Communications Regulatory Authority
State of Qatar
هيئة تنظيم الاتصالات
دولة قطر

Statement of Competition Policy

The Competition Policy comprises the Statement of Competition Policy document together with the accompanying Explanatory Document.

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1 Introduction

The Communications Regulatory Authority (the "Authority") is empowered to regulate telecommunications, post and access to digital media in the State of QATAR under Decree Law 42 of 2014.

Its key objective is to encourage and support an open and competitive Information & Communications Technology (ICT) sector that provides advanced, innovative, and reliable communications services in the State of Qatar.

The Authority has developed a Competition Policy in line with this statutory objective and the principles of regulation set out in the Decree Law No. (34) of 2006 ("Telecommunications Law") and in the Authority's Policy Statement of June 2014, which focuses upon enhancing the role of competition as a catalyst for investment and innovation.

The purpose of the Competition Policy is to create a stable and certain environment in which market participants understand under what circumstances the Authority will undertake ex post investigations in relation to potential anti-competitive behavior as well as the main criteria guiding its decisions.

The Competition Policy comprises this Statement of Competition Policy and an accompanying Explanatory Document. This Statement of Competition Policy details the conduct that may infringe the competition related elements of the Telecoms Law and summarizes how the Authority will assess the implications of mergers and transfers of ownership and control on competition in the relevant markets. The Explanatory Document provides more detail of the approach that the Authority would take in investigating the forms of behavior which could be anti-competitive, or when assessing the impact of mergers or transfers of control on markets.

The Competition Policy should be considered as complementary to other regulatory measures imposed by the Authority, including ex ante regulations placed on Service Providers.

All persons under the remit of the regulatory framework must comply with the Competition Policy as it is an enforceable regulatory instrument. Any decision taken by the Authority in implementing the Competition Policy is final and binding and may be used in any court proceedings.

The Competition Policy may be reviewed from time to time after any amendments being made available to interested parties for review and comment.

The Authority's approach to investigating complaints, and instructions on how to make a complaint, are set out in its published "Ex-Post Investigation Procedures". The Authority's approach to assessing market definition and market power are set out in its "Notice of the Standards, Methodology and Analysis to be applied in the Review of Market Definition and Dominance Designation and for Ex Post

Competition Policy Investigations in the Telecommunication Sector in Qatar" (the "Methodology document").

The structure of the remainder of this Statement of Competition Policy is as follows:

- Section 2 describes the conduct, arrangements or concerted practices that constitute "anti-competitive practices";
- Section 3 describes the conduct that can amount to an abuse of a dominant position;
- Section 4 explains the Authority's approach to assessing the effects of mergers and transfers of control on competition in relevant markets; and,
- Section 5 explains how the Authority will determine appropriate remedies if it finds that a breach of this Competition Policy has occurred.

2 Conduct, arrangements or concerted practices that constitute “anti-competitive practices”

Article 41 of the Telecommunications Law prohibits service providers from engaging in anti-competitive practices and Article 45 of the Telecommunications Law prohibits any “person” from engaging in any practices that prevent or substantially lessen competition. This section summarizes the key elements of this prohibition. Section 2.1 describes how agreements may prevent or substantially lessen competition and so infringe the Article 41 and Article 45 prohibitions and summarizes the different types of agreements that may be prohibited. In certain cases the Authority may not regard agreements as infringing the Telecommunications Law where the agreement generates efficiencies which offset a lessening of competition. Section 2.2 describes how the Authority will consider potential efficiencies that may be generated.

2.1 Agreements that may prevent or substantially lessen competition

Practices that involve some form of an agreement or concerted practice between independent undertakings which restrict normal competitive conduct can prevent or substantially lessen competition. Therefore, while the Authority recognizes that agreements can be an essential part of trade and most agreements do not have anti-competitive intent or effects, some agreements can prevent or substantially lessen of competition.

The Authority categorizes prohibited agreements as either having a restriction of competition as their **“object”;** or otherwise, being an agreement which has the “**effect**” of preventing or substantially lessening competition.

Agreements which restrict competition as their “object” are, by their nature, highly likely to prevent or substantially lessen competition. Therefore when investigating such agreements, the Authority will presume that such agreements lead to a prevention or substantial lessening of competition.

The Authority will consider a substantially lessening competition a significant loss of rivalry between actual or potential competitors occurring if entry or expansion on the market is made more difficult as a consequence of the agreement.

Where agreements do not have as their object a restriction of competition, the Authority will examine the effect of the agreement to determine whether it prevents or substantially lessens competition.

Agreements which **restrict competition by their object** include (but may not be limited to):

- price fixing;
- output limitation;
- sharing of markets and customers;
- bid rigging;
- limiting or controlling investments in or use of R&D; and,
- agreements for fixed and minimum resale price maintenance.[1]

The prohibition can apply to different types of anti-competitive horizontal and vertical agreements.

Horizontal agreements are agreements and concerted practices between undertakings, which operate at the same level of the production or distribution chain. Generally, horizontal agreements may prevent or substantially lessen competition in many ways, such as:

- by limiting the possibility of the undertakings competing against each other or against third parties;
- by reducing the independent decision making of the parties as a result of their substantial asset contribution to a common project, such as a Joint Venture;
- by reducing the independent decision making of the parties by aligning significant financial interests of each party to the agreement;
- disclosing strategic information and thus increasing the likelihood of coordination within or outside the field of cooperation covered by the agreement; or
- by leading to commonality of costs which makes coordination on prices and output easier.

The accompanying Explanatory Document explains how different forms of agreement may be prohibited by the Telecommunications Law including:

- price / output fixing;
- market sharing;
- fixing of trading conditions;
- bid rigging;
- information sharing;
- group boycott;

[1] Note that this list is not exhaustive and other arrangements may also constitute an anti-competitive agreement by object.

- joint purchasing; and
- limiting or controlling investments in or use of R&D.

This list is not exhaustive and the Authority may, under certain circumstances, judge that other forms of horizontal agreements also have anti-competitive object or effect.

Vertical agreements are an essential part of most trade transactions. They can include any agreements to supply, license, distribute, procure agency, or franchise. Generally, vertical agreements are less likely to have anti-competitive effects than horizontal agreements because they relate to different parts of the production and distribution chain. Even if they restrict the commercial freedom of one or more parties to the agreement, they can bring about many benefits, such as aligning incentives for the parties to the agreement at different levels of the production and distribution chain. The Authority will thus assume that vertical agreements generally do not prevent or substantially lessen competition unless a specific decision concludes otherwise.

However, vertical agreements can prevent or substantially lessen competition where they:

- raise barriers to entry or expansion or lead to anti-competitive foreclosures of other suppliers or buyers; and
- soften competition or facilitate collusion between the supplier and its competitors or between the buyer and its competitors.

The accompanying Explanatory Document explains how different forms of Vertical agreement may be prohibited by the Telecommunications Law including:

- exclusive distribution agreements;
- single branding;
- resale price maintenance;
- limited distribution; and
- market partitioning.

For the avoidance of doubt, this list is again not exhaustive and there may be other vertical agreements that can have anti-competitive effects, which the Authority will investigate on a case-by-case basis.

2.2 Efficiency justification

While certain agreements may have the effect of preventing or substantially lessening competition, they may also bring about off-setting economic benefits. The Authority will decide whether to permit such agreements on a case-by-case basis by considering whether and to what extent the economic benefits of an agreement outweigh its negative effects on competition. To

“defend” an otherwise anti-competitive agreement or concerted practice, the parties involved will need to demonstrate that all of the following criteria are simultaneously fulfilled:

- the agreements generate efficiency gains;
- a fair share of the efficiencies are provided to consumers;
- the agreement is indispensable to the generation of the efficiencies; and,
- the agreement does not lead to an elimination of competition.

For the avoidance of doubt, the Authority does not preclude the possibility that agreements with object restrictions could generate sufficient efficiencies of the kind described to off-set any potentially anti-competitive effects. However, it considers that it would be unlikely that this could be the case, and notes that the burden of proof is on the parties wishing to claim the benefit of the efficiencies.

3 Abuse of a dominant position

Article 41 of the Telecommunications Law prohibits Service providers designated as having significant market power or a dominant position from abusing their dominance. Article 43 of the Telecommunications Law and Article 75 of the Telecommunications By-Law describe the types of conduct that may amount to an abuse of dominance and thus be prohibited.

Section 3.1 describes the types of conduct that can amount to an abuse. Section 3.2 provides more details of the circumstances that the Authority will consider, in determining whether conduct, which might otherwise be an abuse of a dominant position, is justified.

3.1 Types of conduct that can amount to an abuse

For the avoidance of doubt, the Competition Policy does not prohibit the holding of a dominant position in itself but the abuse of it. However, firms that have a dominant position have a special responsibility not to allow their conduct to impair genuine undistorted competition.

Abuse of a dominant position can be targeted at potential competitors (exclusionary abuses), or at consumers or suppliers (exploitative abuses).

- **Exclusionary abuses** can prevent or substantially lessen existing and potential future competition in a relevant market, for example either through weakening existing competitors, establishing barriers to entry or foreclosing the market. In this instance, dominant firms often forego profits in the short run in order to increase profits in the longer run. Such behavior could harm consumers by reducing competition, inducing higher prices, reducing customer choice or reducing incentives for investment and innovation.
- **Exploitative abuses** can extract rents from consumers or suppliers. These abuses can relate to price or non-price conditions imposed by a dominant operator. For example, the dominant firm may use its market power to charge excessively high prices to consumers or to reduce payments to suppliers. Such behavior directly harms consumers or suppliers.

The potentially abusive conduct can be further categorized as price based conduct or non-price based conduct. The following are examples of price and non-price based conduct which could amount to an abuse of a dominant position, however, the list is not exhaustive.

Examples of priced based abuses include:

- margin squeeze;
- anti-competitive rebates, discounts and loyalty schemes;
- unjustified price or non-price discrimination;

- cross-subsidization;
- excessive pricing;
- predatory pricing;

Examples of non-priced based abuses include:

- refusal to supply;
- anti-competitive bundling and tying, including exclusionary tying;
- customer lock-in through contract length; and
- exclusive distribution agreements.

3.2 Defenses or justification for otherwise anti-competitive conduct

When investigating alleged abuses of a dominant position, the Authority will consider whether there is any reasonable justification for the conduct in question, in which case it may choose not to make an infringement decision if the investigated service provider can demonstrate that:

- has an objective justification, or
- the conduct leads to demonstrable efficiency gains which would not otherwise be achievable and which benefit consumers.

3.2.1 Objective justification

To justify abusive conduct on the basis of objective necessity, the dominant firm will need to demonstrate that **simultaneously**:

- the conduct is indispensable to the provision of the respective product or service (for example for technical or health and safety reasons), and
- the conduct is proportionate to the provision of the respective product or service, i.e. the provision cannot be achieved in a manner less harmful to competition.

3.2.2 Efficiency justification

To justify abusive conduct on the basis of efficiency gains, the dominant firm will need to demonstrate that the conduct produces efficiencies that outweigh the anti-competitive effects on consumers. This would be the case if the following four criteria were **simultaneously** fulfilled:

- the conduct brings efficiency gains by, for example, reducing costs for the provision of the services in question, and the efficiency gains are passed on to consumers;

- these efficiency gains cannot be achieved without the conduct, i.e. the conduct is indispensable to the efficiency gains;
- the efficiency gains outweigh the harm to competition and negative effects on consumer welfare resulting from the anti-competitive conduct; and
- the abusive conduct does not eliminate effective competition and thus reduce consumer welfare in the long term.

4 Merger and transfer of control

Article (47) of the Telecommunications Law requires that parties directly involved in a merger or transfer of control are required to notify the Authority of the transaction for approval. Article (47) of the 2006 Telecommunications Law provides that "*The General Secretariat in determining whether to approve such transfer, or approve it subject to conditions or reject it shall take into account the effects of the proposed transfer on telecommunications markets in the State and in particular its effects on competition in such markets and the interests of customers and the public.*"

This section summarizes how the Authority will assess the effects of the proposed merger on competition when deciding whether to approve the merger, reject it, or approve it with conditions. Section 4.1 summarizes the Authority's assessment of the negative effects on competition resulting from different types of merger; section 4.3 summarizes the Authority's assessment of efficiency effects of mergers; and section 4.4 describes the potential remedies that the Authority may consider in approving a merger.

4.1 Assessment of the negative effects of the transfer of control on competition

An assessment of the impact on competition of a merger or transfer of control will compare the negative and positive impacts it has on the market against a counterfactual of no merger (following the identification and definition of relevant markets).

The negative competitive impacts of the merger relate to any the lessening of competition resulting from the merger. The Authority's assessment will depend on the type of merger being considered. The sections below summarize the Authority's approach for each of:

- Horizontal mergers;
- Vertical mergers;
- Conglomerate mergers; and,
- Full function joint ventures.

4.1.1 Assessing horizontal mergers

Horizontal mergers refer to mergers between service providers involved at the same stage of a supply chain, and who are competing with each other in the same market.

The Authority considers two principal ways in which horizontal mergers can lead to a substantial lessening of competition. These are unilateral effects and coordinated effects. A merger gives rise to **unilateral effects** where the merged service provider finds it profitable to increase prices regardless of the actions of its competitors. A merger gives rise to **coordinated effects** when the change in the market structure as a result of the merger means that the merged service provider and at least one other is more likely to reach a tacit agreement not to compete as strongly. The Authority will also consider whether the effects of the merger could be limited by the presence of countervailing buyer power.

4.1.2 Assessing Vertical mergers

Vertical mergers refer to mergers between firms involved in different levels of the supply chain. These mergers are less likely to raise competition concerns because the merging firms are not direct competitors. However, there are two ways in which vertical mergers can prevent or substantially lessen competition. These are the effects of input foreclosure and customer foreclosure.

Input foreclosure concerns arise when a merger leads to a vertically integrated service provider which has the market power and incentive to restrict access to an important input. **Customer foreclosure** concerns arise when a merger leads to a vertically integrated service provider which has the market power and incentive to restrict access to an important downstream customer.

4.1.3 Assessing conglomerate mergers

Conglomerate mergers refer to mergers between firms who have activities in different markets which are not vertically related. The Authority would consider whether a substantial lessening of competition could arise because of the possibility of exclusionary practices, for example, if a merged firm could attempt to foreclose a market through bundling or tying sales across its markets.

4.1.4 Assessing full function joint ventures

The Authority will apply the same approach to assessing full function joint ventures as it does to mergers. A full function joint venture refers to a joint

venture between two or more firms which is functionally autonomous[2]. A vertical joint venture would require consideration of input foreclosure and customer foreclosure effects on the market. A horizontal joint venture will need assessment of unilateral and coordinated effects. In assessing the potential for coordinated effects the Authority will consider the potential for information flows between the firms involved in the joint venture, which could affect competition in any of the markets where any of the firms involved are active.

Joint ventures which are not functionally autonomous would be assessed as agreements between the firms involved.

4.2 Assessing the substantial lessening of competition

In analyzing whether there is a substantial lessening of competition, the Authority would take into account the extent of unilateral effects, coordinated effects and foreclosure effects.

Key indicators of the potential presence and magnitude of unilateral effects will be, amongst others: market concentration, closeness of competition, customers' ease of switching, changes in price after the merger, elimination of strong competitive force, extent of competitor capacity constraints, barriers to expansion.

On the other side, the likelihood of coordinated effects will be assessed examining, amongst others, market dynamics, Internal and external sustainability of the tacit agreement.

Finally, when assessing whether a merger will lead to a substantial lessening of competition foreclosing competitors, the Authority will principally examine the ability to foreclose, the incentive to foreclose and the impact on competition.

4.3 Assessing efficiencies of the merger

While mergers can have an anti-competitive effect on a market through a lessening of competition, they can also generate benefits for consumers.

For the Authority to consider the efficiencies as benefits resulting from the merger, these efficiencies need to be merger specific i.e., they would not have been generated absent the merger, and could not be generated by other means; they need to be passed on to consumers; and verifiable in their expected presence and magnitude. The Authority will consider the incentives of the merged service provider for realizing and passing on to consumers the

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[2] This means it is likely to have its own resources and function, as if it were a separate entity distinct from any of its "parent" firms.

efficiency savings and the time frame in which the efficiency gains will be generated.

The merging parties may seek to demonstrate the generation of merger specific benefits and to assert in good faith that they will be passed on to consumers. However, the Authority will require robust and detailed evidence to justify the efficiency benefits resulting from the merger offset any potential harmful effects of the merger.

4.4 Remedies and undertakings

The Authority may approve a merger subject to further conditions which can remedy the substantial lessening of competition which would otherwise result from the merger. Such conditions can be structural remedies, such as the divestment of certain assets; or behavioral, such as undertakings or obligations.

The Authority's approval of a merger using such additional conditions would depend on whether they are sufficient to offset any substantial lessening of competition resulting from the merger.

5 Remedies for infringements of competition aspects of the Telecoms Law

This section presents the remedial actions that the Authority can take if a service provider is found to have infringed the prohibition on abuse of dominant positions or other anti-competitive behavior in an ex-post investigation. The Authority sets out the remedies that it may consider, circumstances under which they might be applied.

The implementation of remedies is in accordance with the Telecommunications Law (2006) and Telecommunications By-Law (2009).

- Article (4) of the Telecommunications Law outlines that the Authority has the authority to enforce remedies in response to anti-competitive behavior;
- Article (46) of the Telecommunications Law provides that such remedies can include, but are not limited to, certain forms of obligations and referrals to the public prosecutor; and,
- Article (76) of the Telecommunications By-Law adds that the Authority may consult the relevant service providers when determining the appropriate remedy, and that this can include the divestment of assets.

This section explains how the Authority will apply behavioral and structural remedies.

5.1 Approach

The remedies applied by the Authority, whether behavioral or structural, are guided by the following objectives:

- **Effectiveness.** The proposed remedies must be able to successfully resolve the competition concerns in an efficient manner. This will involve ensuring that remedies must be sufficiently well targeted and do not have adverse competition effects, and are practical to implement.
- **Proportionality.** This concerns the regulatory burden imposed by the remedies and the appropriateness of the level of intervention to the abuse of market power. Considerations of proportionality would ensure that the implementation costs of the remedy do not outweigh its benefits.

Remedies may be behavioral remedies or structural remedies. **Behavioral remedies** refer to requirements which enforce a specific behavior on the service providers involved in the alleged infringements of the competition aspects of the Telecommunications Law. **Structural remedies** refer primarily to the divestment of assets of the service provider(s). This can involve separating distinct operational functions of the service provider(s) or divesting particular assets.

5.2 Interim remedies

The Authority will consider applications from Complainants to impose an interim behavioral remedy prior to reaching a final decision in certain cases. The Authority will consider

applications for interim remedies where the Complainant can demonstrate that significant *and* irreparable harm would be likely to result in the absence of interim remedies.

5.3 Other remedial actions

The Authority may also respond to anti-competitive behavior with other remedial actions. Specifically, the Authority may accept binding commitments; require the infringing party to publically acknowledge the Authority's decision; may issue a warning to the relevant service provider(s); or refer the matter to the public prosecutor.