

Telecommunications Competition Directive No. 798/2021



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Ethiopian Communications Authority

November 8, 2021

TELECOMMUNICATIONS COMPETITION DIRECTIVE

WHEREAS it has become necessary to provide a framework to determine whether a Telecommunications Operator has engaged, or has likely engaged, in conduct that could reasonably be regarded as anti-competitive;

RECOGNIZING that in this endeavour it is essential to define relevant markets and determine whether a Telecommunications Operator has Significant Market Power in a relevant market;

COGNIZANT of the need to prevent Telecommunications Service markets from being monopolized, and promote competition among Telecommunications Operators;

UNDERSTANDING the importance of providing a framework to review and decide on mergers and acquisitions affecting Telecommunications Operators;

NOW, THEREFORE, the Ethiopian Communications Authority hereby issues this Telecommunication Competition Directive in accordance with the Communications Service Proclamation No.1148/2019 Articles 6(2), 47 and 54(2)

PART I GENERAL

1. Short Title

This Directive shall be cited as the “Telecommunications Competition Directive No. 798/2021.”

2. Definitions

In this Directive, unless the context otherwise requires:

- 1) “**Authority**” means the Ethiopian Communications Authority established under the Communications Service Proclamation No. 1148/2019.
- 2) “**Acquisition**” means the purchase of one company by another, through either the purchase of its shares or the purchase of its assets.
- 3) “**Collocation**” means the placement of network equipment or systems which are used for service provision by a Telecommunications Operator together with network equipment or systems installed at premises of other Telecommunications Operator at a technically feasible location on the basis of agreement reached between them.
- 4) “**Conglomerate Merger**” means merger between firms in unrelated activities.
- 5) “**Downstream Operation**” means the business operations of a Vertically Integrated Operator that concerns with the supply of Retail Services, as if the supply of Retail Services, were carried out by a legally separate entity.
- 6) “**Downstream Retail Cost**” means the cost of the Downstream Operation.
- 7) “**Essential Facilities**” means premises, infrastructure, or resources of a Telecommunications Service that cannot feasibly be duplicated or substituted, due to economic, technical or environmental reasons.
- 8) “**Horizontal Agreement**” means a concerted practice, or mutual understanding, oral or written, among Telecommunications Operators that compete at the same market level.

- 9) “**Horizontal Merger**” means a merger of two or more providers of Telecommunications Services that compete in the same market.
- 10) “**Infrastructure Sharing**” means various kinds of arrangements to share an infrastructure sharing and collocation provider’s active and passive infrastructure, including, but not limited to, the sharing of network elements, antennas, switches, radio access nodes, systems, equipment, facilities, premises or rights of way, with an infrastructure sharing and collocation seeker, subject to an agreement between the parties.
- 11) “**Margin Squeeze**” means the occurrence when a Telecommunications Operator in a relevant retail market who also supplies an essential Wholesale Service to a competitor in a retail market, sets its retail tariff and, or wholesale tariff, such that, the difference between the retail tariff and the wholesale tariff of the corresponding Wholesale Service, would not allow an efficient retail competitor to sustain a competing service.
- 12) “**Market Review**” means an assessment of competition on telecommunications services to determine and define which telecommunications services shall be susceptible to ex-ante competition regulation. It also shall determine whether there are dominant players with Significant Market Power (SMP) in those markets, and whether regulatory remedies are required to make these markets less susceptible to anti-competitive conduct or practices.
- 13) “**Merger**” means when two or more authorized providers of Telecommunications Services, previously having independent existence, amalgamate, or when such parties pool resources, for the purpose of providing Telecommunications Services.
- 14) “**Mergers and Acquisitions Notification**” means a notification to the Authority by a person that intends to enter into an agreement or arrangement of an acquisition or a Merger involving directly or indirectly a Telecommunications Operator.
- 15) “**Predatory Pricing**” means where a telecommunications operator deliberately incurs losses or foregoes profits in the short term, with the intention of foreclosing or be likely to foreclose, a competitor or potential competitor.
- 16) “**Price**” means any charge, tariff or levy, and underlying terms and conditions imposed by a Telecommunications Operator for a Telecommunications Service.
- 17) “**Relevant Market**” means a relevant product market that comprises all those products or services which are regarded as interchangeable or substitutable by the consumer due to the products or services characteristics, prices and intended use and/or a relevant geographic market that comprises the area in which the operators concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous.
- 18) “**Retail Service**” means a Telecommunications Service that is provided to the end user or subscriber and not to another Telecommunications Operator.
- 19) “**Significant Market Power (SMP)**” means the ability to materially affect the price or supply in the relevant market for communications service as a result of either control over essential facilities or use of a Person’s position in the market.
- 20) “**Small but Significant Non-transitory Increase in Price (SSNIP) Test**” means a methodology to define a relevant market by considering demand and supply

substitution effects arising when a hypothetical monopolist were to increase its product price in a given geographical area for a certain period of time.

- 21) “**SMP Operator**” means a Telecommunications Operator that has been found to have Significant Market Power in a relevant market, either acting individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to a noticeable extent independently of competitors, customers, and ultimately consumers.
- 22) “**Substitute Products or Services**” means products and services that compete directly with each other, so that the potential demand or supply-side substitution between them will constrain their prices.”
- 23) “**Vertically Integrated Operator**” means a Telecommunications Operator that provides Wholesale and Retail Services.
- 24) “**Vertical Merger**” means a Merger between two or more Telecommunications Operators operating at different levels within the same market's supply chain.
- 25) “**Wholesale Service**” means a Telecommunications, Collocation, or Infrastructure Sharing Service, that is provided to another Telecommunications Operator.
- 26) “**Working Days**” means business working days only and shall not include Saturday, Sunday and any day that has been declared to be a public holiday by the Federal Democratic Republic of Ethiopia.

3. Objective

The objectives of this Directive are to:

- 1) Provide a framework to define relevant markets and determine whether a Telecommunications Operator has Significant Market Power in a relevant market.
- 2) Provide a framework to determine whether a Telecommunications Operator has engaged, or has likely engaged in conduct or practice that could be reasonably regarded as anti-competitive in accordance with Article 48 of the Proclamation.
- 3) Prevent Telecommunications Operators from engaging in any conduct or practice that has the purpose or effect, of substantially lessening competition.
- 4) Provide a framework to review and decide on mergers and acquisitions affecting a Telecommunications Operator.
- 5) Prevent Telecommunications Service markets from being monopolized and promote competition among Telecommunications Operators.
- 6) Improve the overall economic efficiency of the Telecommunications market.

4. Scope of Application

This Directive applies to all Telecommunications Operators, including infrastructure sharing and collocation, and interconnection service providers in the Federal Democratic Republic of Ethiopia. However, some provisions, when specified, are only applicable to operators with SMP in a relevant market.

PART TWO
ROLE OF THE AUTHORITY

5. Role of The Authority

- 1) The Authority shall:
 - a) Provide a high degree of certainty on the standards and procedures to define relevant markets, designate operators with SMP, investigate and decide on allegations of an operator's anti-competitive conduct or practices, and review and decide on mergers and acquisitions affecting Telecommunications Operators;
 - b) Perform a Market Review every three (3) years;
 - c) Monitor competition in Telecommunication Services, and from time to time, define relevant markets, and designate operators with Significant Market Power in those markets;
 - d) Review and decide on Mergers and Acquisitions Notifications affecting Telecommunications Operators;
 - e) Endeavor to maintain or enhance, competition in Telecommunications Services.
- 2) The Authority may:
 - a) Intervene on its own motion, or in response to a petition filed by an interested party, to investigate whether a Telecommunications Operator has engaged in any conduct or practice that has the purpose or effect, of substantially lessening competition in a market for Telecommunications Services;
 - b) As a consequence of a Market Review proceeding, or from an investigation of an operator's alleged anti-competitive conduct or practice, or if required, as a consequence of a review of a Mergers and Acquisitions Notification, impose remedies or sanctions on operators, with the intention of preserving competition, or preventing operators from engaging in anti-competitive conduct or practices.

PART THREE
RELEVANT MARKET AND MARKET REVIEW

6. Determination of Relevant Markets

- 1) The Authority may define relevant markets for Telecommunications Services if:
 - a) It decides to intervene, on its own motion, or in response to a petition filed by any interested party, to initiate a Market Review to identify markets susceptible to regulation, identify operators with SMP in those markets, and if applicable, impose obligations on those operators; or,
 - b) It decides to intervene, on its own motion, or in response to a petition filed by any interested party, to investigate whether an operator has engaged in conduct or practice that has the purpose or effect, of substantially lessening competition in a market for Telecommunications Services; or,
 - c) In response to a Merger and Acquisitions Notification, the Authority decides to initiate a regulatory proceeding to determine whether the proposed merger or

acquisition is likely to have the effect of substantially lessening competition in a market for Telecommunications Services.

- 2) Where the Authority decides to initiate a regulatory proceeding for any of the three cases presented in Sub-Article 1 of this Article, it shall do so in accordance with the procedure established in Articles 34 and 36 through 38 of the Proclamation, and this Directive.

7. Market Definition in a Market Review

- 1) The Authority shall endeavor to perform a Market Review every three (3) years to define markets susceptible to regulation, and designate operators as having SMP in those markets, if applicable.
- 2) The purpose of a Market Review shall not be to define all telecommunications markets. Instead, the Market Review shall define only markets that shall be susceptible to regulation.
- 3) The following three-criteria test shall be applied to identify a market susceptible to *ex ante* regulation.
 - a) There are high and non-transitory barriers to entry or expansion;
 - b) The market structure does not tend towards effective competition within a relevant time horizon; and,
 - c) The application of competition law alone would not adequately address the market failure concerned.
- 4) The Authority shall use a forward-looking or prospective approach, to define these markets. A prospective approach involves assessing the market dynamics and attempting to anticipate the nature of competition in the near to medium term.

8. Market Definition as Part of an Investigation Into Alleged Anti-Competitive Practices

When investigating allegations of anti-competitive practices, the Authority shall define a relevant market using a backward-looking or retrospective approach. A retrospective approach considers a period of time equivalent to the period of the alleged misconduct.

9. Market Definition as Part of a Review of a Mergers and Acquisitions Notification

The Authority may define a relevant market as part of a review of a Mergers and Acquisitions Notification. In that case, the Authority shall use a prospective approach, but considering the change in market structure or concentration, that would result with the proposed merger or acquisition.

PART FOUR

GENERAL APPROACH TO DEFINE RELEVANT MARKETS

10. The Relevant Product Market

- 1) When defining a relevant market, the Authority shall include all services that are considered to be close substitutes, regardless of the underlying technology used to provide it. These services compete directly with each other, so that, the potential demand - or supply-side substitution between them will constrain their prices.

- 2) To establish the boundaries of relevant markets, the Authority shall use the hypothetical monopolist test approach, also known as, the SSNIP (small but significant non-transitory increase in price) test and/or any other relevant market analysis tools.
- 3) Assessing demand-side substitution between services that are close substitutes, requires assessing whether a significant number of buyers of one service would shift to buying another, after a small but significant non-transitory increase on the relative price of one service.
- 4) Assessing supply-side substitution requires assessing whether existing suppliers would be able to quickly switch from producing service X, to producing service Y, after a small but significant non-transitory increase on the relative price of Y, where services X and Y are close substitutes from the buyer's point of view.
- 5) When applying the SSNIP test, the Authority shall first assess demand-side substitution to come up with a group of services as a candidate product market. Next, the Authority shall consider supply-side substitution effects.
- 6) If a service has been included within a relevant product market as a result of evidence of demand-side substitution, then evidence of supply-side substitution towards this service is not necessary.
- 7) When assessing demand-side substitution, the Authority shall consider:
 - a) The ease by which consumers can switch service providers;
 - b) The cost or burden, of switching service providers;
 - c) The functionality and characteristics of the services from the point of view of the user experience;
 - d) The buyer preferences for bundled services rather than standalone services; and
 - e) Perceived difference in quality of service.
- 8) When analyzing supply-side substitution, the Authority shall consider:
 - a) How quickly existing suppliers can switch from supplying one service to another; or
 - b) Whether they would need to undertake costly investment for new capacity, or to expand capacity, and whether this requires a lengthy corporate approval process; or
 - c) Whether there are legal or regulatory impediments to quickly expanding capacity to produce a new service.

11. The Relevant Geographic Market

- 1) When defining geographic markets, the Authority shall assess the extent to which competitive conditions are appreciably different across geographic areas.
- 2) The network coverage area, or the license area may be considered by the Authority as the tentative relevant geographic market. However, if competitive conditions vary widely from one area to another, the Authority may consider a different geographic market.

PART FIVE
ASSESSING MARKET POWER

12. Assessing Market Power

- 1) When assessing whether an operator has Significant Market Power, the Authority shall assess whether an operator has a position of economic strength and the ability to materially affect the price or supply in the relevant market for communications service as a result of either control over essential facilities or use of a Person's position in the market.
- 2) When assessing whether an operator has SMP, the Authority shall consider, but shall not be limited to, the following criteria, which taken together, may strongly suggest the existence of SMP:
 - a) Market share of the service provider: When an operator holds more than forty percent (40%) market share in the relevant market, the Authority may presume that such operator holds SMP, unless other criteria listed in this sub-section suggests otherwise.
 - b) Control of essential facilities or resource;
 - c) Economies of scale and scope;
 - d) Technological advantages or superiority;
 - e) Absence of or low countervailing buying power;
 - f) Barriers to entry or expansion;
 - g) Access to financial resources;
 - h) Experience in product and service diversification;
 - i) A highly developed distribution and sales network;
 - j) Existence of Vertical Integration; and,
 - k) Existence of sunk costs.
- 3) The Authority may designate operators as jointly SMP, when two or more Operators which individually would not be declared SMP, behave as if they were one SMP Operator.

PART SIX
ANTI-COMPETITIVE PRACTICES

13. Anti-Competitive Practices

- 1) A Telecommunications Operator shall not engage in any conduct that has the purpose or effect of substantially lessening competition in any telecommunications market.
- 2) A Telecommunications Operator shall not enter into any agreement or arrangement with another person that has the purpose or effect of substantially lessening competition in any telecommunications market.
- 3) The following Horizontal Agreements or concerted practices shall be prohibited, when they have the purpose or effect of substantially lessening competition:
 - a) To fix a price or a non-price term of a service; or

- b) To set a floor for a price of a service; or
- c) To share or divide markets according to geographic location, types of consumers, or agreements not to enter a market.
- 4) The Horizontal Agreements referred to in Sub-Article 3 of this Article, apply to mutual understanding, oral or written, between operators that compete at the same market level; either in a retail or wholesale market.
- 5) Sub-Articles 1 through 3, of this Article, do not apply to prices or terms and conditions of services that have been set by the Authority pursuant to the Proclamation, or any applicable Directive adopted by the Authority.

14. Anti-Competitive Practices of SMP Operators

SMP Operators are prohibited from engaging in any practice described in Articles 15 through 19 of this Article, and such practices shall be deemed acts of abuse of market dominance.

15. Failure or Refusal to supply

- 1) A Telecommunications Operator shall not fail to supply interconnection, collocation, or infrastructure sharing services to another operator within the timeframes provided in the Authority's Telecommunications Infrastructure Sharing and Collocation and Telecommunications Interconnection Directives, and under reasonable terms and conditions including fees, unless it cannot be supplied for technical reasons, in accordance to the Proclamation, the Telecommunications Infrastructure Sharing and Collocation Directive, the Telecommunications Interconnection Directive, or any applicable Directive adopted by the Authority.
- 2) A failure or refusal to supply such services under Sub-Article (1) of this Article shall include, but not limited to, the following:
 - a) Failure to grant access to Essential Facilities; or,
 - b) Failure to provide information, delaying Interconnection, or negotiations for Interconnection; or,
 - c) Degrading the quality of network Interconnection, or preventing network Interconnection.
- 3) The Authority shall count as refusal or failure to supply, conduct that includes offering Interconnections, Collocation, or Infrastructure Sharing, under conditions so unreasonable that they delay, or preclude, entry or expansion of services by competitors.

16. Undue Discrimination

Providing interconnection, collocation, or infrastructure sharing services to a downstream competitor on terms and condition that are less favorable than the terms at which the SMP Operator self-supplies the same services shall be deemed an anti-competitive practice, if this discrepancy cannot be explained by technical reasons, cost reasons, or any other objective justification.

17. Anti-Competitive Bundling and Tying

Any Telecommunications Operator shall not engage in any tying or bundling practices that have the purpose or effect of significantly lessening competition. Tying or bundling practices that may have that effect, include, but are not limited to:

- 1) A Telecommunications Operator in market X, requiring, as a condition for supplying X to another operator, who is a competitor in market Y, that the competitor purchases another service it does not require, or does not want; or
- 2) A Telecommunications Operator in market X, offering to another operator, who is a competitor in market Y, more favorable terms for buying X that are not justified by cost, if it acquires another service not required by the competitor, with the intention or effect, of raising the competitor's costs.

18. Predatory Pricing

- 1) Any Telecommunications Operator shall not engage in any Predatory Pricing.
- 2) Any Telecommunications operator shall be deemed to have engaged in predatory pricing if it deliberately incurs losses, or forego profits in the short term, with the intention of foreclosing, or be likely to foreclose, a competitor or potential competitor.
- 3) To assess whether a price is predatory, or likely to be predatory, the Authority shall consider whether the price for the corresponding service, or service bundle, is below cost. If a price is equal or above cost, then the price shall be deemed not predatory.
- 4) The Authority shall use the Telecommunications Operator's current year costs, or where available, regulatory accounting costs, subject to reasonable adjustments if these are from a prior year, as the source of information to calculate the cost of a service.
- 5) When investigating allegations of predatory pricing, the Authority shall use any of the following cost modeling methods to establish the cost basis:
 - a) Long-run incremental cost (LRIC); or
 - b) Long-run incremental cost plus (LRIC+), which allows for joint and common costs.

19. Margin Squeeze

- 1) Any Telecommunications Operator shall not engage in Margin Squeeze.
- 2) A Telecommunications Operator shall be deemed to have engaged in Margin Squeeze if it deliberately reduces the margin of profit available to a competitor that requires a Wholesale Service, by increasing the price of the Wholesale Service required by the competitor, or decreasing the price of the Retail Service in a market where they compete, or both.
- 3) To assess whether a Margin Squeeze exist, or is likely to exist, the Authority shall assess whether there is a positive margin between the retail price and the cost of providing the Retail Service.
- 4) To calculate the cost of the Retail Service, the Authority shall take into account the cost of the required or essential input purchased in the wholesale market, plus the Downstream Retail Cost.

- 5) To calculate the cost of providing a Retail Service, the Authority may use the Downstream Retail Cost of the vertically integrated Telecommunications Operator as a proxy for the Downstream Retail Cost of an efficient retail competitor.
- 6) The Authority shall use the Telecommunications Operator's current year costs, or where available, regulatory accounting costs, subject to reasonable adjustments if these are from a prior year, as the source of information to calculate the Downstream Retail Cost of the vertically integrated Telecommunications Operator.
- 7) The Authority shall use any of the following cost modelling methods to establish the cost basis of a Retail Service:
 - a) Long-run incremental cost (LRIC); or
 - b) Long-run incremental cost plus (LRIC+), which allows for joint and common costs.

20. Investigation of Anti-Competitive Practices and Adjudication

- 1) For the Authority to identify allegations that raise substantive and well-grounded concerns, and therefore to direct its resources appropriately, a complaint shall be specific and cite the specific articles of the Proclamation, this Directive, or competition laws, that form the basis for the complaint.
- 2) Complaints shall include specific information about services, prices, costs, terms and conditions of service, copies of contracts or invoices, and any other information that may support the allegation of anti-competitive practices.
- 3) Within twenty (20) working days of receiving a written complaint, the Authority shall respond to all parties to the complaint, indicating whether:
 - a) It considers that there is not enough evidence to initiate an investigation; or
 - b) Is providing ten (10) working days to the party accused of wrongdoing, to respond to such allegations; or
 - c) Is initiating a proceeding to investigate the allegations in accordance to the procedure established in Articles 34 and 36 through 38 of the Proclamation and this Directive.
- 4) Pursuant to Article 52 (3) of the Proclamation, the Authority shall have the power to adjudicate all complaints against any Telecommunications Operator, and the power to assess appropriate remedies for any violation of the terms of the Proclamation, this Directive, or any applicable Directive adopted by the Authority.
- 5) Where the Authority decides to impose remedies or sanctions, these shall be proportionate, non-discriminatory, and transparent.

PART SEVEN MERGERS AND ACQUISITIONS

21. Control of Mergers and Acquisitions

- 1) No agreement or arrangement of an acquisition or merger, involving directly or indirectly, an authorized provider of Telecommunications Services, may come into effect prior to the approval of the Authority.

- 2) An acquisition or a merger shall be deemed to have occurred:
 - a) When two or more authorized providers of Telecommunications Services, previously having independent existence, amalgamate, or when such parties pool resources, for the purpose of providing Telecommunications Services;
 - b) When a person or group of persons, directly or indirectly acquire shares, or assets, of an authorized provider of Telecommunications Services; or,
 - c) When a person or group of persons, take control of management of an authorized provider of Telecommunications Services, through any other means.
- 3) Any person who proposes to enter into an agreement or arrangement of an acquisition or a merger in accordance with Sub-Article (2) of this Article, shall request prior approval from the Authority of the proposed merger or acquisition.
- 4) A party to a proposed merger or acquisition, shall file with the Authority a Mergers and Acquisitions Notification no less than ninety (90) working days prior to the expected completion date of the intended transaction, and shall be accompanied by at least the following information:
 - a) The identification of all persons involved in the transaction, including, buyers, sellers, their shareholders and affiliated companies, and any person having greater than five percent (5%) ownership interest in all such persons;
 - b) A description of the nature of the proposed transaction and a summary of its commercial terms;
 - c) Financial information of the persons involved in the proposed transaction, including their most recent annual financial statement;
 - d) Information about telecommunications services provided, annual revenue by main category of telecommunications services, and the values of assets used in the supply of Telecommunications or Infrastructure Sharing services; and
 - e) Most recent quarterly financial report.
- 5) Within thirty (30) working days of receiving a Mergers and Acquisitions Notification, the Authority shall issue a notice and either,
 - a) Approve the transaction; or
 - b) Deny approval if it is of the opinion that the transaction is likely to significantly lessen competition and explaining the grounds for denial; or
 - c) Open a regulatory proceeding if it needs more time to investigate in more detail, whether the transaction would likely have the effect of significantly lessen competition for Telecommunications Services.
- 6) Where the Authority decides to open a proceeding for a merger or acquisition review, it shall do so in accordance with the procedure established in Articles 35 through 38 of the Proclamation, and this Directive.
- 7) Where the Authority decides to grant conditional approval of a proposed transaction, and imposes remedies or obligations that the parties to the transaction shall fulfill prior to the completion of such transaction, such remedies or obligations shall be in accordance with the Proclamation, this Directive, or any applicable competition laws.

22. Mergers and Acquisitions Analysis

- 1) The Authority, upon receipt of a Merger and Acquisition Notification, shall conduct an investigation into the likely effects that such transaction would have on competition for Telecommunications Services.
- 2) When analyzing the effect on competition, the Authority shall compare the conditions that would prevail if the transaction is approved, with the conditions without the transaction.
- 3) When analyzing the proposed transaction, the Authority shall consider how the transaction would likely impact:
 - a) Product prices;
 - b) Quality of service;
 - c) Product variety; or
 - d) Product innovation.
- 4) It is often the case that a transaction, and in particular a Merger, could have both positive and negative effects on competition. The Authority shall endeavor to analyze what the net effect on competition would be from such transaction.

23. Competition Concerns in Horizontal Mergers

When analyzing a proposed Horizontal Merger, the Authority shall consider the possible benefits and adverse effects on competition, of such Merger, including, but not limited to:

- a) The potential increase in market concentration, and its possible effect on prices, quality of service, and product variety;
- b) The likelihood that, as a result of a Merger, the merged entity may increase its operational efficiency due to increased economies of scale or scope, and by how much;
- c) The kind of competitor that the proposed Merger would eliminate; and
- d) The market characteristics, such as the ease of entry or expansion, technical changes on the service delivery platform, and changes on consumer preferences, in the post-merger years.

24. Competition Concerns in Vertical Mergers

When analyzing a proposed Vertical Merger, the Authority shall consider the existence of regulations that may constrain the ability of a SMP Operator to act anticompetitively. In particular, obligations, set in the Proclamation, or any Directive adopted by the Authority with respect to Interconnection, Collocation, Infrastructure Sharing, and lawful tariffs.

25. Competition Concerns in Conglomerate Mergers

The Authority shall consider if potential gains in efficiency, as a result of Conglomerate Merger, may countervail competition concerns.

PART EIGHT
REMEDIES AND SANCTIONS

26. Remedies and Sanctions

- 1) Pursuant to Article 52 (5) of the Proclamation, remedies or sanctions imposed by the Authority on authorized providers of Telecommunications Services shall be proportionate, non-discriminatory, and transparent.
- 2) Where the Authority finds that, as a consequence of a Market Review, a Telecommunications Operator has been found to have Significant Market Power in a relevant market, in accordance with Articles 6 through 12 of this Directive, the Authority may impose obligations or remedies on such operator, pursuant to the Proclamation, this Directive, or any applicable Directive adopted by the Authority.
- 3) Where the Authority finds that a Telecommunications Operator has engaged in any anti-competitive practice, in accordance with Article 13 and the procedure established in Article 20 of this Directive, the Authority may consider imposing the following remedies and sanctions:
 - a) Ordering the Telecommunications Operator to refrain from such conduct in the future; or,
 - b) Imposing fines or restitution; or,
 - c) Suspension or revocation of a license;
- 4) Where the Authority finds that an SMP Operator has engaged in any practice deemed an abuse of market dominance in accordance with Article 14 through 19 and the procedure established in Article 20 of this Directive, the Authority may consider imposing the following remedies and sanctions:
 - a) Ordering the Telecommunications Operator to refrain from such conduct in the future; and
 - b) Imposing fines or restitution; or
 - c) Suspension or revocation of a license.
- 5) Where the Authority finds that as a consequence of a Mergers and Acquisitions Notification review in accordance with Article 16 of this Directive, the proposed transaction may be approved, under the condition that the parties to the transaction comply with certain obligations or remedies aimed at diminishing the likely adverse effect of the proposed transaction on competition for Telecommunications Services, the Authority may consider imposing the following conditions:
 - a) That a party to the transaction, sells or divests, in part or in whole, assets, and or equity interests it owns or controls, to a non-affiliated party; or
 - b) That the post-merger authorized provider of Telecommunications Services, be deemed to have Significant Market Power in a relevant market, and be subject to certain obligations determined by the Authority; or
 - c) Any other condition that the Authority may deem appropriate.

PART NINE
COMPLIANCE AND ENFORCEMENT

27. Compliance

The Authority shall monitor a Licensee's compliance with the provisions of the Proclamation and this Directive.

28. Enforcement

- 1) Where the Authority, consistent with the provisions of this Directive, the Proclamation, and other instruments that the Authority may issue, determines that a Telecommunications Operator has violated the provisions of this Directive, it shall impose remedies pursuant to Article 52 of the Proclamation, that shall include fines or restitution.
- 2) Without prejudice to Article 26 of this Directive and Sub-Article (1) of this Article, the Authority's remedies and sanctions shall be guided by the Council of Ministers Regulation issued pursuant to Article 52(6) of the Proclamation that determines the types of infractions that would result in license revocation, suspension, and other administrative measures and stipulate the penalties and the amount of fines to be paid.

PART TEN
MISCELLANEOUS PROVISIONS

29. Confidentiality

To the extent that information provided by Telecommunications Operators pursuant to this Directive, may be confidential, the Authority shall use all reasonable steps to ensure the confidentiality of such information.

30. Right of Appeal

Any decision taken or order issued by the Authority pursuant to the provisions in this Directive, is subject to review and appeal in accordance with Articles 38 and 39 of the Proclamation.

31. Enforcement

Failure to comply with the provisions in the Proclamation, this Directive or any Directive adopted by the Authority, shall be subject to the enforcement provisions in Article 52 of the Proclamation.

32. Amendment

The Authority may, at any time, when it deems it necessary, amend this Directive by notifying all Licensees in advance and conducting a stakeholder consultation process in line with the provisions of the Proclamation.

33. Effective Date

This Directive shall come into force on ____, 2021.

DONE AT ADDIS ABABA ON ____ DAY OF _____ 2021

ENGINEER BALCHA REBA

**DIRECTOR GENERAL
ETHIOPIAN COMMUNICATIONS AUTHORITY**