

HASHEMITE KINGDOM OF JORDAN

**TELECOMMUNICATIONS
REGULATORY COMMISSION**



**Instructions
on Competition Safeguards
in the Telecommunications Sector**

**TRC Board Decision No.(1-3-2006)
Date(14-2-2006)**

**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.

“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

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<p>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.</p> <p>“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.</p> <p>“Licensee” means a Jordanian company established under the Companies Law that holds a License.</p> <p>“Person” means any individual, company, corporation, association, partnership, joint venture, consortium, government, or governmental entity.</p> <p>“Product market” means services or products that consumers consider to be interchangeable or substitutable.</p>	<p>“</p> <p>“</p> <p>“</p> <p>“</p> <p>“</p> <p>)</p> <p>(</p> <p>“</p> <p>“</p> <p>“</p> <p>“</p>
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<p>“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.</p> <p>“TRC” means the Telecommunications Regulatory Commission.</p> <p>“Telecommunications Law” means the Telecommunications Law (No. 13 of 1995), and its amendments.</p>	<p>“</p> <p>”</p> <p>%</p> <p>%</p> <p>“</p> <p>”</p> <p>“</p> <p>”</p>
<p>Article (3) Applicability</p> <p>These Instructions shall be strictly adhered to by all Licensees, unless otherwise provided for herein.</p>	<p>:</p> <p>()</p>
<p>Article (4) General Principles</p> <p>The actions taken by the TRC pursuant to these instructions shall take the following into consideration:</p> <ol style="list-style-type: none"> 1. Implemented in an objective and impartial manner. 2. Conducted in accordance with best standards of transparency taking into consideration the need to protect the national interest. 3. Reasoned and supported by legal references. 	<p>:</p> <p>()</p> <p>:</p> <p>-</p> <p>-</p> <p>-</p>
<p>Article (5) Scope of Instructions</p> <p>These Instructions shall be adopted and applied by the TRC and Licensees for analysis of competition in the telecommunications sector, to be used in all applicable proceedings, including, but not limited to, the designation of dominant licensees for the imposition of obligations under the Telecommunications Law, cases brought by the TRC alleging anticompetitive behavior by Licensees, dispute resolution, such as when a third party submits a complaint to the TRC alleging anticompetitive behavior by a Licensee, and</p>	<p>:</p> <p>()</p>

the review of acquisition or transfer of interests in Licenses for anti-competitive effects.

Article (6) Competition Analysis – Market Definitions

- a) The TRC shall define product markets on a case-by-case basis, using the following four product markets as a starting point:
 - (1) Fixed public telecommunications network and services;
 - (2) Mobile public telecommunications network and services;
 - (3) Leased lines; and
 - (4) Interconnection.

- b) In defining a product market, the TRC shall consider specific information about the services and products available in Jordan that may be included in that market, especially information about:
 - (1) The extent to which consumers of those services and products demonstrate a willingness to substitute one service or product for another because of, for example, their characteristics and prices; and
 - (2) The development of these products and services in Jordan.

- c) The TRC may also consider, when feasible, the results of economic analytic techniques such as the HMT. When

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considering the results of an HMT or other economic analytic techniques, the TRC shall analyze closely the evidence placed in the record by the parties to the particular proceeding.

- d) The relevant geographic market for all telecommunications services shall be deemed to be Jordan, unless the TRC makes an express determination otherwise in a particular circumstance supported by evidence in the record, such as finding that an activity performed outside Jordan affects the telecommunications market in Jordan.

Article (7) Competition Analysis – Market Share

After defining the relevant market pursuant to Article (6) 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 supported by evidence placed in the record by the parties to a particular proceeding.

Article (8) Competition Analysis – Designation of Dominant Licensees

- a) A Licensee shall be deemed dominant in a relevant market when it has such a sufficient impact on the market that it can control and affect the activity of the relevant market.
- b) To determine whether a Licensee has a sufficient impact on a relevant market to

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be designated as dominant in that market, the TRC shall apply a test based upon specified percentage thresholds of market share, as determined in Article (7) of these Instructions, combined with an evaluation of the Licensee's impact on the market, specifically:

1. A Licensee with a market share of 50% or more of a relevant market shall be presumed to be dominant in that market. 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 at least 25% in a relevant market but less than 50% of that market shall be subject to classification as dominant in that market if consideration of evidence establishes 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.

3. A Licensee with a market share of less than 25% in a relevant market shall be presumed to be non-dominant in that market. The presumption of non-dominance can 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

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Factors listed in subparagraph C of this Article.

c) For purposes of this Article, the term “Impact Factors” shall mean, with respect to a Licensee in a relevant market:

(1) Its size, measured by revenue, number of subscribers, and network capacity as compared to the size of other competitors in the market,

(2) Its control of essential facilities, meaning facilities that competitors rely upon for participating in the relevant market,

(3) Network effects, including the geographic availability of its services in the relevant market,

(4) Its conduct in the market with respect to competitors and customers, including end users,

(5) Its technological advantages or disadvantages with respect to competitors in the marketplace,

(6) Countervailing power, if any, of competitors and customers, including end users,

(7) Access to capital markets / financial resources compared to such access by competitors,

(8) Bundling of products or services and the effect of such bundling on competition in the market,

(9) Economies of scale and/or scope, including relationships with affiliated Licensees,

(10) Vertical integration, including

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<p>appropriate.</p> <p>Article (10) Abuses of Dominant Position – General</p> <p>a) A dominant Licensee shall be deemed to have abused its dominant position if it prevents, restricts or distorts competition in the relevant market.</p> <p>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.</p> <p>c) The following examples of specific behaviors and/or practices, described further in subsequent Articles, are prohibited as abuses of 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) anti-competitive bundling and/or tying; (7) exclusionary practices; and (8) exclusive dealing.</p> <p>d) 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. Allegations of abuses of dominance may be analyzed with respect to wholesale customers as</p>	<p>/</p> <p>.</p> <p>()</p> <p>-</p> <p>-</p> <p>.</p> <p>-</p> <p>-</p> <p>/</p> <p>() () :</p> <p>()</p> <p>()</p> <p>() ()</p> <p>()</p> <p>() /</p> <p>()</p> <p>.</p> <p>-</p>
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well as retail customers.

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) The appropriate measure of such 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 a predatory pricing allegation to submit internal cost information to the TRC, with the confidentiality of the information protected in accordance with the terms of TRC Instructions. Any failure by the Licensee to submit such cost information may result in a presumption of abuse of dominance against the Licensee.

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

a) “Anti-competitive cross-subsidization” is the practice that occurs when a dominant Licensee subsidizes below-cost pricing for a competitive or potentially competitive service from other services or operations. 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 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, with the confidentiality of the information protected in accordance with the terms of its License and the Rulemaking Instructions. Any failure by the Licensee to submit such requested cost information may result in a presumption of abuse of dominance against the Licensee.

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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, in a manner that substantially reduces competition or otherwise injures wholesale or retail customers.

b) In determining whether a particular instance of price discrimination 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.

1. In analyzing the conditions for successful price discrimination, the TRC shall consider a variety of factors, including (a) the dominance of the alleged violator, (b) whether price differences reflect corresponding differences in quantity, quality 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.

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2. In analyzing whether the discrimination is harmful to customers or the market, the TRC shall undertake such an analysis on a case-by-case basis based upon the extent and duration of the practice.

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 prices for such inputs to customers who are also competitors; (c) charging unreasonably low prices in the competitive retail market; and (d) has been doing either or both of the

<p>practices described in (b) or (c) for a sufficiently long duration to damage competition. 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) reasonably efficient, with a cost structure that would reasonably allow it to survive in the market in the absence of the dominant provider's allegedly abusive practice.</p>	<p>()</p> <p>()</p> <p>() ()</p> <p>() :</p> <p>()</p> <p>()</p>
<p>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.</p>	<p>-</p> <p>)</p> <p>(</p>
<p>d) For purposes of applying the imputation test, the TRC may require the Licensee that is the subject of a margin squeeze</p>	<p>-</p>

allegation to submit internal cost information to the TRC, with the confidentiality of the information protected in accordance with the terms of its License and the Rulemaking Instructions. Any failure by a Licensee to submit such requested cost information may result in a presumption of abuse of dominance against the Licensee.

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) 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, (5) any economic rationale for the length of such contracts, and (6) the cost of short-term contracts in relation to longer-term contracts.

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Article (16) 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.

- c) When evaluating whether a bundling or tying arrangement is anti-competitive, the TRC shall consider the following factors: (1) whether the alleged violator is a dominant Licensee in the relevant market, (2) whether the Licensee is a dominant provider of at least one of the products or services at issue, which is denoted the “initial” or “base” product or service, or whether the alleged “initial” or “base” service is subject to competition, (3) whether the “tied” or “bundled” product or service faces competition, (4) whether the “initial” or “base” product is regulated or unregulated, (5) whether the second “tied” or “bundled” product is regulated or unregulated, (6) whether (in the case of wholesale services) separate wholesale services are bundled such that some wholesale services for which the Licensee is dominant are available only

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with other services that could be supplied by a competing Licensee, and (7) whether there are any economies of scope that should be considered.

Article (17) Abuses of Dominant Position – Anti-Competitive Exclusionary Practices

- 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: (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.

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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 (18) 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 factors: (1) the relationship between the dominant Licensee and those seeking or

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engaged in exclusive arrangements with the dominant Licensee, (2) whether the exclusive arrangement is unduly biased in favor of the dominant Licensee, (3) whether the arrangement blocks other qualified participants in the market, (4) whether there are objective reasons for the exclusive arrangement, and (5) the overall impact of the exclusive arrangement on competition in the relevant market.

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Article (19) Collusion

a) "Collusion" is defined as the coordinated actions of two or more Licensees, who would normally be competitors, to exert influence on the market with the objective or effect of fixing prices or otherwise restraining competition, that can be either: (1) "explicit collusion" or a "cartel," where two or more independent Licensees explicitly agree to act in combination, conspiracy, cooperation or concert to pursue a common strategy, or (2) "tacit collusion," where competitors have not explicitly or formally agreed to act in concert but consciously behave in parallel ways.

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b) "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

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<p>vertical price fixing agreements on a case-by-case basis to determine if such agreements are anti-competitive.</p> <p>c) 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.</p> <p>d) 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.</p>	<p>-</p> <p>-</p> <p>() :</p> <p>()</p> <p>/ ()</p> <p>()</p> <p>()</p> <p>()</p> <p>()</p> <p>()</p> <p>()</p> <p>()</p>
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Article (20) 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 or to tend to create a monopoly.

- b) In evaluating whether the prohibition of Article (20)A above shall bar a particular acquisition or transfer, the TRC shall consider the following non-exhaustive list of factors: (1) whether the transaction is between two Licensees in the same product and geographic market, (2) whether the transaction shall alter the proportional allocation of market shares held by Licensees in the relevant market, (3) whether the resulting Licensee shall remain or become dominant in a relevant market, (4) whether the products or services provided by the resulting company are offered competitively by other providers in the market, (5) whether the transaction is likely to provide any public benefit, (6) whether competitors' property, licensing of technology, shared research and development or similar activities shall be negatively affected by the transaction, and (7) whether the proposed transaction shall result in the substantial lessening of competition in the relevant telecommunications market.

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Article (21) 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 License 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. The notification must include at a minimum the identities, addresses, and contact information of the parties, a listing of the License (or Licenses) involved, detailed direct and indirect ownership information of the parties, factual details of the transaction sufficient to demonstrate whether Control of the License shall change, and a statement of the competitive and public interest effects of the transaction. 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.

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<p>c) 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.</p>	<p>-</p>
<p>d) For transactions other than those described in this Article (21)A above, 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.</p>	<p>- ()</p>
<p>e) 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.</p>	<p>- () () ()</p>
<p>f) In all cases, the TRC shall act in accordance with Articles 9(B, C, D) of the Competition Law.</p>	<p>- ()</p>