Communications & Information Technology Commission

A Public Consultation Document

on

Telecommunications Market Definition and Dominance

Issued by the CITC, 26/5/1429H; 31/5/2008G

Contents

1. Introduction and Process

1.1 INTRODUCTION

This Public Consultation concerns the way in which the Communications and Information Technology Commission (the "CITC") would:

a) define specific and relevant markets in the telecommunications sector;

b) determine whether any telecommunications service provider has dominance[1] in such relevant market or markets; and

c) stipulate remedies to address dominance in such defined market(s).

The powers of the CITC to define relevant markets, to determine dominance and to impose remedies related to dominance are established in the Telecommunications Act and the Telecommunications Bylaw (the "Act" and "Bylaw"). The Act and the Bylaw were issued in the context of monopoly in the telecommunications sector. In this context, CITC Decision 1/1423 designated STC as dominant in "all telecommunications markets in the Kingdom of Saudi Arabia ("KSA")". Decision 1/1423 and other subsequent decisions have imposed certain dominance-related remedies on STC.

Since the coming into force of the Act and Bylaw and since the issuance of Decision 1/1423:

- new service providers have entered or are about to enter the telecommunications sector in most market segments, including VSAT, data services, Internet service, mobile cellular services and fixed services;
- a "multi-sector", economy-wide Competition Law has come into legal effect and established the Council of Competition Protection; and
- the KSA has become a member of the World Trade Organization ("WTO") and, in the context of the Agreement on Basic Telecommunications ("ABT"), has assumed a series of corresponding regulatory commitments in the telecommunications sector via its adoption of the WTO-ABT Reference Paper.

Accordingly, the CITC is of the view that it is time to review the regulatory framework applicable to dominance in the telecommunications sector and to issue a new designation decision, if required, to update and replace Decision 1/1423 in relation to telecommunications market dominance.

Question 1: Do you agree that there has been sufficient change in the level of competition in the telecommunications market since the adoption of the Act and the Bylaw and the issuance of Decision 1/1423 to warrant a review to designate relevant markets, to determine market dominance within them, and to stipulate appropriate dominance-related remedies?

1.2 CONCEPTUAL OVERVIEW

The KSA has adopted a sector-specific telecommunications regime as well as multi-sector competition laws. To coordinate the regulatory response to market dominance specifically, and to anti-competitive conduct generally, two broad types of controls can be implemented:

- *Ex-ante* regulation means applying regulation in advance. *Ex-ante* sector-specific regulation has generally been adopted to prevent abuse of market dominance and anti-competitive

[1] Throughout this document the term "dominance" is used to describe what in some other jurisdictions is called the possession of "significant market power" (SMP).

conduct before it occurs, as well as to protect consumers. It has the objective of ensuring that, where competition is allowed, abuse of market dominance or anti-competitive conduct may be prevented or at least made easier to identify. This type of control is generally given legal effect via the imposition of certain *ex-ante* remedies on designated dominant service providers.

- *Ex-post* regulation means applying regulation in response to anti-competitive behaviour after it has occurred. Multi-sector competition legislation applies to all sectors of the economy, including the telecommunications sector. Competition legislation is generally applied on an *ex-post* basis to deal with allegations of abuse of market dominance or anti-competitive conduct, and to correct such conduct if it has been found to exist.

This Public Consultation deals with the *ex-ante* regulation of dominance as it relates to the telecommunications sector, without prejudice to the CITC's authority to impose remedies on non-dominant service providers, where appropriate.

As liberalisation takes place and competition intensifies across many or all markets in the telecommunications sector, the international trend is generally:

a) to reduce the dependence on *ex-ante* regulation of market dominance in favour of greater reliance on market outcomes, and

b) to apply the *ex-post* competition controls in cases where there is an allegation of abuse of market dominance or anti-competitive conduct.

All telecommunications markets, whether or not designated as being subject to *ex-ante* regulation in this Public Consultation Document, continue to be subject to *ex-post* regulation as required.

1.3 PUBLIC CONSULTATION PROCESS

1.3.1 Objective and Scope of the Public Consultation

The CITC invites all members of the public, including private individuals, public organizations and commercial entities (together, the "Respondents") to participate in this Public Consultation process.

Pursuant to sections 29(b) and 36(b) of the Bylaw, it is the CITC's duty to establish an open and transparent regulatory framework that minimizes regulatory and other barriers on the telecommunications markets, including interconnection and access regulation. Where a service provider is dominant in one or more telecommunications service markets, this can create barriers to entry for other service providers. Accordingly, the CITC intends to publish, by way of decision, a Regulatory Framework for Telecommunications Market Dominance (the "Regulatory Framework"). A draft of the Regulatory Framework is included in the Annex of this Public Consultation Document. The CITC also intends to issue a designation decision that identifies dominant service providers in each of the relevant telecommunications service markets, which would update and replace Decision 1/1423H.

The process set forth in the Regulatory Framework may be summarized as follows:

a) The CITC prepares a draft "market analysis report" according to the procedure set forth in section 4.1 of the Regulatory Framework;

b) In the context of the market analysis report, the CITC:

(i) designates relevant markets in light of considerations set forth in section 4.2;

(ii) determines whether a telecommunications service provider is dominant within a relevant market or markets in light of considerations set forth in section 4.3; and

(iii) stipulates appropriate remedies in light of considerations set forth in section 4.4 and Schedule A of the Regulatory Framework;

c) The CITC then publishes the draft market analysis report in the context of a public consultation process, inviting interested parties (particularly those service providers mentioned in the report) to comment;

d) Based on the comments received in the public consultation process, the CITC then finalizes the market analysis report, the conclusions of which are set forth in a binding "designation decision".

In this context, this "Consultation Document" is a dual-purpose document. On the one hand, it is a public consultation document that introduces a draft of the Regulatory Framework and seeks public comment, prior to finalization thereof. On the other hand, it is also a draft "market analysis report". In other words, once the CITC has received comments from interested parties on this Consultation Document, the CITC will finalize this first "market analysis report", as well as the Regulatory Framework. The CITC will then draft and issue the corresponding "designation decision", in light of the conclusions set forth in the final market analysis report. The process set forth in the Regulatory Framework (summarized above) is in accordance with section 30.5 of the Bylaw and the Rules of Procedure.

As the competitive environment matures in the telecommunications sector, the Regulatory Framework should assist the CITC in the process of implementing appropriate "de-regulation". The CITC will also be able to revisit prior designation decisions, as necessary, to take into account situations in which telecommunication service providers are no longer dominant.

The CITC has examined the concepts associated with the definition of markets and determination of dominance, in order to outline the issues as it currently sees them for the purposes of this Public Consultation. In particular, the CITC has reviewed the practices of a number of other countries in this regard, and the manner in which they establish, for regulatory administration, the boundaries between specific markets in the sector. The CITC has also reviewed the criteria or guidelines that are to be applied to identify service providers that have dominance in any of the markets so defined. Finally, the CITC has also noted the practices in other countries in relation to defining remedies – i.e. the measures available for use in circumstances where market dominance is identified and where some action is required to curtail its actual and potential impact on competition or consumers.

Based on the review of international experience and its analysis of the situation in the KSA, the CITC has developed some preliminary views with respect to the issues set forth in this Public Consultation Document. In particular, the CITC sets forth, on a preliminary basis:

a) a list of relevant telecommunications markets. This list is presented in Figure 2.1;

b) a determination of which service provider(s) is (are) dominant within each market. This determination is presented in Figure 3.1; and

c) an assessment of appropriate and proportionate remedies in relation to a finding of dominance in relation to these specific and relevant markets. This assessment is presented in Figure 4.1.

The objective of this Public Consultation is to provide Respondents with the opportunity to make comments to the CITC on the issues associated with the definition of telecommunications markets, the determination of dominance in such markets and stipulate remedies to address dominance in such defined markets, once identified. In particular, the CITC seeks comments from Respondents in relation to:

- the proposed Regulatory Framework, included in the Annex of this Public Consultation Document; and

- the draft market analysis and proposed market dominance designations set forth in the above-mentioned Figures 2.1, 3.1 and 4.1 of this Public Consultation Document.

The ultimate aim of the Public Consultation process is to assist the CITC to finalize the proposed Regulatory Framework and to issue designation decisions in these matters in light of the process set forth in the draft Regulatory Framework, and which would complement the CITC Statutes.

1.3.2 Comments on Consultation Document

This Public Consultation Document and Schedule A – the draft Regulatory Framework – will be available on the CITC's website at http://www.citc.gov.sa.

Respondents who wish to express opinions on this Public Consultation Document are invited to submit their comments in writing to the CITC. All comments must be received by the CITC no later than 9/7/1429H, corresponding to 12/7/2008G.

Comments filed in relation to this Public Consultation Document may be submitted to one or more of the following addresses:

a) E-mail to: **dominancy@citc.gov.sa**

b) Delivery (hard and soft copy) by hand or by courier to:

Office of the Governor,
Communications and Information Technology Commission (CITC)
King Fahad Road, P.O. Box 75606
Riyadh 11588
Kingdom of Saudi Arabia

The CITC welcomes all comments on the Public Consultation Document. The CITC particularly invites comments and responses to the specific numbered "Questions" set out in this Public Consultation Document (the "Consultation Questions"). The CITC encourages Respondents to support all comments with relevant data, analysis, benchmarking studies and information based on the national situation or on the experience of other countries to support their comments. The CITC may give greater weight to comments supported by appropriate evidence. In providing their comments, Respondents are requested to indicate the number of the Consultation Question(s) to which the comment relates. Respondents are not required to comment on all Consultation Questions. The CITC is under no obligation to adopt the comments of any Respondent.

Copies of all comments submitted by Respondents in relation to this Consultation Document will be published on the CITC's website at http://www.citc.gov.sa. Claims of confidentiality will be determined by the CITC in accordance with the Rules of Procedure. Generally speaking, statements of opinion will not be regarded as confidential by the CITC.

2. Market Definition and Process

Market dominance, or the ability to operate in a market without concern for the reaction of customers[2] or competitors, exists, if at all, in the context of specific markets. Defining a market means describing its nature and boundaries. This is a role for the regulatory agency. It is an on-going role because telecommunications markets are constantly evolving as a result of developments in technology, features and services provisioning, the cost relationships, and demand patterns to which they are linked.

2.1. DEFINITION OF MARKET AND PROCESS

The CITC is disposed to introduce a definition of "relevant market" that will apply specifically to the issues under consideration for market dominance in this Public Consultation. In particular, the proposed Regulatory Framework document includes a proposed definition of "relevant market".

Question 2: Please comment on the proposed definition of "relevant market" included in the proposed Regulatory Framework.

The CITC is disposed to introduce a process for defining relevant markets in the telecommunications sector. Such a process is included in the proposed Regulatory Framework. Specifically, it includes provisions related to the preparation of a Market Analysis Report in section 4.1 of the proposed Regulatory Framework document, which includes a mechanism for the designation of relevant markets on the basis of factors and criteria set forth in section 4.2 of the proposed Regulatory Framework. CITC has applied this mechanism using the procedure described below, the results of which are summarized in Figure 2.1.

Question 3: Is it appropriate at this time for the CITC to define a process for the determination of relevant telecommunications markets? Please comment on the proposed process as it relates to market dominance included in section 4 of the proposed Regulatory Framework document.

2.2 PRELIMINARY IDENTIFICATION OF RELEVANT MARKETS

As noted in Section 1, the CITC has undertaken research as to international practice in relation to market definition. For the purpose of efficiency, the CITC developed an initial list of relevant markets using the experience of other jurisdictions as a starting point. Specifically, with respect to an initial list of relevant markets, the CITC considered in detail the set of 18 markets determined by the European CITC in 2003 and determined that such market analysis proved to be a useful starting point for its own market analysis process[3]. The CITC then revised and refined this set of markets to the 14 markets described in Figure 2.1 below by applying the proposed methodology and criteria included in sections 4.1 and 4.2 of the proposed Regulatory Framework document, as reflected in the procedure described below, which applies section 4.2.2 and section 4.2.3 of the proposed Regulatory Framework.

a) **Select an initial narrowly-defined service market.** This first step involves defining a series of discrete telecommunications services. Discrete telecommunications service markets are described in the "market definition" column in Figure 2.1.

[2] The expression "customer" throughout this document also refers to "subscriber" or "user", as the context may require.

[3] It is notable that in November 2007 the European Commission reduced its list of relevant markets from the initial 18 to a subset of 7 markets. Nevertheless, given the state of market liberalisation in the KSA, the CITC is of the view that the initial set of 18EU markets was a more appropriate starting point.

b) **Consider whether the market operates as a national market within KSA or as a series of local or regional markets.** In many jurisdictions there is an assumption that markets for telecommunications services are national in character unless there is strong evidence to the contrary. In the KSA, which has the two extremes of dense urban communities and extremely sparsely populated rural and remote communities, the market may operate as a series of local or regional submarkets. So, while the CITC is generally disposed towards the definition of national markets, it is also open to alternative regional definitions where justified. This issue is treated in the “geographic aspects” column of Figure 2.1.

c) **Consider how best to define the customers to whom the service is directed.** Markets are characterised by the demands, requirements and affordability patterns of the customers involved. It may be appropriate in some cases to define the market in terms of customer characteristics. For example, in relation to a particular service, customer requirements and overall demand patterns may be significantly different as between business and residential customers, and it may be appropriate to consider two separate markets as a result. However, as of the present time, the CITC notes that no such customer-defined variation in services exists – the same services and tariffs are available to all customers regardless of whether they are business or residential. This issue is treated in the “customer aspects” column of Figure 2.1.

d) **Consider demand-side substitution using the Hypothetical Monopolist (or SSNIP) Test.** This test is one that involves the use of deductive logic based on the tester’s knowledge of national markets and related international trends with respect to customer behaviour. The test posits a hypothetical monopolist who introduces a small, significant non-transient increase in price (SSNIP) for a service, and tests whether such an increase is deduced to be profitable for the hypothetical monopolist. The profitability of a SSNIP will depend on the number of customers that move to a substitute service. The test is usually based on a price increase of 5% that is put in effect for at least one year. If the increase is deduced to be profitable, then this will be evidence of the absence of appropriate substitutes, and therefore of the boundaries of a discrete market. If the increase is deduced to be not profitable due to availability of a substitute service, the service definition needs to be expanded to include the substitute service, and the SSNIP Test run again on the basis of the enlarged definition. This issue is treated in the “demand-side substitution” column of Figure 2.1.

e) **Consider supply-side substitution using the Hypothetical Monopolist (or SSNIP) Test.** The SSNIP Test is the same but in this case it seeks to test whether the increase in price might induce new entrants into the market. In considering whether such alternative suppliers might be induced to enter the market, it is important to consider the practical issues that they might have to address in deciding on entry. This issue is treated in the “supply-side substitution” column of Figure 2.1.

Figure 2.1 below sets out a summary of the CITC’s preliminary designation of the 14 relevant markets, determined on the basis of the above analysis.

FIGURE 2.1: PRELIMINARY DETERMINATION OF RELEVANT TELECOMMUNICATIONS MARKETS

Market Reference	***1. Market Definition***	***2. Geographic Aspects of Market***	***3. Customer Aspects of Market***	***4. Demand-side substitution***	***5. Supply-side substitution***
1. Retail fixed access services	This is the market for access to the public telephone service at a fixed location in both residential and non-residential (including business and government) premises.	These services are provided on a national basis. The same supply conditions, including price, apply nationally.	No distinction is made in terms of service conditions at this time between residential and non-residential customers. Therefore the market can, at this stage, be regarded as a single market for the purposes of regulation of dominance.	There is no effective service substitute based on the SSNIP test. This service is relatively price-inelastic, and therefore the hypothetical monopolist would find a SSNIP[4] profitable. It should be noted that residential customers are increasingly electing to subscribe to mobile service rather than fixed service. This is occurring in spite of price differences that favour fixed services.	There is no effective supplier substitute based on the SSNIP test. The high costs of establishing fixed access present a significant barrier to entry in the event of a hypothetical monopolist applying a SSNIP.
2. Retail local and national fixed voice call services	This market covers local and national calls originating on the fixed PSTN.	These services are provided on a national basis. The same supply conditions, including price, nationally.	No distinction is made in terms of service conditions at this time between residential and non-residential customers. Therefore the market can, at this stage, be regarded as a single market for the purposes of regulation of dominance.	There is no effective service substitute based on the SSNIP test. Users are at times substituting mobile calls for fixed, but primarily they are doing this for convenience and the mobility involved. They are doing it despite differences in price that favour calls from fixed services. An increase in fixed call prices will reduce the mobile premium and add to the latter's attraction. At this stage however it remains highly likely that the hypothetical monopolist would make a profit on a SSNIP.	Fixed service providers are entering the market, and they may be further encouraged by a SSNIP from the hypothetical monopolist. However, the main alternative suppliers of voice calls in the short term are mobile service providers and the mobile premium is significant at this time – so these companies are unlikely to be tempted into the fixed call market. Potentially, as carrier selection services are introduced, supply-side substitution could arise for national but not local calls, in which case this market could split into two.
3. Retail international voice call services	This market covers international call services for all customers of both fixed and mobile services.	These services are provided on a national basis. The same supply conditions, including price, apply nationally.	All customers have the same tariffs for international calls, and this applies whether they make those calls from fixed or mobile services. In many cases customers have a choice as to whether to make their international calls from a fixed or mobile handset.	There is no effective service substitute based on the SSNIP test. A SSNIP from either a fixed or mobile hypothetical monopolist might lead to customers preferring the alternative service (thus confirming that the market should cover international calls from both fixed and mobile services). However, a SSNIP covering both fixed and mobile international calls would certainly be profitable, as there is no effective substitute service.	International calls are generally highly profitable and prices have been coming down consistently over the years. In such circumstances a SSNIP by a hypothetical monopolist would tend to encourage new suppliers into the market. However, access to this market is regulated, so new players cannot enter the market without a licence.

[4] SSNIP stands for Small but Significant Non-transient Increase in Price

Market Reference	1. Market Definition	2. Geographic Aspects of Market	3. Customer Aspects of Market	4. Demand-side substitution	5. Supply-side substitution
4. Retail national mobile services	This market covers all national retail services from mobile customers, including voice, video and data/text services deployed on 2G and 3G platforms.	These services are provided on a national basis. The same supply conditions, including price, apply nationally.	This market covers all customers, including residential and non-residential.	If a hypothetical monopolist applied a SSNIP, this would likely be profitable. There is no substitute service. Fixed network calls are not generally a suitable substitute as they do not offer the same level of mobility.	Regulatory and spectrum constraints would be a major impediment for new entrants responding to a SSNIP and entering the market. In addition, the investment required would not be deployed in response to a SSNIP. Therefore, a SSNIP would not be sufficient to encourage supply-side substitution.
5. Retail business data services	This is the retail market for business data services, such as IP services (such as IP VPN), packet service, digital data services, ATM, Frame Relay and leased lines	These services are provided on a national basis by service providers. The same supply conditions, including price, apply nationally.	The market is essentially a business market, covering non-residential customers such as those in business and government.	The various data services that serve this market are substitutable amongst themselves to a greater or lesser extent, and therefore it is appropriate to regard the market as a single market, notwithstanding the characteristics that might be unique to specific services. If a hypothetical monopolist applied a SSNIP, this would likely be profitable. Businesses need these services to operate and are not going to reduce demand for them in response to a SSNIP.	A SSNIP is unlikely to attract new entrants to the market, and therefore the definition holds. IP-based solutions are increasingly being considered by business customers. However, these solutions usually involve substantial service provider and customer reorganisation, and are unlikely to be triggered by a SSNIP test.
6. Retail internet access services	This is the retail market for internet access and covers both dial-up and broadband access services.	These services are provided on a national basis by service providers.	This market covers both residential and non-residential (business, government, etc.) customers.	The SSNIP Test supports the inclusion of both dial-up and broadband services in the same market definition, because an increase in price of dial-up will definitely precipitate churn to broadband. It is likely that a SSNIP would be profitable to a hypothetical monopolist providing both dial-up and broadband services. The perceived utility of internet access, once experienced, indicates that cancellation of service in response to a SSNIP will be insignificant.	The characteristics of the internet access service suggest that new entrants may arise in response to price increases, but not in response to SSNIP levels of increase. Therefore a SSNIP will not be sufficient to attract entry by new suppliers.
7. Wholesale fixed voice call termination services	This wholesale market exists in relation to the termination of calls addressed to end-users connected to each fixed network, so that each fixed network defines a separate market.	These services are provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP will make a profit. There is no alternative service substitute. Nor can a service provider cease to use the service, because all service providers are required to make provision for termination of calls made to their networks.	By definition there are no other suppliers – either in the market or capable of entering it. Therefore there is no possibility of supply-side substitution.
8. Wholesale transit interconnection service	This is a wholesale service for the conveyance of traffic between points of interconnection for other service providers.	This service, when made available, will be provided on a national basis by service providers.	This is a wholesale market, and the customers involved will be other licensed service providers.	A hypothetical monopolist applying a SSNIP would likely make a profit. The wholesale customers would not be expected to reduce usage in response to a SSNIP.	A SSNIP would be unlikely to encourage new entrants into the market, or to encourage a service provider to build out its own network as a substitute for using the transit service.

Market Reference	***1. Market Definition***	***2. Geographic Aspects of Market***	***3. Customer Aspects of Market***	***4. Demand-side substitution***	***5. Supply-side substitution***
9. Wholesale line sharing service	This is the wholesale market for provision to other service providers of access to the non-voice spectrum of copper loops from the local exchange to the customer premises.	This service is provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP would likely make a profit. Customers who use line sharing for the provision of broadband services to customers will have invested in systems and other equipment (such as DSLAMs) and would not change their plans and avoid using the service in response to a SSNIP.	There are alternative means of providing broadband. However other suppliers would not enter the market in response to a SSNIP for line sharing, because they would need to make substantial investments of a kind not likely to be exclusively in response to a SSNIP.
10. Wholesale broadband access services	This is the wholesale market for the provision of Bitstream at present.	These services are provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP would likely make a profit. Wholesale customers would be unlikely to reduce demand in response to a SSNIP, but this would depend on how fine the pre-existing wholesale margins were.	The most likely alternative supplier would be the wholesale customer taking a decision to supply broadband access to the retail market through other means than Bitstream. Such decisions are unlikely to be triggered by a SSNIP to any significant level. Therefore a SSNIP is unlikely to be unprofitable because of encouragement of new suppliers into the market.
11. Wholesale leased line services	This is a wholesale market for the provision of leased lines between separate locations of another service provider	These services are provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP would likely make a profit. There are no alternative services that would ne used instead in response to a SSNIP.	A SSNIP would be unlike to encourage alternative suppliers to enter the market, or wholesale customers to invest in their own networks instead of leasing lines from others to any appreciable extent
12. Wholesale mobile call termination services	This wholesale market exists in relation to the termination of calls addressed to customers connected to each mobile network, so that each mobile network defines a separate market.	These services are provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP will make a profit. There is no alternative service substitute. Nor can a service provider cease to use the service, because all service providers are required to make provision for termination of calls made to their networks.	There are no other suppliers – either in the market or capable of entering it. Therefore there is no possibility of supply-side substitution.
13. Wholesale national roaming aervices	This is the wholesale market for roaming of customers between mobile networks.	These services are provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP is highly likely to make a profit. The wholesale customer is unlikely to be able to reduce demand to a level that would make the SSNIP unprofitable. It is more likely that the wholesale customer would seek to pass on the additional costs of the SSNIP to end-users.	A SSNIP is unlikely to encourage alternative suppliers to enter the market. Substantial deployment of a network, with associated substantial investment, is required for market entry by alternative suppliers and a SSNIP will not be sufficient to encourage this.
14. Wholesale international voice call services	This is a wholesale market for the provision of international voice connectivity.	These services are provided on a national basis by service providers.	This is a wholesale market, and the customers involved are other licensed service providers.	A hypothetical monopolist applying a SSNIP is highly likely to make a profit. The wholesale customer is unlikely to be able to reduce demand to a level that would make the SSNIP unprofitable. It is more likely that the wholesale customer would seek to pass on the additional costs of the SSNIP to end-users.	A SSNIP is unlikely to encourage alternative suppliers to enter the market. Substantial investment is required for market entry by alternative suppliers and a SSNIP will not be sufficient to encourage this.

Question 4: Are the telecommunications services markets listed in Figure 2.1 above separate, discrete and relevant markets for the purposes of determining market dominance? Please provide justification for your answers, including relevant market data where possible.

In examining possible markets, the CITC has been concerned only with relevant markets for telecommunications network services. Further, the CITC only considered markets that it considered to be of public interest in relation to the regulation of dominance. Based on this principle, some small markets, such as value added services, have therefore been excluded. The CITC has also excluded markets in which some or all service providers are regulated irrespective of dominance. The market for carrier selection services, yet to commence in KSA, is an example of such a market. The CITC also excluded markets associated with the provision of essential facilities, such as ducts, because these are not, in themselves, telecommunications network services markets.[5] The CITC through its periodic reviews will take these and new markets into consideration as the telecommunications sector evolves. These markets remain subject to *ex-post* competition controls.

Question 5: Are the telecommunications services markets listed in Figure 2.1 above the only markets that need to be considered for the purposes of determining whether or not there is market dominance? If not, please indicate what other telecommunications markets might be included, how they might be described and whether they affect the markets described in Figure 2.1 above.

[5] Note that the CITC may require the provision of essential facilities on an *ex ante* basis by defining the relevant essential facilities as part of a remedy for dominance in a designated market.

3. Determination of Market Dominance

Dominance is the ability of a participant in a market to increase prices or reduce output independently of the reaction of competitors or customers.. As discussed below, there are a range of criteria that go to the determination of market dominance. These criteria include the notion of relative presence and size in a particular market, for which market share is the most common expression.

3.1 MARKET SHARE THRESHOLD FOR DOMINANCE

The definition of a dominant service provider set forth in the Act focuses on the criterion of market share and sets a threshold of 40% market share. The Act notes that the threshold applies “unless the CITC decides to change this share according to the market situation”. That is to say, the Act leaves open the possibility that the CITC could decide to change the market dominance threshold set out in the Act. In section 30.1, the Bylaw re-states that all service providers with market share of 40% or more of gross revenues in the relevant market are dominant. The Bylaw also sets out a series of criteria in section 30.6 for the CITC to determine market dominance in cases where the service provider has a market share of less than 40% in the relevant market.

It appears to the CITC that the current market share arrangements are working satisfactorily and should continue to work satisfactorily over the next few years or more, and the legal framework enables other factors to be considered in the process. The CITC believes that the current arrangements will not constitute a problem for future regulation of market dominance on an *ex-ante* basis.

Question 6: Do you consider that the market share threshold of 40% contained in the Act and the Bylaw should be retained as it is, or do you believe that it should be changed? If so, what changes should be made to the market share threshold arrangement and why?

Question 7: Do you consider that revenue is always a correct measure for the determination of market share? If not, what alternatives (e.g. subscriber lines, call volumes) would you suggest, and under what circumstances should they, rather than revenue-based market shares, apply?

3.2 SUPPLEMENTARY CRITERIA FOR THE DETERMINATION OF MARKET DOMINANCE

The CITC considers that the criteria in the Bylaw for the determination of dominance might usefully be supplemented by other criteria in the Regulatory Framework. The supplementary criteria would relate to other indicators of market dominance that are consistent with international best practice. The proposed supplementary criteria, included in section 4.3.1 of the proposed Regulatory Framework document, are:

- ***Degree of market concentration.*** The more a market is concentrated in the hands of a few players, the more likely that one or more players will be dominant. Market concentration also increases the chances of collusion between players.
- ***Degree to which service provider prices vary over time.*** Competitive markets exhibit dynamic pricing arrangements. In telecommunications this may mean prices falling over time as technological and efficiency improvements occur. However, even if price levels do not change radically or if they rise due to increased costs, in a competitive market there would still tend to be significant variations in pricing plans as service providers seek to gain a competitive edge.

- ***Ability of the service provider to earn supernormal profits.*** Where a service provider sets prices well in excess of its underlying costs, this generally means that it does not face a significant competitive threat.
- ***Financial resources and access to capital.*** In the capital-intensive telecommunications sector, a service provider that has access to significant financial resources is likely to be in a much stronger market position. For example, such access to funds would be necessary to invest in a substantial network.
- ***Vertical integration and a highly developed distribution network.*** Vertical integration may enable a service provider to leverage dominance from one market into another market (e.g. from a wholesale market into a retail market for service that relies on inputs from the wholesale market). Similarly, a service provider with a highly distributed distribution network may be able to leverage that power to obtain dominance in markets that rely on such distribution channels.
- ***Access to technological superiority.*** The ability to gain access to superior technologies in ways that other service providers cannot, such as through patent activity or exclusive licensing.

The CITC did not consider these supplementary in completing its analysis of dominance as summarised in Figure 3.1. If all or any of these supplementary criteria are adopted in the final version of the Regulatory Framework, the CITC may apply them in the context of future market analysis reports for dominance.

Question 8: Do you consider that it would be useful to include in the Regulatory Framework supplementary criteria that could be taken into account when the CITC determines whether there is market dominance? Please comment on the proposed supplementary criteria included in section 4.3.1 of the proposed Regulatory Framework document.

3.3 COMPLEMENTARY PROCESS FOR DETERMINATION OF MARKET DOMINANCE

The Bylaw contains a high level process for the CITC to adopt in the course of determining dominance in any telecommunications market. However, in the interests of transparency, the CITC has tentatively concluded that it would be useful to supplement this process in the context of the Market Analysis Report mechanism in the proposed Regulatory Framework. Specifically, it includes provisions related to the preparation of a Market Analysis Report mechanism in section 4.1, supplemented by market dominance considerations set forth in section 4.3 of the Regulatory Framework.

Question 9: Do you agree that it would be useful to include in the Regulatory Framework a more detailed process for the determination of market dominance? Please comment on the proposed process as it relates to the determination of market dominance included in sections 4.1 and 4.3 of the proposed Regulatory Framework document.

3.4 PRELIMINARY DETERMINATION OF TELECOMMUNICATIONS MARKETS DOMINANCE

The CITC has undertaken a preliminary determination of which service providers are dominant in the markets that have been described in Figure 2.1 of this Public Consultation Document, and using the criteria included in the Bylaw. The CITC's preliminary determination of dominance is shown in Figure 3.1. This figure is arranged according to the existing criteria in the Bylaw and provides CITC's comments and analysis on a criteria-by-criteria basis.

In summary, pursuant to section 30.1 of the Bylaw, any service provider with 40% or more market share shall be determined by the CITC to be a dominant service provider. If this market share threshold is met, no other criteria need to be taken into account to determine dominance. Figure 3.1 includes a column related to this criterion.

Further, pursuant to Bylaw section 30.2, a service provider with a market share of less than 40% may be determined by the CITC to be a dominant service provider if the CITC determines that the service provider, either jointly or individually, meets the “position of economic strength” criteria in that section (which latter criteria is repeated in paragraph 30.6(a)) of the Bylaw, taking into account the criteria in paragraphs 30.6(b) to 30.6(f) of the Bylaw. Figure 3.1 includes columns related to each of these criteria.

The supplementary factors proposed in the Regulatory Framework (in addition to the existing criteria mentioned above) have not been considered by the CITC in this preliminary determination.

Attention is drawn to Market 7 (wholesale fixed call termination) and Market 12 (wholesale mobile call termination). It is now well accepted internationally that a service provider has 100% of the market for terminating calls on services directly connected to its own network. Each network is a separate market for this purpose, and the service provider that operates the network is dominant in relation to that market.

Question 10: Do you agree with the preliminary determination of dominant service providers in Figure 3.1? Please explain your rationale and provide relevant market data.

FIGURE 3.1: PRELIMINARY DETERMINATION AND OUTCOMES OF TELECOMMUNICATIONS MARKET DOMINANCE

Market	***Current Service Providers***	***Bylaw 30.1: Dominant if market share of 40% or more***	***Bylaw 30.2 & 30.6 (a) Whether position of economic strength allows independent action***	***Bylaw 30.6 (b) Number of others and market share***	***Bylaw 30.6 (c) Pricing behaviour***	***Bylaw 30.6 (d) Control over Essential Facilities***	***Bylaw 30.6 (e) Availability of substitute services***	***Bylaw 30.6 (f) Barriers to Entry***	***Preliminary Determination of Dominance***
1. Retail fixed access services	STC. Bayanat and ITC are providing some fixed access for data services.	STC has over 40% market share. Each of the other service providers has less than 40% market share.	Only STC has the ability to act independently, absent regulation.	STC has close to 100% share. Bayanat and ITC have small market share. Three new fixed service providers will be licensed shortly.	Only STC has the ability to take the lead in setting prices, absent regualtion.	STC has control over most fixed access network and related infrastructure.	Limited substitutes.	Regulated entry and substantial investment required	STC is dominant. No other service provider is dominant.
2. Retail local and national fixed voice call services	STC.	STC has over 40% market share.	STC has the ability to act independently, absent regulation.	STC has 100% market share. Three new fixed service providers will be licensed shortly.	Only STC has the ability to take the lead in setting prices, absent regualtion.	STC has control over most fixed network and related infrastructure, the platform used to provide the services.	Limited substitutes. Mobile is not a full substitute yet, especially for local calls, because of mobile price premium.	Regulated entry and substantial investment required	STC is dominant. No other service provider is dominant.
3. Retail international voice call services	STC and Mobily	STC has over 40% market share. Mobily has less than 40% market share.	Only STC has the ability to act independently, absent regulation.	STC has 100% market share of calls originated on fixed services, and more than 40% of calls originated on mobile services. Mobily has less than 40% market share. Zain and three new fixed service providers are expected to enter this market.	Only STC has the ability to take the lead in setting prices, absent regualtion,.	STC has control over most fixed network and related infrastructure, but not over all of the mobile platforms used to provide this service.	The market includes mobile and fixed international call services. There is no other effective substitute service.	Regulated entry.	STC is dominant. No other service provider is dominant.
4. Retail national mobile services	STC and Mobily	STC has over 40% market share. Mobily has less than 40% market share.	STC has some ability to act independently, absent regulation. Mobily is not able to act independently.	STC has approx. 70% market share. Mobily has approx. 30% share.; Zain is expected to enter this market.	STC has some ability to take the lead in setting prices, absent regualtion.	STC, Mobily and Zain have assigned spectrum. In certain limited situations backhaul facilities may not be economic to duplicate and existing facilities are controlled by STC.	None.	Regulated entry and substantial investment required	STC is dominant. No other service provider is dominant.
5. Retail business data services	STC, Bayanat and ITC	STC has over 40% market share. Each of the other service providers has less than 40% market share.	Only STC has the ability to act independently, absent regulation.	STC has close to 100% share Three new fixed service providers will be licensed shortly.	Only STC has the ability to take the lead in setting prices, absent regualtion.	STC has control over most fixed network and related infrastructure.	There are limited substitutes	Regulated entry and substantial investment required	STC is dominant. No other service provider is dominant.

Market	*Current Service Providers*	*Bylaw 30.1: Dominant if market share of 40% or more*	*Bylaw 30.2 & 30.6 (a) Whether position of economic strength allows independent action*	*Bylaw 30.6 (b) Number of others and market share*	*Bylaw 30.6 (c) Pricing behaviour*	*Bylaw 30.6 (d) Control over Essential Facilities*	*Bylaw 30.6 (e) Availability of substitute services*	*Bylaw 30.6 (f) Barriers to Entry*	*Preliminary Determination of Dominance*
6. Retail internet access services	Many	Shares not precisely known but each one is believed to hold less than 40%.	Many service providers. It appears that none can act independently.	Fragmented market and shares.	Apparently competitive	None	None	Low	No service provider is dominant.
7. Wholesale fixed voice call termination services	STC	STC has over 40% market share in relation to call termination on its own network. Less than 100% market share is not possible in this market.	STC has the ability to act independently, absent regulation.	STC has 100% share of the market for termination on its own network. Three new fixed service providers will be licensed shortly.	STC has the ability to take the lead in setting prices, absent regualtion.	Access path is controlled.	No substitutes possible.	No competitive entry is possible	STC is dominant in relation to call termination on its network. Other service providers will be dominant once operational.
8. Wholesale transit interconnection service	STC	This service is not operational yet.	STC will have the ability to act independently, absent regulation.	Only STC is offering this service, but no services are currently provided. Three new fixed service providers will be licensed shortly.	STC will have the ability to take the lead in setting prices, absent regualtion.	None	None	Low	Market not operational. No service provider is dominant.
9. Wholesale line sharing service	STC	STC has over 40% market share.	STC has the ability to act independently, absent regulation.	STC has 100% share. Three new fixed service providers will be licensed shortly but are not likely to provide copper loop network services.	STC has the ability to take the lead in setting prices, absent regualtion.	STC has control over fixed access network and related infrastructure.	Alternative ways to provide broadband access exist.	Regulated entry and substantial investment required	STC is dominant. No other service provider is dominant.
10. Wholesale broadband access services	STC, Bayanat and ITC	STC has over 40% market share. Each of the other service providers has less than 40% market share.	STC has the ability to act independently, absent regulation.	STC has close to 100% share. Three new fixed service providers will be licensed shortly.	STC has the ability to take the lead in setting prices, absent regualtion.	STC has control over fixed access network and related infrastructure.	Wireless and other technology solutions are possible, but not available in this market at present.	Low	STC is dominant. No other service provider is dominant.
11. Wholesale leased line services	STC, Bayanat and ITC	STC is believed to have over 40% market share. Each of the other service providers has less than 40% market share.	Only STC has the ability to act independently, absent regulation.	Exact market shares not known.. Three new fixed service providers will be licensed shortly.	STC has the ability to take the lead in setting prices, absent regualtion.	STC has control over fixed network and related infrastructure.	None	Regulated entry and substantial investment required	STC is dominant. No other service provider is dominant.
12. Wholesale mobile call termination services	STC and Mobily	STC and Mobily have over 40% market share in relation to call termination on their own network. Less than 100% market share is not possible in this market.	Each service provider has the ability to act independently, absent regulation.	Each service provider has 100% market share for calls terminating on its own network. Zain is expected to enter this market.	STC and Mobily have the ability to take the lead in setting prices, absent regualtion.	Access path is controlled.	None	No competitive entry is possible	STC and Mobily sre dominant in relation to call termination on their mobile networks. Zain will be dominant when operational.

Market	*Current Service Providers*	*Bylaw 30.1: Dominant if market share of 40% or more*	*Bylaw 30.2 & 30.6 (a) Whether position of economic strength allows independent action*	*Bylaw 30.6 (b) Number of others and market share*	*Bylaw 30.6 (c) Pricing behaviour*	*Bylaw 30.6 (d) Control over Essential Facilities*	*Bylaw 30.6 (e) Availability of substitute services*	*Bylaw 30.6 (f) Barriers to Entry*	*Preliminary Determination of Dominance*
13. Wholesale national roaming aervices	STC and Mobily	STC has over 40% market share. Mobily has less than 40% market share. [6]	Neither STC now nor Mobily in future has the ability to act independently because the sole customer has the choice of supplier.	Both STC and Mobily have national coverage and thus equal opportunity to offer this service. Zain may enter this market.	Prices are commercially negotiated and confidential.	None	Zain may choose to build out its own network nationally this is the only potential substitute for a national roaming service.	Regulated entry and substantial investment required	(a) STC is dominant until Zain commences operation; (b) after the termination of the STC-Mobily agreement, Mobily will be dominant, unless Zain also enters into an agreement with STC. Then both STC and Mobily will be dominant.
14. Wholesale international voice call services	STC and Mobily	STC has over 40% market share. Mobily has less than 40% market share.	Only STC has the ability to act independently, , absent regulation	STC has 100% market share.. Zain and the three new fixed service providers may enter this market.	STC has the ability to take the lead in setting prices, absent regualtion.	None	None	Low	STC is dominant. No other service provider is dominant.

[6] STC has an agreement with Mobily which expires in June 2009. Mobily has an agreement with Zain that takes effect when Zain commences operation. STC has 100% market share now. Shares are not known from the commencement of Zain's operations. Mobily was from 2005 a customer of roaming services but its use has declined. Zain has preferred the service offered by Mobily.

4. *Ex-Ante* Regulation of Dominance

In this section the CITC explores issues related to the nature of the remedies that currently exist and may be needed to address market dominance on an *ex-ante* basis. This section also addresses the way in which remedies might be best applied.

4.1. PRINCIPLES OF "APPROPRIATENESS, PROPORTIONALITY AND NON-DISCRIMINATION"

The Bylaw is drafted in such a manner that the imposition of some remedies is required to be automatically applied by the CITC (for example, in respect of dominance in relation to interconnection services). In other instances (for example, in relation to the imposition of price caps), the CITC is provided with discretion as to whether to apply the obligation, via a CITC decision, on a dominant service provider.

The CITC understands that market players need to be able to reasonably anticipate regulatory outcomes. Regulatory discretion may result in a risk of greater uncertainty in the market unless the risk is mitigated by adopting the overriding principles of appropriateness, proportionality and non-discrimination to provide greater certainty to market players as to the likely actions of the CITC. These principles mean that the application of remedies on an *ex-ante* basis for market dominance needs to be:

a) ***appropriate***, having regard to the potential threat being posed to the operation of a competitive market by the dominance, to the source of dominance and to the type of market under consideration;

b) ***proportionate***, that is to be in proportion to the threat and to be no more severe or intrusive than the minimum required to effectively address the issues raised by the dominant market power;

c) ***non-discriminatory***, the *ex-ante* remedies should be applied, insofar as reasonably practical, symmetrically to all dominant service providers within a particular market, although the degree of remedy may vary from one dominant service provider to the other.

The CITC is tentatively disposed to the view that the principles of appropriateness, proportionality and non-discrimination should be adopted in relation to the application of *ex-ante* remedies. These principles are included in section 4.4.2 of the proposed Regulatory Framework.

Question 11: Do you agree that the CITC should adopt the principles of appropriateness, proportionality, and non-discrimination in the application of *ex-ante* remedies for market dominance? Please give your reasons. Please comment on the proposed provisions in section 4.4.2 of the proposed Regulatory Framework.

4.2 APPROPRIATENESS

The CITC is disposed to the view that it should follow guidelines as to the appropriateness of various remedies for various market dominance situations, and that such guidelines would best be included in the proposed Regulatory Framework.

Schedule A of the proposed Regulatory Framework includes a table indicating the potential for harm arising from dominance along with a range of possible remedies. Discretion as to which remedies would be appropriate would be limited by the finding of facts and the range of remedies suited to that range of facts. This menu of options and guidance in their application would give practical effect to the principles of appropriateness, proportionality and non-discrimination. It would also further mitigate the risk of regulatory uncertainty.

The guidelines set forth in the Regulatory Framework would provide a degree of certainty for the entire telecommunications sector and lead to a set of convergent expectations in this area.

Question 12: Do you agree that the CITC should follow the specified guidelines to apply appropriate remedies? Please comment on Schedule A of the proposed Regulatory Framework.

4.3 PROPORTIONALITY

There are a number of aspects of the principle of proportionality that require examination since it necessarily involves the reasoned application of the regulator's discretionary powers.

The principle of proportionality requires that the regulator determine the least intrusive or severe remedy that will address the potential harm posed by market dominance in light of the relevant circumstances.

This may take the following forms:

a) A decision to impose no remedy, but to monitor the situation.

b) Where there is a choice of remedies, a decision to impose a relatively lighter remedy and to review the situation after a shorter than normal interval (say, after one year, rather than two years) after which a relatively heavier remedy may be imposed if the negative effects of market dominance continue.

Question 13: Do you agree that the CITC should shape remedies so that they are proportional to the potential harm posed by the dominance in the market in question?

4.4 NON-DISCRIMINATION

Similarly, the principle of non-discrimination requires that if all the material circumstances are the same, service providers should be treated in a similar matter.

This may take the following forms:

a) A decision to impose different remedies on different dominant service providers in the same relevant market, taking into account the different circumstances of each. It is important that different remedies must be justified in terms of the different potential threats posed by the dominance of the service providers. If all of the material circumstances are the same, the principle of non-discrimination mandates that the remedies should be the same as well.

b) A decision to impose the same remedy on two different service providers in the same relevant market. However, the remedy may be applied with greater or lesser constraint or range of applicability, taking into account the different circumstances of each. It is important that the imposition of the same remedy, but applied with greater or lesser constraint or range of applicability, must be justified in terms of the different potential threats posed by the dominance of the service providers. If all of the material circumstances are the same, the principle of non-discrimination mandates that the level of constraint and range of applicability of the same remedy be the same as well.

Question 14: Where two or more service providers are dominant in the same market, do you agree that each one might be subject to different remedies if their circumstances are different, but that according to the principle of non-discrimination, any differential treatment must be justified by the CITC?

4.5. OTHER POSSIBLE REMEDIES

Under its general powers, the CITC may impose *ex-ante* remedies in addition to those already expressly listed in the Bylaw.

Study of international practice in this area has identified other remedies that have been adopted. Of these, the key additional remedies are:

- ***Tariff Notification.*** This remedy would require a dominant service provider to notify the CITC of new and changed tariffs that the service provider intends to charge its customers in a relevant market in which it is dominant, in advance of the implementation of such tariffs, with a requirement that all its customers be informed at the same time of such tariffs. This remedy is lighter than and different from the remedy already included in the Bylaw related to tariff filing and approval.

- ***Offer leased lines.*** This remedy would require a dominant service provider to offer leased lines on a wholesale basis on fair and reasonable terms and conditions, including price.

- ***Offer wholesale international voice service.*** This remedy would require a dominant service provider to offer wholesale international voice service on fair and reasonable terms and conditions, including price. The CITC has employed this *ex-ante* remedy in relation to STC.

- ***Offer national roaming.*** This remedy would require a dominant service provider to offer national roaming for mobile service on a wholesale basis at fair and reasonable terms and conditions, including with respect to wholesale prices. The CITC has employed this *ex-ante* remedy by giving effect to the Regulatory Framework on National Roaming for Mobile Facility Based Providers, and in particular the provisions requiring “Any Dominant Mobile Service Provider shall provide national roaming to a newly licensed Mobile FBP.”

- ***Access to essential facilities.*** This remedy would require a dominant service provider to provide access to certain essential facilities such as ducts, co-location, towers and rights of way, on fair and reasonable terms and conditions, including price, and subject to technical feasibility. The CITC has employed this *ex-ante* remedy for example by requiring STC to provide co-location in the context of the Reference Interconnection Offer (“RIO”) and the Reference Offer for Data Access (“RODA”).

- ***Reference Offer for Data Access.*** In form, this remedy is closely related to the Reference Interconnection Offer, but applies where the dominant service provider is required to specify the unbundled network elements to which competitor service providers will have access, and the terms and conditions of that access. The CITC has employed this *ex-ante* remedy– STC has submitted a RODA.

- ***Accounting Separation.*** Accounting separation is a remedy requiring the dominant service provider to submit accounts which separate the costs and revenues attributable to regulated and unregulated services. Separated accounts attribute costs to specific group of services in order to show the margins and profitability of all services, and to show whether there might be anti-competitive cross-subsidies or inappropriate cost and revenue internal transfers. The CITC has required the current dominant service provider, STC, to file separated annual accounting statements.
- ***Operational (or Functional) Separation***. This remedy involves the effective separation of the regulated wholesale business units of a dominant service provider from the retail and other business units. Operational separation ensures that there is no informational or other advantage shown to internal downstream operations relative to their external competitors, and equivalence of service at all levels.

Remedies may be graded from least to most severe and intrusive. On this scale, Operational Separation is usually regarded as the most severe, and customer information as the least severe. However, it is important to note that each remedy may be applied with greater or lesser constraint, depending on the specifications set out by the legislation or, where there is discretion to do so, by the regulatory agency.

Question 15: Are there remedies that are not included in the list above that the CITC should consider, and, if so, what are they?

4.6. PRELIMINARY APPLICATION OF *EX-ANTE* REMEDIES

In Figure 4.1 the CITC sets out, on a preliminary basis, the *ex-ante* remedies related to dominance that the CITC proposes to apply in each of the relevant markets in Figure 2.1.

FIGURE 4.1: PRELIMINARY APPLICATION OF *EX-ANTE* REMEDIES FOR DOMINANT SERVICE PROVIDERS

Relevant Market	**Dominant service provider**	***Ex-ante* remedies for dominant service provider**
1. Retail fixed access services	STC	Article 47: Tariff filing and approval Article 52: Cost studies Article 62: User information obligations Article 53: Price cap regulation Accounting Separation
2. Retail local and national fixed voice call services	STC	Same as for Market 1 above
3. Retail international voice call services	STC	Same as for Market 1 above
4. Retail national mobile services	STC	Same as for Market 1 above
5. Retail business data services	STC	Same as for Market 1 above
6. Retail internet access services	None	None
7. Wholesale fixed voice call termination services	STC now, and three newly licensed Fixed Network Service Providers in future as well.	Article 39: Offer interconnection service Article 40: Interconnection charges Article 41: Reference Interconnection Offer Article 42: Interconnection agreements Article 52: Cost studies Accounting Separation
8. Wholesale transit interconnection service	None	None
9. Wholesale line sharing service	STC	Reference Offer for Data Access
10. Wholesale broadband access services	STC	Reference Offer for Data Access
11. Wholesale leased line services	STC	Offer wholesale leased lines
12. Wholesale mobile call termination services	STC and Mobily now, and Zain in future as well.	Same as for Market 7 above
13. Wholesale national roaming services	STC now, and Mobily in future	Offer national roaming services
14. Wholesale international voice call services	STC	Offer wholesale international voice service Cost studies

For comparison purposes, Figure 4.2 shows the overall market result of the proposed remedies.

FIGURE 4.2: COMPARISON OF CURRENT VS. PROPOSED *EX-ANTE* REMEDIES FOR DOMINANT SERVICE PROVIDERS

Remedy	**Current remedies**		**Proposed remedies**			
	STC	**Mobily**	**STC**	**Mobily**	**Zain**	**New Fixed SPs**
Remedies listed in the Bylaw						
Article 39: Offer interconnection services	X		X	X	X	X
Article 40: Interconnection charges	X		X	X	X	X
Article 41: Reference Interconnection Offer	X		X	X	X	X
Article 42: Interconnection agreements	X		X	X	X	X
Article 47: Tariff filing and approval	X		X			
Article 52: Cost studies	X		X			
Article 53: Price cap regulation	X		X			
Article 62: User information obligations	X		X			
Article 63: Terms of Service *						
Article 66: Billing rules						
Article 67: Quality of Service *						
Other remedies under general CITC powers						
Reference Unbundling Offer (RODA)	X		X			
Accounting Separation	X		X			
Offer wholesale leased lines	X		X			
Offer national roaming services	X		X			
Offer access to essential facilities *						
Offer wholesale international voice service	X		X			

* CITC has applied these remedies to some or all service providers irrespective of dominance.

With respect to Figures 4.1 and 4.2, the CITC notes the following:

- **Maintenance of existing remedies on STC**
  - Based on the preliminary determination that STC is a dominant service provider in relation to Markets 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 13 and 14, the CITC proposes that STC continue to be subject to the same corresponding remedies that the CITC has currently placed on STC as the only currently-designated dominant service provider, including Reference Offer for Data Access (RODA) and Accounting Separation, a requirement to offer wholesale leased lines, a requirement to offer wholesale international voice service, and a requirement to offer national roaming services.
- **New remedies on Mobily and Zain**
  - Based on the preliminary determination that Mobily is dominant now and that Zain will also be dominant at some future time in relation to Market 12 (wholesale mobile call termination market), the CITC proposes that each be subject to the interconnection-related remedies that are required by the Bylaw (Articles 39 to 42). Taking into account the discussion above on non-discrimination and proportionality, the CITC is of the preliminary view that:
    - These four remedies will be applied to Mobily and Zain only as they relate to the market in which they have been preliminarily determined as dominant service providers (Market 12 - wholesale mobile call termination services market).

Therefore, in comparison to the current and proposed application of these four remedies on STC, the proposed application on Mobily and Zain will have a different range of applicability. This is because Mobily and Zain are preliminarily determined as dominant service providers in only one interconnection-related market (Market 12), while STC has been preliminarily determined as a dominant service provider in all three interconnection related markets (Markets 7, 8 and 12).

- The other remedies that apply to STC in relation to Market 12, namely Article 52: Cost Studies and Accounting Separation, will not be applied to Mobily or Zain, at this stage. The CITC considers these remedies to be disproportionate in the case of Mobily and Zain as they do not have a dominant position in the other interconnection-related markets which these remedies also address.

- **New Remedies on Newly Licensed Fixed Network Service Providers**
  - Based on the preliminary determination that the selected new fixed network service providers will be dominant in relation to Market 7 (wholesale fixed call termination market) when they have been formally licensed and have commenced service operation, the CITC proposes that each be subject to the interconnection-related remedies that are required by the Bylaw (Articles 39 to 42). Taking into account the discussion above on non-discrimination and proportionality, the CITC is of the preliminary view that these four remedies will be applied to the new fixed network service providers only as they relate to the market in which they have been preliminarily determined as dominant service providers (Market 7 - wholesale fixed call termination market). Therefore, in comparison to the current and proposed application of these four remedies on STC, the proposed application on the new fixed network service providers will have a different range of applicability. This is because the new service providers are preliminarily determined as dominant service providers in only one interconnection-related market (Market 7), while STC has been preliminarily determined as a dominant service provider in all three interconnection related markets (Markets 7, 8 and 12).

Generally speaking, the CITC expects that over time, as some markets become progressively competitive, future market analysis reports may eliminate some of the current or proposed remedies if the CITC determines that certain service providers are no longer dominant in one or more relevant markets.

Question 16: Are the market-by-market remedies proposed in Figures 4.1 and 4.2 appropriate? Should access to certain essential facilities also be included as an *ex-ante* remedy for dominance, and, if so, which essential facilities and for which markets? Should operational (or functional) separation be included as an *ex-ante* remedy for dominance, and, if so, for which markets? Please provide justification to support your response.

Annex: Draft Regulatory Framework