



A Public Consultation Document

on

**Proposed Decisions in relation to Market
Definitions and Dominance and to Anti-
Competitive Behaviour**

Issued by the Telecommunications Regulatory Authority, on –
October 2010

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1. INTRODUCTION

The Authority is empowered under The Telecommunications Regulatory Act issued by the Royal Decree No. 30/2002 to make decisions in relation to the definition of markets and dominance, and in relation to anti-competitive behaviour.

The Authority is minded to make Decisions establishing comprehensive sets of rules governing –

- a) the definition of markets and dominance, and the regulation of these matters through *ex ante* controls; and
- b) anti-competitive behaviour in telecommunications markets and the regulation of such behaviour through *ex post* controls.

The Decisions that the Authority is minded to make after taking into account all relevant considerations and the views of the industry, public and other stakeholders, are annexed to this Public Consultation Document in draft form as Annexures A and B respectively.

In the case of each of the Decisions further Guidelines have been developed which explain the rules contained in each Decision in greater detail and provide guidance on how those rules are likely to be applied by the Authority. These Guidelines in draft form are annexed as Annexures C and D respectively.

The Authority is seeking the comments of interested parties, stakeholders and the public on the draft Decisions contained in Annexures A and C, and their respective Guidelines (forming part of the Decisions) in Annexures B and D respectively so that such comments can be considered before the Decisions are formally taken by the Authority.

2. OVERVIEW OF THE MATTERS FOR CONSULTATION

The Sultanate of Oman 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 is generally adopted to prevent abuse of market dominance and anti-competitive conduct before it occurs, as well as to protect consumers. This type of control is generally given legal effect via the imposition of additional *ex-ante* remedies (or obligations) on designated dominant service providers.
- *Ex-post* regulation means applying regulation in response to anti-competitive behaviour after it has occurred. It is generally applied to deal with allegations of abuse of market dominance or anti-competitive agreements or conduct, and to correct such matters if it has been found to exist.

This Public Consultation is concerned with the rules that shall apply to both *ex ante* and *ex post* regulation in telecommunications service markets in Oman. The Authority considers that it is important that the rules for both types of regulatory control are considered at the same time for the following reasons:

- (a) the definitions of a service or market for *ex ante* regulation purposes should be consistent with the definitions for *ex post* regulation;
- (b) whether it is appropriate to apply *ex ante* remedies to address dominance in a market, and the type of remedies chosen, will depend, in part, on the adequacy and likely enforceability of *ex post* remedies; and

- (c) the policy that is proposed in the attached draft Decisions is that, over time as competition gains traction and effectiveness in telecommunications service markets, the emphasis in regulation to sustain competition should move from *ex ante* remedies to *ex post* controls.

3. LATER PUBLIC CONSULTATION PROCESSES

This Public Consultation is concerned with the rules that should apply to *ex ante* regulation of dominance and *ex post* regulation of anti-competitive behaviour.

Stakeholders, the public and other interested parties will have a further opportunity at a date to be announced to provide comments in relation to the application of the proposed Decision on Market Definition and Dominance. The Authority is undertaking an analysis to define telecommunications markets, to designate markets in terms of their susceptibility to *ex ante* regulation, to determine the existence of dominance and to determine appropriate remedies in each case. This analysis will be undertaken in accordance with the Decision on Market Definition and Dominance, once made, and will be the subject of a second Public Consultation.

It is recommended that persons wishing to respond to the present Public Consultation should not anticipate the outcome of the analysis and the contents of the report, but, rather, should delay their comments on application of *ex ante* market definition and dominance rules until the relevant report has been published for comment.

4. COMMENTS ON CONSULTATION DOCUMENT

This Public Consultation Document with Annexures will be available on the Authority's website at <http://www.tra.gov.om>

Respondents who wish to express opinions on this Public Consultation Document are invited to submit their comments in writing to the Authority. All comments must be received by the Authority no later than 4.00 PM onNovember, 2010.

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

- a) E-mail to: XX@tra.gov.om
- b) Delivery (hard and soft copy) by hand or by courier to: **Address**

The Authority welcomes all comments on the Public Consultation Document. The Authority encourages respondents to support all comments with relevant argument and if relevant, data, analysis, benchmarking studies and information based on the national situation or on the experience of other countries to support their comments.

In providing comments respondents are requested to indicate the Annexure and the paragraph or clause reference number to which their comments relate. The Authority has deliberately not prepared specific questions for intending respondents to address. In all matters covered by the annexures, the Authority is seeking comment on the clarity, appropriateness, and adequacy of the provisions proposed individually and in aggregate.

The Authority may give greater weight to comments supported by appropriate argument and, if relevant, evidence. The Authority 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 Authority's website at <http://www.tra.gov.om> Claims of confidentiality will be

determined by the Authority having regard to the public interest in disclosure and the claimed basis for confidentiality.

Annexure A: The Decision on ex ante Rules Governing Market Definition and the Regulation of Dominance

Annexure B: The Market Definition and Dominance Guidelines

Annexure C: The Decision on Rules Governing ex post Anti-competitive Behaviour

Annexure D: The Principles and Guidelines on Anti-competitive Behaviour