



سلطنة عُمان
Sultanate of Oman



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

Decision on Omantel's Reference Access and Interconnection Offer

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Background

The Access and Interconnection (A&I) Regulation (the “Regulation”) issued vide Decision No. 25/2016 on 17th April 2016 requires that a First Draft RAIO shall be submitted by a dominant licensee to the Telecommunications Regulatory Authority (the “TRA” or the “Authority”) not later than thirty (30) days after the A&I Regulation takes effect. As Omantel was declared to have a dominant position in a number of relevant markets under the Market Definition and Dominance (MDD) Decision No. 74/2013 issued by the TRA on 13th August 2013, the TRA directed Omantel to submit its First Draft RAIO in accordance with the requirements set out in the Regulation. Omantel submitted its First Draft RAIO on 29th May 2016. The TRA’s review of that First Draft RAIO, pursuant to Article 50 of the Regulation, highlighted a number of deficiencies in its scope, content and format. Omantel subsequently resubmitted its First Draft RAIO on 14th June 2016, pursuant to Article 51 of the Regulation. Omantel was then required on 19th July 2016 to publish the First Draft RAIO on its website, pursuant to Article 52 of the Regulation.

The TRA initiated the consultation process on the First Draft RAIO on 7th August 2016 under Article 53 of the Regulation. All licensees were requested to provide their comments and suggested changes in accordance with Articles 54-57 of the Regulation. The TRA also provided its comments on Omantel’s First Draft RAIO, as envisaged by Article 57 of the Regulation.

In the light of these comments and suggested changes by licensees and the TRA, Omantel made some amendments to its First Draft RAIO and submitted its Second Draft RAIO under Article 58 of the Regulation on 21st November 2016. As part of this, Omantel also set forth its responses to the comments on its First Draft RAIO that had been provided by the TRA and other parties to the consultation process.

The TRA, pursuant to Article 60 (iii) of the Regulation, directed specific questions to TeO, Friendi, Renna and Omantel on their submissions relating to the First Draft RAIO and responses thereon and provided a further opportunity to Omantel to provide its comments on other licensees’ responses. The TRA also arranged and chaired meetings open to all licensees to comment on a number of particular items within Omantel’s Second Draft RAIO. The meetings were held from 6th to 8th March 2017 and during the meetings Omantel and other interested parties were invited to express their views, seek clarifications and where appropriate, to put forward their recommendations for the final approved RAIO.

After the meetings, the TRA invited all participants, including Omantel, to respond formally in writing to all issues discussed during the meetings. The parties were then requested to comment on other licensees’ comments and submit the same to the TRA.

The TRA, as part of the above-mentioned process and in accordance with the Act and the Regulation, reviewed Omantel’s First and Second Draft RAIOs as well as all comments and representations made in compliance with the Regulation.

Legal Basis

Whereas:

1. pursuant to Article 21 of the Act, the TRA granted licences to Omantel for the installation, operation, maintenance and exploitation of fixed public telecommunications system and mobile public telecommunications system on 11th February 2004;
2. Article 7 of the Act empowers the TRA to prepare suitable conditions for competition among the licensees to ensure the provision of world standard telecommunications services at reasonable costs and prices;
3. Article 8 (10) of the Act empowers the TRA to set the terms, conditions and technical specifications and standards for the Telecommunications Equipment for the purpose of achieving interconnection between terminal telecommunication equipment, telecommunications network, or interconnection in particular between the telecommunications equipment of the licensees and the telecommunications systems;
4. Article 10 Repeated 5 of the Act empowers the TRA to set the technical, regulatory and financial terms and conditions organizing the interconnection services and resale between licensees;
5. Article 27 Repeated of the Act provides that the Authority may oblige the dominant licensee to offer access to its network elements for other licensees of public telecommunication services in accordance with unbundling principles, and with the terms and conditions issued by the Authority at cost based prices with no discrimination and with transparency;
6. Article 46 Repeated of the Act provides that a Public Telecommunication Services Licensee decided by the Authority as having dominance in a specific public telecommunications service shall advertise an Interconnection Reference Offer after the approval of the Authority;
7. Article 46 Repeated of the Act also provides that the advertised offer period shall be in accordance with the period determined by the Authority. The offer shall include a full list of the basic services of interconnection, conditions and technical criteria and prices of each service. The Authority shall determine these conditions, criteria and prices if it declines the conditions, criteria and prices specified by the licensee. The Authority's decision issued in this respect shall be valid from the date of its issue unless another date is specified by the Authority. In all cases, conditions and prices shall be reasonable without discrimination pursuant to the rules, regulations and conditions set forth in the Executive Regulation;

8. Article 46 Repeated (1) of the Act provides that the dominant licensee of public telecommunications services shall provide, when requested by any other licensee of public telecommunications services, access its telecommunications network with fair and reasonable conditions. The Authority, if necessary, may oblige the dominant licensee to provide public telecommunications services to offer access to the pipes, in accordance with the rules and conditions issued by the Authority for the regulation of access including the system related to the access reference offer. If the Authority views that the offered prices and conditions regarding the access by the dominant licensee as unreasonable or unjustified, it may determine the prices and conditions it deems suitable, and these shall be subject to the same conditions and measures regulating the Interconnection Reference Offer;
9. Article 92 of the Executive Regulation (Amended) provided that the TRA shall issue an Access & Interconnection Regulation that includes all the principles and the terms and conditions required under the Act and this Regulation;
10. pursuant to its powers under the Act and Article 92 of the Executive Regulation (Amended), the TRA issued the Access and Interconnection (A&I) Regulation through Decision No. 25/2016;
11. the TRA found Omantel dominant in certain wholesale markets, as set out in the Market Definition and Dominance (MDD) Decision issued in 2013;
12. having been found to be in a dominant position, as set out in the MDD Decision, Omantel was required by Articles 44 and 47 of the Regulation to submit its First Draft RAIO that conforms to the requirements of Annex (1) of the Regulation relating to the structure and minimum content of the RAIO;
13. Omantel submitted its First Draft RAIO to the TRA for approval on 29th May 2016 without the proposed charges;
14. Omantel submitted the proposed charges and cost model to the TRA on 5th June 2016;
15. Omantel submitted its Second Draft RAIO to the TRA for approval on 21st November 2016 pursuant to Article 58 of the Regulation;
16. pursuant to Article 60 (iii) of the Regulation, the TRA directed specific questions to Omantel and the commenting parties for the purpose of determining the disposition of any unresolved issues in relation to Omantel's Second Draft RAIO;
17. pursuant to Article 63 of the Regulation, the TRA convened meetings from 6th to 8th March 2017 with Omantel and commenting parties in order to facilitate the resolution of any material issues of disagreement;

18. Article 2 of the Regulation provides principles of access and interconnection for the application of the provisions of the Regulation;
19. Article 15 of Annex 1 of the Regulation provides general principles which are required to be followed in a RAIO;
20. pursuant to Service Annexes of the Regulation, the prices charged by Omantel for all Regulated Services (with the exception of Broadband Resale, Mobile Access and National Roaming services) shall be fair, reasonable and based on forward looking long run incremental cost (LRIC) of efficient service provision, while the prices for Broadband Resale, Mobile Access and National Roaming services are required to be based on retail-minus approach; and
21. pursuant to Service Annexes of the Regulation, the TRA, while reviewing and determining the prices for A&I Services, may choose to: (i) Use the top-down LRIC model prepared by Omantel after making necessary changes, if required; or (ii) Use both Omantel's top-down LRIC and its own bottom-up LRIC models in the manner it deems appropriate; or (iii) Use its own bottom-up LRIC models in case no charge is proposed or no top-down LRIC model is provided by Omantel.

Decision

Following its review of the Second Draft RAIO in accordance with the Act and the Regulation, including the above provisions, and taking into account the submissions of all interested parties, including Omantel, made pursuant to Part Two of Chapter Three of the Regulation, the TRA has concluded that Omantel's Second Draft RAIO requires a number of modifications, both in relation to the price and non-price terms of the RAIO. The TRA's reasoning for the required changes to the price and non-price terms are set out, with the detailed changes required, in the documents specified below which form part of this Decision.

In the exercise of its powers under Article 61 (ii) of the Regulation, the TRA hereby directs Omantel to:

- (i) make the modifications to its Second Draft RAIO and take any actions as required of it which are specified in Annex-1 (Non-price terms), Annex-1.1 (Service Delivery Times) and Annex-2 (Price terms) of this Decision. In doing so, Omantel is required to ensure that the text of the Final Draft RAIO fully complies with this Decision, including all Annexes, and that no other changes of any kind shall be made, unless these are of a minor nature (i.e. they are of grammatical/ typographical type and do not affect the purpose or effect of the required text). Any such changes will only be allowed if, at the time of submitting the Final Draft RAIO to the TRA, these amendments are clearly identified to the TRA and accompanied by a signed statement by the CEO of Omantel, confirming that amendments are of a minor nature;

- (ii) submit, within thirty (30) days of this Decision, to the TRA its Final Draft RAIO, after making all the changes as specified in (i) above. In doing so Omantel shall submit to the TRA (a) clean copy of all relevant documents comprising the RAIO in Word and PDF version and (b) a copy with track changes showing the changes made between the Second Draft RAIO and the Final Draft RAIO, inclusive of all the relevant documents comprising the RAIO in Word and PDF version; and
- (iii) publish the Approved RAIO (in Word and PDF format) on its website no later than two (2) days following a written confirmation from the TRA that the RAIO is approved.

In case of failure by Omantel to comply with this Decision, the TRA, without prejudice to any penalty set out in the Act, any other law or licenses, reserves the right to charge a minimum penalty of OR 100,000 under Article 83 of the Regulation.

This Decision is effective on the date of its issuance.

This Decision is without prejudice to any further decisions and determinations, that the TRA may consider necessary pursuant to its powers under the Act.