The Rules on Methodological Approach for Market Analysis and Competition Regulation on Telecommunications Market

The Rules made by the Telecommunications Regulatory Commission of Sri Lanka, under Section 68 of the Sri Lanka Telecommunications Act No. 25 of 1991 as amended by Act No 27 of 1996 and approved by the Minister of Technology.

Telecommunications Regulatory Commission of Sri Lanka

Colombo, [-] …………, 2024

1. These Rules may be cited as the Competition Rules of No [-] of 2024 and shall come into effect on [-] 2024.
2. These rules are applicable to all entities licensed under the Act (hereinafter the "Entities").
3. The Commission may issue further guidelines, directives, and interpretations to facilitate the comprehensive application of the rules herein.
4. Entities must comply with all directives, notices, and guidelines issued by the Commission as part of their operational compliance. The markets are defined in Annex 1. Market analysis will be performed by the Commission every three years following the completion of the initial market analysis. The Commission has the autonomy to extend the market analysis interval to five years if it identifies that there is effective competition on relevant market. Should the Commission become aware of significant changes in market conditions that necessitate a new analysis, this interval may be shortened accordingly.
5. The outcomes of the market analysis and subsequent actions by the Commission must adhere to the principles of Non-Discrimination, Transparency, and Technology Neutrality.
   5.1. Under the principle of non-discrimination the Commission requires that operators with significant market power provide equitable treatment to other operators, service providers, and consumers. They must not enforce less favorable terms for identical or comparable products or services. However, these operators may offer varied terms and pricing, provided they can objectively justify such differences.
   5.2. Under the principle of Transparency, the Commission is obligated to ensure that its procedures and decision-making processes are open and accessible to the public. It must also engage stakeholders and the general public on matters affecting consumers in a timely and effective manner. Operators are required to disseminate clear and comprehensible information, consistent with regulatory standards, to both peers and the public.
   5.3. The principle of Technology Neutrality is maintained by ensuring that the adoption of regulations does not unjustly prejudice or advantage any specific technology. The

Commission is committed to fostering an equitable environment for all technological frameworks.

6. The Stages of Market Analysis are set out below:

6.1. **1st Stage- Initiation of Market Analysis.** The Commission begins the market analysis process by publishing a notice on its official web-page and initiating gathering of data. The Commission defines the scope of the analysis, identifying market segments, and geographic areas that require detailed analysis.

6.2. **2nd Stage-Definition of Relevant Markets**. The market analysis process begins with defining and analyzing the relevant markets. First, the Commission defines the relevant product markets. Further, the Commission defines the geographic scope of each market, considering factors such as regional competitive conditions and the reach of service providers per the detailed process provided in Rule 7. At this phase the Commission assesses whether the defined retail market is competitively structured in the absence of ex-ante wholesale regulation. This forward-looking analysis evaluates current and foreseeable market conditions and the effects of other types of regulations over a typical review period of 3-5 years. If the retail market is not competitively structured, the Commission identifies the most upstream wholesale market susceptible to ex-ante regulation. This phase focuses on the wholesale market that can best address competitive deficiencies observed in the retail market. The Commission should target regulatory remedies to wholesale markets due to their potential to positively influence retail competition through a flowing effect. Therefore, focusing on the most upstream wholesale market can benefit downstream wholesale markets that are vertically integrated within the supply chain, leading up to the relevant retail market.

6.3. **3rd Stage- Three Criteria Test**. Upon identifying relevant wholesale markets, a three-criteria test is applied to determine the likelihood of needing ex-ante regulation. This test assesses barriers to market entry, market dynamics, and the adequacy of existing competition laws in addressing potential competition problems.

6.4. **4th Stage. Analysis and Identification of SMP**. A Significant Market Power (SMP) assessment follows, where the market's competitive dynamics are scrutinized to determine if one or more operators hold significant market power, either singly or jointly. This involves analyzing market share distributions, potential collusive behaviors, and other competitive factors per Article 5.

6.5. **5th Stage. Remedies.** The Commission identifies potential competition problems/anticompetitive conducts that could arise without regulation and regulatory obligations/remedies are then defined and imposed on identified SMP operators (per rule 13)

6.6. **6th stage.** The Commission shall publish its findings and proposed regulatory measures.

6.7. Finally the Commission oversees the implementation of the regulatory measures by the operators identified with SMP, ensuring compliance with the established guidelines and timelines. Post-implementation, the market is continually monitored to assess the effectiveness of the regulatory measures. Adjustments are made as necessary based on evolving market conditions.

PART I

7. The Definition of Relevant Markets will be as follows:

7.1. Defining a relevant market is the critical first step in the process of market assessment for the purposes of ex ante regulation. An effective assessment of competition is only possible within the confines of a precisely defined relevant market. When setting the boundaries of a relevant market, the Commission shall consider both product and geographical aspects.

7.1.1. For product markets, it analyses which products and services belong within the relevant market.

7.1.2 For geographical markets, the Commission shall examine the area where licensed entities are involved in supply and demand of these products or services, ensuring that the conditions of competition are uniform or sufficiently homogeneous, and distinctly different from neighboring areas where competition conditions significantly vary.

7.2. The market should always be defined on a forward-looking basis, taking into consideration how market dynamics might evolve in the future, thereby affecting the competitive landscape. The relevant market from a product perspective includes those products and services that consumers find sufficiently interchangeable or substitutable, based on their objective characteristics such as price, intended use, type, and functionality, but also considering the conditions of competition and the structure of supply and demand in the market. The market can be broadly categorized into retail markets, which comprise services and facilities provided directly to end-users, and wholesale markets, which comprise services and facilities provided to authorized entities that then offer these services to end-users.

7.3 Reflecting the varied needs of different end-user groups, the downstream retail market can be further segmented, for example, into markets for residential end-users and business end-users. When necessary, the Commission may consider an even more granular division of the market to cater to the specific needs of different types of users such as small, medium, and large enterprises.

7.4 In assessing product substitutability within a wholesale relevant market, the Commission will consider the substitutability of products and services both in the downstream retail market, which includes products and services provided to end-users, and in the upstream wholesale market.

7.5 The initial phase of market analysis involves the Commission defining the focal product, which is identified as the most utilized product within the relevant group of products. This product serves as the benchmark for further analysis. Subsequent to identifying the focal product, the Commission will determine the closest substitutes. These substitutes are those products that consumers can readily switch to, offering immediate competitive constraints on the behavior of the operator supplying the focal product. Both the focal product and its substitutes are included in the product market definition as they constitute the same market.

The process of defining the market in terms of product and geographical characteristics remains consistent across both retail and wholesale markets. The definition derived from the retail market

analysis is instrumental in determining the upstream products and services that cater to the defined retail markets.

7.6 To accurately define which products and services should be included in the relevant product market, the Commission must assess:

7.6.1 **Demand-Side Substitutability**- Demand side substitutability is utilized to assess to what extent customers are willing to replace one service or product with another, potentially even between products/services of varying prices and qualities.

a. The Commission shall assess demand-side substitutability from a forward-looking perspective, considering current market conditions and their likely evolution over the next three to four years.
b. The primary goal is to identify products that could replace the focal product within a specific timeframe, taking into account intended use, price, quality, and operational conditions in line with general consumer habits and decision-making processes.
c. Demand-side substitutability is measured by consumers' willingness and readiness to substitute the focal product with alternatives. It is sufficient to conclude substitutability if a significant portion of consumers would likely switch to a substitute, especially in response to a price increase of the focal product.
d. If a hypothetical price increase by a supplier would lead to a loss of business due to customer migration to substitute products, this indicates competitive pressure from the substitute, warranting its inclusion in the same product market as the focal product.
e. The Commission shall determine the range of substitutable products by evaluating the potential consumer response to a small but significant and non-transitory relative price increase of the focal product. This involves reviewing historical customer behavior and predicting likely customer and supplier responses to price changes.
f. Historical price fluctuations and consumer responses in potentially competing products may be examined. Records of past price movements and tariff changes that show prompt consumer shifts in response to price variations provide direct evidence of substitutability.
g. In the absence of historical evidence, the Commission may apply the 'hypothetical monopolist' or SSNIP(Small but Significant Non-transitory Increase in Price' ("SSNIP")) test to assess how hypothetical price changes could influence consumer behavior regarding the focal product.
h. The Commission should maintain a flexible approach in its analysis, utilizing all relevant data available. The significance of specific data may vary depending on the products and services under examination and the existing market conditions.
i. The assessment must consider any significant switching costs that consumers may face, such as investments in specific technologies or long-term contractual obligations. If switching costs are prohibitively high, it may prevent consumers from changing products, indicating that the products in question do not belong to the same relevant market.
j. The analysis of demand-side substitutability shall focus on the compatibility of products or services from the consumer's point of view, ensuring that market definitions align with real-world consumer behavior and choices.

7.6.2 **Supply-Side Substitutability**- The ability of suppliers to switch their production or service offerings to the focal product without significant cost or delay. When assessing supply side substitutability, the Commission evaluates whether suppliers, other than those currently offering the product/service in question, could offer the same product/service promptly and without significant additional costs. It also considers any existing legal, contractual, or regulatory barriers that might delay market entry.

a. Criteria for Supply-Side Substitutability conveys that Suppliers must possess the necessary production facilities and technological expertise to consider supply-side substitutability.
b. The Commission shall evaluate the timeframe within which operators not currently active in the product market might enter the market following a small but significant and non-transitory relative price increase. The appropriate timeframe for assessing responses will depend on specific market characteristics and will be determined on a case-by-case basis.
c. Factors such as low switching costs and short preparation times for market entry support including such substitute products within the same product market definition as the focal product.
d. The Commission must assess potential barriers that could prevent a supplier from switching production. These include long-term supply commitments, significant market entry barriers, and legal or regulatory obstacles that could delay timely market entry. If the Commission is responsible for or contributes to any market entry barriers, such as restrictive licensing conditions or spectrum capacity allocation, it will take steps to eliminate these barriers to facilitate supply-side substitution.
e. Factors like complex interconnection negotiations, co-location agreements, network access issues, or obtaining rights of way for network expansion are considered significant barriers. If such conditions are prevalent, they generally indicate an absence of supply-side substitution and competitive pressure.
f. Supply-side substitution typically occurs quickly in response to price increases and involves minimal additional costs. In contrast, potential competitors may require more time and significant investment to enter the market. Thus, potential competition is not considered by the Commission at the market definition stage but rather in later analyses such as the three criteria test and significant market power analysis.

7.6.3 Potential competition involves products and services that have not yet entered the market but could pose competitive constraints in the future. These are considered at a later stage when assessing the likelihood of prospective competition and are influenced by specific market entry conditions. Indirect competitive constraints, such as self-supply, particularly in the context of wholesale markets, are also considered. These constraints are analyzed based on competitive pressures stemming from downstream retail markets.

7.6.4 For assessing both demand and supply side substitutability the Commission employes the 'hypothetical monopolist test' or 'SSNIP test.' (Figure 1). However the application of this test is not mandatory in all scenarios.

7.6.4.1The test considers the effects of a hypothetical small but significant (typically 5-10%) and non-transitory price increase of the focal product, while prices of other products or services remain constant. The key is to observe the probable reactions of consumers to this price increase.

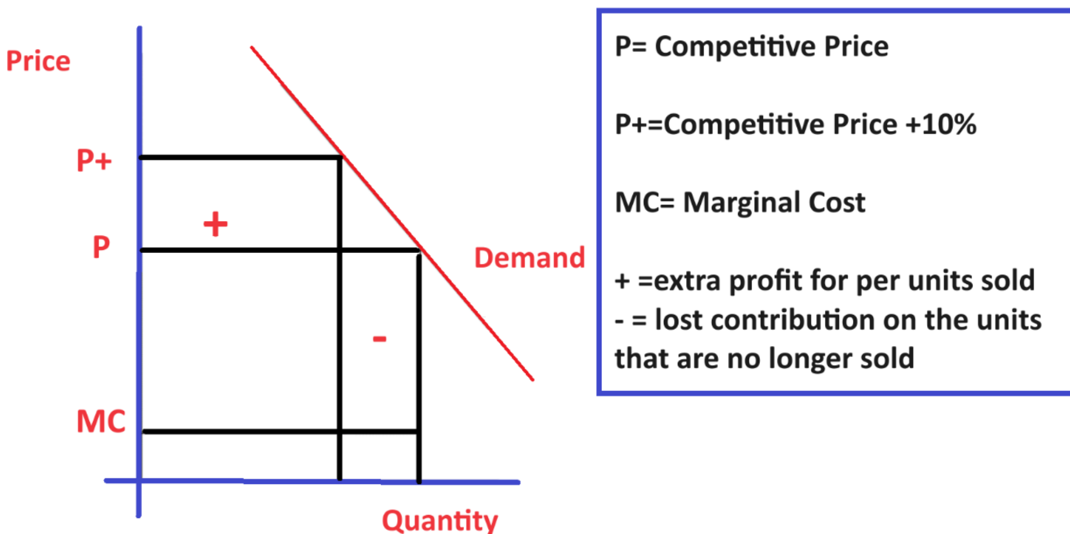
7.6.4.2 If consumers are likely to switch to a substitute product or service in response to the price increase, then the substitute is considered part of the same product market as the focal product. This decision depends on whether enough marginal consumers would switch to substitutes, effectively making the price increase unprofitable for the supplier.

7.6.4.3The SSNIP test evaluates whether the price increase would be profitable after accounting for the potential loss of customers who might switch to competing products or services. This involves comparing the additional profit from higher prices against potential losses from reduced customer base.

7.6.4.4If existing data are insufficient to assess demand and supply-side substitutability, the Regulator may conduct market research. This can involve surveys or consultations with a representative sample of consumers and suppliers to understand their potential responses to price increases and identify possible substitutes.

7.6.4.5The SSNIP test is particularly relevant in markets where prices are presumed to be set at competitive levels. It helps determine if a monopolistic pricing strategy could be effectively countered by market forces, thereby aiding in market definition and competitive analysis.

Figure 1: SSNIP Test



7.6.5.When defining a relevant market, the Commission also takes into account any switching costs that consumers might incur when moving from one product/service to its substitute. If these costs are substantial enough to diminish or eliminate demand side substitutability, the products in question should not be considered part of the same relevant market. Such switching costs may relate to expensive terminal equipment or penalties for breaking contracts with current service/product providers.

7.6.6. Once the relevant product market is defined, the Commission defines the geographic scope of the market to assess its competitive effectiveness.

7.6.6.1 In the definition of geographic markets, it shall be generally presumed that the entire country constitutes a single geographic market, unless specific assessment indicates otherwise. No local or regional markets shall be defined without a thorough analysis demonstrating distinct competitive conditions in those areas.

7.6.6.2 Geographic boundaries are determined by identifying competitive constraints on the behavior of authorized persons, particularly in price setting. Geographic markets are defined as areas where competition conditions are homogeneous and distinct from neighboring areas where competition conditions differ significantly.

7.6.6.3. The assessment of different geographic areas is based on criteria such as the number and size of competitors, market share distribution, price differences or variations across regions, the nature of demand, and differences in marketing strategies. When defining the geographic scope of the market, the Commission ensures that markets are of an appropriate size to avoid significant competitive variations within each unit, yet large enough to prevent a resource-intensive analysis that could lead to market fragmentation. Markets should also reflect the network structure of all relevant operators and have clear and stable boundaries over time.

7.6.7 Unless the Commission can define geographic markets that reflect the principles described above , it defines the geographic scope of the relevant market as national and addresses differences in competitive constraints when imposing geographically differentiated specific obligations on authorized persons with significant market power.

7.6.8 The identification of the relevant retail market using the approach defined above marks the starting point in the market analysis process.

7.6.9.After defining the relevant retail market, the Commission conducts an assessment to determine whether the market is effectively competitive and whether any existing or potential competitive issues exist. This assessment is based on criteria such as the market shares of active authorized persons, the level of retail prices and quality of products/services, and their evolution over time. This assessment does not entail a full market analysis as outlined in herein. The goal of the retail market assessment is to determine whether the market is effectively competitive from a forward-looking perspective, in the absence of regulation based on findings of significant market power, while also considering the impact of other types of regulation.

7.6.10. If the retail market assessment concludes that the market is not effectively competitive, corresponding wholesale markets susceptible to ex ante regulation are identified, defined, and

assessed. The first wholesale market to be analyzed is the one most upstream from the retail market in the vertical supply chain, as its regulation would most significantly influence the development of effective competition in the relevant retail market. When identifying wholesale markets, the Commission considers the ladder of investment principle and acknowledges that some retail markets may be downstream markets in relation to more than one wholesale market.

7.6.11. If the assessment concludes that the relevant retail market is effectively competitive (in the absence of ex ante regulation of the corresponding wholesale relevant market or markets), this leads the Commission to conclude either that regulation is no longer needed at the wholesale level and that the upstream wholesale relevant market or markets are effectively competitive, or that it should not impose obligations in case the upstream wholesale market is currently not regulated.

8.Methodological Approach for Undertaking the Three Criteria Test

8.1 The Commission will use the three criteria test to determine if a relevant market, defined in earlier stages of market analysis warrants the imposition of regulatory obligations.

8.2 A market is deemed susceptible to ex-ante regulation if it cumulatively meets the following conditions:

a. There are substantial and persistent structural, legal, or regulatory barriers to entry.
b. The market structure does not promote effective competition within the anticipated timeframe of3-4 years.
c. Existing competition laws are inadequate to address the competition issues identified effectively.

8.3 The presence of high and persistent barriers that restrict entry into the market is assessed. Such barriers can be structural, legal, or regulatory, significantly impacting potential new entrants' ability to access the market and exert competitive pressure on existing operators. This criterion focuses on current market conditions, emphasizing the challenges new entrants face due to asymmetric relationships, absolute cost advantages, economies of scale, network effects, and substantial investment requirements.

Structural barriers might include economies of scale that incumbents enjoy or the substantial costs new entrants face, which are not quickly recuperable. Regulatory barriers could involve restrictive licensing or access to essential but scarce resources like spectrum.

The Commission should evaluate the amount of investment required, the potential for achieving economies of scale, the necessity of special licenses and approvals, and the timeframe for new entrants to establish infrastructure.

8.4. The second criterion (Market Structure) assesses whether the current and projected market structure supports effective competition. It considers infrastructure-based competition, market dynamics, and the availability of alternative networks. Factors such as market shares, price trends,

investment in technology, and service innovation are analyzed to forecast whether effective competition is achievable without the need for ex-ante regulation.

The Commission should consider ongoing investments, changes in market shares, and innovations that could influence market dynamics. The presence of alternative infrastructures and the potential for market convergence are also important considerations.

8.5. The final criterion (Insufficiency of Competition Law) examines whether traditional competition law remedies are sufficient to address the identified anti-competitive behaviors. This involves determining if ex-post measures can timely and effectively resolve market failures that are not adequately addressed by existing legislative frameworks.

The Commission must assess the responsiveness and effectiveness of competition law interventions, considering if these measures can address issues promptly and effectively. Where competition law falls short, especially in dynamic and evolving markets, ex-ante regulation may be justified.

8.6. If all three criteria are met, the Commission will proceed with SMP analysis and the implementation of ex-ante regulatory measures. Conversely, if the market demonstrates sufficient competitive dynamics and competition law is deemed effective, ex-ante regulation may not be necessary.

9. Market Analysis

9.1. The purpose of market analysis conducted by the Commission is to determine whether the relevant market is genuinely competitive. This includes identifying whether any authorized entities possess significant or joint significant market power within that market.

9.2 To effectively evaluate the wholesale market, the Commission must identify the corresponding retail markets that are impacted by the regulation of the wholesale market, ensuring that regulatory measures accurately target the areas most in need of oversight and support competitive market conditions.

9.3 To determine significant market power, the Commission will assess by using a a combination of the criteria set out below:

9.3.1 Market Position/share- A key measure is the market share, typically based on revenue, subscribers, production units, or network size. An entity with a market share of 50% or more is likely seen as having significant power, while less than 30% likely indicates minimal power. The historical progression of market shares also provides insights into the market's competitive nature. However, the Commission will not rely solely on market share as an indicator.

9.3.1.1 -The purpose of analyzing market shares is to initially gauge the market structure and relative power of operators within both the defined product and geographical markets, helping to identify potential significant market power.

9.3.1.2 The Commission may employ various indicators such as value-based shares (using revenues and investments) and volume-based shares (using numbers of subscribers, traffic quantities, and network capacity) to assess market shares. Typically, this data is collected at the retail level, necessitating a methodology to extrapolate these figures to estimate equivalent shares for wholesale markets susceptible to ex-ante regulation.

9.3.1.3 For vertically integrated operators, market share assessments for wholesale product markets should be based on retail market shares from downstream markets. In scenarios where a formal wholesale market does not yet exist due to the absence of mandated wholesale access, the calculated market shares are considered notional, including estimates of self-supply by vertically integrated operators.

9.3.1.4 - Market shares derived from downstream retail levels are crucial in determining SMP within wholesale markets. The significance of these shares is assessed in context with market dynamics. For example, in telecommunications markets, shares based on data-related revenues and traffic are increasingly vital due to the growth of data services relative to voice services.

9.3.1.5 - An operator holding more than 50% market share typically indicates SMP, unless exceptional circumstances exist. However, if an operator's market share is between 30% and 50%, further supportive criteria listed in paragraph vi and criteria from "b" to "l" of the current clause must be analyzed to confirm SMP. Operators with less than 30% market share are generally not considered to have SMP, though other competitive dynamics should still be examined.

9.3.1.6 - Additional market share-based indicators include:

a. Duration and consistency of high market share suggesting preliminary evidence of SMP.
b. Significant market share fluctuations indicating potential competitive shifts.
c. The ability of new entrants to rapidly increase market share, suggesting increasing competitiveness.
d. Market share distribution highlighting gaps between the largest operators and their competitors.
e. The dynamics in emerging markets where market shares can change rapidly, requiring careful consideration to avoid premature regulation that could stifle competition.

9.3.1.7 While market share is a critical indicator, the Commission will use a combination of other criteria to assess SMP comprehensively.

9.3.2 **Infrastructure Control** - Entities with longstanding presence or access to limited resources, like frequency spectrums, may have extensive infrastructures that competitors can not easily replicate. The Commission will evaluate this infrastructure's importance in influencing market power.

i. The Commission may evaluate the impact of the high investment costs required for a newcomer to enter the defined product market. The extent of these costs directly correlates with the magnitude of the market entry barriers.
ii. If entry into the market requires duplicating extensive infrastructure, such as achieving national coverage typical for mobile networks, this is considered a substantial barrier to market entry. For network types that demand significant long-term investments, such as new entrants in the fixed broadband sector beginning in urban and expanding into rural areas, achieving competitive economies of scale may require several years of sustained investment.
iii. Incumbent operators, having been in the market for a significantly longer period, possess extensive and ubiquitous infrastructure, often with national coverage. These incumbents have already absorbed high sunk costs, which act as a formidable barrier to new entrants lacking similar infrastructure.
iv. The Commission should consider the investment needs of incumbent operators relative to the market demands. For instance, if an incumbent is serving the defined product market with predominantly outdated technology, significant additional investment may be necessary for them to remain competitive against new entrants who invest in modern technologies.
v. If incumbents have made substantial investments in physical infrastructure assets, such as ducts, buildings, towers, and street furniture, they maintain a considerable advantage. This type of passive infrastructure is challenging and often infeasible for new operators to duplicate, thereby reinforcing the incumbents' competitive position in the defined product market.

9.3.3. **Technological Edge-** The Commission will examine if any entity benefits from technological advantages, especially those originating from past monopolistic or oligopolistic scenarios.

9.3.4. **Customer Influence** - An absence of countervailing buying power suggests that customers lack the strength to influence product/service terms. The Commission will consider how many suppliers can offer the product/service.

i. The Commission should assess countervailing buying power to determine whether any operator's market power is effectively counterbalanced by the capabilities of buyers or access-seekers. This involves considering:
   - The number of suppliers that currently provide or are capable of providing the relevant product or service.
   - The magnitude of sales to specific large consumers or the volume of business that access-seekers could potentially redirect.

ii. The evaluation of countervailing buying power encompasses several key factors:

- Assessing whether access-seekers can meet their requirements through investments in their own network infrastructure, thereby reducing dependency on external suppliers.
- Determining whether access-seekers can pose a credible threat to switch suppliers, influencing the dynamics within the defined wholesale market.
- Considering whether the purchase volumes of access-seekers are substantial enough to significantly impact the profitability of the wholesale supplier.

iii. If access-seekers do not meet these criteria, it may indicate that countervailing buyer power is limited or non-existent. Specifically, the assessment focuses on the extent to which buyers can exert influence on the market dynamics and the operations of suppliers through their procurement strategies and market presence. The presence of limited countervailing buying power suggests that the operator may be able to exert significant market power without adequate checks from buyers, which could necessitate regulatory intervention to ensure competitive market conditions.

9.3.5. **Financial Access**- Entities with easier access to funding sources, perhaps due to size or affiliations, may have a competitive advantage in network enhancements.

9.3.5..1 The Commission should assess the access to capital of operators within the defined product market by considering key elements that influence their ability to fund essential network deployments and other strategic investments.

9.3.5. 2 The assessment should include, but not be limited to, the following factors:

- The overall size of the operator and its connections to larger groups or conglomerates which might facilitate access to additional resources.
- The nature of the ownership, notably state ownership, which might afford the operator preferential access to state budget funds as opposed to competitors who rely on commercial lending markets.
- Links to international groups that can channel funding from overseas or other sectors into the operator's local electronic communications investments.
- Analysis of the operator's financial results compared to its competitors, particularly looking at free cash flow generation over the last few years, which can indicate superior access to self-financed investment capabilities.
- The availability of state or other subsidies, including universal service funds or sector-specific grants for expanding into underserved areas or for upgrading services in critical sectors such as education, healthcare, and government infrastructure.

In addition to these direct financial considerations, the Commission should also take into account country-specific factors that may influence an operator's access to finance. These include overall credit environment, which can affect the terms and availability of

external financing and general availability of commercial loans, government-backed financing options, and other forms of financial support.

9.3.6. **Product Diversity**- Companies with a broad product range can offer appealing bundles, potentially leveraging their position across various markets.

9.3.7. **Scale Economies**- Large-scale providers can reduce per-unit costs due to fixed costs being spread over a bigger production volume.

i. Economies of scale in the electronic communications sector occur when the unit supply costs of services within a defined product market decrease as the network size used to supply these services expands, and as traffic, take-up, or capacity utilization increases.

ii. Large operators, especially those with potential for national coverage such as most mobile networks and many incumbent fixed networks, can achieve significantly lower unit costs compared to newer market entrants with more limited coverage. This cost advantage enables larger operators to distribute their total operational costs across a broader customer base, effectively reducing the per-unit cost of service delivery.

iii. The ability to capitalize on economies of scale allows larger operators to potentially lower retail prices within the defined product market. Such pricing strategies can place competitors, particularly those with smaller or less extensive networks, at a competitive disadvantage. By setting lower prices, the larger operator may naturally discourage competition by making it difficult for smaller operators to compete effectively without achieving similar scale.

iv. The Commission should assess whether any large operator enjoys significantly greater economies of scale compared to its competitors. While operators with localized coverage may benefit from certain economies of scale, they typically require expansion to national coverage to match the unit cost efficiencies of the largest operators in the market.

9.3.8. **Scope Economies**- Cost benefits might arise when fixed costs are distributed across diverse services using the same infrastructure or shared activities.

9.3.8.1. Economies of scope occur when the unit supply costs of services within the defined product market decrease due to an operator producing a set of closely related products or services using the same network infrastructure. This results in cost savings because the total costs of producing multiple services over the same infrastructure are lower than when these services are produced separately across distinct networks.

9.3.8.2. These economies arise from the integrated execution of a broader range of activities within a single company. For example, an operator that offers both fixed and mobile services can achieve significant cost efficiencies that smaller or more specialized operators cannot.

9.3.8.3. Common infrastructure elements such as buildings, ducts, power supplies, backhaul links, and international and IP transit links facilitate economies of scope. The shared use of these assets across different service offerings significantly reduces the unit costs associated with supplying each service.

9.3.8.4. Operators that effectively utilize economies of scope can design retail offerings that bundle various services at a lower price than if these services were offered individually. This pricing strategy provides a competitive edge over operators that only provide single services and cannot leverage such cost efficiencies.

9.3.8.5. The Commission should evaluate whether an operator not only enjoys but also actively exploits greater economies of scope. This assessment should consider the operator's presence and performance not only in the defined product market but also in adjacent markets that contribute to its overall economies of scope. This comprehensive evaluation helps understand the operator's current and potential future ability to benefit from these economies in the market.

9.3.9. **Vertical Integration**-Entities owning their network and offering retail services through it might be more adaptive and self-reliant.

9.3.9.1. Vertical integration occurs when an operator manages both upstream wholesale and downstream retail markets utilizing a common network infrastructure. This infrastructure may support diverse services such as leased lines to businesses, broadband access, and voice and IP transit services. Vertical integration offers distinct competitive advantages by enabling operators to:

- Independently offer retail services without relying on another operator's infrastructure.
- Exercise direct control over network resources, influencing product design, service quality, and customer service levels.
- Control the processes of service provision and support.
- Make swift investment decisions and quickly adapt to market changes.

9.3.9.2. All operators that construct their own networks and serve retail subscribers are considered vertically integrated. However, their market power significantly depends on the extent of their network coverage. If two vertically integrated operators are comparable in size, neither is likely to dominate the market. Conversely, a vertically integrated operator, often the incumbent, with a substantially larger network than newer entrants, possesses enhanced market power.

9.3.9.3. In markets lacking ex-ante regulation, larger vertically integrated operators might exploit their market power and operational independence to engage in anti-competitive practices. These practices can include:

- Implementing excessive or predatory pricing strategies.
- Engaging in margin squeeze tactics.
- Discriminating against competitors, for instance, by providing them with lower quality wholesale access or slower service response times compared to services offered to their own retail customers.

9.3.9.4. Actions by larger vertically integrated operators that disadvantage competing operators or unfairly promote their own retail services, such as preferential access to maintenance or repair services, can substantiate the existence of SMP. Such evidence is particularly compelling when it shows operators using their vertical integration to impede fair competition and maintain or enhance their market position.

9.3.10. **Sales Network**- A robust distribution and sales network can make entities more accessible to potential customers, especially relevant for retail markets.

9.3.11. **Potential Competitors**- The Commission will gauge the threat from competitors not currently in the market but who might pivot their products or expand geographically if prices increase.

9.3.12. **Expansion Barriers**- A saturated market may discourage new entrants, possibly leading to less competition or even market consolidation.

i. While there may be no explicit barriers to entering a market, existing operators might face limitations regarding further investments and expansion within the defined product market. The Commission should evaluate the potential existence of these expansion barriers by considering the ability of operators to capitalize on emerging market opportunities, such as geographical expansion or the development of new products and services.

ii. The analysis of barriers to expansion often relates to the assessment of barriers to entry, including both structural and legal/regulatory barriers. It is crucial to understand how these barriers impact not only market entry but also the subsequent expansion efforts of operators.

iii. The Commission should investigate whether smaller operators already in the market have increased their market shares over the past 3-4 years. A lack of significant and sustained growth in market share might indicate the presence of expansion barriers. Operators should be consulted to identify specific factors that have hindered or continue to limit their market expansion.

iv. Real barriers to expansion may arise from the conduct of other operators, particularly those with significant market power, who may wish to restrict competition. Examples include behaviors that delay, discourage, or prevent expanding operators from acquiring new customers.

v. A common barrier to expansion is when an operator with SMP refuses reasonable wholesale access to its network, thus preventing competitors from accessing growth opportunities in regions where they lack infrastructure. Reasonable access under commercial terms would allow competitors to expand their market coverage with reduced risk and better market understanding before committing to significant investments.

vi. Other expansion barriers might relate to a competitor's ability to enhance their service offerings. For instance, if an established operator offers comprehensive retail bundles combining fixed and mobile services, voice, data, and IPTV, a competitor might struggle to expand within the defined product market without a competitive bundle. In such cases, barriers that

prevent competitors from entering other related markets should also be considered in the SMP analysis.

10. Assessment of Joint Dominance

10.1. Joint Significant Market Power is identified when two or more operators, without formal agreement, act in a manner that is independently of competitors or customers in the defined product market. This may include operating under a common policy that aims to restrict competition effectively, driven by mutual economic rationality, without resorting to explicit agreements or practices prohibited by antitrust law.

10.2. To determine the existence of joint SMP, the Commission must analyze the following four cumulative conditions:

a. There must be sufficient market transparency to ensure that each member of the dominant oligopoly is aware of others' market conduct and adherence to a common policy.

b. The condition of tacit coordination must be sustainable, with incentives strong enough to maintain adherence to a shared market policy. Effective deterrents should be in place to discourage deviations from this policy.

c. analysis must demonstrate that external responses from competitors or customers will not effectively counter the benefits expected from the common policy.

d. The behavior of the oligopoly members—such as foregoing certain revenues—must clearly indicate that their actions are better explained by tacit collusion rather than competitive market conditions.

10.3. The Commission must perform a forward-looking assessment considering likely market developments over the next few years. This includes:

- Analyzing all relevant market characteristics and past behaviors of market participants.
- Evaluating the potential focal points of tacit coordination, such as the denial of wholesale access on reasonable terms.
- Assessing incentives for coordinated behavior versus competitive actions, including the credibility and historical application of sanctions for non-compliance.
- Considering market share stability, joint economies of scale or scope, and price alignment over time.

10.4. In assessing joint SMP, the Commission should consider a variety of market characteristics, including:

- The strength and positions of competitors and potential barriers to market entry or expansion.

- The similarity of cost structures across operators.

- The elasticity of demand and the growth dynamics of the defined product market.

- The lack of countervailing buying power and limited scope for price competition.

11. Determination of Market Competitiveness

11.1. If the Commission determines that the market is effectively competitive and no entity holds significant market power, either individually or jointly, it will refrain from imposing any regulatory obligations. Should there be existing obligations from prior analyses, these will be removed to reflect the current competitive status.

11.2. In the event that the market is found not to be competitive, the Commission will identify any entities holding significant market power. Regulatory obligations will be imposed on these entities to address the lack of competition. In cases where multiple entities are found to have significant market power, obligations will be applied to each, tailored to their specific impact on the market dynamics.

11.3. The Commission will publish its findings, including the market definition, detailed market analysis, identification of entities with significant market power, and the proposed obligations. These findings will be subject to a public consultation process, allowing stakeholders and the public to provide input and feedback.

11.4. Based on the outcomes of the public consultation and a thorough review of all submitted comments and evidence, the Commission will make a final decision regarding the obligations to be imposed on the identified entities with significant market power.

11.5. Commission shall evaluate the necessity to impose any of the following specific obligations, individually or in combination, based on the specifics of each case:

(i) Transparency;

(ii) Non-discrimination, including technical and economic replicability;

(iii) Accounting separation;

(iv) Access to, and use of, specific network facilities;

-(v) Price control and cost accounting obligations;

-(vi) Functional separation.

11.6. In imposing specific obligations, the Commission shall adhere to these Rules and respect the following principles:

(i) Specific obligations shall primarily target wholesale markets, and only those that are not effectively competitive;

(ii) Specific obligations are intended to remedy identified existing or potential competition problems;

(iii) All specific obligations must be proportionate to the identified competition problem, justified, and technically feasible;

(iv) Consideration of the interdependency of obligations when imposing them;

(v) Obligations on retail markets shall only be imposed where wholesale market obligations fail to achieve effective competition.

11.6.1 For each specific obligation imposed, the Commission shall detail the implementation requirements and the timeframe for the designated entity recognized as having significant market power to comply. This timeframe shall balance the urgent need to foster a competitive market environment with the designated entity's capacity to implement the obligations

16.6.2 Following the imposition of specific obligations, the Commission shall review whether the designated entity with significant market power has implemented the obligations as specified and within the set timeframe.

11.6.3 The Commission shall periodically reassess the relevant market to evaluate the impact of previously imposed specific obligations on the competitive situation in the downstream retail market. If the analysis reveals that the obligations have not successfully established or maintained sufficient competition, the Commission shall investigate the causes and, if necessary, extend or adjust the scope of the obligations.

11.6.4 Every relevant market identified in accordance with these Rules shall undergo regular analysis as per the market analysis rules established herein, except where the Commission determines that the market does not meet the criteria for imposing specific obligations or if competition issues previously targeted by regulation have been addressed by regulations of another relevant market.

12. **Assessing anticompetitive conduct**

12.1. When evaluating anti-competitive practices, Commission will take into account:

a) If one or more entities/authorized bodies with SMP are involved in activities that could substantially damage competition within the market; and

b) If such an entity or entities/authorized bodies with SMP are also involved in adjacent markets, either before or after the point of their primary operation, and if they have the capacity to adversely impact competition in these connected markets.

12.2. Anticompetitive conduct and respective abuse of dominance can manifest in various forms, including but not limited to:

a) Withholding access to essential facilities;

b) Engaging in unfair pricing strategies;

c) Applying pricing pressure on competitors;

d) Implementing predatory pricing tactics;

e) Setting unreasonably high/monopolistic prices;

f) Misappropriating sensitive information;

g) Denying the provision of necessary information;

h) Combining/bundling products or services in a way that coerces the consumer;

i) Ensuring that customers remain dependent on a single provider;

j) Engaging in restrictive practices, such as collusive agreements.

12.3. It should generally be recognized as an abuse of market dominance if an operator denies others access to its essential network, facilities, products, or services, removes such access, or conditions access on unfair terms such as unreasonable delays, substandard quality, or inflated prices.

12.4. The Commission deems that an abuse of market position may occur through cross-subsidization, where an operator finances its operations in a competitive market with profits from another market where it enjoys monopoly or SMP. This practice should be seen as abusive if it employs profits from a dominant market to cover losses in a competitive one.

12.5. When SMP operator imposes different terms on similar transactions, it should be viewed as engaging in discriminatory pricing. Price discrimination should be considered illegal when it:

a) Aims to drive competitors out of the market; and

b) Involves the operator leveraging its market power to charge certain customers excessive prices.

Discounts that should be banned for operators with SMP include:

a) Loyalty discounts contingent upon customers not buying from competitors, whether implied by expenditure targets or explicitly agreed upon;

b) Discounts calculated across multiple markets and applied to products in these markets;

c) Volume discounts based on total spending in both competitive and regulated markets but only applied to expenditures in competitive markets;

d) Discounts aimed at a select group of customers, especially those poised to switch to other suppliers.

12.6. An operator with substantial market power could potentially compress competitors' margins by hiking wholesale prices for them while reducing retail prices for its own services. To investigate price squeezing, the regulatory authority may enforce a wholesale cost imputation test, where:

a) This test should apply to a monopoly or operator with significant market power in essential facilities and wholesale product provision; and

b) The operator is also involved in a retail market that depends on these facilities or wholesale products.

The operator must demonstrate to the regulatory body that its retail service pricing is at least equal to:

a) The price competitors are charged for the wholesale components of the service (which is "imputed" to the dominant provider's costs, irrespective of actual incurrence); and

b) The real additional costs the dominant provider incurs in offering the retail service, beyond the imputed wholesale costs.

12.7. Predatory pricing occurs when a firm intentionally sets its prices low enough to incur losses in the short term, with the purpose of driving competitors out of the market and gaining the ability to later raise prices substantially.

To classify as predatory pricing, the Commission will apply the following criteria:

a) The firm holds sufficient market power to set higher prices at will;

b) The firm's pricing falls below a recognized benchmark indicative of predatory pricing;

c) There is a deliberate pattern of setting predatory prices, not merely occasional or responsive price cuts; and

d) The firm can reasonably be expected to recoup the losses it sustained during the period of predatory pricing once the competition has been diminished or eliminated.

12.8. A firm with SMP should be seen as abusing its market position if it charges exorbitant prices for network components necessary for competitors to participate in the retail market. Similarly, when a firm with significant market power imposes excessive prices on end-users in markets lacking competitive pressure, this should typically be considered market abuse.

12.9. Operators must not exploit shared information, which is meant to facilitate contractual arrangements, in a way that unfairly benefits any party in offering products and services to consumers.

12.10. A firm with significant market power that denies access to network-generated information, which is essential for connecting or ensuring service interoperability with other networks, is likely abusing its position. Prohibiting the firm from withholding information that prevents others from providing services (like caller ID services) is warranted when such information is exclusively available through the firm. Similarly, the firm should not refuse to provide technical details, like potential connection points, to a competitor seeking interconnection.

12.11 Bundling by a dominant firm should be forbidden in cases where:

a) Products from a competitive market are tied to products from a market where the operator is dominant; and

b) The firm with SMP packages services together that could otherwise be offered separately.

Although the bundling regulations vary internationally, typically, anti-competitive concerns are raised when prices are below certain cost measures. Operators with access to sensitive competitive information, such as infrastructure and telephony service providers, should not be allowed to use this information to undermine competitors.

12.12. Agreements that excessively hinder or prevent customers from switching to another operator should be banned, particularly if the intent or effect of such agreements is to substantially harm competition.

12.13. Agreements resulting in anti-competitive outcomes are to be deemed unacceptable. Such agreements typically fall into two categories:

a) Horizontal agreements, which lead to a collective dominant position that could impede other competitors or be detrimental to consumers; and

b) Vertical agreements that can create barriers for other competitors, such as granting exclusive distribution rights, which may impede market entry or expansion by others.

However, the potential advantages of certain agreements, like those establishing technological standards, should be weighed in assessing whether an arrangement is inherently anti-competitive.

12.14 Typically, the following types of agreements are to be considered prima facie indicators of anti-competitive behavior:

a) Price fixing - collusion on consumer pricing, such as agreements to increase prices to a specific level or to coordinate resistance to price fluctuations;

b) Market division - arrangements for dividing markets by customer segments, geographic territories, or types of products;

c) Bid rigging - conspiracies wherein one party agrees not to submit a bid with the understanding that it will be compensated in another form, or where bids are set at a specific level to intentionally exclude certain competitors.

12.15 Interconnection agreements are critical for competitive network and service provision and should be regularly scrutinized. An interconnection agreement is likely anti-competitive if:

a) It limits competition between the signing parties, for instance through price fixing or dividing markets;

b) It excludes or limits competition from entities not part of the agreement, such as when it stipulates interconnection on an exclusive basis; and

c) It results in one party using commercially sensitive information for competitive advantage outside the scope of the agreement.

13.Regulatory Remedies

13.1. The Commission is entitled to determine the remedies on the basis of the market analysis and identified competition concerns per the articles 3-8 above. The Commission is authorized to apply the remedies including but not limited to the following:

Identified Competition Concern	**Specific obligation intended to remedy the competition problem**
Denial of access	Access obligation Non-discrimination Infrastructure sharing obligation
Denial to negotiate	Transparency such as obligation to publish reference interconnection offer Access obligation, Transparency on physical infrastructure
Discriminatory access to information	Transparency such as obligation to publish reference interconnection offer Non-discrimination
Delaying tactics	Transparency such as obligation to publish reference interconnection offer Access obligation Clearly set timeframes for: • publication of information • reaction to other authorized persons' request for negotiation • submission of the dispute to the TRCSL

Unreasonable bundling of products	Obligation of access to unbundled products Accounting separation
Disproportional conditions	Non-discrimination Accounting separation
Price discrimination	Non-discrimination Transparency Accounting separation
Cross subsidisation	Non-discrimination Accounting separation
Predatory pricing	Non-discrimination Transparency Accounting separation Cost orientation and cost accounting Price control
Excessive pricing	Non-discrimination Transparency Accounting separation Cost orientation and cost accounting Price control

14. Implementation and Oversight of Regulatory Obligations on SMP Operators

14.1. Regulatory obligations included but not limited to the list provided in Rule 13 shall be specifically defined and imposed on operators identified as SMP. These obligations should be designed to be minimally restrictive, directly addressing and rectifying the identified competition problems. Subject to the discretion of the Commission, an impact assessment may be conducted for the proposed obligations to evaluate their potential effects on the market, which includes assessing benefits to consumers and considering implications for operator investment and innovation

14.2. The publication for public comment and feedback from industry stakeholders shall take no more than 30 days.

14.3. After the consultation period, the Commission shall review all submissions and may conduct additional analyses if new evidence or arguments are presented. A final decision is then issued on the market analysis and regulatory measures. This decision should include detailed rationale and expected outcomes of the measures.

14.4. The Commission oversees the implementation of regulatory measures by SMP operators, ensuring that they comply with the established guidelines and timelines.

PART II

15. Assessment of Mergers and Acquisitions

15.1.The Commission evaluates mergers to determine if they could significantly hinder effective competition within the telecommunications sector by creating or reinforcing a dominant position.

15.2. Prior to executing any merger or acquisition, parties involved must notify the Commission to ensure that all potential mergers and acquisitions are assessed in advance to determine their impact on market competition within the telecommunications sector.

15.3. The merging parties are required to submit a detailed notification to the Commission at least 30 days before the proposed merger or acquisition. This notification must include comprehensive details of the merger or acquisition, including the draft agreement, parties involved, and any relevant financial and operational information.

15.4.The Commission will review the notification and may request additional information if necessary to complete its assessment. The review period will commence upon receipt of a complete notification and will last for 180 days, during which the Commission will evaluate the potential impacts of the proposed merger or acquisition on market competition. The Commission retains the authority to request any additional information deemed necessary from the merging entities to properly evaluate the proposed merger and its implications. This includes the power to request access to the merger agreement and any other relevant documents related to the merger. Commission may, in special circumstances, extend the timeline with additional 90 days. If the Commission fails to issue the assessment upon the expiration of the term above, the merging parties may proceed with the proposed merger and acquisition.

15.5.To address potential anti-competitive effects and maintain effective competition in the telecommunications market, merging parties are required to propose remedies as part of their notification to mitigate any negative impacts identified during the assessment.

15.6.The Commission assesses the merger based on its nature:

- Horizontal Mergers-involving companies that compete in the same market.
- Vertical Mergers- Involving companies operating at different levels within the same supply chain.
- Conglomerate Mergers- Involving companies that do not have a horizontal or vertical relationship and operate in distinct markets, or where one of the companies is not an authorized entity in the telecommunications sector.

15.7. For mergers that span multiple categories, the Commission examines all potential impacts—horizontal, vertical, and conglomerate. This includes evaluating the anticipated effects on competition by comparing market conditions with and without the merger. The analysis considers the current competitive environment and potential market changes, such as the entry or exit of competitors.

15.8. Identifying and defining the relevant market is the initial step in analyzing a merger. This is essential for assessing the competitive pressures before and after the merger. The approach for defining markets affected by mergers will align with the methodology used for defining markets susceptible to ex-ante regulation.

15.9. In deciding whether a merger would substantially hinder effective competition, the Commission relies on a detailed evaluation of the potential impact on the identified and defined markets. This assessment includes consideration of various factors such as:

- Market share and the degree of market concentration.
- Potential anti-competitive effects of the merger.
- The power of buyers to counteract these effects.
- Efficiencies gained through the merger.
- The condition of any companies involved that may be failing.

Decisions regarding mergers, including the acceptance or rejection of remedial proposals, will be published by the Commission.

16. Market Share

16.1. For market share assessments, the Commission primarily shall consider the current market shares held by the companies. In certain justified situations, these shares may be adjusted to account for the anticipated entry or exit of firms, or the expansion of existing ones. To calculate market shares after a merger, the existing market shares of the involved companies prior to the merger are used. Historical trends in market share distribution are also critical for a thorough analysis.

16.2. A relevant market share of 50% or higher typically suggests that a dominant position is probable. Yet, even with lower market shares, a dominant position may be inferred based on the number of competitors, their scale, and their capacity to compete with the leading company. Generally, if a company’s market share does not exceed 30%, it is unlikely to be considered dominant under normal conditions.

16.3. The Commission evaluates the competitive landscape of a market by examining the level of concentration and its change after a merger, using the Herfindahl-Hirschman Index (HHI) and its delta value to assess impact.

For horizontal mergers, standard thresholds to be defined as suggesting no competition concerns post merger if:

- The HHI is below 2000;
- The HHI is above 2000 with a delta under 150.

However, exceptions arise in situations like the involvement of a new or potential market entrant, the presence of innovative firms not represented by market shares, significant cross-shareholdings, the participation of a company that disrupts market coordination, evidence of coordination among competitors, or if a company holds a pre-merger market share of 50%

or higher. For vertical and conglomerate mergers, competition concerns are less likely if, after the merger, the market share in affected markets remains below 30% and the HHI is under 2000. This assumes no significant expansion of the companies involved, no substantial cross-shareholdings, no disruption-prone firms, and no signs of existing coordination among competitors. Although HHI and delta values are helpful for initial assessments, they are not decisive indicators of competition issues on their own.

17. Assessing Horizontal Mergers

17.1. In evaluating the unilateral impacts of a horizontal merger, the Commission shall consider a variety of factors, including:

17.1.1. The market shares of the merging entities – the larger the market shares and the greater the addition to market share post-merger, the more likely the merger will result in increased market power.

17.1.2. The level of competition between the merging firms – the greater the substitutability between the products/services of the merging entities and the less substitutable they are with their competitors' offerings, the more likely it is that the merger will substantially lessen competition.

17.1.3. Customers' ability to switch suppliers – the less capable customers are of changing their supplier, whether due to a scarcity of alternatives or high switching costs, the more likely the merger will diminish competition.

17.1.4. Competitors' ability to expand output – if existing competitors are unlikely to be able to increase their output, expand network coverage, enhance capacity, or improve the quality of their networks following a price hike, then the merger is more likely to harm effective competition.

17.1.5. The merging firms' potential to obstruct competitors' growth – if the merging parties control essential inputs needed for competitors to offer a relevant product/service, they may inhibit the growth of existing or new competitors by raising input costs or reducing quality, which could hamper competition.

17.1.6. Removal of a significant competitive player – the merger might remove a major competitive force in a concentrated market, particularly if one of the merging parties is expected to exert considerable competitive pressure on its competitors in the future due to significant innovation capabilities or an attractive product/service offering.

18. Assessing Vertical Concentration

18.1. The Commission shall analyze the potential for input or customer foreclosure following a vertical concentration. Vertical concentration could precipitate input foreclosure if the resulting entity restricts access to vital inputs for its competitors by not supplying, limiting supplies, inflating prices, imposing less favorable supply terms, switching to incompatible technology, or degrading input quality. This may not force a competitor out but could lead to increased consumer prices.

18.2. To appraise the likelihood of input foreclosure, the Commission shall review:

18.2.1. The firm's power to substantially limit input access, considering its market share in supplying the product/service and its impact on input availability regarding price and quality;

18.2.2. The firm's incentive to limit input access, which relates to the profitability of such actions, including the effects on upstream profits and downstream pricing. This incentive is influenced by the potential redirection of demand from competitors, the entity's capacity to meet this demand, the benefits of increased costs for competitors, and any factors that might decrease the propensity for anti-competitive foreclosure; and

18.2.3. Whether input foreclosure would significantly harm competition in the downstream market, such as leading to higher retail prices or increasing entry barriers for new competitors. The Commission will consider counterbalancing factors like the presence of significant buyer power, the probability of new upstream market entrants, or sufficient credible competitors unaffected by the foreclosure.

18.3. In evaluating the risk of anti-competitive customer foreclosure, the Commission should assess:

18.3.1. likelihood of foreclosing access to the downstream market by reducing purchases from upstream competitors, dependent on the alternatives available to these competitors and the degree of market power the concentrated entity wields downstream. The adverse impact of customer foreclosure intensifies for upstream products associated with economies of scale, scope, or network effects.

18.3.2 The incentive for an undertaking to restrict access to necessary inputs is influenced by how profitable such foreclosure would be. This involves considering the effect on the undertaking's profits from both upstream activities (where restricting sales could decrease upstream profits) and downstream consumer-related profits (which could increase due to expanded retail capacity or higher retail prices). The likelihood of foreclosure depends on the degree to which downstream demand might shift from competitors to the undertaking implementing the foreclosure, and whether it can meet this increased demand. Additionally, the possibility of the foreclosing undertaking's downstream operations benefiting from price increases in downstream products/services, due to higher input costs for competitors, is a factor. However, the inclination to foreclose competitively is tempered by various factors, including potential penalties for unlawful foreclosure activities; and

18.3.3 Whether the foreclosure would significantly impact consumers in the downstream market, such as causing price increases. The detrimental effects on competition manifest if there is a substantial increase in costs for downstream competitors, leading to higher retail prices or creating barriers for potential new entrants. Countervailing factors like existing buyer power and the likelihood of new entrants in the upstream or downstream markets should also be considered by the Commission.

19. Foreclosure effects of a conglomerate concentration

19.1. When evaluating the potential for an undertaking to execute anticompetitive foreclosure in the event of a conglomerate concentration, the Commission will consider:

19.1.1The capacity to exclude competitors by utilizing market dominance in one area to shut out competitors in another through product tying or bundling. Essential factors that enable this include significant market control in one area, a product's high importance to many customers, a large shared customer base, and the products' complementarity. In such cases, if a company with substantial market power in one product market (product A) decides to bundle or tie it with a complementary product (product B), this can negatively impact the providers of product B, and potentially harm prospective competitors. The Commission should also consider mitigating elements, such as the competitors' ability to offer a single product/service that combines the features of the bundled or tied products/services, or to purchase and profitably resell the bundled products separately.

19.1.2 The economic rationale for foreclosure hinges on the profitability of such a strategy. Bundling and tying could increase leverage and profits, yet it might also lead to a decline in sales if customers opt for similar standalone products offered by competitors.

19.1.3 The significance of the foreclosure's impact on competition, namely whether it creates or sustains market dominance. Foreclosure that affects a substantial portion of the market could discourage new entrants by diminishing sales opportunities or increasing their costs, as an efficient new entrant would have to enter both markets simultaneously.

In evaluating a concentration's anticompetitive effects, the Commission will consider if effective single-product competitors exist in both markets and take into account counteracting factors like buyer power or potential market entries.

20. Assessing the Anticompetitive Impacts of Market Concentration

20.1. The Commission is tasked with assessing mergers and acquisitions to determine their potential to facilitate tacit coordination among competitors, thereby impacting the competitive dynamics of the market. This includes scrutinizing how mergers change market structures and whether such changes could lead to silent alignment of business strategies, pricing, and other competitive behaviors without formal agreements.

20.2. Special attention should be given to mergers involving companies that are potential competitors. If such a company is already influencing market competition or is poised to become a significant market force, and the merger substantially reduces the number of competitive threats, the potential for anti-competitive effects increases.

20.3. The Commission will also evaluate mergers that result in significant buying power, which could be problematic, particularly in markets with numerous suppliers.

20.4. The potential impact of increased buyer power varies depending on the existing competitive state among suppliers in the upstream market, therefore, the Commission must consider the unique characteristics of each market when assessing the potential anti-competitive effects of a merger. This detailed analysis ensures that the market retains its dynamism and competitiveness.

21. Consideration of Countervailing Buyer Power in Market Concentration Evaluations

21.1. Countervailing buyer power refers to the capacity of buyers to mitigate the potential negative effects of market concentration by exercising their own influence in the market. This concept is critical when assessing the competitive impacts of market concentration, as it can determine whether a concentration significantly hinders competition.

21.2. Effective countervailing buyer power is indicated by several conditions:

- 21.2.1. Buyers have the ability to switch suppliers readily.
- 21.2.2. Buyers possess the capability or option to vertically integrate and start producing the goods themselves.
- 21.2.3. Buyers are influential enough to attract new competitors into the market.
- 21.2.4. Buyers can exercise their purchasing power strategically, either by refusing to buy additional products or by postponing purchases, especially of durable goods.

21.3. the Commission recognizes the importance of not only identifying the presence of countervailing buyer power but also evaluating its sustainability following a merger and its applicability across different customer segments.

22. Merger and Acquisition Involvement with a Failing Company

22.1 The Commission may approve a merger or acquisition involving a failing company if it is determined that the market competition would not deteriorate more significantly than if the failing firm were to exit the market completely.

22.2 The assessment of a merger involving a failing company will be based on the following criteria:

- 22.2.1. The firm must be on the verge of exiting the market due to severe financial difficulties, establishing the merger as critical for the firm's continuation.
- 22.2.2. There should be no viable alternatives to the merger that would pose less harm to market competition.
- 22.2.3. Without the merger, the assets of the failing firm would inevitably be removed from the market. This stipulation ensures that the potential exit of the firm is due to unavoidable financial conditions rather than strategic business decisions.

23. Implementation of Remedial Measures in Mergers and Acquisitions

23.1. Merging entities are required to propose remedies that effectively address the competition concerns identified during the merger review. These remedies must be articulated in the form of binding commitments, including specific measures and a clear timeline for their implementation.

23.2. To aid the creation of effective remedies, the Commission will communicate its detailed concerns about the merger to the involved parties.

23.3. The undertakings must provide exhaustive information alongside their proposed commitments to allow the Commission to assess the adequacy and effectiveness of the remedies. This documentation should include detailed descriptions, implementation plans, and evidence demonstrating the commitments' ability to effectively resolve the competition concerns.

23.4. Upon approval of a merger based on these commitments, the Commission may establish a monitoring system to ensure strict adherence to the agreed-upon remedies.

23.5. The Commission reserves the right to reject remedies if their complexity or insufficient detail hampers the ability to evaluate their effectiveness or implementation fully and timely, ensuring they uphold market competition.

23.6. The undertakings may propose various types of remedies to address competition concerns, including:

23.6.1. Divestitures- Selling parts of the business to credible buyers to maintain a competitive market structure.

23.6.2. Severance of Anti-competitive Links- Ending inappropriate connections with competitors, such as divesting shareholdings or terminating problematic contracts.

24.6.3 - Alternative Remedies

a. Ensuring fair and non-discriminatory access to essential facilities or technologies.
b. Altering long-term exclusive contracts that restrict market access.
c. Commitments to maintain competitive behaviour, which the Commission must be able to monitor and enforce effectively.

23.7. In the telecommunications sector, the following behavioral remedies are considered by the Commission:

23.7.1 - Access Obligations- Requiring fair access to critical network infrastructure for competitors.

23.7.2 - Price Regulation- Implementing price controls to prevent unfair price hikes.

23.7.3 - Mandating Interoperability- Ensuring network compatibility with other operators to maintain competitive service options for customers.

23.7.4 -Commitments to Future Conduct- Requiring continued investment in network improvements and fair competitive practices.

23.7.5- Transparency Measures- Mandating clear reporting of terms and pricing offered to competitors.

23.7.6- Non-retaliation Clauses-Prohibiting retaliatory actions against customers or competitors engaging with other providers.

In these Rules, unless the context otherwise requires:

Bundling	The business practice in which an operator offers one product together with another as a single-priced package.
Effective competition	Means a situation in the relevant market where there is no authorized person/entity[1] which alone or together with other authorized person/entity is in a position of individual or joint significant market power.
Significant Market Power	Means an entity that is deemed to have Significant Market Power if it, either individually or jointly with others, enjoys a position within a telecommunications market that allows it to operate to a considerable extent independently of its competitors and consumers to be defined as holding at least 30% of the market share. For joint dominance, SMP can be attributed to two or more entities when, particularly through direct or indirect links between them, they collectively adopt a unified conduct on the market and, as a result, are able to exert market power by acting to a significant extent in concert, rather than as a result of conditions of genuine competition.
Ex ante regulation	Means proactive regulatory approach where specific rules, obligations, and frameworks are set in advance to address potential competition issues or market failures.
Ex post regulation	Means regulation taken after an event or behavior has occurred, typically involving the correction or punishment of market failures or anti-competitive practices that have already taken place.
Wholesale Market	refers to the segment where telecommunications system operators offer network access, services, and resources to other telecom operators, service providers, or businesses. These

[1] Authorized person/ authorized entity, entity, undertaking and company are used interchangeably throughout the text, as the context requires.

	wholesale services enable the purchasing entities to then provide retail services to end users.
Horizontal Merger	Refers to the combination of two or more companies that operate at the same level of the supply chain and are competitors in the same market. This type of merger typically involves companies that offer similar products or services to consumers.
Vertical Merger	involves the combination of two or more companies that operate at different levels within the same industry's supply chain that creating efficiencies by reducing transaction costs and improving supply chain coordination.
Conglomerate	Refers to the situation when two or more companies in unrelated business activities merge when these companies do not directly compete with each other nor do they operate at different levels of the same supply chain.
Concentration	describes any merger or acquisition where two or more previously independent companies combine to form a single entity. This can occur through the merger of two entities, the acquisition of direct or indirect control of the whole or parts of one or more other companies, or through the creation of a joint venture performing on a lasting basis all the functions of an autonomous economic entity.
The Commission	The Telecommunications Regulatory Commission of Sri Lanka
The Act	The Sri Lanka Telecommunications Act No. 25 of 1991 as amended
Telecommunications Market	Telecommunications service and product market.

Annex 1

Predefined relevant product and service markets within the telecommunications sector of Sri Lanka

Retail Market:

1. Cellular Mobile broadband market
2. Cellular Mobile voice Market
3. Fixed wired and wireless broadband market
4. Fixed wired and wireless voice market

Wholesale Market:

1. Virtual Private Leased Service (VPLS) Market
2. International Private Leased Circuit
3. IP Transit/ISP Bandwidth Market