



**Telecommunications Regulatory Authority**  
**Decision No. [ ]/2011 on Rules Governing**  
***ex post* Anti-competitive Behaviour**

Pursuant to:

The Telecommunications Regulatory Act issued by the Royal Decree No. 30/2002; and

The Executive Regulation of the Telecommunications Regulatory Act issued by the Ministerial Decision No. 10/2007; and

The approval of the Minister of [ ] dated [ ]; and

Based on the exigencies of the public interest

**Article 1: Introduction**

- (1) Article (40) of the Law prohibits conduct that could prevent or restrict competition in relation to any commercial activity connected to telecommunications, including abuse of a dominant position, entering into anti-competitive agreements, supplying facilities that enable anti-competitive behaviour or changing market structures, for example through a merger, in a way that reduces competition.
- (2) Article 40 (2) of the Law provides for the Authority to specify types of anti-competitive agreements in the Executive Regulations.
- (3) Article (41) of the Law provides the Authority with the function of deciding whether any conduct, action or omission prevents or restricts competition under Article 40 of the Law, “*subject to the provisions of Regulations and Decisions issued for the purpose of introducing competition in the telecommunications sector*”.
- (4) Article 79 of the Executive Regulations provides that;  
“*Concerted conduct between two or more licensees in a direct or indirect manner, with the object of preventing or restricting competition in the market, shall be*

*deemed an agreement with others to bring about any of the following matters in the telecommunications market:*

- a) the fixing of tariffs or other conditions of service;*
- b) the pre-selection of the successful party for a contract or a work opportunity;*
- c) the dividing-up of shares as between licensees; and*
- d) any other agreement which the Authority considers such as to prevent or restrict competition.”*

## **Article 2: Scope of Decision**

(1) This Decision of the Authority:

- a) supplements Article 79 (4) of the Executive Regulations by listing other types of agreement which the Authority considers such as to prevent or restrict competition
- b) provides for the powers and procedures of the Authority in exercising its functions under Articles (40) and (41) of the Law.

(2) This Decision does not address mergers under Article 40 (4) of the Law.

## **Article 3: Definitions**

The terms defined in the Law shall have the same meaning when used in this Regulation and the words and expressions listed below shall have the meanings set out against them below:

- a) Dominance means that a Service Provider, either individually or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and customers in a Relevant Market, and Dominant has a corresponding meaning;
- b) Executive Regulations means the Executive Regulations of the Telecommunications Regulatory Act issued by the Ministerial Decision No. 10/2007
- c) Law means The Telecommunications Regulatory Act issued by the Royal Decree No. 30/2002, as amended;
- d) Relevant Market means a market defined in customer and geographic terms comprising products or services that are regarded as interchangeable or substitutable due to their characteristics, prices and intended uses and which is determined as such by the Authority under this Regulation;
- e) Remedy means a remedy or obligation imposed on a Service Provider under the Market Definition and Dominance Regulations [cite reference];
- f) Service Provider means an operator of a telecommunications network or a provider of telecommunications services.

#### **Article 4: Anti-competitive Agreements**

In addition to the types of Agreement specifically referred to in Article 79 (1) to (3) of the Executive Regulations, the Authority has decided under Article 79 (4) of the Executive Regulations that the types of Agreement listed below are also anti-competitive:

- a) agreements which directly or indirectly fix purchase or selling prices or any other trading conditions (otherwise known as 'price fixing', and includes the practice known as 'resale price maintenance');
- b) agreements which limit or control markets, technical development or investment (otherwise known as collusion or collusive agreements);
- c) agreements which divide or allocate markets or sources of supply (otherwise known as 'market fixing' or 'orderly marketing');
- d) agreements which require a customer to accept more services than it wishes to take (otherwise known as full-line forcing agreements) including agreements that run for unduly long periods;
- e) agreements which apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing one or more of them at a competitive disadvantage (otherwise known as discriminatory practices'); and
- f) agreements which make the conclusion of contracts subject to acceptance by any other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts (otherwise known as 'second line forcing' and/or 'third line forcing').

#### **Article 5: Monitoring the Marketplace**

- (1) The Authority may monitor conduct that could prevent or restrict competition in relation to any commercial activity connected to telecommunications, including abuse of a dominant position, entering into anti-competitive agreements, supplying facilities that enable anti-competitive behaviour.
- (2) Following an application made by a party to an Agreement made at any time before it comes into effect, the Authority may exempt an Agreement from the provisions of Article 4 of this Decision or Article 79 (4) of the Executive Regulations if the Authority considers that it will make a positive contribution to markets and the position of consumers which will outweigh its anti-competitive effects.
- (3) The Authority may also, at any time, exempt an Agreement on the grounds that it is of minor importance.
- (4) The Authority will take all other lawful measure, whether preventive or remedial, necessary to protect competition and ensure a sustainable competitive market.
- (5) The Authority will publish, and from time to time update, Guidelines setting out the principles it will adopt when considering what constitutes conduct that could prevent or restrict competition.

#### **Article 6: Investigations**

- (1) The Authority may, on application by any person, or on receipt of information or on its own initiative, initiate an investigation as to whether, in any case, any actions or

activities of a Service Provider could prevent or restrict competition in relation to any commercial activity connected to telecommunications, including abuse of a Dominant position, entering into an anti-competitive agreement or supplying facilities.

- (2) Before requesting the Authority to intervene to resolve a dispute regarding alleged abuse of a Dominant position, the Authority may satisfy itself that a complainant has made an effort to resolve the dispute in good faith.
- (3) Complaints can be submitted to Authority electronically, by post, by hand or by fax. If the Authority receives a complaint it will acknowledge the complaint and then form an initial view on the merits of the complaint.
- (4) If the Authority instigates a complaint or accepts a complaint from an applicant, the investigation shall be conducted in accordance with any rules laid down by the Authority concerning investigations and enforcement.

#### **Article 7: Determinations**

- (1) If the Authority determines that a Service Provider is in breach of Articles (40) or (41) of the Law, the Authority may, by way of a Decision:
  - a) impose a penalty for violation of the Law pursuant to Article 51 *bis* of the Law;
  - b) request that the Service Provider which is in breach and the persons affected by such actions or activities meet to attempt to determine remedies to prevent or eliminate continuation of the same;
  - c) require the Service Provider which is in breach to publish an acknowledgement and apology for such actions, activities or practices in one or more newspapers of wide circulation, in such a form and at such times as the Authority specifies in the decision; and/or
  - d) require the Service Provider which is in breach to provide periodic reports to the Authority to assist in determining whether the actions or activities are continuing and to determine their impact on telecommunications markets, competitors and users
- (2) Without prejudice to Article 51 bis (1) of the Law, a determination by the Authority under this Article shall be final and binding on the Service Provider concerned, provided it received advance notice that such a decision was being considered, and had an opportunity to comment on the relevant issues before the decision was made.
- (3) A decision made under this Article shall specify the reasons for the decision, which shall be consistent with the evolution of a competitive market-based telecommunications sector in the Sultanate of Oman.

#### **Article 8: *Ex ante* and other Regulations**

This Decision is in addition and without prejudice to the Decision on *ex ante* Rules Governing Market Definition and the Regulation of Dominance, the Executive Regulations or any other Regulations issued by the Authority in respect of interconnection, access or otherwise.