سلطنة عُمان
Sultanate of Oman

هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

# Consultation on draft Access and Interconnection Regulation

## Position Statement

**March 2015**

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# 1 INTRODUCTION

1.1 In April 2014, the Telecommunications Regulatory Authority (the "TRA" or "Authority") issued a Public Consultation Document on a Draft Access and Interconnection Regulation ("Consultation"). As set out here, this Consultation was concerned with:

i. The scope of obligations to be imposed on all public telecommunications licensees to provide access and interconnection (A&I) services in compliance with the Telecommunications Regulatory Act ("the Act"); [1]

ii. The scope of the additional obligations to be imposed on the provision of A&I services by dominant operators in those markets in which they have been designated as having dominance;

iii. The scope of the specific ex-ante obligations to be imposed on dominant licensees in each of the markets in which they have been designated as having a dominant position in accordance with the Decision regarding Market Definition, Dominant Licensee and Remedies (the "MDD"); [2] and

iv. The minimum scope and content required for the Reference A&I Offers ("RAIOs") to be prepared by dominant licensees with respect to the provision of certain A&I services, and the process that the Authority will initiate to review and approve those RAIOs.

1.2 Given this, the Authority invited comments from stakeholders, interested parties and the public in general on the draft Regulation. The Authority noted that it would consider such comments when preparing a final draft of the A&I Regulation as deemed appropriate.

1.3 The Authority conducted the consultation in two phases.

Phase 1: Public telecommunications licensees and other stakeholders and members of the public were invited to make submissions in writing in relation to the issues raised in the Consultation and in relation to the draft Regulation. All submissions were published on the Authority's website during the week following the end of this Phase.

Phase 2: Those parties that made submissions during Phase 1 were given a limited period of 10 working days to make any further comments and provide further evidence in relation to matters or arguments raised by other submissions. Phase 2 was intended to provide a limited opportunity to

[1] Issued by the Royal Decree No. 30/2002 (and subsequent amendments thereto)

[2] Decision No. 74/2013

comment on or correct other submissions, and was only open to those who made submissions in Phase 1.

1.4 Phase 1 submissions were received from the following parties:

(i) Omantel;

(ii) Ooredoo (previously "Nawras");

(iii) Friendi;

(iv) Zajel; and

(v) Samatel.

1.5 Submissions in Phase 2 were received from the following three parties:

(i) Omantel;

(ii) Friendi; and

(iii) Zajel.

1.6 This document sets out a summary of the issues raised by stakeholders in both phases of the consultation and the Authority's position in relation to the comments received from stakeholders. The rest of this section lists, for ease of reference, the specific questions asked in the consultation. The rest of this document then sets out:

(i) A summary of the responses received to each of these questions from stakeholders; and

(ii) The TRA's position relating to these responses.

1.7 Given the large volume of responses received, the TRA does not provide a point by point response to each stakeholder submission. If a comment is not discussed it does not mean that TRA has not considered it; rather, the TRA has judged that it has been dealt with elsewhere. Further, the TRA does not address issues that were raised that go beyond the scope of the consultation. For example, a number of stakeholders questioned whether certain types of access or interconnection services should be mandated despite the fact that the mandatory provision of such services by dominant operators was already consulted on and determined by the TRA as part of the MDD exercise. That is, the purpose of the A&I Consultation is not to re-examine designations of dominance. Therefore, where such comments arise, the TRA directs stakeholders to refer to the MDD.

1.8 A number of comments were also received on the draft Regulation which were not related directly to any consultation question. The TRA summarises and responds to these comments in annexe in the Position Statement.

## 2 QUESTIONS ASKED IN THE CONSULTATION

2.1 **Question 1** – Do you agree with the Authority's assessment of the existing A&I services available in the market?

2.2 **Question 2** – Do you agree that the Authority has identified the correct objectives to consider in developing the new Regulation? If not, please specify the additional objectives you believe the Authority should consider, together with your reasoning for these.

2.3 **Question 3** – Do you support the structure of the draft Regulation? If not, please set out your reasoning.

2.4 **Question 4** – Do you support the categorisation of obligations to be imposed on dominant operators in the relevant markets in which they have been designated as dominant? Are there additional obligations you believe ought to be imposed?

2.5 **Question 5** – Do you support the proposed process for the development and review process for approving Reference Offers?

2.6 **Question 6** – Do you support the obligations described in the draft Service Annex? If not please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective (fixed interconnection services).

2.7 **Question 7** - Do you support the obligations described in the draft service annex? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective (mobile interconnection services).

2.8 **Question 8** - Do you support the obligations described in the draft service annex? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective (fixed access services)?

2.9 **Question 9** - Do you support the obligations described in the draft service annex? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective (MVNO access services)?

2.10 **Question 10** - Do you support the obligations described in the draft service annex? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective (national roaming)?

2.11 **Question 11** – Do you support the Authority's proposed dispute resolution procedures as set out under Section 7.5 of the draft Regulation? If not, please set out your reasoning and explain why an alternative process would more closely match the Authority's objectives.

***Question 1 – Do you agree with the Authority's assessment of the existing A&I services available in the market?***

## 3 THE CURRENT REGIME FOR A&I SERVICES IN OMAN

3.1 The responses received and comments closely reflect the parties differing interests with regards to the extent of market regulation and current market relationships. Issues relating to the regime as a whole are summarised below, before the TRA then turns to specific A&I services.

**Issues raised by stakeholders**

3.2 Both Omantel and Ooredoo expressed their views that the current A&I regime in Oman is well functioning and subject to effective competition. For example, Omantel notes:

> *"[…] the strong uptake of Omantel's wholesale services by all industry players is a reflection of a well-functioning fixed infrastructure market*." (p. 22 of Omantel's response)

3.3 Omantel and Ooredoo consider that the existing wholesale markets are subject to effective competition but welcomed the TRA's engagement in further enhancing the telecommunications market in Oman nonetheless. But Omantel also considered that the views presented in the consultation document relating to competition were one-sided, and it rejects the suggestion that Omantel has been a hindrance to market entry.

3.4 Samatel, Friendi and Zajel largely agreed with the TRA's description of current A&I services offered in the Sultanate. They highlighted the need for more effective A&I regulation to further increase competition in the market.

3.5 Both Zajel and Friendi consider that the market in Oman is limited in size and thus the development of a third mobile network operator cannot be expected. Therefore, Zajel and Friendi are of the view that increasing service-based competition is the only way forward to increase the level of competition among operators in Oman.

**TRA position**

3.6 The TRA welcomes the comments made by stakeholders concerning the existing A&I regime in Oman and the commitments expressed by all parties to further enhancing competition in the telecommunications sector.

3.7 The requirements for Omantel and Ooredoo to offer various Regulated A&I services is derived from the findings of dominance made by the TRA against these licensees in the Market Review (MDD) carried out by the TRA as part of the Competition Framework Initiative.

3.8 The MDD concluded that a number of telecommunications markets in the Sultanate were not effectively competitive. Preparing suitable conditions for competition is a key statutory objective for the TRA. Given the nature of the telecommunications sector, this in turn requires there to be an efficient and effective A&I regime to be in place in the market, both to ensure the provision of any to any connectivity and to ensure that barriers to entry are effectively addressed and removed and dominant operators are limited in their ability to foreclose competition.

3.9 Alongside this, the TRA recognises that it is critical that its suite of regulatory policies, including on A&I, supports the benefits that can arise from enhanced service level or retail competition, alongside the long term benefits to the economy of sustainable and efficient investment in network infrastructure. The TRA sought to reflect this in the draft A&I Regulation. Having considered the comments of the various stakeholders, it has, however, made a number of adjustments to the draft Regulation. In the remainder of this Position Statement the TRA sets out the modifications it has made, alongside its response to other comments made by the stakeholders.

## 4. Fixed network A&I services

### Issues raised by stakeholders

4.1 Omantel considers that its engagement with Ooredoo has contributed to market development in Oman and that the uptake of its wholesale services is "a reflection of a well-functioning fixed infrastructure market". For example, Omantel considers that its collaboration with Ooredoo was "critical to allow for the development of a strong second player in the market" and the launch of new services allowing mobile resellers to effectively compete in the market. In addition, Omantel notes that these services are offered at competitive prices (e.g. call carrier selection services are priced at LRIC), but that despite this, fixed access and interconnection products have seen limited uptake, so (in Omantel's view) highlighting a lack of demand for these services.

4.2 Samatel considered that this was the most important section of the regulation. With respect to call interconnection services and their availability, Samatel notes that domestic call origination services are also provided in Omantel's and Ooredoo's access and interconnection agreements (though on a limited basis for domestic calls – e.g. 800 access to Call Center services).

4.3 Zajel considers that high access and interconnection prices are preventing entry to the fixed market and that there should be more competition in the international voice market.

4.4 With regards to fixed network data services, Friendi expressed its view that there exist gaps in the data services offered with regards to other national markets. This view is broadly shared by Zajel. In particular,

Zajel notes that Omantel and Ooredoo are the only internet service providers in Oman due to the lack of access services in the data market.

4.5 In contrast, Omantel submitted that:

> "*fixed broadband services are witnessing challenging market dynamics, due to the availability of mobile broadband including 4G services from Omantel and Ooredoo* […]. (p. 23 of Omantel's response).

4.6 Omantel adds that these services are also subject to competitive pricing at retail-minus basis, but again (as with voice services) such as CPS, have seen little take-up due to limited demand.

**TRA position**

4.7 The TRA notes the comments of all the stakeholders. As set out above, it is committed to ensuring a robust, effective and efficient A&I regime in order to promote suitable conditions for competition in the market. The TRA has therefore considered all comments in this light and sets out in this Position Statement the amendments it had made to the draft Regulation as a result.

4.8 The TRA does not consider, however, that the specific comments made by respondents on the nature of fixed network A&I services currently available in the market, changes the view of the market it presented in the consultation. Up to now, the take-up of A&I services has focused on basic voice services, with no take up of other fixed infrastructure or access services, such as those which can be used to offer downstream broadband services, for example.

4.9 The TRA considers that a number of reasons may exist for the current levels of take-up for these services. However, it is important that take-up is not artificially restricted by the dominant operators having the ability to limit the supply, on reasonable terms and conditions, of bottleneck A&I products. The TRA therefore set out, in the consultation, the minimum list of services it determined the dominant operators should offer and the terms and conditions on which those services should be offered, in order to ensure that the dominant operators are meeting the demand from other licensees and ultimately, consumers, for access to these services. Following the receipt of comments to the consultation the TRA has, in certain aspects, modified the Regulation and hence the obligations placed on dominant licensees and sets out these modifications in this Position Statement. This does not, however, affect the conclusions of the MDD, or the regulatory remedies arising from it.

4.10 However, the TRA continues to recognise that it is essential that some fixed access services are offered by licenses that hold a dominant position in a relevant market. Ensuring that such services are offered on

fair and reasonable terms and that any demand for these services is met, is a critical objective of the TRA, in line with government policy.

## 5. Mobile infrastructure services

### Issues raised by stakeholders

5.1 With respect to current mobile infrastructure services offered in Oman, Omantel notes that "a current healthy level of collaboration exists in the area of mobile infrastructure sharing, and that it has been achieved purely by joint initiatives among the operators and based on commercial agreements." Omantel also argues that such cooperation between operators "would not have been possible if such services were subject to strict access regulation." [3]

5.2 Comments from other parties mainly dealt with mobile reseller / MVNO services. These are considered in a separate sub-section of this Position Statement.

### TRA position

5.3 In response to Omantel's comments, the TRA wishes to clarify that the draft Regulation did not include specific proposals to require dominant licensees to offer, on regulated terms, access to mobile network infrastructure (though it did require such licensees to offer on regulated terms, mobile access services, such as national roaming and wholesale access). The TRA considers that this could, however, fall within the scope of Article 7.3 of the draft Regulation, which requires all Public Telecommunications Licensees to provide, upon reasonable and valid request, access to the Passive Infrastructure Network Elements, unless the TRA determines that the provision of such access would not be technically or economically feasible. This Article is discussed further in Section 10 of the Position Statement. [4]

## 6. Mobile reseller and national roaming services

### Issues raised by stakeholders

6.1 Omantel considers that it has been a "strong supporter of growth and innovation by resellers". Omantel also considers that its engagement in the reseller market has led to product innovation and growth in market shares of resellers and considers that this market is also subject to effective competition.

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[3] p. 23 of Omantel's response

[4] As set out in Section 10, in the final Regulation the title of the definition "Passive Infrastructure Network Elements" will be amended to "Non-active Network Elements".

6.2 In contrast, the current resellers consider that there are limitations. Friendi considered that there is less competition in the market than the consultation document suggests. Notably Friendi acknowledges that while there is currently mobile reseller access, it argues that the wholesale technology is limited to only 2G and 3G.

6.3 It also suggested that there was an "imbalance" in the market caused by "Samatel's favoured status". It also considers that the reliance on commercial negotiations for non-price terms has allowed Omantel to abuse its position of dominance in the market and this has hampered resellers

6.4 Friendi considers that "correcting the present failures … in the mobile resale market as soon as possible will deliver the most significant and immediate positive results for consumers, competition and the general economic and social welfare of Oman, relative to the other RAIO reform proposals." Friendi highlights the benefits of MVNOs (i.e. increased competition, increased customer choice and service quality, increased innovation and innovative pricing options for consumers). It considers that resellers are currently hindered in their ability to compete not by the TRA (i.e. the current licensing and regulatory regime) but rather by the host operators who have "never been willing to consider [to] concede any further rights to Friendi mobile in negotiations (especially not even cost-oriented pricing)." Friendi also wrote that it had been prevented from offering VAS (such as VOIP or anything that requires real time data) and this has affected its ability to compete in the market.

6.5 Samatel notes that:

*"the current Reseller License's authorisation is implicitly limited to reselling what the host operator offers to their customers as per retail minus pricing model."* [5]

6.6 Zajel also agreed that mobile access regulation should be prioritised over other A&I regulation and that the focus of A&I regulation should be on promoting MVNO entry because it considers the market is too small for a third mobile network operator. In addition, Zajel notes that there is currently no price regulation in place that would ensure that there is a reasonable margin left to the MVNOs by the host operator.

6.7 With regards to national roaming services, Ooredoo argues that services should be left to commercial negotiation and are not susceptible to ex ante regulation. Secondly, it states that it would not accept a new entrant mobile operator being granted more favourable roaming terms than were granted to it.

[5] p. 1 of Samatel's response

**TRA position**

6.8 The TRA has, in preparing the Regulation, taken into account the concerns of the resellers. The TRA recognised in the consultation a number of sources of potential enhancements to the current access offers on which the mobile access seekers' retail services are based and which, if implemented, would serve to promote the development of competition in the relevant markets.

6.9 The TRA's position on mobile access services which should be made available to eligible licensees (which are often described as mobile resellers and which in the recent consultation were described as light MVNOs), is set out in Section 16 of this Position Statement.

6.10 As regards national roaming services, the TRA reminds Ooredoo that it was found in the MDD to be jointly dominant with Omantel in Market 18, for wholesale access and call origination on public mobile telephone networks, and that national roaming was included as a service within this market. The TRA also concluded in the MDD that this market was susceptible to ex ante regulation. The TRA does not intend to revisit that conclusion now. Rather, this current regulatory proceeding concerns the development of ex ante remedies in response to the findings of the MDD.

6.11 In judging suitable conditions for roaming for a third operator, the TRA will have regard to the pricing policy described in this Position Statement and the Regulation. This will seek to promote efficient and effective network access, commensurate with the TRA's policy objectives and with encouraging the new entrant to roll out network infrastructure. As such, the TRA does not consider it would be appropriate to constrain pricing of this service now, to levels at which roaming services have been provided historically when, for example, the costs of providing mobile services are likely to have changed over time.

***Question 2 – Do you agree that the Authority has identified the correct objectives to consider in developing the new regulation? If not, please specify the additional objectives you believe the Authority should consider, together with your reasoning for these.***

## 7. POLICY OBJECTIVES

7.1 In the consultation document, the TRA noted a number of policy objectives for the A&I regulation. These included the objectives set out in the Act relating to the provision of services at reasonable prices and encouraging the use of telecommunications services. As noted in the consultation document, particular attention was paid to encouraging competition, developing the economic competence of licensees, facilitating the provision of world class services at reasonable costs and encouraging research and development in the sector.

7.2 The TRA also considered initiatives and objectives as set out in the Authority's Telecom Sector General Policy Framework – Phase 2 as well as practical considerations.

### Issues raised by stakeholders

7.3 Overall, stakeholders appeared to be largely in agreement about the policy objectives for the A&I regulation. However, while Ooredoo agrees with the objectives, it considers that TRA should be clearer on how these would be achieved by the proposed regulation. Also, some stakeholders raised some additional details in relation to these objectives. These are set out below.

#### Promotion of competition

7.4 Samatel considers that there is a need for careful consideration of the type of entry to the market and how this might fragment the market. This concern also appeared to be echoed by Omantel who raised the issue of the evolving sector maturity and how the promotion of competition should be balanced against investment incentives.

7.5 Friendi emphasised the importance of creating fair competition between operators in a multi-network and multi-operator environment.

#### Investment

7.6 Omantel emphasised the importance of creating favourable conditions for investment and raised concerns about the need to preserve national economy interests and to prevent value destruction.

**Consumer outcomes**

7.7 With respect to TRA's objective of ensuring provision of telecommunications services, Zajel notes that the penetration of mobile services in Oman is high (well above 100%) and therefore argues that public payphone services should not be obligatory in order to avoid unnecessary costs.

**National economy**

7.8 Omantel argued that the extent of the regulation imposed by the TRA could have adverse consequences on the national economy of Oman, through its negative impact on investment in telecommunications infrastructure. As such, it argued that the interests of the national economy should be protected.

**Practical considerations**

7.9 Friendi also notes the following practical considerations for the regulation:

i. Ensure seamless any-to-any connectivity;

ii. Ensure that there are clear pre-established procedures to obtain access and interconnection with dominant operators;

iii. Eliminate interconnection barriers by imposing tougher obligations on dominant operators; and

iv. Provide for urgent interim orders and directions to be made by the TRA and swift recourse and enforcement in case of disputes between parties.

7.10 Zajel commented on the objectives set out in the Act and the extent to which the TRA should be involved in the furtherance of each one. However, it is beyond the scope of this current regulation to change the Act itself.

**TRA position**

7.11 The TRA considers that the objectives which it set out in the consultation remain appropriate. The TRA must carry out its work taking into account its mandate as laid out in the Act and it considers that the proposed A&I Regulation does this.

7.12 Consumers and ultimately, the national economy, are best served by the TRA supporting the development of efficient and effective competition in the telecommunications sector. An efficient and effective A&I regime is, in turn, critical for this. Given the increasing use of data services and the convergence of voice and data services, such a regime needs to go

beyond voice and promote access to broadband / internet services as well. This is a key element of the regime developed by the TRA.

7.13 At the same time, as acknowledged in the consultation, the TRA recognises the capital intensive nature of the industry and the importance of ensuring robust and leading edge telecommunications infrastructure in Oman. In turn, this requires ensuring that regulation does not restrict unduly the ability of licensees to invest in networks. Again, the TRA is confident that, with the revisions it has made to the Regulation, this aim is satisfied.

7.14 The TRA notes the practical suggestions made by Friendi for the Regulation. It broadly agrees with these suggestions and believes that these are suitably incorporated into the Regulation.

7.15 The TRA notes Zajel's comments on public payphone services. This is, however, beyond the scope of this consultation and so is not considered further by the TRA at this juncture.

## 8. LEGAL FRAMEWORK

**Issues raised by stakeholders**

8.1 Some of the respondents (and particularly Omantel and Ooredoo) provided comments on the consistency of the draft Regulation with the legal/regulatory framework. Although the TRA did not solicit comments on this issue in the consultation questions, it has nonetheless decided to address these comments in this Position Statement. Set out below is a summary of the comments submitted by respondents on this issue, as well as the TRA's responses.

**Omantel**

8.2 Omantel states that it is unclear where the A&I Regulation would sit within the existing legal and regulatory framework, including the Telecommunications Regulatory Act (the "Act"), existing secondary legal instruments and the MDD. It also states that it is unclear where the A&I Regulation would be superseded in the future by "forthcoming regulations". Omantel argues that, as a number of regulatory initiatives remain outstanding and unsettled, the issuing of the A&I Regulation at this time will create "increased regulatory uncertainty".

8.3 Omantel also contends that the creation of a separate document which sets out the rules and obligations that are applicable to both those operators that are designated with significant market power ("SMP"), and those that are not, and which makes no reference to the MDD, breaks the "crucial connection" between justification and analysis, on the one side, and remedies and obligations, on the other. According to Omantel, this undermines the principle that regulation should be grounded on a thorough analysis of market conditions.

**Ooredoo**

8.4 Ooredoo contends that the draft A&I Regulation is inconsistent with the existing legal/regulatory framework in the Sultanate, including Chapter 6 of the Act and the existing licences. Ooredoo argues that the categorisation of the RAIO obligation as a "Discretionary Service Specific Obligation" is contrary to Article (46) of the Act.

8.5 Ooredoo also states that the non-discrimination requirement set out under Section 3 of Appendix 1 should "automatically" apply to all Dominant Operators (presumably as an "Automatic Obligation" under Section 9.3 of the draft A&I Regulation, as opposed to as a "Discretionary Service Specific Obligation", as is proposed by the TRA). It supports this argument by stating that non-discrimination is "guaranteed" by the Act under Articles (25 Repeated 1), (27 Repeated) and (46) Repeated (no other specific examples of the alleged inconsistency between the draft A&I Regulation and the Act are provided by this respondent). Ooredoo therefore argues that, before issuing the A&I Regulation, the TRA should make necessary amendments to existing primary and secondary legislation such as the Act, the Executive Regulation and licenses.

8.6 Ooredoo alleges that many of the definitions used in the draft Regulation are "inconsistent" with the definitions used in the Act. The following three specific examples of such alleged inconsistency are provided by Ooredoo in Table 2 of its response. Ooredoo does not provide any other examples of such definitional inconsistency.

8.7 The definition of the terms "Automatic Obligation" and "Discretionary Service Specific Obligation" (Sections 1.9 and 1.21 respectively of the draft Regulation).

8.8 The definition of the term "Interconnection" (Section 1.29 of the draft Regulation)

8.9 The definition of "Service Specific Obligations" (Section 1.56 of the draft Regulation).

8.10 Ooredoo contends that it is better to rely on the definitions already set out in the Act, and to confine the development of new definitions to the terms "access" and "interconnection".

**Samatel**

8.11 Samatel states that it is unclear how the new A&I Regulation will be "practically effective" in the absence of the new licensing framework. It also states that the draft A&I Regulation includes a number of references to the current licensing framework, which may become obsolete as soon as the new licensing framework is enacted. It does not specify where these references are to be found.

**TRA position**

**Omantel**

8.12 The A&I Regulation will be subject to the provisions of the Act and the Executive Regulation. Section 5 of the draft A&I Regulation provides that, in the case of any conflict, the A&I Regulation will take precedence over any previously issued secondary legal instruments (i.e. those at the same level of the legislative hierarchy) that address any aspect of A&I regulation. Specific examples of such legal instruments are set down in Section 5 of the draft A&I Regulation. The provisions of the draft A&I Regulation are consistent with the provisions of the Executive Regulation, and specifically Chapter 16.

8.13 Omantel notes that a number of regulatory initiatives remain outstanding and unsettled. The point raised by Omantel in this respect is not, however, unique to the draft A&I Regulation. Notwithstanding this, the draft A&I Regulation has been developed in a manner that ensures that it is sufficiently flexible to adapt to expected changes (such as those concerning the licensing regime, for example).

8.14 Omantel is not correct in its argument that the draft A&I Regulation breaks the "crucial connection" between justification and analysis, on the one side, and remedies and obligations on the other.

8.15 Firstly, the application of the A&I obligations that relate exclusively to Regulated A&I Services under Part D of the draft Regulation is predicated on the carrying out of an ex-ante market review, followed by the finding of market dominance. Therefore, there is a clear link between the ex-ante market review and the subsequent obligations.

8.16 Secondly, the existing legal and regulatory framework provides a number of legal bases for the imposition of A&I obligations that fall outside of the market review process. For example, Article 46 Repeated (6) of the Act requires that all licensees provide, among other things, interconnection, in accordance with the rules issued by the TRA. This is also reflected in the Executive Regulation, Articles 80 – 91 of which address the issue of interconnection, and apply in respect of all licensees. The class one licenses issued by the TRA also establish specific A&I requirements.

8.17 The application of the A&I obligations that relate to Unregulated A&I Services under Parts B and C of the draft A&I Regulation is, therefore, based on specific provisions of primary and secondary legislation, and license requirements, as opposed to an ex-ante market review.

8.18 In addition, the TRA notes that this approach reflects best practices in other jurisdictions, where certain A&I obligations are established and imposed on non-dominant operators outside of the market review process. As such, the TRA considers that this provides further support for the approach it has set out in the draft Regulation. For example, under the European Union ("EU")

sector specific regulatory regime, the requirement to provide interconnection and certain forms of access (including co-location, access to physical infrastructure and access to in-building wiring) applies symmetrically in respect of all operators, and is not contingent on a prior finding of market dominance. [6]

8.19 Furthermore, there is also an obvious consumer welfare issue associated with the requirement that all operators, both dominant and non-dominant, provide interconnection services. Such interconnection services are key to facilitating so-called "any-to-any connectivity" between consumers in the Sultanate, as is required under Article 80(2) of the Executive Regulation. The TRA also notes that Article 7(5) of the Act specifically obligates it to safeguard the interests of beneficiaries with respect to the quality and efficiency of all telecommunications services. Facilitating "any-to-any connectivity" by ensuring effective wholesale interconnection between networks clearly safeguards the interests of beneficiaries for the purposes of Article 7(5).

**Ooredoo**

8.20 Ooredoo' claim that the categorisation of the RAIO obligation as a "Discretionary Service Specific Obligation" is contrary to Article 46 of the Act is incorrect. Article (46) Repeated requires that the Dominant Operator prepare a reference offer in terms of interconnection only (a so-called "Reference Interconnection Offer"). This point is confirmed by the Executive Regulation (Article 92). Contrary to what Ooredoo contends, therefore, Article (46) does not require that the TRA mandate the preparation of a RAIO in respect of all "Regulated A&I Services". Accordingly, the TRA retains the discretion to require a Dominant Operator to prepare a reference offer in respect of certain Regulated Access Services only.

8.21 With respect to Ooredoo's argument concerning the application of the non-discrimination requirement, the TRA notes that a non-discrimination requirement is included as an "Automatic Obligation" under Section 9 of the draft A&I Regulation, and therefore applies in respect of all "Regulated A&I Services". The TRA notes that, in any case, the automatic application of some of the non-discrimination requirements under Section 3 of Appendix 1 in respect of all Regulated A&I Services would neither be necessary nor practicable. A good example here is the provision of call termination

[6] For other services, a competition assessment and SMP assessment is required in order to impose obligations. See: Articles. 4 and 5 of the Access Directive, and Article 12 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC and Regulation 544/2009. Where undertakings are found to have SMP in a relevant market, the terms and conditions on which interconnection and access are provided are generally regulated. This is the case, for example, with call termination markets.

services. Considering the very specific nature of the call termination service market, it would be difficult, if not impossible, to impose a number of the non-discrimination requirements set out under Section 3 of Appendix 1 in respect of these services. Moreover, the automatic imposition of all of these requirements in respect of all call termination services is not considered necessary or proportionate, as it could impart very significant costs on relatively small licensees. Therefore, these requirements must be applied as Discretionary Service Specific Obligations, as opposed to Automatic Obligations that apply without exception to all Regulated A&I Services.

8.22 With regards to the definitions included in the Regulation, certain terms that have been defined in the Act have also been defined in the draft A&I Regulation. The TRA wishes to clarify that these definitions were developed in a manner that is fully consistent with the underlying legal framework. They are aimed at removing ambiguities currently associated with the A&I-related definitions set out in the Act, clarifying the A&I specific obligations provided for under the existing regulatory framework and the manner in which these obligations apply in practice. While some of the definitions used in the draft A&I Regulation may differ slightly from those set down in the Act, they are fully compatible with the current regulatory framework, including the Law, the Executive Regulation and other relevant secondary legislation, as well as the licenses.

8.23 The TRA will consider the consultation comments submitted by Ooredoo when taking a final decision on how those terms that are concurrently defined in the Act will be incorporated into, and addressed under, the final version of the A&I Regulation. This decision will be taken in accordance with the outcome of the legal vetting process undertaken on the final Regulation by the TRA's internal legal department and the Ministry of Legal Affairs.

8.24 Finally, the TRA notes that Ooredoo has failed to indicate any other specific examples of inconsistency between the definitions used in the draft A&I Regulation, and those used in the Act. The three other examples cited by Ooredoo relate to concepts that are specific to the A&I Regulation, and that are not defined in the Act; i.e. "Automatic Obligation", "Service Specific Obligation" and "Discretionary Service Specific Obligation". There cannot, therefore, be any inconsistency between the Act and the draft A&I Regulation in respect of these definitions.

**Samatel**

8.25 As noted above, the draft A&I Regulation has been developed in a manner that ensures that, once enacted, it will be sufficiently flexible to adapt to expected legislative or licensing related changes. This ensures that the A&I Regulation will be fully consistent with the new licensing framework. This also means that the A&I Regulation is not dependent on the current (or any future) licensing framework, as Samatel suggests in its comments. The enactment of the new licensing framework will not, therefore, affect the "practical effectiveness" of the A&I Regulation.

***Question 3 – Do you support the structure of the draft Regulation? If not, please set out your reasoning.***

## 9 STRUCTURE OF REGULATION

**Issues raised by stakeholders**

9.1 The comments received from stakeholders on the structure of the draft Regulation are set out below. As the comments received vary considerably, they are addressed by individual respondent.

**Omantel:**

9.2 Omantel argues that the draft Regulation is unclear in that it contains a mixture of rules and obligations related both to symmetric regulation (under Part B and "somehow" Part C), as well as asymmetric regulation (which it describes as regulation that is applicable to undertakings found to be dominant in one or more markets).[7] Omantel also states that the mixing of symmetric and asymmetric regulation in this manner is confusing, as the objectives of symmetric and asymmetric regulation are typically "very different". According to Omantel, this approach may create "operational difficulties" for the TRA, particularly when reviewing the various symmetric and asymmetric regulations.

9.3 Omantel also submits that the creation of a separate and comprehensive catalogue of A&I obligations is not best practice. Reference is made to practice in various European markets in support of this, where, according to Omantel, National Regulatory Authorities ("NRAs"):

i. Separately publish symmetric and asymmetric obligations; and

ii. List the obligations applicable to operators designated with market dominance or SMP within the market review document.

[7] It should be noted that dominant or SMP designated operators can also be subject to "symmetric" and "asymmetric" regulation. For example, a Telecommunications Regulatory Authority may choose to designate multiple operators with SMP on a particular market, but may apply asymmetric ex-ante regulatory obligations to these operators in respect of that market (the regulation of the voice call termination market provides a good example in this respect). It is clear, however, that, when referring to the application of symmetric and asymmetric regulation in its comments, Omantel is referring to the A&I obligations that apply in respect of all A&I Services (Part B of the draft A&I Regulation), and those A&I obligations that apply only in respect of Regulated or Unregulated A&I Services (Parts C and D of the draft A&I Regulation).

9.4 Reference is also made to practice in various neighbouring countries in the region, where, Omantel argues, regulatory authorities have not published a separate catalogue of (symmetric and asymmetric) A&I rules and obligations.

**Ooredoo:**

9.5 Ooredoo is not in favour of the proposed structure, which, it claims, is "odd and confusing". It also states that, owing to the multiplicity of Sub-Sections and Annexes, the draft Regulation is unnecessarily repetitive and includes "contradicting obligations". Ooredoo argues, for example, that Part C is a replica of Part B. It also requests that the TRA "differentiate" those obligations that apply in respect of all Regulated A&I Services only, and those that apply in respect of Unregulated A&I Services only.

9.6 Ooredoo does not agree with the proposed approach whereby the application of a specific requirement or obligation is predicated on the status of the A&I Service (i.e. whether it is a "Regulated" or "Unregulated" A&I Service), and not the status of the operator in the market (i.e. "Dominant Operator" and "Non-Dominant Operator"). It argues that the current approach is unsatisfactory as the definitions of Regulated and Unregulated Services may change over time.

**Friendi, Samatel and Zajel:**

9.7 Both Friendi and Samatel fully support the structure of the draft Regulation. Zajel did not provide a response to Question 3.

**TRA position**

**Omantel:**

9.8 The TRA notes that, contrary to Omantel's assertion, the obligations set out in Part C of the draft A&I Regulation do not apply "symmetrically" to all A&I Services (as is the case under Part B). The application of these obligations is limited to Unregulated A&I Services only.

9.9 The TRA does not agree with Omantel that symmetric and asymmetric A&I obligations have "very different" objectives, or that the inclusion of both types of obligations in a single document is "confusing" or risks giving rise to "operational difficulties". Notwithstanding the difference in the scope of application of both types of obligations, symmetric and asymmetric A&I obligations share the same fundamental objective: the granting or facilitating of access to essential infrastructure and services under fair, reasonable and non-discriminatory terms and conditions.

9.10 As a threshold matter, the TRA reminds Omantel that a catalogue of ex-ante regulatory obligations (or remedies) is already established under Article 7 of the TRA's Ex Ante Regulations (The Regulation of Dominance)

(2010), and Section 6.4 of the TRA's Market Definition and Dominance Guidelines (23 October 2010).

9.11 With regard to Omantel's specific comments, the TRA notes that, in Europe, the EU Access Directive sets out certain generally applicable A&I obligations, in addition to a catalogue of ex-ante A&I obligations that apply to licensees in a market asymmetrically (in the case of an SMP designation). [8] This practice is reflected at Member States ("MS") level. For example, in the UK, the Communications Act (2003) sets out asymmetric obligations that are only applied in the case of an SMP designation (Sections 87 – 92), while also allowing the NRA, Ofcom, to require that all operators grant interconnection to their networks (Section 74).

9.12 The TRA notes that in Europe, NRAs usually list the A&I obligations applicable to operators designated with SMP within the market review document. In a similar fashion, Section 5 of the MDD sets out the specific ex-ante obligations that apply in respect of the markets in which dominance has been found to exist. It is noted, however, that the specific A&I obligations typically identified by NRAs in Europe in the market review document are actually established in the legislative acts or instruments that make up the national telecommunications regulatory framework. This is not the case in Oman.

**Ooredoo:**

9.13 The TRA considers that the modular structure of the draft Regulation is both practical and helpful as it sets out or characterises the various A&I obligations in terms of the A&I Service to which they can apply; i.e. "Regulated" or "Unregulated" A&I Services, or both. Contrary to what Ooredoo alleges, the application or interaction of Parts B, C and D should not, therefore, be a cause of confusion for stakeholders. For the avoidance of doubt, the structure is explained further, below.

9.14 As explained in Section 2 of the draft A&I Regulation, that document is structured as follows:

i. Part A defines key terms that are referred to the draft Regulation and its Appendices. The key principles that underpin the application of the A&I Regulation and the regulation of A&I Services in general are also established under Part A. The procedures governing the amendment of the Appendices are also set out in Part A.

[8] Directive 2002/19/EC of the European Parliament and of the Council of 7 March on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) as amended by Directive 2009/140/EC, Articles. 5, 9, 10, 11, 12 and 13.

ii. Part B establishes a set of legally binding requirements that apply to the provision of all A&I Services (i.e., both Regulated and Unregulated A&I Services).

iii. Part C establishes the legally binding requirements that apply to the provision of any Unregulated A&I Service that a Non-Dominant Operator elects to offer.

iv. Part D establishes the legally binding requirements that may, at the discretion of the TRA, apply to the provision of a Regulated A&I Service by a Dominant Operator.

9.15 While the A&I obligations set out in Parts C and D supplement the requirements established under Part B, they apply in a mutually exclusive manner. This is because an A&I Service will qualify as either a Regulated A&I Service, or an Unregulated A&I Service, but not both. Contrary to Ooredoo' assertion, therefore, the obligations set out in Parts B, C and D are not contradictory. Nor is the draft Regulation "unnecessarily repetitive". The proposed modular structure adopted ensures that there is no confusion as to what obligations apply in respect of Unregulated A&I Services, Regulated A&I Services and all A&I Services (both Regulated and Unregulated) by setting out these obligations in separate Parts.

9.16 Finally, the TRA does not accept Ooredoo' argument that the current structure is unsatisfactory as the definitions of Regulated and Unregulated Service may change over time. The TRA considers that Ooredoo has failed to demonstrate how these definitions, as opposed to the scope of the actual service markets, could change over time. The TRA also reminds Ooredoo that the terms "Regulated A&I Service" and "Unregulated A&I Service" are, in effect, defined respectively as A&I services offered by a licensee who has been found to be dominant by the Authority in that relevant market, and an A&I service offered by a licensee who has not been found by the Authority to be dominant in that market.

***Question 4 – Do you support the categorisation of obligations to be imposed on dominant operators in the relevant markets in which they have been designated as dominant? Are there additional obligations you believe ought to be imposed?***

## 10 CATEGORISATION AND NATURE OF OBLIGATIONS

10.1 The issues raised by stakeholders in response to this question fall under three main headings:

i. Categorisation of obligations;

ii. Extent of regulation; and

iii. Symmetry of obligations.

10.2 These are summarised and the TRA's position provided below.

### i. Categorisation of obligations

10.3 The comments received from stakeholders on the categorisation of the A&I obligations are set out below. As the comments received vary considerably, they are addressed by individual respondent.

**Summary of stakeholder comments received**

**Omantel:**

10.4 Omantel is critical of the scope of the A&I obligations that apply under Part B of the draft Regulation. It argues that the scope of the requirement that all licensees negotiate and grant access to certain physical infrastructure and other facilities is too broad (Omantel states that this obligation extends to "active elements" of a network).

10.5 Omantel argues that the policy objective for imposing certain types of infrastructure sharing as a symmetric obligation is not clear in the A&I Regulation. It also contends that the requirement that all licensees provide access to ducts and dark fibre is "excessive, unjustified and disproportionate". Omantel argues that the level of detail provided by the TRA in the A&I Regulation does not take into account the practical and operational realities associated with network sharing or the granting of access to in-building wiring.

10.6 Omantel states that the non-discrimination obligation set out under Section 8.4 is unclear, and does not specify how discrimination may harm competition or consumers. It requests that, in order "to support regulatory certainty", a more clear and transparent set of criteria be developed on how the TRA would evaluate harm to competition and consumers.

10.7 Omantel submits that the Discretionary Service Specific Obligations set out in Part D of the draft A&I Regulation are "excessively intrusive in their nature and scope". It notes that the discretionary nature of how these obligations are to be imposed does not bring regulatory predictability or certainty, and that such stringent obligations should only be imposed on the basis of a clear proportionality and justification assessment. Omantel specifies the imposition of the Equivalence of Input obligations on a Dominant Operator as a particularly burdensome requirement.

10.8 Finally, Omantel contends that the prohibition on the offering of new/modified retail services by a Dominant Operator that cannot be replicated will restrict time-to-market for a dominant operator as that operator will be required to go through the full process of service development for both retail and wholesale offers. It argues that this will have a negative impact on customer welfare as it will slow down Omantel's ability to create new offers and to adapt to the offers of its competitors.

**Ooredoo:**

10.9 Ooredoo has provided a large number of comments in respect of the categorisation and scope of the obligations set out in the draft A&I Regulation. These comments are set out and addressed separately in the table in Annexe 1 to this Position Statement.

**Friendi:**

10.10 Friendi recommends that all Discretionary Service Specific Obligations relating to non-discrimination be made Automatic Obligations for the protection of MVNOs. Friendi claims that this would be in line with best international practice.

10.11 It also requests that the TRA "satisfy itself" that any future Omantel price proposal has no anti-competitive effect and that the product is not launched until such time as an equivalent wholesale price is also offered to its mobile resellers in sufficient time for such resellers to offer a competing product at the same time in the market.

10.12 While Friendi applauds the inclusion of "Chinese Wall" obligations between the wholesale and retail divisions of a party providing A&I (the "A&I Provider"), it requests that "specific obligations" be drafted into the Service Annexes in Appendix 2. It does not, however, elaborate on what these "specific obligations" should be.

10.13 Friendi also notes that, with respect to the proposed transparency and reporting obligations set out in the draft A&I Regulation, telecommunications services are very rarely priced according to price lists. According to Friendi, there are permanent and promotional prices that are "significantly lower" than list prices. For this reason, Friendi argues that Dominant Operators should be required to report their real effective retail prices and, as supporting evidence, provide a break-down of usage within

bundles and an allocation of monthly fees to selected usage types. Friendi states that, owing to this, the TRA should demand and receive continual update reports so that it can verify assumptions when operators request tariff approval, or submit long run incremental costs ("LRIC") estimates/analysis/calculations.

10.14 Finally, Friendi states that operators should be obligated to provide facility and site-sharing, co-location of competitors' equipment and transmission links to shared sites.

**Zajel:**

10.15 Zajel's comments to this question focus on the specific obligations placed on dominant operators in each relevant market. The TRA deals with these in responding to the queries on each of the service annexes.

**Samatel:**

10.16 Samatel supports the categorisation of obligations to be imposed on Dominant Operators in the relevant markets in which they have been designated as dominant. It does not believe that there are any additional obligations that should be imposed in this respect.

10.17 Samatel also states that, for the purposes of Sections 10 and 11 of the draft A&I Regulation, it is unclear what is meant by Regulated A&I Services with respect to which a RAIO is/is not mandated.

**TRA's response**

**Omantel**

10.18 As a preliminary matter, the TRA makes the following four observations in response to Omantel's comments on the scope of the symmetric access requirement under Section 7.3.

i. First, in response to Omantel's comment that the requirement under Part B of the draft Regulation extends to "active elements" of a network, the TRA directs Omantel's attention to the definition of "Passive Infrastructure Network Elements" under Section 1.39 of the draft A&I Regulation. [9] In contrast to what Omantel alleges, this definition does not include active network elements, and makes specific reference to all "civil engineering and non-electric elements of a Telecommunications Network".

[9] As set out below, in the final Regulation the title of the definition "Passive Infrastructure Network Elements" will be amended to "Non-active Network Elements".

ii. Second, the TRA notes that the Act establishes access obligations that apply in respect of all licensees, and not only dominant licensees, "in accordance with the rules and procedures issued by the Authority" (see Article 46 Repeated (6)). This provision therefore allows the TRA to develop secondary legislative measures establishing principles for the granting of A&I, including for the provision of access to certain physical infrastructure and other facilities (as is the case under Section 7.3 of the draft A&I Regulation).

iii. Third, the TRA notes that A&I requirements set out under Part B do not apply without qualification. For example, Section 7.3.1 explicitly states that access to certain physical infrastructure and other facilities will be mandated only if it is considered to be "technically [and] economically feasible" by the TRA.

iv. Finally, there would be no ex ante regulation of the actual terms of access offered by Non-Dominant Operators under Section 7.3 and, as such, any agreements concluded in accordance with this Section will be subject to commercial negotiation (see Section 7.3.2 of the draft A&I Regulation).

10.19 Notwithstanding this, and in an effort to clarify the scope of application of the symmetric requirement under Section 7.3, the TRA has decided to amend the title of the definition set out under Section 1.39 of the draft A&I Regulation to "Non-Active Network Elements". The wording of the definition established under Section 1.39 will, subject to the legal vetting of the Regulation, also be revised and clarified in order to ensure that there is no further confusion on this issue.

10.20 The TRA does not agree with Omantel's contention that the draft Regulation fails to take into account the practical and operational realities of network sharing. The TRA expects that the A&I Regulation will be supplemented by guidelines and practices, developed by the parties concerned (and which it expects will be set outside of the RAIO but which are endorsed by the TRA), which address the appropriate detailed operational aspects of this passive network sharing.

10.21 In response to Omantel's comment on the non-discrimination obligation set out under Section 8.4 of the draft A&I Regulation, the TRA notes that Article 46 Repeated 6 of the Act also establishes a general non-discrimination requirement that applies to all licensees providing access and interconnection "in accordance" with the rules and procedures used by the TRA. Section 8.4 reflects this generally applicable requirement.

10.22 Omantel argues that Section 8.4 of the draft A&I Regulation should specify how discrimination may harm competition or consumers, and requests that a set of criteria be developed to indicate how the TRA would evaluate harm to competition and consumers. The TRA underlines the subjective nature of competitive harm, and the importance of carrying out an analysis

on a case-by-case basis to determine whether competitive harm has actually occurred, and, if so, the extent of such harm. The TRA does not, therefore, consider it appropriate to develop a set of criteria indicating how, for the purposes of Section 8.4, it would evaluate harm caused to competition and consumers by discrimination. The formulation of such a set of criteria would have limited use, and may even unnecessarily constrain the TRA when assessing individual instances of anti-competitive discrimination under Section 8.4. In any case, the TRA has already enacted a comprehensive set of guidelines on anti-competitive behaviour, which specifically address discrimination as a specific form of an abuse of dominance. [10] Furthermore, it is important to note that the purpose of the non-discrimination provisions is to limit the ability of dominant operators to engage in discriminatory behaviour to begin with.

10.23 The TRA acknowledges that an Equivalence of Input obligation can be more burdensome to implement than other "lighter touch" regulatory measures. However, the TRA believes that such an obligation can be critical for some A&I services to be offered effectively. This is particularly the case for services such as local loop unbundling ("LLU"), where access seekers need to order individual services from the access provider. Given the limited emergence of competition and use of such services to date (as set out in the MDD), the TRA considers that it is appropriate to require dominant operators to meet this requirement.

10.24 Lastly, Omantel objects to the TRA's proposal to require dominant operators to ensure that all retail offers can be replicated by others using the dominant operator's wholesale services. However, this is a standard obligation in A&I frameworks and the TRA continues to believe it is appropriate and proportionate. This is because such a clause seeks to ensure that vertically integrated dominant operators do not benefit in the retail market from their dominance in wholesale markets.

**Friendi:**

10.25 The TRA does not agree that all Discretionary Service Specific Obligations relating to non-discrimination should be made Automatic Obligations. Contrary to Friendi's stated opinion, this would not be in line with international best practice. The TRA addresses this issue in detail under Section 8.20 above.

10.26 The TRA notes Friendi's suggestion that the TRA should "satisfy itself" that future Omantel retail prices are not anti-competitive, and that retail products should only be launched by dominant operators if they also have put in place an equivalent wholesale product. As set out above, the TRA agrees that all retail services offered by an operator in a market in which it

[10] Sultanate of Oman Principles and Guidelines on Anti-Competitive Behaviour, 23 October 2010, Section 8.1 and Annex 2.

is dominant must be matched by equivalent wholesale products. However, the approach to retail price approval is beyond the scope of this Regulation and so is not set out in further detail here.

10.27 With regards to its comments on information sharing, the TRA does not believe it is necessary to add other specific obligations, or examples of prohibited behaviour, into the Regulation. This is because the Regulation should set out the broad parameters of the obligations of dominant operators. Furthermore, it is not possible for a Regulation to foresee every eventuality and therefore, by describing very specific obligations, or prohibited behaviours, it is possible that the Regulation could be "exploited" by dominant licensees, by identifying other behaviours not covered explicitly in the text of the Regulation.

10.28 The TRA agrees with Friendi that actual, effective prices charged by dominant licensees should be used in any margin squeeze tests, rather than headline prices. This is because temporary promotions and discounts can mean that effective prices are very different to headline prices for any period. Although the full scope of margin squeeze tests is beyond the scope of this Regulation, the TRA notes that it set out in the draft, a requirement for dominant operators to comply with an ex post margin squeeze test.

10.29 Facility and site sharing is not covered in the MDD and the TRA does not consider that it is appropriate to add a requirement for the dominant licensees to offer these services on regulated terms. The TRA does, however, draw respondents' attention to its Site Sharing Guidelines, which describe the conditions for site sharing between two network operators. Should other licensees enter the market and wish to share sites but find themselves unable to agree reasonable terms and conditions, the TRA will reconsider its approach to this matter and in particular, whether any licensee is dominant in a relevant market for infrastructure services and if so, whether such licensee should be required to offer such access on regulated terms. If this is deemed appropriate, an additional Annex describing these services would be added to the Regulation, following the procedure laid down in Article 4.

**Zajel:**

10.30 The TRA responds to Zajel's comments in the subsequent sections of this Position Statement which consider the specific service annexes.

**Samatel:**

10.31 Samatel has stated that it does not understand what is meant by Regulated A&I Services with respect to which a RAIO is/is not mandated (Sections 10 and 11 of the draft A&I Regulation). The obligation to prepare a RAIO is listed as a Discretionary Service Specific Obligation under Section 4 of Appendix 1 to the draft A&I Regulation. In contrast to the Automatic Obligations set out under Section 9.2 of the draft A&I

Regulation, the RAIO obligation will therefore be applied asymmetrically; i.e.; it will not be applied in respect of each Regulated A&I Service. The applicability of the RAIO obligation in respect of a given Regulated A&I Service will be specified in the Service Annex specific to that Regulated A&I Service.

10.32 The asymmetric application of the RAIO obligation in this manner therefore requires that the A&I Regulation separately address instances where:

i. an A&I Agreement is concluded for the provision of an A&I Service in respect of which the preparation of a RAIO is mandated (Section 11); and

ii. an A&I Agreement is concluded for the provision of an A&I Service in respect of which the preparation of a RAIO is not mandated (Section 10).

10.33 The TRA considers this is proportionate, and that it would be overly burdensome to impose the RAIO obligation symmetrically on all Regulated A&I Services. This would lead, for example, to a small operator, who is only dominant in the call termination market, to having to prepare a full reference offer. The TRA does not consider that this would be efficient or necessary.

### ii. Extent of regulation

**Issues raised by stakeholders**

10.34 Omantel considers that the extent and nature of obligations goes well beyond proportionality and international best practice. It considers such "excessive" regulation will make entry and exit to the market too easy and therefore Omantel will bear disproportionately more risk and this could lead to under-investment. Zajel also considered that the draft regulation was a "good example of over-regulation." Omantel supported its objection using a selection of international benchmarks. However, Zajel contended that such benchmarking was irrelevant given that different regulations will be implemented in different countries to reflecting differing market characteristics, and these are not comparable to Oman.

10.35 Omantel also considers that there is a need to balance facilities based competition and services based competition. This is because it considers that promoting services based competition will deter investment in the industry. Omantel argues that there is a need to allow Oman to "catch-up" with more developed markets and this requires further investment (for example, it notes that fixed broadband penetration is only 39%).

10.36 Omantel also requested that further market analysis be conducted before regulation is imposed. In particular, it suggested that the potential impacts on the market of the proposed regulation were poorly understood, particularly as it considered there is limited international precedent.

10.37 On the whole, Samatel agreed with the draft regulations and did not consider that there should be any obligations imposed additional to those set out in the draft regulation.

10.38 Friendi argued that regulation should seek to promote competition in the market, particularly services based competition given that facilities based competition may be more unlikely or may take longer to come into effect. It also argued that the regulation should focus more on promoting MVNO entry, and implementing the mobile access services annexe ahead of the other regulation. Despite this, Friendi agrees with the obligations imposed on operators in the relevant markets and "strongly supports and applauds the RAIO regulatory architecture" given the significant stakeholder benefit of one single integrated framework. Zajel also supported the creation of a single regulation.

10.39 Friendi also suggests a number of additional obligations that it considers should be imposed. For example, obligations relating to non-discrimination should be automatically mandatory for all operators, retail promotions offered by Omantel should be subject to TRA approval and all operators should be required to provide access to their facilities and site sharing. Friendi's recommendations for additional obligations with respect to specific services are discussed in the relevant sections below.

10.40 Zajel supports Friendi's response. It considers that Omantel and Ooredoo are stalling and delaying the introduction of an effective A&I regime.

**TRA position**

10.41 The draft Regulation reflects the findings of the MDD. That is, the MDD identifies a number of markets where Omantel and/or Ooredoo, singly or jointly, has a dominant position, and identifies the potential issues that could arise from those positions of dominance, in the absence of ex ante remedies being imposed. The MDD provides wide discretion to the TRA to define the specific access products which should be made available by dominant operators on regulated terms and conditions and the draft A&I Regulation therefore seeks to "operationalize" this earlier decision.

10.42 Furthermore, for completeness the A&I Regulation also identifies access products, which, under other aspects of the legal and regulatory framework, all licensees must offer (i.e., access to passive infrastructure, in-building wiring and other essential facilities is not linked to dominance). As such, the A&I regulation should not be considered excessive. Nevertheless, the TRA has, in light of the views expressed on the likely demand for some services and given its desire not to introduce regulation without a clear assessment of its likely benefits, limited in the final draft some of the obligations imposed on dominant operators to provide Regulated A&I Services. These amendments to the Regulation are discussed in the relevant sections of this Position Statement.

10.43 In addition, while Omantel's benchmarking approach shows that the proposed regulation is extensive compared to some jurisdictions, there are a number of limitations of benchmarking (e.g. it does not take account of specific market, technical and regulatory conditions in the jurisdictions concerned, whether there has been a finding of dominance, historic regulation, and so on). The TRA considers that benchmarking to markets with much more developed regulation and competition frameworks is unlikely to provide a sound basis for regulation policy in Oman. The TRA does not consider it necessary to redo its market analysis or carry out further benchmarking. Rather, it is satisfied that the obligations it is proposing are reasonable given the sector today and the TRA's objectives for the growth of the sector. As set out previously, in developing its proposals, the TRA has taken account of the need to support the potential demand for service based competition, alongside the need to promote investment in network infrastructure across Oman.

10.44 The TRA considers it has addressed the comments raised by Friendi relating to non-discrimination in the preceding section.

### iii. Symmetry of obligations

**Issues raised by stakeholders**

10.45 Zajel takes the view that Ooredoo is also dominant in a number of wholesale markets and thus both operators should have symmetric obligations. Specifically, Zajel considers that Ooredoo should be subject to the same ex-ante regulatory remedies as Omantel in the following markets:

i. Market 10: Wholesale voice call origination on the public telephone network provided at a fixed location;

ii. Market 12: Wholesale network infrastructure access at a fixed location; and

iii. Market 14: Wholesale terminating segments of leased lines.

**TRA position**

10.46 In its MDD, the TRA determined which, if any, licensee held a dominant position in each of the relevant markets it defined. The obligations set out in the A&I Regulation on Regulated A&I Services, and indeed, the list of Regulated Services, stems from the MDD. This means that in markets where Ooredoo was not found to have a dominant position, it is not required to offer Regulated A&I Services.

10.47 The TRA does not consider it would be appropriate to reopen the MDD at this stage.

***Question 5 – Do you support the proposed process for the development and review process for approving Reference Offers?***

## 11 PROCESS FOR DEVELOPING AND APPROVING REFERENCE OFFERS

**Issues raised by stakeholders**

11.1 The comments received from stakeholders on the process for the development and approval of the RAIO are set out and addressed below under a number of common themes.

**Scope and content of the RAIO obligation**

11.2 Ooredoo queries whether the First Draft RAIO will include specific prices for access services.

11.3 Omantel submits that the requirements set out in Section 12 of the draft A&I Regulation in respect of key performance indicators ("KPIs"), service level agreements ("SLAs") and service level guarantee ("SLGs") are excessive. Omantel suggests reducing the number of indicators prescribed by the draft Regulation. It supports this with the suggestion that the Dominant Operator subject to the RAIO obligation will itself define the relevant indictors for each of the domains identified by the TRA under Section 12.

11.4 Omantel is critical of the fact that Section 12.3.3(iv) of the draft Regulation effectively precludes the A&I Provider from levying a penalty on a party requesting or in receipt of A&I (the "A&I Seeker") for inaccurate traffic forecasting. It notes that A&I arrangements involving substantial amounts of traffic and a corresponding investment are "better served" through some form of joint risk-sharing framework. Such a framework could allow the A&I Provider and Seeker to agree on certain mutual commitments, including compensation, in the case of a significant deviation from a traffic forecast by the A&I Seeker.

11.5 Finally, Omantel argues that the RAIO should be detailed only to the level required to achieve effective regulation of the sector. According to Omantel, further discussions on "complex technical and commercial arrangements" should take place between the A&I Provider and A&I Seeker directly, with the possibility for both parties to resort to dispute resolution in the case of a failure to reach agreement.

11.6 Time limits established under Section 13 for RAIO development and approval process

11.7 Both Omantel and Ooredoo argue in their responses that the 30 day time period (which is triggered on the date that the draft Regulation takes effect) proposed in Section 13.2 for the development of the First Draft RAIO is too short. Ooredoo argues that this time period contradicts Article (46)

Repeated of the Act, which gives operators three months to prepare a RAIO. Both Omantel and Ooredoo recommend that a period of up to 6 months be allowed for the preparation of the RAIO.

11.8 In contrast to Omantel and Ooredoo, Zajel argues that the time limits established under Section 13:

*"[provide] the duopoly too many possibilities to drag and delay […]."*

11.9 Zajel therefore suggests a much shorter timeframe for the development and approval of the RAIO of approximately three months, and notes that Omantel's first Reference Interconnection Offer ("RIO") was actually produced in 15 working days. [11] Zajel also states that, if, during the RAIO approval process, the TRA decides that the draft RAIO should be changed or amended, such changes should be considered valid and included in the final and published RAIO. According to Zajel, the Dominant Operator can then challenge these changes or amendments, which will remain valid and effective pending such challenge.

11.10 Omantel and Ooredoo argue that the time period allowed in Section 13.8 of the draft A&I Regulation for the Dominant Operator to respond to comments submitted during the consultation on the First Draft RAIO (15 calendar days) is insufficient. Omantel suggests that a period of 45 working days should be allowed for this exercise, and that the RAIO should be "considered as approved" if no response is received during that period. Ooredoo suggests that the TRA set a "reasonable and realistic timeframe" for the execution of this requirement.

11.11 Ooredoo also states that Section 13 should establish a timeframe for a number of the specific processes established in that provision, including the consultation process for the First Draft RAIO. It also requests that the TRA establish a timeline for the conclusion of the entire RAIO development and approval process. Ooredoo argues that the absence of such an overall time limit makes the process for the RAIO development and approval "seemingly endless".

11.12 Both Omantel and Ooredoo also express the concern that Section 13 does not provide for any time-limits for TRA actions. Omantel argues that the lack of any such time-limits would lead to "regulatory uncertainty". While Samatel confirms its support for the RAIO development and approval process, it asks whether delivery time objectives could also be set for each TRA action item under Section 13.

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[11] In its comments on the responses received during the first round of the consultation on the draft Regulation, Omantel states at p. 29 that, contrary to Zajel's assertion:

"[…] the first RIO and RAO were in development by Omantel for a period that extended beyond six months."

**Process for the development and approval of the RAIO**

11.13 Ooredoo argues that the process outlined in Sections 13.8, 13.9 and 13.10 of the draft Regulation is unclear, and submits the following specific questions:

i. whether the Dominant Operator submits the Second Draft RAIO for the TRA's approval and comments?

ii. whether the 15 day time-period set down in Section 13.8:

a. also applies to the process established under Section 13.9; and

b. applies in respect of any modifications that the TRA may require the Dominant Operator to make to the Second Draft RAIO (in accordance with Section 13.9(ii))?

iii. What is the timeframe for the TRA to review the Second Draft RAIO?

11.14 According to Omantel, the holding of a public consultation on the First Draft RAIO (Section 13.4 of the draft Regulation) would be "counterproductive" and "redundant". It justifies this statement with the argument that, as A&I Seekers will have an "inherent interest" in proposing aggressive pricing terms and conditions, they will provide a "highly subjective view" in their response to such consultation.

11.15 Omantel is also critical of the fact that the process for the development and approval of the RAIO under Section 13 of the draft Regulation is led by the TRA. It argues that this approach is "intrusive", and would lead to "unwarranted intervention" into the internal management of the Dominant Operator. It suggests the development of a more "collaborative" process, whereby the input of the TRA would be limited to providing feedback and guidance on the principles of conduct from the Dominant Operator. Omantel also objects to the publishing of specific A&I agreements as it considers they should be treated as confidential.

11.16 Friendi suggests that A&I Seekers (and specifically MVNOs) should be allowed to review the LRIC and retail minus calculations submitted by the Dominant Operator along with its proposed A&I charges (to be included in the separate RAIO Schedules – see Section 12.3.7 of the draft Regulation). Friendi further submits that such review should at least relate to the efficiency and cost assumptions underpinning the downstream part of the LRIC/retail minus calculations.

11.17 Friendi also suggests that a Dominant Operator subject to a RAIO obligation should be required to submit a revised RAIO every 6 months for the first two years following the approval of the RAIO.

11.18 Finally, Friendi recommends that, with respect to the negotiation of commercial A&I Agreements based on the RAIO, the TRA be empowered to intervene and mandate commercial prices if, following the elapse of a "reasonable period" (cited as 15 – 30 days), the parties to such negotiations are unable to agree. Friendi contends that such prices should be based on LRIC,and that MVNOs be consulted on or involved in the LRIC analysis.

**TRA position**

The TRA's response to these comments is set out below.

**Scope and content of the RAIO (obligation)**

11.19 Dominant operators will be required to propose charges in their First Draft RAIO which they consider meet the requirements of the Regulation and its Appendices (including the Service Annexes). These proposed charges should be accompanied by relevant cost calculations and supporting documentation, including models, demonstrating compliance with the requirements of the Regulation and its Appendices.

11.20 The TRA will review the proposed charges along with supporting models and documentation, in the context of its review of the First Draft RAIO to determine their compliance with the Regulation and its Appendices. If considered appropriate, the TRA may also invite interested parties to comment on the proposed charges, the method used to derive them and any non-confidential assumptions. Interested parties would be requested to provide, where possible, supporting argumentation/documentation for their comments.

11.21 The proposed charges will, in this manner, be subject to the approval of the TRA. These approved charges will be included in the RAIO Schedules appended to the RAIO addressing each of the Regulated A&I Services subject to the RAIO obligation.

11.22 In order to ensure clarity on this issue, the Authority has decided to amend Section 13.2 of the draft A&I Regulation to require that, when providing the First Draft RAIO, the Dominant Operator also provide sufficient information and documentation demonstrating compliance with the pricing related requirements of the A&I Regulation and its Appendices.

11.23 The TRA wishes to clarify that Dominant operators will also be required to submit proposed charges for Regulated A&I Services that are not subject to the RAIO requirement to the Authority for approval. Such proposed charges should meet all of the requirements of the Regulation and its Appendixes (including the Service Annexes) that apply in respect of the Regulated A&I Service concerned.

11.24 For this reason, the TRA has decided to amend Section 10.3 of the draft A&I Regulation to explicitly stipulate that the final version of an A&I Agreement negotiated pursuant to that Section that is notified to the TRA

prior to its execution should include all relevant prices, fees and charges. The TRA has also decided to amend Section 10.5 of the draft A&I Regulation to specifically require that the Dominant Operator provide whatever information and supporting documentation, including models, that may be requested by the TRA to demonstrate compliance with whatever pricing related requirements are set out in the A&I Regulation and its Appendices in respect of the Regulated A&I Service concerned.

11.25 The TRA does not accept that the requirements set out in Section 12 of the draft A&I Regulation in respect of KPIs, SLAs and SLGs are excessive. The importance of satisfactory and effective performance indicators as a means of safeguarding compliance with the A&I obligations that apply to a Dominant Operator, particularly those relating to non-discrimination, is underlined by the TRA.

11.26 Nor does the TRA accept that the Dominant Operator subject to the RAIO obligation should be allowed to define the relevant indicators for each of the domains identified under Section 12 of the draft A&I Regulation. As noted above, performance indicators play a key role in the monitoring of the non-discrimination obligation. It stands to reason, therefore, that such KPIs should, in compliance with the principles and objectives underpinning the regulation of the telecommunications market in the Sultanate (and particularly those established in Chapter 2, Article 7, of the Act), be defined by the body responsible for enforcing compliance with the non-discrimination obligation. The idea that the Dominant Operator, as the A&I Provider, should itself define performance indicators associated with the provision of an A&I Service is clearly prejudicial to the interests of the A&I Seeker, in particular, and to the market in general. It is therefore unacceptable.

11.27 Omantel is critical of the fact that Section 12.3.3(iv) of the draft Regulation prohibits the A&I Provider from imposing a penalty in the case of inaccurate traffic forecasting. However, the TRA considers that the risk of inaccurate traffic forecasting on the part of the A&I Seeker can be sufficiently mitigated by, for example, applying appropriate safeguards in the service ordering process. These safeguards would be aimed at preventing a situation whereby an A&I Provider is required to undertake significant additional investment on the basis of an inaccurate traffic forecast. An example of such a safeguard could include the setting of appropriately short traffic forecasting periods, or allowing the A&I Provider the opportunity to revise traffic forecasts before the A&I Provider puts in place the necessary network development/management measures that are required to meet the traffic forecast originally provided.

11.28 The TRA considers that Omantel's proposition that all "complex technical and commercial arrangements" relating to the provision of an A&I service be simply left to commercial negotiation is unsatisfactory. Such a scenario would be prejudicial to the interests of the A&I Seeker, which is likely to be placed at a significant disadvantage in such commercial negotiations due to its lack of bargaining power against the A&I Provider. Reliance on dispute

resolution alone in the absence of any ex-ante requirements is unlikely to be capable of guaranteeing the provision of fair and reasonable A&I in the Sultanate in a timely, efficient and transparent manner. Such an approach would also be incapable of satisfactorily remedying the lack of bargaining power that is likely to disadvantage the A&I Seeker in such negotiations. The TRA notes that Omantel does not provide any indication of what it means by the "effective regulation" of the sector, and has instead chosen to leave this as an open-ended statement.

**Time limits established under Section 13 for RAIO development and approval process**

11.29 The TRA underlines that the RAIO development and approval process was drawn up to reflect the fundamental importance of the RAIO to competition and to the market. To this end, specific account has been taken of the need to limit the possibility for Dominant Operators to "draw-out" or unnecessarily prolong this process to the detriment of fair competition. The TRA has also sought to ensure that this important objective is achieved in as fair a manner as possible, and that the Dominant Operator would not be subject to unrealistic or disproportionate requirements in respect of timing and delivery.

11.30 The TRA therefore considers that the 30 day time-period provided for under Section 13.2 of the draft Regulation constitutes a fair and reasonable period for the preparation of the First Draft RAIO. In practice, the preparation of the First Draft RAIO will be facilitated by the fact that reference offers already exist for a number of the regulated wholesale services that will be subject to a RAIO obligation. The Dominant Operators subject to the RAIO obligation will also be able to start preparing their draft RAIOs prior to the time that the A&I Regulation will take effect, which will assist with them meeting the 30 day deadline.

11.31 The TRA does not consider that Omantel or Ooredoo have given sufficient justification for amending the time periods for the preparation of the First and Second Draft RAIOs (including the time period for the public consultation). The TRA believes that any such amendment would result in the unnecessary protraction of the RAIO development and approval process to the detriment of fair competition, the interests of A&I Seekers and, ultimately, the interests of consumers. As such, the TRA intends to maintain the timeframe set out in the draft Regulation.

11.32 Notwithstanding this, the TRA has decided to insert a new Section, which would allow the TRA, where considered necessary, to extend any of the timeframes set down under Section 13 for the RAIO development and approval process. The TRA considers that this will give it sufficient flexibility in the event that something unforeseen happens due to which the timeframe cannot reasonably be met, without the TRA having to adjust the generally applicable timeframe.

11.33 In response to Zajel's proposal that the timeframe for the development and approval of the RAIO be approximately three months, the TRA notes that the process proposed under Section 13 for the preparation of the RAIO should not exceed approximately three months.

11.34 Zajel also states that any changes or amendments made by the TRA during the RAIO approval process should be considered valid and included in the final and published RAIO. The dominant operator could then challenge these changes or amendments, which will remain valid and effective pending any such challenge. The TRA has ensured that the RAIO development and approval process established under Section 13 is as fair and collaborative as possible. For this reason, it has accorded the flexibility to the dominant operator to develop a First Draft RAIO (Section 13.2), while also seeking to engage other operators in this exercise through the public consultation process (Sections 13.4 – 13.6). Notwithstanding this, Section 13 of the draft A&I Regulation does empower the TRA to direct that specific amendments be made to the draft RAIO prior to its approval, including Sections 13.3.2, 13.9(ii) and 13.10(ii). The TRA considers that this should meet Zajel's concerns.

11.35 In response to Ooredoo' request that the TRA establish a timeline for the conclusion of the entire RAIO development and approval process, the TRA notes that a chart setting out the RAIO development and approval process was included in the draft A&I Regulation consultation document at page 39. This chart sets out the actions to be undertaken by the various stakeholders in the RAIO development and approval process (including the TRA), and also indicates the specific timeframes for these actions as set out in Section 13 of the draft A&I Regulation. This chart indicates that the process set out under Section 13 of the draft A&I Regulation for the preparation of the RAIO should not exceed approximately three months in length.

11.36 By way of response to the comments submitted by stakeholders regarding the absence of any time-limits for TRA actions in Section 13, the TRA notes that it is subject to a number of principles under the Act that require that any needless delays in the RAIO development and approval process be avoided. The TRA's objectives and functions under Articles 7 and (8) of the Act are, for example, particularly relevant in this regard (and specifically the requirement that the TRA ensure the provision of reasonably priced services, safeguard the interests of beneficiaries, etc.). Therefore, as the TRA is under a clear obligation to use every effort to ensure that the RAIO development and approval process is expedited, it is not considered necessary to establish specific time-limits for TRA actions under Section 13.

**Process for the development and approval of the RAIO**

11.37 Ooredoo has posed a number of specific questions in respect of the process outlined in Sections 13.8, 13.9 and 13.10 of the draft A&I Regulation. These questions are answered individually below:

**Does the Dominant Operator submit the Second Draft RAIO for the TRA's approval and comments (Section 13.8)?**

11.38 Yes. The Dominant Operator is required to submit the Second Draft RAIO, together with detailed replies to all comments received during the public consultation, for the TRA's approval and comments. This requirement is established in the chapeau to Sections 13.8 of the draft Regulation, and confirmed in the chapeau to Section 13.9.

**Does the 15 day time-period set down in Section 13.8:**

**(1) also apply to the process established** under Section 13.9; and

**(2) apply in respect of any modifications that the TRA may require the Dominant Operator to make to the Second Draft RAIO (in accordance with Section 13.9(ii))?**

11.39 The 15 day time-period established in Section 13.8 applies only to the process addressed under that Section; i.e., the preparation by the Dominant Operator of a Second Draft RAIO together with detailed replies to the comments received on the First Draft RAIO during the consultation. It does not, therefore, apply to the process established under Section 13.9.

11.40 The TRA has decided to amend Section 13.9(ii) of the draft Regulation to require that the Dominant Operator make whatever modifications to the Second Draft RAIO that the Authority deems necessary within the timeframe indicated by the Authority for the making of such modifications. A failure to meet such an obligation would, therefore, be a breach of the Regulation.

**What is the timeframe for the TRA to review the Second Draft RAIO?**

11.41 11.40 The TRA notes that it is subject to a number of principles under the Act that require it to ensure that the RAIO development and approval process is undertaken as quickly as possible. The TRA's objectives and functions under Articles 7 and (8) of the Act are, for example, particularly relevant in this regard (and specifically the requirement that the TRA ensure the provision of reasonably priced services, safeguard the interests of beneficiaries etc.). As the TRA is under a clear obligation to use every effort to ensure that the RAIO development and approval process is expedited, it is not considered necessary to establish specific time-limits for any of the TRA actions undertaken pursuant to Section 13. Sections 13.9 and 13.10 do not, therefore, establish a specific timeframe for the TRA to review the Second Draft RAIO.

11.42 In response to its comment concerning the public consultation on the First Draft RAIO (Section 13.4 of the draft Regulation), the TRA reminds Omantel that the purpose of a public consultation is to elicit all stakeholders' positions and views on a given proposal or proposition. This allows the TRA to develop its legislative proposal on the basis of a well-

informed and rounded impression of the views and positions of the various stakeholders and interest groups.

11.43 In response to Omantel's argument that the RAIO development and approval process is "intrusive", and represents an "unwarranted intervention" into the internal management of the Dominant Operator, the TRA underlines that the Dominant Operator has an inherent incentive to delay or prolong the RAIO development and approval process. In order to mitigate this risk, and to ensure that A&I Services are made available to the market as quickly as possible, Section 13 creates a RAIO approval process that is led by the TRA, as opposed to the Dominant Operator. The TRA notes that such process is commonplace in other jurisdictions, and will not give rise to "unwarranted intervention" into the internal management of the dominant operator. There is therefore no justification for the replacement of the proposed RAIO development and approval process with a process in which the role of the TRA is limited to providing feedback and guidance on the principles of conduct from the Dominant Operator.

11.44 The TRA does not agree with Omantel that individual A&I Agreements, developed under the auspices of the RAIO, should not be published. Indeed, publication is essential if the market is to monitor that the dominant licensee(s) is (are) offering equivalent terms and conditions to different downstream providers. This issue is addressed in detail in Annexe 1 to this Position Statement.

11.45 Friendi suggests that A&I Seekers (and specifically MVNOs) be allowed to review certain (retail) cost assumptions that underpin the A&I charges proposed by a Dominant Operator. However, much of the cost related submissions that will be made by a Dominant Operator during the RAIO development and approval process will be highly sensitive and it is important that such confidentiality is safeguarded. For this reason, the TRA does not consider that Friendi's proposal is appropriate.

11.46 The TRA notes that, in any case, A&I Seekers (including parties eligible to take mobile access products) will be accorded ample opportunity to provide input on the A&I charges proposed by the Dominant Operator during the RAIO development and approval process (for example, in response to the consultation on the First Draft RAIO). Dominant operators will be required to propose charges in their First Draft RAIO which they consider meet the requirements of the Regulation. Thereafter, these will be subject to industry consultation and review by the TRA. The TRA would, in this context, welcome any information or views that such A&I Seekers would have regarding such retail (or other) cost assumptions that would assist the TRA in its evaluation of the proposed A&I charges. Any sensitive cost information or data provided by the Dominant Operator in this regard will, however, remain confidential.

11.47 The TRA considers that the imposition of an automatic requirement to revise a RAIO every 6 months over a two-year period, as suggested by Friendi, would be both onerous and disproportionate. It is noted that, in any

case, the TRA may, at its own initiative, request the modification of an approved RAIO from "time to time" under Section 14.1 of the draft Regulation.

11.48 Finally, Friendi recommends the TRA be empowered to intervene and mandate commercial prices if, following the elapse of a "reasonable period", an A&I Seeker and A&I Provider are unable to conclude an A&I Agreement. The TRA notes that any instance whereby an A&I Seeker and Provider fail to agree on the commercial terms of an A&I Agreement is explicitly addressed under Article (46) of the Act. This provision states that, if negotiations do not lead to the conclusion of an A&I Agreement within three months, a dispute may be submitted to the TRA for resolution (Article 81 of the Executive Regulation repeats this point in respect of agreements for the provision of interconnection services only).

11.49 The TRA has therefore decided to insert a new Section 7.5 into the A&I Regulation that explicitly states that, if negotiations between a Providing Party and Requesting Party do not result in the conclusion of an A&I Agreement within three months of the receipt by the Providing Party of a valid request from the Requesting Party, either party can refer a dispute for resolution to the TRA in accordance with Section 7.6 of the A&I Regulation (former Section 7.5 of the draft A&I Regulation).

***Question 6 – Do you support the obligations described in the draft Service Annex (fixed interconnection services)? If not please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective.***

## 12 FIXED INTERCONNECTION SERVICES - SPECIFIC OBLIGATIONS

12.1 With a few exceptions, Omantel broadly supports the proposed regulation of fixed interconnection services. Samatel, Friendi and Zajel also broadly support the obligations proposed by the TRA. However, they requested some further clarifications. These exceptions and clarifications are described further below.

12.2 The TRA also notes that some of the comments made by particular operators on the service specific annexes are common across all the annexes. In these cases, the TRA does not repeat the comment (and its response) for all of the annexes, unless the context of the comment merits it, or TRA's response differs.

**Regulated services**

**i. Data and voice services**

**Issues raised by stakeholders**

12.3 Zajel considered that the Draft Regulation was focused on voice and traffic, rather than being more forward-looking and giving more weight to data services. It also suggested that the pricing of data services should be based on capacity rather than on traffic.

12.4 Zajel considered that the interconnection interface should also include IP.

**TRA position**

12.5 The Telecoms Act and Executive Regulations, taken together, require the TRA to specify the standards for telecommunications equipment, for the purposes of achieving interconnection. Given this, and as set out in the consultation, the TRA believes that access providers required to prepare, under this Regulation, a Reference Offer for fixed interconnection services, must provide in those reference offers, for interconnection to be based on C7/TDM interconnection interfaces. The TRA notes that this is in line with regulatory requirements in other jurisdictions. Whilst the TRA is aware that new entrants are likely to deploy NGN networks, the TRA also understands that most, if not all, NGNs, will include a media gateway in order to allow conversion of IP traffic for interconnection purposes.

12.6 In the longer term and for the avoidance of doubt, the TRA believes it would be beneficial to develop an IP interface for all forms of interconnection. Indeed, nothing in the Regulation will preclude access providers, including in their RAIOs, the option of providing an IP interconnection interface, so long as a C7 interface is also offered.

12.7 At an appropriate time in the future and guided by the market and international experience, the TRA will examine whether and when it should require interconnection interfaces to be IP based and initiate a multi-party discussion about the move to IP based interfaces. If required, the TRA shall then update the Service Annex accordingly.

12.8 The TRA does not accept Zajel's criticism that the Draft Regulation was overly focused on voice traffic. Although the particular service annex under consideration in this section focused on voice interconnection services, the TRA has also mandated, in another service annex, that dominant operators in the relevant markets, must include in their reference offers a number of access services which can be used by competing operators to provide broadband and data services.

### ii. Call origination

**Issues raised by stakeholders**

12.9 Zajel considers that the regulated price for origination should be the same as that for termination.

12.10 Omantel considered that there is sufficient competition in the outgoing international call market in order to remove the regulatory obligation to provide these services and allow agreements to be reached commercially. It notes that there has been limited uptake of CS by access seekers and retail consumers, reflecting a lack of interest even when prices were LRIC based. Nevertheless, it has noted that it would be willing to provide call origination services subject to it being able to recover the costs of providing this service, whether or not forecast demand materialises. This is because it considers that would be unfair to have a regulatory obligation to provide a service with limited commercial viability without allowing for full cost recovery.

12.11 Omantel also requested that calls to directory enquiries should be removed as they are covered by call origination and it considers that this market is highly competitive.

12.12 Friendi considers that resellers should also be able to request carrier selection. It also requested that transit, interconnection and international capacity should be available to purchase as separate services.

**TRA position**

12.13 The TRA does not agree with Omantel's position that competition in this market is sufficient for the remedy to not be warranted. The proposals in the draft A&I Regulation stem directly from the MDD, where TRA conducted an extensive competition assessment and concluded that Omantel has a dominant position in the relevant market. CS and CPS are key remedies to promote competition in calls markets. Without regulation, Omantel would have an incentive to not provide a call origination service on reasonable terms and conditions. Regulation is therefore essential to ensure that efficient and effective competition, to the benefit of all stakeholders in Oman, can emerge.

### iii. Incoming international calls

**Issues raised by stakeholders**

12.14 Omantel considers that there is no need to regulate incoming international calls because there are four licensees with access to an international gateway, there is a limited proportion of Omani nationals living abroad and calling subscribers in Oman.

**TRA position**

12.15 The regulation of international calls refers to the terminating leg of these calls and not, in the context of Market 11, to the regulation of the international leg of these calls. The TRA considers it is appropriate to require dominant licensees to offer call termination of international calls on regulated terms and conditions. This is because the termination service represents an economic bottleneck. In order for another licensee to compete effectively to terminate international traffic in Oman, it therefore needs access to this service (i.e. another licensed operator in Oman could agree to terminate calls originating from other countries, by bringing traffic from the international gateway to a point of interconnect with (for example) Omantel's network, and then complete the call by purchasing a call termination service from Omantel). In some jurisdictions, the TRA is aware that incumbent operators have sought to limit the scope of the regulated call termination service to exclude this type of call. By doing so, incumbent operators can limit the competition for carrying incoming international calls. As a result, the TRA continues to consider that it is appropriate to regulate this service.

12.16 Given that, technically, the call termination service for calls originating on domestic numbers and those originating internationally will be the same, the TRA expects that the tariffs charged by dominant operators for both services will be the same.

### iv. IP interconnection

**Issues raised by stakeholders**

12.17 Omantel requested clarification of the definition of the IP interconnect service – i.e. whether this relates to exchange of internet traffic between two operators rather than point to point IP connectivity. Omantel considers that this service should not be regulated because there is already a commercial agreement between itself and Ooredoo, traffic between Omantel and Ooredoo is relatively symmetric, international IP transit acts as a direct substitute and an IXP is planned for Oman.

12.18 Zajel considers that the specific obligations with respect to Market 10 and 11 should include interconnection interface using IP not only SDH and SS7. Zajel also considers that IP interface would lower the costs of interconnection.

**TRA position**

12.19 The TRA recognises that commercially negotiated mutual IP peering services have long formed part of the Internet. These work well when the traffic is broadly symmetrical, as in the case of mutual termination on each other's network. In other cases, IP interconnection provides the capability for all operators to purchase IP connectivity on a worldwide basis.

12.20 The TRA also recognises that Omantel and Ooredoo have reached a commercial agreement over the delivery of IP interconnection services. The TRA is though concerned about the ability of other potential ISPs, who may enter the market, to negotiate a similar arrangement, given the different bargaining positions of new entrants and established operators. Therefore, whilst the TRA has decided at this time not to include a requirement for licensees dominant in a relevant market to offer IP interconnection services on regulated terms and conditions, it does reserve the right to impose such obligations, covering both fixed and mobile services, should it observe that the market is not, by itself, supplying efficient and effective IP interconnection.

12.21 For IP interfaces, see 12.5 to 12.8 above.

### v. VOIP

**Issues raised by stakeholders**

12.22 Samatel requested that VOIP as an OTT application should not be blocked by dominant operators and should be included in the RAIO.

12.23 Separately, and in response to the section in the consultation addressing the position of content providers, Omantel reiterated its views that the scope of activities covered by the A&I Regulation should be limited to telecom networks and services, and that in particular, any process for

including content providers in the scope of this Regulation should include the relevant Ministries and governmental bodies which have certain jurisdiction over content issues.

**TRA position**

12.24 Samatel's comment refers to an issue known commonly as "net neutrality". This is beyond the scope of the A&I Regulation. However, TRA is regulating the provision of VOIP in 2012 through Decision No (34/2012). Article 2 of this Decision indicates that public telecommunications services licensees are permitted to provide VOIP telecommunications services in accordance with the Telecoms Act and the licences awarded to them. The Authority may exempt specific VOIP applications via computers or similar devices if they are used for personal purposes only.

12.25 With regards to Omantel's comments on the eligibility of content providers to take regulated A&I services, the TRA would like to clarify that A&I services will be accessible by all eligible access seekers if holding appropriate authorization from the Authority.. Currently, content and application providers are not licensed by the Authority. As such, they are not, at this time, eligible for the provision of regulated A&I services in accordance with the requirements of the A&I Regulation.

**Eligibility**

**Issues raised by stakeholders**

12.26 Friendi requested that there should be explicit consideration of the eligibility of operators using wholesale mobile access to request A&I services including international IP capacity. It also considers that a specific obligation should be set for the host operator to route the traffic and data without delays or additional fees.

12.27 Friendi also states that the call origination service should be developed such that licensees (such as MVNOs) can subscribe to the service and use this service to route calls over a preferred network, rather than rely on their host network to deliver all traffic.

**TRA position**

12.28 As set out above, there are no eligibility restrictions on the take-up of fixed interconnection services (apart from the requirement to have a licence to operate as a telecoms provider in Oman). As per the draft Regulation, these services may be requested by any public telecommunications licensee whose licence enables them to provide a retail service which relies on the A&I input.

12.29 With regards to the availability of the CS service, although an operator's demand for carrier selection will normally be linked directly to the demand for end-customers to use a particular carrier for a call service, the TRA

confirms that the Regulation would not restrict an operator using the CS service to "override" any other network carriage arrangements it has. Nevertheless, to use a carrier selection service provided by a regulated operator, the access seeker will need to have established a point of interconnection with the regulated operator. That is, carrier selection is not an end-to-end resale service which can be used by licensees with no infrastructure.

**Structure and level of prices**

**Issues raised by stakeholders**

12.30 Zajel agreed with the TRA's proposal to regulate fixed interconnection prices using a LRIC methodology. Zajel also provided suggestions for the detailed calculation of LRIC which are beyond the scope of this consultation and being considered by the TRA in a separate consultation.

12.31 Omantel did not accept the requirement for LRIC based prices unless it allows for full cost recovery. Where forecast demand does not materialise for call origination services, Omantel considers that it should be permitted to recover these costs from other services.

12.32 Friendi also requested that prices should be broken down between access, transit and termination and that dominant operators should always quote these prices separately.

12.33 Ooredoo requested greater clarity on how Dominant Operators can propose interconnection rates.

**TRA position**

12.34 The TRA believes that fixed interconnection prices should be set at cost oriented levels, using a LRIC approach. This approach will ensure that prices reflect as closely as possible the efficient economic costs of interconnection services, whilst ensuring that reasonably efficient operators are able to earn a reasonable return on capital, so meaning that these operators are able to fund investment and so are incentivised to invest in network architecture. Setting interconnection prices on a LRIC basis is supported by a wide body of regulatory precedent, both from Europe and elsewhere, including other countries in the GCC. Furthermore, the decision to set fixed interconnection prices based on LRIC is taken directly from the MDD. As set out in its Position Statement on its LRIC model development, at this stage the TRA will not set charges on Pure LRIC but will rather allow licensees to recover a reasonable proportion of fixed and common costs from interconnection services (i.e., the LRIC plus standard).

12.35 With regards to the process for setting rates, the TRA confirms that, as per the consultation document, the dominant operators must propose, in their draft RAIOs, prices for each service, which they consider meet the requirements of the TRA for such prices to be LRIC based. Alongside this,

the operators should provide evidence to support their proposed prices. In assessing the reasonableness of the prices, the TRA will then use various sources, include potentially both top-down and bottom-up information, to review the operators' proposals.

12.36 The TRA does not agree with Friendi that charges should be split between access, transit and termination elements. For call termination and origination services, the TRA does not consider that this would be supported by international benchmarks. In proposing cost oriented (LRIC based) charges, dominant operators must, however, be able to demonstrate to the TRA the individual network element costs that make-up the proposed charge, and must ensure that interconnection services are sufficiently unbundled to ensure that access seekers do not pay for network elements which they do not require.

***Question 7 - Do you support the obligations described in the draft Service Annex (mobile interconnection services)? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective.***

## 13 MOBILE INTERCONNECTION SERVICES - SPECIFIC OBLIGATIONS

13.1 The majority of comments received on this annex related to the mobile call origination service and particularly, whether Omantel and Ooredoo should be required to offer such a service and if so, which licensees should be eligible to purchase the service.

### i. Mobile call origination

**Issues raised by stakeholders**

13.2 Omantel objected to the regulation of mobile call origination on the grounds that there is limited international precedent for doing so and services such as VOIP are becoming increasingly widespread.

13.3 Omantel also considers that mobile call origination should not be made available to operators without international facilities since this may lead to a grey market.

13.4 Friendi supports the specific obligations described in the draft Service Annex. Notably, it agrees with the TRA that competition based on mobile carrier selection and pre-selection could be harmful to competition based on MVNO access. However, Friendi also considers, on this basis, that mobile CS should not be available to any operators (i.e. it should not be offered to operators with their own international gateway).

13.5 Zajel considers that carrier selection should also cover data traffic. Zajel considers that interface for the interconnection between the duopoly's networks and the network of other providers should also include IP based interface (not only SDH). Samatel also considers that VOIP should be included in the obligations.

**TRA position**

13.6 The imposition of the obligation on Omantel and Ooredoo to offer mobile call origination services stems from the TRA's MDD, which found the licensees to be jointly dominant in the relevant market. As such, the TRA does not consider it appropriate to reopen this conclusion here. Whilst it may be correct that there is limited international precedent for requiring mobile operators to offer CS services, it is not appropriate to compare the regulation of the mobile market in Oman, where the TRA has concluded, following an extensive exercise, that the market is not effectively

competitive, with that in the majority of other countries where more than two network operators are present and the market has been judged to not be susceptible to ex ante regulation.

13.7 The majority of the other stakeholder comments centred on whether there should be any restrictions placed on the eligibility of access seekers to take this product. The TRA does not consider that any of the comments change the position set out in the consultation and therefore in the final draft Regulation, the TRA has maintained the limited eligibility for mobile call origination to licensees who have international gateway licences.

### ii. Mobile call termination

**Issues raised by stakeholders**

13.8 None of the respondents to the consultation raised any issues in relation to the regulation of mobile termination in itself. However, a number of comments were raised in relation to the pricing methodology.

13.9 Omantel accepts the continued regulation of mobile call termination. In contrast to its position on the regulation of other services, Omantel also accepts that it is reasonable for the mobile termination rate to be set on the basis of a (forward looking) LRIC measure.

13.10 Zajel considers that prices should be based on a pure incremental cost basis (i.e. only considering the incremental cost of interconnection without allowing for the recovery of common costs) and that this should be based on the modern efficient technology. Zajel also considers that the revenue arising from international incoming traffic should be regulated and shared with terminating operator or MVNO.

13.11 Samatel also considers that VOIP should be included in the obligations.

**TRA position**

13.12 The TRA hereby confirms the position set out in its consultation. Regulation of mobile termination, with rates set on a LRIC basis is a well-established regulatory measure and indeed, will be a continuation of the existing regulatory situation in Oman. A number of comments have been made, especially by Zajel, on the exact definition of LRIC to be used in the price determination. This is beyond the scope of this consultation and so the TRA does not address this issue further here.

13.13 The TRA also notes that the mobile termination service covers only the termination of traffic from the point of interconnection between the access provider and access seeker, to the final customer. As such, the determination of how providers should share any revenues arising from the international transit leg of incoming international calls with terminating operators is beyond the scope of this service.

***Question 8 - Do you support the obligations described in the draft Service Annex (fixed access services)? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective?***

## 14 FIXED ACCESS SERVICES - SPECIFIC OBLIGATIONS

### Summary of issues raised by stakeholders

14.1 The TRA received a wide variety of comments on the draft fixed access services annex. These related mainly to the list of services which dominant licensees would be required to provide and the price terms on which services should be offered. Generally, Omantel, as the dominant licensee, voiced concerns over the range of services it would be required to offer, whilst the Class II licensees were generally supportive of the proposed obligations.

### List of services covered

### Issues raised by stakeholders

14.2 While Omantel accepted the regulation of LLU, both Omantel and Ooredoo argued that requiring dominant licensees to provide regulated access to dark fibre and ducts is excessive. In contrast, Zajel considers that a fibre wavelength access product should be included in the dominant licensee's RAIO.

14.3 Zajel also does not understand why Ooredoo does not have obligations similar to Omantel with respect to access to infrastructure or passive network elements (e.g. the obligation to offer access to points of presence, national peering or IP transit). In this regard, Zajel notes:

*"The time when Ooredoo was a challenger is gone, now the market is dominated by the two operators, Omantel and Ooredoo, the Duopoly, that have very similar interests especially when it comes to new entrants in the market." (p. 4 of Zajel's response)*

14.4 Omantel proposes that trunk segments of leased lines, access to landing stations, co-location (except for LLU), and access to earth stations should not be regulated but should be provided according to commercial agreements with access seekers.

14.5 Ooredoo does not consider that broadband resale forms part of the markets falling under A&I regulation.

14.6 These issues are discussed in further detail below.

### Wholesale network infrastructure access

#### Issues raised by stakeholders

14.7 Omantel agrees on the need to regulate LLU, line sharing, and co-location on the basis of cost orientation as outlined in the draft regulation (although, as discussed in a subsequent section of this paper, it does not agree with the proposed price regulation of these services). [12] However, it considers that co-location should only be regulated where it is used for LLU.

#### TRA position

14.8 The TRA welcomes Omantel's acceptance of the importance of it offering a fit for purpose LLU product to the market. The TRA has therefore retained the requirement on Omantel to offer an LLU product, as set out initially in the draft Regulation. The TRA considers matters related to the pricing of this product in following sections of this Position Statement.

14.9 The TRA believes that where co-location is a necessary associated facility for an access seeker to use a Regulated A&I Service, then that co-location service would also be a Regulated A&I Service. As such, the TRA does not believe that it would be appropriate to restrict co-location to the LLU product only, as proposed by Omantel.

### Duct access and dark fibre

#### Issues raised by stakeholders

14.10 Omantel considers that duct access should not be subject to regulation since "most of [its] ducts are a result of recent greenfield/brownfield fibre deployments" since much of its legacy copper network was buried rather than ducted. Therefore, Omantel considers that these should be treated as an NGA service and the pricing approach should reflect the corresponding risk. It also argued that duct access should not be subject to regulation but should be subject to commercial agreement.

14.11 Omantel also considers that dark fibre should not be subject to regulation since it is not regulated in a number of other countries, regulating it may disincentivise investment, it does not take account of OBC's rollout and LLU "presents a viable alternative for access seekers". Omantel also notes that dark fibre was not specifically listed in the MDD definition of Market 12.

[12] Page 39 of response.

**TRA position**

14.12 The TRA has reviewed the obligations contained in the draft Regulation in the light of the comments received, taking into account its desire to support the benefits of efficient and effective competition, while ensuring that efficient investment in the sector is maintained and enhanced, and its objective to minimise the burden of regulation.

14.13 This last point is critical. The TRA recognises that requiring Omantel to offer access to dark fibre and duct services could impart a significant cost on Omantel. However, at the same time, demand for these services is unproven and, with the future development of the national broadband network by OBC, it is possible that demand may not emerge.

14.14 Taking into account all of the above, the TRA considers that it would be appropriate, at this stage of the market's development, to not require Omantel (or any other licensee who has a dominant position in the relevant market) to offer duct access and dark fibre services on regulated terms. However, the TRA reserves the right to impose a requirement on such licensees to add these services into reference offers in the event that demand for these services is proven, competition does not develop in the broadband market, or if evidence emerges of anti-competitive behaviour among the licensees

14.15 With regards to Zajel's concern regarding the lack of "symmetry" in the obligations proposed in the draft Regulation, respondents are reminded that the decision over which licensees must provide regulated access services in a given market is driven by the findings of the MDD. As Ooredoo was not found to have a dominant position in the market for network infrastructure access at a fixed location, it is not obliged to offer regulated access to services in that market.

**Wholesale broadband access**

**Issues raised by stakeholders**

14.16 Omantel accepts the inclusion of wholesale bitstream services in the annex, given the TRA's objective to increase competition in this market. However, it does not consider that bitstream services will lead to consumers having access to better quality services, as a wholesale bitstream service does not allow service differentiation at the retail level. Omantel also argues that bitstream access should be priced on a retail minus basis.

14.17 Ooredoo argues that broadband resale is not part of the wholesale markets regulated under the A&I Regulation and should therefore be removed from the Regulation.

14.18 In contrast, Zajel argues that fibre wavelength and IP interconnection for voice traffic should be added to the service annex.

**TRA position**

14.19 The TRA welcomes Omantel's acceptance that bitstream services should be covered in the RAIO. It does not accept, however, Omantel's assertion that having a bitstream product is unlikely to benefit consumers. Some level of service differentiation is still possible with a wholesale bitstream product, whilst operators will also be able to focus on putting together distinctive retail offers (for example, they could compete over the quality of customer care, for example, or how the broadband product is packaged). In addition, many operators in other jurisdictions who initially compete using bitstream services subsequently move to providing broadband over LLU, leading to greater product differentiation and network investment. As such, including a bitstream product in the RAIO will help to ensure the long term development of competition for broadband services in Oman.

14.20 The TRA does not accept Ooredoo' premise that broadband resale is not included within the scope of the relevant market (wholesale market 12). That market, "Wholesale broadband access at a fixed location" clearly covers resale.

14.21 With regards to Zajel's comments, the TRA has set out its position with regards to IP interconnection above. The TRA does not, however, at this stage, feel it would be appropriate to oblige dominant operators to also offer a fibre wavelength product. This is because the roll out of fibre is still in its early stages. The TRA considers it is important to allow the roll out of fibre services to develop first, before potentially introducing access regulation of fibre products.

**Wholesale transmission**

**Issues raised by stakeholders**

14.22 Omantel requested clarification on the definition of this as it argues that it is possible to deliver this service through wholesale terminating segments of leased lines, wholesale truck segments of leased lines, or through a combination of both. Given this, Omantel argues it should be removed from the annex as the service is effectively redundant.

**TRA position**

14.23 The TRA acknowledges there is a technical similarity between the trunk segment of a leased line and wholesale transmission. Indeed, this similarity is likely to be reflected in the pricing of the products. However, they have different purposes. The trunk segment of a leased line will be used with one of more terminating segments to provide a whole or partial leased line connecting to an end-customer. Wholesale Transmission is a standalone product allowing a Requesting Party to access and use transmission of the Providing Party to connect two locations on the Requesting Party's network. For example, transmission for mobile backhaul would be provided through the wholesale transmission product.

14.24 The TRA therefore considers it is useful to keep both products as separate Regulated A&I Services. Operators who are dominant in the relevant market will thus need to provide both services.

**Wholesale terminating segments of leased lines**

**Issues raised by stakeholders**

14.25 Zajel considers that the TRA should specify the exact leased line portfolio that dominant operators must provide and that it must include access to international private leased circuits (IPLCs).

14.26 Omantel accepts broadly the need to regulate wholesale terminating segments of leased lines, but requests clarification on the definition of this service (in particular, whether it covers fibre access). Omantel considers that this service should only relate to copper access and argues that only leased lines of up to 155 Mbit/s should be regulated, as per some benchmark evidence it has provided.

**TRA position**

14.27 The TRA does not believe it would be appropriate to restrict artificially the breadth of the wholesale leased line terminating product. The MDD did not distinguish between leased lines of different capacities, but rather found that Omantel held a dominant position in the overall market for terminating segments of leased lines. That is, the TRA's competition assessment did not suggest that competitive constraints for higher speed services would prevent a dominant operator from being in a position where it could abuse its dominant position. Again, the TRA reiterates that it is essential that regulatory obligations in Oman are based on the results of the MDD exercise, rather than being benchmarked against countries where market liberalisation has been established for a much longer period and where competition has been judged to be more effective.

14.28 The TRA also does not believe the Regulation should distinguish between copper and fibre-based leased lines. This is because such an approach would create an artificial distinction between technologies. A leased line may be delivered over copper or fibre, with the electrical interface being the same regardless of the means of delivery. A customer will not choose explicitly between a copper and a fibre leased line, but rather choose a service that provides the quality of service, download speed and so on that it is seeking. Indeed, the MDD did not distinguish between leased lines according to the underlying medium over which they were provided.

14.29 The TRA does, however, recognise the importance of ensuring that dominant operators have a continued incentive to make efficient levels of investment in their networks. It has taken this into account in its proposed price regulation of all services, as is described in more detail below.

14.30 With regards to Zajel's comments, Omantel will be required to offer a portfolio of wholesale terminating segments of leased lines which will allow

access seeker's to replicate Omantel's retail offer. That is, there should be a wholesale terminating segment equivalent for each retail leased line product offered by Omantel.

14.31 Access to IPLCs is covered under Market 15 and therefore forms part of the Regulated Services in the A&I Regulation.

**Wholesale trunk segments of leased lines**

**Issues raised by stakeholders**

14.32 Zajel considers that providing the terminating and trunk parts of leased lines is necessary for an access seeker to be able to offer a full end to end service and in this respect requests clarification of Ooredoo's obligations.

14.33 Omantel does not agree with the regulation of wholesale trunk segments of leased lines. It argues this would not be consistent with its review of international benchmarks, stating that trunk segments of leased lines are "not traditionally regulated" because of the:

i. existence of effective alternatives for point-to-point connection, such as microwave;

ii. potential connectivity through alternative utilities providers (e.g. electricity, water, etc.); and

iii. the need to promote infrastructure investment in backbone capabilities to support redundancy across operators as well as national disaster recovery.

14.34 Omantel also seeks clarity on whether mobile backhaul services would be considered under this category.

**TRA position**

14.35 The TRA does not agree with Omantel's position that trunk segments of leased lines should not be regulated. The reasoning presented by Omantel mainly relates to the extent of competition for leased line services. Effectively, Omantel is arguing that the range of alternative products means that it is not a dominant provider and so there is no need to regulate the service. This runs counter to the conclusions of the TRA. As set out above, the draft A&I Regulation takes as its starting point, the findings of the MDD. It does not seek to re-examine the level of competition in each market, but rather develops the remedies imposed on dominant licensees through the MDD. In due course, as the MDD is reviewed, these issues will be considered again.

14.36 Therefore, the TRA does not consider international benchmarks from European (or other) markets, which have now been considered to be effectively competitive, and where many competing core networks exist, to be relevant. However, the TRA does note that trunk segments of leased

lines were regulated in many countries at the outset of liberalisation, whilst the incumbent operator maintained a position of market power.

14.37 The TRA has clarified the treatment of mobile backhaul above. It does not repeat that again here.

14.38 In contrast to Omantel, Ooredoo has not been judged to have a dominant position in the relevant market for trunk segments of leased lines (Market 15). It is therefore not required to include this service in its RAIO.

**Wholesale IP international bandwidth capacity**

**Issues raised by stakeholders**

14.39 Omantel does not support the TRA's proposals to require it to offer regulated access to IP international bandwidth. It believes the current approach has delivered significant benefits to Oman, in the form of increased capacity, and suggests instead that licensees should work together to coordinate joint investment initiatives where, "risks and rewards are shared equally". It does not consider that cost oriented access would be appropriate, given the nature and scale of risk associated with investment in this market.

14.40 Zajel considers that operators in Oman should have the right to acquire IP international bandwidth capacity at the same price at which this capacity is sold internationally. Zajel notes that both Omantel and Ooredoo have capacity that is not used and Omantel sells this internationally at a lower rate. Zajel argues that this price should be reflected at local charges for local IP capacity. Friendi also argued that MVNOs should be permitted to have access to wholesale IP international bandwidth capacity and that pricing should be based on capacity rather than on usage in order to better reflect the underlying network structure.

14.41 Friendi suggested that access seekers should be able to purchase access, transit and international IP capacity separately and from different operators. Zajel also considered that it should not be limited to purchasing international IP capacity from domestic operators but that it should also be permitted to purchase this from international operators.

**TRA position**

14.42 The MDD found that Omantel and Ooredoo enjoy a position of joint dominance in the wholesale IP international bandwidth capacity market (Market 16 in the MDD). As a result, the MDD imposed remedies on both licensees requiring them to (amongst others), supply IP international bandwidth capacity to all eligible access seekers, reflecting the terms of their published Reference Access Offer for the supply of wholesale IP international bandwidth capacity, which must be in a form and with content approved by the TRA. As a result, the obligations set out in the draft A&I Regulation implement the remedies determined as part of the MDD. The remedies imposed in the MDD were imposed following a separate

consultation process and the TRA does not feel it is appropriate to re-open those now.

**Access to landing stations and earth stations**

**Issues raised by stakeholders**

14.43 Omantel considers that access to cable landing stations should not be regulated as it was not analysed in the MDD report. Also, Omantel considers that this is a "facility" and not a "service". Therefore, mandating access would be contrary to the Telecoms Act. Further, there are already commercial agreements between Ooredoo and Omantel for access. Omantel also stated that regulating access to cable landing stations would risk investment given that they are currently operating below optimal capacity and therefore making no profits.

14.44 Finally, Omantel argues that access to landing stations is not necessary because the submarine cable capacity is exclusively owned by the owners of the landing station. As such, Omantel argues that third parties purchasing capacity from Omantel or Ooredoo do not require access to the submarine landing stations, but simply a backhaul service to an agreed point of interconnection.

14.45 Omantel considers that access to earth stations should not be regulated as demand is limited and regulation is unlikely to be beneficial.

14.46 Zajel notes that Omantel and Ooredoo have control of international capacity (through submarine cable landing stations) which has an impact on prices of international leased lines, IPLCs and IP transit. Therefore, Zajel strongly agrees with the TRA's attempt to introduce competition in these markets.

14.47 Zajel considers that MVNOs should have also the right to access landing stations (in other words, that access to submarine cable landing stations should not be dependent on international contracts).

**TRA position**

14.48 The TRA considers that access to landing and earth stations remains an important aspect of the overall A&I Regime. Access to international facilities (capacity on submarine cables and access to submarine cable landing stations) is required in order to be able to provide broadband internet services. Indeed, the MDD found that Omantel and Ooredoo enjoy a position of joint dominance in the wholesale IP international bandwidth capacity market (Market 16 in the MDD), which included access to landing and earth stations. To promote competition for broadband and data services, it is important, therefore, that access to both landing and earth stations forms part of the suite of regulated A&I Services.

14.49 While Samatel is licensed to operate its own international facilities, according to the TRA's market review, the relevant markets remain highly

concentrated between Omantel and Ooredoo and the TRA concluded that they were jointly dominant in Market 16. Without regulation, therefore, the licensees could have the incentive and ability to tacitly collude to prevent further entry and so to limit the possibility of the market becoming effectively competitive.

14.50 Access to landing stations will allow alternative providers (new entrants) to directly access submarine cables landing in the Sultanate, thus enabling those providers to negotiate with the owners of those cables to purchase capacity on those cables. The TRA considers that this will, in turn, have the potential to enhance competition for international voice and data services.

14.51 The TRA deals separately with the points raised by Omantel on the reasonability of applying cost oriented access to this (and other) services. Nevertheless, it does not agree with Omantel that requiring Omantel and Ooredoo to offer cost oriented access to landing stations would be unreasonable. Charges will be derived to ensure that a reasonably efficient operator could earn its cost of capital, so enabling it to attract investment funds. This should also not affect investment in the actual cable systems themselves. Rather, the regulation only seeks to ensure that other licensees in Oman, who purchase capacity on a given submarine cable, are then able to access directly that capacity.

**Pricing principles**

14.52 Stakeholders made comments on a number of areas relating to price controls for wholesale fixed access services. These can be divided into three main categories:

i. Symmetry of pricing;

ii. The use of LRIC based pricing; and

iii. The use of retail minus pricing.

The issues raised by stakeholders and the TRA's position on each of these areas are described below.

**i. Symmetry of pricing**

**Issues raised by stakeholders**

14.53 Ooredoo requested greater clarity on whether, for those services which both it and Omantel are required to provide, asymmetric prices would be permitted.

**TRA position**

14.54 As set out previously, it will be up to the licensees to submit proposed price terms as part of their first draft RAIOs. Naturally, the TRA would expect that these proposals may differ between the regulated operators. Thereafter, as well as putting these to consultation, the TRA will review the proposals, using available top-down and bottom-up cost data to ensure that the proposed prices are appropriate.

14.55 Generally, for services where prices should be cost based, the TRA considers that interconnection and access prices should reflect the costs that a reasonably efficient operator would incur in providing the given service. This will allow both the access provider to earn a reasonable return and provide the correct signals to access seekers about the resource cost of the service (i.e., whether it is more efficient for them to purchase access, or roll out their own network). In general, therefore, the TRA believes that this cost should be the same for both licensees. This means that, in the majority of cases, the TRA would expect that regulated cost oriented access and interconnection charges will be symmetric. The TRA accepts that there could be some limited circumstances in which asymmetric rates could be charged. However, this will generally only be the case where one operator has, for reasons beyond its control, unavoidably higher costs.

14.56 For example, in some jurisdictions, new entrant mobile operators have, for a limited period, been allowed to charge higher termination rates than more established operators, especially where differences in spectrum assignments or barriers to expansion have meant that the later entrant has not benefitted from the same economies of scale as other operators.

14.57 Where prices are set by retail–minus, clearly the actual price points may differ, reflecting different retail prices. However, in this case the TRA believes that there is a strong likelihood that the discount percentage (margin) will be the same for each access provider.

### ii. LRIC based pricing

**Issues raised by stakeholders**

14.58 Omantel argued extensively against cost orientation/LRIC based pricing for almost all wholesale fixed access services included in this market. Its main reasoning for this was that it believes that setting prices according to LRIC will reduce the incentives for investment and it is not well suited to services where new investment is required for fibre rollout and international capacity. Further, it argued that cost-orientation should not be required in markets where no specific issues have been identified.

Omantel argues that the TRA has used a "blanket" approach that is inconsistent with regional and international best practice. [13]

14.59 Omantel also suggests that using cost orientation will not necessarily lead to a better outcome for consumers as entrants to the market will rely on the existing networks. Omantel state that this is because it will lead to "a shift in revenues from operators that invest in the network, to resellers that do not invest" and therefore limit the ability of existing network operators to invest in their networks.

14.60 Omantel considers that wholesale bitstream access (Layer 2/3) should be subject to retail minus pricing obligation rather than cost orientation. This is to reflect the uncertainty in the market and aggressive competition in the retail market. Omantel considers that there is substantial investment risk associated with NGA network rollout and the high level of investment required to reach the target coverage.

14.61 Omantel suggests that bitstream based entry is likely to be focused in areas with low subscriber density where costs are higher (since entrants will use LLU in the high density areas where this is more economic). Therefore, using a national average price may results in under-recovery of costs overall. Omantel also considers that bitstream is more of a resale service and there is effective competition in the market. Therefore, Omantel considers that pricing should be based on a retail-minus approach.

14.62 Omantel argued that if LRIC based pricing is to be used, then it should be based on top-down LRIC rather than a bottom-up approach as this would be consistent with the information is produces for its regulatory accounts. It also requested that any submissions for costing models should be confidential and sets out a number of recommendations for the detailed LRIC methodology. These go beyond the scope of this consultation.

14.63 Samatel agrees that only licensees that have invested in network infrastructure should be eligible to benefit from cost oriented access to other network infrastructure. It also argued that LRIC based pricing would increase demand considerably.

14.64 Samatel supports the use of margin squeeze tests for fixed wholesale access services.

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[13] Omantel argues for cost-orientation based on "cost plus" rather than LRIC so that an additional margin can be included to compensate for investment risk. This is already taken into account in the definition of LRIC, where operators are able to earn a reasonable return on efficiently incurred costs (see the TRA's Methodology document on BU LRIC modelling, issued in April 2014).

14.65 Ooredoo requested more clarity on the need for it to develop top-down and bottom-up LRIC models and the forecasting period used in the models.

14.66 Ooredoo strongly objects to LRIC pricing for broadband resale, and other wholesale fixed access services and considers that these should be based on a retail minus methodology.

14.67 Zajel supports the use of LRIC for pricing of fixed access services and suggests the use of bottom up LRIC, where providing fixed access to other licensees is considered to be the increment. Zajel notes that it may be difficult to estimate LRIC costs for capacity (e.g. for leased lines and access lines) and suggests that prices for capacity services should be based on the maximum volume that is theoretically possible to establish. Zajel does not consider that LRIC based pricing will deter investment in the way that Omantel asserts.

14.68 Finally, Zajel supports the TRA's position to apply a retail minus approach for pricing broadband resale service. It adds and suggests that the duopoly should be subject to the obligation to submit "a full margin squeeze analysis" to the TRA. These margins should be reasonable (not lower than 40%).

**TRA position**

14.69 The TRA has considered carefully the submissions made by the stakeholders on the issue of how regulated fixed access services should be priced. In particular, it has considered whether the use of LRIC based pricing could limit the ability of access seekers to invest in network upgrades and whether such pricing would lead to an unreasonable transfer from access providers to access seekers. For the reasons set out below, however, the TRA is satisfied that its initial proposals remain reasonable.

14.70 Many aspects of the consultation responses, especially from Zajel and Omantel, concerned the practical development of LRIC models. The TRA does not address these here, as they go beyond the scope of the consultation. It does though direct stakeholders to Methodology Document on BU LRIC Modelling issued by TRA in April 2014 which describes the TRA's BU LRIC model process in more detail, and to Section 11 of this Position Statement, which describes the process by which regulated access prices will be set.

14.71 In response to Ooredoo' query regarding whether it needs to develop LRIC models, the TRA confirms that Ooredoo will be expected to be in a position to meet all the obligations of the Regulation that arise from its status as a dominant operator in certain relevant markets. These obligations include the provision of evidence-based, cost oriented charges for regulated A&I services.

14.72 For the avoidance of doubt and for the reasons set out in the consultation, the TRA has not proposed to set wholesale broadband resale prices using

LRIC. This service was instead proposed to be priced on a retail minus basis.

**Response to Omantel concerns on the use of LRIC**

14.73 Having reviewed the submissions, the TRA concludes that Omantel appears to have misunderstood the definition of LRIC. The TRA believes it is also not appropriate to categorise the use of LRIC based pricing as placing full investment risk with the access provider. Many access services, such as LLU, requires significant investment by entrants in their own infrastructure. In any case, access providers will be compensated for the investment risk through the cost of capital.

14.74 Contrary to Omantel's assertions, LRIC based pricing allows for both the recovery of efficiently incurred costs and a reasonable return on capital employed (ROCE) and therefore seeks to not distort efficient investment. Investment is funded by future revenues rather than by past revenue. Cost orientation allows for a reasonable return on investment in order to maintain investment incentives. Furthermore, in determining the allowed cost of capital, the TRA will take into account the cost of finance in Oman, in order to ensure that access providers are able to continue to invest. Large scale investment could also directly affect the cost of capital (for example, if a business is seen to become relatively more risky compared to the overall market, its equity beta is likely to increase). The TRA will assess this fully when reviewing the cost of capital.

14.75 While the use of LRIC, compared to setting prices at levels above efficient costs, may result in a reduction in access prices and ultimately, lower prices for consumers (assuming there is some pass through from lower wholesale costs to retail prices), this does not necessarily diminish the ability or the incentive to invest as Omantel claims. Rather, this would reflect only that, up to now, access providers have been able to extract monopoly profits as a result of the market power they hold in the various wholesale markets. A regulatory authority should seek to promote the development of competition, with efficient and effective competition then also driving future investment. In addition, and for the reasons set out in the consultation document, resale products will be priced on a retail minus approach – that is, only access seekers who have undertaken some level of network investment will be able to use wholesale access products provided on a LRIC basis.

14.76 The TRA does not agree that it has not identified specific concerns on how access prices would be set, absent effective regulation. As part of the MDD, it identified such concerns when assessing whether a market is susceptible to ex ante regulation and hence whether price regulation should be appropriate. Furthermore, its proposal to regulate charges on LRIC is consistent with previous precedent in Oman.

14.77 The TRA has considered the international precedent presented by Omantel in its consultation response. Omantel uses the UK as an example

of where regulation has been more "investment friendly". However, Omantel's submission does not describe the extensive regulation of copper based services that serves to prevent BT in the UK from abusing its position of dominance when providing fibre based services ("anchor pricing"). Omantel also describes how in Ireland price floors were set "to avoid dis-incentivising investment in LLU and network infrastructure". However, this document describes how the price floor is intended to prevent margin squeeze – i.e. to promote competition downstream rather than to protect the regulated operator. [14]

14.78 Finally, regulation of fixed access products on a LRIC basis has been a common obligation imposed across many European countries. Whilst there are now some moves to change access pricing approaches for fibre based products, this change is only implemented on the back of continued regulation of copper products and the development of, in some markets, more extensive competition for access services.

### iii. Retail minus pricing

**Issues raised by stakeholders**

14.79 Ooredoo considered that retail minus pricing should be used for all fixed wholesale access services.

14.80 Samatel supports the use of a retail minus approach for broadband resale but suggests that there should be consideration of the returns earned by the reseller itself (rather than those that would be available to the host operator).

14.81 Samatel also argued that the retail minus methodology lacked transparency and could be difficult to implement in practice. Friendi also expressed its concern over the complexity of retail minus approach as well as over the potential incentive of host operators to provide false calculations. Friendi also considers that any adjustments to wholesale prices should take place prior to any adjustments to retail prices or should be applied retroactively from the day when retail prices of the host operator change.

14.82 Omantel suggested that a workshop would be useful to address the concerns of various operators relating to how the retail minus methodology would be implemented in practice. It supported the use of retail minus pricing to set the broadband resale price, but also proposed that bitstream services should be priced on a retail-minus basis.

[14] http://www.comreg.ie/_fileupload/publications/ComReg1232.pdf

**TRA position**

14.83 The TRA is satisfied that retail minus pricing is appropriate for wholesale products such as broadband resale, where the access seeker can use the wholesale product to offer a retail service with no or only very limited investment. This is because such pricing enables resellers to compete in downstream markets, whilst also giving an incentive for parties to invest in network infrastructure.

14.84 However, for the reasons set out above, the TRA does not think it is appropriate to use this method to determine the prices for other wholesale fixed access services. Therefore, in line with the initial proposals, licensees that are dominant in the relevant markets will be required to set the prices for all wholesale fixed access services using a LRIC approach, with the exception of broadband resale.

14.85 The TRA notes the concerns raised by some of the stakeholders regarding the potential complexity of the retail minus approach. In general, the TRA believes that this approach ought to be more straightforward than the LRIC approach. As set out in the consultation, the starting point for determining the wholesale price is the retail price set by the dominant operator (and as approved by the Authority under separate retail regulations where applicable).

14.86 The “minus” component of the calculation consists of costs that are avoided by the vertically integrated operator when it provides only the wholesale service instead of the full retail service. The burden would be on the access provider to demonstrate that any such costs are relevant. The “minus” component would be applied as a percentage discount to the relevant retail price.

14.87 As set out in the draft Regulation, the dominant licensees will also be required to demonstrate regularly their compliance with an ex post margin squeeze test. This will ensure that the wholesale price is set appropriately and enables access seekers to compete in the downstream market with the dominant licensee. In order to meet the margin squeeze test, the dominant licensee will need to update regularly its wholesale prices, if it is reducing prices in the downstream market.

14.88 In light of the comments received, however, the TRA will consider arranging, in due course, and following the publication of the final A&I Regulation, a workshop for market participants to describe the retail minus regime in more detail.

***Question 9 – Do you support the obligations described in the draft Service Annex (national roaming)? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective?***

## 15 NATIONAL ROAMING - SPECIFIC OBLIGATIONS

15.1 The respondents raised a number of issues concerning the scope of the National Roaming obligation. At a high level, these relate to which licensees should have access to national roaming and at what price. Ooredoo has also questioned whether a new entrant could get more favourable terms and conditions for national roaming than it received itself.

15.2 The TRA sets out these concerns and its response in more detail below. Having considered, these comments however, the TRA is satisfied that its proposals are fair and reasonable and should be implemented as per the draft Regulation, save for making provisions that the date from which the obligation to prepare the relevant Reference Offer and make the services available to any eligible licensee shall apply, namely a new public telecommunications mobile licence holder, will be the date of the formal announcement of the commencement of the process for award of such a licence.

### Services included

### Issues raised by stakeholders

15.3 Omantel made no comment on the services to be included. In contrast, Ooredoo has asked that the TRA should elaborate on the obligations proposed for National Roaming and that national roaming arrangements should be left to commercial negotiation with minimal intervention from the Authority. Ooredoo further stated that it would not accept any terms for a new entrant (in respect of coverage obligations and national roaming) that were more favourable than those offered to Ooredoo.

15.4 Friendi broadly agrees with stipulated service obligations. It suggests that an explicit reference should be provided for in the Service Annex with respect to data national roaming.

15.5 Zajel argues that the current regulation only allows operators that have been granted frequency spectrum to take a national roaming service. It considers that if the national roaming service was available to all operators, it would allow the current and new MVNOs to be active in this market without having to finance the roll out of their own network. Zajel considers this to be a considerable limitation in the market for national roaming.

**TRA position**

15.6 The TRA notes the comments received and responds to these below. In so doing, the TRA also seeks to respond to certain misconceptions as to what has been proposed in the draft Regulation.

15.7 Firstly, the TRA would like to clarify that the proposals set out in the draft Regulation do not affect commercial agreements that may be entered into between operators. Such agreements are permissible and not the subject of this specific obligation.

15.8 The national roaming services must be supplied, by a dominant licensee, following a request from any public telecommunications mobile licensee that has been assigned frequency spectrum for the provision of voice and/or data services, for the first three years following the launch of its commercial mobile services in Oman; and subject to any coverage obligations that they may have in their licences.

15.9 Given this, the relevant Service Annex will be amended so that the timescales relating to the obligation to:

(a) prepare the national roaming services offers; and

(b) make such services available to those entitled to them,

shall start following the award of a new public telecommunications mobile licence.

15.10 In terms of the content of the Reference Offer for National Roaming, the TRA does not consider that any roaming services should be restricted in scope and pricing to the roaming service Ooredoo used when it first entered the market. This is because the mobile market has developed considerably since Ooredoo entered the market, including Ooredoo's own entry, while network costs also have been changed. Therefore, it would be inappropriate to, in effect, use a roaming agreement from a number of years ago as the basis for an agreement today. The reasonableness of the proposed roaming terms and conditions will be judged on their own merits and not against historic practice in the market.

15.11 The TRA does not see any reason why it should exclude any technology from the scope of the Regulation. That is, so long as the licences of both the access provider and the access seeker cover a specific technology, it could be included in the national roaming agreement. To do otherwise would run counter to the TRA's stated objective to be technology neutral in its regulation.

15.12 In addition, the Authority will decide the exact scope of the coverage of the obligations of any new entrant when such licenses are to be

granted. Therefore the comments objecting to National Coverage are misguided in that the Regulation stipulates that *"Public Telecommunications Licensees are only eligible to request National Roaming Services in those geographic areas of the Sultanate in which they do not have their own network coverage. Public Telecommunications Licensees are only eligible to request National Roaming Services in the first three years following the launch of their commercial mobile services in the Sultanate."* Thus, subject to any roll out obligations the offer would be removed as the network is rolled out, or not provided at all where the licence does not allow the new entrant to rely on such a service.

15.13 Further, the TRA maintains the ability to require a licensee to provide national roaming services for other policy reasons (for example, but not limited to, for reasons relating to universal service) through separate regulations or orders.

15.14 The TRA does not consider that it is appropriate to expand the scope of those entitled to national roaming to any operator that does not meet the criteria already set out in draft Regulation. National roaming is a service which should be provided to new entrants to support their entry into the retail market whilst they are deploying their own network infrastructure.

**Pricing of national roaming services**

**Issues raised by stakeholders**

15.15 Stakeholders expressed very mixed views on pricing. Both Zajel and Samatel argued that national roaming should be available at cost. Zajel argued that national roaming should be based on cost and on a site by site basis. On the other hand, both Ooredoo and Omantel argued prices should be commercially agreed and not mandated. Samatel considers that the retail minus methodology is "complex".

15.16 Omantel does not support the use of a retail minus approach as it considers that it can limit the ability of the dominant operator to change its retail prices. It further considers that if national roaming were commercially agreed, prices would likely be on a retail minus basis anyway but with greater flexibility and would be monitored through ex post regulation.

**TRA position**

15.17 The TRA continues to believe that prices for national roaming services should be set on a retail-minus basis. This is because the national roaming service is used by new entrants where they do not yet have network infrastructure.

15.18 The TRA believes that a retail-minus approach to price setting will encourage the continued roll out of infrastructure by the new entrant in

order for it to limit its reliance on roaming. The TRA also considers that this approach will be easier to implement in practice than a 'cost-plus' approach. This is because network costs could differ across the country and in particular, between areas covered by roaming agreement and those not covered. In contrast, it will be possible to set a nationally uniform national roaming price based on retail-minus.

15.19 As such, the TRA's proposal set out in the draft Regulation is maintained. The TRA does not agree with Omantel that this will limit its flexibility in the retail market. As long as Omantel ensures that it is not engaging in anti-competitive pricing such as margin squeeze, the national roaming obligation will not affect its ability to change its retail prices.

***Question 10 - Do you support the obligations described in the draft Service Annex (MVNO access services)? If not, please provide, with explanation, a description of the amendments to this Service Annex which you believe would better reflect the Authority's objective?***

## 16 MOBILE ACCESS SERVICES - SPECIFIC OBLIGATIONS

16.1 Comments have been received from a number of respondents concerning the introduction of MVNOs in the market and the impact that this may have on existing operators in the market as a whole.

16.2 The comments raised a number of detailed points which are set out below, alongside the TRA's response. However, the TRA would like to clarify that the detailed provisions concerning the rights and obligations of MVNOs, if and when these are licensed, are clearly outside the scope of this consultation. The current consultation and the resulting Regulation deal exclusively with the interconnection and access rights that appropriately licensed MVNOs will be entitled to.

16.3 The draft Regulation sought to describe the A&I services that would be available to future MVNOs, as and when they are licensed in Oman. Such services could not, however, be taken by the existing Class II licensees. Given that currently no such MVNO licenses exist and to avoid confusion, the dominant licensees will not be required to include these MVNO services in the initial RAIOs that they must prepare or, at this time, to offer such as Regulated A&I Services. As and when additional MVNO licences are granted, as a remedy to resolve the competition concerns in the relevant markets identified by the TRA in the MDD, the TRA will amend the relevant Service Annex to set out the additional services which must be offered by the dominant licensees to suitably licensed MVNOs. This amendment will be made pursuant to Section 4 of the draft A&I Regulation. The range of additional access services which will be included in the Service Annex will be dependent on the final MVNO licences that are granted.

16.4 Therefore, the dominant licensees are only required, at this time, to offer, on regulated terms, the mobile access services that are available to be taken by the existing Class II licensees that by virtue of their licences can purchase such services.

16.5 For the avoidance of doubt, the services that must be provided at this stage have been defined as Mobile Access Services. Definitions relating to MVNOs have been retained in the Regulation only to the extent necessary to define the scope of the services to be provided at this stage. The definitions used in this Regulation relating to MVNOs are without prejudice to any future decisions that the TRA may take on this issue.

**Service obligations**

**Legal basis for services based entry**

**Issues raised**

16.6 Ooredoo and Omantel consider that there is no legal basis for the introduction of Light and Full MVNOs, as described in the Regulation / Consultation. On the other hand, Friendi in its second round submission took the view that no change to the Telecommunications Act is needed. It considers that the introduction of the new Full MVNO and Light MVNO concept would need a simple amendment to the MVNO licence.

16.7 Zajel finds that the distinction between light MVNOs and full MVNOs is not sensible and would welcome the TRA focusing more on ensuring that the current MVNOs gain more independence (for example, by including access to national roaming as discussed above).

**TRA position**

16.8 The TRA examined the comments received concerning MVNOs and related access. It has also considered whether to proceed at this stage to include in the current Regulation the services that it has identified as appropriate for such entities.

16.9 The Authority, without prejudice to its position in the future, has decided that it will retain in the Regulation the appropriate services for mobile access that should be made available now to appropriately licensed operators. These licensees are, in effect, those currently holding appropriate Class II licences. As set out above, it will not require, at this time, the dominant licensees to include in their RAIOs services which could be used by the so-called Full MVNOs as defined in the consultation document. The TRA reserves the right to require dominant operators to add these services to the Annex at a later date.

**Range of services included in obligations**

**Issues raised**

16.10 Given the fact that the current Regulation is not intended to make provisions for the establishment of MVNOs and the scope between the different types of such entities, the comments received were examined solely in the light of the approach identified above.

16.11 Several licensees (Friendi, Samatel, Zajel) stressed the importance of data based access services. Friendi expressed the view that mobile regulated access should not be limited to voice access but should include data access as well (both incoming and outgoing traffic). Friendi also stated that resellers should be able to access any new technologies at the same time as the host operator's retail unit.

16.12 Friendi expressed the views that appropriate licensed operators[15]should have the right to choose the host operator and a right to choose more than one host operator at a time. This view was supported by Zajel in its second submission. They argue that they should have the right to choose any provider/s for international IP capacity (including the right to deal with foreign providers), national transit and mobile (radio) access.

16.13 Friendi also requested that an explicit reference is made with reference to Lawful Intercept being the host network's obligation (for the part of call/data content) and that no fees should be charged by the host operator for this service. In contrast, Lawful Intercept for customer information would remain the responsibility of the MVNO.

16.14 In addition, Friendi commented on issues concerning the services that should be provided such as location data, interconnect at the SGSN, SS7 signalling, HLR/HSS/AUC, Gateway MSC, GGSN, etc.

16.15 Zajel considers that it should be clearly specified in the Draft Regulation that call origination could be managed by either voice channel or by data channel (VOIP).

16.16 Zajel also noted that the interface for the interconnection between the Duopoly's network and other networks should include IP based interface (not only SDH).

**TRA position**

16.17 The TRA considers that the draft Regulation deals adequately with the concerns by those currently holding licences that entitle them to take mobile access services. In addition, any issues raised about the services that must be included in the RAIO should be examined (a) when the draft reference offers are made available for comments, and (b) in the light of the rights and obligations of the licensees that are entitled to take these services.

16.18 Without any prejudice to any future decisions it may take, the TRA is satisfied that those services that should be mandated are already provided for in the Regulation. Any additional services which an access seeker may require should initially be a matter to be agreed commercially between the licensees.

16.19 The comments concerning data services as well as the use of other technologies such as VOIP are matters that are covered by the general policies of the TRA and as such should not be treated differently for current purposes. The TRA would expect, however, that resellers should be in a

[15] References were made in relation to MVNOs, however given the approach adopted by the Authority these comments have been adjusted to relate to the Regulation to be issued save where they are only MVNO specific.

position to offer a full set of mobile voice and data services to consumers, using the access services provided by the dominant licensees.

16.20 The point concerning whether full MVNO licensees should be entitled to require access to more than one network operator and other specific issues relating to the scope of the rights and obligations of these licences will be determined in due time when the relevant licences/framework is brought into force. Where appropriate, these issues will be reflected in the content of a relevant new Service Annex to the A&I Regulation for MVNO access services. As such, the provisions in the Regulation will be amended accordingly at that time in the light of relevant licence/framework provisions.

**Pricing for Mobile Access / MVNO access**

16.21 Stakeholders made comments in the following areas in relation to the pricing of MVNO access:

i. General comments on the regulation of the pricing of services;

ii. The use of a retail minus approach for light MVNOs;

iii. The use LRIC based pricing for full MVNOs;

iv. Competition issues related to pricing;

v. The pricing of data services; and

vi. Whether MVNOs should receive revenues from host operators for incoming calls.

These comments and the TRA's position in relation to each area are described in more detail below.

**Pricing of services**

**Issues raised by stakeholders**

16.22 Friendi argues that reliance on commercially negotiated prices has not worked in Oman and access services have not been provided on fair and reasonable terms. While Friendi, Samatel and Zajel support the use of cost based pricing, Omantel strongly objected to the use of LRIC pricing for full MVNOs and argued that prices should not be regulated, but based on commercial agreements only.

16.23 Zajel objected to the use of different pricing methodologies for Light and Full MVNOs. It argued that prices should be fair and equal and thus not dependent on the respective status of buyer. Zajel considers that prices for both light and full MVNOs should be based on LRIC to allow MVNOs to offer competitive services. This is because it considers that retail minus pricing would mean that in practice MVNOs would change their prices following a change in the

duopoly's different offers and campaigns i.e., that it would not stimulate genuine competition .

16.24 Friendi also suggested that there should be TRA approval of retail tariffs in order to monitor the impact on competition of the host operator's retail pricing. However, this is beyond the scope of the A&I Regulation.

**TRA position**

16.25 The TRA is satisfied that its original proposals will support the development of effective and efficient competition in the mobile market. In the light of Omantel and Ooredoo' position in the mobile market (where the TRA found Omantel and Ooredoo to be jointly dominant in the market for mobile access and call origination – Market 18 in the MDD) and hence their ability to restrict competition, in the absence of ex ante regulation, the TRA continues to believe that it is appropriate for it to impose regulatory controls on mobile access prices.

**Retail minus for "Light MVNOs" / current Class II Licensees**

**Issues raised by stakeholders**

16.26 Although Friendi supports the use of cost based pricing, it considers that retail minus methodology is complex and brings uncertainty over the wholesale discount offered. This view was also shared by Samatel. Friendi considers that if retail minus pricing is used, then it considers that such prices should account for overhead costs and any government taxes (annual license fee, numbering fees and royalty). In this respect Friendi considers that a cost plus approach would be more appropriate (as well as more transparent and practical). Friendi also considers that retail minus pricing provides no scope for MVNOs to invest in product innovation and network assets and limits competition to "branding, customer service, distribution and – if they are more efficient than their host – price".

16.27 Friendi considered that the most significant drawback of the retail minus approach is that it does not address the dominant operator's ability to charge excessive prices and hence foreclose downstream markets. It also reduces the incentive of the host operator to reduce retail prices.

16.28 Therefore, Friendi considers that a retail minus pricing regime would not support further liberalisation and greater competition but cost-orientation would.

16.29 Ooredoo considers that it is likely that it will have different retail prices and avoidable costs compared to Omantel and therefore, regulated prices should be asymmetric. Ooredoo suggests that the TRA should hold a workshop to discuss the methodology further (including average revenue calculation, quarterly calculation).

16.30 With respect to costs differentials of different MNOs arising from economies of scale, Friendi notes in its second submission that this could be resolved by

setting cost oriented tariffs that reflect not actual costs but the efficient costs of an operator with equal market share. It also considers that cost differentials could lead to more competition. It also argues that service based competition based on access is often a vehicle to for long-term infrastructure competition.

16.31 Ooredoo considers that the requirement to demonstrate no margin squeeze for the retail business is not in line with the remedies proposed for the subject markets. In contrast, Friendi suggested that stakeholders should be involved in the review of retail minus calculations and margin squeeze test.

**TRA position**

16.32 The TRA continues to believe that retail minus pricing should be used as the basis for the determination of mobile access charges to resellers / Class II Licensees under the existing licensing framework (so called "light MVNOs" in the consultation). The TRA does not believe that resellers should have access to LRIC / cost based pricing for wholesale services when they have not themselves invested in network equipment.

16.33 The TRA does recognise that the current pricing regime for mobile access is one contributory factor for the resellers to not yet establishing themselves as effective competitors to the two network operators. It therefore set out detailed guidance in the consultation as to how access charges should be set and assessed. This guidance was developed with the objective of enhancing the current retail minus regime, to ensure it offered a reasonable margin to the resellers, thus enabling them to compete with the network operators, to the benefit of all consumers. These were also reflected in the draft Regulation, and will be maintained in the Final Regulation. The TRA is confident that these detailed proposals, combined with the requirement for the network operators to demonstrate regularly that their retail and wholesale pricing does not create a margin squeeze for resellers, will ensure that resellers will be able to compete in the downstream market.

**LRIC for Full MVNOs**

**Issues raised by stakeholders**

16.34 Omantel opposes the use of LRIC pricing for Full MVNO access whereas both Samatel and Friendi support the use of cost based pricing. Friendi suggested that stakeholders should be involved in the review of LRIC calculations; and Zajel called for prices for call origination to be equal prices for call termination.

16.35 Omantel considers that allowing cost-based full MVNO access will destroy value in the mobile market and could discourage investment by network operators (e.g. in rural areas). Omantel considers that prices should be commercially negotiated and requiring LRIC-based prices will lead to easy entry and exit to the market by MVNOs since MVNOs do not invest in the country and this may lead to "irreversible market damage". Omantel does not consider that the regulation being proposed is a proportionate remedy for the finding of dominance in the MDD. It considers that regulatory intervention should be ex-post in case of market failures. Omantel also urges the TRA to

postpone implementing regulation in this market until further analysis has been carried out.

16.36 Further, Omantel considers that it may have a different LRIC compared to Ooredoo owing to differing scale. This may have a negative impact on the smaller MVNO if it has higher unit costs. Given this, this may result in short term focused price discounting. Omantel describes the TRA's approach as "fundamentally flawed". This view was challenged by Friendi who argued that if costs are assessed correctly, LRIC allows for a reasonable rate of return and, therefore, will not stifle investment. Friendi also argued that maintaining the current level of competition in the market (through access based entry) would actually reduce the pressure for MNOs to invest. Friendi also stated that incentives to invest in coverage in rural areas would continue to exist particularly where investment has already taken place. In addition, there is no evidence of a link between monopoly profits and greater network investment.

16.37 Friendi also suggested that spare capacity in rural areas could be utilised to provide wholesale services. Friendi also notes that even though in some countries MVNO access services are commercially negotiated, the agreed prices closely reflect cost oriented prices.

16.38 Friendi considers that price regulation is necessary given the weak incentives for the host operator to provide access on reasonable terms and conditions. It also suggests that the LRIC should be of an operator with equal market share (rather than reflecting Omantel's and Ooredoo' actual market shares).

**TRA position**

16.39 In general, the TRA believes it is appropriate that such access should be provided on cost-based terms subject to:

i. There being an absence of effective competition in a market ;

ii. Where the emergence of such competition relies on access seekers gaining access to the incumbent networks, and

iii. Where those access seekers are prepared to undertake network investment.

16.40 Furthermore, the TRA considers that many of the points raised by Omantel in response to this question have been considered above by the TRA, in the context of using LRIC to set prices for other regulated wholesale services.

16.41 Nevertheless, the TRA notes that, at this time, there will be no requirement for the network operators to include in their RAIOs a "full MVNO" service. As such, the TRA does not at present need to take a final decision on the exact pricing of full MVNO services. However, and without prejudice to any future decisions it may take, the TRA expects that this will be in line with the position set out in the consultation document.

**Competition issues**

**Issues raised by stakeholders**

16.42 Friendi raised a number of competition concerns in relation to MVNO pricing and access. In particular, Friendi suggested that:

i. For a given retail product of host operator, the corresponding wholesale price should enable MVNOs to launch a competing product in the relevant market (including any promotions);

ii. Promotions offered by Omantel should be subject to TRA's approval in order to check for any adverse effects on competition;

iii. Host operators should be required to demonstrate that there is no anti-competitive effect that could result from concluding an exclusive arrangement before such an arrangement is permitted;

iv. Dominant operators should provide detail of their effective retail prices with a break-down of usage within bundles and allocation of monthly fees to selected usage types; and

v. Future retail tariff requests including short term promotions should not be approved until the TRA has determined any adverse impact on competition or the market.

**TRA position**

16.43 Many of the points raised by Friendi are beyond the scope of the A&I Consultation. The TRA therefore does not respond to those here. It is, however, aware of the importance of ensuring that the dominant operators do not engage in anti-competitive behaviour through margin squeeze, for example. It is for this reason that the TRA has set out a clear obligation on the dominant operators who are required to offer Regulated A&I Services to demonstrate, on a regular basis to the TRA, that their wholesale and retail pricing does not constitute margin squeeze. As set out in the individual Service Annexes and draft Regulation, the continual failure by the Host Operator to satisfy the ex post margin squeeze test (described in Section 9 of Appendix 2 of the draft Regulation) shall trigger further investigation by the TRA into the retail and wholesale pricing practices of that operator. This may result in the imposition of penalties on the Host Operator.

**Pricing of data services**

**Issues raised by stakeholders**

16.44 Zajel considers that more consideration should be given to data access services and price regulation should be based on capacity rather than on traffic.

16.45 Friendi also considers that prices for IP transit should be based on bandwidth rather than on a per MByte basis.

**TRA position**

16.46 The TRA has proposed that mobile reseller access for current Class II Licensees will be priced on a retail-minus basis. As such, wholesale prices will reflect the structure of retail charges. This will cover both voice and data services, to the extent that the resellers choose to provide data services to their customers.

**Revenues for incoming calls**

**Issues raised by stakeholders**

16.47 Friendi considers that resellers should receive revenues for receiving incoming calls.

**TRA position**

16.48 Under the 'retail minus' regime, resellers will not be eligible to share the revenues from incoming international calls as these are 'wholesale' revenues.

***Question 11 – Do you support the Authority's proposed dispute resolution procedures as set out under section 7.5 of the draft regulation? If not, please set out your reasoning and explain why an alternative process would more closely match the Authority's objectives.***

## 17 DISPUTE RESOLUTION PROCEDURES

**Summary of stakeholder comments received**

17.1 The comments received from stakeholders on the dispute resolution process are set out below. As the comments received varied considerably, they are addressed by individual respondent.

**Omantel**

17.2 While Omantel is supportive of the dispute resolution process established in the draft Regulation, it expresses its doubts that this process will result in a faster and cheaper solution.

17.3 Omantel notes that Section 7 of the draft Regulation should also require that the costs incurred following the appointment of a Billing Expert to resolve a Billing Dispute be borne equally by the parties to that dispute (in the same way as the costs of the Mediation Procedure are to be borne equally by the parties to a dispute under Section 7.5.13 of the draft Regulation).

**Ooredoo**

17.4 Ooredoo contends that the proposed dispute resolution process is difficult to implement, slow and ineffective because:

i. it does not specify who appoints a Billing Expert and who bears the associated costs;

ii. it does not specify what the timeframe is for the appointment of the Billing Expert by the TRA if the parties to a Billing Dispute cannot reach mutual agreement on this matter (Section 7.5.4);

iii. it does not describe what happens if the TRA appoints a Billing Expert, and the timeframes for the settlement of a Billing Dispute; and

iv. the timeframes stated in Sections 7.5.5, 7.5.8 and 7.5.9 are "not well defined".

17.5 In addition, Ooredoo submits that, mediation as an "alternative dispute settlement process" will be ineffective in resolving complex and controversial A&I related disputes. The reason provided by Ooredoo for this contention is that mediation is not binding, and is a time consuming process.

17.6 Ooredoo also contends that the requirement under Section 7.5.11(ii) of the draft Regulation that the parties to a dispute reach agreement on the appointment of a Mediator or Mediation Panel within 15 Days of their decision to engage in mediation is too short. A period of 30 Days is proposed instead.

17.7 Finally, Ooredoo states that the Dispute Resolution Regulation ("DRR") is an ineffective instrument for the resolution of disputes, and gives rise to delays, excessive workload burdens and high costs.

**Friendi**

17.8 Friendi states that the process for defining and handling Billing Disputes needs "*further clarification*". It does not, however, specify what further clarification is required in this respect. Friendi also contends that the dispute settlement process set out in Section 7.5 does not adequately address the "*process relating to urgent and interim orders and determinations*". Friendi further states that it would be:

"[…] *helpful to import such specific powers into the RAIO*".

17.9 Friendi provides excerpts from Ofcom's Guidelines on complaints under the UK Competition Act 1998 and certain complaints and disputes under the UK Communications Act 2003 in support of its submission.

**Zajel**

17.10 Zajel alleges that the dispute resolution framework under Section 7.5 of the draft A&I Regulation is "tailor made for the duopoly", and gives Omantel and Ooredoo room for manoeuvre and the possibility to prolong a dispute.

17.11 Zajel also requests that the TRA develop a "swifter and fairer dispute resolution procedure, which takes specific account of the position of small operators. It uses the appointment of a mediator or mediation panel as a means of illustrating this point, arguing that such appointment will create an additional cost for small operators, and thereby place them at a disadvantage vis-à-vis their bigger competitors.

17.12 Finally, Zajel argues that a Billing Dispute is not traditionally regarded as a "regulatory dispute", and that such disputes might be more efficiently handled by the civil courts.

**Samatel**

17.13 Samatel fully supports the dispute resolution process proposed by the TRA.

**TRA's response**

The TRA's response to the comments summarised above is set out below.

**Omantel**

17.14 The TRA does not agree with Omantel's suggestion that Section 7.5 specify that the costs incurred following the appointment of a Billing Expert be borne equally by both parties. Instead, and in order to address the risk that operators may refer frivolous and vexatious Billing Disputes to the Billing Expert for resolution, the TRA has decided to amend the draft A&I Regulation to explicitly require that the party against which the Billing Expert makes his/her findings pay the associated costs, unless otherwise agreed by the parties to that dispute.

**Ooredoo**

17.15 Ooredoo has submitted a number of specific comments on the dispute settlement framework process outlined in Section 7.5 of the draft Regulation. These points are addressed individually below:

(i) **Section 7.5 does not specify who appoints a Billing Expert and who bears the associated costs**

17.16 Sections 7.5.3 and 7.5.4 of the draft A&I Regulation state that the parties to a Billing Dispute will have the first opportunity to appoint the Billing Expert (the TRA will appoint the Billing Expert if the parties to a dispute fail to reach agreement on this issue (Section 7.5.4). The TRA has, in any case, decided to amend the relevant provision in order to confirm that the parties to the Billing Dispute will, unless mutual agreement cannot be reached, appoint the Billing Expert.

17.17 As explained in Section immediately above, the TRA has also decided to amend the draft Regulation to now require that the party against which the Billing Expert makes his/her findings pay the associated costs, unless otherwise agreed by the parties to that dispute.

(ii) **Section 7.5.4 does not specify what the timeframe is for the appointment of the Billing Expert by the TRA if the parties to a Billing Dispute cannot reach mutual agreement on this matter**

17.18 The TRA has decided to amend the draft A&I Regulation to require that the Billing Expert be appointed "forthwith" by the TRA. The TRA will appoint a Billing Expert from the list of Billing Experts provided by each of the parties to a Billing Dispute. In the alternative, the TRA may choose to appoint a Billing Expert from a shortlist that it may draw up itself. The possibility to refer to a shortlist of Billing Experts in this manner means that the Authority will not have to undertake a time consuming selection process if required to appoint a Billing Expert, which will allow for the expedition of the Billing Dispute.

(iii) **Section 7.5 does not describe what happens if the TRA appoints a Billing Expert, and the timeframes for the settlement of a Billing Dispute**

17.19 It is clear from Sections 7.5.3 – 7.5.5 of the draft A&I Regulation that, once appointed (either by the parties to the Billing Dispute or the TRA), the Billing Expert will consider the Billing Dispute and provide a signed decision or recommendations on its resolution. This signed decision or recommendations should be provided as expeditiously as possible to prevent any undue delay.

17.20 However, in order to ensure that there is absolute clarity on this procedure, the TRA has decided to insert a new sentence into the relevant provision in the A&I Regulation which describes the Billing Expert's functions in this regard, and which requires that the Billing Expert issue its non-binding decision or recommendations no later than ten calendar days following the submission of the Billing Dispute.

(iv) **The timeframes set out in Sections 7.5.5, 7.5.8 and 7.5.9 are not well defined**

17.21 Section 7.5.5 of the draft Regulation allows for the referral of a Billing Dispute to the TRA by a party that disagrees with the non-binding decision or recommendations of the Billing Expert.

17.22 In order to ensure absolute clarity on this procedure, the TRA has decided to insert a new sentence into this provision, which requires that a Billing Dispute be referred to the TRA for resolution within 5 Days of the receipt by the parties of the Billing Expert's non-binding decision or recommendations:

17.23 Section 7.5.8 of the draft A&I Regulation allows for the referral of a dispute other than a Billing Dispute to the TRA following the conclusion of the Mediation Procedure.

17.24 In order to also ensure that there is absolute clarity on this procedure, the TRA has decided to insert new text into this provision which requires that a dispute other than a Billing Dispute must be referred to the TRA for resolution within 5 Days of the receipt by the parties of the recommendations of the Mediator or Mediation Panel.

17.25 Ooredoo also refers to the need to insert specific timeframes under Section 7.5.9 of the draft A&I Regulation. Section 7.5.9 of the draft Regulation provides that, in the case that a dispute other than a Billing Dispute is referred to the TRA, the parties to that dispute will be exempted from any mandatory escalation or related procedures that would otherwise apply under the DRR.

17.26 Section 7.5.9 does not, therefore, set out or otherwise refer to any specific time frame for an action under the dispute resolution process established under the draft A&I Regulation. In contrast, the mandatory escalation or related procedures referred to under Section 7.5.9 concern the formal dispute resolution proceedings initiated before the TRA under the DRR. For this

reason, these procedures, and any related time frames, are addressed under the DRR, and not the A&I Regulation. The TRA does not, therefore, agree that there are any timeframes that require clarification under Section 7.5.9 of the draft A&I Regulation.

17.27 Ooredoo argues that mediation will be ineffective in resolving complex and controversial A&I related disputes, as it is non-binding and time consuming. The TRA underlines that the Mediation Procedure established under Section 7.5 of the draft A&I Regulation is not mandatory, and will only apply in respect of disputes other than Billing Disputes if both parties jointly agree. Parties to an A&I dispute are therefore free to choose not to avail of this option if they believe that mediation is not a suitable means of dispute resolution. Such parties are entitled to refer their dispute directly to the TRA for resolution in accordance with the DRR, as they have always been able to do.

17.28 With respect to Ooredoo' assertion that the time period allowed under Section 7.5.11(ii) of the draft A&I Regulation is too short, the TRA considers that 15 Days is a sufficiently long period for the appointment of a Mediator or Mediation Panel. Ooredoo has failed to provide adequate justification for its proposal that a period of 30 days should be allowed in this respect, which the TRA regards as unnecessary and excessive.

17.29 The TRA will not respond to Ooredoo' comments on the DRR as a dispute resolution instrument as this falls outside of the scope of this consultation.

**Friendi**

17.30 Friendi refers to the possibility to provide the TRA with the power to impose urgent and interim orders under Section 7.5 of the draft A&I Regulation. The TRA also reminds Friendi that this provision sets out specific procedures that are aimed at facilitating the resolution of A&I related disputes **prior to** the formal referral of such dispute to the TRA. Importantly, Section 7.5 confirms that any A&I related dispute that is referred to the TRA for resolution should be done "*in accordance with*" the DRR.

17.31 The DRR establishes a set of generally applicable principles and procedures that apply in respect of the formal handling and resolution of a dispute by the TRA (in accordance with its statutory dispute resolution powers set out under Section 5 "Repeated" of the Act). This includes the power to order the application of so-called "interim" or "conservatory" measures while adjudicating on a dispute (Article 19.1.f of the DRR). The TRA does not, therefore, consider that it is either appropriate or necessary to empower the TRA to impose urgent or interim relief prior to the formal referral of a dispute under the DRR.

17.32 Finally, the TRA notes that, in any case, the Ofcom Guidelines provided by Friendi refer to Ofcom's statutory power to impose interim measures in the case that it suspects breach of ex-post competition law. These guidelines are therefore considered to be of limited relevance to the current legislative initiative.

**Zajel**

17.33 The TRA does not agree with Zajel that the dispute resolution framework established under Section 7.5 of the draft Regulation is "tailor made" for Omantel and Ooredoo, as it offers these operators the possibility to prolong a dispute. The TRA notes that, contrary to Zajel's assertions, the framework established under Section 7.5 is aimed at offering disputing parties maximum choice in respect of the possible means of settling a dispute. It also offers these parties the opportunity to resolve (in as amicable a manner as possible) their differences without having to enter into formal dispute resolution proceedings that could have a lasting negative impact on their commercial relationship.

17.34 Importantly, the alternative means of dispute resolution provided for under Section 7.5 of the draft A&I Regulation allow the parties to a dispute the opportunity to achieve a settlement without having to engage in what can be lengthy dispute resolution proceedings before the TRA. The principles and procedures set out under Section 7.5 ensure that, when availed of, these alternative means of dispute resolution are expedited, and are not subjected or "held ransom" to unnecessary or tactical delays by either of the disputing parties. These principles and procedures are addressed below.

17.35 Section 7.5 of the draft A&I Regulation mandates the appointment of a Billing Expert, but only where the particular Billing Dispute cannot be resolved in accordance with the provisions of the A&I Agreement. Section 7.5.4 ensures that the Billing Expert is appointed as quickly as possible by the parties by setting down a timeframe of five Days for such appointment. It also provides that, where the parties to a Billing Dispute are unable to agree on a Billing Expert within the five Day timeframe, the TRA must appoint the Billing Expert (forthwith) on behalf of these parties. Section 7.5.4 therefore ensures that a party to a Billing Dispute cannot tactically delay the resolution of such dispute by indefinitely withholding agreement on the appointment of a Billing Expert.

17.36 As explained above, the Mediation Procedure established under Section 7.5 of the draft A&I Regulation is not mandatory, and will only apply in respect of disputes other than Billing Disputes if both parties jointly agree (see Section 7.5.7 of the draft A&I Regulation). Mediation does not, therefore, constitute an extra step that risks slowing the dispute resolution process down. In any case, the TRA notes that the Mediation Procedure established under Section 7.5 includes safeguards that are aimed at mitigating against or preventing any tactical delay by a party to a dispute other than a Billing Dispute. Examples include: Sections 7.5.11 (ii), (iii) and (iv), for example.

17.37 The optional nature of this procedure also means that, contrary to Zajel's argument, mediation under Section 7.5 of the draft A&I Regulation does not create an additional and mandatory cost for small operators which places them at a disadvantage vis-à-vis their larger competitors. The TRA notes that, where possible, parties to a dispute should make all reasonable effort to come to a mutual settlement without availing of the dispute resolution jurisdiction of the TRA. While this may help to facilitate the more amicable resolution of such

disputes, it would also help ensure that the TRA is not burdened with disputes that could be best settled by the parties themselves, thus allowing it to dedicate its capacity to the resolution of those disputes that cannot otherwise be resolved.

17.38 Finally, Zajel argues that Billing Disputes are not traditionally regarded as "regulatory disputes", and that such disputes might be more efficiently handled by the civil courts. The TRA reminds Zajel that the term "Billing Dispute" is narrowly defined under Section 1.15 of the draft A&I Regulation to only include "the amount invoiced by the Providing Party for the provision of an A&I Service". Such disputes must be referred to a Billing Expert for consideration, and can only be referred to the TRA for resolution following the exhaustion of this first mandatory step. A dispute that arises in respect of any other element of the billing process, including the underlying charging methodology for the calculation of an invoice, falls outside the definition of a "Billing Dispute" for the purposes of Section 1.15. Such disputes may be referred to the TRA for formal resolution, or to Mediation, if they fall within the scope of Section 7.5.7 of the draft Regulation; i.e., if they relate to the "negotiation, implementation or interpretation of an A&I Agreement".

## Annexe 1: TRA response to Ooredoo's comments on the categorisation of Access and Interconnection obligations (Consultation Question 4)

| Draft A&I Regulation Section number | Summary of comment received | TRA's view and conclusion |
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| **Main body of A&I Regulation** | | |
| 7.3.1 | Ooredoo objects to the requirement that all licensees provide access to certain physical infrastructure and other facilities.<br><br>It states that the Telecommunications Regulatory Authority ("TRA" or "Authority") should justify the basis for imposing this obligation on all operators, and argues that there should be minimum regulatory intervention in respect of "*non-dominant access*". | The basis for, and scope of, Section 7.3 as a symmetrically applicable obligation is addressed in detail above. |
| 7.3.3, 8,5,1, 10.7 & 11.9 | Ooredoo objects to the requirement that all access and interconnection ("A&I") Agreements concluded pursuant to Sections 7, 8, 10 and 11 be notified to the TRA and published in the manner as set out under Sections 10.7 and 11.9 of the draft A&I Regulation.<br><br>Ooredoo states in particular that it does not wish to publish such agreements "*for confidentiality and business negotiation*" purposes, and requests that the TRA explain why this requirement is necessary. | The requirement under the A&I Regulation that all concluded A&I Agreements be notified and approved by the TRA provides for a greater degree of market transparency, while also allowing the TRA to verify compliance with the requirements of the A&I Regulation. It also allows the TRA to comply with its obligation under Article 87 of the Executive Regulation, which requires that the Authority publish adequate and up-to-date information about interconnection agreements concluded between licensees.<br><br>The TRA reminds Ooredoo that the draft A&I Regulation explicitly requires that all business proprietary information, Customer |

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| | | Confidential Information and/or security sensitive information be redacted from the concluded A&I Agreement prior to its publication, and upon the TRA's approval (see Sections 10.8 and 11.9). The TRA considers that these requirements address any concerns that Ooredoo may have in terms of confidentiality and business negotiation.<br><br>The TRA also notes that the requirement that A&I Agreements be notified to the competent regulatory authority and published or made available to the public is commonplace in other jurisdictions. For example, Section 22 of the German Telecommunications Law (the "TKG") requires that, once an operator that has been designated with Significant Market Power ("SMP") concludes an access agreement, it must submit a copy of that agreement to the German telecommunications regulatory authority ("BNetzA") "*without delay*". Once notified of this agreement, BNetzA is obligated to publish information on where this access agreement is available for viewing by third parties requesting the regulated access product that is the subject of that agreement.<br><br>There is also relevant precedent from the region. For example, Article 25 of the Telecommunications Law of the State of Qatar requires that a Dominant Service Provider comply with "*any requirements relating to submission and publication of interconnection and access agreements*". This requirement is reflected under Article (52) of the Qatari Executive By-Law, which also provides that a redacted version of a signed agreement on interconnection and access be placed on the website of the |

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| | | Supreme Council of Information and Communication Technology ("ictQatar"). [16] The Licenses for the provision of Public Fixed Telecommunications Networks and Services in Qatar also require that a duly executed copy of an A&I Agreement be filed with ictQatar within 5 days of its execution (Condition 1.6, Annexure F). In addition, Article 57(c) of the Telecommunications Law of the Kingdom of Bahrain requires that a dominant operator submit a concluded interconnection agreement to the Telecommunications Regulatory Authority within three days of its conclusion.<br><br>Finally, the importance of A&I in achieving fair competitive conditions in the Sultanate means that there is a clear public interest in ensuring compliance with the A&I legal framework. The requirement that all concluded A&I Agreements be notified and approved by the TRA therefore allows the TRA to ensure that this important public policy objective is fulfilled. Moreover, there is an additional public interest issue at stake in respect of interconnection agreements, which are key to ensuring "*any-to-any connectivity*" between consumers in the Sultanate (see Section 3.2(2.). It is therefore very important that such agreements are notified to and approved by the Authority, which will ensure that consumers' interest and welfare is safeguarded. |
| 7.4.1 | Ooredoo contends that the confidentiality requirement should apply to both the Providing Party and the Requesting Party/Wholesale Customer, and proposes alternative wording | Article 46 *Repeated (9)* of the Act requires that any licensee that obtains information while negotiating or providing an A&I Service must not use such information for its own advantage or for any other |

[16] Decision of the Board of the Supreme Council for Information and Communication Technology No. (1) of 2009 on the promulgation of the Executive By-Law for the Telecommunications Law.

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| | to this effect for Section 7.4.1 | purpose, or disclose it to any party that could use such information for its own competitive advantage.<br><br>The TRA has therefore decided to amend the wording of Section 7.4.1 of the draft A&I Regulation to confirm that this requirement also applies to the Requesting Party and/or Wholesale Customer. |
| 8.5.2 | Ooredoo requests that point (iv) of Section 8.5.2 be removed. This provision allows the TRA to require that the parties to an A&I Agreement concluded pursuant to Section 8 modify any terms and conditions if, following consultations with such parties, it determines that such terms and conditions are detrimental to fair competition.<br><br>Ooredoo argues that Section 8.5.2(iv) constitutes a "*general statement*" and is "*very subjective when considering unregulated services*". | The Act requires that the TRA act in a manner that safeguards effective competition in the Sultanate. For example, Article 7(5)(ii) requires that the TRA promote and facilitate new market entry "*in order to establish an effective competitive environment*". Article 7(5)(iv) further requires that the TRA "*prepare suitable conditions for competition among the licensees*".<br><br>It is clear that Articles 7(5)(ii) & (iv) apply in respect of the regulation of A&I Services pursuant to Chapter 6 of the Act. Section 8.5.2(iv) of the draft A&I Regulation therefore ensures conformity with the principles set down in the Act by allowing the TRA to require that the terms and conditions of an A&I Agreement be amended if they would be detrimental to fair competition.<br><br>The TRA does not agree with Ooredoo' contention that Section 8.5.2(iv) should be removed as it constitutes a general statement that is very subjective when considering unregulated services.<br><br>In any case, the TRA has already enacted a comprehensive set of guidelines on anti-competitive behaviour which specifically address |

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| | | discrimination as a specific form of an abuse of dominance. [17] |
| 9.2 | Ooredoo contends that the classification of the A&I obligations that may be applied in respect of Regulated A&I Services into obligatory and discretionary obligations is not in line with best international practices and, if implemented, could lead to the application of different obligations to Dominant Operators. | The TRA notes that, contrary to Ooredoo' contention, it is common practice in other jurisdictions to apply asymmetric regulatory obligations to operators designated as dominant on certain service markets (see footnote 8 of the TRA's Position Statement). The asymmetric application of *ex-ante* regulatory requirements in respect of certain service markets in this manner may, for example, be required in order to protect and support small competitors or new entrants in order to achieve sustainable long-term infrastructure competition.<br><br>A good example is the market for voice call termination. In the United Kingdom ("UK"), for example, the local National Regulatory Authority ("NRA"), Ofcom, has designated each network operator with SMP on its own call termination market. While it has imposed access and charge notification requirements on each network operator, it has chosen to impose the following asymmetric SMP obligations on British Telecom ("BT") only:<br>• Charge control;<br>• Non-discrimination;<br>• Requirement to publish a reference offer;<br>• Requirement to notify technical information; |

[17] Sultanate of Oman Principles and Guidelines on Anti-Competitive Behaviour, 23 October 2010, Section 8.1 and Annex 2.

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| | | • Cost accounting; and<br>• Accounting separation. [18]<br><br>The TRA does not, therefore, agree that the classification of the requirements that may be applied in respect of Regulated A&I Services into obligatory and discretionary obligations (i.e.; Automatic and Discretionary Service Specific Obligations) is not in line with best international practice.<br><br>The approach taken by the TRA will also add further flexibility to the regulation of A&I services. For example, it will mean that the TRA can more carefully tailor regulatory obligations to dominant operators in each individual market, based on the specific competition concerns identified in that market. For example, and as explained in the Position Statement, requiring an operator to comply with Equivalence of Input protocols may not be suitable for every market. |
| 9.2.3 | Ooredoo also proposes that Section 9.2.3 be amended in order to require that the TRA consult with the Dominant Operator prior to specifying any additional Service Specific Obligations (e.g.; the Discretionary Service Specific | The TRA acknowledges the benefit of consultation prior to specifying any additional Discretionary Service Specific Obligations that would apply in respect of any Regulated A&I Service. |

[18] Commission Decision concerning Case UK/2013/1495: Call origination on the public telephone network provided at a fixed location in the UK, Commission Decision concerning Case UK/2013/1496: Call termination on individual public telephone networks provided at a fixed location in the UK, Brussels, 20.9.2013, C(2013) 6275 final.

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| | Obligations listed under Appendix 1) that would apply in respect of any Regulated A&I Service. Ooredoo proposes alternative wording for Section 9.2.3 in this respect.<br><br>Ooredoo also suggests that a similar consultative process be followed for "*any amendment*" of the A&I Regulation. | The TRA notes that Section 3 of the draft A&I Regulation already establishes a consultative process for the approval of New Discretionary Service Specific Obligations) (see Section 3.2.8).<br><br>Ooredoo also suggests that a similar consultative process be followed for "*any amendment*" of the A&I Regulation. The amendment of the A&I Regulation will be subject to the relevant processes established under the administrative law of the Sultanate for the modification of such legislative instruments. It is therefore not considered necessary to address this issue in the A&I Regulation itself. |
| 9.4.2(ii) | Ooredoo states that the TRA should issue new Discretionary Service Specific Obligations only after consulting with the Dominant Operator.<br><br>It also contends that the issuing of a new Discretionary Service Specific Obligation must:<br><br>"*be part of the Regulation and not a separate order or decision*." | With regard to the first point listed in the adjacent column, Ooredoo makes the same argument in respect of Section 9.2.3 of the draft A&I Regulation. This argument is addressed immediately above.<br><br>The TRA will consider the second point raised by Ooredoo, taking due account of the relevant legal and regulatory considerations, and the requirements of the market. |
| 10 | Ooredoo states that it cannot understand how the obligations set out in Section 10 differ from those that apply in respect of Unregulated A&I Services (under Part C). | The requirements set out under Section 10 apply specifically to the negotiation of an A&I Agreement for the provision of a Regulated A&I Service in respect of which the preparation of a RAIO is not mandated (see Sections 10.31 to 10.33 of the TRA's Position Statement for and explanation on the asymmetric application of the RAIO obligation in respect of Regulated A&I Services).<br><br>In contrast, the A&I obligations established under Part C apply exclusively to the provision of Unregulated A&I Services that a Non- |

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| | | Dominant Operator elects to offer; i.e.; those A&I Services that fall within a relevant telecommunications service market that is not characterised by a finding of market dominance, or which are provided by a licensee not designated with dominance. |
| 10 & 13.1 | Ooredoo argues that Dominant Operators should be required to prepare a RAIO in respect of all Regulated A&I Services (i.e. that the requirement to prepare a RAIO be categorised as an Automatic Obligation as opposed to a Discretionary Service Specific Obligation). Ooredoo claims that this is "*confirmed*" under Article (46) of the Act. It also contends that:<br><br>"[…] *the classification of RAIO obligations into mandated/not mandated is confusing and leads to repetition between the different clauses*."<br><br>Ooredoo also claims that it is not in line with best international practice to make the RAIO requirement a Discretionary Service Specific Obligation.<br><br>It further queries what Regulated A&I Services would not be subject to the RAIO obligation (as referred to under Section 10.1 of the draft A&I Regulation). | Article (46) requires that the Dominant Operator prepare a reference offer in terms of interconnection only (a so-called "*Reference Interconnection Offer*") (Article (46) *Repeated*). This point is confirmed by the Executive Regulation (Article 92).<br><br>Contrary to what Ooredoo contends, therefore, Article (46) does not mandate that the TRA require the preparation of a reference offer in respect of all "*Regulated A&I Services*". This provision does not, however, prevent the TRA from requiring that a Dominant Operator prepare a reference offer in respect of certain Access Services only.<br><br>For this reason, the draft A&I Regulation addresses the provision of Regulated A&I Services both in cases where the preparation of a RAIO (as a Discretionary Service Specific Obligation) is mandated, and where it is not mandated.<br><br>The TRA also notes that, contrary to Ooredoo' assertion, the *ex-ante* obligation to prepare a reference offer is sometimes applied asymmetrically in other jurisdictions in respect of certain service markets where an SMP designation has been made. The case of the call termination service markets in the UK is a good example. As explained in the response to Ooredoo' comment on Section 9.2 of the draft A&I Regulation above, Ofcom has imposed a requirement to prepare a reference offer only on BT, despite designating each network operator with SMP for the termination of voice calls on its |

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| | | own respective network. Again, therefore, the TRA considers that the Regulation as drafted provides it with a reasonable degree of flexibility in the design of regulation. Although currently all regulated A&I Services must be included in a RAIO, in future this may not be the case, particularly if an operator is only found to be dominant in a single market and so must only make available a limited set of regulated wholesale services. |
| 10.4 | Ooredoo requests that the TRA clarify the following in respect of the conclusion of A&I Agreements on a commercial basis (i.e. where the preparation of a RAIO is not mandated):<br>• the basis on which such an A&I Agreement would be approved/rejected; and<br>• the conditions/criteria used to approve/disprove such an A&I Agreement in this manner. | Article 84 of the Executive Regulation requires that all agreements on interconnection (an "Interconnection Agreement") be notified to the TRA for prior approval. This provision states that, if the TRA approves the notified Interconnection Agreement, it shall notify each party in writing. This provision further states that, if the TRA chooses not to approve a notified Interconnection Agreement,<br>"[…] *it shall inform each party of the reasons of its decision. Each party shall make whatever adjustments necessary to the agreement in order to comply with the Authority's decision under this Clause*."<br>The TRA acknowledges Ooredoo' comment, and, in light of the procedure established under Article 84 of the Executive Regulation, has decided to amend/replace Sections 10.2, 10.3 and 10.4 of the draft A&I Regulation by removing all references to the "*deemed approval*" of a notified agreement.<br>In order to ensure consistency, the wording of Sections 11.3, 11.4 and 11.5 of the draft A&I Regulation shall be amended/replaced in the same manner, while Sections 7.3.3 and 8.5.1 shall also be amended. |

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| 10.5 & 11.6 | Ooredoo proposes that a time-cap be specified in Sections 10.5 and 11.6 that does not exceed a period of 90 days. | Long notification and approval periods should, in the interests of legal and regulatory certainty, be avoided, where possible. The TRA therefore considers that the process for the notification, approval and publication of A&I Agreements should be concluded as quickly as possible. However, and bearing in mind that the A&I Agreements concluded for the provision of certain A&I Services may require more time for review than others, the TRA has decided to extend the proposed 30-day time-cap under Sections 10.5 and 11.6 of the draft A&I Regulation to 45 days.<br><br>The amendment of the time-caps applicable under Sections 10.5 and 11.6 in this manner also requires the extension of the current 30-day time-caps that apply under Sections 10.2, 103, 11.3 and 11.4 of the draft Regulation to 45 days.<br><br>These time-caps are fully compliant with Article 84 of the Executive Regulation, which requires that the TRA approve an A&I Agreement "*within three months*" of its notification. |
| 12.1.4(ii) | Ooredoo argues that the TRA should be required to consult with a Dominant Operator if it clarifies or develops on any of the requirements relating to the structure and minimum content of the RAIO set out in Section 12.<br><br>Ooredoo also states that any such clarification or development should be undertaken as part of the A&I Regulation, and not as part of a separate order or decision. | Any amendment of Section 12 would constitute an amendment of the Regulation itself.<br><br>As is explained in the TRA's response to Ooredoo' comment on Section 9.2.3 above, the amendment of the A&I Regulation will be subject to the relevant processes established under the administrative law of the Sultanate for the modification of such legislative instruments. It is not, therefore, considered necessary to address this issue in the A&I Regulation itself. |

| **Appendix 1** | | |
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| Second paragraph of introductory text of Appendix 1. | Ooredoo objects to the "*third paragraph*" of the introductory text to Appendix 1, contending that the TRA can only apply new obligations after consulting with the Dominant Operator.[19]<br><br>It further states that:<br><br>"*any such addition/amendment shall be part of the Regulation and not a separate order or decision*." | See TRA response to Ooredoo' comment on Section 9.2.3 above. |
| 3.10 | Ooredoo objects to what it terms as:<br><br>"*any retail discussion in the context of access/wholesale services*."<br><br>It also requests that the TRA justify the requirement under Section 3.10 of the draft A&I Regulation which, Ooredoo alleges, is "*not in line with best practice*". | The provision of wholesale inputs must be regulated in a manner that ensures that the party requesting or in receipt of the A&I Service (the "A&I Seeker") will be capable of effectively replicating (in both technical and economic terms) the downstream retail services provided by the A&I Provider. Facilitating technical and economic replicability in this manner is key to ensuring effective service-based competition in the Sultanate.<br><br>By way of example, the Equivalence of Input requirement established under Section 3.16 of Appendix 1 requires that the Dominant Operator provide a Regulated A&I Service under the same timescales, terms and conditions (including price and service levels), by means of the same systems and processes, and subject |

[19] Ooredoo refers to the "second paragraph" of the introductory text of Appendix 1 in its response. However, it is assumed that Ooredoo meant to refer to the "third paragraph" of this text in its response, which specifically addresses the development of new Discretionary Service Specific Obligations.

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| | | to the provision of the same technical and commercial information, as it would provide to its own downstream retail operations.<br><br>The TRA does not, therefore, accept Ooredoo' objection to any retail discussion in the context of access/wholesale services.<br><br>Moreover, it is common practice elsewhere to require that SMP designated operators subject to a non-discrimination obligation provide A&I Seekers with regulated wholesale inputs that facilitate the effective replication of the retail offers of the downstream businesses of the SMP operator. The TRA points, for example, to the recently enacted European Commission Recommendation on consistent non-discrimination obligations and costing methodologies to enhance competition and broadband investment. This Recommendation sets out a number of requirements aimed at ensuring equivalence of access, as well as the technical replicability of the SMP operators new retail offers. [20] |

[20] Commission Recommendation of 11.9.2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, Brussels, C(2013) 5761 final, pars. 12 – 19 and 20 – 22.

## ANNEXE 2: TRA RESPONSE TO OTHER LEGAL RELATED COMMENTS ON THE DRAFT REGULATION WHICH FALL OUTSIDE THE SCOPE OF THE CONSULTATION QUESTIONS

| Draft A&I Regulation Section number | Summary of comment received | TRA's view and conclusion |
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| **Omantel** | | |
| 8 | Omantel states that Section 8.2.5 of the draft A&I Regulation implies the application of asymmetric interconnection charges, and requests that the TRA provide clarification on this matter. | As noted in the TRA's response to Ooredoo' comment on Section 9.2 in the table in Annexe 1, it is possible to apply asymmetric *ex-ante* regulation (including price regulation) in respect of the market for voice call termination services, for example.<br><br>The application of such asymmetric price regulation must, however, be justified. Such justification, may, for example, include the protection and support of small competitors or new entrants in order to achieve sustainable long-term infrastructure competition. Asymmetric price regulation is usually applied on a transitory basis, in conjunction with a glide-path indicating when the relevant price regulation will become symmetric.[21]<br><br>Please see also Sections 14.54 to 14.57 of the Position Statement above. |

[21] See, for example, ERG's Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates, ERG (07) 83 final 080312, pp. 27 – 37 and pp. 81 – 102.

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| 11 | Omantel contends that the ability of the TRA to establish interim provisions in Section 11.11 of the draft A&I Regulation creates an "*uncertain regulatory environment*". Omantel further requests that it be allowed the opportunity to further analyse the impact of any such interim provisions, which would essentially replace existing A&I Agreements.<br><br>Omantel also notes that Section 11 does not address the removal or "*phasing out*" of any interim measures once they are no longer required. | Section 19(f) of the Dispute Resolution Regulation ("DRR") (Decision No 44/2010) allows the TRA to order a party to a dispute to take action, or refrain from taking any action, pending the resolution of that dispute. It also empowers the TRA to "*order any other interim or conservatory measures*" while dispute resolution proceedings are pending.<br><br>The TRA does not, therefore, accept Omantel's contention that the ability to establish interim provisions under Section 11.11 of the draft A&I Regulation creates an "*uncertain regulatory environment*". Section 11.11 clearly refers to instances where a dispute is referred to the TRA for resolution under the DRR. As already noted, the TRA is empowered under Section 19 of the DRR to impose interim or conservatory measures on the parties to that dispute.<br><br>The TRA does not consider it necessary that Section 11 address the removal or "*phasing out*" of any interim measures, as suggested by Omantel. As also noted above, Section 19(f) states that such interim or conservatory measures be applied in the time prior to the rendering of a decision by the TRA resolving the particular dispute. |
| 12.3 | Omantel argues that the requirement under Section 12.3.14 that the parties to an A&I Agreement obtain the approval of the TRA prior to the termination of an A&I Agreement is "*onerous*", particularly if the party requesting or in receipt of the A&I Service (the "A&I Seeker") has breached the agreement.<br><br>Omantel further argues that this principle provides A&I | The requirement that the termination of an A&I Agreement for the provision of a Regulated A&I Service be subject to the TRA's approval addresses the risk that a party providing that Regulated A&I Service (an "A&I Provider") will take advantage of its favourable position by unilaterally terminating an A&I Agreement under spurious or unfair circumstances.<br><br>The inability of the A&I Seeker to purchase a Regulated A&I Service in such a case is likely to mean that it would no longer be able to |

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| | Seekers with the incentive to dispute or delay the payment of access charges in order to avoid compliance with their obligations. | provide commercial services to its customers. This could lead to loss of market share and good will for the A&I Seeker and, in a worst case scenario, market exit. Moreover, and considering the length of time and expense that would normally be required to litigate such a matter, the A&I Seeker is, in the meantime, likely to be severely prejudiced by the unilateral termination of an A&I Agreement by the A&I Provider.<br><br>The TRA has therefore decided that, in order to mitigate this risk, the termination of all A&I Agreements for the provision of Regulated A&I Services should be subject to its prior approval. This process also ensures that the TRA stays fully apprised of the situation on the market. For this reason, the TRA has decided to insert new Section 10.11into the draft A&I Regulation requiring that parties to an A&I Agreement for the provision of a Regulated A&I Service that is concluded pursuant to Section 10 obtain the approval of the TRA prior to the termination of such agreement.<br><br>The TRA does not understand how the approval process would incentivise A&I Seekers to dispute or delay the payment of access charges in order to avoid compliance with their obligations. The TRA notes that, if an A&I Provider considers that an A&I Seeker has breached the A&I Agreement in a manner that allows it to invoke its right of unilateral termination, it will still be able to invoke this right once it receives the TRA's approval. In any case, the TRA notes that any attempt by an A&I Seeker to unilaterally terminate an A&I Agreement in response to a breach of that agreement by the A&I Provider would, likewise, be subject to the TRA's approval. |

| Ooredoo | | |
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| 3 | Ooredoo contends that the TRA's right to amend the A&I Regulation and its Annexes is confirmed by the Telecommunications Regulatory Act (the "Act"). It argues that it would therefore be sufficient to develop a single clause stating that the TRA has the right to amend the A&I Regulation after a public consultation.<br><br>According to Ooredoo, the amendment of an Extant Discretionary Service Specific Obligation and the approval of a New Discretionary Service Specific Obligation are the same. It therefore suggests that all of the current Section 3 be merged under a single heading, as the proposed structure constitutes "*unnecessary repetition*". | Ooredoo is incorrect in stating that the amendment of an Extant Discretionary Service Specific Obligation, and the approval of a New Discretionary Service Specific Obligation, are the same. These are distinct exercises that have different objectives, that can take place under different circumstances. They should, therefore, be treated separately and individually, as is the case under Sections 3 and 4 of the draft A&I Regulation. |
| 3.2.6 | Ooredoo requests that the TRA "*elaborate*" on Section 3.2.6(iii).<br><br>This provision states that the TRA may propose the approval of a new Discretionary Service Specific Obligation following the issuance of:<br><br>"[…] *any other legal instrument defining a new market for ex-ante regulation*." | Section 3.2.6(iii) refers specifically to the case where the TRA defines a new service market for *ex-ante* regulation (i.e.; a new Regulated A&I Service). This may, in the case of a finding of dominance in respect of that market, require the development of an additional Discretionary Service Specific Obligation(s) in Appendix 1. |
| 4 | According to Ooredoo, the amendment of an Approved Service Annex and the promulgation of a New Service Annex are the same. It therefore suggests that all of the current Section 4 be merged under a single heading. | See TRA response to Ooredoo' comment on Section 3 above. |

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| 4.2 | Ooredoo suggests that a new Section 4.2.1(iii) be added that allows for the amendment of an Approved Service Annex at the request of an operator. [22] | The TRA notes that Section 4.2.1 of the draft A&I Regulation already provides that the TRA may propose:<br><br>a) the amendment of a Service Specific Obligation; or<br><br>b) the application of a new Service Specific Obligation<br><br>at its own initiative **or** "*at the request of a Public Telecommunications Licensee*". |
| 5.1(v) | Ooredoo states that the Quality of Service Regulation should not be considered as "*preceded*" by the A&I Regulation.<br><br>According to Ooredoo, the Quality of Service Regulation addresses specific Key Performance Indicators ("KPIs") for licensees, regardless of the A&I arrangements. Ooredoo also states that the draft A&I Regulation does not address quality of service obligations. | The TRA notes that Section 5.1 states that the A&I Regulation shall take precedence over the instruments listed in points (i) – (iv) "*in the case of conflict*".<br><br>Contrary to Ooredoo' assertion, the A&I Regulation will not replace the Quality of Service Regulation, or render that instrument obsolete. The more developed provisions of the Quality of Service Regulation relating to issues such as KPIs and quality of service will continue to apply concurrently to the provisions of the A&I Regulation. |
| 15 | Ooredoo argues that it is "not common" to insert specific penalties in a regulation. | The TRA firstly notes that Article (51) Repeated of the Act empowers the TRA to impose a financial penalty (of not more than 1 million Omani Riyals) for each violation of "the provisions of [the] |

[22] Ooredoo refers to "Section 4.2.2" in its response (see p. 6). The TRA assumes that Ooredoo intended to state "Section 4.2.1", which empowers the TRA to propose: (i) the amendment of a Service Specific Obligation; or (ii) the application of a new Service Specific Obligation.

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| | It also notes that the penalty amounts are “excessive”, and criticises the fact that Section 15 establishes minimum (“open-ended”) penalty amounts only.<br><br>Ooredoo further states that the draft A&I Regulation should establish minimum/maximum penalty amounts that are “commensurate” to the violation in question.<br><br>Finally, Ooredoo requests that Section 15 provide for the “increase” rather than “doubling” of a penalty amount in the case of recidivism. | Act, the regulations and decisions in implementation thereof”.<br><br>The A&I Regulation develops upon and implements the requirements established under the Act, including the provisions of Chapter 6. Moreover, it is a “regulation” within the meaning of Article 51 Repeated of the Act. The latter provision therefore vests the TRA with the power to establish penalty amounts aimed at ensuring compliance with the A&I Regulation (as it has done under Section 15).<br><br>The TRA further notes that Article (8) of the Act requires that the TRA undertake its functions in a transparent manner and without discrimination. The establishment of minimum penalty amounts under Section 15 of the draft A&I Regulation ensures greater transparency as to the sanction that will apply for various types of infringement of the A&I Regulation. The setting of a minimum amount in this manner also helps to ensure non-discrimination in respect of the fines imposed for specific infringements.<br><br>The establishment of minimum penalty amounts for specific infringement of the A&I Regulation will also help deter infringement of the obligations set out in the A&I Regulation.<br><br>The A&I Regulation establishes a range of important obligations that are critical to ensuring effective A&I in the Sultanate. The minimum financial penalties established in Section 15 adequately reflect the severity of the infringements specified in that provision, and are consistent with the TRA’s past fining practice.<br><br>Finally, significant harm can be caused by repeated infringements of the same obligations by the same party. For this reason, Section 15.8 of the draft A&I Regulation empowers the TRA to double any financial penalty if it determines that the same violation has been |

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| | | committed by a licensee more than once. This is fully compatible with Chapter 7 of the Act, which likewise provides for the doubling of a financial penalty in the case of "repetition" (see Articles (66) and (68) Repeated (1) – (4)).<br><br>In order to ensure consistency with the relevant fining provisions of the Act, the TRA has decided to insert a new Section 15.9 into the draft A&I Regulation explicitly acknowledging that the provisions of Section 15 will apply "without prejudice" to Article 51 Repeated and Chapter 7 of the Act. |
| Samatel | | |
| 10 & 11 | Samatel states that there is no "duration limit" specified for the negotiation and execution of an A&I Agreement (Sections 11.2 & 11.3). [23]<br><br>It also states that the enforcement of a time limit for the negotiation of an A&I Agreement is materially important, and that any failure to reach such agreement should be subject to the dispute resolution competence of the TRA. | The failure by an A&I Seeker and an A&I Provider to agree on the commercial terms of an A&I Agreement is explicitly addressed under Article (46) of the Act. This provision states that, if negotiations do not lead to the conclusion of an A&I Agreement within three months, a dispute may be referred to the TRA for resolution.<br><br>The TRA has therefore decided to insert a new Section 7.5 into the A&I Regulation that explicitly states that, if negotiations between a Providing Party and Requesting Party do not result in the conclusion of an A&I Agreement within three months of the receipt by the Providing Party of a valid request from the Requesting Party, either party can refer a dispute for resolution to the TRA in accordance |

[23] The same is the case under Sections 10.1 and 10.2 of the draft A&I Regulation, which apply in respect of the negotiation of an A&I Agreement where the preparation of a RAIO is not mandated.

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| | | with Section 7.6 of the A&I Regulation (former Section 7.5 of the draft A&I Regulation). |
| 12 | Samatel sates that the current wording of Section 12.3.9 allows a dominant operator to prolong negotiations on an A&I Agreement, or to impose other conditions on the A&I seeker. It therefore contends that the notions of "reasonable and proportionate" financial security be defined under Section 12.3.9.<br><br>Samatel also argues that the provision of financial security should not be ex-ante or prior to the conclusion of an A&I Agreement. It states that, as the financial risk only accrues as and when the A&I service are provided, a "dynamic" security setting system should be implemented according to the Services Annexes found at Appendix 2 to the A&I Regulation. | The current wording of Section 12.3.9 states that the RAIO "*may*" require the Requesting Party to provide reasonable and proportionate financial security. The issue as to whether such financial security "*should*" actually be required in respect of a particular A&I Service will be decided on a case-by-case basis during the RAIO development and approval process for that A&I Service.<br><br>Likewise, the issue as to what constitutes "*reasonable and proportionate*" financial security should be decided on a case-by-case basis during the RAIO development and approval process. Any provisions in the RAIO requiring the provision of such financial security will also be subject to the approval of the Authority, which shall ensure that the requirements of reasonableness and proportionality are respected. The TRA does not, therefore, consider it either necessary or appropriate to define these notions under Section 12.3.9 of the draft Regulation.<br><br>The TRA does not accept that the provision of financial security should only be required following the conclusion of an A&I Agreement. It is, in certain cases, reasonable for an A&I Provider to request financial security in advance of the provision of an A&I Service, particularly where it is considered that a reasonable financial risk accrues to the A&I Provider at that time. Once again, this is an issue that will be decided on a case-by-case basis during the RAIO development and approval process, and will be subject to |

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| | | the approval of the TRA.<br><br>The TRA notes that the position of the A&I Seeker will be safeguarded in this respect, as Section 12.3.9 of the draft A&I Regulation requires that any financial security required by the A&I Provider must be "*reasonable and proportionate*". [24]<br><br>The TRA also notes that Samatel did not propose any alternative arrangements (or "*dynamic security setting system*", as it calls it) that would address its concern. |

[24] The danger that can be associated with the imposition by a dominant licensee of a bank guarantee requirement is highlighted in a recent decision by the European Commission in the Slovak Telekom case. In this decision, the Commission held that the requirement that access seekers provide Slovak Telekom with a bank guarantee that was disproportionate to the associated cost/risk, and that could be easily multiplied by Slovak Telekom, contributed to the abuse by Slovak Telekom of its position of dominance on the national wholesale broadband market. See: Antitrust: Commission fines Slovak Telekom and its parent, Deutsche Telekom, for abusive conduct in Slovak broadband market, MEMO/14/590, Brussels, 15 October 2014.