

The role of the BTA and competition law

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A presentation to the Stakeholders' Forum on further liberalisation

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Challenges for the BTA

Challenges of full liberalisation

- ensure profit maximising industry cooperates in Government's ICT policy
- resolve disputes between a growing number of players
- distinguish in a transparent way between markets which are competitive and those which require regulation
- issue more licences
- continue to empower and protect consumers



A changing role for the BTA.
So important to:

- articulate the guiding principles which the BTA will follow
- focus efforts on the key functions required for effective competition

Three possible principles to follow

- Continue to provide ***independent and predictable*** regulation:
 - needed to attract the new investment required for further liberalisation to be successful
 - ensure the amendment to the Telecommunications Act is interpreted in a way which does not deter outside investors
 - transparent consultation and decision making processes are central to implementing this principle
- Implement ***proportionate*** measures:
 - benefits of any regulation should outweigh the costs
 - especially important in a small market like Botswana given:
 - costs of regulation are largely fixed
 - benefits often proportionate to the market size
- ***Forbear*** from regulation wherever possible:
 - market mechanisms should determine supply conditions where possible
 - focus regulation on correcting market failure rather than managing the market for particular outcomes
 - follow infrastructure based competition policy in first three years of full liberalisation

Key roles for the BTA - consumers and licensing

- Consumer protection and empowerment:
 - continue to check service providers before licensing
 - focus on **informing** consumers rather than **restricting** service providers
 - do not regulate QoS for consumers but let them make an informed choice
 - develop measures for VoIP - but keep them to a minimum
- Licensing:
 - continue to check service providers before licensing
 - move to a standard licence for service providers and individual licences for the three main incumbents
 - rationalise the licence fee structure to avoid distorting competition

Key roles for the BTA - price control

- Refrain from retail price controls where possible and let service providers experiment with prices and price structures to grow the market
- Develop an explicit and transparent process to decide where price control is needed
- At **retail level** impose price controls in markets which are **not effectively competitive**:
 - on BTC's basic national and local services
 - on leased lines on most routes outside the Gaborone to Francistown corridor
 - monitor retail prices in the mobile markets but no price control
- At the **wholesale level** regulate prices of **non replicable bottleneck facilities and services**:
 - all call termination services
 - BTC's wholesale leased line prices on low volume routes
 - BTC's (or Botswana International's) international wholesale services in medium term

Key roles for the BTA - other

- Effective and flexible **spectrum management** is of central importance to success of full liberalisation:
 - microwave links, FWA, PMR, 3rd mobile
 - beyond study terms of reference to make recommendations in this area
 - Important for BTA to ensure that spectrum pricing study has right terms of reference
- **Review infrastructure based competition policy:**
 - give it three years
 - review progress and, if necessary, consider imposing service based measures on BTC eg carrier selection
- Collect, collate and publish more **information on telecoms markets** of Botswana to enable potential investors to evaluate decisions with confidence

The role of competition law

Sector specific regulation and competition law

Sector specific regulation

- Telecoms sector specific applied by the BTA
- **Ex ante** regulation
- Put in place to stop the possibility of a dominant operator acting in an anti competitive manner

Competition law

- Applies to all industries
- **Ex post** regulation - remedies applied after anti competitive conduct has taken place
- Punitive fines act to deter anti competitive behaviour
- Applies only to dominant operators

- The two sets of regulations function in parallel
- So it is important to produce consistent outcomes

Use of competition law in telecoms - 1

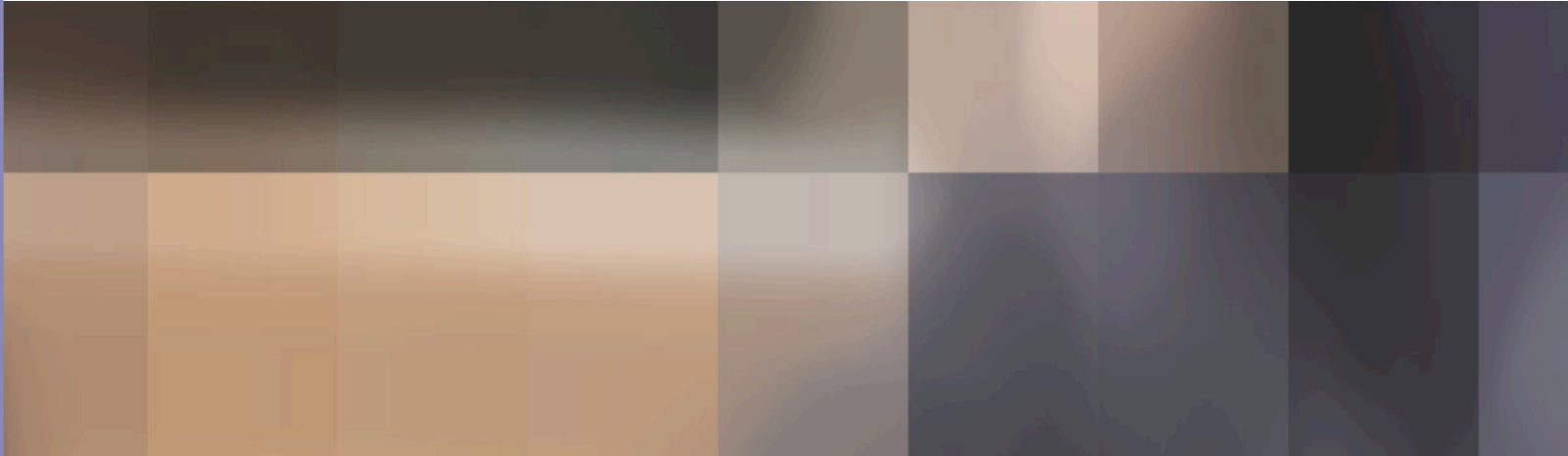
- **Ex-ante** regulation: BTA sets rule in advance to ensure effective competition in the industry

- **Ex-post** regulation: the competent authority rules on complaints that an operator with a dominant position in a market has engaged in anti-competitive behaviour

- Ministry of Trade and Industry is in process of enacting a competition law to:
 - apply ex post competition regulation across all industries
 - establish a national competition authority (NCA)
- So competition law and ex ante sector specific regulation will operate in parallel
- Who should resolve competition law disputes in the telecoms sector?
- How do the authorities concerned ensure consistent outcomes from the two processes?

Use of competition law in telecoms - 2

- Who should resolve competition law disputes in the telecoms sector - the BTA or the NCA?
 - BTA would help ensure consistency of outcome between ex ante and ex post rulings and expert analysis of problems
 - NCA would help ensure consistency of outcome across all industries and reduce danger of “cross contamination” of the two processes
- How do the authorities concerned ensure consistent outcomes from the two processes?
 - need for common approach to definition of markets and assessment of dominance
 - need for regular informal contacts between the two organisations
- We recommend that the NCA resolves competition law disputes with expert advice of the BTA:
 - works in South Africa and Sweden
 - support of BTC and Mascom
- We recommend that the BTA and NCA should develop a joint approach on working together



Thank you