

Issue: Draft for Consultation



REPUBLIC OF LEBANON
**TELECOMMUNICATIONS
REGULATORY AUTHORITY**

Draft Pricing Regulation

30 April 2008

This Consultation is issued by the Telecommunications Regulatory Authority of the Republic of Lebanon and is made publicly available via its web site to allow interested parties to provide their views on the issues that it raises. Anybody who wishes to do so should respond in writing to the Authority during the public consultation period. Responses must be received no later than 5.00pm on July 31, 2008.

The address for responses to this Consultation is:

Telecommunications Regulatory Authority
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Attention: The Chairman

Alternatively, e-mail responses may be sent to the Authority's e-mail address at pricing@tra.gov.lb or by fax to +961 1 964 341

The Authority may publish the comments as received unless respondents explicitly ask that their responses be treated as confidential, in total or in part. If any party wishes to have the whole of its submission withheld, it should state that clearly at the beginning of the submission. If the respondent wishes to have some parts withheld, it should put them in separate annexes and clearly mark them as such.

The Authority reserves the right to amend, withdraw or expand the proposals included in this Consultation, to reflect comments received, or following any subsequent market analysis as well as assessment of competition in different markets.

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1 Introduction

1.1 Background

This Consultation, issued by the Telecommunications Regulatory Authority of Lebanon (the Authority) in accordance with the Telecommunications Law - Law No. 431 of 2002 (Telecommunications Law), is designed to assist potential and current market participants in this sector by providing for consultation an overview of the Authority's proposals in relation to tariff regulation of both Service Providers with Significant Market Power (SMP) and those without.

1.2 Legal Basis

1.2.1 The Authority's Mandate and the Telecommunications Law

The Telecommunications Law provides for the regulation, by the Authority of the telecommunications sector, mandating it, among other things, to regulate and monitor tariffs, and ensure market transparency. In developing its policies in this area and in setting up the appropriate rules, the Authority may also make reference to the competition principles and laws of other countries.

The Telecommunications Law provides for the development of an open, competitive market that will lead to increased penetration of telecommunications services, lower prices, improved efficiency, and enhanced quality and choice.

To this end, the Telecommunications Law has given the Authority a clear mandate, among other things, to:

- a. establish an open, clear and transparent regulatory framework that minimizes legal, regulatory, and other barriers to entry;
- b. promote competition in the telecommunications sector;
- c. monitor and approve the prices and terms and conditions of services offered by Service Providers with SMP;
- d. determine and collect fees pursuant to the provisions of the Telecommunications Law;
- e. monitor and prevent practices that would restrict competition;
- f. review agreements or contractual relationships (e.g., interconnection agreements), particularly involving Service Providers with SMP, to ensure that they will not restrict, undermine or distort competition; and
- g. take all necessary measures, whether preventive or remedial to protect competition and ensure a sustainable competitive market.

The concept of tariff regulation that is used in the pricing provision of the Law (Article 28) is threaded through other sections of the Law, including provisions relating to Significant Market Power (Article 30) and interconnection (Article 29).

While Service Providers with SMP are understandably singled out for greater attention, the Authority, under the Telecommunications Law, can take other measures deemed necessary to promote competition, in addition to imposing restrictions on Service Providers with SMP.

1.2.2 The Authority's Jurisdiction in the Context of Other Relevant Laws

Given the interrelated nature of markets for goods and services, the Authority understands that its rulings and actions concerning potentially anti-competitive conduct and, in particular, SMP are liable to affect and be affected by the standards and actions of other relevant governmental bodies and institutions.

The Telecommunications Law as the *lex specialis*, shall take precedence over other generally applicable current laws that apply. The Authority considers that it shall have the primary jurisdiction over price regulation and potential anti-competitive pricing for telecommunication services. In all other cases, where appropriate, the Authority will coordinate its actions with the relevant governmental body(ies) involved and/or refer appropriate complaints, investigations or cases to such bodies.

The Authority notes that it may have shared jurisdiction over competition issues with regulatory bodies that may be created by virtue of a competition act which is under consideration by the Government of Lebanon. Such a competition act is expected to set generally applicable rules for all markets and designate an appropriate regulatory body with powers to investigate and redress anti-competitive conduct. Insofar as the provisions of the Telecommunications Law constitute a more specific and more extensive basis for both preventive (*ex-ante*) and remedial (*ex-post*) action, the Authority will assert primary jurisdiction in competition cases involving persons and services subject to its jurisdiction under the Law. Where there are cases that affect but are not part of the telecommunications sector, the Authority will seek to coordinate its actions with the appropriate competition regulator.

1.3 Definitions

Unless otherwise defined and unless the context requires otherwise, any word, phrase or expression used in this Regulation shall have the meaning given to it in the Telecommunications Law.

1.4 Application of this Regulation

Except for section 5, all provisions of this Regulation apply only to Public Telecommunications Services and providers of such services. Section 5 applies to all Telecommunications Services and all Service Providers, i.e., including both Public and Private Telecommunications Services and providers of such services.

Public Telecommunications Services are defined in the Telecommunications Law as "generally available Telecommunications Services provided to the public or to a group of persons, including Basic Telephony Services". References to "Service Providers" throughout this Regulation (other than section 5) are only to those providing Public Telecommunications Services.

Private Telecommunications Services are defined in the Telecommunications Law as “Telecommunications Services provided to specific groups of Users either within the premises of a single building or contiguous facilities, or within the premises of non-contiguous buildings by way of connection via a private line service for transmission and reception by one Person or by his employees or otherwise by different Persons belonging to one group or their employees.”

1.5 Tariff Principles

In developing the proposals contained within this Consultation, the Authority has had regard to the following principles related to tariffs¹ of telecommunications services.

- a. Service Providers in the Republic of Lebanon shall have certain obligations with respect to their tariffs for telecommunications services:
 1. Unless otherwise determined by the Authority, the tariffs of all wholesale and retail services offered by Service Providers shall be published according to guidelines set out by the Authority
 2. Unless otherwise determined by the Authority, Service Providers shall notify to the Authority the introduction of a new service or a change in the tariff of an existing service
 3. Tariffs of services offered by Service Providers could form part of *ex post* competition investigations should the Authority deem that there are features of a tariff within a relevant market that potentially have the effect of materially preventing or distorting competition
 4. The Authority reserves the right to regulate prices of those basic telephony services deemed as having, for reasons such as affordability or social inclusion, a universal service obligation (USO)
- b. If a Service Provider is designated as having Significant Market Power (SMP) in a relevant economic market², the Service Provider's service offerings which fall within that market will incur additional obligations, the degree of which will depend on the outcome of market analysis and assessment exercises undertaken by the Authority. Such services are deemed Designated Services:
 1. The prices of Designated Services shall be cost oriented, reflecting legitimate and efficiently-incurred costs, based on principles of cost causation;
 2. The tariffs of all Designated Services shall be transparent, non predatory (in relation to price) and not unduly discriminatory;

¹ For the avoidance of doubt a ‘tariff’ refers to the price of a telecommunications service and all the relevant terms and conditions that apply to that service

² The procedures by which the Authority will analyse the relevant markets have been outlined in the SMP Regulation issued by the Authority

3. Unless otherwise determined by the Authority, the tariffs for a Designated Service shall be *ex ante* approved by the Authority with reference to the cost of providing the services; and
4. A price for a Designated Service may be subject to further *ex ante* pricing obligations including, but not limited to, an appropriate method of price control.

Furthermore, while the Authority considers that regulatory intervention in wholesale markets is preferable to intervention in retail markets, until measures taken at the wholesale level³ can effectively support the development of competition at the retail level, through, for example, the introduction of service based competition, the Authority may apply obligations on Service Providers with SMP to offer retail services under certain price conditions.

1.6 Purpose of this Consultation

This Consultation presents the Authority's proposed approach to tariff regulation, including obligations requiring Service Providers to notify the Authority of the tariffs for services they offer and the manner by which they shall publish such tariffs. Outlines of potential methods of *ex ante* regulation for Designated Services (such as cost based pricing, price approval requirements and implementation of price controls), are also provided.

Following this consultation, the Authority intends to consult further and in more detail on additional pricing obligations likely to be imposed on SMP Service Providers.

1.7 Structure of this Consultation

This Consultation is structured as follows:

- a. Scope of Tariff Obligations;
- b. Structure of Tariffs;
- c. Tariff Filing Requirements;
- d. Anticompetitive Prices;
- e. Tariff Publication;
- f. Billing; and
- g. Interim Pricing Measures.

³ Obligations in the Interconnection Regulation for SMP Service Providers to submit a Reference Interconnection Offer for approval cover the wholesale market.

2 Scope of Tariff Obligations

2.1 Background

The Authority recognises that where its market analysis reveals that competition is not effective in relevant economic markets it may be necessary to impose remedies relating to the tariffs offered by Service Providers with SMP in those relevant markets. The regulatory intervention may be relatively light, such as an obligation that prices be fair and reasonable, or heavier, such as an obligation that prices are cost oriented (as proposed in this Consultation). In particular, operators with Significant Market Power may be subject to obligations concerning price controls and/or cost accounting (including cost orientation of prices and details of the cost accounting methodology by which they should be calculated), to ensure that a lack of effective competition does not result in consumer detriment or anticompetitive conduct. Furthermore, in order to advance its understanding of the market and to maintain its role as a protector of consumers through ensuring the continued provision of services to all sectors of Lebanese society, the Authority considers that it will be necessary that all Service Providers be subject to some basic obligations, for example, relating to tariff filing and publication.

2.2 Services Subject to Tariff Obligations

2.2.1 All Service Providers

Obligations shall apply to both retail and wholesale service tariffs of all Service Providers. Retail services are those offered to end users, both residential and non-residential. Wholesale services are those offered by one Service Provider to another Service Provider, which include, *inter alia*, interconnection services as well as the provision of other services such as resale of network capacity, access or minutes.

Unless otherwise determined by the Authority, the tariffs of all services offered by Service Providers shall be subject to the following obligations. For the avoidance of doubt, the Authority intends that these will apply irrespective of whether or not a Service Provider has SMP in a relevant market:

- a. New tariffs and/or changes to existing tariffs shall be filed with the Authority. Further details on the procedure for filing of tariffs are given in Section 4 of this Consultation; and
- b. Service Providers shall publish all tariffs, as described in Section 6 of this Consultation.

In addition, as outlined in section 5 of this Consultation, tariffs of services offered by Service Providers could form part of *ex post* competition investigations should the Authority deem that there are features of a relevant market that potentially have the effect of materially preventing or distorting competition.

Finally, the Authority reserves the right to regulate prices of those basic telephony services which fall under any universal service obligation (yet to be determined by the Authority) so that the prices of the relevant services shall promote the availability and affordability of these services to all of Lebanese society. The Authority shall consult further on its proposed approach to universal service.

2.2.2 Additional Obligations on Service Providers with Significant Market Power

Where a service is offered by a Service Provider with SMP in a relevant market, further obligations shall be applied to the tariffs for that service. Such services (which could include both retail and wholesale services) are deemed Designated Services.

2.2.2.1 Designated Services – Cost based prices

Prices of Designated Services should be based on justified and efficiently-incurred costs reflecting the principles of cost causation. Cost causation implies that the cost of the service reflects as closely as possible the cost of the individual elements that are used by the service and are based on observable elements that constitute the service. Cost based prices for Designated Services are expected to provide efficient signals to new and existing operators regarding investment decisions and allow them to make informed business decisions based on transparent pricing mechanisms.

In general, cost based retail prices usually employ a Fully Allocated Costing (FAC) methodology and consist of network (e.g., transmission, switching, etc.) and retail costs (e.g., customer service centre, customer billing, etc.). Such estimates of cost will include an allowance for the Service Provider to earn a reasonable return on the capital employed in providing that service (i.e., its cost of capital).

Cost based wholesale prices may employ either a FAC costing methodology (for example, for wholesale leased lines or wholesale internet access) or any methodology derived from the Long Run Incremental Costing (LRIC) methodology (for example for interconnection prices - although before the development of LRIC models, a FAC methodology may be employed). At very early stages it may also be necessary to rely on benchmarking of costs pending the development of costing systems and information. Wholesale prices consist of both network (e.g., transmission, switching, etc.) and wholesale costs (e.g., technological support centers, operator billing, etc.). Again, such estimates of cost will include an allowance for the Service Provider to earn a reasonable return on the capital employed in providing that service (i.e., its cost of capital).

In contrast to retail services, the likelihood of competition in the provision of some wholesale services (for example laying transmission capacity in a city) is quite low – given the nature of entry barriers and the level of sunk costs involved – therefore accurate estimation of wholesale costs is very important. The Authority considers that wholesale prices that are not cost reflective may violate the principle of no undue discrimination. For example, pricing wholesale services above costs may result in prices that unduly discriminate against those Service Providers who will use wholesale services provided by a vertically integrated Service Provider with SMP to compete with the same provider in retail markets.

In either the wholesale or retail market, the Authority may require a SMP Service Provider to prepare a cost analysis to justify its prices as an effective and necessary means of preventing anti-competitive cross-subsidization or otherwise preventing an abuse of the Service Provider's SMP position with respect to its prices.

Details of obligations for the necessary cost analysis will be given in the Accounting Separation and Costing Regulation to be issued by the Authority and relating to the:

- a. Method(s) to be used to allocate costs to services
- b. Types of costs which will be allowed to be included and excluded from certain services
- c. Format of the Separated Accounts
- d. Timeframe for cost studies to be carried out

Q1 What is your view of the need for cost-based pricing for SMP operators especially in relation to the time and resources required to implement cost based pricing and its accompanying regulatory price regime (e.g. publication of an account procedures manual, submission of separated accounts, assessment of separated accounts, etc.)?

Q2. What is your view on setting a strict cost-oriented pricing regime in wholesale markets?

2.2.2.2 Designated Services – Approval Requirements

Service providers with SMP shall submit tariffs for Designated Services to the Authority for prior approval. This will apply both to the introduction of a new service, where such a service is deemed by the Authority to be a Designated Service, or a change in tariff of an existing Designated Service. The Authority provides below a summary of its proposals in this area and, in addition, expects to publish a separate consultation document on a retail price approval process for Designated Services of SMP Service Providers.

When a Service Provider submits, for approval, a tariff for a Designated Service, it shall submit for assessment all information which is relevant and necessary for the Authority to undertake its review. Such information includes, without limitation, information relating to a description of the service (including its terms and conditions and price) and likely market impact, cost structure (details of the cost requirements relating to prices will be presented in more depth in an Accounting Separation and Costing Regulation to be issued by the Authority), as well as a technical description for the operation of the service (e.g., what infrastructure it has, what spectrum it utilizes if any, etc.). Where the application relates to a change in a service, the Service Provider will identify clearly all changes it proposes to make compared to the existing service.

Where directed by the Authority, such information shall be submitted in such a form and manner as to be determined by the Authority (for example, as a hard copy and/or an electronic version of a specified format delivered either through email or an online form that may be developed by the Authority on its website). The Authority will acknowledge receipt of the submission in a timely manner.

The Telecommunications Law (Art 28(4)) allows the Authority sixty (60) days in which to raise any objections to the prices and terms of a Designated Service offered in a retail market and notified to it by a Service Provider. The Authority will count this period from the date of receipt of the prices and terms. In all instances where the prices and terms of such a Designated Service are submitted for prior approval to the Authority, the Authority will issue a written decision (which may constitute an outright approval, an outright rejection or a request for further information) to the Service Provider within the required 60 day time period. Although the Authority will attempt to avoid any such occurrences, absence of a written decision by the Authority, on expiration of the mentioned 60-day period, shall be deemed as an implicit approval of the new prices and terms of the service.

However, for the submission for approval of a Designated Service which will be introduced, or currently exists, in a wholesale market, the Authority will refer to the Interconnection Regulation which allows a service submitted as part of the Reference Interconnection Offer (RIO) to be approved within Ninety (90) days. Unless otherwise stated in the Interconnection regulation, for any new wholesale services submitted to the Authority for approval, the Authority will issue a written decision (which may constitute an outright approval, an outright rejection or a request for further information) to the Service Provider within the required 60 day time period.

As mentioned above, during the assessment process of any Designated Service, the Authority may write to the Service Provider requesting additional information and in certain circumstances may place the price assessment process on hold until the requested information is received. If the Authority requests further information, the Service Provider must submit the information within a timely period. However, in order that approval applications do not remain pending for long periods, the Authority may place a maximum time limit (for example 3 months) on the receipt of any further information. The Authority will outline a maximum time limit in more detail in its Pricing Regulation.

A Service Provider designated as having SMP shall not, for the relevant market, introduce any new Designated Service or change the terms and conditions including prices of an existing Designated Service without the prior approval of the Authority, unless the specified time period for the Authority's response has expired and no approval/rejection/request for further information has been received, in which case the proposed service can be changed/introduced.

For Designated Services which are promotional and of a short term, non-recurrent nature (for example services introduced for less than one month and which have not been implemented in a similar format during the past 6 months) the Authority may waive the requirement for approval before introduction; although the Authority may still require the Service Provider concerned to submit written justification for the proposed promotional tariff within a predefined period (for example seven (7) days) prior to the service launch. The Authority expects to issue further guidance on promotional Designated Services in the near future.

Q3. What are your views on the procedures outline above for the introduction of a tariff approval process for all designated services of SMP operators?

Q4. Do you think a tariff approval process as outlined above is sufficiently flexible to allow the development of price competition in Lebanon?

Q5. What are your views in relation to removing the requirement to seek approval of tariffs relating to short-term promotions?

Q6. Should an approval process also apply to Service Providers that may not be already designated as SMP in a relevant market, but who gain a short-term degree of market power through for example the introduction of a new technology or from a first-mover advantage in an emerging market? If so, should this process be similar to the process described above?

2.2.2.3 Designated Services – Price Controls

A Service Provider having SMP in a relevant retail economic market may want to set and/or maintain prices at a level higher than they would be if competition (at either the wholesale or retail levels) was effective. In the absence of competitive pressure, such prices will be to the detriment of end users.

Therefore, the Authority can take some retail price control measures, potentially in the form of a price cap, to constrain the pricing of operators who are found to have a position of SMP in a relevant retail market. A typical way of applying a price cap is to use a broad cost or retail price index as a proxy for general costs in the country and to deduct a certain figure, usually denoted by X, so as to adjust prices to reflect expected company specific productivity improvements. Such a measure is usually known as an RPI-X or CPI-X control (depending on the price index used to capture overall price trends (RPI: Retail Price Index, CPI: Consumers Price Index)).

RPI-X type measures are not short term control mechanisms, with the usual span of control before review being in the order of 3-5 years. The length of any price control will affect the Service Provider's incentive to improve its operating (and capital) efficiency although it could potentially delay the transfer of these gains to consumers. In addition, the appropriate length of a price cap is likely to be determined by the development of the market over the course of the control and the availability of reliable forecast information on which to base it.

The Authority considers that there are three key objectives to the use of price controls to correct pricing distortions in the market.

2.2.2.3.1 Retail Price Controls – Excessive Pricing

A key objective of any price cap on services is to provide consumers with protection against any potential exploitation of significant market power, such as excessive pricing.

This can be achieved through the aforementioned RPI-X value applied to the respective basket of telecommunications services. The RPI-X rate will be applied to the prices of a basket of services, which will be required to change by less than the RPI-X level every year from their (average) levels the previous year – this will ensure that the regulated company cannot increase price levels above the 'cap' specified by the price cap rate. In fact, the fall in price may be greater as a result of competitive pressures resulting from market entry and expansion.

In addition, sub-caps can be applied to individual services, in order to constrain the extent of any price increase on particular services. Such sub-caps are often used as a method of managing any requirements for tariff rebalancing.

2.2.2.3.2 Retail Price Controls – Price Rebalancing

Price controls may be implemented to allow the incumbent fixed operator, if appropriate, to rebalance its prices to become more cost reflective in an orderly and controlled manner. Prices for basic telephony services have been historically set throughout the world in a way that is not cost-reflective, resulting in some services –typically access services (line rental, local calls)- often being priced below cost while other services –typically long distance and international services- are priced above costs.

Price rebalancing becomes important when new competitors are licensed and enter the market. Large differences between the costs of providing a service and the price offered by the incumbent operator become an opportunity for new entrants. Operators naturally choose to enter markets where there are revenues (and profits) that can be captured easily, whereas the incumbent operator may have a public commitment to provide service at set rates which do not cover costs. The incumbent operator then has the potentially conflicting goals of matching competition in these markets whilst maintaining loss making service offerings in non-competitive markets.

The key problem in rebalancing such prices is in increasing some prices (for services priced below cost) without making the services unaffordable to the Customers who are already receiving them. Price rebalancing will require an emphasis on the affordability of access and will need to consider measures to minimize the impact on low income and vulnerable consumers in order to ensure that all sectors of Lebanese society can obtain basic telecommunications services.

The Authority will, in due course, examine whether there is a need for tariff rebalancing in Lebanon, focusing in particular on the provision of basic fixed line services offered by Liban Telecom, and until such time the Ministry of Telecommunications.

2.2.2.3.3 Retail Price Controls - Incentive Regulation

The final key objective for the introduction of price controls is to incentivize the Service Provider to be more efficient, in that if it manages to reduce its costs by more than the value of X set for the basket, then it will, at least for the period of the control, be able to keep the additional profits that result. Such a target based cost incentive has had very effective results in a number of telecommunication markets around the world as well as in other utility industries where this form of control has been applied.

The Authority will issue a public consultation document regarding the mechanism for the price regulation of an SMP retail services provider. The consultation will discuss the relevant issues for price cap including, but not limited to;

- a. Duration of an initial price cap period
- b. Services to which the price cap method of regulation would apply
- c. Date on which the initial price cap period would end

- d. Number of price cap baskets and the services which would be in each basket
- e. Price cap formula and the variables in the formula, including an inflation factor and a productivity factor (X)
- f. Application of the price cap to retail and/or wholesale services
- g. Preservation of the affordability of access to Public Telecommunications Services
- h. Implications for a tariff approval process of services within a proposed price cap⁴

Q7. What is your view on the use of price controls such as price caps to control prices of designated services? Under what circumstances would this be better left to competition and new entry?

Q8. What other price control mechanisms might be used to control prices of designated services that may be preferable to a price cap approach, and if so why?

Q9. In general, what do you consider to be the benefits, and costs, to bringing about rebalancing of prices through the use of mechanisms such as price caps?

Q10. What other forms of incentive regulation, such as tying the removal of SMP obligations in certain retail markets to the introduction of cost-based 'fit for purpose' wholesale products, could be introduced by the Authority?

⁴ An approval process of services within a price cap may be limited to, for example, assessing pricing below cost rather than excessive prices.

3 Structure of Tariffs

This section provides the Authority's current views in relation to a range of different elements of pricing structure applicable to Service Providers.

3.1 Charging Periods

All Service Providers may differentiate their prices by time of day or the day of week as long as the 24 hour average charge reflects the cost of provision for Designated Services.

Calls which straddle charging periods shall be charged according to the actual time spent in each period.

3.2 Time Based Charging

All calls, except those to which specific number ranges detail as having a per call (fixed rate) price, shall be charged on a per second basis. Where an existing Service Provider does not charge on a per second billing basis, the Authority may agree an implementation date for such charging.

3.3 Non-time based charging

All volume triggered or transaction triggered prices for Designated Services should be based on their underlying cost of provision.

3.4 Fixed Rate Charging

Calls to fixed rate numbers, where calls are charged on a per call basis shall be charged only for successful calls⁵.

3.5 Call Set Up Charges

If used, any call set up charges which are applied in addition to time based charges shall only be applied to successful calls. Such charges will have to be cost justified and cost oriented for services offered by SMP Service Providers⁶.

⁵ A successful call is one where a voice or data path is established between an end user and another end user and the call is answered (including instances where an answering machine, fax, or other equipment of the called party answered the call).

⁶ The Authority is aware of current practices of signalling through the use of unanswered calls. While unanswered calls do use network resources and hence on this basis an unsuccessful call attempt could be charged the Authority does not know of charging for unsuccessful calls occurring in any other jurisdictions. The Authority will continue to monitor the situation in relation to signalling.

3.6 Minimum Call Charge

Providers may apply a minimum call duration or minimum call charge within their prices. For Designated Services, such a minimum charge shall be detailed in the price submitted to the Authority who will consider whether such a charge is reasonable and cost justified.

3.7 Emergency Services

End users shall not be charged a fee for calls to Emergency Services or other such services that the Authority will define.

Wholesale access to Emergency Services may incur a charge between Telecommunications Providers.

3.8 Geographic Averaging of Prices

Prices for services required to be provided as part of Universal Service Provision shall be geographically averaged, unless otherwise specified by the authority.

3.9 Bundling of Services & Discounts

Service providers may bundle individual services together into price packages, subject to satisfying the Authority that bundling of services that include Designated Services have no anticompetitive effects relating to, for example, one or more services in the bundle being provided below cost or leveraging of market power of an operator from a non-competitive market into a competitive market.

Providers shall also ensure that the service elements within a bundle are available in such a way that Customers are not obliged to purchase services as part of the price package that they do not require.

In assessing whether a bundle of services may be priced anti-competitively, the Authority will have regard to whether or not the bundle can be replicated by another provider. For example, assuming that in order to replicate the bundle, other providers have to access upstream (wholesale) inputs from the (SMP) provider of the bundled services, the Authority will have regard to whether, using those wholesale inputs, a reasonably efficient provider could compete with the bundled offer. However, where a bundle is offered by a provider that is not dominant in either relevant wholesale or retail markets, the Authority will apply an a priori assumption that such a bundle is not anti-competitive. Service providers not designated as having SMP in a market may, then, offer services in such market bundled with other services without requiring the Authority's prior approval.

Service providers may offer promotional discounts or volume discounts providing that in doing so for Designated Services, they satisfy the Authority that such discount offers are based on genuine costs savings and that they have no anti-competitive effects.

Q11. The Authority wishes to receive comments on any of the principles relating to the structure of prices as set out in the section.

4 Tariff filing requirements

The Authority considers that it is essential that tariffs for telecommunications services offered by licensed providers are generally filed with the Authority to inform it of market developments so it may be kept up-to-date with market trends, and to be able to assess the effectiveness of sectors policies. The Telecommunications Law (Article 28) requires that all prices of Public Telecommunications Services be filed with the Authority. Therefore, the Authority proposes to impose a tariff filing obligation on all Service Providers, irrespective of whether or not they are in a position of SMP in a relevant economic market, unless otherwise determined by the Authority.

Under this requirement, the following information (without limitation) regarding the introduction of a new service or a change in the tariff of an existing service shall be provided to the Authority:

- a. Name and address details of the provider including contact details of the individual responsible for the tariff in case the Authority needs to contact the provider regarding the submission;
- b. The nature of the service concerned (i.e., retail or wholesale);
- c. A short description of the service concerned, including a technical description of its operation (for example infrastructure deployed and/or spectrum used);
- d. The effective date of the tariff;
- e. The price for the services, including usage, recurring and one off charges, any deposits required, any bundling of services with other services; and
- f. The terms and conditions for the service;

Any discounts or promotions filed by providers shall be highlighted in the submission, including details of the duration of the discount or promotion, the extent of the discounted price, and any restrictions on the availability of the discount or promotion as shown in the terms and conditions of the price.

The information shall be received by the Authority within a predetermined time period (for example, seven (7) days) before the planned implementation date of the service and shall be submitted in such a form and manner (for example, as a hard copy and/or an electronic version of a specified format delivered either through email or an online form that may be developed by the Authority on its website) as determined by the Authority. The Authority will acknowledge receipt of the tariff information within a timely manner.

Unless it has significant concerns regarding a particular tariff, the Authority does not intend to impose any further obligations above the aforementioned price filing requirement. However, if such concerns arise, the Authority may write to the provider requesting additional information or that the service/tariff not be introduced until the Authority has further investigated its concerns.

The Authority will ensure the confidentiality of any information provided as part of the filing process, until and after tariffs are formally published by the provider.

The Authority is however aware that in practice, the proposals it has set out above in relation to tariff filing procedures overlap significantly with its proposed tariff approval process for Designated Services. In order to reduce the regulatory burden on providers of Designated Services, the Authority proposes that tariff filing requirements for Designated Services will be deemed to have been met as part of the tariff approval process for such services. In such cases, in their submission of a tariff for approval, providers will be required to notify the Authority of the date at which the approved Designated Service tariff is to be introduced.

The Authority recognises that there may be specific circumstances in which the filing of a tariff may not be practicable or desirable, for example where a competitor needs to react very quickly to a rival offer, or where rival providers are competing through a competitive tender to offer a range of services to the corporate or the public sector. It is therefore minded to allow exemptions from the above filing rules subject to the requirement that a provider seeking the exemption satisfying the Authority that filing would not be practicable or would undermine the competitive process.

The Authority will consult further on the form and structure of the tariff filing requirement of non-SMP operators within the context of its proposed consultation on a tariff approval requirement for SMP operators.

In its discretion, the Authority may determine that specific services under certain circumstances be exempted from the tariff filing requirements.

Q12. How long before the introduction of a service should operators be required to file a tariff?

Q13. What are respondents' views on the proposed exemption process?

5 Anti-competitive Prices

The Authority reserves the right to investigate tariffs of Designated Services offered by a provider in order to establish if they have the effect of materially preventing or distorting competition. It may do this on its own initiative, or following a complaint from an end user or other provider. Should it decide to launch such an investigation, the Authority will notify the provider subject to the investigation and inform it of the suspected anti-competitive behavior. As part of such investigations, the Authority may request, in writing from the provider under investigation, and other providers as it deems appropriate, such information as will enable it to conclude its investigation, including, but not limited to further information regarding the tariff, including supporting cost data

Where the Authority issues a decision that a tariff is found to be anticompetitive, apart from any other action that the Authority may take, the tariff will be withdrawn immediately by the provider. In case the proposed tariff is a change from a pre-existing tariff, the previous tariff that might have been applicable will, unless the Authority decides otherwise, be reinstated.

Without limitation, the Authority may consider the following examples⁷ of pricing behaviors as constituting anticompetitive pricing:

- a. Undue price discrimination - an SMP provider charges a higher price (which usually is above costs) to downstream competitors than it implicitly charges to its own retail affiliate. Can be used by a vertically integrated undertaking with SMP on the wholesale market to raise its rivals' costs downstream;
- b. Cross-subsidization - in one market a price above incremental cost is charged for a Designated Service, whilst in another more competitive market, a price below incremental cost (predatory price) is charged;
- c. Margin squeeze - a provider sets a margin between its downstream retail price and upstream wholesale charge for an essential input (Designated Service) such that a reasonably efficient downstream competitor is not able to compete effectively with the provider of the Designated Service;
- d. Predatory pricing - a provider of a Designated Service sells a good or service below costs of production for a period of time, with the intention of deterring entry, or putting a rival out of business, and increasing its profits in the future;
- e. Bundling/Tying - can have anticompetitive effects if the implicit price of the tied Designated Service product is below cost and/or if the bundle cannot be replicated by competitors; and
- f. Excessive pricing - allows a Provider to sustain profits higher than it could expect to earn in a competitive market (super-normal profits).

The Authority may also investigate potential anti-competitive behavior relating to the terms and conditions of a service. These may include, but are not limited to:

- a. Locking Customers into long term contracts with no possibility of cancelling without heavy monetary penalties;

⁷ These examples are provided at a very high level and do not constitute an exhaustive list or description of the elements that would make such actions anti-competitive.

- b. Offering discounts related to the volume of purchases made and which are not based on genuine cost savings;
- c. Tying the supply of one product to the purchase of another; and
- d. Offering terms and conditions to a group or person who meet predefined criteria whilst not offering the same terms and conditions to another group or person who also meet the required criteria.

Q14. What other forms of anti-competitive price and non-price measures do you think may emerge as the market develops?

6 Price Publication

The Authority intends to consult further on possible obligations in the area of price publication, save where it is already mandated by licences or regulations, including obligations currently under the Consumer Affairs Regulation where Service Providers are required to:

- a. Maintain a complete and up to date schedule of their retail prices and standard terms and condition on their official web site;
- b. Communicate full terms and conditions as well as prices to all new users on the provisioning of a service; and
- c. Publish prices for premium rate services wherever the service is advertised, including print and broadcast media.

Further, providers with SMP who have an obligation to publish a Reference Interconnection Offer, having their prices for wholesale services published on their website as well as the Authority's website.

Providers will be allowed to publish approved prices to their end users in advance of their implementation, as long as it is clear as to the date that such prices shall be implemented. However, it should be made clear that providers must not advertise in any form or manner prices that have not been approved or are the subject matter of an approval application with the Authority.

The Authority recognises that, as with tariff approval, there may be specific circumstances in which the publication of a tariff may not be practicable or desirable. It is therefore minded to allow exemptions from publication obligation subject to a provider seeking the exemption satisfying the Authority that publication would not be practicable or would undermine the competitive process.

Q15. The Authority invites comments on any of the issues relating to the publication of prices.

7 Billing

The Authority under the Consumer Affairs Regulation, requires that all providers shall issue bills which are:

- a. Clear, establishing verifiable charges in a format that can be easily compared;
- b. Complete, so Customers can confirm or challenge calls, payments and late charges;
- c. Detailed, containing a list of all calls the Customer made which includes the following minimum information: the date of the call, the start time of the call, the number called, call duration and the price of the call (whether per minute, per second, per usage, or per capacity); and
- d. Itemized as to national and international usage, monthly subscription fees, premium rate or value-added services charges, Internet subscription and usage fees, packet-switched data services and directory assistance fees, without additional charge.

Service Providers will be allowed to offer online itemized bill display, bill downloads and electronic bill payment.

Service Providers shall be required to retain billing records for a period of no less than 10 years as per the Lebanese applicable legislation (Trade Law) with a view of settling disputes, including but not limited to billing disputes.

Q16. The Authority invites comments on any of the issues relating to billing.

8 Interim Pricing Measures

The Authority is aware that regulatory controls and the implementation of cost-oriented pricing on SMP Service Providers may take a prolonged period of time to take effect. Therefore, in the interest of consumer welfare, the Authority considers that it may be necessary to impose short-term retail pricing obligations on Designated Services. Such interim measures would be designed to deal specifically with issues such as:

- a. Charging excessive retail prices and the reflection of any removal of taxes to retail prices;
- b. Showing undue preference or undue discrimination vis-a-vis specific end-users; and
- c. Potential margin squeeze and other anti-competitive behavior.

These interim pricing measures may take the form of:

1 Retail-minus pricing for wholesale services

A retail minus approach is used in practice to derive an upstream (wholesale) price from a price of a service provided further downstream. The classical form of retail minus price is calculated on the basis of deducting from the Service Provider's retail price and the additional costs it incurs in providing a retail, as opposed to wholesale, price:

$$P_a = P_r - C_r$$

Where P_a is the wholesale price, P_r the retail price, and C_r the Service Provider's costs at the retail level.

As the wholesale price is calculated as the retail price minus the retail costs of the Service Provider, an excessive retail price will automatically feed into an excessive wholesale price. A retail minus approach should, therefore, not be applied in cases where the problem of excessive prices is a concern.

A retail-minus approach may, however, be used as an interim measure to prevent a Service Provider from exposing its competitors to a margin squeeze, as it links explicitly wholesale and retail prices.

2 Benchmarking

Benchmarking can be used for the purpose of setting either retail or wholesale charges and in some cases, can tie the price in one market to the price in other comparable markets (sometimes in the form of an international comparison).

Benchmarking also has a number of other valuable uses. In the context of cost oriented prices, it may be used as a cross-check on the outputs of a cost model. On the basis of a suitable comparison, it may also be used to set reasonable prices or as a cross-check on the reasonableness of a retail-minus pricing approach described above.

The relevance of the comparator figures is key to the use of benchmarking for setting of prices. If the Authority decides to impose price regulation on the basis of a comparison with other countries, it needs to have reason to believe that the overseas prices are relevant to its own case. This might not be the case if conditions prevailing on the relevant overseas market(s) were known to be fundamentally different from those which prevailed in its home market. The comparison could also be problematical if different cost standards were used in some of the other countries (e.g. some prices were cost-oriented, others not).

Q17. Should the Authority be using interim pricing measures to ensure prices are not set above the competitive level before the introduction of competition? What effect, if any, will this have on the incentive of new operators to enter markets?

Q18. If you agree that interim pricing measures should be used by the Authority to control prices in non-competitive markets, what other measures than those listed above could be used?

Q19. What other forms of pricing controls can be used in the interim to ensure that prices of designated services are cost reflective until cost based pricing is implemented?

Next Steps

This document is issued by the Telecommunications Regulatory Authority of the Republic of Lebanon and it is made publicly available via its web site so that interested parties may provide their views on the issues that it raises. Anybody who wishes to do so should respond in writing to the Authority during the public consultation period. Responses must be received no later than **5.00 pm on July 31, 2008**.

The address for responses to this Consultation is:

**Telecommunications Regulatory Authority
Marfaa 200, Building
Beirut, Lebanon**

Attention: The Chairman

Alternatively, e-mail responses may be sent to the Authority's e-mail address at **pricing@tra.gov.lb** or by fax to **+961 1 964 341**

The Authority may publish the comments as received unless respondents explicitly ask that their responses be treated as confidential, in total or in part. If any party wishes to have the whole of its submission withheld, it should state that clearly at the beginning of the submission. If the respondent wishes to have some parts withheld, it should put them in separate annexes and clearly mark them as such.