GOVERNMENT GAZETTE

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REPUBLIC OF NAMIBIA

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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 40 2021

DETERMINATION OF DOMINANT POSITION IN THE TELECOMMUNICATIONS SECTOR

The Communications Regulatory Authority of Namibia in terms of Section 78(1) of the Communications Act, 2009 (Act No. 8 of 2009) publishes this determination of licensees holding a dominant position in the telecommunications market in Namibia, which contains the following:

a) Determination of licensees holding a dominant position in the telecommunications market as set out in Schedule 1; and

b) A study document on the determination of licensees holding a dominant position in the market as set out in Schedule 2.

H. M. GAOMAB II
CHAIRPERSON, BOARD OF DIRECTORS
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SCHEDULE 1

DETERMINATION OF LICENSEES HOLDING A DOMINANT POSITION IN THE TELECOMMUNICATIONS MARKET IN TERMS OF SECTION 78(1)

The table below shows the determination as follows:

Markets		Dominant operators 2019
1	National Data Transmission	Telecom Namibia, NamPower
2	Wired End-User Access	Telecom Namibia
3	Wireless End-User Access	MTC, Telecom Namibia
4	Fixed and Mobile Call & SMS Termination	All licensees with a number range

All licensees providing call and SMS termination are dominant. Telecom Namibia is dominant for the Wired End-User Access and the National Data Transmission markets. MTC and Telecom Namibia are dominant for the Wireless End-User Access market. NamPower is dominant for the National Data Transmission market.

New licensees will be assessed for potential market power before licenses are issued by CRAN based on the framework set up in Table 24. This is a necessary pre-requisite for obtaining a license, as it is anticipated that new market entrants may derive market power from outside the ICT sector.

SCHEDULE 2

STUDY DOCUMENT ON THE DETERMINATION OF LICENSEES HOLDING A DOMINANT POSITION IN THE MARKET AS CONTEMPLATED IN SECTION 78 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009)

1. Introduction

Market definitions and declarations of dominance are a legal requirement. Section 78 (1) of the Communications Act, 2009 (Act No. 8 of 2009) (the Act) mandates CRAN to undertake a market study to determine if there are dominant operators in the telecommunications market.

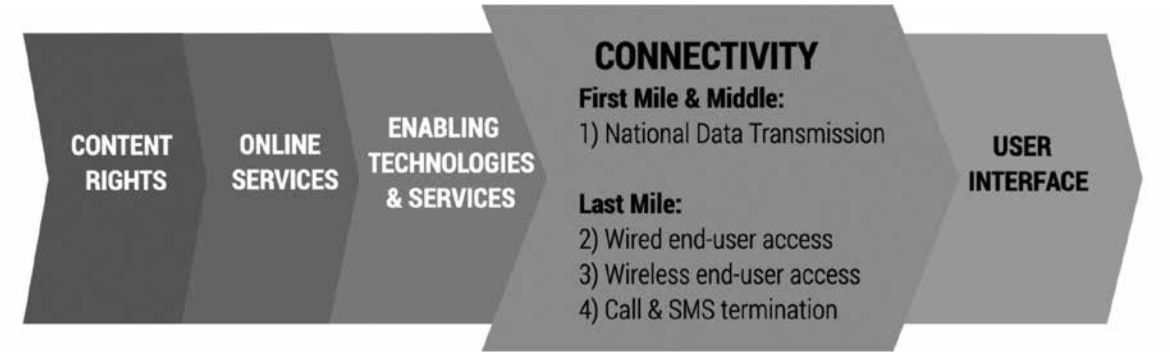
CRAN's approach to the market studies of 2012 and 2016 has been one of minimal intervention. To determine dominance in the market, it is necessary to define relevant markets. The adopted approach of 2012 aimed at minimising the burden on licensees while allowing CRAN to implement the objectives of the Act. Only two markets were defined at the time, telecommunication services and broadcasting services. Dominance was only declared for the telecommunications service market and MTC, Leo and Telecom Namibia were declared dominant.[1] The 2016 market study defined four priority markets.[2]

A more focused approach was considered but challenged by written submissions from licensees. CRAN had proposed to define markets more narrowly. The proposal was to define the markets for wired and wireless end-user access as copper-based and mobile end-user access. The main objection to this approach was that these market definitions leave out several services that may require ex-ante regulation during the period 2020 to 2022, in particular, FTTx and fixed-wireless.[3]

[1] Namibian Government Gazette 2013 No. 5201 - 167.
[2] Namibian Government Gazette 28 June 2016, No. 214 No. 6054.
[3] Namibian Government Gazette 27 March 2020, No.105 No. 7156.

The 2016 Market Study defined four broad markets that covered the entire connectivity segments of the Internet value chain. In 2019, with even further increased market concentration this approach is still suitable. Defining markets with more granularity would simply mean the same operators are dominant for these markets as well.

Figure 1: Identified priority markets as part of the Internet Value Chain



CRAN thus retains the market definitions from 2016.

2. National Data Transmission

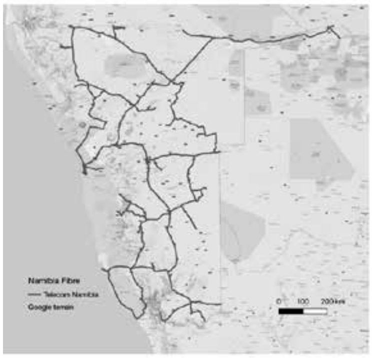
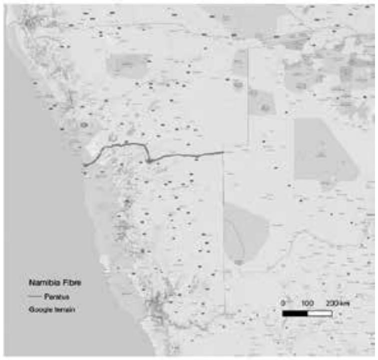
The market for National Data Transmission covers all forms of prearranged connectivity within Namibia excluding the end-user access section. It covers wholesale and retail services. The markets include any form of backhauling services for mobile operators, leased lines, Metro Ethernet, microwave, national IP transit, services rendered at submarine cable landing stations and relevant facilities.

Table 2: Market concentration in terms of km fibre routes							
Regions	NamPower		TN		Paratus		Combined
	km	%	km	%	km	%	km
!Karas	1,114	36%	2,013	64%			3,127
Erongo	532	26%	1,270	61%	275	13%	2,078
Hardap	266	12%	1,886	88%			2,152
Kavango East	382	54%	328	46%			710
Kavango West	133	35%	250	65%			382
Khomas	390	25%	934	59%	256	16%	1,580
Kunene	8	1%	813	99%			822
Ohangwena	38	19%	163	81%			201
Omaheke	236	17%	941	66%	248	17%	1,425
Omusati	121	35%	225	65%			345
Oshana	120	62%	74	38%			194
Oshikoto	253	50%	252	50%			505
Otjozondjupa	990	42%	1,238	53%	127	5%	2,355
Zambezi	208	42%	290	58%			498
Namibia	**4,792**	**29.3%**	**10,676**	**65.2%**	**906**	**5.53%**	**16,373**

NamPower and Telecom Namibia, both 100% state-owned, control more than 94% of Namibia's Fibre routes. NamPower has 30% and TN 65% of fibre routes. Paratus only operates 5.5% of Namibia's fibre routes and this only in four regions: Erongo, Khomas, Otjozondjupa and Omaheke.

Geographic markets would not make sense at the moment given that Paratus only has between 5-17% of market share in fibre routes in the four regions it operates in. Table 3 displays the fibre map for Namibia based on submissions from Telecom Namibia, NamPower and Paratus.[4]

Table 3: Fibre routes in Namibia (Source: CRAN)

Telecom Namibia	**NamPower**	**Paratus**
		
10,676 km	4792 km	906 km
65.2%	29.3%	5.5%

Market power for the National Data Transmission market rests on fibre route ownership. Resellers buy bandwidth from fibre route owners and their end-user prices are downward limited by what they have to pay the fibre route owners. Resellers thus have limited market power.

Table 4: Market share of national data connectivity market in terms of revenues

	Africa Online	**Bidvest**	**Misty Bay**	**MTN**	**Paratus**	**SALT**	**Telecom Namibia**
Jan-Mar 2018	1.7%	0.6%	0.3%	17.7%	25.7%	0.1%	53.9%
Apr-Jun 2018	1.0%	0.6%	0.4%	16.1%	27.7%	0.0%	54.2%
Jul-Sep 2018	1.2%	0.7%	0.4%	16.6%	28.6%	0.1%	52.6%
Oct-Dec 2018	1.2%	0.7%	0.4%	20.7%	29.3%	0.0%	47.7%
2018	**1.3%**	**0.6%**	**0.4%**	**17.8%**	**27.8%**	0.1%	**52.1%**
Source	CRAN Portal, except Telecom Namibia which submitted figures as part of the market study information request						

In 2018, Telecom Namibia held a 52% market share for national data connectivity revenue. This is an estimate since the revenues are based on submissions to the CRAN Portal for ethernet and leased line revenues, except for Telecom Namibia which stated a higher figure for national data connectivity in its submission for the market study. The revenue figure in its submission is still well below what is captured under data revenues in Telecom Namibia's audited financial statements. However, given that market power mainly relies on infrastructure ownership it is not necessary to obtain more precise revenue data.

CRAN finds:

(a) Telecom Namibia has more than 50% share of the revenues 65% of the national fibre network and is thus dominant.

(b) NamPower was only licensed in 2018 and will be providing services to all licensees going forward. Given its extensive fibre national fibre network, it is also a dominant operator.

[4] CRAN received fibre files from Paratus for Walvis Bay, Swakopmund and Windhoek but not for the Trans-Kalahari Fibre route. The length of the route was estimated following the road from Swakopmund (B2) to Windhoek and Windhoek to .Buitepos (B6) using Google Earth.

(c) Paratus is not dominant despite its newly built fibre routes. Firstly, Paratus only operates in four regions and its fibre routes constitute less than 5.5% of total fibre routes. Secondly, Telecom Namibia and NamPower have routes alongside Paratus' fibre route (Table 3). The other licensees that provide national data transmission services are only resellers and have thus little market power.

Table 5: SMP in the market for National Data Transmission				
		Telecom Namibia	**NamPower**	**Paratus**
1	At least 35% market share?	Yes	No	No
2	Less than 35% market share but controls some infrastructure that is necessary for the provision of the services in question?	Yes	Yes	Yes
3	Less than 35% market share but has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	Yes	No	No
4	Less than 35% market share but has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	No	No	No
Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?		**Yes**	**Yes**	**No**
Declared Dominant		**Yes**	**Yes**	**No**

3. Wireless End-User Access

The market for wireless end-user access includes mobile and fixed-wireless services. This market includes call and SMS origination as well as Internet access provided via mobile phone, dongle, wireless modem, wireless router or VSAT terminal.

Table 6: Wireless end-user access (Source: CRAN)			
	2016 Dec	**2017 Dec**	**2018 Dec**
Mobile Active SIM cards	2,659,951	2,680,196	2,759,293
VSAT	354	542	960
Other wireless	14	364	268
Active SIM cards as share of total wireless end-user subscriptions	99.99%	99.97%	99.96%

Mobile end-user access is where market power is. Wireless End-user access is mostly mobile in Namibia with 99.9%. Other forms of wireless end-user access are insignificant.

Table 7: Network coverage by region based on WorldPop population mapping					
Worldpop	**MTC**		**TN**		
	3G	**4G**	**2G**	**3G**	**4G**
!Karas	76%	45%	80%	51%	20%
Erongo	94%	82%	96%	52%	34%
Hardap	74%	43%	84%	49%	26%
Kavango East	81%	40%	96%	33%	35%
Kavango West	57%	0%	65%	4%	0%
Khomas	98%	92%	99%	71%	46%
Kunene	42%	5%	58%	7%	0%
Ohangwena	67%	7%	94%	7%	4%
Omaheke	56%	23%	62%	34%	1%
Omusati	68%	3%	98%	4%	2%
Oshana	88%	46%	100%	42%	28%

Table 7: Network coverage by region based on WorldPop population mapping					
Worldpop	MTC		TN		
	3G	4G	2G	3G	4G
Oshikoto	66%	12%	92%	12%	9%
Otjozondjupa	76%	45%	81%	53%	24%
Zambezi	86%	30%	82%	31%	0%
Namibia	**78%**	**38%**	**90%**	**35%**	**20%**
Note:	MTC's 2G coverage map was not incorporated due to technical issues				

MTC and TN have extensive network coverage in all of Namibia's regions. Telecom Namibia has 2G population coverage is 90%. Both MTC and TN are national mobile broadband operators, covering all of Namibia's regions. MTC has a national 3G population coverage of 8% and 38% 4G population coverage. While MTC still dominates wireless end-user markets, Telecom Namibia managed to increase its market share to 5.2% during that year.

Table 8: Mobile revenues in 1,000s: Mobile voice, SMS, data, handsets (Source AFS)			
	FY 2016	FY 2017	FY 2018
Telecom Namibia	108,254	105,480	137,987
	4.5%	4.2%	5.2%
MTC	2,323,533	2,420,896	2,498,160
	95.5%	95.8%	94.8%
Total	2,431,787	2,526,376	2,636,147

CRAN finds:

(a) MTC and Telecom Namibia operate the only national[5] mobile networks, and both are dominant.

(b) Telecom Namibia's market share for mobile voice and data is well below 35% but it does operate a national mobile network and also has market power through its national fibre network for mobile data. Telecom Namibia owns 100% of Powercom and thus owns all of Powercom's assets.

(c) Paratus' fixed-wireless revenues are insignificant when compared to MTC's and Telecom Namibia's mobile revenues.

[5] Both provide mobile end-user services in all of Namibia's regions.

Table 9: Assessment of Dominance for Mobile End-user Access market				
		Telecom Namibia	**MTC**	**Paratus**
1	At least 35% market share?	No	Yes	No
2	Less than 35% market share but controls some infrastructure that is necessary for the provision of the services in question?	Yes	Yes	Yes
3	Less than 35% market share but has dominance in a related market and therefore is able to exercise power in the market for the telecommunications services in question	Yes	No	No
4	Less than 35% market share but has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia?	No	No	No
Do the 4 criteria give the licensee the ability to exercise market power (Section 78(5))?		**Yes**	**Yes**	No
Declared Dominant		**Yes**	**Yes**	No

4. Wired End-User Access

The market for wired end-user access includes retail and wholesale/reseller services provided via fibre or copper lines. Services in this market include fixed call origination xDSL, FTTx, local leads or tail ends for leased lines.

Table 10: Wired end-user access			
	2016 Dec	**2017 Dec**	**2018 Dec**
Landlines	187,812	193,026	141,750
xDSL	53,381	54,524	54,014
Fibre to the home	158	252	498
MetroNet (ethernet)	57	591	496
Leased lines	9,874	7,621	6,489
Total wired- end-user access	251,282	256,014	203,247
Share of Landlines and xDSL of total wired- end-user access	**96.0%**	**96.7%**	**96.3%**

CRAN finds:

(a) Copper-based end-user access made up 96% of subscriptions in the Wired End-User Access market.

(b) While Wired End-User Access is being offered by a few licensees other than Telecom Namibia, it is mostly reselling of Telecom Namibia services. Telecom Namibia is thus the only dominant operator in this market.

5. Call & SMS Termination

The market for fixed and mobile call and SMS termination is a natural monopoly and all operators offering call and SMS termination are dominant operators.

6. Recommendations

CRAN has reverted to the technologically neutral market definitions of the 2016 market study of wired and wireless end-user markets. The wider market definitions are more suitable for a highly concentrated market in comparison to the narrower market definitions.

All licensees providing call and SMS termination are dominant. Telecom Namibia is dominant for the Wired End-User Access and the National Data Transmission markets. MTC and Telecom Namibia are dominant for the Wireless End-User Access market. NamPower is dominant for the National Data Transmission market.

Table 11: Dominance Finding		
Markets		Dominant operators
1	National Data Transmission	Telecom Namibia, NamPower
2	Wired End-User Access	Telecom Namibia
3	Wireless End-User Access	MTC, Telecom Namibia
4	Fixed and Mobile Call & SMS Termination	All licensees with a number range

New licensees will be assessed for potential market power before licenses are issued by CRAN based on the framework set up in Table 24. This is a necessary pre-requisite for obtaining a license, as it is anticipated that new market entrants may derive market power from outside the ICT sector.

CONSIDERATION OF COMMENTS ON THE DETERMINATION OF DOMINANT POSITION IN THE TELECOMMUNICATIONS SECTOR

1. Introduction

The purpose of this paper is to review the comments received from stakeholders on the proposed Determination of Dominant Position in the Telecommunications Sector which was published in Government *Gazette* No. 7368 on 20 October 2020. Written comments were received from MTC Mobile Telecommunications Limited ("MTC") and Telecom Namibia ("Telecom").

2. Consideration of Comments

COMMENTS BY MTC		
Comment		Review & Consideration
1.	MTC states that the Authority's Position Study fails to accurately reflect all of Paratus' infrastructure. MTC submits that in addition to Namibia, Paratus has fibre routes in various African countries namely, Angola, Botswana, Mozambique, South Africa and Zambia. MTC further states that section 78 (4) (d) of the Communications Act No. 8 of 2009 states: "(d) the licensee in question has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia." MTC also submits that in light of the above Paratus meets the aforementioned criteria in terms of section 78 (4) (d) and that this significantly increases Paratus market power and provides Paratus with additional market power in and outside the borders of Namibia. MTC opines that on this basis Paratus should be declared a dominant operator in the National Data Transmission Market.	When considering market power the international operations of Paratus was considered. The focus in relation to Paratus for section 78(4)(d) should be *"that can be used to exercise market power"* The fibre ownership of Paratus outside of Namibia is mostly limited to inner-city fibre. The backhaul routes to, for example, Gaborone, Lusaka and Johannesburg are leased not owned. The Authority, therefore, concluded that the international operations of Paratus does not give Paratus market power in the market for National Data Transmission. Further, most of the national data transmission routes that Paratus uses within Namibia are owned by Telecom Namibia. Paratus is thus primarily a reseller.

TELECOM		
	Comment	**Review & Consideration**
1.	Telecom submits that as per page 4, paragraph 1, it still notes with concern, the inconsistency in the application of criterions under section 78 by the Authority that Paratus 5-7% market share in fibre routes is considered insignificant while Telecom's 5.2% market share in mobile is considered enough for contribution towards the declaration of Telecom dominant in Mobile.	Market power is assessed based on a sequence of tests and a final assessment of the ability of a licensee to act independently from its competitors on pricing. Telecom Namibia's dominance in the wireless end-user market is based on its national mobile network coverage and not on market share.
	Telecom further submits that the Authority attempted to justify throughout the revised market study that the Telecom subscribers has grown, and revenue has grown and thus they submit that for growth in the market share to be considered it should be at least 35% and Telecom's share is only at 5.2%. The inconsistency and biased approach seem too obvious to be justified in any way and Telecom insist that these irregularities and inconsistencies be attended to avoid further and future disparity and conflict. Telecom submits that on page 5, table 5, in which related market is the finding under **row 3 in table 5** determined and how and why in the Authority's interpretation of section 78 are those markets related. Telecom states that these seem mutually exclusive and again, unjustified.	Paratus' position for national data transmission indicated a "yes" for infrastructure ownership but was overall assessed not to be dominant due to its low share in national fibre routes, it lack of national coverage and the fact that its national fibre routes duplicate those of Nampower and Telecom Namibia.
2.	Telecom submits that on page 6, paragraph a "CRAN Finds", it is alleged that *"Telecom have extensive network coverage in all of Namibia's regions"*. The Authority submits that *"although MTC still dominates wireless end user Markets (mobile), Telecom managed to increase its market share to 5.2% during that year"*. Telecom submits that as stated in paragraph 1 of these comments above, the growth of 5.2% of market share in mobile is minimal and does not warrant any consideration if it's still under 35%. Reliance can therefore not be place in this aspect. Although Telecom has infrastructure in some regions nationally, ownership of infrastructure alone does not translate into dominance especially in this case where MTC has more infrastructure than Telecom and the gap has only widened between what MTC owns and what Telecom owns. The ownership of infrastructure in this case therefore does not give Telecom market control especially because MTC owns infrastructure alongside Telecom in all those towns and Paratus and MTN also has infrastructure in selected towns nationally. Telecom further submits that is the Authority's findings is further based on its previous finding that Telecom is allegedly dominant in a related market being Nation data transmission, Telecom maintains that their query under **row 12 comment 12.1 on page 13** remains unanswered and/or ignored, where Telecom specifically requested the Authority in their previous comments to clarify what in the context if this determination is "related market" and indicate why and how the alleged dominance in the related market (national data transmission) caused Telecom to be dominant in mobile or how the two markets are considered to be related markets. The conclusions and comparisons are baseless regardless the unjustified efforts to justify certain findings which Telecom find to be biased.	Telecom Namibia's population coverage was established based on the infrastructure data submitted by Telecom to CRAN. CRAN deems Telecom to be in the position to act independently of MTC in setting prices. This can take various forms including the pricing for a mobile virtual network operator (MVNO), based on its national mobile network coverage and its dominance in the national data transmission market. National data transmission is related due to the ability to bundle least mobile access with national data transmission as a bundled service to an MVNO.

	Telecom states that they note the Authority's answer to **comment 12.1 on page 13** that "*The Authority does not specify this in more detail on purpose"* and consider the response to be insufficient and lacks the much-needed clarity on this determination. Telecom thus raises the issue of how the Authority applied interpretation to section 78 with regard to why National data transmission and mobile are considered related markets in the case of Telecom, especially because the Act does not specify a definition. This again seems motivated through bias to justify other issues highlighted hereinabove. The findings by the Regulator in any way proposed factual basis for conclusions, that would be welcomed, but unfortunately it is distorted and seems wrongly motivated.	
3.	Telecom on page 6 paragraph (b) "CRAN Finds" submits that it is worth quantifying that the combined Telecom / Powercom assets (towers) are less than 15% of the total market infrastructure, which is far less than 35%. Furthermore, regardless of Powercom being a subsidiary, it operates independently and should be treated as such. The intentional combination of the entities to justify certain conclusion is unfounded and should be corrected.	The matter of Powercom being assessed independently was addressed in our letter dated 1 September 2020 and will therefore not be reiterated. It must however be mentioned that asset value was not used to determine market power.
4.	Telecom on page 6 paragraph (c) "CRAN Finds" submits that the Authority states that "Paratus" fixed-wireless revenues are insignificant when compared to MTC's and Telecom Namibia's revenues. Telecom seeks advice as to how was this determination made if there are no revenue figures depicted for Paratus in this study. For the sake of transparency Telecom implore and demand that the Regulator be transparent on these issues to ensure fairness to all parties.	It is the prerogative of the Authority to determine which information should be made public. This information can however be obtained from the Paratus' Audited Financial Statements (AFS).
5.	Telecom submits that on page 7, table 9 criteria 3 and the finds, the application of criteria 3 in relation to Telecom is discriminatory. National data transmission is required to provide services in all other markets identified. This criterion proposes that as long as a Service Provider is dominant in the National Data Transmission market, it will be dominant in other markets it enters. By way of example, if Nampower would enter the mobile market today, it will be dominant too in Mobile because of this criterion. Telecom therefore seek clarity to the questions posed in paragraph 3 of this submission in relation to the definition and interpretation of related market by the Authority. This is senseless and to that extend Telecom submits that this was not the intent of legislature to have all parties declare dominant just by virtue of operating and competing in a certain market. This principle is in any event not applied consistently as various other operators are excluded from this principle.	Criteria 3 is a legal requirement stipulated by the Communications Act. The remainder of the point was answered under point 2.

6.	Telecom on page 7, wired end-user access, submits that enough information is not provided under this market for the sake of transparency. Particularly, how much percentage is Telecom copper and how much percentage is the copper for other operators? How much percentage is Telecom fibre and how much is other service providers? How much revenue is generated from fibre from all operators? What is the number of subscribers for fibre for each operator? How much infrastructure does each operator has? These are all issues that requires to be address without making baseless findings on presumptions as it would appear.	Copper made up 96% of subscriptions in the Wired End-User Access market. Telecom Namibia is the only operator owning a copper network. It was thus not necessary to test for revenue market share.
	Telecom submits that if evaluation is done based on the criteria highlighted in Table 5 and 9 respectively, more Service Providers will be declared dominant especially based on the criteria of less than 35% market share but controls some infrastructure that is necessary for the provision of the services in question? The information requested above should therefore provide for transparency.	
7.	Telecom submits that in terms of page 11, paragraph 9.2, the subscriber and revenue might have grown but not to 35% which is the requirement. Revenue is still at 5.2% of the market. Since Paratus has infrastructure in wireless end-user access but is not found dominant in 2019, and while being cognisant of the fact that ownership alone is not enough to translate into dominance in what way does Paratus infrastructure provide market power compared to Telecom's infrastructure?	Telecom Namibia's dominance for mobile stems not from having revenues that exceed 35% market share but from owning a national mobile network and being dominant in the market for national data transmission. A national mobile network and 65.2% ownership of national fibre routes provide Telecom with market power.
8.	Telecom submits on page 12, paragraph 9.5, the Authority has not responded to their comment under 9.5 on page 12 and request that the Authority provide Telecom with response comments herein.	Based on the previous comments submitted by licensees the market definitions were reverted to the 2016 definitions, i.e. wireless end-user access instead of mobile. This avoids the need to distinguish between fixed and mobile wireless services.