



# GENERAL COMPETITION LAW COMPLIANCE GUIDELINES FOR NGMN LIMITED (“NGMN”)

## 1. BACKGROUND

The purpose of this document is to provide guidelines and general advice to Members and Participants of NGMN in relation to issues of competition law that may arise from time to time during meetings or discussions of NGMN. It is important to note that this document is for general information purposes only and does not purport to provide more than a brief outline of the relevant law. Clearly, this may not be sufficiently detailed for any particular case and therefore specific advice should always be obtained in the event that a person involved in NGMN has any doubt whatsoever that competition law may be relevant to a particular issue. It is the policy of NGMN that if any doubt exists as to whether it is permissible to discuss a certain issue, then that issue should not be discussed until the matter has been referred to the NGMN Board and legal counsel for guidance.

## 2. INTRODUCTION TO COMPETITION LAW

Competition law seeks to promote competition between competitors with the goal of achieving benefits for consumers of products and services. Competitors are therefore prohibited from co-operating in ways that distort the competitive process and frustrate the aforementioned goal of competition law. Accordingly, under competition law, there are rules as to what types of information and topics can be legitimately discussed between competitors without giving rise to concerns that their conduct on the market is being aligned. A non-exhaustive list of examples of the types of topics that should not be discussed in the context of NGMN is set out in section 3(a).

Moreover, when developing and discussing a set of recommendations for use in an industry, it is important to ensure that the process is open and transparent and that there are no restrictions imposed on any of the participants to avoid competition being adversely affected. However, it should be noted that the range of subjects, issues and matters, which may be subject to the provisions of both national and international competition law, is enormous. There is no definitive list of matters or behaviour, which may be considered “anti-competitive”. Therefore, it is vital that Members and Participants of NGMN are vigilant in ensuring that at no time are they involved in any behaviour, which may be considered anti-competitive by the relevant authorities. Such vigilance is all the more compelling given the heavy penalties that exist for serious breaches of competition law.

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### 3. RULES IN RELATION TO COMPETITION LAW

Since NGMN will involve competing providers of mobile telecommunications services to the public, as well as competing manufacturers and technology providers, competition law will apply to all meetings and discussions (both formal and informal) of NGMN Members (and Participants where applicable). A failure to respect these rules could expose NGMN and each of its Members and Participants to serious fines and/or criminal sanctions.

Set out below is a non-exhaustive guide to the types of conduct at these meetings that are prohibited under competition law. Each chairman of a formal meeting shall be deemed to be responsible for ensuring that these guidelines are respected but it is incumbent upon all members to follow the guidelines at all meetings relating to NGMN (including informal discussions).

#### **(a) Rules with respect to discussions relating to prices, costs and strategy in the telecommunications market:**

Agreements on prices and market sharing between competitors are amongst the most sensitive areas of competition law. Competition authorities are always concerned that when competitors meet they will either openly or tacitly agree to fix prices or allocate customers or markets so that their profit margins are boosted or stabilised. Additionally, discussions about other sensitive or confidential business information (such as costs or commercial strategy) are looked upon unfavourably by competition authorities because they may reduce the incentive for market participants to compete. Due to these concerns, all parties must adhere strictly to the following principles:

- (1) Do not discuss current or future prices (be very careful of discussions of past prices);
- (2) Do not discuss what a fair profit level is;
- (3) Do not discuss an increase or decrease in price;
- (4) Do not discuss standardising or stabilising prices;
- (5) Do not discuss pricing procedures;
- (6) Do not discuss cash discounts;
- (7) Do not discuss credit terms or any other terms or conditions of sale;
- (8) Do not discuss controlling sales;
- (9) Do not discuss allocating markets, customers, suppliers or territories;
- (10) Do not complain to a competitor that his prices constitute unfair trade practices;
- (11) Do not discuss refusing to deal with a company because of its pricing or distribution practices;
- (12) Do not undertake any statistical, bench marking or survey program without legal advice;
- (13) Do not promulgate or enforce regulations or policies which have price-fixing implications, such as preventing the advertising of prices; and
- (14) Do not agree to exchange information on market percentages, suppliers or retailers or market supply or demand trends without legal advice.
- (15) Do not discuss any aspect of the individual strategy of any Member of Participants (including individual plans for investment, technology, production, research and development, marketing or network roll-out);
- (16) Do not discuss, consider or reveal individual business costs.

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## **(b) Rules with regard to discussing NGMN recommendations:**

NGMN has been established to determine a set of recommendations that will assist in the development of enhanced mobile broadband services offered by mobile operators to their customers. In achieving these goals, NGMN Members and Participants must ensure that:

- (1) Access to NGMN shall be determined only on the basis of the objective and non-discriminatory criteria specified in the Articles of Association;
- (2) Fees for participation in NGMN either as a Member or Participant shall be determined only on objective and non-discriminatory criteria;
- (3) Any recommendations adopted are based on objective criteria and interpreted objectively and accurately;
- (4) All interested parties, including parties who are not current Members or Participants in NGMN, are given notice of the work streams of NGMN and an opportunity to be heard and contribute where they wish to do so;
- (5) Wherever possible, decisions are taken by unanimous agreement of all Members and Participants involved in a particular matter. Where unanimity is not possible, decisions are based on objective and transparent criteria in accordance with NGMN's stated objectives and goals;
- (6) Decisions are not made by those unfamiliar with the objectives of NGMN and the basis on which decisions are made within NGMN;
- (7) The recommendations accomplish NGMN's goals and objectives in the least restrictive way; and
- (8) Adherence to and compliance with any of the recommendations developed under the auspices of NGMN is voluntary. Members and participants must ensure that there are no supplementary agreements (tacit or overt) among Members and/or Participants to adhere to requirements once they are set or to purchase or put on the market only, or any specified amount of products or services that comply with the recommendations that emerge from NGMN.

## **(c) Rules for potentially anti-competitive situations:**

Individual participants in NGMN who find themselves involved in a meeting or discussion that may give rise to an anti-competitive practice on the basis of any these guidelines could be liable to sanctions. If such a situation arises the individual should:

- (1) Inform the other party(ies) that you will not discuss the subject and end the conversation immediately. If the other speaker persists, walk away;
- (2) Be alert to what others say at NGMN meetings or gatherings; leave a meeting if anyone persists in discussing a prohibited subject and encourage others to leave if possible. Make your departure obvious, stating the reasons for your departure – do not just slip out the backdoor;
- (3) Be careful in your choice of words; never, even in jest, use words that indicate that you approve of or have participated in prohibited conduct; avoid conjecture, exaggeration or colourful or ambiguous language that might be misinterpreted.

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#### **(d) Rules in relation to access to NGMN**

Members and Participants must remember that, NGMN has certain fixed procedures and objective and non-discriminatory criteria for accepting new members. These procedures and criteria must be complied with strictly. Beyond NGMN, there are no restrictions on Members or Participants dealing with non-Members or Participants.

#### **4. CONCLUSION**

This document contains guidelines and general advice to members in relation to issues of Competition law. **In case of doubt, specific advice should always be sought.** The extensive range of matters and behaviour, which may be deemed “anti-competitive”, should always be borne in mind. **Failure to observe this principle may result in serious consequences for both NGMN and its members.** It is incumbent on all Members and Participants at all times, not just Chairmen of meetings or working groups to follow the specific rules and advice contained in this document. **Respecting these guidelines is to the benefit of all Members and Participants of NGMN.**

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