First Public Consultation: TRA Position Statement and Response to Comments

16 December 2010

1. Introduction

On 23rd October 2010 the TRA published a public consultation inviting interested parties to comment on two draft decisions and two draft guidelines on ex ante and ex post regulation of telecommunications service markets in Oman.

The public consultation document indicated that the TRA was 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 public consultation document allowed four weeks for comments and requested that comments be received on or before 19th November 2010.

2. Comments received

In the event comments were received from only two interested parties, Omantel and Nawras.

3. Confidentiality

The covering letter from Omantel is marked "Strictly Confidential" and each of the attached documents are marked as "Confidential". The Nawras submission is not labelled as confidential and there is no claim to confidentiality anywhere within it.

In its Public Consultation Document of 23rd October 2010 the TRA stated: "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."

It is important that the public consultation process is transparent and the information and arguments that inform debate on the issues that arise are available for public scrutiny. There is a burden on anybody wishing to prevent publication to show that the commercial or other confidentiality values favouring non-publication outweigh the public interest in disclosure.

The TRA will publish the submissions with public comments on its website. However, before doing so, the TRA will give both Omantel and Nawras a

further opportunity to claim and argue for confidentiality in relation to specific content in their respective submissions. If the TRA agrees with such claims it will be prepared to publish a suitably redacted version of the submission.

4. Layout and structure of this document

Because it is intended to publish the comments that comprise the Omantel and Nawras submissions, it is not necessary to repeat those comments in full in this document.

The Omantel and Nawras submissions have separate and different structures. However both separate out the comments relating to the ex-ante and ex post drafts. In the case of Omantel, comments have been made relating to both the Draft Decision and the Draft Guidelines in both cases. In the case of Nawras, the comments are confined to the Draft Guidelines only.

Because of the different structures TRA's responses have been made separately to each respondent's comments - firstly in relation to the proposed ex ante regulation and secondly in relation to the proposed ex post regulation.

In each case the TRA response cites the paragraph or other reference in the relevant submission, notes the topic or subject-matter, summarise the comment, and sets out the content of TRA's response. This has been done in a tabular form below.

Note that a number of comments have been repeated in both the Omantel and Nawras submissions, and, where a response is required, TRA has tried to make it only once. In addition, many of the comments address the application of the Draft Decisions and Guidelines. In the case of the Draft Decision and Guideline relating to ex ante dominance regulation these comments are best considered in the light of the Market Definition and Dominance (MDD) Report which, in turn, will be the subject of the Second Public Consultation. To pre-empt many comments of this kind the TRA gave notice of the Second Public Consultation in the Public Consultation Document of 23rd October 2010.

In many parts of the submissions the respondents are discursive without seeking or suggesting changes. Comments of this kind are invariably interesting but do not always warrant a specific response from TRA. They will be borne in mind by TRA.

5. Position Statement of the TRA on the matters subject to the First Public Consultation

The TRA thanks both Omantel and Nawras for its submissions containing comments on the draft documents that were the subject of the First Public Consultation.

As indicated in the detailed responses in this report the TRA found a considerable amount of highly helpful and useful comment in the submissions. The process reinforced the value of the public consultation process from the TRA's perspective.

In particular, the TRA considers that many of the clarifications and additions suggested by the comments to be useful and has adopted many of them in the revised final version of the documents. These comments covered many important issues.

The TRA notes that the detailed regulatory framework contained in the Decisions and Guidelines documents is at a relatively early stage in Oman, and that significant judgements need to be made to strike an appropriate balance between the detailed guidance that might result from substantial experience and the determination of many individual cases or issues and the need to be careful not to pre-empt the development of the market with undue and premature regulatory prescriptions. The TRA trusts that the balance achieved in the final Decisions and the approved final version of the Guidelines is appropriate under all the circumstances. The TRA notes however that the Decisions and Guidelines are not intended to operate without review to ensure that they remain relevant and appropriate to the development of telecommunications sector in Oman, and that there will be further opportunities for the industry to participate in revising and fine-tuning them to meet changing circumstances in future.

The TRA's position in relation to the content of the decisions and Guidelines is reflected in the revised versions of all the four documents. It is intended to publish these as soon as practicable.

Comments on Decision and Guideline on Ex Ante Dominance Regulation

A: Comments from Omantel

Paragraph Reference	Subject-matter	Comment or suggestion	TRA Response	Proposed action
2.2	Discrepancies between Draft Decision and Guidelines	Draft Decision references Art. 46(1) and 46(6) of the Act, the Draft Guidelines refer to other parts of the Act.	The Draft Decision already refers to other Articles, so the point is sufficiently covered.	No further action
2.4	Joint dominance	Inconsistency is claimed between the Draft Decision and the Guidelines because the former does not contain a description of a mechanism that would need to be present to show joint dominance and does not clarify sufficiently that joint dominance requires common policies.	TRA considers that there is no inconsistency; the description of the mechanism is rightly left to the Guidelines. TRA considers that a reference to "common policies" as an essential prerequisite to joint dominance might be too restrictive.	No further action
2.5	Joint dominance	Omantel notes that the TRA uses a long list of criteria, and suggests that the economic literature on telecommunications networks should not be ignored and would be a good substitute for Annex B on joint dominance.	Omantel's opinion is noted. It is incorrect to assume that the literature referred to will be ignored by TRA, and this is a matter to be judged when the MDD Report is issued. The use of lists of criteria by the EU is also noted as being in support of TRA's approach. This is not a mechanistic application of a 'check list', as described in Section 5.4 of the Guidelines. In that section the TRA also provides other general rules for	No further action

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			the applicability of criteria. In particular point d) highlights that the applicability on one criterion will depend on market circumstances and not all criteria will necessarily be relevant for all markets.	
2.5	Joint dominance	Criteria should never be seen as a substitute for the description and analysis of an actual mechanism of how tacit collusion would occur in a market.	There is not such substitution in the Draft Decision or Guidelines.	No further action
2.6	The aim and scope of ex-ante regulation	The Draft Guidelines do not lay down the reasons why intervention takes place.	This is incorrect. The Guidelines are pursuant to the Act and Decision. In addition intervention is via remedies the purposes of which are set out.	No further action
2.7	TRA's objectives in Art. 7 of the Act	The Draft Guidelines would benefit from setting out which objective TRA intends to achieve with ex-ante regulation.	The TRA disagrees. Ex ante regulation may address more than one objective, and, in performing its role the TRA must have regard to them all to the extent that they may apply. There is no value in picking and choosing.	No further action
2.9	(3rd dot) Unbundled local loops	There are currently no regulated unbundled local loops (ULL) on Omantel's network and Omantel is upgrading its fixed network by removing fibre lines to street cabinets. This means that traditional ULL regulation would be obsolete for Oman on practical grounds.	Whether ULL regulation is appropriate or not is a matter on which TRA is yet to decide, and it will do that in the context of the MDD Report.	No further action
2.10	Effective competition	The ex-ante Draft Guidelines would benefit from emphasizing how effective competition would be characterised in Oman – that is,	It is not necessary to say that a market might, in effect, be considered to be effectively competitive, or about to	No further action

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		how TRA would see the benchmark at which regulation is not necessary. Omantel believes the existence of one competitor (Nawras) will make a market effectively competitive.	become so, if there is no single or jointly dominance operator in the market. The characterisation of individual markets, and whether in particular cases, a single competitor is sufficient for effective competition, is a matter that will be covered in the MDD Report where the assessment of the market circumstances in Oman will be analysed.	
2.11 – 2.14	Regulatory developments and failures of the European experience	Omantel has set out its views of the issues and failures that have arisen in this area in Europe.	TRA notes that many of the issues have parallels or relevance to Oman, particularly the tension between access regulation and encouraging new investment.	No further action
2.15 – 2.16	ULL	Omantel sets out some of the issues associated with ULL, and whether ULL may no longer be feasible given the capacity of street cabinets and other infrastructure now being used for fibre.	These are matters that should be argued in the context of the MDD Report.	No further action
2.18	Minimum necessary intervention	(1st dot) Omantel argues that if a wholesale market has access regulation, then the downstream retail market should not be regulated since the 'barriers to entry' criterion of the three criterion test has been removed.	TRA does not agree that this is necessarily the case, although, in a specific case that may be. For example, if wholesale access regulation is being newly applied and its effectiveness is untested, some retail market regulation may well be retained.	No further action
2.18	Minimum necessary intervention	(2nd dot) If several services constitute the same market, then only one (if any) service requires regulation. Omantel calls this the	TRA does not concur in the comment. There are other principles, such as technology neutrality that may be	No further action

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		"logic of market definition". (Also covered in 5.8)	undermined by such an approach. The relationship between services may not be so well known that this approach could always be adopted with confidence. TRA prefers to leave open the possibility of a different outcome if the requirements of the specific market situation make this more appropriate.	
2.19	Criteria for single and joint dominance	Omantel believes that the criteria approach may mean check-box lists. Rather criteria should only be aids to understanding dominance.	TRA agrees with the second sentence. There is no implication that the criteria should be checked (or ticked) in a mechanical fashion.	No further action
2.20	Intent and joint dominance	In relation to joint dominance Omantel says that it understands TRA's position that *no evidence of intent or behaviour is required*.	TRA takes this as effectively an agreement. It is an important matter which will undoubtedly arise if the TRA later finds that there is joint dominance in any market.	No further action
2.21	"Mechanism of collusion"	In relation to tacit collusion a mechanism must be defined by which a company can act independently in a market and by which several companies can potentially tacit collude	TRA notes a description of the mechanisms in place for joint dominance is already included in section 5.3 of the Guidelines, i.e. where TRA indicates that the effectiveness and credibility of the punishment / retaliatory strategies are necessary step tests to establish joint dominance.	No further action
2.22	Economic literature on	Omantel suggest to incorporate the economic literature into the Guidelines	TRA has covered this point above in response to comment 2.5	No further action

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	independent traffic			
2.25	Discretion on ex ante regualtion	Omantel notes that the Draft Guidelines provide: *If any of these 3 criteria is no longer satisfied in a market,* [i.e. the 3 criteria test for susceptibility of markets to ex ante regulation] *ex ante regulation may be removed.* Omantel is concerned that TRA should have no discretion of the kind suggested by the word "may".	The term ex ante regulation is quite wide and TRA cannot undertake in advance to remove all discretion in this matter. It is likely that if the circumstances change then the TRA will remove the ex-ante regulation that it has in place, so the term 'may' will be replaced by 'is likely to'.	Guidelines will be amended as indicated.
4.5	SSNIP test definition	Omantel seeks to introduce the concept of 'marginal customer' into the definition of the SSNIP test. By that Omantel means that a sufficient number of customers would switch in response to a SSNIP. (This is also repeated in 4.11.)	TRA considers that the test is properly and adequately described and that the notion of profitability, which is part of the test in the Draft Guidelines (but not mentioned in Omantel's comment) fulfils the role that Omantel has in mind by the term 'sufficient customers', but fulfils it better in TRA's view.	No further action
4.8	Broadband market definition	Omantel argues that mobile and fixed broadband services are in the same market.	This is a matter best deferred and considered in the context of the MDD Report. It is premature at this stage.	No further action
4.12-4.14	Relevance of SSNIP Test	Omantel cites the EC that: *In principle, the 'hypothetical monopolist test' is relevant only with regard to products or services, the price of which is freely determined and not*	TRA accepts the comments and notes Guidelines clearly indicates that starting point for the SSNIP test is the competitive price.	TRA will modify the Guidelines to include alternative methods to the SSNIP test.

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		subject to regulation. Omantel then argues that care must be taken in applying the test in relation to what constitutes a competitive price because of the nature of markets in Oman. Omantel suggests that some limits on the application of the SSNIP test in Oman need to be include and that in such cases the TRA will not insist on using it.	TRA also notes that as clarified by the EC Guidelines, the SSNIP test is only *"one possible way of assessing the existence of any demand and supply-side substitution" and "[...] although the SSNIP test is but one example of methods used for defining the relevant market and notwithstanding its formal econometric nature, or its margins for errors (the so-called 'cellophane fallacy'), its importance lies primarily in its use as a conceptual tool for assessing evidence of competition between different products or services"* This is to say that the SSNIP test in absence of data will be used as a methodological conceptual framework for assessing the boundaries of the markets including a combination of quantitative and qualitative analysis, such as the assessment of the physical characteristics and intended use of products.	
4.15-4.16	Market definition and price levels	Omantel comments that different price levels (relevant to different customer segments, for example) do not necessarily imply different markets.	TRA accepts the comment, but notes that price levels may have the opposite effect as well and suggest different markets. These matters need to be considered in context, and the best context will be future MDD Reports.	No further action

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4.18 – 4.19	Benchmarking and market definition	Omantel requests the TRA to state how (overseas) benchmarks will be interpreted and incorporated into the process of market definition – especially in relation to the geographic dimension of market definition.	TRA disagrees that there is any such need. If any reliance is placed on such benchmarks it will be in the course of a MDD Report and that will be the time for explanation and appropriate argument.	No further action
4.22 - 4.23	Consistency of Art 2(e) and 3 of Draft Decision with section 3 of the Draft Guidelines	Omantel comments that markets are defined differently in these places.	TRA has modified the reference in the Guidelines (at Section 3.1) to remove reference to *network* services, even though network services will remain, in practice, the main focus of market analysis.	Amend as indicated in response
4.24	Market definition	Omantel requests that section 3.5 of the Draft Guideline should be incorporated into the Decision and that Art 2(e) should be clarified to say that a market is a behavioural concept.	TRA considers that it should be able to take account of any relevant factor and not be limited by an approach of this kind.	No further action
5.2 – 5.3	Three criteria test	Omantel is concerned about the use of the term 'candidate' markets in section 4 of the Draft Guidelines, partly on the basis that this term is not used in Europe. It proposes a change in terminology to avoid the confusion it claims results.	TRA will identify candidate markets at the first stage of analysis and then determine whether any is/is not susceptible to ex ante regulation. The TRA considers the terminology to be clear.	No further action
5.5	Effect on wholesale and related retail markets	Omantel asserts that ex ante regulation in a wholesale market should mean that the downstream retail market should fail the three criteria test and not be regulated ex ante.	This has been dealt with earlier when it was asserted. In addition to the response made there TRA notes that many retail markets do not have perfectly and exclusively aligned wholesale markets and that this will also	No further action

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			impact on the consequences, requiring more judgment than Omantel allows for.	
5.11	New markets, and new and innovative services	Omantel uses the term 'regulatory holiday'. Omantel believes that the Guidelines at section 4.3 should specify the length of any such regulatory holiday for new services.	This is not a term used by TRA, nor is it appropriate. The point being made is that some care needs to be exercised before regulating new and innovative services, and that TRA will be disinclined to intervene until demand patterns and other characteristics of such services become clear. Omantel has misunderstood the point being made.	No further action
5.13	Markets with obsolete services	Omantel comments that *a further regulatory exemption* is required for markets that are becoming obsolete, and refers specifically to the ULL market.	There is no regulatory exemption and therefore no place for a *further* one. Presumably Omantel is referring to obsolete *services* within a market, rather than markets per se. ULL is not necessarily a good example, but that is a matter for a MDD Report. TRA takes the view that there are sometimes very great risks of potential harm associated with maximising returns from obsolete services that make them a primary focus for consideration of ex ante regulation, and in particular when shaping price regulation remedies. This is the reverse of the position claimed generally as a requirement by Omantel.	No further action
5.15 – 5.16	Reconsideration	Omantel is concerned that Section 4.4 of the Guidelines might mean that TRA might	There is no suggestion at all that this could be the meaning. TRA's statement	No further action

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		regulate a given market which failed the three criteria test as a later point of time without going through the market definition process again.	is not meant to create an exception to the three criteria test but to clarify that a reconsideration of a market is always possible, even if that market has been treated differently before.	
5.17 – 5.18	Additional consideration concerning access regulation	Omantel argues that passing the 3 criteria test should not automatically imply regulatory intervention. Omantel suggests that the *Bronner* criteria (four in all) might be considered in determining whether intervention is justified.	TRA agrees with the first point, and considers that regulatory intervention and forbearance options and issues are adequately described later in the Guideline. TRA considers that the *Bronner* criteria should not be included in the Guideline. The *Bronner* criteria, based on Oscar Bronner Gmbh vs. Mediaprint Case C7/97, make reference to the "essential facility doctrine" and whether an incumbent is behaving anti-competitively by refusing supply of an input. Therefore by definition those criteria are more stringent than might apply generally. Finally, TRA notes that the EC also considers the essential facilities doctrine not to be relevant to the ex-ante assessment of dominance (see point 81-82 of the Directive 2002/C 165/03).	No further action
5.20 – 5.22	Consistency of Art 7 of Draft	Omantel comments that Art 7 lacks the condition in Section 4.2(a) of high and non-	The Decision is deliberately high-level with detail in the Guidelines. TRA does	No further action

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	Decision and Section 4 of Guidelines	transitory barriers to entry, and that the Decision lacks a reference to new markets as in Section 4.3 of the Guidelines.	not want to get into determining hypothetical cases in the Decision based on unknown facts.	
5.22	Obsolete market (3rd dot)	Omantel argues again that a market that is or is becoming obsolete should not be found to be a susceptible market to ex ante regulation.	This has been addressed earlier in this response. TRA will take these issues into account when defining the appropriate pricing remedies for the specific risks of harm that it identifies.	No further action
6.2	Criteria for dominance determination	Omantel comments that different relevance levels need to be attached to the proposed criteria.	TRA disagrees. Relevance will depend on the market context.	No further action
6.3 - 6.4	Three broad dominance criteria	Omantel proposes again the same three broad criteria that it proposed in 2009. This applies to both single and joint dominance.	TRA notes that no new arguments have been made for these criteria. TRA considers that these criteria are too simplistic and not exhaustive for the purpose.	No further action
6.8 - 6.9	3 criteria test and single dominance criteria	Omantel suggests that it needs to be made clear that the 3 criteria test involve different tests than apply to dominance, and uses the case of barriers to entry.	TRA accepts the comments, and understands that the scope of the 3 criteria is different from the tests suggested for dominance assessment. The 3 criteria are only used to filter out the markets that may require the imposition of ex ante regulation taking account of both static and dynamic perspectives. This is in line with the EC framework and TRA believes that there	No further action

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			is no scope for confusion and/or overlapping between the 3 criteria test and other criteria for assessing dominance. With regard to the example cited by Omantel, TRA understands that the existence of barriers to entry or "ease of market entry" as a criterion for the assessment of dominance is a different one from the existence of "high and non-transitory barriers" within the 3 criteria test. TRA considers that the Guidelines are clear in this respect. Additionally, TRA highlights that the extent of potential competition is a separate issue that, together with the level of substitutability existing in the market, is an essential factor for assessing the level of competition in a market. Therefore, it should not be excluded from the list of dominance criteria.	
6.11	Untried regulation	Omantel suggests that the notion of 'untried' regulation is inconceivable. This is a situation in which upstream wholesale regulation may not immediately lead to relaxation of regulation of related retail markets.	On the contrary the situation is highly conceivable in Oman where the impact of regulation that has been shaped to be as light as possible may have to be seen. In these situations immediate relaxation of retail market regulation might not be responsible or appropriate.	No further action

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6.17 – 6.18	Market share measures and implications for dominance	Omantel comments that the TRA, in saying that where a market share in revenue is greater than a market share in services may have implications for dominance is not accurate, because it may be due to creativity or other factors.	This situation may be due to other factors, but is may have implications for dominance. Clearly the cause of the difference in shares needs to be examined. The TRA comment that it *may* go to dominance is therefore accurate.	No further action
6.20	Barriers to entry	Omantel comments that it is a bit controversial to regard artificially imposed barriers (such as legal barriers) as an indication of dominance	TRA disagrees. If entry is blocked to others then an operator may be dominant in the market. The dominance is no less real because the barrier is legal or economic. This is not considered to be controversial.	No further action
6.21	Sunk costs and barriers to entry	Omantel comments that no reference has been made to sunk costs as an important economic entry barrier, and suggests that sunk costs be covered in the discussion.	TRA agrees and will make the discussion more explicit and refer to sunk costs.	The Guideline will be modified as indicated
6.23	Switching costs and barriers	Omantel comments that switching costs are unlikely to be a concern in Oman because consumers switch and have contracts with both suppliers (of mobile).	The Guideline is not the place where predictions of likely relevance of criteria in specific markets should occur. The actual assessment will be in the MDD Report.	No further action
6.24	Network effects	Omantel comments that when two mobile operators are of similar size network effects are not likely to be a concern.	The Guideline is not the place where predictions of likely relevance of criteria in specific markets should occur. The actual assessment will be in the MDD Report.	No further action

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6.26	Customers' ability to access and use information	Omantel comments that this criterion is unlikely to be relevant in the Omani market.	The Guideline is not the place where predictions of likely relevance of criteria in specific markets should occur. The actual assessment will be in the MDD Report.	No further action
6.29 - 6.30	Financial strength	Omantel notes that financial strength should rarely create a barrier to entry, and states that TRA aims to compare the cost of capital for each firm. Omantel notes that the practical relevance of this is questionable, and that access to capital is not an issue for regulation.	TRA has not said that it will compare costs of capital in this way. The argument put forward is a straw man. In addition it might be argued that global and other capital markets do not always work effectively in the manner suggested. TRA's point is that a consideration of financial strength might illuminate the nature and a source of dominance. If so it will be a relevant factor.	No further action
6.32	Profitability	Omantel comments that profitability might indicate market power, but that it might not always be relevant. Omantel continues: *If a company becomes dominant by merit, it clearly should not be regulated.*	TRA agrees with the first sentence, but not with the sentence quoted. The purpose of ex ante regulation is to address the potential harm from dominance, if there is any. The second sentence is quite wrong. In such a case the dominant company might attract regulation.	No further action
6.34	Profitability and prices	Omantel comments that the Draft Guidelines seem to be more focussed on profitability rather than price levels – and that these should not be handled as if they were the same.	TRA fully understands that these are separate matters and has treated them as such. The test is in the MDD Report, rather than in the Guideline. In any case the focus on profitability is	No further action

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			appropriate since economic theory tells us that a rational monopoly or dominant firm will seek to maximise profits rather than prices.	
6.37 – 6.38	Technological advantage or superiority	Omantel comments that if an input can be purchased in a market there is no issue of technological superiority and that if the superiority is based on exclusive contracts the matter is one of behaviour and not an indicator of dominance.	TRA does not agree that technological advantage or superiority, however acquired, can never be a factor in determining dominance. Again the issue is the dominance per se, and what, if anything should be done about it.	No further action
6.42	Other criteria – absence of potential competition	Omantel comments that because this is a consideration in the 3 criteria test it has no further role in determining dominance.	TRA disagrees. The 3 criteria test is about susceptibility to ex ante regulation and the matters now being considered are factors that are dominance criteria. In addition, the second test of the 3 criteria test is whether the market is moving towards competition in a suitable timescale, notwithstanding any entry barriers. It is not whether there is an *absence* of *potential* competition. Please also refer to comments 6.8-6.9 and the related responses.	No further action
6.43	Other criteria – overall size of the undertaking	Omantel comments that the use of this criterion is complicated by the fact that it could affect the final conclusion (on dominance) in both directions, and that some of the effects are covered by other criteria.	TRA agrees on both counts. TRA has made it clear that some criteria will overlap in their coverage and effect and for that reason should not be considered in a mechanistic manner – such as the *check box* approach which Omantel has rightly cautioned against.	No further action

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6.44	Other criteria – highly developed distribution and sales network	Omantel comments that these networks do not imply much concern as alternative mechanisms to sell do exist.	Such networks may be a source of dominance and should be examined for that reason. Whether alternatives exist is an empirical matter to be considered and weighted in the course of a MDD Report.	No further action
6.45 – 6.46	Other criteria – product/service diversification	Omantel comments that bundling potentially benefits consumers and should not trigger ex ante regulation. Omantel prefers ex post anti-competitive behaviour evaluation	The issue here is whether there is dominance and whether bundling may be a contributing factor to such dominance. The matter of remedies and the adequacy of ex post regulation is a separate matter.	No further action
6.48	Lack of active competition in non-price factors	Omantel comments that this criteria that it is identical to product differentiation and should be dropped.	TRA believes that there may be overlap but that conceptually it is a different criterion that may well involve issues not appropriately considered as product or service differences. TRA also notes that absence of potential competition is one of the key criteria used by the EC Guidelines at point 78, bullet point 11.	No further action
6.56	Single dominance criteria relevance	Omantel uses a table to put relevance evaluations on criteria.	TRA believes that a prior consideration of relevance for any criterion is inappropriate, since it is dependent on a study of each specific market in Oman. This should be considered as part of the MDD Report.	No further action
6.58	Consistency of Draft Decision	Omantel comments that *joint dominance* is defined before *dominance* in the Draft	TRA will ensure that the order is alphabetical. Other points raised in this	The text will be modified as indicated

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	and Guidelines on single dominance	Decision and the order should be reversed.	section of Omantel's comments have been addressed elsewhere in this Response.	in the response
6.59 – 6.60	Deemed dominance in a closely related market – Art 4(2)	Omantel comments that the deeming provision in Art 4(2) of the Draft Decision does not appear in the Guidelines, and prefers that it be deleted altogether. Omantel argues that the idea of related markets is not properly defined and might, if it relates to bundling and tying, be referring to matters better covered through ex post regulation.	In TRA's view the language complained of should not be deleted from the Decision. However some additional text will be added in the Guidelines explaining the approach to making such a "deeming".	The text will be modified as indicated in the response
6.63	Joint dominance – regulatory controls on licensing and entry	Omantel comments that collective dominance is an unlikely outcome in telecoms markets since the regulator decides the number of market players and has a say on barriers to entry.	TRA disagrees with this statement. The issue is whether there is joint dominance and on what it is based. Whether it has been contributed to by past regulatory and policy is irrelevant to whether it exists.	No further action
6.65	Joint dominance criteria relevance	Omantel uses a table to put relevance evaluations on criteria.	TRA believes that a prior consideration of relevance for any criterion is inappropriate, since it is dependent on a study of each specific market in Oman. This should be considered as part of the MDD Report.	No further action
6.66 – 6.68	Two additional joint dominance criteria	Omantel comments that the two additional criteria – incentives and enforceability – are 'catch all' criteria which would be used if no other evidence is found. Omantel seeks their removal.	TRA disagrees with this characterisation. It is not clear, other than in the context of a specific market assessment, whether these criteria are sufficient. There is no intention or statement in the	No further action

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			Guidelines that these criteria should or would be applied without evidence.	
6.70	Market concentration and HHI scores	Omantel comments that caution is needed in applying the HHI since changes might reflect competition not concentration.	TRA agrees.	No further action
6.71	Low elasticity of demand	Omantel comments that low elasticity of demand has an ambiguous effect on the incentives to deviate from a collusive outcome.	TRA agrees and emphasises that the specific market circumstances are very important when applying this criterion. Therefore, the applicability of the elasticity of demand as a criterion should be considered as part of the MDD Report.	No further action
6.72 – 6.73	Homogeneous product	Omantel cites Annex B 6 of the Guidelines and comments that the second sentence in the citation is not about homogeneous products. Omantel suggests that the paragraph should be changed to reflect this.	TRA agrees and highlights that the impact of product homogeneity for joint dominance may operate in different directions.	The text will be modified as indicated in the response
6.75	Retaliatory mechanisms	Omantel comments that some of the terms used such as *inter-form wholesale activity* and *conditions for a price war* could be better explained to give guidance.	TRA notes that there has been a typographical mistake in the Guidelines where "inter-form wholesale activity" should be read instead as "inter-firm wholesale activity". TRA does not consider that the term "conditions for a price war" needs further explanation. It has the general meaning normally attributed to the words used.	
6.76	Lack of or	Omantel agrees that this could be an	TRA notes the comment and further	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA Response	Proposed action
	reduced scope for price competition	important criterion for joint dominance. Omantel comments that it is not clear how TRA would infer lack of price competition from cost studies, and suggests the application should be made straightforward.	notes that cost studies will help to assess the extent to which prices are close to or moving towards costs. This is the normal meaning that would be attributed to the words used.	
6.82 – 6.83	Tacit collusion	Omantel sets out a scenario relating to mobile usage charges and concludes that, despite the positive nature of many joint dominance indicators for Oman, collusion would not be feasible in retail mobile markets.	TRA considers that it is better to wait and discuss the evidence for and against joint dominance in specific markets in the MDD Report, rather than to rule in or out any views on the matter at this stage.	No further action
6.84	Replacement of Annex B	Omantel proposes that Annex B (and joint dominance criteria) be replaced with a discussion on the economic literature on competition in telecommunications networks.	TRA considers this view to be inappropriate and in doing so notes that the EU has not taken such an approach.	No further action
6.86 – 6.87	Inconsistency between the Draft Decision and the Guidelines	Omantel comments that the Draft Decision (in contrast to the Guidelines) takes no note of the mechanism described in the *Airtours* criteria. Omantel comments that the Draft Decision lists an inexhaustive list of criteria for joint dominance that Omantel claims is inconsistent with the list contained in the Guidelines. Omantel also comments that the definition in the Draft Decision of joint dominance is different to that in the Guidelines.	The Decision is high-level and is not an appropriate place for a discussion of *Airtours*.	No further action
6.88	Coordinated action	Omantel comments that joint dominance *requires the coordinated action of at least*	TRA considers that this is closer to the requirements for collusion per se – an	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA Response	Proposed action
		two large companies.	example of anti-competitive behaviour. The requirement in the case of joint dominance is being in a position that enables the pursuit of a common purpose.	
6.89	Market inertia	Omantel comments that market inertia is not mentioned in the Guidelines, even though it is in the Draft Decision.	TRA considers that market inertia may be a sign of mutual decisions to not compete, and will include a reference in the Guidelines.	The text will be modified as indicated in the response
6.90	Draft Decision - joint dominance	Omantel comments that the Draft Decision should be changed (1) to delete the possibility of joint dominance in cases of market inertia; (2) to explicitly link joint dominance to the adoption of a common policy by market participants; (3) to adopt the 3 step test outlined in 5.3 of the Guidelines; and (4) to delete the incomplete set of criteria in Art 2(a).	In response to each of Omantel's points, TRA notes that: (1) Market inertia is a factor to consider when assessing markets for joint dominance. (2) No, this formulation sounds too much like actual anti-competitive behaviour and therefore not related to dominance which is a position and a potential in the market – whether single or joint dominance. (3) No, procedural guidance is the role of the Guidelines but not the Decision. No, it is important to retain appropriate discretion for the TRA.	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA Response	Proposed action
7.1	Remedies - principles	Omantel comments that retail markets downstream from ex ante regulated wholesale markets should not be regarded as markets susceptible to ex ante regulation.	This view has already been addressed in this response. For example, in response to the comment at para 2.18, TRA noted that if wholesale access regulation is being newly applied and its effectiveness is untested, some retail market regulation may well be retained.	No further action
7.4	Comparison with EU remedies	Omantel comments that in order to determine whether the remedies proposed by the TRA were excessive it carried out a review of remedies in the EU framework.	The remedies being proposed are for the Oman market not EU markets and therefore the comparison is inappropriate for the purpose it was undertaken. In addition TRA considers that whether remedies are appropriate or excessive depend on the context of the market conditions to which they are applied. This is a discussion that should be had when the MDD Report is prepared.	No further action
7.9	Consistency of Guidelines Section 6 with Art 8 of Draft Decision	Omantel comments that (1) the Draft Decision mentions a remedy not to discriminate in favour of the regulated firm's own operation and that this is not mentioned in the Guidelines; (2) the Draft Decision mentions wholesale price controls, which are not explicitly mentioned in the Guidelines; and (3) the Guidelines mention a tariff notification remedy, and this may be ambiguous.	In response to each point: (1) TRA agrees that this remedy should be included in the Guidelines (2) The TRA considers that the references to price controls and related remedies are sufficient references in the Guidelines (3) Tariff notification to the TRA is a	The TRA will amend the Guidelines accordingly re (1) in the response

Paragraph Reference	Subject-matter	Comment or suggestion	TRA Response	Proposed action
			separate and distinct from an approvals remedy, since it alerts the TRA to situations in which some discussion and clarification may be required. This is not the same as an approval.	
8.3	Tacit collusion	Omantel comments that joint dominance cannot be based on criteria but must be analysed using the description of a mechanism of tacit collusion.	The term *tacit collusion* is not preferred because it has connotations of behaviour rather than position in a market. However the analysis would examine the criteria and indicate how the joint dominance arises and could operate (or continue).	No further action
Annex	Market context in Oman	Omantel refers to and offers conclusions based on empirical data relating to Oman.	This is appropriate in the context of an MDD Report, not at this stage in establishing rules and guidelines.	No further action

B. Comments from Nawras

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
1.2	(1st dot)	Nawras recommends that ex ante regulation should only be imposed where ex post competition law protections are insufficient.	TRA generally agrees. Nawras makes some additional comments later which are responded to below.	
1.2	(2nd dot) Focus of ex ante regulation	Nawras recommends that ex ante regulation should focus only on wholesale markets and all retail tariff approval requirements should be removed.	TRA agrees that the focus should be as far as possible on wholesale markets, but this is subject to many considerations which are better explained in the actual market context addressed in a MDD Report.	No further action
1.2	(3rd dot) Baseline decision period	Nawras recommends that the baseline period for ex ante regulatory decisions should be 3 years, although shorter periods could also be considered in some circumstances – this will create greater regulatory certainty for licensees.	TRA considers that the approach currently proposed in the Guidelines is sufficiently flexible to respond to situations where markets require early review and balances the limits of forecasting for a sector in flux with the costs of undertaking reviews.	See later response
1.2	(4th dot) Greater guidance on	Nawras recommends that the TRA should provide greater guidance on how it intends	TRA defers a response until the details in the body of the comments are	See later response

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
	SSNIP test application	to apply the SSNIP test, including how it intends to determine what constitutes pricing at a "competitive level".	discussed later in this document. However, the TRA is disinclined to be too prescriptive except in the context of a market assessment in a MDD Report, where individual markets are considered.	
1.2	(5th dot) Complementary tests to the SSNIP test	Nawras recommends that the TRA should utilise complementary tests to the SSNIP test to check whether the application of the SSNIP test correctly approximates a competitive price.	The TRA agrees in principle and notes that the SSNIP test was never intended to be the only test to be considered.	No further action
1.2	(6th dot) Utilise latest EC recommendation -ns	Nawras recommends that the TRA should seek to utilise the latest EC recommendation on markets to be subject to ex ante regulation as the starting point for its market reviews.	TRA will have regard to relevant considerations, including the approaches taken in other jurisdictions (not only the EC) when it undertakes market reviews. It is inappropriate to say that the EC recommendations should be the starting point for each review.	No further action
1.2	(7th dot) Geographic markets	Nawras recommends that the TRA should avoid defining geographic markets in an overly narrow way (e.g. on a premises-by-premises basis) – such an approach is likely to distort the assessment of competition within the relevant market.	TRA agrees. Further responses appear later.	No further action
1.2	(8th dot)	Nawras recommends that the TRA should	TRA agrees. The notion of intensity of	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
	Intensity of remedies	consider adjusting the intensity of regulation (i.e. remedies) to take account of competitive differences based on geography.	regulation (remedies) is already included in the Guidelines.	
1.2	(9th dot) Guidance on the 3 criteria test	Nawras recommends that the TRA should provide greater guidance on how it intends to apply the three criteria test by using the list of factors adopted by the European Regulators Group.	TRA disagrees. It is inappropriate to tie the application of tests in Oman to lists produced for EU conditions. However these lists will be considered along with other useful information.	No further action
1.2	(10th dot) Joint dominance criteria	Nawras recommends that the TRA should remove the joint dominance criteria – it is unnecessarily complex and is not directly relevant to Oman's telecoms sector.	TRA disagrees and intends to retain the criteria. The relevance of the list and the joint dominance concept will be tested in the context of specific markets in the MDD Report.	No further action
2.1	Market review period of 3 years	Nawras comments that a 2 year review period would be costly and resource intensive and the period should be extended.	TRA disagrees. The comment seems to be based on a misunderstanding. The maximum period proposed between reviews is 5 years, not 2.	No further action
2.1	Look forward period	Nawras comments that a properly conducted market analysis would typically be able to predict the competitive changes within a market over a longer regulatory	TRA notes that this is an assertion without supporting evidence or argument. However, TRA agrees to the extent that for some markets a review	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		period than the proposed 2 years.	horizon of more than 2 years may be possible. The horizon needs to be stated in the case of each review.	
2.1	Reviews for shorter periods and longer periods than 2 years	Nawras comments that aas a general rule, we consider that the TRA should adopt a longer period than 2 years, although shorter periods would also be appropriate in some circumstances.	TRA agrees with both parts of the statement. TRA is inclined to consider that Nawras has confused the forward looking horizon for a review as automatically the period before the next review. This is certainly not the case, and greater flexibility will be required to address emerging market circumstances than such an approach allows.	No further action
2.1	Investment pay back	Nawras comments, in relation to a 2 year review period, an access seeker is less likely to be incentivised to invest if the 'pay back' period cannot be realised due to a risk that the TRA will remove or change the form of regulation in the next regulatory period.	TRA considers that this comment is a result of confusion between the review horizon (2 years but subject itself to appropriate judgment by TRA in the course on any individual market review) and the maximum period of 5 years between reviews. Investment cannot be affected in the way that the comment suggests, as a result of a 2-year review horizon.	No further action
2.2	Guidance on application of SSNIP test	Nawras comments that specific guidance on the SSNIP test's application is need in terms of determining the *competitive level* above which price increases are assessed. Nawras	TRA recognizes that issue of the so-called "cellophane fallacy" in market definition assessment is one that needs to be considered with care. However,	TRA will modify the Guidelines with the aim of including alternatives options to

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		cites references to show that there is a risk that markets will be defined in excessively broad terms if the test is applied to the supra-competitive prices of dominant providers. Nawras refers to a number of possible ways of determining competitive prices, including the use of cost information, namely: - using a combination of qualitative and quantitative analysis - using data from comparable markets as a cross check - looking at competitive market behaviour from the dominant firm - using the SSNDP test.	TRA believes that the Guidelines have made the issue clear by defining the SSNIP to be above the competitive price level. At the same time, TRA recognizes that a SSNIP test is only one of the possible approaches for defining markets and alternative options should also be considered. Nawras has helpfully suggested a list of alternatives options at page 7 of its response, but TRA notes that the list is a mix of ways to measure the competitive price and alternatives options to the SSNIP test. TRA also notes that similar comments have been addressed at points 4.12-4.14 of the Omantel responses, and refers back to the proposed actions set out there.	the SSNIP test
2.2 (at p.7)	EC Recs	Nawras recommends, in the interests of certainty, that the TRA should seek to utilise the latest EC recommendation on markets to be subject to ex ante regulation.	TRA does not agree that this is an appropriate position for an independent regulator to adopt, because it would be tying the exercise of its discretion and judgment and the discharge of its statutory role on these matters to the position adopted in another jurisdiction. We note that Nawras is not saying that TRA should adopt the EC position but	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
			should seek to utilise it. That is not a pre-disposition that any independent regulator should adopt.	
2.3	Geographic markets	Nawras comments that it would be worthwhile if the TRA provided further guidance on its approach to defining geographic markets. In particular, it would be worthwhile if the TRA clarified how it will determine whether competitive conditions are essentially similar based on geography to justify a single market definition. Nawras cites the EC on this matter.	TRA considers that the practical guidance that Nawras seeks will likely be found in draft MDD Reports that are published for public comment. With respect, TRA considers that there is no additional guidance in the EC text cited than is currently provided in the Guidelines. The factors that are likely to require consideration of geographical sub-markets are likely to be market and service specific and therefore the place for that discussion is in an MDD Report. For the sake of clarity however, TRA will incorporate an option for sub-national market regulation into the Guidelines.	Amend Guidelines as indicated in the response
2.3 (at p.9)	Narrow geographic markets	Nawras comments in relation to the EC text mentioned above that the implementation of such an approach would avoid the identification of very narrow geographic markets (e.g. on a premises-by-premises, or route-by-route basis), which are otherwise likely to distort any assessment of competition within those markets.	TRA is concerned that the adoption of narrowly defined geographic markets could become unmanageable and distort assessments of competition. However, TRA believes that the current Guidelines contain a sufficient identification of the problem and indicate that TRA will seek to avoid that outcome.	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
2.4	3 criteria test	Nawras comments that the TRA correctly stated that if any one of the criteria is no longer satisfied, it may be necessary to review the continued need for ex ante regulation in that market.	TRA highlights this comment because the TRA statement was criticised by Omantel in its comments. Omantel was concerned about the retention of some discretion through the use of the word "may". TRA disagreed with Omantel and notes that Nawras has raised no such concern in its formal submission.	No further action
2.4	Cumulative nature of the 3 criteria test	Nawras comments that it would be useful, however, for the TRA to clarify that the three criteria test is <u>cumulative</u> and ex ante regulation will not be imposed unless <u>all</u> of the three criteria are simultaneously satisfied.	TRA believes that the Guidelines are clear on the need for all three criteria to be satisfied, but will add words as suggested by Nawras to put this beyond doubt.	The Guidelines will be amended accordingly
2.4	Barriers to entry	Nawras suggests a number of factors that might be considered when assessing high and non-transitory barriers to entry such as: - the existence of sunk costs - control of infrastructure not easily duplicated - technological advantages or superiority - easy or privileged access to capital	TRA considers that the factors listed are but some of many that it could, depending on the specific relevant market, consider. TRA considers that a further list in the Guideline is not required.	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		or financial resources - economies of scale, economies of scope - vertical integration - barriers to develop distribution and sales network - products or services diversification.		
2.4 (at p.11)	Criteria for effective competition	Nawras comments that the ERG specifies the following criteria as possible indicators to assess whether a market tends toward effective competition, and list the criteria.	TRA notes the point and also that these and other criteria have been set out in the Guidelines as potentially relevant to dominance – the other side of the same issue as effective competition.	No further action
2.4 (at p.11)	Criteria for sufficiency of competition law	Nawras comments that the ERG has recommended the following relevant facts for the 3rd criterion – sufficiency of competition law: - the degree of generalization of non-competitive behaviour - the degree of difficulty to address non-competitive behaviour - non-competitive behaviour brings about irreparable damage in related	TRA will have regard to current guidance from ERG (now BEREC) and other "recognised authorities" in these matters. This is preferable to adopting criteria from one source rather than examining the literature at the time of a MDD Report.	The Guidelines will be amended as indicated in the response.

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		or connected markets - the need of regulatory intervention to ensure the development of effective competition in the long run		
2.5	Targeting remedies to the wholesale level	Nawras comments that it does not support ex ante regualtion at retail level and that there are currently a range of competitive telecommunications services in Oman that remain subject to retail regulation that should no longer be regulated in this manner	TRA notes the comment but considers that the place for the discussion on ex ante regulation in retail markets is in the context of individual markets in the MDD Report. However it is appropriate to note, given Nawras's recommendations about adopting European (EC and ERG) approaches that the EC permits ex ante regulation of retail markets by NRAs. However the point about a wholesale level regulatory focus is understood and agreed and is reflected in the current Guidelines.	No further action
2.6	Criteria for joint dominance	Nawras comments that it has previously expressed concerns in relation to the inclusion of joint dominance criteria within the TRA regulatory framework. Nawras considers that joint dominance is an unnecessary concept in the context of an ex ante regulatory framework.	TRA has noted those comments both at the time they were made and in the development of the Guidelines. TRA disagrees about the need for the concept, because it is not possible to say that ex post competition rules will always be sufficient.	No further action
2.6	Joint dominance	Nawras comments that the concept of joint	TRA does not share this view, and the	No further action

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
	– 1dt principles	dominance is confused at a first principles level – it is unclear whether a jointly dominant position exists by virtue of an oligopolistic market structure or because of structural links between entities.	place where it might be best worked out is in the MDD Report, if joint dominance is considered for any of the markets defined there.	
2.6 (at p.16)	Joint dominance not needed	Nawras comments that it will not be necessary for the TRA to designate joint dominance in any telecommunications markets in Oman, as the same outcome could be achieved through the application of the single dominance criteria.	TRA disagrees in principle. An oligopolistic market might not involve one or two cases of single dominance because the players need to have regard to the actions of each other – however that does not, by itself, rule out the possibility of joint dominance in such a market. TRA suggests the better course would be to see how this works out in a real market context in the MDD Report.	No further action

Comments on Decision and Guideline on Ex Post Competition Regulation

A. Comments from Omantel

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
1.3	Legally binding	Omantel comments that the Guidelines will not be legally binding on the TRA.	The Guidelines are not binding on TRA, but highly persuasive.	No further action
2.1	Regulatory "mindset"	Omantel comments that a significant concern is that on occasions the ex-post Draft Guidelines are written with a regulatory "mindset".	TRA believes that its perception of its role, both in ex post and ex ante regualtion is appropriate and based on the role set out in the Act.	No further action
2.1	Competitive prices	Omantel comments that the idea that prices should tend in a competitive market to long run cost is wrong. This is repeated in various forms elsewhere in Omantel's comments.	TRA confirms that its original words were both considered and correct. However, Omantel's comment suggests that an unintended interpretation was made that all prices in a competitive market will reflect long term costs. The point made is that in such markets prices generally will tend to reflect such costs, not that all prices will be cost based at all times.	No further action
2.7	Legal certainty	Omantel comments that the guidelines should be providing more legal certainty to market participants, and not be overly prescriptive.	TRA notes that the Guidelines are not legally binding and therefore cannot provide *legal certainty* of the kind Omantel may have in mind. TRA agrees	No further action

			that the guidelines should not be overly prescriptive and has sought to get the balance right. It notes however that Omantel seek s substantial detail and prescription later in its submission.	
2.8	Guidelines not the result of experience	Omantel comments that prescriptive rules should be based on and distilled from experience with decision, complaints and judgments.	TRA believes that the Guidelines are useful, even though the experience in Oman of applying the approaches they contain to Omani conditions is necessarily very limited. It goes without saying that the Guidelines are an initial document that will be amended over time to capture the benefits of TRA's experience.	No further action
2.11	Testing decisions first	Omantel comments that it would be better to first test decisions taken by TRA to understand whether any clarifications or guidelines are necessary.	TRA believes that this is a prescription for no guidance on the TRA's intended approach or for very protracted (and possibly very untimely) guidance. TRA reiterates that the Guidelines are not fixed or incapable of changing to reflect new and emerging experience and concerns.	No further action
2.14	Consistency of Draft Guidelines with other TRA initiatives	Omantel comments that the Guidelines should be consistent with the initiatives such as the Reference Access Offer. In particular the margin squeeze test is set out as an ex-post policy but not as a remedy in the ex-	TRA notes that the Reference Access Offer arrangements have been established prior to the Draft Decisions and Guidelines. The RAO arrangements may need to be revisited once the	No further action

		ante Draft Guidelines and therefore, according to Omantel, it should not appear as a condition in a Reference Access Offer.	Decision and Guidelines have been finalised and formally adopted. TRA disagrees in the specific case because it is necessary to establish the information requirement to enable tests to be applied for price control. Clearly some methodologies might be applicable to the action that the TRA might take in relation to both ex ante and ex post regulation.	
2.15	Cookbook approach	Omantel comments that there is a danger of a cookbook approach, and notes that abuse of dominance cases can last for years resulting in the development of economic and legal thought often being very slow	TRA has no quick recipes for these often difficult and complex situations. On the other hand the implication that the TRA should not seek to offer guidance until an unclear date long into the future is not acceptable in the interests of competition and consumer welfare in Oman.	No further action
2.18	Effects in both directions	Omantel comments that certain types of behaviour can have both positive and negative effects – that is be pro-competitive under some circumstances and anti-competitive under other circumstances.	TRA agrees, and that is why it is always important to undertake a context based analysis. TRA intends to adopt such an approach.	No further action
2.23	Efficiency defences	Omantel comments that there are commonly accepted defences that have evolved in Europe – such as efficiency	TRA does not consider that it is the role of the Guidelines to set out a comprehensive set of potential	Further guidance on exemptions and exceptions, including

		defences – that should be considered for each of the practices. By efficiency defences Omantel means arguments that the practice concerned is pro-competitive rather than anti-competitive.	defences. On the other hand TRA agrees that there is scope to say more about the circumstances in which it may be inclined, in advance of the specific case, to consider exceptions and exemptions. There is a balance to be struck here and TRA will prepare appropriate text that it considers best reflects that balance.	efficiency defences, will be included.
2.24 – 2.26	Consistency between Draft Decision and the Act	Omantel comments that Arts 40 and 41 of the Act refer to behaviour that could *prevent* competition, but that the Draft Decision in Art 5(1) widens the scope by claiming the TRA can *prevent* conduct that could prevent or restrict competition. Omantel requests amendment of Art 5(12) of the Draft Decision.	TRA agrees and will delete the words "and prevent" from Art. 5(1) of the Draft Decision.	Amendment of the Draft Decision as indicated
2.28	Due process in the Act and Draft Decision	Omantel comments that it is concerned that the due process set out in Art 41 paras 2 and 3 of the Act is not sufficiently reflected in Art 6 and 7 of the Draft Decision.	Art. 6 (4) of the Decision provides for detailed Rules to be drawn up. Those Rules must clearly respect the safeguards provided for in the Law, and will be undertaken as a separate exercise. No change is needed in the Decision.	No further action
2.29 – 2.32	Mergers in the Act and Draft Decision	Omantel is concerned that the Draft Decision (Art2 (2)) explicitly states that it does not address mergers under Art 40(4)	The Draft Decision does not address mergers. It is intended to keep some guidance in the Guidelines and therefore	Amendments as indicated in the response

		of the Act, but that section 7 of the Guidelines does.	to retain Section 7, notwithstanding. TRA will amend the preamble along the following lines: "The Decision on Anti-competitive Behaviour in the Sultanate of Oman does not extend to mergers. Further guidance on the TRA's approach to mergers and acquisitions may be published in due course in a formal Merger Decision and in Guidelines on Mergers and Acquisitions. However some informal early guidance on the TRA's likely approach to mergers may be helpful."	
3.2 – 3.3	Relationship between ex ante and ex post rules	Omantel comments that there appears to be a contradiction between the ex-ante and ex post Guidelines when the ex post Guidelines say at section 25 para 5 that *the methodology and analysis for market definition at ex post level is the same as the one used for ex ante purposes*, when at the same time it says that the market definitions can differ.	TRA notes that the two points are meant to clarify how the methodological framework for market definition is the same at ex ante and ex post levels, even though the market definitions that result may differ. The Guidelines leave open that possible outcome.	No further action
3.8 -3.18	The role of dominance	Omantel comments at 3.16 that an abuse of dominance is an action by a company to leverage its dominance to other competitive portions of market demand or to other relevant markets.	TRA notes that excessive pricing is a potential anti-competitive strategy that will need consideration on a case by case basis and taking into account the elements described in Annex 4 of the Guidelines. Excessive pricing may be an abuse of dominance that does not	No further action

			involve the leveraging referred to by Omantel.	
4.1	Objective of competition rules	Omantel comments that the Guidelines should delineate what constitutes competitive behaviour vs. what is likely to be anti-competitive in the telecommunications sector in Oman	TRA agrees that there is scope in the Guidelines for more guidance on this matter, and will set out a list of considerations in the course of adding guidance on the approach that TRA will take to granting authorisations (or exemptions) in specific cases.	Amendment as indicated
4.4	Principles of competition economics for ex post guidelines	Omantel comments that the purpose of competition policy is to ensure competition on the merits amongst companies and to avoid the exploitation of consumers. On that basis it argues that the role of the TRA is as a referee.	TRA agrees that competition policy should seek to ensure competition on the merits and to avoid the exploitation of consumers. However, to describe the TRA's role as that of a referee is not a complete description of the roles that the TRA may have. A referee role suggests that competition regulation is always complaints-driven and that the resolution is a form of arbitration. This is not necessarily always the case.	No further action
4.4 – 4.7	Referee role of regulator	Omantel comments that TRA should recognise the referee role and that para 22 is deleted from the Guidelines as being incompatible with that view of competition policy.	TRA disagrees with Omantel and does not consider it appropriate to delete the paragraph. Additional paragraphs specifying the objectives of Competition Policy as described above will be sufficient to address Omantel's concerns	Amendment as indicated

5.1	Telecom market specific factors	Omantel comments that the Guidelines are unnecessarily abstract and should provide specific guidelines for the telecoms sector. Omantel notes that para 24 and 26 do not mention any specific telecom market factors.	TRA does not regard the Guidelines as the place for a description of the telecom market, or for an attempt to highlight those telecom market factors that might be relevant and important in the context of particular conduct.	No further action
5.19 - 5.20	Price discrimination	Omantel comments that the Guidelines a) should explicitly recognize price discrimination as a way to recover fixed costs; b) do not recognise why operators use price discrimination and suggests that there is an incorrect in presuming that price discrimination is illegal (anti-competitive) if it occurs at the upstream level. (Annex 2 para 8).	a) TRA notes that Guidelines explicitly mention that a two-part tariff enables the monopolist to cover the fixed costs (see Annex 2 at point 6 second bullet point); and b) as Omantel notes the Guidelines states that price discrimination need not be anti-competitive. TRA does not adopt the presumption claimed about price discrimination in upstream levels of markets. However it recognises the possibility.	No further action
5.23	Price discrimination – US perspectives	Omantel comments on a US study about the declines in consumer welfare that might result from an inability to price discriminate.	TRA does not proscribe price discrimination.	No further action
5.25	Price discrimination and cost standards for predation	Omantel comments that it is appropriate to apply different 'safe harbour' standards, and suggests that in the interests of higher legal certainty there should be a presumption of legality if prices are above marginal cost.	TRA notes that safe harbour cost standards for predatory pricing strategies are included in the Guidelines and are consistent with the economic literature on predation (see the early	

			work of WJ Baumol (1996) and P Bolton, JF Brodley, and MH Riordan (2000)) where the average avoidable costs (AAC) are considered to be a good lower bound benchmark to assess predation and that is independent of the type of customer groups to be considered. It follows that if costs are within the standard then they do not amount to predation. No presumption is required.	
5.27	Longer contracts	Omantel comments that longer contracts may be necessary for cost recovery of e.g. handsets and that Annex 8 of the Guidelines should recognise that in some cases long contracts could be pro-competitive.	TRA accepts the comment and understands that long term contracts can be an economic rational strategy to recover fixed costs. Some cases may be noted in the Guidelines.	Amendment as indicated.
5.29	Investment uncertainty	Omantel comments that it is incorrect to say, as in Section 8.4 of the Guidelines that competitive conditions mean that prices tend towards long-run costs.	TRA disagrees and notes that prices tend towards long run costs when supply and demand are matched in contestable markets and therefore long run cost is a good proxy for competitive market price equilibrium.	No further action
5.31	Success of investments	Omantel comments that if prices tend towards long-run costs then investments can only be profitable if all investments succeed, which is clearly not the case.	The profitability of an investment is determined by the cost of capital (return on capital employed) which should factor in both the irreversibility of an investment and the risks associated with it. TRA understands this and will specify the implications of cost of capital on	Amendment as indicated

			profitability within the ex post assessment of an excessive pricing conduct.	
5.38 – 5.39	Auction theory and pricing	Omantel comments that we know from auction theory that competitive prices are in most cases higher than long-run costs.	TRA's point is not that examples of pricing above long-run costs do not occur (for example where there are short term price fluctuations in response to changes in demand), but that is the direction in which prices will tend in a competitive market.	No further action
5.2	Horizontal and vertical cooperation	Omantel comments that the guidance in the European Commission is now almost 90 pages long compared to a much shorter guidance in the TRA's Guidelines	TRA does not consider page length to be an appropriate method of considering the adequacy of the guidance required at this stage in Oman.	No further action
6.3 – 6.4	Horizontal and vertical cooperation	Omantel comments that the Guidelines add a fifth criteria to those the EC applies in exempting agreements, namely that no consumer segment should be disadvantaged as a result of the agreement. Omantel disagrees with this addition because some consumers will be worse off in most cases and this should be factored against overall consumer welfare benefits.	TRA will amend the reference and add qualifications. For example it will be made clear that this criterion is related to a test for exemption from a determination that behaviour is otherwise anti-competitive. A clarification in terms of being *materially* or *significantly* worse off will be considered as well.	Amendments as indicated in the response
6.6	Horizontal agreements	Omantel comments that the TRA should make it clear whether, for such agreements	This proposed condition is not considered appropriate or necessary.	No further action

		to be regarded as unlawful, at least one party must be dominant in at least one market.	An agreement may have the effect of creating and then abusing a dominant position.	
6.6	Horizontal agreements	Omantel comments that the TRA should clarify whether there are de minimis rules in this area – thresholds below which the TRA would not take action.	Although the application of judgments associates with materiality and de minimis rules are matters for TRA in the context of specific anti-competitive behaviour cases TRA will include a suitable rule in the Decision and supplementary guidance in the Guidelines.	Amendments as indicated in the response
6.9	Coordination on standards	Omantel comments that it might be beneficial to have coordination to adopt a common standard, and this agreement could promote rather than limit competition.	TRA believes that cooperation, even on technical issues, should be scrutinised to ensure that it is not anti-competitive. However as already noted the Decision will be amended to include provision for authorisations (which will act as exemptions in particular circumstances) to provide for certainty and support investment and other decisions. If the parties wishing to cooperate on technical issues consider that there is no anti-competitive behaviour involved and that the benefit warrants continued cooperation, they may apply for an authorisation.	No further action beyond that already noted for the Decision.
6.13	Cooperation – separate treatment	Omantel comments that there would be value in a separate treatment of cooperation in the Guidelines.	TRA considers that, on balance there should not be. See response above.	No further action

6.14	Mobile resellers and commercial negotiations	Omantel comments that the example of mobile resellers in Section 6.1 is out of context and that particular example should not be used.	TRA agrees and has amended the example.	Amendment as indicated in response
6.20	Lack of practical examples in Guidelines	Omantel comments that significant guidance has not been given on vertical agreements and asks for the response on a specific case involving co-financing of a reseller's advertising campaign, as well as other examples.	TRA aims to provide as much guidance as is reasonable at this stage, but considers it inappropriate to provide specific advice in the Guidelines on issues that need full and detailed assessment	No further action
6.21	Role of vertical restraints to eliminate double marginalisation	Omantel comments that the TRA does not, and impliedly should, state that the *classic efficiency reasoning* for vertical restraints is the problem of double marginalisation.	TRA has included appropriate reference to double marginalisation to add further guidance as suggested.	Amendment as indicated in the response
6.21 – 6.23	Defences	Omantel raises a number of defences that might be used to argue for a vertical restraint such as double marginalisation, uncertainty considerations, and management of downstream discrimination price problems.	TRA considers that some issues that may be raised in mitigation or defence might be raised in the context of an anti-competitive case where a detailed examination is being made of the context and detail of the behaviour in question. In addition, the Guidelines will now include some additions in relation to authorisation and exemptions that may provide guidance in relation to vertical restraint. This response should be read in	No further action beyond that already indicated for 2.23 above.

			conjunction with the response made in relation to the comments at 2.23 above.	
7.3 – 7.4	Excessive pricing	Omantel comments that a) companies can only have power in a market with a small number of participants; and b) the statement "*Competitive prices are prices that would result in a competitive market where prices trend towards long run costs*" is economically incorrect and not meaningful. Omantel therefore believes that para. 76 and 78 of Section 8.4 should be deleted.	a) TRA considers this to be incorrect. In a market of many competitors there may be power if there is significant market concentration. b) TRA has commented earlier on this issue.	No further action
7.5	Overlaps	Omantel comments that when ex ante and ex post policies are present simultaneously, as in the case of the TRA Guidelines, the problem of overlaps arises.	It is not clear whether Omantel is referring to the existence of two sets of Guidelines or their presentation for comment at the same time. In any case the two sets of Guidelines are related at various points even though their purposes differ. TRA disagrees that there is a problem.	No further action
7.6	Consequences of not intervening ex ante on excessive pricing	Omantel comments that the ex-ante Guidelines give TRA the right to intervene ex ante if there is dominance. Omantel argues that if TRA sees no reason to	TRA disagrees and considers that it may wish to forebear from ex ante regualtion for a range of reasons, once being that ex post intervention will be sufficient to	No further action

		intervene ex ante then the given reasons at section 8.4 para 80- of the Guidelines should not be valid and the para should therefore be deleted.	address the concerns about dominance. The Omantel line of argument assumes that non-intervention ex ante is a positive statement about the facts that must exist or not exist. This need not be the case as the example above shows.	
7.6	Past legal monopoly	Omantel comments that the clause referring to past legal monopoly arrangements is nonsensical and should be removed.	TRA has reviewed the clause and considers that it is not required for the analysis of excessive pricing. It will therefore be removed.	Amendment as indicated in the response
7.9	Predatory pricing	Omantel comments that TRA seems to put too much emphasis on the intention of the dominant company to eliminate competitors.	TRA does not agree that there is undue emphasis in this case.	No further action
7.12	Role of recoupment in predatory pricing	Omantel agrees with TRA that it should not be necessary to prove that the dominant operator is able to recoup its losses, but it comments that there should be an assessment of the possibility of re-entry.	Re-entry possibilities will be dependent on the specific market circumstances and may be raised by the parties in the course of a specific case if considered relevant. TRA does not consider it appropriate to include reference in the Guidelines. There are many specific circumstances that the parties may wish to raise or may be appropriate for TRA to consider that are inappropriate to a general Guideline.	No further action

7.13 – 7.15	Specific telecom factors	Omantel comments that more specific telecom sector factors affecting predatory pricing such as switching costs, depreciation profiles and the like should be explicitly considered in the Guidelines.	TRA agrees that there are some matters that are telecom specific and which can be included for guidance at this stage, even though full consideration will need to be case-specific.	Amendment as indicated in the response.
7.10 – 7.18	Pricing and costing issues	Omantel comments that the Guidelines should answer specific questions about how certain issues are treated in a pricing analysis for predatory pricing. A number of specific issues are listed in 7.18.	There are many specific circumstances that the parties may wish to raise or may be appropriate for TRA to consider that are inappropriate to a general Guideline.	No further action
7.22	Margin squeeze methodology	Omantel comments that because of the uncertainty inherent in margin squeeze assessment the method chosen should be the one least favourable to the claimant (and therefore most favourable to the operator whose behaviour is being scrutinised for predatory pricing).	TRA considers that it is important to have a sensible rule rather than a bias in favour of one party or another – if there is a claimant and a defendant. TRA will clarify its approach in the guideline along the lines in the EC Guidelines which state that "the Commission will generally … determine the costs of an equally efficient operator as the LRAIC of the downstream division of the integrated dominant undertaking" but "in some cases it is possible to use the LRAIC of a non-integrated downstream competitor when it is not possible to allocate the dominant undertaking's costs to downstream and upstream operations."	Amendment as indicated in the response.

7.23	Business plans and strategies documents	Omantel comments that business plans and strategies documents should not be used in an assessment as these are often over-optimistic.	TRA agrees that some business plans and related documents might be optimistic, however that goes to interpretation, not to whether the documents might not be used in the first place to assist in the case.	No further action
7.24	Cost standards	Omantel comments that cost standards are mentioned without giving detail on when each would be employed.	TRA agrees with the view that the Guidelines might benefit from a further description of costs standards and their potential use in the analysis, and will examine the potential for further guidance	Amendment as indicated in the response
7.25	Amortisation of costs	Omantel comments that customer acquisition costs should be amortised over the lifetime of the customer (meaning the account life) and not taken into account fully when they occur.	TRA sees no value in being prescriptive to this extent before the event and before consideration of actual cases, other than to note that appropriate cost treatment and standards will be applied.	No further action
7.27 ff	Ex ante or ex post	Omantel comments on the terms and coverage of the Reference Access Offer and takes the view that margin squeeze test should only be used ex-post rather than ex-ante.	TRA notes that the RAO, and any discussion on the appropriateness on ex ante margin squeeze, is a separate and on-going matter that will not be advanced by being discussed in the current context.	No further action

7.35	Bundling and tying	Omantel comments that paras 85 and 86 of Section 8.5 provide two different sets of conditions that have to be met to find that the bundling practice is abusive, and requests clarification.	TRA has addressed the two points more extensively in Annex 6 of the Guidelines	No further action
7.36	Price discrimination	Omantel comments that the Guidelines do not link price discrimination with bundling and should do so.	TRA considers that price discrimination may occur in various contexts, one of which is bundling. A link of this kind will be made.	Amendment as indicated in the response
7.39	Refusal to supply	Omantel comments that refusal to supply does not appear in the Guidelines as an abusive practice, other than perhaps as a vertical restraint. Omantel considers that it should be separately included in its own right.	The list of anti-competitive behaviours is not necessarily complete and it is important to recognise that. It is not intended to include refusal to supply beyond the extent to which it has been recognised. Refusal to supply is an important risk of dominance that may well be better considered amongst ex ante remedies for dominance.	No further action
7.40	Unduly long term contracts	Omantel comments that Annex 8 covers unduly long term contracts which are not mentioned in the Draft decision or the Guidelines previously. Omantel suggests not including unduly long term contracts as a separate issue.	Unduly long term contracts is an important issue especially in Oman where the size of the market may well exacerbate the overall impact of such behaviour. It is TRA's intention to highlight the matter in the Guidelines. However, in light of Omantel's comment, the reference will be linked with other categories of potentially anti-competitive behaviour, such as tying. A	Amendment as indicated in the response

			reference will also be made in the Decision document to unduly long term contracts.	

B. Comments from Nawras

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
1.3 (1st dot)	Compliance with ex ante regulation as a defence	Nawras recommends that the TRA should clarify the specific circumstances in which compliance with ex ante regulation will clear a licensee from liability under ex post competition laws.	TRA disagrees with this comment beyond the guidance already included in the Guidelines. The Guidelines make it clear that a defence would exist if the ex post behaviour resulted from strict compliance with an ex ante regulatory obligation and if there was no discretion with the operator to comply in a manner that would have avoided anti-competitive behaviour. It is not practical in the Guidelines to set out all of the possibilities that might amount to defences. Indeed, such an approach would be inappropriate when the aim of the ex post Guidelines is not to encourage ways of avoiding regulations but to concentrate on compliance.	No further action
1.3 (2nd dot)	Margin squeeze application	Nawras recommends that if the TRA does not consider that it has sufficient expertise or resourcing to undertake a rigorous margin squeeze analysis, it should build up these capabilities over time and the prohibition against margin squeezes should only be applied once such capabilities are sufficiently developed.	TRA will seek to develop its capabilities over time in various ways. Nawras recognises that margin squeeze cases may be complex and difficult. However if TRA deferred all action on margin squeeze cases until it felt that they were neither complex nor difficult, it would not be fulfilling its duties under the Act.	No further action
1.3	Equally Efficient	Nawras recommends that the TRA should	See responses to later comments	No further action at

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
(3rd dot)	Operator test	only utilise the "Equally Efficient Operator" test in its consideration of margin squeeze cases.		this point
1.3 (4th dot)	Self-assessment	Nawras recommends that the TRA should consider developing comprehensive rules or guidelines that allow licensees to self-assess whether their proposed pricing is likely to result in a margin squeeze.	TRA considers that one of the main purposes of the guidelines is to enable service providers to undertake some form of self-assessment before adopting prices. However, the TRA also considers that considerable self-assessment should be possible with the current Guidelines. TRA will keep the Guidelines under review and examine in the light of experience the potential for further guidance to be included.	No further action at this stage
1.3 (5th dot)	LRIC standards for margin squeeze	Nawras recommends that the TRA should use long run incremental cost (LRIC) as the appropriate costs standard for assessing a margin squeeze.	TRA agrees but a fuller response is contained above in response to Omantel's item 7.22	No further action than already indicated above
1.3 (6th dot)	Bundling and tying being pro-competitive	Nawras recommends that the TRA should recognise that bundling and tying is typically pro-competitive and should provide further guidance on the types of activities that are likely to be seen as anti-competitive, as well as the criteria that needs to be satisfied before an abuse of dominant position can be established.	TRA will review the Guideline to ensure that it adequately recognises that bundling and tying might have pro-competitive effects. However, it is not appropriate to attempt to outline all of the circumstances where bundling and tying may be used and assess them in these Guidelines. This issue is addressed further in these responses.	Review of Guidelines as indicated

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
1.3 (7th dot)	Procedural rules and guidelines	Nawras recommends that the TRA should develop procedural rules or guidelines that govern how it deals with disputes on ex ante regulation and ex post competition matters.	TRA will separately consider rules relating to procedures of the kind that Nawras refers to. Guidance on Dispute Resolution has already been provided by TRA.	No further action in relation to these Guidelines
3.1	Relationship of ex ante and ex post rules	Nawras comments that it would be useful for the TRA to provide a higher level of practical guidance to identify the circumstances in which compliance with ex ante price controls would relieve a licensee against a margin squeeze or predatory pricing allegation.	TRA considers that the level of guidance already given is sufficient – namely that if the service provider strictly complies with the ex-ante regulation and has no further discretion that would enable avoidance of margin squeeze or predatory pricing, then there is a defence. TRA seeks to encourage compliance not to seek ways of encouraging avoidance of the prohibitions on anti-competitive behaviour.	No further action
3.1 (at p.17)	Relationship of ex ante and ex post rules	Nawras comments that it would be worthwhile for the TRA to clarify the types of ex ante obligations that the TRA considers: - would require the regulated firm to behave in an exact manner - would result in the regulated firm having discretion to determine its	The TRA accepts that it is desirable for licensees to be able to obtain (persuasive but non-binding) advice from the TRA on activity that might be considered anti-competitive, and also to obtain individual exemptions from the Rules in case of an Agreement which contributes to improving production or distribution or promoting technical or	No further action in the documents under consideration, but elsewhere as noted.

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		pricing practices	economic progress, while allowing consumers a fair share of the resulting benefit and which does not unnecessary restrictions or allow the possibility of eliminating competition. Agreements of minor importance should also be exempt. The TRA will provide for these matters in separate Rules on clearances, enforcement and sanctions.	
3.1 (at p. 17)	Obtaining appropriate permissions	Nawras comments about the desirability of clarifying the liability position in circumstances where a regulated firm has a discretion to determine its pricing practices and seeks to change its pricing by obtaining appropriate permissions from the TRA, and where the TRA either: - approves such a request, resulting in the licensee implementing the price change that results in a margin squeeze allegation; or - alternatively, fails to respond to the regulated firm's request within a reasonable time and the licensee decides to implement a price change (assuming it has the flexibility to do so based on the applicable remedies	As already indicated in this response report, TRA will establish an authorisation arrangement in the Decision and provide additional guidance in the Guidelines. Details on the procedure that the TRA may adopt will be considered in a separate and more appropriate regulation. In the first of the two situations outlined by Nawras the existence of an authorisation obviously is a relevant factor if, within the terms of the authorisation, behaviour that is otherwise anti-competitive is alleged. If an authorisation (or permission) is not granted and the applicant proceeds to implement a price change or other	No further action (at this stage)

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		for that market)	behaviour covered by the application, the applicant clearly does so at its own risk. This result seems so clear-cut as to not require any guidance. However the point will be borne in mind when procedural rules are being prepared.	
3.2 (at p. 18)	Margin squeeze test	Nawras comments that there should be a single test for measuring margin squeeze and that it should be the 'Equally Efficient Operator' test, rather than the 'Reasonably Efficient Operator' test – both of which are mentioned in the Guidelines.	TRA has reviewed the discussion in the Guidelines to make its preferred test more apparent.	Review as indicated in the response
3.3	Cost standards for margin squeeze	Nawras notes that TRA has said that it would use of the lower of avoidable and incremental cost in margin squeeze, and recommends that TRA should align with the EC approach and adopt the LRIC standard.	TRA will ensure clearer guidance on this point – see response to Omantel's item 7.22 above	Amendment as already indicated
3.4	Bundling and tying	Nawras comments that the positive pro-competitive impacts of tying and bundling need to be recognised.	This point has been addressed above in response to Nawras' point 1.3	As already noted.
3.4	Prohibition on bundling and tying	Nawras comments that a general prohibition against bundling would be contrary to the interests of consumers, as they deprive customers of the convenience of purchasing	TRA agrees, and is not proposing such a general prohibition.	No further action other than above

Paragraph Reference	Subject-matter	Comment or suggestion	TRA response	Proposed action
		products together and force them to acquire the selected products individually, usually at higher prices.		
3.4 (at p.22)	Where bundles and tying are problematic	Nawras comments that it would be useful if the TRA provided further details about examples of tying and bundling conduct and whether those examples would be viewed as problematic by the TRA from a competition law perspective, and suggests some EC approaches as useful.	TRA has further reviewed and revised the Guidelines in the light of the EC approach.	Amended as indicated in the response
3.5	Ex post procedural issues	Nawras comments that the success of the ex post framework is likely to depend heavily on the manner in which it is implemented and recommends the development of appropriate procedures. Nawras includes details of the some of the rules that might constitute such procedures, including indicative decision making timelines for TRA in ex post cases.	TRA recognises the point of the comment and is in the process of preparing a separate procedural guideline that will cover the issues raised.	No further action here