هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

Retail Tariff Notification Regulation

A Regulation issued by the Telecommunications Regulatory Authority on the Retail Tariff Notification Regime

21 February 2010

Regulation 1 of 2010

Purpose: To provide a framework for the notification of retail tariffs for Licensees determined by the Telecommunications Regulatory Authority to have Significant Market Power in any relevant retail markets in the Kingdom of Bahrain.

Board of Directors
Telecommunications Regulatory Authority

Resolution No. 1 of 2010 regarding the Retail Tariff Notification Regulation

The Telecommunications Regulatory Authority (the "Authority") Board of Directors,

Pursuant to the Telecommunications Law No. 48 of 2002 particularly Articles 3 and 58 thereof and,
On the basis of the proposal submitted by the Acting General Director of the Authority and after the approval of the Authority's Board of Directors thereof,
Has resolved as follows:

Article 1

The provisions of the Retail Tariff Notification Regulation attached herewith shall apply.

Article 2

This Resolution shall be published in the Official Gazette and shall come into force on the day following the publication date.

Dr Mohammed Ahmed Al Amer
Chairman

Issued on 7 Rabea Al Awwal 1431H
21 February 2010

Regulation

Retail Tariff Notification

Article 1 - Definitions

1.1 For the purposes of this Regulation, any word or expression shall have the meaning given to it in the Telecommunications Law.

1.2 The following terms and expressions shall have the following meanings, unless the context otherwise requires:

Bundling	The offering of two or more Retail Telecommunications Services together.
Controlled Tariff	A Retail Tariff of a Retail Telecommunications Service in a retail market in which a Licensed Operator is determined by the Authority to have Significant Market Power in accordance with the definition of "Operator with Significant Market" in the Telecommunications Law ("SMP"). Controlled Tariffs shall also include any Retail Tariffs for Bundles of Retail Telecommunications Services comprising at least one Retail Telecommunications Service offered in a retail market in which the Licensed Operator is determined to have SMP.
Implementation Period	The period defined in Article 9.2 of this Regulation.
Notification Date	The date on which a valid Notification Form as defined in Article 4 of this Regulation is received by the Authority.
Notification Period	The period defined in Article 5 of this Regulation.
Notifying Operator	A Licensed Operator that submits a notification to the Authority in accordance with this Regulation.
Retail Tariffs	Tariffs of any Retail Telecommunications Service including non-price terms to the extent that they may affect the price or cost of provision of the Retail

	Telecommunications Service.
Retail Telecommunications Service	A licensed telecommunications service provided to Users at the retail level.
Tariff Controls	Means retail tariff controls defined in Article 6 of this Regulation.
Tying	A type of bundle where the offering of one or more Retail Telecommunications Services is conditional upon the purchase of one or more Retail Telecommunications Services.
Undertakings	Any measures necessary to ensure compliance with this Regulation submitted by the Notifying Operator or specified by the Authority in order to ensure compliance of a notified Controlled Tariff with the Tariff Controls.
Wholesale Telecommunications Service	A licensed telecommunications service provided to Licensed Operators at the wholesale level.

Article 2 - Scope of Regulation

2.1 This Regulation applies to all Licensed Operators determined by the Authority to have SMP in any relevant retail markets and which intend to introduce, change or withdraw Retail Tariffs in any of those retail markets in which it has been determined by the Authority to have SMP.

Article 3 - Notification

3.1 Any Licensed Operator determined by the Authority to have SMP in any relevant retail markets shall notify the Authority of its intention to introduce, change or withdraw any Controlled Tariff. This shall include notifying the Authority of any of the following:

a. Introduction of new Controlled Tariffs.

b. Any changes that affect the prices of Controlled Tariffs which relate to existing Retail Telecommunications Services.

c. Any changes to the non-price terms (including terms and conditions) of Controlled Tariffs which amount to a material change in the resulting price or the cost of provision of Retail Telecommunications Services.

3.2 A Notifying Operator that has been determined by the Authority to have a Dominant Position in a wholesale market(s) and is required to prepare a reference Interconnection or Access offer for such products in accordance with Article 57 of the Telecommunications Law, must, when notifying the Authority of a new Controlled Tariff for a Retail Telecommunications Service that is vertically-related to that wholesale market, provide a corresponding Wholesale Telecommunications Service in the vertically related upstream market(s) to allow other Licensed Operators to replicate the Controlled Tariff of the Notifying Operator.

Article 4 - Notification Procedure

4.1 The notification shall be submitted using the Notification Form issued by the Authority and shall be sent by email to an email address provided by the Authority.

4.2 The Notification Form shall contain:

a. All required analysis and information having regard to the Retail Tariff Notification Guidelines issued by the Authority;
b. A certification from the Notifying Operator that the notified Controlled Tariff complies with all the Tariff Controls specified in Article 6 of this Regulation .

4.3 The Notification Form shall be deemed invalid if it does not comply with Article 4.2 of this Regulation. The Authority shall inform the Notifying Operator of this and provide written reasons within five (5) working days from receiving the Notification Form. For the avoidance of doubt, the Notification shall be deemed to have not been made.

Article 5 - Notification Period

5.1 The Notification Period shall be twenty (20) working days from the Notification Date. The Authority may extend the Notification Period by written notice to the Notifying Operator in the following circumstances:

a. Where the Notifying Operator submits a Wholesale Telecommunications Service for the Authority's approval in accordance with Article 3.2 of this Regulation.

b. Where the volume of information provided by the Notifying Operator is unusually large and the Authority therefore requires more time to review this information in sufficient detail.

c. Where the Notified Controlled Tariff is unusually complex and the Authority therefore requires more time to analyse the information and assess its compliance with the provisions of this Regulation.

Article 6 - Tariff Controls

6.1 Controlled Tariffs shall be subject to the provisions of Article 58 of the Telecommunications Law and shall comply with the following Tariff Controls:

a. **No undue price discrimination:** The Notifying Operator may not set a Controlled Tariff such that the price or the accompanying non-price terms are differentiated across Users, unless this can be justified by reference to differences in the expected level of the underlying costs of provision or expected material improvements in consumer benefits. If it cannot be justified to the satisfaction of the Authority in either of these ways, such Controlled Tariff will be considered unduly discriminatory.

b. **No excessive pricing:** The Notifying Operator may not set a price for a Controlled Tariff such that at the time of its introduction the retail price could be expected to significantly exceed the price level anticipated under competitive market conditions.

c. **No margin squeezing:** The Notifying Operator may not set a price for a Controlled Tariff such that, at the time of its introduction, the difference between the retail price and the price of the relevant corresponding Wholesale Telecommunications Service is such that an efficient competitor could not be expected to sustain a competing service.

d. **No predatory pricing:** The Notifying Operator may not set a price for a Controlled Tariff such that, at the time of its introduction, the retail price could reasonably be expected to be unjustifiably below the relevant measure of the cost of providing the relevant Retail Telecommunications Service.

e. **No abusive bundling or tying of services:** Regarding Bundles and Ties of Retail Telecommunications Services which include at least one Retail Telecommunications Service provided in a retail market in which the Notifying Operator has been determined by the Authority to have SMP, the Notifying Operator may not bundle or tie Retail Telecommunications Services if it can

be expected that as a consequence of the bundling or tying competition may be foreclosed, prevented, restricted or distorted. This can occur where:

i. the terms on which the bundle or tie is offered are deemed or expected to be anti-competitive by the Authority; or
ii. the components of the bundle or tie are not available separately to Users; or
iii. the bundle or tie cannot be replicated by other Licensed Operators.

6.2 The Authority may allow the implementation of a Controlled Tariff which is not completely compliant with the Tariff Controls if the Authority considers that:

a. The implementation of such tariff is beneficial to the protection of the interests of Users and Subscribers or to the promotion of fair and effective competition between existing and new Licensed Operators.

b. The implementation of such tariff will not be detrimental to the interests of Users and Subscribers.

c. The implementation of such tariff will not foreclose or prevent, restrict, or distort competition.

6.3 Without prejudice to the Tariff Controls stated above, any changes to the price of fixed narrowband access rental services are subject to a re-balancing plan or a similar arrangement to be approved by the Authority.

Article 7 - Review of Controlled Tariffs

7.1 The Authority shall review the notified Controlled Tariff, during the Notification Period, for compliance with Tariff Controls and may:

a. Decide to prohibit the Notifying Operator from implementing the notified Controlled Tariff because it does not comply with the Tariff Controls. The Authority shall explain, in its written decision, the reasons of such prohibition.

b. Request information in accordance with the provisions of Article 8 of this Regulation.

7.2 Where the Authority has not issued a decision prohibiting the notified Controlled Tariff before the end of the Notification Period, the Notifying Operator may implement the notified Controlled Tariff pursuant to Article 9.1.

7.3 The Authority shall consider the following when reviewing the notified Controlled Tariffs:

a. TRA's duties defined in Article 3(b) of the Telecommunications Law;

b. The requirements of Article 58(b) of the Telecommunications Law; and

c. The Retail Tariff Notification Guidelines issued by the Authority.

Article 8 - Request for Information

8.1 If the Authority considers that it requires further information to review the compliance of the notified Controlled Tariff with the Tariff Controls in Article 6 of this Regulation, the Authority may, within ten (10) working days from the Notification Date, request in writing the Notifying Operator to provide the information and clarifications which the Authority considers necessary. The Authority must provide the reasons for which the further information is required. The Authority may require the Notifying Operator to perform further analysis.

8.2 In its request for information, the Authority may additionally specify Undertakings which in the view of the Authority should be implemented to comply with the Regulation.

8.3 The Notification Period shall be suspended from the date of sending a request for information in accordance with Article 8.1 above until the receipt by the Authority of the Notifying Operator's response. The Notification Period will recommence from the date of receipt by the Authority of the Notifying Operator's response.

8.4 In the event that the Authority receives no reply from the Notifying Operator within thirty (30) working days from the date of the Request for Information, the Notification will be deemed to have lapsed.

8.5 In its response, the Notifying Operator may submit to the Authority the Undertakings that in the view of the Notifying Operator will ensure that the Controlled Tariff complies with the Tariff Controls.

8.6 Upon receipt of a reply from the Notifying Operator to the Request for Information, the Authority shall review the reply and may issue a reasoned decision either:

a. allowing the implementation of the notified Controlled Tariff after the end of the Notification Period provided that the Notifying Operator implements the Undertakings deemed necessary by the Authority to ensure compliance with this Regulation.

b. prohibiting the notified Controlled Tariff.

8.7 If before the end of the Notification Period the Authority does not issue a decision under Article 8.6, the Notifying Operator may implement the notified Controlled Tariff pursuant to Article 9.1.

Article 9 - Implementation of Controlled Tariffs

9.1 Without prejudice to TRA's powers under Sections 35 and 65 of the Telecommunications Law, and in cases other than those defined in Article 9.3, the Notifying Operator may implement the notified Controlled Tariff in the period between the end of the Notification Period and the end of the Implementation Period. The Notifying Operator shall:

a. notify the Authority of the implementation by sending an email to an address provided by the Authority on the day on which the notified Controlled Tariff is implemented; and

b. where applicable confirm in writing the Undertakings imposed by the Authority when informing the Authority of the implementation of the notified Controlled Tariff.

9.2 The Implementation Period shall be sixty (60) working days from the end of the Notification Period. The Notifying Operator may request the Authority in writing to grant a longer Implementation Period, and the Authority may grant such extension.

9.3 A Notifying Operator may not implement any Controlled Tariff:

a. before it has been notified to the Authority.

b. before the expiry of the Notification Period, unless the Authority expressly decides otherwise in exceptional or unforeseeable circumstances.

c. in the event that the Authority issues a decision prohibiting the Notifying Operator from implementing the Notified Tariff pursuant to Articles 7.1(a) and 8.6(b) of this Regulation.

d. in the event that the Authority has not received a reply from the Notifying Operator pursuant to Article 8.4 of this Regulation.

e. in contravention with any Undertakings.

f. after the end of the Implementation Period.

9.4 The Notifying Operator may notify the Authority of a revised version of any notified Controlled Tariff that cannot be implemented for the reasons set out in Article 9.3 (c), (d), and (f).

Article 10 - Compliance with this Regulation

10.1 Without prejudice to TRA's powers defined in Articles 35 and 65 of the Telecommunications Law, in the event that the Controlled Tariff is implemented in breach of this Regulation, the Authority may order the Licensed Operator to:

a. immediately cease the implementation of the Controlled Tariff.

b. take any other appropriate measures necessary in order to withdraw the Controlled Tariff or rectify the breach.

c. take any other appropriate measures including refraining from taking particular actions that are deemed necessary to restore the situation existing prior to the implementation of the Controlled Tariff.

Article 11 - TRA's Decisions

11.1 Any decisions or orders issued by the Authority pursuant to the provisions of this Regulation shall be sent by any of the following means: email, fax, courier, or post or any other means. The Authority may publish such decisions on its website.

Article 12 - Right of Appeal

12.1 Any decisions taken or orders issued by the Authority pursuant to this Regulation are subject to appeal in accordance with the provisions of Article 36 and 66 of the Telecommunications Law.

Article 13 - Confidentiality

13.1 The Authority shall treat all information submitted to it as a result of this Regulation in accordance with the relevant provisions of the Telecommunications Law and Guidelines issued by the Authority.

Article 14 - Time Periods

14.1 All the time periods stipulated in this Regulation shall be calculated starting from the next working day following the Notification Date, the date of the request for further

information, the date of receipt of responses from the Notifying Operator, or the end of the Notification Period.