



Geneva, Switzerland — 20 - 22 November 2002

Suggested list of issues for discussion

The application of competition policy in telecommunications raises a number of issues that will be discussed during the workshop. The following list presents a selection of issues that participants in the Workshop may wish to discuss, from the perspective of their own countries:

1. Institutional approaches to competition policy

- 1.1 In some countries, observers have argued that deregulation should be accelerated and that competition law should increasingly replace sector-specific regulation. At what stage of market development is that possible? Will there always be a need for sector-specific regulation?
- 1.2 Where a separate regime for competition law exists, should it be made fully applicable to the telecommunications sector, notwithstanding the continued regulation of the sector?
- 1.3 Should competition policy in telecommunications be entrusted to a competition authority or to a telecommunications regulatory body (e.g. what are their relative merits)? In the context of convergence can telecommunications regulators continue to effectively apply effective competition policy? What tools can be made available to them to facilitate this task?
- 1.4 Where the two institutions co-exist, what should be the appropriate division of responsibilities between the two institutions (e.g. relevant to telecommunications merger reviews, prevention of anti-competitive behaviour)? How can co-ordination between the two institutions be improved?

2. Defining markets and market power

- 2.1 Two different approaches to market definition can be distinguished: demand substitutability and service classification. Which is more effective for purposes of *ex ante* regulation?
- 2.2 What are the obstacles to adopting a demand substitutability approach for the purposes of *ex ante* regulation? How can certainty and uniformity be preserved?
- 2.3 In applying a demand substitutability test to telecommunications services, what factors should be considered? What degree of substitutability should be required between different services (e.g., to what degree is broadband cable TV availability substitutable for broadband in the local loop?)
- 2.4 What factors should be considered in definition geographic scope (e.g. regulatory boundaries, the extent of the network)? Should a distinction be made between rural and urban markets? Should each mobile call termination network be defined as an individual market? What importance should be given to interconnection and roaming?

2.5 Dominance is identified using both quantitative and qualitative factors. Should a single factor take precedence over the others (e.g. ownership of essential facilities, high market share)? Experts have argued that market share is an unreliable indicator of dominance in fast paced industries, should more qualitative factors, such as a strong record of innovation, be included?

3. Access and interconnection

3.1 Should only telecommunications regulation apply in issues of access to essential facilities? Should a competition law essential facilities doctrine be applied to networks and facilities, such as cable TV, which some regulators have decided to forbear from regulating?

3.2 Some courts have expressed their reluctance in mandating access based on an essential facilities doctrine because of its negative effect on innovation and facilities-based competition, are these concerns similarly considered in telecommunications regulation? Do regulatory obligations such as local loop unbundling and mandatory interconnection go further than an essential facilities doctrine?

3.3 Access to the Internet in many countries depends also on access to the international Internet backbone. To what extent is this problem related to competition? What role is there for competition policy? Who should assume responsibility for applying competition policy in this situation (e.g. an international body, countries where the dominant players are based)?

4. Anti-competitive behaviour

4.1 Anti-competitive conduct is also commonplace in competitive markets that have been deregulated. Is re-regulation necessary in such instances? Or is competition law sufficient (e.g. to rectify excessive pricing in fixed-mobile interconnection, international mobile roaming services)?

4.2 In the context of a vertically layered digital economy, the threat of foreclosure in downstream or upstream market layers has become a major concern. Is there a role for telecommunications regulation in preventing such behaviour? Do telecommunications regulators possess sufficient tools to identify and prevent anti-competitive conduct that is cross-sectoral in nature?

5. Mergers, Acquisitions and other corporate alliances

5.1 Corporate alliances are increasingly taking varied forms, from full mergers to partial share swaps. How should merger control authorities distinguish between these forms of alliance? Should a predominantly *ex ante* or *ex post* regime be adopted towards merger review?

5.2 Vertical mergers are scrutinized where one party owns or controls bottleneck facilities for downstream or upstream markets. In a layered digital economy, the danger posed is even greater. How can new bottlenecks be better identified in an environment of rapid technological change (e.g. instant messenger (IM) services, cable TV networks)?

5.3 The consideration of merger efficiencies plays a large role in merger reviews, how is this balanced against the risk posed to competition? In what circumstances is industry consolidation desirable? Is size necessary for global competitiveness (e.g. large capitalization, end-to-end connectivity, vertical integration offering a full range of services)?

5.4 While competition authorities prefer structural remedies, sector-specific regulators have tended to impose behavioural ones. What are their relative merits? In certain cases structural remedies are difficult to impose in view of certain public policies (e.g. desire for industry

consolidation, national industry champion), in what circumstances can behavioural remedies be substituted for structural ones?

6. International competition policy developments and the WTO

- 6.1 Is there a need for a multi-lateral competition policy framework in telecommunications? What frameworks for competition policy co-operation or enforcement exist? What form should such a framework take (e.g. binding treaties, co-operation agreements)?
- 6.2 The WTO is regarded as a key forum where competition policy issues in telecommunications are dealt with on a multi-lateral level, the Reference Paper on interconnection being a case in point, what direction should further developments take (e.g. specific interconnection and access obligations on an international and domestic level, mandatory dispute resolution)?
- 6.3 A number of countries have concluded co-operation agreements on the matter of competition policy. In practice, this has been applied in the context of mergers involving cross-border interests. Is there a similar scope for co-operation regarding instances of cross-border anti-competitive behaviour in telecommunications? Is the present international framework based on co-operation sufficient to address issues of access at a global level?