TELECOMMUNICATIONS REGULATORY AUTHORITY
SULTANATE OF OMAN

No.: 2/2006 Date: 7/10/2006

DETERMINATION
Re
Nawras Submission No: 002 dated 4 January 2006
On Reduction of Rates for International outbound Calls charged by Omantel to Nawras

Date of Hearing: 01/05/2006

Before:
Engr. Naashiah Al-Kharusi, Member,
Col. Mohsin Al-Hafeeth, Member.

Background:

1. The Omani Qatari Telecommunications Company operating under the trade name of "Nawras" was granted Public Mobile Telecommunications License (Royal Decree 17/2005) to operate as a second mobile operator in the Sultanate of Oman under the Telecommunications Regulatory Act - Royal Decree 30/2002 (The Act). Nawras made a submission to the Telecommunications Regulatory Authority of the Sultanate of Oman (the "TRA") on 4 January 2006 regarding its dispute with Omantel pertaining to the rates being charged by Omantel for International Outbound Calls. Nawras and Omantel (together "the parties") were given sufficient opportunities to present their written pleadings. Finally, the hearing was held on 1st May 2006 in the Authority's premises and the parties were once again given the opportunity to present their arguments and counter arguments through their authorized representatives.

2. The TRA has looked into the submission and all documents submitted by the parties and the oral submissions made by the parties to issue this determination.

Summary of the Dispute:

3. Nawras started its operations on 16 March 2005. Before starting the service, Nawras entered into an interim Interconnection Agreement with

Omantel. Nawras claims that the International outbound call charges of Omantel being charged from the interconnect operators should be cost oriented. During negotiations between them, Nawras proposed that charges for international out-bound calls should be based on “Cost plus” principle. On the other hand, Omantel offered to charge such calls on the bases of “Retail minus” principle. As per the interim interconnection agreement, these charges have been set at “retail minus 15% per minute.

Brief Background of the Case;

4. Under its Telecommunications Liberalization Policy, the Sultanate of Oman awarded a Mobile Public Telecommunications Services license to the Omani Qatari Telecommunications Company under the Royal Decree No: 17/2005. The license was issued on 19 February 2005.

5. Nawras and Omantel initiated their negotiations on interconnection terms and conditions in the second half of 2004. The parties, however, could not agree on a number of issues especially the interconnect charges and quality of service parameters. As a result of their negotiations, they entered into an interim interconnect agreement on 12 March 2005. The parties signed this agreement with an understanding to approach the TRA for determination on unresolved issues. The agreement was presented to TRA for approval in accordance with the license conditions. While submitting the interconnection agreement to TRA through its letter dated 12 March 2005, Nawras indicated that they would make a formal submission in due course of time for determination for the unresolved issues.

6. In the said interim agreement, the parties agreed that the terms and conditions of interim agreement would remain applicable until determination by TRA. However, in its letter dated 12 March 2005, Nawras requested that the determination to be applied retrospectively from the date of their service launch.

7. Nawras made their formal submission to TRA for Determination on their dispute with Omantel regarding International Outbound Call Charges on 4 January 2006. The TRA examined the submission of Nawras and admitted it for formal hearing and determination in due course of time.

8. The TRA provided copy of Nawras’s submission to Omantel for their comments, arguments and counter arguments. Omantel submitted their written response in the following letters:

(i)	Letter No: Omantel/EP/1/24/108/2006 dated 27 February 2006	- First response
(ii)	Letter No: Omantel/EP/1/24/307/2006 dated 24 April 2006	- Further submission
(iii)	Letter No: Omantel/EP/1/24/427/2006	- Post-hearing submission

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	dated 13 May 2006	
(iv)	Letter No: Omantel/EP/1/24/538/2006 dated 4 June 2006	- Post-hearing, further submission

9. In addition to their first submission for determination, the Nawras made the following submissions to TRA in respect of their dispute with Omantel:

(i)	Submission dated 4 January 2006	The Submission for Determination
(ii)	Submission dated 25 April 2006	Response to Omantel submission dated 27/02/2006
(iii)	Submission dated 24 May 2006	Post-hearing submission

10. The parties also exchanged their non-confidential submissions with each other and provided their counter arguments to each other.

11. In addition to their written pleadings, the parties were given an opportunity to make oral presentations to the Authority in support of their arguments. The TRA conducted the hearing on 1 May 2006 at the TRA premises. The parties presented their arguments and counter arguments through their authorized representatives.

Legal References:

12. In order to examine the issue and submissions of the parties in the right legal perspective, following provisions of the Act and the licenses of the concerned operators are reproduced for reference:

The Telecommunications Regulatory Act, states:

Article 7(9): Objectives of the Authority
To create an environment for competition among the licensees to ensure the provision of world standard telecommunications services at reasonable cost and prices, and to take necessary steps to enable the service providers to compete abroad.

Article: 8 - Functions of the Authority

13. To approve the interconnection agreements in consideration with the provisions stated in this Act.

14. to take the necessary measures to determine the acts or events which prevent competition in the telecommunications sector.

18. to investigate the complaints filed by the beneficiaries or licensees or any other person and take the necessary measures in that regard.

Omantel License

Condition 1. LICENSED SERVICES
The Licensee is authorized to provide the following services in the Licensed Area by means of the Licensed Systems and the network connections that the Licensee has installed or is installing:

1.1 Local, long distance, and international Telecommunications Services with respect to Basic Voice Services, Public Data Services and International Telecommunications Services on an exclusive basis until 31 December 2003, and on a non-exclusive basis thereafter.

Condition 14. PROVISION OF ACCESS SERVICES/LEASED LINES
*14.1 The Licensee shall provide access to the Licensed Systems on the reasonable request of any Service Provider or Licensed Operator (the "**Access Services**").*

14.2 Access Services shall be provided in accordance with the applicable recommendations of the International Telecommunication Union and other international entities, and all applicable decisions, orders and guidelines published by the Regulatory Authority.

Condition: 17.2 Principles for Interconnection Rates
17.2.1 The Licensee shall ensure that the charges to be made for the provision by it of Telecommunications Services in accordance with Condition 17.1.1, shall be cost-oriented and fully justified, such charges to be calculated based on a reasonable assessment of the costs associated with establishing interconnection and of providing the telecommunication services requested by the Public Telecommunications Operator.

Condition: 17.2.2(f) Principles for Interconnection Rates
Where the charges for interconnection are to be based on the standard charges for the provision of a similar service to the Licensee's Customers, those charges should be adjusted to take account of any cost savings associated with providing service to the interconnecting Public Telecommunications Operator;

Nawras License:

Condition: 7.1 (INTERNATIONAL SERVICES)

The Licensee shall undertake to provide International Telecommunications Services by means of the facilities and services provided to the Licensee by another Licensed Operator authorized to enter into agreements with International Telecommunications Operators. The Licensee shall not enter into International Correspondent Agreements.

Omantel and Nawras Interim Interconnection Agreement

Clause 1.4

The Parties wish to enter into this agreement for the purpose of establishing the fundamental principles of interconnection in order to enable customers of one Party to communicate effectively with customers of the other Party, including but not limited to international operators.

Clause 3.2

Given that no final agreement was reached between the parties after lengthy negotiations, the parties have hereby agreed to enter into an interim agreement for a period of six months from the effective date. The parties hereby acknowledge that the matter shall be submitted to TRA for a determination in accordance with clause 16.3 of the Operator's License.

Clause 3.3

In the event that the TRA does not make a determination within the six months period then the terms and conditions of this agreement shall continue to apply until such time the Final Agreement is completed.

The Issues:

13. The following issues are framed to be analyzed in the light of relevant legal and regulatory provisions and arguments of the parties:

(i) By virtue of its license, Omantel is the only provider of International Telecommunication Services. The other class-I licensees in the Sultanate can also provide International Telecommunication Services by using the Omantel facilities. In this situation, what is the nature of International outgoing call service? Is it an "Access Service" or an "Interconnection Service"?

(ii) What principle should be applied to determine the charges to be paid to Omantel for provision of international outgoing call service and whether the current charges based on Retail minus 15% are reasonable and justified?

(iii) In case the charges to be determined under this determination comes out to be different than the existing charges of international outgoing call service, what shall be the date of application of those charges.

Summary of Nawras Arguments in Support of its request for Determination

14. Nawras has submitted that the rates currently being charged by Omantel for International outgoing calls are not appropriate for the following reasons:

(a) Condition 16.2 of the Nawras License and 17.2.1 of the Omantel License confirm that "the charges to be made for the provision of the telecommunication services shall be **cost oriented** and **fully justified**". The above Conditions also state that "such charges shall be calculated based on "**a reasonable assessment of the costs** associated with establishing interconnection and of providing the telecommunication services requested". The charges for international calls imposed by Omantel are not cost based and cannot, in our view, be justified. Further, we maintain that "retail minus 15%" cannot be said to be based on a reasonable assessment of international call services provided to Nawras by Omantel.

(b) It is unreasonable for Omantel to treat Nawras in the same way as it treats its individual customers. Nawras is the single biggest customer of Omantel (putting aside Oman Mobile, which is owned by Omantel itself), not only in respect of international calls generated by Nawras customers, but also in terms of revenues to be generated from various commercial arrangements made between the parties, such as the backbone agreement, site sharing and interconnection agreements.

(c) The insistence of Omantel to use a "retail minus" model is, in our view, a reflection of the fact that Nawras is not permitted to establish its own facilities or use facilities other than Omantel facilities for the purpose of providing international telecommunications services to its customers.

(d) Nawras requested two international carrier service providers to quote their rates which would be charged to Nawras for the provision of international telecommunications services. The quotes from them show that the Omantel rates are much higher as compared to the rates of those carriers. The following table shows the level of difference:

Country	Difference (RO/min)
India	0.146

United Arab Emirates	0.063
Pakistan	0.154
Bangladesh	0.179
Saudi Arabia	0.077
Egypt	0.146
Algeria	0.156
Qatar	0.060
Bahrain	0.099
Jordan	0.141
Kuwait	0.110
Tanzania	0.170
United Kingdom	0.184
Philippines	0.178
Syria	0.094
Yemen	0.139
Lebanon	0.143
Sudan	0.131
Indonesia	0.232
Sri Lanka	0.171
Average	**0.139**

15. Assuming Omantel has similar carrier costs as that of other international carriers, this would mean that Omantel would retain an unjustifiable mark-up and the above does neither take into account any volume discount Omantel may have from international carriers nor the lower rates it could obtain on certain destinations form other international carriers.

16. Based on the foregoing, we believe that the rates charged by Omantel to Nawras are neither reasonable nor justifiable and are not in compliance with Condition 17.2.1 of Omantel's License.

17. It should be noted that whilst the rates currently charged by Omantel to Nawras vary depending on the peak and off-peak periods, Omantel pays a single rate to its international correspondents regardless of peak or off-peak periods. Therefore, Nawras submits that it would be fair and indeed reasonable that the peak and off-peak rates currently charged by Omantel be substituted by a single rate to reflect Omantel's cost base for such services.

18. TRA to consider the objectives of the TRA which are stipulated in the Telecommunications Law namely to encourage fair competition among service providers and to ensure that the pricing policy adopted by

a service provider is consistent with international practices. Omantel is abusing its monopoly position in the market by pricing charges for international calls at levels which do not reflect the underlying costs of providing such services to Nawras or to any other customer in Oman. In so doing, Omantel is deriving substantially higher profits, a matter which is contrary to the objectives of fair competition and the provision of the services in accordance with international practices.

19. The TRA should also note that Article 17.2.2 (b) of Omantel's License stipulates that the rates charged by Omantel must reflect a reasonable return, taking into account the costs of operating and providing the services (in this case the international services provided to Nawras by Omantel under the Agreement). In this regard, Nawras submits that only Omantel's operational and capital costs relating to equipment exclusively used for the conveyances of Nawras international traffic should be taken into account for the purpose of determining Omantel's costs of providing international call service to Nawras.

20. Omantel should therefore be required to demonstrate to the TRA that the rates charged by Omantel are consistent with the above mentioned cost recovery principles, and that it should continue to demonstrate that these rates are cost-oriented until such time as the market for outbound international call conveyance services is declared as fully competitive by the TRA.

21. In its further submission the Nawras has provided additional arguments in support of their submission. These are summarized below:

The Cost plus Principle

(a) In our previous submissions we have provided legal arguments in support of the fact that wholesale rates charged by Omantel for the provision of WIOCS must be based on the "cost plus" principle. We have also provided benchmarks which demonstrate that the wholesale rates charged by Omantel are neither reasonable nor justifiable and that such rates are, in our opinion, not in compliance with the provisions of the Telecommunications Law, the License of both parties as well as the draft Executive Regulations.

(b) In order to clarify the matter further, we refer the TRA to examine the annexes attached to their submissions, which shows the assumptions and calculations made by Nawras to arrive at what could be considered, in our view, a reasonable and justifiable average wholesale rate, which should be paid by Nawras to Omantel based on a "cost plus" principle. The calculations suggest that the wholesale rates charged to Nawras should, in fact, be equal to the current Omantel retail rates minus 74.5%. The calculations are based on the following assumptions:

i) As shown in our first submission, we have received offers for an International Outbound Call Service from two randomly selected operators. The offers indicate that Nawras would be able to terminate international traffic to its top 20 destination at much lower cost as compared to its present arrangements with Omantel. These offers were based on a "hand-over" of the traffic in Oman (i.e. Point of Interconnect in Oman), as is the case with the corresponding WIOCS service offered by Omantel to Nawras.

ii) Based on the offers received from the two international carriers, we have assumed that Omantel's average variable cost of providing WIOCS to Nawras would not exceed than that of Nawras. In fact one could assume that it is considerably less, since:

a. Omantel is in a better position to secure lower wholesale rates than those offered to Nawras by the above mentioned carriers, due to the fact that Omantel's traffic volumes, and thereby potential for volume discounts, are higher than Nawras',

b. Omantel can benefit from Least Cost Routing between several connected carries, thereby profiting from even lower rates on specific destinations, and

c. Taking into consideration International Inbound Termination Rates offered by other operators in the GCC, and the recommendations of the Arab Council of Ministers, one can only conclude that Omantel profits form even lower rates, than those offered by international carriers to Nawras, when terminating calls in other Arab countries, which constitutes as considerable part of the top 20 destinations mentioned above.

iii) Furthermore, our calculations assume that Omantel's incremental fixed cost for handling the WIOCS traffic from Nawras is negligible. This assumption is based on the fact that:

a. Nawras's traffic volumes are small as compared to those generated by the Omantel Group (assumed to be less than 15% of total traffic volume), meaning that the incremental costs for additional port, transmission and switch capacity is insignificant,

b. Omantel already charges Nawras 100% of the interconnection links required to convey Nawras' WIOCS traffic to Omantel's international Gateway, and

iv) Based on our experience and enquiries made to other operators, the mark-up for reselling International Outbound Call Services on a wholesale basis ranges between 4 to 6% (mark-up of underlying variable costs). In the calculations, we have once again taken a more than reasonable approach and assumed that Omantel should enjoy 10% mark-up.

22. Based on the above arguments, the average rate Omantel should be allowed to charge for providing WIOCS to Nawras for the top 20 destinations under a “cost plus” regime would be 57.2 bz per minute.

23. Omantel’s average retail rate for the corresponding top 20 destinations is 224.2 bz per minute. Compared to the expected wholesale rate of 57.2 bz per minute argued above, it would mean that Omantel should charge Nawras no more than retail minus 74.5%, under the assumption that the rates where defined based on a “cost plus” principle.

24. Nawras therefore submits that based on a “cost plus” principle, the rates to be charged by Omantel for the provision of WIOCS to Nawras should not be higher than the current Omantel retail rates minus 74.5%.

Retail minus Principle

25. In order to provide the TRA with a second reference point for setting the rates for WIOCS, we thought it would be appropriate to provide the TRA also with our analysis based of a “retail minus” principle.

26. Omantel’s provision of WIOCS to Nawras is distinct from any other services provided by Omantel. The so called World Call retail service requires Omantel to:

a) procure, operate and maintain the equipment, networks (including access and transit network) and systems necessary to originate international calls from its retail customers CPEs (Customer Premises Equipment) to Omantel’s International Gateway switch,
b) handle all issues pertaining to acquiring and retaining retail customers, such as marketing, customer provisioning, billing, bad debt collection and write offs, customers care services account handling, etc.

27. The provision of WIOCS to Nawras does not involve any of the above components (with the exception of a simple billing and account handling- which are both considered trivial in this respect), as Nawras connects and relays its International Outbound Call traffic directly to Omantel’s International Gateway, and takes care of all retail related costs itself.

28. We would therefore claim that no retail related costs are applicable to WIOCS, as all “Omantel Retail” costs are avoidable. The only unavoidable costs are those of “Omantel Wholesale”, which have been calculated to be a maximum average of 52 bz per minute for the top 20 destinations under the cost-based analysis above.

29. In order to calculate the “minus” under a “retail minus” principle, one would therefore need to know the total cost of “Omantel’s Retail” business. As these costs are unknown to Nawras, and also would require a detailed cost analysis, we are suggesting using an approach in which the “retail minus” rate is calculated based on Omantel’s EBITDA margin noted in Omantel’s published audited accounts for 2004 and 2005 respectively.

30. Our “retail minus” approach is based on the argument that a reasonable rate for WIOCS can be reached by assuming that Omantel should receive the same return (EBITDA margin) for providing WIOCS to Nawras, as it receives for providing other services across its business. Taking into consideration that the Fixed Line business of an incumbent typically generates lower EBITDA margins than the Mobile arm of its business, this assumption would even result in an above average margin for WIOCS compared other Fixed Line services.

31. In the published accounts of Omantel we have noted that Omantel enjoyed an EBITDA margin of 53.9% and 51.5% in 2004 and 2005 respectively across all of its business.

32. In our calculations we have used the average (52.7%) of Omantel’s last two full year EBITDA margins, as the fair and reasonable EBITDA margin Omantel could expect from providing WIOCS to Nawras under a “retail minus” pricing principle. Based on this assumption, our calculations suggest that the wholesale rates Omantel should charge for providing WIOCS to Nawras should be equal to the current Omantel retail rates minus 51.0%. The calculations are based on the following assumptions:

i) As argued above, Omantel’s costs of providing WIOCS to Nawras cannot be more than 52 bz per minute for the top 20 destinations.
ii) Under the conservative assumption that the costs are equal to an average rate of 52 bz per minute, Omantel would have to sell WIOCS to Nawras for 109.9 bz per minute, in order to profit from the same EBITDA margin (52.7%) for this service, as it has received on the average across all of its business the last two years.
iii) As shown above, Omantel’s average retail rate for the top 20 destinations is much higher as compared to the expected wholesale rate of 109.9 bz per minute, which would result in a an EBITDA margin of 52.7%, it would mean that Omantel should charge Nawras no more that retail minus 51.0% for the provision of WIOCS to Nawras.

33. Nawras therefore submits that based on a “retail minus” principle, the disputed rates to be charged by Omantel for the provision of WIOCS to Nawras should not be higher than the current Omantel retail rates minus 51.0%.

<u>Summary of Omantel Pleadings:</u>

34. Omantel submitted that Nawras application for determination under the Dispute resolution Regulations is out of process because:

(a) At the conclusion of negotiations, Nawras and Omantel agreed to enter into an interim interconnection agreement for a period of six months.

(b) Parties submitted this Agreement and NOT a dispute for the review, for approval of the TRA

© The TRA approved the agreement on provisional basis until the formal approval

(d) The review and determination process, as already instituted by the TRA, is underway.

35. Omantel has, therefore, made their submission to facilitate the TRA review process. The facts of the matter are:

(i) The Nawras/Omantel Negotiation team concluded its negotiation with:

(a) Agreement on the Omantel interconnection charges <u>INCLUDING</u> the <u>Charge for International Outbound Calls</u>.
(b) Agreement on the terms of Service Levels as in Section 11 in Annex H of the Nawras/Omantel interconnection agreement. So quality of interconnection and penalties were not outstanding issues.
(c) <u>Only Nawras Mobile Termination Rate</u> required closure and concurrence and was the subject of further discussions among the top management of Nawras, Omantel and Oman Mobile.

36. Agreement and dispute are antithetical terms. If there is an agreement, then there is no dispute.

37. Omantel has been perplexed by Nawras’ apparently contradictory stance of submitting the Nawras/Omantel Interconnection Agreement to TRA as concluded and agreed through negotiation under Article 16.1 of

Nawras License and at the same time seeking determination under Article 16.3 related to Dispute Resolution.

38. Omantel (through its further submission) submitted that based on the literature available on interconnection charges and the regulatory practice in various jurisdictions, cost-based rate was one but not the only among various approaches to pricing of interconnection services.

39. The various approaches to charging which have been used are:

- Cost-based (Fully Distributed Cost, Long Range Incremental Cost)
- Retail Price (e.g. Co-location space at Real estate retail rates, Leased Lines)
- Retail price with discounts (e.g. Wholesale Long Distance Voice Calls both National and International).
- Benchmarks
- Revenue Sharing
- Bill and Keep

40. Among the various Interconnection services, conveyance services are recognized as basic interconnection services (call termination, call origination and transit). Generally the charging for these basic services is cost-based. For others, various other approaches have also been used.

41. Another important principle applied in practice by regulators is that the effort required to develop a cost-based rate must be commensurate with the nature and significance of the service being costed and should not impose an undue burden. Thus all elements of interconnection services need not be cost-based. For example, co-location is more realistically priced based on prevailing real estate market value rather than cost derived from a costing model. In the RIO, access to premium numbers is charged at a retail rate with a discount. The charge for number implementation is developed using benchmarks. In both these cases, the effort required to develop a cost-based rate would not be commensurate with size and revenue potential of the services.

42. International outbound calls are charged on “retail minus” basis. This involves basing the charge on the retail tariff but deducting the “Avoidable costs” which Omantel saves by offering the service as a wholesale service. Primarily these “Avoidable Costs” are billing, bad debt, marketing and some customer services costs.

43. In fact, the approach applied to international outbound call charge is not only used in practice elsewhere but is expressly permitted under principles for interconnection rates in Oman under Condition 17.2.2(f) of the Omantel license which states that "when the charges for interconnection are to be used based on standard charges for the provision of a similar service to the licensee's customers, those charges should be adjusted to take account of any cost savings associated with providing service to the interconnecting Public Telecommunications Operator".

44. Omantel provided justification for the international Outbound Call Charge in the submission of July 24, 2005, in response to TRA Letter No. TRA/ECON/90/864/2005 dated June 11, 2005 related to Omantel Interconnection agreement with Nawras and Oman Mobile and the list of Observations in Annex 1 attached to the letter.

45. The above is the part of the process in progress and instituted by the TRA for the review, determination and approval of the interconnection agreement submitted on March 12, 2005.

46. It is also worth noting that Nawras in its section 3.1(a) makes highlighted reference to Article 17.1 of Omantel license but conveniently overlooks Article 17.2.2(f) under the same principles for interconnection rates in the Omantel license which permits "Retail Minus" approach.

47. Provision of international outbound calls at wholesale rates which are lower than retail rates creates an arbitrage opportunity and a potential for by pass abuse.

48. In fact, Nawras has utilized this arbitrage opportunity to offer Nawras customers international call rates cheaper than retail rates of Omantel to specific high traffic destinations such as India, Pakistan, Bangladesh, UAE and other GCC countries.

49. It appears that Nawras efforts for cost oriented proposed model for international outbound call charge is an attempt to increase the arbitrage opportunity and the potential for greater by pass abuse.

50. Any determination of international outbound call charges to mobile operators cannot be made independent of the consideration of its consequential impact on retail international tariff.

51. Thus, in making such determination, the TRA should take into account other regulatory considerations such as:

- Implicit and explicit subsidies to access tariff
- Tariff rebalancing
- Price cap regulation
- Affordability and accessibility to basic telephony service
- Obligation to serve
- LRIC-based costing

52. In order to demonstrate the significance of the impact based on the type of cost-based model advocated in Nawras submission, Omantel has developed a Macro/Micro Level impact analysis which has been submitted in confidence because the divulgence of the sensitive financial and business information will do irreparable harm to Omantel.

Retroactive application of rates

53. On the issue of retrospective application of the final rates, Omantel has submitted the following pleadings.

54. With reference to Section 5.1 of Nawras submission, Omantel totally disagrees with the retroactive application of rates as it has no basis and makes the following submission.

(i) Section 3 of the main body of the Omantel/Nawras interconnection agreement submitted to the TRA stipulates that:

  a. The agreement continues for an interim period of six months.

  b. In case TRA does not make a determination within six months, then the terms and conditions (which would include rates) of the agreement continue to apply until such time the final agreement is completed.

55. Thus, irrespective of the time elapsed from the effective date of this agreement to the completion of the final agreement, the same terms and conditions, including rates, would continue to apply. There is neither any implicit nor explicit indication of retroactive application of rates. On the contrary, Article 3.3 in section 3 stipulates that the terms and

conditions of the final agreement do not apply before the completion of the final agreement.

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56. On the basis of the statutory definitions under the laws and regulations in the Sultanate of Oman and supported by the fact of international regulatory practices elsewhere, International Outgoing Transit Service as described in the Omantel RIO and Omantel/Nawras Interconnection Agreement is an Interconnection Service.

Principles and approach for interconnection rates

57. Statutory support for the approach to be used in the pricing of interconnection services is provided under principles for interconnection rates as stated in Omantel license under Condition 17.2 and in the Nawras license under Condition 16.2.

58. The approach applied by Omantel to international outbound call charges is not only used in practice elsewhere but is expressly permitted in Oman under the principles for interconnection rates in Condition 17.2.2(f) of the Omantel license which states that "when the charges for interconnection are to be used based on standard charges for the provision of a similar service to the licensee's customers, those charges should be adjusted to take account of any cost savings associated with providing service to the interconnecting public telecommunications operator". This corresponds to the provisions under Condition 16.2.2(f) of the Nawras license.

59. International outbound calls are charged on "retail minus" basis. This involves basing the charge on the Omantel retail WORLD CALL tariff but deducting the "avoidable costs" which Omantel saves by offering the service as a wholesale service.

60. This approach is consistent with Condition 17.2.2(f) and Condition 16.2.2(f) of Omantel and Nawras licenses respectively where:

- Omantel WORLD CALL tariffs (International direct dialling call charges) are the standard charges for the provision of a similar service to the Licensee's Customer and are

- <u>Adjusted</u> to take account of cost <u>savings</u> through avoidable costs such as billing, bad debt, marketing and some customer services costs.

61. It is to be noted that Omantel RIO provides the standard terms and conditions of Omantel for interconnection and was to be the basis for negotiations as per the agreed TOR for negotiations with Nawras. Further, Omantel throughout the negotiations, adhered to Article 7.3 of the terms of reference: "<u>Omantel will ensure in good faith that its submission and proposals in the negotiation process will not materially contradict the terms and conditions in the draft RIO, submitted as required by the TRA and will not impose additional or materially different requirements on Nawras</u>**"**

62. From all of the above, it is clear that International Outbound call charge is an Interconnection Rate applicable to International Outgoing Transit Service which is considered an interconnection service in international practice and under the Telecommunications Statutes of Oman.

<u>Examination of the Issues and Analysis of the Pleadings:</u>

63. The dispute revolves around the following issues:

- whether the international outbound call service is an interconnection service to be subjected to cost-based charges;

- if the TRA considers that the existing "Retail minus" tariff regime should remain applicable to the international outbound calls in the current environment then what would be a reasonable level for the discount to be offered to the mobile operators; and

- if the TRA determines a different discount level to be applied to International outbound call service other than the existing one or determines a cost-based rate to be applicable then what would be the appropriate date of application of such discount level or cost-based rate.

64. The definition of the term "interconnection" as given in the Law is reproduced below:

"Technical, regulatory and financial criteria that permit the connection of two or more telecommunications networks within the Sultanate"

65. Deliberating on the first issue in the light of the above definition, it is observed that from purely technical viewpoint alone, the arrangements between

the parties for international outbound calls could be interconnection arrangements as the Nawras network is physically interconnected to the Omantel network to send and receive local and long distance calls across the networks within the country and international calls out side the country.

66. Nawras believes that it is availing interconnection service from Omantel for its International outbound traffic, hence as per the principles laid down in their respective licenses the charges should be fully justified and based on costs associated in providing the interconnection service.

67. On the other hand Omantel is of the view that for International outbound traffic of Nawras, Omantel is providing International transit service to Nawras. Although transit service falls under the category of interconnection services as per their Interim Interconnection Agreement, yet Omantel has the right to charge for this service based on its standard charges (i.e retail minus) as provided by Condition 17.2.2(f) of Omantel license.

68. We know that Nawras does not have mandate to enter into International Correspondent Agreements with the foreign operators. However, it can provide International Telecommunication Services by means of the facilities of the authorized operator (Omantel), which it is presently doing. It means Nawras originates international outbound traffic on behalf of Omantel and is providing call origination service. Nawras, therefore, should be entitled to "call origination" charges.

69. The TRA on the other hand see the dispute from the regulatory perspective, irrespective of the technical arrangements. The TRA, therefore, accord more importance to the reasonableness of the charges to ensure fair treatment to all the parties. If the charges are reasonable, both parties will have some incentive to continue to provide service irrespective of the fact whether it falls under the category of interconnection or access services.

70. The Nawras license provides that:

"The Licensee shall undertake to provide International Telecommunications Services by means of the facilities and services provided to the Licensee by another Licensed Operator authorized to enter into agreements with International Telecommunications Operators. The Licensee shall not enter into International Correspondent Agreements."

We could consider the Omantel service as "Transit" service in case Nawras would uses Omantel Gateway Exchange <u>*only*</u> and have its own International Corresponding Agreements with the foreign operators, and IPLC to carry the traffic to the terminating foreign operator. Since Nawras, as per its license, is restricted to the domestic end only, hence we cannot consider the Omantel service as transit service. Rather Omantel provides access to its complete international telecommunications facilities consisting of international gateway exchange, international corresponding agreements, IPLC, and reconciliation and billing services. Hence, from the regulatory viewpoint, we can consider the "Omantel international outbound call service" as an "Access Service".

71. If we further stretch the argument of Omantel whereby it has taken the position that their license provides them the flexibility of charging certain interconnection services on the basis of "standard charges" as being applied to its own customers for the similar service, then we need to see the reasonability of the adjustment it provides to the Nawras as required under the said License Condition 17.2.2(f). This condition requires Omantel that when "standard charges" are applied as interconnection charge, it is obliged to adjust these charges by taking into account any cost savings associated with providing the service to Nawras. While submitting its pleadings on the subject dispute, Omantel did not provide any justification or calculation to prove that the present 15% discount on international outbound traffic was reasonable.

72. Similarly, Nawras has also shown its inability at this point in time to provide costs associated with its interconnection services including "call origination" service.

73. Thus in the absence of sufficient cost information, the TRA has to resort to other methodologies and available information to assess the reasonableness of the present charge or to work out applicable interconnection or access charges. Omantel was therefore, directed to provide rationale and justification of 15% discount being offered to Mobile operators. Omantel provided, in confidence, the calculations of cost savings for review by TRA.

74. Looking into the Omantel's position as to what are their cost savings in providing international outgoing call service to Nawras. They have indicated in their pleadings that its avoidable costs relate to; billing, bad debt, marketing, and some customer service costs. The TRA has estimated these costs with the help of information available in the Audited Financial Statements of Omantel and other information provided by Omantel. As per our assessment, these costs account for about 15% of their gross revenue as shown below:

Table-1

	Cost Element	**%age**
1	Call Conveyance Cost	1.04
2	Marketing & Advertising	1.28
3	Bad Debt Provisioning	3.30
4	Customer Billing	0.05

5	Sales & Collection Commission	7.81
6	License Fee Amortization/cost	1.44
7	**Total**	**14.92**

75. The above assessment is consistent with the commonly used discount ranges by different jurisdictions. Moreover, it is generally accepted that 15-25% of total costs consist of retail service provision functions.

76. If we consider the international outbound traffic as "call origination" service of Nawras, then Omantel needs to pay the call origination charges or (provide a discount equivalent to the call origination charges) to Nawras. In order to estimate this cost, we can use the indirect regulatory approach. The indirect regulatory approach relies on linking call termination rates with retail call origination prices. Currently, Nawras is offering following retail tariff to its customers:

Table-2

(i)	Ajel	On-net, Peak/off-peak	19	Bz/min
(ii)	Ajel	Off-net Peak/off-peak	39	Bz/min
(iii)	Mousbak	Peak, On-net/Off-net	55	Bz/min
(iv)	Mousbak	Off-peak On-net/Off-net	39	Bz/min
(v)	Average	All	38	Bz/min

77. We have taken simple average due to non-availability of detailed traffic data of Nawras. We assume that this tariff covers both call origination and call termination costs. We also assume that in most of the cases, the network utilization for call origination and call termination for a mobile call are the same. However, call origination attract 15-20% extra cost than call termination associated with marketing and advertising, selling and distribution, and bad-debts. If these costs are eliminated, we are left with the cost of origination and termination. It is safe to assume that these costs are not much different as these services use almost the similar network elements. According to these assumptions, we can estimate the cost of call origination for Nawras as narrated below:

Table-3

(i)	Average Retail price per min	38 Bz

(ii)	Less: cost of retail service provision @ 15%	5 Bz
(iii)	Net cost for Call Origination and Termination	33 Bz
(iv)	Share of cost attributable to call origination (50:50)	17 Bz
(v)	Total Origination cost (17+5)	22 Bz

78. It may be noted that when this indirect approach is applied, usually the lowest on-net tariff is used to work out the call termination and call origination charges assuming that the service is competitive and the prices are cost-oriented. In the above scenario, we have used the average price. In case the highest price (55 Bz/min) is used then the result would be 31Bz/min.

79. It is true that Omantel carries Access Deficit in their operations because its tariffs are not fully rebalanced yet and it is still responsible to meet its license obligation for expansion of access to certain un-served but economically unattractive areas. The international service is one of the few services helping Omantel to mitigate the effect of Access Deficit. Keeping in view the volume of the Access Deficit involved, it is essential that Omantel is permitted to continue charging international service at a premium price for some time till its tariffs are rebalanced. It is also essential that Omantel take necessary steps to move towards the tariff rebalancing and gradually bring about the cost-oriented prices. The premium on international outgoing tariff helps in covering the amount of Access Deficit. Omantel is largely dependent on the higher profits from the international call market to cross-subsidize the access service it provides to retail users below cost. Till such time, the Access Deficit exists and Omantel continue to provide basic access below cost, Omantel will need to recover these charges from elsewhere. In case it is decided that some subsidy should come from the international outbound call market then wholesale charges need to be set to ensure that competition is possible but it does not reduce Omantel’s ability to earn premium from this market.

80. The subject issue should also take into consideration the element of charging mechanism of international outbound calls. The operators measure and settle their international outbound traffic by aggregate seconds and every call is not rounded upward to the nearest minute. On the other hand, the customers are charged on the basis of call minutes, which are rounded upward. In this manner, it is estimated that the operators gain to the tune of 25% extra revenue through this charging mechanism as the average call duration is very low. Hence the margin available to them is not restricted only to Omantel discount, which is currently 15%. If we add up these two figures, the total margin available to the mobile operators would be around 40%, which should be quite sufficient incentive to offer the service by the mobile operators.

هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

DETERMINATION

81. Having considered the written submissions made by the parties, their oral presentations during the hearing held on 1st May 2006 in the TRA premises and other relevant evidence, the TRA hereby makes the following determination on the issues raised in the previous section.

(i) As discussed in detail at para 64 to 80, the TRA is of the view that "international outbound call service" is not strictly interconnection service. Keeping in view the relevant license conditions of Nawras, this service can be treated as access service.

(ii) License Condition 17.2.2(f) of Omantel License allows Omantel to use interconnection charges based on its standard charges. The Standard Charges, however, would be adjusted by giving effect of cost savings accrued to Omantel by providing this service as whole-sale service to mobile operators. Considering this as a valid legal arrangement, Omantel has the option to offer international outbound service on the basis of "retail-minus" principle. The operators are not obliged to offer cost-based prices for those services which are not interconnection services. However, the prices have to be reasonable and justified. In the given scenario, for the international outbound call service, Omantel is not obliged to provide this service strictly on cost-based prices. However, the TRA is cognizant of the fact that it is essential to provide reasonable discount to the mobile operators for originating international traffic from their networks. Although the calculations carried out in the previous section verify that the current level of discount offered to the mobile operators is in line with the principles laid down in the license for charging this service yet the TRA feels that in order to induce more competition in this segment, increase in the discount level would be helpful. Accordingly, TRA decides to increase the discount on international outbound traffic to 20%. The TRA is confident that this change will be catalytic to bring the prices down and usage up by more competition on the price front. The TRA expects that the mobile operators would suitably pass on this additional discount to be offered by Omantel to their subscribers. The TRA expects that all stake holders will gain from the lower tariffs because the lower tariffs would be compensated through the increased usage of service.

(iii) Regarding the application of the revised discount levels, TRA determines that the new discount rate should not be applied retrospectively because it is not being offered on the grounds purported by the applicant. The new rate shall be applicable from the future date as specified in this determination so that the parties are able to make required changes in their systems and also they can make some adjustments in the consumer tariffs if they wish to do so. This determination will, therefore, take effect from 1st January 2007 and shall remain valid till its revision or cessation by the TRA.

82. This determination is without prejudice to the TRA's powers under the Act, and to the outcome of any ongoing or future investigations, consultations or other regulatory process carried out pursuant to the functions and responsibilities of the Authority.