

Annex N

Ex ante and ex post regulation

N.1 An effectively competitive market will produce a more efficient outcome than a regulated market. As this the case, the promotion of competition is central to Oftel's goal of securing the best deal for the consumer in terms of quality, choice and value for money.

N.2 Where markets are effectively competitive, ex post competition law is sufficient to deal with any competition abuses that may arise. However, without the imposition of ex ante regulation to promote actively the development of competition in markets in which competition is not effective, it is unlikely that ex post general competition law powers would be sufficient to ensure that effective competition became established in markets such as those found in telecommunications. For example, ex post powers prohibit abuse of dominance rather than the holding of a dominant position. Ex ante powers can be utilised to reduce the level of market power and thereby encourage effective competition to become established.

N.3 Telecommunications markets are also often characterised by features that can complicate the assessment of behaviour under ex post powers. For example, the existence of significant common costs and economies of scope and scale can complicate matters, as it may be difficult to establish that prices in any one market are excessive until the extent of common cost recovery in other markets has been considered. The complexities that would be involved in dealing with ex post regulation could result in uncertainty and this would result in additional costs for providers in the relevant markets. This is likely to impair fair and effective competition, and thereby disadvantage consumers.

N.4 However, in some circumstances use of some ex ante measures can themselves limit the development of competition. In such cases, Oftel would remove regulation.
