GSM Europe

The European interest group of the GSM Association

Key Messages for the New Regulatory Framework

"minimum regulation necessary"

29 November 2000

3 Key Messages

- Refrain from ex-ante intervention if:
  - ✓ Competition law tools give sufficient and timely remedy
  - ✓ Market is effectively or prospectively competitive (regulatory forbearance)

- Stick SMP definition to "simple" dominance in order to keep it flexible to case law and avoid discrimination

- All market assessments should be based on competition law principles in order to facilitate envisaged transition to competition law

GSM Europe supports:

- The overall approach in the package to roll back regulation, because most parts of the communications sector are entering a phase of effective competition, like the mobile market place
- The Commission's proposal to abandon the 25% market share SMP concept which distorts markets and disadvantages new entrants in the mobile market
- The Commission's competition law approach (dominance) in the new SMP concept

GSM Europe supports:

- The Commission's view that: "*the use of ex-ante rules by national regulatory authorities should be limited to those areas where ex-post application of the remedies available under competition law cannot achieve the same results in the same time-scale.*"[1]

- This important objective should be incorporated in the Policy Objectives (New art. 7.2e) instead of being a recital in the access & interconnection directive

- GSM Europe suggests to add the following policy objective:

[N]RAs shall promote an open and competitive market..by:

limiting the use of ex-ante regulation to those market failures where ex-post application of remedies available under competition law cannot achieve the same results in the same time-scale (New art. 7.2e)

[1] *Draft Directive on Access and Interconnection. Recital 4.*

GSM Europe supports:

- The Commission's position that ex-ante regulation should not be applied where competition has developed effectively[2]

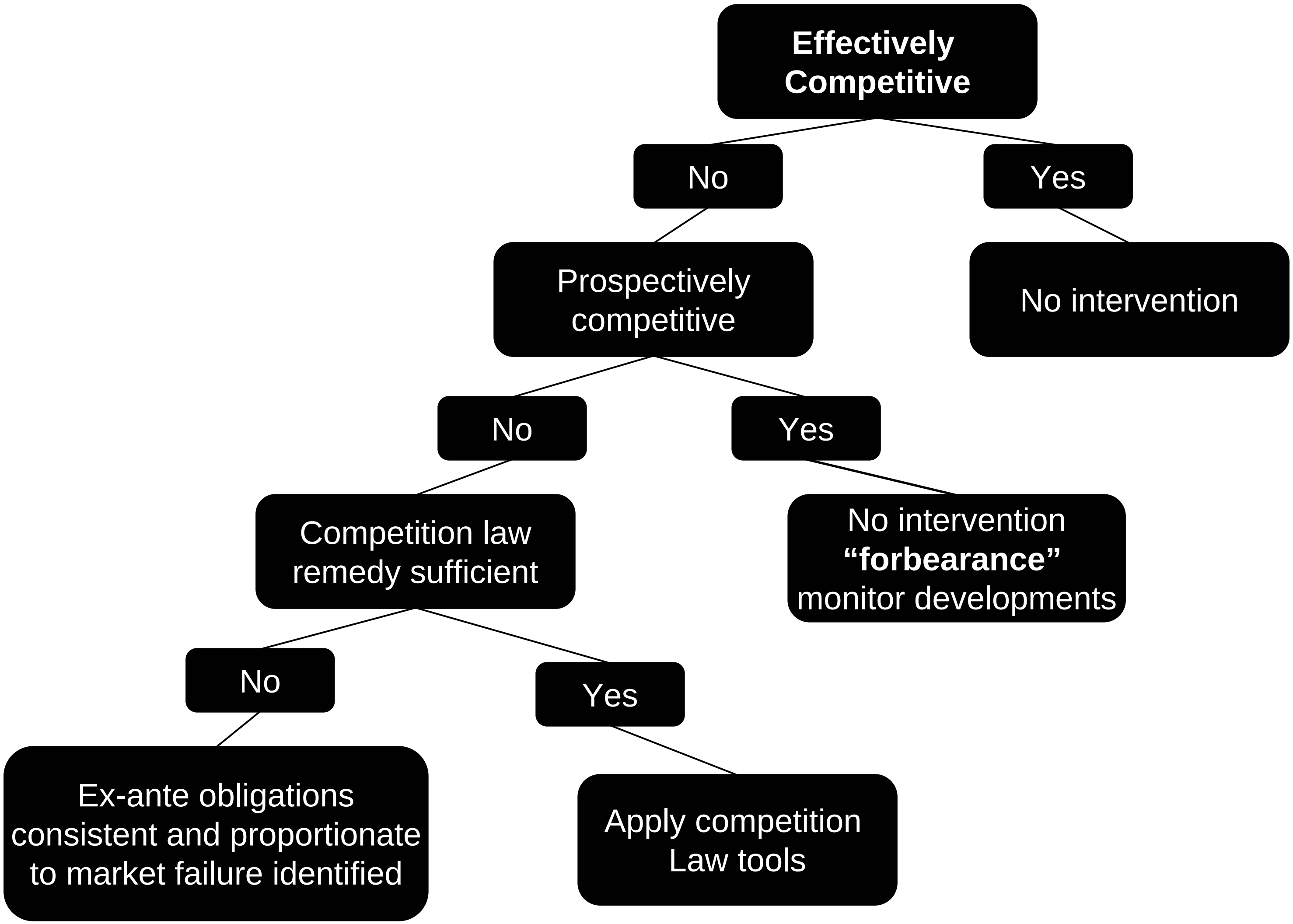
- <u>OR</u> where there is prospective competition

- In order to avoid premature and unnecessary intervention that might replace market forces by a cycle of regulatory action, GSM Europe proposes to strengthen the wording with regard to prospective competition and regulatory forbearance

"forbearance" should be a leading regulatory principle and therefore be reintroduced in the new regulatory framework

[2] *Draft Directive on a Common Regulatory Framework. Recital 21.*

Ex-ante access & interconnection intervention: *"severe interventions require severe tests"*



Forbearance required in SMP definition

Market assessments can not be a “snap shot”

- Electronic communications markets are not static but extremely dynamic and market positions change in short time frames
- Ex-ante regulation should only be allowed if market cannot provide a solution itself in the short to medium term
- A high price today may be a stage in a downward spiral, a market share may be high today but falling rapidly

In order to guarantee the use of the forbearance principle

GSM Europe strongly suggests the

addition of the word “persistent” in in the SMP definition art. 13 (2)

SMP / Dominance

Joint dominance concept leads to discrimination

- There is no justification to single out only one specific competition law concept, joint dominance, as there are other equally important concepts, like essential facility
- Relying on this concept more than others, then applying it to the communications market, through NRA decisions, will lead to different (discriminatory!) outcomes in different industries
- This potential discriminatory outcome may hinder investments and innovative services in the communications sector

GSM Europe suggests the following amendment:

delete the words "*either individually or jointly with others*" from art. 13 (2)

Procedure for SMP notification and obligations

An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers”

Decision on relevant markets (Commission)

Guidelines on market analysis and SMP assessment (Commission)

Market analysis (NRA)

Effective competition assessment and SMP Notification (NRA)

Decision to impose new obligations, or maintain or withdraw existing obligations

Consultation and transparency mechanism

All market assessments should be based on competition law principles

- In order for the industry to make the envisaged transition from to competition law the Decision on relevant markets, the guidelines on market analysis & SMP assessment and the market analysis to be carried out by the NRAs should all be based on competition law principles

- This will ensure that the decisions are adjusted to the specific market conditions at the point of time of the analysis, taking for instance full account of demand and supply side substitutability

GSM Europe suggest the following amendment:

..[T]he Decision shall identify<u>, in accordance with the principles of competition law *,</u> those products and service markets within the communications sector..art. 14 (1)

* Specific competition law criteria should be incorporated in the Framework directive if the Commission and NRAs don't commit themselves to competition law principles. The same counts for the Guidelines and NRA analysis...

Europe's mobile sector:
Facts & figures

- 256 million subscribers (October 2000)
- 3-4 networks in most countries; 4-6 with UMTS
- Additional consumer choice via commercial MVNO (Virgin, One.Tel) and SP (Mobilcom, Debitel) deals
- € 70 billion high risk mobile investment in 1/2G in 1990's
- Estimated € 170 billion in UMTS licences plus € 132 in infrastructure

Europe‘s mobile sector:
Facts & figures

- Consumer prices fell by 70% in 1990‘s
- Average consumer prices will continue to fall by 15% to 20% p.a. in many countries
- Mobile costs for consumer fell from 6% to below 1% of GDP per capita in 1990‘s
- Constant innovation: voice-mail, SMS, WAP, GPRS, M-commerce
- Fastest growth market in the world, 80% average growth in ’99, average market penetration 50% (topping 70%)