

**Determination of the
Telecommunications Regulatory Authority
In case of
Nawras Submission No: 004 - Asymmetric Interconnection Charges**

Determination No: 04/2006
Dated: 7th October 2006

Background:

1. Nawras submitted a formal Request for Determination No.4 dated 25th of February, 2006. The dispute in question relates to asymmetric interconnection rates in favor of Nawras. Nawras takes the view that they as a startup business need some kind of protection against the SMP in the market, Oman Mobile and Omantel. The request of Nawras is summarized in the following points:
 - a. The applicable interconnection rates under the agreement between parties should be based on the principle of asymmetry in favor of Nawras.
 - b. The level of asymmetry should be 46% and applicable termination rates should initially be 44.32 Bz/Min for calls terminating on Nawras's network and 30.36 Bz/Min for calls terminating on Oman Mobil's Network.
 - c. The above asymmetric level should be applied to both voice calls and also data traffic including SMS and MMS traffic.
 - d. The level of asymmetry determined by the TRA should be fixed for the initial period of two years from the Nawras Launch Date until 15th of March, 2007 and thereafter should be reduced gradually depending on the ratio between the two mobile operators customer base.
 - e. The rates for the fixed termination should be at a ratio of 1:9 to Nawras's mobile termination rate. In this manner the Fixed Termination rates initially should be fixed at 4.92 Bz/Min.
 - f. The rates to be fixed by the TRA as a result of this request for determination should be applied retrospectively from the launch date i.e., 16th March, 2005.
2. The Authority after receiving the submission, forwarded a copy to both Omantel and Oman Mobile for their reply. The Authority received replies from both Omantel



and Oman Mobile vide reference No: Omantel/EP/1/24/380/2006 and No: OMTC/MD/LRA/71/2006 respectively, dated the 9th of May, 2006.

Legal Provisions:

3. The following provisions of the Act and the respective licenses of Omantel and Nawras have been reproduced here in order to examine the issue in the light of relevant regulatory and legal framework:

Reference from the Act:

Article (1) 13 - Definition of Interconnection:

“Technical, regulatory and financial criteria that permit the connection of two or more telecommunications networks within the Sultanate.”

Article (7) – Objectives of the Authority:

The basic objectives of the Authority are (*among others*) to achieve the following:-

Article 7-1

To ensure the provision of telecommunications services for the entire Sultanate within reasonable limits and charges. In particular these services shall include: emergency services, public payphones, directory services, operator assistance service, maritime service and rural services.

Article 7-9

To create an environment for competition among the licensees to ensure the provision of world standard telecommunications services at reasonable cost and prices, and to take necessary steps to enable the service providers to compete abroad.

Article (8) - Functions of the Authority:

The Authority shall perform all the functions and take all necessary actions and measures to achieve its goals, including the following:

Article 8-14

To take necessary measures to determine the acts or events, which prevent competition in the telecommunications sector.

Article 8-18

To investigate the complaints filed by the beneficiaries or licensees or any other person, and take the necessary measures in that regard.

Reference from the Nawras License:

Condition 16.1 - Interconnection Agreements

- 16.1.1 The Licensee shall, within three (3) months of a request by another Licensed Operator, enter into an agreement with such Operator in accordance with the limits and controls set out in Condition 16.1.3 to connect to the Licensed Systems the Telecommunications System run by the Licensed Operator at technically feasible points of connection and provide such other Telecommunications Services as are reasonably necessary in order for the Licensed Operator to provide Telecommunication Services to its Beneficiaries.

In the event that the two parties do not conclude an agreement within the specified period, the matters in dispute shall be referred to the Regulatory Authority for resolution in accordance with Condition 16.3.

Condition 16.2-Principles for Interconnection Rates

- 16.2.1 The Licensee shall ensure that the charges to be made for the provision by it of Telecommunications Services in accordance with Condition 16.1.1 above, shall be cost-oriented and fully justified, such charges to be calculated based on a reasonable assessment of the costs associated with establishing interconnection and of providing the telecommunication services requested by a Licensed Operator.
- 16.2.2 In establishing rates and charges for interconnection, the Licensee shall adhere to the following principles:
- a. The charges for interconnection service and facilities should in all cases be reasonable and, with respect to similarly situated users, non-discriminatory;
 - b. The charges for each type of service requiring interconnection shall be such that they ensure the Licensee a reasonable return, taking into account the Licensee's costs of operating the Licensed System and providing the Licensed Services;
 - c. The terms of interconnection should be designed to prevent uneconomic or non-cost based bypass of the Licensed Systems by other Telecommunications Systems, including by providing for interconnection which is sufficiently unbundled so that the interconnecting operator is not required to pay for services or facilities that it does not require;
 - d. The division of revenues from traffic carried between the Licensed Systems and the Telecommunications System operated by the Licensed Operator requesting interconnection should take account of the relative use made of each of the interconnecting operators' plant and equipment by the service in question;
 - e. Long-run incremental cost (LRIC) estimates shall be used as the initial basis for calculation of the costs of interconnection and universal service stipulated in Condition 3 of the Fixed Public Telecommunications System License issued by the Royal Decree No. 20/2004 after two (2) years of the Effective Date;

- f. Where the charges for interconnection are to be based on the standard charges for the provision of a similar service to the Licensee's Beneficiaries, those charges should be adjusted to take account of any cost savings associated with providing service to the Licensed Operator requesting interconnection; and
- g. The Licensee may not impose any delay penalties except in accordance with the Conditions of the Agreement set out in Condition 16.1.1 and after obtaining the Authority's approval.

Condition 16.3- Resolution of Interconnection Disputes

- 16.3.1 Without violating the regulations issued in accordance with Article 46 of the Telecommunications Regulatory Act, if an agreement cannot be reached according to Condition 16.1.1 within three (3) months, the Licensee or the Licensed Operator may refer the matter to the Regulatory Authority. The Regulatory Authority shall make such determination, including the imposition of reasonable terms and conditions, as it considers necessary in all the circumstances within six (6) months of the reference, such determination to be final.
- 16.3.2 Where a dispute arises between the parties under the agreement or in relation to a related matter, either party may refer the matter to the Regulatory Authority for determination in accordance with Condition 16.3.1.
- 16.3.3 The party referring any matter to the Regulatory Authority shall provide all the necessary information to the Regulatory Authority so as to enable it to determine the nature of the matter being referred. The other party may make such submissions in relation to the matter being referred as he considers necessary. The Regulatory Authority may require the provision of further information from either party and may specify the period of time within which such information must be provided. The Regulatory Authority shall notify the parties in writing of its determination. The Licensee shall do whatever is necessary to give effect to the determination.

The Pleadings of other parties

4. Omantel and Oman Mobile being the concerned parties in this submission were asked to submit their pleadings with reference to the Asymmetric Interconnection charges. Both, Omantel and Oman Mobile submitted their view point vide their letters dated 9th May 2006. The salient points of their pleadings are presented hereunder.

The Submission of Oman Mobile:

5. The submission made by Oman Mobile in response to Nawras Submission for Determination - 4 is summarized in the following paragraphs:
 - (a) TRA has already initiated the process for review and determination of interconnection charges and the approval of the interconnection agreements submitted by the operators on 13th of March, 2006. Since the determination

process by the TRA is already underway, the current Nawras request filed as a dispute would constitute a parallel process, which is uncalled for at this stage.

- (b) Nawras has accepted and agreed to the symmetrical mobile termination rates during the negotiation process, which has been reflected in the Interconnection Agreement submitted to TRA for approval.
- (c) Any asymmetry in favor of Nawras without supporting cost details imply that Oman Mobile would have to mitigate the impact by either recovering the extra payments from its customers or accept lower profits for its investors or become more efficient. In the competitive environment none of these options would be easy and acceptable to Oman Mobile.
- (d) The proposed Termination Rate of Nawras is higher than its retail price, which tantamount to be anti-competitive (margin squeeze) on the part of Nawras.
- (e) Article 16 of Mobile licenses requires that interconnection rates should be based on costs. Hence, the request of Nawras without cost details is base-less, which cannot be agreed.
- (f) Nawras' reference of European practice supporting asymmetry of interconnection charges is not correct. Moreover, asymmetry is not an international best practice to be supported by regulators. Asymmetric mobile termination rates are not an international best practice. The situation in the Arab world is also not different. Out of fifteen Arab countries, as studied by Oman Mobile, only two have asymmetric interconnection charges.
- (g) The above arguments also apply to SMS and MMS traffic and Oman Mobile could not find and tenable justification for the retroactive application of interconnection rates as proposed by Nawras.

The Submission of Omantel:

6. The salient points of the response submitted by Omantel with reference to Nawras submission is summarized as below:

- (a) TRA has already initiated the process for determination of cost-based interconnection charges. Since the determination process is already underway, Nawras application for a parallel dispute resolution would be inappropriate, out of process and an onerous burden on the regulatory process. TRA, therefore, should continue with the determination process already underway on interconnection agreements.

- (b) As a part of the negotiation process, Nawras accepted and agreed to the interconnection rates on interim basis, which shall be reviewed and validated after the study undertaken by TRA is finalized. Hence, any further submission on the issue is unwarranted.
 - (c) The mobile to fixed termination rates as identified under National Call Termination in section 6.1 Annex 4 of the Omantel/Nawras Interconnection Agreement is reasonable, appropriate and justified as it is cost based and consistent with the principle of the interconnection rates pursuant to Article 17.2.1 of the Omantel License.
 - (d) Pricing approach using ratios based on benchmarking as advocated by Nawras is inaccurate and inappropriate. The cost based pricing approach adopted by Omantel is fair, consistent with international practice and recognized under Omantel License.
 - (e) There is no basis for the retroactive application of rates.
7. Omantel further requested that TRA to:
- a. Continue with the determination process, which is underway for to approve the interconnection agreements submitted on the 12th of March, 2005 and consider Nawras application under dispute resolution as a duplicative and out of process.
 - b. Validate and approve the Mobile to Fixed Termination rates as negotiated, agreed and submitted on the 12th of March, 2005.
 - c. Not allow retroactive application of approved rates.

Analysis of the Submissions and Pleadings:

8. The Authority carefully examined all submissions, pleadings, and references put forward and analyzed the issues in the context of the Telecommunications Regulatory Act (Royal Decree 30/2002), the Licenses and other relevant instruments. The Authority also took advice from its consultant in order to give due consideration to the international best practices.

9. The Authority noted that Nawras has supported its request by using some selected international examples. However, the Authority observed that the use of benchmarking of charges may not always be the right tool as the underlying cost, regulatory environment and market conditions widely differ from one country/region to the other. However, the Authority gave due considerations to all the examples and the work done by Nawras to assess its suitability for application in the Omani Market. The Authority noted that:

- (i) No one operator in other countries as mentioned by Nawras faces the same condition as either of the two Omani operators.
- (ii) The termination charges are not always cost based, and even if those were, the costing methodology and cost drivers of each operator would be different.
- (iii) Further, the proposed formula for asymmetry level ($A = 46 \% * (1 - N/O)$) has no built in cost element.

A = Asymmetry level

N = Nawras total customer base

O = Oman Mobile total customer base

As a result, the asymmetry will be zero when the market share of both operators becomes equal. Nevertheless, having equal market share doesn't mean that the incurred costs are equal. The following points would clarify this issue further:

- (a) It is not true that both operators will incur the same cost only when they have equal market share. That's because cost is driven by the level of coverage each operator achieves; both operators enjoy the same coverage because of national roaming.
- (b) Nawras network could be more efficient than that of Oman Mobile because of technological reasons. Thus the unit cost of Nawras could be even lower than that of Oman Mobile even with a smaller market share.
- (c) Even if the networks are identical, the size of economies of scale will tend to decrease with scale. Therefore, the level of asymmetry of cost will not be linearly related to the market share.
- (iv) Nawras submits that the current weighted wholesale rate it is charged by Omantel for termination of calls on its fixed network is not sufficiently below the costs of the termination rate it is currently charging for termination of calls on Nawras' mobile network. Nawras submits that the current ratio between the mobile and fixed termination rate (3.55:1) "does not commensurate with the international best practice and norms". Nawras refers to a study conducted by the International Telecommunications Union (ITU) in March 2001. TRA tried to search for this reference out of publicly available reports but no such study was found. It appears that Nawras is referring a presentation given by the ITU in a conference in 2001. However, this presentation shows the approximate range of mobile to fixed costs in the EU and it doesn't represent the international best practice. Again, benchmarking alone is of limited in use when determining cost-based charges. This means that the ratios presented here need not necessarily be the same as in Oman.

Decision:

10. As stated above, the Authority has taken into consideration all the arguments and submissions made by the parties and referred the relevant provisions of the Act, the licenses and also sought assistance of the consultant carrying out Study for Interconnection and Roaming charges. The Authority, therefore, decided as below:

(i) The Nawras submission for Asymmetry of Interconnection charges in favor of Nawras is not justified as:

(a) The Nawras based its justifications on the benchmarking. The arguments do not take account of the costs actually incurred either by Oman Mobile or by Nawras or by a hypothetical mobile network operator providing services in Oman. Thus the basis for the arguments is not tenable.

(b) Given the terms of Oman Mobile's and Nawras' licenses, interconnection rates must be cost oriented and should initially be set at long run incremental cost, therefore, the TRA is unable to takes on board submissions if they are not based on costs.

(c) Nawras' demand for MNP and National roaming is being met, which brings the Nawras network coverage at par with that of the Oman Mobile and help it better compete with the Oman Mobile.

(ii) Since there will be no Asymmetry, the question of retroactive application of Asymmetric rates does not arise.

(iii) The above decisions as listed in Paragraph 10(i) and 10(ii) are also applicable for SMS and MMS as the same arguments and logic applies to them.

(iv) Nawras request for review of ratio between Fixed and Mobile termination rates cannot be considered at this stage because it will be addressed after finalization of the TRA study undertaken for determination of Interconnection and national Roaming charges.

11. This determination is without prejudice to the TRA's powers under the Act, and to the outcome of any ongoing or future investigations, consultations or other regulatory process carried out pursuant to the functions and responsibilities of the Authority.

12. This determination shall be effective from the date of its issuance.

