

Executive summary

Ooredoo Oman appreciates the opportunity that the Telecommunications Regulatory Authority (TRA) has given it to respond to the consultation on Accounting Separation Regulation and Guidelines.

After reviewing the consultation documents provided by the TRA, Ooredoo Oman is pleased to submit its detailed response for which we provide an executive summary in this section. Please note that we have tried to include responses related to both the AS Regulations and AS Guidelines consultations in this first response. However we have not been able to review all aspects of the AS Guidelines consultation and therefore we may submit a more complete response in time for the second deadline.

Ooredoo Oman considers that accounting separation, and in particular the form of accounting separation that the TRA has prescribed, is a disproportionate remedy to address the regulatory and competition issues in the Omani telecommunications market.

When the TRA carried out its market assessment in 2012, it used partial data from 2011. In these four years the competitive landscape of Omani telecommunications market has changed significantly; there has been sizeable growth of MVNOs using the networks of incumbent operators and the increased rollout of fixed access infrastructure by Ooredoo Oman.

The TRA is therefore proposing to impose an onerous and disproportionate remedy based on competition assessment findings which are out of date. We consider it essential that the TRA revisits its market assessment, taking into account the changes in the market, before requiring Ooredoo Oman to implement such a disproportionate remedy.

Even based on the findings of the 2012 market assessment, the potential competition issues arising from the perceived dominance or joint dominance of Ooredoo Oman did not warrant a remedy as disproportionate as the one the TRA is proposing.

It is worth noting that there is little international precedent for the prescription of accounting separation as a remedy for mobile operators or for smaller fixed operators whose network overlaps with that of the incumbent.

Not only is accounting separation generally being perceived as a burdensome remedy but the TRA has proposed a particularly onerous and disproportionate form of accounting separation, which is likely to create costs which far outweigh any potential benefits. In some cases the requirements will make implementation unfeasible. Specifically:

- The TRA has reserved itself the right to request separated accounts for all services, including markets where Ooredoo Oman does not have SMP;
- It has formulated CCA and LRIC methodologies for all services without assessing the real need and benefit of using these methodologies compared to the costs of implementing them;

- It has reserved itself the right to publish the accounts, disregarding confidentiality issues or potentially unintended consequences;
- It has set out an unrealistic timetable for the presentation of the accounts;
- It sets a level of granularity which makes the accounts difficult to prepare and may lead to qualified audits; and
- The TRA has stated that it wishes to develop a market for wholesale access and sees accounting separation as a transitory remedy to facilitate this. Given the significant implementation costs of accounting separation, it is disproportionate to request it as a transitory measure.

Therefore Ooredoo Oman considers that the TRA should consider carrying out an updated market assessment that better reflects the current conditions of the Omani market.

Notwithstanding this, Ooredoo Oman believes that the TRA should re-assess the implementation of accounting separation as an adequate remedy to meet its objectives. If the TRA still concludes that accounting separation is warranted, it should prescribe a form of the remedy which is proportionate to the market failure it is trying to address, feasible to implement and that does not impose an unreasonable burden on operators and the sector as a whole.

1. Introduction

1.1. The legal basis for requiring accounting separation

In August 2013 the TRA issued decision 74/2013 regarding Market Definition, Dominant Licensee and Remedies. In this document the TRA set out its decision on the relevant markets in the telecommunications sector in Oman, the dominant operator(s) in each market and the remedies prescribed for each market where Significant Market Power (SMP) was found.

In the case of Ooredoo Oman, it was found to be jointly dominant with Omantel in the following markets:

- Market 4: retail broadband internet access from a fixed location
- Market 6: retail mobile services market
- Market 13: Wholesale broadband access at a fixed location
- Market 15: Wholesale trunk segments of leased lines
- Market 16: Wholesale IP international bandwidth capacity
- Market 18: Wholesale access and call origination on public mobile telephone networks
- Market 20: Wholesale transit

In addition, Ooredoo Oman has been found singly dominant for the following markets:

- Market 11: Wholesale voice call termination on individual public telephone networks provided at a fixed location
- Market 17: Wholesale voice call termination on individual mobile networks

For all these markets the TRA prescribed, among other remedies, accounting separation.

In February 2015 the TRA issued the Accounting Separation Regulation and the Accounting Separation Guidelines for consultation.

While Ooredoo Oman does not agree with the joint dominance designation, it is pleased to respond to the consultation being carried out by the TRA in response to the accounting separation regulation and guidelines.

Ooredoo Oman considers that there is evidence which contradicts the finding of joint dominance, namely the continued rollout of competing infrastructure and the increased market share by MVNOs due to increased wholesale access. In addition, there is little evidence of collusion in these markets, thereby the risk of abuse of dominance is small. With this in mind, accounting separation is a very harsh remedy to address a small risk.

It should also be noted that Article 7 of Decision 69/2012 only allows to the TRA to impose accounting separation by way of a justified decision in line with the regulatory objective to develop competition and in a manner proportionate with the size of the potential harm.

Decision 74/2013 gave no such justification. Now that the detail of the proposed accounting separation remedy has been explained in this consultation, it can be seen that the accounting separation is disproportionate because it is not a well-focused remedy for joint dominance issues, or for single firm dominance, it is unclear how the results of the accounting separation will be used.

Not only is accounting separation not a well-focused remedy for dominance issues but the specific requirements by the TRA are disproportionate and, in some cases, are likely to act as an obstacle to implementation.

1.2. The Omani context

The following section provides a brief overview of the Omani telecommunications market. It is not intended to act as a detailed review of the Omani telecommunications market but simply to provide some context as to the market where the TRA intends to implement accounting separation remedies. Specifically, it discusses the size of the telecommunications market in Oman as well as the evolution of competition in the mobile and fixed parts of the market.

1.2.1. Demographics

Oman has a relatively small population with approximately 3.2 million inhabitants spread over an area of 212,240 km, making it one of the least densely populated in the world. Nonetheless, approximately 60% of the population resides in the 10 largest urban centres in the country.

The relatively small size of the addressable market means that any potential regulation which is likely to create a cost should be implemented with a clear idea of the costs and benefits related to it. For example, in the case of accounting separation, the costs are generally fixed and are not proportional to size. The costs of implementation would therefore have to be absorbed by a small subscriber base.

1.2.2. Mobile market

In spite of having only two mobile operators, the mobile market in Oman is highly competitive. It is one of the most highly penetrated markets in the region with a total penetration of 188%¹ (December 2014).

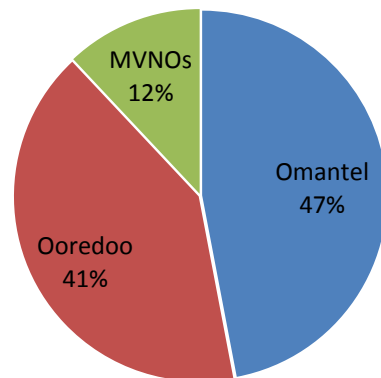
In addition to the two mobile network providers, there are several Mobile Virtual Network Operators (MVNO's) that operate or have operated using both Omantel and Ooredoo Oman's infrastructure. Specifically, three continue to have significant influence in the market – Friendi, Renna and Samatel (the latter also having a healthy international gateway business).

Since the provision of telecommunications licenses to MVNOs in 2008, these have been able to capture a sizeable part of the market as the following chart shows²:

¹ Source: Telegeography

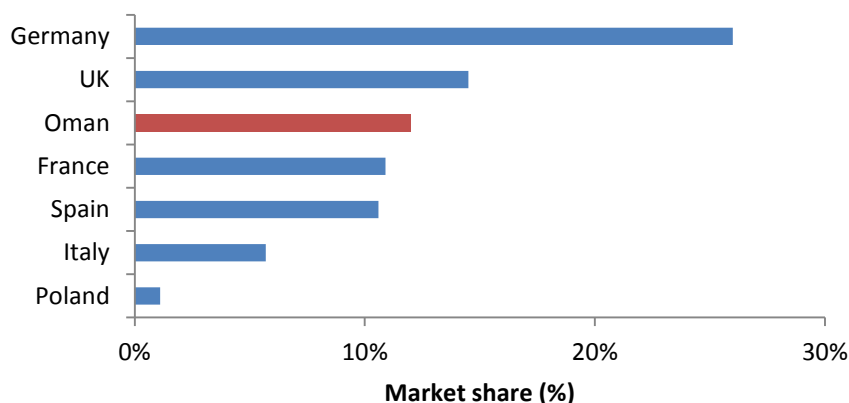
² Source: TRA

Chart 1. Subscriber market share



Furthermore, in 2014 MVNOs increased their share of the market from 10.1% to 12%. This level of MVNO penetration compares well with that achieved in other countries where MVNOs have been allowed to operate as the following chart shows³:

Chart 2: MVNO penetration rates by subscribers⁴



1.2.3. Fixed market

Despite its low population density Oman has achieved a high degree of fixed penetration (excluding fixed-wireless) with 93.27% household penetration achieved in December 2014⁵.

³ Source Piran Partners MVNO Observatory 2014

http://www2.piranpartners.com/index.php?option=com_joomdoc&task=cat_view&gid=35&Itemid=

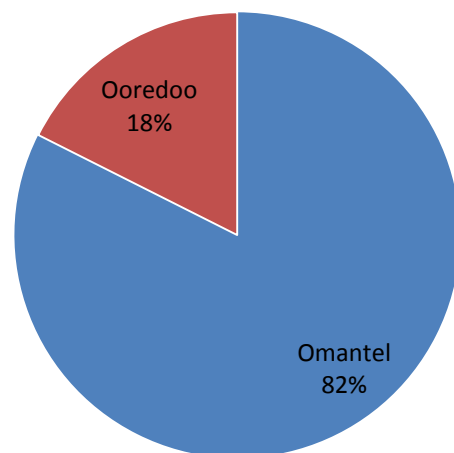
⁴ Germany MVNO share has been adjusted for subscribers contracted with branded resellers like Freenet, Drillisch and United Internet (whose combined contract customer base is 9.7mn in Q1 2014). The UK MVNO market share has also been adjusted for the 1mn contract customers for Giffgaff (which is also a branded reseller).

http://imagepool.drillisch.de/download/2014-10-22_Drillisch-Warburg_Research_en.pdf and

<http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/telecoms/10456091/Budget-mobile-network-giffgaff-hits-1m-mark.html>

While Omantel remains the incumbent operator, Ooredoo Oman has made great strides since 2009 where it started to roll out its own fibre access network. Nonetheless, its market share is still significantly smaller as the following chart shows⁶:

Chart 3: Fixed line market share



With Omantel still having more than 80% of the total retail fixed market, it is clear that it still enjoys a dominant position. Given this, Ooredoo Oman fails to understand how it can be concluded that it shares that dominant position with Omantel when its market share and footprint is much smaller.

1.2.4. Summary

The TRA should give careful consideration to the conditions of the Omani market before imposing an onerous remedy such as accounting separation. Specifically, it should take into account that:

- The Omani market is small and the costs of accounting separation are not proportional to size. These costs will therefore have to be absorbed by a smaller subscriber base as well as investors.
- The Omani mobile market has been competitive and wholesale access has been made readily available to access seekers, especially by Ooredoo Oman.
- In the fixed market Ooredoo Oman has fewer subscribers and a smaller footprint than Omantel and, therefore, cannot be considered to be jointly dominant in the retail and wholesale fixed markets.

1.3. Accounting separation in the context of an outdated market assessment

⁵ Source: TRA

⁶ Source: BMI

When the TRA carried out its market assessment in 2012 it used 2011 data. In its final report it analysed some information from 2012, but did not subject this market information to consultation. As discussed in the previous section, the Omani telecommunications market has changed significantly since then. As a result, the TRA is planning to impose onerous remedies based on findings which may no longer be valid.

It is significant in this respect that the TRA clearly indicated in its 2012 consultation document that the time horizon for its market assessment horizon was 2 years from the adoption of the relevant report. That assessment horizon should properly start from the end of the last year of market data that was assessed, i.e. 2011 in relation to markets that were actually consulted on, or 2012 if market data that was not subject to consultation is relevant, which Ooredoo considers questionable.

The fact that the relevant assessment horizon is now passed, while the TRA is only now consulting on the accounting separation remedy, shows that the introduction of an accounting separation remedy (and indeed other remedies that have not even been consulted on such as market caps) cannot be considered to be of great importance to assuring effective competition in the market, and bearing in mind the very significant cost of accounting separation, strongly supports the conclusion that its introduction is disproportionate.

It should also be noted in this respect that the first set of regulatory accounts that have to be produced under the AS remedy are an FAC HCA basis, and not a LRIC basis. Although those FAC HCA accounts are to be generated within 12 months of the regulation being adopted, practice suggests that in fact it will probably be about 2 years before the first set of HCA FAC accounts will be available, and the second year's LRIC accounts will be even further off. In addition, the TRA appears to consider that where the audit of those accounts are subject to a qualification, their costing information may not be relevant for regulatory purposes. Ooredoo understands that on the basis of the auditing standards indicated by the TRA there is a strong possibility of some qualification to the audit of those accounts for the first two years of regulatory accounts produced. The likelihood is therefore that the accounting separation obligation on Ooredoo will not produce any information that the TRA can rely on for regulatory purposes within the next 3 ½ to 4 years.

These factors also strongly support the view that the TRA must carry out an updated market assessment which not only better reflects the current situation, but also looks properly at the relationship between the likely cost burden compared with the harm addressed, and takes into account the fact that results of AS are not likely to be usable for several years, at which time the market situation may look very different. An updated market assessment will minimise the risk of imposing such onerous remedies as the proposed version of accounting separation on markets where there are no longer competition concerns, or at least not serious enough to warrant such intrusive and burdensome remedies.

1.4. The role of AS

Accounting separation has been formulated as one of the remedies available to regulators to address dominance in telecommunications markets. Accounting separation is, however, not a blanket remedy to be imposed whenever dominance is identified.

The role of Separated Accounts is two-fold, they potentially act as both as an ex-ante remedy for certain competition concerns and as an informational tool for the TRA.

The role of Separated Accounts, as a regulatory remedy can be appropriate but it is most important that:

- the regulator is clear and precise about the nature of the competition problem;
- accounting separation is a suitable and efficient remedy for the identified problem;
- any accounting separation remedy is at the level of the economic market where the competition problem has been identified;
- the remedy is constructed in the least intrusive/burdensome form possible to address the identified competition problem; and
- the expected benefits of the remedy outweigh the costs of the remedy.

The EU framework provides guidance as to the objective of accounting separation. Within the EU, accounting separation is a remedy specifically imposed on an operator in a particular defined relevant market in response to finding of SMP in that market. Its status as such is recognised in the EU framework's enshrinement of accounting separation as one of 5 specific wholesale remedies available to NRAs to impose on SMP operators, where appropriate and proportionate. In other words, accounting separation is not justified, needed or relevant where:

- an operator has SMP in an upstream market, but transparency in relation to its treatment of its retail arm is not a concern; or
- the downstream market is effectively competitive.

Accounting separation is a highly intrusive and costly remedy, requiring significant amounts of internal and external resources. Furthermore, accounting separation generally addresses a narrow type of market failure, namely dominance in wholesale markets providing an essential input to retail operators where additional transparency and monitoring against discrimination is needed (e.g. ensure that there is no margin squeeze or cross-subsidy).

As a result, it would neither be appropriate nor proportionate to require an operator to prepare separated accounts in relation to services other than those in which it has been found to have SMP.

In addition, given the significant costs that building separated accounts entail, there has to be a clear benefit to its implementation, which more than offsets the costs that it creates.

The Omani market is smaller than that of most countries where AS has been implemented. As a result, the significant costs required for implementation and ongoing production of separated accounts will have to be absorbed by a smaller subscriber base. As will be discussed later in this response, the TRA has formulated more onerous AS requirements on Ooredoo Oman than, for example, Ofcom has imposed on BT, a company serving a population of more than 64 million people. It is therefore unlikely that the benefits resulting from the imposition of this remedy would offset the costs.

In addition, Ooredoo Oman considers that the competition issues that the original market assessment identified were not serious enough to warrant a remedy as onerous as accounting separation and certainly not with the requirements that the TRA has set out. Furthermore, the

developments in the Omani telecommunications market since the original market assessment was carried out indicate that these competition concerns are less relevant today.

The TRA has formulated the accounting separation remedy based on the finding of joint dominance for markets 4, 6, 13, 15, 16, 18 and 20. There is scant precedent for regulators finding joint dominance.

In 2003 ComReg attempted to impose joint dominance in the mobile access market in Ireland on Vodafone and O2. In 2005, however, the decision was annulled by the Electronic Communications Appeal Panel (ECAP) because, among others, ComReg failed to establish that prices charged by the two mobile operators were above the competitive price levels and that tacit collusion required a symmetric market share for the involved parties⁷.

There are only a handful of additional cases (e.g. Spain) where joint dominance was found in the mobile market and accounting separation was never required. Furthermore, we are not aware of joint dominance finding in any fixed market.

It is worth remembering that joint dominance would mean that, in the relevant market, Omantel and Ooredoo Oman are able to coordinate their activities independently of the market and to their own benefit. The TRA has failed to explain how, for example, in the fixed access market where it has a much smaller footprint than the incumbent Ooredoo Oman would be able to effectively coordinate with Omantel to its own benefit.

The TRA has proposed remedies on both the mobile and fixed businesses of Ooredoo Oman. We now discuss the issues related to accounting separation in mobile and fixed separately.

1.4.1. Accounting separation on Ooredoo Oman's fixed network

Ooredoo Oman's fixed wireless network was rolled out in 2010 and their fixed fibre access network started being rolled out only in 2011, with 64,000 fixed subscribers in total compared to over 300,000 subscribers for Omantel.

There is little evidence of joint dominance being found when there are competing infrastructures, much less when the incumbent has a footprint larger than the nascent operator. Lack of joint dominance in overlapping networks is not uncommon as, for example, many European countries have incumbent fixed networks, which partially overlap much smaller cable networks. Where these networks overlap there has not been any finding of joint dominance or led to a qualified finding of dominance for the incumbent.

A good example of this is the UK where BT and KCOM have been found dominant⁸ despite Virgin Media having its own access network which overlaps the incumbents' networks. Ofcom has not

⁷ See http://www.compecon.ie/attachments/File/Compecon_Newsletter__6.pdf

⁸ KCOM is dominant in the Hull area and BT is dominant everywhere but Hull. It is worth noting that this is not a finding of joint dominance but of dominance on different markets. KCOM and BT provide services in different geographical markets, therefore each is singly dominant in its own market.

found BT/KCom to be jointly dominant with Virgin. Specifically, in its 2012 review⁹, Ofcom stated that “(...) while we acknowledge that Virgin is considering expanding its network footprint (as discussed above), we consider it unlikely that this will significantly reduce BT’s market share in this review period. We therefore consider it likely that BT’s market share will still be greater than 50% by the end of this review period.” Ofcom therefore concluded that BT/KCOM continued to be dominant while Virgin Media was not dominant or jointly dominant.

Ooredoo Oman is in a similar circumstance, with a footprint that is much smaller than that of Omantel and, therefore, dominance concerns must be strictly limited. It is worth noting that joint dominance assumes that the jointly dominant operators can coordinate their activities in order to act independently of the market. Where Ooredoo Oman does not have a network it cannot coordinate any activities and even where the networks overlap there is no evidence of coordination or collusion.

Accounting separation is generally imposed on operators which have SMP in an upstream market which provides an essential input to downstream competitors and where additional transparency is therefore needed. Ooredoo Oman understands why, for example, Omantel, which is the sole operator with a nation-wide footprint, may require such a remedy. For example, in areas where Omantel is the sole wholesale access provider additional transparency between its retail and wholesale offerings may be required to ensure that there is, for instance, no margin squeeze.

Even though the TRA may still want both operators to provide wholesale access where there is overlapping infrastructure, there is no need for such onerous transparency requirements on both operators, much less one as burdensome as the form of accounting separation that the TRA has prescribed.

Ooredoo Oman therefore considers that the highly intrusive form of accounting separation the TRA has prescribed on its fixed business that is unwarranted.

Further, it should be taken into account in any assessment of this market that the Oman Broadband Company is about to launch. That is a government run and owned asset that will be able to wholesale to any potential new entrant and which already has very developed fixed assets. This reality needs to be reflected in the underlying market assessment before any onerous requirements are placed on Ooredoo Oman. The application in this context is very questionable.

1.4.2. Accounting separation on Ooredoo Oman’s mobile network

Across the world it is uncommon for regulators to impose accounting separation remedies on mobile operators. The fact that there are generally multiple mobile operators covering the same territory means that no one single operator is likely to be in control of an essential input for its downstream competitors (e.g. wholesale origination access).

While regulators around the world have encouraged Mobile Virtual Network Operators (MVNOs), which do not own their own network, they have done it through instruments other than imposing accounting separation on mobile operators. Generally, the availability of more than one network is

⁹ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/fixed-access-market-reviews-2014/statement-june-2014/volume1.pdf>

sufficient for potential access seekers to be able to negotiate a favourable deal with access providers.

There is no indication of there being any access issues to wholesale mobile infrastructure in Oman as both Omantel and Ooredoo Oman have provided access to several MVNOs, which, in turn, have been able to capture more than 12% of the retail market.

While the TRA's intention may have been to facilitate and effectively monitor the development of this market, it has decided to impose a very onerous form of accounting separation which is likely to yield very limited benefits, if any, and will come at a significant cost to the industry.

Ooredoo Oman therefore considers that there is no justification for the formulation of accounting separation as a remedy for mobile markets.

1.4.3. Summary

We consider that the potential competition issues pertaining to Ooredoo Oman that the 2012 market assessment identified does not warrant particularly onerous remedies. The recent developments in the Omani market have confirmed that a functioning wholesale access market can develop without the need for heavy-handed regulatory intervention.

However, not only has the TRA decided to push ahead with its implementation of a particularly burdensome remedy but it has prescribed a very onerous version of accounting separation, one which is disproportionate to the potential competition issue.

Ooredoo Oman is particularly concerned about the costs that the prescribed accounting separation remedy would entail and whether these will be offset by the limited benefits that it is likely to bring.

In small markets there is a real and present danger that remedies injudiciously applied may end up imposing net costs, instead of benefits on consumers. This is because the costs of compliance with Separated Accounts regulation do not scale with size and in a small jurisdiction can outweigh the benefits flowing from the regulation. This is particularly the case with a move to a fairly presents audit opinion as this places significant additional burdens on an operator, as will be discussed in detail in section 6.

Therefore, while Ooredoo Oman understands and agrees with the TRA's objective of creating an access framework which allows new operators to effectively compete at the retail level, the blanket formulation of an onerous form of accounting separation as a remedy is likely to result in significant costs for the industry with little in the way of benefits to show for it.

The TRA should therefore ensure that the remedies that it is prescribing are proportional to the competition concern it is trying to address. Even if the TRA decides that accounting separation is the correct remedy, it should prescribe a less onerous form of accounting separation which is also commensurate with the competition issue being addressed.

In addition, the TRA should consider carrying out a new market assessment in order to ensure that the remedies being imposed are appropriate for the current Omani telecommunications market.

2. Proportionality in the context of accounting separation

A key principle of regulation is that remedies should be proportionate, meaning that they are no more interventionist than necessary in order to achieve the specified objectives. In order to ensure proportionality, there should be a consideration of alternative remedies, and demonstrate that the least burdensome effective remedy is selected.

In the case of Oman, the accounting separation remedy that has been formulated is not proportional with the market failure it tries to address. Not only is accounting separation a disproportionate remedy for the markets where Ooredoo Oman has been found dominant or jointly dominant but the TRA has chosen to formulate it in an unusually onerous form. Specifically:

- The TRA has reserved itself the right to request separated accounts for all services, including markets where Ooredoo Oman does not have SMP;
- It has formulated CCA and LRIC methodologies for all services without assessing the real need and benefit of using these methodologies compared to the costs of implementing them;
- It has reserved itself the right to publish the accounts, disregarding confidentiality issues or potentially unintended consequences;
- It has placed unnecessarily stringent audit requirements, including the requirement for fairly presented accounts, which entail a significantly higher cost and effort than properly prepared accounts;
- It has set out an unrealistic timetable for the presentation of the accounts;
- It sets a level of granularity which makes the accounts difficult to prepare and may lead to qualified audits;
- The TRA wishes to develop a market for wholesale access and sees accounting separation as a transitory remedy to facilitate this. Given the significant implementation costs of accounting separation, it is disproportionate to request it as a transitory measure; and
- It has required a very detailed level of documentation.

Ooredoo Oman will discuss each of these issues in detail in the subsequent sections.

3. Application to markets without SMP

Paragraph 3.7 of the Accounting Separation regulation states:

“The Authority may require the Dominant Licensee, in order to investigate any possible anti-competitive conduct by that Dominant Licensee, to submit in the given timeframe:

(i) any accounting information, including Separated Regulatory Accounts, for any Relevant Market and Individual Service in which that Dominant Licensee is operational but has not been declared by the Authority to have a dominant position;”

By definition separated accounts would only be prepared for the services where SMP was identified and this remedy was prescribed. Requesting separated accounts for markets for which it has not prescribed them would be akin to implementing remedies without a market assessment and in markets without SMP.

Furthermore, there is a contradiction in this requirement as it is aimed at investigating *“any possible anti-competitive conduct by that Dominant Licensee”*. Dominant operators only exist in the relevant markets where SMP was found. In other words, the behaviour of *dominant* operators in markets without SMP cannot be assessed because these operators do not exist in the first place.

Ooredoo Oman would like to clarify that the TRA is entitled to request **cost accounting** information as parts of its duties, including ex-post competition analysis. On the other hand, separated accounts can only be requested for markets where SMP has been identified and it has been prescribed as a remedy.

4. Costing methodologies

The TRA has imposed disproportionate costing requirements on Ooredoo Oman. The TRA has effectively formulated all possible costing methodologies for all services in markets where accounting separation was prescribed without regard for the cost or suitability. Furthermore, the proposed implementation of LRIC would go against the underlying principle of full cost recovery.

Specifically, the TRA has required all accounts to be presented using CCA and HCA and also two versions of LRIC costing. Ooredoo Oman sets out its view on CCA and TD-LRIC in the following sections:

4.1. CCA

The TRA has proposed that a set of accounts has to be submitted using CCA. In its guidelines it has outlined the revaluation methodology for all assets.

The objective of CCA is to reflect the market price of the assets at present rather than the accounting value. This is particularly useful for networks where assets have been in place for a long time and the accounting values are likely to differ significantly from accounting values.

For example, in Europe CCA has generally been used for incumbent networks where many of the assets continue to be used well beyond the end of their accounting lives. By using CCA it is possible to have a better understanding of the *current* value of the network than would be obtained by reviewing historical accounting values.

With this in mind it is unclear why there is a need for Ooredoo Oman to submit its accounts using CCA given that its network is new and, therefore, its accounting information reflects the *current* value of the network.

It is worth mentioning that Ooredoo Oman's mobile network started being deployed in 2005 while the initial rollout of fixed access network was in 2009, with additional deployment taking place for both networks – i.e. more coverage for fixed and 3G/LTE for mobile. Given the age of these networks the accounting values are expected to be close to the values that would be obtained using CCA.

Preparing CCA accounts requires a significant additional effort and costs and there should be a clear justification for the implementation of CCA. The TRA therefore needs to make clear what it intends to use CCA accounts for. If the purpose is to use them in the process of regulatory price setting, this requirement is likely to be met through the bottom up models being built at the moment as per the 2015 consultation on BULRIC models for mobile and fixed networks.

If the TRA decides that requiring CCA accounts is still required, it should be mindful that the CCA requirement should be proportionate. As a result, it should opt for a less onerous method to produce these accounts, namely use indexing for the revaluation of the assets, which will greatly reduce the effort required while not materially compromising the accuracy and reliability of the results.

4.2. TD-LRIC

4.2.1. Limited basis for onerous LRIC requirement

In addition to the two sets of FAC Separated Accounts (on an HCA and CCA basis), the TRA is imposing a requirement on Ooredoo Oman to prepare two further sets of Separated Accounts, on a TD LRIC cost basis. This leads to four sets of accounts, which is without precedent.

To justify the inclusion of these LRIC accounts, the TRA states in the AS guidelines that:

“LRIC is often considered to be the ideal methodology to adopt in setting regulated prices at economic cost. From an economic perspective it delivers the best approximation of what an efficient licensee's costs should be since it shows the actual resource cost in providing an additional amount of output. This in turn means that LRIC can provide the correct economic signals to the market. As such, LRIC information is an important part of a set of separated regulatory accounts.”

The TRA has used this theoretical argument in favour of LRIC costing to justify extending the Separated Accounts implementation significantly. The TRA has not considered any practical considerations.

Preparing Separated Accounts on a LRIC basis is an extremely onerous requirement. There are some regulators that have imposed this, but many only choose to impose Separated Accounts on an FAC basis. In the UK, whilst there is a LRIC model prepared by BT, this model is unaudited in contrast to the rest of the Separated Accounts. Whereas regulators would typically present the costs and benefits of imposing this onerous requirement, it appears that the TRA has not considered this.

We would expect the TRA to firstly set out how they would use the TD LRIC in the Separated Accounts information to help them make regulatory decisions. This is not immediately clear, particularly as the TRA is also in the process of preparing a Bottom-up LRIC cost model for this very purpose. Given that it will have LRIC information available, it is unclear why it is imposing such an onerous obligation on Ooredoo Oman.

4.2.2. Requirement for two sets of LRIC accounts

The situation is further complicated by the TRA's decision to require Ooredoo Oman to prepare two separate forms of LRIC Separated Accounts. The TRA has said that *“LRIC should be shown based on the two definitions”*, presumably because the TRA could not decide which definition it preferred. This heavy-handed approach will significantly increase the workload of Ooredoo Oman, who will now be required to prepare four sets of Separated Accounts. This consideration, which should be at the forefront of a regulator's mind, has not been considered by the TRA.

Furthermore, requiring more information will not only increase the burden on Ooredoo Oman, it will probably result in reduced usefulness for the TRA. The TRA will receive two sets of LRIC costs, based on the different definitions, in addition to the LRIC costs generated from its own bottom-up model.

In this case, having more is not necessarily better as there will just be resulting confusion from all parties as to what is the appropriate cost to use in pricing and regulatory decisions.

If the TRA continues to require LRIC based accounts, it needs to decide on one specific definition to use, rather than its current approach which will double Ooredoo Oman's workload and create subsequent confusion.

4.3. Summary

Ooredoo Oman believes that the costing requirements that the TRA has proposed are disproportionate, especially with regards to CCA costing and LRIC. Specifically, Ooredoo Oman considers that:

- CCA has little benefit in the case of Ooredoo Oman as both its fixed and mobile networks are relatively new;
- If CCA were to be implemented, revaluation of the assets should be done through indexation;
- The TRA should clarify what the purpose of the TD-LRIC accounts are, given the bottom-up model it is preparing. The TRA should consider whether any theoretical benefits justify the practical concerns;
- The TRA cannot justify requiring Ooredoo Oman to prepare two separate LRIC accounts. Instead it must surely decide on a specific definition of LRIC to employ; and
- The TRA is effectively requiring Ooredoo Oman to produce four sets of accounts without a clear explanation of what they will be used for.

5. Use of AS Costs in interconnection and pricing

The usefulness of the cost model developed for Ooredoo's regulatory accounts under the AS remedy for interconnection and access pricing is unclear:

- the TRA has suggested that where services are cost based it considers that interconnection and access pricing should be symmetrical, unless one operator can demonstrate higher costs . It is entirely disproportionate, therefore to require Ooredoo to produce separated accounts for this purpose, when Omantel is already under an obligation to produce such accounts, and the costing produced by Ooredoo will in all likelihood not be relevant.
- It is clear that the charges for many of the access services that Ooredoo will be required to offer will be based on a retail minus calculation, including MVNO (the TRA having decided not to impose the "Heavy" MVNO model) , national roaming and broadband resale rather than on

6. Publication

The 'Accounting Separation Regulations' consultation, the TRA opens up the possibility that the Separated Accounts may be published:

*"The Authority may, at its discretion, publish or require the Dominant Licensee to publish Accounting Separation Methodology Document, Separated Regulatory Accounts and Accounting Documents that have been submitted to the Authority in compliance with this Regulation."*¹⁰

However; very little further detail is provided and it is not clear whether this is something that the TRA is seeking to implement or instead whether it is an option it may only introduce if further concerns are raised. However, Ooredoo Oman has to assume that the TRA is planning to require publication.

There are a few regulators who require the Separated Accounts of operators to be published. The most commonly known examples are in the UK¹¹ and Ireland¹². The reason for requiring publication is to help ensure transparency and allow wholesale access seekers to understand the costs faced by an incumbent. There is certainly merit in these points from a policy perspective.

However, the majority of regulators that require the preparation of separated accounts do not require publication. These NRAs understand the merit of transparency and the benefits that access-seekers will get from understanding the costs faced by the incumbent. However, these benefits are outweighed by the potential costs of publication. The EC Directive which sets out the option for implementing Accounting Separation sets out the risks that may result from publication:

¹⁰ AS Regulation, Paragraph 12.1

¹¹ <http://btplc.com/Thegroup/RegulatoryandPublicaffairs/Financialstatements/2014/index.htm>

¹² <http://www.eircom.net/regulatoryinformation/separated-accounts/>

*“National regulatory authorities may publish such information as would contribute to an open and competitive market, **while respecting national and Community rules on commercial confidentiality**”¹³*

Despite the Directive giving them the opportunity to do so, most NRAs do not require the publication of Separated Accounts because this would lead to breaches of commercial confidentiality:

- In Sweden, separated accounts are not published due to the Swedish confidentiality act since TeliaSonera is still partially a public trade company;
- In Switzerland, there is no publication because the information of the SMP operator has to be treated as strictly confidential;
- In Germany, separated accounts are not published due to confidentiality requirements derived from case-law from the Constitutional Court; and
- In Hungary, separated accounts are not published due to such accounts being regarded as confidential.

We have reviewed the regulatory requirements in ten Middle Eastern countries and have not found any examples of countries where there are requirements to publish accounts¹⁴. In the case of Saudi Arabia, their telecommunication regulator has a conditional stipulation that designated service providers might have to publish their accounting separation methodology for transparency purposes. However, there is no requirement to publish the actual accounts.

The same rationale for not requiring publication of accounts is relevant in Oman. However, given the reason why Ooredoo Oman has been required to prepare Separated Accounts, it is even more relevant. Ooredoo Oman and Omantel have been judged to be jointly dominant in a number of markets. This joint dominance designation, which is unusual as explained above, implies that the TRA considers that *“collusion is an outcome that may be reasonably expected under the circumstances”*. If the TRA does indeed believe that these markets are ripe for collusion between Omantel and Ooredoo Oman, surely the worst thing to require is for each company to publish confidential business information.

The negative collusive consequences of publication have been considered by regulators previously:

*“Another problem with non-discrimination is that together with the transparency obligation it can also facilitate and indeed **encourage tacit collusion among operators**. In markets*

¹³ Article 11 of Directive 2002/19/EC of The European Parliament and of the Council of March 7, 2002 (as amended by Directive 2009/140/EC).

¹⁴ For the following countries, there is no evidence that their respective telecommunication regulation authorities have imposed an obligation to publish their separated accounts:

- Bahrain,
- Egypt,
- Iraq,
- Jordan,
- Kuwait,
- Lebanon,
- Libya,
- Qatar,
- Saudi Arabia and
- United Arab Emirates.

*which meet many or all of the criteria which would indicate the **presence of possible joint dominance, consideration should be given to the extent that such obligations may have adverse consequences**, possibly to the extent that alternative or modified obligations might be considered...*

*...Problems similar to that identified in relation to transparency and non-discrimination also apply in this area regarding co-ordinating effects and the **possible promotion or facilitation of tacit collusion**. The revelation of business processes, efficiencies and indeed strategies to competitors can be mitigated by appropriate control of the information. Therefore the publication of information by NRAs is conditioned in the sense that it has to contribute to an open and competitive market, while national and Community rules on commercial confidentiality are respected.”¹⁵*

We would expect the TRA to consider carefully the potential risks of publication of separated accounts. The current consultation implies that the regulator will be able to keep this option up its sleeve and use it at a time of its choosing, when Ooredoo Oman will get an opportunity to seek to redact a portion of these accounts. Instead we think that this issue is too important to be left hanging. The TRA should setting out its position regarding publication, which should be consistent every year, so that Ooredoo Oman can respond appropriately.

¹⁵ ERG, Remedies Guidance 2006

7. Audit requirements

7.1. Specific Audit requirements in AS Regulations

The AS regulations consultation sets out a number of specific requirements related to the audit which go against best practice for Separated Accounts.

The TRA requires the Auditor to prepare a Compliance Statement to accompany the Audit report. We understand that it is not common practice for auditors to prepare this statement and the information that is being requested here would normally be included in the Audit Report and/or the tripartite meeting. We propose that this superfluous requirement, which would increase the audit fees, is removed.

The TRA completes its section related to the audit in the AS regulations by setting out its expectation regarding a qualified audit opinion:

“The Dominant Licensee shall be deemed to have complied with its obligations in relation to the preparation of the Separated Regulatory Accounts only if the Regulatory Auditor issues an unqualified Audit Report in relation to Separated Regulatory Accounts.

If the Regulatory Auditor issues a qualified Audit Report, the Authority, without prejudice to its powers to impose penalties, may require the Dominant Licensee to prepare a second set of Separated Regulatory Accounts which address the Regulatory Auditor’s identified reasons for qualifying the Separated Regulatory Accounts. Any and all subsequent Separated Regulatory Accounts shall also be audited.”

The TRA’s heavy-handed approach does not reflect the fact that in-fact there may be circumstances where it will not be possible for an operator to get an unqualified audit opinion, through no fault of their own. For example, there may be historic data issues which cannot be rectified for a reasonable cost, or within a given timeframe. In these circumstances, the proportionate solution would be to get a qualified report. We understand from discussions with auditors that they have had to do this when auditing Separated Accounts in other countries. This situation should not mean that the operator has not complied with its obligations.

We think it will be appropriate for the TRA to remove these final two paragraphs to reflect the reality that there may be some instances where, through no fault of the operator, a qualified Audit Report is required.

8. Timetable

The TRA has included an aggressive timetable for the production of the separated accounts and related information. Some of these requirements will not be possible practically, and the TRA needs to reconsider these accordingly.

The first requirement that Ooredoo Oman would face would be to provide the TRA with a complete list of individual services within fifteen days from the issuing of the regulations. Given that the TRA has not yet provided detail of how services will be disaggregated, it will be impossible for Ooredoo Oman to comply with this, without further detail ahead of the regulations being finalised, so that the lists can start being prepared. Considering this is a new exercise for Ooredoo, we believe that 60 working days from the issuing of the regulations would be a more reasonable requirement.

The second requirement that Ooredoo Oman would face would be to present a methodology document within three months from the regulations being issued. Whilst we expect to need to prepare a methodology ahead of preparing the accounts, and the timetable is not unreasonable for this, this methodology should only be an internal document. It will be impossible for Ooredoo Oman to finalise a methodology and present it to the regulator to meet this timetable.

There may be aspects of the methodology that need to be changes at a later stage because of practicalities in the process. There may be aspects of the methodology that the auditor requires us to change as part of the audit process. The TRA has stated that this document should be final but this will not be possible until the end of the audit because the auditor will require changes to the methodology document. We understand that auditors have required aspects of the methodology to be changed right up to the date of submission. For this reason the methodology should only be finalised and presented to the TRA at the same time as the Separated Accounts. It would be inappropriate to finalise this any earlier.

If the TRA is seeking to make changes to the AS methodology, we understand from discussions with auditors that this may have an impact on the opinion that they are able to provide. If the TRA proposes a change to the methodology which the auditor disagrees with, this will prevent it from being able to issue a “fairly presents” opinion. This issue has been considered in recent directions from Ofcom to BT.¹⁶

The third requirement that Ooredoo Oman will face will be to prepare the first set of FAC-HCA separated accounts within twelve months after placing the obligation. These accounts will need to be audited to the “fairly presents” opinion. As explained above, under a fairly presents audit opinion detailed testing is required of all the material data sources which provide information to be used in the production of the Statements. In order to allow for this testing the operator needs to put appropriate systems in place to collect the necessary data. It is not possible to retrospectively collect the data.

This twelve month timetable will not be possible to achieve, given that it means that at least part of the year for the first separated accounts will be prior to the obligations being finalised. Until operators begin the implementation process, they will be unaware of which data sources will be

¹⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/financial-reporting/statement/statement.pdf>

required to support the methodologies chosen. Only at this stage will it be possible to understand whether any remediation is needed for the data sources, and how long it would take. It will therefore be impossible to get a “fairly presents” opinion for a year which incorporates this period prior to the finalised obligations.

The TRA needs to take this into account when determining when a fairly presents opinion is required.

It should be noted that it is common practice not to impose a “fairly presents” audit opinion in the first year of preparing separated accounts for this reason. Indeed when the TRA first imposed this obligation on Omantel, it allowed them to have a properly prepared audit opinion as an interim measure in the first year. It seems contradictory for the TRA to impose a more burdensome obligation, especially when this cannot practically be done.

In our view, the most sensible approach is to have an evolution of the auditing requirements as shown below:

- **First year:** Agreed upon procedures
- **Second year:** Properly prepared opinion
- **Subsequent years:** Assess the practicality of fairly presented and potential time required in order to achieve it.

We understand from discussions with auditors that there are a number of examples of regulators gradually increasing the level of audit opinion in this way:

- **Ireland:** Eircom was only required to have a properly prepared audit opinion in first year in 1999. There was a move to a fairly presents opinion in 2001.
- **Jamaica:** C&W was only required to have a properly prepared audit opinion in first year in 2008. There was a move to a fairly presents opinion in 2010.
- **Guernsey:** C&W was not required to have the first set of separated accounts audited in 2002. A properly prepared audit opinion was required in 2003. There was a move to fairly presents opinion in 2005.
- **Jersey:** JT was not required to have the separated accounts audited from 2004 until 2010. A properly prepared audit opinion was required in 2011. There was a move to fairly presents opinion in 2012.
- **Bahrain:** Batelco was only required to have a properly prepared audit opinion for ten years. There was a move to a fairly presents opinion requirement in 2011.

We therefore consider it reasonable to produce the Separated Accounts within twelve months of the obligation, on an agreed upon procedures basis. However this will only be possible for the Financial Year that had already been completed. If the TRA wishes to have accounts prepared for the next year, it needs to allow for twelve months after the completion of the Financial Year.

The fourth requirement that Ooredoo Oman will face will be in subsequent years. At this stage the subsequent FAC-HCA, FAC-CCA and LRIC accounts will need to be presented six months after the end of the financial year. As explained above, the requirements set out for the different costing methodologies are quite onerous and six months will not be sufficient. For the first year of

preparing CCA and LRIC cost models, it is likely that twelve months will be required in the same way as they were required for the first year of preparing HCA cost models.

In subsequent years, Ooredoo Oman could move to a faster timetable, with the aim to prepare the accounts within six months in the long term.

Summary

The TRA has presented a very ambitious timetable for preparing the separated accounts and the associated information. The TRA presumably expects that this accelerated timetable would end up giving it better information that it can use for regulatory purposes. However, the timetable is so quick, that documents need to be prepared before they are ready, or when systems will not be in place to support them. This is obviously not the TRA's intention and it should amend the timetable to better reflect its objectives.

Our proposal is as follows:

- Ooredoo sends a list of services to the TRA within sixty working days of the determination;
- The first set of HCA accounts are prepared on an agreed upon procedures basis after twelve months of both the Financial year in question and the placing of the obligations (i.e. either the 2014 accounts will be prepared a year after the obligations or the 2015 accounts will be prepared by 31 December 2016);
- The finalised methodology will be presented at the same time as the finalised accounts;
- The second set of HCA/CCA/LRIC accounts are prepared on a properly prepared basis twelve months after the end of the Financial year in question;
- The third set of HCA/CCA/LRIC accounts are prepared on a properly prepared basis nine months after the end of the Financial year in question; and
- In subsequent years, the HCA/CCA/LRIC accounts are prepared on a properly prepared basis six months after the end of the Financial year in question.

9. Granularity of accounts

The TRA has prescribed a level of granularity which will make the process of producing separated accounts much more complex.

In addition, the TRA has not provided the detail of how the services will be disaggregated. The list of services for which separated accounts have to be produced has not been consulted on and, therefore, the actual level of granularity is uncertain.

The level of granularity required by the TRA will make it difficult to achieve the level of accuracy that the TRA expects. Specifically:

- quality of data to support attribution methods may be insufficient for such a granular level of reporting and assurance;
- the objectivity of generic attribution bases cannot be assessed at such a granular level; and
- it may not be possible to assess the overall reasonableness of one service where it is too immaterial relative to the overall business.

Indeed, experience suggests that reporting is normally done at market level. Where regulators require more granularity in terms of services, for example with BT in the UK, they often allow for less detail to be included in the Accounts

10. Evolution of accounting separation as a requirement

One of the intended objectives of the TRA is to create a functioning market for wholesale access for both mobile and fixed.

While Ooredoo Oman agrees with the TRA in the pursuit of this objective, it considers that implementing onerous accounting separation remedies is not the proportionate method to achieve it.

In some instances this market has developed on its own. For example, as was discussed in section 2, there is a functioning wholesale market for mobile access. Retail access seekers have been able to gain access to the infrastructure of Omantel and, in particular, Ooredoo Oman, which has allowed them to gain a significant market share, much higher than that of MVNOs in other countries.

More importantly, in section 6.2 we outlined the costs related to the implementation of accounting separation. Many of these costs are related to the implementation of systems which allow for the preparation of separated accounts. Setting accounting separation as a transitory remedy would therefore force operators to incur a significant cost for something that will not be required after a few years.

It is worth highlighting that other countries have been gradually moving towards a less onerous form of accounting separation.

Ooredoo Oman therefore considers that it is disproportionate to prescribe accounting separation as a transitory remedy. The TRA can achieve –and, indeed, has already partially achieved- a functioning wholesale market for access without having to impose a remedy as onerous as accounting separation, much less if it intends to use it as a transitory measure.

11. Conclusion

We again thank the TRA for the opportunity to respond to the consultation on accounting separation regulation and guidelines. Ooredoo Oman is supportive of the TRA's objective of achieving a competitive telecommunications market in Oman.

We believe that the TRA has prescribed a particularly onerous form of accounting separation which cannot be objectively justified on the basis of a cost/benefit analysis. Specifically we argued that:

- The accounting separation remedy was prescribed based on a market assessment which may not accurately reflect the current condition of the Omani telecommunications market;
- A market for wholesale access in Oman has developed and accounting separation is not the proportionate transitory remedy in order to further develop it;
- The form of accounting separation that the TRA has prescribed is disproportionate with respect to the competition issue it is trying to address;
- The TRA retains the option of requesting separated accounts for services in markets where no SMP has been found;
- It requires accounts to be provided using too many different methodologies without a clear explanation of what the results will be used for;
- The TRA reserves the right to publish of the accounts, which may lead to confidential information being disclosed as well as facilitating anti-competitive practices;
- It has set an unfeasible timetable to comply with the regulation;
- It has demanded a level of granularity which significantly increases the complexity to produce the accounts and runs the risk of making them less accurate; and
- It has prescribed a transitory remedy with significant implementation costs;

In addition the process followed by the TRA in this consultation has not provided Ooredoo Oman with sufficient information to prepare a complete response on all issues relating to accounting separation.

- It is not clear the level of granularity required; and
- Two definitions of LRIC which contradict each other and cannot be fairly prepared simultaneously.

We consider it is imperative that the TRA consults again on its proposals for accounting separation.

We trust that the TRA finds our comments useful and we would welcome the opportunity of discussing our submission further with you.