

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 57. Volume CXII, dated 8th November, 2019

Printed by UPPC, Entebbe, by Order of the Government.

S T A T U T O R Y I N S T R U M E N T S

2019 No. 93

THE UGANDA COMMUNICATIONS (COMPETITION)
REGULATIONS, 2019

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SCHEDULE — GUIDELINES FOR MARKET DEFINITION
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The Uganda Communications (Competition) Regulations, 2019

(Under sections 5, 52, 53, 54, 55, 56, 57 and 93 of the Uganda Communications Act, 2013, Act 1 of 2013)

IN EXERCISE of the powers conferred upon the Minister by section 93 of the Uganda Communications Act, 2013 and in consultation with the Uganda Communications Commission these Regulations are made this 5th day of July, 2019.

PART I— PRELIMINARY

1. Title.

These Regulations may be cited as the Uganda Communications (Competition) Regulations, 2019.

2. Application.

These Regulations apply to all operators licensed under the Act and to any other person required to comply with Part IX of the Act.

3. Promotion of fair competition.

The Commission shall—

- (a) promote, monitor and enforce fair competition in the communications sector;
- (b) investigate all acts in breach of fair competition by an operator or any other person to whom these Regulations apply;
- (c) conduct proceedings, inquiries and public consultations in order to render or make decisions on acts or conduct in breach of fair competition or proposed changes in control or market structures;

- (d) conduct market studies in the communications sector by sample or comprehensive method to establish market dominance and its effect on consumers; and
- (e) impose remedies, sanctions and penalties or issue notices or orders against operators and persons whose acts or conduct are anti-competitive or in breach of fair competition.

4. Objectives.

The objectives of these Regulations are—

- (a) to promote the efficiency and competitiveness of communications services in Uganda;
- (b) to ensure that communications services are reasonably accessible and fairly priced in Uganda;
- (c) to ensure that communications services are supplied as efficiently and economically as is practicable and at performance standards that meet the social, industrial and commercial needs of Uganda;
- (d) to promote and maintain fair and efficient market conduct and effective competition among all persons engaged in commercial activities connected with the communications sector in Uganda;
- (e) to encourage, facilitate and promote investment;
- (f) to establish, develop and expand the communications industry in Uganda; and
- (g) to promote fair, reasonable and non discriminatory conduct in the provision of communications and value added services.

5. Interpretation.

In these Regulations, unless the context otherwise requires—

“Act” means the Uganda Communications Act, 2013;

“agreement” means an agreement between one or more operators, interconnect and access seekers or any other authorised person whose content is regulated by these Regulations;

- “authorised person” means a person allowed by the Commission to provide specified goods and services over a communications network or platform and includes a provider of value added services;
- “Commission” means the Uganda Communications Commission established by the Act;
- “communications” means telecommunications, data communication, radio communications, and postal communications; and includes broadcasting;
- “consumer” has the same meaning as in the Uganda Communications (Consumer Protection) Regulations, 2019;
- “conduct” means any action by an operator or authorised person which has consequences on the market;
- “dominant position” means a position of market power enjoyed by an operator or authorised person, which enables the operator or authorised person to prevent effective competition in the relevant market by giving it the power to behave, to an appreciable extent, independently of its competitors and customers;
- “end-user” means any person who requests for or uses communications services as a consumer or customer;
- “interconnection” means linking; whether directly or indirectly, by physical or logical means, or by a combination of both, of communications networks used by the same or a different operator in order to allow the users of one operator to communicate with users of the same operator or to access services provided by another operator;
- “licence” means a licence issued under the Act;
- “licensee” means a person issued a licence under the Act;
- “network termination point” means the physical point at which a user is provided with access to a public communications network including, where it concerns networks using transmission by

switching or routing, physical points identified by means of a specific network address which may be linked to that user's telephone number or name;

“operator” means a person licensed to provide a communications or broadcasting service under the Act;

“prescribed fee” means a fee assessed by the Commission under the Uganda Communications (Fees and Fines) Regulations 2019;

“service provider” means a service provider that offers services to end users, either by using the basic service and infrastructure provided by network operators on a re-sale basis, or by providing services through their own infrastructure where they form part of a network operation;

“significant market power” or “SMP” means, in relation to an operator, having a position of market power or economic strength enabling the operator to prevent effective competition in a relevant market or markets by affording that operator the power to behave, to an appreciable extent, independently of competitors, customers and users; significant power includes an operator enjoying a dominant position;

“user” means a person, including an operator, consumer or third party, using or requesting for publicly available communications services.

PART II— RULES OF FAIR COMPETITION

6. Rules of fair competition

(1) The rules of fair competition shall, to the extent practicable as determined by the commission, be based on the principles of national, regional and international competition law practices relating to the prohibition of—

- (a) anti-competitive agreements, decisions or concerted practices;
- (b) abuse of dominant position;

- (c) anti-competitive mergers, take-overs, consolidations, acquisitions or such anti-competitive changes in the market structure resulting from changes in ownership, control, composition and structure of operators; and
- (d) all other practices and acts which lead or would lead to a substantial lessening of competition; including unfair methods of competition, unfair or deceptive acts or practices, the purpose or effect of which is to distort competition in the communications market.

(2) An operator or authorised person shall not engage in any activity, whether by act or omission, which has or is intended to or is likely to have the effect of unfairly preventing, restricting or distorting competition where the act or omission is done in the course of, or as a result of, or in connection with, any business activity relating to communications services.

(3) For the avoidance of doubt, an operator, consumer or authorised person shall be taken to have engaged or to be engaged in an anti-competitive act, if, by commission or omission, that act has an appreciable effect on fair competition in the communications market.

7. Acts of unfair competition.

(1) An act or omission of an operator, consumer or authorised persons, whether independently or with others, shall constitute or amount to an abuse by the operator where the act or omission includes—

- (a) price abuses or anti-competitive pricing through predatory price-cutting, price squeezes, cross-subsidisations, price-discrimination or any form of direct or indirect imposition of unfair purchasing or selling prices or other unfair trading conditions;
- (b) any conduct which exploits customers or suppliers through excessively high prices or discriminatory prices or terms,

conditions or conduct which removes or limits competition from existing competitors or which excludes new undertakings from entering the market through predatory behaviour, vertical restraints or refusal to supply existing or potential competitors;

- (c) limiting production, markets or technical development to the prejudice of consumers;
- (d) applying dissimilar conditions to equivalent transactions with other parties, which place them at a competitive or commercial disadvantage;
- (e) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of the contracts;
- (f) predatory network alterations, where the dominant operator alters the physical or logical interface of its network in a manner that imposes significant costs on interconnected operators without any legitimate business, operational or technical justification;
- (g) refusal to supply communications services or grant access or interconnection to facilities under the Act and the Uganda Communications (Interconnection and Access) Regulations 2019;
- (h) tying access to network facilities, equipment, products and services to unreasonable conditions;
- (i) establishing unreasonable economic conditions for interconnect or access applicants through unreasonable minimum service and billing thresholds designed to make interconnection and access unfeasible or loss making;

- (j) failure to act in good faith in the negotiation and provision of access, interconnection and communications services;
- (k) engaging in unfair methods of competition that deter or are likely to deter new entrants in the communications market or that restrict or are likely to restrict existing competition in the communications market for reasons unrelated to the availability, price or quality of the equipment, product or service that a prospective or current operator offers or seeks to offer through—
 - (i) false or misleading claims;
 - (ii) degradation of service availability or quality;
 - (iii) provision of false or misleading information to competitors; or
 - (iv) interference with end-user or supplier relationship.

(2) For the avoidance of doubt, and without limiting the general effect of subregulation (1), the following conditions shall include vertical restraints imposed by an operator or operators acting in concert with authorised persons that potentially reduce competition—

- (a) resale price maintenance;
- (b) selective distribution;
- (c) exclusive distribution;
- (d) exclusive purchasing or dealing;
- (e) tie-in sales and bundling;
- (f) full-line forcing;
- (g) quantity forcing;
- (h) fidelity discounts; and
- (i) non-linear pricing.

(3) An agreement between one or more operators or a concerted industry practice restricting, distorting or reducing competition in the communications sector, shall constitute an act of unfair competition.

(4) The acts of unfair competition referred to in subregulation (3) include—

- (a) directly or indirectly fixing purchase prices or selling prices;

- (b) agreements to fix trading conditions;
- (c) agreements to share markets;
- (d) agreements to limit or control interconnection, communication or investment;
- (e) collusion tendering or bid-rigging;
- (f) group boycotts, whether formal or informal;
- (g) agreements with a potential to result in higher prices or reductions in output of communications services or equipment;
- (h) agreements between operators and entities at different levels in the supply chain as a down-stream reseller or an upstream provider of communications services including vertical price fixing, vertical market allocation or exclusive dealing;
- (i) bundling, including “tie-in” sales or “locking-in” customers;
- (j) joint buying or selling agreements between buyers to fix the price at which they are prepared to buy or sell; and similar agreements between sellers where they agree to boycott certain customers;
- (k) information sharing agreements where the exchange leads or would lead to substantial lessening of competition;
- (l) exchange of price information that eliminates competition between the cooperating operators;
- (m) exchange of non-price information that has an effect on competition;
- (n) advertising restrictions relating to, among others, the amount, nature or form;
- (o) standardisation agreements that contain restrictions on what the parties may produce and which, as a result, limit competition from other sources through raising entry barriers; and
- (p) all anti-competitive agreements with an appreciable effect on competition including aggregated rebate schemes, specialisation agreements, co-operation in research and development or joint ventures for the development of new products or markets.

(5) An agreement prohibited by the Act or these Regulations shall be established—

- (a) through direct evidence of the agreement, including a signed document;
- (b) through a bundling agreement between an operator and an authorised person which restricts access to new access seekers or restricts the use of content or access to customers by new access seekers;
- (c) through discovery at the request of the complainant or the Commission where grounds exist to show the probable existence of a written agreement or oral undertaking;
- (d) using circumstantial evidence that demonstrates the existence of the agreement.

(6) The Commission shall, in order to determine whether a particular agreement or form of conduct is in contravention of fair competition under the Act or these Regulations—

- (a) determine the market to which the agreement or conduct in question relates;
- (b) consider whether the operator in question is dominant or has significant market power; and
- (c) determine whether there is a breach of the rules of fair competition under the Act or these Regulations.

(7) The guidelines set out in the Schedule to these Regulations apply in the making of determinations under subregulation (6) (a) and (b).

8. Merger, change of control, consolidation or new ownership.

(1) A transaction by an operator relating to its ownership, shareholding, constitution, composition, management, control or any change thereto shall be deemed to be anti-competitive in the communications market, to the extent that it negatively affects the market structure and leads or could lead to a lessening of competition.

(2) An operator who seeks to undergo a restructuring, consolidation, amalgamation, re-arrangement or re-composition of its structure, composition, management, control, ownership or shareholding by way of a merger, joint venture, acquisition, take-over or consolidation shall, within three months before undergoing the desired scheme or arrangement, apply to the Commission for approval.

(3) The Commission shall consider the application for a merger within forty five days from the date of receipt of complete application and where it is satisfied that the restructuring, consolidation, amalgamation, re-arrangement or re-composition of its structure, composition, management, control, ownership or shareholding by way of a merger, joint venture, acquisition, take-over or consolidation will not lead to anti-competition, approve the merger.

(4) The Commission shall, before deciding whether or not to approve a transaction under this regulation, conduct an investigation in accordance with these Regulations.

(5) An investigation under subregulation (4) may include a public hearing at which comments from interested persons or members of the public may be solicited.

(6) The Commission may issue guidelines for mergers and acquisitions.

9. Discrimination and undue preference.

(1) An act or omission by an operator amounts to an act of discrimination or undue preference where the operator—

- (a) directly or indirectly, by any means or device, makes unjust or unreasonable discrimination in the charges, practices, classification, regulations, facilities or services for or in connection with similar communications services;
- (b) makes or gives undue or unreasonable preference or advantage to a particular person, class of persons or locality,

- or subjects any person, class of persons or locality to undue or unreasonable prejudice or disadvantage;
- (c) unfairly favours a business carried on by an operator so as to place at a significantly competitive or commercial disadvantage, other operators lawfully competing with that business;
 - (d) unjustly or unfairly denies access or service to a customer or another operator;
 - (e) refuses or fails to provide, or in any way denies customers or operators equal opportunity for access to the same type and quality of service; or
 - (f) carries out any other act or omission considered discriminatory or amounting to undue prejudice or disadvantage by the Commission.

(2) An operator shall offer non-discriminatory treatment to the public in the provision of communications services.

(3) An operator shall—

- (a) not discriminate against or grant any preference to any person utilising communications services; and
- (b) offer rates, terms, conditions and technical standards for its services or through its affiliates, identical and equivalent to those offered to other unaffiliated operators.

(4) Notwithstanding subregulation (3), a licensee shall offer services at fair, reasonable and non-discriminatory terms to other non-affiliated operators.

10. Designation of dominant position.

(1) The Commission shall prescribe, by guidelines, the process of designating an operator a significant market power with dominant position.

(2) Guidelines issue under subregulation (1) shall include—

- (a) quantification of market share through collated reports filed by the operator with the Commission;

- (b) automatic designation where an operator controls a specified percentage of a particular defined market segment;
- (c) commencement of a market study or similar work of the relevant market segment by the Commission;
- (d) solicitation of submissions from the public, experts or consumers; and
- (e) any other evidence-based measures.

(3) The Commission may designate an operator as having dominant position in a relevant market or markets in accordance with the procedure set out in the guidelines issued under subregulation (1).

(4) Any findings made under subregulation (3) shall be shared with the affected operator and, where relevant, with the public, prior to any action being taken.

(5) The affected operator may make presentations to the Commission as to why the designation should be made or not be made.

PART III — EXEMPTIONS FROM ANTI-COMPETITIVE PRACTICE.

II. Waivers.

(1) The Commission may grant a waiver in relation to particular conduct of an operator where the Commission is satisfied that—

- (a) the conduct shall result, or is likely to result in a benefit to the public; or
- (b) the resultant public benefit outweighs, or will outweigh the detriment to the public constituted by any lessening of competition that will result, or is likely to result from engaging in the conduct.

(2) An application for a waiver under subregulation (1) shall be in the form prescribed by the Commission and shall be accompanied by the prescribed fee.

(3) The Commission may, in determining whether to grant a waiver under this regulation, have regard to —

- (a) the extent to which the conduct relates to the supply of goods or services on favorable terms and conditions to —
 - (i) financially disadvantaged individuals;
 - (ii) an individual who is disadvantaged on health grounds;
 - (iii) a non-profit community organisation or a non-profit charitable organisation ;
 - (iv) an educational institution;
 - (v) a health facility; or
 - (vi) any other instance as the Commission may determine;
- (b) the extent to which the conduct relates to the supply of goods or services for—
 - (i) community, charitable or educational purposes; or
 - (ii) the need to satisfy any applicable universal service obligation;
- (c) the extent to which the conduct prevents or reduces, or is likely to prevent or reduce pollution or other forms of degradation of environmental amenities; and
- (d) the extent to which the conduct contributes, or is likely to contribute to technical innovation or the development of new goods or services; or
- (e) promotion of health or safety on favorable terms and conditions.

(4) Where the Commission grants a waiver under this regulation, the Commission shall give the applicant written notice of the waiver stating the reasons for the grant.

(5) Where the Commission refuses to grant a waiver under this regulation, the Commission shall give the applicant written notice of the refusal, stating the reasons for the refusal.

(6) A waiver shall be subject to such conditions as the Commission may specify.

(7) The Commission may revoke a waiver granted under this regulation, if satisfied that—

- (a) the waiver was made on the basis of information that is false or misleading in a material particular;
- (b) a condition to which the waiver is subject is contravened; or
- (c) there has been a material change of circumstances since the order was made.

(8) Where the Commission revokes a waiver under subregulation (7), the Commission shall give the operator written notice stating that the waiver is revoked and stating out the reasons for the revocation.

(9) An operator applying for a waiver shall not, in connection with the application, intentionally or recklessly—

- (a) give information to the Commission, that is false or misleading in a material particular; or
- (b) omit, from information given to the Commission, any matter or thing without which the information given would become misleading in a material particular.

(10) For the avoidance of doubt—

- (a) an act or omission of a kind described as abusive conduct is not prohibited where—
 - (i) it has or would have no appreciable effect on competition;
 - (ii) it has or would have no appreciable effect on competition between persons engaged in commercial activities connected with the communications sector; or
 - (iii) it would have no appreciable effect on users of communications services;
- (b) an act or omission of a kind described as an anti-

competition agreement, decision or concerted practice is not prohibited where the anti-competition agreement, decision or concerted practice contributes to improving the provision of any goods or services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and where the agreement, decision or concerted practice does not—

- (i) impose on the parties concerned, restrictions which are not indispensable to obtaining the objectives stated under this regulation; and
- (ii) afford the parties the possibility of eliminating competition in respect of a substantial part of the goods or services in question.

12. Register of exemption waivers.

(1) The Commission shall keep a register of exemption waivers granted under regulation 11.

(2) The register kept under subregulation (1) shall include—

- (a) all exemption waivers granted by the Commission;
- (b) applications for exemption waivers received by the Commission;
- (c) decisions for refusal to grant exemption waivers;
- (d) decisions revoking, exemption waivers; and
- (e) particulars of the Commission's reasons for granting exemption waivers.

(3) The register shall not contain any information whose disclosure is likely to prejudice, substantially, the commercial interests of the operator, or of any person to whom the information relates.

(4) Subject to subregulation (5), any person may, on payment of the prescribed fee, inspect the register and make a copy of or take an extract from the register.

(5) The Commission may refuse a person from inspecting the register or making a copy of the register where the disclosure would prejudice substantially the commercial interests of the operator or of any person to whom the information relates.

PART IV - GENERAL

13. Notification and guidance.

(1) Every operator or authorised third party shall ensure that the operator's agreement and conduct comply with the Act and these Regulations.

(2) Except in the case of merger control under regulation 8 for which notification is mandatory, an operator may request the Commission for guidance on whether a specific agreement proposed or entered into by the party submitting conduct complies with the provisions of fair competition under the Act or the rules of fair competition under these Regulations.

(3) A request by an operator for guidance under subregulation (2) shall indicate —

- (a) whether the agreement or conduct is likely to infringe any relevant provisions of fair competition under the Act or these Regulations; or
- (b) whether the conduct or agreement is eligible for grant of an exemption if an application in that regard is made.

(4) Where the Commission has issued its guidance, the decision of the Commission shall be final unless—

- (a) there are reasonable grounds for believing that there has been a material change of circumstances since the guidance was given or the commission has established new facts;
- (b) there is reasonable suspicion that materially incomplete, misleading or false information was given; or
- (c) a complaint is received from a third party.

14. Enforcement procedures.

(1) The Commission may investigate a complaint-

- (a) following a complaint by any person;
- (b) as a result of an issue arising from an investigation of any person as part of the Commission's performance of its duties;
- (c) where the Commission obtains information, which suggests that a contravention of the rules of fair competition may have occurred or is occurring; or
- (d) on the Commission's own motion.

(2) The Commission shall, upon receipt of a complaint about a particular conduct, within thirty days from the date of receipt of the complaint, determine whether there is reason to suspect that there is a contravention of the rules of fair competition under the Act or these Regulations, and if so, proceed to investigate the complaint.

(3) The Commission shall, in determining whether to proceed with the investigation of a complaint, give priority to matters where-

- (a) there appears to be a blatant disregard for the law;
- (b) the matter particularly affects disadvantaged consumers;
- (c) there appears to be substantial damage to competition;
- (d) there is significant public detriment;
- (e) the Commission's enforcement by litigation or other means would have a significant deterrent or educational effect; or
- (f) an important new issue is involved, including one arising from economic or technological change.

(4) Where the Commission determines that the complaint is a consumer complaint, it may investigate it in accordance with the Uganda Communications (Consumer Protection) Regulations, 2019.

(5) Where the Commission determines that there is reason to believe that there is a contravention of the rules of fair competition under the Act or these Regulations, the Commission shall issue a competition notice to the operator.

(6) The Commission shall issue a competition notice only after giving proper consideration to the merits of a case and determining whether it has reason to believe that the operator concerned contravened the rules of fair competition under the Act and these Regulations.

(7) The competition notice shall state—

- (a) that the Commission is investigating a possible breach of fair competition;
- (b) the reasons for the belief of a contravention or breach of fair competition, including any matters of fact or law which are relevant to the investigation;
- (c) further information required from the operator in order to complete the investigations; and
- (d) where appropriate, the steps to be taken in order to remedy the breach.

(8) Where the Commission issues a competition notice to an operator, the Commission shall proceed to determine the matter and issue its decision.

(9) The Commission shall, in making a decision on a matter concerning fair competition—

- (a) not be bound by technicalities, legal forms or rules of evidence;
- (b) act as speedily as proper consideration of the matter allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits and fair settlement of the dispute;
- (c) inform itself of any matter relevant to the dispute in any way it thinks appropriate; and
- (d) require an operator to sign an undertaking to cease and desist from any future similar conduct.

15. Powers of Commission to issue orders and other enforcement actions.

(1) The Commission may, at any time during an enforcement proceeding, issue an order directing an operator to cease and desist from specified conduct, where the Commission is satisfied that—

- (a) there is prima facie evidence that the operator contravened the Act or these Regulations regarding fair competition;
- (b) continuation of the operator's conduct is likely to cause serious harm to other operators, consumers or the general public;
- (c) the potential anti-competitive harm in allowing the operator to continue its conduct outweighs the burden on the operator; or
- (d) the issuance of the order is in the public interest.

(2) Where the Commission determines that an operator has breached fair competition under the Act or these Regulations, the Commission shall take the following enforcement actions—

- (a) direct the operator to cease engaging in the conduct by issuing a cease and desist order;
- (b) order the operator to stop the unfair competition;
- (c) direct the operator to take specific remedial action;
- (d) impose a financial penalty on the operator not exceeding 10% of the annual turnover of the operator;
- (e) declare any anticompetitive agreements or contracts null and void or, where an operator has been designated as dominant, apply any of the remedies prescribed under the Act; and
- (f) publish the results of the investigation in a newspaper of wide circulation and other media.

(3) The Commission may, in imposing a financial penalty, under subregulation (2)(d), consider any aggravating factors including—

- (a) the severity of the contravention;

- (b) the duration of the contravention;
- (c) whether the contravention resulted in injury to person or property;
- (d) whether the operator has a previous history of contravention;
- (e) whether the operator has dominant power; or
- (f) whether the operator made any effort to conceal the contravention.

(4) Where the Commission is satisfied that an operator has breached fair competition obligations under the Act or these Regulations more than once, the Commission may suspend or revoke the operator's licence in accordance with section 41 of the Act.

16. Revocation of S.I No. 24 of 2005.

The Communications (Fair Competition) Regulations, 2005 are revoked.

SCHEDULE

SCHEDULE

Regulation 7(7)

GUIDELINES FOR MARKET DEFINITION

1. Market definition.

- (1) Each relevant market is defined by reference to—
 - (a) the product sold in the market; the “product market”;
 - (b) the demographic market; and
 - (c) the geographical area within which the product is sold; the “geographical market”.

(2) A product market consists of the product or group of products to which the agreement or conduct relates, and includes any demand-side substitutes or supply-side substitutes whose availability prevents an operator from sustaining a small but significant increase in the price of a product above the competitive level.

(3) The boundaries of the geographical market shall depend on the extent to which—

- (a) customers are able to switch to substitutes supplied by operators in different areas; and
- (b) operators in different areas are able to supply substitute products.

(4) The Commission shall define the relevant product and service markets in terms of the nature of substitutable products and services, in situations where the objective conditions applying to competing service providers would be similar or the same.

(5) The Commission shall define relevant markets in ways that reinforce its broader policy objective of fostering service-based competition by opening up the existing infrastructure to enable viable competition.

(6) The market definition process will include the following factors and any other factor that the Commission determines is appropriate—

- (a) ascertaining demand-side and supply-side substitutability of products and services;
- (b) distinguishing between relevant retail and wholesale markets;
- (c) evaluating whether there is further customer segmentation;
- (d) evaluating the functional dimension of the identified markets as well as time factors; and
- (e) considering other relevant factors including national differences, the effects of regulation, product diversification, chain substitution, current and potential competitive constraints, current market shares and volumes where such information is available; and expected future market developments.

(7) The Commission shall consider evidence of the development of sustainable and effective competition in a particular relevant market as the basis for withdrawing a dominant market designation relating to that market, as and when the circumstances warrant.

2. Standards and methodology used to assess market power in the relevant markets.

(1) The Commission shall, in order to determine the extent of market power in the relevant markets, evaluate the market information and evidence by applying any or all of the following criteria—

- (a) market share;
- (b) absolute and relative size of the firm in the relevant market;
- (c) degree of control of facilities and infrastructure that

would be uneconomical for another person to develop to provide services in the relevant market;

- (d) economies of scope and scale;
- (e) absence of countervailing buyer power, including customer churn characteristics;
- (f) structural and strategic barriers to entry and expansion;
- (g) horizontal and vertical market concentration;
- (h) pricing and non-pricing conduct; and
- (i) any other factors relevant to evaluating the existence of market power in a particular market including, innovation, supply side substitutability and emerging services.

(2) For purposes of measuring market share, appropriate parameters (such as number of lines, number of minutes, revenues or other relevant metrics) will be applied based on the circumstances, and the proportion or percentage of market share determined may be used as an indicator of market power.

(3) As a guideline, a market share of 25% or more will indicate a presumption of significant market power, which in turn may trigger an investigation into actual or potential anti-competitive conduct.

(4) The Commission shall engage in evidence-based analysis where possible and rely on the best data available and where accurate or complete information is not available, proxies and reasonable estimates may be utilised.

(5) Reference may be made to comparative benchmarks in jurisdictions that have already undertaken a similar market review process in evaluating the need for regulation of their communications sectors.

(6) Notwithstanding the standards and criteria for

assessing SMP prescribed in subparagraph (2), an operator may be regulated as an operator with SMP if that operator—

- (a) has control of the means of access to a network termination point and the ability to control the communications services available to an end-user at that network termination point;
- (b) has the ability to deny other service providers access to an end-user at the network;
- (c) has control of the termination point;
- (d) has control of the means of access through ownership or control of the physical link to the end-user, whether wire or wireless; or
- (e) has the ability to change or withdraw the national number or numbers needed to access an end-user's network termination point.

Cross References

- Uganda Communications (Consumer Protection) Regulations, 2019.
- Uganda Communications (Fees and Fines) Regulations, 2019.
- Uganda Communications (Interconnection and Access) Regulations, 2019.

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