

***Lightspeed Submission in Response to the TRA  
Public Consultation on the***

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

**Lightspeed submission on the Public Consultation  
"Repeal of the Determination on the Methodology for the Definition  
of Telecommunication Markets and Determination on the  
Methodology for Determining Market Power"**

**Introduction:**

Lightspeed welcomes the opportunity to submit its comments on the public consultation issued by the TRA regarding the "Repeal of the Determination on the Methodology for the Definition of Telecommunication Markets and Determination on the Methodology for Determining Market Power" hereinafter referred to as the "Consultation Paper".

Lightspeed does not see the logic and the legal reasoning for issuing such repeal. Accordingly, we would like to refer to our comments sent in response to the Competition Guidelines Consultation issued earlier by the TRA and would like to submit the following comments that emphasize on our previous position in a number of issues relating to the above mentioned determination.

**General Comments:**

1. Lightspeed stresses that the provisions stated in the Consultation Paper should not effect in any way the current and future regulations to be issued by the TRA in addressing anti competitive practices by operators enjoying a significant market power. This is essential to ensure that effective competition could be established in the near future. We also emphasize that it is also legally advisable to draft some regulatory provisions in a general manner to ensure that the TRA has the legal flexibility and the discretion to address future cases that may not be covered specifically in the Competition Guidelines. We therefore suggest that the repeal of the above mentioned determination be postponed until a Competition Law is effective in the Kingdom of Bahrain and final Competition Safeguard Instructions are issued. This will ensure that the legal framework for safeguarding competition is established and at that point the repeal for the above mentioned determination would be in place. Lightspeed stresses that the Competition Guidelines build upon the TRA's previous determinations on defining relevant markets and market power assessment and do not replace them. **It should be noted that the Competition Guidelines do not legally bind the TRA.** Accordingly we do not see any legal and regulatory reason to repeal the above mentioned determination hence it is binding on both the TRA and

the operators. On the contrary, and as mentioned above we believe that such a determination should remain in force until a Competition Law is effective and binding Competition Safeguard instructions are issued.

2. Lightspeed strongly believes that the Draft Competition Guidelines should be a first step towards the issuance of binding Competition Safeguard Instructions that adhere to the current market situations and address all market entry obstacles and anti competitive violations to ensure the establishment of effective competition in the Bahraini Telecommunications market. Indeed, International experience demonstrates that the best means to control anti-competitive practices and to ensure effective competition is to combine strong ex-ante regulation with strong ex-post control of abuses of dominant position. The use of a solid Competition Law and the use of both ex-ante and ex-post regulatory instruments together is the only way to ensure the establishment of effective competition in the Bahraini telecommunications market. Given the absence of the before mentioned the repeal of any relevant determination will only weaken the position of the TRA and the new entrants and will open the door for more anti-competitive practices that will surely have a serious impact on the telecommunications sector, in deterring competitive entry, blocking investment, and denying consumers the benefits of liberalization.

3. It is important to emphasize that the main focus of the TRA should be to ensure that to the extent that a dominant operator retains, or has any reasonable possibility of regaining significant market power in a market, the TRA generally will continue to impose ex ante regulations that will be necessary to deter anti-competitive conduct.

4. Lightspeed while supporting the TRA in its approach stated in the Competition Guidelines, emphasizes that once a market is defined by the TRA, it must be analyzed to assess the degree of competition on that market in a manner consistent with the SMP determination issued earlier by the TRA. The TRA should then intervene to impose obligations on undertakings only where the markets are considered not to be effectively competitive as a result of such undertakings being in a dominant position. Where market analysis reveals that competition on the market is not effective, the TRA should impose ex-ante regulations.

5. Lightspeed urges the TRA to confirm that market share is the most solid and objective element of information available today, and for the foreseeable future, and should therefore be the cornerstone of any market analysis to be conducted.

6. Lightspeed stresses that the local access network still remains uncompetitive with the dominant operator being the dominant incumbent carrier. It is clear that the dominant operator has successfully maintained its high market share even with ex ante regulations imposed, and so any relaxation would significantly damage the early stages of competition.

In conclusion Lightspeed would like to stress on its position of rejecting such a repeal until a Competition Law is effective in the Kingdom of Bahrain and binding Competition Safeguard Instructions are issued.