Telecommunications Regulatory Commission of Sri Lanka

Consultation Paper

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Consultation Paper of the Telecommunications Regulatory Commission of Sri Lanka on Competition Regulation on Telecommunications Market

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1.0. Introduction

The rapidly evolving telecommunications industry has been at the forefront of technological advancement and has significantly influenced the global socio-economic landscape. As this industry continues to expand and integrate deeper into our daily lives, it becomes imperative to ensure that the market remains competitive, innovation-driven, and consumer-centric.

This consultation paper has been initiated by the Telecommunications Regulatory Commission of Sri Lanka (hereinafter TRCSL) with the intention of understanding, evaluating, and addressing potential market imbalances and shortcomings within the telecommunications sector in Sri Lanka. One of the primary objectives is to recognize that the current regulatory framework is not adequate to safeguard against anti-competitive behaviors, monopolistic tendencies, and other market failures. The consultation paper aims to identify the regulatory framework that is transparent, fair and proportionate. Another equally crucial objective is to gather feedback from a wide range of stakeholders, thereby ensuring a holistic and informed approach to any forthcoming regulatory measures.

The need for ex ante regulation is a focal point of this consultation. Ex ante regulations, which are proactive in nature, are designed to address potential competitive threats before they materialize. Given the pace at which the telecommunications industry evolves, relying solely on ex post measures, which address issues after they arise, may not be effective in preventing irreversible market distortions or in ensuring optimal consumer welfare. The essence of this consultation, therefore, leans towards the establishment of a regulatory framework that is anticipatory, preemptive, and robust, ensuring that the telecommunications market remains both vibrant and fair for all its stakeholders.

1.1 Rationale for examining competition in the telecoms market

The telecommunications sector is a cornerstone of the modern digital economy, underpinning numerous facets of our daily lives, from business operations to social interactions. With the increasing convergence of technologies and services, the telecommunications market continues to grow in complexity. As a result, ensuring a competitive landscape in this industry is not just about promoting business interests but is intrinsically tied to the broader socio-economic development of Sri Lanka.

From a regulatory standpoint, the significance of analyzing competition in the telecommunications market is multifaceted. Firstly, a competitive market spurs innovation, leading to the introduction of newer, better, and often more affordable services for consumers. In an industry as dynamic as telecommunications, where technological advancements are swift, a competitive environment ensures that companies remain at the cutting edge, continually striving to improve.

Secondly, regular market analysis is crucial to understand the evolving nature of competition. This includes identifying emerging dominant players, potential anti-competitive behaviors, and any barriers that might hinder new entrants. Without such periodic evaluations, regulators run the risk of implementing outdated or misaligned policies.

Furthermore, a well-structured regulatory framework grounded in thorough market analysis ensures that any intervention is both proportionate and appropriate. Instead of applying a one-size-fits-all approach, regulators can adopt nuanced, targeted measures that address specific competitive challenges while minimizing undue burdens on industry players.

Lastly, in a sector as pivotal as telecommunications, any market distortion can have ripple effects across various sectors of the economy. By regularly analyzing the market and having a robust regulatory framework in place, regulators can ensure that the telecommunications industry remains not only economically viable but also serves as a catalyst for broader economic and social growth.

In summary, the regulatory perspective underscores the utmost significance of competition within the telecoms industry. By using a thoughtful combination of market research and a flexible regulatory framework, it is possible to maintain a competitive and innovative sector that serves the best interests of customers and stakeholders.

1.2 Impact on Market

Competition regulation has a crucial role in defining the dynamics of the telecommunications market, yielding a wide range of repercussions.

Prevention of anti competitive behavior: The prevention of anti-competitive behavior encompasses measures aimed at curbing monopolistic and oligopolistic tendencies, promoting fair competition for new market entrants, and preventing the misuse of dominating market positions by established companies. One possible approach to curbing anti-competitive behaviors involves addressing practices such as predatory pricing, refusal to provide, and tying.

Investments: The promotion of investment and innovation is facilitated by a competitive market environment, since it compels enterprises to engage in innovative practices in order to establish a unique market position. This phenomenon has the potential to stimulate heightened levels of research and development, thus expediting the implementation of novel technologies and services. In a regulated setting, telecommunications companies may expedite the deployment of high-speed internet or broadband networks in order to gain a competitive advantage.

The provision of equitable access to network infrastructure by dominant entities to emerging or smaller counterparts is ensured by effective regulatory measures. This phenomenon promotes competition since new market participants often depend on these networks to provide their services.

M&A: Regulatory bodies responsible for overseeing competition often conduct thorough assessments of noteworthy mergers and acquisitions in order to ascertain that they do not result in a considerable reduction in competition, which might potentially lead to higher costs or diminished services for consumers.

Market Structure: Competition regulation plays a crucial role in maintaining a diversified market environment by avoiding excessive market concentration. This regulatory approach promotes a multi-player market structure, which in turn benefits consumers by offering them a wider range of options and competitive pricing.

The promotion of infrastructure sharing may be facilitated by regulatory measures, which aim to encourage the joint use of expensive infrastructure components, such as towers or ducts. This approach serves the purpose of cost reduction and efficiency enhancement.

The promotion of transparency mandated by the regulatory bodies, with the aim of providing customers with access to comprehensive information on pricing and service terms and conditions, so enabling them to make well-informed decisions.

The presence of a competitive telecommunications market has the potential to provide a positive economic impact via the facilitation of reduced pricing, hence fostering more economic activity. Reduced communication costs provide businesses advantageous outcomes, while consumers are afforded more discretionary cash for allocation in other domains.

Digital growth is contingent upon the presence of a competitive telecommunications market in order to accommodate the growing digital economy. It serves as the foundational structure for digital services, financial technology, electronic commerce, and several other internet-based platforms.

In summary, the regulation of competition within the telecommunications industry is of utmost importance in maintaining a dynamic market environment that is consumer-centric and fosters innovation and expansion. The exact effects, however, may differ depending on the particular legislation, the level of market development, and the degree of regulatory enforcement.

1.3 Impact on Customers

Competition regulation within the telecommunications industry serves the purpose of promoting equitable competition and deterring anti-competitive behaviors. Consequently, it engenders several discernible effects on consumers, both directly and indirectly.

1.3.1 Decreased Prices: Enhanced market competition often results in a greater degree of price competitiveness. Customers may get advantages from the implementation of decreased prices for various telecommunication services, including calls, messages, data, and other related offerings.

1.3.2 Enhanced Service Quality: In order to establish a distinctive position within a highly competitive market, telecommunications operators may choose to provide superior network performance, reduced instances of call disconnections, enhanced data transmission rates, and elevated levels of customer support.

1.3.3 Increased Options and Versatility: A highly competitive market often results in an expanded array of plans and bundles. Consumers have the option to choose from a range of service providers and a diverse array of subscription plans in order to identify the most suitable option that aligns with their individual requirements.

1.3.4 Competition serves as a catalyst for innovation in the development of novel products and services. Customers may get advantages from the introduction of new services, technologies, and features by telecom carriers in order to attain a competitive advantage. These may include sophisticated voicemail functions, video calling capabilities, Internet of Things (IoT) services, and other similar offerings.

1.3.4.1 Enhanced Customer Service: Within a context of heightened competition, telecommunications carriers are driven to provide exceptional customer service as a means of both retaining and attracting customers. This may potentially result in reduced waiting periods, enhanced assistance responsiveness, and the implementation of policies that prioritize customer satisfaction.

Transparency: The regulation of competition may impose requirements for transparency in both price and conditions of service. Customers possess a higher level of knowledge about the goods or services they are purchasing, enabling them to make more informed and rational choices.

Regulatory measures serve to safeguard clients from possible predatory behaviors shown by powerful market participants, including but not limited to tactics such as tying, bundling, and the imposition of unjust contract conditions.

Regulatory measures often establish minimum quality benchmarks that operators are obligated to adhere to, therefore guaranteeing clients a service that is consistently dependable and of high quality.

The presence of a competitive market helps expedite the implementation of emerging technology. Competition, as an example, has the potential to expedite the implementation of 5G or other cutting-edge communication technologies, therefore enhancing the experience of consumers via improved connectivity that is both quicker and more dependable.

Fair Contracts: Through effective regulatory supervision, telecommunications providers are inclined to minimize the imposition of inequitable contractual provisions or concealed charges, so fostering the establishment of transparent and consumer-centric agreements.

2.0 Definitions of Key Terms

Effective competition	a situation in the relevant market where there is no authorized person/entity[1] which alone or together with other authorised person/entity is in a position of individual or joint significant market power.
Significant Market Power	An entity 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	proactive regulatory approach where specific rules, obligations, and frameworks are set in advance to address potential competition issues or market failures.
Ex post regulation	regulation refers to regulatory actions 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 wholesale services enable the purchasing entities to then provide retail services to end users.

3.0 Current Competitive Landscape

3.1. Overview of existing major players in the market and market distribution

Currently, Sri Lanka has 3 fixed access operators namely Sri Lanka Telecom PLC. (Wireline as well as LTE), Lanka Bell Ltd. (Wireless local loop) and Dialog Broadband Network (Pvt) Ltd. (Wireless Local Loop) and four cellular Mobile operators namely Dialog Axiata PLC. (Dialog), Mobitel (Pvt) Ltd. (Mobitel), Hutchison Telecommunications Lanka (Pvt) Ltd. (Hutch) and Bharti Airtel Lanka (Pvt) Ltd. (Airtel) to provide Telecommunication Services to the country. The authorized services of each operator are indicated in their licenses. The following table illustrates the market share of each operator in two segments for the year 2021 and 2022. Most of the

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

operators have separate licenses to provide International Telecommunication Services and DBN has a license to provide infrastructure facilities (Fiber) to other operators.

Cellular Mobile Industry

Operator	Subscriber Based Market Share			Revenue Based Market Share	
	2021	2022	2023-Aug.	2021	2022
Operator 1	49%	49%	51%	57%	59%
Operator 2	27%	26%	25%	29%	26%
Operator 3	12%	13%	12%	7%	7%
Operator 4	11%	11%	12%	7%	8%

Fixed Access Industry

Operator	Subscriber Based Market Share			Revenue Based Market Share	
	2021	2022	2023-Aug.	2021	2022
Operator 1	46%	45%	45%	56%	50.37%
Operator 2	47%	51%	53%	42%	48.36%
Operator 3	6%	4%	2%	2%	1.27%

In the current landscape, Sri Lanka's telecommunications sector is characterized by the dominance of two large operators each in mobile (Dialog and Mobitel) and fixed services (SLT and DBN). Although the privatization in telecom market is positive sign, the risk of an oligopolistic market structure arising from unduly competition regulations necessitates timely measures to ensure a competitive environment.

3.2. Overview of existing competition regulation and its impact

Sri Lanka's current regulatory landscape for competition, both in general terms and within the telecom sector, suffers from a lack of a comprehensive and detailed framework.

The Sri Lanka Telecommunications Act No. 25 of 1991 (Telecom Act) serves as a crucial legal framework for Sri Lanka's telecom sector, outlining the responsibilities of the TRCSL. Telecom Act provides a broad structure for managing various aspects of telecommunications, with a particular emphasis on the TRCSL's role in overseeing industry competition. The TRCSL is mandated to operate in a manner that benefits the national interest, with a specific objective to promote and maintain competition among authorized persons.

The existing regulations are rather scattered, with the Consumer Affairs Authority Act No9 of 2003 focusing on promoting competition to benefit consumers but not addressing the complexities of the telecom sector specifically. The Interconnection Rules of 2003 do touch on issues of market dominance but are primarily aimed at improving the accessibility and affordability of communication services, while also aiming to nurture a competitive market. The TRCSL has been

endowed with certain powers, such as initiating inquiries and reviewing interconnection agreements, yet the overall regulatory environment remains sparse without clear competition guidelines.

The TRCSL employs a suite of mechanisms to enforce competition regulation within the sector. This includes the regulation of all end-user (retail) tariffs, ensuring that the prices charged for telecom services are fair and reflective of the market conditions, avoiding any form of price gouging that might arise from monopolistic tendencies. Additionally, the TRCSL regulates the charges for backbone/International Private Leased Circuit (IPLC) services provided by Sri Lanka Telecom, a key infrastructural element for international communications. The regulation extends to interconnection charges for voice and SMS, maintaining a cost structure that facilitates equitable access and competition among operators. Furthermore, the TRCSL has the authority to approve or disapprove mergers and acquisitions among operators, a critical function to prevent the undue concentration of market power. Lastly, it enforces compulsory tower sharing, which mitigates the high entry barriers associated with network infrastructure deployment and promotes a more competitive environment by enabling multiple operators to efficiently extend their services.

The importance of both ex ante and ex post regulation in the telecom sector cannot be overstated. Ex ante regulation is preventive, setting out rules in advance to avoid anti-competitive behavior and market distortion. On the other hand, ex post regulation involves remedial actions taken after anti-competitive behavior occurs. This two-pronged approach is crucial in maintaining fair competition and consumer protection. In the absence of a dedicated competition authority, assigning ex post regulatory powers to the telecom regulator can provide a safety net against anti-competitive practices. However, for a holistic approach to market regulation and to truly foster a dynamic and competitive telecom sector, there is a clear need for dedicated and explicit competition regulation that encompasses the sector's unique challenges and dynamics.

4.0 Need for Competition Regulation

4.1. Discussion on potential market failures

Competition regulation is vital in preempting market failures, which occur when unregulated markets fail to distribute resources efficiently. These failures can stem from natural monopolies, where economies of scale lead to a single firm supplying the entire market more efficiently than multiple firms, or from oligopolies, where a few firms may collude—explicitly or tacitly—to act like a monopoly. Market failures also arise from non-competitive behaviors that distort prices, limit supply, and reduce the overall welfare of society. Through competition regulation, authorities can prevent these failures by ensuring that the market dynamics work in favor of consumers, encouraging a fair distribution of resources, and promoting efficient market outcomes.

4.2 Monopolistic behavior

The emergence of monopolies can stifle innovation and efficiency within a market. A monopolist may have less incentive to invest in new technologies or improve services, potentially leading to stagnation and inefficiency. Moreover, the absence of competitive pressure often results in higher prices for consumers, as the monopolist can exercise price-setting power without fear of losing customers to competitors. Competition regulation serves to monitor, deter, and dismantle such monopolistic power structures, ensuring that the market remains dynamic and responsive to consumer needs.

4.3 Anti-competitive practices

Anti-competitive practices, such as cartel formation, predatory pricing, and exclusive dealing, can have detrimental effects on the market. These practices are designed to establish or maintain market power and can often lead to reduced output, higher prices, and less choice for consumers. By prohibiting these practices, competition regulation helps to maintain a level playing field where firms compete based on the quality, price, and innovation of their products and services, rather than through manipulation and coercion.

4.4 Barriers to entry for new players

Barriers to entry, whether artificially created by incumbent firms or arising from regulatory failures, prevent new competitors from entering the market and offering new products, services, or innovations. High entry barriers lead to a less competitive market environment, with existing players enjoying greater market power and the ability to set higher prices. Competition regulation is critical in identifying and dismantling these barriers, which can range from exclusive practices to regulatory hurdles, ensuring that new entrants can challenge incumbents, keeping the market dynamic and prices competitive.

4.5 The potential impact of these behaviors on consumers

Ultimately, the behaviors outlined above can have a severe impact on consumers. Monopolistic and anti-competitive behaviors, as well as barriers to entry for new firms, typically result in higher prices, reduced choice, and lower quality products and services for consumers. In the long term, these dynamics can also lead to reduced innovation, as the competitive pressure that drives firms to innovate and improve is diminished. Competition regulation not only prevents these negative outcomes but also actively fosters a market environment where consumers can benefit from the best possible products and services at the fairest prices.

5.0 Proposed Regulatory Framework

5.1Principles for regulation

Minimum Intervention: It is TRCSL's belief that regulation should be minimal, especially in markets that are competitive. Global evidence suggests that markets driven by free competition tend to serve consumer needs better than those under government control. Over-regulation can negate or diminish the benefits of privatization and market liberalization. The degree of regulation should align with a market's maturity and its competitive landscape. As competition grows, the need for regulation should diminish. Yet, it is often crucial to have strong regulatory measures. By proactively eliminating competition barriers, the market can foster a competitive environment, allowing for more deregulation in the future. As markets transition to being more competitive, regulatory efforts should primarily address dominant incumbent operators, ensuring their networks are accessible and adaptable to support new market entrants.

Non-Discrimination-The principle of non-discrimination aims to guarantee equitable treatment from operators with significant market power towards other operators, service providers, and consumers. Such dominant operators should not impose less favorable conditions for identical products or services. Nonetheless, operators are permitted to vary their offerings and pricing if they can objectively substantiate the reasons for such differentiation.

Transparency-TRCSL should maintain transparent procedures and decision-making processes, making them publicly accessible. Additionally, TRCSL should consult affected parties and the general public in a reasonable manner on issues that impact consumers. Operators are obligated to disclose clear and accessible information, in line with regulatory requirements, to both other companies and the general public.

Technology Neutrality-The principle of technology neutrality is upheld when the implementation of the rules neither discriminates against nor favors any particular technology. TRCSL will ensure a level playing field for all technological platforms.

5.2 Market definition and identification of operators with significant market power

5.2.1. Definition of relevant markets

Identifying a relevant market is foundational for market assessment under ex ante regulation since genuine competition can only be evaluated within a specified market context. In outlining a relevant market, the TRCSL demarcates it by product/ service type and geographical location. For products, the TRCSL discerns which products and services are part of the market. Geographically, it considers areas where authorized entities partake in relevant product or service exchanges, where competitive conditions are notably alike, and that stand out from adjacent areas with distinct competition dynamics.

The market's definition should be anticipatory in nature. From a product perspective, it includes items and services that consumers might see as similar or replaceable based on factors such as price, purpose, type, and functionality, as well as the competitive environment and market dynamics.

Two core market types to consider are:

i. Retail markets, which offer services and amenities directly to consumers.
ii. Wholesale markets, catering to authorized entities that then serve consumers.

Recognizing the diverse needs of consumers, the retail market may be divided further, like distinguishing between markets for residential consumers and corporate customers.

In evaluating product/service substitutability within a wholesale relevant market, the TRCSL considers:

i. Substitutability in the downstream retail market, which offers products and services to end-users.
ii. Substitutability in the upstream wholesale market.[2]

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[2] **Upstream Market in Telecom:** The upstream market in the telecom industry involves the provision of basic infrastructure and essential services necessary for delivering telecom services. This includes:
Network Infrastructure: The physical infrastructure like fiber optic cables, satellites, cellular towers, and other facilities that are foundational for telecom services. Wholesale Services: These are services provided by network operators to other telecom companies that enable them to offer telecom services to end-users. For example, a company owning a fiber optic network might lease access to this network to other service providers.Regulatory Services and Spectrum Allocation: This includes the allocation of electromagnetic spectrum for wireless communication and other regulatory services essential for telecom operations.
Downstream Market in Telecom: The downstream market refers to the market where telecom services are provided directly to the end-users or consumers. This includes: Retail Telecom Services: Services such as mobile phone connectivity, internet access, and landline services that are sold directly to consumers and businesses. Value-Added Services: These are additional services provided over the basic telecom services, like voice mail, caller ID, or specialized business communication solutions. Customer-Focused Products: Products like mobile phones, modems, and other end-user equipment that enable consumers to access telecom services.

Demand side substitutability gauges how readily customers might swap one product/service for another, which can occur even with varied prices and qualities. On the supply side, the TRCSL assesses if other suppliers, not currently providing the said product/service, can do so promptly without major extra costs. It also factors in any legal, contractual, or regulatory hurdles that could delay market entry.

A prevalent method for appraising both demand and supply side substitutability is the 'hypothetical monopolist test' or 'SSNIP test.' Here, the TRCSL hypothesizes the repercussions of a modest but sustained price hike (10%) for a product, assuming other product prices remain unchanged. This test predicts customer and supplier responses, determining product substitutability. If a price increase benefits a hypothetical monopolist, it implies limited or no viable substitutes, marking it as a distinct product/service market. If unprofitable, the market definition broadens to incorporate substitute products/services. The SSNIP test, while theoretical, aids the TRCSL in defining relevant markets.

Implementing the SSNIP test involves pinpointing a focal product/service, against which others are assessed. This focal item should ideally have characteristics indicative of limited competition.

When outlining a relevant market, the TRCSL may factor in switching costs. These are expenses consumers bear when transitioning from one product/service to its substitute. If these costs are significantly restrictive, diminishing demand side substitutability, such products should not be in the same market. Switching costs can arise from pricey equipment or penalties for contract breaches with a current service/product provider.

Once the relevant product/service market is determined, the TRCSL will define its geographical scope to evaluate the market's competitive effectiveness. This scope is determined by identifying competitive constraints on authorized entities within such markets, particularly regarding price-setting behaviors. Two key constraints, demand side and supply side substitution, are evaluated to determine if a specific geographical area qualifies as a distinct relevant market. Essentially, a geographic market is an area where competition conditions are similar, distinguishing it from nearby areas with notably different competition conditions.

To determine different geographic areas, the TRCSL will consider factors like the number and size of competitors, market share distribution, price differences across regions, demand nature, and differences in marketing strategies and commercial offers. In defining the geographic scope, the TRCSL will ensure markets are:

- Appropriately sized to maintain consistent competitive conditions within each segment while avoiding overly detailed and resource-intensive micro-analysis.
- Reflective of every relevant operator's network structure.
- Stable with clear boundaries over time.

If the TRCSL cannot define geographic markets following the above principles, the **default approach will be to view the market scope** as national. TRCSL will address varied competitive constraints when imposing specific obligations on entities with significant market power, differentiated by region.

The initial step in the ex ante market analysis is identifying the relevant retail market based on the aforementioned approach. Once defined, the TRCSL evaluates the market to identify its competitive status and any potential or existing competitive challenges. Criteria like the market

shares of active authorized entities and the evolution of retail prices and product/service quality over time guide this assessment. This assessment, however, will not involve a comprehensive market analysis.

Ultimately, the retail market assessment's objective is to determine if the market is competitively effective in a forward-looking manner. This is done without the influence of regulations based on significant market power findings but considers the impact of other regulatory types.

5.2.2.Three criteria test

Once a market prone to ex ante regulation is identified, the TRCSL will employ three concurrent criteria to evaluate if that market should be subject to ex ante regulation:

Criteria 1/Barriers to Entry: The TRCSL will examine whether there are substantial and persistent structural, legal, or regulatory barriers that hinder entry into the market. This assessment will focus on the likelihood of new competitors entering the market in a reasonable time frame, the sustainability of such entries, and their sufficiency relative to the market size.

Criteria 2/Market Structure & Effective Competition: The TRCSL will study the market's inherent tendency to evolve towards effective competition within a set time frame, especially considering the status of infrastructure-based competition and other forms of competition that exist despite entry barriers. Key considerations here include the presence of alternative infrastructure, innovation, and excess capacity that might promote competition.

Criteria 3/ Adequacy of existing law alone: The TRCSL will assess whether the Sri Lanka Telecommunications Act No. 25 of 1991, as a standalone mechanism, can sufficiently address identified market failures. Specifically, they will explore if competition law can rectify any market failures pinpointed during the market analysis without the need for additional ex ante regulation.

Structural barriers to market entry arise when technological conditions, network nature, associated cost structures, and/or demand levels create uneven conditions among operators, hindering new entrants or the expansion of existing competitors. These barriers are common in markets where absolute cost advantages, significant economies of scale and/or scope, capacity limitations, and high sunk costs are prevalent. Considerations like the minimum efficient scale of production and the ratio of sunk costs are also important. Legal or regulatory barriers, such as requirements for construction permits, are derived from legislative or regulatory actions that directly affect potential competitors' access to the relevant market.

Markets with substantial entry barriers can evolve towards effective competition if there are enough competing authorized entities providing or capable of providing substitutable services/products from the customer's viewpoint. A market's movement towards effective competition does not necessarily mean it will become competitive within the current market review period. However, predictions of effective competition beyond this period must be grounded in solid evidence, like business plans or existing investments. The more distant the expected time for effective competition, the more likely the market is considered not to be progressing towards effective competition.

While competition law remedies are generally applied to address specific instances of anti-competitive behavior, ex ante regulatory remedies are designed to address competition issues specifically within the electronic communications sector. Additionally, market analyses for

competition law purposes are usually one-off, whereas those for ex ante regulation are conducted periodically.

Although the three criteria test use similar indicators as used for market analysis its focus is on an overall market characteristics and structure. Finding that the relevant market fulfils the three criteria test is not sufficient to conclude whether the market is competitive or not.

5.2.3.Market analysis

Market analysis aims to evaluate whether the relevant market is genuinely competitive. This involves determining if one or more authorized entities have significant or joint significant market power.

To accurately assess the wholesale market, the TRCSL should pinpoint the corresponding retail markets that the regulation of the said wholesale market targets.

To determine significant market power, the TRCSL will evaluate using a blend of these criteria:

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 30% 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 TRCSL will not rely solely on market share as an indicator.

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 TRCSL will evaluate this infrastructure's importance in influencing market power.

Technological Edge: The TRCSL will examine if any entity benefits from technological advantages, especially those originating from past monopolistic or oligopolistic scenarios.

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

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

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

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

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

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

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

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

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

For each specific market under scrutiny, the TRCSL will apply **at least two** of these criteria deemed most pertinent.

5.2.4. Identification of SMP

If TRCSL determines the market is effectively competitive and no entity holds a significant market power, either individually or jointly, it will not impose any obligations. If prior obligations were set due to previous analyses, they will be removed.

Should TRCSL find the market not competitive, it will identify and impose obligations on any entity/entities holding significant market power. In situations with multiple entities having significant market power, obligations apply to all, but might differ based on each entity's impact.

TRCSL will publish its findings, including market definition, analysis, identification of entities with significant market power, and proposed obligations. These findings will undergo public consultation. Based on this, TRCSL will make a final decision on the obligations to be imposed.

Potential obligations for SMPs by TRCSL can include:

- Transparency
- Non-discrimination, including technical and economic replicability
- Accounting separation
- Access to specific network facilities
- Price control and cost accounting
- Functional separation

In imposing these obligations, TRCSL will:

- Primarily focus on wholesale markets that are not effectively competitive.
- Aim to rectify existing or potential competition issues.
- Ensure obligations are proportional, justified, and technically feasible.
- Consider the interdependencies of obligations.
- Apply retail market obligations only if wholesale obligations do not foster effective competition.

For each obligation, TRCSL will set implementation specifics and deadlines. This timeline will balance the need for a competitive environment with the entity's capacity to meet the obligations. For every specific obligation set by the TRCSL, the details necessary for their implementation and the timeline within which the entity recognized as having significant market power must put in place these obligations will be clearly defined. This timeline will take into consideration the need to create a competitive environment in the pertinent market and the capacity of the identified entity to fulfill the imposed obligations.

Upon assigning specific obligations to an entity with significant market power, the TRCSL will monitor whether the entity has implemented the obligations as dictated and within the determined period.

In the event of subsequent analyses of a relevant market, the TRCSL will evaluate the effects of previously imposed obligations on the competitive climate of the downstream retail market. If the review reveals that the imposed obligations have not led to the creation of a competitive market or if competition remains inadequate, the TRCSL will investigate the causes and, if necessary, expand the scope of the obligations.

A market deemed relevant by the TRCSL is subject to routine analysis to ascertain its competitive dynamics. However, this regular analysis may be waived if the TRCSL determines that the market does not meet specific criteria tests, or if issues previously addressed by regulation are now being managed under different market regulations.

5.3. Obligations of SMP operators

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 subsidization	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

5.4. Assessing anticompetitive conduct

The notion of dominance abuse encompasses a variety of anti-competitive behaviors acknowledged in the legislation and guidelines across numerous nations. TRCSL also shares the idea that this position is akin to "monopolization, yet it encompasses a wider spectrum of activities. Despite variations in the exact interpretation of dominance abuse, recurring elements are present. Key features of such abuse typically involve:

(i) The possession of a leading position in the market by a company; and

(ii) The exploitation of this powerful stance by the entity/authorized body to partake in activities deemed "abusive," which have the potential to damage competitive processes or are likely to do so.

When evaluating anti-competitive practices, TRCSL 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.

Violating key restrictions 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.

5.4.1.Refusal to Supply Essential Facilities

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.

5.4.2.Cross-Subsidization

It is TRCSL's understanding 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.

5.4.3.Price Discrimination

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.

5.4.4.Price Squeezing

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.

5.4.5.Predatory Pricing

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, TRCSL 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.

5.4.6.Excessive Pricing

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.

5.4.7.Misuse of Information

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.

5.4.8.Refusal to Supply Information

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.

5.4.9.Bundling

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. In telecommunications, prices are often compared to Long Run Incremental Costs (LRIC).

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. For instance, if a competitor needs a local access circuit from an incumbent to provide a service to a business customer, the incumbent should not be permitted to use this situation to try to poach that customer.

5.4.10. Locking-in Customers

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.

5.4.11. Restrictive Agreements

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.

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.

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.

5.5. Mergers & Acquisitions

Typically, the oversight of mergers, acquisitions, and other forms of corporate consolidation (hereinafter, for the purposes of this Consultation Paper "Concentration") falls under the purview of antitrust/competition agencies, not telecommunications regulators. Nonetheless, the scrutiny of such mergers and acquisitions is anticipated to play a larger role in the competition policy concerning the telecommunications industry. When antitrust authorities are not designated to oversee merger control, this responsibility is transferred to the Telecommunications authority.

The fundamental principle behind merger control is the belief of TRCSL that it is more effective to stop companies from acquiring too much market dominance rather than trying to regulate the misuse of such power after it has been established.

The apprehensions surrounding mergers and acquisitions typically stem from the same concerns about anti-competitive conduct as discussed above. The primary issue is that a newly enlarged entity may augment its market influence. As a merged company grows more prominent in the market, the likelihood of misusing this dominance escalates. The objective of merger regulations is to thwart the concentration and exertion of market control that could harm both competitors and consumers.

5.6.Proposed Scope of Assessment of Mergers & Acquisitions

In evaluating a merger, the TRCSL determines if the proposed merger could significantly hinder effective competition in the relevant market or markets within the telecommunications sector by creating or reinforcing a dominant position. A dominant position is defined as the ability of a firm to operate without substantial competition, affecting its competitors, customers, and ultimately, the end-users.

The TRCSL's assessment includes determining if the merger is of a horizontal nature (involving companies that compete in the same market), vertical (involving companies operating at different levels of the supply chain for the same product or service), or conglomerate (where the companies involved do not have a horizontal or vertical relationship and operate in distinct markets within the telecommunications sector, or one of the companies is not an authorized entity).

If a merger spans multiple categories, the TRCSL examines all possible impacts—horizontal, vertical, and conglomerate. The TRCSL evaluates the anticipated impact on competition by comparing market conditions with and without the merger, considering the current competitive environment and, when justified, foreseeable market changes such as the potential entry or exit of competitors if the merger were not to proceed.

Identifying and defining the relevant market is the initial step in analyzing a merger because it is only by understanding the defined market(s) that one can evaluate the competitive pressures before and after the merger.

When identifying relevant markets affected by mergers & acquisitions the TRCSL will use same approach for market definition as defining markets susceptible to the ex ante regulation.

In deciding if a merger would substantially hinder effective competition, the TRCSL's analysis relies on a comprehensive evaluation of the potential impact that the merger may have on the markets identified and defined by TRCSL. This assessment includes consideration of various factors such as market share, the degree of concentration, potential anti-competitive effects of the merger, the power of buyers to counteract these effects, efficiencies gained through the merger, and the condition of any companies involved that may be failing.

5.6.1. Market Share

For market share assessments, the TRCSL primarily considers the current market shares held by the companies. However, 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.

A relevant market share of 30% 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.

The TRCSL 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[3] to assess impact.

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

- The HHI is below 1000;
- The HHI is between 1000 to 2000 with a delta under 250; or
- The HHI is above 2000 with a delta under 150.[4]

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.

[3] Delta values refer to the changes in the HHI resulting from a merger or acquisition in a market.When a merger occurs, the delta value (ΔHHI) is the difference in the HHI before and after the merger. This value is used to assess the impact of the merger on market competition. A large increase in the HHI (high delta value) suggests a significant decrease in competition, which might raise concerns with regulatory authorities about potential monopolistic or anti-competitive behavior.

[4] For model regulations and best practices, please refer to Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (2004/C 31/03) and Horizontal Merger Guidelines," which are jointly issued by the Federal Trade Commission (FTC) and the Department of Justice (DOJ).

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.

5.6.2. Potential Competitive Issues Arising from Mergers

Mergers could potentially lead to several anti-competitive scenarios, such as independent but parallel behavior among companies, explicit or implicit collusion, the removal of burgeoning competitors, and the amplification or establishment of dominant buying power over suppliers.

When companies in the same market combine (horizontal mergers), it directly reduces the number of competitors, which not only erodes competition among existing companies but also bolsters the market influence of non-participating companies by diminishing the overall competitive landscape.

Mergers that are not horizontal—meaning the companies do not compete directly in the same market—do not cut out competition among those companies within that market. However, they could still cause competitive issues like market foreclosure[5] or enable access to sensitive business information of competitors, which can have detrimental effects up or down the supply chain.

While mergers among related, but not directly competing, companies (conglomerate mergers) are generally less disruptive to competition, they can still pose significant competitive threats in certain conditions. For example, these merged entities might use their combined market power to unfairly edge out competitors by practices such as product tying, bundling, or other exclusionary tactics, effectively foreclosing the market to others.

5.6.3.Non-coordinated effects of a horizontal concentration

In evaluating the unilateral impacts of a horizontal merger, the TRCSL will consider a variety of factors, including:

[5] "foreclosure" refers to a situation where competitors are prevented from competing effectively in a market. This can occur due to the actions of one or more dominant companies. Foreclosure can be either partial or complete, and it may manifest in various forms. Foreclosure can take several forms, including: Exclusive Dealing: This occurs when a dominant company requires customers to source all or most of a particular type of goods or services from it, thereby excluding competitors. Tying and Bundling: Tying involves making the sale of one product conditional on the purchase of another product, which can foreclose competitors who only offer the second product. Bundling refers to offering products together at a discount, which can make it difficult for competitors who only sell one of those products to compete. Predatory Pricing: This involves setting prices so low that competitors cannot compete and are forced out of the market. After eliminating competition, the dominant company may then increase prices.
Refusal to Supply: A dominant company may refuse to supply essential products or services to competitors, especially if those products or services are crucial for competition in downstream markets. Margin Squeeze: This occurs when a dominant company in an upstream market sets its prices at a level that does not allow competitors in a downstream market to compete effectively. Discriminatory Practices: Treating different trading parties unequally in a way that harms competition.
The key concern in all forms of foreclosure is that they can harm consumer welfare by reducing choice, increasing prices, limiting innovation, and generally decreasing the efficiency of markets.

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

5.6.4. Effects of Vertical Concentration

The TRCSL will 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.

To appraise the likelihood of input foreclosure, the TRCSL will review:

(i) 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;

(ii) 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

(iii) 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 TRCSL 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.

Customer foreclosure can result from a vertical concentration when the involved parties are both suppliers in the upstream market and significant customers in the downstream market. This might cause upstream competitors to lose a major customer, potentially decreasing their output and increasing their costs, which may then be transferred to downstream prices, facilitating the post-concentration entity to raise its prices. It is crucial to assess if such increased costs would result in higher consumer prices.

In evaluating the risk of anti-competitive customer foreclosure, the TRCSL should assess:

(i) The 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.

(ii) 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

(iii) 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 TRCSL.

5.6.5.Foreclosure effects of a conglomerate concentration

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

(i) The 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 TRCSL 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.

(ii) 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.

(iii) 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 TRCSL will consider if effective single-product competitors exist in both markets and take into account counteracting factors like buyer power or potential market entries.

5.6.7.Assessing the Anticompetitive Impacts of Market Concentration

In the context of market dynamics, mergers and acquisitions might inadvertently set the stage for companies to engage in tacit coordination. This means they could silently align their business strategies, pricing, and other competitive behaviors without formal agreements, which could negatively affect the competitive landscape. TRCSL will therefore carefully evaluate how a merger changes the market structure and whether these changes facilitate such coordination among remaining competitors.

The scrutiny becomes particularly intense when the merger involves a company that is a potential competitor. If this company is already influencing market competition or is expected to become a significant force, and the merger would leave few other competitive threats, then the potential for anti-competitive effects is high. Such a scenario requires a thorough assessment to ensure that competitive pressures remain sufficient to prevent any one entity from dominating the market.

Moreover, mergers that lead to an entity gaining substantial buying power can also be problematic. In markets with many suppliers, a powerful buyer might leverage their position to dictate terms that could diminish the quality, quantity, or variety of products and services. This could include negotiating lower input costs that result in a decrease in service quality or diversity for the end consumer. In extreme cases, this buyer power could even force competitors out of the market, a practice known as foreclosure, which further reduces competition.

The potential impact of increased buyer power is not uniform across all markets; it largely depends on the current state of competition among suppliers in the upstream market. TRCSL must, therefore, consider the unique characteristics of each market when assessing the potential anti-competitive effects of a merger. This detailed analysis is critical to ensure that the market remains dynamic and competitive.

5.6.8.Countervailing Buying Power

When evaluating the competitive effects of a market concentration, the concept of "countervailing buyer power" is considered an important factor. This refers to the ability of buyers to balance out the potential negative impacts of a concentration by exerting their own power. A concentration may not hinder competition if buyers can easily switch suppliers, if they have the option to start producing the goods themselves (vertical integration), if they are influential enough to entice new

competitors into the market, if they can leverage their purchasing power by refusing to buy additional products, or if they can postpone buying products that have a long lifespan.

Respectively, TRCSL acknowledges a need to examine not just the existence of such buyer power but also its sustainability post-merger and whether it applies broadly or is confined to certain customer segments. The effectiveness of countervailing power is key to preventing a concentration from reducing competition in the market.

5.6.9.M&A with Participation of a Failing Company

The TRCSL may consider approving a merger or acquisition, if one of the undertakings concerned by the concentration is a failing company. The approval is contingent on the understanding that the market competition would not worsen more than it would if the troubled firm were to exit the market entirely.

Criteria for Assessment:

Imminent Market Exit: The firm in question must be on the brink of leaving the market due to financial hardships, making the acquisition a necessity for its survival.

Lack of Better Alternatives: There should be no other less anti-competitive options available than the proposed merger.

Inevitable Asset Exit: In the absence of the merger, the assets of the failing firm would inevitably be lost from the market, indicating that the firm's exit is not merely a strategic choice but a matter of financial inevitability.

It is deemed that this approach balances the need to maintain competitive markets with the practical realities facing failing businesses.

5.6.10.Market Dynamics and Efficiency Considerations in Concentrations

The likelihood of a concentration impairing competition is less if there are low barriers to entering the relevant market. Barriers may be legal, regulatory, economic (like economies of scale), structural (such as access to distribution networks), or technological. Entry is more probable in growing markets or where entrants from related markets are anticipated. The TRCSL will consider the likelihood, timeliness (typically within two years), and impact of market entry when assessing this.

Moreover, the adverse effects of a concentration might be offset by efficiencies it creates, which must be substantial, specific to the concentration, beneficial to consumers, and verifiable. These efficiencies could result in lower prices or improved products and services.

Lastly, a concentration involving a failing firm may be permitted if its exit would reduce competition in the same manner regardless. This assessment hinges on whether the firm would leave the market without the merger, if there are no less anti-competitive alternatives, and if the firm's assets would otherwise exit the market.

TRCSL will consider all these factors together.

5.6.11.Remedies

The enactment of remedies is crucial to mitigate any substantial obstructions to effective competition that may arise from mergers or acquisitions, as identified by the TRCSL. The core objective of these remedies is to preserve competitive market conditions by preempting any negative impacts a concentration might have.

Remedies are to be designed with precision and efficiency, aiming to fully address the competition concerns pinpointed by the TRCSL. They should be sufficiently comprehensive and feasible to implement swiftly, to ensure the competitive landscape remains undistorted during the transition phase. Only commitments that can be actioned within a defined and short timeframe, effectively restoring or maintaining market competition, will be considered acceptable.

5.6.12. Proposal of Remedies

It falls upon the merging entities to propose remedies that effectively counteract the identified competition impediments. These proposals, including the specific measures and the timeline for implementation, must be submitted in the form of binding commitments.

To facilitate the creation of appropriate remedies, the TRCSL will communicate its detailed concerns regarding the concentration to the involved undertakings. This transparency allows the entities to tailor their commitments closely to the issues at hand.

The undertakings must accompany their proposed commitments with exhaustive information, enabling the TRCSL to assess the sufficiency of the remedies/commitments. This includes detailed descriptions, implementation frameworks, and evidence confirming the commitments' capability to resolve the competition concerns effectively.

Upon approving a concentration based on the proposed commitments, the TRCSL may set up a robust monitoring system to ensure adherence to the agreed remedies.

The TRCSL will reserve the right to reject remedies if their complexity or comprehensiveness hampers the TRCSL's ability to evaluate their full and timely implementation and their effectiveness in upholding market competition.

The undertakings may propose several types of remedies to address competition concerns, including:

(i) Divestitures to credible buyers to foster competition by introducing a new market participant or by enhancing the capabilities of existing competitors.

(ii) Severance of any anticompetitive connections with competitors, which may involve divesting shareholdings or terminating existing contracts within the same market.

(iii) Alternative remedies equivalent in effect to divestitures, such as:

(a) Access remedies ensuring the non-discriminatory and transparent utilization of essential facilities, technologies, or intellectual property.

(b) Modifications to long-term exclusive contracts that might inhibit market access for competitors, encompassing subscriber contracts or exclusive equipment vendor agreements.

(c) Behavioral pledges which will be evaluated based on the TRCSL's ability to monitor and enforce compliance effectively.

In the context of mergers and acquisitions in the telecommunications sector, behavioral remedies are designed to modify the behavior of the merged entity to maintain competition and protect consumer interests. Following are considered by TRCSL:

Access Obligations-The regulatory authority might require the merged entity to provide competitors with fair and non-discriminatory access to critical network infrastructure or other essential facilities. This ensures that the merger does not result in the denial of access to resources crucial for competition.

Price Regulation- To prevent the merged entity from exploiting its potentially increased market power to raise prices unfairly, regulators can impose price controls or cap increases for certain services, especially those that are critical for both consumers and competitors.

Mandating Interoperability- Ensuring that the merged entity's network is interoperable with other operators can be crucial. This promotes a level playing field, allowing customers to benefit from a range of services regardless of their chosen provider.

Commitments to Future Conduct- The entity might be required to commit to certain behaviors, like continued investment in network expansion, adherence to standards of service quality, or engagement in fair competitive practices.

Transparency Measures- Imposing requirements for transparency in dealings with competitors and customers can prevent discriminatory practices. This might include transparent reporting of wholesale prices and terms offered to competitors.

Non-retaliation Clauses- These provisions can be applied to ensure the merged company does not retaliate against customers, suppliers, or competitors who choose to use services from other providers.

6.0. International Practices and Case Studies

Competition regulations in the telecommunications markets of other countries

6.1.Singapore

In Singapore, the regulation of competition in the telecommunications sector is primarily overseen by the Infocomm Media Development Authority (IMDA). IMDA is a statutory board of the Singapore government, under the Ministry of Communications and Information. The regulation and oversight provided by IMDA aim to ensure a competitive and dynamic telecommunications sector that can support the needs of consumers and businesses, while fostering innovation and investment. Key aspects of competition regulation in the telecom sector in Singapore include:

Licensing: IMDA issues licenses to telecommunications operators. These licenses come with conditions that ensure operators do not engage in anti-competitive practices. The framework is designed to encourage healthy competition among service providers.

Market Access and Interconnection: IMDA facilitates fair and non-discriminatory access to essential telecom facilities, ensuring that new entrants can compete effectively. This includes

managing the terms and conditions of interconnection among different telecom operators to ensure they are fair and promote competition.

Price Regulation and Tariff Oversight: While IMDA generally allows market forces to determine prices, it retains the authority to intervene in cases where market dynamics do not protect the interests of consumers. This includes oversight of tariffs and pricing strategies to prevent predatory pricing or unfair practices.

Quality of Service Standards: IMDA sets and enforces Quality of Service (QoS) standards to ensure that consumers receive a certain level of service quality. This also serves to maintain a competitive environment where service providers strive to meet or exceed these standards.

Monitoring Anti-Competitive Practices: IMDA actively monitors the market for any anti-competitive behavior, such as collusion or abuse of market dominance. It has the authority to investigate and take action against such practices.

Consumer Protection: Protecting the interests of consumers is a key aspect of IMDA's role. This includes ensuring transparency in service offerings and pricing, as well as safeguarding consumer data and privacy.

Promoting Innovation and Investment: Beyond regulating competition, IMDA also plays a role in encouraging innovation and investment in the telecom sector. This involves creating an environment conducive to research and development, as well as the adoption of new technologies.

In Singapore, SMP in the telecommunications market is defined and regulated by the IMDA. SMP is a term used to describe a situation where one or more firms have the ability to behave independently of competitors, customers, and ultimately consumers. In Singapore, a company is presumed to have significant market power in the telecommunications and media markets if it has a market share of 50 percent or more. This presumption threshold applies equally to both sectors, indicating that a company holding 50 percent or more market share is considered to have a dominant influence in the market

The criteria and process for determining SMP typically involve several key aspects:

Market Share: One of the primary indicators of SMP is the market share of a company. A high market share might suggest that the company has significant power over the market, although it is not the only factor considered.

Market Structure and Dynamics: IMDA examines the overall structure of the market, including the number of competitors, entry barriers, and the maturity of the market. This involves assessing whether the market is dynamic and competitive or stagnant with high entry barriers.

Control over Essential Facilities: If a company controls infrastructure that is essential for other competitors to offer their services, this could be an indicator of SMP. For example, owning a majority of the telecommunications network infrastructure could place a company in a position of significant market power.

Financial Power: The financial strength of a company, in relation to its competitors, can also be a factor in determining SMP. A company with significant financial resources may have the ability to sustain competitive actions that others cannot.

Vertical Integration and Diversification: Companies that are vertically integrated or have diversified operations across different layers of the telecommunications value chain might wield more power in the market

Once a company is designated as having SMP, IMDA may impose specific regulatory obligations on it to prevent anti-competitive practices and to ensure that the market remains competitive and fair. These obligations can include requirements for fair and non-discriminatory interconnection, pricing regulation, and transparency in dealings with other operators and customers.

The determination of SMP is a dynamic process and is subject to periodic review to reflect changing market conditions. IMDA's approach aims to balance the need to regulate dominant players with the goal of encouraging investment and innovation in the telecom sector.

Singapore has a separate competition authority known as the Competition and Consumer Commission of Singapore (CCCS). The CCCS is an independent statutory board under the Ministry of Trade and Industry, and it is responsible for enforcing the Competition Act, which covers all sectors, including telecommunications.

The CCCS's role in the telecom sector, especially regarding mergers and acquisitions, includes:

Merger Control: The CCCS has the authority to review mergers and acquisitions to prevent any that may significantly lessen competition in any market in Singapore. While mergers in the telecom sector are not required to be pre-notified to the CCCS, parties to a merger are encouraged to consult the CCCS if the merger has the potential to raise competition concerns.

Investigation of Anti-Competitive Behavior: The CCCS can investigate anti-competitive practices, such as abuse of dominant position or anti-competitive agreements, within the telecom sector. This includes practices like predatory pricing, exclusive dealing, or tying arrangements that could harm competition.

Enforcement and Penalties: If the CCCS finds that a company has engaged in anti-competitive practices, it can impose penalties, including financial fines. It also has the power to direct companies to cease such practices and to take corrective measures.

Market Studies and Research: The CCCS conducts market studies to understand and assess competition dynamics in various sectors, including telecommunications. These studies can inform policy decisions and regulatory approaches.

Advocacy and Guidance: Apart from its enforcement role, the CCCS also engages in advocacy to promote understanding of competition principles among businesses and consumers. It offers guidance to businesses on how to comply with competition laws.

In the context of the telecom sector, the CCCS works in tandem with IMDA, to ensure a competitive landscape. For instance, in cases of mergers and acquisitions in the telecom sector, while IMDA would look at sector-specific implications (like service quality, consumer interest, and technological advancements), the CCCS would assess the broader competition implications of the transaction.

IMDA and CCCS do have an obligation to cooperate in the area of competition regulation, particularly in markets like telecommunications, where both regulatory oversight and competition laws are relevant. This cooperative relationship is structured around several key aspects:

IMDA and CCCS collaborate and consult with each other on matters where their regulatory purviews overlap. For instance, in cases of mergers and acquisitions in the telecom sector, while IMDA assesses the impact on industry-specific factors, CCCS examines the broader competition implications. They work together to ensure that their decisions are aligned and serve the overall best interest of the market and consumers.

The two entities may share relevant information and expertise to facilitate informed decision-making. For example, CCCS may rely on IMDA's technical and industry-specific knowledge when assessing competition issues in the telecom sector.

To prevent regulatory overlap and conflict, IMDA and CCCS strive for regulatory coherence. This ensures that businesses operating in the telecom sector have clear and consistent regulatory guidelines, reducing the burden of compliance.

Both entities may also collaborate in the development of new policies or guidelines affecting the telecom sector, ensuring that these policies are supportive of both sector-specific goals and broader competition principles.

This collaborative approach ensures that regulatory measures are both effective in promoting fair competition and sensitive to the unique characteristics and needs of the telecommunications sector. It also helps in creating a predictable and stable regulatory environment, which is crucial for encouraging investment and innovation in the sector.

6.2. Malaysia

In Malaysia, the regulation of the telecommunications sector, including competition regulation, is overseen primarily by the Malaysian Communications and Multimedia Commission (MCMC) and the Malaysia Competition Commission (MyCC).

Malaysian Communications and Multimedia Commission (MCMC)

The MCMC, established under the Malaysian Communications and Multimedia Commission Act 1998, is responsible for regulating the telecommunications and multimedia industries. Its roles include licensing, enforcing telecommunications standards, and promoting industry development.

Defining SMP in Telecom: Similar to other countries, the concept of SMP in Malaysia's telecom sector is used to identify market players with the ability to influence market conditions, prices, or outputs. The MCMC is responsible for determining which companies hold SMP status based on various factors such as market share, control over essential facilities, and financial strength.

Assessment of dominance: The assessment of dominance in the telecommunications sector in Malaysia is governed by specific provisions within the Malaysian legal framework, particularly under the Communications and Multimedia Act (CMA).

A dominant position in the market is typically associated with the ability of a company or entity to act independently of its competitors, customers, or consumers. In the context of competition law, a dominant position becomes a concern when it leads to conduct that substantially lessens competition in the market.

Under Section 137 of the CMA, the Malaysian Communications and Multimedia Commission (MCMC) has the authority to determine whether a licensee is in a dominant position in a

communications market. The CMA does not explicitly presume dominance based on certain criteria such as market share or size alone. Instead, it requires a more detailed investigation into the market dynamics and the behavior of the entity in question.

Guidelines on Dominant Position, Section 138: This section empowers the Commission to publish guidelines that clarify the application of the test for dominant position. These guidelines can include factors such as: Understanding the boundaries of the market where the entity operates is crucial for assessing dominance; Global technology and commercial trends: This acknowledges the influence of international market dynamics and technological advancements on local market power. Market share of the licensee: While not the sole factor, market share is an important indicator of market power.

The MCMC, when assessing dominance, will likely conduct a comprehensive analysis that includes market studies, economic analysis, and consideration of the broader impact on market competition.

Role of Market Share: While market share is a significant factor, it is part of a broader assessment that considers market dynamics, competitive landscape, and consumer impact.

In summary, the assessment of dominance in Malaysia's telecommunications sector is a nuanced process. It requires a thorough analysis of market conditions, entity behavior, and broader economic factors, guided by the provisions of the CMA and the guidelines published by the MCMC. This approach ensures that determinations of dominance are grounded in a comprehensive understanding of market realities.

Entities identified as having SMP may be subject to specific regulatory measures to prevent anti-competitive practices. These measures can include price control, mandatory service standards, and requirements for fair access to network infrastructure.

Malaysia Competition Commission (MyCC) was established under the Competition Commission Act 2010, MyCC is responsible for enforcing the Competition Act 2010 across all sectors of the Malaysian economy, including telecommunications.

While the MCMC handles sector-specific issues, MyCC focuses on general competition matters such as preventing and penalizing anti-competitive agreements and abuse of dominant positions across all sectors.

Role in Mergers and Acquisitions: MyCC examines mergers and acquisitions that may affect market competition. However, in the telecom sector, the MCMC also plays a significant role in assessing such transactions for their impact on industry-specific dynamics.

When it comes to collaborative efforts, the MCMC and MyCC cooperate to ensure regulatory coherence and avoid overlap in the telecom sector. They may consult each other on matters that intersect sector-specific regulation and general competition law.

These entities might share information and collaborate on investigations, particularly in cases where a telecom company's practices may raise both sector-specific and broader competition concerns.

Both MCMC and MyCC work towards aligning their policies to create a stable and predictable regulatory environment. This is crucial for fostering fair competition and encouraging investment in the telecom sector. They may also jointly engage in advocacy initiatives to promote

understanding of competition laws and sector-specific regulations among stakeholders in the telecommunications industry.

In summary, Malaysia's approach to regulating the telecom sector involves a dual structure where the MCMC oversees sector-specific issues, and MyCC addresses broader competition concerns. Their collaborative relationship ensures that the telecom market remains competitive and fair, while also supporting sector-specific goals and development.

6.3. India

The regulation of competition in the telecommunications sector in India involves a complex interplay between various regulatory bodies and legal frameworks. Here's an overview:

Overview of Competition Regulation in Telecom Sector: The telecommunications sector in India is primarily regulated by the Telecom Regulatory Authority of India (TRAI) and the Department of Telecommunications (DoT). The Competition Commission of India (CCI) plays a crucial role in ensuring fair competition across all sectors, including telecom.

The regulatory framework aims to foster healthy competition, prevent monopoly and unfair trade practices, and protect consumer interests.

Cooperation Between Telecom Regulator and Competition Regulator: TRAI and CCI often collaborate to address competition-related issues in the telecom sector. This cooperation is essential because telecom is a rapidly evolving sector with significant overlap between sector-specific and competition-related concerns.

The collaboration ensures that regulatory policies keep pace with technological advancements and market dynamics while maintaining a fair and competitive environment.

Definition of SMP in Telecom: In the context of the telecommunications sector, SMP refers to a situation where a telecom operator has a significant influence on the market, either due to its size, resources, or market share. In India, the definition of SMP in the telecommunications sector does not solely rely on a fixed percentage threshold. Instead, the determination of SMP is based on a comprehensive assessment of various factors. These factors include, but are not limited to, market share, size, economic power, and competitive advantage.

TRAI uses these criteria to assess whether a telecom operator holds a position of dominance in the market that could potentially lead to anti-competitive practices. The focus is on the overall impact and influence of a company in the market rather than just a numerical threshold of market share.

The criteria for determining SMP include factors like market share, size, access to financial resources, and the operator’s control over essential facilities.

SMP regulations are crucial to prevent dominant players from engaging in anti-competitive practices like predatory pricing, exclusivity contracts, or unfair terms of service.

Key Regulatory Measures: The regulatory framework includes measures like tariff regulations, interconnection rules, and guidelines for mergers and acquisitions to ensure fair competition.

TRAI regularly monitors the market to identify any potential abuse of dominant positions and to ensure that smaller players have a fair opportunity to compete.

6.4.Georgia

The Georgian National Communications Commission (GNCC) is the regulatory authority responsible for overseeing the telecommunications sector in Georgia.

The GNCC is tasked with ensuring fair competition, regulating market access, and monitoring compliance with applicable laws in the telecommunications sector.

Definition and Assessment of Significant Market Power (SMP):

According to the Law of Georgia on Electronic Communications, “a significant joint market power of two or more authorised persons over a relevant segment of the service market, which is a situation where an analysis conducted by the Georgian National Communications Commission confirms that the situation created in this segment of the market and characteristics of competition allow them to act in concert and obtain a joint non-competitive advantage in the market even when there are no structural or other types of links, including contractual relations, between them”. The GNCC identifies entities with significant market power and assigns specific obligations to them. This process likely involves a comprehensive assessment of market share, market dynamics, and the overall influence of a company in the telecommunications market.

Ex Post and Ex Ante Regulation:

In Georgia, both ex post and ex ante regulatory mechanisms are applied in the telecommunications sector on the basis of Competition Law and Electronic Communications Law.

Ex ante regulation refers to proactive measures taken to prevent anti-competitive practices before they occur. This includes setting rules and guidelines for market behavior, access to networks, and licensing requirements. Ex post regulation involves the GNCC taking action after an anti-competitive practice has been identified. This could include imposing fines, modifying or revoking licenses, or implementing corrective measures.

The regulatory framework in Georgia aims to foster a competitive and fair telecommunications market, protect consumer interests, and ensure compliance with national laws and international best practices.

6.5. Lessons learned from other jurisdictions

Drawing on lessons from various jurisdictions, we can identify key insights regarding the regulation of competition in the telecommunications sector. Here are some conclusive points that summarize these lessons:

6.5.1.Importance of Competition Regulation by the Telecom Regulator

Telecom regulators, with their deep understanding of the sector, are crucial in addressing competition issues that are unique to telecommunications, such as network access and interconnection.

Telecom regulators can quickly adapt to technological advancements and market changes, ensuring that regulations remain relevant and effective.

6.5.2.Ex Ante Regulation

Preventive Approach: Ex ante regulation allows telecom regulators to anticipate and prevent anti-competitive behavior before it causes harm, which is essential in a rapidly evolving market. By setting clear rules in advance, ex ante regulation contributes to market stability and investor confidence, fostering a healthy competitive environment.

6.5.3.Specific Obligations for SMP

Imposing specific obligations on SMP operators ensures that no single entity can dominate the market, promoting fair competition. Regulations targeting SMPs can lead to better prices, improved service quality, and innovation, benefiting consumers.

6.5.4.Role of Competition Regulator in Mergers and Acquisitions

A general competition regulator plays a crucial role in assessing the broader impact of mergers and acquisitions on market competition, beyond the telecom sector.

These regulators can provide a more holistic analysis of mergers, considering potential cross-sectoral impacts.

In jurisdictions without a general competition regulator, the telecom regulator often assumes dual responsibilities, overseeing both sector-specific issues and broader competition concerns.

This dual role can lead to challenges, such as potential conflicts of interest or a lack of expertise in broader competition issues. Telecom regulators in such scenarios may require enhanced capacity and resources to effectively manage the additional responsibilities.

In conclusion, these lessons highlight the importance of having both telecom-specific and general competition regulation. Effective competition regulation in the telecommunications sector requires a balance between sector-specific expertise and broader market oversight. The presence of both a telecom regulator and a general competition authority, each with clearly defined roles and collaborative mechanisms, is ideal for fostering a competitive and consumer-friendly market environment.

7.0. Public Consultation

7.1.Details on how to submit feedback

To submit feedback on consultation questions effectively, reflect on each one and gather any necessary information, data, or research that might support your response. This will ensure that your feedback is well-informed and evidence-based.

Please, tackle each question separately for clarity and coherence. When drafting your answer, be concise and stay focused on the topic. Where appropriate, back up your responses with evidence or data and most importantly, if you do not agree any options or approaches in the document, please provide justification.

When preparing to submit your feedback, compile your responses in a single document. Include following contact information:

- Name, Designation, Email and Tel. No. of a contactable person.

The deadline for submission is 26th February 2024.

Please submit the responses in MS Word document format.

After submitting your feedback, you should receive confirmation of receipt. If not, it is advisable to follow up to ensure your feedback has been received. Keep a copy of your submitted feedback for your records.

Lastly, be available for further clarifications. The TRCSL might require additional information or discussion on your feedback.

Any comments shall be provided in writing through e-mail or mail to Director General, Telecommunications Regulatory Commission of Sri Lanka on or before 26th February 2024.

E-mail: dgtsl@trc.gov.lk

Mail: No. 276, Elvitigala Mawatha, Colombo 08.

7.2. Key topics that the TRCSL is seeking input on

1. **Proposed market definition and the identification of operators with significant market power.**

2. **Obligations for operators with significant market power.**
3. **Approach to assessing anticompetitive conduct.**
4. **Scope for the assessment of mergers and acquisitions, along with the suggested remedies.**
5. **Feedback and suggestions on any topic included in this paper are welcome.**

8.0. Conclusion and Next Steps

The consultation document is poised for a thorough examination through collaboration with key stakeholders in the telecom industry and government bodies. We highly value the perspectives of industry experts and actively seek their feedback on the proposed regulations.

The document will be published at TRCSL's official web page. TRCSL's regulatory team will then analyze and synthesize the received input to gain further insights into the proposed regulations.

Based on the feedback received, necessary edits and refinements will be made to enhance the document's effectiveness. Subsequently, the refined document will be shared once again with the consulted parties for a second round of review.

Consultation meetings may be arranged as needed to address specific points and ensure clarity in the regulatory framework. The ultimate goal is to collaboratively shape a comprehensive and effective set of competition regulations for the telecommunications market.

Upon completion of the consultation process and the consideration of all relevant feedback, the finalized consultation paper will be prepared. This final version will serve as the cornerstone for the competition regulation of the telecommunications market to be adopted by TRCSL.

The deadline for the Competition Regulation to be published in the gazette is March 31, 2024. We appreciate the active engagement and contributions of all stakeholders in this pivotal process.