



REPUBLIC OF THE UNION OF MYANMAR  
MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY  
UNION MINISTER'S OFFICE

## Competition Rules

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December 23, 2013



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## PART I. PRELIMINARY

### 1. Citation

These Rules may be cited as the "Competition Rules for the Telecommunications Sector of the Republic of the Union of Myanmar, 2013."

### 2. Objective

These Rules are made to provide a regulatory framework for the promotion of fair competition in the telecommunications sector in the Republic of the Union of Myanmar and the protection against anticompetitive practices, pursuant to Chapter XI of the Telecommunications Law and all matters related thereto.

### 3. Scope

These Rules provide guidance relating to:

- a) the standards and procedures which the Department will apply in determining whether particular conduct constitutes Lessening of Free Competition for the purposes of the Telecommunications Law;
- b) what understandings, Agreement, or arrangements the Department will find to be anticompetitive, and so prohibited under the Telecommunications Law;
- c) the standards and processes which the Department will apply to define relevant markets and determine whether one or more Licensees have a Dominant Position in one or more telecommunications markets;
- d) the ex ante competitive safeguards and remedies that may be imposed on Licensees found to have a Dominant Position in one or more telecommunications markets;
- e) the Transaction review procedures to be applied by the Department;
- f) the process the Department will follow when conducting investigations and enforcing the provisions of these Rules; and
- g) the process the Department will follow to review and approve or reject Tariff applications.

### 4. Application

These Rules apply to:

- a) all Licensees and any other providers of telecommunications services in the Republic of the Union of Myanmar which shall remain subject to any conditions regarding anticompetitive conduct set out in the Telecommunications Law, other laws and regulations and their licenses.



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- b) any non-Licensee that enters into an anticompetitive Agreement with a Licensee or is party to a Transaction involving a Licensee.

## 5. Interpretation

Headings and titles used in these Rules are for reference only and shall not affect its interpretation or construction. The plural and singular forms of words shall have the same meaning.

The terms below shall have the following meanings for purposes of these Rules only. To the extent that a term is capitalized in these Rules and not defined below, the term is defined in the Telecommunications Law.

- a) "Agreement" means any form of contract, arrangement or understanding, whether or not legally enforceable, between Enterprises, and includes a decision by an association and Concerted Practices;
- b) "Bundled Services Offer" means a combined offer of telecommunications services provided by one or more Licensees under a bundled Rate or Rate formula where the offering of one or more services within the bundle is contingent on acceptance of the entire bundle and comprising one or more services.
- c) "Concerted Practice" means any form of coordination between Enterprises which involves direct or indirect contact or communication between Enterprises, the object or Effect of which is either:
  - i. to influence the conduct of one or more Enterprises in a market; or
  - ii. to disclose the course of conduct which an Enterprise has decided to adopt or is contemplating to adopt in a market, in circumstances where such disclosure would not have been made under normal conditions of competition;
- d) "Consumer" means any direct or indirect user of telecommunications services or goods or services used in conjunction with any telecommunication service, supplied by Licensee in the course of business, and includes another Licensee that purchases telecommunications services or goods or services used in conjunction with any telecommunication services supplied on a wholesale basis or as a final Consumer;
- e) "Days" means calendar Days. In computing any period of time described in these Rules:
  - i. the Day from which the period begins to run is not counted;
  - ii. when the last Day of the period is a Saturday, Sunday, or holiday, the period extends to the next Day that is not a Saturday, Sunday, or holiday;
  - iii. when the Department, or another authority where a submission is due, is closed for all or part of the last Day, the period extends to the next Day on which the Department or such authority is open;



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- f) "Department" means the Postal and Telecommunications Department under the Ministry of Communications and Information Technology;
- g) "Dominant Position" or "Dominance" means a situation in which an Enterprise, either individually or jointly with others, enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors and Consumers;
- h) "Enterprise" means any Person engaged in activities relating to telecommunications services or goods or services used in conjunction with any telecommunication service, and for the purposes of these Rules, a parent and subsidiary company shall be regarded as a single Enterprise if, despite their separate legal entity, they form a single economic unit within which the subsidiaries do not enjoy real autonomy in determining their actions on the market;
- i) "Essential Facilities" are those facilities that are declared as such under Schedule 2 as revised by the Department from time to time. Essential Facilities shall be made available to competing Licensees at cost-oriented Prices and on non-discriminatory terms and conditions and must comply with the following factors:
  - i. the facilities are required to provide telecommunications services;
  - ii. an efficient new entrant would neither be able to replicate the facility within the foreseeable future, nor obtain it from a third party through a commercial transaction, at a cost that would allow market entry;
  - iii. the Licensee that controls the facility has sufficient current capacity to share with other Licensees;
  - iv. the Licensee that controls the facility has no legitimate justification for refusing to share the facility with other Licensees; and
  - v. failure to provide access to the facility would unreasonably restrict competition in a telecommunications market;
- j) "Horizontal Agreement" means an Agreement between Enterprises each of which operates at the same level in the production or distribution chain;
- k) "Infringement" means an infringement of any prohibition under the Law, these Rules, the terms and conditions of a license;
- l) "Licensee" means an Enterprise that holds a license or other authorization for the provision of telecommunications services pursuant to the Law;
- m) "Market Power" refers to the ability of an Enterprise or group of Enterprises to profitably raise and maintain Price above the level that would prevail under competition. An Enterprise or group of Enterprises may possess Market Power, but will not be in a Dominant Position in that market if they can be restrained in their conduct by rivals with comparable levels of Market Power.



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- n) "Ministry" means the Union Ministry of Communications and Information Technology of the Union Government.
- o) "MPT" means the Ministry of Post and Telecommunications in its capacity as the incumbent telecommunications service provider, or its successors;
- p) "Person" means any individual, legal entity or governmental body.
- q) "Price" or "Rate" includes any form of consideration given in return for any telecommunications service or goods or services used in conjunction with any telecommunication service, whether such consideration has actually been given or is advertised or stated as being required to be given in exchange for such goods or services;
- r) "Relevant Revenue" means the portion of the revenue that the Licensee receives from the provision of Telecommunications Services to End Users and to Other Licensees minus payments that the Licensee makes to Other Licensees for interconnection, access or wholesale services that the Licensee uses to provide those services
- s) "SSNIP" means a small, but significant and non-transitory increase in Price, generally of between five to ten percent (5-10%). In the case of market definition for the purpose of reviewing:
  - i. conduct that lessens free competition under Part II or imposing ex ante regulation pursuant to Section 19, the Department shall use the competitive Price or the regulated Price, where applicable;
  - ii. for the purpose of reviewing Transaction under Part III the Department shall generally use the prevailing Price;
- t) "Supply" includes:
  - i. in relation to goods, the Supply and resupply, by way of sale, exchange, lease, hire or hire-purchase of the goods; and
  - ii. in relation to services, the provision by way of sale, grant or conferment of the services;
- u) "Tariff" means the Rates, terms and conditions applicable to a service;
- v) "Telecommunications Law" means the Telecommunications Law of the Republic of the Union of Myanmar of 2013;
- w) "Vertical Agreement" means an Agreement between Enterprises each of which operates at a different level in the production or distribution chain.



## PART II. CONDUCT WHICH HAS THE EFFECT OF LESSENING OF FREE COMPETITION

### 6. Power of the Department to review conduct which has the Effect of Lessening of Free Competition

- a) The provision of Section [35] of the Telecommunications Law prohibits Licensees from engaging in any Conduct which has the Effect of Lessening of Free Competition in a telecommunications market.
- b) Pursuant to the provision of Sections [38] and [57] of the Telecommunications Law, in case a Licensee engages in conduct that has the Effect of Lessening of Free Competition in any telecommunications market, the Department shall conduct an investigation in accordance with Part V of these Rules and, subject to the approval of the Ministry, take such administrative actions as it deems justified.
- c) For the purpose of this Part:
  - i. "Conduct" means any action, or a lack of action, which can either actually or potentially affect the level of competition in a market;
  - ii. "Effect" means whether the Conduct has led to or may lead to substantial Lessening of Free Competition in a market.
  - iii. "Lessening of Free Competition" means a significant reduction in the level of actual or potential rivalry between Licensees in a specific relevant market. Conduct that significantly increases Market Power for a Licensee in a market will be deemed a lessening of free competition.

### 7. Guidance on Lessening of Free Competition

- a) In assessing whether any Conduct constitutes Lessening of Free Competition, the Department shall consider the:
  - i. definition of the relevant market or markets, using the market analysis methodology described in Part IV;
  - ii. impact of the Conduct on Consumers, including the availability and pricing of products and services;
  - iii. impact of the Conduct on existing competitors in the identified market or markets;
  - iv. impact of the Conduct on further market entry; and
  - v. degree of interference with competition that results in identifiable injury to competitors or Consumers.





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- b) In determining whether a particular Conduct is of the kind identified in Section 7(a)(v) of these Rules, the Department shall apply the following further considerations:
- i. the degree of Market Power of the Licensee, using the market definition and assessment of Market Power methodologies described in Part IV;
  - ii. a smaller degree of interference or injury resulting from the Conduct of a Licensee found to be in a Dominant Position may be found to constitute Lessening of Free Competition.
  - iii. The Telecommunications Law or this Part does not prohibit an Enterprise in a Dominant Position from taking any step which has reasonable commercial justification or represents a reasonable commercial response to the market entry or market Conduct of a competitor.

**8. Conduct deemed to be Lessening of Free Competition**

- a) Subject to a Licensee demonstrating otherwise in the course of any investigation conducted by the Department, the following Conduct shall be deemed to result in a Lessening of Free Competition:
- i. failing to Supply interconnection or access to telecommunications services or other Essential Facilities to a competing Licensee, in accordance with any interconnection or other Agreement between the parties or any direction, rule or order issued by the Department or Ministry, pursuant to the Telecommunications Law or the Interconnection and Access Rules, except such failure is objectively justified;
  - ii. discriminating in the provision of interconnection or access to telecommunications services or other Essential Facilities to competing Licensees, except under circumstances that are objectively justified;
  - iii. tying of telecommunications services, whereby the Licensee in question requires, as a condition of Supplying a service to a competing Licensee, that the competing Licensee acquire another service that it does not require;
  - iv. offering a competing Licensee more favorable terms or conditions that are not justified by cost differences, if it acquires another service that it does not require;
  - v. preemptively acquiring or securing Essential Facilities or scarce resources, including rights of way or access to in building wiring, required by another Licensee for the provision of its service, with the Effect of denying the use of the Essential Facilities or scarce resources to the other Licensee;
  - vi. Supplying telecommunications services at Prices below long run average incremental costs or such other cost standard, as is adopted by the Regulator;
  - vii. using revenues or the allocation of costs from one telecommunications service to cross-subsidize another telecommunications service, except where such cross subsidy is explicitly included under Tariff schemes approved by the Department for the relevant



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- telecommunications services in accordance with the provisions under Section 29 (b) of the Telecommunications Law;
- viii. failing to comply with an interconnection or access obligation related decision, direction or guideline of the Department;
  - ix. performing any of the following actions, where such actions have the effect of impeding or preventing a competing Licensee's entry into, or expansion in, a telecommunications market:
    - 1) deliberately reducing the margin of profit available to a competing Licensee that requires wholesale telecommunications services from the Licensee in question, by increasing the Prices for the wholesale communications services required by that competing Licensee or decreasing the Prices of telecommunications services in retail markets where they compete, or both;
    - 2) requiring or inducing a supplier to refrain from selling to a competing Licensee;
    - 3) adopting technical specifications for networks or systems to prevent, delay or hinder interconnection or interoperability with a network or system of a competing Licensee;
    - 4) failing to make available to competing Licensees on a timely basis, technical specifications, information about Essential Facilities, or other commercially relevant information which is required by such competing Licensees to provide telecommunications services and which is not available from other sources; and
    - 5) using information obtained from competing Licensees, for purposes related to interconnection or the Supply of access to communications facilities or services by the Licensee in question, to compete with such competing Licensees ; and
  - x. limiting or restricting the ability of a Consumer of a Licensee's service to acquire telecommunication equipment and/or services from such Licensee or from any other Licensee;
  - xi. any failure by a Licensee to comply with any decision, rule, direction or guideline issued by the Department or Ministry, regarding either prohibited or required competitive Conducts or Agreement.
- b) The Ministry may, from time to time, specify other Conduct that shall be deemed to result in Lessening of Free Competition, including those that arise pursuant to Part III.



## PART III. ANTI-COMPETITIVE AGREEMENTS

### 9. Power of the Regulator to review anti-competitive Agreements

- a) The provision of Section [36] of the Telecommunications Law prohibits Licensees from entering into any understanding, Agreement, or arrangement with any Person, department or organization which provide for Price fixing, market sharing, or boycotting of a competitor, supplier or Licensee.
- b) Pursuant to the provision of Sections [38] and [57] of the Telecommunications Law, in case the Department has reason to believe that a Licensee has entered into any anticompetitive understanding, Agreement, or arrangement, the Department shall conduct an investigation in accordance with Part Vand, subject to the approval of the Ministry, take such administrative actions as it deems justified.

### 10. Types of Agreements to be reviewed by the Regulator

- a) A Horizontal or Vertical Agreement between Licensees or between a Licensee and a non-Licensee is prohibited under the Telecommunications Law and these Rules insofar as the Agreement has the object or Effect of significantly preventing, restricting or distorting competition in any relevant telecommunications market.
- b) Notwithstanding the generality of subsection (a), a Horizontal Agreement between Enterprises is deemed to have the object or Effect of significantly preventing, restricting, or distorting competition in any telecommunications market if it has the object to:
  - i. fix, directly or indirectly, a purchase or selling Price or any other trading conditions;
  - ii. share markets or sources of Supply;
  - iii. limit or control:
    - 1) production;
    - 2) market outlets or market access;
    - 3) technical or technological development; or
    - 4) investment; or
  - iv. perform an act of bid rigging, in which competing Licensees manipulate, or attempt to manipulate, the Prices, terms or conditions of an otherwise competitive tender process.
- c) The Department may assess whether any other Agreements between Licensees or between a Licensee and third parties, including joint-ventures or similar Agreements, have the object of significantly preventing, restricting, or distorting competition in any telecommunications market.



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- d) Any Enterprise which is a party to an Agreement which is prohibited under this Section shall be liable for infringement of the prohibition set forth in subsection (a).
- e) Any Agreement or decision which is prohibited by subsection (a) is void.
- f) Unless the context otherwise requires, a provision of this Part which is expressed to apply to, or in relation to, an Agreement is to be read as applying, with the necessary modifications, equally to, or in relation to, a decision by an association of Enterprises or a Concerted Practice.

#### 11. Individual exemptions

- a) A Licensee may apply to the Department for an exemption with respect to a particular Agreement from the prohibition under Section 10.
- b) The Department may, subject to the approval of the Ministry and after seeking public comments, grant an individual exemption if, in the opinion of the Department, the Agreement is one to which Section 13 applies.
- c) An exemption granted under this Section is referred to as an "individual exemption".
- d) The individual exemption granted by the Department may be:
  - i. subject to any condition or obligation as the Department considers it appropriate to impose; and
  - ii. for a limited duration as specified in the order.
- e) An individual exemption may provide for it to have effect from a date earlier than that on which the order is made.

#### 12. Block exemptions

- a) If Agreements which fall within a particular category of Agreements are, in the opinion of the Department, likely to be Agreements referred to in Section 13, the Department may, after seeking public comments, recommend that the Minister make an order specifying that category for the purposes of this Section.
- b) The Minister may make an order giving effect to such a recommendation:
  - i. in the form in which the recommendation is made; or
  - ii. subject to such modifications as the Minister considers appropriate.
- c) An order made under this Section is referred to in this section as a "block exemption order" and an exemption under this section is referred to in this section as a "block exemption".



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- d) An Agreement which falls within a category specified in a block exemption order shall be exempt from the Section 10 prohibition.
- e) A block exemption order may impose conditions or obligations subject to which a block exemption shall have effect.
- f) A block exemption order may provide:
  - i. if there is a breach of a condition imposed by the block exemption, the Department may, by notice in writing, cancel the block exemption in respect of the Agreement from the date of the breach;
  - ii. if there is a failure to comply with an obligation imposed by the block exemption, the Department may, by notice in writing, cancel the block exemption in respect of the Agreement;
  - iii. if the Department considers that a particular Agreement is not one to which Section 13 applies, the Department may, by notice in writing, cancel the block exemption in respect of the Agreement from such date as the Department may specify;
  - iv. the block exemption shall cease to have effect at the end of a period specified in the order; or
  - v. the block exemption is to have effect from a date earlier than that on which the order is made.

**13. The criteria for individual and block exemptions**

- a) An individual or block exemption may be granted to any Agreement which, allowing Consumers a fair share of the resulting benefit, contributes to:
  - i. improving production or distribution, or
  - ii. promoting technical or economic progress.
- b) Agreements referred to in subsection (a) shall not:
  - i. impose on the Enterprises concerned restrictions which are not indispensable to the attainment of the objectives provided in subsection (a); or
  - ii. afford the Enterprises concerned the possibility of eliminating actual or potential competition in respect of a substantial part of the telecommunications services in question.



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#### 14. Leniency regime

- a) The Department shall apply a leniency regime, with a reduction of up to a maximum of one hundred percent of any financial penalties which would otherwise have been imposed, which shall be available in the cases of any Licensee which has:
  - i. admitted its involvement in an infringement of any prohibition under this Part; and
  - ii. provided information or other form of co-operation to the Department which significantly assisted, or is likely to significantly assist, in the identification or investigation of any finding of an infringement of a prohibition under this Part by any other Enterprises.
- b) The leniency regime shall permit different percentages of reductions of financial penalties to be available to a licensee which complies with the conditions and requirement set forth in this Section, as follows:
  - i. the first Licensee to admit its involvement in an infringement of any prohibition under this Part and fully comply with the submission of information and evidence to assist the Department in opening an investigation will receive full immunity from financial penalties;
  - ii. if a Licensee is not the first Licensee to admit its involvement in the alleged Agreement pursuant to subsection (b)(i), but nevertheless provides significant added value to the Department's investigation, it shall receive:
    - 1) if it is the first Licensee to provide significant added value, between thirty percent (30%) and fifty percent (50%) reduction in financial penalties;
    - 2) if it is the second Licensee to provide significant added value, between twenty percent (20%) and thirty percent (30%) reduction in financial penalties; and
    - 3) if it is any subsequent Licensee to provide significant added value, up to twenty percent (20%) reduction in financial penalties.
  - iii. for the purpose of this subsection, significant added value refers to the extent to which, in the Department's discretion, the evidence provided by a Licensee strengthens the twenty percent's ability to demonstrate the alleged Agreement.
- c) The Department will not consider other applications for leniency from financial penalties before it has taken a position on an existing application in relation to the same alleged infringement.
- d) An application for leniency shall provide:
  - i. a detailed description of the alleged Agreement, including:
    - 1) Its aims, activities and functioning;
    - 2) the product or service concerned;



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- 3) the geographic scope;
  - 4) the duration of and the estimated market volumes affected by the alleged Agreement;
  - 5) the specific dates, locations, content of and participants in the alleged Agreement; and
  - 6) all relevant explanations in connection with the pieces of evidence provided in support of the application.
- ii. the name and address of the Licensee submitting the leniency application as well as the names and addresses of all the other Enterprises that participate(d) in the alleged Agreement;
  - iii. the names, positions, office locations and, where necessary, home addresses of all individuals who, to the applicant's knowledge, are or have been involved in the alleged Agreement, including those individuals which have been involved on the applicant's behalf; and
  - iv. other evidence relating to the alleged Agreement in possession of the applicant or available to it at the time of the application, including in particular any evidence contemporaneous to the infringement.
- e) In addition to the information established in subsection (d), all the following conditions must be met in any case to qualify for any leniency from a financial penalty:
- i. the Licensee cooperates genuinely, fully, on a continuous basis and expeditiously from the time it submits its application throughout the Department administrative procedure. This includes:
    - 1) providing the Department promptly with all relevant information and evidence relating to the alleged Agreement that comes into its possession or is available to it;
    - 2) remaining at the Department's disposal to answer promptly to any request that may contribute to the establishment of the facts;
    - 3) making current (and, if possible, former) employees and directors available for interviews with the Department;
    - 4) not destroying, falsifying or concealing relevant information or evidence relating to the alleged Agreement; and
    - 5) not disclosing the fact or any of the content of its application before the Department has issued a statement of objections in the case, unless otherwise agreed.
  - ii. the Licensee ended its involvement in the alleged Agreement immediately following its application, except for what would, in the Department's view, be reasonably necessary to preserve the integrity of the inspections;



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- iii. when contemplating making its application to the Department, the Enterprise must not have destroyed, falsified or concealed evidence of the alleged Agreement nor disclosed the fact or any of the content of its contemplated application.
- f) Leniency will not be granted if:
  - i. the conditions set forth in subsection (d) are not met;
  - ii. at the time of the application, the Department had already sufficient evidence to adopt a decision to carry out an investigation in connection with the alleged Agreement or had already initiated such investigation, except for the cases of significant value added addressed in subsection (a)(ii);
  - iii. the Licensee that filed the application took steps to coerce other Licensees to join the alleged Agreement or to remain in it will not be eligible for total immunity from financial penalty, but may still qualify for a reduction of such penalties if it fulfills the relevant requirements and conditions.
- g) If at the end of the review of an application for leniency, the Department finds that:
  - i. the Licensee has complied with the conditions of subsection (d), the Department will grant such Licensee leniency from financial penalties in the relevant decision in accordance with subsection (b)(ii);
  - ii. the Licensee has not met the conditions of subsection (d), the Licensee will not benefit from any favorable treatment under this Section.

## **PART IV. DETERMINATION OF DOMINANT POSITION**

### **15. Guidance on the determination of Dominant Position**

- a) The purpose of this Part is to provide guidance on the standards and processes to be used by the Department, to determine whether a Licensee, alone or in conjunction with one or more Licensees, are in a Dominant Position in one or more telecommunication markets.
- b) Before making a determination of Dominant Position, the Department shall:
  - i. invite submissions from members of the public on the matter; and
- c) consult with the competition authority which shall take account of any recommendations made by that authority. The competition authority shall issue its recommendation within thirty (30) Days of receiving the consultation from the Department. The assessment of Dominant Position shall:
  - i. begin with the definition of the relevant telecommunications market or markets;





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- ii. a Licensee will be classified as being in a Dominant Position if:
  - 1) it is licensed to operator controls Essential Facilities used for the provision of telecommunication services in Myanmar; or
  - 2) it holds a degree of Market Power that affords it the ability to behave to an appreciable extent independently of competitors and Consumers in any market in which it provides telecommunication services pursuant to its license.

## 16. Relevant market definition

- a) In its assessment and definition of relevant telecommunications markets, the Department shall take account of the following circumstances and criteria:
  - i. markets shall be determined by identifying the specific products or services that make up a distinct market as well as the geographic scope of that market, and considering the following factors:
    - 1) product or service functionality and characteristics;
    - 2) quality, Price, inputs, and costs of the product or service; and
    - 3) Consumer preferences and switching costs.
  - ii. the Department will assess demand-side substitution, in order to determine the extent to which Consumers are prepared or able to substitute other products or services for the products or services supplied by the Licensee making a SSNIP unprofitable;
  - iii. the Department will assess Supply-side substitution, in order to determine the extent to which suppliers other than the Licensee in question are able to Supply products or services that provide a competitive alternative to Consumers making a SSNIP unprofitable.

## 17. Determination of a Dominant Position

- a) The Department shall apply the standards and processes described in this Section, with the objective of identifying those Licensees that have a Dominant Position in one or more telecommunications markets.
- b) In determining whether a Licensee is in a Dominant Position, the Department may consider a range of market circumstances or criteria, but shall consider one or more of the following:
  - i. the market share of the Licensee, determined by reference to revenues, numbers of subscribers or volumes of sales;
  - ii. the overall size of the Licensee in comparison to competing Licensees particularly any resulting economies of scale or scope that permit the larger Licensee to produce products or services at lower costs;



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- iii. control of Essential Facilities;
  - iv. the degree of countervailing buying power or negotiating position by Consumers, this includes substantial barriers to switching service providers;
  - v. ease of market entry and expansion, and the extent to which actual or potential market entry protects against the exercise of Market Power such as raising Prices;
  - vi. the Rate of technological or other change in the market, and related effects for market entry or the continuation of a Dominant Position.
- c) The Department may determine that two or more Licensees, acting jointly or collectively, are in a Dominant Position, including, where the Licensees have no common ownership, are not parties to any formal Agreement or operate in different markets.

### **18. Presumption of Dominant Position**

- a) For the purpose of ex post regulation, any Licensee whose gross revenues in a specific telecommunications market exceed fifty percent (50%) of the total gross revenues of all Licensees in that market, will be presumed to hold a Dominant Position in that market.
- b) For the purpose of ex ante regulation, any Licensee whose gross revenues in a specific telecommunications market exceed thirty percent (30%) of the total gross revenues of all Licensees in that market, will be presumed to hold a Dominant Position in that market.
- c) The Department may, from time to time, review this presumption based on the specific circumstances and conditions of the case and shall consider demonstration by a Licensee in the specific circumstances that the presumption should not apply.

### **19. Criteria to identify relevant markets for the purpose of ex ante regulation**

- a) In identifying telecommunications markets for the purpose of ex ante regulation, the Department shall ensure that the following three criteria are cumulatively met:
  - i. the presence of high and non-transitory barriers to entry of a structural, legal or regulatory nature;
  - ii. a market structure which does not tend towards effective competition within the relevant time horizon as defined by the Department. The application of this criterion involves examining the state of competition behind the barriers to entry;
  - iii. the insufficiency of competition law alone to adequately address the market failure.
- b) The definition of markets for the purpose of ex ante regulation will in most cases correspond to the market definitions that would apply for ex post regulation. In some cases, relevant markets defined for ex ante regulation may differ from those defined for ex post regulation.



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**20. Ex ante obligations for providers that are in a Dominant Position**

- a) For the purpose of ex ante regulation, the Department shall impose one or more of the following obligations on providers that are in a Dominant Position in a specific relevant market:
  - i. Obligation of transparency in relation to the publication of information, including reference offers. The obligation of transparency consists of the requirement to publish appropriate information by a provider in a Dominant Position, including relevant statutory accounting information, technical specifications, network characteristics and terms and conditions for Supply and use, including Prices.
  - ii. Obligation of non-discrimination which consists, particularly, of the requirement for a provider in a Dominant Position to apply equivalent conditions in equivalent circumstances to other operators providing equivalent services and to provide services and information to third parties under the same conditions and with the same quality as the services and information provided to its own departments or to its subsidiaries or partners.
  - iii. Obligation for accounting separation which consists, particularly, of the requirement that providers in a Dominant Position, and especially those that are Vertically integrated, present their wholesale and internal transfer Prices in a form that has transparency in order to ensure, inter alia, compliance with the obligation of non-discrimination where applicable or, where necessary, to prevent unfair cross-subsidy. The Regulator may specify the format and accounting methodology to be used;
  - iv. Obligation of providing access; and
  - v. Obligation of Price control and cost accounting.
- b) In exceptional circumstances and where appropriate the Department may:
  - i. impose obligations other than those set out in subsection (a) on providers in a Dominant Position, subject to public consultation;
  - ii. impose obligations set out in subsection (a) on Licensees not previously designated as being in a Dominant Position in the cases laid down in the law or where such imposition is necessary to comply with international commitments; and
  - iii. impose obligations set out in subsection (a) on an Enterprise that is not a Licensee, but that control Essential Facilities. For this purpose, the Department will consult with any other sector regulator that has authority over such Enterprise prior to imposing any obligation, where applicable.
- c) The Department's decision to impose obligations on a provider in a Dominant Position shall:
  - i. Take account of the appropriateness of each obligation in each specific case and set the starting moment in time for the fulfillment of such obligations.



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- ii. Be reasonable, based on the nature of the problem identified, proportionate and justified in the light of the principles and objectives of the Telecommunications Law, these Rules and other rules set forth under the law.
- d) The determination and imposition of obligations under this Section shall be reviewed every three (3) to five (5) years by the Department.
- e) Where it is established on the basis of a relevant market analysis that the market characteristics:
  - i. do not justify the imposition of obligations on a Licensee in a Dominant Position; or
  - ii. that there are no Licensees that are in a Dominant Position in a specific relevant market,the Department shall not impose any obligations or shall withdraw the obligations, if any, imposed on Licensees previously found to be in Dominant Position.
- f) Pursuant to a determination to remove the classification of Dominance imposed on a specific Licensee, the Department may consider transitional mechanisms to effect the gradual removal of obligations on such Licensees previously found to be in a Dominant Position.



## PART V - INVESTIGATIONS AND ENFORCEMENT

### 21. Investigation by the Department

- a) The Department may conduct an investigation under these Rules if there are reasonable grounds for suspecting that one or more Licensees or Persons have infringed or are infringing any prohibition provided under Chapter XI the Telecommunications Law or Parts II, III and VI of these Rules.
- b) The Department shall, on the direction of the Minister, investigate any suspected infringement of any prohibition provided under Chapter XI the Telecommunications Law or Parts II, III and VI of these Rules.
- c) The Department shall deliver a written notice to the Licensee or any other Person who is the subject of the investigation, identifying the nature of the proceeding, including a summary of the events, circumstances, Conduct and provisions of the Telecommunications Law, license conditions or any rules, regulations, decisions, directions or other actions of the Regulator relevant to the proceeding and the potential outcome of the investigation.
- d) The notice referred to in subsection (c) shall also specify:
  - i. timing for the delivery of submissions by the Person or Persons subject of the investigation or any other interested Persons; and
  - ii. any additional actions to be taken by the Department in concluding the proceeding.

### 22. Complaint to the Department

- a) The Department may, upon a complaint by a Person or Persons ("complainant"), conduct an investigation on any Enterprise, Agreement or Conduct if there are reasonable grounds for suspecting that has infringed or is infringing any prohibition provided under Chapter XI the Telecommunications Law or Parts II, III and VI of these Rules.
- b) The request for investigation shall:
  - i. be submitted in writing to the Department and the complainant shall deliver a copy of the request for investigation to the other party ("responding party") on the same Day that the request is submitted to the Department;
  - ii. summarize the nature of the complaint and the desired outcome, including a summary of all relevant events or circumstances and any related correspondence or other supporting materials.
- c) The responding party shall have fifteen (15) Days, from the Day of the request for investigation is delivered by the complainant to:



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- i. provide its written comments if any, on why the Department should not investigate or otherwise respond to the complaint; and
  - ii. deliver a copy of such comments to the complainant, on the same Day that the comments are submitted to the Department.
- d) Within thirty (30) Days of submission of the request for investigation, the Department shall:
- i. consider whether it will undertake an investigation or take any other action in response to the request for investigation; and
  - ii. issue a written notice to the parties, identifying whether it will take action, the specific action to be taken and the basis for its decision.
- e) Where more than one request for investigation is received in connection with the same, or substantially the same Conduct or circumstances, the Department may consolidate the matters into a single proceeding.
- f) Within thirty (30) Days of the notice referred to in Section d(ii) the complainant shall:
- i. make its formal written submissions setting out a full statement of the circumstances and arguments that support the complainant's position and the desired outcome, including any specific breaches of the Telecommunications Law, any regulation, rule, direction, license condition or other right or obligation, committed by the responding party and the consequences of those breaches;
  - ii. include in its written submission any documentary or other evidence relied on by the complainant to support its position; and
  - iii. deliver a copy of its written submission and any documentary or other evidence presented to the responding party, on the same Day that they are submitted to the Department.
- g) Within thirty (30) Days of the notice referred to in Section f(iii) the responding party shall:
- i. submit a written response to the submissions identifying:
    - 1) any circumstances or arguments included in the complaint's written submissions that the responding party admits or agrees with;
    - 2) for each circumstance or argument relied on by the complainant in its written submissions that the responding party rejects or disagrees with, a clear statement of how its position differs from that of the complainant and the circumstances and evidence in support of its position and desired outcome.
  - ii. include in its written response any documentary or other evidence to support its position; and



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- iii. deliver a copy of its written response and any documentary or other evidence presented to the complainant, on the same Day that they are submitted to the Department.
- h) In cases where the Department believes it is warranted, the Department may provide the complainant an opportunity to reply in writing to the written response of the responding party within fifteen (15) Days of being informed by the Department that it may make the further submissions. In such cases, the Department shall allow the responding party an opportunity to submit a final written response, addressing any new submissions or evidence raised in the complainant's reply within fifteen (15) Days of the filing of the complainant's reply.

**23. Procedural matters applicable to all investigations conducted under these Rules**

- a) The Department may, at its discretion, grant an extension of time for any interested party to make its submissions.
- b) Any request for an extension of time shall be made in writing to the Department at least five (5) Days before the expiration of the otherwise applicable deadline and the Department shall inform parties of its decision in response to an extension request within three (3) Days of receipt of the request.
- c) The Department may, at any time during the course of an investigation under these Rules, request either or both parties to submit additional information.
- d) Any information provided by a party, shall be provided to the other party, at the time it is submitted to the Department.
- e) Where a party wishes to submit confidential information to the Department in connection with the investigation that party may request the Department for confidential treatment of such information and shall justify such request. The Department will assess whether to grant confidential treatment information based on the applicable standards.
- f) The Department shall endeavor to complete investigations under these Rules, and issue either a decision resolving the issues or a notice specifying any other actions to be taken in connection with the investigation, within sixty (60) Days of receiving all necessary information and the Department may, by written notice to the parties, at any time during the relevant investigation, extend the time for the Department to issue its decision.
- g) Appeals of the decisions issued by the Department under these rules shall be governed by Chapter XIV of the Telecommunications Law.

**24. Interim measures**

- a) This Section applies if the Department has initiated but not completed an investigation under Sections 21 and 22.
- b) The Department may, subject to the approval of the Ministry, give directions under this Section if:



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- i. there are reasonable grounds to believe that any prohibition under Chapter XI of the Telecommunications Law or Parts II, III and VI of these Rules has been infringed or is likely to be infringed; and
- ii. the Department believes that it is necessary to act as a matter of urgency for the purpose of:
  - 1) preventing serious and irreparable damage, economic or otherwise, to a particular Person or category of Persons; or
  - 2) protecting the public interest.
- c) A direction given under subsection (b) may include requiring or causing any Person:
  - i. to desist from any Conduct which is suspected of infringing any prohibition under Part II or VI;
  - ii. to suspend the effect of, and desist from acting in accordance with, any Agreement which is suspected of infringing any prohibition under Part III; or
  - iii. to do, or refrain from doing, any act, but which shall not require the payment of money.
- d) The Department shall, before giving a direction under subsection (b):
  - i. serve a written notice indicating the nature of the direction which the Department proposes to give and its reasons for giving the direction to the Person to whom it proposes to give the direction; and
  - ii. give that Person an opportunity to make written representations within a period of at least seven (7) Days from the date of the written notice.
- e) The Department may at any time withdraw a direction given under subsection (b).
- f) Without prejudice to subsection (e), any direction given under subsection (b) shall cease to have effect:
  - i. on the date of the decision by the Department upon completion of the investigation under Sections 211 or 22; or
  - ii. twelve (12) months from the date the direction was given, whichever is earlier.

## 25. Finding of non-infringement

Where the Department has, subject to the approval of the Ministry, made a decision that there is no infringement of a prohibition under Parts II, III or IV of these Rules, the Department shall, without delay, give notice of the decision to any Person who is affected by the decision stating the facts on which the Department bases the decision and the Department's reason for making the decision.





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## 26. Finding of an infringement

- a) If the Department determines, subject to the approval of the Ministry, that there is an infringement of a prohibition under Parts II, III or VI of these Rules, the Department:
  - i. shall require the infringement to be ceased immediately;
  - ii. may specify appropriate steps which are required to be taken by the infringing Licensee or Licensees for bringing the infringement to an end;
  - iii. may impose a financial penalty in accordance with the Telecommunications Law and other applicable laws of the Republic of the Union of Myanmar; or
  - iv. may give any other direction as it deems appropriate.
- b) The Department shall, within fourteen (14) Days of its making a decision under this Section, notify any Person affected by the decision.
- c) The Department shall prepare and publish reasons for each decision it makes under this Section.
- d) A financial penalty shall not exceed ten percent (10%) of the Relevant Revenue of an Enterprise over the period during which an infringement occurred.

## 27. Failure to comply with directions, orders or decisions

- a) If the Licensee fails to comply with a direction issued by the Department pursuant to Section 26 (a) (iv), the Department may take the following additional administrative actions:
  - i. issue a warning stating the conditions and timeline for the Licensee to comply with the direction; and/or
  - ii. impose financial penalties for each Day the Licensee failed to comply with the direction until such time the Licensee comes into compliance with the direction,
- b) If the Licensee fails to comply with a direction, order or decision issued by the Department pursuant to Section 26, the Department may take the following additional actions:
  - i. issue a warning stating the conditions and timeline for the Licensee to comply with a direction, order or decision issued by the Department pursuant to Section 26 also informing of the risk that the license as a next step could otherwise be suspended for a certain period;
  - ii. suspend the license for a certain period if a Licensee has failed to comply with the warning issued under subsection i. above ; also advising the risk that the license could be terminated;
  - iii. terminate the license if a Licensee has failed to comply following a warning and a suspended license for a certain period in accordance with i. and ii. above.



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## 28. Power to accept undertakings

- a) The Department may, subject to the conditions that the Department may impose and with the approval of the Ministry, accept from a Licensee an undertaking to do or refrain from doing anything as the Department considers appropriate.
- b) If the Department accepts an undertaking under subsection (a), the Department shall, close the investigation without making any finding of infringement and shall not impose a penalty on the Licensee.
- c) Any undertaking accepted by the Department shall be made in writing and shall be made available for inspection by the public in a manner determined by the Department.
- d) The provisions of any undertaking accepted by the Department under this Section shall be enforceable by the Department as though those provisions had been set out in a decision, direction or order given to the Licensee providing that undertaking.

## 29. Costs and experts

- a) Except as specifically directed otherwise by the Department, as part of any final decision in a proceeding, the parties shall bear their own costs of participating in the proceeding.
- b) The Department may, in the course of completing any proceeding, enlist the services of an appropriately qualified expert, to assess any issues or circumstances raised by a party that should be considered with the benefit of specialist knowledge.

## PART VI—REVIEW OF TRANSACTIONS

### 30. Power of the Department to review Transactions

- a) Any Transaction that has or is likely to have the Effect of Lessening of Free Competition in a communications market shall be illegal, unless it has been authorized by the Department, subject to the approval of the Ministry.
- b) For the purpose of this Part:
  - i. "Transaction" means:
    - 1) assigning, transferring, subletting or otherwise disposing rights, duties, liabilities, obligations and privileges under its license to any other entity; and
    - 2) implementing a change in the Controlling Interest of a Licensee.
  - ii. "Controlling Interest" means ownership interest:



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- a. whether directly or indirectly, of more than fifty (50) percent of the voting stock, membership interest or general partnership interest in another entity; or
- b. that provides a Person with the right to do any or all of the following
  - i. appoint more than fifty (50) percent of the board of directors or management committee of another entity;
  - ii. appoint, promote, demote, and dismiss senior executives who control the Day-to-Day activities of another entity;
  - iii. make critical investment, administrative or management decisions of another entity;
  - iv. play a decisive role in management decisions of another entity;
  - v. manage the Day-to-Day operations of another entity; or
  - vi. make decisions or otherwise engage in practices or activities that determine or significantly influence the nature or types of services provided by another entity, the terms on which those services are offered or the Prices charged for such services.
- iii. "Pro Forma Transaction" means assignment, transfer, sublet or otherwise disposal of rights, duties, liabilities, obligations and privileges under a License:
  - 1) from one or more Persons to another entity owned or controlled by the same Person or Persons without any change in their relative interests;
  - 2) from a legal entity to shareholders without effecting any change in the disposition of their interests; a reorganization of a legal entity that involves no change in the beneficial ownership thereof;
  - 3) from a legal entity to its wholly owned subsidiary or vice versa;
  - 4) between wholly owned subsidiaries of the same holding company;
  - 5) from a legal entity to another legal entity owned or controlled by the assignor's shareholders without a substantial change in their relative interests.

**31. Scope of review procedures for mergers, acquisitions and takeovers**

- a) For the purpose of Section 30(a), the Department shall apply the review procedures described in this Part to the following Transactions:
  - i. Transactions that involve the acquisition of more than 15 percent of the shares of a Licensee; or
  - ii. any other Transaction that results in a change in control of the Licensee; and



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- iii. any Transaction that results in the direct or indirect transfer or acquisition of any license, previously granted by the Ministry pursuant to the Telecommunications Law.
- b) The Department will not approve an application for a proposed Transaction where the Department determines that the proposed Transaction is likely to lessen free competition in any telecommunications market in the Republic of the Union of Myanmar.

### 32. Notification of Transactions

- a) Any Transaction included in Section 30(b) will require prior notification and must obtain approval of the Department, subject to the approval of the Ministry, to take effect.
- b) The Licensee shall, submit a written notification and request for approval, at least sixty (60) Days, prior to the completion date for the intended Transaction, to be accompanied by at least, the following information:
  - i. the identification of all Persons involved in the Transaction, including buyers, seller, their shareholders and affiliated companies having an ownership interest equal or greater than ten percent (10%) in all such Persons;
  - ii. a description of the nature of the proposed Transaction, including a detailed analysis of the resulting scheme of arrangement and summary of its commercial terms;
  - iii. financial information on the Persons involved in the proposed Transaction, including their annual revenues from all telecommunications markets, identified by specific markets, the value of assets allocated to telecommunications businesses and copies of any recent annual or quarterly financial reports;
  - iv. a description of the telecommunications markets in which the Persons involved in the proposed Transaction operate; and
  - v. a description of the effects of the Transaction, on the control of network facilities or related infrastructure.
- c) The Department may request additional information, regarding an application at any time.

### 33. Application review process

- a) Within sixty (60) Days of receipt of a fully completed application for approval of a Transaction the Department may:
  - i. approve the proposed Transaction without conditions if it believes the Transaction is not likely to lessen free competition in any telecommunication market in the Republic of Union of Myanmar;



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- ii. approve the proposed Transaction with such conditions as the Department determines are necessary, to prevent or compensate for any lessening free of competition resulting from the Transaction;
- iii. deny approval of the proposed Transaction;
- iv. issue a notice initiating an inquiry or other public proceeding, regarding the proposed Transaction, and following such proceeding, the Department may take one of the actions described in subsections (i), (ii) or (iii).

#### **34. Transaction between competitors**

- a) A Transaction between competitors could lessen free competition in a telecommunications market if the Transaction:
  - i. removes a competitor that provided a competitive constraint, resulting in the ability for the resulting entity to profitably increase Prices; or
  - ii. increases the likelihood for the resulting entity and all or some of its remaining competitors may coordinate their behavior to reduce output and/or increase Prices in the market.
- b) The Department will use expected market shares and concentration measures following a proposed Transaction as indicators of the level of competition in the market following a proposed Transaction in order to identify if the proposed Transaction is likely to lessen free competition.
- c) A Transaction between competitors shall be deemed less likely to lessen free competition where, after the Transaction, one or more of the following indicators is met:
  - i. the three largest firms in the market have a combined market share of less than eighty percent (80%), and the resulting entity's market share is less than forty percent (40%); or
  - ii. the three largest firms in the market have a combined market share of eighty percent (80%) or more, and the resulting entity's market share is less than thirty percent (30%); or
  - iii. the resulting entity does not control more than one third (1/3) of the radio spectrum assigned for the provision of the specific services included in the relevant market.
- d) The indicators presented in subsection (c) are only initial references that the Department will use in assessing a Transaction. Therefore, depending on the specific circumstances:
  - i. a Transaction not exceeding these indicators may still be found to lessen free competition; or
  - ii. A Transaction exceeding these indicators may be found to not necessarily lessen free competition.



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### 35. Transactions between entities that are not competitors

- a) Transactions between entities that are not competitors are less likely to result in a lessening of Free Competition than those between competitors as they do not result in a direct loss of competition.
- b) However, a lessening of Free Competition may occur if a Transaction between entities that are not competitors:
  - i. gives the resulting entity a greater ability and/or incentive to engage in Conduct that prevents or hinders actual or potential competitors from entering the market or from competing effectively; or
  - ii. increases the likelihood for the resulting entity and all or some of its remaining competitors to coordinate their behavior to reduce output and/or increase Prices in the market.

### 36. Pro forma Transactions

Section 32 shall not apply to a Pro Forma Transaction and the following provisions of this Section shall apply in relation thereto:

- a) within thirty (30) Days after the completion of the Transaction the Licensee shall-
  - i. submit to the Department proof of the completion of the Transaction either in the form of an application that is appropriate for the class of license to which it relates or such other written correspondence as the Department may authorize, containing all of the information included in the application; and
  - ii. certify that the Transaction is a Pro Forma Transaction;
  - iii. the Department shall publish notice of the Transaction.

## PART VII—TARIFF APPLICATION AND REVIEW PROCESS

### 37. Power of the Department to review and approve Tariffs

- a) Section [29] of the Telecommunications Law requires Licensees to submit proposed Tariffs for the services provided or for any proposed service to the Department, which shall approve such Tariff after giving due regard to it, subject to the approval of the Ministry.

### 38. Filing of Tariffs for services with the Department

- a) No Licensee may provide a service except in accordance with a Tariff filed and approved by the Department pursuant to the provisions of this Part.



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- b) At least thirty (30) Days before the Tariff is to come into effect, the Licensee that proposes to establish such Tariff shall file an application for approval with the Department.
- c) The Licensee shall provide information regarding the proposed range of Prices for the services being offered, this means, the floor and ceiling Price of the Tariff, sufficiently describing:
  - i. the service offer or Bundled Services Offer; and
  - ii. the terms and conditions of the offer, including Rates.
- d) The application for approval of a Tariff set forth in subsection (b) shall also apply to Bundled Services Offers.
- e) The Department and Ministry shall have thirty (30) Days from the submission of the application to approve, reject or seek modification of the Tariff.

**39. Process for review of Tariffs**

- a) The Department shall review Tariff applications based on the principles set forth in Section 43 and within fifteen (15) Days of filing shall:
  - i. recommend that the Ministry approve the proposed Tariff;
  - ii. request the Licensee to submit additional information in accordance with Section 40; or
  - iii. give direction to the Licensee to modify or amend the proposed Tariff or change in Tariff in accordance with Section 42.
- b) Within fifteen (15) Days from receipt of the Department's recommendation issued under subsection (a)(i), the Ministry shall approve or reject the recommendation based on the following principles:
  - i. the Ministry shall follow the recommendation of the Department unless it has a justifiably objective reason to believe that the proposed Tariff or Tariff change does not comport to the principles set forth in Section 43;
  - ii. if the Ministry rejects a recommendation to approve a Tariff, it will refer the recommendation back to the Department for further consideration giving written reasons for its decision.
- c) Upon referral of a recommendation under subsection (b)(ii), the Department shall within two (2) Days:
  - i. request the Licensee to submit additional information under Section 40; or
  - ii. issue a direction under Section 42.



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- d) The Department and the Ministry shall be deemed to have approved a Tariff application, where the application has neither been approved nor denied within thirty (30) Days of filing, provided that no requests for additional information under subsection (a)(ii) or directions under subsection (a)(iii) have been made.

#### 40. Request for additional information

- a) The Department may issue reasonable requests to the Licensee to provide additional information relating to its application.
- b) The Licensee shall provide additional information requested under subsection (a) within five (5) Days of receiving the request from the Department.
- c) Within five (5) Days of receiving the additional information, the Department shall review it and:
- i. deny the application when it does not comport to the principles set forth in Section 43.
  - ii. recommend that the Ministry approve the application, in which case:
    - 1) the Ministry shall review the recommendation in accordance with Section 39(b); or
    - 2) if the recommendation issued by the Department is an amended recommendation in accordance with a referral issued by the Ministry under Section 39(b)(ii), the Ministry shall have five (5) Days from receipt of the Department's amended recommendation to:
      - a. accept the amended recommendation if the Ministry is satisfied that the application satisfies the principles set forth in Section 43; or
      - b. reject the amended recommendation and deny the application if the Ministry determines that the application does not comport to the principles set forth in Section 43.
- d) If the Licensee fails to provide satisfactory additional information within the timeframe set forth in subsection (b), its Tariff application will be deemed denied without requiring further administrative action.

#### 41. Change in Tariff

Once a Tariff is approved, it will not require additional approvals from the Department unless the change in the Tariff is outside of the approved range of Prices for the services being offered. If the change in the Tariff is above or below the approved Tariff range, the Licensee shall file a new Tariff application. If the Department has not objected to the application relating to the Tariff change within fifteen (15) Days of the filing, the approval will be deemed granted.





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**42. Directions by the Department to modify or amend a proposed Tariff**

- a) The Department may give reasoned, written direction to the Licensee to modify or amend its proposed Tariff when it does not comport to the principles set forth in Section43.
- b) Within five (5) Days of receiving a direction, the Licensee may:
  - i. file an amended Tariff in accordance with the direction;
  - ii. withdraw the proposed Tariff; or
  - iii. dispute the direction.
- c) The Department shall, within five (5) Days of receipt, review the amended application filed in accordance with subsection (b)(i) or the arguments disputing the direction filed in accordance with Section (b) (iii) and:
  - i. deny the application when it does not comport to the principles set forth in Section43.
  - ii. recommend that the Ministry approve the proposed Tariff in which case:
    - 1) the Ministry shall review the recommendation in accordance with Section39(b); or
    - 2) if the recommendation issued by the Department is an amended recommendation in accordance with a referral issued by the Ministry under Section39(b)(ii), the Ministry shall have five (5) Days from receipt of the Department's amended recommendation to:
      - a. accept the amended recommendation if the Ministry is satisfied that the application comports to the principles set forth in Section43; or
      - b. reject the amended recommendation and deny the applicationif the Ministry determines that the application does not comport to the principles set forth in Section43.

**43. Principles for review and approval of Tariffs by the Department and the Ministry**

- a) The Department and the Ministry shall, in reviewing and approving a Tariff, follow the general principles specified below:
  - i. Rates charged for services shall be just and reasonable; and
  - ii. no provision of a proposed Tariff shall be anti-competitive.
- b) The Department and the Ministry shall approve an application filed to establish or change the Tariff of a service, where the proposed Tariff or change complies with a regulated Price for a dominant provider set by the Department in accordance with the Telecommunications Law.



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#### 44. Publication of approved Tariffs

- a) The Department and the Licensee shall publish on its website and in such other means as deemed necessary all Tariffs approved under this Part.
- b) The Department and the Ministry shall not disclose information relating to any Tariff application until it has been approved.

#### 45. Market trials and short term promotional offers

- a) A Licensee may conduct a market trial or short term promotional offer of a service or a Bundled Services Offer without prior approval from the Department, provided that:
  - i. the market trial or short term promotional offer does not have a Benefits Period that exceeds ninety (90) Days in duration;
  - ii. the market trial or short term promotional offer does not have an enrolment period that exceeds the Benefits Period;
  - iii. the market trial or short term promotional offer is not Substantially Similar in the opinion of the Department to a market trial or short term promotion implemented by the Licensee, or an Enterprise related to the Licensee, with an Enrollment Period that concluded less than one hundred and eighty (180) Days before the market trial or short term promotional offer is to come into effect; and
  - iv. the Licensee files a description of the market trial or short term promotional offer, including the Rates, terms and conditions, with the Department at least ten (10) Days before the market trial or short term promotional offer is to come into effect.
- b) For the purpose of this Section:
  - i. "Benefits Period" means period over which the benefits of the market trial or the promotional offer is received by the Consumer;
  - ii. "Enrollment Period" means the period over which the Consumer can take up or subscribe to the market trial or the promotional offer.
  - iii. "Substantially Similar" means:
    - a. a market trial or short term promotional offer that reduces the effective Price of a service or services that was subject to a reduction via a prior market trial or short term promotion; or
    - b. a market trial or short term promotional offer that, as a whole, offers terms and conditions for a service or services, including but not limited to Prices, that are, in the opinion of the Department, similar to those offered in a prior market trial or promotional offer.



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- c) The Department and Licensee shall publish on its website all notified market trials and short term promotional offers.
- d) Neither the Department nor the Ministry shall not disclose information relating to a notified market trial or short term promotional offer until the date when market trial or short term promotional offer is to come into effect as indicated by the Licensee in its filing in accordance with subsection (a)(iii) or such later date as the Licensee notifies it will implement the market trial or short term promotional offer.
- e) The Department may order a Licensee to not conduct, discontinue or suspend a market trial or short term promotional offer where such market trial or short term promotional offer is contrary to Section 43.

**46. Minimum Rates for services**

- a) A Licensee shall not charge a Rate for a service or a Bundled Services Offer that is below the long run average incremental cost of providing the service or services within the Bundled Services Offer, except:
  - i. where the Licensee is conducting a market trial or short term promotional offer not deemed to lessen free competition by the Department; or
  - ii. where the Department determines it is in the public interest to do so.
- b) The Department may at any time, including after an application to establish or change a Tariff has been approved, require a Licensee to demonstrate that a Rate charged, or proposed to be charged, for a service or services within a Bundled Services Offer complies with subsection (a).
- c) The Department may also request third parties to present information and reports relating to the Tariff under review in accordance with subsection (b).
- d) The Licensee, and third parties, shall have thirty (30) Days to present a report as required under subsection (b). If the Licensee fails to present the report within the timeframe set forth in this subsection, the Department shall issue its determination under subsection (f) with the information at its disposal.
- e) The Department shall within thirty (30) Days after the filing of the report required under subsection (b):
  - i. determine that the Rates charged or proposed to be charged, comply with subsection (a); or
  - ii. determine that the Rates charged or proposed to be charged, do not comply with subsection (a), in which case the Department:
    - 1) shall direct the Licensee to amend the Rates in the manner that the Department determines is consistent with subsection (a); and



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- 2) may initiate an investigation to determine whether the Licensee is engaged in a practice that lessens free competition in contravention to the Telecommunications Law and these Rules.
- f) The Department may issue reasonable requests to the Licensee or third parties to provide additional information relating to the reports presented under subsection (b) and (c).

## **PART VIII—MISCELLANEOUS PROVISIONS**

### **47. Authority of the Department to review anticompetitive Conduct and Agreements in the telecommunication sector**

- a) The Department, subject to the approval of the Ministry, will have exclusive jurisdiction to review anticompetitive Conduct and Agreements in the telecommunications sector and Transactions involving one or more Licensees and, where warranted, issue orders, directions or determinations and impose sanctions on Licensees found to have engaged in anticompetitive Conduct and Agreements.
- b) Notwithstanding the generality of subsection (a), the Department will consult with the competition authority before issuing any order, direction or determination and imposing any sanction on Licensees and other Enterprises under the Telecommunications Law and these Rules.
- c) Subsection (b) will apply once a competition authority is established and general competition legislation enters into force in the Republic of the Union of Myanmar.

### **48. Relevance of practices by competition authorities**

- a) The provisions in these Rules are grounded in well-established principles of competition law, and are consistent with “best practices” in other jurisdictions.
- b) In applying these provisions, the Department will give appropriate consideration to best practices in other jurisdictions as well as practices of the competition authority of the Republic of the Union of Myanmar.
- c) Notwithstanding the generality of subsection (b), the Department may adopt in specific cases standards or methodologies that are designed to address the unique conditions of Myanmar’s telecommunication market.

### **49. Review of transitory determinations in Schedules**

The Department may, from time to time, review and, if warranted and taking into account the state of development of competition in the various telecommunications markets in the Republic of the Union of Myanmar, modify:



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- a) the relevant markets for the purpose of ex ante regulation identified in Schedule 1 subject to the conditions established in Section 19;
- b) the designation of MPT as being in a Dominant Position established in Schedule 1; and
- c) the Essential Facilities identified in Schedule 2.

## **SCHEDULE 1: TRANSITORY DETERMINATION OF RELEVANT MARKETS AND DOMINANT POSITION FOR THE PURPOSE OF EX ANTE REGULATION**

Until such time as the Department completes proceedings to define relevant markets for the purpose of ex ante regulation and determines operators in a Dominant Position in such relevant markets, MPT will be considered to have a Dominant Position in the following markets:

- a) Retail markets:
  - i. Access to public telephone network at a fixed location
  - ii. Local, National and International Voice call Service
  - iii. Leased lines
- b) Wholesale markets:
  - i. Call termination on individual public telecommunications networks at a fixed location
  - ii. Wholesale access to broadband services at a fixed location
  - iii. Leased lines
  - iv. Call termination on individual mobile networks
  - v. National roaming services on mobile networks



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## **SCHEDULE 2: TRANSITORY DETERMINATION OF ESSENTIAL FACILITIES**

The following types of facilities are designated as Essential Facilities:

- a) in-building wiring;
- b) lead-in ducts and associated manholes;
- c) subsea cable landing stations;
- d) poles; and
- e) radio towers (excluding towers used for the operation of any broadcasting service).