

Republic of Lebanon

Telecommunications Regulatory Authority

Decision n°3/2009

Significant Market Power Regulation

The TRA, during its meeting held on 18/03/2009

Pursuant to law No 431 dated 22/07/2002 (Telecommunications Law), in particular Article 5,

Pursuant to Decree No 14264 dated 4/03/2005 (Financial and administrative management of the Telecommunications Regulatory Authority),

Pursuant to Decree N° 1 dated 08/02/2007 (Appointment of the TRA Board),

And upon the advice of the Council of State (Opinion No. 40/2008-2009 dated 29/01/2009),

Issued the following regulation:

Chapter 1

Purpose and scope of the Regulation

Article 1: Background

1. This Significant Market Power Regulation (the Regulation) is issued by the Telecommunications Regulatory Authority (TRA). It is designed to provide potential and current stakeholders in the sector with clear and concise explanations of the TRA's actions relating to service providers with Significant Market Power (SMP).
2. This Regulation is a binding document that states the official policies and procedures of the TRA during its period of validity. It may be subject to review and amendment following consultation and promulgation processes required by the law. Such review and amendment may be undertaken periodically as deemed necessary by the TRA in light of the development of the Lebanese telecommunications markets, changes to Lebanese national laws affecting the telecommunications sector, or other factors.

Article 2: Legal Basis

1. The Government of Lebanon having determined to transform the telecommunications sector in Lebanon from a state-owned monopoly to a competitive market, open to private participation, promulgated the Telecommunications Law - Law No. 431/2002 (Telecommunications Law) to achieve this aim.
2. The Telecommunications Law ensures that an open, competitive market will bring pressure to bear on service providers, leading to increased penetration of telecommunications services, lower prices, improved efficiency, and enhanced quality and choice of services. Accordingly, the TRA is provided with wide-ranging powers to promote competition and to guard against anti-competitive behavior which would distort this market-based, competitive process. The provisions in the Telecommunications Law which address anti-competitive behavior are consistent with the WTO Reference Paper on Regulatory Principles.¹

The TRA is charged with promoting competition in telecommunications (Telecommunications Law, Art. 5.1(C)). To that end, the Telecommunications Law has given the TRA a clear mandate, among other things, to:

¹ See the 1997 WTO Agreement on Basic Telecommunications Services.

- establish an open, clear and transparent regulatory framework that minimizes legal, regulatory, and other barriers to entry;
- issue licenses;
- identify service providers with SMP;
- monitor and prevent abuses of SMP;
- monitor and prevent practices that would restrict competition;
- review any agreement or contractual relationship (e.g., interconnection), particularly involving service providers with SMP, to ensure that they will not restrict, undermine or distort competition; and
- take all necessary measures, whether preventive (i.e., before abuse of SMP) or remedial (i.e., after abuse of SMP), to protect competition and ensure a sustainable competitive market.

Should the TRA find a potential or actual situation which diminishes competition, the TRA may take such measures as it deems necessary. While service providers with SMP are singled out for greater attention, the TRA is encouraged to take measures to increase competition rather than imposing restrictions on such service providers. In countering anti-competitive behavior generally, the TRA is also encouraged to benefit from international best practices by considering relevant principles of competition law from countries with more competitive telecommunications markets.

The concept of SMP used in the competition provision of the Telecommunications Law (Article 30) is threaded through other sections of the Telecommunications Law, including provisions relating to interconnection (Article 29), rate and tariff regulation (Article 28), and the resale of services (Article 27). Consistent with international best practices and the WTO Reference Paper, a service provider with SMP is one that can materially affect participation in a market for a service as a result of its control over essential facilities or the use of its position in the market.

The Telecommunications Law provides for the regulation of the telecommunications sector in Lebanon by the TRA, mandating it, among other things, to act against anti-competitive behavior, ensure market transparency and supervise service providers with SMP. The authority and mandate of the TRA in this regard encompass specific provisions that authorize the TRA to constrain service providers with SMP (Article 5 (j)) and provide for measures such as initiating investigations, making determinations, and imposing additional obligations upon such providers. Beyond these mandates and specific provisions of the Telecommunications Law, the TRA may also make reference to the competition principles and laws of other countries with competitive telecommunications markets (Article 30))

3. Given the interrelated nature of markets for goods and services, particularly those requiring or required by telecommunications services, the TRA understands that its standards and actions concerning potentially anti-competitive conduct and particularly SMP are liable to affect and be affected by the standards and actions of other relevant governmental bodies and institutions.

The Telecommunications Law is a *lex specialis*, taking precedence over other generally applicable laws that apply when determining the appropriate standards and practices promulgated in this Regulation. Regarding potential anti-competitive conduct in the market for telecommunications services, the TRA will assume primary jurisdiction over

such matters in accordance with the Telecommunications Law. In all other cases, the TRA will coordinate its actions with the appropriate governmental body involved and/or refer appropriate complaints, investigations or cases to such bodies.

The TRA notes that it may have shared jurisdiction over competition issues with regulatory bodies that may be created by virtue of a competition act which is under consideration by the Government of Lebanon. Such a competition act would set generally applicable rules for all markets and designate an appropriate regulatory body with powers to investigate and redress anti-competitive conduct. Insofar as the provisions of the Telecommunications Law and this Regulation constitute a more specific and more extensive basis for both preventive (ex-ante) and remedial (ex-post) action, the TRA will assert primary jurisdiction in competition cases involving persons and services subject to its jurisdiction under the Telecommunications Law. In all other cases including those concerning telecommunications markets, the TRA will seek to coordinate its actions with the appropriate competition regulator.

Article 3: Interpretation

Individual clauses containing the word 'shall' and 'will' are mandatory requirements and are binding on licensed providers of telecommunications services and applicants for such licenses.

Individual clauses containing the word 'may' are permissions or recommendations (depending on the context) to providers but are not mandatory.

Individual clauses containing the word 'shall' and 'will', when applied to the TRA, refer to its current intention as to how it will approach the matter referred to.

Article 4: Purpose of the Regulation

The principal purpose of this Regulation is to set the rules and conditions to be adopted by the TRA for the study of Telecommunications Markets in order to assess whether telecommunications service providers have Significant Market Power and to take the necessary resolutions in light of such assessment.

The Regulation also describes processes designed to ensure that all providers and applicants for service provider status are treated fairly and in a non-discriminatory manner; it also aims to encourage best practices by service providers and to promote the provision of high quality services to end-users, through technical and economic efficiency.

Article 5: Scope of the Regulation

1. This Regulation applies to all providers of telecommunications services in Lebanon; therefore, its scope of implementation does not include end-users of such services nor does it cover the importation and provision of telecommunications equipment of all kind.

The TRA's activities within the scope of this Regulation include in particular:

- i. a. defining relevant markets in terms of products and services, customer groups, and geography;
- ii. b. carrying out market analyses of each of the relevant markets to determine whether any providers have SMP in those relevant markets;
- iii. c. issuing decisions relating to providers having SMP in a relevant market; and
- iv. d. imposing regulatory obligations on those providers designated as having SMP as described above.

2. This Regulation includes the following schedules attached thereto:

Schedule A: Retail Markets

Schedule B: Wholesale Markets

The attached annexes are deemed to be an integral part of this regulation.

Chapter 2 Definitions

Article 6: Definitions Basis

In this Regulation, unless otherwise defined, any word, phrase or expression shall, unless the context requires otherwise, have the meaning given to it in the Telecommunications Law. In the event of conflict or ambiguity between the terms defined herein and the terms defined in a license or in the Telecommunications Law, the following order of precedence shall apply:

1. Telecommunications Law.
2. SMP Regulation.
3. Service provider license.

Article 7: Definitions

In this Regulation, the following terms shall have the corresponding meanings:

Call origination - The service of originating calls on a network, for completion either on the same or a different network.

Call termination - The service of terminating calls on a network, whether originated on the same or a different network.

Carrier pre-selection - Election by the customer of which provider will provide service on a permanent or semi-permanent basis.

Carrier selection - Election by the customer of which service provider will provide service on a call-by-call basis.

Collective SMP – SMP attributable to two or more service providers collectively, through collusion, joint ownership, or other means.

Consumer - Any person, other than a service provider, that is a potential customer or end user.

Cost accounting – The preparation by service providers with SMP of accounting information according to the costing methodology and any regulation on cost accounting prescribed by the TRA in order to identify the cost of providing a service.

End user - Any person who uses telecommunications services, whether or not such person pays for such services, and who does not provide access to telecommunications services to persons outside their respective defined user group or on a commercial scale or for profit.

Local loop unbundling - A process that allows multiple service providers access to local loops.

Number portability – A service which allows a customer to change service providers while maintaining his access number.

Relevant market - A market defined by the TRA under section 3 of this Regulation for purposes of determining SMP.

Significant Market Power (SMP) - SMP is the economic strength held by a Telecommunications service provider, either individually or jointly with others, affording it the power to behave to an appreciable extent independently of competitors and customers.

Chapter 3 Market Definition Procedure

Article 8: Relevant Market Definition

1. TRA will define relevant markets as a precondition to any decision to adopt ex-ante regulatory measures.
2. A relevant market comprises all those products or services that are regarded as interchangeable or substitutable, due to the products' or services' characteristics, prices and intended uses.
3. The definition of relevant markets will have three dimensions:
 - a. the products or services included;

- b. the customer groups served; and
- c. the geographical area and/or route affected.

Article 9: Services

To group services into relevant markets, the TRA will consider primarily demand-side substitutability. The reaction of marginal customers to a shift in prices will be an important element of market definition.

The TRA considers retail services separately from wholesale services as the objective characteristics, pricing arrangements, and intended uses of each of these service categories, are different, as are the parties involved in the transactions.

Article 10: Demand-side Substitutability

1. The TRA attaches great significance to demand-side substitutability in its market definition exercises, on the basis that it represents the most immediate and effective disciplinary force on the suppliers of a product or service.
2. The TRA undertakes examination of evidence of consumer behavior, relative prices and price movements of potentially competing products or services, and switching costs, which may hinder consumers from substituting a product or service for another.
3. Over the long term, the TRA plans to use the “Hypothetical Monopolist Test” which is a market test to define a relevant market in a defined geographical area such that a hypothetical profit-maximizing service provider, not subject to price regulation, that is the only present and future producer or provider of products or services for the relevant market in that area could impose a small but significant and non-transitory increase in price (SSNIP), assuming the terms of provision of all other products are held constant. The test is repeated until the market boundary is set. This test requires an analysis of whether consumers of a particular product or service would be likely to switch to readily available substitutes in the short term and at a negligible cost in response to a hypothetical SSNIP in the range of 5 to 10% that is applied to the products or services under consideration. The TRA may rely on empirical methods to determine the thresholds to be used in the “Hypothetical Monopolist Test”. Those values will be subject to periodical review.

Article 11: Supply-side Substitutability

1. Supply-side substitutability will form part of the TRA’s market definition analysis, complementing the demand-side substitutability analysis to assist with a clear definition of relevant markets.
2. If required, the TRA will assess supply-side substitutability based on the overall costs to a provider of switching production to the product or service in question and any legal, statutory, or other regulatory requirements which could defeat a time-efficient entry into

the relevant market, for example, delays and obstacles in concluding agreements for collocation, interconnection, access, or rights of way.

3. The TRA will not take into account supply-side substitutability in the definition of a relevant market where such substitution would entail significant changes to existing tangible and intangible assets, additional investments, strategic decisions, or time delays.

Article 12: Retail Services

1. At the retail level, the TRA may distinguish between products or services provided at fixed locations and those provided to non-fixed locations. A further distinction may also be made between voice services and non-voice (data) services. These distinctions, used for the purposes of market analysis do not by themselves constitute a determination that these services constitute separate relevant markets.

The TRA will consider whether a distinction should be made between access and calls. A service provider may make a decision to enter the combined market for access and calls or simply enter part or all of the calls market.

The TRA analyzes whether fixed access (both direct and indirect) for voice services over the public switched telephone network (PSTN) is substitutable with access provided over upgraded cable networks, wireless local loop and unbundled local loops.

2. At the international level, a relevant market may be global, regional, or route-specific (i.e., fixed voice calls on all international routes defined as part of the same relevant market, fixed voice calls on certain international routes defined in separate markets, or fixed voice calls on each international route defined as a separate market). A route-specific market for switched services may be appropriate where there is a non-liberalized regime at one end of the route, or, in the case of a cable consortium for example, where terms of access for new entrants are relatively unattractive compared to those available to existing members of the consortium, thereby eliminating any reasonable prospect of entering the end market.
3. The TRA tests whether mobile access is perceived to be a substitute for fixed access for voice calls among particular customer groups.
4. The TRA considers that the principle factors in determining relevant markets in the leased line sector are:
 - a. speed of transmission;
 - b. availability of local termination;
 - c. distance (national, international, etc.); and
 - d. quality and reliability.
5. The TRA recognizes that conducting full analyses of the definitions of retail markets will require time, capacity and information that may not be available in the early period of the TRA's existence. Until such time as such capacity and information are available, the TRA may conduct a fast-track review to define relevant markets. Such fast-track review

may rely more upon supply side analysis and take into account practice in other countries which the TRA considers relevant. The TRA will initially analyze at the retail level the markets listed in Schedule A. The list in Schedule A may be amended from time-to-time.

Article 13: Wholesale Services

The TRA generally defines relevant markets at the wholesale level with reference to retail markets, as they usually establish the parameters of the corresponding wholesale markets.

TRA analyzes the markets listed in Schedule B at the wholesale level. The list in Schedule B may be amended from time-to-time.

Article 14: Customer Groups

Since a service provider's services, prices, access methods, and terms of business may vary between customer groups, the TRA will distinguish, where appropriate, in its analysis between groups of customers insofar as required to delimit the market or markets at issue.

Article 15: Geographic Aspects of Relevant Markets

1. Service providers may be active only in specific geographic areas or routes. Hence the geographic area or the routes covered may be important in defining relevant markets.
2. The TRA generally defines relevant geographic markets as the areas in which competitors are able to offer their services and the objective conditions of competition are similar.
3. The TRA characterizes the geographic dimension of relevant markets, taking into account:
 - a. the extent and coverage of the network and the customers that can economically be reached and whose demands may be met, and
 - b. any legal or regulatory barriers limiting competitors and their right to provide a service or services in a defined area.
4. The TRA takes into consideration whether it is appropriate to divide the geographic dimension of wholesale relevant markets into local, regional, national and international services, or otherwise.

Chapter Four Determination of SMP

Article 16: Basis for determination of SMP

1. The TRA determines whether a relevant market is effectively competitive in a given geographic area in order to determine whether to impose, maintain, amend, or withdraw obligations on providers considered to have SMP. A relevant market will not be considered to be effectively competitive where there are one or more providers with SMP.
2. A provider will be deemed to have SMP if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and customers. Such a service provider will be referred to as the designated provider or the provider with SMP.
3. A provider may be deemed to have SMP either individually or jointly with other providers in a relevant market. In addition, where a provider has SMP in a specific relevant market, it may also be deemed to have SMP in a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the provider.

Article 17: Criteria for Identifying SMP

The criteria the TRA will apply in order to identify SMP in a defined relevant market can include, but are not limited to:

a. Situation in the Relevant Market

- 1.the penetration rate;
- 2.the technological advances and degree of innovation;
- 3.the number of potential competitors;
- 4.the degree of price competition;
- 5.the development of prices over time;
- 6.the degree of competition on quality;
- 7.the degree of differentiation of products;

8.the extent to which consumers are satisfied with the choice, quality and price of products and services; and

9.whether the same or a similar choice, quality and price of products and services are available in comparable markets in other countries.

b. Market Position of the Service Provider Concerned

1. Market share and market concentration - historical and current trends are relevant (although high and stable market shares do not always indicate that a provider has SMP);
2. overall size of the provider;
3. access to capital markets and financial resources;
4. strength of brand and brand loyalty;
5. length of time the provider has been in a strong position;
6. economies of scale;
7. economies of scope;
8. the ability of the provider to influence market conditions especially prices; and
9. pricing and profitability - a service provider's opportunity to price at levels significantly higher than competitive ones, or to increase prices without a corresponding loss of sales revenues is an indicator of SMP. If a major provider in a market has high profitability or prices compared to providers in comparable markets elsewhere, SMP may be present. However, allowance must be made for high profitability being the result of factors other than pricing, for example the benefits of scale, efficiency gains or innovation. Correspondingly, low profitability is not necessarily an argument against a provider having SMP. Where possible and if information is available, profitability may also be measured over a sustainable period before declaring a provider as SMP.

c. Ease of entry into the market

1. Entry barriers related to the control of infrastructure by a provider, in particular, control of the means of access to end users or control of other infrastructure not easily replicated;
2. control of transit services by a provider;
3. utilization of excess capacity - if a service provider has significant excess capacity, this may result in an entry or growth barrier to others because in the event of an increase in demand in the market, such a service provider can increase production without major investment and thus prevent new providers from entering or winning market share;
4. product diversification or bundling of products;

5. degree of vertical integration of a provider;
6. size of distribution and sales network of a service provider; and
7. technological advantages or superiority enjoyed by a service provider .

d. Demand-side factors

1. Countervailing buying power;
2. switching costs and lock-in effects - if there are restrictions or costs for end users changing providers, this increases the opportunity for a provider to gain SMP; such restrictions may be of a practical, technical, or financial nature, or may arise because end users have greater confidence in existing and well-established service providers rather than new providers and will not take the risk of switching;
3. end user access to information - for end users to make an effective choice between service providers in a market, they must have access to information that makes it possible to carry out a comparison of the offerings in the market; complexities such as the use of complicated price structures, bonus and discount arrangements restrict the opportunities for effective end user choice and may contribute to strengthening a provider's position in the market.

e. Collective SMP

Evidence of collective SMP will be assessed.

Article 18: Individual SMP

1. The TRA will assess whether there is a service provider with SMP in each relevant market.
2. Such assessments will take place periodically, or may be initiated due to proposed changes of ownership of providers, or by complaints received about anti-competitive behavior.
3. The TRA will take into account all the relevant criteria in assessing whether a service provider has SMP in a relevant market. However, it is not possible to define in advance the weight to be given to each criterion in any given market assessment. These weights may vary between the relevant markets. Market share, market concentration, and the presence of lasting market entry barriers will be key criteria in every assessment. Both the current and prospective situation, such as in cases of proposed changes of ownership in the sector, will be taken into account. A conclusion that a provider has SMP may be based on a combination of different criteria.
4. The TRA's analysis of SMP will include an assessment of whether the relevant market is likely to become competitive in the near future, and thus whether any lack of effective competition is durable.

5. The TRA will take appropriate account of the existence of any regulation affecting the market, for example price control or obligations regarding non-discrimination.
- 6 .Where the TRA determines that a service provider has SMP in a relevant market, the services offered by that provider in that market shall be referred to as designated services.
7. The TRA will post and maintain on its website a current list of all service providers with SMP, specifying the relevant market in which the designation has been made.
- 8 .If the market analysis does not provide grounds to designate any service provider with SMP, the relevant market will not qualify for sector-specific ex-ante regulation.
9. The TRA will conduct regular market assessments to ensure that decisions on SMP remain relevant. A designated provider can request such reviews more frequently at the designated service provider's expense, subject to providing sufficient evidence that such a review is warranted.

Article 19: Collective SMP

1. SMP in a relevant market can be held by a single provider or collectively by two or more service providers.
2. In assessing collective SMP, the TRA will examine whether the service providers concerned operate with coordinated effects even in the absence of structural or other links between them.
3. The TRA's collective SMP test will examine whether the structural characteristics of the relevant market encourage parallel or aligned anti-competitive behavior.
4. The TRA notes that a relevant market characterized by the presence of many market participants is less likely to give rise to collective SMP concerns. Accordingly, the TRA will analyze the degree of market concentration and shares at the outset to determine whether it is at such a level as to preclude the existence of collective SMP.
- 5 .A high and stable market share divided among two or more participants in the relevant market will not of itself point conclusively to the existence of collective SMP. An assessment of the potential existence of collective dominance will take into account international precedence and consider whether conditions exist such that providers may tacitly collude (for example over prices or market shares) to prevent the establishment of a competitive market. In particular, for this purpose, TRA shall have regard to:
 - a.The potential incentive that providers may have to tacitly collude;

- b. The ability that providers may have to tacitly collude (for example, examining factors such as transparent and simple pricing structures and levels); and
 - c. The availability and credibility of any punishment against a provider who deviates from the tacit agreement (i.e., if there is no credible punishment strategy, providers would not maintain the tacit agreement).
- 6. In addition to an assessment of market concentration, the TRA will have regard to the stability of market conditions, especially by reference to factors such as:
 - a. the maturity of the market; and
 - b. technological innovation
- 7. The TRA will examine the role of “facilitating factors” permitting competitors to co-ordinate their behavior, including:
 - a. repeated interactions between firms, as such interactions facilitate market transparency and deterrent mechanisms;
 - b. transparency of the marketplace, particularly as regards pricing;
 - c. homogeneity of products or services;
 - d. the existence of structural links between competitors; and
 - e. the existence of symmetries or similarities between competitors, particularly as regards cost structures, financial resources, spare capacity, market share and sales, the purchasing power of customers.
- 8. Where the TRA determines that a group of service providers have collective SMP in a relevant market, the services offered by those providers in that market shall be referred to as designated services.

Article 20: Abuse of Market Position by Service Providers with SMP

The following types of actions and activities of a service provider with SMP shall generally be considered an abuse of market power:

- a. failure to supply essential facilities or services to a competitor within a reasonable time after a request and on reasonable terms and conditions, where the service provider with SMP has such facilities or services available;
- b. failure to supply essential facilities or services to a competitor within a reasonable time after a request and on reasonable terms and conditions, (in accordance with such other requirement as may apply under the Telecommunications Law or any regulations) when these facilities and services

are provided on an exclusive basis, due to a *de jure* monopoly, by the service provider with SMP;

- c. price and non-price discrimination in the provision of access, interconnection or other services or facilities to other service providers (and between a provider's own business or subsidiary and downstream rivals in the use of wholesale services) except under circumstances that are objectively justified based on differences in supply conditions, including different costs or a shortage of available facilities or resources;
- d. bundling of services in a manner that is designed to disadvantage, or has the effect of disadvantaging, a competitor unfairly, for example by imposing a cost on the competitor for acquiring services which it does not require from the service provider;
- e. pre-emptive acquisition or the securing of scarce facilities or resources, including rights of way, required by another service provider for the operation of its business, with the effect of denying the use of the facilities or resources to the other service provider;
- f. supply of competitive services at prices below long run average incremental costs or such other cost standard as is established by the TRA;
- g. cross-subsidization of a competitive service with the objective of lessening competition, except where such cross subsidization is specifically approved by a decision of the TRA or by the TRA's approval of tariffs for relevant services;
- h. failure to comply with the interconnection obligations of a service provider with SMP as specified in the Interconnection Regulation;
- i. price squeezing, by a service provider with SMP, of the margin of profit available to a competitor that requires wholesale services from the service provider with SMP, by increasing the prices for wholesale services required by that competitor, or decreasing the prices of the retail services in markets where they compete, or both;
- j. requiring or inducing a supplier to refrain from selling to a competitor;
- k. adoption, by a service provider with SMP, of technical specifications for its networks or systems that prevent interoperability with a network or system of a competitor;
- l. failure, by a service provider with SMP, to make available to other service providers on a timely basis technical information about essential facilities, technical specifications or other commercially relevant information which is required by such other service providers to provide services; or
- m. using information obtained from competitors, for purposes related to interconnection or supply of services by the service provider with SMP, to compete with such competitors; and

- n. any other action or activity engaged in by a service provider with SMP that the TRA determines in accordance with Article 30 of the Telecommunications Law to have the effect, or to be likely to have the effect, of materially restricting or distorting competition in a telecommunications market.

Article 21: Abuse of Market Position by Service Providers with Collective SMP

No service provider shall engage in practices restricting or distorting competition in telecommunications markets, including the following:

- a. arrangements between two or more service providers to directly or indirectly fix prices, divide the market or fix other terms or conditions of service in telecommunications markets;
- b. arrangements between two or more service providers to directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market; and
- c. arrangements between two or more service providers to apportion, share or allocate telecommunications markets among themselves or other service providers.

Article 22: Initial Designations of SMP

The TRA recognizes that conducting full market analyses for service providers and for the services listed in Schedules A and B will require time, capacity and information that may not be available in the early period of the TRA's existence. Until such time as such capacity and information are available, the TRA may conduct a fast-track review of all service providers and the services listed in Schedules A and B in order to determine where SMP exists and to designate service providers as having SMP. Such fast-track review may take into account practice in other countries which the TRA considers relevant. Where a service provider is the only provider of a given service or where competition in such service has only commenced within the previous year, it shall be reasonable for the TRA to find that it has SMP in such service.

Chapter five Regulations to be applied to Service Providers with SMP

Article 23: Principles of Regulating Service Providers with SMP

1. For a relevant market to be eligible for ex-ante regulation, the emergence of effective competition must not be foreseeable, and the application of ex-post controls must be insufficient to address the market failures concerned. The latter includes situations where the compliance requirements of an intervention to redress a market failure are extensive, where frequent and/or timely intervention is indispensable, or where creating legal certainty is of paramount concern. Nevertheless, the identification of a relevant market as lacking effective competition does not necessarily imply that all regulatory remedies will be applied to that market.
 2. The TRA will develop regulations including but not limited to interconnection, access, licensing, price controls, universal service, and quality of service requirements, to ensure that a service provider with SMP does not abuse that market power.
 3. When imposing a regulation, the TRA will provide reasons why it considers it appropriate to address the underlying competition problem, proportionate and justified in the light of the basic regulatory objectives of promoting competition, and that it contributes to the development of the market and promotes the interests of Lebanese citizens. These requirements are summarized by the following principles:
 - a. The regulation selected must be based on the nature of the problem as identified in the market analysis procedure.
 - b. Where infrastructure competition is not likely to be feasible, due to the persistent presence of significant economies of scale or scope or other market entry restrictions, the TRA will act to ensure sufficient access on acceptable terms to wholesale inputs in order to secure maximum consumer benefits, and will protect against any potential behavioral abuses.
 - c. Where replication of the infrastructure of the service provider with SMP is known to be feasible, regulation should assist in the process of replication in the transition to a sustainable competitive market. The TRA will continue monitoring the situation, while being alert to the possibility of inefficient investment.
 - d. The TRA will produce reasoned decisions in a transparent manner respecting the principle of proportionality. Such decisions may include an assessment of alternative regulations (if available) so that the least burdensome and most effective remedy can be selected.
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- e. Regulations are designed to be compatible with incentives of service providers. The TRA will, wherever possible, formulate regulations in such a way that to the regulated party the advantages of compliance outweigh the benefits of evasion.

Article 24: Obligations to Provide Wholesale Services

1. Service providers with SMP are obliged to deal fairly and responsively with other service providers. This obligation is expanded upon in the Interconnection Regulation.
2. Service providers with SMP may be obliged to offer pro-competitive wholesale services to other providers as determined by a decision of the TRA at the appropriate time. Such a decision may address carrier selection, carrier pre-selection, number portability, and local loop unbundling among other measures.

Article 25: Obligations to Provide Retail Services

1. Regulatory intervention in wholesale markets is preferable to regulatory intervention in retail markets. If measures taken at the wholesale level do not resolve problems in the retail market, then retail obligations to offer retail services under certain price, availability, quality, or other conditions obligations may be applied. Generally, regulatory controls on retail services will only be imposed where the TRA considers that relevant wholesale measures would fail to achieve the objective of ensuring effective competition.
 2. Given the danger that regulatory controls in wholesale markets may take a prolonged period of time to take effect, in the interest of consumer welfare it may be necessary to impose retail obligations on service providers in the interim period.
 3. Retail obligations on service providers may include, but are not limited to, prohibitions against:
 - a. charging excessive retail prices;
 - b. inhibiting market entry or restricting competition by setting prices below cost;
 - c. showing undue preference or undue discrimination vis-a-vis specific end-users; and
 - d. unreasonably bundling retail services.
 4. The TRA may subject such service providers to appropriate retail price cap measures, measures to control individual tariffs, or measures to orient prices towards costs or towards prices in comparable markets, in order to protect end-user interests while promoting effective competition. Where price controls are put in place at the retail level, the necessary and appropriate cost accounting
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systems must be implemented by such service providers following the format and accounting methodology specified by TRA to ensure compliance.

Article 26: Monitoring, Compliance and Penalties

1. The TRA will monitor service providers' compliance with the SMP Regulation.
2. The TRA will monitor and prevent abuses of market power of providers with SMP.
3. The TRA will monitor and prevent practices that may restrict competition.
4. The TRA will review transactions or transactional relationships (e.g., interconnection), particularly those involving service providers with SMP, to ensure that they do not have the purpose or effect of restricting, undermining or distorting competition.
5. The TRA will take all necessary measures, whether preventive or remedial, to protect competition and ensure a sustainable competitive market.
6. The TRA may impose one or more of the following penalties allowed by the Telecommunications Law, on service providers with SMP for non-compliance with the SMP Regulation:
 - a. the amendment of license conditions or the imposition of new terms to ensure the elimination of the infringement and compliance with the provisions of the Telecommunications Law and the SMP Regulation;
 - b. the suspension of a license for a limited period of time or the final cancellation thereof, prohibiting the infringing service provider from obtaining any license, whether provisional or definite, upon repeated infringements or the commission of a grave violation, as evaluated by the TRA; and
 - c. the imposition of fines to be evaluated by the TRA in light of the seriousness of the incident or its rate of recurrence. The TRA may impose an additional fine for each day of delay in eliminating such violation.

Chapter six Dispute Resolution Procedure

Article 27: Dispute Resolution procedure

1. Before requesting the TRA to intervene to resolve a dispute regarding alleged abuse of SMP, parties to the dispute must show that they have made an effort to resolve the dispute in good faith.
2. In the event of any dispute or difference arising between or among service providers relating to or arising out of an issue that would be considered as an abuse of market power by a provider with SMP, the matter shall be dealt with by the TRA pursuant to the applicable regulation relating to the resolution of such disputes.

Article 28:

Decision n°3/2008 issued by the TRA and published in issue n°17 dated 24/4/2008 of the Official Gazette is hereby cancelled.

This Regulation will be published and entered into force upon its publication in the Official Gazette.

Beirut March 18th 2009

Dr. Kamal Shehadi

Chairman of the Telecommunications Regulatory Authority

Schedule A: Retail Markets

The TRA will analyze the four retail markets below in order to determine whether any service provider has SMP in any of such retail markets. The four markets listed below include the subset retail markets set out in further detail thereafter. The list below and the list of subset retail markets are not exhaustive and may be amended from time-to-time as necessary in the judgment of the TRA.

- Fixed domestic (voice and data)
- Fixed international (voice and data)
- Mobile voice and data
- Leased lines

The TRA may, from time to time, analyze individually the subset retail markets listed below as appropriate.

Fixed Domestic (voice and data) market

1. Access to public telecommunications services at a fixed location for residential customers.
2. Access to the public telecommunications services at a fixed location for non-residential customers.
3. Public telecommunications services provided at a fixed location for residential customers.
4. Public telecommunications services provided at a fixed location for non-residential Customers.
5. Public telecommunications services originating at a fixed location and terminating at a mobile location for residential customers.
6. Public telecommunications services originating at a fixed location and terminating at a mobile location for non-residential customers.
7. Domestic voice service available at a public location.
8. Narrowband and/or broadband Internet service provision for residential customers.
9. Narrowband and/or broadband Internet service provision for non-residential customers
10. Access to the Internet available at a public location
11. Virtual Private Networks and Managed Network Services (X.25, frame relay, ATM, managed bandwidth (SMDS/SHDS) and Internet and IP Network Services).

Fixed international (voice and data) market

12. International public telecommunications services provided at a fixed location for residential customers.
13. International public telecommunications services provided at a fixed location for non-residential Customers.
14. International voice service available at a public location

Mobile voice and data market

15. Mobile public telecommunications services for residential customers.
16. Mobile public telecommunications services for non-residential customers.

Leased line market

17. Leased lines up to and including 2 Mb/s capacities.

Schedule B: Wholesale Markets

The TRA will analyze at the wholesale level the markets listed below. The list may be amended from time-to-time as necessary in the judgment of the TRA.

1. Access circuits (narrow and broadband) to a public telecommunications network.
2. Call origination from a fixed public telecommunications network.
3. Call origination from a mobile public telecommunications network.
4. Call termination on a fixed public telecommunications network.
5. Call termination on a mobile public telecommunications network.
6. Transit services over a fixed public telecommunications network.
7. International roaming on a mobile public telecommunications network;
8. Unbundled access (including shared access) to metallic loops and sub-loops for the purpose of providing narrowband and/or broadband services.
9. High speed bit stream access.
10. Terminating segments of leased lines.
11. Trunk segments of leased lines.

At least three different types of wholesale leased line will be considered by TRA.

1. Leased lines up to 2Mb/s and those over 2Mb/s.
2. "Short" or "urban" leased lines.
3. "Long distance" or "backbone" leased lines.

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