

**REPUBLIC OF IRAQ**

**COMMUNICATIONS AND MEDIA COMMISSION**



**CONSULTATION DOCUMENT**

**COMPETITION REGULATION**

**JUNE 2016**

## 1. INTRODUCTION

Pursuant to the Constitution and Coalition Provisional Authority Order 65 (Order 65), the Communications and Media Commission (the Commission) is empowered to regulate telecommunications and information services sector in the Republic of Iraq.

The Commission has engaged a firm of consultants to assist it with a review of the existing regulatory framework. Having carried out this review in regard to the legal powers and mandates of the Commission, the status, need for, and international best practices on competition regulation, the consultants have produced a draft Competition Regulations, which has been considered and endorsed by the Commission.

Now the Commission wishes to obtain the views of interested individuals and persons on this proposed Competition Regulation, which conforms to international best practice and the relevant laws of the Republic of Iraq, before the Commission considers these for their final approval and implementation.

Hence, the Commission invites the public, telecommunications and information services sector licensees and other interested persons to provide it with their comments on the information set out in this document. Any views or comments should be made in writing addressed to:

**IRAQ – Baghdad**

**Al masbah – hay babel**

**District #: 929, Street #: 32, Building #: 18**

Or electronically to;

**[consultation@cmc.iq](mailto:consultation@cmc.iq)**

22/7/2016

Submissions are needed in soft copy only and may be in English or Arabic; dual-language submissions will be extremely helpful.

In the interests of transparency, the Commission expects to publish submissions. Stakeholders should indicate clearly any part of their

submission that they would not wish to be included in a published version, explaining why such part should be treated as confidential.

## **2. CONTEXT OF THIS CONSULTATION**

This public consultation is issued to seek comments from all stakeholders and interested members of the public on the approach to regulating competition in the telecommunications and information services sector by the Commission, including the proposed Competition Regulation.

The Commission has, over the past years, developed and consulted on an array of new and updated regulations to appropriately carry out its mandate. A number of these regulations are relevant to discussions of competition, including mobile number portability and interconnection, as well as tariffing. With these regulations finalized and in place, the competition regulation the Commission propose to adopt is designed to closely align with its regulations in these matters. In addition, the Commission is in the process of developing market reviews and a bottom-up cost model, which will facilitate application of competition principles to elements of telecommunications services pricing and related matters.

In the present document, the Commission sets out a number of important considerations relevant to the development of its approach to regulating competition in the telecommunications and information services sector, including a review of the present legal and regulatory context, best international practices and certain crucial considerations informing the approach taken here. These are set out in the following section of this document. These policy rationales do not form part of the proposed Competition Regulation but aim to inform the public and the industry by setting out the position of the Commission on the relevant issues.

### **2.1 Regulatory Framework Context**

The Commission notes that this consultation should be seen in the framework of a substantial improvement in the breadth of Commission regulations providing specific and enforceable standards in a number of areas relevant to competition. Among others, the Commission has promulgated regulations on mobile number portability (enabling consumers to minimize their switching costs for moving providers), tariffing (imposing price controls on dominant providers not subject to effective competition), interconnection (requiring essential services to be provided to other licensees to ensure end-to-end connectivity) and the development of a cost model, among others. While these topics have already progressed through the consultation process, the Commission notes that the presently proposed Competition Regulation should be seen in the context of these related regulatory tools.

## 2.2 The Need for Competition Regulation

Since the establishment of the Commission under Order 65 and the new constitutional order, the Commission has managed the development of a competitive telecommunications and information services sector in line with the aims of the Constitution and the law, developing a modern, competitive sector driven by private sector investment and regulated by the Commission as an independent, expert regulator.

The Constitution explicitly envisions the application of policies reflecting modern competitive economics to be applied to the telecommunications and information services sector by the Commission as the independent regulator exercising the federal jurisdiction over the sector. Thus, Article 25 of the Constitution calls for the state to *“guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector.”* The economic principles referred to require the development and implementation of effective regulation of competition to safeguard against instances of market failure and protect competition and consumers alike.

Relevant objectives of Order 65, Section 2, conforming to this overall mandate include the establishment by the Commission of a *“framework for full and fair competition among all providers”* to encourage the *“evolution of ... communications networks to the greater benefit of all who live in Iraq”* and *“protect the interests of the citizens of Iraq as consumers of communication services...”* Here, Order 65 also recognizes that, to succeed in these tasks, the regulator needs to be *“an open and transparent regulatory organization that reflects international best practices and will attract private sector investment and promote public confidence and accountability.”*

The past decade, during which the Commission has overseen the development of the sector, has seen the growth of a vibrant telecommunications and information services market, including a competitive mobile telecommunications industry, recently enhanced with the entry of a fourth licensee. While fixed line services continue to be dominated by the state-owned Iraqi Telecommunications and Post Company (ITPC), here too competitive service provision has commenced with fixed wireless operators offering alternatives.

Over the last decade, the Commission has employed its specialist technical expertise and legal authority to establish and foster an investor-driven and increasingly competitive market for telecommunications and information services in Iraq. To further encourage and enable the growth of competition and the most efficient, innovative and value-for-money provision of services in the sector, the Commission believes it is now the right time to consolidate its regulation of competition issues into a clear and specific code of rules,

based on its jurisdictional authority under Order 65, the Competition and Monopoly Prevention Law and the terms of its licensing agreements with telecommunications and information services sector licensees.

Critically, the Competition and Monopoly Prevention Law recognises the technical and industry-based expertise of sectoral competition authorities, like the Commission, as well as the need for consistent regulatory outcomes across the economy. To this end, Article 15 of the Competition and Monopoly Prevention Law permits the sectoral competition authorities, to independently investigate apparent anti-competitive behaviour in these respective jurisdictions, while ultimately requiring that any evidence of violations be presented for trial before Iraqi courts, specially established by the Supreme Legal Council for this purpose.

The Competition and Monopoly Prevention Law further facilitates and enhances the regulation of competition in Iraq with the establishment of a general competition authority, the Competition and Monopoly Prevention Council (CMPC), with a parallel competition regulatory jurisdiction to that vested in the Commission under the Order 65.

Consistent with Article 130 of the Iraq Constitution, whereby the 2004 Order 65 and 2010 Competition and Monopoly Prevention Law are of equal legal effect, the creation of the CMPC establishes a regulatory regime of complementary jurisdictions in which empowered sectoral authorities, such as the Commission, continue to act as the sole regulator of competition in their respective sectors, while the CMPC is to take responsibility for the remaining sectors of the Iraqi economy, not subject to such independent and specialist competition regulation.

The regulatory model implemented through the Competition and Monopoly Prevention Law by the Council of Representatives additionally recognizes the importance of avoiding regulatory conflicts of interest in the telecommunications and information sector. While the governing members of the CMPC include government authorities and ministries which own and/or operate significant assets in this key sector of the economy, any CMPC regulation of the sector risks being seen as potentially harming market competition. Such a perception by private and foreign firms will likely slow market investment and market entry. This in turn will limit the access of Iraqi consumers to innovative, widely available and affordable telecommunications and information services, which are vital for the welfare of Iraqi citizens and national economic development.

It is therefore clear that the Council of Representatives took no action under the Competition and Monopoly Prevention Law to restrict the competition jurisdiction of sectoral competition authorities. Instead, the law demonstrates that the Council continues to trust the regulation of competition in key sectors to authorities, like the Commission, whose regulatory independence is guaranteed and protected under Article 103 of the Iraq Constitution.

Nevertheless, to enable the coordination of their respective regulatory responsibilities, the proposed Competition Regulations include provisions allowing for the regular sharing of information between the Commission and the CMPC. This would permit the CMPC to fulfil its general liaison role under Article 7 of the Competition and Monopoly Prevention Law whereby it is to exchange information with foreign and international organisations on competition regulation in Iraq, and annually report regulatory data to the Iraq Council of Ministers.

## **2.3 International Best Practice**

As part of the development of the proposed Competition Regulation, the Commission considered benchmark best practices in this area internationally. With respect to some core issues of regulating competition in the telecommunications and information services sector, the following overall conclusions were reached and are reflected in the proposed competition regulations:

***Regulation of competition should be conducted by an independent institution.***

Across countries reviewed, the institution or institutions charged by law with regulating competition and telecommunications both tend to be constituted as independent commissions. This institutional choice reflects the risk, recognized widely in these international benchmark jurisdictions, of potential conflicts of interest defeating efforts at regulation for the benefit of competition and consumers. The nearly universal preference for independent institutions applies to both general (across all sectors), competition regulators and to the sectoral (telecommunications) regulators involved with competition regulation. In Iraq, the Commission is one of the few independent institutions, as noted above, with its status guaranteed by the Constitution. It is therefore safe from political intervention and exempt from conflicts of interest resulting from government ministries and authorities both owning and regulating entities in the same industry sector.

The Commission therefore is uniquely suitable to regulate competition in the telecommunications and information services sector, aided where necessary by the courts and its jurisdictional powers and responsibilities under Order 65 and the Competition and Monopoly Prevention Law. Furthermore, under the Competition and Monopoly Prevention Law and consistent with international best practice, the Council of Representatives has avoided any potential conflict between and among institutions by continuing to allow and support independent sectoral regulators, such as the Commission, in their regulation of competition in their respective sectoral jurisdictions.

### ***The subject matter of competition regulation***

The theory and law of competition regulation distinguishes between three major forms of prohibition: (a) prohibitions against “monopoly agreements” between and among market participants that are anti-competitive; (b) prohibitions against abuses of market power by participants in the market holding a position of dominance or “significant market power” (SMP); and (c) prohibitions against merger and acquisition (M&A) transactions involving market participants that have an anti-competitive effect. The Commission in its proposed Competition Regulation uses and builds upon these concepts to set specific and enforceable rules for fair competition tailored to these distinct elements of competition law.

### ***Distinguishing among preventive and remedial competition regulation***

Competition regulation is usually divided into two distinct types: ex-ante and ex-post regulation.

Ex-ante regulation is preventive and seeks to intervene in the market before anti-competitive behaviour can occur or do significant damage to competition. In other words, ex-ante regulation seeks to ‘level the playing field’ by requiring the dominant service provider in the market to provide its competitors with interconnection with its services and access to its networks and facilities under reasonable terms and conditions, among other corrective measures.

Ex-post regulation responds after the anti-competitive behaviour has occurred; it is remedial with efforts focussed on penalising and deterring competition law violations and, where possible, undoing the damage done. In other words, ex-post regulation investigates, prosecutes and punishes anti-competitive behaviour to deter future violations and, where possible, to compensate the parties harmed.

### ***Ex-ante regulation of dominant providers in its sector is to be handled by the Commission responsible regulator***

The review of international benchmarks found that ex-ante regulation of the sector is normally exclusive to the telecommunications regulator. The research found that sectoral telecommunications regulators have exclusive jurisdiction over ex-ante regulation, including particularly the conduct of proceedings to determine whether an operator holds significant market power (SMP) and for setting additional obligations on such SMP Licensees to ensure that other firms can effectively compete with them. Examples of issues that might be addressed through such regulatory determinations include unbundled access to services and facilities, as well as price controls.



It is suggested that a sectoral specialist regulator like the Commission enjoys distinct advantages in terms of institutional expertise and understanding of its sectoral market segments for conducting these specialized and research-intensive ex-ante processes, normally applied only in telecommunications and other network industries. Additionally, the sectoral regulator has in place monitoring and complaints mechanisms to detect and correct non-compliant behaviour. The Commission is also the issuer of the license on the basis of which operators with significant market power are allowed to operate in the first place.

Hence, the Commission intends to exercise primary and exclusive jurisdiction in regard to ex-ante competition regulation of telecommunications and information services sector licensees.

### ***Ex-post enforcement of anti-competitive behaviour to be undertaken in concert***

With regard to ex-post regulation, benchmark research found that, where an authority has jurisdiction, as the Commission does, to take ex-post regulatory action in a defined sector against the making of monopoly agreements and abuses of dominant market power, such action is only permitted in circumstances where market competition in that sector has been or is likely to be affected.

Accordingly, the Competition Regulations propose that:

- where all of the parties which have allegedly violated the relevant ex-post prohibitions are licensees in the Iraqi telecommunications and information services sector, the Commission will unilaterally take ex-post regulatory action;
- where one or more of the parties which have allegedly violated the relevant ex-post prohibitions are not licensees in the Iraqi telecommunications and information services sector, the Commission will, with respect to such non-licensee party, refer the matter and any evidence of illegal activities to the CMPC, or if it is unavailable, to the responsible prosecutorial authorities as indicated by the Iraqi legislature or appropriate executive branch authorities.

### ***Mergers and Acquisitions Review***

Benchmark research also found that where an authority has jurisdiction in a particular sector, as the Commission does, to make determinations on competition grounds on whether to approve proposed M&A transactions, such determinations are only permitted in circumstances where those transactions are likely to affect market competition in that sector.

Accordingly, the Competition Regulation calls for the following:

- where all of the parties involved in a M&A transaction are licensees in the Iraqi telecommunications and information services sector, the Commission will make a determination whether to approve the proposed transaction;
- where the relevant M&A transaction involves one or more parties which are not licensees in the Iraqi telecommunications and information services sector, the Commission will, with respect to any non-licensee party or parties, refer the matter and any competition-based concerns it has about the transaction, to the CMPC, or if it is unavailable, to the responsible authorities as indicated by the Iraqi legislature or executive branch authorities.

It should be noted that, outside its competition regulatory-related jurisdiction, the Commission also has responsibility for approving the transfer of, or change of effective control over licenses in the sector.

Where a M&A transaction involves such change of control or transfer, the proposed Competition Regulation would permit the Commission to determine whether to approve the transaction, based on public interest grounds. In these circumstances, the Commission would make these public interest determinations in considering the national effects of the requested transaction, as opposed to the impacts of an M&A transaction at the sectoral level based on market competition considerations.

Therefore, the Commission will be free to decide whether or not to approve a license transfer or change of control as part of a requested M&A transaction in the sector, based on public interest considerations and regardless of the fact that one or more of the transaction parties is not a licensee in the telecommunications and information services sector.

# Proposed Competition Regulation

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## **PREAMBLE**

On this \_\_\_ day of \_\_\_, 20\_\_\_, the Board of the Communications and Media Commission of Iraq hereby issues the following Competition Regulations:

## **AUTHORITY**

The Commission, after careful consideration of the provisions of the Constitution of Iraq, including Article 25, calling for the reform of the Iraqi economy in accordance with modern economic principles, in conjunction with the exclusive federal jurisdiction over telecommunications regulation entrusted to the Communications and Media Commission (the Commission) through Article 103 read with Article 107; and in view of its continuing legal authority under Order 65, as amended by CPA Order 100 and as validated by the Constitution's Article 130, which calls for the Commission, in Section 2(3), to establish the framework for full and fair competition among all providers in line with international best practice; and further mandates the Commission, in Article 5 thereof, to establish a regulatory regime for the sector by, inter alia, drafting and implementing standards and rules for the competitive provision of telecommunications and information services; and reflecting the views of the legislative and executive branches in having provided for a Competition and Monopoly Prevention Law; has decided to promulgate this Competition Regulation.

This Competition Regulation reflects the understanding that there is no contradiction on the issue of competition jurisdiction between Order 65, the empowering instrument of the Commission, and the Competition and Monopoly Prevention Law, which created the Competition and Monopoly Prevention Council (CMPC). Order 65 and the Competition and Monopoly Prevention Law are compatible legal instruments which both seek to further the same constitutional goals, with the relevant provisions of each of which reflected in this Regulation.

## **RECITATIONS**

Mindful of the need to create a framework for full and fair competition in the sector under its jurisdiction, which in international best practice crucially includes a regulatory framework for protecting and enhancing competition from instances of market failure; and

To benefit the public through the availability of innovative, efficient and reasonably priced communications services which requires a competitive market for these services; and

To safeguard and further, in an independent and impartial manner, competition among and by each and every licensee in the telecommunications and information services sector as the designated independent commission established for this purpose; and

Having bound the entities licensed to provide telecommunications services through license terms including provisions relevant to competition and also having promulgated a number of related regulatory instruments, including in terms of interconnection and tariff regulations;

The Commission has ~~have~~ determined to further these aims by promulgating the following regulation:

## **PART ONE: GENERAL MATTERS**

### **Article I. SCOPE**

This Competition Regulation binds all licensees, which provide jurisdictional Telecommunications and Information Services.

### **Article II. DEFINITIONS**

- (1) **Accounting Separation** means for the purposes of this Competition Regulation, and unless and until superseded by other Commission regulation, the preparation of a separate set of financial statements by an Operator for the services and markets in which that Operator has been determined to have SMP, including allocations of shared costs and distinguishing as among core, access, retail and other costs.
- (2) **Commission (or CMC)** means the Communications and Media Commission of Iraq, and any successor body.

- (3) **Competition and Monopoly Prevention Committee (or CMPC)** means the regulatory body established under Chapter 2 of the Competition and Monopoly Prevention Law.
- (4) **Competition and Monopoly Prevention Law** means the Competition and Monopoly Prevention Law, Number 14 of 2010, promulgated by the Council of Representatives of Iraq bearing this sequence number, as amended.
- (5) **Competitor**, in the context of this Competition Regulation, means any Telecommunications and Information services sector Licensee, including but not limited to an Operator offering services that – from the End Customer perspective – maybe considered functional substitutes for each other.
- (6) **Court with Jurisdiction under the Competition and Monopoly Prevention Law** means a court vested by the Supreme Legal Council of Iraq with jurisdiction to enforce the Competition and Monopoly Prevention Law through private actions and government agency litigation, under Articles 13 and 15 of the Competition and Monopoly Prevention Law.
- (7) **Days** means calendar days.
- (8) **Dominant Market Position** means a position held by a Licensee with Significant Market Power.
- (9) **Electronic Communications Services** means, for the purposes of this Competition Regulation, the provision, on a commercial basis, to any member of the public at large or to other Licensees under a licence issued by the Commission, of Telecommunications or Information Services, but excluding any broadcasting services.
- (10) **End Customer** means, for purposes of this Competition Regulation any natural or legal person who is not (a) also a Licensee, nor (b) in the business of providing unlicensed services involving or requiring to a substantial extent Electronic Communications services; and (c) taking service from a Licensee.
- (11) **Gross Revenues** means total revenues realized by the Licensee or its operating units, subsidiaries, affiliates or other controlled interests, from its or their provision of Telecommunications Service and Information Service within

the Republic of Iraq.

- (12) **Information Service** has the meaning given to this term in Order 65.
- (13) **Interconnection** means the physical and logical linking of Electronic Communications systems in order to allow the End Customers of one Electronic Communications system to communicate with End Customers of the another Electronic Communications system or to access services provided by another Licensee.
- (14) **Interconnection Agreement** means a legal agreement made between two Operators for the purpose of providing Interconnection Services.
- (15) **Interconnection Services** means the services provided by one Operator to another in order to permit or facilitate interconnection between their customers and networks, including (without limitation) call termination, call transit, call origination, transmission links, points of interconnection, co-location facilities, directory and customer assistance facilities and any other services that are agreed between the Operators and that are described in an Interconnection Agreement. The competition-relevant regulations applying to Interconnection Services are separately contained in the Commission Interconnection Regulation.
- (16) **Licence Agreements** means the agreements entered into between the Commission and Licensees governing the supply by Licensees of mobile telecommunications services, local telecommunications services or other services in or from Iraq.
- (17) **Licensee** means an entity, including but not limited to an Operator, which has effective control over a license issued by the Commission.
- (18) **Independent Manager** means, for purposes of this Competition Regulation a person other than a Commission officer or employee appointed by Commission, under particular circumstances set out in Article 10(3)(d) and in the respective Licence Agreements to manage the affairs of a Licensee and granted particular enumerated powers laid out in a Schedule to this Regulation
- (19) **Monopoly Agreement** has the meaning given this term in the Competition and

Monopoly Prevention Law and implemented in this Competition Regulation.

- (20) **Network Elements** means all technical elements used by Operators to provide services to their customers, including, without limitation, wholesale leased lines, wholesale digital subscriber lines, unbundled local loops, main distribution frames or concentrators for bitstream access or digital subscriber line co-location.
- (21) **Network Facilities** means all facilities used by or useful to Licensees for the provision of Telecommunications and/or Information Services, including, without limitation, land, buildings, shelters and access to these facilities; utilities required for the operation of facilities, including but not limited to power, cooling, fire protection and earthing; and cable access, including but not limited to ducts, routes and trays.
- (22) **Network Facilities Sharing Agreement** means a legal agreement made between two or more Licensees for the purpose of sharing Network Facilities.
- (23) **Operator** means a provider of Electronic Communications Services in the Republic of Iraq.
- (24) **Licensee with Significant Market Power (or SMP Licensee)** means a Licensee that the Commission has designated as having Significant Market Power in a specified retail or wholesale market. The Commission determines Significant Market Power based on the measures of market definition and market power set out in the most recent version of the Commission Market Review Policy and its review of other sources.
- (25) **Order 65** means the 2004 Order promulgated by the Coalition Provisional Authority bearing this sequence number, as amended.
- (26) **Person** means, unless the context clearly indicates otherwise, any natural or legal person.
- (27) **Price** means the price of goods and services as well as any other form of value that could be fixed among Competitors – including, but not limited to a discount, allowance, rebate or credit.



- (28) **Qualifying Share** means any share of any class in a Licensee.
- (29) **Reference Access Offer** means the standard access agreements required to be offered by an Licensee with Significant Market Power, approved and published by the Commission, as it may be amended from time to time by order of Commission.
- (30) **Reference Interconnection Offer means** the offer required to be made pursuant to the Commission Interconnection Regulation.
- (31) **Regulated Network Elements** means telecommunications Network Elements that have been so designated by the Commission as requiring regulatory intervention, including the setting of prices by the Commission.
- (32) **Retail Arms** means the departments, business units or other parts of the Operator that sell, market or provide the Operator's Electronic Communications Services to End Customers.
- (33) **Significant Interest** means as appropriate to the context **a one per cent (1%)** or greater interest in (a) the Qualifying Shares issued in a Licensee, or (b) the total voting rights outstanding in a Licensee, or (c) an equivalent level of beneficial ownership interest in a Licensee, however structured.
- (34) **Significant Market Power(or SMP)-** See above for Licensee with Significant Market Power.
- (35) **Telecommunications** has the meaning defined for this term in Order 65.

### **Article III. POWERS UNDER THE COMPETITION REGULATION**

- (1) Consistent with Order 65, the Competition and Monopoly Prevention Law, and the Licence Agreements, the Commission shall have the power under this Competition Regulationto:
- (a) issue regulations and orders making designations in relation to:
    - i) Network Facilities;

- ii) Network Elements;
  - iii) Interconnection Services;
  - iv) Monopoly Agreements;
  - v) mergers and acquisitions; and
  - vi) the abuse of a Dominant Market Position.
- (b) Monitor and investigate compliance with:
- i) the provisions of this and other relevant regulations and orders made thereunder, both on its own initiative or upon a granted petition and investigation initiated by any Person; as well as
  - ii) such regulations and orders as may be made in future to ensure compliance with this regulation.

## **PART TWO: EX ANTE REGULATION**

### **Article IV. NETWORK ELEMENTS ACCESS**

- (1) The Commission may impose additional and specific obligations on an Licensee with Significant Market Power, which obligations may relate to:
- (a) transparency, so that the terms and conditions under which access to Network Elements is provided, are published and publicly available;
  - (b) cost orientation, so that the prices charged for access to Network Elements are based on underlying costs;
  - (c) Accounting Separation, so that the cost of access to particular Network Elements can be identified and the SMP Licensee can demonstrate that it is charging the same prices to its own Retail Arms and/or subsidiary and affiliated companies as it charges to Licensees accessing its Network Elements or Interconnection Services for similar elements or services;
  - (d) access obligations, providing for other Licensees to be entitled to use the Network Elements of the SMP Licensee, including all related services, interfaces, technologies, co-location facilities, operational support or software systems;
  - (e) Price controls, under which Commission may set and/or approve the pricing for other Licensees to access the Network Elements of the SMP Licensee;
  - (f) non-discrimination, so that the SMP Licensee may be obliged to offer other Licensees similar terms and conditions (including Prices), for Network Elements, and Interconnection Services as it offers to its own Retail Arms and subsidiary and affiliated companies.
- (2) The Commission may designate certain Network Elements provided by one or

more Licensees as Regulated Network Elements, and may set the prices for access to these Regulated Network Elements.

- (3) The Commission may require a SMP Licensee to provide other Licensees, in terms of a Reference Access Offer or otherwise, with at least the following:
  - (a) access to any Regulated Network Elements;
  - (b) access to any technical interfaces, protocols or other key technologies that are indispensable, necessary or appropriate for the interoperability of telecommunications services or virtual network services relying on any Regulated Network Element;
  - (c) co-location or other forms of Network Facility Sharing required for, or appropriate to, access to and use of any Regulated Network Element required to be offered, including but not limited to duct, building or mast/tower sharing;
  - (d) any other services needed to ensure interoperability of related end-to-end services to End Customers, including facilities for intelligent network services; and
  - (e) related operational support systems or similar software systems.
- (4) The Commission Price controls of Regulated Network Elements may take the form of formulas, price caps and glide paths, including for individual or bundled Network Element or service pricing, including provisions allowing for the averaging out of allowable prices over extended periods of time.

## **Article V. NETWORK FACILITIES SHARING**

### **GENERAL PROVISIONS**

- (1) So as to encourage the sharing of Network Facilities by and among Licensees in the interest of strengthening competitive and cost-effective provision of Telecommunications services, the Commission provides facilitative assistance to the establishment and maintenance of such Facility Sharing arrangements

among Licensees, including by:

- (a) requiring any Licensee owning and/or controlling Network Facilities to provide, upon request by any other Licensee, an appropriate form for requesting facilities sharing for any of its Network Facilities;
  - (b) providing for efficient negotiations among Licensees of Network Facilities sharing arrangements in line with this Regulation;
  - (c) offering, to any Licensee, its dispute resolution processes to assist in the conclusion of appropriate sharing arrangements.
- (2) Any Licensee owning and/or controlling Network Facilities is required, within 60 days of the effective date of this Competition Regulation, to develop and post on its website a Network Facilities sharing request form that contains all necessary information required by that Licensee to determine the feasibility of a sharing request made for specific facilities and/or locations.
- (3) Any Licensee has the right to request to share Network Facilities with other Licensees, and Licensees must make reasonable efforts to reach agreements with other Licensees on the sharing of Network Facilities where this is requested.
- (4) An Licensee is not required to agree to share any specific Network Facility if doing so is:
- (a) Demonstrably not technically feasible, or not feasible without significant investment;
  - (b) Demonstrably certain to impair the functionality of the specific facility for the functions in the network for which it was designed, including but not limited to impairment or interference with the services of the Licensee owning or controlling said Network Facility or the services of other Licensees relying on said Network Facility;
  - (c) Will necessarily impair or significantly affect the property or other rights of third parties relating to the facility, including but not limited

to owners of land or buildings who are not Licensees, or where the Licensees' contractual or other rights in relation to a Network Facility do not permit sharing; and

- (d) Demonstrably will cause damage to any property or harm to any person.
- (5) A Licensee may seek reasonable terms of compensation and impose reasonable conditions for its agreement allowing the shared use of any of its Network Facilities by other Licensees.
- (6) An Licensee wishing to enter into a Network Facilities Sharing Agreement with another Licensee must send that Licensee a written request for the negotiation of a Network Facilities Sharing Agreement. Such a request must at minimum:
- (a) include and utilize the requisite form for such request developed by the Licensee of whom this request is made;
  - (b) provide the information necessary for the Licensee to whom this request is addressed to be able to identify the specific Network Facilities to which access is being requested;
  - (c) contain sufficient details of the requested use and/or prospective installations and equipment to allow the Licensee of whom this request is made to ascertain its feasibility; and
  - (d) state all necessary contact information to allow the Licensee to respond to the requesting party.

#### **NEGOTIATING AN AGREEMENT**

- (7) Any Licensee receiving a request for a Network Facilities Sharing Agreement must acknowledge the request within 15Days, and must at the same time indicate in writing whether it is willing to share the specific Network Facilities requested, pending a determination of the technical feasibility of doing so, or not.
- (8) If an Licensee refuses a request for a Network Facilities Sharing Agreement, it

must do so within 45 Days of the request date and make specific reference to the grounds provided for in Article V(1) (a) through (d) in relation to the specific Network Facility or Facilities to which the request referred.

- (9) The Licensees should enter into good faith negotiations over the terms of the Network Facilities Sharing Agreement, and must complete the signature of the Network Facilities Sharing Agreement no later than 90 Days after the initial written request was made. Alternatively, the Licensees may mutually agree to extend this period by a specified number of days.
- (10) Licensees must exchange information about each other's Network Facilities, if requested by the other Licensee, without any charge for the provision of this information. Licensees requested to provide information may however require the completion of an appropriate non-disclosure agreement to control the distribution of confidential information.

#### **REQUESTS FOR COMMISSION INTERVENTION**

- (11) Where no agreement is reached between the requesting Licensee and the owner of the Network Facilities for which sharing has been requested, but no earlier than 90 days after the date of its initial request, the Licensee making the request for a Network Facilities Sharing Agreement may petition Commission for assistance. The Commission may, in its discretion -
  - (a) order the Network Facilities owner to respond in writing, either offering to enter into negotiations with the requesting Licensee or setting out one or more of the permitted grounds enumerated in Article V(1) for its refusal;
  - (b) review refusals for conformity with this Competition Regulation, including but not limited to the reasonableness of the grounds given for refusal and their factual basis and, where these are found to be unreasonable, order the Network Facilities owner to enter into good faith negotiations with the requesting Licensee by a specified date;
  - (c) offer, with the consent of both parties, to mediate issues preventing

the Licensee parties from reaching an agreement;

- (d) impose a Network Facilities Sharing Agreement on particular terms and conditions on the Licensees concerned, or require the Licensees to undertake specific steps in order to complete the Network Facilities Sharing Agreement.
- (e) refer the matter to the Director-General or the Hearing Panel for resolution.

#### **STANDARDS FOR AND DISPUTES UNDER COMPLETED AGREEMENTS**

(12) Network Facilities Sharing Agreements must be legally binding and contain all the terms and conditions that affect the sharing of Network Facilities between or among the Licensees, including:

- (a) legal terms, including commencement, termination, breach and suspension, force majeure, review of the Network Facilities Sharing Agreement, and confidentiality of information;
- (b) a description of the physical access and visiting rights of the Licensees to the Network Facilities covered;
- (c) maintenance, safety and cleaning of the Network Facilities shared;
- (d) responsibilities for fault clearance including urgent faults;
- (e) arrangements for site security at the Network Facilities;
- (f) processes for resolving disputes between Licensees, including providing for referral of disputes to independent arbitration or mediation and, failing to reach agreement, to Commission for resolution.
- (g) fees for the sharing of the Network Facilities.

(13) The Licensee parties are required to submit concluded Network Facilities Sharing Agreements to the Commission within 14 Days of their signature. The Commission may review these agreements to ensure compliance with



these Competition Regulations and other laws and regulations, and may require the Licensees to amend any terms and conditions in the Network Facilities Sharing Agreement.

- (14) An Licensee may refer a dispute with another Licensee under a Network Facilities Sharing Agreement to the Commission. A dispute may concern the failure to comply with the terms of a Network Facilities Sharing Agreement or the provisions of these Competition Regulations in relation to the sharing of Network Facilities.
- (15) Before a Licensee which is party to an effective agreement refers a dispute to the Commission, it must have completed any dispute resolution procedures set out in the Network Facilities Sharing Agreement with the other Licensee.
- (16) A Licensee wishing to refer a dispute to the Commission must set out its case in writing, along with evidence of the problem and of the Licensee's attempts to resolve the problem with the other Licensee(s) involved in the dispute.
- (17) Licensees involved in a Network Facilities dispute must co-operate with the Commission and provide any information required by the Commission in a timely manner, so that the Commission may resolve the dispute fairly and efficiently, in accordance with the rules and procedures of the Commission as set out in other regulations.

## **PART THREE: EX POST REGULATION**

### **Article VI. MONOPOLY AGREEMENTS**

#### **GENERAL PROHIBITIONS**

- (1) Consistent with the Competition and Monopoly Prevention Law and the Licence Agreements, a Licensee is prohibited from:
  - (a) entering into any agreements, arrangements or understandings with one or more of its Competitors that have the purpose, or have

or are likely to have the effect of substantially reducing competition.

- i) Such agreements, arrangements or understandings need not be formal, nor do they need to be written;
  - ii) a substantial reduction of competition occurs when, as a result of the activity described in this Competition Regulation (e.g. the making of a Monopoly Agreement or abuse of a dominant market position), one or more of the Licensees in the relevant market: can increase the price of services; and/or can decrease the quality of services; without risking a significant loss of market share.
- (b) Entering into any agreements, arrangements or understandings set out in paragraph (a) either by:
- i) fixing the Price of services in the Telecommunications or Information Services sector, including but not limited to Electronic Communications services, and/or ancillary goods in the relevant market(s);
  - ii) fixing the availability and/or capacities in one or more geographic or product market(s) of any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services;
  - iii) as within the license areas granted to Licensees in terms of their Licences, sharing any market(s) for any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services on a geographical basis, irrespective of the manner in which such sharing is to be accomplished or measured; or
  - iv) sharing information in respect of tenders, auctions or other bidding activities including or relating to any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications, inputs and resources

used and useful for same, including but not limited to, Price information.

- (c) The foregoing prohibition does not apply where a Licensee with its Competitor(s) makes joint bids in a tender, auction or other bidding activity; and this does not have the purpose, nor does it have nor is it likely to have the effect, of substantially reducing competition.

#### **PROHIBITION AGAINST ANTI-COMPETITIVE AGREEMENTS IN THE SUPPLY CHAIN**

- (2) Consistent with the Competition and Monopoly Prevention Law and the Licence Agreements, a Licensee is prohibited from entering into agreements, arrangements or understandings with either -

- (a) its customers, excluding End Customers, for any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or other Elements thereof on a wholesale or other non-retail basis, and;
- (b) its suppliers of any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or necessary elements thereof,

that have the purpose, or have or are likely to have the effect, of substantially reducing competition in the meaning given for these terms under Article VI(1)(a) by fixing the Price of any such services, including ancillary goods, sold or bought by the Licensee.

- (3) The prohibition in paragraphs(2)(a) and (b) of this Article may not apply where such agreement, arrangement or understanding:
  - (a) is limited to a non-binding recommendation of a Price without any attempt to force customers or resellers to charge such Price; or
  - (b) does not have the purpose, nor does it have, or is likely to have the effect, of substantially reducing competition; or
  - (c) is authorized by a Court with Jurisdiction under the Competition

and Monopoly Prevention Law, based on a finding that the agreement, arrangement or understanding is in the public interest.

#### **PROHIBITION AGAINST EXCLUSIONARY AGREEMENTS**

- (4) Consistent with the Competition and Monopoly Prevention Law and relevant Commission regulations, including but not limited to the Interconnection Regulation, a Licensee is prohibited from entering into agreements, arrangements or understandings with its Competitors which have the purpose, or have or are likely to have the effect, of substantially reducing competition in the meaning assigned these terms in Article VI(1), either by preventing, restricting or limiting the availability of any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or necessary elements thereof, as well as goods ancillary or necessary thereto, to or from particular persons or classes of persons, including but not limited to:
- (a) agreements between two or more Licensees that they will prioritize one another's traffic ahead of traffic from other Licensees in the market; and/or
  - (b) agreements between two or more Licensees that if a particular new Competitor or any new Competitor enters the market, they will each attempt to find reasons to refuse this new Competitor shared use of their Network Facilities.
- (5) Consistent with the Competition and Monopoly Prevention Law and the Licence Agreements, a Licensee is prohibited from entering into agreements, arrangements or understandings in which one party provides the other with exclusive Prices or other exclusionary sales or purchase conditions, with either -
- (a) its customers, excluding End Customers, for any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or any elements thereof on a wholesale or other non-retail basis; or

- (b) its suppliers of any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or necessary elements thereof.

## **Article VII. MERGERS AND ACQUISITIONS**

### **NO DISPOSAL OF LICENCES OR CONTROLLING INTERESTS WITHOUT COMMISSION APPROVAL**

- (1) As consistent with the Licence Agreements, a Licensee may not, without having obtained the prior written approval of Commission:
  - (a) assign, sub-license, transfer, or otherwise dispose of a license granted by the Commission;
  - (b) permit or undertake any direct or indirect change in the control of a Significant Interest in its body corporate **for one time only**.
- (2) The Commission may in its discretion grant approval of petitions by Licensees under Article VII(1),
  - (a) following the receipt of a written application from the Licensee requesting a Commission approval for its license disposal or change of control of a Significant Interest; and
  - (b) a Commission finding that the license disposal or change of control of a Significant Interest **or more than one time** will be in the public interest; and/or
  - (c) a Commission finding that the license disposal or change of control of a Significant interest does not have either an anti-competitive purpose nor such effect.
- (3) Consistent with the Licence Agreements, the application and approval requirements under Article VII(1), may not apply to the transfers of Iraqi Stock Exchange-listed:

- (a) shares
- (b) American depositary receipts;
- (c) global depositary receipts; or
- (d) equivalent instruments.

## **Article VIII. ABUSE OF DOMINANT MARKET POSITION**

### **GENERAL PROHIBITION AGAINST ABUSES OF DOMINANT MARKET POSITION**

- (1) Consistent with the Competition and Monopoly Prevention Law and, where applicable, the LicenceAgreements, aSMP Licensee must not:
  - (a) abuse its Dominant Market Position where this has the purpose, or has, or is likely to have the effect, of substantially reducingcompetition;
  - (b) enter into agreements with:
    - i) its customers,excluding End Customers,for any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or anyelements thereof on a wholesale or other non-retail basis, and/or;
    - ii) its suppliers of any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or necessary elements thereof;
  - (c) impose different terms and conditions for the sale or purchase of goods or services of the same type, quantity and quality, where this has the purpose, or has or is likely to have the effect, of substantially reducingcompetition in the sense of Article VI(1)(a)(ii);
  - (d) refuse to deal with any End Customer or other person requesting the services of the SMP Licensee, unless such refusal to deal --

- i) is solely based on technical considerations relating to the service area, networks and facilities of the Operator; or
  - ii) relies on or complies with an affirmative mandate or prohibition under the law and/or a regulation or order by Commission or other competent authority.
- (e) monopolize or attempt to monopolize essential goods, facilities and services necessary for the provision of Electronic Communications Services by Competitors where this has the purpose, or has, or is likely to have the effect, of substantially reducing competition.

**ANTI-COMPETITIVE TYING OR BUNDLING**

(2) Consistent with the Competition and Monopoly Prevention Law, a SMPLicensee must not:

- (a) require either, its customers for any services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services or any elements thereof on a wholesale or other non-retail basis; nor
- (b) its End Customers

to purchase one type of services as a bundle or tied with another type of goods or services where this has the purpose, or has, or is likely to have the effect, of substantially reducing competition.

**PART FOUR: COMPLIANCE AND ENFORCEMENT**

**Article IX. COMPLIANCE MEASURES**

**COMMISSION POWER TO MAKE RECORD KEEPING RULES FOR ADDITIONAL REPORTING**

(1) The Commission, under its mandates granted by Order 65, Sec. 5(2) to promulgate rules and regulations necessary and appropriate for the

competitive provisions of services in the Telecommunications or Information Service sector, including but not limited to Electronic Communications Services, including but not limited to conditions set out in the Licence Agreements under which the Commission has authorized Operators, requires all Operators to keep and retain records and prepare reports consisting of information contained in those records to the Commission at regular, specified intervals and in a specified manner and form set by Commission, in addition to such specified software and specified authentication requirements as the Commission may now or in the future specify.

### **RECORD-KEEPING REQUIREMENTS**

- (2) Consistent with the Licence Agreements and incorporated herein, without limitation or restricting in any way the relevant provisions of the Licence Agreements, any Operator must securely keep and maintain records of its:
  - (a) financial performance pertaining to its provision of Electronic Communications Services and network, including but not limited to, the net revenue generated from its network and operations for a minimum period of five (5) years;
  - (b) operational performance relating to its provision of Electronic Communications Services and network for a minimum period of one (1) year, including but not limited to:
    - i) data identifying the name, type, location (expressed in terms of latitude and longitude coordinates or physical addresses where more appropriate), and specifications for all significant Interconnection Services, Network Elements and Network Facilities; and
    - ii) all data required for the monthly and annual reporting of operational performance metrics, as stipulated in Article IX(5) of this Regulation.



### MONTHLY AND ANNUAL REPORTING OBLIGATIONS

- (3) Each Operator must submit, within 120 days of the completion of the previous calendar year, an Annual Financial and Operational Report to the Commission:
- (a) signed by an authorized representative of the Operator and the Operator's auditor; and
  - (b) containing the following mandatory content:
    - i) financial performance data pertaining to its Electronic Communications Services and network and operations, including but not limited to the gross and net revenue, total assets and equity, liabilities, profits before tax, and operating margin generated from its Electronic Communications network and operations;
    - ii) identification and discussion of material market developments during the past calendar year;
    - iii) utilization of, and trends associated with, all its service offerings;
    - iv) development of new products, functionality, capabilities and offerings; and
    - v) the network and operational performance metrics stipulated in Article IX(5) of this Competition Regulation for that 12 month reporting period.
- (4) Each Operator must submit a monthly report to the Commission within 7 days of the conclusion of each month, which shall contain:
- (a) the network and operational performance metrics stipulated in Article IX(5) of this Regulation, and
  - (b) any other information Commission requests from Operators for inclusion in their respective monthly report to Commission.

- (5) The network and operational performance metrics to be included in the annual and monthly reports described in Articles IX(3) and IX(4) of this Competition Regulation are:
- (a) minutes and/or megabytes of use (as appropriate) provided, including delineation by the type of Electronic Communications service utilized (voice, data, other), categorization of the End Customers (including by business, governmental, residential), and such other categorizations as the Operator finds necessary and appropriate;
  - (b) End Customer additions and losses;
  - (c) utilization of, and trends associated with various service offerings;
  - (d) all towers in operation, or under construction or planned (with projected in-service dates), and their cell names, site types, vendors, longitude and latitude, band, azimuth, number of radii used and effective radiated power;
  - (e) the current use of radio frequency spectrum, and anticipated future use at each transmitter site;
  - (f) any other operational performance metrics the Commission requests from Operators for inclusion in the annual and/or monthly reports.

#### **EXISTING AD HOC REPORTING OBLIGATIONS**

- (6) Consistent with the Licence Agreements, and without a specific request by the Commission, each Operator must submit to the Commission a report within 30 days of the occurrence of any of the following:
- (a) any material development affecting, or which would affect, ownership, control or management of the Operator, including but not limited to such developments as:
    - i) any proposed change in a Significant Interest in the control of

Licensee, such as its prospective sale, disposition, bankruptcy, voluntary or involuntary insolvency, threat of insolvency, transfer of managerial or voting control, or otherwise;

- ii) any proposed assignment of material assets of the Licensee;
  - iii) the filing or prospective filing of significant legal claims against the Licensee by third parties which may have a material impact on the Licensee's ownership, control, or management;
- (b) changes in the Licensee's legal form or place of registration.

## **Article X. ENFORCEMENT**

### **POWER TO DEMAND INFORMATION FROM LICENSEES**

- (1) By virtue of its powers under Order 65, Section 5(2)(k) and consistent with the Licence Agreements, the Commission may demand that Licensees, within 14 Days of Commission's notice, provide it with such information as it deems necessary for the performance of its duties under this and other regulations. Such information includes but may not be limited to commercial documents, accounts, returns, estimates and reports or other information as specified by the Commission.

### **POWER OF ENTRY, SEARCH AND SEIZURE**

- (2) Consistent with Licensees granting the Commission under the Licence Agreements, reasonable access to their records, personnel and property, or subject to a warrant issued by a competent court, the Commission will duly authorize its staff or other person(s) to:
- (a) enter the premises and other facilities of the Licensee; and
  - (b) conduct searches and make copies of technical, commercial and financial information on the premises of Licensees, including but not limited to those relating to network performance statistics, operational, pricing and financial records and other technical and

operational data as Commission requires to fulfil its obligations under the law and regulations.

#### **ENFORCEMENT OF EX-ANTE REGULATIONS**

- (3) Under its powers under Order 65, Section 9 and consistent with the Licence Agreements, on making a reasonable determination based upon substantiated evidence of an Operator's breach of the provisions of Articles IV, V (Ex-ante regulations) and IX (Reporting), the Commission may impose and enforce any or all of the following remedial or enforcement measures against the contravening Operator:
- (a) Orders of public admonishment, and/or demands for public apology to be issued by an Operator;
  - (b) Orders of public admonishment that include a public warning that Licence Agreements will be foreshortened, terminated or revoked, or that the Licence Agreement, or its rights will be suspended, unless breaches or violations are remedied within a stated period;
  - (c) fines, penalties, or compensatory damages payable by Licensees on written demand by the Commission;
  - (d) suspension or cancellation of any discounts otherwise allowable on fees payable by Licensees to the Commission;
  - (e) confiscation or seizure of Licensees' equipment, software, records or other assets;
  - (f) suspension of Licence Agreements or suspension of any of rights under these, including but not limited to the right to accept, register or connect new End Customers;
  - (g) where allowed for in the Licence Agreements, the appointment by the Commission of an Independent Manager to assume day-to-day management and control of the Operator, under the powers listed in Schedule A of this regulation; or

- (h) early termination of Licence Agreements following a substantiated finding of a gross breach of these Competition Regulations, where the Commission concludes that the nature or character of the breach or violation is such that the imposition of fines and/or monetary damages would not be sufficient under the circumstances to remedy the breach or violation.

#### **ENFORCEMENT OF EX-POST REGULATIONS**

- (4) The Commission will seek enforcement action against Licensees for violations of Articles VI, VII, VIII (Ex-post regulations) of this Competition Regulation, in a Court with Jurisdiction under the Competition and Monopoly Prevention Law as provided for under Article 15 of the Competition and Monopoly Prevention Law.
- (5) The Commission will petition the court to apply penalties for such violations of the above-cited Ex-post regulations as set out under Article 13 of the Competition and Monopoly Prevention Law.
- (6) In order to most efficiently co-ordinate its litigation involving one or more Operator under the Competition and Monopoly Prevention Law with that of the CMPC, the Commission will give written notice to the CMPC 45 days prior to, or as soon as is otherwise feasible before, commencing any litigation under the Competition and Monopoly Prevention Law

#### **Article XI. AUTHORISATIONS**

- (1) If, under Article 14 of the Competition and Monopoly Law, the CMPC delegates power to the Commission over authorisation applications in the Electronic Communications sector, or if the CMPC is unable to receive and make recommendations on authorisation applications under Article 12 of the Competition and Monopoly Law, the Commission will:
  - (a) assess any application made by an Operator seeking an authorisation to enter into an otherwise prohibited Monopoly Agreement for the fixing of Prices, availability and/or capacities or

the sharing of any market(s) or information in respect of tenders, auctions or other bidding activities of Electronic Communications Services, as described under Article VI(1) of this Competition Regulation;

- (b) recommend to a Court with Jurisdiction under the Competition and Monopoly Prevention Law that an authorisation be granted to any authorisation application the Commission approves; and
- (c) record and monitor any such Monopoly Agreements authorized by a Court with Jurisdiction under the Competition and Monopoly Prevention Law.

## **SCHEDULE A      POWERS OF THE INDEPENDENT MANAGER**

An Independent Manager may be appointed by Commission to manage an Operator under circumstances defined in Article 10(3).

The Independent Manager shall have the following powers

- (d) Power to carry on the business of the Operator in accordance with this Competition Regulation and to give directions to officers of the Operator on actions to be taken by them in connection with the operation of the Operator's business.
- (e) Power to do all acts and to execute, in the name of and on behalf of the Operator, any agreement, receipt or other document.
- (f) Power to bring or defend any action or other legal proceedings in the name of and on behalf of the Operator.
- (g) Power to collect all and retain all the Operator's Gross Revenues.
- (h) Power to pay himself remuneration and expenses out of the Operator's Gross Revenues.
- (i) Power to raise or borrow money and grant security therefor over the property of the Operator.
- (j) Power to refer to arbitration any question affecting the Operator.
- (k) Power to take out and maintain insurances in respect of the business and property of the Operator.
- (l) Power to appoint consultants or professionally qualified persons to assist him in the performance of his functions.
- (m) Power to appoint and delegate any of his powers to any agent in order to permit that agent to carry on any business which he is unable to do himself or which can more conveniently be done by an agent.
- (n) Power to employ and dismiss employees consistent with the

provisions of applicable law in respect of employment.

- (o) Power to do all such things (including the carrying out of works) as may be necessary for the realization of any property of the Operator.
  - (p) Power to commence and/or complete any building operation or improve any asset and to apply for and maintain any permission, approval or any other authorization.
  - (q) Power to make any payment which is necessary under this Licence Agreement or otherwise incidental to the performance of his functions.
  - (r) Power to make any arrangement or compromise on behalf of the Operator.
  - (s) Power to do all other things incidental to the exercise of the foregoing powers.
  - (t) Power to wind-up and/or dispose of the business.
- (1) Additional Provisions:
- (a) The Licensor may fix the remuneration of the Independent Manager.
  - (b) The Independent Manager will be deemed to be the agent of the Operator for all purposes. The Operator is solely responsible for the contracts, engagements, acts, omissions, defaults and losses of the manager and for liabilities incurred by the Independent Manager.
  - (c) The Licensor will not incur any liability to the Operator by reason of the appointment of the Independent Manager.
  - (d) The Independent Manager shall remain in office following his appointment until service of written notice by the Commission bringing his appointment to a close.