

**Decision No. 70/2013 regarding
Ex-Post Regulations (Anti-Competitive Behavior)**

Pursuant to the Telecommunications Regulatory Act issued by the Royal Decree No. 30/2002 and;

The Executive Regulation of the Telecommunications Regulatory Act issued by Decision No. 144/2008 and;

The approval of the Authority's Board of Directors at its meeting No. 3/2012 dated 6/5/2012 and;

The approval of the Minister of Transport and Communications vide his letter No. MoTC/1/22/1220 dated 24/9/2012 and;

Based on the exigencies of the public interest;

It is resolved:

Article 1: The following regulations shall be applicable with respect to ex-post regulations (anti-competitive behavior).

Article 2: This Decision shall be published in the official Gazette and shall be operative from the day following its date of publication.

Issued on: 23 Ramadhan 1434 H
Corresponding to: 1.8.2013

Signed/ -

Mohammed Bin Hamad Al-Rumhi
Chairman, Board of Directors

Ex-Post Regulations (Anti-Competitive Behavior)

Article (1): Anti- Competitive Agreement & Practices

Without prejudice to the provisions of the Telecommunications Regulatory Act and its Executive Regulation, the following agreements and practices shall be regarded as anti-competitive:

1. **Agreement with directly or indirectly fix purchase or selling prices** or any other trading conditions (otherwise Known as ‘price fixing’, and includes the practice known as ‘resale price maintenance’.
2. **Agreement which limit or control competition in markets**, technical development or investment (otherwise known as collusion or collusive agreements);
3. **Agreements which divide or allocate markets or sources of supply** (otherwise known as ‘market fixing’ or orderly marketing’);
4. **Agreement which require a customer to accept more service than it wishes to take** (otherwise known as full-line forcing agreements) including agreements that run for unduly long periods;
5. **Agreement which apply dissimilar conditions or equivalent transactions** with other trading parties, thereby placing one or more of them at a competitive disadvantage (otherwise known as ‘discriminatory practices’);
6. **Agreements which make the conclusion of contracts** subject to acceptance of a condition or an obligation which has no connection with the subject of such contracts (otherwise known as ‘second line forcing’ and / or ‘third line forcing’).
7. Practices which constitute an abuse of a dominant position.
8. Any other practices, agreements or missions to act that may prevent or restrict competition in the market.

Article (2):

The Authority may, at its own discretion, or based on a request from the concerned party, exempt any agreement or practice from the provisions of agreements and anti-competitive practices stipulated in Article (1) of these Regulations, or in the Executive Regulation of the Telecommunications Regulatory Act if the Authority considers that such agreements and practices:

- a. Will make a positive contribution to markets that will outweigh its anti-competitive effects.
- b. Are of minor importance to be subject to the provisions of Article (2) of these Regulations or the other decisions issued by the Authority.

Article (3):

1. The Authority shall monitor conduct that could prevent or restrict competition in relation to any commercial activity connected to telecommunications, including abuse of a dominant position, entering into anti-competitive agreements and supplying facilities that enable anti-competitive behaviour.
2. The Authority shall take the necessary legal measures to protect competition and ensure a sustainable competitive market.

Article (4): Complaints & Dispute

1. The Authority may, at its own initiative, or based on a complaint by a concerned party, initiate an investigation as to whether, any actions or activities of a Licensee could prevent or restrict competition in relation to telecommunications, including abuse of a dominant position, entering into an anti-competitive agreement or supplying facilities.
2. Without prejudice to the provisions of these regulations, the Authority shall resolve all disputes regarding Anti-competitive behavior in accordance with the provisions of the Dispute Resolution Regulation stipulated in the TRA Decision No 44/2010.

Article 5: Guidelines & Publication

1. The Authority shall issue, and from time to time update, guidelines setting out the principles it will adopt when considering what constitutes conduct that could prevent or restrict competition.
2. The Authority shall publish on its website the guidelines it issues in accordance with the provisions of these Regulations.

Article 6: Penalties

Without prejudice to its right to inflict of the penalties set out in the Telecommunication Regulatory Act, its Executive Regulation and the Decisions issued in implementation thereof, the Authority may, in the event of a breach by the licensee of the provisions of these Regulations, take any of the following measures:

- A. Request that the Service Provider which is in breach and the persons affected by such actions or activities meet to attempt to determine remedies to prevent or eliminate continuation of the same;
- B. Require the Service Provider which is in breach to publish an acknowledgement and apology for such actions, activities or practices in one or more newspapers of wide circulation, in such a form and at such times as the Authority specifies in the decisions;
- C. Require the Service Provider which is in breach to provide periodic reports to the Authority to assist in determining whether the actions or activities are continuing and to determine their impact on telecommunications markets, competitors and users.