

Annex 1:

Definition of the relevant markets for determination of dominance in mobile telecommunication markets in Vanuatu

1. Purpose

This annex defines the *relevant markets* for the purpose of reviewing and potentially designating dominance in mobile telecommunication services in Vanuatu.

2. Background

At present there are only two service providers licensed to provide mobile telecommunication services to end-users in Vanuatu. The Government's present policy is that it intends to issue no further licences for mobile telecommunication services before March 2011. The two service providers that are licensed to provide mobile telecommunication services are Telecom Vanuatu Ltd (TVL) and Digicel (Vanuatu) Ltd (Digicel).

Under the terms of the telecommunication licences issued to TVL and Digicel, the following provisions are stated in clause 10.1:

10.1 Designation if greater than 40% market share

[name of operator] (and any other licensed operator) will be designated as a dominant service provider by the Regulator in any telecommunications market in Vanuatu if its gross revenues in that market (including services provided using an international gateway) constitutes 40% or more of the total gross revenues of all licensed operators in that market (as determined by the Regulator).

Thus the Regulator is required to designate as a *dominant service provider*, any operator with 40% market share, measured in revenue terms, in any telecommunications market in Vanuatu, and to determine the relevant market for any such study and designation.

3. Approach to market definition

The Regulator has adopted the following approach to market definition when defining the relevant markets.

The word “market” is taken to mean a market in Vanuatu for goods or services as well as other goods or services that, as a matter of fact and commercial commonsense, are substitutable for them. Economically substitutable products, which are available or are likely to be available, are to be included in the market definition.

Substitutable products are those seen as coming within the area of close competition relevant to the particular product. That is, substitutable products are products which are reasonable substitutes for each other, given the respective prices and conditions of sale of those products.

The focus is upon those goods or services that are close substitutes in the eyes of buyers, and upon those suppliers who produce, or could easily switch to produce, those goods or services.

Generally, the appropriate ‘market’ is the area of close competition within which commercial commonsense would accept the actual and potential, but not purely theoretical, substitution of a product in response to the right incentive.

A market is defined to include all those suppliers, and all those buyers, between whom there is close competition, and to exclude all other suppliers and buyers.

Within that broad approach, it is necessary to define the relevant markets in a way that best assists the analysis under consideration, bearing in mind the need for a commonsense, pragmatic approach to market definition. In some cases, this means that services that are inextricably linked, either by necessity or by practical common usage, will also be combined into a common market definition. For example the services that enable customers to make and receive mobile telephone calls are treated as part of a common market definition.

The focus is on substitutability of the products provided by Digicel. The relevant markets have been defined on the basis of these products and any substitutes for them (including other products provided by Digicel and any other licensed operators).

4. Market definitions

The markets the Regulator has considered in the context of dominance designation are:

1. The market for retail mobile services in Vanuatu; and
2. The wholesale market for termination of calls in the Digicel network in Vanuatu.

These markets are identified and defined as follows:

4.1 The market for retail mobile services

4.1.1 Definition

The product market for retail mobile services in Vanuatu is defined as embracing the following services:

1. calling to other customers on the same mobile network;
2. calling from a mobile network to customers on another network in Vanuatu;
3. calling from a mobile network to international destinations;
4. calls from a mobile network to voicemail for message deposit or retrieval;
5. SMS messages;
6. services of types 1 to 6 above provided to both residential and business customers; and
7. both pre-pay and post-pay services.

The market for *retail mobile services* in Vanuatu does not include:

1. terminating services for calls that originate in other networks;
2. data call services (other than SMS);
3. inbound and outbound services to roaming customers;
4. services that use pre-pay credit other than for making calls (e.g. lotteries, ring tone sales and credit transfers);
5. wholesale mobile services including termination of incoming calls from other networks into the mobile network under consideration;
6. The sale or lease of mobile handsets and other associated hardware items.

The geographic scope of the market is national, ie the whole of Vanuatu.

4.1.2 Rationale

The reasons for the inclusion or exclusion of items in the market definition are as follows:

1. The different types of calls (to the same network, to different networks, to international destinations and to voice messaging services) are included within

the same retail product market because they are bundled together and sold as one service, eg call minutes or airtime.

2. Services provided to both business and residential customers are included in the market definition because it is often impossible to distinguish between the two categories. Sometime suppliers may make a distinction in branding their products or service bundles, but there is generally nothing to stop a business customer buying a residential bundle or vice versa if the product characteristics suit their needs. Such products are generally effective substitutes for one another and the customer groups purchasing them cannot be effectively distinguished from one another.
3. The definition includes both pre-pay and post pay services, because these are effective substitutes for one another.
4. SMS messages are arguably a different type of product, but the capability to send and receive SMS messages is today inevitably linked and sold with mobile voice calling. Also, SMS messages can be a partial substitute for voice calls in the event that a hypothetical monopolist raises the prices one service type or the other.
5. Although handsets are necessary to avail of retail mobile telephony services, and are a complementary good to mobile retail services, the sale or lease of mobile handsets are not included in the definition. This is because handsets are not a direct substitute for actual calls/SMS messages, and are likely to instead constitute a separate product market. In some cases dealers who are not mobile telephone service providers may sell handsets.
6. Fixed-line services are excluded from the market definition because differences in functionality and availability to retail customers mean that fixed line services are not an effective substitute for mobile services.
7. Terminating services for calls that originate in other networks are excluded from the market definition because these services are only sold on a wholesale basis at present. They are often subject to other forms of control such as interconnection agreements. In any case, it is universally understood that the service of providing termination on the home network for calls originating in other networks is inevitably a monopoly. No one else can provide this service.
8. At the current time, voice and data services (other than SMS) are considered overall to be sufficiently distinct in terms of demand substitution that they are effectively separate markets.
9. Miscellaneous applications of pre-pay credit for purposes such as lotteries or ringtone sales are excluded because they are add-on services that are not effective or partial substitutes for other services included in the market definition.
10. Wholesale mobile services, for example as sold to mobile virtual network operators (MVNOs), do not presently exist in Vanuatu and are therefore excluded from the definition, which in any case is specifically focussed on retail services.

11. The only wholesale mobile service currently sold by TVL and Digicel is the services of terminating incoming calls from customers on other networks. This service is treated as a separate market because this is a wholesale service not sold directly to end-users.

12. The geographic scope of the definition is "the whole of Vanuatu". This is appropriate because the two present service providers each have significantly more than 50% of the population covered by their signals; and the total population coverage is now more than 80%. In addition, there are no regional differences in prices or product offerings so this suggests that the market for retail mobile services is national in geographic scope.

4.2 The wholesale market for call termination on TVL's and Digicel's mobile networks

4.2.1 *Definition*

The wholesale market for call termination on the operators' mobile networks is defined as the market for incoming calls to each respective network. Incoming calls are calls that originate in networks other than the operator's mobile network. These calls are paid for by the companies that interconnect with the respective operators' network. They are not sold directly to end-users. The interconnecting companies generally add a margin to the price paid to the operator in order to cover calling costs in the other network. Thus the operators sell these incoming calls on a wholesale basis.

4.2.2 *Rationale*

The wholesale market for call termination on each operator's network is considered separately from the market for retail mobile services because it serves a different group of customers (other network operators), and there is no contestability for services in this market. This is because each operator is the only company who can currently provide direct connections to that operator's customers through the operator's mobile network.

5. Disclaimer

These definitions are made without prejudice to markets that may subsequently be defined in specific cases under telecommunications licences, legislation or regulations.

The definition of a relevant market can change as time goes by, as the available technologies, products and services evolve and the possibilities for demand and supply substitution change.