

REPORT

Report on Telecommunications Mergers and Acquisitions Regulation

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A Report issued by the Telecommunications Regulatory Authority

28th September 2004

Purpose: Provides analysis on the approach that the TRA has taken in relation to the Telecommunications Mergers and Acquisitions Regulation issued on 28th September 2004.



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1 Introduction

1.1 Context

This Report, represents the outcome of the consultation process, which commenced on 20th June 2004 with the publication of the consultation on the Telecommunications Mergers and Acquisitions Regulation (“the Consultation”), reference LAU/CN/001, which was followed by a Report on comments received to the Consultation, reference LAU/RP/043 of 29th August 2004 and a draft Regulation (“draft Regulation”), reference LAU/RN/008 of 29th August 2004.

The TRA received no comments on the draft Regulation issued on 29th August 2004. However, in carrying out the final review of the draft Regulation, the TRA has made minor amendments to it, which aim to clarify the Regulation and its scope. As these are minor and solely to ensure that the text is clear and consistent, no further consultation was considered appropriate.

1.2 Scope and next steps

This document has no status other than as a means of disseminating information and the TRA’s reasoning leading to the minor amendments made to the Regulation.

The TRA has today issued the Telecommunications Mergers and Acquisitions Regulation (“the Regulation”), reference number: Regulation 3 of 2004.

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2 Analysis of amendments made to the Regulation

Articles in this section refer to those of the draft and final Regulations.

Article 1 - Scope

The TRA has noted that the current wording of Article 2(1) and Articles 1(1) and (2) may be interpreted that a notification would be required even when the transaction does not “*involve a market within or affecting the telecommunications industry in the Kingdom...*”. The TRA considers that since all notified Qualifying Transactions should in fact “*involve a market within or affecting the telecommunications industry in the Kingdom...*”, it has added the wording from Article 1(1) to Article 1(2) i.e. as a further criteria of a Qualifying Transaction, which serves to clarify the scope of the Regulation.

In cases where Parties to a Qualifying Transaction may be unclear whether a transaction may involve a market “*within or affecting the telecommunications industry in the Kingdom...*” they may discuss such case with the TRA, pursuant to the provisions of Article 2(3).

The TRA considers that the words “*already controlling at least one entity*” at Article 1(2)(b) are superfluous, as the need to already control one entity is irrelevant. Rather, what matters is simply whether a Licensee is involved in a Qualifying Transaction as either an Acquiring or Acquired Party. The TRA has therefore removed the words “*already controlling at least one entity*” from the final Regulation.

Article 3 – Procedure

The TRA has amended the wording of Article 3.2(c) from “*serious doubts as to its compatibility with competition in Bahrain*” to “*serious doubts as to its compatibility with Article 4(1) and (2) of this Regulation*” for added clarity and to bring it in line with other similar provisions such as at Articles 3(4) and (5) of the Regulation.