

COMPETITION IN TELECOMMUNICATIONS IN VIETNAM: ACTUAL SITUATIONS AND CHALLENGES

Workshop on Competition and Tariff Regulation

Hanoi, November 1st 2017.

CONTENT



1	OVERVIEW OF THE TELECOMMUNICATIONS MARKET IN VIETNAM
2	COMPETITION IN TELECOMMUNICATIONS IN VIETNAM: ACTUAL SITUATIONS AND CHALLENGES



Telecommunications Market

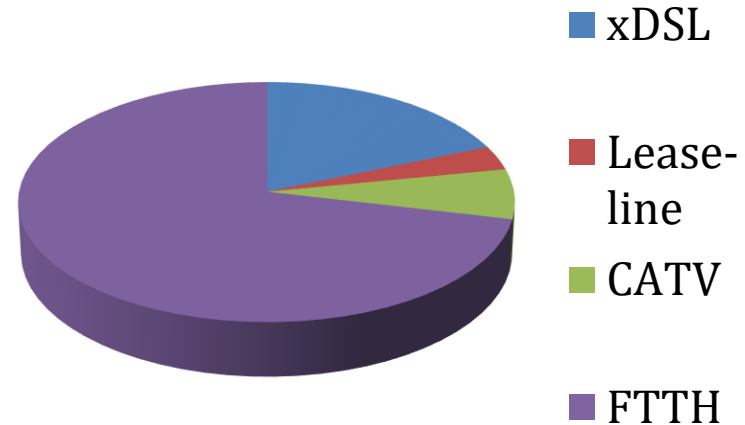
No.	Classification	2016	Details
1	Number of licensed operators in setting public telecommunications network nationwide	15	VNPT, Viettel, FPT Telecom, HTC, CMC Telecom, Gtel, Dong Duong, VTC, SPT, Vishipel, SCTV, AVG, etc.
2	Number of current fixed telecommunications operators	5	VNPT, Viettel, FPT Telecom, SPT, VTC
3	Number of current mobile telecom operators	5	Vinaphone, Mobifone, Viettel, Gtel, Vietnamobile
4	Number of 3G current operators	4	Vinaphone, Mobifone, Viettel, Vietnamobile
5	Number of 4G current operators	4	Vinaphone, Mobifone, Viettel, GMobile
6	Number of current Internet service operators	65	VNPT, FPT, Viettel, etc.



Critical Figures (as of Jun. 2017)

❖ Total fixed broadband Internet subscribers: **10,036,042.**

- Via xDSL: **1,269,989**
- Via Leased-line: **226,077**
- Via CATV: **678,342**
- Via FTTH: **7,861,634**

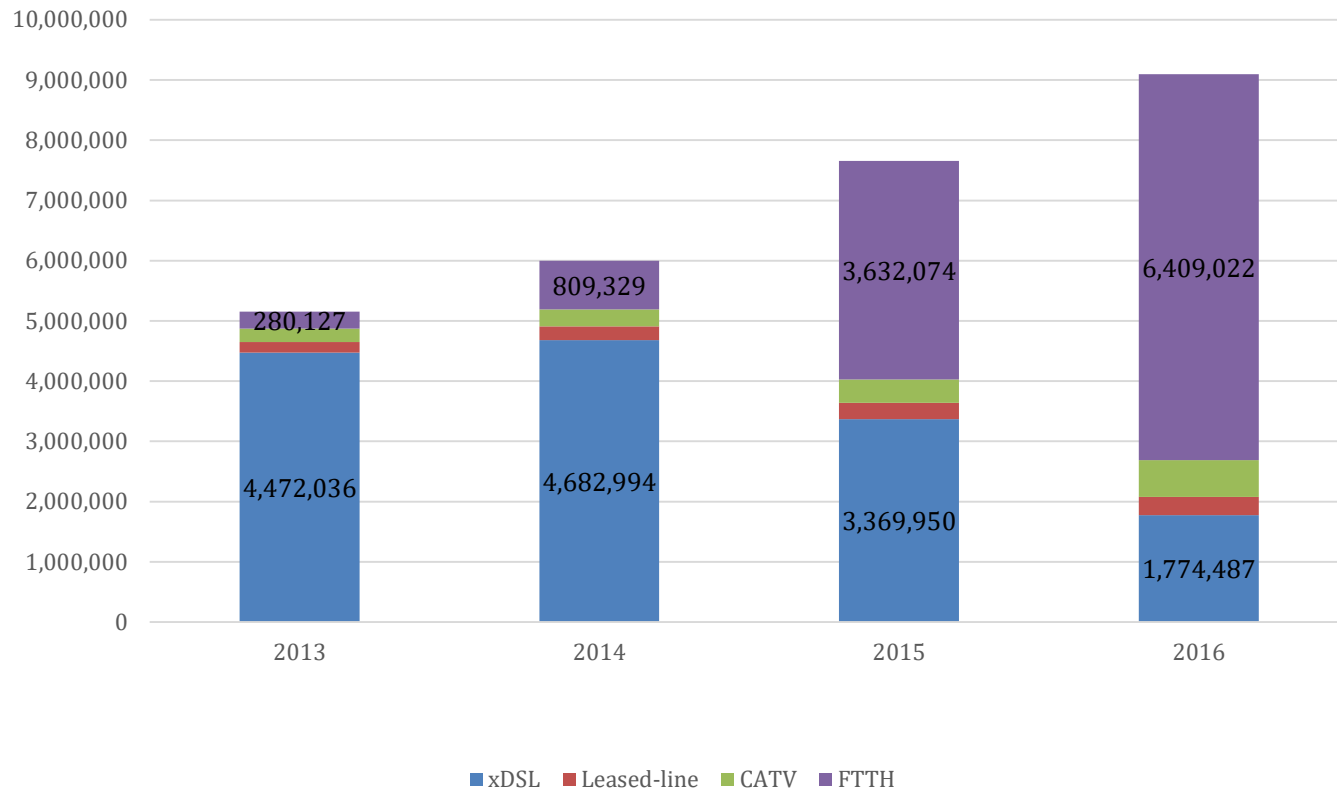


❖ Total mobile broadband Internet subscribers via 3G network: **41,806,336.**

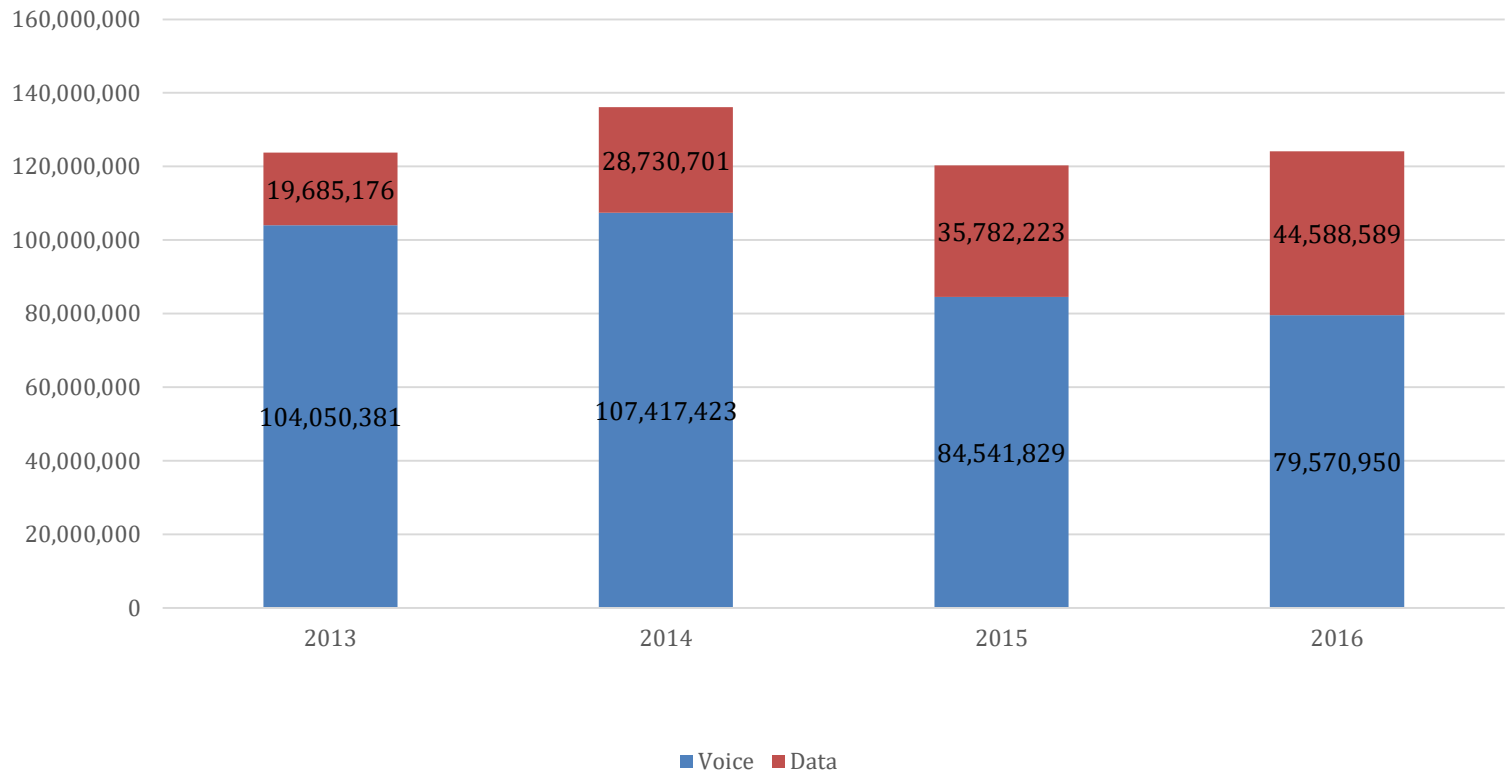
❖ Total domestic Internet bandwidth : **1,950,804 Mbps.**

❖ Total international Internet bandwidth : **4,697,606 Mbps.**

Fixed Broadband Subscribers



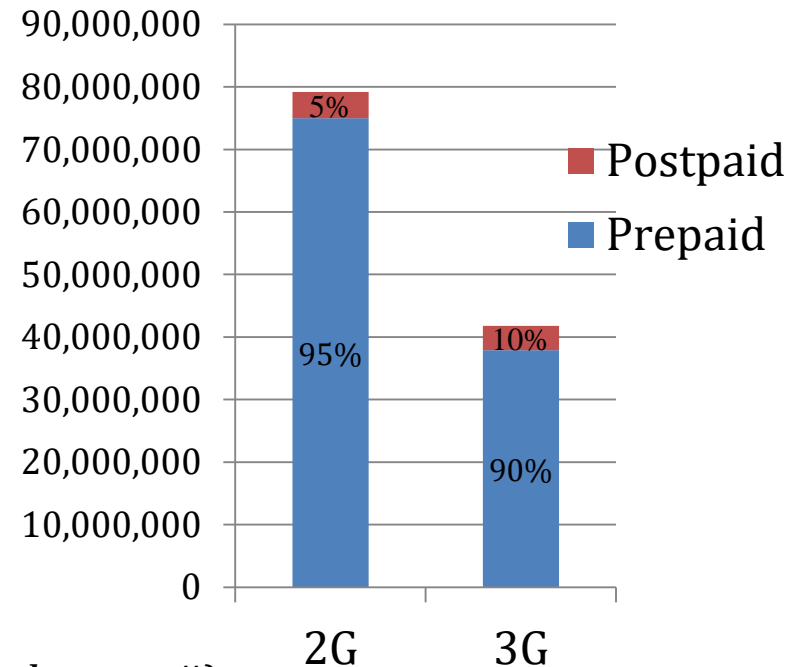
Mobile Subscribers



Mobile Subscriber

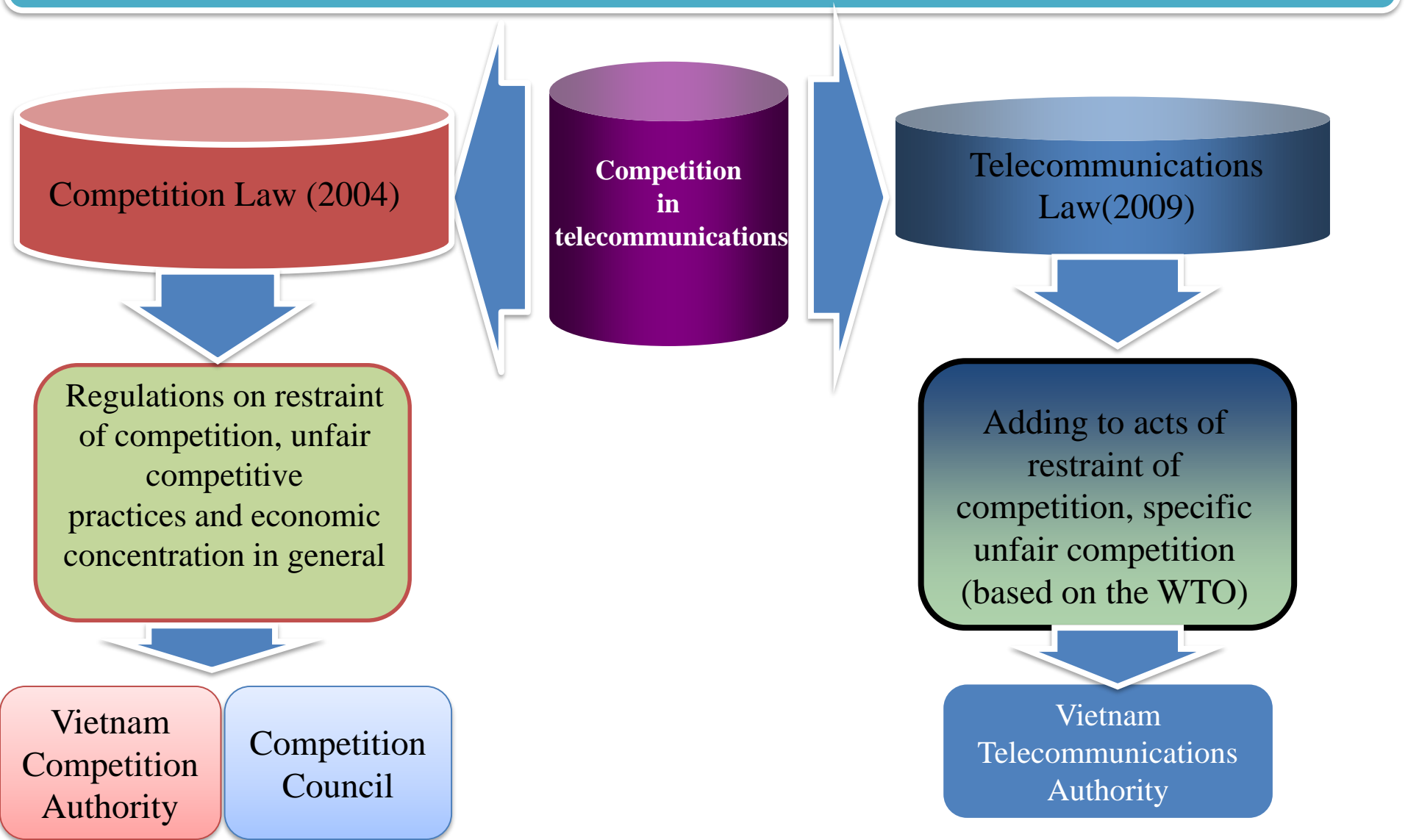


Total Mobile Subscribers:	120,983,205
2G Subscriber:	79,176,869
<i>Prepaid:</i>	74,989,679
<i>Postpaid:</i>	4,187,190
3G Subscriber:	41,806,336
<i>Prepaid:</i>	37,874,485
<i>Postpaid:</i>	3,931,851



(Sources: <http://vnta.gov.vn/thongke/Trang/dulieuthongke.aspx#>)

ACTUAL SITUATIONS



ACTUAL SITUATIONS

REGULATORY

Competition law



- Regulations on restraint of competition, unfair competitive practices and economic concentration in general
- Regulations criteria for enterprises and groups of enterprises having dominant positions in the market

Decree 116/2005/NĐ-CP

- Determining the relevant market
- Bases for determining capability of enter prise to substantially restrain competition in relevant market
- Selling goods or providing services below total prime cost of goods aimed at excluding competitors

ACTUAL SITUATIONS

REGULATORY

Telecommunications Law

- Competition in the provision of telecommunications services
- In each period, the MIC shall promulgate a list of SMP, and a list of telecommunications businesses that possess essential devices

Decree 25/2011/NĐ-CP

- Handling cases of competition in the telecommunication services trading

Circular 18/2012/TT-BTTTT 15/2015/TT-BTTTT

- List of telecommunications enterprises, group of telecommunications enterprises with SMP for the important telecommunication services

QUESTIONS

Question 1

Competition management between general competition law and specialized law

Question 2

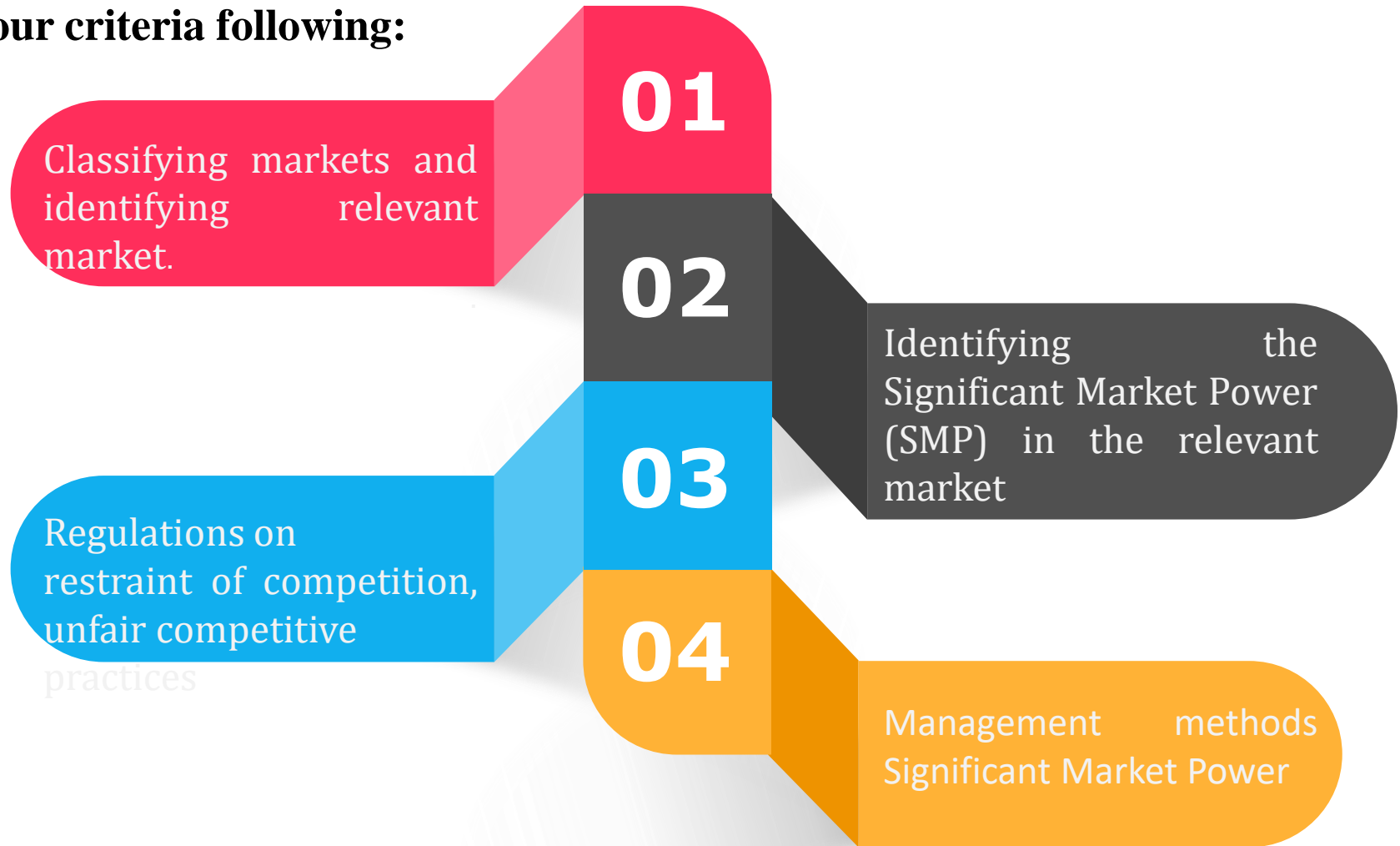
On economic concentration: the functional role of the Competition Law and the specialized law, the role of ministries (notification, approval, exemption ...)

Question 3

Identifying the business that possess essential devices: experience and share with Vietnam

ACTUAL SITUATIONS

Competition management in telecommunications is mainly based on the four criteria following:



ACTUAL SITUATIONS

01 Relevant market

Article 11 Competition law

1

Enterprises and groups of enterprises in dominant market position

2

1. An enterprise shall be deemed to be in a dominant market position if such enterprise has a market share of thirty (30) per cent or more in the relevant market or is capable of substantially restraining competition.

3

2. A group of enterprises shall be deemed to be in a dominant market position if they act together in order to restrain competition and fall into one of the following categories:

4

(a) Two enterprises have a market share of fifty (50) per cent or more in the relevant market;

5

(b) Three enterprises have a market share of sixty five (65) per cent or more in the relevant market;

(c) Four enterprises have a market share of seventy five (75) per cent or more in the relevant market.

ACTUAL SITUATIONS

01 Relevant market

Relevant market

Relevant market consists of relevant product market and relevant geographical market.

1

Relevant product market means a market comprising goods or services which may be substituted for each other in terms of characteristics, use purpose and price.

2

Relevant geographical market means a specific geographical area in which goods or services may be substituted for each other with similar competitive conditions and which area is significantly different from neighbouring areas.

ACTUAL SITUATIONS

01 Relevant market

Relevant market in Telecommunications

Classifying the relevant market by service classification:

I	Ground fixed telecommunications services	Number of SMP enterprise
1	Local telephone service	2
2	Domestic long-distance telephone service	1
3	International telephone service	2
4	Local leased line service	2
5	Domestic long distance leased line service	2
6	International leased line service	2
7	Broadband Internet access service	3
II	Land mobile information services	
1	Phone service	1
2	Messaging service	1
3	Internet access service	1

QUESTIONS

01 Relevant market

01

Comments on relevant market classification in accordance with reality in Vietnam

02

Examples about some services may be interchangeable in terms of the characteristics and uses of telecommunications.

03

The list of relevant markets in telecommunications countries in the world is in line with Vietnam

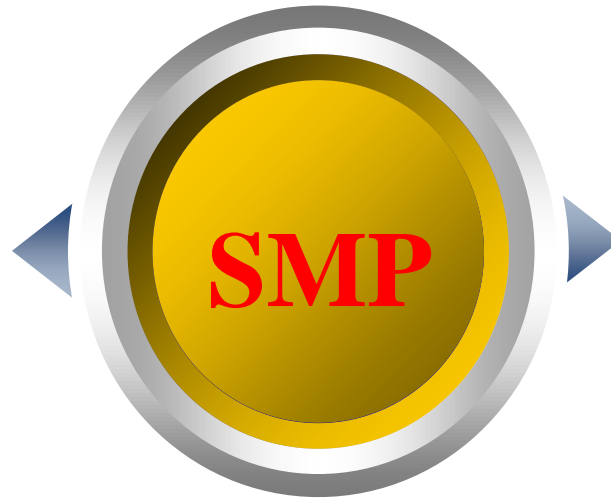
04

How to identify the relevant market in a technology convergence environment

ACTUAL SITUATIONS

02 Identification of the SMP enterprise

Determined by the market share of revenue, with reference to the market share of subscribers and quantity



Not defined under the second Criteria of Competition Law: “An enterprise shall be deemed to be in SMP if ...is capable of substantially restraining competition.

Identify SMP for the important telecommunication services

02 Identification of the SMP enterprise

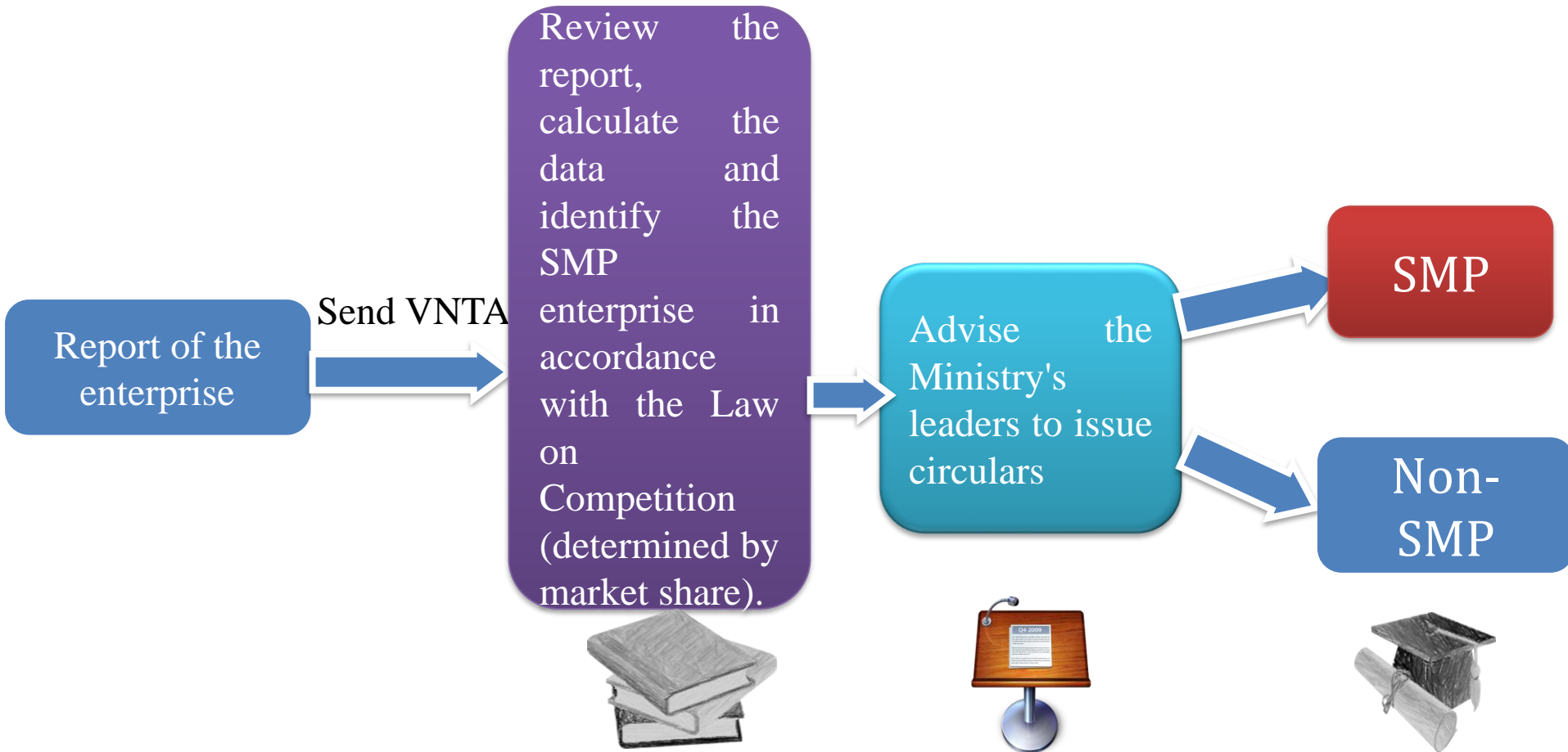
Principles for identifying SMP businesses in telecommunications:

1. Identification of SMP according to the provisions of the Competition Law (Telecommunications Law does not stipulate criteria)
2. The basis is determined based on the business production report of the enterprise (including telecoms revenue, quantity and number of subscribers)
3. After 2 years will review the SMP enterprise

Example: In 2012, the MIC issued Circular No.18/2012/TT-BTTTT, which stipulates that there are three SMPs for Land mobile information services. By early 2015, the MIC issued Circular No.15/2015/TT-BTTTT. Accordingly, for Land mobile information services only has one SMP

ACTUAL SITUATIONS

02 Identification of the SMP enterprise



ACTUAL SITUATIONS

02 Identification of the SMP enterprise

Financial capacity of the enterprise

Financial capacity of the organizations and individuals which established the enterprise

Financial capability of the organization or individual that has the right to control or dominate the operation of the enterprise according to the provisions of law or the enterprises charter

Financial capacity of the parent company

Technological capability

The right to own or use industrial property objects

Scale of distribution network

The capability of an enterprise to substantially restrain competition (Decree 116/2005/NĐ-CP) rely on one or more bases

CHALLENGES

02 Identification of the SMP enterprise

01

If SMP is only identified by market share, it does not fully reflect the competitive nature of telecommunications

02

There are no significant competing specific criteria to the capability of an enterprise to substantially restrain competition to identify SMP enterprise (07 criteria mentioned above)

03

Giving the method to defined SMP by combining two methods according to the Competition Law

QUESTIONS

02 Identification of the SMP enterprise

Question 1

Criteria for identifying SMP may apply in Vietnam

Question 2

Experience identifying SMP for some telecom enterprises in line with Vietnam market

Question 3

Example of identifying SMP with the capability of an enterprise to substantially restrain competition ?

Question 4

Sharing of delegates on the problems and lessons for Vietnam

03 Unfair competitive practices

Practices constituting abuse of dominant market position which are prohibited

1. Selling goods or providing services below total prime cost of the goods aimed at excluding competitors;
2. Fixing an unreasonable selling or purchasing price or fixing a minimum re-selling price goods or services, thereby causing loss to customers;
3. Restraining production or distribution of goods or services, limiting the market, or impeding technical or technological development, thereby causing loss to customers;
4. Applying different commercial conditions to the same transactions aimed at creating inequality in competition;
5. Imposing conditions on other enterprises signing contracts for the purchase and sale of goods and services or forcing other enterprises to agree to obligations which are not related in a direct way to the subject matter of the contract;
6. Preventing market participation by new competitors.

03 Unfair competitive practices

Many behavior abuse of SMP is prohibited in telecommunications in addition to the above provisions of the Competition Law (based on WTO references):

1. Cross subsidisation telecommunications services among them for the unfair competition purpose;
2. Taking advantage of their telecommunications networks and essential devices to impede the market penetration or limit or cause troubles to provision of telecommunications services by other telecommunications businesses;
3. Using information obtained from other telecommunications businesses for the unfair competition purpose;
4. Failing to promptly provide to other telecommunications businesses about technical information on essential devices and relevant commercial information necessary for the provision of telecommunications services.

QUESTION

03 Unfair competitive practices

1 How to determine the cross subsidisation?



2 All four behaviors are based on WTO documents
The expert's experience identifies the four behaviors
(handling cases, litigation in some countries)

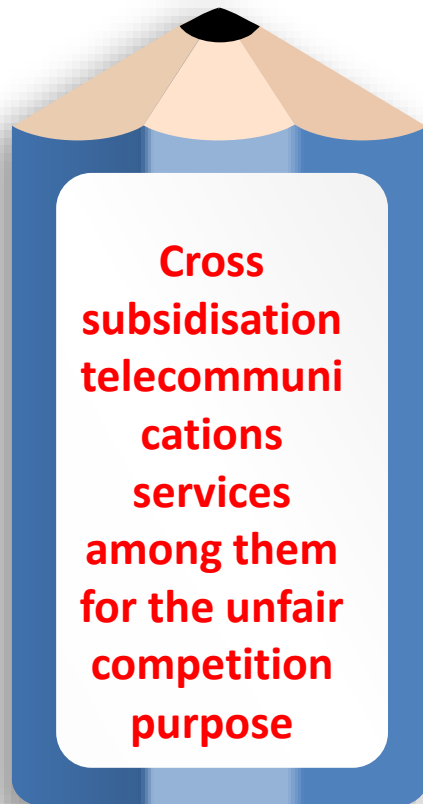


3 Sharing of experts on the reality in Vietnam and sharing about how to manage in accordance with Vietnam in the coming time

ACTUAL SITUATIONS

03 Unfair competitive practices

Many behavior abuse of SMP are taking place in the telecommunications sector:



CHALLENGES

Cause of unfair competitive practices

01

Increase revenue, subscribers by all means

02

The sanction is still low

03

Some guiding Legal documents are not specific, difficult to implement

04

Vietnam is developing a new Competition Law, however, some contents are inconsistent with the Telecommunications Law

QUESTIONS

03 Unfair competitive practices

Question 1

How to manage unfair competition practices?

Question 2

Major Unfair Competition practices in telecom market

Question 3

Sanction of unfair competition practices?

ACTUAL SITUATIONS

04 Management of SMP

1. Cost-effective management
(not sold below cost service),
Anti Cross subsidisation service

2. Management in the form of ex-ante

Example: Significant market power (SMP) enterprise for land mobile information service. Before issuing the retail tariff to the terminal service user, the SMP enterprise is responsible for registering the tariff to the VNTA - MIC (Ex-ante), and SMP only implement when available written approval of VNTA. Other enterprises (Non-SMP) just announce tariff

QUESTIONS

04 Management of SMP

Question 1

Comments on how to manage SMP in Vietnam

Question 2

SMP and Non-SMP enterprise management practices are in line with the reality of Vietnam

Question 3

Management ex-ante, ex-post

Question 4

Competition management between general competition law and specialized law

THANK YOU

