

THE HASHEMITE Kingdom of Jordan
TELECOMMUNICATIONS REGULATORY COMMISSION



Public Consultation Document

Update to the Competition Safeguard Instructions

Introduction

The Telecommunications Regulatory Commission (“TRC”) is responsible for the promotion of competition in the telecommunications and information technology sectors in Jordan. In particular, Article 6(a), 6(b), 6(e) 12(A/2), and 12(A/6) of the Telecommunications Law No. 13 of 1995 (The “Law”) requires the TRC to, among other duties, ensure that it imposes regulation on markets in the telecommunications sector that is sufficient to forbid illegal competitive practices, or prevent any person with a dominant position in the market from abusing its position, and to take any necessary actions in this regard. Additionally, Article 17 of the Competition Law states that any cases related to the violations of the provisions of Articles 5, 6, 8, 9, and 10 (including anti-competitive practices and abuse of a dominant position) shall be instituted based on a complaint presented by, among other parties, the sectoral regulatory authority.

In line with this obligation, the TRC developed and published the Competition Safeguard Instructions (“Instructions”) in February 2006 to govern its assessment of potential anti-competitive behaviours by Licensees, together also with its assessment of any changes in interest or control of a Licensee.

Section 2 of Schedule D of the License agreement prohibits Licensees from engaging in, or continue to knowingly consent to any anti-competitive practices. The Instructions set out the types of behaviours that the TRC would likely deem to be anti-competitive and the key guiding principles that the TRC would follow when undertaking an investigation to identify alleged abuses of a dominant position, or other anti-competitive practices.

In addition to the Instructions, the TRC also developed and published, in May 2009, the White paper on the Market review Process. This presents the process, key principles and essential elements that the TRC will adopt when conducting ex-ante market reviews in the telecommunications and information technology sectors in Jordan.

Article 38 of the General Policy for the Information and Communications Technology and Postal Sectors requires the TRC to review and update its Competition Safeguard Instructions, which it has embarked on in early 2024. To ensure transparency, the TRC is undertaking this public consultation process to invite the Licensees and other relevant stakeholders to comment on the draft updated Competition Safeguard Instructions annexed to this document. The final updated Instructions will be published following this public consultation process, following which the White Paper will be superseded by the Instructions.¹

¹ However, the White Paper will remain available as a non-binding reference document for ex ante market review.

Objectives and scope of this consultation process

Rationale for review

It is important that any regulation or frameworks adopted by the TRC remain up-to-date and fit for purpose, in line with international best practice and accepted definitions of anti-competitive behaviours. Recognising the changes that have taken place in the telecommunications sector in Jordan since the Instructions and White Paper were published, the TRC has now undertaken an exercise to update the provisions of the Competition Safeguard Instructions to better reflect the state of the market in the present day.

In addition to these factors, there are also a number of legal and regulatory factors that require TRC to update the Instructions. In particular:

- Pursuant to the ICT Policy of Jordan, the Government requires the TRC to review its instructions and regulatory decisions periodically and, where market conditions allow and where, in the judgment of the Commission it is appropriate, to amend such instructions and regulatory decisions in line with these conditions.
- The TRC signed a Memorandum of Understanding with the Directorate of Competition in 2009, which requires the TRC to work jointly with the Directorate to identify and investigate anti-competitive practices and prevent the abuse of a dominant position in the telecommunications sector. The TRC has ensured that the updated Instructions clearly set out this joint approach to competition investigations.
- The general Competition Law in Jordan was amended in 2023. The TRC has ensured that the updated Instructions are consistent with these amendments.

Scope of the updated Instructions

The original Instructions set out how the TRC would define relevant markets, identify and designate Licensees that hold a position of single dominance, covered the types of behaviours that the TRC would likely deem anti-competitive and provided high-level guidance on how it would assess whether a given behaviour represented an abuse of a dominant position. It also provided guidance on the process that TRC would follow when assessing a proposed transfer of ownership involving a Licensee.

As part of the draft amended Instructions, the TRC has expanded the scope of the Instructions to provide additional guidance to the market. In particular:

- The updated Instructions provide more detailed guidance on how TRC will define the boundaries of any market.
 - The updated Instructions have been expanded to cover the identification of joint dominant positions, and the description of the factors that the TRC will use to assess whether a Licensee holds a dominant position have been streamlined.

- The list of behaviours that the TRC will likely deem to be anti-competitive has been streamlined. Additionally, the updated Instructions provide more detailed guidance on the substantive assessments that the TRC will look to apply and the evidence that the TRC may require from the party(ies) under investigation, in order to judge whether a certain behaviour is anti-competitive.
- The updated Instructions clarify the procedural steps that the TRC will look to follow when undertaking an ex-post competition investigation.
- The Instructions have been expanded to provide additional guidance on the kinds of substantive tests that the TRC will likely employ when assessing the potential competitive and efficiency impacts of a proposed transfer of ownership or interest.
- Finally, the Instructions have also been expanded to incorporate the TRC's guidance on its approach to ex-ante market reviews, as previously set out in the White Paper on the Market review Process.

The Public Consultation process

This Public Consultation Document will be available on the TRC's website at www.trc.gov.io

Interested parties are invited to provide comments and observations to the TRC within a period of 30 working days as of the publication of this document.

Any comments provided in response to this Public Consultation Document should be provided in hard copy to TRC and soft copy (both in PDF and Word format) to the following E-mail to: marketreview@TRC.GOV.JO.

The TRC invites comments on this consultation from all interested parties. The TRC encourages respondents to support all comments with relevant arguments and if relevant, data, analysis, benchmarking studies and information based on the national situation or on the experience of other countries. Indeed, it may give greater weight to comments supported by such evidence.

The TRC has prepared specific questions for respondents to address if they wish. In providing comments, respondents should indicate the question number to which their comments relate. In addition to responding to these questions, the respondents may comment on any other matter of relevance in the draft updated Instructions. In doing so, respondents should indicate the Article number of the draft updated Instructions to which their comment refers.

The TRC also appreciates that some of the issues raised in the Public Consultation document might require that respondents provide confidential information in support of their comments. Respondents are therefore requested to identify clearly any such confidential material and to include it in a separate annex to their response.

The TRC is under no obligation to adopt the comments of any respondent.

The TRC will complete this Consultation process by publishing an explanatory memorandum which will set out the TRC's response to the more substantive comments identified across the consultation responses, along with the final updated Competition Safeguard Instructions.

List of consultation questions

Below is the list of consultation questions which the industry is requested to respond to. In providing comments, respondents should clearly indicate the question number to which their responses relate.

Question 1

*Does the industry agree with the updates to the **market definition process** as set out in Article (5) of the draft updated Instructions? In particular, the TRC proposes to remove any references to pre-defined product or geographic markets, and instead undertake a market definition exercise on a case-by-case basis, based on evidence around demand-side and supply-side substitutability, and other relevant considerations. If not, please state why this is not the case, with reasons, and propose alternative definitions.*

Question 2

*Does the industry agree with **the definition and proposed categorisation of the Impact Factors** that the TRC proposes to consider when assessing whether a Licensee holds a position of single or joint dominance in the relevant market(s) as set out in Article 7(a)? In addition, does the industry agree with the distinction in the approach to dominance designation in the context of ex-post competition investigations, compared to ex-ante market reviews? If not, please state why this is not the case, with reasons, and propose an alternative approach.*

Question 3

*Does the industry agree with the **provisions regarding the identification of joint dominance**, including the considerations that the TRC will take into account in its assessment, as set out in Article 7(b)? If not, please state why this is not the case, with reasons, and propose an alternative approach.*

Question 4

*Does the industry agree with the **overall, proposed complaint and assessment process (and the key process steps within it)** set out in Article (9) of the draft updated Instructions? Additionally, does the industry agree with the proposed timelines set out by the TRC as part of the guidance on the complaint and assessment process? If not, please state why this is not the case, with reasons, and propose specific amendments to the overall process or timelines.*

Question 5

Does the industry agree with the **proposed amendments to the substantive assessments that the TRC will look to undertake when assessing each of the anti-competitive behaviours** outlined in Articles (11) to (20)? If not, please state why this is not the case, with reasons, and propose alternative substantive approaches.

Question 6

Does the industry agree with the **detailed guidance presented on the substantive approaches** that the TRC will look to adopt in its assessment of proposed transfers of ownership or control, as set out in Article (21) of the draft updated Instructions?

Question 7

Does the industry agree with the information that the TRC proposes to be included as part of a formal notification of a transfer of ownership in Article (22)? Is there any additional information that the TRC should request as part of the initial notification to potentially streamline the TRC's formal investigation? Further, does the industry agree with the proposed investigation process and associated timelines proposed by the TRC? If not, please state why this is not the case, with reasons, and propose specific amendments to the overall process or timelines.

THE HASHEMITE KINGDOM OF JORDAN
TELECOMMUNICATIONS REGULATORY
COMMISSION



Instructions
on Competition Safeguards
in the Telecommunications Sector

[DATE]

Telecommunications Regulatory Commission

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**TELECOMMUNICATIONS REGULATORY
COMMISSION**

**INSTRUCTIONS ON COMPETITION
SAFEGUARDS IN THE
TELECOMMUNICATIONS SECTOR**

**Issued Pursuant to ARTICLES 6(a), 6(b),
.6(e) 12(A/2), and 12(A/6) of the
Telecommunications Law No. (13) for the
Year 1995 and its amendments.**

Article (1) Citation

These Instructions shall be cited as the “Instructions on Competition Safeguards in the Telecommunications Sector,” and shall come into effect as of the date of their approval by the Board of Commissioners.

Article (2) Definitions

The following words and phrases shall have the meanings assigned thereto hereunder, unless the context indicates otherwise. Any words and phrases not defined hereunder shall have the meanings ascribed thereto in the Telecommunications Law and the Regulations issued pursuant thereto:

“Competition Law” means the Competition Law (No. 33 of 2004), and its amendments.

“Control” means the ownership of more than 50% of the voting interests in a Person and/or the ability to control in fact the business of a Person, whether by ownership, agreement, or otherwise.

“Directorate of Competition” means the Competition Directorate at the Ministry of Industry, Trade and Supply

“Downstream” market means a market that is further down the supply or production chain relative to the market in question.

“Enterprise” means any Person, natural or juristic, that carries out economic activities, or any grouping of such Persons

“HMT” means the Hypothetical Monopolist Test, an economic analytic technique for defining product markets that, beginning with the narrowest possible definition of the market being analyzed, determines if a hypothetical monopolist could implement a SSNIP without losing net revenue due to customer substitution of alternative products or services. The HMT adds products or services to, or deletes products or services from, the market being analyzed until the SSNIP becomes profitable for the hypothetical monopolist and there are accordingly no remaining close substitutes.

“Impact Factor” means the potential factors the TRC may consider to identify whether a Licensee or a group of Licensees hold a position of single or joint dominance.

“License” means the authorization granted by the TRC, or the contract or license agreement signed between the TRC and a Person (including all appendices and schedules attached thereto), to allow a Person to establish, operate, and manage a Public Telecommunications Network, or provide Public Telecommunications Services, or use Radio Frequencies pursuant to the provisions of the Telecommunications Law and the by-laws and instructions issued pursuant thereto.

“Licensee” means a Jordanian company established under the Companies Law that holds a License.

“Market share” means the percentage of the total market accounted for by a Licensee, as measured by total revenues, subscriptions, or other measures of market performance.

“Memorandum of Understanding” means the memorandum signed between the Directorate of Competition and the TRC in 2009, as may be amended from time to time.

“Person” means any individual, company, corporation, association, partnership, joint venture, consortium, government, or governmental entity.

“Upstream” market means a market that is further up the supply or production chain relative to the market in question.

“SSNIP” means a “small but significant and non-transitory increase in price,” such as a 5% to 10% increase above competitive prices in one year.

“TRC” means the Telecommunications Regulatory Commission.

“Telecommunications Law” means the Telecommunications Law (No. 13 of 1995), and its amendments.

Article (3) General Principles

- a) The actions taken by the TRC pursuant to these instructions shall take the following into consideration:
- (1) They shall be implemented in an objective and impartial manner.
 - (2) They shall be conducted in accordance with best standards of transparency taking into consideration the need to protect the national interest.
 - (3) They shall be reasoned and supported by legal references.
- b) The TRC may work in collaboration with the Directorate of Competition when undertaking investigations pursuant to Articles (7) to (22) of these Instructions, in accordance with the Memorandum of Understanding signed between the TRC and the Directorate of competition..

Article (4) Scope of Instructions

- a) These Instructions shall be adopted and applied by the TRC, and adhered to by all Licensees. The TRC will apply the provisions of these Instructions to inform:
- (1) its ex-post assessments of potential anti-competitive behavior by any Licensees;
 - (2) its assessment of the competitive implications of an acquisition or a transfer of interests involving a Licensee; and
 - (3) its ex-ante market reviews within the telecommunications sector, including, but not limited to, the designation of dominant licensees and the resulting imposition of obligations under the Telecommunications Law.

Article (5) Competition Analysis –

Market Definitions

- a) As a starting point to any analysis or investigation carried out under these Instructions, the TRC shall, on a case-by-case basis, define the boundaries of the relevant market, covering both its product and geographic boundaries

- b) The product market definition will be carried out following an assessment of the demand-side and/or supply-side substitutability between different products or services, including the implementation of the Hypothetical Monopolist Test (HMT) to assess the competitive constraint imposed by the products or services on each other. The TRC may require evidence from the Parties for this analysis.

- c) As part of this, the TRC may also consider specific information about the products and services, including, but not limited to:
 - (1) service characteristics and general price levels;
 - (2) the importance of the product(s) or service(s) for the end users over recent years, as well as the expected outlook; and
 - (3) the trends in the supply and development of these products and services in Jordan over recent years, as well as the expected outlook.
 - (4) whether there are any chains of substitutions for the products or services under consideration that need to be included in the product market.
 - (5) when defining wholesale markets, whether any indirect pricing constraints from downstream markets exist that may impact

the demand for the wholesale services under consideration.

However, the HMT does not require a quantitative assessment, and may be carried out on the basis of qualitative arguments where such data is unavailable or insufficiently captures expected market dynamics.

- d) As part of the product market definition, the TRC may also consider new services that have not historically formed part of relevant markets. These services may be defined to form part of the same product market as existing services, or form a separate product market, based on the TRC's assessment as set out above.
- e) The relevant geographic market(s) will also be defined on a case-by-case basis.
- f) This may be national, or defined on the basis of political or administrative boundaries, or network topology of the relevant Licensees. The TRC may start with a high-level consideration of whether there are any competitive or structural differences across different geographical areas to arrive at preliminary view of whether the relevant geographic market is national or sub-national. In so doing, the TRC will aim to identify a geographic unit that has stable and transparent boundaries.
- g) Where the preliminary analysis is insufficient, the TRC will assess any differences in the competitive conditions across different geographic units. This may be based on factors including, but not limited to:
 - (1) an assessment of potential supply-side substitution;

- (2) structural differences in the competitive conditions between different types of geographical areas;
- (3) the coverage of the parties' fixed or mobile telecommunications networks; and
- (4) geographic variation in observed price levels.

The geographic market definition will also consider whether an activity performed by any of the parties outside Jordan affects the telecommunications market in Jordan.

- h) If there are no differences in the competitive conditions between the different geographic units, the TRC is unlikely to consider a case for a sub-national market definition.

**Article (6) Competition Analysis –
Market Share**

ere appropriate after defining the relevant market pursuant to Article (5) of these Instructions, the TRC shall determine the measurement of the relevant Licensee's market share by examining, as an initial matter, that Licensee's share of revenue in the defined market. The TRC may also consider other appropriate measures of market share (such as, based on the number of customers or subscriptions) supported by evidence placed in the record by the parties to a particular proceeding.

**Article (7) Competition Analysis –
Designation of Dominant Licensees**

A Licensee may be found to hold single dominance or a group of Licensees may be found to hold joint dominance in a relevant market(s).

Article (7a) Competition Analysis – Single Dominance

- a) A Licensee shall be deemed to hold single dominance in a relevant market when it is sufficiently able to unilaterally influence or control key market outcomes in the relevant market(s).

- b) To arrive at a preliminary determination of whether a Licensee has sufficient unilateral influence on a relevant market to be designated as dominant in that market, the TRC shall first apply a test based upon specified percentage thresholds of market share, as determined in Article (6) of these Instructions, combined with an evaluation of the Licensee's impact on the market. Specifically:
 - (1) In line with the provisions of Article 6C of the Competition Law, a Licensee with a market share of 40% or more of a relevant market shall be presumed to hold single dominance in that market, unless it can prove that it is facing effective competition, or it does not have significant market power. The presumption of dominance can be overcome by consideration of evidence establishing that the Licensee does not have the ability to control and affect the activity of the market, based on factors including, but not necessarily limited to, the Impact Factors listed in subparagraph C of this Article.

 - (2) A Licensee with a market share of less than 40% in a relevant market shall be presumed to not hold a single dominant position in that market. The presumption of non-dominance can, however, be overcome by consideration of evidence establishing that the Licensee has the ability to control and affect the activity of the market, based on factors including, but not necessarily limited to, the Impact

Factors listed in subparagraph C of this Article.

- c) In addition to the market share thresholds, the TRC will also consider additional Impact Factors to better reflect the underlying competitive mechanisms in the market(s). The Impact Factors can be categorized across three dimensions:

Historic and current market outcomes

- (1) Observed rates of customer switching, such as through data on historic and current churn rates
- (2) Whether any Licensees enjoy a competitive advantage due to economies of scale or scope
- (3) Presence of countervailing buyer power which may restrain the ability of a Licensee from exercising its market power due to other buying relationships that the Licensee may have in the relevant market(s)

Operator characteristics

- (4) Overall size of the Licensee, relative to other market participants, in terms of its revenue, profitability, employment, number of subscribers, or network capacity. The relative size of the Licensee may either confer an advantage (in the form of greater resources and capacity), or a disadvantage (if smaller operators have not reached the minimum efficient scale). The implication of the relative size of a Licensee on its ability to influence market outcomes will be assessed on a case-by-case basis
- (5) Its control of essential facilities and infrastructure that is not economically duplicable. This includes physical infrastructure like ducts and transportation networks that incur high fixed costs to install, as well as resources that are scarce, such as spectrum frequencies.
- (6) Whether the Licensee is vertically integrated in a Upstream market that provides an essential input into the

Downstream market(s). In such a situation, the TRC will assess the potential capability and incentive of the Licensee to foreclose Downstream competitors by refusing to supply or dealing with unfavorable terms.

- (7) Any non-temporary technological advantages enjoyed by the Licensee
- (8) Any non-temporary network externalities enjoyed by the Licensee, for example through the presence of material differences in on-net and off-net rates offered
- (9) More privileged access to financial resources and capital, relative to other competitors. The audited accounts of the Licensees may be required to provide information on the cost of capital incurred, to be compared to the appropriate market rate.
- (10) The ability of Licensees that operate in related markets to leverage a position of market power in one market, into a related market through bundling or tying of related products or services.

Market outlook

- (11) The presence of legal, regulatory, structural, or commercial barriers to market entry, relative to the number of players already in the market.
- (12) The presence of barriers to expansion of existing players in the market. The TRC may base this on a comparison of the actual and potential customer penetration levels to assess whether there remains significant opportunity that might be conducive to entry or expansion.
- (13) The absence of potential entrants from adjacent markets.
- (14) The existence of non-transient barriers to customer switching between operators or tariffs, as measured by current and expected churn rates as well

as customer access to information on tariffs and retail offers.

- d) Any designations of dominance pursuant to this Article shall be used both to: (1) impose ex ante regulatory obligations applicable to dominant Licensees, and (2) evaluate alleged anti-competitive misconduct by Licensees on an ex post basis.

- e) The specific Impact Factors that the TRC will consider will vary on a case-by-case basis. These Impact Factors include both, backward-looking and forward-looking considerations, with the former more likely to be relevant for investigations into possible anti-competitive behavior and the latter more likely to be relevant for ex-ante market reviews. Whether a factor is forward-looking or backward-looking must be determined based on the specifics of the case.

Article (7b) Competition Analysis – Joint Dominance

- a) Two or more Licensees shall be deemed to hold joint dominance in a relevant market if they can jointly influence or control key market outcomes in the relevant market(s), independently of other competitors in the market(s).

- b) A joint dominance finding will be based on evidence that two or more Licensees have adopted, or are able to adopt, a common policy on a lasting basis, with the aim to distort competition in the market and negatively affect other competitors or end users in the market. The TRC will investigate the existence of such common policies including, but are not limited to:
 - (1) Coordinated price movements
 - (2) Joint refusal to deal or supply

<p>(3) Market segmentation based on geography or customer segments</p> <p>(4) Synchronized investment and network expansion</p> <p>c) Joint dominance can be exercised through tacit or explicit collusion.</p> <p>(1) Tacit collusion refers to a situation where coordination is achieved without explicit agreement between the parties but where the parties consciously behave in parallel ways</p> <p>(2) Explicit collusion refers to an explicit agreement between two or more independent Licensees to act in combination, conspiracy, cooperation or concert to pursue a common interest or outcome in the form of a 'cartel'</p> <p>d) For a relevant market to facilitate joint dominance, it must fulfil several conditions relating to internal and external stability. The TRC will consider whether these conditions are present and how they holistically contribute to the presence of joint dominance. These conditions are:</p> <p>Internal stability</p> <p>(1) Transparency: Whether information on key outcomes (such as prices or quantities) can be easily monitored by the parties, such that deviation from agreed behaviors can be observed. In this regard, the TRC may assess the availability of such information on Licensee websites and financial statements.</p> <p>(2) Symmetry: The extent to which the parties have similar cost structures and commercial strategies, thus making it more straightforward to act jointly and symmetrically. The TRC may consider the existence of such symmetry in Licensees' strategic statements and financial accounts.</p> <p>(3) Credible punishment: Whether the potential forms of punishment for deviation from the agreed behavior can be credibly implemented. As part of this,</p>	
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the TRC may consider the forms of punishment that may be applicable, and whether the market conditions are conducive to their implementation.

External stability

- (4) High barriers to entry: Since collusive behavior can be disrupted by new competitors, an assessment of the barriers to market entry is necessary
 - (5) An absence of countervailing buyer power: If the buyers (at the retail or wholesale level) have sufficient power, it can restrain the ability of the Licensees to act jointly in a way that is detrimental to market outcomes.
- e) The TRC will assess the Impact Factors listed in paragraph c) of Article (7a) of these Instructions, where relevant. For ex-ante market reviews, a joint dominance finding can be established based on evidence that the relevant market(s) is conducive to such behavior, without the TRC proving active collusive behavior. On the other hand, for ex-post investigations, a determination of joint dominance and the subsequent imposition of sanctions requires evidence of actual collusive behavior between the parties, whether tacit or explicit.

Article (8) Competition Analysis – Anti-Competitive Conduct

- a) The following forms of anti-competitive conduct shall be forbidden:
 - (1) Abuse of dominant position, as described in Article (10) of these Instructions, and
 - (2) Collusion, as described in Article (20) of these Instructions.
- b) In the event a Licensee violates the general prohibitions of these Instructions, such Licensee

shall be subject to appropriate sanctions pursuant to the Telecommunications Law, any Instructions adopted pursuant thereto, and/or the terms of the Licensee's License, as the TRC deems applicable and appropriate.

Article (9) Competition Analysis – Process

a) The TRC will structure its ex-post competition investigation as follows:

(1) An ex-post competition investigation may commence following a complaint or claim from a Licensee, or as an own-initiative investigation by the TRC which may be triggered by a complaint from any affected end-users or other interested parties.

- a. If the complaint or claim raises concerns regarding the protection of fair and sustainable competition, the TRC may open a competition investigation.
- b. The complainant or claimant must provide, along with the complaint, evidence to substantiate its allegations. This evidence may be in the form of observed parameters (such as prices), or internal or public documents that point to potential abuse.
- c. An own-initiative investigation may be carried out following observations from an ex-ante market review. Additionally, in its role as sector regulator, the TRC monitors regularly market outcomes and so may begin an assessment if it notices practices which it believes may be harmful to consumers or competition.

(2) The TRC will then undertake its investigation over two phases:

- a. The TRC will undertake a Phase 1 investigation which will encompass an initial review of high-level indicators and assessments (such as observed impact of alleged behavior

on key outcomes such as market shares and prices) to identify any concerns, the TRC will either present its final decision, or will indicate the need for further investigation.

- b. Cases that require further assessment following Phase 1 will proceed to the Phase 2 investigation for a more in-depth analysis of the alleged behavior, utilizing the methods and approaches outlined in these Instructions.

(3) Following the TRC's investigation, the TRC will take all necessary actions to end the anti-competitive behavior and/or present its conclusions to the Court, which will then deliver a final verdict in line with the provisions of Articles (20), (21) and (22) of the Competition Law.

Article (10) Abuses of Dominant Position – General

- a) A dominant Licensee shall be deemed to have abused its dominant position if it prevents, restricts or distorts competition in the relevant market.

- b) A dominant Licensee shall not discriminate against customers or competitors in order to favor itself or its affiliates in the provision of products or services for which it is dominant.

- c) The following examples of specific behaviors and/or practices, described further in subsequent Articles, are prohibited as abuses of a dominant position: (1) predatory pricing; (2) anti-competitive cross-subsidization; (3) anti-competitive price discrimination; (4) margin squeezes; (5) anti-competitive long-term contracts; (6) excessive pricing; (7) anti-competitive bundling and/or tying; (8)

exclusionary practices; and (9) exclusive dealing.

- d) The list of behaviors in paragraph C of this Article is non-exhaustive. The TRC may consider whether other specific pricing or non-pricing practices presented in specific proceedings are abuses of dominant position that are therefore prohibited. For the avoidance of doubt, allegations of abuses of dominance could relate to any level in the telecommunications value-chain.
- e) As part of its assessment, the TRC may require the Licensee(s) under investigation to provide internal information on costs, as well as other relevant data as set out in Articles (11) to (20) of these Instructions. The confidentiality of any information provided will be protected in accordance with the terms of its License.

Article (11) Abuses of Dominant Position – Predatory Pricing

- a) “Predatory pricing” is the practice that occurs when a dominant Licensee prices a product or service below an appropriate measure of its cost, with the purpose or effect of eliminating competitors in the short run or reducing competition in the long run, and with the expectation of recouping such losses through subsequent higher prices.
- b) To assess whether a Licensee is engaging in predatory pricing, the TRC may assess the following:
 - (1) The relevant time period over which to measure observed revenues and costs, over which the alleged predatory prices prevailed;
 - (2) The relevant revenues (and therefore, prices) generated over that time period;

(3) The relevant cost benchmark to use. The TRC will identify this on a case-by-case basis based upon empirical evidence submitted in the record of any particular proceeding.

- c) The TRC may also take into account other factors including direct documentary evidence, the Licensee's behavior in the relevant market, as well as the possibility for the alleged Licensee to raise its prices following market exit (or denied entry) and recoup any losses.
- d) The TRC will also consider, taking into account submissions by the relevant Licensee, whether the observed pricing may be a rational and competitive strategy such as attracting new customers in the short-term, or responding to unanticipated shocks. For this, the TRC may also cover, in its assessment, market developments.
- e) Finally, The TRC may require a Licensee that is the subject of a predatory pricing allegation to submit internal cost information and other documentary evidence to the TRC.

Article (12) Abuses of Dominant Position – Anti-Competitive Cross-Subsidization

- a) "Anti-competitive cross-subsidization" is the practice that occurs when a dominant Licensee in one market subsidizes below-cost pricing in another market where it potentially faces greater competition. Cross-subsidization shall be considered anti-competitive if competitors (1) lack sufficient resources to be able to match the subsidy, and (2) are unlikely to maintain their current market presence, or re-enter the market, following a price increase.
- b) The TRC may assess alleged cross-subsidization by looking into the cost structure

of the dominant Licensee and how it allocates its costs to the different services and markets in which it operates.

- c) If the TRC finds that the Licensee is using profits in another market to charge a price that is lower than the appropriate cost measure for providing that product or service, such that it is likely to foreclose equally efficient competitors or prevent market entry, the TRC may conclude that the Licensee is engaging in anti-competitive cross-subsidization.
- d) The appropriate measure of cost shall be determined by the TRC on a case-by-case basis based upon empirical evidence submitted in the record of any particular proceeding. The TRC may require a Licensee that is the subject of an anti-competitive cross-subsidization allegation to submit internal cost information to the TRC.

Article (13) Abuses of Dominant Position – Anti-Competitive Price Discrimination

- a) “Anti-competitive price discrimination” is the practice that occurs when a dominant Licensee charges different prices to similarly situated customers for the same product or service, in a manner that substantially reduces competition or otherwise injures wholesale or retail customers.
- b) In determining whether a particular instance of price discrimination by a Licensee is anti-competitive, the TRC shall apply the following two-step analysis: (1) whether the conditions exist for successful price discrimination, and, if so, (2) whether the discrimination is harmful to customers, whether wholesale or retail, or the market.
- c) In analyzing the conditions for successful price discrimination, the TRC shall consider a variety of factors, including, but not limited to (a) the dominance of the alleged violator, (b) whether price differences reflect corresponding differences in quantity, quality, cost or other characteristics, (c) whether the cost of service for different customers varies significantly, (d)

whether the alleged violator has sufficient information to determine customer tolerance to pricing differences, and (e) whether the alleged violator is able to prevent arbitrage or resale.

- d) The TRC will also take into account the potential positive welfare effects of price discrimination such as the expansion of output in the market and lower prices offered to certain customer groups.
- e) The TRC will assess whether the observed price discrimination is harmful to customers or exclusionary in nature on a case-by-case basis based upon the extent and duration of the practice.
- f) The TRC may require a Licensee that is the subject of an anti-competitive price discrimination allegation to provide objective justification for the differential prices it has observed, including internal evidence on the cost of supply and demand.
- g) In addition to price discrimination, the TRC may also consider allegations of non-price discrimination, including deliberate informational asymmetry by the Licensee, or through a dominant wholesale Licensee raising its Downstream rivals' costs.

Article (14) Abuses of Dominant Position – Margin Squeeze

- a) A “margin squeeze” or “vertical price squeeze” is the practice that occurs when a Licensee or its affiliate competes in a market, and the Licensee is also a dominant seller to its competitors of a critical input, and the Licensee inflates the charge for that input so as to raise the average cost base of its rivals and/or charge a retail price relative to the charge of that input so as to damage competition.
- b) To determine whether a particular situation involves a margin squeeze or simply an inefficient Licensee, the TRC requires a demonstration that the alleged violator or its affiliate is (a) dominant in the relevant market

for a product which is an input for a service in a market in which the alleged violator also competes; (b) charging unreasonably high wholesale prices and/or unreasonably low retail prices such that the Downstream competitor is unable to maintain a sufficiently high margin to operate. In addition, the TRC requires a demonstration that a competitor is: (i) buying important inputs from its dominant Licensee rival at prices that exceed reasonable levels, thereby inflating its costs; (ii) unable to find or purchase inputs from other sources at lower prices; and (iii) has a cost structure that would reasonably allow it to survive in the market in the absence of the dominant provider's allegedly abusive practice.

- c) In determining whether a margin squeeze exists, the TRC shall apply an imputation test that compares the retail price of a dominant firm for a particular service to the sum of its price for the wholesale service and the incremental costs of providing the retail service (such as marketing, billing and collection). The TRC, however, may exempt certain regulated services from the imputation test where application of the test would otherwise conflict with existing dominant Licensee regulations, license conditions or specific articulated policy goals.
- d) For purposes of applying the imputation test, the TRC may require the Licensee that is the subject of a margin squeeze allegation to submit internal cost information to the TRC.

Article (15) Abuses of Dominant Position – Excessively Long-Term Contracts

- a) An “excessively long-term contract” shall mean an agreement, whether wholesale or retail, for the supply of products and services by a dominant Licensee that is of sufficient duration that it has the objective of restraining competition.
- b) Such excessively long-term contracts may be viewed as anti-competitive if they unduly ‘lock-in’ customers and prevent them from switching to other service providers, or if they have the intention or effect of weakening competitors by

removing significant parts of the market from being contestable for an unduly long period of time.

- c) In determining whether an agreement is “excessively” long, the TRC shall consider the following non-exhaustive factors: (1) whether the alleged violator is dominant in the relevant market, (2) the impact of the contract on competition in that segment of the market, (3) the economic characteristics of the subject products or services, (4) the availability of shorter-term contracts for the same products or services from the Licensee in question, or other providers, (5) any economic rationale for the length of such contracts, (6) whether the costs of longer term contracts are sufficiently different from the costs of short-term contracts and (7) whether there are contractual penalties or undue cancellation fees that prevent premature termination of the contract.
- d) The TRC may require a Licensee whose contracts are the subject of such an allegation to provide internal evidence on the cost of offering long-term contracts relative to shorter-term contracts. Additionally, the TRC may also request information on the economic rationale for the offered contract terms and whether they represent additional costs.

Article (16) Abuses of Dominant Position

– Excessive pricing

- a) Excessive pricing refers to a situation where a dominant Licensee sets a wholesale or retail price that is excessive in relation to the economic value of the product or service in question. Such a practice can lead to direct consumer harm (whether that consumer is another licensee or an end-customer) in the form of higher prices.
- b) A dominant Licensee shall be considered to be committing excessive pricing if it sets prices that are unjustifiably high, or if it re-prices a product or service in a way that does not reflect the change in the underlying cost.
- c) The key consideration when assessing alleged excessive pricing is whether the observed

prices reflect the underlying associated costs. As such, the TRC will look to identify the appropriate cost benchmark against which it will assess the observed price. While the TRC will identify this benchmark on a case-by-case basis, it will likely draw on the following elements:

- (1) The long run average cost associated with the relevant product or service
 - (2) The profit margins or prices charged by competitors in the same, or a comparable market
 - (3) Historic profit margins or prices charged by the Licensee
 - (4) The profit margins or prices charged for a similar service, in a comparable geographic market
 - (5) The profit margins or prices charged for a similar service in a different, but comparable customer segment.
- d) The TRC may require a Licensee that is the subject of an excessive pricing allegation to provide internal evidence on the long run average cost of providing the relevant good or service, as well as the change in this cost over time. As part of its assessment, the TRC will consider possible reasons for prices being above cost, including responding to an unanticipated shock, or a reasonable return on investment or innovation. Additionally, high observed profit levels may also be beneficial for the market if they strengthen incentives to innovate, encourage market entry, or support price and quality competition.

Article (17) Abuses of Dominant Position – Anti-Competitive Bundling and/or Tying

- a) Anti-competitive “bundling” or “tying” is the practice that occurs when a dominant Licensee links the supply of one product or service to the supply of another product or service when the Licensee is dominant in the provision of at least one of the products or

services, and there is a negative impact on competition in a relevant market.

- b) A bundling or tying arrangement is presumptively not harmful to competition where the bundled elements are available separately and are priced in a cost-based manner such that they give rise to overall efficiencies by better reflecting consumer willingness to pay.
- c) However, bundling and tying may be used as an anti-competitive tool to leverage market power from a market where the Licensee has a dominant position into an otherwise potentially competitive market.
- d) When evaluating whether a bundling or tying arrangement is anti-competitive, the TRC may consider the following list of non-exhaustive factors:
 - (1) The current state of competition in the relevant markets that include the initial product and the bundled product, and whether the Licensee is dominant in either of these markets;
 - (2) whether the initial or bundled products are subject to regulation;
 - (3) whether there are any economies of scope or other potential benefits that should be considered. This may also include an assessment of whether the bundled products are complementary in nature, or a combination of wholesale and retail products
 - (4) the non-price terms and conditions of the bundled services.
- e) Given the potential welfare effects of bundling, the TRC will, in any investigation, weigh the potential anti-competitive effects with the potential efficiency gains (and whether these are passed on to the consumers). The TRC will consider whether any potential benefits outweigh the costs and whether there is no alternative route to achieving the benefits.
- f) Since bundling products represents a discounted price relative to offering them

individually, the TRC may also conduct tests for predatory pricing or margin squeezing strategies, pursuant to Articles (11) and (14) of these Instructions.

- g) In both cases, the TRC will identify the relevant cost and revenue benchmark on a case-by-case basis. The TRC may require a Licensee that is the subject of an anti-competitive bundling or tying allegation to submit internal cost information to the TRC.

**Article (18) Abuses of Dominant Position
– Anti-Competitive Exclusionary Practices
or Refusal to Deal**

- a) An “anti-competitive exclusionary practice” is a practice by a dominant Licensee designed to prevent competitors or potential competitors from entering a market or, if they have already entered the market, from increasing or maintaining their output.
- b) A dominant Licensee shall not engage in a “refusal to deal,” examples of which include, but are not limited to: (1) unilateral refusal to deal with another party in order to create or maintain the Licensee’s dominance in a relevant market, and (2) a concerted refusal to deal, meaning a decision made by the dominant Licensee jointly with one or more Persons not to deal with a third party, with the effect of limiting competition from the third party.
- c) In assessing whether a particular refusal to deal is anti-competitive, the TRC shall consider, on a case-by-case basis, the relationship between the dominant Licensee that those seeking supply, sharing or other dealings with the dominant Licensee, whether the agreement is unduly biased in favor of the dominant Licensee, and whether there are any objective reasons for such a bias.

Article (19) Abuses of Dominant Position

– Anti-Competitive Exclusive Dealing

- a) “Anti-competitive exclusive dealing” is defined as any form of vertical integration by contract or agreement under which a buyer agrees to purchase all of its needs for a particular product or service from the seller and not to consider dealing with other potential suppliers, when such an arrangement involves a dominant Licensee and another unaffiliated Licensee and restrains trade or contains restrictions on production, use, or price that have negative effects on competition.
- b) In analyzing whether a particular exclusive dealing arrangement is anti-competitive, the TRC shall consider, on a case-by-case basis, the following list of non-exhaustive factors:
- (1) the relationship between the dominant Licensee and those seeking or engaged in exclusive arrangements with the dominant Licensee;
 - (2) whether there is significant horizontal market power at either Upstream or Downstream, or both, levels. In assessing this the TRC may consider evidence on observed price mark-ups, profit levels, and measures of market share;
 - (3) whether the exclusive arrangement is unduly biased in favor of the dominant Licensee;
 - (4) whether the arrangement blocks other qualified participants in the market;
 - (5) whether there are objective reasons for the exclusive arrangement, such as economies of scope, or reduction in search costs;
 - (6) whether the exclusive dealing is as a result of a mutual agreement, as opposed to evidence of it being imposed by the dominant Licensee; and
 - (7) the overall impact of the exclusive arrangement on competition in the relevant market.

Article (20) Collusion

- a) "Collusion" is defined as the coordinated actions of two or more Licensees, who would normally be competitors, to jointly influence or control market outcomes, often with the intention to negatively distort competition. This is related to the provisions on Joint Dominance set out in Article 7(b) of these Instructions.
- b) Anti-competitive collusive behavior may include price fixing agreements as well as non-price collusive behavior.
- (1) "Price fixing agreements" are agreements between competitors (horizontal) or agreements between wholesale and retail providers (vertical) that directly or indirectly fix prices. Horizontal price fixing agreements shall presumptively constitute collusion, although the TRC shall review allegations on a case-by-case basis to determine if such agreements are anti-competitive. The TRC shall review vertical price fixing agreements on a case-by-case basis to determine if such agreements are anti-competitive. Because parallel pricing behavior alone is not necessarily anti-competitive, the TRC shall review allegations on a case-by-case basis to determine if any particular parallel pricing practice is anti-competitive.
- (2) Non-price collusive behavior may include, but not be limited to: (1) agreements on quantities or other sale conditions of production or service provision; (2) agreements on sharing the markets on the basis of geography or customer segments or any other basis that affects competition; (3) agreements setting barriers to entry of Licensees into the market or eliminate them therefrom, including collective refusal to supply; and (4) agreements where the Licensees exchange commercially sensitive information on market conditions that negatively affects competition.
- c) When evaluating whether particular agreements are collusive and anti-competitive, the TRC shall consider the following factors:
- (1) the number of Persons who are party to the

agreement, (2) the relative degree of market dominance of the parties, (3) whether substitute technologies and/or products exist outside of the agreement, (4) whether the terms of the agreement are highly restrictive for one of the parties, (5) whether the terms of the agreement are anti-competitive on their face, (6) the duration of the agreement, (7) the economic rationale (if any) for the agreement, and (8) the likely impact of the agreement on competition in the relevant market.

Article (21) Review of Acquisition or Transfer of Interests in Licenses for Anti-Competitive Effects

- a) No Person shall be authorized to acquire or transfer, directly or indirectly, an interest in or Control of a License if the effect of such acquisition or transfer of an interest in or Control of a License is to lessen substantially competition.

- b) All changes of Control of the Licensee shall require the prior written approval of the TRC. All assignments or transfers of a License shall require the prior written approval of the TRC.

- c) If the total transaction market share of the Enterprises involved in such an operation exceeds 40%, or the combined net annual income of the Enterprises exceeds a preset threshold as determined by the Council of Ministers, then the approval of such an operation must also be granted by the Directorate of Competition, before the transaction can be completed. Any assessment of such an operation will be led by the Directorate of Competition.

- d) To assess the potential competitive effects of a proposed economic concentration operation, the will look to undertake a counterfactual analysis to compare the likely evolution of competition in the relevant market(s) in a scenario where the proposed operation is approved (factual scenario), compared to a scenario where the proposed operation is blocked (counterfactual scenario). This

counterfactual analysis will consider the incremental benefits and risks in the factual scenario over the counterfactual scenario to conclude whether, on balance, the benefits outweigh the risks. As part of its assessment, the TRC may consider the following non-exhaustive list of factors:

- (1) whether the transaction is between two Licensees in the same relevant product and geographic market(s) in the telecommunications sector,
 - (2) whether the licensees are close competitors on the relevant market
 - (3) the prevalent market shares and levels of market concentration and whether the transaction is likely to alter the market shares and concentration in the market in a way that could increase the risk of anti-competitive conduct;
 - (4) whether the resulting Licensee shall remain or become dominant in a relevant market;
 - (5) whether the products or services provided by the resulting Enterprise are offered competitively by other providers in the market;
 - (6) whether the products and services of the Enterprises impose significant competitive constraints on each other such that the proposed transaction removes an important source of competition from the parties;
 - (7) whether the transaction is likely to provide any public benefit;
 - (8) whether competitors' property, licensing of technology, shared research and development or similar activities shall be negatively affected by the transaction; and
- e) The TRC would expect that this assessment could include a variety of quantitative methods and tests, if the necessary information is available. The types of quantitative methods that the TRC may adopt include:
- (1) Market shares: The market shares of the Enterprises prior to and following the

proposed operation can provide useful first indications of the market structure and of the competitive importance of parties as well as the other competitors in the relevant market(s). A high combined market share may suggest that the parties are important competitors in the market, and as such potentially exert material competitive constraints on each other. If these constraints are weakened or removed as a result of the proposed operation, the parties may have stronger incentives to engage in anti-competitive behavior.

- (2) Market concentration: Similar to market shares, an assessment of the level of concentration in the relevant markets pre- and post-operation can provide an indication of the scope of the likely competitive effects that may arise as a result of the transaction. The TRC may choose to apply the Herfindahl-Hirschman Index (HHI) which is calculated by summing the squares of the individual market shares of all the firms in the market. The absolute level of the HHI can give an initial indication of the competitive pressure in the market, whilst the change in the HHI (known as the 'delta') is a useful proxy for the change in concentration directly brought about by the proposed concentration.
- (3) Diversion ratios: In addition to measures of market structure, the TRC may also consider evidence of the degree of substitutability between the products and services offered by the parties to the transaction. Diversion ratios measure the proportion of customers that would substitute to one of the other merging parties, as a result of an increase in the price of the product offered by one of the merging parties. The diversion ratio is linked to the own-price elasticity and cross-price elasticity of the products of the merging parties and can give an indication of the competitive pressure applied by the merging parties on one another and therefore, how much competitive pressure would be lost if the proposed operation was to proceed.

(4) Upwards Pricing Pressure (UPP): A related concept to diversion ratios is the Upward pricing Pressure which aims to quantitatively identify the expected increase in the price of the post-transaction entity's offering. The quantitative measure, termed the Gross Upward Pricing Pressure Index (or GUPPI), measures the post-transaction entity's incentives to raise price unilaterally, in the absence of any countervailing efficiencies, entry, or other change to the market structure.

Article (22) Review of Acquisition or Transfer of Interests in Licenses and Licensees – Process

- a) All changes of Control of the Licensee shall require the prior written approval of the TRC. All assignments or transfers of a License shall require the prior written approval of the TRC.
- b) If a Person seeks to acquire, directly or indirectly, an interest in or Control of a Licensee such that it shall hold a total of at least 10% ownership or Control of a Licensee, measured by ownership of voting securities or value of equity ownership, or Control of the affected Licensee, the parties to the transaction shall be required to file jointly a notification of the transaction with the TRC prior to the transaction's consummation.
- c) The notification of a proposed transfer of control to the TRC must include at a minimum:
 - (1) the identities, addresses, and contact information of the parties;
 - (2) a listing of the License (or Licenses) involved;
 - (3) detailed direct and indirect ownership information of the parties including a list of the shareholders or partners of the Enterprises;

- (4) audited financial statements for the two most recent fiscal years of the Enterprises;
- (5) a list of the most important products and services in which the Enterprises are active, and their shares thereof;
- (6) factual details of the transaction sufficient to demonstrate whether Control of the License shall change;
- (7) a statement of the expected competitive and public interest effects of the transaction including any potential benefits to the parties, as well as to the relevant market(s);
- (8) If Control of the License, as defined in the terms of the License, shall change, the parties must disclose this in the notification.

The TRC may require the parties to supply additional information in the notification.

- d) Following the filing of such a notification, the TRC shall inform the parties within 30 days of the initial filing whether the TRC shall subject the transaction to further review.
- e) If the TRC does not inform the parties within 30 days of the date of the initial filing that the transaction is subject to further TRC review, no further authorization by the TRC is needed for the transaction.
- f) The TRC shall approve (with or without conditions) or deny the proposed transaction within 90 days after informing the parties that further review is necessary, except that the TRC may extend this period by an additional 90 days if the proposed transaction raises complex issues that require additional analysis. Such conditions to approval could include further reporting or notification requirements that the TRC may deem necessary or remedies to alleviate any anti-competitive effects of the transaction.

- g) In all cases, the TRC and all Licensees shall act in accordance with the Competition Law.

Article (23) Approach to ex-ante market reviews

- a) When conducting ex-ante market reviews in the telecommunications sector, the TRC will follow a number of guiding principles in its assessments:
- (1) The market reviews will be grounded in economic theory and competition law to ensure that markets are defined in accordance with sound theoretical methods, with the imposition of ex-ante obligations being dependent on the existence of a dominant position in the relevant market(s).
 - (2) Market reviews will be conducted with a forward-looking perspective of two to three years to take into account any potential technological or commercial developments that are likely to occur in the timeframe covered by the review.
 - (3) Market reviews will be conducted regularly to ensure that they continue to reflect the latest developments and accurately account for forward-looking perspectives.
 - (4) Market reviews will follow the principles of technology neutrality and de-couple the imposition of ex-ante regulation with the technologies currently in place to provide those services.
 - (5) The market review process will adhere to the 'Modified Greenfield Approach' ("MGA") wherein the reviewed market will be analyzed under the assumption that there are no dominance-based ex-ante obligations currently in place in the market in question. However, in assessing the need for regulation in Downstream markets, any dominance-related ex-ante

obligations in further Upstream markets will be assumed to be in place.

(6) Any imposition of regulatory obligations will be targeted at the most Upstream market and only move Downstream if regulation in the Upstream markets is insufficient to address any identified competition concerns in the retail market, so as to not distort competition in Downstream markets.

b) Ex ante market reviews will include, at a minimum, the following :

(1) Identifying the product and geographic boundaries of concerned markets.

(2) Identifying, from those markets, any that may be susceptible to ex-ante regulation, through the application of the Tree Criteria Test;

(3) Measuring dominance and designating dominant operator(s);

(4) Imposing regulatory remedies on said operators.

Article (24) Identifying candidate markets and defining relevant markets

a) As a first step, the TRC will identify potential candidate markets that may be susceptible to ex-ante regulation. For this, and where appropriate, the TRC will expect to start from any markets defined in a previous review, or any international benchmarks, where relevant.

b) Following the identification of the candidate markets, the TRC will look to define the relevant product and geographic markets. The TRC will follow the principles set out in Article 5 of these Instructions. However, compared to an assessment undertaken in the context of alleged anti-competitive behavior, the TRC will place greater weight on any expected technological or structural developments in the market over the forward-looking horizon of the market review that may affect the assessment of substitutability

between different products, or the difference in competitive conditions across different geographic units.

Article (25) Identifying markets susceptible to ex-ante regulation

- a) Once the relevant markets have been identified, the TRC will assess whether the identified market(s) is susceptible to ex-ante regulation.
- b) To do so, the TRC will apply the Three Criteria Test (TCT). The TCT requires that the three criteria are cumulatively fulfilled in order for a market to be susceptible to ex-ante regulation. These criteria are:
 - (1) The market must be characterized by high and non-transitory barriers to entry (structural and/or regulatory)
 - (2) The market has characteristics such that it will not tend towards effective competition over the forward-looking horizon of the market review.
 - (3) Ex-post competition law is insufficient to address any competition problems that exist (or may exist) in the market.

Article (26) Designation of single or joint Dominance

- a) Having identified and defined the relevant market(s) that are susceptible to ex-ante regulation, the TRC will then assess whether there exist any Licensee(s) that hold a position of dominance in that (those) market(s), either unilaterally, or in combination with other Licensees.
- b) The identification and designation of a dominant position will follow the principles set out in Articles 7a and 7b of these Instructions. In particular, the TRC will adopt the same market share threshold (of 40%) and consider similar Impact Factors to assess the ability of

the Licensee(s) to distort market outcomes to the detriment of competition.

- c) However, given the forward-looking focus of ex-ante market reviews, the TRC will modify its assessment of the Impact Factors to also take into account any expected technological, legal, or structural developments expected over the timeframe of the market review.

Article (27) Identifying regulatory remedies

- a) Finally, the TRC will identify and implement regulatory remedies on dominant Licensees to address the identified competition problems.
- b) When identifying remedies, the TRC will follow a number of guiding principles:
 - (1) The remedies will be targeted at the competition problem likely to exist in the absence of other dominance-related regulation.
 - (2) The remedies will be selected in a way that promotes competition in the market and strikes the right balance between service and infrastructure competition
 - (3) The remedies will be reasonable and proportionate to the problems identified
 - (4) The remedies will be selected in a way that do not hinder investment in the telecommunications sector, reflecting developing common rules and predictable regulatory approaches, to reduce investor risk.

