FINAL Report on

ITU-BDT Regional Workshop on "Competition in Telecommunications Market"

Khartoum-Sudan, 24-26 May 2016

MAIN OUTCOMES

Introduction

The ITU-BDT Regional Workshop on "Competition in Telecommunications Market" was organized in Khartoum, Sudan 24-26 May 2016, kindly hosted by the Sudanese Telecommunications Company (ZAIN).

The workshop served as a forum for competition and telecommunications policy makers, national telecommunications regulators, operators, experts and telecom industry, to exchange information and experiences on the issue of competition policy and law in telecommunications market.

The workshop identified key issues with respect to the relationship between competition law, telecommunications regulation and telecom services providers. Issues raised ranged from institutional, such as whether competition agencies or national telecommunications regulators are best placed to deal with telecommunication competition issues, to the substantive, such as how relevant markets and significant market power are determined.

The workshop set few principles or "best practices" that could be used by countries that have recently introduced or are planning to introduce competition into their telecommunication markets, as well as by countries seeking to maintain or increase the level of competition in their markets.

Participation

The workshop was attended by more than 50 participants representing 7 Member States from the region.

Documentation

The workshop was paperless. 22 presentations were delivered during the workshop. Relevant documentation, including Agenda, Presentations and final report are made available at the workshop website.

Opening and Welcome Remarks

Eng Elsadig Mohammed, the State Minister of ICT-Sudan officially opened the workshop and addressed his welcoming remarks to the participants highlighting Sudan policy about competition. Eng. Elsadig showed his full support to the workshop outcomes and asked the participants to express their views on the workshop subject.

Eng. Mustafa Al Mahdi, the ITU Arab Regional Office representative addressed his speech highlighting the role of the all stakeholders in promoting competition and the ITU trends concerning the competition in Telecom/ICTs market.

Dr Yahia Abd Allah, the DG of National Telecommunication Corporation (NTC)-Sudan welcomed the participants of the workshop, thanked the ITU Arab Regional Office for its continues support to the Arab LDCs and for organizing workshops on subjects that meet the demands of the members of ITU.

Dr Yahia emphasized the role of the all players in ICT market on competition asking the participants to benefit from the rich programme of the workshop and the presence of the ITU experts in the workshop.
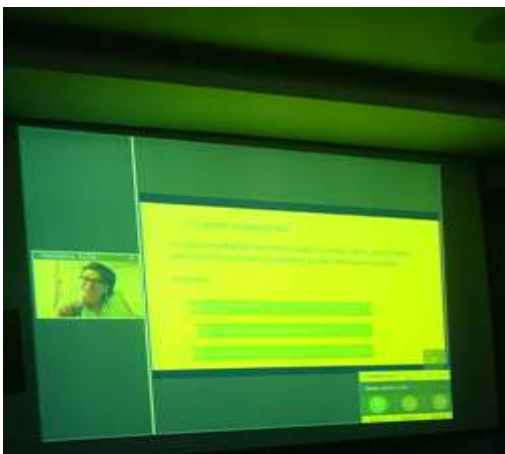
Mr Ibrahim Ahmed Elhassan, Deputy CEO of ZAIN-Sudan, welcomed the participants of the workshop on behalf of Zain and thanked ITU for the support in organizing the workshop for the benefit of Arab states.

Mr Ibrahim showed the full support to the workshop outcomes and asked the workshop audiences to benefits from the ITU resources in the workshop subject.

Session1: Competition – Need, Scope & Regulatory Policy

Eng. Mustafa Al Mahdi provided a comprehensive presentation on the mains issues around the competition policy in ICTs and changes in Competition Policy in Telecommunications Market. Furthermore, Mr Al Mahdi presented the Basic Framework of Competition, Market Analysis Process, ex ante and ex post regulation, Need for Regulation during transition from public monopoly to fully competitive environment, regulatory factors relevant to competition and how to increase competition.

Mrs Sofie Maddens, Head, Regulatory and Market Environment Division of BDT/ITU, through remote participation, provided general trends of competition, evolution of ICT regulation, future trends of technologies and their impact on competition and regulation.

Mrs Maddens discussed the Mandate of ICT Regulators, the collaborative Regulation and building blocks for collaborative 5th generation regulation.

Session2: Trends in Telecom Competition

Dr. Hisham Tahat, as an ITU expert, talked in this session about issues related to the definition of competition and how regulators develop their competition framework. A distinction between general competition law (Ex Post telecom Regulation) and Ex ante regulation has been made. Then Dr.Tahat explained the process of applying market study and declaring dominance in the market. The process of Market definition, deciding who has Significant Market Power (SMP) and impose the remedies on the dominant operators have been explained with examples. After that an examination of competition framework in

the digital environment was presented and explained as a new trend in the competition in the current telecom environment.

Session3: Infrastructure Sharing and Roaming to promote Competition in Telecom

In this session, three presentations were made. Eng. Mohammed Tangsawi (Ex-ZAIN-Sudan) presented the role of infrastructure sharing scope and models and national roaming. In addition, issues related to ICT policy related to infrastructure such as the positive outcomes of infrastructure sharing, infrastructure sharing challenges and some real cases on competition on infrastructure sharing in Sudan were presented and discussed by the workshop participants and speaker.

Ms. Carmen Prado Wagner, Regulatory and Market Environment (RME) -(BDT) remotely provided general introduction presentations on roaming issues today and market competition and regulatory aspects of international roaming.

Ms. Wagner also introduced the BDT Director, Mr. Sanou's Initiative LET'S ROAM THE WORLD – Building blocks for Strategic Best Practices Guidelines and shared with participants the ITU IMR Resources Portal.

Mrs. Anne Rita Ssemboga, Program Officer- ITU Regional Office for Africa remotely intervened and presented the Infrastructure sharing, competition, definition, and scope of Infrastructure sharing. In addition, Mrs. Ssemboga had presented the key trends of Infrastructure sharing as well as the benefits, challenges of Infrastructure sharing, and its roles in promoting the competition. Case studies from Africa region on Infrastructure sharing, principals, remedies, and ITU activities in this area were presented.

Session4: Universal access and consumer protection

During this session, which aimed at focusing on issues related to consumer protection and universal service, Dr. Tahat provided a presentation on key issues of consumer protection in the telecom framework . He described the rights of consumer in the telecom act and the operator's license. He outlined the right to have access to the telecommunications services and the right of good quality of services. Issues like the impact of competition to consumers, number portability and carrier selection in which they are rights to the consumers in the telecom environment has been explained. In addition to that Dr. Tahat , explained the right of privacy and the right to switch between operators in details through his presentation. At the end of his presentation, Dr. Tahat, explained the right of complaint and the dispute settlement process from the consumer's complaints point of view.

Session5: Guidelines of Competition in Telecom Market

In this session, two presentations were made. The first one was about guidelines of competition market which was presented by Dr. Izzeldin. Dr IzzEldin, in this presentation, explained issues related to the regulation of ex ante competition regulation and Ex post. In addition, Dr. Izzeldin discussed the regulatory intervention process in some of anticompetitive practices.
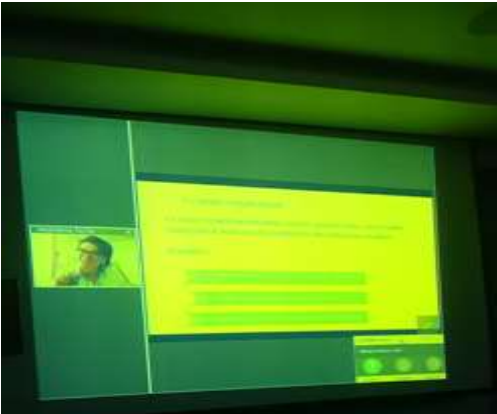

Dr. Tahat delivered the second presentation which was about categories of anti-competitive behaviors in the market. Practical cases regarding anti-competitive conducts like margin squeeze merge and acquisition and other types of anti-competitive behaviors were discussed.

Full participation and involvement from the workshop's participants regarding the cases presented in this session make it as a practical training.

The expert showed the participants how they would decide if they face similar anti-competitive practices and at the end of the presentation, Dr. Tahat provided a road map of how the regulator can handle anti-competitive cases and impose the remedies on the non-compliance operator.

Session6: Key Principles of Market Regulation in Telecommunications

Mrs. Maddens and Mr Hans Bakker, as ITU expert, provided general introduction presentations on key principles and challenges in market regulation in electronic communications markets. They discussed the rationale for having sector specific ex ante regulation and how it is related to ex post regulation (competition law). Mrs Maddens gave an overview of technological and market developments that necessitate rethinking of ex ante regulation, such as convergence, digitalization and the role of OTT services.

Mr Bakker listed key principles of best practice that should be included in a regulatory framework. He stressed that the interplay between a clear set of rules, an independent regulator to apply them and an appeal court disciplining the regulator on request of stakeholders will cause a dynamic regulatory mechanism.

Session 7: Market power, anticompetitive practices and types of regulatory intervention

Mr Bakker provided a presentation setting out types of market dominance (SMP, leverage and joint dominance) and the methodology of market and dominance analysis. He described which types of regulatory remedies are generally applied to address competition problems, either asymmetrically (to achieve a level playing field) or for all market players. He also stressed some general requirements in applying remedies such as the principle of proportionality and the ladder of investment.

Mr Ahmad Obeidat, Director Regulatory Affairs - Zain Group, gave an overview of the situation in countries where Zain operates with regard to regulatory interventions. He indicated the importance of consultations as a way for regulatory authorities to keep track of new developments and opinions of stakeholders. Both speakers stressed the necessity of speedy dispute resolution procedures as a default solution. In reply to questions from the participants it was discussed that dominance analyses are always applied anew in cases of competition law (mergers and anticompetitive behavior) but if applied to ex ante regulation, a market analysis must be refreshed periodically every 2-3 years.

Session 8: Access and Interconnection

Mrs Wagner described how technological changes lead to new approaches of interconnection regulation e.g. through capacity based pricing. She stressed how OTT services disrupt the classical business case of operators and that solutions need to be found that safeguard incentives to invest, given the enormous growth in capacity demand.

Eng. Abd Allah Elfadil, Corporate Manager, MTN –Sudan, gave presentations on the subject of Access and Interconnection and its regulation. Mr Elfadil described the challenges in present day interconnection regulation and underlined that some regulators tend to reduce interconnection prices too strongly which might harm competition developing. He also touched upon the existence of on net/off net pricing structures which make it very difficult to compete. This led to a discussion about the fact that regulators tend to be watchful against strong competitive pricing and won´t allow offers

below costs. But this should be reconsidered – in international best practice, price offers of non-dominant providers can be below costs and it is seen as a good contribution to achieving competitive markets.

The participants discussed that if the interconnection rate or cost are regulated and there is competition at market there is no need to regulatory intervention in retail price.

Session 9: Spectrum and licensing in the mobile telecommunications market

Mr Bakker provided a presentation on key requirements in radio frequency spectrum management and licensing of mobile communications markets. He described the need for regular updating of national spectrum allocation plans to incorporate new technological and market developments, and the need to ´refarm´ outdated usage of spectrum that can be made much more efficient which can lead to a significant ´digital dividend´. He described the various ways of awarding individual spectrum licenses and stressed the importance of having a licensing policy for the long term that is not lightly changed because mobile operators´ business cases are based on them.

Eng. Mustafa Abd Elahfiz, Director of Telecom Services Dept at NTC-Sudan provided a comprehensive presentation on spectrum policy and spectrum management.

Eng. Mustafa presented the national spectrum plan of NTC-Sudan, the frequency resulted from the digital dividend and how the fair access to the frequencies could be an element of fair competition in telecom sector.

Session 10: Institutional Framework: Independence and quality of the regulatory institutions

Mr Bakker provided a presentation on how, according to international best practice, the institutional structure of a regulatory framework should be set up: what does the requirement of independence entail, how should a regulator ensure expertise and quality of staff and what best practice exists in establishing transparency, predictability and accountability. He stressed the importance of adhering to international best practice in this matter with a view to its conduciveness to investors´ confidence.

Session 11: International & Regional experiences and practices on the ICT/Telecom Market Competition (Mini Workshop)

As a conclusion to the workshop, the last session of the workshop had Mini Workshop format. The ITU representative chaired the session and the participants were distributed into three groups, each group worked on one of the following topics:

A. Anti-competitive behavior

B. Remedies of anti-competitive behavior

C. Competition Management

Mr Bakker, Dr Hisham and Mr. Obeidat supervised the three groups; the moderator had briefed the groups on the topics and tasks to be discussed/tackled.

Each group was given 30 minutes to study/discuss among themselves the assigned task, define the inputs and come up with the outputs.

10 minutes was given for the groups to finalize, present the key findings and 3 minutes was given for each panelists to comments, and feedback the groups on topics discussed.

The participants were very interested in the session and had come-up with many thoughts and recommendations on topics discussed above (see the recommendations part).

Conclusions and Recommendations

The workshop participants made the following recommendations:

1. The transparency and independence of the regulators is crucial for effective competition;

2. Share guiding principles and best practices of competition with other sectors on issues where ICT/telecommunications may be leveraged in other sectors

3. Define mechanisms for effective coordination, cooperation and accountability across the sectors

4. There is a need to rethink the role of OTT services – is there disruption of classic business models a blessing or a curse and how should they be incorporated in market and dominance analyses, if at all?

5. In many countries in the region the existence of on net/off net pricing structures is an obstacle to emerging competition and it causes people to walk around with multiple phones. In some countries, these pricing structures have been forbidden and this example should be followed in other countries as well.

6. In many countries in the region regulatory authorities regulate retail prices of non-dominant players which diverges from international best practice. Particularly, regulators tend to be watchful against strong competitive pricing and won´t allow offers below costs. But this should be reconsidered – in international best practice, price offers of non-dominant providers can be below costs and it is seen as a good contribution to achieving competitive markets.

7. The independence of regulatory authorities in the region should be improved especially if the State is still a stakeholder in one of the market players. Also, if the appeal body that processes the judicial review of regulatory decisions lacks expertise and/or is too slow to render swift decisions, alternative solutions should be considered.

8. Ability to Challenge NRAs decisions should always be granted and the hierarchy for appealing process should include independent court as last resort

9. There is a need to strengthen the capacity of the resources in the regulator in how to deal with competition issues and particularly anti-competitive behavior complaints.

10. The emergence of IP traffic along with the provision of non-telecom services like OTTs and media content force all stakeholders to rethink of how to regulate competition in the digital environment.

11. The workshop also recommends the importance of transparent terms and conditions between the provider and the consumer especially with regard to prices and quality of service.

12. In the Arab region, very few countries have developed any framework with respect to the privacy of consumer's data and information. Therefore, there is a need to have a common approach in how to develop and apply privacy framework in telecom.

13. Regulators should intervene to regulate market only if there is Market failure and the intervention should be proportional and transparent.

14. Regulators should monitor the market carefully and should not allow the anti-competitive behavior to appear especially cross subsidization

15. Regulators should encourage the implementation of infrastructure sharing, MNP and national roaming

16. Regulators should encourage the entry of the MVNOs

17. The participants emphasized on clear plan and roadmap for competition management

18. The participants asked the ITU for leveraging the help of experts and consultants for development of competition;

19. The participants emphasized on the empowerment of the member states and regulators in terms of recruitment of experts, budget and staff expose is needed for effective process;

20. The participants called for a holistic general Telecom/ICTs Policy and Strategy.

Closing:

ITU representative delivered the closing speech on behalf of the ITU.

All speakers and participants were thanked for their contributions to the workshop sessions and their active participation in the hot debate and discussions.

ITU representative, speakers and participants thanked ZAIN-Sudan for its kind host of the workshop and for their warm hospitality during their stay in Khartoum.