

# Flowchart 2:

## *New Economy Example*

### Question: when does a regulator regulate?

- Based on EU precedents: <https://ec.europa.eu/digital-single-market/news/explanatory-note-accompanying-commission-recommendation-relevant-product-and-service-markets>.
- Tables provided for illustration only, to aid those seeking to implement 'SMP regulation'. The actual markets exemplified are not real markets but are shown purely in order to provide an example of how the process may work in practice.
- Application of the rules requires access to evidence both for market definition and market analysis:
  - › consumer surveys; market questionnaires
  - › market data: pricing, market shares, quality of service, patterns of consumers switching between different operators.

#### Three-Criteria test:

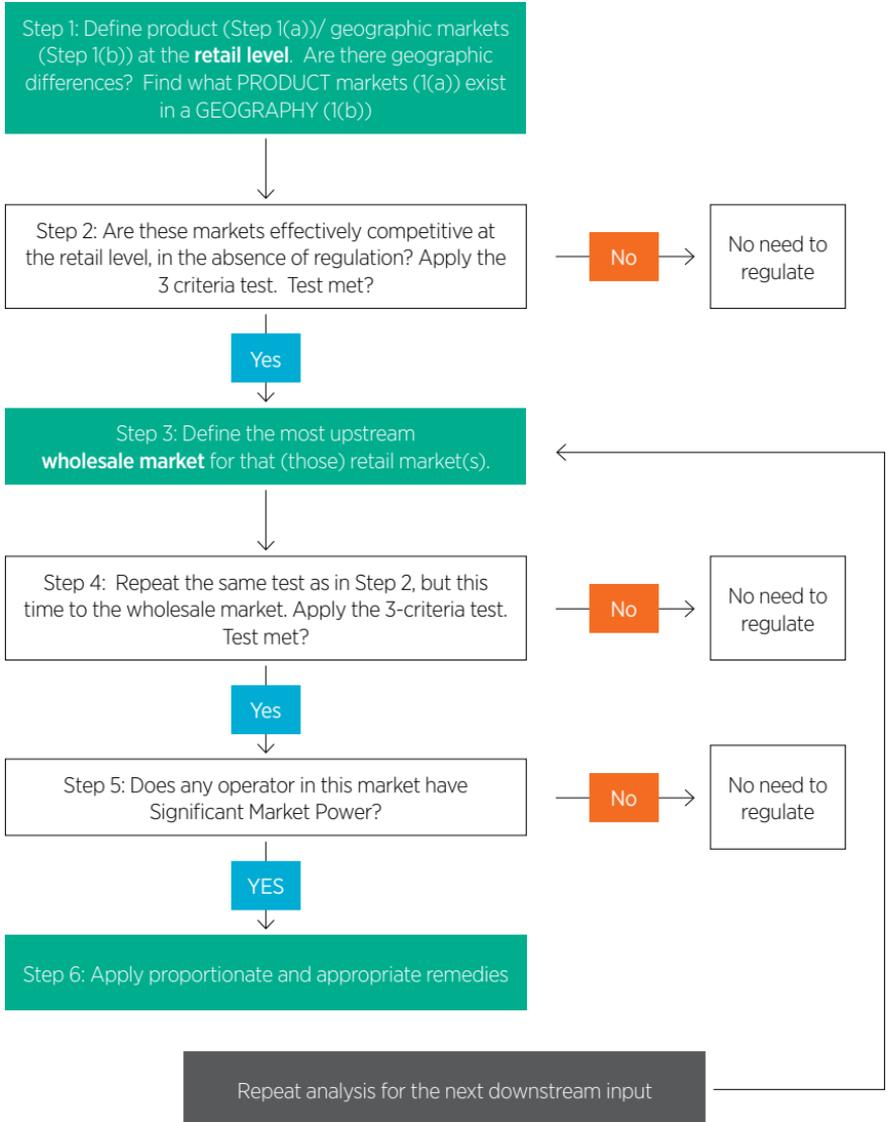
1. The presence of high and non-transitory structural, legal or regulatory barriers to entry in the market.
2. The market structure does not tend towards effective competition within the relevant time horizon (having regard to the state of infrastructure-based and other competition behind the barriers to entry)
3. Competition law alone is insufficient to adequately address the identified market failure(s)

These criteria are applied cumulatively – only if they are all met is a market susceptible to ex ante regulation.

The test applies to overall market characteristics and structure, not to a specific operator (which is the focus of an SMP assessment).

## Flowcharts

### Overview<sup>1</sup>



1. COLOUR CODING: In these flowcharts:

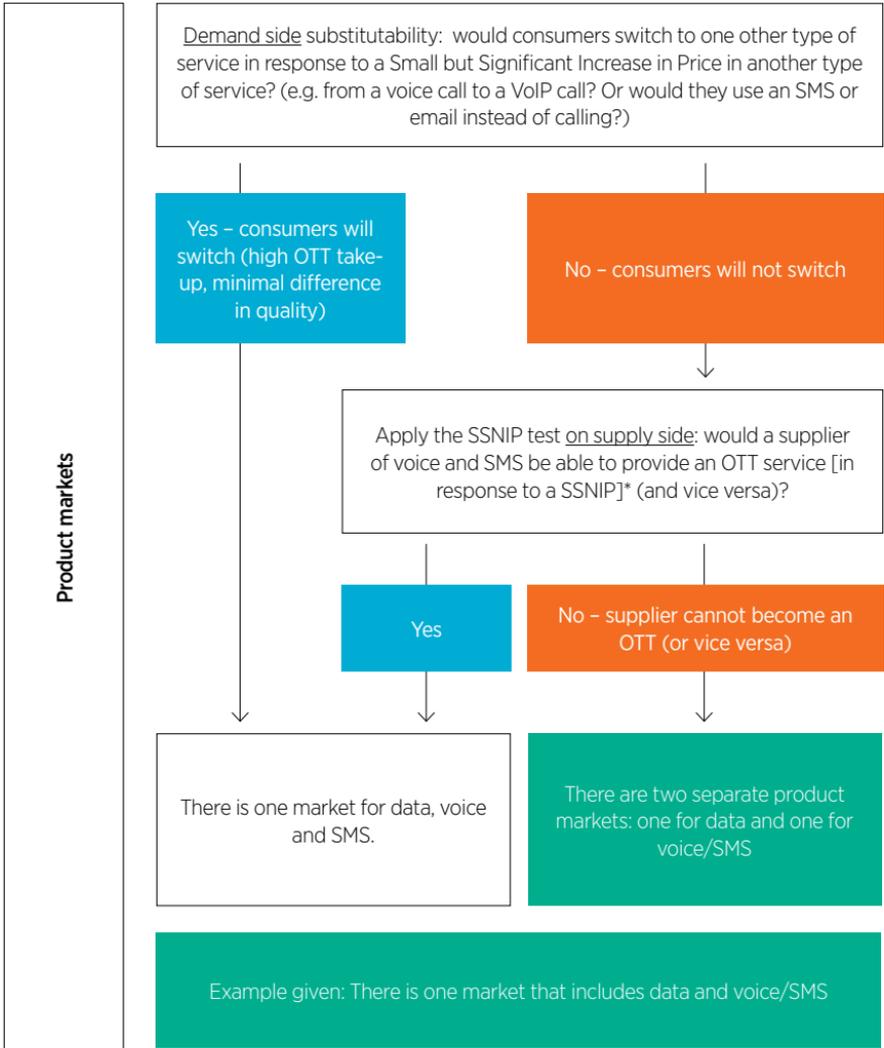
- **Pale blue** denotes a 'yes answer' and in some cases the consequences that derive from such an answer
- **Orange** denotes a 'no answer' and in some cases the consequences that derive from such an answer
- **Grey** denotes general information on the way in which SMP analysis is carried out
- **Green** denotes the choice of an example / the conclusion reached: as the analysis is carried out, we focus on one market at the time and we assume that the analysis has shown that: (i) there is a specific market definition; and (ii) after the analysis, the market as defined requires SMP regulation.



## Flowcharts

## Step 1(a) – Define Product Market at retail level:

What electronic communications do consumers use? Voice, SMS, Data

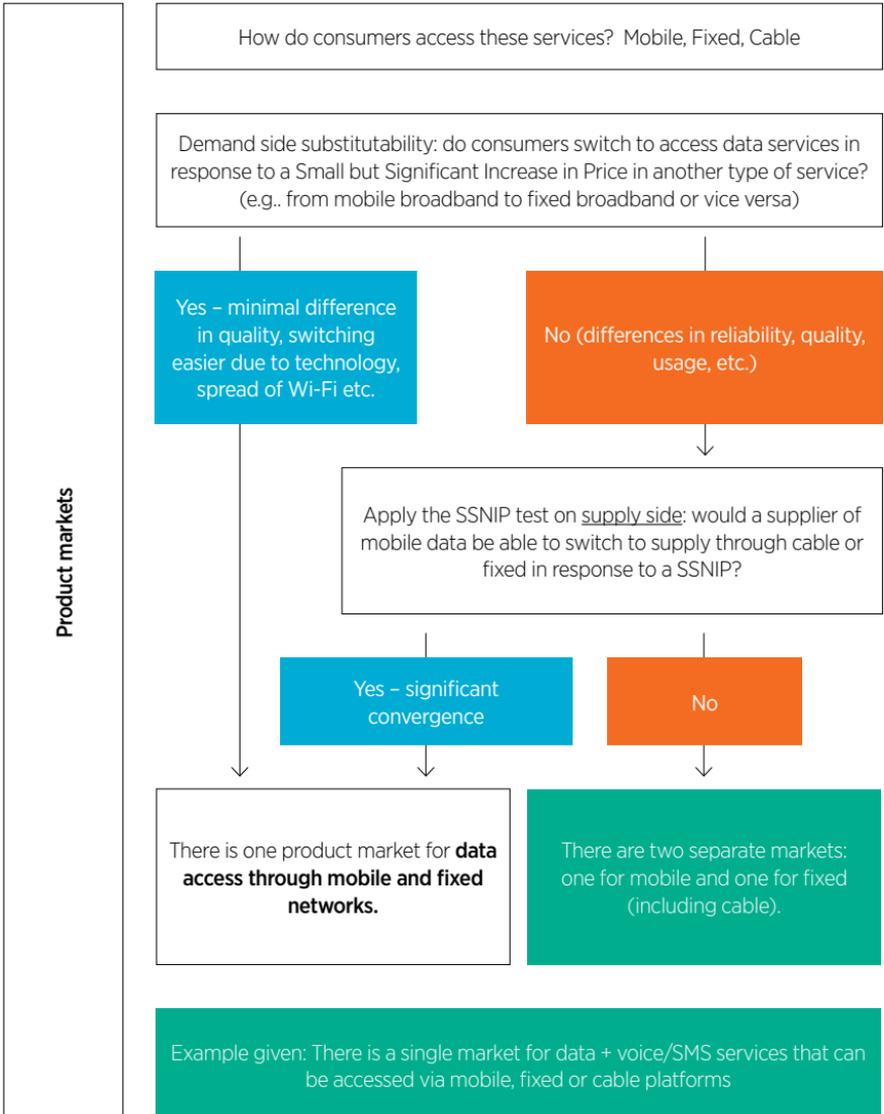




## Flowcharts

## Step 1(a) – Define Product Market at retail level (cont'd):

Example given: There is one market for data + voice/SMS services

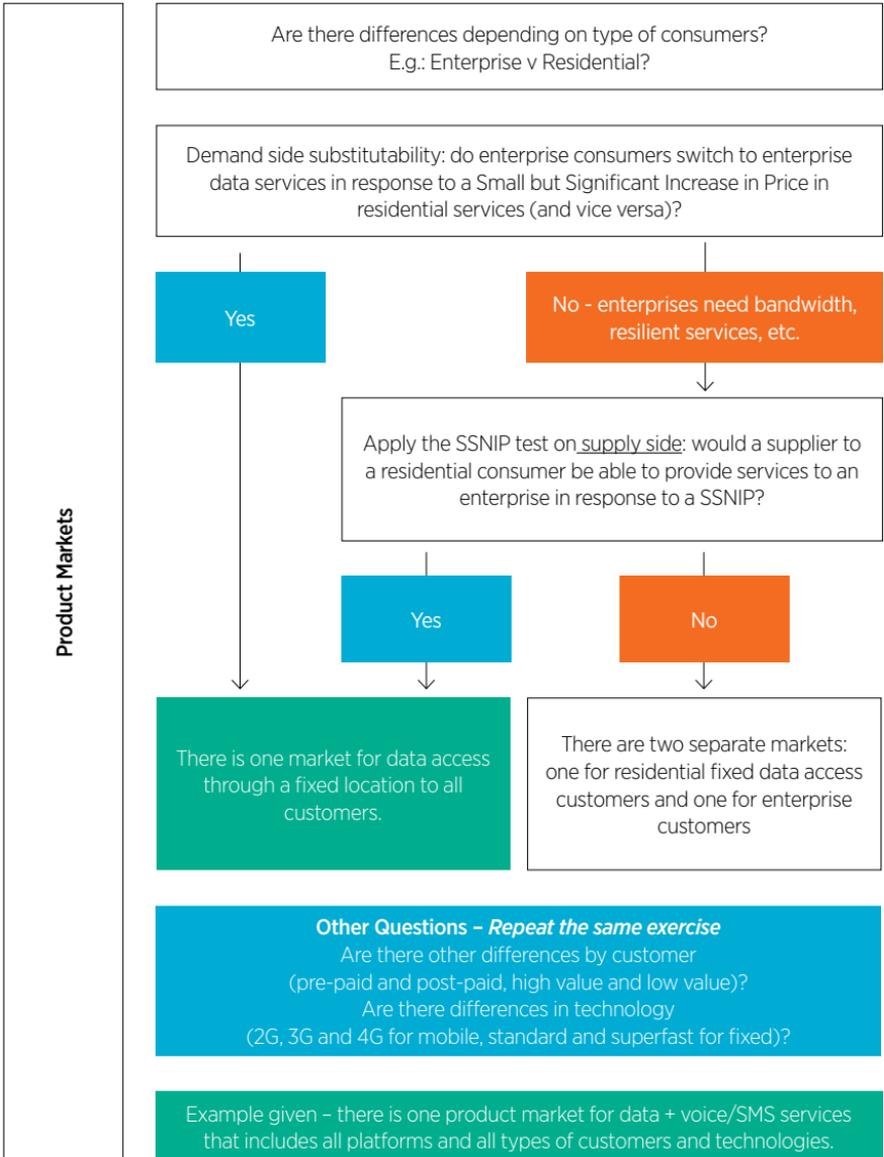




## Flowcharts

## Step 1(a) – Define Product Market at retail level (cont'd):

Example given: Single market for data + voice/SMS services on all platforms

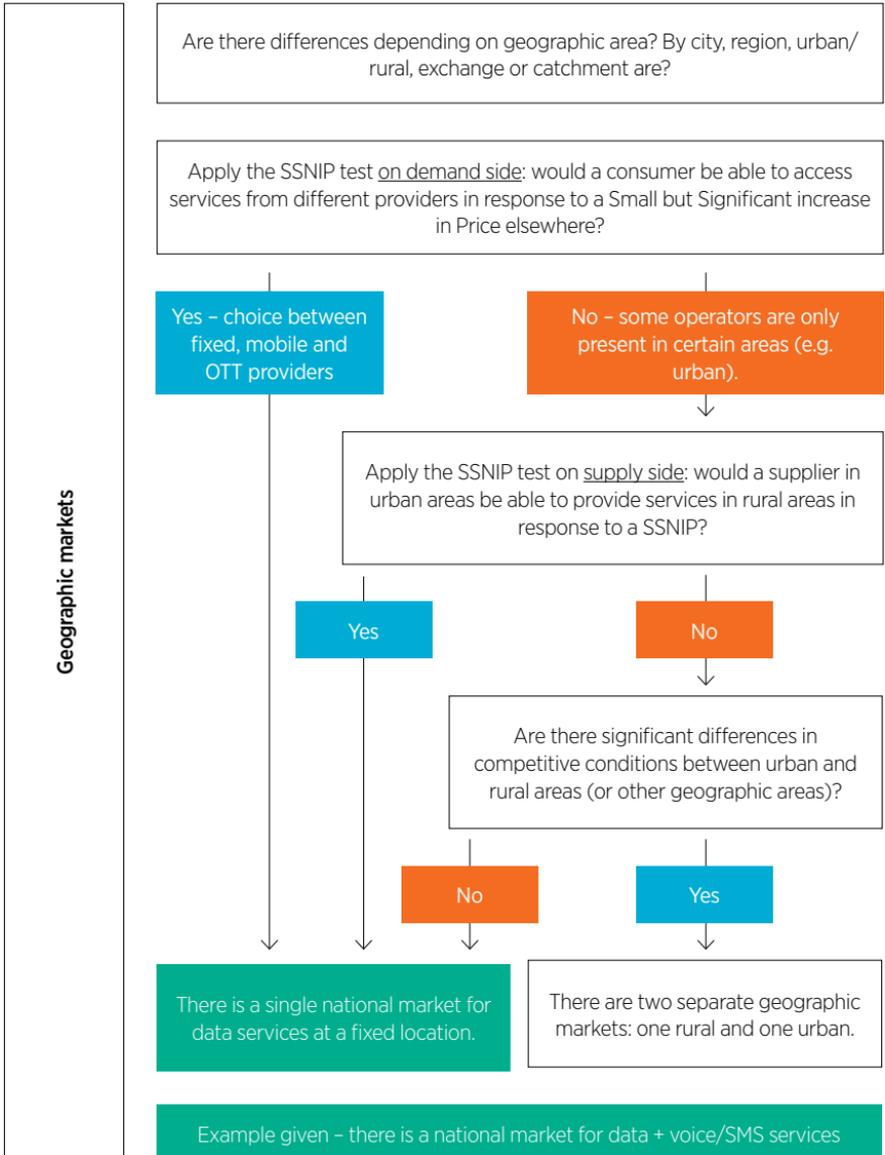




## Flowcharts

## Step 1(b) – Define Geographic Market at retail level:

Example given – there is one product market for data + voice/SMS services



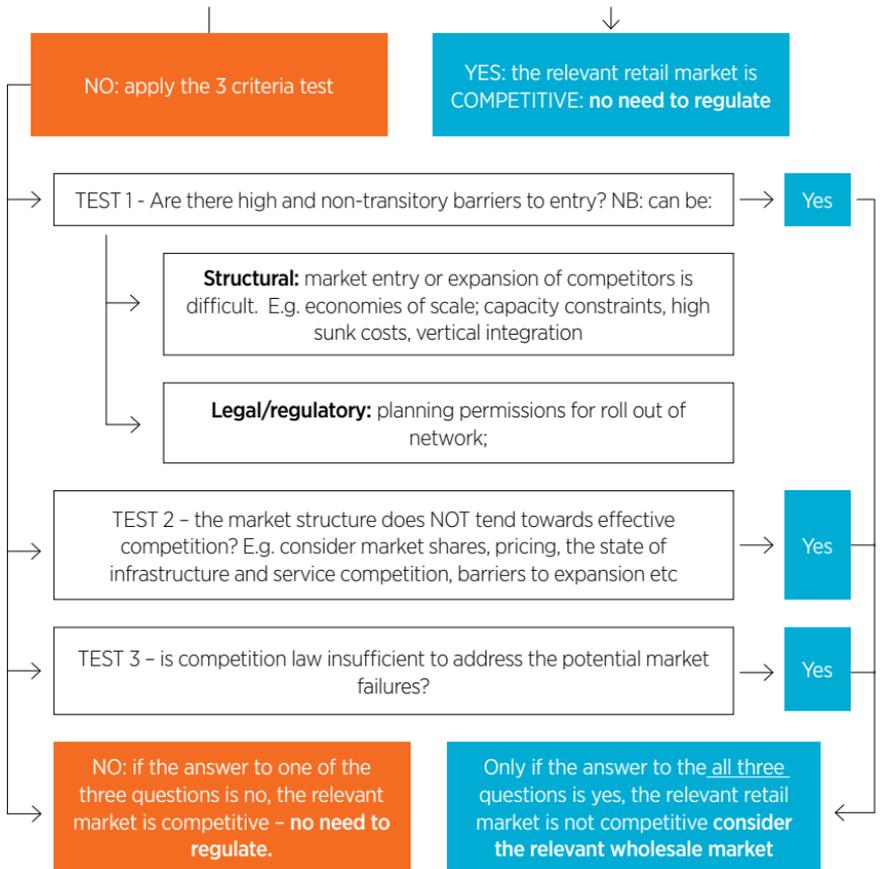
## Flowcharts

## Step 2 – Is it necessary to regulate? Apply 3-criteria test / retail level

APPLY SAME TEST TO EACH RETAIL MARKET IDENTIFIED

Example: national market for data + voice/SMS services (includes fixed and mobile)

**Absent any regulation** (retail or wholesale), are there a sufficient number of players active for effective competition?



Example given: The national retail market for data + voice/SMS services **is competitive**. No need to consider the wholesale upstream market. No ex-ante regulation is necessary.