Draft Competition Guidelines of the Broadcasting Authority

2.11.2000

Purpose of Guidelines

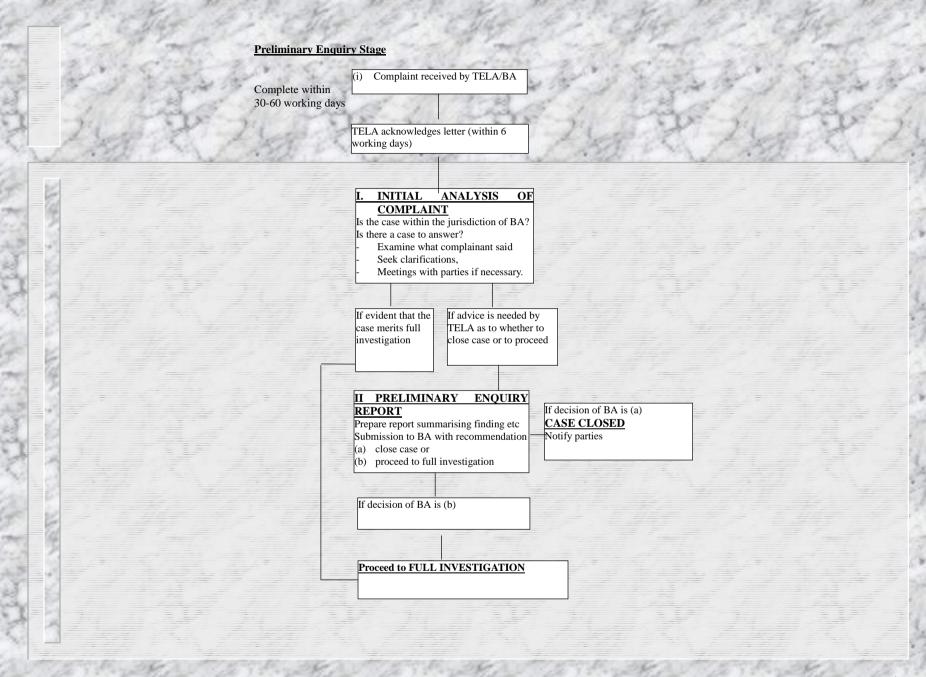
- Ensure compliance by assisting the industry in understanding
 - the way BA will deal with competition cases;
 - what behaviour is prohibited under the law; and
 - how to file a complaint effectively.

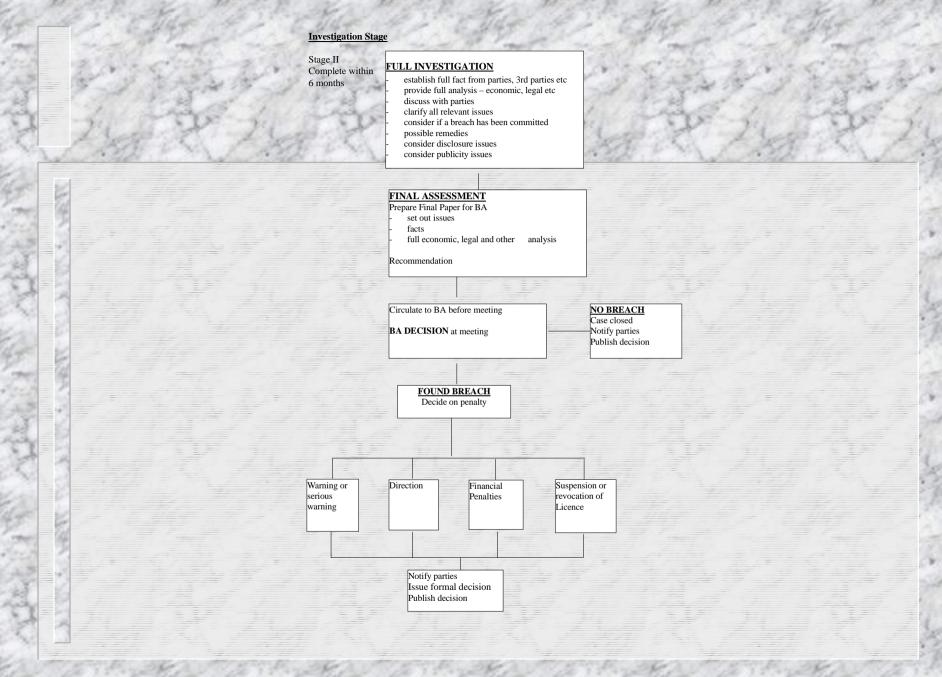
Not the purpose of Guidelines to

deal with all eventualities;

deal with specific cases; or

assess the market in the abstract.





Anti-competitive conduct

Section 13 of Broadcasting Ordinance

Anti-competitive behaviour - S.13

- conduct
- purpose or effect of:

preventing

distorting

substantially restricting

competition in a television programme service market in Hong Kong.

In a television programme service market...

- How to define market
 - demand side
 - supply side
 - geographic
 - temporal

Types of behaviour

- In most case it will deal with agreements etc
 - do not have to be formal agreements;
 - can be understandings.
- Non-dominant players, if acting <u>alone</u>, usually cannot have such effect.

In practice...

- cartels;
- market sharing;
- bid rigging;
- etc.
 - BUT MAY BE SUBJECT TO EXEMPTIONS PROVIDED FOR BY S. 13(4) & (5)
 - own programme for own service;
 - approval by BA on a prescribed ground (sub. legislation to be made if and when necessary).

Abuse of Dominance

Section 14 of Broadcasting Ordinance

Abuse of Dominance - S.14

- Prohibition of abuse and NOT holding of a dominant position.
- Test can the licensee act without significant competitive restraint?
- Deemed to have abused if action has purpose or effect of distorting competition.

Dominance indicators

Market share

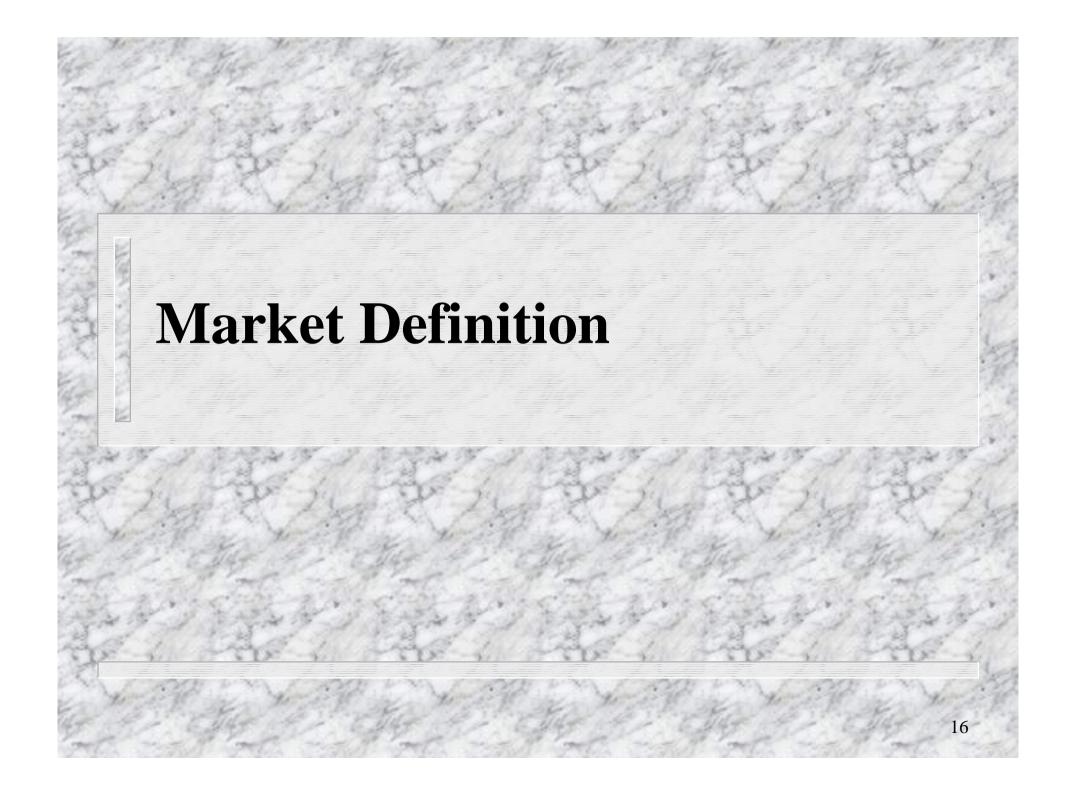
- persistently > 50% presume dominant
- persistently < 40% presume non-dominant
- For conduct parties (usually) must have 25%+ for it to have effect.
- BUT OTHER FACTORS MAY CHANGE THE ABOVE RULE OF THUMB.

Other factors

- potential competitors;
- market structure;
- buyers' power;
- churn of customers;
- entry barriers
 - absolute, e.g regulatory restrictions spectrum limitations;
 - strategic, e.g first mover in market /intellectual property/branding.

Abuse examples

- predatory pricing;
- cross subsidy;
- refusal to supply essential facilities;
- bundling;
- etc.



What is the Market - Definition

Two Tests

- What are the choices available to consumers (Demand Side)
- Who are the possible competitors(Supply Side)

Demand Side

- Alternative products for customer
 - Look at:
 - price
 - quality
 - content
 - switching costs
 - etc
- Cable TV Satellite TV ?
- Pay TV Free-to-Air TV ?

Supply Side

- Who can be an alternative supplier?
 - easy to switch production
 - easy to enter
 - what are the costs
 - technical barriers
 - regulatory barriers
- producer of news channel produce weather channel

Product Market

- Sets product parameters
- Demand or Supply depends on case
- But to define RELEVANT MARKET must also consider...

Other market parameters

Geographic market

- what is the physical area of the market?
- e.g., Hong Kong? Asia-Pacific?

Temporal market

- is there a time element?
- e.g., live sports?
- e.g., peak or off peak advertising?

The Guidelines aim to ensure that

- The rights of licensees and consumers are protected
- The decision
 - takes into account commercial realities but does not forget consumers;
 - is in line with guidelines UNLESS GOOD reasons;
 - has regard to local and overseas experience....

BUT ... relevant to the Hong Kong market.

