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Telecommunications Mergers and Acquisitions Draft Regulation

Telecommunications Mergers and Acquisitions Draft Regulation

A draft Regulation issued by the Telecommunications Regulatory Authority
on the Telecommunications Mergers and Acquisitions Regulation

29th August 2004

REFERENCE LAU/RN/008

The address for responses to this document is:

The General Director,

Telecommunications Regulatory Authority (TRA)

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the Authority's e-mail address at consult@tra.org.bh

The deadline for responses is 5pm on 12th September 2004

Purpose: To provide a framework for the treatment of mergers by the Telecommunications Regulatory Authority.



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1 Introduction

The Telecommunications Regulatory Authority (TRA) was established in 2002 under Legislative Decree No. 48 of 2002 promulgating the Telecommunications Law (“the Telecommunications Law”). One of the tasks of the TRA as set out in section 3 of the Telecommunications Law is to promote effective and fair competition among new and existing licensed operators.

With liberalization of the telecommunications sector in Bahrain, increase in investment and the entrance of new licensees, it is possible that there will be corporate reorganizations within the telecommunications industry in the Kingdom, in particular in the form of mergers, acquisitions and joint ventures. The TRA welcomes such transactions in so far as they are in line with the competition provisions of the Telecommunications Law in that they do not materially prevent, restrict or distort competition in a commercial field connected with telecommunications in the Kingdom and/or do not put in jeopardy the other areas that the TRA is entrusted with, i.e. does not endanger the interest of subscribers and users, in particular in terms of tariffs, availability and provision of services and quality of service, as well as the Kingdom as a whole.

Why the need for a Telecommunications Mergers and Acquisitions Regulation?

Most mergers, acquisitions and joint ventures (hereafter for simplicity the word ‘merger’ alone may be used, but is meant to refer interchangeably to mergers, acquisitions and joint ventures) do not raise competition concerns, and reflect normal commercial activities which are part of the efficient operation of the economy. They can provide licensees and other companies with efficiencies such as economies of scale, synergies and the spreading of risk. Nevertheless, experience in jurisdictions with competition law shows that, on occasion, mergers may cause lasting damage to the competitive environment of a particular market or industry. In such cases, a merger, acquisition or joint venture should not be allowed to proceed and cause damage to competition within the telecommunications industry in Bahrain, or only allowed to proceed in a revised manner which does not harm the competitive environment. Equally a pro-competitive merger should in the long term promote the interests of consumers, however, there may be cases where a transaction raises consumer protection issues in the short term that need to be looked after by the regulator when examining such a transaction. In most cases such issues may be dealt with by conditions imposed on telecoms operators to the transaction in an approval decision by the regulator.

The TRA considers competition policy as a means to further economic efficiency and free trade and therefore benefit subscribers and consumers. It is of benefit to the telecommunications industry in the Kingdom of Bahrain as well as potential investors to have a clear regulatory framework, including timetable, to assist everyone concerned to make informed decisions regarding investment activity in the telecommunications industry in the Kingdom. The TRA intends to only intervene (i.e. impose conditions or outright prohibit) in mergers which have a potentially adverse effect on competition. In such cases, the TRA will only prohibit a merger from being implemented, where other remedies to deal with the competitive concerns cannot be reached or are considered by the TRA to be unsatisfactory.

When assessing such transactions, the TRA will have regard to whether the proposed merger has, or is likely to have:

- The effect of substantially lessening competition in a telecommunications market;

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- A benefit to subscribers, users or the public that outweighs any detriment to the public; and/or
- Complies with the licensee's license conditions and obligations.

The TRA received four responses to its Consultation on the Telecommunications Mergers and Acquisitions Regulation of 20th June 2004, reference LAU/CN/001, which set out the TRA's approach and reasoning for the initial version of the draft Telecommunications Mergers and Acquisitions Regulation which it contained. Following review of the responses, the TRA issued a Report summarizing the main responses received and the TRA's approach (document LAU/RP/043) and this draft Regulation sets out the changes discussed in the Report. The TRA welcomes comments on this draft Regulation in so far as the draft Regulation does not reflect the conclusions reached by the Report, or where respondents consider that there are new implications arising from this draft Regulation which the TRA should be aware of with a view to amending the draft Regulation. Following review of any responses to this draft Regulation, the TRA will issue a final Regulation and, if appropriate, a further Report summarizing responses received.

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Draft Telecommunications Mergers and Acquisitions Regulation

Preamble

This Regulation is issued by the Telecommunications Regulatory Authority (TRA) Bahrain under the Telecommunications Law. The Ownership Regulation of 29th October 2003 is subsumed into this Telecommunications Mergers and Acquisitions Regulation and will no longer apply once the Telecommunications Mergers and Acquisitions Regulation comes into force.

This Regulation does not affect the obligations on Parties to a Qualifying Transaction under other laws of the Kingdom of Bahrain, in particular the Commercial Companies Law promulgated by Legislative Decree No. 21 for 2001.

Definitions

Any word, phrase or expression used in this Regulation shall, unless the context requires otherwise or it is expressly defined herein, have the same meaning as it has in the Legislative Decree No. 48 of 2002 promulgating the Telecommunications Law (the “Telecommunications Law”) and the terms below shall have the following meaning:

- “Commitments”** a structural and/or legal remedy proposed by the Party or Parties to a Qualifying Transaction, or by the TRA, in order to remove the TRA’s concerns about a Qualifying Transaction;
- “Days”** means calendar days unless otherwise specified;
- “Issue a decision”** means to publish a decision on the TRA’s website and/or to dispatch the decision (by fax and/or email and/or hand delivery and/or courier and/or by any other means) to the Party or Parties;
- “Issued share capital”** means, with respect to any person, all shares, interests, participations or rights or other equivalent (however designated, whether voting or nonvoting, ordinary or preferred) in the equity or capital of such person, now or hereafter issued;
- “Juristic person”** means any company, corporation, limited liability company, voluntary association, partnership, joint venture, trust or other enterprise or incorporated or unincorporated organization, or government (or any agency, instrumentality or political subdivision thereof);
- “Licensee”** means a Person that has been licensed by the TRA under the Telecommunications Law;

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- “**Party**” or “**Parties**” means any or all of the Persons involved in a Qualifying Transaction;
- “**Person**” means both juristic persons, natural persons and public authorities;
- “**Qualifying Transaction**” means a merger, acquisition or joint venture which fulfils the criteria in Article 1;
- “**Regulation**” means this Telecommunications Mergers and Acquisitions Regulation; and
- “**Third Party**” means a Person that is not a Person involved in a Qualifying Transaction.

Article 1 - Scope

- 1.1 This Regulation applies to mergers, acquisitions or joint ventures involving a Licensee and which involve a market within or affecting the telecommunications industry in the Kingdom of Bahrain.
- 1.2 A Qualifying Transaction shall be deemed to arise where a change of control on a lasting basis results from:
- (a) the merger of two or more previously independent Persons or parts of Persons at least one of which is a Licensee; or
 - (b) the acquisition by one or more Persons already controlling at least one entity, or by one or more entities, (the “**Acquiring Party**”) whether by purchase of shares or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other entities (the “**Acquired Party**”) where at least one of the Acquiring Party and/or the Acquired Party is a Licensee; or
 - (c) the creation of a joint venture which constitutes a Qualifying Transaction within the meaning of paragraph (b).
- 1.3 Control means, in relation to any Person, in the absence of proof to the contrary to the TRA, that such Person directly or indirectly has the ability to control or exert material influence over the Acquired Party.

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Article 2 – Notification

- 2.1 All Qualifying Transactions shall be notified to the TRA prior to their implementation. It is up to the Parties to decide when to notify the TRA of a proposed transaction except that notification shall be made by the relevant Parties:
- (a) within 30 calendar days of the date of the signing of an agreement, the announcement of a public bid or the acquisition of a controlling interest; or
 - (b) prior to the signing of an agreement, the announcement of a public bid or the acquisition of a controlling interest, and where the Parties concerned demonstrate to the TRA their good faith intention to enter into the agreement, or in the case of a public bid, where they have publicly announced an intention to make such a bid.
- 2.2 Article 2.1 shall not prevent the implementation of a series of transactions in securities, including those securities convertible into other securities admitted to trading on the Bahraini or any other stock exchange, by which a controlling interest is acquired from various sellers provided that the Qualifying Transaction is notified to the TRA within 30 days of such acquisition of a controlling interest.
- 2.3 The Parties may approach the TRA for an informal discussion or confidential guidance as to a proposed Qualifying Transaction at any time prior to notification. The Parties should treat any advice given by the TRA as confidential and should not reveal to any other party that advice has been requested or given. Any view expressed by the TRA prior to notification shall not be binding on the TRA or the Parties.
- 2.4 A Qualifying Transaction which consists of a merger under Article 1(2)(a) or joint venture under Article 1(2)(c) shall be notified jointly by the Parties, which means that both Parties must sign the signature page of the notification. An acquisition under Article 1(2)(b) shall be notified by the Acquiring Party.
- 2.5 Notification shall be made on the Notification Form attached to this Regulation.
- 2.6 A notification fee of BD 300 shall be payable to the TRA at the time the completed Notification Form is submitted.
- 2.7 To be complete, the notification must be signed by a duly authorized representative of the notifying Party or Parties, have all supporting documents and proof of payment of fee to the TRA bank account attached. A notification must be made in one original (i.e. with the signature of the duly authorized representative(s)) with four (4) copies attached.

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Article 3 – Procedure

- 3.1 The TRA shall examine the notification as soon as it is received and shall announce on its website as soon as practicable following receipt of a notification, that it has received a notification under the Regulation. Such announcement will be a high-level description of the notified transaction and shall state that interested third parties have 14 calendar days from the date of the announcement to make any submission to the TRA that it wishes about the transaction.
- 3.2 The TRA will assess the notified Qualifying Transaction according to the criteria set out in Article 4 below, and within 30 calendar days of receipt of notification shall issue one of the following decisions:
- (a) A decision that the merger, acquisition or joint venture notified does not fall within the scope of the Regulation (i.e. one of the criteria of Article 1 is not met). In such a case the BD 300 notification fee will not be refunded to the parties; or
 - (b) Where a Qualifying Transaction does not raise serious doubts as to its compatibility with this Regulation, a decision declaring the Qualifying Transaction compatible with this Regulation. Such a decision shall be deemed to cover restrictions directly related and necessary to the implementation of the merger, acquisition or joint venture if expressly stated and clearly asked for; or
 - (c) Where a Qualifying Transaction raises serious doubts as to its compatibility with competition in Bahrain, a decision initiating a Phase 2 investigation shall be made.
- Should the TRA fail to issue one of the above decisions within 30 calendar days of receipt of notification, the Qualifying Transaction shall be deemed to be approved. A decision may not include reasons at the time of issuance, in which case, the TRA shall issue these within 10 working days of the date of the decision.
- 3.3 A Phase 2 investigation may last for up to 90 days from the date of a decision taken under Article 3(2)(c) above. Within 30 days of the opening of the Phase 2 investigation, the TRA shall provide the Parties to the Qualifying Transaction with its objections (“Statement of Objections”) to the Qualifying Transaction, with a time limit for the Parties to respond, which shall not exceed 20 days from the date of the TRA’s Statement of Objections.
- 3.4 During the Phase 2 period, the Parties may make Commitments to the TRA with a view to removing the serious doubts of the TRA. Such Commitments must be submitted within 60 days of the opening of the Phase 2 investigation. Where the TRA finds that as a result of the Commitments given a Qualifying Transaction no longer raises serious doubts within the meaning of Article 3(2)(c) it shall make a decision pursuant to Article

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- 3(2)(b) declaring the Qualifying Transaction compatible with competition in Bahrain and the provisions of Article 4(1), (2) and (3) of this Regulation .
- 3.5 At the end of the 90 day period from the Article 3(2)(c) decision, the TRA shall issue a further decision. This shall either:
- (a) Prohibit the Qualifying Transaction if the TRA's serious doubts as to the compatibility of the Qualifying Transaction with the provisions of Article 4(1) and (2) of this Regulation have not been removed; or
 - (b) Declare the Qualifying Transaction compatible with the provisions of Article 4(1) and (2) of this Regulation. Such decision may include conditions and obligations intended to ensure that the Parties concerned comply with the Commitments they have entered into with the TRA; or
 - (c) Declare that the Qualifying Transaction has been abandoned by the Parties.
- 3.6 The TRA may revoke any decision taken under Article 3(2)(a), Article 3(2)(b) or Article 3(5)(b) if:
- (a) the decision is based on incorrect information for which one of the Parties is responsible or where it has been obtained by deceit; or
 - (b) one of the Parties commits a breach of a Commitment, condition or obligation attached to the decision.
- 3.7 All decisions issued in accordance with Article 3 shall be published by the TRA on its website. Decisions issued under Article 3 shall also be published in the Official Gazette as soon as practicable. The TRA shall give the notifying Parties a copy of any draft decision to be issued under Article 3, in order that the notifying Party or Parties may submit requested deletions of business secrets or other confidential information disclosure of which would be detrimental to that Party's business interests should such information become known by other Persons. A time limit shall be set by the TRA for the submission of such deletions. The decision as to whether submitted requested deletions shall be accepted and made rests with the TRA.

Article 4 – Substantive tests applied by the TRA

- 4.1 In assessing a Qualifying Transaction the TRA shall assess whether the Qualifying Transaction has, or is likely to have, the effect of substantially lessening competition in a market within or affecting the telecommunications industry in the Kingdom of Bahrain.
- 4.2 In assessing a Qualifying Transaction the TRA shall also have regard to its duties and powers under section 3(b) of the Telecommunications Law.

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Article 5 - Suspension of a Qualifying Transaction

- 5.1 A Qualifying Transaction shall not be implemented, including through the exercise of voting rights acquired in the Qualifying Transaction, before its notification to the TRA and until either it has been declared compatible with this Regulation pursuant to a decision approving the Qualifying Transaction by the TRA under Article 3(2)(b) or Article 3(5)(b), or the TRA fails to issue a decision pursuant to the timetable under Article 3(2), in which case the Qualifying Transaction shall be deemed to be approved.
- 5.2 However, Article 5(1) shall not prevent the implementation of a public bid or series of transactions in securities, including those convertible into other securities admitted to trading on the Bahraini or any other stock exchange, by which control within the meaning of Article 1 is acquired, provided that the Acquiring Party does not exercise the voting rights attached to the securities in question or does so only to maintain the full value of the securities in question.
- 5.3 The TRA may take measures appropriate to remedy, mitigate or prevent the substantial lessening of competition in a telecommunications market where a Qualifying Transaction has been implemented in contravention of this Article 5.
- 5.4 Without prejudice to Articles 5.1, 5.2 and 5.3 above, where an Acquired Party is a Licensee and the change of control in that Acquired Party constitutes a Qualifying Transaction within the meaning of Article 1 by means of a sale of shares, the Acquired Party shall not register the new shareholders and the new shareholders may not exercise their voting rights until the TRA has declared the Qualifying Transaction compatible with this Regulation pursuant to an approval decision under Article 3(2)(b) or Article 3(5)(b). Failure by the Acquired Party to comply with this Article shall be considered a material breach of the Law.

Article 6 - Requests for Information

- 6.1 In order for the TRA to carry out the duties assigned to it in this Regulation, the TRA may require the Parties, as well as other Licensees to provide all relevant information during any stage of the TRA's investigation of a Qualifying Transaction.
- 6.2 Such requests for information shall be made by letter, setting out the legal basis for the request, the information required and the deadline by which responses shall be submitted as well as the penalties for supplying incorrect or misleading or incomplete information, or late information in relation to licensees. The TRA may also, if necessary, send requests for information to non-Licensees both within the Kingdom and abroad.
- 6.3 The TRA's timetables for assessing a Qualifying Transaction set out in Article 3 will remain unaffected by any requests for information made by the TRA during Phase 1,

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however, the TRA may issue its decision without taking a reply into account if such reply arrives later than the date specified in the request for information.

- 6.4 At Phase 2 the TRA's timetables for assessing a Qualifying Transaction set out in Article 3 may be put 'on hold' for the duration between a request for information being sent to a Party and the day that a complete response is received by the TRA. In such cases, the TRA shall inform a Party in its request for information that time will be put 'on hold' until the complete response is received. The maximum duration for time being put 'on hold' under this Article is 60 working days.

Article 7 - Right to be heard

- 7.1 The TRA shall ensure at all stages of its assessment of a notified Qualifying Transaction that the Parties shall have the right to make known their views on any objections the TRA may have to the Qualifying Transaction.
- 7.2 In relation to Phase 1, the TRA will inform the notifying Party or Parties in writing of its concerns at least 10 days prior to either the issuance of an Article 3(2)(b) decision if the TRA is intending to attach conditions or an Article 3(2)(c) decision in order that they may submit Commitments to the TRA with a view to removing the TRA's concerns. The TRA may provide suggested Commitments it would seek from the Parties to remove its concerns as well as a timetable for receipt of such Commitments in order to assess these prior to issuing a decision under Article 3(2).
- 7.3 In relation to Phase 2, the TRA will inform the notifying Party or Parties in writing of its concerns at least 30 days prior to either the issuance of an Article 3(5)(b) decision if the TRA is intending to attach conditions or an Article 3(5)(a) decision in order that the Party or Parties may submit Commitments to the TRA with a view to removing the TRA's concerns. The TRA may provide suggested Commitments it would seek from the Parties to remove its concerns. In all cases the TRA may set a timetable for receipt of such Commitments or response to any Commitments proposed by the TRA, in order to provide the TRA with sufficient time to assess these prior to issuing a decision under Article 3(5).
- 7.4 Interested third parties shall have the right to submit comments on a notified Qualifying Transaction to the TRA. Such third parties may request a meeting with the TRA, which the TRA may grant where it deems necessary.
- 7.5 If requested by either the Parties, interested third parties, or at the TRA's own initiative, the TRA can hold a hearing. Such hearing would give the notifying Party or Parties the right to make their case and address any concerns of the TRA, and where appropriate, the right of interested third parties to make their case also. Parties could have consultants (lawyers or others) present. Such hearing would not be open to the public and would be open only to the notifying Party or Parties, and where requested by interested third parties, by such interested third party or parties on invitation by the

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TRA. However, if appropriate the TRA may hold such the hearing, or part of the hearing, in camera to protect confidential information. Such hearing would be held no later than 30 days after the Article 3(2)(c) decision.

Article 8 - Restrictions directly related and necessary to a Qualifying Transaction

- 8.1 If the agreement contain any potential restrictions on competition, which are however deemed by the Parties to be directly related and necessary to the implementation of the Qualifying Transaction, it is for the Parties to list and justify in the notification why such restrictions are necessary.
- 8.2 If the TRA issues an Article 3(2)(b) or 3(5)(b) decision approving the Qualifying Transaction, such a decision shall be deemed to cover restrictions directly related and necessary to the implementation of the merger, acquisition or joint venture if expressly stated and clearly asked for.

Article 9 - Penalties

- 9.1 The TRA may impose the following penalties in order to ensure compliance with this Regulation:
- 9.2 Where a Qualifying Transaction has been implemented prior to the issuance of a TRA clearance decision under Article 3(2)(b) or Article 3(5)(b), or where a Qualifying Transaction that has been prohibited by the TRA by means of an Article 3(5)(a) decision has been implemented, or where a condition attached to an Article 3(2)(b) or Article 3(5)(b) decision has been breached, the TRA may:
 - (a) require the Parties to dissolve the Qualifying Transaction, in particular through the dissolution of the merger, acquisition or joint venture, or the disposal of all the shares or assets acquired, in order to restore the position of the Parties and competition in the relevant market prior to implementation. Where it is impossible to restore the situation existing prior to implementation of the Qualifying Transaction through dissolution of the Qualifying Transaction, the TRA may order the taking of any other act or omission to act that the TRA deems necessary to achieve such restoration as far as possible;
 - (b) order any other appropriate measures necessary in order to dissolve the Qualifying Transaction or take other measures necessary to remedy the breach of compliance with a condition attached to an Article 3(2)(b) or Article 3(5)(b) decision as necessary;
 - (c) The TRA may revoke the decision as set out in Article 3(6), in which case the TRA would issue an Article 3(6) decision revoking its previous clearance decision.

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- 9.3 The TRA may impose fines of up to ten per cent (10 %) of the combined annual turnover of the Parties where a Qualifying Transaction effects anti-competitive changes in market structure as defined under section 65(b)(3) of the Telecommunications Law and where, either intentionally or negligently, the Parties also:
- (a) Failed to notify a Qualifying Transaction prior to its implementation in accordance with Article 1 unless they have requested and received express written authorization from the TRA;
 - (b) Implemented a Qualifying Transaction in breach of Article 5;
 - (c) Implemented a Qualifying Transaction declared incompatible with this Regulation in the Kingdom by a decision issued under Article 3(5)(a);
 - (d) Failed to comply with a condition or obligation imposed by the TRA pursuant to a decision issued under Article 3(2)(b) or Article 3(5)(b); and
 - (e) Supplied misleading or incorrect information to the TRA, or failed to provide information requested by the TRA, as part of the TRA's assessment of a Qualifying Transaction, in particular under Articles 2, 6 and 7 in particular.
- 9.4 In fixing the amount of any fine, the TRA will have due regard to the nature, gravity and duration of the infringement. The TRA may not fine the Parties under Article 9(3) if a determination has been or will be made against them under the Telecommunications Law as a result of their participation in the Qualifying Transaction.
- 9.5 If the TRA considers that a Qualifying Transaction effects anti-competitive changes in market structure as defined under section 65(b)(3) of the Telecommunications Law, the TRA may issue an order of amendment to or revocation of the license(s) of any relevant Licensee in accordance with the provisions of the relevant license(s) and/or section 35 of the Telecommunications Law.
- 9.6 Decisions taken under this Article shall be of an administrative and not criminal law nature.

Article 10 – Right of appeal

- 10.1 Any decision taken by the TRA under Article 3, or Article 9, is subject to appeal by means of the provisions of Chapter XVI of the Telecommunications Law on arbitration. Such right of appeal may be exercised by the Parties to a Qualifying Transaction (irrespective of whether they are licensees). Third parties have the right to appeal a TRA decision under the Regulation by means of the provisions of Chapter XVI of the Telecommunications Law if, upon application to the TRA, they can show that they have both 'sufficient interest' and be 'directly and

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individually affected by the decision'. Such right of appeal is without prejudice to rights under Bahraini law. All notifications of intention to arbitrate a decision shall be subject to the timetables set out in Chapter XVI of the Telecommunications Law on arbitration. Anyone bringing such an arbitration shall be deemed to become aware of the decision on the earlier of the date that the decision is published on the TRA's website or the date that the Person receives a copy of the issued decision.

Article 11 - Confidentiality

- 11.1 The TRA shall treat all information submitted to it as a result of this Regulation as confidential and shall only use such information for the purposes of assessing the relevant Qualifying Transaction. This provision also applies to any information that comes to the TRA as a result of responses to Article 6 requests for information and any other investigations, meetings or hearings.
- 11.2 If access to the file is granted in accordance with Article 12, any Person that has submitted information to the TRA in relation to the Qualifying Transaction will be contacted to submit requested deletions of business secrets or other confidential information disclosure of which would be seriously detrimental to that Person's business interests should such information become known by other Persons. A time limit shall be set by the TRA for the submission of such deletions.

Article 12 - Access to the file

- 12.1 If so requested, the TRA shall grant access to the file to the Party or Parties to whom the TRA has addressed a Statement of Objections pursuant to Article 3(3) for the purpose of enabling them to exercise their rights of defence. Access shall be granted after the notification of the Statement of Objections.
- 12.2 The right of access to the file shall not extend to business secrets or other confidential or privileged information or to internal documents of the TRA. Documents obtained through access to the file shall only be used for the purpose of responding to the Statement of Objections.

Article 13 – Entry into force

- 13.1 This Regulation shall enter into force on [], on which date the Ownership Regulation shall automatically be repealed.

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Telecommunications Mergers and Acquisitions Regulation – Notification Form

NOTIFICATION FORM
RELATING TO THE
NOTIFICATION OF A QUALIFYING TRANSACTION
PURSUANT TO THE TELECOMMUNICATIONS MERGER REGULATION ISSUED BY THE
TELECOMMUNICATIONS REGULATORY AUTHORITY

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SECTION 1

Description of the Qualifying Transaction

- 1.1. Provide an executive summary of the Qualifying Transaction, specifying the parties to the Qualifying Transaction, the nature of the Qualifying Transaction (for example, merger, acquisition, joint venture), the areas of activity of the notifying parties, the market(s) on which the Qualifying Transaction will have an impact and the strategic and economic rationale for the Qualifying Transaction.
- 1.2. Provide a summary (up to 300 words) of the information provided under Section 1.1. It is intended that this summary will be published on the TRA's website at the date of notification. The summary must be drafted so that it contains no confidential information or business secrets. If Parties wish, this may be the same text as to Section 1.1 above.

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SECTION 2

Information about the Parties

2.1. Information on notifying Party (or Parties)

Give details of:

- 2.1.1. name and address of Party;
- 2.1.2. nature of the Party's business;
- 2.1.3. name, address, telephone number, mobile number, fax number and e-mail address of, and position held by, the appropriate contact person; and
- 2.1.4. an address for service of the notifying party (or each of the notifying parties) to which documents and, in particular, TRA decisions may be delivered. The name, e-mail address and telephone number of a person at this address who is authorised to accept service must be provided.

2.2. Information on other parties ⁽¹⁾ to the Qualifying Transaction

For each party to the Qualifying Transaction (except the notifying party or parties) give details of:

- 2.2.1. name and address of Party;
- 2.2.2. nature of Party's business;
- 2.2.3. name, address, telephone number, mobile number, fax number and e-mail address of, and position held by, the appropriate contact person; and
- 2.2.4. an address for service of the party (or each of the parties) to which documents and, in particular, TRA decisions may be delivered. The name, e-mail address and telephone number of a person at this address who is authorised to accept service must be provided.

2.3. Appointment of representatives

Where notifications are signed by representatives of Parties, such representatives must produce written proof that they are authorised to act. The written proof must contain the name and position of the persons granting such authority.

1 This includes the target company in the case of a contested bid, in which case the details should be completed as far as is possible

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Provide the following contact details of information of any representatives who have been authorised to act for any of the parties to the Qualifying Transaction, indicating whom they represent:

- 2.3.1. name of representative;
- 2.3.2. address of representative;
- 2.3.3. name, address, telephone number, fax number and e-mail address of person to be contacted;
and
- 2.3.4. an address of the representative for service (which should be in Bahrain) to which correspondence may be sent and documents delivered. Such address may include embassies, lawyers or accountant's offices, if the appropriate organisation has agreed with the Parties to act as representative. If the address is outside of Bahrain, the TRA will not be responsible for ensuring receipt of documents.

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SECTION 3

Details of the Qualifying Transaction

- 3.1. Describe the nature of the Qualifying Transaction being notified. In doing so state:
- (a) whether the proposed Qualifying Transaction is a merger, an acquisition of sole or joint control, a joint venture within the meaning of Article 1 of the Telecommunications Mergers and Acquisitions Regulation or a contract or other means of conferring direct or indirect control within the meaning of Article 1 of the Regulation;
 - (b) whether the whole or parts of Parties are subject to the Qualifying Transaction;
 - (c) a brief explanation of the economic and financial structure of the Qualifying Transaction;
 - (d) whether any public offer for the securities of one party by another party has the support of the former's supervisory boards of management or other bodies legally representing that party;
 - (e) the proposed or expected date of any major events designed to bring about the implementation of the Qualifying Transaction (other than a decision approving the Qualifying Transaction under Article 3;
 - (f) the proposed structure of ownership and control after the completion of the Qualifying Transaction;
 - (g) any financial or other support received from whatever source (including public authorities) by any of the parties and the nature and amount of this support; and
 - (h) the economic sectors involved in the Qualifying Transaction.
- 3.2. State the value of the transaction (the purchase price or the value of all the assets involved, as the case may be);
- 3.3. For each of the Parties to the Qualifying Transaction provide the following data for the last financial year:
- 3.3.1. world-wide turnover;
 - 3.3.2. turnover within the Kingdom of Bahrain;
- 3.4. In case the transaction concerns the acquisition of joint control of a joint venture, provide the following information:
- 3.4.1. the turnover of the joint venture and/or the turnover of the contributed activities to the joint venture; and/or

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- 3.4.2. the total value of assets transferred to the joint venture.
- 3.5. Describe the economic rationale of the Qualifying Transaction.

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SECTION 4

Ownership and control

For each of the parties to the Qualifying Transaction provide a list of all Parties belonging to the same group.

This list must include:

- 4.1. all Parties or persons controlling these parties, directly or indirectly;
- 4.2. all Parties active in any reportable market that are controlled, directly or indirectly:
 - (a) by these parties;
 - (b) by any other Party identified in 4.1.

For each entry listed above, the nature and means of control should be specified.

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the Parties.

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SECTION 5

Supporting documentation

Notifying parties must provide the following:

- 5.1. copies of the final or most recent versions of all documents bringing about the Qualifying Transaction, whether by agreement between the Parties to the Qualifying Transaction, acquisition of a controlling interest or a public bid; and
- 5.2. copies of the most recent annual reports and accounts of all the Parties to the Qualifying Transaction, for the last three (3) financial years if available.

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SECTION 6

Market definitions

The relevant product and geographic markets determine the scope within which the market power of the new entity resulting from the Qualifying Transaction must be assessed.

The notifying Party or Parties must provide the data requested having regard to the following definitions:

I. Relevant product markets

A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use. A relevant product market may in some cases be composed of a number of individual products and/or services which present largely identical physical or technical characteristics and are interchangeable.

Factors relevant to the assessment of the relevant product market include the analysis of why the products or services in these markets are included and why others are excluded by using the above definition, and having regard to, for example, substitutability, conditions of competition, prices, cross-price elasticity of demand or other factors relevant for the definition of the product markets (for example, supply-side substitutability in appropriate cases).

II. Relevant geographic markets

The relevant geographic market comprises the area in which the Parties concerned are involved in the supply and demand of relevant products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant geographic market include *inter alia* the nature and characteristics of the products or services concerned, the existence of entry barriers, consumer preferences, appreciable differences in the Parties' market shares between neighbouring geographic areas, or substantial price differences.

III. Relevant markets

For purposes of information required in this Notification, relevant markets consist of all relevant product and geographic markets, as well as plausible alternative relevant product and geographic market definitions, on the basis of which:

- (a) two or more of the parties to the Qualifying Transaction are engaged in business activities in the same relevant market (horizontal relationships);
- (b) one or more of the parties to the Qualifying Transaction are engaged in business activities in a product market, which is upstream or downstream of a market in which

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any other party to the Qualifying Transaction is engaged, regardless of whether there is or is not any existing supplier/customer relationship between the parties to the Qualifying Transaction (vertical relationships).

- 6.1. Identify all relevant markets.

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SECTION 7

Information on markets

For each relevant market described in Section 6, for the year preceding the operation, provide the following: ⁽¹⁾

- 7.1 an estimate of the total size of the market(s) in terms of sales value (in BD and US\$) and volume (units) ⁽²⁾. Indicate the basis and sources for the calculations and provide documents where available to confirm these calculations;
- 7.2 the sales in value and volume, as well as an estimate of the market shares, of each of the parties to the Qualifying Transaction. Indicate if there have been significant changes to the sales and market shares for the last three financial years; and
- 7.3 for horizontal and vertical relationships, an estimate of the market share in value (and where appropriate, volume) of the three largest competitors (indicating the basis for the estimates). Provide the name, address, telephone number, fax number and e-mail address of the head of the legal department (or other person exercising similar functions; and in cases where there is no such person, then the chief executive) for these competitors.

¹ In the context of pre-notification, you may want to discuss with the TRA to what extent dispensation (waivers) to provide the requested information would be appropriate for certain relevant markets.

² The value and volume of a market should reflect output less exports plus imports for the Kingdom of Bahrain.

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Declaration

The notification must conclude with the following declaration which is to be signed by or on behalf of all the notifying Parties, signed by duly authorized representative(s) of each Party:

The notifying Party or Parties declare that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required by this Form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

They are aware of the provisions of the Telecommunications Mergers and Acquisitions Regulation.

Place and date:

Signatures:

Name/s and positions:

On behalf of: