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## ***Ex ante* Regulations**

### **The Regulation of Dominance**

#### **Article 1: Definitions**

In the application of the provisions of these regulations, the terms and expressions used herein shall express the exact meaning exhibited in both Telecommunications Regulatory Act & its Executive Regulation, whereas the following terms and expressions shall have the meanings shown against each, unless the text otherwise requires:

- a) Ex ante Regulation means the regulation imposed by the TRA to minimize or manage the potential risks of harm of dominance as deemed appropriate by the TRA.
- b) Dominance means that a licensee enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and customers in a certain Market. Dominance may be in a relevant market for one or more licensees.
- c) Joint Dominance means Dominance attributable to two or more Service Providers operating collectively in a market which is characterised by a lack of effective competition and in which no single licensee has significant market power as shown in Article 5 Para 1 of these regulations.
- d) Market Failure, in particular, occurs in the following cases:
  - Inability of a market to operate in an effectively competitive manner and to produce the outcomes normally expected from competition such as rivalry between competitors in terms of price, service, innovation and performance.

- Reasonable anticipation of market failure that is where there is a reasonable expectation that effective or sustainable competition will not happen in the near future.
- e) 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 TRA under Article 2 of these Regulations.
- f) Remedy means a regulatory requirement imposed by the TRA on a licensee which is Dominant or which enjoys a position of Joint Dominance in a market to lessen or minimize the potential risks of harm which may affect competition in that market.

## **Article 2: Market Definition Procedure**

- (1) The TRA will define Relevant Markets as a precondition to any decision to adopt Remedies. In defining Relevant Markets, the TRA shall have regard to:
- the products or services included;
  - the customer groups served; and
  - the geographical area and/or route affected.
- (2) To group services into Relevant Markets, the TRA will consider the following elements:
- a) Demand-side substitutability.
  - b) Supply-side substitutability.
  - c) Examining the available evidence of consumer behaviour, relative prices and price movements of potentially competing products or services, and switching costs, which may hinder consumers from substituting a product or service for another. TRA may use internationally accepted tests and methodologies.
- (3) The TRA will generally consider retail and wholesale services separately, unless it deems otherwise.

## **Article 3: Procedure for Determination of Dominance**

- (1) The TRA will determine a Dominant licensee according to the following:
- A. Determine whether a Relevant Market is effectively competitive in a given geographic area.
  - B. Determine whether to apply a remedy, impose an obligation, maintain, amend, or revoke either one on a licensee considered to be Dominant.

- C. Assess whether any licensee has Dominance in a Relevant Market in accordance with the guidelines issued by the TRA and published on its website.
- (2) Where a Service Provider is Dominant in a Relevant Market, it may also be deemed by TRA to be Dominant in a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the licensee concerned.

#### **Article 4: Joint Dominance**

Joint Dominance may be determined by TRA in the following cases:

- (1) Where the market is concentrated and exhibits a number of characteristics of which the following may be the most important:
  - Low elasticity of demand,
  - Similar market shares,
  - High legal or economic barriers to entry,
  - Vertical integration with collective refusal to supply,
  - Lack of countervailing buyer power,
  - Lack of potential competition.
- (2) In cases of tacit collusion or market inertia, and is unlikely to arise where there is demonstrable evidence of active competition for a reasonable period of time.
- (3) Existence or absence of arrangements, contacts or any other links between the licensees.

#### **Article 5: Market assessment**

TRA will conduct regular market assessments to ensure that decisions on Dominance and Joint Dominance remain relevant. A licensee determined to be Dominant may request such a review more frequently at its expense, subject to providing sufficient evidence that such a review is warranted.

#### **Article 6: Susceptibility to ex ante Regulation**

- (1) The TRA may impose Remedies on a licensee which it has determined to be Dominant or to enjoy Joint Dominance in the following cases:
  - If compliance requirements of an ex post intervention to redress a Market Failure are extensive or complex.
  - If public interest requires frequent and/or timely intervention

- (2) If the public interest requires the clarity of the legal framework regulating competition 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.

## **Article 7: Remedies**

Notwithstanding any obligations set out in the Telecommunications Regulatory Act, its Executive Regulation and the decisions issued in implementation thereof, TRA may, by way of a justified decision and in line with the regulatory objective to develop competition, and in a manner proportionate with the size of the potential risk of harm of of dominance, impose on any Dominant licensee one or more remedies of the following:

- a) A non-discrimination requirement, being a requirement to apply equivalent conditions in equivalent circumstances, and not to discriminate in favour of the regulated firm's own subsidiaries or partners.
- b) A transparency requirement, being a requirement to make public specified information (including accounting information, technical specifications, network characteristics, and prices).
- c) A tariff approval requirement, being a requirement to obtain TRA approval of tariff proposals related to services offered in the Relevant Market prior to implementation.
- d) A tariff notification requirement, being a requirement by the dominant licensee before or after implementation.
- e) A cost studies requirement, being a requirement to participate in cost studies undertaken by the TRA through the provision of cost and related data in the form specified by the TRA
- f) A price control requirement, being a requirement that the dominant licensee should only charge prices for individual services or for bundles of services in a manner that complies with formulae, constraints and/or criteria determined by the TRA in relation to those services from time to time
- g) An accounting separation requirement, being a requirement that the dominant licensee should provide accounts to the TRA in accordance with specifications of the TRA relating to periodicity, timing, and content, with all costs and revenues separated into service and other categories outlined by the TRA
- h) Subscriber information requirement, being a requirement that the dominant licensee should provide information as specified by the TRA to subscribers on the inception of service or at periods during the course of a subscription, such as information on subscriber bills.

- i) A terms of service requirement, being a requirement that the dominant licensee shall seek approval from the TRA in relation to terms of service or shall provide services in the market in which it is dominant on terms specified by the TRA
- j) A quality of service requirement, being a requirement that the dominant licensee shall either specify and meet nominated service quality standards or meet standards nominated by the TRA.
- k) A reference offer requirement, being a requirement that the dominant licensee shall prepare an interconnection and access reference offer acceptable to the TRA.
- l) An interconnection or access negotiation requirement, being a requirement that the dominant licensee shall negotiate and agree on terms and conditions of access and/or interconnection or usage of specific network elements with other licensees. If no agreement is reached following negotiation, the licensee may refer the matter to the TRA to issue a binding decision.
- m) A provision of service requirement, being a requirement that the dominant licensee shall provide services mandated by the TRA in markets in which it has been found to be dominant by the TRA.
- n) An essential facilities requirement, being a requirement that the dominant licensee shall permit access to facilities that the TRA has nominated to be essential for the provision of retail services by other service providers competing with the dominant operator.

### **Article 8: Regulation of Wholesale Services**

- (1) As a general rule, the TRA will regulate wholesale markets. TRA will regulate retail markets if the regulation of wholesale markets will not resolve problems in the retail market within a sufficiently short period of time determined by the TRA.
- (2) The TRA may impose obligations to offer retail services under certain conditions regarding prices, price caps, availability, quality, or other matters on a licensee which is Dominant, or enjoys Joint Dominance, in a Relevant Market.

### **Article 9: Guidelines and publication**

- (1) The TRA will prepare, and from time to time update, Guidelines setting out the principles it will adopt when defining markets, determining susceptibility to *ex ante* regulation and determining Dominance and Remedies. The TRA may also prepare Guidelines in relation to emerging markets, including next generation networks.
- (2) The TRA will publish on its website, and from time to time update, the Guidelines it issues in accordance with the provisions of these

regulations, and will also publish a list of the Relevant Markets and the Dominant licensees and the remedies applicable.

#### **Article 10: Public Consultations**

The TRA may consult with the licensees and the public on the *ex ante* regulation and its application.

#### **Article 11: Monitoring Compliance and Penalties**

The TRA, at its discretion, shall monitor the licensee's compliance with the Remedies while considering the circumstances of the Relevant markets in question and the potential risks to the competition and public interest.

The TRA may impose the prescribed penalties in case of violating such obligations.