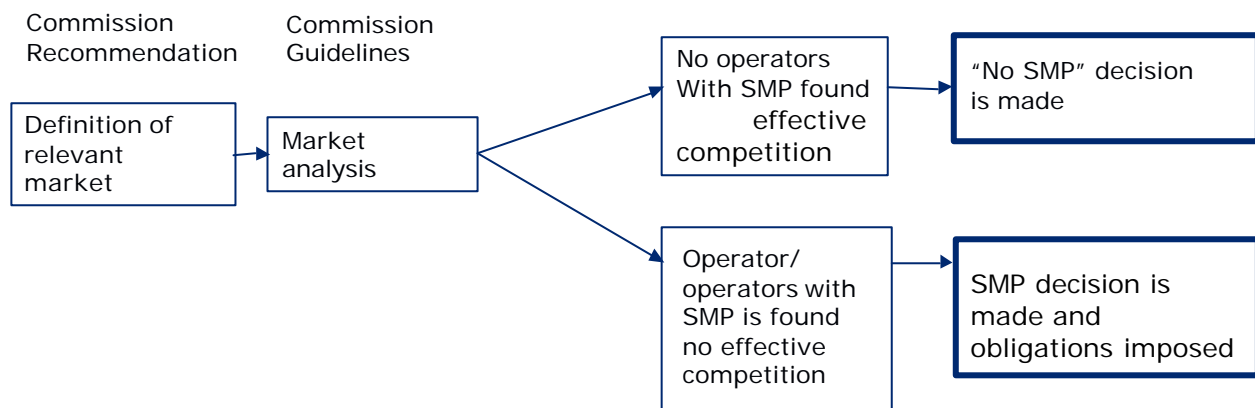


DECISIONS CONCERNING SIGNIFICANT MARKET POWER (SMP) AT FICORA

Background

FICORA seeks to ensure the effective functioning of communications markets. The aim is to ensure that consumers have access to competitive, technically advanced communications services that are of good quality and affordable. In order for this to be achieved, FICORA enforces the Communications Market Act (393/2003) and monitors that it is observed. Defining and analysing relevant communications markets, designating eventual operators with significant market power and imposing obligations on them are an essential part of the process of implementing the law. Figure 1 describes the various phases of SMP analysis.

Figure 1: SMP analysis in short



Consulting the operators, the Commission and other EEA countries

Significant market power

According to the Communications Market Act, an operator is an operator with significant market power if, on the basis of market analysis, it is seen in a particular market to exert economic influence, alone or with others, that allows it to operate, to a considerable extent, independently of competitors, consumers or other users. This definition contains some points that are worth commenting. A market analysis is required in order to establish SMP. Therefore, FICORA must analyse the information collected from hundreds of different operators. Although either only one operator or several operators together can be operators with SMP, there has traditionally been only one operator with SMP in the communications market. That an operator is allowed "to operate, to a considerable extent, independently" (section 17(1) of CMA) is an inaccurate expression. The fact that an operator has a high market share of a particular relevant market might suggest that this operator might be an operator with significant market power, but market share alone is not enough to prove this.

Market analysis to establish SMP

The EU Commission has published guidelines for market analysis and establishing significant market power. According to the guidelines, it is necessary to consider whether SMP exists in order to safeguard effective competition. The guidelines state that if no operator with SMP is found in the assessment, competition is effective and the existing SMP remedies are removed and no new ones are imposed. On the other hand, if at least one SMP operator is found, competition is not effective and the necessary obligations will be imposed on the operators. The following criteria must be assessed when determining whether SMP exists:

- market share
- the economic and financial strength of the operator
- technological superiority
- lack of buyer power on the part of customers or suppliers
- extensive supply selection
- advantages of scale and scope
- vertical integration
- advanced distribution and sales networks
- lack of potential competition
- barriers to the sector
- barriers to expansion

Relevant markets

Two dimensions must be taken into consideration when assessing markets: product or service dimension and geographical dimension. The relevant market regarding significant market power is a combination of these dimensions and FICORA is responsible for defining them in Finland. The relevant market is generally defined as follows: "A combination of a particular commodity group and geographic area, whose exclusive control enables entrepreneurs to exploit market power permanently and extensively." The attempt is to observe such commodities related to electronic communications which are controlled by one firm for example in the area of a particular city or municipality. The firm controlling the availability of products can then charge unreasonable prices and prevent the competitors' from entering the market.

Product and service dimension

The Commission of the European Communities published its Recommendation on relevant product and service markets on 11 February 2003. The recommendation comprises 18 product and service markets. FICORA regards the recommendation as a starting point for defining the product and service dimensions of relevant markets in Finland. The Ministry of Transport and Communications decides whether it is necessary to deviate from the Recommendation.

Geographical dimension

When defining the geographical dimension of significant market power, an area, in which the customers have a realistic chance to acquire the above-mentioned commodities, is sought. The competition circumstances in this area must be sufficiently harmonious, and it must be possible to separate the area from neighbouring ones due to differences in competition circumstances. Normally, it is possible to buy the local loop needed for providing broadband services for consumers in any area in Finland from one firm alone. This firm is the traditional operator of the fixed telephone network in each area.

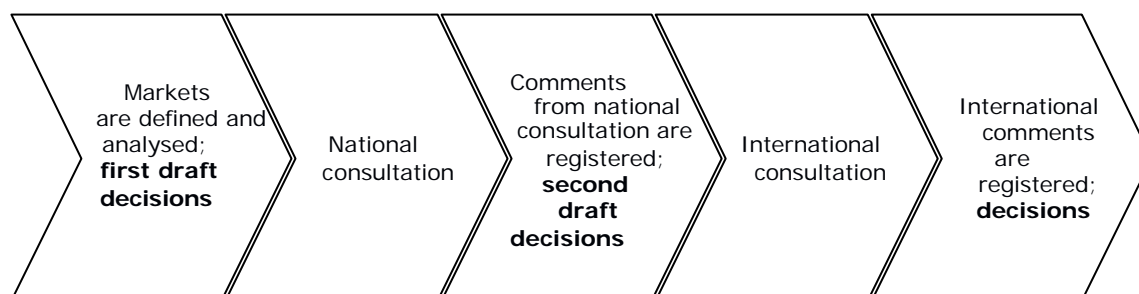
Focus on the substitutability of demand and supply

When defining the product and service dimension and the geographical dimension it is necessary to investigate whether substitutability of demand and supply exists in the market. The aim of this investigation is to find out whether the buyer is able to change commodity suppliers. The basic issue is: are there substituting products when the price rises? The substitutability of supply indicates whether there will be competition in the market. The basic issue is: is it possible for a competitor to enter the market and provide the same product when the price rises?

SMP decisions

After having defined and analysed the markets and eventually designated an operator with significant market power, FICORA issues its first draft decisions regarding each market. After this, Finnish firms and other parties have the opportunity to comment on the draft decisions. After having obtained the opinions, FICORA considers them and makes changes into the draft decisions on the basis of the comments, if necessary. FICORA then issues these new draft decisions, which are sent for international consultation. Authorities of other EU countries and the Commission have the opportunity to comment on the draft decisions. When unanimity is reached between FICORA and the Commission, FICORA gives its final SMP decisions. The parties concerned may appeal the decisions to the Supreme Administration Court. The process of comments is described in detail in figure 2.

Figure 2: The process of comments regarding SMP decisions



Other

The recommendation of the EU Commission is mainly designed for such countries, where there has traditionally been one governmental telecommunications monopoly, and the aim is to undermine its monopolistic position. Due to historic reasons, the telecommunications sector in Finland follows a regional division. Even today, there are 44 local telecommunications operators which are practically the only providers of fixed local telephone network and related services within the municipalities they cover. The large number of local operators and situations where certain new operators enter the market lead to that FICORA needs to issue up to 50 decisions regarding commodity markets defined by the Commission. The total number of decisions from all 18 markets rises to approximately 500. In addition, FICORA has to monitor the communications markets actively, so large amounts of administrative decisions will be made in the future, too.