

هيئة الاتصالات وتقنية المعلومات
Communications & Information Technology Commission



Decision Report

on

STC Reference Offer for Data Access (RODA)

**Issued by CITC in RIYADH, 23/07/1430 H
July 5, 2010 G**

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1. Introduction

This Report presents CITC's analysis, rationale, conclusions and directions in relation to the matters raised pursuant to Public Notice 2/1430 on the Public Consultation Document on STC Reference Offer for Data Access (RODA) (issued 19/02/1430H, corresponding to 14/02/2009G).

This Report should be read together with CITC's Decision, which is issued concurrently (the "Decision"). The Decision includes the specific directions to STC regarding the manner in which STC should amend its current RODA.

The Public Consultation Document included 20 questions directed to Respondents. Respondents were invited to offer their views in reply to all or any of the 20 questions, and to offer comments on any aspect of the matters covered in the Public Consultation Document.

CITC received comments from the following Respondents:

1. Etihad Atheeb Telecommunications Company (EATC);
2. Optical Communications Co. (OCC); and
3. Zain.

Comments from all Respondents are now published on CITC's website as submitted.

On 25/04/1430H (corresponding to 21/04/2009G) CITC invited all Respondents and STC to submit, no later than 17/05/1430H (corresponding to 12/05/2009G), "replies" in relation to the comments received. No replies were submitted.

STC did not formally participate in the public consultation process. After reviewing the comments of all Respondents, CITC prepared a draft version of this RODA Decision Report. Given that STC is the author of the STC RODA and is ultimately subject to its terms, CITC considered that it was essential to provide STC with a final opportunity to submit its comments on the legal, commercial and operational feasibility of implementing the directions referred to in this RODA Decision Report. Accordingly, CITC provided STC with a draft version of this RODA Decision Report on [24/08/1430H] (corresponding to 15/08/2009G).

On [12/04/1431 H] (corresponding to 28/03/2010 G), STC submitted its comments to CITC. In this RODA Decision Report, CITC has summarized STC's comments as they relate to issues for which the STC view differed from the CITC preliminary view and/or the views of the Respondents. CITC also clearly indicates where it has amended its preliminary conclusions after a consideration of STC's comments.

This Report is structured in the same manner as the Public Consultation Document and makes specific reference to each of the 20 questions include therein, in addition to other

matters raised by the Respondents. The following general structure is presented for each comment received from Respondents:

- the text of the relevant provision (as appropriate);
- a summary of the Respondents' comments;
- CITC's analysis, rationale and conclusions in respect of each comment (including, where applicable, analysis of STC's subsequent comments to the extent that they are relevant to the feasibility of implementing CITC's preliminary determinations and to the extent that they are supported by appropriate documentation and justification); and
- CITC's directive to STC in relation to how, if at all, the STC RODA should be amended.

2. RODA Primary Document (Question 1)

Respondents were asked for comments on the Primary Document, including highlighting any terms considered to be unusual or anti-competitive.

2.1 Clause 2.3 - Order of Document Precedence

Clause 2.3 of the Primary Document states that:

“In the event of conflict or ambiguity between the provisions of, this RODA (including any attachments, appendices or annexes hereto) and any Data Access Services Agreement entered into between STC and an Other Licensed Operator pursuant to negotiations based on this RODA, and subject to Clause 2.1 hereof, the following order of precedence shall apply:

- a) This Reference Offer for Data Access
- b) Any Agreement pursuant to this RODA.”

EATC expressed the view that the parties to any Data Access Services Agreement should be able to amend the order of precedence set out in the RODA, depending on the circumstances, in case of a conflict/ambiguity between the RODA and any Data Access Services Agreement.

CITC notes that the RODA sets out a uniform contractual framework that applies to all Data Access Services Agreements. It serves to prevent any discrimination between the OLOs and to limit level the playing field in negotiations between STC (as a dominant service provider) and the OLOs.

CITC further notes that the RODA is subject to periodic review and approval by the CITC. Hence, if changes to the RODA are deemed appropriate, interested parties may suggest such amendments at such time. Moreover, if the parties to a Data Access Services Agreement wish that, in a particular circumstance, a provision of their agreement take precedence over the RODA, they may submit such amendments to the CITC for review and approval, pursuant to Clauses 17.9 and 24.1 of the RODA, so that any such changes may be reflected in the RODA itself. Once approved, such changes would apply to all OLOs since the RODA takes precedence over any Data Access Service Agreement. To ensure fairness to all OLOs, the terms of the RODA should take precedence over any specifically negotiated terms between the parties.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 2.3.

2.2 Clause 8.7 - Time to Conclude Agreement for New Services

Clause 8.7 of the Primary Document states that:

“If STC does accept an obligation to do so [i.e., to enter into an agreement with a licensed operator not later than 2 months after the receipt by STC of the statement of requirements of the licensed operator requesting STC to provide Data Access Services], STC and the Other Licensed Operator shall endeavour to agree the technical and commercial aspects of Data Access Services within one hundred and twenty (120) days after receipt of the statement of requirements.” [bold text in italics inserted by CITC for clarification purposes only]

EATC expressed the view that the time frame should be shortened to 60 days (instead of 120 days) for STC and the Other Licensed Operators to agree on the technical and commercial aspects of Data Access Services.

CITC notes the value of swift implementation of Data Access Services Agreements and that the RODA is intended to limit the scope of negotiations between STC and the OLOs (see comment under Section 2.1 above) and hence there should be limited negotiations between the parties.

Based on this comment, CITC has examined international practice and trends in this matter. Benchmark results showed that the existing timeframe of 120 days is excessive.

Therefore, based on EATC’s comment, CITC analysis and benchmarking, CITC concludes that 90 days would represent a reasonable timeframe. Accordingly, in its Decision, CITC has directed STC to amend Clause 8.7 so that the timeframe for the parties to agree on the technical and commercial aspects for Data Access Services be reduced to 90 days.

2.3 Clause 10.2 - Tax Liability

Clause 10.2 of the Primary Document states that:

“The charges in this RODA are exclusive of government taxes and surcharges unless such charges are stated to be inclusive of government taxes and surcharges. However government taxes shall be charged where appropriate on invoices resulting from an acceptance of this RODA.”

EATC expressed the view that it was inappropriate to transfer the entire tax risk to OLOs and expressed its preferred approach that all charges in the RODA should be inclusive of all government taxes other than taxes that are expressly listed as payable by the OLO.

CITC notes that it has recently issued instructions on the responsibility for payment of royalties and taxes on the provision of various telecommunications services. CITC further notes that such taxes may vary over time and that service providers have no control over such variations. Hence, CITC considers that invoices should be issued exclusive of government taxes and surcharges unless otherwise specified in instructions issued by CITC.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 10.2.

2.4 Clause 10.3 - Payment Terms

Clause 10.3 of the Primary Document states that:

“Invoices are due and payable in Saudi Riyals. Invoices will be dated as of the date of issue of the invoice (the “Issue Date”) and are payable on or before the “Due Date” which is thirty (30) Calendar Days from the Issue Date in accordance with the provisions of Annex B (Billing Processes and Procedures).”

EATC expressed the view that there is an ambiguity under this Clause as to whether all invoices (as opposed to only undisputed invoices) are to be paid on or before the due date.

CITC considers that the issue of disputed invoices is treated in detail in Annex B (which is referenced in Clause 10.3).

Accordingly, in its Decision, CITC has not directed STC to amend Clause 10.3.

2.5 Clause 11.1 - Bank Guarantee

Clause 11.1 of the Primary Document states that:

“The Other Licensed Operator shall provide STC with an unconditional and irrevocable bank guarantee the value and terms of which shall be agreed upon by STC and the Other Licensed Operator in the Data Access Services Agreement. This amount shall not exceed the value of three (3) Months of forecasted invoices for STC Services.”

EATC expressed the view that the amount of the irrevocable bank guarantee to be provided by the OLO to STC should not exceed 2 months of forecasted invoices for services rendered by STC (as opposed to 3 months as currently set out in the RODA). EATC argued that this is a reasonable alternative given that under the RODA STC has a right to withdraw Data Access Services with 2 months notice.

Based on this comment, CITC has examined international practice and trends in this matter. Benchmark results showed that Clause 11.1 is consistent with such international practice and trends.

Further, CITC does not consider that it is relevant to establish the amount of the bank guarantee in relation to the duration of the notice period granted to STC to withdraw Data Access Services.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 11.1.

2.6 Clause 12.2 - Equipment Connection

Clause 12.2 of the Primary Document states that:

“Neither STC nor the Other Licensed Operator shall connect or knowingly permit the connection to its Network of any equipment or apparatus, including, but not limited to, any terminal equipment that is not approved by the CITC in accordance with Chapter 12 of the Bylaw.”

EATC expressed the view that the grammatical construction of this Clause in effect prevents STC or the OLOs from connecting any equipment/apparatus to STC’s network, including equipment that has been approved by CITC.

CITC considers that the intent of this Clause is self-evident, but agrees that the syntax is ambiguous.

Therefore, based on EATC’s comment and CITC analysis, CITC concludes that the clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 12.2 as follows:

“Neither STC nor the Other Licensed Operator shall connect or knowingly permit the connection to its Network of any equipment or apparatus (including, but not limited to, any terminal equipment) that is not approved by the CITC in accordance with Chapter 12 of the Bylaw.”

2.7 Clause 13.5 - Reciprocity of Information Disclosure

Clause 13.5 of the Primary Document states that:

“The Disclosing Licensed Operator shall use reasonable endeavours to ensure that information disclosed is correct to the best of its knowledge at the time of provision of such information.”

EATC expressed the view that this Clause may not be considered as reciprocal, in that STC’s obligations may not be the same as the OLOs.

CITC considers that the term “Disclosing Licensed Operator” is likely not intended to be restricted to the OLO seeking access, but to STC as well. The Annex A definition of “Disclosing Party” is consistent with this interpretation. However, CITC notes that the RODA uses the undefined term “Disclosing Licensed Operator” rather than the defined term “Disclosing Party”.

Therefore, based on EATC’s comment and CITC analysis, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to:

- amend Clause 13.5 and other relevant clauses to use the defined term “Disclosing Party” (rather than the undefined term “Disclosing Licensed Operator”)
- amend Clause 13.6 and other relevant clauses to use a new defined term “Receiving Party” (rather than the undefined term “Receiving Licensed Operator”)
- amend the Glossary to add a new term “Receiving Party” defined as follows: “A party receiving information from a Disclosing Party.”

2.8 Clause 13.6 - Indemnity Obligations

Clause 13.6 of the Primary Document states that:

“Subject to Clause 19 hereof, Limitation of Liability, hereof, the Receiving Licensed Operator shall indemnify the Disclosing Licensed Operator and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Licensed Operator to comply with any reasonable conditions imposed and expressly identified and notified to Receiving Licensed Operator, including

those relating to confidentiality as per this Clause 13, by the Disclosing Licensed Operator at the time when the information was provided.”

EATC expressed the view that this Clause does not include a timeframe during which the Receiving Licensed Operator can adjust / implement any conditions notified by the Disclosing Licensed Operator, prior to being subject to indemnification obligations.

CITC considers that Clause 13.6 inappropriately provides for an indemnification obligation in relation to the breach of obligations that are not specified in the RODA (namely the obligation to “comply with any reasonable conditions imposed and expressly identified and notified to Receiving Licensed Operator”).

STC expressed the view that it was in the interest of both the Disclosing as well as the Receiving Parties that the original text of this Clause be maintained since the original clause is complete and without any ambiguity.

CITC notes that STC provided no substantive justification to support its view that no change to this clause is necessary.

Therefore, based on EATC’s and STC’s comments and CITC analysis, CITC concludes that this Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 13.6 to read as follows (struck-out text removed, underlined text added, and modifications include those pursuant to Section 2.7 above):

“Subject to Clause 19 hereof, Limitation of Liability, hereof, the Receiving Party ~~Licensed Operator~~ shall indemnify the Disclosing Party ~~Licensed Operator~~ and keep it indemnified against all liabilities, claims, demands, damages, costs and expenses arising as a consequence of any failure by the Receiving Party ~~Licensed Operator~~ to comply with any reasonable conditions imposed and expressly identified and notified to Receiving Licensed Operator, including those relating to its confidentiality obligations as per this Clause 13, ~~by the Disclosing Licensed Operator at the time when the information was provided.~~”

2.9 Clause 14.1 - Relevance of ‘Good Faith’

Clause 14.1 of the Primary Document states that:

“In the event of any Dispute arising between the Licensed Operators relating to or arising out of a Data Access Services Agreement, including the implementation, execution, interpretation, rectification, termination or cancellation of the Data Access Services Agreement, the Licensed Operators shall meet within ten (10) Business Days of receipt of written notice of the Dispute by one Licensed Operator to the other (or such longer time as mutually agreed by the Licensed Operators) to negotiate in good faith in an effort to settle such Dispute.”

EATC expressed the view that the reference to “good faith” should be removed since, for example, EATC considers that a party, by refusing to negotiate or meet, may be deemed

to have breached its good faith obligations and that such a determination would be inappropriate.

CITC notes that paragraph 45.2 of the Bylaw requires that the parties negotiate in "good faith" prior to bringing a dispute for consensual resolution. Furthermore, given the public resources required to settle disputes between private parties, CITC encourages the parties to attempt in good faith to resolve their disputes prior to submitting any such disputes to the CITC.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 14.1.

2.10 Clause 14.2 - Dispute Process

Clause 14.2 of the Primary Document states that:

“Subject to Clause 14.3 hereof, provided that the period during which the parties have been negotiating in good faith is not less than Sixty (60) days and in circumstances where the parties have met, negotiated in good faith and failed to resolve the Dispute then either party may refer the matter to CITC for resolution in accordance with the Laws of the Kingdom.”

EATC expressed the view that this clause is ambiguous as to whether it is possible to file a court action before, at the same time or only after the dispute resolution provisions have been complied with and exhausted.

EATC also expressed the view that no time period within which the CITC must resolve the dispute is given and that the reference to “good faith” should be deleted.

With respect to the first matter, CITC notes that, under Saudi law, OLOs have a right to file a court action in relation to a dispute, whether or not such dispute is brought to CITC for resolution. CITC notes moreover that Clause 14.2 already refers to either party’s right to settle disputes “in accordance with the Laws of the Kingdom”. Accordingly, CITC concludes that Clause 14.2 should not be amended with respect to the first matter.

With respect to the second matter there are two elements. For the first element, CITC notes that pursuant to CITC analysis under Section 2.9 above, CITC has concluded that the “good faith” obligation should remain. For the second element, CITC notes that pursuant to CITC analysis under Section 2.11 below, CITC considers that the Bylaw already provides adequate dispute resolution procedures, including applicable timelines. Accordingly, CITC concludes that Clause 14.2 should not be amended with respect to the second matter.

2.11 Clause 14.3 - Timing of Disputes

Clause 14.3 of the Primary Document states that:

“The period of Sixty (60) days given in Clause 14.2 herein is in addition to the time taken for the parties to meet as set out in Clause 14.1 hereof.”

EATC expressed the view that this Clause should also, in addition to the 60-day period set out in Clause 14.2, refer to the period granted to CITC to review a dispute.

EATC also expressed concern that this Clause (and the other provisions of the RODA) does not expressly indicate that the parties may seek interim protective measures during the course of the dispute resolution.

With respect to the first matter, CITC notes that Chapter 6 of the Telecommunications Bylaw provides for a detailed procedure for dispute resolution (including references to applicable timelines) by CITC. Accordingly, CITC concludes that Clause 14.3 should not be amended in this respect.

With respect to the second matter, CITC has examined international practice and trends. Benchmark results showed that it is common to state expressly that nothing in the agreement prevents a party from exercising any other rights or remedies it may have at law or under contract.

STC expressed the view that the Dispute Resolution Procedures included in the RODA are in accordance with the CITC Bylaws and that amendment is not necessary as the clause is complete and meaningful.

CITC notes that the original clause may have been complete in itself, but the suggested change gives legal clarity on other rights and remedies.

Therefore, based on EATC's and STC's comment, CITC analysis and CITC benchmarking, CITC concludes that this clause should be amended with respect to the second matter only. Accordingly, in its Decision, CITC has directed STC to amend Clause 14.3 so that it includes a principle that dispute resolution under the RODA is without prejudice to other rights and remedies, including interim protective measures (where applicable), that may be available in the Act, the Bylaws or other legislation.

2.12 Clause 15.1 – Serious Network Disturbance

Clause 15.1 of the Primary Document states that:

“If one Licensed Operator’s Network seriously and adversely affects the normal operation of the other Licensed Operator’s Network, or is a threat to any person’s safety, the affected Licensed Operator shall immediately inform the affecting Licensed Operator. The affecting Licensed Operator shall take immediate action to resolve the problem and in the event that normal operation is not restored in a reasonable period of time or if the matter is extreme, the affected Licensed Operator may suspend, to the extent necessary, such of its obligations under this RODA, and for such period as it may consider reasonable to ensure the normal operation of its Telecommunications System or to reduce the threat to safety. Such suspension shall be notified in writing to both the Other Licensed Operator in potential breach and the CIRC and may continue unless the CIRC instructs otherwise or the problem is resolved.”

EATC expressed the view that this Clause does not allow a service provider, whose network operation is seriously and adversely affected by the other service provider, to demand that such other service provider suspend the services that are causing the disturbance. Rather, under the clause, the affected Licensed Operator may simply choose to suspend its obligations (e.g. payment).

CIRC considers that the first measure to be taken by the affecting Licensed Operator is to isolate the problem, take all steps to prevent any disruption of the other service provider’s network and to restore normal operation of the affected service(s). CIRC initially noted that the suspension of service(s) by the affecting Licensed Operator should be the last recourse.

STC agreed that it is important to isolate problems causing disturbances, but did not believe it was appropriate to refer to suspension of services.

CIRC agrees that, to the extent that the disturbance is isolated, there should be no need to otherwise suspend the services causing problems.

Therefore, based on EATC’s and STC’s comment and CIRC analysis, CIRC concludes that the Clause should be amended.

Accordingly, in its Decision, CIRC has directed STC to amend Clause 15.1 as follows (stroke text removed, underlined text added):

“[...] The affecting Licensed Operator shall take immediate action to isolate and resolve the problem and in the event that normal operation is not restored in a reasonable period of time or if the matter is extreme, the affected Licensed Operator may suspend, to the extent necessary, such of its obligations under this RODA, and for such period as it may consider reasonable to ensure the normal operation of its Telecommunications System or to reduce the threat to safety. Such suspension(s) shall be notified in writing to both the Other Licensed Operator ~~in potential breach~~ and the CIRC and may continue unless the CIRC instructs otherwise or the problem is resolved.”

2.13 Clauses 15.3/15.5 - Breach, Suspension and Termination

Clause 15.3 of the Primary Document states that:

“If the Licensed Operator in breach fails to remedy the breach within twenty eight (28) Calendar Days of receipt of the breach notice, the other affected Licensed Operator may, until such breach is remedied, action the consequences stated in the breach notice including suspend performance of such of its obligations made under an agreement pursuant to this RODA as is reasonable in the circumstances. Such suspension shall be notified in writing to the CITC.”

Clause 15.5 of the Primary Document states that:

“The Data Access Services Agreement may be terminated by either Licensed Operator by written notice forthwith to both the Licensed Operator in breach as well as the CITC (or on the termination of such other period as such notice may specify) if any one of the following occurs;

- a) The Other Licensed Operator formally commences bankruptcy proceedings;
- b) Bankruptcy proceedings are formally commenced against the Other Licensed Operator;
- c) The Other Licensed Operator ceases to carry on business.”

Zain expressed the view that CITC should review and approve any suspension of performance under the RODA or any termination of the RODA, given the effect that any such suspension/termination may have on the OLOs.

CITC considers that the obligation to notify the CITC prior to suspending or terminating a service offered under the RODA (as set out in Clauses 15.2, 15.3 and 15.5) serves to reduce the risk that the suspension / termination of the services may be applied abusively.

CITC further notes that the parties to such agreements can refer their disputes to CITC in accordance with Clause 14 of the RODA, including in connection with the suspension/termination of the agreements. CITC does not believe that it should automatically review and approve any such suspension / termination.

Accordingly, in its Decision, CITC has not directed STC to amend Clauses 15.3 and 15.5.

2.14 Clause 15.4 - Breach Period

Clause 15.4 of the Primary Document states that:

“If the Licensed Operator in breach fails to remedy the breach within the period stated in the breach notice, the affected Licensed Operator may, terminate the Data Access Services Agreement with the Licensed Operator in breach on three (3) Calendar Months’ written notice to both the Licensed Operator in breach as well as the CITC. If the Licensed Operator in breach remedies the breach within such three (3) Calendar Months’ notice period, the Data Access Services Agreement shall not be terminated as a result of such

notice. Such termination shall be notified in writing to the CITC and may be implemented unless the CITC instruct otherwise.”

CITC notes that this Clause must be read in conjunction with Clauses 15.2 and 15.3 which state respectively that:

“If either Licensed Operator is in material breach of any provisions of the Data Access Services Agreement consequent upon this RODA (including failure to pay an undisputed sum due hereunder), the Licensed Operator may serve a written notice (the “breach notice”) on the Licensed Operator in breach, copied to the CITC, specifying the breach and requiring it to be remedied as well as stating the consequences of failure to remedy including potential suspension or termination.”

“If the Licensed Operator in breach fails to remedy the breach within twenty eight (28) Calendar Days of receipt of the breach notice, the other affected Licensed Operator may, until such breach is remedied, action the consequences stated in the breach notice including suspend performance of such of its obligations made under an agreement pursuant to this RODA as is reasonable in the circumstances. Such suspension shall be notified in writing to the CITC.”

EATC expressed the view that there is an ambiguity in Clause 15.4 (read in conjunction with Clauses 15.2 and 15.3) as to whether the 28 calendar days breach notice set out in Clause 15.3 always applies or whether it is possible to provide a breach notice for a shorter period. EATC suggests to expressly refer to a 28 calendar day period in Clause 15.4.

In addition, EATC expressed the view that the non-breaching service provider should be compensated for any remedial action it must take (i.e., related to the sourcing of alternative service providers) during the 3 month period following the breach notice until the termination of the Data Access Services Agreement.

With respect to the first matter and based on EATC’s comment, CITC has examined international practice and trends in this matter. Benchmark results showed that the 28 calendar day remedial period is consistent with such international practice and trends. However, CITC notes that, for greater clarity, Clause 15.4 should set out a reference period (of 28 Calendar Days) as of the receipt of the breach notice as it is the case in Clause 15.3.

With respect to the second matter, CITC considers that the right of the a party (i) to terminate the Data Access Services Agreement in case of a breach by the other party within a fixed period of time (Clauses 15.2 to 15.4), (ii) to claim for any damages it may have suffered as a consequence of such breach (as per general liability provisions contained in applicable law), (iii) to receive a refund of the periodic sums (if any) paid for a period extending beyond the date of the termination (Clause 15.11) and (iv) to receive such assistance by the breaching party as is necessary to recover its equipment (Clause 15.9), without being granted a specific right to be compensated for costs incurred

to find an alternative option, offer sufficient protection to the non-breaching party and are consistent with customary commercial practices.

Therefore, based on EATC comments, CITC analysis and CITC benchmarking, CITC concludes that the Clause should be amended with respect to the first matter, but that the Clause does not need to be amended with respect to the second matter. Accordingly, in its Decision, CITC has directed STC to amend Clause 15.4 as follows (stroke text removed, underlined text added):

“If the Licensed Operator in breach fails to remedy the breach within ~~the period stated in the breach notice~~ thirty (30) Calendar Days of receipt of the breach notice, the affected Licensed Operator may, terminate the Data Access Services Agreement with the Licensed Operator in breach on three (3) Calendar Months’ written notice to both the Licensed Operator in breach as well as the CITC. [...]”

2.15 Clause 15.5 - Bankruptcy

Clause 15.5 of the Primary Document states that:

“The Data Access Services Agreement may be terminated by either Licensed Operator by written notice forthwith to both the Licensed Operator in breach as well as the CITC (or on the termination of such other period as such notice may specify) if any one of the following occurs;

- a) The Other Licensed Operator formally commences bankruptcy proceedings;
- b) Bankruptcy proceedings are formally commenced against the Other Licensed Operator;
- c) The Other Licensed Operator ceases to carry on business.”

EATC expressed the view that a Licensed Operator may file for bankruptcy proceedings as a means of triggering the right to terminate the Data Access Services Agreement. EATC proposes additional wording in this regard. It also proposes to include additional bankruptcy related events that would trigger the right to terminate the Data Access Services Agreement would add precision and clarity to the existing language.

CITC considers that the obligation to notify the CITC, as well as the fact that the option to terminate the Data Access Services Agreement occurs in the event that the other Licensed Operator formally commences bankruptcy proceedings, both serve to reduce the risk that the clause will be applied abusively or in bad faith.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 15.5.

2.16 Clause 15.6 – Termination for Convenience

Clause 15.6 of the Primary Document states that:

“Either Licensed Operator may terminate the Data Access Services Agreement by giving at any time to the other not less than twenty four (24) Calendar Months written notice.”

EATC expressed the view that there may be services which are not capable of being transferred to another service provider within the (notice) period given by the terminating party of 24 months as of the termination of the Data Access Services Agreement.

CITC considers that STC, as dominant service provider, is required to provide data access services to OLOs pursuant to the relevant provisions of the Bylaws and hence that it would be inappropriate to allow STC to terminate the Data Access Services Agreement for convenience. Therefore, based on EATC comments, CITC analysis and international best practice, CITC concludes that Clause 15.6 of the Primary Document should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 15.6 as follows (struck-out text removed, underlined text added):

“~~Either Licensed Operator~~ The OLO may terminate the Data Access Services Agreement by giving at any time to ~~the other~~ STC not less than twenty four (24) Calendar Months written notice.”

2.17 Clause 15.11 - Refunds Post-expiry/termination

Clause 15.11 of the Primary Document states that:

“Without prejudice to a Licensed Operator’s rights upon expiry of the Data Access Services Agreement, a Licensed Operator shall refund to the other a fair and equitable proportion of those periodic sums (if any) paid under the Data Access Services Agreement for a period extending beyond the date of such termination or expiration.”

EATC expressed the view that, following the expiry/termination of a Data Access Services Agreement, funds to be returned by one service provider to the other for the period extending beyond the date of expiration/termination should be determined in an objective way (i.e., the funds returned should amount to the sums that relate to the period extending beyond the date of expiry/termination minus costs already incurred or that the service provider is contractually obliged to pay) and not be limited to a “fair and equitable proportion”.

CITC considers that while it would be desirable in principle to provide for an objective approach to determine the sums owed to a service provider upon expiry/termination of a Data Access Services Agreement, the specific circumstances and the factors that must be considered are likely to vary in each instance.

CITC further considers that the current reference to a “fair and equitable proportion” of fees provides the parties with the requisite and appropriate degree of flexibility.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 15.11.

2.18 Clause 18.1 - Force Majeure

Clause 18.1 of the Primary Document states that:

“Neither STC nor the Other Licensed Operator shall be liable for any breach of the Data Access Services Agreement caused by force majeure, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, highway authority or other competent authority, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, industrial disputes of any kind (whether or not involving either STC’s or the Other Licensed Operator’s employees), fire, lightning, explosion, flood, earthquake, subsidence, weather of exceptional severity, acts or omissions of persons for whom neither Licensed Operator is responsible or any other cause whether similar or dissimilar outside its reasonable control and any such event or circumstance is a force majeure.”

EATC expressed the view that the definition of force majeure includes industrial disputes which may involve STC’s employees and that as such this should be reviewed.

Based on this comment, CITC has examined international practice and trends in this matter. Benchmark results showed that the inclusion of industrial disputes in the definition of force majeure is consistent with such international practice and trends.

CITC notes that industrial disputes are most often outside the reasonable control of service providers.

CITC however, considers that if a dispute involves the employees of the party relying on the force majeure, such party must take all reasonable actions to prevent the dispute from arising.

STC expressed the view that the current wording fully conveys the meaning without any confusion. It further expressed the view that the RODA is just an offer document and not the Agreement which may contain more detailed clauses depending on the circumstances and the negotiations between the parties.

CITC believes that this modification adds an important principle into the meaning of Force Majeure and does not believe that it would be appropriate for this to be negotiated as part of an Interconnect Agreement, as this would potentially lead to a discriminatory approach amongst Service Providers.

Therefore, based on EATC's and STC's comments, CITC analysis and CITC benchmarking, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 18.1 as follows (underlined text added):

“Neither STC nor the Other Licensed Operator [...] industrial disputes of any kind (whether or not involving either STC's or the Other Licensed Operator's employees; provided that in circumstances where the industrial dispute involves its own employees, the party relying on the force majeure has taken all reasonable actions to prevent such industrial disputes from arising), fire, lighting [...].”

2.19 Clause 18.5 – Refund in Case of Force Majeure

Clause 18.5 of the Primary Document states that:

“To the extent that a Licensed Operator is prevented as a result of a force majeure from providing all of the services or facilities to be provided under this RODA, the other Licensed Operator shall be released to the equivalent extent from its obligations to make payment for such services or facilities or complying with its obligations in relation thereto.”

EATC expressed the view that the RODA should clearly state that in the event that a service provider is released from its obligations to make payments (for example, if the corresponding services are not provided by the other service provider as a result of a force majeure event), all monies paid for services to be provided in the future should be refunded.

CITC does not consider that monies paid for services that are suspended should be refunded in their entirety. This is because (pursuant to the provision under consideration) a force majeure event merely suspends the provision of the services. The services are not terminated unless the effects of the force majeure continue for a continuous period of 6 months or more and the service provider receiving a force majeure notification elects to terminate the Data Access Services Agreement (Clause 18.6). As currently drafted, the service provider that is not affected by the force majeure event is already released to the “equivalent extent” from its obligations to make payment.

CITC further notes that, pursuant to Clause 18.4, the service provider that is affected by a force majeure event must perform those of its remaining obligations not affected by the force majeure. The parties to a Data Access Services Agreement may agree that the monies paid for services that are suspended due to the force majeure may be set off against invoices due for the services that are not affected by the force majeure.

CITC considers this to be a fair and equitable approach to address the situation as contemplated.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 18.5.

2.20 Clause 19.1 - Limitation of Liability

Clause 19.1 of the Primary Document states that:

“Subject to Clause 15, Breach, Suspension and Termination, if either operator is in breach of any of its obligations under the Data Access Services Agreement pursuant to this RODA (excluding obligations arising under this RODA to pay moneys), liability shall be limited to three million Saudi Riyals (SAR 3,000,000) for any one event or series of connected events and seven million Saudi Riyals (SAR 7,000,000) for all events (connected or unconnected) occurring in a Calendar Year (Gregorian).”

EATC expressed the view that each party’s maximum liability under a Data Access Services Agreement (excluding for payment of monies) of SAR 3 million for any one event or series of connected events and SAR 7 million for all events occurring in any given calendar year is not sufficient. Consequently, EATC proposes to increase these figures to (i) SAR 10 million and SAR 21 million, respectively or (ii) if the compensation under the agreement is, for any given calendar year, higher than SAR 10 million for any service/series of connected services or SAR 21 million for all services. EATC also proposes that the liability cap should be equal to the sum actually paid for such service/services.

Based on this comment, CITC has examined international practice and trends in this matter. Benchmark results showed that the limitation of liability set out in the RODA is consistent with such international practice and trends.

CITC considers that the limitation of liability is also consistent with the risks incurred by the parties under the Data Access Services Agreements in the Kingdom.

Accordingly, in its Decision, CITC has not directed STC to amend clause 19.1.

2.21 Clause 24.1 - Effect of RODA Changes on Agreements

Clause 24.1 of the Primary Document states that:

“Amendments and supplements to this RODA, including its Annexes, Appendices, Attachments and Service Schedules, shall be issued with not less than twenty eight (28) days notices subject to the approval of the CITC.”

EATC expressed the view that the RODA does not specify that any amendments made thereto are automatically incorporated to the agreements entered into between STC and OLOs.

CITC notes that (i) Clause 1.1 indicates that the RODA provides the standard terms and conditions under which STC provides the Data Access Services to the OLOs, (ii)

according to Sub-clause 1.4, STC offers to provide the Data Access Services on the terms and conditions as provided for in the RODA and (iii) Clause 2.3 deals with the order of precedence in case of a conflict/ambiguity between the RODA and the terms of any Data Access Services Agreement.

On this basis, CITC considers that the terms of the RODA (as may be amended as per Clause 24) apply to all Data Access Services Agreements and that they override any provisions of such agreements in case of conflict with a provisions of the RODA.

Under the circumstances, CITC considers that it is not necessary to further specify that any amendments to the RODA automatically incorporated into the agreements between STC and OLOs.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 24.1.

3. Annex A – Definitions and Glossary of Terms (Question 2)

Respondents were asked for comments on Annex A - Definitions and Glossary of Terms of the RODA.

3.1 ADSL Serving Site

“ADSL Serving Site” is defined in Annex A as an:

“Individual site where MDF is located with possible available spare ADSL (DSLAM) ports. A list of ADSL Serving sites may be amended by STC from time to time (see attachment-1 to Annex H).”

EATC expressed the view that the effect of this definition is that STC can unilaterally change the list of serving sites with no notice to the OLOs, which may result in costs for OLOs in planning installations and work for ADSL Serving Sites which are removed by STC. Consequently, EATC suggested that STC be required to provide a 3 month advice notice and to consult the OLO in relation to any serving site where the OLO is active.

CITC considers that STC cannot change the list of Serving Sites without notice, since any change of the RODA requires CITC’s review and approval and since CITC can stipulate an appropriate time period before changes are made. CITC also notes that Clause 3.8 (Part A) of Annex C provides, wherever possible, 7 months notice of DSLAM changes.

Accordingly, in its Decision, CITC has not directed STC to amend the definition of ADSL Serving Site in Annex A.

3.2 Dispute

“Dispute” is defined in Annex A as:

“A disagreement between the two parties pursuant to the Data Access Services Agreement (excluding breaches).”

EATC expressed the view that breaches should not be excluded from the definition, so that a breach, whether actual or alleged, may be disputed.

CITC notes that the parties to a Data Access Services Agreement can refer their disputes to CITC in accordance with Clause 14, including in connection with the “execution” (which includes non-execution) of the Data Access Services Agreement.

CITC recognizes the right of the parties that are in a dispute in connection with an alleged breach of the Data Access Services Agreement to submit such dispute to the dispute resolution mechanism set out in the RODA and, more generally, to Chapter 6 of the Telecommunications Bylaw.

STC expressed the view that a breach and a dispute are different situations and have different remedies associated with them. Hence STC does not think it is logical to include the notion of breach under the definition of “Dispute”. STC further commented that a breach can be a dispute, but a dispute does not necessarily mean a breach because it might be an assertion of rights under the Data Access Agreement.

CITC accepts that a breach and a dispute may be different things with different remedies. CITC notes that STC accepts that a breach can be a dispute. Hence until CITC intervenes to determine whether a breach has occurred, it is right that other parties should be able to refer matters to CITC under the Dispute procedure.

Therefore, based on EATC’s and STC’s comments and CITC analysis, CITC concludes that the definition of “Dispute” should be amended. Accordingly, in its Decision, CITC has directed STC to amend the definition of “Dispute” as follows (struck-out text removed):

“A disagreement between the two parties pursuant to the Data Access Services Agreement (~~excluding breaches~~).”

3.3 RODA

EATC pointed out a typographical error in the definition of RODA (Reference Offer for Data Access), noting that it should read “A Reference Offer for Data Access” as opposed to “A Reference Data Access Offer”.

CITC agrees with EATC’s comment. Accordingly, in its Decision, CITC has directed STC to amend the definition of RODA as follows (struck-out text removed, underlined text added):

“A Reference ~~Data Access~~ Offer for Data Access (RODA) is a [...]”

3.4 Survey

EATC pointed out a typographical error in the definition of Survey (Full “Professional” Survey), noting that the term “Professional Surveyor” should not comprise capital letters as this term is not otherwise defined in the RODA.

CITC agrees with EATC’s comment. Accordingly, in its Decision, CITC has directed STC to amend the definition of “Survey” as follows (struck-out text removed, underlined text added):

“This is a full and complete survey carried out by a ~~P~~professional ~~S~~surveyor who is [...]”

4. Annex B – Billing Processes and Procedures (Question 3)

Respondents were asked for comments on Annex B - Billing Processes and Procedures of the RODA.

4.1 Clause 2.1.2 – Prepared Facility

Clause 2.1.2 of Annex B states that:

“The commencement date of charging for the facility will be from the moment of handover of the prepared facility as set out in Annex G.”

EATC expressed the view that the words ‘fully functional’ should be inserted before ‘facility’ so that OLOs will not be charged until the facility is functional.

CITC notes that in Clause 2.1.2, 'facility' is qualified by the adjective 'prepared'. CITC understands this to mean that the facility is ready for service before the commencement date of charging.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 2.1.2.

4.2 Clauses 2.1.4, 2.2.3, 2.3.4 – Timing of Invoices

Clauses 2.1.4, 2.2.3 and 2.3.4 of Annex B state that:

“[the Service] will be invoiced and payable at the date of STC's handover of the Service.”

EATC expressed the view that payment of the services on the same day as the day on which the corresponding invoice is issued does not allow sufficient time to arrange for transfer of funds and creates a situation where the OLOs would be unintentionally breaching the provision of the RODA. Consequently, EATC suggests that invoicing occur at least 3 calendar days before the handover of the Service to allow payment to occur on that day.

CITC notes that, from a practical perspective, invoice dates and due payment dates should not fall on the same day.

STC expressed the view that there could be a misunderstanding, as each Invoice is payable on the due date which has been defined as to be within 30 days from the Invoice date, as stated in Annex B Clause 3.2.4.

CITC accepts that invoices are settled in 30 days. However, CITC considers that the language used is ambiguous and has been misinterpreted and the phrase 'chargeable as of' would be preferable to 'payable'.

Therefore, based on EATC's and STC's comments and CITC analysis, CITC concludes that these clauses should be amended. Accordingly, in its Decision, CITC has directed STC to amend these Clauses as follows (struck-out text removed, underlined text added):

“[the Service] will be invoiced and ~~payable~~ chargeable as of the date of STC's handover of the Service.”

4.3 Clauses 2.4.1, 3.3.5, 3.3.7-8 and 3.4.2-3 – Billing Accuracy

Clause 2.4.1 of Annex B states that:

“The Other Licensed Operator and STC will agree that a discrepancy of up to three percent (3%) per Data Access Service type or facility will be accepted. That is to say that where there is a discrepancy between the invoice supplied by STC and the invoice expected by the Other Licensed Operator for any one service type or facility the amount of the discrepancy is less than three percent (3%) or a monetary value of less than SAR 40,000 there will be no billing reconciliation procedure for that service type or facility, otherwise the discrepancy will be subject to the reconciliation procedure detailed below.”

This Clause allows a discrepancy up to 3% or SAR 40,000 between any invoice provided by STC to the OLO and the corresponding invoice expected by the OLO before triggering a billing reconciliation procedure. Clauses 3.3.5, 3.3.7, 3.3.8, 3.4.2 and 3.4.3 of Annex B also refer to this 3% rate in connection with the investigation and the resolution of dispute relating to billing reconciliation.

EATC expressed the view that in each case the discrepancy for triggering the reconciliation process be reduced to 0.5% or SAR 10,000.

CITC notes that the 3% billing accuracy is the same as is specified in the STC Reference Interconnection Offer (RIO). However, in that case, invoices are subject to the accuracy of the systems for measuring traffic, whereas in the RODA, invoices relate to quantities of lines ordered or in service.

CITC further notes that with respect to the RODA there should be no doubt about such numbers, and hence considers that a greater degree of accuracy should be capable of being achieved. Therefore, the percentage discrepancy at which the reconciliation procedure is activated can be less.

STC expressed the view that the reconciliation limits of SR 40,000 or 3% are reasonable and these should be maintained without change until some operational experience had been achieved. STC noted that RODA payments are made up of fixed rates (numbers of links, customers etc) and so the likelihood of discrepancies is much smaller than with the RIO.

CITC notes that STC accepts the view that discrepancies are less likely than with telephony as payments relate to fixed rates and facilities. CITC further notes that in almost all other countries, there is no minimum discrepancy below which errors are ignored. Therefore, based on EATC’s comment and CITC analysis, CITC concludes that the clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend the relevant clauses to reduce the percentage of discrepancy at which the reconciliation process is activated to 0.5% or SAR 10,000.

EATC also pointed out a typographical error in Clause 3.3.8, where the term “payable” at the end of the paragraph should be replaced by “be paid”.

CITC agrees with EATC’s comment. Accordingly, in its Decision, CITC has directed STC to

- amend Clauses 2.4.1, 3.3.5, 3.3.7-8 and 3.4.2-3 to reduce the percentage of discrepancy at which the reconciliation process is activated to 0.5% or SAR 10,000;
- amend Clause 3.3.8 and all other relevant clauses to replace “payable” with “be paid”.

4.4 Clause 2.4.8 – Reconciliation Procedure

Clause 2.4.8 of Annex B states that:

“Notwithstanding the other provisions of this Clause 2.4 STC may decide not to participate in the reconciliation procedure by immediately adjusting its invoice for Data Access Services the particular Data Access Service type or facility to be within the margin of the acceptable tolerance limits set out in Clause 2.4.1.”

EATC expressed the view that this Clause in effect allows STC to retain the 3% amount referred to in particular in Clause 2.4.1 (see Section 4.3 above).

CITC considers that the intent of this Clause is to allow STC to acknowledge an invoicing mistake on its part without entering into a more protracted reconciliation process. Moreover, given CITC’s direction to STC to reduce the percentage of tolerable discrepancy to 0.5% or SAR 10,000, CITC further considers that the voluntary adjustment mechanism is unlikely to be unfairly prejudicial to OLOs.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 2.4.8.

4.5 Clause 3.3.3 – Billing Information

Clause 3.3.3 of Annex B states that:

“The Other Licensed Operator should submit a request for recalculation of that invoice within three (3) Weeks from the date of receipt of that invoice. The Technical Review Committee or appointed billing sub committee from both parties will meet within one (1) Week of such a request and use best efforts to reconcile the reports in a timely manner.”

EATC expressed the view that in order for an OLO to assess the need for a recalculation, it must receive all Billing Information (as defined in the RODA) relating to the applicable invoice, as opposed to the invoice itself.

CITC notes that according to Clause 3.2.5, STC must provide with the invoice appropriate Billing Information. Consequently, the OLO should be in possession of all relevant information to assess the need for a recalculation at the time of receipt of the invoice. CITC considers, however, that there may be instances where not all Billing Information (or not sufficient details in respect thereof) has been provided at the time of invoice, so the Clause should refer to Billing Information.

STC expressed the view that as the Billing Information should be provided with the Invoice (as per Section 3.2.5 of Annex B) then there should be no need for a modification to this clause.

CITC agrees that the Billing Information should be provided with the Invoice, but nevertheless maintains the view that a simple amendment to the Clause would be appropriate.

Therefore, based on EATC's and STC's comments and CITC analysis, CITC concludes that the clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 3.3.3 as follows (underlined text added):

“The Other Licensed Operator should submit a request for recalculation of that invoice within three (3) Weeks from the date of receipt of the Billing Information relating to that invoice. The Technical Review Committee or appointed billing sub committee from both parties will meet within one (1) Week of such a request and use best efforts to reconcile the reports in a timely manner.”

4.6 Clause 3.4.6 – Tax Liability

Clause 3.4.6 of Annex B states that:

“Relevant Government Royalties and Fees as applicable will be added to all or any part of the charges under the Data Access Services Agreement and will be paid by the Licensee responsible for making such payment.”

EATC expressed the view that invoices should be inclusive of all taxes and should list taxes that are excluded and which should be paid by the licensee responsible for such payment.

As noted under Section 2.3 above that deals with Clause 10.2 of the Primary Document, CITC has issued instructions on the responsibility for payment of royalties and taxes on the provision of various telecommunications services. CITC further notes that such taxes may vary over time and that service providers have no control over such variations. Hence, CITC considers that invoices should be issued exclusive of government taxes and surcharges unless otherwise specified in instructions issued by CITC.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.4.6.

5. Annex C – Technical Information

Respondents were asked for comments on Annex C – Technical Information.

5.1 Clause 3.8 (Part A) – Relocations of DSLAMs

Clause 3.8 (Part A) of Annex C states that:

“In the unavoidable event that STC needs to relocate a DSLAM, it is possible that, because of the increased distance between the DSLAM and the Subscriber, the Bit Stream Service on some subscriber lines will cease to operate. In such unavoidable circumstances, the service for those Subscribers may need to be withdrawn [...].”

Zain expressed the view that if STC needs to relocate a DSLAM, OLOs should be able to install their own DSLAMs.

CITC considers Bit Stream to be a service provided from STC’s network; it is not a supply of any specific physical facility. Therefore, CITC does not consider it appropriate for an OLO to substitute its own DSLAM in the case of STC relocating its equipment.

CITC does consider, however, that STC should be required to provide extended notice of changes to its network, see Section 22 below.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.8.

5.2 Clause 1.4 (Part B)– Spectrum Management

Clause 1.4 (Part B) of Annex C states that:

“Spectrum Management and spectral compatibility is an area subject to study by several telecommunications authorities, with a view to introducing new industry standards. The specifications given under Clause 3 of this Section will be the subject of periodic reviews by STC, at which time any new standards will be incorporated where appropriate.”

Zain expressed the view that all OLOs should be involved in the decision to incorporate any new standard.

CITC considers that Spectrum Management is an industry-wide issue. The Power Spectral Density (PSD) specifications both restrain and protect services for OLOs and

STC alike. CITC further considers that STC should not unilaterally make changes in this area without consultation with all service providers subject to RODA Agreements.

STC expressed the view the Clause should be modified as follows:

“Spectrum Management and spectral compatibility are areas subject to study by several Telecommunications authorities, with a view to introducing new industry standards. As needed, the specifications given under Clause 3 of this Section will be the subject of periodic reviews by STC, at which time any new approved International standards will be incorporated where appropriate.”

CITC notes STC’s proposals but does not believe that the text is appropriate. International Standards may be well be approved (by the ITU), but that doesn't always mean that they should be automatically and retrospectively added to the RODA, without CITC's approval. Issues of spectrum compatibility affect all service providers and should not be the subject of unilateral decisions by STC.

Therefore, based on Zain’s and STC’s comments and CITC analysis, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 1.4 (Part B) of Annex C as follows (struck-out text removed, underlined text added):

“Spectrum Management and spectral compatibility is an area subject to study by several telecommunications authorities, with a view to introducing new industry standards. The specifications given under Clause 3 of this Section will be the subject of periodic reviews by STC, ~~at which time any new standards will be incorporated where appropriate.~~ Where any changes are proposed by STC in consultation with OLOs, such changes shall be incorporated into this Annex, after review and approval by CITC.”

5.3 Clause 4.6 (Part B) – Power Spectral Density (PSD) Template

Clause 4.6 (Part B) of Annex C states that:

“The PSD masks and templates are drawn from ANSI T1 E1.4 Spectrum Management Class 5 which is intended for DSL transmission systems that use ATU-C equipment and operate in the frequency spectrum for approximately 25kHz to approximately 1104kHz and ATU-R equipment that operates in the frequency spectrum from approximately 25kHz to approximately 138kHz.” [PSD table follows]

Zain expressed the view that the PSD figures set out in this Clause should be within globally accepted ranges.

CITC considers that the ANSI figures align with best international practice and are therefore within globally accepted ranges.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 4.6.

6. Annex C - Attachment 1 – Bit Stream CPE Interface (Question 4)

Respondents were asked for comments on the Bit Stream ADSL CPE specifications.

None of the Respondents provided comments.

Accordingly, in its Decision, CITC has not directed STC to amend Annex C - Attachment 1.

7. Annex C - Attachment 2 – Bit Stream Link Interface (Question 5)

Respondents were asked for comments on the Bit Stream Access Link CPE specifications.

None of the Respondents provided comments.

Accordingly, in its Decision, CITC has not directed STC to amend Annex C - Attachment 2.

8. Annex C - Attachment 3 – Environmental and Power (Question 6)

Respondents were asked whether the power and environmental conditions that STC will supply in collocation areas should be specified.

In the Public Consultation Document, CITC stated its preliminary view that Attachment 3 should be amended to contain a statement of the environmental and power conditions that STC will supply within collocation areas. This preliminary view was based on the CITC belief that it is not reasonable to impose a compliance requirement on OLOs when they did not know the environment within which the equipment would operate. Furthermore, OLOs should not face a burdensome compliance process that STC does not face and that a simpler compliance process for OLOs should be facilitated.

EATC and Zain agreed with CITC's preliminary view. EATC further commented that the obligation on OLOs to provide 'Proof of Compliance' for each environmental requirement was unnecessarily burdensome and one that STC did not face.

CITC considers that it is essential that STC should provide a Statement of the environmental and power conditions, as OLOs must have confidence about the nature of the collocation space into which they will install their equipment. This Statement would include, for example, details of the temperature and humidity ranges for the collocation area.

CITC further considers that STC should not require OLOs to provide 'Proof of Compliance' beyond a self-declaration of compliance.

Also, consistent with CITC's conclusion in Section 17.10 below, CITC considers that STC should not reject any equipment proposed by OLOs until confirmed by CITC.

Therefore, based on EATC and Zain comments and CITC analysis, CITC concludes that this Attachment should be amended. Accordingly, in its Decision, CITC has directed STC to amend Annex C - Attachment 3 as follows:

- add a specification of the power and environmental conditions that STC will supply within collocation areas.
- amend the relevant clauses to delete the requirement for OLOs to provide STC with "Proof of Compliance" in relation to equipment standards, and replace it with a requirement for the OLOs' to provide a self-declaration of compliance. The wording of this declaration shall be proposed by STC and be approved by CITC.

9. Annex C Attachment 4 – Tie Cable Characteristics (Question 7)

Respondents were asked for comments on Tie Cable Characteristics.

None of the Respondents provided comments.

Accordingly, in its Decision, CITC has not directed STC to amend Annex C -Attachment 4.

10. Annex D: Management of Data Access Services (Question 8)

Respondents were asked for comments on the Management of Data Access Services.

None of the Respondents provided comments.

Accordingly, subject to CITC's comments and directions regarding the impact of NGN and NGA in Section 22 of this report below, in its Decision, CITC has not otherwise directed STC to amend Annex D.

11. Annex E: Forecasting (Question 9)

Respondents were asked whether the periods for forecasting should be reduced to match international benchmarks and other matters.

11.1 Clauses 1.1. and 3.1 (Part B) – Forecasts

Clause 1.1 (Part B) of Annex E states that:

“The Other Licensed Operator shall supply forecasts of the Local Loop Sharing Server requirements, by STC Exchange Site, to STC every six (6) months on 1st of December and 1st of June of each year.”

Clause 3.1 (Part B) of Annex E states that:

“[The Long Term Local Loop Sharing Service Order Forecast] will provide an indicative forward look of order volumes for the Local Loop Sharing Service, by STC Exchange Site name, over the eighteen (18) Calendar Months, following on from the Short term Forecast, broken down into quarterly figures and updated quarterly.”

In the Public Consultation Document, CITC stated its preliminary view that, based on its benchmarking analysis, the length of time applicable to forecasts should be reduced. In addition, CITC also stated its preliminary view that OLO should submit short-term and long-term forecasts every 3 months. The latter preliminary view is based on ensuring the correct correspondence between the frequency and the proposed revised length of the short-term forecast.

Zain agreed with CITC's preliminary view that the frequency of short-term forecast submission should be reduced from 6 months to 3 months. However, it expressed the view that the production every 3 months of both short and long-term forecasts is burdensome and should be optional, and that STC should motivate the OLOs to submit

their forecasts by offering financial benefits. Zain also expressed the view that the production of long term forecasts every year (instead of every 6 months) would be adequate.

EATC agreed with CITC's preliminary view that the timing of forecasts should be limited to 3 months or less for short term forecasts and 12 months for long term forecasts (or longer if the OLO wishes to give more information).

CITC recognizes that forecasting can be a burden, but considers it to be a necessary part of the wholesale relationship between STC and the OLOs. The system of using short-term and longer-term forecasts is consistent with international practice.

STC expressed the view that the suggested changes to the forecasting processes were acceptable but suggested that STC's commitment to provide the services as per the OLO Forecasts should be subject to the availability of equipment. Such a statement should be added to Clause 1.2 of Section A : "Wholesale Bitstream Service" and to Clause 1.2 of Section B : "Local Loop Sharing Service of Annex E".

CITC noted STC's acceptance of the proposed forecasting changes. However, with regard to the proposal to add new text about availability of equipment, CITC considers that the purpose of a forecast is to ensure that equipment is procured on time to meet OLOs' requirements as expressed through the forecast. Only where OLOs' actual orders exceed the forecast does equipment availability become an issue and then the principle of 'reasonable endeavours' should apply.

Therefore, based on EATC's, Zain's and STC's comments, CITC analysis and CITC benchmarking, CITC concludes that the corresponding clauses should be amended. Accordingly, in its Decision, CITC has directed STC to amend Annex E as follows:

- Clause 1.1 (Parts A and B) (and any other paragraphs in Annex E that relate to the duration of short-term forecasts) shall be amended to a 3 month forecast;
- Clause 3.1 (Part B) (and any other paragraphs in Annex E that relate to the duration of long-term forecasts) shall be amended to a 12-month forecast; and
- Annex E Attachments 1-4 shall be amended to require only 3 monthly forecasting periods (instead of 6) at each submission.

11.2 Process Diagram (Part B)

The process diagram set out on page 6 of Annex E show that forecasts provided by OLOs may be rejected or partially rejected by STC.

Zain expressed the view that STC should not be able to reject a forecast.

CITC notes that the flowchart indicates that any formal STC rejection can only occur after its rejection by the Joint Technical Committee (JTC), on which the OLOs are represented. This means that STC alone cannot reject a forecast.

Accordingly, in its Decision, CITC has not directed STC to amend the Process Diagram.

11.3 Clause 2.2 (Part B) - Initial 6 months Forecast

Clause 2.2 (Part B) of Annex E states that:

“The initial 'six months' forecast is required to begin four months prior to the first Local Loop Sharing Service order, or during the initial contract signature stage whichever is the sooner, and is updated quarterly as described.”

EATC expressed the view that Clause 2.2 is incorrectly worded, since there is no service 4 months before the first order and suggests that the words ‘be submitted’ be substituted in place of ‘begin’.

CITC considers that the clause appears ambiguous.

Therefore, based on EATC’s comment and CITC analysis, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 2.2 (Part B) as follows (struck-out text removed, underlined text added):

“The initial 'six months' forecast is required to ~~begin~~ be submitted four months prior to the first Local Loop Sharing Service order, or during the initial contract signature stage whichever is the sooner, and is updated quarterly as described.”

11.4 Clause 2.3 (Part B) – Tolerance of Forecasts

Clause 2.3 (Part B) of Annex E states that:

“The Local Loop Sharing Service forecast of the OLO should be reasonable and realistic. STC will accept a variation of $\pm 15\%$ of the Forecast provided by the OLO. However, STC reserves the right to ask for compensation if the variation exceeds the indicated tolerance limits of $\pm 15\%$ in any given month.”

Zain expressed the view that it may not be feasible to require a $\pm 15\%$ tolerance on forecasts in particular in the early period of service. Zain also considers that the RODA should set out the compensation due to STC for any variation beyond the tolerance limits.

EATC expressed similar concerns to Zain about the $\pm 15\%$ tolerance and suggests that it should be measured over one quarter and not each month.

Based on this comment, CITC has examined international practice and trends in this matter. Benchmark results showed that it is not the norm for the service provider providing the reference offer to demand compensation for any variation beyond the tolerance limits. However, CITC notes that any compensation payable for over-forecasting is held as pre-payment against future orders over the next 12 months, as set out in the diagram on Page 6, so any forecast outside the tolerance does not lead to any immediate financial penalty. Therefore, in its Decision, has not required STC to amend Clause 2.3 in this regard.

In Section 11.1 above, CITC has directed that the short-term forecast should only be for 3 months and not 6 months. In view of this, CITC concludes that calculating the tolerance over the same period would be appropriate.

Therefore, based on EATC's comment, CITC analysis and CITC benchmarking, CITC concludes that Annex E should be amended. Accordingly, in its Decision, CITC has directed STC to amend Annex E so that tolerance in forecasts is measured over any given 3 month forecast period and make any related amendments to this Annex in accordance with that.

11.5 Clause 3.2 (Part B) - Long Term Forecast

Clause 3.2 (Part B) of Annex E states that:

“The initial ‘eighteen’ month indicative order forecast is required during the initial contract signature, updated quarterly as described.”

Zain expressed the view that the requirement to provide the initial long-term forecast will delay launch.

CITC notes that to reduce the burden of forecasting on OLOs, CITC has directed STC to amend the RODA to reduce the period of forecasts from 6 months to 3 months for short-term forecasts and from 18 to 12 (Section 11.1 above).

CITC further notes that long-term forecasts are only indicative and can be altered every 3 months and that only the short-term forecast gets translated to advanced circuit orders.

CITC concludes that the changes directed in Section 11.1 are sufficient to address this concern. Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.2 (Part B) of Annex E.

11.6 Part D – Requirement for Zero Forecasts

Clause 2.1 (Part D) of Annex E states that:

“The Other Licensed Operator shall provide STC with forecasts of the expected number of services in each of the STC Exchange Sites required for the provision of Bit Stream Access Link Service every six (6) months on 1st of December and 1st of June of each year.”

Zain expressed the view that STC requires a forecast of Bit Stream Access Links even if the OLO is not ‘forecasting new business’ and hence is concerned about the need for returning a zero forecast.

CITC considers that returning a zero forecast is not an unreasonable burden for the OLOs.

Accordingly, in its Decision, CITC has not directed STC to amend Part D of Annex E.

11.7 Part E - Requirement to Use the Line-Sharing Backhaul Service

Zain expressed the view that OLOs should have the option to use their own backhaul as an alternative to using STC’s line-sharing backhaul service.

CITC considers that this is a separate wholesale service from line-sharing itself and therefore OLO can make its own arrangements for backhaul. CITC notes that this would require collocation of transmission equipment and in Section 17.11 below has directed that the RODA be amended to clarify that such equipment can be installed in the collocation area.

Accordingly, in its Decision, CITC has not directed STC to amend Part E of Annex E.

11.8 Part B Section 2 - No Advance Capacity Orders (ACOs)

EATC expressed the view that there should be no Advance Capacity Orders, particularly in the first 18 months, as forecasting estimates are likely to be inaccurate.

CITC notes that the Advance Circuit Orders are produced from the short term forecast for the next forecasting period. This is currently 6 months and is to be reduced to 3 months (see Section 11.1 above).

CITC further notes that actual circuit orders can vary by 15% and any compensation payable for over-forecasting is held as pre-payment against future orders over the next 12 months, as set out in the diagram on Page 6, so that any forecast outside the tolerance

does not lead to any immediate financial penalty. CITC considers that the Advanced Capacity Order process is sufficiently flexible to deal with the uncertainties in the early period of service.

Accordingly, in its Decision, CITC has not directed STC to amend the Part B of Annex E.

11.9 Part B Section 2 – Compensation for ACOs

EATC expressed the view that if CITC resolves to continue to include some form of Advance Capacity Orders, STC should not be entitled to any payment or compensation if the actual orders do not match up to the Advance Capacity Order unless STC gives notice in advance of additional costs that it incurs on the basis of the Advance Capacity Orders (and such costs are agreed by the OLO) and STC does incur a cost and a loss on the basis of the forecast made by the OLO.

CITC notes that, as described in Sections 11.1 and 11.8, any compensation payable for over-forecasting is held as pre-payment against future orders over the next 12 months, as set out in the diagram on Page 6, so that any forecast outside the tolerance does not lead to any immediate financial penalty. CITC considers that the Advanced Capacity Order process is sufficiently flexible to deal with the uncertainties in the early period of service.

Accordingly, in its Decision, CITC has not directed STC to amend Part B of Annex E.

11.10 Clause 1.1 (Part C) – Lack of Collocation Space

Clause 1.1 (Part C) of Annex E states that:

“The STC ADSL DSLAM Site Sharing Service is offered to OLOs on a first come first serve basis and available space will be allocated to OLOs upon request until the ADSL DSLAM Site Sharing facility or available site area space is full. STC cannot guarantee that, after an OLO has installed equipment in the ADSL DSLAM Site Sharing facility, space for equipment growth will always be available at any given STC Exchange Overall Site.”

EATC expressed the view that the lack of any obligation on STC to locate collocation space if the Site Sharing Facility is full is not reasonable.

CITC considers that collocation is a key issue, which is why CITC has asked for views on alternative forms of collocation, see Question 14 at Section 16 below.

11.11 Clause 1.3 (Part C) – Unused Site Sharing Space

Clause 1.3 (Part C) of Annex E states that:

“However, in order to meet the needs of OLO's requesting ADSL DSLAM Site Sharing space in a fair and reasonable manner and to discourage anti-competitive behaviour, STC reserves the right to reclaim reserved site area space for a ADSL DSLAM Site Sharing facility, that is seen to be unused after 12 Calendar Months.”

EATC has expressed the view that the precise wording “after 12 Calendar Months” is ambiguous, as this implies that the space is unused at that time, whereas the phrase “for 12 Calendar Months” would imply it has been unused during a period of 12 months.

CITC considers that any misunderstanding is unlikely to arise about the true intent of this Clause. However, it notes that substituting ‘for’ in place of ‘after’ would remove any ambiguity.

Therefore, based on EATC comments and CITC analysis, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 1.3 (Part C) of Annex E as follows (struck-out text removed, underlined text added):

“However, in order to meet the needs of OLO's requesting ADSL DSLAM Site Sharing space in a fair and reasonable manner and to discourage anti-competitive behaviour, STC reserves the right to reclaim reserved site area space for a ADSL DSLAM Site Sharing facility, that is seen to be unused ~~after~~ for 12 Calendar Months.”

12. Annex F Schedule 1.1 – Wholesale Bit Stream Service (Question 10)

Schedule 1.1 of Annex F sets out the prices for three wholesale Bit Stream services, 256kbit/s, 512kbit/s and 1Mbit/s. This Schedule does not include the prices for 2Mbit/s, 4Mbit, 8Mbit/s, 10Mbit/s, 16Mbit/s and 20Mbit/s services, which are offered by STC on a retail basis but not on a wholesale basis.

In the Public Consultation Document, CITC stated its preliminary view that, based on its benchmarking analysis, the price for the 256kbit/s service should be reduced to 210 SAR and that STC should offer on a wholesale basis services corresponding to all speeds of retail services, including 2Mbit/s, 4Mbit/s, 8Mbit/s, 10Mbit/s, 16Mbit/s and 20Mbit/s services.

EATC and Zain agreed with CITC's preliminary view. However, EATC considered that CITC's proposed price would still be too high, citing the situation in Germany where Deutsch Telecom charges the equivalent of 136.4 SAR per month for a 6Mbit/s service

and the system adopted in New Zealand where the NRA applied benchmarked discounts to an adjusted incumbent retail prices to arrive at the wholesale prices. EATC also expressed concern about the possibility of a margin squeeze with reference to the relationship between retail and wholesale pricing.

Both EATC and Zain agreed with CITC's preliminary view that STC should offer on a wholesale basis the retail services currently offered by STC. They considered that these wholesale services should be made available on the same basis as they are made available to STC's own ISP.

Therefore, after reviewing EATC and Zain comments, and based on CITC analysis and CITC benchmarking, CITC considered that Annex F Schedule 1.1, and any other relevant provisions of the RODA, should be amended to:

- offer wholesale Bit Stream services for all speeds which correspond to those of its current retail services and publish the respective prices.
- establish the principle that STC shall update the RODA to include the equivalent wholesale services to newly-offered services provided on a retail basis, and submit for CITC approval.

Moreover, given the absence of pricing in the RODA for speeds higher than 1Mbit/s, CITC conducted further benchmarking, including for higher-speed wholesale Bit Stream services based on a combination of two forms of benchmarking: first, by benchmarking prices of wholesale Bit Stream services in other countries and second, by benchmarking the "Retail-minus" discount percentage difference between the price of equivalent wholesale and retail services in other countries. With regard to Retail-minus, CITC found:

- "Retail-minus" is an important and commonly used approach to the setting of prices for wholesale Bit Stream services. Further, the Retail-minus approach highlights the importance of the relationship between retail and wholesale pricing, hence reducing the possibility of an anti-competitive margin squeeze.
- In general, Retail-minus discount percentages appear to be higher for the higher speed ranges;

Taking all the above into account, including the results of CITC's benchmarking, CITC's findings on the specific wholesale Bit Stream service prices are presented below.¹ For

¹ CITC does not necessarily intend to apply the same Retail-minus discount percentages in the process to set wholesale Bit Stream service prices in the future. Cost-based pricing remains CITC's preferred methodology. In the absence of costing information, however, the CITC will continue to monitor the development of retail and wholesale prices in KSA and other countries to review and update the benchmarking results, to ensure that the wholesale prices in KSA continue to be at appropriate levels.

reference purposes, the retail prices and the resulting implied Retail-minus discount percentages are also presented.

Service Speed	Monthly Retail Price	Monthly Wholesale Price	Implied Retail-Minus Discount Percentage
128 Kbps	90	68.0	25.0%
256 Kbps	100	72.0	28.0%
512 Kbps	120	81.6	32.0%
1 Mbps	150	97.5	35.0%
2 Mbps	180	108.0	40.0%
4 Mbps	210	115.5	45.0%
8 Mbps	240	120.0	50.0%
10 Mbps	260	130.0	50.0%
16 Mbps	290	145.0	50.0%
20 Mbps	310	155.0	50.0%

STC expressed the view that:

- it is unable to provide wholesale Bit Stream services at speeds higher than 8Mbit/s due to technical and operational limitations. 8Mbit/s is highest speed attainable on most current copper networks. Higher speeds are offered on a retail basis to a very limited number of customers based on network capabilities.
- offering new services on a wholesale and retail basis at the same time might delay the retail launch to the detriment of the market.
- CITC-proposed prices, including those based on 50% retail-minus discount percentage, constituted the provision of same to OLOs on a non-commercial basis.

In regard to STC's first comment, CITC notes that STC did not state what its operational limitations were as regards the supply of speeds higher than 8Mb/s . CITC understands that the service would not be available nationwide and that STC will need time to upgrade its network and operational capabilities to provide the speeds higher than 8Mb/s on a wholesale basis. However, STC is supplying the higher speeds at a retail level and should make the necessary arrangements to provide a wholesale equivalent - an important principle of non-discrimination.

In regard to STC's second comment, CITC considers that while providing a wholesale

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- In the interim, if before the next RODA review, STC reduces some or all of its retail prices, the CITC will take into account both forms of benchmarking results, concerns with respect to anti-competitive margin squeeze and consistency across the whole range of the wholesale Bit Stream service speeds, among other considerations, in its analysis as to whether and when to require a corresponding decrease in some or all of the wholesale Bit Stream prices. [Footnote should be all on one page]

service may somewhat delay retail launch, on balance, the market detriment will be worse if competition is not available for new retail services.

In regard to STC's third comment, CITC notes that its benchmarking shows that other jurisdictions have adopted even greater Retail-minus discount percentages. Further, STC has not provided costing or other justification to support its claim that such rates would be non-commercial.

Accordingly, in its Decision, CITC has directed STC to amend Annex F Schedule 1.1 and any other relevant provisions of the RODA, to:

- Offer the 128 Kbit/s, 256Kbit/s, 512Kbit/s, 1Mbit/s wholesale Bit Stream services at the prices shown in table 1 below;
- Offer 2Mbit/s, 4Mbit/s, 8Mbit/s wholesale Bit Stream services at the prices shown in table 1 below;
- Offer 10Mbit/s, 16Mbit/s and 20Mbit/s wholesale Bit Stream services at the prices shown in table 1 below and submit the amended RODA for approval within 11 months from the date of the issuance of the Decision. Such prices shall become effective within 12 months from the issuance of the Decision;
- When STC offers any new Bitstream service or modifies any existing service to its subscribers, it must amend this Annex and any other conditions relevant clauses in the RODA to enable other operators to benefit from this service (in a manner similar to what is offered by STC to its own customers) and to make such amendments to the Commission for approval. That should be done before (or with) the application or approval of the proposed retail tariff for this service to the CITC;
- Amend Annex F to include prices for wholesale Bit Stream services as follows:

Table 1

Service Speed	STC Monthly Wholesale Price
128 Kbps	68.0
256 Kbps	72.0
512 Kbps	82.0
1 Mbps	98.0
2 Mbps	108.0
4 Mbps	116.0
8 Mbps	120.0
10 Mbps	130.0
16 Mbps	145.0
20 Mbps	155.0

13. Annex F Schedule 2.1 – Line Sharing Service (Question 11)

Schedule 2.1 of Annex F sets out a price of 30 SAR per month per line for the Line Sharing Service rental.

In the Public Consultation Document, CITC stated its preliminary view that, based on its benchmarking analysis, the price for this service should be reduced to 20 SAR per month.

Both EATC and Zain agreed with CITC's preliminary view that the price should be reduced from 30 SAR per month. However, both EATC and Zain went further, expressing the view that CITC should require an even lower price.

For instance, EATC referred to EU benchmarks in asserting that 20 SAR would still be too high. EATC also commends the Australian approach for costing the service.

CITC examined international practice and trends in this matter to arrive at the 20 SAR benchmark result, calculated as the average of a wide range of data observations, including from countries that have similarities to the KSA market characteristics, countries in the EU and countries not in the EU.

CITC further notes that the Australian approach referred to by EATC is based on an approach to cost recovery whereby the wholesale line sharing charge should not include any contribution to line costs if these are already fully recovered by the fixed network services provider from the retail customer. The CITC benchmarking analysis was designed and implemented to reflect a broad range of cost recovery approaches.

STC expressed the view that benchmarking of line-sharing was not an appropriate method to set prices. STC further expressed the view that it could not reduce the price to 20 SAR as it was already offering Line Sharing below cost.

CITC notes that STC provided no data to substantiate its claim that it is currently offering the service below cost. CITC remains of the view that, in the absence of detailed cost information for STC's network, benchmarking remains the most appropriate method to assist in setting prices.

Therefore, based on EATC's, Zain's and STC's comments, CITC analysis and CITC benchmarking, CITC concludes that Annex F Schedule 2.1 should be amended. Accordingly, in its Decision, CITC has directed STC to amend Annex F Schedule 2.1 to reduce the price of the Line Sharing rental to 20 SAR per month.

14. Annex F Schedule 2.2 – ADSL DSLAM Site Sharing (Question 12)

Schedule 2.2 of Annex F sets out prices for certain ADSL DSLAM site sharing services but leaves others as “bespoke”.

In the Public Consultation Document, CITC stated its preliminary view that STC should publish some examples of rental of site sharing space in the RODA, and STC should maintain an annexed schedule of any site rentals that have been subject to quotation. These preliminary views are based on the principle that in a reference offer terms and conditions should not be left as bespoke and that all services being offered should include standard terms and conditions, including with respect to charges.

Both EATC and Zain expressed the view that bespoke prices were unacceptable and that all services being offered should include standard terms and conditions, including with respect to charges, since without such information it is difficult to create a business plan for Line Sharing.

EATC further argued that standard rates per square meter should be quoted for different regions, e.g. metropolitan, suburban and rural. EATC also made the point that STC’s own ISP should be paying an equivalent charge for the space it occupies in STC’s building.

CITC considers that it is important to provide greater certainty about space rental charges. Hence, CITC remains of the view that greater specificity is required. However, site rentals are likely to vary across the Kingdom and once a reasonable number of sites of different types have been assessed, it may become possible to establish an average charge for a particular type of region, e.g. metropolitan, suburban and rural.

Therefore, based on EATC and Zain comments and CITC analysis, CITC proposed that Annex F Schedule 2.2 should be amended to provide greater specificity as follows:.

- provide indicative prices for site sharing in each of the main cities of Riyadh, Jeddah, Makkah and Dammam; and,
- for information purposes, provide an Attachment to Annex F listing any site rentals that have been subject to quotation or agreement.

STC expressed the view that as each site is subject to individual survey, it would be difficult to propose indicative prices.

CITC notes STC’s comments and considers that if it is not feasible to provide actual or indicative prices, then STC should carry out preliminary and final site surveys on request, even if the service provider had not yet entered into a Data Access Agreement. This would allow the service provider to obtain realistic prices of site rentals for their business planning purposes ahead of entering into a Data Access Agreement. The service provider would pay for such surveys at the normal RODA price.

Accordingly, in its Decision, CITC has directed STC to amend Schedule 2.2 of Annex F to:

- offer preliminary and final site surveys, even if the service provider is not yet subject to a Data Access Agreement, at standard RODA prices;
- provide an Attachment to Annex F listing any prices that have been submitted to or agreed with any other operator.

15. Annex F – Other issues (Question 13)

Respondents were asked for other comments on Annex F.

The rest of this Chapter addresses these comments received on other issues in Annex F.

15.1 Change of Subscriber Location

Schedule 1.1 of Annex F sets out a price of 150 SAR where a Bit Stream subscriber of the OLO moves within the same STC exchange area.

Zain expressed the view that the price for exchanging two customers on two different exchanges should also be included.

CITC understands this comment to mean that Zain wishes to see a price where a Bit Stream subscriber of an OLO moves to a different STC exchange area. CITC notes that when a subscriber moves to another STC exchange, this would constitute one cease order on the first exchange and one new provide order on the second exchange. CITC considers that the overall price will be no different to the current connection charge, as the work performed will be similar.

Accordingly, in its Decision, CITC has not directed STC to amend Schedule 1.1 of Annex F.

15.2 Use of own fibre

Zain expressed the view that OLOs should have the option to use its own fibre to reach the STC data centre, thus decreasing the cost of the annual rental. In that case, Zain considered that STC would only need to charge a port fee.

CITC understands Zain's comments to refer to a proposed option in the Bit Stream Service to use their own fibre in place of the Bit Stream Access Link Service.

CITC considers that where appropriate RODA services should provide the option for OLOs to use their own infrastructure.

STC expressed the view that this is not feasible in view of the associated technical, legal and commercial considerations. Also such a proposal, will give rise to a lot of security concerns as well as maintenance issues.

CITC notes that STC has not stated the specific technical, legal or commercial considerations which it believes would render provision of this option non-feasible. With regard to technical, maintenance and security issues, CITC notes that these can be avoided if the OLO provided Bit Stream Access Link is provided on an 'In-Span Interconnection' basis, where the OLO link is built to a footway box close to the STC building and terminates on an STC transmission terminal in their building. This configuration avoids the need for STC to provide for collocation in their building. However, other types of interconnection could also be used, such as Collocated Interconnection using optical or electrical interfaces. Since the OLO's fibre is a substitute for the Bit Stream Access Link Service, the only commercial issue is that STC may need to quote a price for the STC costs of this option, which will depend on the type of interconnection agreed. CITC does not believe there are any legal impediments to this proposal. Furthermore, CITC notes that in accordance with its statutes (including Article 31(c) of the Telecommunications Bylaw), OLOs should not be required to purchase a bundled service they do not require.

Therefore based on Zain's and STC's comments and CITC analysis, CITC concludes that the relevant provisions of the RODA should be amended in this matter. Accordingly, in its Decision, CITC has directed STC to amend the relevant provisions of the RODA to include the option of using a self-provided link in place of the Bit Stream Access Link and to provide a price for this option in Annex F Schedule 2.1.

15.3 Preliminary and Final Surveys

Schedule 2.2 of Annex F sets out the prices for the Preliminary and Final Surveys.

Zain expressed the view that it would like to obtain more clarity on the content and the differences between preliminary and final surveys and that STC should maintain a list of sharable sites where a Preliminary Survey has already been performed.

With respect to the first matter, CITC considers that the description of the Preliminary and Final Surveys is given in Annex G Schedule 2.2 Clauses 4.4 and 4.5 is sufficiently detailed.

With respect to the second matter, CITC agrees that the list of DSLAM sites should be regularly updated to show those which have been subject of a Preliminary Survey, a Final Survey and those at which Site Sharing facilities have been constructed.

Therefore, CITC concludes that this Attachment should be amended with respect to the second matter. Accordingly, in its Decision, CITC has directed STC to amend Attachment 8 in Annex H to show which sites have had Preliminary Surveys or Final Surveys performed or have had facilities constructed. This Attachment is provided to OLOs on request.

15.4 Construction of Own Site Sharing Facilities

Zain expressed the view that OLOs should have the option to perform their own construction of site sharing facilities.

This issue is covered in Section 16 below (Question 14).

16. Annex G Site Sharing Service (Question 14)

Annex G, sets out that ADSL DSLAM Site Sharing Service is to be provided by STC to OLOs by the means generally referred to as “Adjacent Collocation”.

In the Public Consultation Document, CITC stated its preliminary view that, if feasible, STC should also offer “Co-mingling or Dedicated Collocation”. If this is not feasible (for instance, if space is shown to be limited or if legitimate security concerns are demonstrable), then another alternative is for the OLOs and STC to develop proposals for the use of a containerized solution for Adjacent Collocation. Further, the CITC stated its preliminary view that whatever solution is adopted, that OLOs’ DSL equipment should be installed in conditions that are as similar as possible to those of STC.

Those preliminary views were based on the CITC concern that Adjacent Collocation may require relatively expensive and difficult construction of buildings within the STC site and that offering only Adjacent Collocation may be considered discriminatory, as STC’s own ADSL equipment could likely be installed at a relatively lower cost within their normal exchange equipment area.

Zain agreed with CITC’s preliminary view that OLOs’ equipment should be installed in conditions similar to that which STC uses. CITC takes this to mean support for the concept of Co-mingling Collocation.

EATC also agreed with CITC’s preliminary view for the use of Dedicated or Co-mingled Collocation. EATC argued that any claims by STC that there is a lack of space should

require independent verification. EATC commented that such methods have been widely used in other jurisdictions without problems.

There were no comments on the issue of alternative containerized forms of Collocation, although Zain in their response to Question 13 stated that OLOs should have the right to plan and build their own collocation facilities.

CITC has since conducted a more comprehensive analysis of the issues. CITC has concluded that there remain significant security concerns where OLOs have equipment within STC's buildings. Given these concerns, CITC has concluded that it will not always be appropriate to require Dedicated or Co-mingled collocation at every site. Therefore CITC considers that such in-building collocation should at this time be restricted to sites at which STC already offers collocation under the Reference Interconnection Offer (RIO) pursuant to RIO Annex G Schedule 5A, or any site where such collocation has already been provided. These are the STC Service Node sites and are listed in the RIO Annex C Attachment 2. Availability of collocation would still be subject of a survey. For other sites, CITC also sees merit in widening the options for Collocation and in particular by allowing OLOs to construct their own "Distant Collocation" (whereby the OLO houses DSL equipment in an external building and connects to the MDF site using external tie cables). CITC would also encourage STC and OLOs to explore other ways of providing Adjacent Collocation, such as using containerized solutions.

STC expressed the view that offering the Collocation service under RIO in some of the designated Service Node sites is very different from providing the Co-mingling service under the RODA in these Service Node sites. STC further stated that normally no subscriber lines are directly connected to Service Nodes, and hence are not suitable for ADSL Site Sharing. Hence STC considers that it is not technically feasible and furthermore will give rise to a lot of practical problems related to security and access.

Concerning the proposal for Distant Collocation, STC expressed the view that it may not be feasible for the ADSL Sites to accommodate all the cable entries for the different OLOs with necessary ducting facilities through trenches and manholes. It could also give rise to a lot operational and Management problems. STC considered that the use of Distant Collocation may compromise the availability of duct, building lead in and MDF capacity all of which will affect (and may slow down) the provision of service to both STC and OLO customers.

CITC notes that STC has not substantiated its claim that co-mingling is significantly different from collocation under the RIO. CITC accepts that some Service Node sites may not have direct subscriber lines. However, for those that do, CITC considers that the issues of security and access are no different from those for interconnection equipment collocation under the RIO.

As regards STC's comments on Distant Collocation, CITC accepts that in certain situations the issues raised by STC might become determinant. However, CITC considers

Distant Collocation may only be a viable option where Adjacent Collocation is not available and in any event would only be provided subject to technical and operational feasibility, as with all Collocation options.

Therefore, based on EATC's, Zain's and STC's comments, CITC benchmarking and CITC re-consideration of its analysis, CITC concludes that Annex G should be amended. Accordingly, in its Decision, CITC has directed STC to amend Annex G to offer Dedicated or Co-Mingled collocation at sites where in-building collocation is offered in the RIO or where such collocation has actually been provided. CITC has also directed STC to introduce another form of collocation, generally referred to as Distant Collocation, in addition to the current "Adjacent Collocation", subject to it being found to be technically feasible after survey. STC shall also make other consequential amendments to make operational these new options.

17. Annex G – Other matters (Question 15)

Respondents were asked for other comments on Annex G.

The rest of this Chapter addresses these other comments received on Annex G.

17.1 Clause 3.2.1 (Sched. 1.1) & Clause 3.12(c) (Sched. 2.1) – Network Conditioning

Clauses 3.2.1 (Schedule 1.1) and 3.12(c) (Schedule 2.1) of Annex G state that:

“Network conditioning is the term used to describe any additional work that STC may have to carry out to provide the requested service, such as to make copper loops suitable for use in providing Bit Stream or Shared Access Services. This work will involve major activities required to support the transmission systems of DSL technologies such as making an undertaking of a solution to replace a “Pair-Gain” systems or microwave links. However, if such network conditioning was not already included in STC plans, STC will charge for additional work or, in exceptional circumstances, decline to provide the services. Charges will be as detailed in Annex F – Price List.”

Zain expressed the view that a list of sites which have been conditioned should be published, that the number of conditioned sites should be sufficient to start a sound OLO operation and that any charges should be quoted and that CITC should regulate network conditioning charges.

CITC notes that the term Network Conditioning is not defined in Annex A but a description of Network Conditioning is included in Clause 3.2.1 (Schedule 1.1.) of Annex G and Clause 3.12(c) (Schedule 2.1) of Annex G. Annex F includes charges for Network

Conditioning but shows them as ‘bespoke’. CITC understands this use of the term Network Conditioning to refer to actions on individual loops to make them suitable for DSL, rather than being a site based activity as suggested by Zain.

CITC understands Zain’s reference to ‘conditioned’ sites to mean sites available for the supply of Bit Stream. These are listed in Attachment 1 to Annex H which is provided to OLOs on request to STC.

However, CITC also notes the use of the term Network Conditioning in a different context, for example at Clause 4.4 in Schedules 1.2, 2.1 and 2.3. This appears to be similar to the use of the term Network Conditioning in the Reference Interconnection Offer and refers to actions in the core network to configure it to provide for a given service.

CITC considers that using the term Network Conditioning for two different processes is confusing and lacks transparency. Concerning the charges for the two kinds of conditioning, the former line-based activity is likely to generate different costs according to the remedial work necessary to prepare the line for broadband service. However, the latter form conditioning is a normal part of configuring a service for handover and any costs are already covered by the installation charges.

Therefore, based on Zain’s comments and CITC analysis CITC concludes that the relevant provisions should be amended. Accordingly, in its Decision, CITC has directed STC to:

- Amend the relevant provisions of the RODA, including in this Annex, to introduce a new term ‘Line Conditioning’ to replace ‘Network Conditioning’ when activities on a single DSL line are being referred to, by replacing the word “network” with the word “line”, as appropriate.
- Amend Annex A to include both ‘Line Conditioning’ and ‘Network Conditioning’ as defined terms.

17.2 Clause 3.8 (Schedule 1.1) – Technical Information on Router

Clause 3.8 (Schedule 1.1) of Annex G states that:

“It is the responsibility of the OLO to provide and configure the router at their premises.”

EATC expressed the view that OLOs may need technical information to configure the routers on their premises (that is, the router terminating the Bit Stream Access Link service). However, this Clause includes no obligation upon STC to provide OLOs the details or settings according to which the router should be configured by the OLOs.

CITC recognises the issue but considers that the obligations on both parties contained in Clause 3.3 (Schedule 1.2) are sufficient for this purpose. This Clause states that:

“The parties shall agree in advance all the necessary technical requirements, including physical circuit installation and operation for the provision of the Bit Stream Access Link Service pursuant to this Schedule.”

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.8 (Schedule 1.1) of Annex G.

17.3 Clause 3.8 (Schedule 1.1) – Contention Ratio

Clause 3.8 (Schedule 1.1) of Annex G states that:

“STC will endeavour to offer a contention ratio falling not below 40:1 that aligns with that offered by STC in its retail broadband products.”

Zain expressed the view that the meaning of the contention ratio set out in this Clause requires clarification. That is whether the terms “not below 40:1” mean ‘at least 40:1’ or ‘at most 40:1’. Zain also expressed the view that OLOs should be able to offer a different (better) contention ratio, based on a new service differentiated by its contention ratio offered by STC at a reasonable (and different) charge to that offered for the standard 40:1 contention ratio service.

CITC considers that the intent of the terms “not below 40:1” is self-evident. However, to avoid ambiguity, CITC concluded that the clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 3.8 (Schedule 1.1) of Annex G as follows (stroke text removed, underlined text added):

“STC will endeavour to offer a contention ratio ~~falling not below 40:~~of 40:1 or better that aligns with that offered by STC in its retail broadband products.”

In addition, if CITC recognises the value of OLOs being able to offer better contention ratios, but believes that it may be difficult for the current Bit Stream service to be engineered to provide a different contention ratio for different groups of customers in the same area. In any case, if an OLO desires a new service under the RODA, with a better contention ratio, then this should be requested via the new services request process in the first instance (Primary Document, Clause 8).

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.8 (Schedule 2.1) of Annex G.

17.4 Clause 4.3 (Schedule 1.1) – Minimum Activation Quantities

Clause 4.3 (Schedule 1.1) of Annex G states that:

“The initial order shall be no less than 30,000 lines to be activated over a year (7,500 target activation per quarter). The Bit Stream Service is to be ordered in multiples of 1,000.”

Zain expressed the view that it is unreasonable to impose minimum activation order quantities (30,000 per year, 7500 per quarter) particularly in the first year of OLO operation.

EATC expressed similar views and stated further that it is unreasonable to have to pay in advance for the whole year’s commitment, as defined in Annex B clause 2.2.9, since STC do not face costs relating to such demand.

Based on EATC and Zain comments, CITC has examined international practice and trends in this matter. Benchmark results showed none of the countries reviewed require a minimum initial number of lines that should be ordered. Additionally, benchmark results showed none of the countries reviewed require that the service should be ordered in multiples of 1,000.

CITC considers that the existing minimum activation order quantities can create a barrier to market entry and may be anti-competitive. Even though services to ISPs will be provided by larger Data Service Providers (DSPs), it may still be difficult to guarantee a large volume of orders in the early months of service. Since the service uses common equipment in the network, there should be no requirement for payment before delivery of order. Consequentially, the CITC also considers that the requirement to order in multiples of 1,000 is unduly restrictive.

Therefore, based on EATC and Zain comments, CITC analysis and CITC benchmarking, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 4.3 (Schedule 1.1) as follows (struck-out text removed, underlined text added):

“The initial order shall be no less than ~~30,000~~4,000 lines to be activated over a year (~~7,500~~1,000 target activation per quarter). ~~The Bit Stream Service is to be ordered in multiples of 1,000.~~”

and to amend Annex B Clause 2.2.9 so that connection charges are only invoiced on or after the date of handover of each new connection.

17.5 Clause 4.7 (Schedule 1.1) – Errors in the Wording

EATC expressed the view that in Clause 4.7 (Schedule 1.1), the correct reference should be to ‘4.5a or 4.5b’. EATC also highlights similar changes to replace ‘and’ by ‘or’ in Clause 4.6 in each of Schedules 1.2, 2.1 and 2.3 of Annex G.

CITC agrees with the proposed typographical amendments. Accordingly, in its Decision, CITC has directed STC to amend Annex G accordingly.

17.6 Clause 3.2 (Schedule 1.2) – Bit Stream Access Links QOS

Clause 3.2 (Schedule 1.2) of Annex G states that:

“STC shall provide the Bit Stream Access Link Service to the Other Licensed Operator for the contracted period and at the same standard and quality of services as it provides for similar circuits.”

EATC expressed the view that to encourage better levels of service, a best market practice standard should be imposed on STC, rather than the current approach whereby STC is only required to provide the same level of service it is already providing.

CITC notes that the quality standards for such circuits are set out in Annex I. This is addressed in Section 20 below (Question 18).

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.2 (Schedule 1.2) of Annex G.

17.7 Schedule 2.1 – Restriction to the High Frequency Portion of the Loop

Schedule 2.1 of Annex G provides for the description of Local Loop Sharing Services.

Zain expressed the view that OLOs should not be restricted to the high frequency spectrum of the local loop if it holds a licence for fixed voice services.

CITC notes that without such a restriction, the service would not be a Line Sharing service, but a fully unbundled local loop, which is not currently a mandated service under the Regulatory Framework for Unbundling (the “RFU”).

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.4 (Schedule 2.1) of Annex G.

17.8 Clause 3.4 (Schedule 2.1) – Customer Cessation of Telephony Service

Clause 3.4 (Schedule 2.1) of Annex G states that:

“For avoidance of doubt, if a subscriber should cease their STC analogue telephone service, then by default the OLO ADSL service will have to cease at the same time. Upon receiving a request to cease an STC voice service which also has a Line Sharing Service STC will contact the voice customer informing them that the broadband service will also cease on the same date and requesting confirmation that the voice customer wishes to proceed with the request [...].”

Zain expressed the view that it is not reasonable that the ADSL service should be ceased if the customer ceases their telephony service, as the customer may want to have alternative voice service from the OLO using IP technologies.

CITC notes that this issue was raised during the previous RODA Public Consultation process and that STC accepted an obligation to contact the customer to ensure he/she understood the implications of ceasing the voice service. The wording of Clause 3.4 was amended accordingly. CITC considers that this safeguard adequately protects the customer.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.4 (Schedule 2.1) of Annex G.

On a similar point, Zain expressed the view that STC should be obliged to offer a ‘naked DSL’ service, that is, a broadband data service with no STC telephone service.

CITC notes that Zain’s comment relates to Schedule 1.1 (Bit Stream) and not Schedule 2.1 (Line Sharing). CITC notes that “naked DSL” is not currently a mandated service under the RFU.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.4 (Schedule 2.1) of Annex G.

17.9 Clause 3.11 (Schedule 2.1) – Interference Issues

Clause 3.11 (Schedule 2.1) of Annex G states that:

“The Local Loop Sharing Service will only be provided on condition that the OLO is prepared to adhere to the limitation specified by STC. In order to address any network interference issues, all equipment connected to the Shared Line Service must comply with any Access Network Frequency Plan produced by STC, in coordination with CITC, and the specifications in Annex C (*Technical Information*).”

Zain expressed the view that interference issues must operate equally as between STC and OLOs.

This comment has been addressed in Section 2.1 above (Question 1).

17.10 Clause 3.16 (Schedule 2.1) – Rejection of Equipment

Clause 3.16 (Schedule 2.1) of Annex G states that:

“STC reserves the right to reject the request of the OLO where such equipment, in STC’s opinion, causes potential harm or incompatibility of operation to the STC Network and has not been type approved by CITC.”

Zain expressed the view that STC could reject OLO equipment and suggests that CITC should make any final decision and that no equipment should be rejected on commercial grounds.

CITC notes that in practice, STC would not be in a position to know whether a specific type of network equipment were type approved, by CITC and considers that STC should not reject equipment before consulting with CITC.

STC expressed the view that if equipment is found to be causing potential harm and incompatibility of operation to the STC Network, it is necessary that STC has the right to reject such equipment, without losing any time by referring the issue to CITC for its confirmation.

CITC notes STC’s views but believes that it has misunderstood CITC’s proposal. CITC accepts that when in service, STC should have the right to quickly isolate or remove equipment found to be causing problems. However, CITC continues to consider that STC should not have the right to reject the installation of OLO equipment without the agreement of CITC.

Therefore, based on Zain’s and STC’s comments and CITC analysis CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 3.1.6 (schedule 2.1) as follows (struck-out text removed, underlined text added):

“STC reserves the right to reject the request of the OLO where such equipment, in STC’s opinion, causes potential harm or incompatibility of operation to the STC Network, ~~and has not been type approved by CITC~~ subject to confirmation by CITC.”

17.11 Clause 3.17 (Schedule 2.1) – Use of Site Sharing Space

Clause 3.17 (Schedule 2.1) of Annex G states that:

“The ADSL DSLAM Site Sharing facility is provided to the OLO for the purpose of providing accommodation for equipment installed to provide ADSL service to Subscribers via the Local Loop Sharing Service, i.e. the DSLAM units. OLOs are therefore not permitted to house equipment in the ADSL DSLAM Site Sharing space that is not for this purpose.”

Zain expressed the view that STC should not be provided with the authority to specify how the Site Sharing space is to be used, i.e. that it cannot be used for other purposes than providing accommodation for equipment installed to provide ADSL service.

Given that such space may be limited and in demand by other service providers, CITC considers that Clause 3.17 provides for a reasonable restriction. However, CITC also considers that this restriction should not prevent the use of the space for other RODA services or other services, such as self-provided or 3rd party backhaul, necessary for the use of RODA services.

STC expressed the view that it should provide the backhaul required for the Line Sharing service and hence installation of the Backhaul Equipment separately by the OLOs is not required. Using the ADSL DSLAM Site for the Installation of backhaul equipment, will add to the complexities.

CITC notes that STC’s position would require OLOs purchasing Line Sharing to also buy Backhaul even if they don’t require it. As set out above in Section 15.2, such bundling is not in conformance with the telecommunication statutes. CITC therefore continues to consider that it must be possible for an OLO to provide its own backhaul and use the collocation area for this equipment. Since in most cases this will be in a dedicated Adjacent Collocation facility, CITC is of the view that such an arrangement will not significantly add to complexity.

Therefore, based on Zain’s and STC’s comments and CITC analysis, CITC concludes that the Clause should be amended. Accordingly, in its Decision, CITC has directed STC to amend Clause 3.17 (Schedule 2.1) as follows (underlined text added):

“The ADSL DSLAM Site Sharing facility is provided to the OLO for the purpose of providing accommodation for equipment installed to provide ADSL service to Subscribers via the Local Loop Sharing Service, i.e. the DSLAM units and any other equipment necessary for the purpose of the Local Loop Sharing Service or its backhaul. OLOs are therefore not permitted to house equipment in the ADSL DSLAM Site Sharing space that is not for this purpose.”

17.12 Clause 3.19 (Schedule 2.1) – Restrictions on Line-Testing

Clause 3.19 (Schedule 2.1) of Annex G states that:

“STC will be responsible for line test facilities (LTS) for the metallic path that is used for the Local Loop Sharing Service.”

Zain expressed the view that the restrictions on line-testing may not be reasonable and suggested that OLOs need to test the line themselves in order to troubleshoot and rectify their own line problems.

CITC considers that in the case of Line Sharing it is not practical for the OLOs to test the full metallic loop without interfering with STC’s telephony service on the same line. In most cases, Line Test facilities are provided from the telephone exchange’s test-head. OLOs can only carry out tests on the high frequency portion of the loop and must seek STC’s assistance with other problems. Hence, CITC considers that STC should remain responsible for Line Test facilities.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.19 (Schedule 2.1) of Annex G.

17.13 Clause 5.1(a) (Schedule 2.1) – Incompatible DSL Systems

Clause 5.1(a) (Schedule 2.1) of Annex G states that:

“For the purpose of this Schedule, STC shall consider the following points when assessing the availability of the Local Loop Sharing Service.

- a) Whether the Subscriber has services other than the ‘normal’ Voice Line service. Systems that would not be compatible with DSL will include but not be limited to the following:
 - any system that introduces voltages and / or currents on to a loop that does not comply with technical specifications compatible with operational requirements of the STC access network;
 - any asymmetric DSL system connected in reverser, i.e. with the DSLAM located at the customer end termination of a loop;
 - systems using HDB3 line code; see ETSI TR 101 803-1 paras. 10.12 and 10.13
 - systems using ADSL over ISDN;
 - systems using ADSL that employ echo cancellation and do not use frequency division duplexing (FDD).

STC will develop this list in consultation with OLOs and agree how broadband orders which may conflict with existing STC services should be managed. The list and the associated procedures will be published in the STC RODA.”

Zain expressed the view that the apparent restrictions on DSL systems imposed by this clause were not reasonable. Zain argued that the system should be evaluated on technical grounds only; that the OLO should be able to use the frequency range for any service it is licensed to offer and that if the subscriber is not using a service from STC that is using that particular frequency, then the frequency band (other than the voice lower frequency) is free to be claimed by the OLO if it makes a sale to the subscriber.

CITC considers that the restrictions in this clause are reasonable, since they are designed to ensure that one service provider’s equipment and service do not interfere with others’. CITC further considers that as long as the OLO equipment and service is compatible with the Power Spectral Density specifications in the Access Network Frequency Plan, then the list set out above imposes no further restrictions.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 5.1(a) (Schedule 2.1).

17.14 Clause 5.1(c) (Schedule 2.1) – Network Modification

Clause 5.1(c) (Schedule 2.1) of Annex G states that:

“For the purpose of this Schedule, STC shall consider the following points when assessing the availability of the Local Loop Sharing Service.

[...]

Whether STC has any major Network modification plans or otherwise proposes to decommission the Local Loop.”

Zain expressed the view that the restrictions that might be imposed by network modification plans requiring decommissioning of the loop may not be reasonable and argued that this should be done in consultation with the OLO and with sufficient advance notice.

CITC is aware that in the future, copper loops may be decommissioned and replaced by fibre links or hybrid copper/fibre links. In Section 22 below, the issues relating to Next Generation Access are addressed and that CITC has concluded that greater advance notice should be given of significant modifications to the network. In those circumstances, if the OLO has sufficient forward notice of such modifications, then the OLO should be allowed to procure line sharing services if it decides that the short period of service is nevertheless worthwhile. CITC also considers that the Clause should be amended by the deletion of Clause 5.1(c).

STC expressed the view that it does not see the reason why the proposed clause 5.1 (c) should be deleted as it is taking away what should be useful information for the OLO.

CITC notes that STC will still have obligations to notify OLOs of modifications to its network and their timing. The deletion of 5.1(c) is intended to ensure that, when assessing the current availability of the Line Sharing Service, future modifications are not taken into account and that if the OLO proceeds, it does so at its own risk.

Therefore, based on Zain's and STC's comments and CITC analysis, CITC concludes that Clause 5.1(c) should be deleted.

Accordingly, in its Decision, CITC has directed STC to delete Clause 5.1(c) in Schedule 2.1 of Annex G.

17.15 Clauses 3.5 and 3.6 (Schedule 2.2) – Site Plan and Build Costs

Clauses 3.5 and 3.6 (Schedule 2.2) of Annex G must be read in conjunction with Clause 3.4 which states that:

“The ‘first’ requesting OLO will be responsible for the costs of the plan and build of the ADSL DSLAM Site Sharing Facility.”

Clause 3.5 (Schedule 2.2) of Annex G states that:

“Subsequent OLO's will contribute to the costs of the plan and build of the ADSL DSLAM Site Sharing Facility. OLO(s) already using the facility will be compensated, in equal percentage share, to the limit of the value of the original plan and build costs of the ADSL DSLAM Site Sharing Facility.”

Clause 3.6 (Schedule 2.2) of Annex G states that:

“For the avoidance of doubt, the first OLO will pay 100% of the plan and build cost of the ADSL DSLAM Site Sharing Facility. The second OLO will pay 50% of the original plan & build costs to the first OLO. The third OLO will pay 16.66% of the original plan and build costs to the first two OLO's. This process will continue for further, subsequent, OLO's.”

Zain expressed the view that the sharing of the original site plan and build costs is unreasonable, since later OLOs would be paying part of the original costs and not current cost levels. Zain argued for the inclusion of an inflationary mark-up (regulated by CITC) should be employed.

CITC considers that the inclusion of inflationary mark-up would not be suitable because such an approach would result in previous OLOs recovering more costs than appropriate.

EATC also expressed the view that the wording of this clause is ambiguous as to how the process will continue for further OLOs (if the intention is that they continue to pay 16.66% this will mean that third and any subsequent OLO will be making profit from any new OLOs). Thus, EATC suggest that the reference to payment of plan and build costs be in relation to proportionality sharing in the original plan and build costs.

CITC considers that the intent of this Clause is reasonably clear as it indicates that payment is to be proportionate to the 'original plan and build costs' paid by the first OLO and that as each OLO uses a given site, the costs are equalised amongst the OLOs at the site. Therefore, a fourth OLO would not pay 16.66% but 8.33% each to the first three OLOs. However, CITC accepts that the wording could be improved to avoid any doubt.

Therefore, based on EATC and Zain comments and CITC analysis, CITC concludes that the clause should be amended. Accordingly, CITC has directed STC to amend clause 3.6 (Schedule 2.2) as follows (underlined text added):

“For the avoidance of doubt, the first OLO will pay 100% of the plan and build cost of the ADSL DSLAM Site Sharing Facility. The second OLO will pay 50% of the original plan & build costs to the first OLO. The third OLO will pay 16.66% of the original plan and build costs to the first two OLO’s. This process will continue for further, subsequent, OLO’s so that at every stage, all OLOs have paid an equal proportion of the original plan and build costs.”

17.16 Clause 3.17 (Schedule 2.2) – Assignment of Site Sharing Space

Clause 3.17 (Schedule 2.2) of Annex G states that:

“The Requesting Other Licensed Operator has no rights to assign to a third party in whole or in part the license in respect of the ADSL DSLAM Site Sharing Space or to sub-let the Site Sharing Space at the STC Exchange Overall Site.”

EATC expressed the view that restrictions on assignment or sub-letting prevents even assignment to other members of the OLO’s group, which may be require for internal operational reason.

CITC agrees that it is reasonable that OLOs be authorized to assign/sub-let to members of their group.

STC expressed the view that RODA is an offer document of STC covering the general legal, technical and commercial aspects of the service offer conditions. The finer legal details such as assigning or subletting the space to third parties under special circumstances should be left to the parties to negotiate and agree and incorporate the agreed terms into the contract as appropriate.

CITC notes that while STC describes the RODA as an STC offer document, it is nevertheless a document required by CITC regulations. In this regard, CITC considers that it is important to include this material in order to ensure a non-discriminatory approach.

Therefore, based on EATC and STC comments and CITC analysis, CITC concludes that the clause should be amended. Accordingly, CITC has directed STC to amend Clause 3.17 (Schedule 2.2) as follows (underlined text added):

“The Requesting Other Licensed Operator has no rights to assign to a third party outside the Requesting Other Licensed Operator’s corporate group in whole or in part the license in respect of the ADSL DSLAM Site Sharing Space or to sub-let the Site Sharing Space at the STC Exchange Overall Site; provided that, in case of permitted assignment or sub-let, the assignor or sublessor remains responsible for any breach of the assignee’s or sub-lessee’s obligations or responsibilities under the applicable licence.”

17.17 Clause 5.5 (Schedule 2.2) – Delays in Cable Provision

Clause 5.5 (Schedule 2.2) of Annex G states that:

“The provision of the External Tie Cable(s) may require STC to obtain mandatory consents and approvals, especially where new duct(s) are called for. STC shall endeavour to obtain the necessary consents and approvals for the provision of the External Tie Cable(s). STC reserves the right to suspend its obligations under the terms of the order process where it is unable to obtain the said consents and approvals within the timescales required to enable the commissioning of the External Tie Cable(s) within the agreed delivery period. Under these circumstances STC’s obligations will be suspended until such time as the consents and approvals are obtained. STC reserves the right to adjust the expected delivery time to make good for any and all delays beyond its control. In addition, STC will be entitled to recover from the OLO any costs incurred as a result of the delay.”

EATC expressed the view that this clause does not restrict STC’s ability to suspend its obligations or to recover costs when the delay in obtaining licences was due to STC’s own actions.

CITC considers that the intent of this Clause is self-evident. In addition, the fact that undue suspensions of STC’s obligations or requests to recover costs are subject to the dispute process (as set out in other sections of the RODA and the Telecommunications Bylaw) hinders any such actions on the part of STC and provides an adequate protection for the OLOs.

Accordingly, in its Decision, CITC has not directed STC to amend Clause 5.5 (Schedule 2.2) in Annex G.

17.18 Clause 3.2 (Schedule 2.3) – QOS for Wholesale Backhaul

Clause 3.2 (Schedule 2.3) of Annex G states that:

“STC shall provide Wholesale Backhaul for Line Sharing Service to the Other Licensed Operator for the contracted period and at the same standard and quality of services as it provides for similar circuits.”

EATC notes that STC is only required to provide the same level of service as it is already providing. EATC expressed the view that to encourage better levels of service, a best market practice standard should be imposed on STC.

CITC notes that the quality standards for such circuits are set out in Annex I.

This is addressed in Section 20 below (Question 18).

Accordingly, in its Decision, CITC has not directed STC to amend Clause 3.2 (Schedule 2.3) of Annex G.

18. Annex H – Operations and Maintenance Manual (Question 16)

Clause 1.13 (Part B) of Annex H states that:

“The OLO acknowledges that there is a maximum number of Subscriber activations that can be carried out in any one day. This constraint will be shared by all OLOs during the Joint Technical Review Committee Meetings.”

In the Public Consultation Document, CITC stated its preliminary view that any daily limits should apply equally to both STC and the OLOs and that any inefficiencies in the wholesale provisioning process should be addressed (for example, through automation). This preliminary view is based on CITC concern that such daily limits may reflect inefficiencies related to manual and/or paper-based systems. CITC is further concerned that this daily limit may not apply to STC’s retail service and therefore could be discriminatory.

Both EATC and Zain agreed with CITC’s preliminary view that any daily limit on activations should be provided in a non-discriminatory fashion and apply to both STC and the OLOs.

CITC considers that there is no justification for any discrimination in the matter of providing service. Consequently, CITC remains of the view that any limits must impact all service providers, including STC, alike.

STC expressed the view that what STC is offering through the RODA is a Wholesale Bitsream service and this service cannot be linked to the retail service offerings of STC. The intention of the this clause is just to let the OLOs understand that there are certain operational limits involved in the process despite the best efforts from STC and these constraints will be shared during the Joint Technical Review Committee meetings. Hence STC did not see it appropriate to include wording indicated by CIRC.

CIRC notes that STC's wholesale business is supplying its retail business with the same facilities as it supplies to OLOs and that the principle of non-discrimination is paramount. CIRC therefore remains of the view that STC's demands for activation capacity must be dealt with equally with that of the OLOs.

Therefore, based on EATC's, Zain's and STC's comments and CIRC analysis, CIRC concludes that the clause should be amended. Accordingly, in its Decision, CIRC has directed STC to amend Clause 1.13 (Part B) of Annex H as follows (underlined text added):

“The OLO acknowledges that there is a maximum number of Subscriber activations that can be carried out in any one day. This constraint will be shared by all OLOs and STC during the Joint Technical Review Committee Meetings.”

19. Annex I – Delivery Times (Question 17)

Clause 2.4.1 of Annex I provides for the delivery lead times applicable to the Bit Stream Access Link Service and Wholesale Backhaul for Line Sharing Services, including delivery lead times for STM-1 (12 and 24 weeks).

In the Public Consultation Document, CIRC stated its preliminary view that, based on its benchmark analysis, the delivery times for STM-1 Link service should be reduced to 6 and 20 weeks.

Zain agreed with CIRC's preliminary view that the time for STM-1 delivery should be more consistent with the CIRC benchmark results of 6 and 20 weeks for repeat and new orders. EATC considered that these times should be even shorter, 4 weeks and 12 weeks.

While recognising that longer term delivery times might be further improved, CIRC remains of the view that a reduction towards the CIRC benchmark results of 6 and 20 weeks is an appropriate improvement at this time. Further improvements can be considered in future reviews of the RODA.

Therefore, based on EATC and Zain comments, CIRC analysis and CIRC benchmarking, CIRC initially considered that the clause should be amended to reduce the delivery times for STM-1 links to 20 weeks for new orders and 6 weeks for repeat orders.

STC expressed the view that in the case of STM-1 Links, where capacity is required at one or both the ends, STC is prepared to reduce the Delivery Times from 24 weeks to 20 weeks, wherever it is technically possible.

STC further expressed the view that as regards the reduction of Delivery Time for the STM-1 Links where capacity is available, STC could at the most reduce to 8 weeks from 12 weeks wherever it is technically possible.

Accordingly, in its Decision, CITC has directed STC to amend Annex I to reduce the delivery times for STM-1 links to 20 weeks for new orders and to 8 weeks for repeat orders immediately (and to 7 weeks after one year from the issuance date of the Decision).

20. Annex I – Availability Targets (Question 18)

Clause 3.3.1 of Annex I states that:

“Each Bit Stream Access Link Service and Wholesale Backhaul Service for Line Sharing will have a target availability of 99%, which is the amount of time over one quarter (that is to say three (3) Calendar Months in the Hijra calendar) during which the link is fully functional and available for the transmission of broadband services.”

In the Public Consultation Document, CITC stated its preliminary view that, based on its benchmark analysis, the availability rates for these services should be increased to 99.8%.

Both EATC and Zain agreed with CITC’s preliminary view.

CITC notes that the current figure of 99% is significantly below the CITC benchmarking result, implying 5 times more outage or errored-seconds. CITC remains of the view that this can and should be improved to 99.6% immediately and 99.8% within one year of the Decision.

STC expressed the view that after consideration of its operational processes and constraints, it could provide for an immediate improvement to 99.4% availability for Bit Stream Access Links and the Line Sharing Backhaul service and 99.6% availability within one year of the Decision.

Therefore, based on EATC’s, Zain’s and STC’s comments, CITC analysis and CITC benchmarking, CITC concludes that Annex I should be amended to provide for an immediate improvement to 99.4% availability for Bit Stream Access Links and the Line Sharing Backhaul service, 99.6% availability after one year of the Decision and 99.8% after 2 years.

Accordingly, in its Decision, CITC has directed STC to amend Annex I to provide for an immediate improvement to 99.4% availability for Bit Stream Access Links and the Line

Sharing Backhaul service, 99.6% availability after one year of the Decision and 99.8% after 2 years.

21. Annex I – Other Issues (Question 19)

Respondents were asked for any other comments on Annex I.

Zain suggested that any failure by STC to meet target repair times should be subject to penalties.

EATC suggested that times for local loop provision and preliminary loop survey were too long. EATC further suggested that comprehensive Key Performance Indicators (KPIs), backed by penalties, should be introduced and provided background from other countries that had adopted regulatory KPIs.

CITC recognises the importance of maintaining appropriate service targets and has recently published its Quality of Service Scheme, which requires all providers to report quality figures in a consistent way each quarter, showing monthly performance against a range of parameters. This includes reporting performance to a provider's own business units or affiliates, so that non-discrimination can be established. Most of these parameters are already contained within Annex I, but one is new and CITC requires that Annex I includes all the service parameters to be reported.

CITC intends to monitor the results of the Quality of Service Scheme and will review whether, based on reported performance, there would be merit in mandating a system of penalties for Data Access services.

STC indicated that it did not consider it appropriate to include the Fault Rates related to the wholesale Bit Stream access Service and Line Sharing Service, as it is yet to have an operational understanding of the performance of these wholesale services.

CITC notes STC's view, but since this obligation relating to the fault rate already exists in the CITC Quality of Service Scheme, it must therefore also be reflected in the RODA. Moreover, STC should already have sufficient operational understanding of these services as it supplies them to its own retail business.

Therefore, based on CITC analysis including in the preparation of the Quality of Service Scheme, CITC concludes that Annex I should be amended. Accordingly, in its Decision, CITC has directed STC to amend this Annex to include the following new parameter:

“Fault rate for Bit stream Access Service and Line Sharing Service with a target of 50 reported faults per 1000 lines per quarter (full details are set out in Annex B1 to the Quality of Service Scheme).”

22. Impact of NGN and NGA (Question 20)

Respondents were asked for comments on how the deployment of NGN and NGA would affect the RODA.

In the Public Consultation Document, CITC stated its preliminary view that, in the absence of significant deployment by STC of NGNs and NGAs, there is currently no compelling need to significantly revise the RODA. This view is also based on CITC observation that relatively few regulatory agencies across the globe have come to final decisions on the many NGN and NGA issues, so that instead CITC intends to monitor national and international developments and seek to pursue the application of regulations that are consistent with best practice as it emerges.

CITC notes that there is no internationally acknowledged definition of 'Next Generation Access' (NGA). For the avoidance of doubt, CITC takes the term NGA to refer to future forms of access technology capable of speeds in excess of 30Mbit/s using technologies such as:

- Fibre to the Curb (FTTC) and VDSL on the remaining short copper loops, or
- Fibre to the Premises (FTTP) using fibre all the way to the customers' premises, with typically either point-to-point fibre, or passive optical network configurations.

Further, CITC also stated its preliminary view that STC should provide OLOs with longer advanced notice as regards the introduction of NGN or NGA. Moreover, STC should consult with OLOs who receive services under the RODA regarding the potential impact on such OLOs' networks that may result from such changes. This view is based on the CITC conclusion that sufficient forward notification is required of any changes to network technology or topology that would be likely to impact materially on the past or future investment by OLOs in their wholesale interconnection and access arrangements.

EATC, OCC and Zain made comments on the subject of NGN/NGA.

Zain agreed with CITC's preliminary view that the notification period for changes associated with NGN/NGA should be increased and that STC should consult with OLOs using RODA services on their impact.

OCC stated that it believed that while there was no compelling case to alter the RODA now, CITC should use its current ex-ante framework of market reviews to monitor the effects on competition and that STC should introduce appropriate wholesale services. OCC also agreed that the notification period should be increased. OCC further suggested that CITC establish rules concerning what forms of network change should be notified.

EATC provided a comprehensive response suggesting that the RODA should be modified now to include NGN/NGA aspects and quoting a range of actions by regulators around the world in the light of such developments. EATC supported CITC's views on

notification periods and the need for STC to consult with OLOs, but went further and suggested that STC should treat its retail functions in the same way as it treats OLOs.

CITC has been following international developments in this area and notes that most regulatory actions in this regard relate to the imminent introduction of NGA. Consistent themes in such regulatory actions include mandating Bit Stream access over NGA networks and more flexible forms of Bit Stream (such as UK Ofcom's proposals for Active Line Access) with OLO control over QoS (essential for maintaining the delivery of real-time services).

CITC also notes that much regulatory work around the world has gone into the difficult question of pricing of NGA wholesale services, recognising that if services are mandated at very low prices, there will be no incentive to build NGA networks. Various approaches have been proposed to deal with the risk-reward balance.

CITC further notes that, as indicated in its Regulatory Framework on Fixed and Mobile Services Licensing, CITC's current regulatory framework and licensing requirements are intended to promote investment in building network infrastructure that provides increased bandwidth, especially in the access network. It is with this objective in mind that the RFU was designed to mandate only a limited set of copper-loop based unbundling services, and for a limited period of time, as a means for new competitive service providers to begin offering services before the completion of the planned rollout of their own facilities.

Taking all the above into consideration, CITC intends to proceed in the following manner:

1. In this Decision, require that:
 - a. the relevant amendments to the RODA with the aim of increasing the forward visibility of STC's activities and plans in relation to the rollout of NGN/NGA; and
 - b. to address current generation broadband services which may be delivered over new technology (e.g. MSANs), amend the RODA to that it refers equally to broadband whether delivered over DSLAMs or MSANs.
2. At the appropriate time, initiate a proceeding to review the CITC network access regulatory framework in light of the anticipated rollout of NGN/NGA (the "network access review"). Depending on the specific manner and rate at which NGN/NGA developments take place in KSA, such an examination may also have a consequential impact on the current RFU.

With respect to the issues relevant to this Decision, CITC agrees with EATC that OLOs should have equivalent access to information on network developments as STC's own retail businesses.

STC did not comment on the proposal that STC should provide each party with the same information as it does to its own business units and affiliates.

CITC also considers that Attachment 8 to Annex H should provide for a forward as well as current view of the locations of serving sites, of up to 2 years, especially where MSANs are being deployed. CITC notes that this Attachment is available to OLOs on request and considers that this must include any OLO considering utilising RODA services.

CITC also considers that the RODA should be clarified so that all references to DSLAMs also include the DSLAM functionality in MSANs.

STC expressed the view that 2 years is currently too long a period for STC to develop and advise the OLOs of its planned changes. It suggested the present requirement to notify changes with 7 months notice should be modified to refer only to 'significant changes'.

CITC understands that STC will not always know its plan 2 years in advance, but experience suggests that major changes of network topology and closure of sites are planned at least 1 year in advance, so STC should provide information where it becomes known within the period of 2 years ahead of implementation. Furthermore, CITC considers that the proposed addition of the word 'significant' may have the effect of weakening the present 7 month notification obligation.

STC further expressed the view that the MSANs are part of STC's Next Generation Network and are not subject to similar regulation as STC's legacy network.

With regard to STC's view that its current deployment of MSANs falls outside the present regulatory framework, CITC considers that the principle of 'technology neutrality' should apply, such that the obligations are not affected by whether the broadband modems are situated in a DSLAM or an MSAN.

Therefore, based on EATC, OCC and Zain comments and CITC analysis, CITC concludes that the relevant provisions of the RODA should be amended. Accordingly, CITC has directed STC to amend Clause 1.3.1 of Annex D as follows (underlined text added):

"Each party will provide the other party with advance information about such planned introduction, closure, replacement or modification of or to any ADSL Service site (insofar as it is relevant to the provision of Data Access Services). STC will provide the same information to each party as it does to its own business units and affiliates".

CITC has also directed STC to amend Clause 1.3.2 of Annex D as follows (underlined text added):

"Each party will provide the other party with advance information about such proposed alterations and upgrades to their network which will make it necessary to change the other

party's network in order to maintain the Data Access Services provided by STC to the Other Licensed Operator. All parties will enter into negotiations in good faith concerning all proposed alterations with a view to minimising disruption to service, avoiding stranded investment and maximising opportunities to improve services. Such negotiations shall take place in the context of the Joint Technical Review Committee.

CITC has also directed STC to amend Clause 1.3.3 of Annex D as follows (struck-out text removed, underlined text added):

“Any changes planned or likely to take place within 2 years will be notified as soon as the proposal becomes firm, stating the degree to which they are firm, and definite alterations shall be notified not less than seven (7) Calendar Months prior to the implementation of the alteration. All notified changes will be incorporated in Attachment 8 to Annex H.”

CITC has also directed STC to amend the relevant provisions in the RODA so that it is clear that where reference is made to DSLAMs, this term also includes DSLAM functions built into Multi-Service Access Nodes (MSANs).

23. Broader Market Issues

EATC provided an extensive commentary on 8 other issues relating to the broadband market in general.

In summary these were on the following topics:

- Scope of RODA services should be expanded
- RODA obligations relating to FTTx
- Legal and regulatory issues in the broadband market
- Eliminate minimum order requirement
- Rate-shaped Bit Stream offering should be replaced
- RODA obligations on NGN networks
- Need for fuller description of processes
- Need for QoS control on NGA networks

CITC is very grateful to EATC for the extensive, detailed and thoughtful contribution to the regulatory debate and expects that the issues it has raised will form an important part of CITC's planned network access review.

In advance of the planned review, and without prejudice to its future deliberations in this regard, CITC gives here some general reactions to the issues raised in these eight topics. In some cases, some immediate changes to the RODA are considered appropriate.

23.1 Scope of RODA Services should be expanded

EATC expressed the view that more services should be included in the RODA, including:

1. 'Naked DSL';
2. Bit Stream with different qualities of service;
3. Other types of xDSL;
4. Other interfaces (e.g. Ethernet);
5. Fully unbundled loops;
6. Services over fibre loops;

CITC notes that these proposals may be separated into three possible categories:

- A. Proposals relating to services that are within the scope of the services mandated by the RFU, but that are not included in the RODA. CITC considers that such proposals should be addressed as follows:
 1. Wholesale services that STC supplies to its own retail businesses. Since STC is providing the service to its retail customers, it can be considered that technical and commercial supply is possible and market demand for the service exists. STC is therefore required to offer such wholesale services in the RODA.
 2. Wholesale services that STC does not appear to supply to its own retail businesses. In this instance, the OLO may request the service via the New Services provisions in Section 8 of the Primary Document (the "New Services Process". The OLO and STC can then come to an agreement on the technical and commercial supply and market demand issues. CITC could be called in to resolve any disputes.
- B. Proposals relating to NGA/NGN-related services that are not deemed to be within the scope of the services mandated by the RFU, and hence may be considered in the context of the planned network access review.

- C. Proposals relating to copper-based services that are not within the scope of the services mandated by the RFU, and hence may be reconsidered in the context of the planned network access review.

With respect to the six specific proposals, CITC concludes the following:

1. **‘Naked DSL’**. This is a copper-based service that is not included within the scope of the services mandated by the RFU and falls under category C. This service may be reconsidered in the context of the planned network access review
2. **Bit Stream with different qualities of service**. This refers to a Bit Stream service with greater OLO control of contention and quality of service. This service falls under category A2 and could be requested under the New Services Process.
3. **Other types of xDSL**. These services fall under category A2 and could be requested under the New Services Process, provided that the requested xDSL services can co-exist with the present telephony service.
4. **Other interfaces (e.g. Ethernet)**. These are alternative interfaces to the present ATM/IP Bit Stream service interface. These services fall under category A2 and could be requested under the New Services Process.
5. **Fully unbundled loops**. This is a copper-based service that is not included within the scope of the RFU and falls under category C. This service may be reconsidered in the context of the planned network access review.
6. **Services over fibre loops**. This refers to a wholly fibre loop (with no copper component) and is related to NGN/NGA. This service falls under category B and is not included within the scope of the RFU, and hence may be reconsidered in the context of the planned network access review.

23.2 RODA Obligations Relating to FTTx

EATC expressed the view that the RODA should mandate wholesale services over FTTx systems. EATC made the point that lack of visibility of plans to replace copper with fibre or hybrid fibre/copper can cause stranded investments.

CITC notes that FTTx is used as a generic term to describe several configurations of fibre deployment replacing some or all of the current copper loop, including the following two possibilities:

- **Wholly fibre loops (no copper component) “Fibre to the Premises”**. This is service was addressed in item 6 of section 23.1 above.

- **Hybrid loops (access links comprising of both copper and fibre components) “Fibre to the Curb”.** Where such loops use very short copper segments capable of supporting speeds of 30Mbit/s or more using technologies such as VDSL, then this is a Category B service related to NGN/NGA that is not included within the scope of the RFU and hence may be considered in the context of the planned network access review. Where a hybrid loop uses copper loops designed to support current broadband technologies, such as ADSL2+, then these are considered to be within the scope of the present RFU. Services over such loops fall into Category A1, since STC already appears to be providing these on a retail basis.

23.3 Legal and regulatory issues in the broadband market

EATC raised a range of legal and regulatory issues which it acknowledges fall outside the RODA. These include:

Tariff approval for Internet services

EATC expressed the view that the tariff approval process should be reviewed because STC currently does not have the obligation to submit for tariff approval changes in some of its retail Internet services.

CITC notes that in the context of another regulatory proceeding, it is currently studying the issue of market dominance and the imposition of ex-ante regulatory remedies in the different relevant telecommunications markets in the KSA, including, where appropriate, remedies relating to tariff approval. Furthermore, CITC also intends to initiate a proceeding to review the tariff regulation regime, including the tariff approval process.

Lack of cost-based charging for RODA services

EATC is concerned that RODA charges might not be cost-based. The application of cost-based charging for RODA services is complex, time-consuming and resource-intensive. The CITC is currently in the process of studying the issue of LRIC-based pricing for certain interconnection related services. However, these do not cover the access network.

Overall, given the relative advantages and disadvantages of the LRIC and benchmarking approaches applied to the current situation in the Kingdom with respect to RODA services, CITC has concluded that at this time the benchmarking approach should continue to be used.

Lack of transparency about STC’s NGN/NGA developments

Please refer to Section 22 above.

23.4 Eliminate minimum order requirement

EATC expressed the view that the minimum order requirements should be abandoned.

This has been addressed in Section 17.4 above. CITC has directed that the minimum order requirement should be significantly reduced.

23.5 Rate-shaped Bit Stream offering Should Be Replaced

EATC suggested that the present rate-shaped Bit Stream offering should be replaced by a non-rate-shaped version which would not be limited in speed at the DSLAM and which would allow the OLO to decide on the speed and range of services to be offered. CITC takes this to mean that the wholesale Bit Stream would always provide the maximum speed technically possible on a given line, rather than rate limited to, for example, 1Mbit/s or 2Mbit/s.

CITC notes that international practice is to charge different prices for different headline speeds at the DSLAM (e.g. 1Mbit/s) both at the retail and wholesale level. This approach broadly aligns prices with costs in the backhaul and core networks. If wholesale speeds were unconstrained, charging would have to be based on volumes transmitted and this does not always reflect peak period costs.

CITC also notes that in other countries that offer both Rate-Shaped and Non Rate-Shaped services, the Rate-Shaping does not refer to flexibility in the headline DSLAM speed, but rather the presence or absence of shaping which gives prioritization of one service type over another. For example, Rate-Shaping may be used to prioritise web browsing over file transfer.

In conclusion, this service falls under category A2 (see Section 23.1 above for description of categories) and hence could be requested under the New Services Process.

23.6 RODA Obligations on NGN Networks

EATC expressed the view that the RODA should be amended to clarify that obligations apply to broadband services provided from MSANs as well as broadband services from DSLAMs. Furthermore, EATC argued that interfaces other than ATM should also be provided.

CITC's policy is that the RODA should generally be technology neutral, so whether a device is called a DSLAM or MSAN should not affect the regulatory obligations. Therefore, CITC has directed STC to ensure that the RODA reflects this principle, see Sections 22, 23.1 and 23.2 above.

Concerning the technical specifications of interfaces over which services are provided, CITC considers that these should reflect industry developments and OLO demands. While ATM has been the predominant Layer 2 protocol to date, this is likely to migrate to Ethernet in the future. See Section 23.1 above.

23.7 Need for Fuller Description of Processes

EATC suggests that much more detailed process descriptions should be included in the RODA. 3 particular issues were raised:

Pilot Description

EATC suggested that a description of a Pilot Testing process should be included.

CITC notes that it is often the case that Reference Offers do not include all the detailed operation and maintenance procedures, which are developed on a mutual basis by the service providers. A pilot may well be a useful procedure to undertake and CITC notes that this would fall under the terms of reference of the joint STC/OLO Technical Review Committee, as defined in Annex D, Section 1.2.

Handover Process

EATC suggested that the handover process should be fully described in the RODA.

CITC considers that the details of the handover process would similarly be covered by the Technical Review Committee and need not be detailed in the RODA itself.

Reasons for Rejecting/Termination of Existing Service

EATC expressed concern that the RODA is silent about how RODA service requests would be handled in cases where a customer was already receiving broadband services from STC or another OLO. It noted that many authorities around the world had prevented service providers from refusing service on this basis.

CITC notes that the same principles are also widely applied to number portability requests. Also, some countries now have formal regulation to ensure that broadband migrations are effected swiftly and according to an agreed process.

CITC agrees that the inclusion of such rules would remove uncertainty.

Therefore, based on EATC comment and CITC analysis, CITC concludes that the relevant provisions should be amended with respect to this matter. Accordingly, in its Decision, CITC has directed STC to amend Annex H (in particular but not exclusively Part B Clause 4.10 and Part D Clause 2.4) to include, for both Bit Stream and Line

Sharing Services that no service request will be refused based on the presence of an existing service on a subscriber line.

23.8 Need for QoS Control on NGA Networks

EATC expressed the view that Bit Stream services require control over Quality of Service so that voice services over the IP path can be provided without interference from data.

CITC acknowledges the need for this service and considers it to be a Category B service which will be reviewed as part of the 'network access review' (Section 22 above refers).