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Access Regulation

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A Regulation issued by the Telecommunications
Regulatory Authority

30 April 2005

Regulation 1 of 2005

Purpose: To provide a framework for Access obligations and the requirements for the publication of a Reference Access Offer by Licensed operators that are declared to hold a Dominant position in a relevant market.



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Preamble

This Regulation is issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain under Sections 3(c)(1), 57, 58 and 65 of the Telecommunications Law. Section 57(e) of the Telecommunications Law requires a Licensed operator in a Dominant position in a relevant market to offer Access to its Telecommunications network and Telecommunications facilities on fair and reasonable terms. Section 57(e) empowers the TRA to publish regulations in connection with such Access.

Where this document is a translation of the original version, and any discrepancies exist between the two, the original version shall prevail.

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 in the Telecommunications Law and the terms below shall have the following meaning for the purposes of this Regulation only:

Access Order means an Order imposed pursuant to Article 2 of this Regulation and pursuant to Section 3(c)(1) of the Telecommunications Law.

Access Obligation means an obligation imposed pursuant to Article 3.3, 3.4 or 3.5 of this Regulation.

Access Seeker means a Licensed operator seeking Access from a Licensed operator holding a Dominant position. It does not include, apply or refer to Access by end users.

Methodology for Determining Market Power means the Methodology for Determining Market Power Determination issued by the TRA on 19 April 2003, as may be amended by the TRA from time to time.

Methodology for the Definition of Telecommunications Markets means the Methodology for the Definition of Telecommunications Markets Determination issued by the TRA on 19 April 2003, as may be amended by the TRA from time to time.

Month means a Gregorian calendar month unless otherwise specified.

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Order means an Order issued by the TRA pursuant to the provisions of Sections 3(c)(1), 57 (b) or 57 (e) of the Telecommunications Law.

TRA means the Telecommunications Regulatory Authority of the Kingdom of Bahrain.

Telecommunications Law means the Telecommunications Law promulgated by the Kingdom of Bahrain Legislative Decree No. 48 of 2002.

Week means a consecutive period of seven calendar days.

Article 1 - Scope

1.1 This Regulation applies to Licensed operators which have been declared by the TRA to hold a Dominant position in a relevant market.

Article 2 -Role and duty of the TRA

2.1 The TRA may impose by way of an Access Order one or more of the Access Obligations identified in Article 3 on a Licensed operator declared to hold a Dominant position in a relevant market. The TRA may impose by way of an Access Order any other Access-related obligations on a Licensed operator declared to hold a Dominant position in a relevant market. Where such other Access-related obligations are imposed, the TRA shall provide written reasons to the Licensed operator. No obligations can be imposed on any Licensee under this Regulation if that Licensee has not been declared by the TRA to be holding a Dominant position in a relevant market.

2.2 The TRA will review obligations imposed on Licensed operators under this Regulation that are in force when it conducts its periodic reviews under the Methodology for Determining Market Power. In doing so, it will consider whether to amend or withdraw any obligations that are in force and whether to impose additional obligations.

Article 3 - Access to, and use of, specific Telecommunications networks and Telecommunications facilities

3.1 The TRA may, in accordance with the provisions of Article 2, impose obligations on Licensed operators to meet reasonable requests for Access to, and use of, specific elements of Telecommunications networks and Telecommunications facilities.

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- 3.2 A Licensed operator that is obliged to meet all reasonable requests for Access, in the forms mandated by the TRA from time to time, may only refuse to provide such Access on the basis of objective criteria related to technical feasibility or maintenance of network integrity. Where an Access Seeker takes the view that any such refusal is not based on such objective criteria, it may initiate dispute resolution pursuant to the procedures set out in Section 57(g) of the Telecommunications Law.
- 3.3 A Licensed operator that has been declared by the TRA to hold a Dominant position in a relevant market shall:
- (a) continue to offer, and not withdraw, Access to Telecommunications networks and Telecommunications facilities already granted, except where justified by a widely applicable upgrade to a Telecommunications network agreed with the TRA and subsequent to giving a reasonable period of notice;
 - (b) negotiate in good faith with Access Seekers; and
 - (c) make available a Reference Access Offer in accordance with Article 4.
- 3.4 Where a Licensed operator is declared to hold a Dominant position in a relevant market, the TRA may additionally require it to:
- (a) give other Licensed operators Access to specified elements of either or both of the Licensed operator's Telecommunications networks and Telecommunications facilities;
 - (b) provide Access Seekers with Access services;
 - (c) provide telecommunications services as may be specified by the TRA on a wholesale basis for resale by other Licensed operators;
 - (d) grant open Access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of telecommunications services or virtual network services;
 - (e) provide co-location or other forms of facility sharing, including duct, building or mast sharing;
 - (f) provide specified Access services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services; and

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- (g) provide Access to operational support systems or similar software systems.

3.5 Where a Licensed operator is declared to hold a Dominant position in a relevant market, the TRA may require it to provide various Access services in relation to any of the following Telecommunications networks' elements or Telecommunications facilities:

- (a) wholesale leased lines;
- (b) international capacity;
- (c) international outbound call termination facilities;
- (d) wholesale DSLs;
- (e) unbundled local loops;
- (f) main distribution frames or concentrators for bitstream access or DSL co-location;
- (g) dark fibre; and
- (h) narrowband dial-up facilities.

3.6 The TRA may, by way of a determination, add to, remove from, or otherwise amend the list of Telecommunications networks' elements or Telecommunications facilities for which Access services may be required to be provided by Licensed operators pursuant to Article 3.5.

3.7 When considering whether to impose any Access Obligation, the TRA will assess whether such an Access Obligation is no more than is appropriate and necessary to address the market failure identified by the TRA, taking into account:

- (a) the technical and economic viability of installing competing facilities, in light of the level and rate of market development;
- (b) the feasibility and efficiency of providing the form of Access, particularly in light of the available capacity; and

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- (c) the TRA's duty to safeguard and encourage the long-term development of competition and the long-term interests of end users.

Article 4 - Reference Access Offer

- 4.1 Any Licensed operator which is subject to Access Obligations, or is required to provide Access to ducts pursuant to Section 57(e) of the Telecommunications Law, shall make available a Reference Access Offer. A Reference Access Offer must include offers for all Access services that the Licensed operator is required to provide, and must set out a description of the relevant offerings, unbundled according to market needs where this is technically and economically feasible together with the associated terms, conditions and tariffs. A Reference Access Offer must also contain all necessary information regarding technical specifications and network characteristics for Access Seekers to be able to effectively and efficiently acquire and use each Access service.
- 4.2 As a minimum the following information must be provided in a Reference Access Offer:
 - (a) description of the services and facilities to be provided, including their technical characteristics;
 - (b) location of the points of access and of other associated facilities (including co-location space), subject to reasonable concerns regarding network security and national security;
 - (c) technical standards for access (including any usage restrictions and other security issues);
 - (d) conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests);
 - (e) forecasting, ordering and provisioning procedures;
 - (f) tariffs, terms of payment and procedures for billing, collection and billing disputes;
 - (g) interoperability tests, where applicable;

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- (h) traffic or network management;
- (i) maintenance and quality of access services;
- (j) measures to ensure compliance with requirements for network integrity, site security and relevant rules relating to personnel;
- (k) terms relating to intellectual property rights, if applicable;
- (l) dispute resolution procedures between parties including reference to the TRA for dispute resolution;
- (m) confidentiality;
- (n) rules for allocation between operators when supply is limited; and
- (o) standard terms and conditions of supply.

Article 5 - Approval of the Reference Access Offer

- 5.1 Any Licensed operator which is required to make available a Reference Access Offer under Article 4 shall, within two Months of being declared by the TRA to hold a Dominant position in a relevant market, submit its Reference Access Offer to the TRA for approval. Such Licensed operators shall also periodically submit a revised Reference Access Offer to the TRA for approval, either when the TRA mandates additional Access Obligations or amends any Access Obligations addressed to the Licensed operator or, in any event, within every six Months of the date of publication of its most recently published Reference Access Offer.
- 5.2 Where the TRA determines that the terms and conditions or tariffs contained in a Reference Access Offer that has been provided to it for approval are fair, reasonable and non-discriminatory and in compliance with the Telecommunications Law, it will approve the Reference Access Offer. The Reference Access Offer shall be effective from the date of this TRA approval. Where considered appropriate by the TRA, the TRA may take into account the views of Access Seekers before approving a Reference Access Offer.
- 5.3 Where the TRA determines that any of the terms and conditions or tariffs contained in a Reference Access Offer that has been provided to it for approval are not fair, reasonable and non-discriminatory, it will issue an Order specifying the terms and conditions or tariffs it does not approve and shall state the terms and conditions that shall apply in a notice stating in writing the Order to be issued (the “draft Order”) and the notice

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period for responding to the draft Order, which shall not be less than one Month from the date of the notice. The TRA, taking into account the Licensed operator's response submitted in writing within the fixed period, shall issue a final Order, which shall include a warning to the Licensed operator that its License may be revoked pursuant to Section 35 of the Telecommunications Law if the Licensed operator fails to comply with the Order, as such a failure would be a material breach of its License.

- 5.4 The terms and conditions and tariffs specified in a final Order issued pursuant to Article 5.3 shall become effective in the Reference Access Offer on the effective date of the final Order. Such final Orders shall be effective from their date of issue, unless the TRA specifies another date in the relevant final Order.
- 5.5 A Licensed operator which has submitted a Reference Access Offer that has been approved by the TRA or that has been subject to an Order by the TRA must publish that Reference Access Offer within two Weeks of the grant of such approval or Order including posting a copy of the Reference Access Offer on the relevant Licensed operator's website. After publication a Reference Access Offer shall remain in force until such time as a revised Reference Access Offer becomes effective.
- 5.6 Copies of Reference Access Offers that have been approved by the TRA or that have been subject to an Order must be provided to any person (natural or legal) requesting a copy and must be made available at the head office of the Licensed operator which produced the particular Reference Access Offer for inspection free of charge during normal office hours.

Article 6 - Tariffs

- 6.1 Tariffs for all Access services shall be fair, reasonable and non-discriminatory.
- 6.2 The TRA may require a Licensed operator to provide justification for its tariffs and may, where appropriate, require that any or all tariffs in a Reference Access Offer be adjusted so that they are in accordance with Article 6.1.

Article 7 - Confidentiality

- 7.1 Where a Licensed operator acquires information from another Licensed operator before, during or after the process of negotiating Access or in relation to the provision or acquisition of Access, it must use that information solely for the purpose for which it was supplied, and must respect at all times the confidentiality of information transmitted or stored.

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Information received in such circumstances must not be provided (in any form) to any other party, including other departments or subsidiaries or partners of the recipient.

Article 8 - Enforcement and penalties

- 8.1 The TRA shall enforce this Regulation and measures made thereunder through decisions, determinations, and orders made in particular under Sections 3, 35 and 65 of the Telecommunications Law.
- 8.2 Any material breach of this Regulation shall be deemed to constitute a material breach of the Telecommunications Law and, where appropriate, of any relevant telecommunications licence held by the relevant Licensed operator.

Article 9 - Entry into force

- 9.1 This Regulation shall enter into force on 30 April 2005.