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# Regulatory Policy

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## Competition Safeguards

Version 1.1

30 September 2010

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Telecommunications Regulatory Authority (TRA)  
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Version 1.1 - 30 September 2010**

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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 (the “**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. Scope and Purpose

- 2.1 The purpose of this Regulatory Policy is to further establish *ex post* competition safeguards in the UAE telecommunications sector. Together with the existing *ex ante* regulation in place, and those that may be introduced in the future, the *ex post* rules introduced by this Regulatory Policy, will provide a comprehensive regime of competition regulation. 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:

2.1.1 *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 that competition may develop. The TRA has already introduced some *ex ante* regulation, and may introduce further such regulation. Such *ex ante* measures are not the subject of this Regulatory Policy.

2.1.2 *Ex post* regulation on the other hand, is not designed to introduce competition into a market, but rather to safeguard whatever degree of competition may exist from time to time in



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the market. *Ex post* regulation tends to be reactive in nature. *Ex post* rules provide a framework for the regulator to deal on a case by case basis with specific allegations of anti-competitive behaviour that may lead to market failure. An *ex post* competition regulatory framework allows the regulator to identify such behaviour and to redress it through a range of enforcement options including fines and orders to cease the anti-competitive behaviour. Typically *ex post* regulatory activities aim to redress proven misconduct through a range of enforcement options including fines, injunctions, or bans and is designed to deal with identified and specific examples of behaviour that may lead to market failure.

- 2.2 This Regulatory Policy is ultimately for the benefit of consumers, to promote and protect competition by deterring Entities from engaging in activities that may impede competition in the UAE telecommunications sector.
- 2.3 This Regulatory Policy does not 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 measures to correct that market failure or to promote the development of sustainable competition.

### **3. Definitions**

- 3.1 The terms, words and phrases used in this Regulatory Policy shall have the same meaning as is 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 otherwise. For the purposes of this Regulatory Policy, the following terms and words shall have the meanings ascribed to them below:



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- 3.1.1 Entity** shall refer to any natural or juridical person whose activities fall within the authority of the TRA as derived from the Telecommunications Law.
- 3.1.2 Market Power** shall mean a position of economic strength enjoyed by an Entity, either individually or jointly with others, which enables it to behave to an appreciable extent independently of its competitors, customers, and ultimately consumers.
- 3.1.3 Market Share** refers to the share of an Entity or Entities of a Relevant Market. Market Share may be calculated on a volume or value measure. The TRA shall use the most appropriate measure depending on the nature of the Telecommunications Service or product in question.
- 3.1.4 Regulatory Framework** shall mean the policies, regulations, directions, orders, decisions, procedures, guidelines or other regulatory instruments which have been issued or may be amended by the TRA from time to time pursuant to the Telecommunications Law and any amendments thereto
- 3.1.5 Relevant Market** means the market for a group of Telecommunications Services or related products, which are, from the perspective of consumers of those Telecommunications Services or related products, and providers of those Telecommunications Services or related products, substitutable due to the Telecommunications Services' or related products' characteristics, price and intended use. A Relevant Market for the purposes of this Regulatory Policy shall be defined or determined by the TRA in accordance with Article 4 of this Regulatory Policy.

**4. Relevant Market**

- 4.1** When defining a Relevant Market for the purposes of this Regulatory Policy, the TRA will take account of any factors that it considers relevant, which may include but are not limited to the following:
  - 4.1.1** the geographical boundaries of the market – the extent to which competitive conditions and constraints of that market are different across geographical areas;





- 5.2.3 Collusive supply** – directly or indirectly fixing the quantity or the quality of supply of products or services in a Relevant Market, and which by doing so does or may restrict, prevent, or distort competition in that Relevant Market or another Relevant Market; and
- 5.2.4 Exclusive dealing** – requiring a party to supply, purchase or distribute products or services on an exclusive basis, and which by doing so does or may restrict, prevent, or distort competition in a Relevant Market.
- 5.3** It shall be a *prima facie* but rebuttable presumption, that an agreement or understanding will not contravene Article 5.1, if the combined Market Share of all parties to the agreement or understanding does not exceed 15% in any of the Relevant Markets affected by the agreement or understanding.

## 6. Misuse of Market Power

- 6.1** An Entity with Market Power in a Relevant Market shall not misuse its Market Power in a way which does or may restrict, prevent, or distort competition in that Relevant Market or any other Relevant Market.
- 6.2** A misuse of Market Power includes, but is not limited to, the following:
  - 6.2.1 Predatory pricing** – lowering the price of a product or service in a Relevant Market below its relevant costs, where there is a possibility for the relevant Entity to recoup the losses it incurred from lowering that price, and where such price cannot be matched by its competitors without incurring losses;
  - 6.2.2 Unfair or excessive pricing** – setting the price of a product or service in a Relevant Market that is excessive in relation to the relevant costs of supply of that product or service;
  - 6.2.3 Anti-competitive cross-subsidisation** – using revenues from a product or service offered in a Relevant Market to cross-subsidise the price of another product or service offered in a separate Relevant Market;
  - 6.2.4 Margin squeeze** – a situation in which an Entity which supplies an essential input (as determined by the TRA) to a Telecommunications Service or related product in a Relevant



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Market to competitors of the relevant Entity in the Relevant Market, either raises the costs of the input, or reduces its price for a Telecommunications Service or related product in the Relevant Market, to prevent those competitors from making a reasonable level of profit in the Relevant Market;

- 6.2.5 Anti-competitive bundling or tying** – bundling or tying products or services offered in Relevant Markets, and which by doing so does or may restrict, prevent, or distort competition in one or more of those Relevant Markets or another Relevant Market;
- 6.2.6 Anti-competitive refusal to supply** – refusing or discontinuing the provision of a product, service or resource (including rights of way) to a competitor in a Relevant Market which, due to the difficulty of replicating such a product, service or resource, depends upon that product, service or resource to provide a product or service of its own in that Relevant market;
- 6.2.7 Degradation of service** – degrading or inducing another party to degrade the availability or quality of a competitor’s product or service without a legitimate justification (as determined by the TRA) and which by doing so does or may restrict, prevent, or distort competition in a Relevant Market;
- 6.2.8 Discrimination against competitors** – failing to supply products or services to competitors under the same conditions and of the same quality as an Entity provides the product or service to its affiliates, subsidiaries or other companies, and which by doing so does or may restrict, prevent, or distort competition in a Relevant Market;
- 6.2.9 Anti-competitive customer lock-in** - locking-in customers through unduly long-term contracts, and which by doing so does or may restrict, prevent, or distort competition in a Relevant Market;
- 6.2.10 Anti-competitive rebates** - setting rebates or discount schemes for customers in a manner which reinforces loyalty to an Entity, and which by doing so does or may restrict, prevent, or distort competition in a Relevant Market; and
- 6.2.11 Misuse of information** – the usage or disclosure of information obtained in connection with the provision of a



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product or service for a purpose other than that for which it was initially provided.

- 6.3** For the purposes of this Regulatory Policy, it shall be a *prima facie* but rebuttable presumption, that an Entity does not have Market Power in a Relevant Market if its Market Share does not exceed 40% in the Relevant Market.
- 6.4** For the avoidance of doubt, a determination of finding by the TRA that an Entity has Market Power in a Relevant Market, will not be a determination of finding that the Entity has Market Power in any other market, nor shall it be a determination of finding that the Entity has Market Power for the purposes of any other regulatory instrument.

**7. Exemptions**

- 7.1** The TRA may, at its discretion, decide for the public benefit, to exempt certain agreements or understandings or classes of agreements or understandings from the prohibitions in Article 5.1 or specific incidents of behaviour from the prohibitions in Article 6.1. The factors which the TRA may consider in assessing whether or not to make such exemptions, include, but are not limited to, the following:
  - 7.1.1** whether the overall economic development of the UAE (or a part of it) may be enhanced by granting the exemption;
  - 7.1.2** whether performance and competitive capacities in the telecommunications or related sectors of the economy may be achieved or enhanced by granting the exemption;
  - 7.1.3** whether the overall development of production or distribution systems in the telecommunications or related sectors of the economy may be enhanced by granting the exemption; and
  - 7.1.4** whether specific consumer benefits may be achieved or enhanced by granting the exemption.

**8. Effective Date**

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