

Annex A

Regulation on “*Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services*”

**Recommendation of the Eastern Caribbean Telecommunications Authority
(ECTEL)**

To the National Electronic Regulatory Commissions

To consult on a Draft

Regulation on “*Guidelines on market analysis and the assessment of significant market power in the Eastern Caribbean Telecommunications Authority (ECTEL) Contracting States for electronic communications networks and services*”

Table of Contents

1. Citation

2. Prescribed Guidelines

Schedule – Guidelines on market analysis and the assessment of significant market power for electronic communications networks and services

Part 1 – Preliminary Provisions

Part 2 – Market Definition

Part 3 – Assessing Significant Market Power

Part 4 – Imposition of Obligations under the Regulatory Framework

Part 5 – Market Analysis and Powers of Investigation

Part 6 – Procedures for Consultation and Publication of Proposed Commission Decisions

1. Citation

These Regulations may be cited as the Guidelines on Market Analysis and the Assessment of Significant Market Power for Electronic Communications Networks and Services Regulations 20[].

2. Prescribed Guidelines

The Guidelines set out in the Schedule are prescribed as the Guidelines on Market Analysis and the Assessment of Significant Market Power for Electronic Communications Networks and Services.

SCHEDULE

Guidelines on Market Analysis and the Assessment of Significant Market Power for Electronic Communications Networks and Services.

1. Interpretation	5
2. Scope and purpose of the Guidelines:	5
3. Principles and policy objectives underlying sector specific measures.	5
4. Relationship with the assessment of anti-competitive practices.	7
5. Functions of the Commission	8
6. Functions of ECTEL	8
7. Introduction	8
8. Main criteria for defining the relevant market: Introduction	9
9. Main criteria for defining the relevant market: Demand-side and supply-side substitution	9
10. Main criteria for defining the relevant market: Hypothetical monopolist test	9
11. Geographic market	10
12. The relevance of a market likely to be regulated.	10
PART 3	11
ASSESSING SIGNIFICANT MARKET POWER	11
13. Definition	11
14. Criteria for assessing SMP	11
15. Leverage of market power	13
16. Collective dominance	13
PART 4	15
IMPOSITION OF OBLIGATIONS UNDER THE REGULATORY FRAMEWORK	15
17. Imposition, maintenance, amendment or removal of obligations on SMP operators.	15
18. Transnational markets: joint analysis by several Commissions in the ECTEL Contracting States	15
19. Imposition of certain specific regulatory obligations on non-SMP operators	16
PART 5	16
MARKET ANALYSIS AND POWERS OF INVESTIGATION	16
20. Collection of information.	16
21. Publication	16
PART 6	17
PROCEDURES FOR CONSULTATION AND PUBLICATION OF PROPOSED COMMISSION DECISIONS	17
22. Public consultation mechanisms.	17
23. Adoption of the final decision	17

PART I
PRELIMINARY PROVISIONS

1. Interpretation

(1) In these Guidelines unless the context otherwise requires –

“Act” means the Electronic Communications Act, 20[●]

(2) A word or expression that is used in these Guidelines and is also used in the Act shall have in these Guidelines the same meaning as it has in the Act unless the contrary intention appears.

2. Scope and purpose of the Guidelines:

(1) The Act provides that the Commission shall perform regular market analysis in order to determine if one or more Licensees have significant market power (“SMP”) in the relevant market concerned. Where, following a market analysis, a Licensee is designated as having significant market power in a given market, the Commission may impose, as applicable, specific obligations, as may be prescribed under the Act.

(2) These Guidelines set out the principles for use by the Commission in the analysis of markets and effective competition under the Act.

3. Principles and policy objectives underlying sector specific measures.

(1) In carrying out a market analysis, the Commission shall seek to achieve the policy objectives identified in section 3 of the Act, particularly:

- (a) ensure the overall development of electronic communications in the interest of the sustainable development of [Name of ECTEL Contracting State];
- (b) promote and maintain fair and efficient market conduct and sustainable competition between Licensees;
- (c) encourage, promote and facilitate and otherwise assist in the development of investment, innovation and competitiveness in the electronic communications sector in [Name of ECTEL Contracting State].

(2) The purpose of imposing *ex-ante* obligations on Licensees designated as having SMP is to ensure that the Licensees cannot use their market power either to restrict or distort competition in the relevant market, or to leverage such market power onto adjacent markets. This market power is generally due to the existence of barriers to entry preventing competitors from establishing themselves in the relevant markets.

(3) Having regard to the purpose of imposing *ex-ante* obligations on Licensees designated as having SMP, the competitive analysis distinguishes structural barriers to entry and regulatory barriers to entry:

- a) structural barriers result from the characteristics of demand and cost structure: they generally arise where significant investment costs to enter the market exist, in the presence of essential facilities or control of positive externalities (club effects, for example). They can create an asymmetry

- between incumbents and new entrants and thus impair the development of competition and economic efficiency;
- b) regulatory barriers are not considered to be economic barriers to entry. They result from legal or regulatory limitations on the exercise of operator activity such as licensing, numbering resources or frequencies.
- (4) Anti-competitive practices that may arise in the electronic communications sector are numerous. However, it is possible to distinguish three types of behavior of a SMP Licensee. First, the SMP Licensee may exercise its market power in markets vertically or horizontally connected or adjacent markets. Second, the SMP Licensee can implement practices directly related to its monopoly power, such as excessive prices, low quality service offering, etc. Finally, a SMP Licensee can also implement strategies for the sole purpose of maintaining its market power.
- (5) Three cumulative criteria shall be used to identify markets likely to require regulation due to the existence of SMP: (i) the existence of high and persistent barriers to entry; (ii) the absence of market developments toward a competitive dynamic; (iii) the insufficiency of competition law alone to address these market failures.
- (6) A relevant market is a market that the Commission considers to be non-competitive on the basis of the above three criteria. Where relevant markets are defined and SMP Licensees are identified, the Commission may reduce some of the barriers to entry by applying specific obligations (sometimes called "remedies").
- (7) These regulatory obligations should only be imposed on those electronic communications markets whose characteristics may justify sector-specific regulation and in which the Commission has determined that one or more Licensees have SMP.
- (8) A finding that effective competition exists in a relevant market is equivalent to a finding that no Licensee enjoys a single or joint dominant position in that market. On the other hand, when the Commission concludes that a relevant market is not effectively competitive, it will designate a Licensee or Licensees with SMP in that market, and will either impose appropriate specific obligations, or maintain or amend such obligations where they already exist, in accordance with the Act, the relevant Regulations, such as – but not limited to - *Regulations on Access to Wholesale Network Infrastructure and Services* or *Retail Pricing Regulations* and any other law prescribed under the Act.
- (9) In carrying out a market analysis, the Commission will conduct a forward looking, structural evaluation of the relevant market, based on existing market conditions. The Commission shall determine whether the market is prospectively competitive, and thus whether any lack of effective competition is durable by taking into account expected or foreseeable market developments over the course of a reasonable period. Such a reasonable period shall be for at least three years unless the specific characteristics of the relevant market require that a shorter time frame be taken into account.

- (10) The Commission enjoys discretionary powers which reflect the complexity of all the relevant factors that must be assessed (economic, factual and legal) when identifying a relevant market and determining the existence of Licensees with SMP. These discretionary powers remain subject, however, to –
- a) the provisions of the Act, Regulations and any other law prescribed under the Act referenced in subsection (8);
 - b) the principle of proportionality, such that regulatory requirements are proportional to the impacts of the practice to be regulated;
 - c) the development of an internal market within the ECTEL Contracting States which means that the Commission shall ensure that it implements the provisions to which these guidelines apply in a consistent manner with the Commissions of other ECTEL Contracting States and in accordance with the recommendations of ECTEL.

4. Relationship with the assessment of anti-competitive practices.

- (1) Part 5 of the Act relates to anti-competitive practices such as, but not limited to:
- a) agreements between Licensees, decisions by associations of Licensees and concerted practices by Licensees which have as their objective or effect the prevention, restriction or distortion of competition within [Name of ECTEL Contracting State];
 - b) actions by which a Licensee abuses its significant market power within [Name of ECTEL Contracting State]; or
 - c) any other like conduct by Licensees whose objective or effect is to frustrate the benefits expected from the establishment of the CARICOM Single Market and Economy, the OECS Economic Union or the ECTEL.
- (2) Under the Act and in accordance with these Guidelines, assessment of anti-competitive practices shall use the same methodology as used to define relevant markets and define SMP. However, sector specific regulation will always be conducted on a forward looking basis as mentioned in subsection (9) of section 3. For example, in conducting a market analysis, the Commission shall include in its assessment an appreciation of the future development of the market beyond the current characteristics of the relevant market. Accordingly, the starting point of competition investigations is different: it is the suspicion of an anti-competitive practice (such as a concerted practice or abuse of dominance) which occurred in the past and sometimes still persists. Although merger analysis is also applied *ex ante*, it is not carried out periodically as is the case with the market analysis conducted by the Commission under this regulatory framework.
- (3) Another difference between the two approaches is that the SMP designation has no bearing on whether that Licensee has committed an abuse of a dominant position within the meaning of competition law. It merely implies that, from a structural and competitive perspective, and in the short to medium term, the operator has and will have, in the relevant market identified, sufficient market power to behave to an appreciable extent independently of competitors, customers, and ultimately consumers.

5. Functions of the Commission

- (1) In accordance with the Act the Commission shall have the authority to:
 - a) perform regular market analysis;
 - b) determine if one or more operators have SMP in the relevant market concerned;
 - c) Impose specific obligations on a Licensee with SMP.
- (2) Prior to the exercise of any of the powers of the Commission under sub-section (1), the Commission shall consult with ECTEL and shall take into account recommendations of ECTEL.

6. Functions of ECTEL

- (1) Pursuant to its functions and powers as provided in Article 5 of the Treaty, ECTEL may –
 - a) adopt a Recommendation which identifies those relevant product and service markets within the electronic communications sector in [Name of ECTEL Contracting State], whose characteristics may justify the imposition of specific regulatory obligations set out in the Act, Regulations or other laws prescribed by the Act referred to in subsection (6) of section 3;
 - b) on behalf of the Commission and in consultation with it, the ECTEL may -
 - i. perform regular market analysis in [Name of ECTEL Contracting State],
 - ii. determine if one Licensee has or more than one Licensees have significant market power in the relevant market concerned in [Name of ECTEL Contracting State].
- (2) In determining the existence of SMP as referenced in subsection (1)b), the Commission shall :
 - a) provide ECTEL with all required information;
 - b) adopt decisions relating to market analysis and determination of Licensees that have SMP in the relevant market in compliance with the findings of ECTEL.

PART 2

MARKET DEFINITION

7. Introduction

- (1) These Guidelines do not purport to explain how any competition rules apply, generally, in the electronic communications sector, but focus only on issues related to (i) market definition; and (ii) the assessment of SMP; within the meaning of Clause 78 of the Act.
- (2) The definition of a relevant market is of fundamental importance, since effective competition can only be assessed by reference to the market thus defined. The use of

the term 'relevant market' implies the description of the products or services that make up the market and the assessment of the geographical scope of that market.

- (3) However, where ECTEL has adopted the Recommendation referenced in subsection (1) of section 6 identifying the presumptively relevant markets in [Name of ECTEL Contracting State], the task of the Commission will normally focus primarily on defining the geographic scope of the relevant market. However, the Commission also has the authority to define product and service markets other than those listed in the aforementioned Recommendation, subject to the approval of ECTEL.

8. Main criteria for defining the relevant market: Introduction

- 1) The determination of a relevant market is based on two complementary criteria:
 - a) the determination in terms of products or services: two products or services belong to the same market if they are interchangeable or substitutable from the point of view of supply and demand;
 - b) the determination in geographic terms: an area in which the competitive conditions are similar or sufficiently homogeneous. This can be either the national territory, which is generally the case, or a region or set of regions.
- 2) With regard to the forward looking approach referenced in subsection (9) of section 3, the goal of determination of relevant markets is to establish a multi-year regulatory framework. Therefore, all the issues and methods described below must be understood in the context of a time period of about three years.

9. Main criteria for defining the relevant market: Demand-side and supply-side substitution

- 1) Analysis of demand-side substitutability measures the interchangeable nature of products and services from the consumer point of view. In particular, it includes the assessment of consumer behavior when faced with a price change.
Both products and services belong to the same market if they are sufficiently interchangeable by their users, especially in terms of the use made of the products and services, their characteristics, their pricing, their distribution conditions, mobility provided, and costs of "migration" from one product to another.
- 2) Analysis of supply-side substitutability measures the possibilities of entry in the market: it involves assessing the incentive of potential suppliers (firms that offer other products and services) to produce the product or service concerned in case of a price increase.

Supply-side substitutability exists when an operator that is not currently present in a given market is likely to enter rapidly in response to an increase in the price of products sold in this market.

10. Main criteria for defining the relevant market: Hypothetical monopolist test

- 1) In order, to complete the market-definition analysis, the Commission, in addition to considering products or services whose objective characteristics, prices, mobility and intended use make them sufficiently interchangeable, may also examine, where necessary,

the prevailing conditions of demand and supply substitution by applying the hypothetical monopolist test (SSNIP test, "Small but Significant Non-transitory Increase in Prices").

- 2) This test consists of analyzing the effects that a small and permanent increase of the price of a service (5-10% for example) would have on demand or supply, in order to determine whether there are services considered substitutable by consumers and toward which they are likely to move.
 - a) From the demand-side perspective, this test considers a market for those products or services in which a hypothetical monopolist could significantly and sustainably increase prices and increase its profit. The relevant market consists of all the products or services for which a price increase (for example 5% to 10%) would maximize the benefit of the supplier.
 - b) From a supply-side perspective, the test consists of assessing whether firms offering other products or services would be able to provide, in a short time frame (e.g. 6-12 months) and easily (with moderate fixed costs), a product or a service equivalent to the products or services offered by the hypothetical monopolist in case of price increase (for example 5% to 10%).

11. Geographic market

- 1) The relevant geographic market can be defined as the area:
 - a) in which the firms concerned are involved in the supply or demand for the relevant products or services, where they are subject to similar or sufficiently homogeneous conditions of competition and,
 - b) which can be distinguished from neighboring areas in which the conditions of competition are different to a significant extent.
- 2) In the electronic communications sector, the geographic scope of a relevant market has traditionally been determined by reference to two main criteria:
 - a) first, the territory covered by the network;
 - b) second, the existence of legal instruments that seek to identify or distinguish a particular geographic area or, on the contrary, national in extent.

In general, electronic communications markets are national, unless there are special conditions such as specific coverage by networks which would be likely to justify a more limited geographic market area.

12. The relevance of a market likely to be regulated.

- 1) Beyond the definition of a market and its boundaries, the Commission shall demonstrate how the market is relevant for *ex-ante* regulation, that is to say, why it is necessary to apply a specific regulatory treatment to this market.
- 2) Prior to applying *ex-ante* regulation in a market, the given market shall meet the following criteria:
 - a) the existence of high and persistent barriers to entry;

- b) a lack of progress toward effective competition;
- c) competition law alone is insufficient to address these market failures.

These three criteria are cumulative and must be satisfied for a market to be considered as relevant.

- 3) The importance of barriers to entry is assessed on the basis of demand and supply conditions in the market –; e.g.: the presence of network externalities, diversity of services, existence of sunk costs, technological advantages, access to financial resources, economies of scale and scope, vertical integration;
- 4) The competitive dynamic in the market is measured through the evolution of the market shares of operators in the market, pricing behavior, diversity of offers and potential competition and other factors considered relevant by the Commission.
- 5) Finally, the insufficiency of competition law alone to address market failures is evaluated mainly from the perspective of anti-competitive behaviors, the desire to ensure the development of long-term competition and the need for specific regulatory tools *a priori* (such as price control or accounting separation) to remedy the identified competition risks.

PART 3

ASSESSING SIGNIFICANT MARKET POWER

13. Definition

- 1) The finding of a SMP does not preclude some competition in the market. It only enables the Licensee that enjoys such a position, if not to determine, at least to have an appreciable effect on the conditions under which that competition will develop, and in any case to act in disregard of such competitive constraint so long as such conduct does not operate to its detriment.
- 2) Accordingly, the Act defines a Licensee having SMP, as a Licensee that individually- or jointly with others- enjoys a position of economic strength that enables it to hinder the maintenance of effective competition in the relevant market by affording the Licensee the power to behave to an appreciable extent independently of its competitors and users.

14. Criteria for assessing SMP

- 1) A position of SMP (often referred to as dominance) is found by reference to a number of criteria and its assessment is based, as stated above, on a forward-looking market analysis based on existing market conditions.
- 2) Market shares are often used as a proxy for market power. Although a high market share alone is insufficient to establish the possession of SMP, it is unlikely that a firm without a significant share of a relevant market would be in a dominant position in that market. Thus, Licensees with market shares of no more than 25 % are unlikely to enjoy a (single) dominant

position in the market concerned, while single dominance concerns normally arise in the case of firms with market shares of over 40 %.

- 3) According to the best international practices, the Commission may consider that market shares in excess of 50 % are in themselves, save in exceptional circumstances³, evidence of the existence of a dominant position.
- 4) The method used to determine the market share will be defined individually for each relevant market. It may rely especially on one or more of the following criteria:
 - a) revenues;
 - b) the number of subscribers, particularly in the retail markets for voice or fixed or mobile data;
 - c) the traffic carried, especially for retail or wholesale markets for voice or fixed or mobile data;
 - d) capacities available, in particular in wholesale access markets;
 - e) any other relevant criterion under the respective market.

The Commission may use, on a case by case basis, the most suitable criterion (or combination of criteria if necessary) for the economic conditions of the considered market.

- 5) Below the threshold of 50% of market share, a systematic and rigorous assessment of the market position of a Licensee (or group of Licensees) requires an additional qualitative analysis beyond the analysis of market shares. For example:
 - a) a high market share does not necessarily reflect dominance if the barriers to entry are low;
 - b) a meaningful market share may also reflect the effectiveness of a given Licensee in innovation or quality of service;
 - c) where a relevant market contains differentiated products, a relatively small market share may reflect some market power,
 - d) the fact that Licensees have similar market shares does not mean that there is no market power (e.g. due to presence of significant switching costs for consumers and / or different production capacity).
- 6) In general, the methodology for identification of SMP operators must assess potential competition and thus analyze the barriers to entry (sunk fixed costs, limited access to essential inputs, sector regulation, economies of scale and scope, reputation, network effects, vertical restrictions of competition), and evaluate, as the case may be, the existence of countervailing buying power and its potential effects on competition.

The potential development of existing competitors or potential entry by new competitors are strong indicators of the position of operators in the market. For example, barriers to entry may

³ E.g.: a volatile market share is an indicator of competition insofar as this may be indicative of an innovative dynamic challenging market positions

be evaluated by determining the extent to which a Licensee in the market can increase its price above the competitive level without causing new entry.

- 7) The Act and regulatory best practices provide several additional criteria which may be used by the Commission, beyond the market share criterion. These criteria include among others:
- a) overall size of the firm;
 - b) control of infrastructure not easily duplicated;
 - c) technological advantages or superiority;
 - d) absence of or low countervailing buying power;
 - e) easy or privileged access to capital markets/financial resources;
 - f) product/service diversification (e.g. bundled products or services);
 - g) economies of scale;
 - h) economies of scope;
 - i) vertical integration;
 - j) a highly developed distribution and sales network;
 - k) absence of potential competition.

A dominant position can derive from a combination of the above criteria, which taken separately may not necessarily be determinative.

15. Leverage of market power

- 1) Where a Licensee has SMP in a specific market, it may also be deemed to have SMP in a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the Licensee.
- 2) Under such circumstances, the Commission may consider it appropriate to find that the operator has SMP in both specific and related markets at the same time. However, in practice, if a Licensee has been designated as having SMP in an upstream wholesale or access market, the Commission may be in a position to prevent any likely spill-over or leverage effects downstream into the retail or services markets by imposing on that Licensee any of the obligations provided for in the Act, the relevant Regulations such as – but not limited to - *Regulations on Access to Wholesale Network Infrastructure and Services* or any other law prescribed under the Act, which may be appropriate to avoid such effects.
- 3) Therefore, it is typically only where the imposition of *ex-ante* obligations on a Licensee which is dominant in the (access) upstream market would not result in effective competition in the (retail) downstream market that the Commission should address remedies for dominance of the aforementioned Licensee in retail markets.

16. Collective dominance

- 1) Under Section 76 of the Act, the Commission shall perform regular market analysis in order to determine if one or more operators have significant market power in the relevant market concerned. Accordingly, a Licensee may enjoy significant market power either individually or jointly with others.
- 2) Collective dominance is likely to occur in oligopolistic markets characterized by a lack of effective competition and in which no single Licensee has significant market power. In that case, the Commission may ascertain whether the structure of the oligopolistic markets in question was conducive to coordinated effects in those markets, even in the absence of structural or other links between the Licensees concerned.
- 3) When assessing *ex-ante* the likely existence or emergence of a market which is or could become conducive to collective dominance in the form of tacit coordination, the Commission shall analyze:
 - a) whether the characteristics of the market make it conducive to tacit coordination; and
 - b) whether such form of coordination is sustainable; that is, (i) whether any of the oligopolists have the ability and incentive to deviate from the coordinated outcome, considering the ability and incentives of the non-deviators to retaliate; and (ii) whether buyers/ fringe competitors/potential entrants have the ability and incentive to challenge any anti-competitive coordinated outcome.
- 4) In carrying out the above analysis, the Commission may consider a number of criteria, such as:
 - a) low elasticity of demand;
 - b) similar market shares;
 - c) high legal or economic barriers to entry, vertical integration with collective refusal to supply;
 - d) lack of countervailing buyer power;
 - e) lack of potential competition.

The above is an indicative list and is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the type of evidence that could be used to support assertions concerning the existence of joint dominance. In proving tacit coordination, the Commission does not need to demonstrate evidence of the existence of an express agreement or express contact between the oligopolists, but rather only that the outcomes in the market are indicative of results that would arise from tacit coordination.

PART 4

IMPOSITION OF OBLIGATIONS UNDER THE REGULATORY FRAMEWORK

17. Imposition, maintenance, amendment or removal of obligations on SMP operators.

- 1) Where, following a market analysis, a Licensee is designated as having significant market power in a given market, the Commission may impose, as applicable, the obligations set forth in section 76 of the Act.
- 2) In accordance with the Act, in assessing the proportionality of the obligations it is likely to impose on a Licensee having significant market power, the Commission shall take into account the following criteria:
 - a) the technical and economic viability of using or setting up competing facilities, given the pace of market development and the nature and type of interconnection and access involved;
 - b) the feasibility of providing the access proposed, in view of the available capacity and technical conditions;
 - c) the investment made by the Licensee and need for the Licensee to earn a reasonable rate of return on capital employed efficiently, in view of the risks involved;
 - d) the need to preserve long-term competition;
 - e) any relevant intellectual property rights;
 - f) the available offers and prices in available markets;
 - g) other factors as determined appropriate by the Commission.
- 3) Any obligations in this respect will be determined by the Commission on a case by case basis, in accordance with the Act, relevant Regulations such as – but not limited to - *Regulations on Access to Wholesale Network Infrastructure and Services* or *Retail Pricing Regulation* and any other law prescribed by the Act.
- 4) The foregoing obligations shall be imposed, maintained, amended or removed, to reflect revisions of the analysis of the relevant market concerned.
- 5) Prior to review of the analysis of any relevant market, the Commission shall publish a report on actual results, given the objectives pursued, and of the measures implemented pursuant to the previous analysis.

18. Transnational markets: joint analysis by several Commissions in the ECTEL Contracting States

- 1) ECTEL in consultation with the Commissions established in the ECTEL Contracting States may identify product and service markets that are transnational, i.e.: covering the whole of the Contracting States or a substantial part thereof (e.g. roaming, access to undersea capacity).
- 2) In such cases, the Commissions concerned shall jointly conduct the market analysis and decide whether obligations need to be imposed.

- 3) Joint analysis by several Commissions shall follow similar procedures (e.g. for public consultation) to those required when a single national Commission is conducting a market analysis.
- 4) Precise arrangements for collective analysis and decision-making will need to be drawn up in consultation with ECTEL and all the Commissions of each ECTEL Contracting State.

19. Imposition of certain specific regulatory obligations on non-SMP operators

- 1) The foregoing sections of these Guidelines do not preclude the Commission from imposing specific obligations on Licensees other than those that have been designated as having SMP, where it is required to comply with the Act, Regulations or other laws prescribed under the Act.

PART 5

MARKET ANALYSIS AND POWERS OF INVESTIGATION

20. Collection of information.

- 1) In order to carry out a market analysis, the Commission shall have the authority to collect all information it considers necessary to assess market power in a given market.
- 2) To the extent that such information needs to be obtained directly from Licensees, they are required by the terms of their Licenses to provide the Minister, the Commission and ECTEL with any accounting, financial, cost, technical and other information reasonably required to enable the Minister, the Commission or ECTEL to carry out their functions under the Act and, in the case of ECTEL, under the Treaty, in such manner and at the times that they may request.
- 3) When the Commission or ECTEL requests information from a Licensee, they shall state the reasons justifying the request and the time limit within which the information must be provided.

21. Publication

The Commission shall publish all information that would contribute to an open and competitive market, acting in accordance with the Act and the rules on commercial confidentiality. This confidentiality obligation applies equally to information that has been received in confidence from another public authority.

PART 6

PROCEDURES FOR CONSULTATION AND PUBLICATION OF PROPOSED COMMISSION DECISIONS

22. Public consultation mechanisms.

- 1) In order to give the interested parties the opportunity to comment on a draft measure when such measure would have a significant impact on the relevant market, the Commission shall hold a public consultation on any proposed decision to determine SMP and impose specific obligations.
- 2) Where the draft measure concerns a decision relating to a SMP designation or non-designation, it shall include the following:
 - a) the market definition used and reasons therefor, with the exception of information that is confidential in accordance with the rules on business confidentiality;
 - b) evidence relating to the finding of SMP, with the exception of information that is confidential in accordance with the rules on business confidentiality, together with the identification of any Licensee proposed to be designated as having SMP;
 - c) full details of the sector-specific obligations that the Commission proposes to impose, maintain, amended or remove on the abovementioned Licensee, together with an assessment of the proportionality of that proposed measure.

23. Adoption of the final decision

- 1) Once the Commission's decision has become final, the Commission shall notify ECTEL of the names of the Licensees that have been designated as having SMP and the obligations imposed on them.
- 2) The Commission shall publish on its website the names of Licensees that it has designated as having SMP and the obligations imposed on them. It should ensure that up-to-date information is made publicly available in a manner that guarantees all interested parties easy access to that information.