

The long and winding road - Competition in the Telco market in Saudi Arabia

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It is intended to be the start of a series of articles, with detailed updates on the competition progression in the Region, with special emphasis on Saudi Arabia.

Admittedly, it has been a long and winding road, but it seems to eventually lead up to the door of full competition, beneficial to the Saudi population and residents.

The offering of a third GSM license in the Kingdom of Saudi Arabia will lead the next wave of telecom liberalization and deregulation in the Gulf. The development will happen in the next 6 to 12 months, and come as the Middle Eastern countries adapted the World Trade Organization (WTO) guidelines on free trade. However, despite these moves, telecom industry liberalisation and deregulation will not be a quick process in the region. Opening the Local Loop (LL) and Long Distance and International telecom services for private and foreign participation in major markets will take some time.

The Ministry of Interior (MOI), who is handling the regulatory issues in the Kingdom of Saudi Arabia, realizes that regulatory approval is needed to foster:

- Voice over Internet Protocol (VoIP),
- Local Loop Unbundling (LLU), and
- Mobile Virtual Network Operator (MVNO) in the market; and that process will be time consuming.

However, eventually, MVNOs are expected to encourage competition and drive down average monthly revenue per user (ARPU) for regional fixed and mobile operators in the next years.

The Kingdom of Saudi Arabia will be granting licenses for network and telecom services in the coming year, though there is no specified timeline yet.

The MOI is well aware of the development in the neighboring country Qatar where the Supreme Council of Information and Communication Technology (ICT-Qatar) has been made responsible for adopting and implementing a comprehensive regulatory framework for the sector, to end Qtel's monopoly.

It is interesting to note that the Qatar mobile market will mirror the developments in other partly liberalized markets with higher penetration rates, lower tariffs, lower ARPUs and more value-added services for consumers. Wi-max technology is expected to become more prominent, which perhaps is a surprise to many as Wi-max technology has seen its best days, although no licenses are expected to be granted in the very near future in most Middle Eastern markets or the spectrum has not been opened up by the local regulators for the adoption of the technology.

As the appetite for new technologies and investments stays strong, the transition to wireless technologies will boost fixed-line adoption in Saudi Arabia mainly due to the lack of infrastructure on the ground to reach every corner of the continent and thereby the supply side problems will cease to exist.

The road to competition will progress in steps, set out in the Competition Law [June 16, 2006], and addresses:

- Anti-competitive agreements,
- Controlling monopoly abuse,
- Regulation introducing competition, and

- Applying the regulation rules to the public sector.

What has to be taken into consideration is the WTO guidelines, which have been adopted by Saudi Arabia. They state, among other things:

The following shall be prohibited as incompatible with the Competitive Market:

- all agreements between undertakings,
- decisions by associations of undertakings and concerted practices, which may effect trade between contracting parties and which have as their object or effect
- the prevention,
- restriction or
- distortion of competition within the Market (territory covered by this Agreement), and in particular those which:
- directly or indirectly fix purchase or selling prices or any other trading conditions
- limit or control production, markets, technical development, or investment
- share markets or sources of supply

The origin of this is the famous Continental Can case, Euroemballage and Continental Can v. Commission [1973] ECR 215. This is now article 81:1 of the European Treaty.

The European Court of Justice has said “Article 81:1 seeks to achieve the same aim on different levels; the maintenance of effective competition within the Common Market”.

The European Commission has held that “Undertakings are in a dominant position when they have the power to behave independently...”.

The provisions of the Treaty, of course, determine the limit and the object of the Community’s competition activity in the telecommunications field. Secondary EC legislation is conceived, amended, and implemented taking account of the interpretation of EC Law by the European Court of Justice (ECJ). This case law has been useful in providing a framework for the Community legislation in such a very sensitive field as telecommunications.

It will be interesting to follow the liberalization process in the Kingdom of Saudi Arabia and to see in what extent it will follow the development that took place in Europe. In the following article, we will closely follow the legal development in the Kingdom of Saudi Arabia set out by CITC.

It can however already now be revealed to the reader that CITC has in a resolution asked the incumbent to “justify its cost for mobile tariffs and the cost of roaming”. This writer considers that the major step towards breaking up the dominant position of the incumbent.

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