



**TRA Public Consultation on Market
Definitions, Dominance and Related
Regulations**

Nawras' response

1. Introduction

We thank the Authority for conducting this consultation and for giving Nawras the opportunity to comment on such important issues.

We also commend that TRA for the consultation process adopted by the TRA and the opportunities given to Operators to engage in two-way dialogue with the Authority on these issues.

In Section 2 of our Response we set out a series of general comments on the competition framework. Then in section 3 we address the specific questions set out in the consultation paper, focusing on markets relevant to Nawras, whether it was identified as being jointly dominant or otherwise.

2. General Comments

2.1. It is important to highlight that the telecom landscape has experienced many changes and a number of steps taken by the Authority and the Government will impact the development of the market within the time horizon set out in the report. These changes are not reflected in the paper. These include:

- The development of a National Broadband Strategy
- Release of significant additional spectrum (2100, 1800, U900, 2300)
- Refarming of spectrum (U900)
- Creation of a Government owned infrastructure company
- Introduction of OTT applications including VOIP into the market, such applications often provided by global players increase choice and competition in the market
- MNP has been launched for Class II Operators (adding to the already implemented MNP for Class 1 Operators)
- FNP has been launched

2.2. Nawras generally supports the underlying principles set out in the Decision attached as Annexure B and also the Principles at p. 267 of the paper. We highlight the important assumptions and principles that we find imperative in defining dominance in the market:

(Article 6 (2)): *“The TRA shall not impose remedies on a licensee which it has determined to be dominant or to enjoy joint dominance if, in its opinion, the emergence of effective competition is foreseeable in the near future or if ex-post controls are likely to be sufficient to address the market failures concerned”.*

(Principle 2.1): *“Regulation should not be imposed unless the market forces, if any, at work in a market are insufficient to sustain effective competition or unless competition alone cannot deliver social and economic outcomes that have been set out as desirable in legislation.”*

(Principle 2.1): *“The TRA will refrain from intervening in a market unless there is a market failure and will only intervene, if at all, to the minimum extent necessary to address the market failure”.*

(Principle 6.1(a)): *“ The TRA will apply remedies first to dominance in wholesale markets and only then will consider whether it is necessary to also apply remedies to dominance in related*

retail markets, bearing in mind that the wholesale market remedies may preclude the need for retail market remedies”

Based on the underlying principles highlighted above, we believe that the Authority’s initial regulatory intervention should always be in the wholesale market first. However, we note that in many cases and for the same market, TRA has identified remedies to both the wholesale and retail level.

We consider it preferable for wholesale markets to be regulated and for such regulation to fail before the TRA considers applying remedies in retail markets. The report appears to focus on each market separately, determining remedies for retail, which we consider less effective, unnecessary and contrary to legislative principles.

- 2.3. Nawras has a general preference for ex-post regulation and has raised this previously with the TRA on many occasions. It is our firm belief that the Omani market is sufficiently developed, competitive and stable to support such a move. It is also our firm belief that such move would make the market more dynamic and free up Operator and TRA resources currently engaged in the burdensome price approval process, to be involved in longer-term strategic initiatives.
- 2.4. We consider that one of the reasons the TRA remains reluctant to trust ex-post regulation is that it does not have the comfort of robust and tested competition laws. If Oman was to develop and introduce more comprehensive competition laws this might assist in the inevitable move to ex-post regulation.

Similarly, we consider it would be beneficial for the TRA to develop further supporting industry self-regulation in the form of codes of practice. These have been very successful in encouraging industry self regulation and good practice in other jurisdictions.

- 2.5. Below we provide our conclusion on susceptibility analysis made by the Authority in pg. 78-79:

Market	Susceptible to ex ante regulation for dominance	Nawras View to susceptible to ex ante regulation for dominance
Market 1: Retail access to the public telephone network at a fixed location	Yes	No
Market 2: Retail local, national voice call service	Yes	No
Market 3: Retail international voice call service	Yes	No
Market 4: Retail broadband Internet access from a fixed location	Yes	Yes
Market 5: Retail dial-up Internet access from a fixed location	No	No comment
Market 6: Retail mobile services market	Yes	No
Market 7: Retail national leased line services	Yes	No comment

Market 8: Retail international leased lines	Yes	No comment
Market 9: Retail business data services	No	No comment
Market 10: Wholesale voice call origination on the public telephone network provided at a fixed location	Yes	No comment
Market 11: Wholesale voice call termination on individual public telephone networks provided at a fixed location	Yes	Yes
Market 12: Wholesale network infrastructure access at a fixed location	Yes	No comment
Market 13: Wholesale broadband access (including bit-stream and WLR)	Yes	Yes
Market 14: Wholesale terminating segments of leased lines	Yes	No comment
Market 15: Wholesale trunk segments of leased lines	Yes	No comment
Market 16: Wholesale international capacity (Bandwidth)	Yes	Yes
Market 17: Wholesale voice call termination on individual mobile networks	Yes	Yes
Market 18: Wholesale access and call origination on public mobile telephone networks	Yes	Yes
Market 19: Wholesale national roaming services	No	No comment
Market 20: Wholesale transit	Yes	No comment

2.6. In determining markets susceptible to ex-ante regulation, the Authority may need to consider amending rules and regulations applied to dominant licensees, and differentiating it to those rules and regulations applied to others. We note that table page 234 provides proposed means of implementing TRA's decision, however these regulations are applied to all licensees without differentiating between obligations of dominant and that of non-dominant, as well as differentiating between wholesale and retail remedies. As an example, for Market 2, the Telecom Act, and License obligations referred to are also set in Nawras' License. These obligations do not refer to dominance position of the licensee nor differentiate between licensees' obligations due to dominance position. As a result, we question how will these obligations enhance or impact competition in the market if:

1. They are already applicable.
2. They do not set any unique obligations on a dominate operator

In assessing the market and setting remedies the Authority need to consider what amendments necessary in the Act, Licenses and Regulations to ensure the effectiveness of the obligations.

2.7. We note that many conclusions set out in the paper lacked empirical evidence to support such conclusions. Absence of supporting evidence undermines many of the conclusions. It is our respectful opinion that such factual errors or omission should be addressed prior to any final decisions being taken

Examples of such cases are as follows:

Pg.	Subject	Issue
P.26	Fixed access and retail calls	Carrier Select not implemented. True but Nawras has been pushing for CS for a long time and believe that this will change the nature of the market. It should be in the forecast as we foresee that CS will be implemented within the coming 2 years.
P.28	Geographic scope	The government broadband infrastructure company and Haya Water project are likely to significantly impact on fibre connections and differentiate those regions that are affected.
P.28	Business v non-business	Differentiation does exist, e.g. CUG for business customers.
P.30	FNP	FNP being recently launched will change the survey results significantly and competition will be more robust in the coming 2 year horizon of the report.
P.32 & p.37	International calls part of mobile packages	There are a number of promotions currently running that include international calls on mobile services, such as: <ul style="list-style-type: none"> - VoIP 0902 - 800/800 (includes both national and international calls on mobile) - Recharge promotion - Family and Friends (Omantel)
P.38	Nawras Business Product	Nawras business services are available to both Ajel (post-paid) and Mousbak (pre-paid)
P.99	VoIP	Several VoIP applications have been opened to the market therefore a major factor that will impinge heavily on both operators does exist.
P 106	Criterion A.17	Both operators provide LRIC models to the TRA therefore they are able to assess whether pricing is excessive compared to costs
P.144	Market 13	Absence of evidence to support joint dominance in market 13 however the report then concludes that joint dominance exists in said market.

2.5 For those markets we did not comment on, i.e. markets 5, 7-10, 12, 14, 15, 19, and 20, we have no major observations except that we caution the Authority from applying ex-ante remedies in retail markets before assessing effect of remedies in wholesale markets.

3. Detailed Comments

Box 2.1								
<p>Question1: do you agree with TRA’s list of candidate markets in Figure 2.1? In particular, do you consider that any of the defined markets should not be included or should be amended? If so, please provide arguments for your view</p>	<p>Yes except for Market 1 which we recommend be amended from <u>Retail</u> access to the public telephone network at a fixed location to <u>Wholesale</u> access to the public telephone network at a fixed location. The reason being, access by itself is not a service, access is a means by which customers obtain broadband service, voice service or both. We do not foresee customers paying for access as a standalone product; it is always obtained as a mean for other services.</p> <p>We believe it is more appropriate to consider it as a wholesale market or linked to voice (Market 2) such as the case for broadband (Market 4).</p> <table border="1" data-bbox="642 740 1894 906"> <thead> <tr> <th>Market title</th> <th>Suggestion</th> <th>To</th> </tr> </thead> <tbody> <tr> <td>Market1: Retail access to the public telephone network at a fixed location</td> <td>Amend</td> <td>Market1: Wholesale access to the public telephone network at a fixed location</td> </tr> </tbody> </table>		Market title	Suggestion	To	Market1: Retail access to the public telephone network at a fixed location	Amend	Market1: Wholesale access to the public telephone network at a fixed location
Market title	Suggestion	To						
Market1: Retail access to the public telephone network at a fixed location	Amend	Market1: Wholesale access to the public telephone network at a fixed location						
<p>Question 2: Are there other telecommunications service markets that should be considered and which are not presently included in any of the candidate markets listed in figure 2.1? if so, please describe the market in terms of services, geography and customers and provide arguments for the market being considered</p>	<p>No</p>							

Market 2: Retail local and national voice call service

Box 2.3

Question 1: Do you agree with TRA's Assessment that, during the time of this review, fixed and mobile national call services should be treated as sufficiently substitutable services to be considered to be in the same market? please provide reasons and empirical evidence supporting your view

No, while we acknowledge TRA's analysis on SSNIP, we believe the two are not substitutable. We note:

- 1- The fixed location feature of fixed services such as PSTN is very important for non-residential customers such as businesses and Government organizations. This segment of the market requires fixed access for business purposes and therefore they will unlikely substitute fixed for mobile.
- 2- Penetration - due to lack of coverage in certain areas, mobile/fixed access substitutability is not possible in such locations. This is more relevant when considering TRA's definition of national as a geographic scope.

Question2: Do you have any market survey or other similar information bearing on the propensity of Omani customers to substitute fixed and mobile call services that you are able to make available to the TRA?

No.

Questions 3: Apart from the issue of whether or not to include retail mobile call services in this market, do you agree with TRA's conclusions about the relevant service, geographic and customer market definition for the local and national fixed call services market

Yes we agree.

Box 3.2

Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for retail national voice services is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence.

Criterion (a): Yes we agree.

Criterion (b): Disagree. The introduction of Nawras' fixed services in 2010 has enhanced competition for the national voice services. Although still at early stage of competition, with Omantel having a larger market share, the market is witnessing competitive rates and new offers that were not previously available.

The wireless WiMAX technology offered by Nawras enables customers to make an alternative choice for fixed access services.

Criterion (C): Disagree. With current market dynamics, competition although at early stage is present and growing in this market. Regardless of number of players in the market, we consider prices are competitive and within reasonable rates compared to that in the Region. Both operators are competing aggressively through attractive offers such as CUG in order to gain higher market share.

We would like to refer to TRA's principles:

(Principle 2.1): *"Regulation should not be imposed unless the market forces, if any, at work in a market are insufficient to sustain effective competition or unless competition alone cannot deliver social and economic outcomes that have been set out as desirable in legislation."*

(Principle 6.1(a)): *" The TRA will apply remedies first to dominance in wholesale markets and only then will consider whether it is necessary to also apply remedies to dominance in related retail markets, bearing in mind that the wholesale market remedies may preclude the need for retail market remedies"*

At this stage, due to presence of effective competition, we do not foresee risks of failure in this market. As a result, we believe it is more appropriate to examine and apply remedies for the wholesale market before considering the retail.

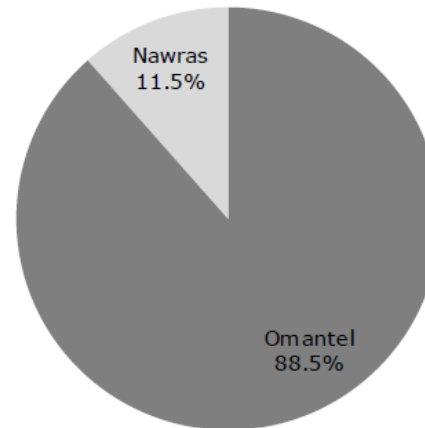
Box 4.3

Question 1: Do you agree with TRA's assessment that during the time frame of this review, Omantel is a singly dominant operator in the provision of retail fixed voice call national and local services? Please provide reasons and relevant evidence to support your views.

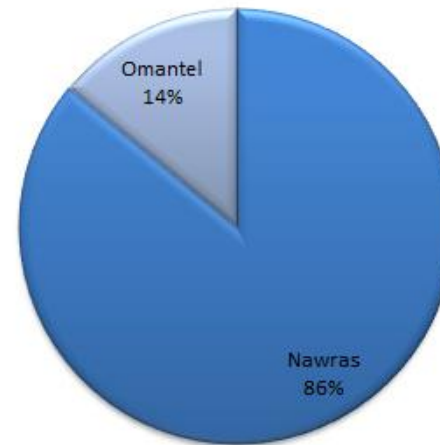
Yes. TRA's assessment even though lacking supporting evidence is in our opinion reasonable for the following reasons:

- Omantel maintains higher market and revenue shares.

**Fixed Voice Telephony Market Shares,
Q1 2012**



Source: Arab Advisor Group, July 5, 2012

Fixed Telephony Revenue Share (Mar'2012)

Source: Omantel Group Performance Report (May 2012)

- Omantel has the potential to margin squeeze
- Omantel has been reluctant to implement established regulations such as carrier select, LLU and FNP.

Question 2: Do you have specific evidence that Omantel achieves above-normal or below-normal profitability in this market? If so please provide it to the TRA.

No.

Box 5.2	
<p>Question 1: Do you agree with TRA’s assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.</p>	<p>While we agree with TRA’s assessment, we do not agree that the retail market should be regulated on ex-ante basis.</p>
<p>Question 2: Do you agree with TRA’s assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons</p>	<p>No. In regulating this market it is important to apply remedies that will enhance competition and minimize dominance position. The question the Authority needs to consider is how effective are the proposed remedies in minimizing the harm in the market.</p> <p>We view the remedies proposed as insufficient and ineffective for the following reasons:</p> <ul style="list-style-type: none"> • Remedies proposed are not new, they are applied as part of License obligations; however these remedies have not minimized the harm in the market. we note that Incumbent still maintains a dominance position • To push the market to effective competition, focus should be on wholesale ex-ante rather than retail. Ex-ante regulation should be implemented on wholesale access to ensure enough incentive for competitors to enter the market. • Absence of clear transparent cost-based wholesale regulation such as RIO, RAO, CS, and FNP
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>We suggest not regulating this market on ex-ante basis.</p>

Market 3: Retail international voice call (fixed and mobile)	
Box 2.4	
Question 1: Do you agree with TRA's conclusion that there is a material level of competition between fixed and mobile operators for international call services in Oman? Please provide reasons and empirical evidence supporting your view.	<p>Yes, we agree with TRA's conclusion on international retail market as we believe competition exists in this market. The analysis on SSNIP is acceptable and in line with current conditions in Oman. We also note that:</p> <ul style="list-style-type: none"> • On retail side, all licensees in Oman, Class I and II offer competitive international services
Question 2: Do you agree with TRA's assessment about the relevant service, geographic and customer market definition for the international call services market?	Yes we agree.
Box 3.3	
Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for retail fixed and mobile international services is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence	<p>Criterion (a): Disagree. The Authority in its assessment has not provided supporting evidence as to why it considers this market subject to high non-transitory barrier. There is no empirical evidence to show that competition is not sufficient in market 3. In accordance to TRA's licensing regime and FTA obligations, we consider this market open, supported by introducing a third international gateway licensee.</p> <p>Criterion (b): Disagree. We consider international market as one of the most competitive markets defined. While we agree there is lack of competition on the wholesale side, on the retail side, the market has experienced major changes, with VoIP applications such as Viber being unblocked in the Omani market as well as the launch of Nawras' 0902 promotion which has been running since January and is expected to be offered on a permanent basis soon.</p>

The following evidence support our argument:

Subject	Evidence
Number of players	All service providers including resellers provide <u>retail</u> international services.
Access providers	There are currently two access providers in the market (Nawras and Omantel)
Regulatory requirements	The Authority obliges Class I licensee to transfer any reduction in prices to resellers
Prices	Introduction of VOIP calls at a discount of 15%-25% of normal rates
Other non-licensed operators	With the introduction on Viber and other applications in Oman, international call services are no longer restricted to the licensed service provider. Customers now have choice to make FREE calls using OTTs

Criterion (C): Disagree. This market is not at risk of market failure, as it is competitive enough to introduce ex-post regulation. As stated in the report, ex-post controls have not been tested to determine the effectiveness of competition in the market. We believe that this is an important criterion that must be satisfied in order to determine susceptibility. It is also one of the main underlying principles in the dominance guidelines highlighted in the general section point 2.2 of our response.

We also wish to draw attention to the statement on p. 62: *"We are concerned here with ongoing competition and continuing rivalry between the gateway operators for other traffic and incoming traffic. At this stage there is no clear indication that competition will be of that kind"*.

It is Nawras position that the incoming traffic market should be excluded from current considerations as the benefits of regulation (if any) will only flow to foreign non-Omani recipients at the expense of the industry in Oman. Consequently, we consider that regulation of incoming international traffic should be avoided.

Box 4.4

Question 1: Do you agree with TRA's assessment that during the time frame of this review, Omantel and Nawras are jointly dominant in the provision of retail mobile and fixed voice call international voice call services? Please provide reasons and relevant evidence to support your views.

The Authority has defined Joint Dominance as “*Dominance attributable to two or more Service Providers operating collectively in a market which is characterized by a lack of effective competition and in which no single licensee has significant market power*”.

Based on the above definition, we strongly disagree with Authority's assessment and argue:

1. As demonstrated in Box 3.3 Question 1, retail international market is very competitive.
2. As a result of market competition including resellers, Nawras and Omantel's' economic strength is weakened. There are no single or joint players having the ability to influence the market independently. For example, both Nawras and Omantel are not able to charge a retail price that is too high relative to its wholesale price. In order to gain market share, both are competing aggressively in gaining higher market share.
3. TRA's conclusion in section (c) overlooked testing each criterion. It simply implies that any operator with international gateway and large mobile and fixed market share is considered as joint dominant.
4. The criteria set for joint dominance need to be tested and validated. For example:
 - a. B.7- The Authority did not consider Nawras' investment as new and substantial, compared to Omantel's sunk investment, which results in Omantel having competitive advantage over Nawras.
 - b. B.8- is irrelevant, Nawras outgoing capacity is smaller and therefore until such time, Nawras continues to depend on Omantel pipes to send out traffic during high periods. Market share is an extremely relevant criterion and in the case of market 3 it is only Omantel that currently holds significant market share based on the table provided in the report on p. 96. In the Vodafone/O2 case in Ireland¹ where it was found that such asymmetry in market share contributed to the successful appeal against ComReg's decision that Vodafone and O2 were jointly dominant.
 - c. B.16- is an incorrect comment. In addition to higher discounts offered for resellers increase in traffic, resellers also benefit from Nawras and Omantel's retail reductions. Considering resellers

¹ Joint dominance and tacit collusion : An analysis of the Irish Vodafone/O2 case and the implications for competition and regulatory policy, (Massey, Patrick; McDowell, Moore), 2008

	<p>low operational and capital costs, this only means higher margin and room for effective competition.</p> <p>Nawras in order to accept TRA's position requests the Authority to substantiate its conclusion with tests and concrete evidence. Nawras will not accept TRA's position based on the analysis provided in the report.</p>
Box 5.3	
<p>Question 1: Do you agree with TRA's assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.</p>	<p>Disagree. We do not consider the market being at risk of harm as a result of dominance. The market is in our opinion driven by competition sufficient to influence changes. In a regulatory environment in which certain services are market driven, regulatory intervention should not be anticipated unless there is a market failure. The basis for enforcing <i>ex ante</i> regulatory instrument is not well justified.</p>
<p>Question 2: Do you agree with TRA's assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons</p>	<p>Disagree.</p> <p>We consider that the market in Oman is sufficiently developed that ex-ante price regulation is not required.</p> <p>While we support the joint objectives of ensuring fair pricing in the market and restricting anti-competitive behaviour, it is our position that the regulation method chosen should be the minimum mechanism required to achieve the desired aims.</p> <p>In the current Oman market we consider that ex-ante retail regulation in this market is not needed as the regulation can be managed ex-post or, in the alternative, through wholesale market regulation. There is much evidence that the market in question is highly competitive and robust and not susceptible to anti-competitive behaviour.</p> <p>We address the risks highlighted in the paper:</p>

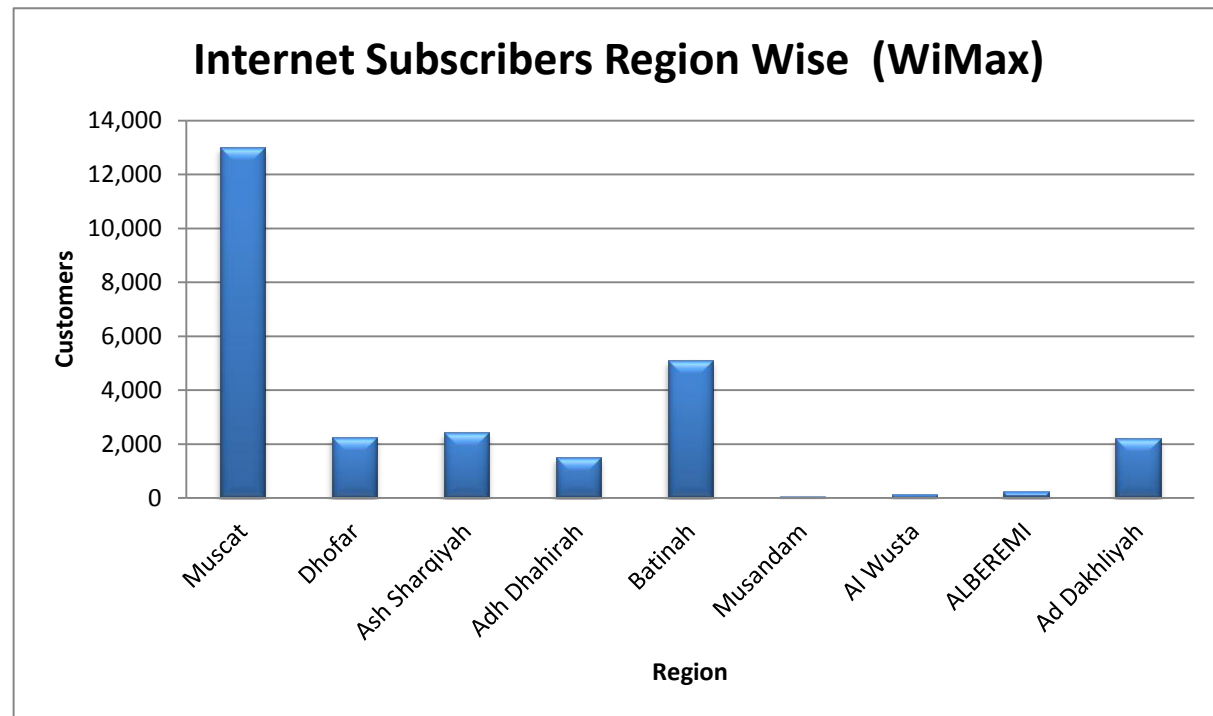
	<ul style="list-style-type: none"> • Undue discrimination in relation to terms of supply: we agree with the remedy proposed in the paper and find it to be appropriate and proportionate. • Anti-competitive price discrimination: As the paper suggested, market 3 is a competitive market whereas an SSNIP test would be negative as there is direct substitutability between international mobile and international fixed. Additionally, the VoIP applications being open in Oman, competition on international traffic has become operators' priority and this is evident in the offers currently in market such as Nawras' 0902 offer and Omantel's Family & Friends promotions. • Additionally, operators are expected/pressured by market forces to continue to reduce international pricing and this has been evident in the past couple of years and is expected to continue in the coming years. <p>Based on the above, we see no need to impose tariff notification and approval obligations as a remedy as the risk is unforeseeable. We also oppose any requirement to sell all unbundled elements as separate products as well. With telecom industry moving to convergence it is inevitable to bundle services. Cross subsidy can be monitored through accounting separation.</p>
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>For reasons mentioned in questions 2, we believe the Authority should move away from ex-ante regulation and focus on ex-post remedies for retail markets.</p>

Market 4: Retail broadband internet access from a fixed location

Box 2.5

<p>Question 1: Do you agree with TRA's assessment that during the time of this review fixed and mobile broadband services should not be treated as sufficiently substitutable services and should not be considered to be in the same market? Please provide reasons and empirical evidence supporting your view.</p>	<p>We agree with TRA's assessment. The access characteristic of the service does not allow substitutability especially when considering business and government customers.</p> <p>We would also like to make the following observations:</p> <ol style="list-style-type: none"> 1- TRA has not considered fiber optic as broadband access 2- WiMAX is unlikely to be included in the above market. As you are aware, the Authority in March 2012 granted Nawras approval for mobility option on 2.3 GHz (without voice). As a result, we do not consider WiMAX as a fixed technology. Kindly note while we have not implemented mobility feature on WiMAX broadband, the technology characteristic of the service has changed from fixed to mobile.
<p>Question 2: Do you agree with TRA's assessment about the relevant service, geographic and customer market definition for the retail fixed broadband internet access service market?</p>	<p>Nawras considers the geographical scope very critical for this market. We believe it should not be on national basis; rather it should be defined for urban and rural. The current market dynamics is different in urban area than that of rural. We consider the market to have high penetration and acceptable level of competition in urban² (if WiMAX is considered).</p>

² According to Ministry of National Economy census, urban is defined as Willayat Boushar, Muscat, Mutrah, and centers of the other Willayat, also any residential area with 2500 population having a school, electricity services, health center and telecommunications services.



Source (Nawras, Q3 2012)

We do not have Omantel's data region wise but we expect the same trend to be present.

According to above, the Authority should consider defining urban and rural as the geographic scope, and hence assess the markets in both geographies.

Box 3.4

Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for retail broadband access services from a fixed location is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence

Criterion (a): TRA's conclusion contradicts its assessment in market analysis for dominance. In criteria A.16 in Figure 4.6 the Authority in fact has determined the market to be competitive with no major barrier to entry.

Criterion (b): TRA's statement is inaccurate because:

- 1- It lacks detailed assessment as to why this market is considered uncompetitive.
- 2- It does not differentiate rural and urban geographical scope. As we explained in Question 2 Box 2.5, we believe such differentiation is important as the market dynamics are completely different in rural and urban. As a result, assessment of competition should be different.

Criterion (c): Accept TRA's conclusion only based on its definition of geographic scope. However as this market is rapidly growing, we request the Authority to conduct reviews on annual basis.

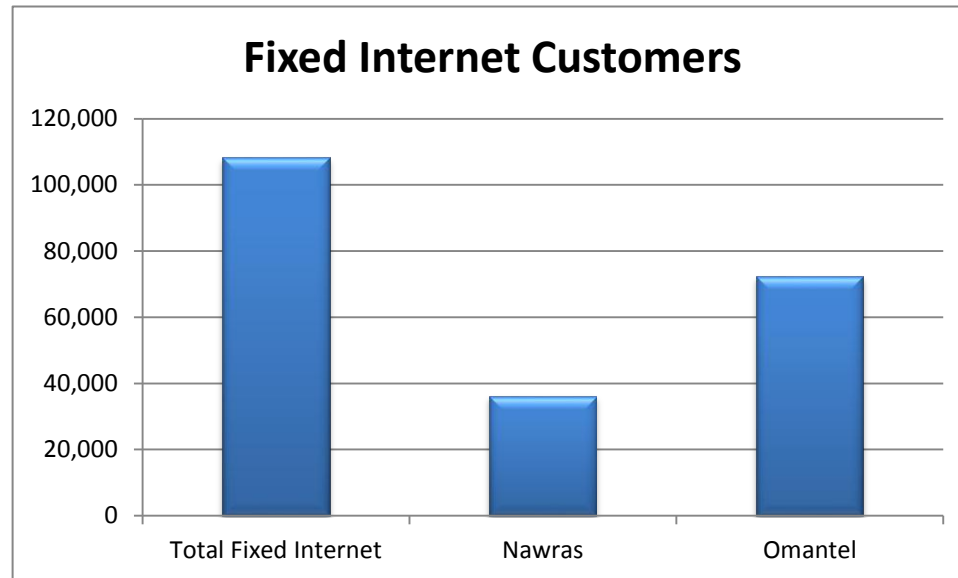
Box 4.5

Question 1: Do you agree with TRA's assessment that during the time frame of this review, neither Omantel nor Nawras is singly dominant or jointly dominant in the provision of fixed broadband internet services? Please provide reasons and relevant evidence to support your views.

TRA's conclusion is appropriate only when national is defined as the geographic scope. In Omani fixed broadband market, different characteristics exist in urban and rural areas, and therefore market performance differs.

Taking into account Authority's definition, we would like to raise the following points:

- 1- Although Nawras offers broadband internet services (WiMAX), our market share is small compared to Omantel's. Omantel on the other hand, has larger market share especially in urban area and business segment.



Source: TRA and Nawras (September 2012)

- 2- Omantel has the ability to influence the market independently due its market share and widespread coverage.
- 3- Omantel's investment is mature compared to Nawras'. TRA's assessment of equal sunk investment is incorrect.
- 4- The Authority can conduct margin squeeze tests based on the LRIC models submitted by incumbent. Nawras will be submitting its first model by November 2012.

Market 6: Retail mobile service market

Box 2.7

Question 1: Do you agree with TRA's assessment that, within the time horizon of this review, mobile broadband access is part of the broader market of retail mobile services? If not, should mobile broadband access (or mobile data) be considered as a separate market from mobile access and voice services? Please provide reasons and empirical evidence supporting your view.

Yes we agree.

Box 3.6

Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for retail mobile services is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence

Criterion (a): Tend to disagree with TRA's assessment. We recognize the regulatory and economic entry barrier for Class I however this is not the case for Class II entrants. The fact is the Authority has set minimum entry criteria for Class II requiring less stringent obligations and capital requirements.

Criterion (b): Disagree. Competition in retail mobile has been established, regardless of number of players in the market. Retail mobile is one of the most aggressive competitive markets in Omani telecom sector, with 5 service providers, 4 of which have a reasonable market share.

In fact, the Arab Advisor Group has put Oman in a very good position, ranking it as 5th with 67% score on level of competition in Oman's mobile market in June 2012³

2. Source: Competition Levels in Arab Cellular Markets Arab Advisors Group Strategic Research Service, June 2012.

Below table also shows Oman's rank in terms of mobile market:

Exhibit 1: Cellular Competition Intensity Index rankings (2011 – 2012)

Rank in June 2012	Country	Score	Rank in April 2011	Rank change	Market status by June 2012
1	Saudi Arabia	74.56%	1	↔	Competitive (four operators)
2	Jordan	70.67%	2	↔	Competitive (three operators)
3	Palestine	70.43%	3	↔	Competitive (six operators) ⁽¹⁾
4	Egypt	67.86%	5	↑	Competitive (three operators)
5	Oman	67.01%	4	↓	Competitive (two operators and six MVNOs) ⁽²⁾
6	Morocco	64.20%	6	↔	Competitive (three operators)
7	Iraq	62.45%	7	↔	Competitive (four operators) ⁽³⁾
8	Tunisia	61.13%	8	↔	Competitive (three operators)
9	Bahrain	61.01%	9	↔	Competitive (three operators)
10	Algeria	58.91%	10	↔	Competitive (three operators)
11	Sudan	56.72%	13	↑	Competitive (three operators)
12	Mauritania	55.63%	12	↔	Competitive (three operators)
13	Yemen	55.19%	11	↓	Competitive (four operators)
14	Kuwait	52.58%	14	↔	Competitive (three operators)
15	UAE	49.01%	16	↑	Duopoly
16	Qatar	47.14%	15	↓	Duopoly
17	Syria	39.75%	17	↔	Controlled duopoly
18	Lebanon	38.84%	19	↑	Government-owned Duopoly
19	Libya	32.68%	18	↓	Competitive (two operators and one MVNO) ⁽⁴⁾

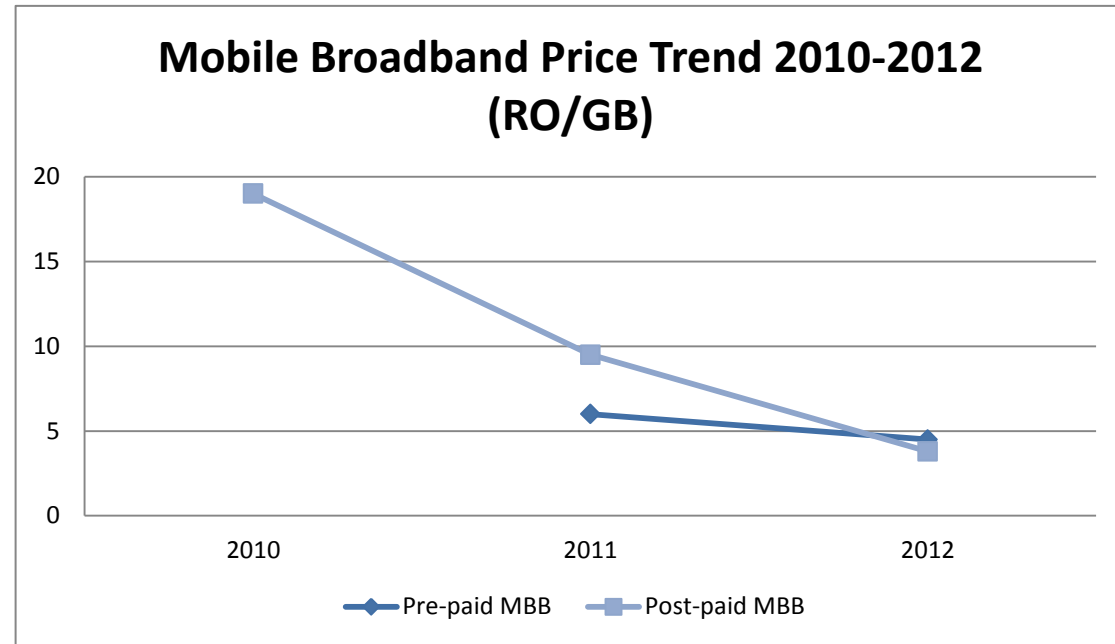
Source: Arab Advisor Group, June 2012

Price in the mobile retail market is elastic and customers are very sensitive to price changes. It is also worth noting that prices in mobile broadband and blackberry prices have significantly declined in the past 3 years

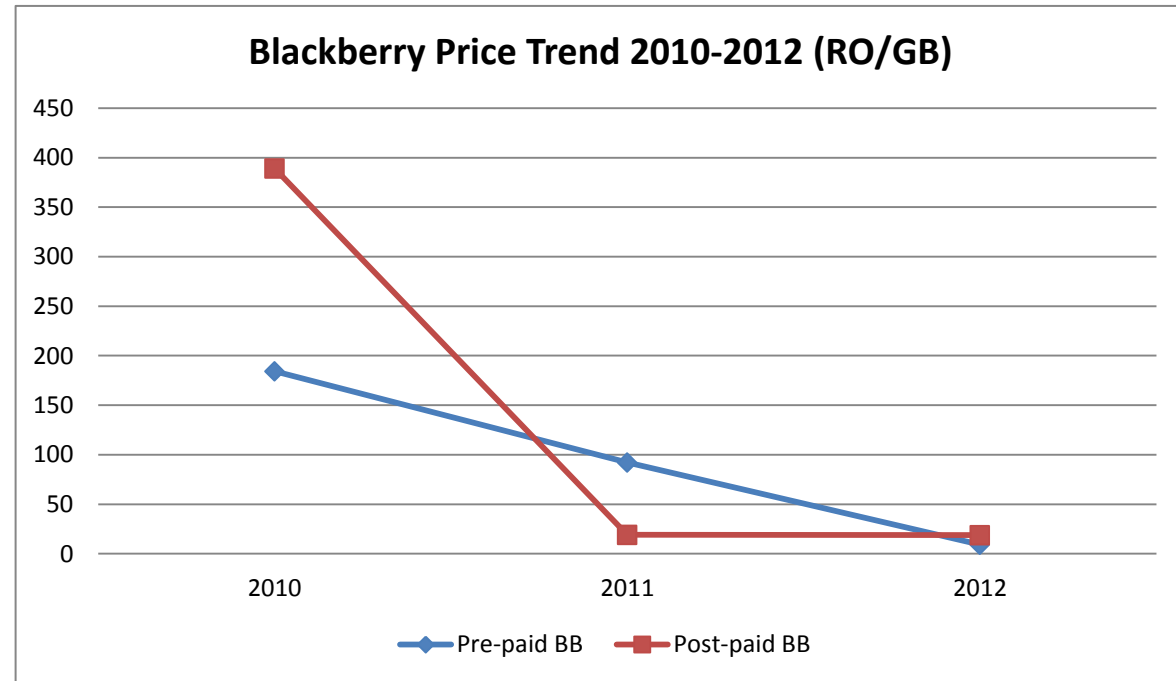
Mobile broadband and Blackberry prices have witnessed dramatic declines over the past three years. In order to draw a comparison we took a plan from each of the post-paid and pre-paid plans on offer by Nawras and unified them at an RO/GB rate.

The graphs below show the RO/GB trend from 2010 and 2012 for Nawras' mobile broadband and blackberry

products. As evident, MBB and Blackberry prices have declined up to 110% and 140% respectively in the past 3 years.



Source: Nawras



Source: Nawras

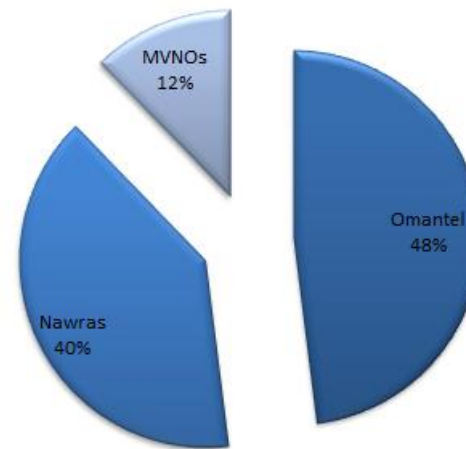
Recently in November 2012 MNP for resellers was implemented. This will enhance competition and will provide customers with greater choices to services and prices.

Criterion (C): The Authority needs to provide supporting evidence as to why it considers ex-post regulation insufficient to regulate an effective competitive market such as the retail mobile. As the paper states, the efficiency of competition has been untested and based on the current level of competition we do not foresee any chance for operators to increase prices and therefore we do not believe that this important criterion has been met. We also remind the TRA on the principle guidelines set out in Annex C of the consultation under principle 2.1.

The fact that Nawras and Omantel have similar market share none with significant market power, and prices

over the past 5 years have materially declined, is a clear indication of the effectiveness of competition.

Mobile Customer Market Share (Mar'2012)



Source: Omantel Group Performance Report (May 14, 2012)

Box 4.6

Question 1: Do you agree with TRA's assessment that during the time frame of this review, Omantel and Nawras are jointly dominant in the retail mobile services market? Please provide reasons and relevant evidence to support your views.

We consider TRA's conclusion lacks proper market assessment and empirical evidence to support it. The retail mobile market in our judgment, and based on available evidence, is effectively competitive with no dominance, single or joint in this market.

Our argument is based on the following facts:

- 1- The retail mobile market condition currently is very aggressive, with effective prices being reduced constantly (through permanent or promotional reductions). As noted earlier, Oman has been ranked as 5th in the cellular competition intensity index, with 2 facility base service providers and 4 resellers in the market. In addition, the Authority has clearly indicated based on SNIP, a 5% increase in price would lead to significant movement of customer to competition
- 2- In determining joint dominance, the Authority has not provided evidence of Nawras and Omantel operating collectively in the market. This is the main characteristic of joint dominance, which in our opinion is absent in retail mobile market. This is clearly demonstrated by the promotions offered by both operators.
- 3- TRA's lack of experience in the application of new competition regulations should not deter the TRA applying such regulations as the first line of defense. The Omani telecom market is highly untested for real competition and only when it is proven to have failed that remedies are found to counteract any anti-competitive behavior.

On the contrary, price offers in the market indicates existence of price rivalry between the two. The Authority is familiar with this tactic through it constant monitor and approval of new tariffs in the market. It is clear that competitors immediately react to any reductions or introduction of promotions by offering similar or more attractive offers. We have seen this in broadband services as well as voice.

- 4- TRA assessment on resellers' inability to compete fairly in the market as a result of joint dominance is inaccurate. The Authority in fact asserted resellers' inability to develop independent strategy thus it's unlikely to become effective competitor to Nawras and Omantel. This is a natural advantage of facility based service provider, and therefore, within the scope of each service providers the market is effectively competitive. Moreover, the regulatory requirement set by the TRA obliges Nawras and Omantel to transfer any reductions in retail tariffs to resellers. This includes promotional offers. Even though Resellers are able to gain from reductions implemented by Nawras and Omantel due to their

	<p>lower operational costs, they tend to maintain prices closer to that of Nawras and Omantel to gain higher margins.</p> <p>5- We tend to disagree with TRA’s assessment on lack of effective competition. In our opinion, the most important aspects to consider in assessing competitiveness of a market are (a) whether competition in the market results in prices declining? (b) Whether competition in the market results in improving providers’ performance? If the answer to the above is yes, then the market is effectively competitive regardless of number of competitors.</p> <p>The above assessment is lacking in the consultation document and therefore it is difficult to accept TRA’s conclusion of effectiveness of competition.</p> <p>In conclusion, we believe assessment of this particular market requires further analysis supported by empirical evidence. Nawras appreciate if the Authority would provide further assessment on this important market</p>
<p>Question 2: Do you have any information on the level of spare capacity that the Class I service providers have in relation to this market? Could you please provide it to the TRA?</p>	<p>No.</p>
<p>Question 3: Do you have any views and relevant information on whether the Mobile Number Portability arrangements introduced in August 2006 are effective or not, and whether or not they are contributing to competition in the market?</p>	<p>Number portability is indeed an effective tool/product in promoting competition as demonstrated by number of ports. The porting process is at times complex, tedious to customers and not in-line with best practices. The Authority may consider introducing a third party to robustly manage porting activities.</p>

<p>Question 4: Do you have any information on whether national mobile call prices have decreased over the past 3 years? Could you please provide your views and supporting information to the TRA?</p>	<p>Although the national mobile tariffs that apply in situations where customers are not receiving a specific service offering or benefiting from a promotional rate, have not decreased as such, the reality is that those rates are not reflective of actual rates with most customers enjoying far better rates that have constantly improved over time.</p>
<p>Box 5.4</p>	
<p>Question 1: Do you agree with TRA’s assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.</p>	<p>Disagree. We do not consider the market being at risk of harm. For the reasons mentioned in Question 1, Box 3.6 we consider the market to be competitive. Ex-ante regulation is therefore not required.</p> <p>The harms of undue discrimination, excessive pricing can be regulated through more effective means such as ex-post regulation. We note that ex-post regulation can adapt the principles of non-discrimination and reasonable pricing mandated in the Licenses</p>
<p>Question 2: Do you agree with TRA’s assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reason</p>	<p>No. In a market that is characterized as competitive, we require the Authority to consider more effective measures in safeguarding competition. We believe the remedies suggested can be set as guideline for operators to follow in applying tariffs.</p> <p>In applying suggested regulation we foresee the following challenges:</p> <ol style="list-style-type: none"> 1. Lack of flexibility to meet changes in the existing competitive environment. The current arrangement does not allow Nawras to fully engage in competition, the fact that we must present every price variation, discount and service bundle to TRA as a tariff application makes it increasingly difficult to meet the particular needs of Oman’s consumers in a pro-competitive and meaningful manner. 2. Regulating tariffs on <i>ex ante</i> basis is burdensome, impedes competition and is no longer effective. The regulatory tool should be effective and at a minimum and should support the market and market dynamics. <p>To monitor anti-competitive behavior, approving tariffs under <i>ex ante</i> mechanism does not mean that there will be no regulatory remedy if it was subsequently confirmed after more thorough investigation to be anti-competitive. On this basis, it would be more efficient to simply rely on the competition provisions of the Act and</p>

	License on an ex-post basis.
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>We would suggest the Authority to implement lighter regulation in a form of ex-post regulations. The Authority should implement standard principles provisioned in the ACT, License and relevant Regulations on ex-post basis. The TRA should permit Nawras to launch services without prior approval of the Authority. This would include the following:</p> <ol style="list-style-type: none"> 1. Compliance to applicable policies and regulations 2. Compliance to principles governing third party agreements 3. Principles governing tariff transparency 4. Provide notification to the Authority in a form of a descriptive report.

Market 11: Wholesale voice call termination on fixed networks	
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Box 2.12	
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<p>Question 1: Do you agree with TRA's assessment about the relevant service, geographic and customer market definition for the wholesale fixed voice call termination market?</p>	<p>We agree with TRA's definition.</p>
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Box 3.11	
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<p>Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for wholesale fixed voice call termination is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence</p>	<p>We agree with TRA's assessment.</p>
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Box 4.10	
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<p>Question 1: Do you agree with TRA's assessment that during the time frame of this review, Omantel and Nawras are each singly dominant operator in the market for wholesale fixed voice call termination services on their own networks? Please provide reasons and relevant evidence to support your view.</p>	<p>We agree with TRA's assessment.</p>
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Box 5.8	
Question 1: Do you agree with TRA's assessment of the risks of harm that might result from dominance in this market in the absence of <i>ex ante</i> regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.	Yes we agree.
Question 2: Do you agree with TRA's assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons	Yes we agree.
Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.	We agree to TRA's conclusion.

Market 13: Wholesale broadband access	
Box 2.14	
Question 1: Do you consider that bit stream access and ULL should be included in the same wholesale market? Please provide your reasons and relevant evidence.	<p>No. In our opinion ULL is a full pipe on which services can be added to (voice, data etc.), while Bit stream only relates to the broadband service.</p> <p>On a general note, clear definition of Wholesale Broadband Access is not clear in the report. For example figure 2.1 page 25, the Authority defines wholesale broadband as Bit stream, and DSL end to end resale service. Later on page 70 defines the services to include X DSL, and wireless based services. While we agree to include wireless based technologies, we would appreciate consistent definition to be provided.</p>
Question 2: Leaving aside the specific issue raised in the previous question, do you agree with TRA's assessment about the relevant service, geographic and customer market definition for the wholesale broadband access market?	Yes we do.
Box 3.13	
Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for wholesale broadband access services is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence.	<p>Criterion (a): Overall, there is regulatory barrier in this market.</p> <p>Criterion (b): Yes, we agree. Competition to a certain degree is ineffective in this market.</p> <p>Criterion (C): We accept TRA's conclusion.</p>

Box 4.12	
Question 1: Do you agree with TRA's assessment that during the time frame of this review, neither Omantel nor Nawras is singly dominant operator in the market for wholesale broadband access services?	Yes we agree.
Question 2: Do you agree that Omantel and Nawras are jointly dominant in the market for wholesale broadband access services??Please provide reasons and relevant evidence to support your view.	Yes we agree.
Box 5.10	
Question 1: Do you agree with TRA's assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.	Yes we do. This market need to be regulated to ensure access prices offered is cost-based.

<p>Question 2: Do you agree with TRA's assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons</p>	<p>Yes. These remedies will incentivize investors to enter the market and will ensure fair competition. The remedies are in line with best practice and regulations applied internationally.</p>
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>No.</p>

Market 16: Wholesale international capacity (bandwidth)	
Box 2.16	
Question 1: Should wholesale leased line trunk and terminating segments be considered to be in the same market? Please provide your reasons and relevant evidence.	Yes.
Question 2: Apart from the issue raised in the previous question, do you agree with TRA's conclusions about the relevant service, geographic and customer market definition for the wholesale leased line trunk segments market?	Yes we do.
Box 3.16	
Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for wholesale international capacity services is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence	<p>Criterion (a): we believe there are no more barriers to entry in this market. In addition to the flexible criteria set by the Authority in granting a license, Oman signing the FTA has determined an open entry policy.</p> <p>Criterion (b): Authority's assessment on competition has focused on the retail side of the business. When it comes to International wholesale market, we consider the market uncompetitive, Omantel being the incumbent having an infrastructure advantage, currently owning several international cables compared to 1 cable owned by Nawras.</p> <p>Criterion (C): We accept TRA's conclusion to impose ex-ante regulation for dominance.</p>

Box 4.15

Question 1: Do you agree with TRA's assessment that during the time frame of this review, Omantel and Nawras are jointly dominant in the wholesale international capacity services market? Please provide reasons and relevant evidence to support your view.

The market in our opinion lacks competition. However we consider Omantel is singly dominant in this market for the following reasons:

- 1- TRA's conclusion does not meet the criteria in A 4(1) of the Decision
- 2- We specifically address Article 4(1) of the Decision which states key determinants are:
 - Low elasticity of demand
 - Similar Market Shares High barriers to entry
 - Vertical Integration
 - Countervailing buyer power
 - Lack of potential competition

Of the main 6 only 1 suggests (Vertical Integration) joint dominance should be applicable.

- 1- Nawras market share is smaller compared to Omantel's
- 2- Omantel's international network is larger than Nawras. As noted above, Nawras currently owns 1 submarine cable compared to 6 owned by Omantel. Nawras capacity is insufficient to cater for larger traffic and therefore occasionally requires access from Omantel during peak periods.
- 3- Nawras and Omantel do not collectively operate in this market.

TRA's assessment of this market lacks empirical evidence and requires further analysis.

Box 5.12	
<p>Question 1: Do you agree with TRA's assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.</p>	<p>Yes, due to ineffective competition in this market, dominated by Omantel, if the market is not regulated there is harm of excessive access prices and therefore barrier to entry.</p>
<p>Question 2: Do you agree with TRA's assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons</p>	<p>Yes. The remedies are acceptable to push the market to competition at wholesale level.</p>
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>No.</p>

Market 17: Wholesale voice call termination on individual mobile network

Box 2.18

Question 1: Do you agree with TRA's assessment about the relevant service, geographic and customer market definition for wholesale mobile termination services?

We agree with the definition provided by the Authority.

Box 3.17

Question 1: do you agree with TRA's assessment set out above that in this market the three criteria are cumulatively satisfied and the market for wholesale mobile termination services is susceptible to ex-ante regulation? Please state your reasons and provide relevant supporting evidence

Overall, we agree with TRA's assessment.

Box 4.16

Question 1: Do you agree with TRA's assessment that during the time frame of this review, both Omantel and Nawras are singly dominant in the markets for wholesale mobile termination services on their own respective networks? Please provide reasons and relevant evidence to support your view.

We agree with TRA's assessment.

Box 5.13	
<p>Question 1: Do you agree with TRA's assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.</p>	<p>Agree.</p>
<p>Question 2: Do you agree with TRA's assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons</p>	<p>Yes we agree.</p>
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>Yes we agree.</p>

Market 18: Wholesale access and call origination on public mobile telephone networks	
Box 2.19	
Question 1: Do you agree with TRA's assessment about the relevant service, geographic and customer market definition for wholesale mobile access and call origination services?	Acceptable.
Box 4.17	
Question 1: Do you agree with TRA's assessment that during the time frame of this review, Omantel and Nawras are jointly dominant in the market for wholesale mobile access and call origination services? Please provide reasons and relevant evidence to support your view.	In principle we agree to TRA's conclusion.
Box 5.14	
Question 1: Do you agree with TRA's assessment of the risks of harm that might result from dominance in this market in the absence of ex ante regulation? Have any types of harm that might result from dominance been overlooked? Please give reasons.	<p>We agree to TRA's conclusion for this market, save that any movement away from Retail Minus approach needs to be separately analyzed and understood.</p> <p>We note the following:</p> <ol style="list-style-type: none"> 1. Mobile resellers are not locked into their provider. The Agreements have been approved by TRA and there is no exclusivity or unjustified commitment periods.

	<p>2. Need to consider the importance of other regulatory tools on this market. E.g. CS. Is currently regulated but not enforced. If it was enforced, it has the potential to significantly increase countervailing purchasing power.</p> <p>3. Moreover, we request the Authority to explain why it intends to regulate both this and Market 6 -Retail Mobile Services. Contrary to “ <i>The TRA will apply remedies first to dominance in wholesale markets and only then will consider whether it is necessary to also apply remedies to dominance in related retail markets, bearing in mind that the wholesale market remedies may preclude the need for retail market remedies</i>” (Principle 6.1(a)). We request that if the TRA determines that it needs to regulate both wholesale and retail markets that the TRA focus on wholesale regulation initially and determine whether this is sufficient, before turning to any retail regulation.</p>
<p>Question 2: Do you agree with TRA’s assessment of the options for <i>ex-ante</i> remedies for dominance in this market and the remedies that TRA concluded were appropriate and should be applied? Please give reasons</p>	<p>Yes we agree.</p>
<p>Question 3: Do you consider that some of the <i>ex-ante</i> remedies proposed might be duplicative and should be either held in abeyance or applied more lightly than suggested in the discussion of the market? If so, please identify the remedies, give reasons and suggest, if applicable, how a lighter administration might be achieved.</p>	<p>Yes we agree.</p>

Question 4: Do you favor a transition to an arms-length cost based arrangement between Class I mobile operators and MVNO / mobile resellers? If so, please indicate the process and the end-agreement that you prefer together with arguments in favor of your view.

No. Any movement away from Retail Minus approach needs to be separately analyzed and understood.

4. Conclusion

We again thank the TRA for the opportunity to participate in this important consultation. Nawras is supportive of the TRA's objective to appropriately identify markets for dominance analysis and the consequent regulatory strategy.

Our position as presented in this response is that while we are supportive of the approach being adopted we consider:

- Recent important developments need to be taken into consideration
- The underlying principles articulated in the Act need to be followed and in particular regulation of both retail and wholesale markets should be avoided wherever possible
- Where regulation is required, wholesale markets should be tackled first and only where such regulation fails to achieve desired aims should retail regulation be considered
- A transition to ex-post regulation should be facilitated as soon as possible as the market is sufficiently competitive and robust and such a move will result in greater price competition and a more dynamic, self-regulating industry
- Any discussion of regulation in this area should be supported by a comprehensive competition law regime and the TRA should push for this to be developed in parallel with the initiatives set out in the consultation paper
- It is important that the TRA ensure that factual discrepancies in the consultation paper are rectified before it makes any final conclusions

We trust the TRA finds our comments useful and we would welcome the opportunity of discussing our submission further with you.