

Regulations Governing the Determination and Cancellation of Significant Market Power

The purpose of this legislation is clearly explained in Article 1 of the Telecommunications Management Act, which states, *“The Act is enacted to ensure the healthy development of the telecommunications industry, to encourage innovative services, to facilitate fair market competition and telecommunications infrastructure, to ensure the reasonable use and efficiency of resources, to improve technological development and interconnection applications, and to protect the rights and interests of consumers.”* Similarly, in order to accomplish the goal of “facilitating fair market competition” and prevent significant market powers from abusing powers and compromising effective market competition, Article 27 of the Telecommunications Management Act specifies that *“to ensure effective competition in the telecommunications service market, the competent authority is entitled to adopt control measures for significant market powers in the specific telecommunications service market if necessary,”* as well as other factors to be considered when delimiting the scope of the specific telecommunications service market. Also, Article 28 defines an enterprise with significant market power and authorizes the competent authority to develop *“rules governing the significant market power determination standards, procedures and cancellation; date of promulgation; and other related matters.”* Consequently, these Regulations have been established according to Paragraph 6, Article 28 of the Telecommunications Management Act, specifying the administrative procedures for certifying significant market powers, and relevant special control measures set forth in Section 2, Chapter 3 of the Telecommunications Management Act.

With the policy goals above in mind, these Regulations specify the principles of market definitions, criteria to define significant market powers, and administrative procedures to define specific telecommunications service market and significant market powers, an outline of which as follows:

1. The legal basis of these Regulations (Article 1)
2. Method and announcements of market definition (Article 2)
3. Obligations of telecommunications enterprise to provide information needed for market definition (Article 3)
4. Factors to be considered for certifying significant market powers (Article 4 and Article 5)
5. Certification of significant power in a specific telecommunications market and the public consultation procedure for special control measures (Article 6)
6. Periodical review of specific telecommunications service market (Article 7)
7. Procedure to decertify significant market powers (Article 8)
8. The date these Regulations becomes effective (Article 9)

Article	Comments
Chapter I	Name of chapter
Article 1 These Regulations are promulgated pursuant to Paragraph 6, Article 28 of the Telecommunications Management Act (hereinafter referred to as the Act).	Specifies the legal basis on which these Regulations are established.
Chapter II Market Definition Principles	Name of chapter
<p>Article 2 To define a specific telecommunications service market, the competent authority may review relevant market information and consider the following factors for the announcement of the specific telecommunications service market:</p> <ol style="list-style-type: none"> 1. Level of technology and service development; 2. Importance to overall telecommunications service market: level of demands of users or trading counterparts of the service; 3. Region or range of competition engaged: network architecture, network or service coverage associated with the telecommunications business; 4. Framework of and competition of the telecommunications service market: vertical integration and competition in wholesale and retail markets from up- to downstream, considering service demands and alternatives for supply. 	<ol style="list-style-type: none"> 1. This article specifies factors determining the definition of significant market power based on the “Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services” of the principles of the EU and “Fair Trade Commission for market definitions”. 2. Subparagraph 1: since new and emerging telecommunications services are driven by the constant development of telecommunications technology, it is necessary to ensure the existence of alternatives, as well as consider the difficulty and costs of new technology or services for users. 3. Subparagraph 2: whether users or trading counterparts have high demands for the service shall be taken into consideration when determining the importance to the overall telecommunications service market. 4. Subparagraph 3: the region or range of competition engaged shall define the geographic market in nature, as well as whether the regions or ranges where network or service is available are overlapping or mutually alternative. 5. Subparagraph 4: both wholesale service, between telecommunications enterprises, and retail service, between users and a telecommunications enterprise, shall be considered in terms of market framework and competition. If it is determined that effective competition does not exist in the retail market, the market is failing for the wholesale service at the upstream, and the competent authority may need to take measures for the definition of wholesale service market, evaluating the services provided in the downstream retail market by wholesale service providers, as well as their purpose.
<p>Article 3 The competent authority may request, in written form, the relevant telecommunications enterprise to provide the following information in a specified format while defining the specific telecommunications market pursuant to Paragraph 2, Article 27 of the Act:</p> <ol style="list-style-type: none"> 1. Capital and services provided; 2. Number of employees hired by the telecommunications enterprise; 3. Financial report and accounting independent 	<ol style="list-style-type: none"> 1. This article specifies that the competent authority may require a telecommunications enterprise to provide additional information necessary for the definition of specific telecommunications service market. 2. The factors to be considered by the competent authority while defining a specific telecommunications service market must be based on the relevant information provided. To help the

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<p>financial report of the telecommunications enterprise and its affiliates of the previous year, reviewed and approved by a registered accountant;</p> <ol style="list-style-type: none"> 4. Business status of the specific telecommunications service market engaged in, including range of service area, number of users, number of subscribers subscribing a tariff or service program, sales income, and cost analysis; 5. Items, number, and locations of essential facilities owned or controlled as announced by the competent authority; 6. Other information specified by the competent authority. <p>As the competent authority has defined the specific telecommunications market pursuant to Paragraph 2, Article 27 of the Act, the telecommunications enterprise that provided the specific telecommunications service shall provide relevant information according to the written notification in the format specified by the competent authority.</p>	<p>competent authority keep updated of market information, Paragraph 1 specifies that telecommunications enterprises are obligated to provide necessary information when specified by the competent authority.</p> <ol style="list-style-type: none"> 3. For Subparagraphs 1 through 5 of Paragraph 1, the information needed by the competent authority for market definition includes the basics statistics of the telecommunications enterprise (capital, number of employees and affiliates), business status in the specific market in which the enterprise is operating (including service coverage, number of users, number of subscribers subscribing a tariff or service program, sales income and cost analysis), and the items, number and locations of essential facilities if involved. 4. Subparagraph 6 of Paragraph 1 specifies that the competent authority may require additional information from the telecommunications enterprises such as the current status of new technology and service in the specific telecommunications service market and competition evaluation, as well as the overview of specific telecommunications service market from upstream to downstream. 5. The competent authority may provide forms in certain format to allow the enterprises to provide the additional information required by the competent authority. 6. Paragraph 2: the competent authority still has to monitor changes in the specific telecommunications service market after defining the market, and, therefore, it is specified that telecommunications enterprises shall continue to provide the required information.
<p>Chapter III Criteria to Designate Significant market powers</p>	<p>Name of chapter</p>
<p>Article 4 To designate an entity that has significant power to influence market price or service terms according to Subparagraph 1, Paragraph 1, Article 28 of the Act, the competent authority may consider the following factors:</p> <ol style="list-style-type: none"> 1. Relative scale of business; 2. Market entry barrier(s); 3. Technical and commercial advantage(s); 4. Dominating position in capital market or access to capital. 	<ol style="list-style-type: none"> 1. This article specifies the factors to determine an entity that has the significant power to influence market price or service terms based on Clauses 58 through 62 and 64 of the “Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services.” 2. The judgment of influence on market price or service terms is based on a number of factors, such as market characteristics and framework, competitive advantage, access to capital, the countervailing power of buyer and sales channels. This article specifies the key factors for

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	<p>consideration.</p> <ol style="list-style-type: none"> 3. For the determination of relative scale in Subparagraph 1, the size of business in the market relative to one another as well as power to fight back against competitors shall be considered when determining significant market power. 4. Subparagraph 2: generalizing market entry barriers is challenging and should be determined based on actual information. For example, there are usually highly technical barriers in the telecommunications market, such as available frequency may be limited due to its rarity; As a result, this creates a barrier to market entry. Likewise, new technology derived from technical advancement may give newcomers the edge over significant market powers providing better service quality, reducing the entry barrier; or technical advancement allows existing service providers to provide better services and, therefore, makes it more difficult for newcomers to enter the market. In light of these situations, technical and commercial advantages in Subparagraph 3 shall be considered. 5. As telecommunications market is highly capital-intensive, Subparagraph 4 specifies the consideration of whether a telecommunications enterprise has the advantage in access to capital.
<p>Article 5 The following criteria may be taken into consideration for the announcements of percentages pursuant to Subparagraph 2, Paragraph 1, Article 28 of the Act:</p> <ol style="list-style-type: none"> 1. For an entity that has 40% or more of market share in the specific telecommunications market (referred to as the market hereinafter), the competent authority may consider the market structure for certification of significant market power; 2. For an entity that has 50% or more of market share, it is considered a significant market power. The market share percentage mentioned in the preceding paragraph shall be determined based on the number of subscribers or revenue from the specific telecommunications service. A telecommunications enterprise whose total revenues of the previous fiscal year does not reach 2 billion New Taiwan Dollars shall not be considered as significant market powers under these Regulations. 	<ol style="list-style-type: none"> 1. Subparagraph 2, Paragraph 1, Article 28 of the Act specifies, “<i>The number of subscribers or revenue of telecommunications service items operated thereby is above the percentage announced by the competent authority,</i>” which certifies significant market powers. This article specifies the factors to be considered for the percentage announced by the competent authority as the basis on which to certify whether an enterprise is a significant market power or not. 2. For the certification of a significant market power in a specific telecommunications market, the market share may serve as the criterion for the certification, but since the market conditions and status of competition vary, it may be difficult to define. The competition law and telecommunications control practice of the EU both consider 40% as the starting point to certify the status of significant market power; for 50% or more, it is usually considered a significant market power unless there is an exception; for lower than 50%, the competent authority shall consider other characteristics of market framework. It is necessary to monitor the market share for a period

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	<p>of time and examine variations in this percentage from one enterprise to the other prior to making the appropriate decision of certification.</p> <p>3. Paragraph 3: the consideration is that a telecommunications enterprise that has significant market power should have a certain level of business size and revenue. Based on the requirements of total revenues to certify a monopolistic enterprise in the Fair Trade Act, the total revenue of NT\$2 billion of the previous fiscal year has been determined as the threshold. Those that do not reach this threshold are considered to have a limited business size and, therefore, excluded from the certification of significant market power, thereby avoiding unnecessary controls.</p>
Chapter IV Administrative Procedures	Name of chapter
<p>Article 6 For significant market powers in a specific telecommunications service market designated according to Article 27 and 28 of the Act, the competent authority may enforce necessary special control measures.</p> <p>In the case aforementioned in the preceding paragraph, the competent authority shall provide public consultation documents to explain the certification of significant market powers and configuration of special control measures to be taken, and organize a public hearing to compile feedback from the parties and stakeholders concerned prior to the measures being enforced.</p> <p>The consultation results shall be in principle public; however, this does not apply when business confidentiality or official secrets are involved.</p>	<p>1. This article specifies the definition of specific telecommunications service market, certification of significant market power and the public consultation procedure for special control measures to be taken based on EU’s “European Electronic Communications Code (EECC).”</p> <p>2. The competent authority shall follow the principle of proportionality and principle of improper connection forbidden to take special control measures on significant market powers, and only on significant market powers necessary; appropriate corrective action shall be taken to avoid possible damage to market competition. Due to the obligations of significant market power under the Act to be subject to special control measures, and to effectively facilitate market competition, public consultations are required; thus, Paragraph 2 is established.</p> <p>3. The consultation results are in principle disclosed to the public; however, this does not apply when business confidentiality or official secrets are involved; thus, Paragraph 3.</p>
<p>Article 7 The competent authority shall perform a review procedure every three years to review the scope of specific telecommunications service market defined pursuant to Paragraph 3, Article 27 of the Act.</p> <p>In the case aforementioned in the preceding paragraph, the telecommunications enterprise informed by the competent authority shall submit the relevant information by the given deadline.</p> <p>The competent authority shall examine the definition of specific telecommunications service market based on the information provided in the preceding paragraph, and organize a public hearing to</p>	<p>1. This article specifies the periodical review procedure for the definition of specific telecommunications service market.</p> <p>2. Paragraph 3, Article 27 of the Act specifies that the competent authority shall evaluate the scope of specific telecommunications service market certification every three years. Therefore, a procedure is specified here for the periodical review by the competent authority, which has the authority to require additional information if deemed necessary; a public hearing shall be arranged to compile feedback from relative</p>

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compile feedback from the parties and stakeholders concerned.	parties and stakeholders.
<p>Article 8 Significant market powers may apply to the competent authority for decertification of significant market power along with relevant information for justification.</p> <p>Should the application aforementioned in the preceding paragraph, after review by the competent authority, be determined to be incomplete or that more information is required for justification, the applicant shall be required to undertake corrective action within a prescribed period of time. Failure to undertake correct action may result in the application's rejection.</p>	<ol style="list-style-type: none"> 1. This article specifies procedures for decertification. 2. Significant market powers may apply for decertification according to Paragraph 5, Article 28 of the Act. However, information related to the designation criteria shall be submitted to the competent authority for the application. If the competent authority determines the need for additional information, the applicant shall provide the required information by the deadline given by the competent authority, and failure to do so will result in the rejection of application for decertification of significant market power.
Chapter V Supplementary Provisions	Name of chapter
Article 9 These Regulations shall become effective on the day of promulgation.	This article specifies the day on which these Regulations become effective.