



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

Repeal of the Determination on the Methodology for the Definition of Telecommunication Markets and Determination on the Methodology for Determining Market Power

Determination

18 February 2010

MCD/02/10/021

Purpose: To repeal the Determination on the Methodology for the Definition of Telecommunications Markets (Determination 1 of 2003) and the Determination on the Methodology for Determining Market Power (Determination 2 of 2003).

PREAMBLE

1. The Legislative Decree No. 48 of 2002 promulgating the Telecommunications Law (the “Telecommunications Law”) provides a definition of the concepts of Dominance and Significant Market Power and the obligations which each position of market power entails are detailed in the various articles of the Telecommunications Law.
2. The Telecommunications Law also gives the Telecommunications Regulatory Authority (“TRA”) the power to issue the necessary determinations in relation to market power. However, the Telecommunications Law gives discretion to TRA regarding the approach to be taken by TRA when defining the telecommunications markets and determining market power in those markets.
3. On 19 April 2003, TRA issued two determinations approving the Methodology for the Definition of the Telecommunications Markets (Determination 1 of 2003) and the Methodology for Determining Market Power (Determination 2 of 2003).
4. On 4 November 2008, TRA issued for consultation Draft Competition Guidelines (Ref: MCD/11/08/080).
5. After public consultation, TRA issued on 18 February 2010 final Competition Guidelines which build upon TRA’s previous determinations on defining relevant markets and market power assessment and also take into account the provisions in the Telecommunications Law and the experience of TRA with respect to market definition and competition analysis.
6. TRA intends to follow the approach set out in the Competition Guidelines when defining relevant markets and assessing market power within these markets for the purposes of ex-ante and ex-post regulation.
7. As such, TRA issues this Determination to repeal the methodologies described in the Determination 1 of 2003 and Determination 2 of 2003.
8. This Determination is issued pursuant to Section 3(c) (1) of the Telecommunications Law.

DETERMINATION

**HAVING REGARD TO THE LEGISLATIVE DECREE NO. 48 OF 2002
PROMULGATING THE TELECOMMUNICATIONS LAW, ALL ADMISSIBLE EVIDENCE
AND SUBMISSIONS RECEIVED BY THE TELECOMMUNICATIONS REGULATORY
AUTHORITY, THE TELECOMMUNICATIONS REGULATORY AUTHORITY HEREBY
MAKES THE FOLLOWING DETERMINATION:**

1. TRA hereby repeals Determination No. 1 of 2003 issued by TRA on 19 April 2003 (Methodology for the Definition of the Telecommunications Markets) and Determination No. 2 of 2003 issued by TRA on 19 April 2003 (Methodology for Determining Market Power).
2. This Determination shall come into effect from the date of its issuance.

Dr Mohammed Al Amer
Chairman
Acting General Director
Telecommunications Regulatory Authority
Manama
Kingdom of Bahrain

18 February 2010

ANNEX: SUMMARY OF RESPONSES RECEIVED TO THE DRAFT DETERMINATION AND TRA's CONCLUSIONS

1. On 27 August 2009 TRA issued for public consultation a Draft Determination titled "Repeal of the Determination on the Methodology for the Definition of Telecommunications Markets and Determination on the Methodology for Determining Market Power". This Annex summarises and addresses the responses received. TRA received a response from Lightspeed Communications W.L.L. ("Lightspeed") and MTC-Vodafone Bahrain B.S.C ("Zain").

Respondent	Comments received	TRA's view & position
Lightspeed	Lightspeed considers that the repeal of these two determinations should be postponed until a competition law is effective in the Kingdom of Bahrain and final Competition Safeguard Instructions are issued.	The issuance of the determination repealing the aforementioned determinations is synchronised with the issuance of the Final Competition Guidelines. TRA has responsibility for competition issues in the telecommunications sector. Hence there is no reason why the repeal of the aforementioned determinations should be postponed until such time as a generic competition law is implemented in Bahrain.
	Lightspeed does not see any legal and regulatory reasons to repeal the two determinations.	It is because TRA intends to follow the approach set out in the Competition Guidelines. Hence the aforementioned determinations are no longer required.
	Lightspeed reiterates various comments submitted in response to the Draft Competition Guidelines issued by TRA on 4 November 2008 (Ref MCD/11/08/080) ("Draft Competition Guidelines").	These comments have been considered in the Report on the consultation on the Draft Competition Guidelines.
Zain	TRA's approach to repeal what currently exists in the absence of publication of the final Competition Guidelines that will replace the repealed determinations and the responses to the Draft Competition Guidelines is not transparent.	TRA disagrees as the Draft Competition Guidelines indicated TRA's intention to repeal the two determinations and clearly set out the purposes of the Competition Guidelines.
	The repeal of the two determinations should be stayed until the concerns highlighted by Zain in its submission to the Draft Competition Guidelines are addressed.	TRA has considered Zain's comments on the Draft Competition Guidelines. See Report on the consultation on the Draft Competition Guidelines.
	Given Zain's concerns with the Draft Competition Guidelines, Zain considers that TRA should publish the responses to the Draft Competition Guidelines and	The comments made by Zain on the Draft Competition Guidelines have been considered in the Report on the consultation on the Draft Competition

request further comments before finalizing the Competition Guidelines.

Guidelines.

Responses received on the present consultation and the consultation on the Draft Competition Guidelines are made publicly available at the time the final documents are issued. This is consistent with TRA's practice and TRA's standard "Instructions for Comments" included in all consultation documents.

TRA considers that a further round of consultation is not necessary.

Zain reiterates various comments submitted in response to the Draft Competition Guidelines.

These comments have been considered in the Report on the consultation on the Draft Competition Guidelines.
