

**Regulatory Framework
for
Telecommunications Market Definition
and Dominance**

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1. INTRODUCTION

- 1.1 The Telecommunications Act (the “Act”) states that the telecommunications sector shall be regulated, among other things, to promote and encourage the objective of fair competition in all fields of telecommunications.
- 1.2 The Act also states that the Telecommunications Bylaw (the “Bylaw”) shall establish “dominant service providers’ obligations and the rules by which a dominant service provider’s activity is considered an abuse”.
- 1.3 The Bylaw states that the Communications and Information Technology Commission (the “CITC”) shall perform, among other things, the following functions and duties:
 - 1.3.1 issue a decision designating dominant service providers in relevant markets in the Kingdom of Saudi Arabia (the “KSA”);
 - 1.3.2 determine which service providers are dominant service providers 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 Reference Interconnection Offers in accordance with the Bylaw and the Interconnection Guidelines.
- 1.4 The Bylaw also establishes provisions regarding the designation of dominant service providers, as well as regarding the following *ex-ante* remedies applicable to dominant service providers:
 - 1.4.1 interconnection offers;
 - 1.4.2 the regulation of interconnection charges;
 - 1.4.3 the preparation and publication of reference interconnection offers;
 - 1.4.4 reporting and publication requirements regarding interconnection agreements;
 - 1.4.5 tariff filing and approval requirements;
 - 1.4.6 cost study preparation requirements;
 - 1.4.7 price cap regulation;
 - 1.4.8 user information obligations;

- 1.4.9 terms of service obligations;
 - 1.4.10 billing rules; and
 - 1.4.11 quality of service obligations.
- 1.5 Pursuant to paragraphs 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 to entry into telecommunications markets, including with respect to interconnection and access.
- 1.6 This "Regulatory Framework for Telecommunications Market Definition and Dominance" (the "Regulatory Framework") addresses specific issues related to the following:
- 1.6.1 the procedure for the preparation of market analysis reports and the issuance of designation decisions;
 - 1.6.2 the definition of relevant telecommunications markets;
 - 1.6.3 the criteria for the determination of dominance within such relevant markets; and
 - 1.6.4 guidelines for the imposition of *ex-ante* remedies applicable in the event of a finding of dominance within one or several relevant markets.

2. DEFINITIONS AND DESCRIPTIONS

- 2.1 The words and expressions defined in the Act and the Bylaw shall have the same meaning when used in this Regulatory Framework, unless context requires otherwise. The following words and expressions shall have the meaning assigned to them below.
- 2.2 "**Customer**" also means "subscriber" or "user" as context may require.
- 2.3 "**Designation decision**" means a decision issued by the CITC, based on the final conclusions of a market analysis report, in which the CITC specifies the relevant market or markets under consideration, indicates the CITC's assessment of whether or not each of one or more telecommunications service providers is a dominant service provider in such relevant market or markets and, in the event of a finding of market dominance, stipulates the remedy or remedies, if any.
- 2.4 "**Dominant service provider**" means a telecommunications service provider designated as a dominant service provider by the CITC in a designation decision, pursuant to a consideration of the circumstances and criteria set forth in section 4.3.
- 2.5 "**Market analysis report**" means a report prepared by the CITC pursuant to section 4.1, in which the CITC specifies, for the purpose of public consultation, the relevant market or markets under consideration, indicates the CITC's assessment of whether or not each of one or more telecommunications service providers is a dominant service provider in such

relevant market or markets and, in the event of a finding of market dominance, stipulates the remedy or remedies that the CITC intends to apply under the circumstances, if any.

- 2.6 “**Relevant market**” comprises all those telecommunications network services, offered within a delimited geographic area, that are regarded as substitutable by reason of the services’ characteristics, their price and their intended use, as such relevant market is designated by the CITC in a designation decision, pursuant to a consideration of the circumstances and criteria set forth in section 4.2.
- 2.7 “**Remedies**” means the specific measures imposed by the CITC on a dominant service provider to counter, control or neutralise the impact of market dominance, as set forth in section 4.4. This Regulatory Framework treats only *ex-ante* remedies (remedies applied in advance to dominant service providers in order to prevent abuses of dominant position and other anti-competitive behaviour and to protect customers) rather than *ex-post* competition controls (applied “after the fact” in response to specific anti-competitive behaviour).

3. CONSIDERATIONS

- 3.1 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.
- 3.2 Since the coming into force of the Act and the Bylaw and since the issuance of Decision No. 1/1423:
- 3.2.1 new service providers have entered or are about to enter the telecommunications sector in most market segments, including VSAT, data services, Internet services, mobile cellular services and fixed services;
- 3.2.2 the Competition Law has come into legal effect and established the Council of Competition Protection; and
- 3.2.3 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.
- 3.3 As liberalisation takes place and competition intensifies across many or all relevant markets in the sector, it is desirable that *ex-ante* regulation of market dominance 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.
- 3.4 Given the above, this Regulatory Framework is intended to clarify and render more flexible the telecommunication regulatory regime as it relates to the following issues:

- 3.4.1 the methodology for defining relevant markets;
- 3.4.2 the criteria and mechanism for the assessment of dominance within a relevant market; and
- 3.4.3 the determination of proportionate, appropriate and non-discriminatory *ex-ante* remedies applicable to dominant service providers.

4. REGULATORY FRAMEWORK

4.1 Procedure for the issuance of a market analysis report and designation decision

- 4.1.1 Prior to issuing a designation decision, the CITC shall first prepare a market analysis report and hold a public consultation process in accordance with this section 4.1 and the applicable Rules of Procedure.
- 4.1.2 The CITC may at any time, on its own motion or on the application of any interested person, prepare, review or amend a market analysis report, in the light of evolving market conditions, in order to:
 - (a) designate one or more relevant markets pursuant to section 4.2;
 - (b) determine whether each of one or more telecommunications service providers is a dominant service provider in one or more relevant markets pursuant to section 4.3; and
 - (c) in the event of a finding of market dominance, stipulate the remedy or remedies that the CITC intends to apply, if any, pursuant to section 4.4.
- 4.1.3 The CITC may refuse an application for the preparation, review or amendment of a market analysis report, where the CITC determines that the application is frivolous or unsubstantiated or that the relevant market or markets have not sufficiently evolved since the previous applicable market analysis report or designation decision to merit further analysis.
- 4.1.4 In the context of a public consultation process and prior to finalizing a market analysis report, the CITC:
 - (a) may require a telecommunications service provider to provide it with such information as the CITC may require in order to determine whether the telecommunications service provider is a dominant service provider in one or more relevant markets, in which case the telecommunications service provider shall submit such information to the CITC in the manner and form requested within 30 days of the request, or within such other period as stipulated by the CITC;

- (b) may request and consider information or recommendations from government agencies with expertise in matters related to anti-competitive conduct and the definition of markets; and
 - (c) shall provide interested parties, including any telecommunications service providers who are subject to a determination in a market analysis report, with a period of at least 30 days prior to publication of a designation decision to submit written comments in relation to the market analysis report and to submit any such further information to the CITC as may be reasonably relevant to a determination of whether or not such telecommunications service provider is a dominant service provider.
- 4.1.5 Where, in a finalized version of a market analysis report, the CITC determines that each of one or more telecommunications service providers is a dominant service provider in one or more relevant markets, the CITC shall issue a designation decision in which it stipulates, after due consideration of the principles set forth in section 4.4, which of the remedies set forth in the Bylaw or this Regulatory Framework, if any, shall apply to such dominant service provider(s) in each relevant market or markets under consideration.

4.2 Designation of relevant markets in a market analysis report

- 4.2.1 The first step in a market analysis report shall be the designation by the CITC of some or all of the relevant markets under consideration.
- 4.2.2 The CITC shall assess and designate each relevant market by analyzing a range of market circumstances or criteria, including the telecommunications services that make up a specific market, as well as the geographic scope of that market and the relevant group of customers of such services.
- 4.2.3 In its assessment and designation of the relevant market or markets, the CITC may also consider the following:
- (a) an assessment of demand-side substitutability in order to measure the extent to which the customers of the relevant telecommunications services are prepared or able to substitute other telecommunications services for the telecommunications services under consideration; or
 - (b) an assessment of supply-side substitutability to determine the extent to which suppliers are able to supply other telecommunications services for the telecommunications services under consideration.
- 4.2.4 In its assessment of demand-side and supply-side substitutability, the CITC may take account of 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 five percent (5%) price increase would be deemed significant and a period of one year or more would be deemed non-transient.

4.3 Determination of dominant service provider in a market analysis report

4.3.1 When determining in a market analysis report whether a telecommunications service provider is a dominant service provider in a specific market or markets, the CITC shall apply the criteria and tests set forth in Article 30 of the Bylaw, and it may, in addition, apply a range of other market circumstances or criteria, including one or more of the following:

- (a) the degree of market concentration as determined by reference to revenues, numbers of subscribers or volumes of sales;
- (b) the degree to which a telecommunications service provider's prices vary over time;
- (c) the ability of the telecommunications service provider to earn supernormal profits;
- (d) the telecommunications service provider's financial resources and access to capital;
- (e) the telecommunications service provider's vertical integration and the existence of a highly developed distribution network; and
- (f) whether the telecommunications service provider benefits from preferential or limited access to superior technology.

4.4 Application of remedies in respect of dominance in a market analysis report

4.4.1 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 relevant markets, the CITC may order the dominant service provider to comply with one or more of the following remedies, in addition to or in place of any of the applicable remedies set forth in section 1.4 above:

- (a) 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;

- (b) require a dominant service provider to offer leased lines on a wholesale basis on fair and reasonable terms and conditions, including price;
- (c) require a dominant service provider to offer wholesale international voice service on fair and reasonable terms and conditions, including price;
- (d) require a dominant service provider to offer national roaming for mobile service on a wholesale basis at fair and reasonable terms and conditions, including price;
- (e) require a dominant service provider to provide access to certain essential facilities, subject to technical feasibility, on fair and reasonable terms and conditions, including price;
- (f) require a dominant service provider to publish a reference offer for data access;
- (g) require a dominant service provider to submit accounts that separate the costs and revenues attributable to its regulated and unregulated services;
- (h) require a dominant service provider to institute effective operational (or functional) separation of its regulated wholesale business units from its retail and other business units in order to ensure that such latter business units have no informational or other advantage relative to analogous business units of competitive telecommunications service providers; or
- (i) require a dominant service provider to comply with any other remedy that is within the CITC's powers to require.

4.4.2 When considering which remedies to apply in the event of a finding of dominance in a market analysis report, the CITC shall ensure that the application of remedies in relation to market dominance is appropriate, proportional and non-discriminatory, taking into consideration the 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, as well as the table of indicative remedies attached as Schedule A to this Regulatory Framework.

SCHEDULE A: TABLE OF INDICATIVE REMEDIES

Relevant Market	Typical potential for harm from market dominance	Indicative potential remedies
1. Retail fixed access services	Over-charging, anti-competitive pricing, cross subsidies, etc.	- Tariff filing and approval - Tariff Notification - Cost studies - Price Cap Regulation - Accounting Separation
	Unfair terms and condition, information asymmetry, customer lock-in, etc.	- User information obligations - Terms of service
	Reduction in quality	- Quality of service
2. Retail local and national fixed voice call services	As for Market No. 1 above	As for Market No. 1 above
3. Retail international voice call services	As for Market No. 1 above	As for Market No. 1 above
4. Retail national mobile services	As for Market No. 1 above	As for Market No. 1 above
5. Retail business data services	As for Market No. 1 above	As for Market No. 1 above
6. Retail internet access services	As for Market No. 1 above	As for Market No. 1 above
7. Wholesale fixed voice call termination services	Over-charging, anti-competitive pricing, cross subsidies, etc	- Interconnection Charges - Cost studies - Accounting Separation - Tariff filing and approval
	Denial or delay in providing services, unfair terms and condition, etc.	- Offer interconnection services - Reference Interconnection Offer (RIO) - Interconnection Agreement - Offer access to essential facilities
	General discrimination in favour of own retail operations	- Operational separation
8. Wholesale transit interconnection service	As for Market No. 7 above	As for Market No. 7 above
9. Wholesale line sharing service	Denial or delay in providing access; unfair terms and conditions, etc.	- Reference Offer for Data Access (RODA)
	Over-charging, anti-competitive pricing, cross subsidies, etc.	- Accounting separation - Cost Studies
	General discrimination in favour of own retail operations	- Operational separation
10. Wholesale broadband access services	As for Market No. 9 above	As for Market No. 9 above and Offer access to essential facilities
11. Wholesale leased line services	Denial or delay of providing leased lines; unfair terms and conditions, etc.	- Offer wholesale leased lines - Offer access to essential facilities
	Over-charging, anti-competitive pricing, cross subsidies, etc.	- Cost Studies
12. Wholesale mobile call termination services	As for Market No. 7 above	As for Market No. 7 above
13. Wholesale national roaming services	Denial or delay of providing services; unfair terms and conditions, etc.	- Offer national roaming services
	Over-charging, anti-competitive pricing, cross subsidies, etc.	- Cost Studies
14. Wholesale international voice call services	Denial or delay of providing wholesale international voice service; unfair terms and conditions, etc.	- Offer wholesale international voice service
	Over-charging, anti-competitive pricing, cross subsidies, etc.	- Cost Studies