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SERIES D: TARIFF AND ACCOUNTING PRINCIPLES  
AND INTERNATIONAL TELECOMMUNICATION/ICT  
ECONOMIC AND POLICY ISSUES

General tariff principles – Economic and policy factors  
relevant to the efficient provision of international  
telecommunication services

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**Principles for market definition and  
identification of operators with significant  
market power**

Recommendation ITU-T D.261

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## Recommendation ITU-T D.261

### Principles for market definition and identification of operators with significant market power

#### Summary

Recommendation ITU-T D.261 proposes principles and guidelines to assist countries in defining and identifying significant market power (SMP) in the telecommunications sector.

#### History

Edition	Recommendation	Approval	Study Group	Unique ID*
1.0	ITU-T D.261	2016-10-25	3	<a href="http://handle.itu.int/11.1002/1000/12829">11.1002/1000/12829</a>

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\* To access the Recommendation, type the URL <http://handle.itu.int/> in the address field of your web browser, followed by the Recommendation's unique ID. For example, <http://handle.itu.int/11.1002/1000/11830-en>.

## FOREWORD

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The World Telecommunication Standardization Assembly (WTSA), which meets every four years, establishes the topics for study by the ITU-T study groups which, in turn, produce Recommendations on these topics.

The approval of ITU-T Recommendations is covered by the procedure laid down in WTSA Resolution 1.

In some areas of information technology which fall within ITU-T's purview, the necessary standards are prepared on a collaborative basis with ISO and IEC.

## NOTE

In this Recommendation, the expression "Administration" is used for conciseness to indicate both a telecommunication administration and a recognized operating agency.

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## Introduction

With the increased variety of commercial offers by operators, spanning across all regions and countries, the need to ensure a level playing field in the provision of international telecommunication services becomes very pertinent. This calls for the identification of the relevant markets for international services where the possibility of abuse of significant power by dominant operators is likely to occur.

Member States and regulators continue to express concern about the possibility of abuse of market power and dominance in the provision of international telecommunications services. Market forces alone may not be effective enough to prevent abuse of market power and dominance in the provision of international telecommunication services.

The issues at stake and their degree vary from region to region, and also within regions, in terms of levels of economic development, market structures and regulatory frameworks. As such, there is need for a harmonized approach at the international level to ensure the competitive provision of international services on a fair and non-discriminatory basis.

Along with the considerations above, it is fundamental that the Member States and national regulatory authorities (NRAs) ensure the greatest possible level of transparency and legal certainty. Regulation as regards the definition of relevant markets and identification of operators with significant market power (SMP) should be explicitly clear in its guiding principles.

It is recommended that the following principles at least should be considered:

- i) *The principle of minimum intervention:* This guarantees that the regulatory authorities will intervene only at times when market conditions do not *per se* ensure effective and sustainable competition among the different competitors in the relevant market.
- ii) *The principle of proportionality:* This means that the regulatory authorities undertake not to impose obligations entailing costs greater than the possible benefits of applying the *ex ante* regulation.

## **Recommendation ITU-T D.261**

### **Principles for market definition and identification of operators with significant market power<sup>1</sup>**

#### **1 Scope**

This Recommendation proposes principles and guidelines to be considered by Member States in defining, identifying and assessing the degree of abuse of market power and dominance by international telecommunication service providers in the various markets for international telecommunication services and obligations on such service providers with significant market power (SMP).

#### **2 Abbreviations and acronyms**

This Recommendation uses the following abbreviations and acronyms:

NRA National Regulatory Authorities

SMP Significant Market Power

SSNIP Small but Significant Non-Transitory Increase in Price

#### **3 Principles for market identification and definition**

**3.1** Identifying relevant markets is a critical first step in any competition analysis. Markets shall be identified with reference to their product and geographical dimensions, but may also consider other dimensions, as set out below:

- a) **Product dimension:**  
Characteristics, prices and intended use of products and services in question.
- b) **Geographic dimension:**  
Geographic area in which products and services are supplied.
- c) **Temporal dimension:**  
Time period over which products and services are supplied.
- d) **Functional dimension:**  
Position in the supply chain, i.e. retail or wholesale.

**3.2** For each of the dimensions above, the relevant market must then be defined through the concept of substitutability. Substitutability refers to the ability of a customer or supplier to switch from one product or service to an alternative in response to a change in the relative price, service or quality of the first product or service. For example, under the product dimension, products and services are considered 'substitutable' if customers and suppliers consider the products or services to be close alternatives in terms of characteristics and usage.

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<sup>1</sup> In accordance with clause 9.5.4 of WTSA Resolution 1, it was requested that the following reservations be appended to this Recommendation:

- The following country has expressed a reservation with respect to this Recommendation: Australia
- The following countries have expressed a reservation and will not apply this Recommendation: Canada and United States of America
- This Recommendation is not applicable for Finland, Norway, Switzerland and Sweden
- This Recommendation is not applicable to Germany, Poland, Portugal and the United Kingdom

**3.3** In view to identify and evaluate substitution possibilities, the national regulatory authorities (NRAs) can be used for the small but significant non-transitory increase in price (SSNIP) test. This test identifies the narrowest possible set of products and/or a geographic region and then asks the question as to whether a hypothetical monopolist supplier could profitably impose a small but significant non-transitory increase in price. If the answer of the test is "Yes", the product and/or geographic region in question (i.e. to which customers or suppliers are likely to switch) is considered to be part of the relevant market.

#### **4 Three-criteria test for markets susceptible to *ex ante* regulation**

**4.1** A relevant market, as defined above, will be subject to *ex ante* regulation<sup>2</sup> by Member States and NRAs, only if all the three criteria given below are met:

- i) High and non-transitory structural, legal or regulatory barriers to entry are present;
- ii) Market structure does not tend towards effective competition within the relevant time horizon (having regard to the state of other competition behind the barriers to entry);
- iii) Competition law alone is insufficient to adequately address market failure(s).

#### **5 Identification of operators with significant market power (SMP)**

**5.1** Once a relevant market is deemed to be subject to *ex ante* regulation, Member States and NRAs should identify operators with significant market power (SMP). An operator shall be deemed to have SMP if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position giving it the power to behave independently of other competitors, buyers and, ultimately, consumers, to a significant extent.

**5.2** The existence of SMP is found by reference to a number of criteria and its assessment is based on a forward-looking market analysis based on existing market conditions. Member States or NRAs should consider a combination of the following criteria, *inter alia*, as determinative of SMP:

- market share;
- control of essential facilities;
- barriers to entry;
- potential competition;
- easy access to financial resources;
- strength of the countervailing power of consumers;
- economies of scale;
- economies of scope;
- vertical integration.

#### **6 Obligations for operators with SMP**

Member States and NRAs are encouraged to consider imposing on operators with SMP a number of obligations which may include but are not limited to:

- transparency;
- isonomic and non-discriminatory treatment;
- wholesale price control;

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<sup>2</sup> *Ex ante* regulation refers to preventive or anticipatory intervention. *Ex post* regulation is remedial intervention, following inappropriate conduct.



- interconnection and open access;
- reference offers obligation;
- functional and accounting separation.





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