

## Competition – Need, Scope & Regulatory Policy

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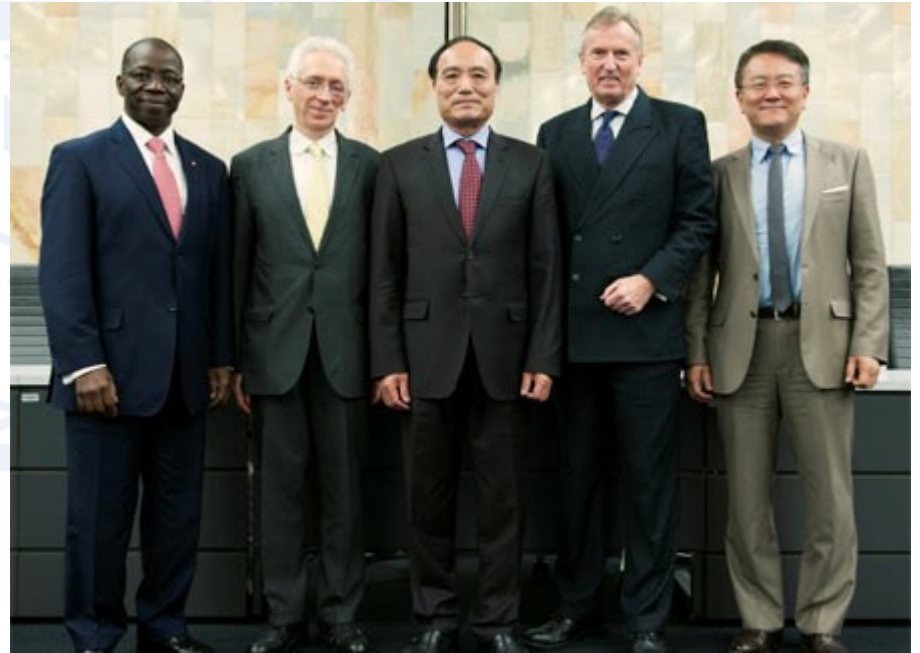
# ITU Regional Workshop on “Competition in Telecommunications Market” Khartoum-Sudan, 24-26 May 2016

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# ITU in brief

- Leading United Nations Agency for ICTs.
- 193 Member States, 750+ Sector Members
- SG & DSG
- Three sectors:
  - **Radiocommunication**
  - **Standardization**
  - **Development**
- ITU TELECOM Events



# ITU's Global Presence



ITU Headquarters is in Geneva, Switzerland

There are 5 regional offices and 8 area offices around the world



# ITU-D: Global Development Objectives (2015-2017)

## Objective #1

Foster international cooperation on telecommunication/ICT development issues

## Objective #2

Foster an enabling environment conducive to ICT development and foster the deployment of telecommunication/ICT networks as well as relevant applications and services, including bridging the standardization gap

## Objective #3

Enhance confidence and security in the use of telecommunications/ICTs, and roll-out of relevant applications and services

## Objective #4

Build human and institutional capacity, provide data and statistics, promote digital inclusion and provide concentrated assistance to countries in special need

## Objective #5

Enhance environmental protection, climate-change adaptation and mitigation, and disaster-management efforts through telecommunications/ICTs

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## 1. Competition Trends in Telecom



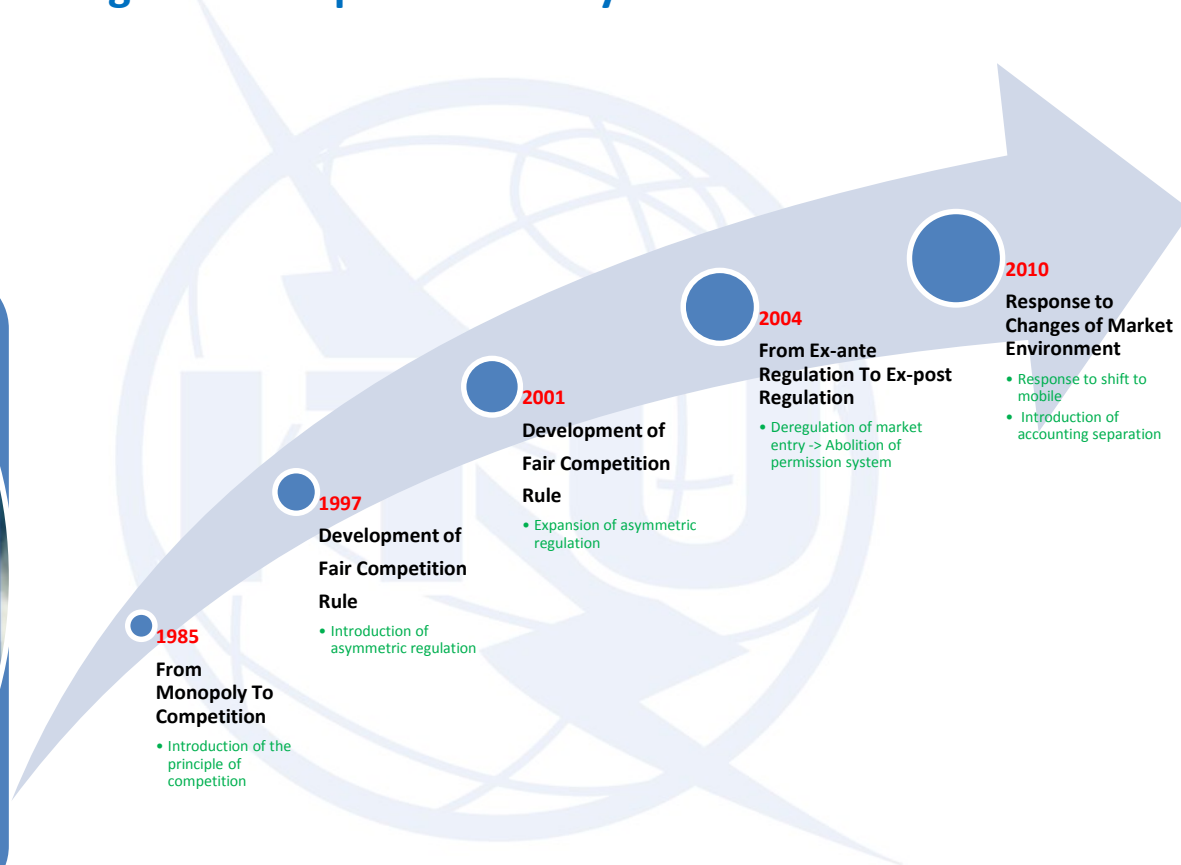
### Growth of competition in selected services

### Percentage of Countries allowing Competition, for Selected ICT Services

Local Fixed Line Services - Competition, 2015	70%	
International Fixed Long Distance - Competition, 2015	74%	
International Gateways - Competition, 2015	85%	
IMT (3G, 4G, etc.) - Competition, 2015	89%	
Internet Services - Competition, 2015	93%	
Concept of dominance or Significant Market Power recognized in law - Yes, 2015	83%	
Accounting separation required, 2015	70%	
Functional separation of SMP/dominant network operator(s) required by law, 2015	32%	

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## 2. Changes in Competition Policy in Telecom Market



### 3.1 The Basic Framework of Competition Policy



#### Laws

- Economy wide
- Focus on preserving competition
- Specific complaint or investigation driven
- Predominantly ex post



#### Regulations

- Industry specific
- Multiple policy objectives
- Precise in setting acceptable behavior
- Ex ante and ex post



#### Institutions

- Institutions are needed to apply the laws and regulations.
- Most countries employ telecommunications regulators or a combination of both telecommunications regulators and competition authorities to implement competition policy in telecommunications.

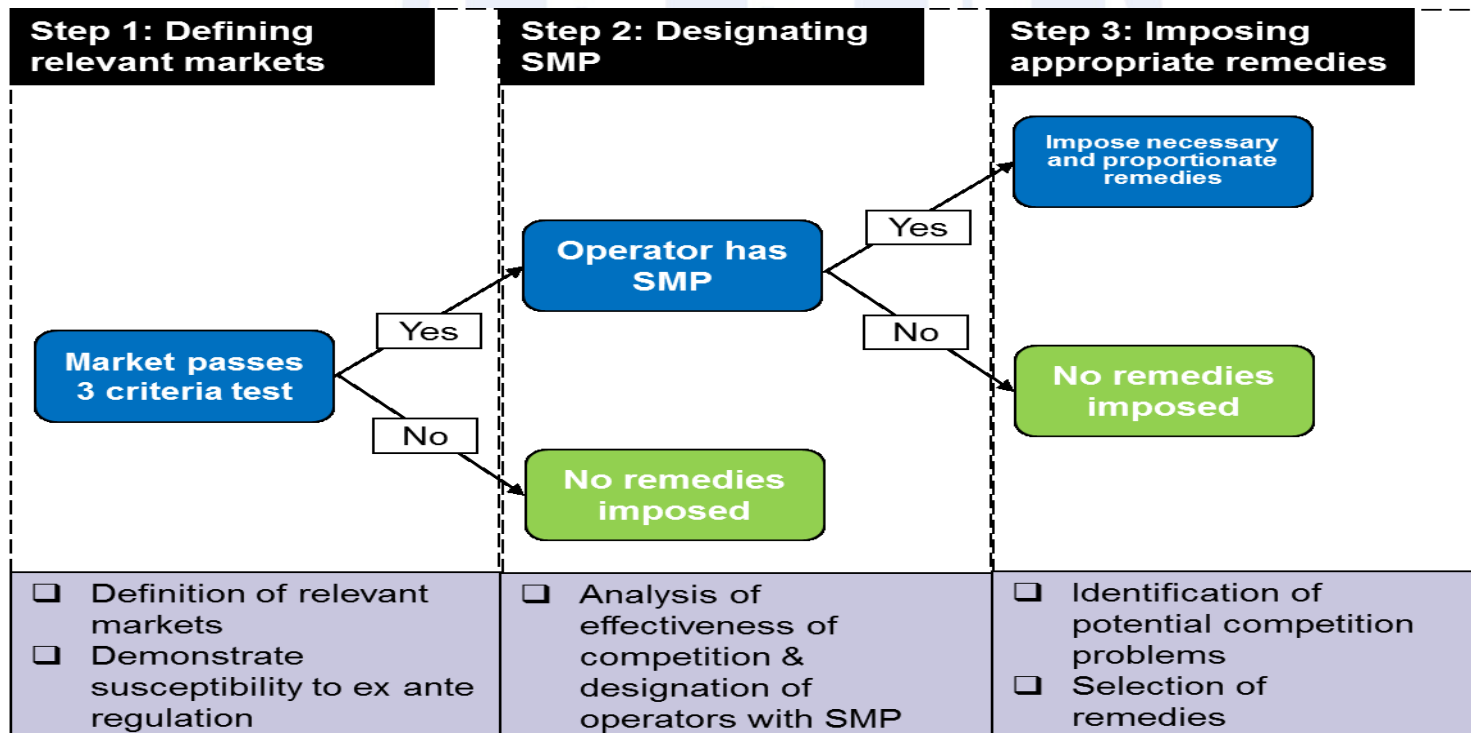


### 3.2 Competition Policy Objectives & Market Analysis /Process

#### 1) Competition Policy Objectives:

- Increasing competition
- Developing broadband
- ..etc

#### 2) Market Analysis /Process:



### 3.3 Ex-ante Regulation

- ❖ Market intervention by the regulator “before the event” of anticipated or potential market failure
- ❖ In order to keep from unnecessarily limiting market forces, countries explicitly set out prerequisites for ex ante regulation in their regulatory framework. That is, ex-ante regulation is only necessary if the following three prerequisites are fulfilled (three criteria test):
  1. There are substantial barriers to market entry
  2. There is no visible trend towards the development of Competition
  3. The ex-post interventions provided for in general competition law are unable to guarantee competitive structures.
- ❖ The three criteria test is meant to help the regulator to intervene at the right time with the right intensity in market activity.
- ❖ If the criteria of this test are not all met at once, the market will be regulated ex-post

## 3.4 Ex-post Regulation

- ❖ Refers to the opposite situation (“**after the fact**”), where no explicit ex-ante market intervention is performed
- ❖ Ex-post regulation refers to:
  - ❖ Anti-trust and merger regulation (Gambia Competition and Consumer Protection Commission)
  - ❖ Defined action of the regulatory authorities such as Arbitration and imposition of Penalties
- ❖ The prerequisite for optimum regulation is a combination of ex-ante and ex-post actions
- ❖ Some consider that ex-ante regulation can create undue market distortions and hindrance to investment
  - ❖ but also, a constantly learning regulator!

## 3.5 Ex ante Regulation Methodology

- ❖ Regulators define markets & determine dominance for these markets in order to design appropriate regulatory interventions, to
  - ❖ Promote competition
  - ❖ Affordable user prices
  - ❖ Efficient investments
- ❖ Ex-ante regulation is designed to protect consumers in the retail market, often by safeguarding fair competition in wholesale markets.

## 3.6 Fields of ex ante Regulation

Traditionally these are:

- ❖ Interconnection practices and rates
- ❖ Unbundling of the local loop or retail packages
- ❖ Wholesale terms of backbone and bandwidth access
- ❖ Infrastructure sharing
- ❖ Price regulation

### 3.7 Steps to Ex-ante Regulation

1. Define “**relevant markets**”
2. Analyze the defined markets to determine if there is **effective competition** or not
3. Identify Dominant (**SMP**) operators
4. Impose **measures** and **remedies** with the aim of preventing **monopolistic** behaviour
  - Obligations
  - Regulations

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## 4. Need for Regulation during Transition from Public Monopoly to Fully Competitive Environment



### Value of Competition:

Resolve disputes, address anticompetitive abuses, protect consumers, and attain national goals such as universal access, industrial competitiveness or economic productivity and growth.

### The transition to competition:



## 5. General Aims and Objectives of Regulation

# Why regulate?



Regulation aims to protect the long-term interests of consumers where the market is unlikely to be able to do so



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Regulation has always been needed but its nature has changed over time



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## 6. Regulatory Factors relevant to Competition

### **Design of the legal Framework:**

Whether the telecommunication law establishes a regulator and defines its role, scope of responsibility, accountability and market objectives.

### **Licensing Regime:**

The extent to which licence obligations are transparent or come with additional burdens such as administration, reporting and fees.

### **Interconnection Regime:**

Whether there is a well-designed and implemented interconnection regime that protects investors from below-cost interconnection payments from operators or unreasonable rate mandates from regulators.

### **Regulatory Fees and Taxation:**

Whether there are excessive fees and taxes, which can increase operating costs and discourage innovation and further investment.

### **Universal Service Funds (USF):**

Whether operators are obliged to contribute to USFs and have the ability to access them to fund investment in cases of market failure.

### **Competition policy:**

The regulators' effectiveness in protecting new operators against the abuse of market power from existing dominant operators, and in promoting fair competition through non-discriminatory, wholesale, open access to dominant operator infrastructure.

### **Tariff Regulation:**

The ability of the regulator to implement tariff regulation in developing regions or in the provision of services where there is ineffective competition.

### **Spectrum Management**

: Whether scarce spectrum is over-priced and overburdened with coverage obligations, thereby decreasing the operators' available capital to invest in infrastructure.

## 7. The balance between Competition and Regulation

### Competition

- When competition is effective and sustainable
- Tests
  - Competitors are established
  - Limited barriers to entry and exit
  - Market relatively mature
  - No collusion

### Regulation

- When there is structural weakness in the market,
- When an operator has substantial power in the market
- Summary: when there is likely market failure, underlined by the existence of significant market power in one or more participants

## 8. Anti-competitive behaviour

### 8.1 What is anti-competitive behaviour?

Anti-competitive behaviour is behaviour that has the intention or effect of significantly lessening competition in a market

## 8.2 Forms of anti-competitive pricing behavior

### General Behavior

- Anti-competitive agreements
- Abuse of dominance
- Tying and bundling

### Price Specific Behavior

- Price Discrimination
- Predatory Pricing
- Margin Squeeze
- Excessive Pricing

## 9. How to Increase Competition



Increased Competition

### Mobile Number Portability:

*MNP increased competition by reducing the incumbent's market power and by tightening the range of prices practiced.*

### Interconnection:

*A fair, transparent, non-discriminatory and cost-based interconnection regime is essential to promote competition and efficiency.*

### Mobile Termination

*Cost-based charge for originating and terminating encourages the competition*

### Other Issues

MVNOs, International Roaming, - National roaming, Spectrum Allocation

## 10. ITU-BDT Resources

- Resources and events organization information is available at the Regulatory and Market environment Website: [www.itu.int/en/itu-d/regulatory-market/Pages/default.aspx](http://www.itu.int/en/itu-d/regulatory-market/Pages/default.aspx)
- ITU has developed a series of publications and studies on regulatory, economic and financial issues, including interconnection [www.itu.int/en/ITU-D/Regulatory-Market/Pages/Studies.aspx](http://www.itu.int/en/ITU-D/Regulatory-Market/Pages/Studies.aspx)
- In the framework of ITU-D Study Group 1, there is Question 4/1 on *Economic policies and methods of determining the costs of services related to national telecommunication/ICT networks, including NGN* [www.itu.int/net4/ITU-D/CDS/sg/questions.asp?lg=1&sp=2014](http://www.itu.int/net4/ITU-D/CDS/sg/questions.asp?lg=1&sp=2014)
- ITU is collecting data from NRAs with the:
  - ITU Regulatory Survey
  - ITU Tariff Policies Survey

The data collected is available on the ITU ICTEye Database [www.itu.int/ICTEYE](http://www.itu.int/ICTEYE)



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All the statistics data are available on the [www.itu.int/ICTEYE](http://www.itu.int/ICTEYE)

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## Welcome to ITU's ICT-Eye

ITU's portal for key ICT data and statistics

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**About** ITU (International Telecommunication Union), the United Nations specialized agency for information and communication technologies (ICTs), is recognized around the globe as the leading provider of timely and comprehensive telecommunication/ICT statistics and trends.

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**Focus Areas** v

**ICT Statistics**

**Regional Information** ICT data is collected directly from countries, validated by ITU and made available on the ICT-Eye.

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**Regional Organizations**

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ICT Statistics Database

- Fixed-line telephone
- Internet
  - Fixed (wired) Internet sub...
  - Fixed (wired) Internet sub...
  - Fixed (wired)-broadband s...
  - Fixed (wired)-broadband s...**
  - ...

Fixed (wired)-broadband subscriptions per 100 inhabitants ?

40

France South Korea





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## The ITU-InfoDev ICT Regulation Toolkit



### ICT Regulation Toolkit



<p><b>WHAT'S THIS?</b></p> <p>The <b>ICT Regulation Toolkit</b> is a live resource for policy-makers, regulators, the telecom industry, and consumers. It provides a global overview of how telecom policy is best implemented with practical materials highlighting experience and results.</p> <p><b>SHORTCUTS</b></p> <ul style="list-style-type: none"><li>Table of Contents</li><li>Table of Practice Notes</li><li>Table of Reference Documents</li><li>Translations</li></ul> <p><b>RESOURCES</b></p> <ul style="list-style-type: none"><li>ITU Blog</li><li>Broadband Toolkit</li><li>ITU Broadband reports</li><li>ITU Trends in Telecommunication Reform 2013</li><li>ITU Trends in Telecommunication Reform - Special Edition (new)</li><li>Training</li></ul>	<p>1</p>	<p>Overview</p>	<p>2</p>	<p>Competition and Price</p>
	<p>3</p>	<p>Authorization of Services</p>	<p>4</p>	<p>Universal Access and Service</p>
	<p>5</p>	<p>Radio Spectrum Management</p>	<p>6</p>	<p>Legal and Institutional Framework</p>
	<p>7</p>	<p>Content regulation</p> <p>COMING SOON</p>		



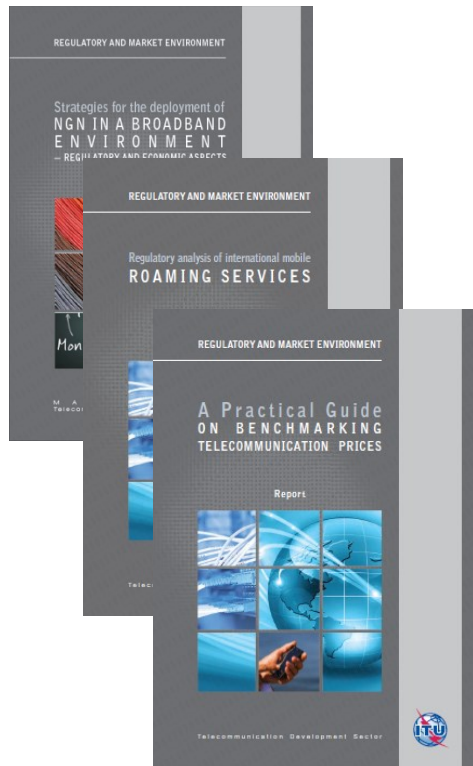
## ITU/BDT Reports

### Trends in Telecommunication Reform 2016: Regulatory Incentives to Achieve Digital Opportunities

[www.itu.int/en/ITU-D/Regulatory-Market/Pages/Regulatory-Publications.aspx](http://www.itu.int/en/ITU-D/Regulatory-Market/Pages/Regulatory-Publications.aspx)

### Regulatory, Economic and Financial Reports 2013-2014:

- **New** A Practical Guide on Benchmarking Telecommunications Service Prices
- **New** Regulatory analysis of international mobile roaming services
- ITU Report on International Mobile Roaming services: Facilitating competition and protecting users
- Competition and regulation in a converged broadband world



Thank you for your attention  
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