



A Consultation Document on

Proposals for a New Licensing Framework for Telecommunications in Oman

Issued by the Telecommunications Regulatory Authority, Sultanate of
Oman, on

24 December 2012

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1 Introduction

Pursuant to article (5) Repeated of the Telecommunications Regulatory Act issued by the Royal Decree No. 30/2002 and its amendments thereto, TRA is seeking the public opinion through this consultation paper on the draft **Licensing Framework** in the Sultanate of Oman.

Article 3 of the Telecommunications Regulatory Act requires the responsible Minister to set the general policy for the telecommunications sector. The General Policy Framework 2012, recently approved by the Council of Ministers, sets out four broad requirements:

- To increase Internet penetration whilst focussing on high speed broadband access;
- To prepare suitable conditions for effective competition in the provision of infrastructure and telecom services, and promote competition in the provision of these services;
- To expand the provision of full range of telecoms services to the unserved willayats;
- Supported by the creation of supportive Legal and regulatory environment.

The TRA has embarked on an initiative to review the current licensing framework in line with the directives of the Council of Ministers that aim to identify and remove barriers of entry and enhance the level of competition in the telecommunications sector. The overall objective of the new Licensing Framework is to facilitate the realization of the General Policy Framework.

In connection with the four broad requirements above, policy specifically requires the Authority to:

- Review the Regulatory Framework and associated measures; and
- To modify the current Licensing Framework to simplify entry procedures and license awards.

This document briefly outlines the findings of a study related to the historic and present context of the present licensing framework, together with certain proposals for change.

The Authority is seeking the comments of interested parties, stakeholders on the proposals put forward for comment at the present stage of their development. Subsequent to the receipt of comments a substantive Licensing Framework will be set out, in full detail.

1.1 Overview of the matters for consultation

This consultation document is concerned with:

(a) The development of a framework of licensing and primary and secondary legislation to meet changing circumstances in telecommunications markets, and the emergence of markets for the Supply of Content by means of electronic networks.

(b) Proposals are offered for consultation, at their present stage of development, and relate to a liberalized Licensing Framework through the introduction of Unified licensing of

telecommunications related activities and the streamlining of license application processes. The proposals give rise to a need to consider the revision of primary legislation, and adjustments to the emphases of regulation.

(c) Proposals are also put forward, subject to achieving necessary changes to legislation, which would bring some Supply of Content by means of electronic networks, into a licensing regime that would reinforce, but not override, the existing approvals processes, operated by other agencies. In common with existing approvals processes operated by other agencies, the aim of licensing would be to seek to protect society from illegality and the effects of harmful material conveyed by networks.

This Consultation Document is structured around these matters.

1.2 Status of the Consultation Document

The Consultation Document is a draft and includes consideration of the materials and information available to the Authority at the time of writing. The Consultation Document does not necessarily represent the final view of the Authority on any of the matters consulted upon therein. The Authority is open to receive and consider the reasoned views and documented comments on all of these matters by respondents to this consultation. As a result of this consultation process, the Authority's views contained may or may not vary in relation to some or any matters covered in the Consultation Document. Nevertheless, the respondents are advised that the assumption they should entertain for practical purposes is that, absent any further comment, the Authority is likely to confirm the preliminary view expressed in the Consultation Document. If respondents have a different view of the matter then they should consider submitting that view together with reasons and, if relevant, evidence in support.

1.3 The consultation process

This consultation process is comprised of two phases:

Phase 1 - on Wednesday 5th December 2012, the Authority invited licensees and other interested stakeholders to attend a Presentation of the Consultation Document.

Phase 2, in which licensees and other stakeholders and members of the public may make submissions in writing in relation to the Consultation Document. These should reach the Authority no later than the 3.00 PM on Monday, 21 January 2013.

The Authority is strongly minded to maintain the date for submissions to the Consultation Document, and therefore does not encourage any requests for extensions beyond the submission date of Monday 21 January 2013. However, it is recognized that exceptional circumstances may arise and therefore respondents may submit a formal written request for an extension, but should not assume that this request would be granted by the Authority.

1.4 Comment on the Consultation Document

This Consultation Document will be available on the Authority's website at <http://www.tra.gov.om> Respondents who wish to express opinions on this Consultation Document are invited to submit their comments in writing to the Authority. All comments must

be received by the Authority no later than 3.00 PM on Monday, 21 January 2013. Comments filed in relation to this Consultation Document may be submitted to one or more of the following addresses:

- a) E-mail to: AlHadabi@tra.gov.om
- b) Delivery (hard and soft copy) by hand or by courier to:
Telecommunications Regulatory Authority
Licensing Department
Oman Oil Building – 2nd Floor
Qurum – Muscat – Sultanate of Oman,
P.O Box 579, PC 112, Ruwi.

The Authority welcomes all comments on the Consultation Document. All respondents are encouraged to support all comments with relevant argument and if applicable, data, analysis, benchmarking studies and information based on the national situation or on the experience of other countries to support their comments. In providing comments, respondents are requested to indicate the question number, paragraph or clause to which their comments relate. The Authority has prepared specific questions for intending respondents to address if they wish. It would be helpful to the Authority if respondents answered those specific questions of interest to them, but submissions may take any form that the respondent chooses. The Authority may give greater weight to comments supported by appropriate argument and, if relevant, evidence. The Authority is under no obligation to adopt the comments of any respondent.

2 Background – The Historic and Present Context

The General Policy for liberalization of the telecommunications sector was approved by the Council of Ministers in 2003, and the updated General Policy Framework was announced in 2012. The sector now has established and successful fixed and mobile operators. However, most markets are not yet fully competitive.

2.1 Historic context

Oman entered on a course of market liberalisation and partial privatization in 2003, under the terms of the Telecommunications Regulatory Act, which established, and still governs, the Authority. The Act has subsequently been amended in certain respects.

The Act remains prescriptive in relation to the form of licensing that may be applied, particularly Article 21 which specifies three classes of licenses. In summary, the three classes of licenses and their associated scopes of service provision are as follows:

Class 1

- Establishment or operation of public telecommunications network; or
- International telecommunications infrastructure; or
- Offering public telecommunications services; or
- International access services;
- Issued by a Royal Decree based on a proposal by the Minister after the approval of the Authority.

Class 2

- Provision of public telecommunication services that depends on using the capacity of telecommunication network of Class 1 license;
- And the provision of additional public telecommunication services which require exploiting the national resources (numbering), without exploiting any natural resource of the Sultanate.

Class 3

- Establishment or operation private telecommunication services or offering these services by establishing or operating an infrastructure of a private telecommunications network not connected to the public network or by exploiting the capacity of public telecommunication network.

2.2 Present context

The approach taken toward the assessment of applications for and the grant of licenses has been conservative.

In the early stages of liberalization, particularly in countries with small populations such as Oman, conservatism in licensing decisions has been typical. At the time, there was an understandable concern and a wish to mitigate the consequences of potential failure (financial or otherwise) when only a few number of licensees operated in the market. Under these market conditions, failures were assessed to having deleterious effects for national economies and for users of services, and therefore such risks were avoided.

Oman has progressed to a position where there are now two well-resourced companies holding vertically integrated fixed and mobile licenses. Outside of these principal markets there are nine other licenses, but otherwise the take-up of licenses has been very limited.

Comments received from Stakeholders consulted during the course of this study, and the Authority's own analyses, suggest that the present licensing framework may be perceived as a barrier to entry to Omani telecommunications markets. Views have been expressed to the effect that:

- The processes associated with license applications and approvals, take too long, are too expensive and require too many layers of approval;
- Obligations associated with certain licenses may be considered onerous, by prospective market entrants, relative to the benefits that can be derived under the licenses.

Overall, the present licensing framework's rules and approval processes have been identified to be disincentives to market entry.

The prescriptive terms of the Telecommunications Regulatory Act, related to licensing, may be considered to be reflective of market circumstances that in many respects have been superseded by the implications of advances in technology, demand for Content, and the greater globalisation of communications.

In recognition of the factors described in this section of the document, and in further recognition of fundamental trends for change that are explored subsequently, the Authority considers that it must seek to modernize the entire Licensing Framework surrounding market entry, and the governance of markets.

The term Framework, in this context, encompasses licenses and their associated terms, the processes of application for licenses, and primary and secondary legislation.

3 Fundamental Trends – Opportunities and Challenges

Section 2 has set out a case for change within the historic and present context of markets and suppliers. The Authority suggests that the form and nature of change should be more influenced by the needs of the future than by any perceived shortcomings of the past.

It is certain that the factors described below will have fundamental impacts upon markets:

- A National Broadband Strategy (NBS) is under consideration, which, when implemented, will make high-speed fixed access to the Internet widely available in Oman. Within the NBS, or in parallel with it, fourth generation mobile technologies are to be deployed. Use of fibre assets owned by Government and others, is to be made available to facilitate high-speed access, in some geographic areas.
- Associated developments include the evidenced growth of convergence within service offerings, between elements drawn from previously separate sectors. Those developments include the supply of ‘over the top’ Content and service elements, made possible by the use of IP within communication networks.
- Consequential developments can be expected to include exponential growth in data traffic flows, resulting in the enhanced need for communications capacity, including major requirements for international capacity. The very nature and definition of markets will change, in which complex and often transitory relationships between users, suppliers of communication services and suppliers of Content will arise.

The Authority recognises that the foreseeable trends that have been described must be accommodated within any revised Licensing Framework. However, it further recognises that the future can never be foreseen with perfect clarity and thus:

- The Licensing Framework must provide a flexibility of structure that will permit its legal core to have the longevity that provides necessary certainty and protection for all stakeholders, whilst allowing the detailed elements, beyond the legal core, to change to meet developing circumstances.

The Authority also recognises that the trends that can be foreseen present certain challenges that must be met. The challenges include:

- Maximising advantage to Oman and its consumers.
 - In this area, opportunities exist for GDP growth, driven by new areas of domestic and international demand, the formation of new markets and the encouragement of existing and prospective suppliers to grasp the opportunities presented.
- Ensuring that benefits are widely diffused.
 - In the emerging environment that has been described, certain sections of society may be severely hampered in their development if deprived of access to services because of their geographic location, or otherwise. Further, unless access is made

largely ubiquitous, the scale necessary to maximise advantage to Oman will not be achieved.

- Ensuring appropriately balanced governance.
 - Conflicts and challenges can arise in several areas, but particularly in the supply of what is collectively described as 'Content', which term defies absolute and permanent description, but can encompass a spectrum of services from government sponsored material, through a multiplicity of entertainment, to applications such as cloud computing.
 - The conflicts require application of the correct regulatory balance between protection of consumers; meeting national security needs and similar imperatives; and the free development of markets and supply.
 - The challenges lie in recognising and understanding the developments, that may be technology or demand driven, and/or global in their source, and providing the correct governance context to meet national needs.

4 The scope of activities to be addressed by the Licensing Framework

The Licensing Framework has previously been described as encompassing licenses and their associated terms, the processes of application for licenses, and primary and secondary legislation. The analyses within section 3 would indicate that the scope of activities that the Licensing Framework must address should be widely and flexibly defined. The following definition, of the scope of activities to be addressed by the Licensing Framework, is proposed:

- The establishment, maintenance and operation of Electronic Communications Networks, being transmission systems for the conveyance, by the use of electrical, magnetic, or, electro-magnetic energy of signals of any description, together with associated facilities that make the provision of networks or services provided by means of networks possible, and/or, make possible the provision of other services provided by means of those networks or services, and/or, support the provision of those other services, and/or,
- The supply of national and/or international services, products or facilities, for public or private consumption, that have as a principal feature, the conveyance of signals by an Electronic Communications Network or are Content Services. Content Services comprise the provision of material to be comprised in signals conveyed by Electronic Communications Networks or the Editorial Control of the Contents of signals conveyed by such networks.

With regard to Content Services two matters should be particularly noted:

- a) The statement of scope for the Licensing Framework makes clear that only material disseminated by means of Electronic Communications Networks falls within the scope to be addressed by the Licensing Framework. Further matters related to Content, such as its origination, its social acceptability, legality and supply other than by means of Electronic Communications Networks, are within the jurisdiction or concern of various agencies other than the Authority, and are governed by various elements of separate legislation. Those separate jurisdictions or areas of authority must be recognised by, and where practical enforced by, the Licensing Framework, but must not be duplicated or overridden.
- b) Editorial Control means; having the knowledge, opportunity and ability to control the publication of material to be comprised in signals conveyed by Electronic Communications Networks.

Question 1

Do you agree with the statement of scope of activities to be addressed by the Licensing Framework? If you do not agree please supply your reasons for not agreeing, and supply any alternative definitions or statements of scope that you consider more appropriate.

5 Licensing and Applications for Licenses

5.1 Separate licensing

It is proposed that within the overall Licensing Framework relating to the establishment and supply of services by means of Electronic Communications Networks, the licensing of Telecommunications activities and the Supply of Content should be separate functions, notwithstanding that it is sought to address both activities by means of the same overall Licensing Framework.

It is proposed that the following definition should apply to the Supply of Content:

- The provision of material to be comprised in signals conveyed by Electronic Communications Networks, or the editorial control of the Contents of signals conveyed by such networks, shall constitute the Supply of Content.

The principal reason for the distinction between Telecommunications and Supply of Content licensing originates in the recognition that the Supply of Content and its conveyance are in most instances logically separate activities, although not physically separate.

The delivery of Content would normally arise from a contract between the user and the supplier of Content. The conveyance of the Content would typically arise under a contract between the user and a supplier of telecommunications services. In this connection, use of the term contract means any arrangement between parties, whether or not formalised, with or without monetary consideration, and whether transitory, or a more lasting relationship.

It can of course be the case that Telecommunications and Content Supply services are provided by a single entity, however the Authority considers that separate licensing remains justified, at this time, because:

- It is desirable that the Supply of Content is encouraged as an economic activity within Oman and potential Content suppliers may not wish to be subjected to, or may not qualify for, licensing that encompasses Telecommunications activity.
- The obligations arising for suppliers, and the associated necessary regulatory safeguards arising from the relative supplies of services, are sufficiently different to make separate licensing logical and desirable.

Question 2

Do you accept that it is presently inappropriate to combine the licensing and regulation of Content with that applied to telecommunications? If not, please state your reasons for disagreeing with the proposal that is put forward.

6 Telecommunications Licensing

In developing the proposals that are now offered for consultation the Authority has considered a range of factors:

- Licensing is typically applied when markets have the potential to be competitive but may contain structural elements that would not permit competition to develop naturally, and/or it is applied in response to national policies that may seek to restrict the supply of services or the number of suppliers.
- The General Policy Framework for the Telecommunications Sector is clear, in that it seeks to encourage greater competition within markets.
- Within that context, licensing is a forward-looking safeguard of competition and market development that is applied at the time of market entry, as opposed to other regulatory remedies that may be enabled by licensing but are responses to market developments, and thus are applied at a later stage of the licensee's activities.

6.1 Factors influencing the selection of a licensing model

The Authority has considered a number of models of licensing.

It has determined that markets in Oman are insufficiently developed and insufficiently competitive to justify the 'open entry and exit' models that have been adopted in some of the major economies of the world.

The selection of a licensing model and, most particularly, the associated rules related to the grant of licenses is principally a response to or the management of various risks. In identifying risk, in addition to market related factors, the Authority has to take account of statutory requirements. In that connection the Basic Law stipulates the following, in Article II:

- "All natural resources are the property of the State, which safeguards them and ensures that they are properly utilised while taking into account the requirements of State security and the interests of the national economy. No concession may be granted, nor may any of the country's public resources be exploited, except in accordance with the Law and for a limited period of time, and in such a manner as to preserve national interests.
- Public property is inviolable. The State shall protect it, and citizens and all other persons shall preserve it.
- Private property is protected. No-one shall be prevented from disposing of his property within the limits of the Law. Nor shall anyone's property be expropriated, except for the public benefit in those cases defined by the Law and in the manner stipulated by the Law, and on condition that the person whose property is expropriated receives just compensation for it."

Based upon the stipulations of the Basic Law and assessments of normal factors that influence telecommunications sectors, the Authority has identified the following as presenting risks of

harm to the national interest, and/or the interests of users of services and/or the state of competition in markets:

- Inefficient or inappropriate use of natural resources;
- Inefficient or inappropriate use of public property;
- Technology failure;
- Financial failure of the authorised entity;
- Illegality, including threats to national security and offences against public decency;
- Monopoly influences and/or where activities may jeopardize the development of fair market competition.

Each of the areas is considered in the following sub-sections and proposed responses to risk are outlined.

Question 3

Do you agree with the broad categorisation of risk that has been adopted by the Authority? If you do not agree, please state your reasons and supply details of the categories that you consider to be more relevant.

6.1.1 Inefficient or inappropriate use of natural resources

The impacts of inefficient and inappropriate use are highest when natural resources are scarce. In the communications context, radio spectrum is the natural Resource that is most often utilized. Radio spectrum is typically scarce when significant amounts must be allocated in specific blocks to permit services to be provided to meet mass-market demand. The large allocations significantly deplete the available resource and may practically exclude other suppliers from market entry.

It is not typically the case, however, that scarcity exists when allocations are made for piecemeal microwave links and other small-scale purposes, as the depletion effect may be minor.

It is proposed that risk in the area can be mitigated by a combination of three means:

- Determinations by the Authority, from time to time and according to prevailing of foreseeable circumstances, as to what natural or any other resources, may be objectively deemed to be scarce. In present circumstances the TRA considers that only radio spectrum that must, for practical reasons, be allocated in significant quantity and in specific blocks would be determined to represent a Scarce Resource. However, circumstances that cannot presently be foreseen may dictate that other resources must be considered in the future.
- Individual licensing of those entities to whom the right to use scarce resources is granted. Individual licenses would contain obligations that differ from those within the generality of licenses to the minimum extent necessary to reflect the exploitation of

scarcity. The grant of use of scarce resources would be associated with separate radio spectrum or other resource related licensing, which extracts the appropriate value to meet the national interest.

- Most importantly, the use of criteria in the application process that seek to reasonably ensure the competence and financial viability of the entity, to which any license that is associated with the right to use scarce resource is granted.

Question 4

Do you agree that the risk of inefficient use of natural resources should be mitigated through licensing that contains individualized terms, and the use of criteria in the license application process that seek to ensure the viability of the entity to which rights of use of scarce resources may be granted? If you do not agree, please supply your reasons and offer views as to alternative means by which the risks should be addressed.

Question 5

Do you agree that it is appropriate for the Authority to determine what natural and other resources are scarce? If you do not agree, please supply your reasons and offer alternative approaches to the determination of scarcity.

Question 6

Do you agree that it would be appropriate for the TRA to determine, in present circumstances, that certain, but not all, radio spectrum that is allocated through separate spectrum licensing is the only resource that is scarce? If you do not agree, please supply your reasons and offer details of other resources that you consider to be scarce.

6.1.2 Inefficient or inappropriate use of public property

The provision of Electronic Communications Networks and Associated Facilities typically requires that rights of access to public property, such as roads and territorial waters, are sought, for the purposes of installation, maintenance and related tasks.

The rights sought must typically be granted by, or are subject to, the approval of various governmental bodies, such as municipalities. Whilst in isolated instances the ability to accommodate all applicants that seek rights to use particular public property may be limited, at a general national level the rights cannot be reasonably considered to be scarce.

However, the Basic Law requires that public property is protected and preserved, and, inefficient use of public property can have undesirable environmental and social effects.

Whilst the licensing process cannot normally confer property access rights, it can ensure that bodies that do confer rights can have assurance that applicants for substantial levels of access do have the approval of the Authority that such access is appropriate.

It is therefore proposed that where application is made by an entity for stated activities that can be anticipated to require substantial amounts of access to public property:

- Application criteria and processes should reasonably ensure that an applicant entity is sufficiently competent and financially viable to be able to put access to public property to appropriate and efficient use.
- The approved applicant is issued with a license that specifically recognises in its terms the requirement to subsequently apply for substantial amounts of access to public property, but otherwise, has common terms with the generality of licenses.;
- Or the applicant is granted a license that is exactly common with that granted to the generality of licensees, with any recognition of a requirement to subsequently apply for substantial amounts of access to public property being restricted to an identifying designation of the license that would indicate to those authorities that consider applications for use of public property, the approved status of the licensee.
- The Authority continues to monitor and facilitate the activities of all entities that have been approved for use of public property, in its subsequent use of property to ensure compliance with the Basic Law.

It is proposed that the term substantial, in the context of the use of public property by an applicant entity should be principally, but not exclusively, determined by the geographic extent, and the objectively determined potential for significant disruption of the activities of businesses and the public arising from any grant of rights of use or access that may be granted by other agencies. The Authority proposes to publish guidelines related to determinations in this area.

Question 7

The Authority considers that the terms of the Basic Law require that the right of use of public property should be subject to particular safeguards. Do you agree that it is appropriate to seek to apply safeguards that may exceed those applied to the generality of licensing? If you do not agree, please suggest alternative approaches.

Question 8

Do you have a preference for the grant of licenses that contain a term specifically related to the requirement for applications for substantial amounts of access to public property, over, the grant of licenses that have common terms with the generality of licenses but bear a designation that indicates the approved status of the licensee, for the benefit of agencies to whom the licensee may make applications for substantial use in ? If you have a preference, please state it and supply reasons for your preference.

6.1.3 Technology failure, and/or financial failure of the licensed entity

Whilst it is desirable that no authorised entity should fail in its activities, it is proposed that the risk of such failure should not preclude the authorisation of entities that wish to enter markets, expand their areas of activity and otherwise innovate.

Acceptance of such risk is implicit in the competition enhancement requirements of the revised General Policy Framework.

Oman has two well established and profitable vertically integrated suppliers of services. Accordingly, the failure of entrants, although undoubtedly inconvenient for some users, is unlikely to cause significant damage to the Omani economy. However, reputational damage that might deter further investment, were such failure to arise from inadequate regulatory safeguards, is a factor within the overall risk profile that must be considered.

It is accordingly proposed that:

- Applications for licenses that do not require rights to use scarce resources, or do not require rights to access public property to a substantial extent, should be subject to application criteria and processes that are robust but do not specifically seek to ensure that failure will not occur.
- Approved applicants be issued with a license that is common to the generality of licenses granted in similar circumstances;
- Market regulation, notably in the area of competition assurance and wholesale supply, to be strengthened from present levels by means of appropriate instruments in order to provide a viable basis for market entry for applicants.

Question 9

Do you agree with the various liberalisation measures that are set out in this section? If you do not agree, please state your reasons and offer your substantiated views on alternative approaches to the attraction of additional suppliers to telecommunications markets.

6.1.4 Illegality, including threats to national security and offences against public decency

It is necessary that, where there are risks of the above nature, that can be objectively defined, applications for licenses of any type must be refused.

In order to permit management of such risks, in circumstances where licensing has been granted, it is proposed that all licensees should be subject to obligations and prohibitions, by means of both license term and regulatory instrument, that would permit the Authority to impose sanctions that end any manifestation of the listed threats.

No question is asked in this instance as the stated position of the Authority is perceived to be mandatory. However, respondents are free to make observations should they desire to do so.

6.1.5 Monopoly influences and/or where activities may jeopardize the development of fair market competition

It can be anticipated that activities that have been defined to be addressed by the Licensing Framework, in the area of associated facilities or otherwise, can be highly desirable to the development of communications infrastructure and services, but may represent single or dominant sources of supply or in other ways may have the potential jeopardize the development of fair operation of markets.

Accordingly, it is proposed that:

- In circumstances in which application is made for a license to undertake activities that the Authority considers to be desirable in the national interest, or in the interests of consumers of services, but which, in the objective assessment of the Authority, present significant risks to the development of fair competition and/or investment within markets, then in such exceptional circumstances individual licensing may apply. Individual licensing may apply only when the entry of non-standard terms at the licensing stage will both adequately diminish the subject risks, and alternative regulatory remedies, applied at a later stage after licensing, would be unlikely to suffice.
- The Authority should publish on its website, in every instance, reasons for the application of individual licensing.

Question 10

Do you agree that it is appropriate to extend the use of Individual licensing to the circumstances described? If you do not agree, please supply your reasons.

6.2 Telecommunications Licensing Proposals

This sub-section, sets out proposals that arise from analyses and information supplied in earlier parts of this Consultation Document.

6.2.1 Unified licensing

In recognition of a desire to encourage market entry, together with trends related to convergence of service elements, and the fact that telecommunications markets are, in the main, presently served by suppliers that hold both fixed and mobile licenses, it is proposed that future telecommunications licensing be 'Unified' thus permitting all activities and supply of all services, described as follows:

- The establishment, maintenance and operation of Electronic Communications Networks, being transmission systems for the conveyance, by the use of electrical, magnetic, or, electro-magnetic energy of signals of any description, together with associated facilities that make the provision of networks or services provided by means of networks possible, and/or, make possible the provision of other services provided by means of those networks or services, and/or, support the provision of those other services, and/or,

- The supply of national and/or international telecommunications services.

Question 11

Do you agree that the adoption of Unified licensing is appropriate? If you disagree please supply your reasons.

Question 12

Do you agree with the description of activities to be authorised by telecommunications licenses? If you do not agree, please supply both, your reasons and an alternative description of activities to be authorised by licenses.

6.2.2 General attributes of licensing, and, introducing Standard and Individual licenses

It is proposed that telecommunications licenses should not dictate the technology that may be applied in the establishment of networks and facilities and/or in the provision of services, beyond normal prohibitions upon use of technologies or means that are dangerous to users or others, or physically harmful to other network or service providers.

It is further proposed, and is implicit within the description of activities and services set out in section 6.2.1, that licensing should not be specific to individual services, or types of services. It is necessary, however, that the services that are supplied under the terms of the license be recognised administratively. The administrative requirement will be found to be necessary in the context of applications for licensing that are described subsequently.

The General Policy for the sector makes it appropriate that no restrictions should be placed on the number of licenses that may be granted to applicants that meet necessary criteria, other than when the necessity to employ rights of use of scarce resources makes it impractical to accommodate unlimited numbers of suppliers in certain markets.

Introducing Unified Standard and Individual licenses

It is proposed that there should be a **Standard** form of license that authorises the activities described in section 6.2.1.

An **Individual** license may be exceptionally granted in two circumstances:

- Where the grant of a license is associated with the use of Scarce Resources, in accordance with proposals described in section 6.1.1.
- Where the grant of a license is to an entity that is to undertake activities that the Authority considers to be desirable in the national interest, or in the interests of consumers of services, but which, in the objective assessment of the Authority, present significant risks to the development of fair competition and/or investment within markets, as described in section 6.1.5.

The terms of an Individual license may vary from the terms of the Standard license only to the extent that such variation is determined to reasonably address a specified need that arises from the circumstances that dictate that a Standard license would not be appropriate.

Annex A contains the schematic of the Licensing Framework that summarizes the proposals above. The schematic was presented to stakeholders on 5th December, 2012. It is reproduced in the Consultation Document as a diagrammatic aid to respondents.

Question 13

Do you agree with the general attributes of licensing that are stated, which require that licenses should not be refused to any applicant that meets necessary criteria, subject to availability of scarce resources? If you do not agree, please give your reasons for wishing to restrict market entry.

Question 14

Do you agree that the differentiation between a Standard license and an Individual license should be restricted to the two circumstances that are stated? If you do not agree, please give your views as to what circumstances should determine the grant of an Individual license.

6.2.3 Exemption from Licensing and the introduction of Registration

It is proposed to retain the present right to exempt from licensing certain of the activities that are described to be addressed by the Licensing Framework.

It is proposed that exemption should be granted only in accordance with a published regulatory instrument that sets out the criteria to be applied in determining whether exemption is appropriate.

Activities that are exempted from licensing must nevertheless be registered with the Authority. It will be the responsibility of the entity that is, or intends to, undertake activities that may be eligible for exemption to apply for exemption in a manner prescribed by the Authority. If in the view of the Authority an application for exemption is not appropriate, it will direct that an application for an appropriate license is made.

Registered activities will remain subject to regulatory control.

No activity that falls within those defined as being addressed by the Licensing Framework in section 4, and is undertaken by an entity that is subject to the Laws of Oman, can be lawful unless either licensed, or both exempted and registered.

Question 15

Do you agree that all activity that falls within that described to be addressed by the Licensing Framework should be either licensed or made subject to registration? If you

do not agree, please supply your reasons for seeking exclusions from regulatory overview.

6.2.4 Rules applicable to the Standard License

It is proposed that the Standard license is granted in all circumstances where licensing is not exempted, other than in those exceptional instances where Individual licensing should apply.

Section 6.1.2 has described the necessity, arising from the requirements of the Basic Law, for special considerations to apply to those applicants that seek rights to use substantial amounts of access to public property. It is proposed that the approved applicant would be either granted a Standard license that is designated A, or, is granted a license that has terms that are exactly common with those of the Standard License other than the addition of a term related to approval of the licensee to make application to other authorities for substantial use of/access to public property.

It follows that in line with the arrangement outlined in section 6.1.3, it is proposed that an application that does not seek to use substantial amounts of access to public property, and does not give rise to Individual licensing, will be approved on the basis that the grant will be of a Standard license that is designated B, or, does not bear that designation, but instead contains a term related to approval of the licensee to make application to other authorities for substantial use of/access to public property. It should be noted that all applicants for Standard licenses may apply for rights of use of natural resources that have not been designated as scarce, and those applying for, or are eligible for, Standard B licensees may seek rights of access to public property, provided that the extent of the requirement is not deemed by the Authority to be substantial, as that term is defined in section 6.1.2.

It is further proposed that applicants for Standard licenses should be required to state the activities to be undertaken, and in the event that such activities change over time, the Authority is formally advised of such changes before implementation.

In the event that the changes of activity significantly alters the risk associated with the original licensing of the entity, the Authority may seek further information or undertakings from the entity, or change its form of licensing.

In recognition that the obligation to advise changes of activity may, if excessively applied, become a disincentive to service development, it is proposed that broad groups of like, and risk-similar, activities are defined and published by the Authority within which the licensed entity may freely operate, in addition to activities listed in its license application, without a requirement for formal notification.

Question 16

Do you consider it appropriate that Standard licensees should be required to advise changes of activity, relative to those set out in its license application? Please elaborate in your answer.

Question 17

Do you consider that the obligation to advise changes of activities to the Authority is onerous? If so, please supply your reasons.

Question 18

Would you consider it appropriate that Standard licensees should, in any circumstances, be permitted to undertake activities beyond those contained in license applications without further advice or recourse to the Authority? Please elaborate in your answer.

6.2.5 Licensing applicable when services are not provided to the general public

1. A truly private network comprised of transmission elements sourced from licensed operators may be exempted from licensing

It is proposed that when an organisation creates an Electronic Communications Network that is comprised of transmission elements and systems that are wholly sourced from licensed operators, and that network is owned and used solely by the organisation that has created that network, the organisation will be exempted from licensing. It is proposed that exemption should continue to apply, in the described circumstances, should the network operations be outsourced to a third-party

2. A network that is operated to supply services to multiple third-party organisations, but not the public, is not a private network and must be licensed.

It is proposed that where an Electronic Communications Network is, or is to be, created, owned, and/or, operated, by a third party, and that network supplies services to multiple organisations, then exemption will not apply and a license must be applied for. Licenses must be sought in similar supply circumstances when the network is owned by an organisation other than the third-party operator, or is owned by multiple organisations.

3. A truly private network that does not source its transmission elements from licensed operators and self-provides, or acquires by any means those elements from other unlicensed sources, must be licensed.
4. It is proposed that where an Electronic Communications Network is created or exists in the circumstances described in 1, except that all transmission elements and systems are not sourced from licensed operators, the organisation must seek a license. In such circumstances, consideration may be given to the grant of an Individual license, subject to the terms of pre-existing concessions.
5. In all circumstances that networks are exempted from licensing, Registration as described in section 6.2.3 shall apply.

Question 19

Do you consider it appropriate to exempt private networks from licensing in the circumstances outlined in 1? If you disagree, please state your reasons.

Question 20

Do you agree that networks that are substantially self-provided should be licensed?

6.2.6 Principles applicable to rules governing the assessment of applications for licenses

The principles to be applied to criteria that are set for the assessment of applications for licenses are proposed to be:

- Proportionate to the exposure to the risks that have been described in section 6.1 of this Consultation Document; and
- Transparently and consistently applied.

It is suggested that it is self-evident that the criteria applied for approval of a license for activities that require rights of use of scarce resources must be significantly more demanding than those applied to an application that does not seek use of scarce resources, but does seek material amounts of access to public property.

In turn, an application that may seek no rights of use, or rights only to non-scarce resources, and/or, minor access to public property should be subjected to criteria that are less demanding than those applied when an application for use of material amounts of public property is involved.

The Authority intends to continue its policy of publication of the rules and criteria to be applied in the above circumstances.

Section 6.2.4 has set out options related to designations of Standard licenses as A or B, with the alternative of Standard licenses being granted without designation, but the discrimination, in terms of approval criteria related to rights of access to material amounts of public property, being effected only through the license application process. The Authority has separately sought views on that issue.

No questions are posed in relation to this section, as matters that are summarised within the section have been raised elsewhere in this Consultation Document.

7 Licensing of the Supply of Content

Under the terms of the Telecommunications Regulatory Act, the Authority has regulatory authority and obligations related to the supply of material that is conveyed by means of Electronic Communications Networks.

At the present time the Authority has limited regulatory tools that may be deployed to meet its obligations. Notably, the Act offers no suitable means of licensing. The Authority has addressed the area through a Regulation related to Web-based services, and by other guidance related to the liability of providers of the telecommunications services that convey material. The Authority recognises that measures to date may not prove adequate in the medium-term as the supply of material that represents Content is expected to reach very substantial proportions.

It is proposed that a licensing and registration regime, associated with codes of practice, be introduced when the availability of amended legislation will permit its introduction.

It is again emphasised that such a regime would seek only to address those aspects of supply with regard to which the Authority has responsibilities. Many other aspects of supply remain the responsibility of other agencies and are subject to separate legislation. In many respects, the Authority is in a position of enforcing the regulatory decisions of other agencies. These matters are further discussed in section 7.1.

The principal aims of the regime will be:

- The protection of consumers;
- Prevention of the conveyance of subversive material;
- Facilitation of the needs of security organisations.

Licensing and registration will be applied to the Supply of Content, which has been defined in section 5 as:

- The provision of material to be comprised in signals conveyed by Electronic Communications Networks, or, the editorial control of the Contents of signals conveyed by such networks shall constitute the Supply of Content.

Within the definition of the term Content, it is the case that it may cover a multitude of different forms of material. The material can also originate from a multitude of sources, both within Oman and outside it. It follows that the regime proposed by the Authority must be practical and selective in seeking to focus upon the principal aims that have been stated.

It is proposed that, unless exempted from licensing by means of a regulation governing such exemption, licensing shall apply to the Supply of Content for consideration, as follows:

- The Supply of Content for consideration, whether monetary or otherwise, shall be subject to licensing, when the Supply of Content and its conveyance to an end user, whether conveyance is instigated by the user or otherwise, is undertaken, arranged, permitted, facilitated or by any means achieved, by an individual or entity, acting as principal or agent, that is subject to the Laws of Oman,

The license granted in normal circumstances would be a Standard Content license. The license will require adherence to a code of practice related to dealings with consumers. It will also require that, amongst other matters that copyright and other intellectual property rights are respected, and that the needs of the security services are met.

In exceptional circumstances, principally when there are significant risks to the development of fair competition and/or investment within markets, or in the presence of influences that may prejudice the achievement of the stated principal aims of licensing, an Individual Content license may be granted. As with the telecommunications Individual license, the Individual Content license terms will vary from the terms of the Standard Content license to the minimum extent necessary to mitigate the risks that are identified.

The Authority will consider the feasibility of the introduction of a Registration process for those engaged in the Supply of Content that are either not required to be licensed, or, are exempted from licensing.

The introduction of licensing for the Supply of Content will give rise to the need for enabling provisions within telecommunications licenses and regulations, and, the placing of obligations on telecommunications licensees to reasonably ensure that Content, which is knowingly conveyed by them, is from licensed entities.

It will be noted that licensing can only apply to entities that are subject to the Laws of Oman. The problems associated with the supply of Over the Top (OTT) Content from outside Oman can, presently, only be addressed by means of enforced prohibitions, and/or international cooperation. The Authority intends to play its full part in international initiatives in this area.

Question 21

Do you support the proposed initiative to introduce licensing for the Supply of Content? If you do not, please give your reasons and any views on what alternative courses of action might be taken to achieve the stated principal aims.

7.1 Policy issues related to the Supply of Content

The licensing measures that have been outlined in section 7 address only issues that are relevant to the present regulatory responsibilities of the Authority

Other agencies have different responsibilities related to material in other forms and circumstances. Elements of material may be subject to existing legislation, or be within the responsibility or overview of various government bodies.

- In addition to the Authority, the Ministries of Information, Commerce and Industry, Transport and Communications, and the Information Technology Authority are amongst those government entities that either have overview or promotional responsibilities, or have responsibilities related to relevant legislation.

The Authority is aware that the existence of multiple bodies with responsibilities and rights of approval of material may present difficulties for those wishing to supply Content, and

accordingly, may inhibit the development of a Content production and supply industry within Oman.

The Authority is also concerned that its own regulatory actions should be consistent with those of other responsible bodies.

The Authority accordingly considers that the development of a common national policy related to Content would be appropriate and seeks the views of stakeholders, including the public, related to the matter.

Question 22

Do you agree that there would advantage in the development of a common national policy related to Content? If you agree, please supply your reasons. If you disagree, please also supply your reasons.

8 Licensing Authorities

At the present time, licensing is carried by out in association with, or by means of:

- Royal Decrees;
- Ministerial Decisions; and
- the Authority's decisions.

In all instances the Authority has responsibility for the assessment of all applications for licenses.

Some stakeholders have asserted that the existence of multiple licensing authorities, and the delays to licensing that are attributed to the arrangement, has contributed to the failure to attract market entrants. Section 2 of this Consultation Document has suggested that other factors may also contribute to the failure to attract entrants, to an equal or greater extent.

However, the proposed introduction of a revised Licensing Framework may present an opportunity to rationalize licensing responsibility within a single entity.

Question 23

Do you consider that rationalizing the authority to grant licenses into a single entity would represent a significantly beneficial reform? If you agree, please state your reasons. If you disagree, please also state your reasons and offer views as to how licensing authorisation/approval might alternatively be improved.

9 Adjusting Regulatory Postures within the Licensing Framework

Previous sections of this Consultation Document have focused upon proposed changes to licensing and application procedures. It is clear that secondary legislation, in the form of various regulatory instruments, will need to be adjusted to accord with those liberalizing proposals, which reflect the central imperative to increase the number of suppliers in markets.

It is not practical or appropriate at this stage to outline all changes that will be necessary within a new Licensing Framework. However, certain matters are fundamental:

- Potential entrants must be offered the opportunity to viably purchase wholesale products of various kinds, including unbundled elements of various network-based and international services.
- It is the intention of the Authority to progressively lessen its focus on retail pricing controls and place regulatory emphasis on the assurance of the availability and fair pricing of wholesale products.
- In accord with the above objectives, the Authority will introduce measures enabled by the newly introduced Competition Framework.

No questions are posed, as this section represents a series of statements by the Authority that are necessary to establish the context within which Licensing Framework proposals are made. However, respondents are free to make any observations that they wish.

10 Legislative Implications of Proposals for Revised Licensing

The Telecommunications Regulatory Act is the key element within the existing Licensing Framework.

The terms of the Act, in relation to licensing, have been described in section 2 as being prescriptive. It also remains the case that there is a logical conflict between the terms of Articles 21.1 and 21.2.

Certain of the proposals that have been set out in this Consultation Document, but by no means all, are not compatible with the present terms of the Act. Notably, proposals related to Standard, Individual licensing and Registration, and the introduction of licensing for the Supply of Content may be considered to conflict with the terms of Article 21.1 in particular.

Subject to the receipt of comments to this Consultation Document, related to the proposed Licensing Framework, it is the intention of the Authority to make recommendations for amendments to legislation to accommodate finalised proposals.

Within those recommendations, the Authority will seek that the terms of the Act take the form of enabling provisions, as opposed to prescriptive measures, and that the same approach is taken to any provision within the Act that may be more appropriately contained in secondary legislation.

Should the Authority recommendations be accepted, it will become possible to also simplify the form of licenses by restricting license provisions to essential elements, with as many operational elements as possible being dealt with by reference to a body of regulation.

The approaches to changed legislation and simplification of licensing form are consistent with the desire expressed in section 3 to the effect that it is sought that legislation and licensing has longevity in its core provisions and that changed circumstances are, as far as possible, reflected only in adjustments to secondary legislation. The intention is clearly that legislation does not again become a barrier to market development.

No questions are posed, as this section represents a series of statements by the Authority that are necessary to establish the context within which Licensing Framework proposals are made. However, respondents are free to make any observations that they wish.

11 Proposals Related to Transition to the Proposed Licensing Framework

It is proposed that Class I telecommunications licensees, existing at the date that the proposed Licensing Framework comes into legal existence, should be issued with Individual licenses.

Individual licenses would perpetuate existing substantive terms that are individual to that licensee, to the extent that they remain relevant and appropriate.

It is acknowledged that existing Class I licenses require that a notice period of one year should apply to any modification to licenses.

In such circumstances, it is considered appropriate to offer those licensees the option to take up licenses in the revised form:

- At any time within one year of the date that the proposed Licensing Framework comes into legal existence;
- With the change becoming mandatory on the first anniversary of that date.

Class II or III licensees that exist at the time that the proposed Licensing Framework comes into legal existence will be issued with a Standard license. It is not proposed to offer a period in which transition is optional, because:

- The notice period required by present Class II/III licenses is relatively short;
- The new Standard licenses can be expected to confer certain advantages.

Presently unlicensed networks and service providers will be subject to the Authority review upon commencement of the proposed Licensing Framework to determine whether they should be licensed, or be required to formally apply for Registration.

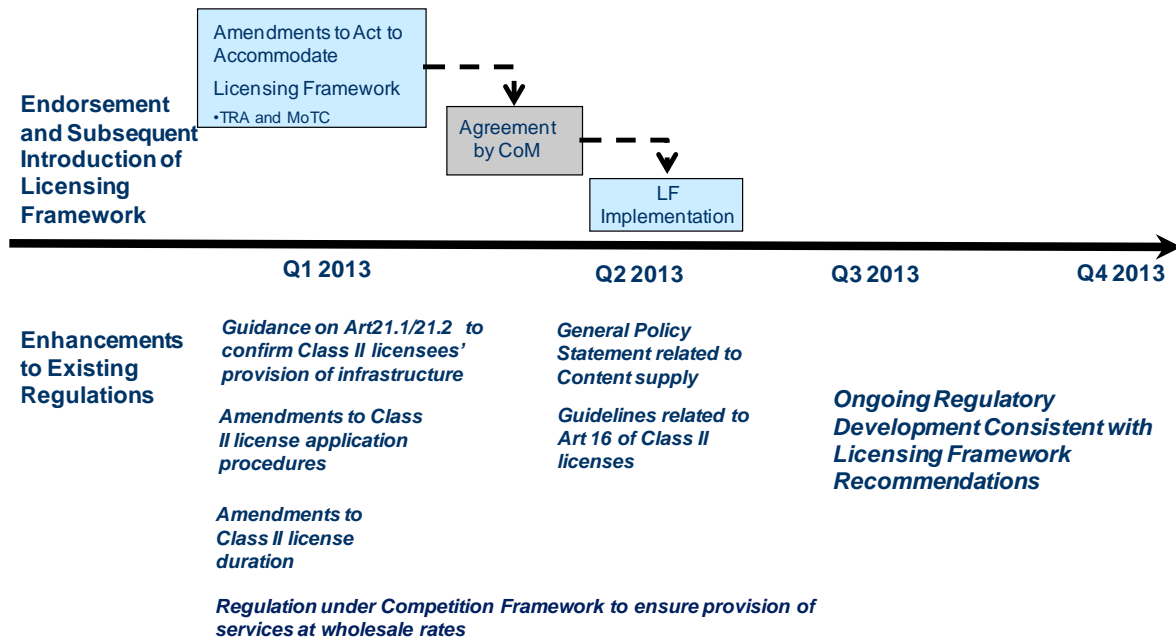
Question 24

Do you consider the license transition proposals to be acceptable? If you do not agree, please supply your reasons, and, supply any alternative proposals related to the transition process.

12 The Authority's Initiatives Pending Transition and the Roadmap

The Authority presents a proposed roadmap of actions over the year 2013 for the realization of the Licensing Framework. As can be seen in the figure below, two main streams of actions are shown in the roadmap:

- The endorsement and subsequent introduction of the Licensing Framework;
- The enhancement to existing regulations.



The endorsement and introduction of the Licensing Framework concerns the amendments to the Telecommunications Regulatory Act and their subsequent endorsement by the Council of Ministers. It is the intention of the Authority to have made such amendments to permit the implementation of the Licensing Framework in approximately mid 2013.

The enhancement to existing regulations is proposed action by the Authority to address issues largely related to Class II licenses that would be beneficial even prior to the formal implementation of the Licensing Framework, and include:

- Guidance concerning the Class II licensees provision of infrastructure;
- Amendments to Class II license application procedures;
- Amendments to Class II license duration of five years.

Additionally, the Authority proposes action in the area of Content supply including the issuance of guidelines related to Article 16 of Class II licenses.

Question 25

Do you have any comments on the Authority's proposed roadmap of actions for 2013?

Annex A

Annex A contains the schematic of the Licensing Framework, which was presented to stakeholders on 5th December, 2012.

It represents a summary of the overall concept of the Licensing Framework in terms of its scope, and unified standard and individual licenses. It is reproduced in the Consultation Document as a diagrammatic aid to respondents, but should not be considered a replacement of or a complement to the formal proposals contained herein. Therefore, responses should not be made concerning the schematic.

	Individual	Standard
<i>Content service</i>	<ul style="list-style-type: none"> Individual to only apply exceptionally, where activities have the potential to distort the development of markets 	
<i>ECNS</i>	Build, operate and manage ECNs and/or to provide ECN services <ul style="list-style-type: none"> that require the use of “scarce” spectrum, or, exceptionally: do not require the use “scarce” spectrum but the Applicant’s activities are determined to pose significant risks to the development of fair competition, unless addressed through individualized terms 	Build, manage and operate ECNs and/or to provide ECN services that do not involve the use of “scarce” spectrum