

**Transition to a competitive
telecommunications market:**
the application of competition rules¹
in the telecommunications sector



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As an industry or market matures and develops, regulation may move from a sector-specific regulator to an economy-wide competition authority. However, where these two bodies operate concurrently, a mechanism for avoiding conflicts of jurisdiction and consistent application of law is necessary. This article examines key issues which governments must consider in the context of a particular liberalised industry: the telecommunications industry.

Historically, regulation of the telecommunications industry was based on the understanding that the provision of telecommunications service was a natural monopoly.³ Market and technological developments in recent years have since made it clear that this is no longer necessarily the case and competition is now possible within virtually all of the relevant telecommunications markets, even down to the “local loop”.⁴

In countries where telecommunications has been liberalised, including the majority of the EBRD’s countries of operations, the challenge is now to foster competition and advance it to a sustainable position where special sector-specific regulatory intervention⁵ – which has characterised the market to date – is no longer required. The goal is more competition and less regulation, ultimately to the extent that competition should replace regulation as the best means of determining network and service offerings and price.

The recently revised European Union (EU) telecommunications regulation framework⁶ reflects this movement away from sector-specific provisions toward the general competition framework. A critically important policy issue for the market is the timing and administration of evolution from a monopoly regime first to a sector-specific regulated environment, and then to a competitive market place with full application of the general competition framework within the sector.

Given that the two authorities of significance within the telecommunications sector – the competition authority and the telecommunications regulator – both have somewhat of a different focus and pursue differing objectives, as competition takes hold in the market the interface between the two has the potential to be a veritable minefield of jurisdictional overlap during this crucial transitory period. Consequently, a mechanism which would avoid conflicting exercise of jurisdiction and permit consistent application of competition law and sector-specific regulations in the telecommunications area is necessary.

As the EU prepares to move eastwards and modern, international practices take hold within the accession countries,⁷ it would appear an opportune time to reflect upon this issue, explore what this means for the EBRD countries of operations⁸ and the options available to deal with this overlap. This article will seek to examine these issues, with specific reference to the telecommunications sector.⁹

Background

With a decision to liberalise the telecommunications sector in a given country critical issues for consideration are:

- (i) how will competition in the market be introduced and sustained?
- (ii) who will be responsible for the introduction and maintenance of such competition?

More particularly, the questions which arise in this respect are:

- whether responsibility for the sector should be administered via a cross-sectoral body, such as an economy-wide competition authority, or via an industry specific regulator; and

- whether general competition law will suffice to introduce competition into the telecommunications market or is there a necessity for sector-specific rules.

In this respect, complications arise as certain specific instances of anti-competitive behaviour addressed by sector-specific legislation, such as a refusal to interconnect,¹⁰ are at the same time used as an example of an

the incumbent operator). For liberalisation and competition to work there must be a workable and cooperative relationship between the two.

Incumbent operators in the telecommunications industry have very little or no incentive to cooperate or facilitate the emergence of competition. In fact, some will often engage in anti-competitive behaviour to prevent diminution of their market share. Anti-competitive behaviour

law,¹⁷ is usually referred to as a refusal to provide access to an essential facility.¹⁸

Refusal to provide this access is likely to drive new entrants out of the market since either there is no alternative solution to the services they seek or, if it exists, it is disproportionately expensive. If such dictum is applied to the telecommunications market, refusal by an operator possessing a dominant position to provide a new entrant access

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abuse of a dominant position, one of the crucial components of the general competition law. Allied to this, the question arises as to which rules should be applied by which body and what is the procedure for overlap in the jurisdiction of the rules applicable to the sector.

Before examining such overlapping jurisdiction, it is important to explore the nature of the framework within which competition is introduced to the telecommunications market and the characteristics of the authorities tasked with the application and implementation of such a framework.

General competition law versus sector-specific laws¹¹

When it comes to the liberalisation of network industries,¹² particularly telecommunications, these industries can be seen as possessing certain unique characteristics that require the application of special measures before meaningful competition can take hold.


One particular instance of these unique characteristics, within the telecommunications sector, is the nature of the relationship between the incumbent operator¹³ (whose market share will be diminished by liberalisation) and new entrant operators¹⁴ (who will seek to acquire market share previously held by

in the telecommunications market can take several different forms, including refusal by an incumbent operator to make available or construct adequate capacity for competitive provision of service (i.e. interconnection) or anti-competitive cross-subsidisation.

Interconnection

One of the areas of the incumbent operator/new entrant relationship which is critical for the development of a competitive market in telecommunications is "interconnection".¹⁵ Interconnection is the lifeblood of a competitive telecommunications market and can be one of the primary areas of anti-competitive practices by an incumbent operator aimed at preventing a new entrant seizing market share at their expense.

EU case law¹⁶ shows, in broad terms, that where an organisation holds a dominant position in the market, with respect to a particular product, and refuses to supply that product, where such refusal prevents the emergence of a new product or service or impedes competition with respect to existing product market, this refusal to supply can constitute an abuse of a dominant position. This particular type of abuse of a dominant position, which has found a source of inspiration in American case



to its network (i.e. interconnection capacity), where such refusal would prevent the provision of a new service to the market or restrict competition in the market for such services, this could amount to an abuse of a dominant position and thereby breach general competition law.

Cross-subsidisation

Another instance of anti-competitive behaviour in the telecommunications market that would also contravene general competition law is anti-competitive cross-subsidisation. EU competition law prohibits¹⁹ dominant firms from using revenues to cross-subsidise the price of a service it provides in another market. In the telecommunications sector, such behaviour will arise where an operator, dominant in a particular part of the market, raises or maintains a specific pricing above cost and uses excess revenue generated in that market to subsidise lower costs in other liberalised markets. Without the ability to cross-subsidise its services, new entrants may be disadvantaged in terms of matching prices offered by the dominant operator.

Sufficiency of general competition law in the telecommunications sector

Many of the issues arising within the telecommunications sector appear to be classic anti-competitive practices which should be sufficiently addressed under a general competition framework. However, when some of the unique characteristics of the telecommunications market are closely examined the need for sector-specific laws becomes apparent.²⁰

Having the protection of competition as its main objective, general competition laws may not ensure the emergence of

- there was no objective justification for this refusal;²¹
- this refusal has prevented the emergence of a new service or product market.

Similarly, unfair cross-subsidisation can usually only be established after a thorough examination of the incumbent operator's books. This is generally possible if the books have been kept consistent with a set methodology permitting the allocation of revenues and expenses to appropriate and verifiable categories and the aggrieved party has sufficient access to these books. It is highly unlikely that an incumbent operator will adopt such a complex and burdensome methodology on its own initiative.

In the EU, such sector-specific laws have been set out in the original Open Network Provision Directives,²² adopted more than a decade ago and recently consolidated and revised²³ to take account of developments within the telecommunications market. This sector-specific law goes further than general competition law, extending obligations traditionally imposed only on dominant undertakings to all operators with significant market power.²⁴ It also establishes a specific mechanism for assessing whether an operator will or will not be subject to the requirements of the sector-specific legislation.

In this way, the rules can be seen as more workable, efficient and are more in tune with the realities of the market for competitive telecommunications services. Additionally, these sector-

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a competitive market in the telecommunications sector and more appropriate competition provisions within the sector-specific law could deal with the issue more efficiently. Moreover, before initiating a procedure with respect to anti-competitive practice under a general competition law, an aggrieved party will generally be required to accumulate evidence proving the existence of a dominant position in the particular marketplace and facts constituting an abuse of that position.

Translating this to a case of a refusal to supply network access by an incumbent operator, an aggrieved party will have to establish:

- access to the particular facility in question was indeed essential;
- there was sufficient network capacity available to provide the access requested;

Consequently, in the absence of accounting separation obligations imposed upon a regulated company by a sector-specific framework, a competition authority operating on the basis of commonly understood powers would be arguably unlikely to find sufficient evidence of unfair cross-subsidisation.

Necessity for sector-specific laws

While the general competition framework provides fundamental protections against anti-competitive behaviour in the telecommunications sector, these protections will only be meaningful if supplemented by sector-specific provisions establishing rules designed to facilitate the emergence of competition dealing with the specific issues highlighted.

specific laws can require operators to grant access to their networks irrespective of whether or not they are dominant. This would not be possible under general competition laws.

The sector-specific law also applies requirements with respect to the specific methodology applicable to allocation of cost and revenue. Again, general competition law does not extend this far. Many of these provisions have been replicated in the telecommunications legislation of numerous countries around the world, including the majority of the EBRD's countries of operations. The EBRD Legal Transition Programme assists the authorities in EBRD countries of operations to elaborate and implement telecommunications sector principles based upon or reflective of the EU telecommunications regulatory framework.²⁵

With increasing incidence of concurrent powers for both telecommunications regulators and economy-wide competition authorities, the scope for overlap and inconsistent application of competition measures by both authorities remains significant.

Competition authority or sector-specific regulator?

When a decision has been made regarding the nature of the legal framework and how it will support the introduction and maintenance of competition in the telecommunications sector, a related question arises. Will the responsibility for the implementation of that framework be entrusted to an economy-wide competition authority or a sector-specific telecommunications regulatory authority?

Worldwide, various options have been pursued with respect to whether a general competition authority or sector-specific regulator should be responsible for overseeing the liberalisation of the telecommunications marketplace. These options range from having both a general competition authority and a sector-specific regulator²⁶ to a competition authority without any sector-specific regulator.²⁷

The general tendency in Europe, in particular since the advent of de-monopolisation and liberalisation within the utility sectors, has been the establishment of a sector-specific regulator, in addition to an extant competition authority. In this context, there has been considerable debate about the nature and scope of regulation required and the relationship between sector-specific laws and the greater competition framework and between the respective authorities.

Competition authority and sector-specific regulator compared

The basic frameworks underpinning both an economy-wide competition authority and a sector-specific regulator can be compared in a number of ways. A competition authority's responsibility stretches throughout the economy, focusing on the preservation of competition. According to general competition law a competition authority by and large performs its duties on a retrospective basis, addressing activity that has already taken place which had as its object or effect the distortion of the market.

A competition authority is generally driven by specific complaints or general investigation aimed at remedying a transgression after the fact. In this way a competition authority acts in a predominantly *ex post* fashion. In contrast, a sector-specific regulatory authority is industry specific, pursuing multiple policy objectives. These objectives range from the introduction and development of a competitive market, through to pursuing certain social policy objectives, such as universal access.²⁸ The sector-specific authority will generally use its discretion to exercise sector-specific regulatory functions, where particular markets become sufficiently competitive. This can be done through a combination of *ex ante* and *ex post* measures.

In essence, the role of telecommunications regulation is affirmative in nature, dictating precise acceptable behaviour required for sector participation through a mix of retrospective and prospective activity. Certain functions of the regulatory authority, such as tariffing limits, terms and conditions for interconnection and quality of service have a prospective quality, while at the same time these regulators are also empowered to

respond to individual complaints or launch investigations where there appears to have been a contravention of the regulatory framework.

Given the particular characteristics of the telecommunications sector and the differing objectives pursued by an economy-wide competition authority, a sector-specific regulatory authority would appear to be the most appropriate authority for administration of a sector-specific framework, at least until a certain degree of competition has taken hold.

For example, a sector-specific regulator would be in a better position than a traditional competition authority to render technical expertise necessary for the administration of interconnection or the detection of cross-subsidisation. In addition, a sector-specific body would be more appropriately suited to pursuing certain sector-specific policy objectives, that may not best serve the principles of a fully competitive market place (e.g. universal service objectives).

Overlap in the application of competition and sector-specific laws

As indicated earlier, overlap in the application of competition and sector-specific laws occurs when specific instances of anti-competitive behaviour addressed by sector-specific legislation, such as a refusal to interconnect, are also used as an example of an abuse of a dominant position, a crucial component of general competition law.

The EU regulatory framework, and those based thereupon, envisage steadily increasing competition within the telecommunications market and commensurately less need for sector-specific regulation. To facilitate enforcement and harmonisation of competition rules in the

telecommunications sector, for example, a number of guidelines and notices have been adopted over the years.²⁹

Continuing this trend, the new EU regulatory package manifests an approach more in line with the principles of general competition law.³⁰ While national legislation in certain EU markets, such as the United Kingdom, reflecting that manifestation increasingly provides for competence of the telecommunications regulator to apply competition law in the telecommunications sector,³¹ debate remains as to which is the competent authority.

The main approaches to this issue range from no mechanism at all,³² to mandatory cooperation,³³ to resolution by a third authority,³⁴ to agreement between authorities.³⁵ If this issue remains unresolved within EU countries, there is certainly potential for similar overlap to become an issue in the non-accession telecommunications markets of the EBRD's countries of operations as these countries move to liberalise their telecommunications marketplaces.

Consequently, in the absence of specific legislative guidance in this respect (particularly in the non-accession telecommunications markets) it is essential that a clear and unambiguous framework is developed. This framework should set out the competencies of each authority and provide a workable mechanism for the resolution of dispute as to the competencies. Without these measures, the scope for inter-agency power battles and potential for regulatory duplication, inconsistent intervention or "double jeopardy" increases greatly.

Whether such a framework is contained in specific legislation or agreements between authorities is a policy choice for individual nations. While the preference is to have as binding a mechanism as possible, there must be sufficient flexibility to react to the rapidly changing market environment within the sector.

Conclusion

As competition becomes more pervasive in telecommunications markets, an increasing reliance on competition law, rather than sector-specific measures, is expected. The updated EU telecommunications regulatory framework reflects this expectation, as do national laws adopted to transpose the EU measures.

However with the increasing incidence of concurrent powers for both telecommunications regulators and economy-wide competition authorities within the telecommunications sector, the scope for overlap and inconsistent application of competition laws and relevant sector-specific measures by both authorities remains significant during the transition to a competitive marketplace. While this matter is being dealt with in varying degrees within the advanced telecommunications markets, the matter represents a relatively significant issue for the lesser developed markets. In particular the non-accession EBRD countries of operations as they move to reform both their telecommunications and competition frameworks will likely be affected.

To avoid such conflict, there should be a clear and unambiguous statement of the competencies of both the telecommunications authority and the competition authority. The statement should cover the application of competition rules to the telecommunications sector. Going forward, technical cooperation assistance provided by the EBRD, through its Legal Transition Programme, will enable the Bank to stay abreast of these issues, the surrounding debate and the mechanisms adopted to address overlapping jurisdictions. ^⑥

Notes

- ¹ For the purpose of this article, competition rules should be understood to include any provision provided either by classical competition law or sector-specific regulation, relevant to the core competition law principles.
- ² The authors wish to acknowledge the helpful comments of Olivier de Juvigny and Pierre-Xavier Boubée of the law firm Rambaud Martel, Paris, France.
- ³ The Organisation for Economic Co-operation and Development (OECD) understands a "natural monopoly" to exist in a particular market if a single firm can serve that market at lower cost than any combination of two or more firms. Natural monopoly arises out of the properties of productive technology, often in association with market demand, and not from the activities of governments or rivals. Generally speaking, natural monopolies are characterised by steeply declining long-run average and marginal-cost curves such that there is room for only one firm to fully exploit available economies of scale and supply the market (OECD *Glossary of Industrial Organisation Economics and Competition Law* – <http://www.oecd.org/dataoecd/8/61/2376087.pdf>). For further reference on the natural monopoly concept see: W.W. Sharkey, *The Theory of Natural Monopoly*, Cambridge University Press, Cambridge, UK (1982); M. Waterson, "Recent Developments in the Theory of Natural Monopoly", *Journal of Economic Surveys*, Vol. 1, No.1 1987.
- ⁴ The "local loop", also known as the "last mile", is the physical copper line circuit in the local access network connecting the customer's premises to the operator's local switch, concentrator or equivalent facility (Article 2 of Regulation (2887/2000/EC) on Unbundled Access to the Local Loop).
- ⁵ "Sector-specific regulatory intervention" refers to the legislative and regulatory framework applying to a specific sector such as telecommunications, electricity, etc. aimed at the introduction and maintenance of competition in that marketplace.
- ⁶ While the revised EU framework uses the term "electronic communications" (referring to the converged marketplace of telecommunications, broadcasting and internet), for the purpose of consistency throughout this article, the term "telecommunications" will be used.
- ⁷ Eight of the ten countries anticipated to accede to the European Union in 2004 are EBRD countries of operations. These countries are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia.
- ⁸ The current EBRD countries of operations are Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, FYR Macedonia, Georgia, Hungary, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, Moldova, Poland, Romania, Russia, Serbia and Montenegro, Slovak Republic, Slovenia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.
- ⁹ While certain of the issues highlighted in this article are being addressed within the recently adopted EU communications regulatory framework, as not all of the EBRD countries of operations are directly concerned with the EU telecommunications framework, the aim of this article is to explore the issues herein on the wider basis of their application to those countries.
- ¹⁰ See definition of "interconnection" at footnote 15.

Notes (continued)

- ¹¹ It is important to note that this debate is being carried on within the context, and against the backdrop, of an ever evolving competitive structure and market dynamic. Thus while it may currently be appropriate to discuss an adequate scope of competition rules in the telecoms area and their enforcement by either competition or regulatory authority – or both, the ever changing nature of the industry structure could at some stage make such delineation redundant.
- ¹² An industry in which, *inter alia*, competitors need to have physical, electronic or contractual links with one another in order to compete effectively. Examples of such industries would include transport, electricity, gas and telecommunications.
- ¹³ “Incumbent operator” generally refers to the established telecommunications network operator(s) in a given country. Normally this entity operates all or most of the public telecommunications network infrastructure in a country. In many countries, this was the Post Telephone and Telegraph (PTT) administration of the national government. In some countries it was, or now is, a private sector operator. In both cases, incumbent public telecommunications operators generally operated as monopolies (see *infoDev/McCarthy Tétrault Telecommunications Regulation Handbook*, appendix C, page 7 – <http://www.infodev.org/projects/314regulationhandbook/appendix.pdf>).
- ¹⁴ A “new entrant operator” refers to a new telecommunications service provider, including a new public telecommunications operator (see *infoDev/McCarthy Tétrault Telecommunications Regulation Handbook*, appendix C, page 10 – <http://www.infodev.org/projects/314regulationhandbook/appendix.pdf>).
- ¹⁵ Interconnection means the physical and logical linking of public electronic communications networks used by the same or a different undertaking to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. (Article 2, Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997). In most basic terms, interconnection is the linking of different networks so customers of each network may communicate with one another. The purpose of an interconnection regime is to benefit users by encouraging competition and innovations in the telecommunications market.
- ¹⁶ Radio Telefis Eireann (RTE) and Independent Television Publications Ltd. (ITP) v Commission of the European Communities; Decision of the European Court of Justice, Joined Cases C-241/91 P and C-242/91 P, 6 April 1995: the “Magill” decision.
- ¹⁷ Decision of the American Supreme Court “United States v Terminal Railroad Association” (224 US 383), in 1912.
- ¹⁸ The theory of essential facilities has been progressively introduced into EU law mainly through the EU Commission’s decisions and mostly under the name of essential infrastructure. For further reference see: M. Furse, “The essential facility doctrine in community law”, *European Competition Law Review*, pp. 469-473 (1995/8); D. Glasl, “Essential facility doctrine in EC anti-trust law: a contribution to a current debate” *European Competition Law Review*, p. 469-473 (1994).
- ¹⁹ Case C-62/86 AKZO Chemie BV v Commission of the European Communities (1991) ECR I-3359.
- ²⁰ The 1998 EC “Access” Notice (Notice on the application of competition rules to access agreements in the telecommunications sector OJ C 265.22.8.1998) recognised that community competition laws were not sufficient to remedy all the various problems in the telecommunications sector.
- ²¹ Refusal is likely to be objectively justified if access to the network at a particular point or time would not have been technically feasible (where the facilities or equipment of the requesting party were not of a technically compatible standard).
- ²² For further information on the Open Network Provision Directives refer to Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision and relevant provisions flowing therefrom.
- ²³ The revised 2002 EU communications regulation framework aims to reduce regulation as competition becomes effective in specific markets. The adoption of the new directives is expected to stimulate more competition as it will create a clear and consistent regulatory framework across the EU for all operators.
- ²⁴ These are organisations which provide electronic communications networks or service and are considered by the communications regulatory authority as having “significant market power”. An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance. That is to say it has a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers (Article 14 (2) Directive 2002/21/EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) – L 108/33).
- ²⁵ For further details see <http://www.ebrd.com/country/sector/law/telecoms/main>. For a brief overview of EBRD telecommunications policy see box (right). The EBRD Legal Transition Programme has provided, or is currently providing, technical assistance within the telecommunications sector of the following countries: Albania, Armenia, Belarus, Bosnia and Herzegovina, Estonia, Georgia, Kazakhstan, Kyrgyz Republic, Lithuania, Poland, Russia, Serbia and Montenegro, Tajikistan, Ukraine and Uzbekistan.
- ²⁶ The model for an independent sector-specific regulatory authority for the telecommunications sector is in place within the EU and many countries throughout the world. According to the International Telecommunications Union there are now currently in excess of 110 such regulators through the world. See <http://www.itu.int/publications/docs/trends2002>.
- ²⁷ See, for example, the mechanism in place in New Zealand. For further detailed discussion on this issue see Roundtable on the “Relationship between Regulations and Competition Authorities” held by the Committee on Competition Law and Policy in June 1998, Organisation for Economic Co-operation and Development, DAFNE/CLP (99) 8, p. 211.
- ²⁸ Universal access/service generally refers to a minimum set of services of specified quality which are available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price (Article 2 of Directive 97/33/EC of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability).
- ²⁹ See, for example, guidelines on the application of the EU competition rules to the telecommunications sector (OJ C 233, 6.9.1991); and Access Notice (1998) (see footnote 19 above).
- ³⁰ For example, the definition of significant market power has been changed to bring it more in line with the concept of “dominance” in EU competition law.
- ³¹ In the United Kingdom, the 1998 Competition Act confers almost all of the functions of the competition authority under the Competition Act in so far as those functions relating to “commercial activities connected with telecommunications”. The recent update of UK legislation in this area (the Telecommunications Act 2003) confirms and extends the communications regulator’s powers in this regard. Under sections 369-371 of the 2003 UK Communications Act, the communications regulator will have power to investigate and enforce competition law across the whole field of communications using the extensive powers set out in the competition law, concurrently with the competition authority.
- ³² Such would appear to be the case in Austria where the telecommunications authority possesses a certain degree of authority with respect to the application of competition rules in the sector. There currently exists no special mechanism to avoid conflicting exercise of jurisdiction, nor is there any specific mechanism to ensure the consistent application of competition rules and sector-specific legislation.
- ³³ Hungary is an example of such mandatory consultation insofar as it requires cooperation between the telecommunications regulator and the competition authority on matters affecting competition in the market.
- ³⁴ It is understood that in Poland, both the telecommunications regulator and the competition authority have competence with respect to matters of competition in the telecommunications sector. Where there is an overlap of jurisdiction between the two authorities, the President of the Council of Ministers is empowered to decide the appropriate authority to exercise jurisdiction in a given instance.
- ³⁵ Canada is a good example of a workable agreement. In 1999, the Competition Bureau and the CRTC signed a Memorandum of Understanding which describes the authority of the CRTC under the Telecommunications and Broadcasting Acts and the authority of the Bureau regarding the telecommunications and broadcasting sectors. The interface document deals with a range of competitive issues including access, merger review, competitive safeguards and various marketing practices.

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The EBRD telecommunications policy

In accordance with its established policy and practice, the Bank provides technical cooperation assistance to its countries of operations which have expressed genuine interest in reforming their telecommunications policy. EBRD technical cooperation projects will only be launched if no other law reform facilitator is providing adequate assistance and the project is directly related to a specific Bank investment, potential investment or investment strategy in general. In providing technical cooperation assistance, the Bank promotes:

- a) *the gradual liberalisation of all telecommunications services*
The Bank believes that both the telecommunications sector and the overall economy of a country will benefit greatly from the rapid emergence of competition in all telecommunications markets;
- b) *the establishment of an independent regulator with no structural or functional links with the incumbent telecommunications operator*
The Bank considers that the effective separation of the regulatory authority from the owner of the incumbent operator is vital for the creation of a level playing field for new entrants. The EBRD, therefore, supports efforts to create an independent regulator with the powers and the means to sanction any anti-competitive behaviour of the incumbent operator and the emergence of competition in the sector;
- c) *the progressive rebalancing of tariffs*
The Bank considers that the structure of the tariff policy of many dominant operators in the region constitutes a serious impediment for both liberalisation and privatisation. Tariffs for local telecommunications services are often substantially below cost and need, therefore, to be subsidised by income generated through the provision of international and long-distance services. This has the following repercussions:
 - Unbalanced tariffs create an obvious opportunity for “cream-skimming” in the event of competition, thus constituting a deterrent to liberalisation.
 - Unbalanced tariffs offer little incentive to provide local telecommunications services, in particular to remote or sparsely populated areas. Hence, the demand for telecommunications lines exceeds that available and the Universal Service obligation of the incumbent operator remains unfulfilled.

In order to compensate the likely adverse social effects of rapid tariff rebalancing, the Bank supports all efforts to develop universal service and/or universal access mechanisms. These will permit less privileged customers to benefit from a direct subsidy but will not disrupt the development of the market by creating competitive advantages or disadvantages; and
- d) *the elaboration of a set of rules designed to facilitate the emergence of competition*
The main objective of these rules will be to enable new entrants to obtain access into the dominant operator’s network on fair, objective and transparent terms. The Bank takes the view that effective competition can only emerge if regulatory constraints preclude predatory use of market dominance by the incumbent operator and unfair practices versus its new competitors.

The policy advocated by the Bank is consistent with the WTO agreement on basic telecommunications services and with the telecommunications policy and legislation of the European Union. In the case of EU accession countries, the Bank encourages and supports the efforts of those countries to achieve full compliance with the European Union’s *acquis communautaire*.