

Regulatory Framework

for

Designation of Markets & Dominance in the Telecom Sector

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1. INTRODUCTION

- 1.1 Article Three of the Telecommunications Act (the “Act”) states that “the telecommunications sector shall be regulated "To ensure creation of favourable atmosphere to promote and encourage fair competition in all fields of telecommunications.”
- 1.2 Article Twenty-six of the Act states that “Any operator dominating a certain telecommunications market or part of it, shall not undertake any activities or actions which are considered an abuse of its position. The Bylaw defines the dominant operator’s obligations and the rules based on which a dominant service provider's behaviour shall be considered an abuse of dominant position.”
- 1.3 The Telecommunications Bylaw (the “Bylaw”) states that the Communications and Information Technology Commission (the “CITC”) shall perform the following functions:
 - 1.3.1 issue a decision designating dominant service providers in relevant telecommunications markets in the Kingdom of Saudi Arabia (the “KSA”), based on their share in the market and any other relevant factors;
 - 1.3.2 determine which service providers are dominant in a telecommunications market for interconnection;
 - 1.3.3 regulate prices for interconnection and access services by dominant service providers in a telecommunications market for interconnection, if considered appropriate by the CITC; and
 - 1.3.4 ensure that dominant service providers publish their Reference Interconnection Offers in accordance with the Bylaw and the Interconnection Guidelines.
- 1.4 The Bylaw also establishes a number of remedies that CITC may apply to dominant service providers, in order to prevent abuse of dominance practices, for example, requiring them to:
 - 1.4.1 prepare and present Reference Interconnection Offers pursuant to the interconnection Bylaw and Guidelines;
 - 1.4.2 apply the requirements of the regulation of interconnection charges;
 - 1.4.3 publish the reference interconnection offers approved by the CITC;
 - 1.4.4 publish the interconnection agreements approved by the CITC;

- 1.4.5 submit their applications to obtain CITC's approval on all tariffs for their services in the markets in which CITC considers them as dominant service providers;
 - 1.4.6 prepare and submit studies related to the costs of their services;
 - 1.4.7 submit suggestions to apply the price cap regulation for their services;
 - 1.4.8 apply the obligations stated within a Terms of Service document approved by the CITC;
 - 1.4.9 apply the rules of issuing bills according to the Bylaws;
 - 1.4.10 apply the rules and regulations related to the quality of services pursuant to the Bylaws; and
 - 1.4.11 apply accounting separation.
- 1.5 The CITC issued Decision No. 1/1423, dated 23/06/1423H, which designates the Saudi Telecommunications Company as a dominant service provider in all telecommunications markets in the KSA.
- 1.6 Since the coming into force of the Act and the Bylaw and since the issuance of the said Decision, many developments have taken place, of which the most important are:
- 1.6.1 new service providers have entered and others who are about to enter the telecommunications sector, including VSAT, data services, Internet services, mobile cellular services and fixed services;
 - 1.6.2 the Competition Law has come into effect and established the Council of Competition Protection; and
 - 1.6.3 the KSA has become a member of the World Trade Organization (“WTO”), and has certain obligations in the telecommunications sector.
- 1.7 Paragraph 29(b) of the Bylaw states that it is the CITC’s duty to “establish an open and transparent regulatory framework that minimizes regulatory and other barriers to entry into telecommunications markets in the KSA.”
- 1.8 Paragraph 36(b) of the Bylaw states that it is the CITC’s duty to “establish an open and transparent regulatory framework for interconnection and access with a view to minimizing regulatory and other barriers to entry into telecommunications markets.”
- 1.9 Once competition intensifies in a designated telecommunications market to an appropriate level, reliance on *ex-ante* regulation of market dominance will be reduced in favour of greater reliance on market outcomes and on the application in the telecommunications sector of *ex-post* competition controls in cases where there is an allegation of abuse of market dominance or of anti-competitive conduct.

- 1.10 Given the above, the Regulatory Framework for the Designation of Market and Dominance in the Telecom sector (the Regulatory Framework) is intended to render more flexible the telecommunications regulatory regime as it relates to the following issues:
- 1.10.1 determination of a flexible methodology for designating relevant telecommunications markets for *ex-ante* regulation of market dominance;
 - 1.10.2 determination of specific criteria and mechanisms for the assessment of dominance within a telecommunications market; and
 - 1.10.3 determination of proportionate, appropriate and non-discriminatory remedies applicable to dominant service providers.
- 1.11 Thus this Regulatory Framework includes the following procedures:
- 1.11.1 preparation of market definition, designation and dominance reports and the issuance of designation decisions;
 - 1.11.2 definition and designation of telecommunications markets;
 - 1.11.3 determination of the presence of a dominant service provider within the designated telecommunications markets; and
 - 1.11.4 determination of *ex-ante* remedies applicable in the event of a finding of the presence of a dominant service provider within a designated telecommunications market.
- 1.12 This Regulatory Framework addresses the necessary *ex-ante* remedies required to prevent anti competitive practices by dominant service providers, however, it does not address the *ex-ante* regulation that is applicable to service providers irrespective of the presence of dominance. In deciding on the application of *ex-ante* remedies, the CITC may consider the table of indicative remedies in Schedule A.

2. REGULATORY FRAMEWORK

2.1 Definitions

The words and expressions defined in this Regulatory Framework shall have the same meaning as in the Act and the Bylaw, unless context requires otherwise. The following words and expressions shall have the meaning assigned to them below.

“**Act**” the Telecom Act.

“**By-laws**” the Telecom By-laws of the Telecom Act.

“**Designation decision**” a decision issued by the CITC to define and designate the telecommunications market(s) which are subject to dominance and in addition, to designate any telecommunications service provider or service providers who are

dominant in such market or markets and, stipulate any required *ex-ante* remedies to be applies to such dominant service provider(s).

“Dominant service provider” a telecommunications service provider designated as a dominant service provider by the CITC in a designation decision, pursuant to section 2.4 of this Regulatory Framework.

“Telecommunication market” comprises all those telecommunications network services, provided by licensed service providers within a specified geographic area. The CITC shall define the telecommunications market(s) and designate those that are subject to dominance in a designation decision, pursuant to the circumstances and criteria set forth in section 2.3 of this Regulatory Framework.

“Ex-ante Remedies” the specific requirements imposed by the CITC on a dominant service provider in a designated telecommunications market to counter, prevent or neutralize the impact of dominance and other anti-competitive practices to protect users in such a market as set out in section 2.5 of this Regulatory Framework.

“Ex-post Remedies” the regulatory controls imposed on a service provider in the event that he engages in anti-competitive behaviour.

2.2 **Procedure for the issuance of the market definition, designation and dominance report and the designation decision**

2.2.1 Prior to issuing a designation decision, the CITC shall prepare a market definition, designation and dominance report and publish it for public consultation in accordance with the CITC statutes and the provisions of section 2.2 of this Regulatory Framework.

2.2.2 The CITC may at any time, on its own motion or on receipt of an application supported by appropriate justification, prepare, review or amend a market definition, designation and dominance report, in the light of evolving market conditions, in order to:

- (a) designate one or more defined telecommunications market(s) for regulation of dominance pursuant to section 2.3 of this Regulatory Framework;
- (b) designate telecommunications service provider(s) who are dominant in one or more designated telecommunications market(s) pursuant to section 2.4 of this Regulatory Framework; and
- (c) in the event of a finding of dominance in one or more of the defined telecommunications market(s), stipulate the application of *ex-ante* remedies, if any, pursuant to section 2.5 of this Regulatory Framework.

2.2.3 The CITC shall prepare and publish a new market definition, designation and dominance report no later than five years from the date of the issuance of the last designation decision.

2.2.4 The CITC may refuse any application for the preparation, review or amendment of a market definition, designation and dominance report, according to its discretionary powers, for reasons the CITC will disclose, such as where the application is frivolous or unsubstantiated or that the defined telecommunications markets have not sufficiently evolved since the issuance of the last designation decision.

2.3 **Definition and designation of the relevant markets in the report**

2.3.1 The market definition, designation and dominance report shall include CITC's position on some or all of the telecommunications markets that it considers to be relevant for the application of remedies. The report may be limited to one or more geographical markets or one or more telecommunications services.

2.3.2 The CITC shall define and designate a telecommunications market or markets for the application of remedies by analyzing a range of market criteria, including the telecommunications services that make up one market, the relevant group of users of such services as well as the geographic scope of that market.

2.3.3 In its definition and designation of the relevant telecommunications market or markets subject to *ex-ante* remedies, the CITC may also consider the following:

- (a) demand-side substitutability in order to determine the extent to which telecommunications services are available which could be substituted by users for the telecommunications services under consideration; and
- (b) supply-side substitutability in order to determine the extent to which substitute telecommunications services to the services under consideration are available, which telecommunications service providers could provide.

2.3.4 In assessing substitutability, the CITC may consider any factor that, in its opinion, reasonably affects market definition, including consideration of the smallest group of services and the smallest geographic area in relation to which a telecommunications service provider can impose and profitably maintain a small but significant non-transitory increase in price. In most cases, a 5% price increase would be considered significant and a period of one year or less would be considered transitory.

2.3.5 The CITC shall proceed to a full examination of whether a service provider is dominant in a defined telecommunications market pursuant to section 2.4 of this Regulatory Framework; and in designating a telecommunications market

or markets as subject to *ex-ante* remedies, the following criteria shall be considered:

- (a) whether the telecommunications market under consideration is subject to high and non-transitory barriers to entry;
- (b) whether the telecommunications market under consideration would naturally tend, in the short or medium term, toward sufficient competition to protect the interests of customers, even without regulatory intervention; and
- (c) whether *ex-post* remedies alone, in the absence of *ex-ante* remedies in the same telecommunications market, would likely be sufficient to address concerns related to market dominance.

2.4 **Determination of dominant service provider in the report**

When designating in a market definition, designation and dominance report a telecommunications service provider as dominant in a specific telecommunications market or markets, the CITC shall apply the criteria and tests set forth in Chapter Four of the Bylaw, and it may, in addition, apply a range of other market circumstances or criteria, as described below:

- 2.4.1 the degree of market concentration as determined by reference to revenues, numbers of subscribers or other relevant statistics;
- 2.4.2 the evolution of telecommunications service providers' market share over time;
- 2.4.3 the degree to which a telecommunications service provider's tariffs have varied over time;
- 2.4.4 the ability of the telecommunications service provider to earn higher than normal profits;
- 2.4.5 the telecommunications service provider's financial resources and access to funding;
- 2.4.6 the telecommunications service provider's vertical integration and the existence of a highly developed distribution network;
- 2.4.7 the ability of the telecommunications service provider to benefit from preferential or limited access to superior technology; and
- 2.4.8 the ability of the telecommunications service provider to obtain preferential, or long-term contracts for the supply of relevant services to large users.

2.5 **Specification and application of remedies in the report**

- 2.5.1 In the event that the CITC determines that each of one or more telecommunications service providers is a dominant service provider in one or more of the telecommunications markets, the CITC shall take into consideration whether the application of remedies to the dominant provider(s) in a wholesale telecommunications market(s) is likely to reduce the expected impacts of dominance in one or more corresponding retail telecommunications market(s).
- 2.5.2 In addition to any of the applicable remedies set forth in the Bylaw, the CITC may order the dominant service provider in one or more designated telecommunications markets to comply with one or more of the following remedies:
- (a) to notify the CITC of the tariffs for its services before implementing them and to notify all its customers of the same tariffs;
 - (b) to offer leased lines on a wholesale basis on fair and reasonable terms and conditions, including price;
 - (c) to offer wholesale international voice service on fair and reasonable terms and conditions, and at appropriate prices;
 - (d) to offer national roaming for mobile service on a wholesale basis on fair and reasonable terms and conditions, and at appropriate prices;
 - (e) to provide access to certain essential facilities, subject to technical feasibility, on fair and reasonable terms and conditions, and at appropriate prices;
 - (f) to publish a reference offer for data access;
 - (g) to submit accounts that separate the costs and revenues attributable to its regulated and unregulated services;
 - (h) to comply with any other appropriate remedies as determined by the CITC.
- 2.5.3 Where other remedies are insufficient to address the potential harm associated with dominance, the CITC shall require a dominant service provider to institute effective regulatory separation – such as by the inclusion in a separate business unit of the sub-set of related infrastructure assets that cannot be economically replicated – and to operate such a business unit separately from its retail and other business units, in order to ensure that such latter business units have an equivalence of access to information and services associated with such assets relative to the access granted to analogous business units of other telecommunications service providers.

2.5.4 When considering which remedies to apply in the event of a finding of dominance in a market designation and dominance report, the CITC shall take into consideration the designated market in question, the degree of market dominance, the threat of harm to competition or to customers that may result from such market dominance, and the degree to which reliance on market outcomes or *ex-post* competition controls may address such threat of harm efficiently and effectively.

SCHEDULE A

TABLE OF INDICATIVE REMEDIES

Relevant Market Category	Typical potential for harm from market dominance	Indicative potential remedies
1. Retail markets	Over-charging, anti-competitive pricing, cross subsidies, etc.	<ul style="list-style-type: none"> - Tariff filing and approval - Tariff Notification - Cost studies - Price Cap Regulation - Accounting Separation
	Unfair terms and condition, information asymmetry, subscriber lock-in, etc.	<ul style="list-style-type: none"> - Subscriber information obligations - Terms of service
	Reduction in quality	<ul style="list-style-type: none"> - Quality of service
2. Wholesale markets	Reduction in quality	<ul style="list-style-type: none"> - Quality of service
	Unfair terms and condition, information asymmetry, subscriber lock-in, etc.	<ul style="list-style-type: none"> - Subscriber information obligations - Terms of service
	Over-charging, anti-competitive pricing, cross subsidies, etc	<ul style="list-style-type: none"> - Interconnection Charges - Cost studies - Accounting Separation - Tariff filing and approval
	Denial or delay in providing services, unfair terms and condition, etc.	<ul style="list-style-type: none"> - Offer interconnection services - Reference Interconnection Offer (RIO) - Reference Offer for Data Access (RODA) - Interconnection Agreement - Offer wholesale leased lines - Offer access to essential facilities
	General discrimination in favour of own retail operations	<ul style="list-style-type: none"> - Effective regulatory separation - Offer access to essential facilities