

**Telecommunications Regulatory Authority**  
**Decision No. [ ]/2011 on *ex ante* Rules Governing**  
**Market Definition and the Regulation of Dominance**

Pursuant to:

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

Based on the exigencies of the public interest

**Article 1: Scope of Decision**

Articles 46 *bis*, 46 (1) and 46 (6) of the Law, among other provisions, impose obligations on licensees which have been declared by the TRA to be Dominant, or empower the TRA to impose certain obligations upon them to address potential harm to competition and consumer interests arising in respect of such Dominance. Provision is also made for the TRA to impose rules and regulations to give effect to these arrangements.

**Article 2: Definitions**

The terms defined in the Telecommunications Law shall have the same meaning when used in this Decision 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) Joint Dominance means Dominance attributable to two or more Service Providers collectively in cases where they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power. A situation of Joint Dominance may

be determined by the TRA in a case in which the market is concentrated and exhibits a number of indicated characteristics of which the following may be the most relevant:

- 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.

Joint Dominance may be determined in cases of tacit collusion or market inertia, and is unlikely to arise where there is demonstrable evidence of active competition;

- d) Law means The Telecommunications Regulatory Act of the Sultanate of Oman, as amended;
- 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 3 of this Regulation;
- f) Remedy means an obligation imposed under these Regulations on a Service Provider which is Dominant or which enjoys a position of Joint Dominance.;
- g) Service Provider means an operator of a telecommunications network or a provider of telecommunications services.

### **Article 3: 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 first demand-side substitutability and then supply-side substitutability. The TRA will generally consider retail and wholesale services separately as their objective characteristics, intended uses, and pricing arrangements are usually different, as are the parties involved in the transactions.
- (3) The TRA will examine 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, and may use internationally accepted tests and methodologies.
- (4) Any analysis on any of the matters listed above carried out within a period of nine months prior to the date on which these Regulations are issued may be relied upon

by the TRA for the purpose of defining or determining Relevant Markets, susceptibility to ex ante regulation, Dominance, Joint Dominance or Remedies.

#### **Article 4: Procedure for Determination of Dominance**

- (1) The TRA will determine whether a Relevant Market is effectively competitive in a given geographic area to determine whether to impose, maintain, amend, or withdraw obligations on providers considered to be Dominant.
- (2) Where a Service Provider is Dominant in a Relevant Market, it may also be deemed 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 Service Provider concerned.

#### **Article 5: Criteria for Identifying Dominance**

- (1) The TRA will carry out assessments on whether any Service Provider has Dominance in any Relevant Market.
- (2) The TRA will post and maintain on its website a current list of all Dominant Service Providers, specifying the Relevant Market in which the determination has been made.
- (3) The TRA will conduct regular market assessments to ensure that decisions on Dominance remain relevant. A Service Provider determined to be Dominant or to enjoy Joint Dominance may request such a review more frequently at its expense, subject to providing sufficient evidence that such a review is warranted.

#### **Article 6: Joint Dominance**

- (1) Dominance in a Relevant Market can be held by a single Service Provider or collectively by two or more Service Providers.
- (2) In determining whether Joint Dominance exists in any Relevant Market, the TRA will have regard to the factors and indicators described in the definition of Joint Dominance, and other factors considered to be objectively relevant, and the issue shall not be determined solely on the basis of the presence or absence of structural or other links between them.

#### **Article 7: Susceptibility to ex ante Regulation**

The TRA shall not impose Remedies on a Dominant Service Provider 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. The TRA may in particular impose Remedies where:

- a) compliance requirements of an *ex post* intervention to redress a market failure are extensive or complex;
- b) frequent and/or timely intervention is indispensable; and
- c) creating legal certainty is of paramount concern.

## Article 8: Remedies

- (1) The TRA may, by way of a Decision impose on any Service Provider which it has determined to be Dominant or to enjoy Joint Dominance in a Relevant Market, one or more remedies or obligations of any or all of the following types [or other proportionate remedies or obligations to protect consumers and competitors]:
  - a) a transparency obligation to make public specified information (including accounting information, technical specifications, network characteristics, and prices)
  - b) a non-discrimination obligation to apply equivalent conditions in equivalent circumstances, and not to discriminate in favour of the regulated firm's own subsidiaries or partners
  - c) an accounting separation obligation requiring the preparation of separated regulatory accounts for the different markets specified by the TRA, so that costs and revenues associated with each market can be separately identified and properly allocated
  - d) obligations relating to meeting requests for access or interconnection or use of specific network elements, including obligations regarding negotiation of terms and conditions of providing access and other matters to be set forth in the relevant remedy
  - e) an obligation to provide access to essential facilities controlled by the Dominant Service Provider
  - f) a requirement to prepare an offer, acceptable to the TRA, in relation to the terms and conditions under which the Dominant Service Provider will provide services to other eligible Service Providers
  - g) a requirement to participate with the TRA in cost studies undertaken by the TRA and to provide relevant data
  - h) wholesale price controls with or without a cost accounting obligation, which may require service providers to set cost-oriented access charges
  - i) retail price controls, including obligations to notify tariffs before or after implementation, or tariff caps for individual services or bundles of services or requirements for tariff approval in cases in which market analysis suggests that, absent such regulation, retail prices might be sustained at excessively high levels, and
  - j) a requirement to provide information to subscribers and users prior to inception of service or to provide service in a market in which it is dominant on terms specified by the TRA or to meet quality standards nominated by the TRA,

all with a view to ensuring that the risk of harm to consumer welfare and to competition from abuse of a dominant position is reduced or removed.
- (2) When imposing a remedy or obligation, the TRA will provide reasons why it considers it appropriate to do so in order to address the underlying competition problem, why it considers the measure to be proportionate and justified in the light of the basic regulatory objectives of promoting competition, and how it will contribute to the development of the market and promote the interests of the public.

## **Article 9: Obligations to Provide Wholesale Services**

Remedies or obligations imposed under these Regulations shall be in addition to other obligations imposed on Dominant Service Providers under the Executive Regulations and [other Regulations].

## **Article 10: Regulation of Retail Services**

The TRA will intervene in wholesale markets in preference to intervention in retail markets, but if measures taken at the wholesale level will not resolve problems in the retail market within a sufficiently short period of time, the TRA may impose obligations to offer retail services under certain conditions regarding prices, price caps, availability, quality, or other matters on a Service Provider which is Dominant, or enjoys Joint Dominance, in a Relevant Market.

## **Article 12: Guidelines**

The Authority will publish, 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 publish, and from time to time update, Guidelines setting out the principles it will adopt when preparing and imposing *ex ante* Regulations in relation to emerging markets, including next generation networks.

## **Article 13: Obligation to Consult**

The TRA shall consult with Service Providers and the public before determining a Relevant Market, susceptibility to *ex ante* regulation, Dominance or any Remedy, and shall in all respects act in an open, transparent, objective and non-discriminatory manner.

## **Article 14: Monitoring, Compliance and Penalties**

- (1) The TRA may monitor Service Providers' compliance with Remedies.
- (2) The TRA may impose one or more of the following penalties for non-compliance with Remedies on a Service Provider which is Dominant or which enjoys a position of Joint Dominance:
  - a) the suspension of a licence for a limited period of time or the revocation of a licence; or
  - b) the imposition of fines of up to One million Omani Riyals calculated in light of the seriousness of the incident or its rate of recurrence. The TRA may impose an additional fine for each day of delay in eliminating such violation.

**Article 15: *Ex Post* and other Regulations**

- (1) This Decision is in addition and without prejudice to a further Decision to be prepared by the TRA in respect of *ex post* behaviour.
- (2) The Regulations are also in addition and without prejudice to the Executive Regulations and all other Regulations issued by the TRA.