



United Arab Emirates



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# Regulatory Policy

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## Ex Ante Competition Safeguards

Version 1.1

30 September 2010

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Telecommunications Regulatory Authority (TRA)  
P O Box 26662, Abu Dhabi, United Arab Emirates (UAE)  
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Version 1.1 - 30 September 2010**

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1.1	30 September 2010	Update to some definitions.
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**1. Legal Reference**

- 1.1 Article 12 of Federal Law by Decree No. (3) of 2003, as amended (the “**Telecommunications Law**”), establishes the Telecommunications Regulatory Authority (“**TRA**”) as the competent body to oversee the telecommunications sector in the UAE.
- 1.2 Additionally, Article 14(4) of Federal Law by Decree No. (5) of 2008, amending the provisions of the Federal Law by Decree No. (3) of 2003, specifically grants to the TRA the power to issue regulations, instructions, resolutions and procedures, “*regulating and ensuring competition in the telecommunications sector...*”.

**2. Purpose and Scope**

- 2.1 The purpose of this Regulatory Policy is to set out the basis for introducing further *ex ante* measures, or adapting, or removing existing *ex ante* measures in the Regulatory Framework, as the TRA determines that such a need arises. While the application of *ex ante* and *ex post* remedies involves a consideration of similar basic principles and economic and legal concepts and analysis, their objectives and uses are quite different. *Ex post* regulation is not designed to introduce competition into a market, but rather to safeguard whatever degree of competition may exist from time to time in the market. *Ex post* regulation tends to be reactive in nature.
- 2.2 On the other hand *ex ante* regulation is “forward-looking” in application, and generally consists of the use by regulators of “tools” or “levers” by which the regulator seeks to intervene in the development of a market. The regulator may seek to achieve this through the introduction of measures designed to introduce a degree of competition in existing markets, or to create the circumstances in which competition may develop. Such tools or levers may include means by which to counteract the economic strength of Entities having Market Power in a Relevant Market. *Ex ante* regulation which the TRA has already introduced includes the licenses which have been issued, and the introduction of regulatory instruments on such matters as Interconnection, pricing



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(wholesale and retail), CPS, National Roaming, and the preparation of Regulatory Accounts.

- 2.3** The purpose of this *ex ante* Regulatory Policy is to institute a framework for the TRA to define relevant retail and wholesale telecommunications markets in the UAE, and to undertake a competition assessment of these relevant markets for the purpose of determining Market Power. Through such determinations the TRA will have the basis for applying appropriate *ex ante* regulation in order to counteract the economic strength of an Entity with Market Power in a Relevant Market.
- 2.4** This Regulatory Policy does not of itself, limit or in any way qualify any other obligation or prohibition described in the laws of the UAE, the Telecommunications Law and its amendments, the TRA's Regulatory Framework or any License or similar authorization. However, if as a result of activities undertaken by the TRA under this Regulatory Policy, it appears to the TRA that there has been a market failure, the TRA may decide to put in place further *ex ante* measures (if any exist at all), or adjust or amend existing *ex ante* measures to correct that market failure or to develop sustainable competition. Conversely the TRA may decide, as a result of activities undertaken under this Regulatory Policy, to remove existing *ex ante* measures where in the opinion of the TRA it is no longer appropriate to maintain such *ex ante* measures in operation.

**3. Definitions**

- 3.1** The terms, words and phrases used in this Regulatory Policy shall have the same meaning as are ascribed to them in the Telecommunications Law unless this Regulatory Policy expressly provides for otherwise, or the context in which those terms, words and phrases are used in this Regulatory Policy requires it. For the purposes of this Regulatory Policy:

**3.1.1** **Entity** shall have the same meaning as defined in the TRA's *Competition Safeguards Regulatory Policy*.

**3.1.2** **Market Power** shall have the same meaning as defined in the TRA's *Competition Safeguards Regulatory Policy*.

For the avoidance of doubt "Market Power" as defined or determined for the purposes of another regulatory instrument, will not necessarily be definitive as to how "Market Power" is

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determined for the purposes of this Regulatory Policy.

- 3.1.3 Market Share** shall have the same meaning as defined in the TRA's *Competition Safeguards Regulatory Policy*.
- 3.1.4 Relevant Market** shall mean any of those markets defined or determined by the TRA in accordance with Article 4.1 of this Regulatory Policy.
- 3.1.5 Regulatory Framework** shall have the same meaning as defined in the TRA's *Competition Safeguards Regulatory Policy*.

#### **4. Relevant Markets Subject to Competition Assessment**

- 4.1** The TRA will, at its discretion determine, from time to time, what are the Relevant Markets for the purposes of this Regulatory Policy, in accordance with the principles set out in this Regulatory Policy.
- 4.2** The TRA will issue guidelines on the process to be used to define and analyse Relevant Markets.
- 4.3** The TRA may revise, expand or reduce the list or definition of Relevant Markets that it determines for the purposes of this Regulatory Policy.
- 4.4** For the avoidance of doubt, for the purposes of this Regulatory Policy the TRA will define "Relevant Markets" without necessarily having regard to the use of that term or a determination of Relevant Markets for the purposes of other regulatory instruments. Further, a "Relevant Market" as defined or determined for the purposes of another regulatory instrument, will not necessarily be definitive as to how a "Relevant Market" is determined for the purposes of this Regulatory Policy.

#### **5. Competition Assessment**

- 5.1** The TRA shall designate an Entity as having Market Power in a Relevant Market if the TRA determines that the Entity enjoys a position of economic strength, which enables it to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

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- 5.2** In order to assess the level of competition in a Relevant Market the TRA will take into account any factors that it considers relevant, which may include but are not limited to the following:
- 5.2.1** Market Share;
  - 5.2.2** revenues and assets of the relevant Entity;
  - 5.2.3** control of facilities, products or services for which duplication is effectively prevented or difficult to achieve due to technical or economic considerations;
  - 5.2.4** technological advantages or superiority;
  - 5.2.5** ease of market entry and market exit;
  - 5.2.6** levels of countervailing buying power;
  - 5.2.7** levels of access to capital markets and financial resources;
  - 5.2.8** products and services diversification;
  - 5.2.9** economies of scale;
  - 5.2.10** economies of scope;
  - 5.2.11** vertical integration;
  - 5.2.12** the level of development of any distribution or sales network;
  - 5.2.13** potential to leverage Market Power;
  - 5.2.14** barriers to entry to a Relevant Market, and barriers to expansion in a Relevant Market; and
  - 5.2.15** the availability of scarce resources.
- 5.3** The TRA may, at its discretion, revise, expand or reduce the factors stipulated by Article 5.2 above.
- 5.4** The TRA may, at its discretion, reassess the level of competition in a Relevant Market and make such adjustments to the *ex ante* measures as the TRA considers appropriate at that time.



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**6. Obligations for Entities Designated as Having Market Power**

- 6.1** Any Entities designated as having Market Power in a Relevant Market may be subject to *ex ante* obligations additional to those in place under the Regulatory Framework at the time of the designation.
- 6.2** The nature of these additional *ex ante* obligations shall depend on the outcome of an assessment of the level of competition in the Relevant Market.

**7. Effective Date**

This Regulatory Policy shall take effect on the date of issue.