

# **Economic and legal analysis of the United Arab Emirates’ telecommunications market**

By Judit Renata Kovacs

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Supervisors: Professor Caterina Sganga and Professor Andrzej Baniak

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## Abstract

This thesis focuses to understand the current market position and situation of the UAE's telecommunications market. It is recognised throughout the research that the UAE's telecommunications industry is centralized by government and basically there is no competitive market situation but a larger monopoly run by two firms. It is causing huge losses to consumers and social welfare. It would be ideal to find an economic improvement for the UAE's telecommunications market with the help of necessary amendments in relevant policies and competition law. There will be an examination whether liberating the telecommunications market brings the desired economic outcome as minimizing consumers' losses and increasing social welfare. There can be no economic alteration done without making the necessary policy suggestions in UAE's competition law therefore we will examine the system of matured competitive nations of EU and US in order to be able to come up with the sufficient policy recommendations. Since we are aware of the limitations of this research, we are not aiming to find the best but a possible policy arrangement. As this thesis will cover two areas in the analysis; specifically a legal part and an economics part; therefore there will be these two types of researches simultaneously conducted. Despite of the economic findings of insufficient welfare state of consumers due to monopoly dominance in the industry; it is in the very interest of the government and their state owned Telecommunications Company to remain centralized due to supernormal profits as the UAE's legislative pillar is not based on democracy but it has a Sheikdom government structure.

In this thesis it is recommended to omit literature review, relevant background information and sources will be presented in the given chapters.

# List of Figures, Tables, Illustrations

Figure 1.<sup>1</sup>

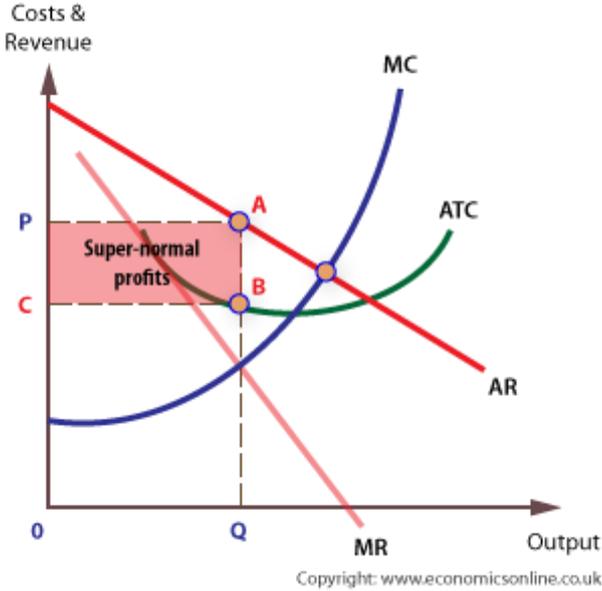


Figure 2<sup>2</sup>

	Etisalat	Du
<b>Plan</b>	<b>Visitor's Mobile Package</b>	<b>Visitor's Mobile Line</b>
Activation (AED)	60	49
Free Credit (AED)	25	20
Extra	2 mins Intl. Video Talk Time	0
Local Call Rate (AED per min)	0.5	0.6
Intl. Call Rate (AED per min)	2.5	2.118 to 2.40
Local SMS (AED)	0.3	0.18
Intl. SMS (AED)	0.9	0.6
Validity (Can be renewed)	90 days	90 days

<sup>1</sup> "Monopoly," accessed May 17, 2014, [http://www.economicsonline.co.uk/Business\\_economics/Monopoly.html](http://www.economicsonline.co.uk/Business_economics/Monopoly.html).

<sup>2</sup> "Competition Is Key in UAE Telecoms Sector | The National," accessed May 27, 2014, <http://www.thenational.ae/business/industry-insights/telecoms/competition-is-key-in-uae-telecoms-sector>.

## List of Abbreviations

EU - European Union

US - United States of America

UAE - United Arab Emirates

TRA- Telecommunications Regulatory Authority (UAE)

GCC - (countries)– Gulf Cooperation Council

EEAS - European External Action Service

NGO – Non-Governmental Organization

FDI – Foreign Direct Investment

FCC- Federal Communications Commission (US)

PPP – Purchase Power Parity

# 1 Chapter - Introduction

## 1.1 The topic

This thesis focuses to understand the current position and policies of the UAE's telecommunications market. As the UAE is an emerging market a comparison tool will help us to draw conclusions. The choice of developed countries are - the US and the EU.

In the end policy recommendations will be given based on a desired efficient economic outcome. We will look whether a liberalization of the UAE's telecommunication market is feasible, which is moving towards corporatization and with an aim for privatization within the industry. That is why prior attempting a re-regulation of the telecommunications industry; a degree of efficiency has to be determined to figure out the degree and the type of regulation which is desirable for an efficient economic outcome. Failing to do so may result in an inefficiency, thus the price of regulation may surpass any benefits gained in the short run and particularly on a long run.

At the moment there are only two main dominating market players in the UAE, Etisalat and Du. Both of them are mainly government owned and ruled; namely by the Telecommunications Regulatory Authority (TRA)

Etisalat was founded in 1976 as a joint-stock company between local partners; British Company and International Aeradio Limited. Sixty percent of Etisalat's shares is owned by the government of the United Arab Emirates' and the remaining forty percent is publicly traded.<sup>3</sup> At the moment Etisalat is operating fifteen in countries across the Middle East; Asia and Africa. In the world ranking list Etisalat has reached the twelfth largest mobile network

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<sup>3</sup> "Etisalat - History - History," accessed June 4, 2014, <http://www.etisalat.com/en/about/history/history.jsp>.

operator position, with the number of total registered people Hundred and fifty million.<sup>4</sup> Du was officially launched in 2006, and it is eighty percent state-owned.<sup>5</sup>

In this case where are only two market players; we are talking about an economic phenomena called duopoly. However, if we closely examine the policies and competition laws in the UAE and these two firms market power, we can easily state that there is an exclusively government controlled monopoly the time of 2014.

The UAE's telecom market is highly restricted, with both major players being largely government owned. There is actually no real competition, providers are set as a monopoly in certain geographic locations. As a consequence, contrary to the UAE's objectives to be a major global IT hub, in the UAE the broadband internet provision is among the most expensive in the world (e.g. a price of AED 299 for 8Mbit/s - which is around US\$82), with a maximum speed of 100 Gbit/s.<sup>6</sup>

## 1.2 Rationale, aims and objectives

It would be ideal to find an economic improvement for the UAE's telecommunications market with the help of necessary amendments in policies; particularly in competition law. There will be an examination whether liberating the telecommunications market brings the desired economic outcome as minimizing consumers' loss and increasing social welfare. There can be no economic alteration done without making the necessary policy suggestions in UAE's competition law therefore we will examine the system of matured competitive nations of EU and US in order to be able to come up with the sufficient recommendations.

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<sup>4</sup> Ibid.

<sup>5</sup> "Shareholders Structure | Corporate Governance | About Us | Du," accessed June 4, 2014, <http://www.du.ae/about/corporate-governance/shareholders>.

<sup>6</sup> "Royalties Revised for Etisalat and Du | The National," accessed June 4, 2014, <http://www.thenational.ae/business/industry-insights/telecoms/royalties-revised-for-etisalat-and-du>.

However since we are aware of the limitations of this research and that there are certain reasons behind the already existing legislation gaps, therefore we are not aiming to find the best but a possible arrangement.

### **1.3 Research question**

How the structure and policy of the telecommunication industry in the UAE can be changed in order to increase economic welfare and better serve consumers?

### **1.4 Research Methodology**

The methodology is a plan for collecting, organizing and integrating collected data so that an end result can be reached (White, 2002). This section will aim to discuss the project methodology, different research methods, techniques, collections and ways of analyzing data, as well as discussing the quality of research.

Since this thesis will cover two areas in the analysis; specifically a legal part and an economics part; therefore there will be these two types of researches simultaneously conducted.

The main purpose of this research design is to provide a plan for answering the research question detailed above. This section will look at the larger picture first and then delve into the details of each section, which applies to most blueprints. Research designs can be classified into two basic categories vis-à-vis descriptive and experimental (Saunders et al, 2003). This study will follow both previously mentioned design due to the nature of the question. Moreover another practice is to adopt economical approach, which is likely to include a qualitative method to examine the effect of the law in deed and as legislated by public policy.

As a first step a primary examination will be conducted in order to gather and analyse the existing facts on the UAE's, EU's and US's telecommunications related policies and competition law. Then we recognize and array the basic material for literature review and legal issues in a coherent order, thus the work will be prioritized in an order that the most fundamental issues come first in the research.

As a second step, secondary sources will be collected in order to attain contextual evidence. This part will offer an understanding about black letter law, including case and basic statutory law and to take citations from related principal authorities. These sources might be from: LexisNexis, West Law, SSRN, Google Scholar, Treaties, online law journal articles, library books...etc....

As a third step we will localize and read key authorities' legislations. They are usually including court resolutions, statues, directives, and court documentations. They are either persuasive or obligatory/ binding in terms of their trustworthiness and consequence. It is critical to understand the differences between resolutions that are required for this paper's research question and the once, which are only influential.

The economic part of this hypothesis contains the examination of relevant economic principles, which apply to a related study of monopoly. This is the most important part of this paper. The understanding of the facts will be expended in drawing conclusions in order to be able to make policy recommendations. This part has to be perceived accurately; otherwise the thesis statement will be lack of standing.

In economics the main objective of a study is to discover the accuracy about economic questions that is concerning the consumers and market efficiency of UAE's telecommunication industry. The hypothesis research's question is qualitative. These

often include the way in which a person, corporation or a policy maker is bringing a decision or even welfare of the users and society.

The usual practice in economics is definitely a “welfarist”. It ranges to the policy examination of the analysis of law economically. In this paper, we consider influences for “welfarism” as a typical norm, which is evaluating the rightfulness of regulations and institutions in case of the telecommunications market.

Practical application of economic models are necessary in order to be able to recommend a beneficial improvement for the society’s welfare and the UAE’s economy as well. In our case the purpose comprises methodical gathering of knowledge on variables acknowledged by specific concept, such as experimental analysis. As far as the sources are concerned, the library and online sources (JSTOR, Econlit, Business source premier, SSRN and other online sources and relevant economic books etc....) will be used.

## 2 Chapter - The fundamentals of an effective telecommunications market

### 2.1 UAE's telecommunications market

UAE has a telecommunications sector is trying to be modern and advanced in order to keep up with international standards. The General Policy for the Telecommunication Sector (GTP) of 2006 was publicized by the Supreme Committee for the Supervision of the Telecom Sector (SCSTS) to provide encouragement for competition between operating companies at the same time it is also fostering innovation in research and development.<sup>7</sup> The aim was the promotion of the UAE as a hub for Information Communication Telecommunications.<sup>8</sup>

As a result UAE has become one of the most 'wired' countries in the Middle East. The penetration in the mobile sector has achieved around 204% with approximately 9.8 million subscribers in the country in 2008 that then quickly achieved figures in excess of 10.2 million in 2009.<sup>9</sup> Additionally, penetration through fixed lines also rose to around 34% in 2008 (an increase of around 20% from 2007).

Most internet subscriptions are currently based on the dial-up system that is now largely defunct in most Western nations, thus it can be claimed that in the world wide outlook the technology of UAE's telecommunications market is still outdated. Although most internet access in the country it is still through dial-up, subscriptions through broadband have increased as well to approximately 47% of all internet connections by the middle of 2009 so broadband will be the majority as of 2015.<sup>10</sup>

However, telecommunications prices are considered to be too high in the UAE according to users. One of the key reasons for high prices is the lack of competition; the

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<sup>7</sup> RAK Free Trade Zone '1.12 Telecommunications & Data Networks in the UAE'

<sup>8</sup> Ibid.

<sup>9</sup> RAK Free Trade Zone '1.12 Telecommunications & Data Networks in the UAE'

<sup>10</sup> Ibid.

telecommunications market is currently exempted from the competition law. Furthermore the location of the UAE has added a bit of complication due to the distance cables which must travel under water from the US. In addition, as it will be further discussed in detail, the political influence over the telecommunications industry continues to be significant, in other words the two central players in the industry (i.e. du and Etisalat) are still substantially owned by the state.<sup>11</sup>

A poll has been undertaken by the Arabic newspaper, al Khaleej which found that most of the people believed that the country's call rates were overly high and that the services provided are far below the standards that should be set.<sup>12</sup>

Moreover, a significant percentage of the people polled also believe that the offers are made by the two telecommunications companies to customers in the UAE (Etisalat and du) are artificial, despite of the fact that people experienced continuous promotions.<sup>13</sup> In addition, al Khaleej found that around sixty percent of those polled regarding international call rates considered them to be too high despite the fact that there have been price reductions in recent years. Whereas only around eight percent said that they considered the international call rates to be somewhat low in the country.<sup>14</sup>

Moreover, the survey found that around sixty-four percent of those were polled regarding the promotion offers found that offers are far below their expectation levels. Although around twenty-two percent found that these offers are 'real' and fourteen percent actually said that they considered the offers made to be 'fake'.<sup>15</sup> Furthermore, approximately sixty percent of the respondents were dissatisfied with the quality of services generally, whilst around twenty-two percent said that the services provided were just good and only around

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<sup>11</sup> Arabian Business.Com *'The Great Duopoly of UAE Telecoms'* Arabian Business.Com

<sup>12</sup> Zawya *'UAE phone call rates are high: poll'* (5th September 2010).

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

eighteen percent found that the services offered were acceptable.<sup>16</sup>

Finally, the majority of the respondents to the survey believed the competition between du and Etisalat has not brought significant price reductions in telephone call costs.<sup>17</sup> Additionally, around 60% of those that responded to the newspaper's poll called for the establishment of a third telecommunication service provider in the UAE to improve competition and enhance the services provided.<sup>18</sup>

In order to be able to remain unbiased about telecommunications prices; the UAE's Purchasing Power Parity (PPP) of consumers is examined compared to US and the EU as per the International Comparison Program (ICP). According to World Bank's data the UAE is considered to be a high income country in 2012 with a GDP of 383,8 billion dollar with a population of 9,2 million. Purchasing Power Parity is 30 with the place of 32nd in the UAE while in the US is 53 is 6<sup>th</sup> on the list.<sup>19</sup> There is no comprehensive data found on the EU's PPP on average, only on individual countries.<sup>20</sup> As we can see the UAE does belong to the high income countries, nevertheless the US's PPP is still higher while telecommunication prices are lower (as the research will show later). Thus belonging to a high income category is not a reason for high prices in the telecommunications market.

### 2.1.1 The regulatory framework of UAE's telecommunications market

This analysis emphasizes on competition and FDI as instruments of economic growth in the telecommunications industry and improvement of social welfare around the scope of policies.

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> "Purchasing Power Parity Definition | Purchasing Power Parity Meaning - The Economic Times," accessed June 4, 2014, <http://economictimes.indiatimes.com/definition/purchasing-power-parity>.

The Commercial Code of the United Arab Emirates Federal Law No.18 of 1993 is recognizing the position of the consumers. The Consumer Code of Rights of the United AE Federal Law No. 24 of 2006 was issued by the Ministry of Economy in the country to further enhance the position of consumers' position. The law states at Articles 3-5 respectively that services must be carried out with due care and skill and the materials used in connection with a services that should meet customer requirements. While consumers have rights to remedies, where there is a problem arising, Federal Law No. 24 of 2006 makes it possible to have services resupplied or refund its value.<sup>21</sup>

In order to achieve the recognition of these rights the Department of Economic Development's Commercial Control and Consumer Protection Division is deemed responsible for guaranteeing consumers and retailers to comply with the Consumer Code of Rights, understand their responsibilities and facilitate the resolution of disputes where necessary between retailers and consumers.

Competition Law is mainly a controller for non-discriminatory competitive behavior between companies of the same segment. Trade liberalization and adequate polices stimulate economic efficiency, expansion in the economy. In the UAE the Federal law no. 4 of 2012<sup>22</sup> is the latest statue which is specifying the competition law, previous to this regulation, competition law was not specified as a separate compatible provisions, they were distributed amongst numerous other laws, such as the UAE's consumer protection law, commercial code and regulations. The aim of the latest 2012 law is:

“The protection and enhancement of competition and the combat of monopoly practices /in particular through) keeping a competitive market governed by the market mechanisms in accordance with the economic freedom principle through banning restrictive

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<sup>21</sup> Consumer Code of Rights of the United AE Federal Law No. 24 of 2006.

<sup>22</sup> “Competition Is Key in UAE Telecoms Sector | The National.”

agreements, banning the business and actions that lead to the abuse of a dominant position, controlling the operations of economic concentration and avoiding all that may prejudice, limit or prevent economic development”<sup>23</sup>

The aim of the new competition law is firstly to stipulate an inspiring ecosystem for enterprises in order to boost economic productivity and effectiveness and keeping in mind the concern of customers and thus in the UAE sustainable growth. Secondly, in accordance with the economic freedom code; competitive market has to be maintained under the governance of the market mechanisms through prohibiting anticipatory blocking agreements, avoiding business dominant monopolistic position.<sup>24</sup>

The Structure of the ruling can be determined as following definitions and objectives: “Anti-Competitive Practices; Application of the Law (along with certain exclusions); □ Abuse of Dominant Position; Penalties, Economic Concentration; Restrictive Agreements Competition Regulation Committee; and Responsibilities of the Ministry of Economy”.<sup>25</sup>

There are some Government owned or controlled entities which are exempted from the UAE Competition Law’s provisions. They are the following;

In our case the telecommunications operators (such as Etisalat and Du), financial services, electricity and water companies, sewage facilities firms, postal services, conveyance and metros.<sup>26</sup>

As a consequence; the new completion law in the UAE attempting to move further towards globalization; hence the UAE has initiated liberalization procedures in the telecommunications market in 2007 in order to change the monopoly position of Etisalat to a

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<sup>23</sup> “NEW COMPETITION LAW IN THE UAE - Al Tamimi & Company,” accessed May 10, 2014, <http://www.tamimi.com/en/magazine/law-update/section-5/january-2/new-competition-law-in-the-uae.html>.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

duopoly. However both firms are mainly government owned; competition law does not apply on them, that is why under certain measures we are not talking about a duopoly anymore but again a ‘larger monopoly’.<sup>27</sup>

Hypothetically even if these two firms Etisalat and Du were privatized, it would have no effect on the market, without a healthy competition. The intention behind denationalization is to intensify competition and market efficiency thus to reduce deadweight loss on consumers caused by the monopoly, see figure 2. Later in this thesis we may consider some policy changes in competition law for a better economic outcome in terms of telecommunications.

### 2.1.2 The National Regulatory Authority (TRA)

The Telecommunications Regulatory Authority (TRA) was implemented in 2003 to stipulate a form of regulation in the Information Communications and Telecommunications sector.<sup>28</sup>

To this effect the Authority was meant to guarantee competitiveness, transparency and sustainability within the market for all customers, shareholders and service providers.<sup>29</sup> By performing so; the Telecommunications Regulatory Authority oversees both the telecommunications sector along with the licensees domestically in keeping with the Federal Law by Decree No. 3 of 2003 regarding the organization of the telecommunication sector and its Executive Order.<sup>30</sup>

Moreover, as an independent body, the Telecommunications Regulatory Authority must also guarantee the availability of telecommunication services to the entire country, ensure licensed operators act in keeping with rules and regulations established, safeguard

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<sup>27</sup> Ibid.

<sup>28</sup> Telecommunications Regulatory Authority *'About TRA'* Telecommunications Regulatory Authority (2011).

<sup>29</sup> International Telecommunications Union *'ICT Newslog - TRA – UAE Telecom Operators can now set their own standards'* International Telecommunications Union (15 February 2010).

<sup>30</sup> Federal Law by Decree No. 3 of 2003 regarding the organization of the telecommunication sector.

subscribers interests, provide for telecommunications enhancement and assist with implementing innovative new technologies.<sup>31</sup>

However, the role of the TRA actually extends beyond the limits of the country itself. As it is also obligatory upon the TRA to represent the UAE in forums both regionally and global basis; arguably most importantly at the International Telecommunications Union (ITU).<sup>32</sup>

Nevertheless, the TRA provides development of the regulatory framework of Information Communications and Telecommunications, by issuing the necessary regulations and the resolution of any disputes that could develop within the UAE telecommunications market.<sup>33</sup>

The TRA was established for the purpose of telecommunications to become more sophisticated and to regulate developments. One of the most significant steps taken, provided for the encouragement of greater market competition through the licensing of an additional telecommunications operator – Emirates Integrated Telecommunications Company (now recognized as company 'Du') – to compete with Etisalat and to provide enhancement of communications services and offer users more options.<sup>34</sup>

Moreover, the eighteenth Plenipotentiary Conference in Mexico in 2010 served the second consecutive UAE election to the International Telecommunications Union Council's membership.<sup>35</sup> Furthermore, the Global Technology Report by the World Economic Forum ranked the UAE as a successful economy in achieving the development of a knowledge based

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<sup>31</sup> Arab Advisors Group '*Cementing Its Stance as the Arab World's Internet Leader, the UAE's ADSL Penetration Reached around 11% by End of 2008*' Arab Advisors Group (16th March 2009).

<sup>32</sup> International Telecommunication Union '*Internet Indicators: Subscribers, Users, & Broadband Subscribers*' International Telecommunications Union (2008).

<sup>33</sup> Khaleej Times '*UAE Will Spend \$3.3b in IT and Communications*' Khaleej Times (19th March 2009).

<sup>34</sup> AMEinfo.com '*Telecom Supreme Committee inks second telecom operator's license in the UAE*' AMEinfo.com (12th February 2006).

<sup>35</sup> The ITU Plenipotentiary Conference 2010 (PP-10) (4th-22nd October 2010).

economy.<sup>36</sup> In 2010 the TRA has announced the development of the telecommunications 'Competition Framework' that aims to benefit consumers through the promotion and safeguard of competition; it is done by engagement activities to prevent competition.<sup>37</sup> The TRA aims to provide the latest technologies associated with Information Communications Telecommunications.<sup>38</sup>

According to Al Mal Capital, TRA designed to implement the following regulatory policies for the purpose of effective development: National Roaming; Mobile Number Portability; Voice-over-Internet Protocol (VoIP); for instance Skype or Viber VoIP calls are also blocked.<sup>39</sup> There is a filtering system that is blocking controversial or offensive Internet content as well.<sup>40</sup> The efficiency of filtering is shadowy, since many people learn to bypass it by using Tor or VPN.<sup>41</sup>

Nevertheless, the biggest problem is that the national government in the UAE still maintains significant shares in both du and Etisalat, so there is a conflict of interest, meaning the law will remain rather gentle on telecommunications.

### 2.1.3 Net neutrality in the UAE

Net neutrality means that internet service providers must transmit all data and content in an unbiased manner as guaranteeing free and open internet.

Basically in the UAE there is no network neutrality, the signs are that they are blocking the VOIP calls such as Skype and Viber.<sup>42</sup> Similarly certain games are also blocked.

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<sup>36</sup> Dutta. S & Mia. I *The Global Information Technology Report 2008–2009 - Mobility in a Networked World* World Economic Forum (2009).

<sup>37</sup> Telecommunications Regulatory Authority *'TRA Introduces the Telecommunications' Competition Framework, Al Ghanim, "the framework is an important piece in regulating the telecom market in the UAE and ensuring a healthy competitive environment"'* Telecommunications Regulatory Authority (25th January 2010).

<sup>38</sup> Telecommunications Regulatory Authority *'About TRA'* Telecommunications Regulatory Authority (2011).

<sup>39</sup> Ibid.

<sup>40</sup> "Royalties Revised for Etisalat and Du | The National."

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

## 2.2 European Union's Telecommunications Market

In terms of market access the 2002 Directive obliges the Member States to form a general authorization for all type of telecommunications services.<sup>43</sup>

### 2.2.1 The regulatory framework of EU's telecommunications market

In the EU the 'Telecoms Reform Package'<sup>44</sup> was presented by the European Commission with an aim to amend the EU Telecommunications Rules 2002 already in place.<sup>45</sup>

This understanding and development of the law was meant to be universal throughout all of the EU's member states by the end of 2009. Movements in this regard begun essentially with five specific Directives implementation in the form of - (a) Directive 2002/19/EC;<sup>46</sup> (b) Directive 2002/20/EC;<sup>47</sup> (c) Directive 2002/21/EC;<sup>48</sup> (d) Directive 2002/22/EC;<sup>49</sup> and (e) Directive 2002/58/EC.<sup>50</sup> These original five Directives were then amended as follows with Directives 2002/22/EC and 2002/58/EC amended by Directive 2009/136/EC,<sup>51</sup> and Directives

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<sup>43</sup> "Regulatory Framework for Telecoms in the EU Today — EU - European Union and Eurozone Business News | EUBusiness.com," accessed June 4, 2014,

<http://www.eubusiness.com/topics/telecoms/homepage/framework>.

<sup>44</sup> Proposal for a Directive of the European Parliament & of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services, COM (2007) 697, 2007/0247/COD.

<sup>45</sup> i.e. Directive 2002/19/EC; Directive 2002/20/EC; Directive 2002/21/EC; Directive 2002/22/EC; & Directive 2002/58/EC.

<sup>46</sup> Directive 2002/19/EC on access to, & interconnection of, electronic communications networks & associated facilities (Access Directive) OJ L 108/7 (7th March 2002).

<sup>47</sup> Directive 2002/20/EC on the authorisation of electronic communications networks & services (Authorisation Directive) OJ L108/21 (7th March 2002).

<sup>48</sup> Directive 2002/21/EC on a common regulatory framework for electronic communications networks & services (Framework Directive) OJ L 108/33 (7th March 2002).

<sup>49</sup> Directive 2002/22/EC on universal service & users' rights relating to electronic communications networks & services (Universal Service Directive) OJ L 108/51 (7th March 2002).

<sup>50</sup> Directive 2002/58/EC concerning the processing of personal data & the protection of privacy in the electronic communications sector (Directive on privacy & electronic communications) OJ L 201/37 (12th July 2002).

<sup>51</sup> Directive 2009/136/EC Publications Office amending Directive 2002/22/EC on universal service & users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector & Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws OJ L 337/11 (25th November 2009).

2002/19/EC, 2002/20/EC and 2002/21/EC amended by Directive 2009/140/EC.<sup>52</sup>

The European Commission is principally looking to allow all of the citizens within the Union to take advantage of improved communication services that are much more cost effective. Therefore, the European Commission considered to bring strengthened consumer rights by achieving the reinforcement of competition between operators involved in telecommunications and encouraging investment into more innovative infrastructures by making radio spectrums more accessible and secure for wireless broadband services.

However, the Lisbon Treaty (LTFEU) 2008 served to further amend the already amended EC Treaty. Article 81 of the Treaty seeks to prohibit anti-competitive agreements and concentrated practices, whilst Article 82 prevents the abuse of a dominant position.<sup>53</sup> Both Articles 81 and 82 of the LTFEU 2008 are focused upon the development of measures that may affect trade between member states, whilst other anti-competitive practices will often be caught by the domestic competition law.<sup>54</sup> Therefore, the harmonization of EU competition law helps the market integration by eliminating disparities and ensuring that the level playing field is free from negative and detrimental competition practices on consumers.<sup>55</sup>

Though, before determining the law of dominance in a given market, there is a need to ascertain the relevant market where the undertaking is operating.<sup>56</sup> If a given market is very wide, than there is a reduced chance of labeling a firm as abusive and dominant.

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<sup>52</sup> Directive 2009/140/EC amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks & services, 2002/19/EC on access to, and interconnection of, electronic communications networks & associated facilities, and 2002/20/EC on the authorisation of electronic communications networks & services OJ L 337/37 (25th November 2009).

<sup>53</sup> Cassese. S *'European Administrative Proceedings'* (2004) 68(1) Law & Contemporary Problems 21.

<sup>54</sup> Abbott. A. F *'Intellectual, Property Licensing & Antitrust Policy: A Comparative Perspective'* (2003) 34(4) Law & Policy in International Business 801.

<sup>55</sup> Cassese. S *'European Administrative Proceedings'* (2004) 68(1) Law & Contemporary Problems 21.

<sup>56</sup> European Commission Notice of the Definition of the Relevant Market (1997 OJ C 372/5).

Moreover, the relevant market can be divided into three distinct factors – (i) the product market; (ii) the geographical market; and (iii) the historical market<sup>57</sup>. The Directorate-General for Competition in 1997 issued a Notice of the Definition of the Relevant Market<sup>58</sup> to provide more transparency regarding the European Commission assessing the relevant market to better understand competition. However in our telecommunications case the anti-competitive agreements Article 81 and 82 of the LTFEU 2008 is more relevant.<sup>59</sup> The parties market share should not exceed ten percent, if it exceeds than a horizontal agreement will be provided as de minimis - although vertical agreements are not as capable of restricting or distorting competition unless the supplier has market power so the de minimis threshold is fifteen percent and not applicable where there are ‘hard core’ restrictions.<sup>60</sup>

The introduction of the new European Telecom Market Authority is guaranteeing the consistent application methods of consumer regulations and market rules. For instance the EU Telecommunications Rules for broadband providers with more than twenty five percent on the telecommunications market<sup>61</sup> are subject to several obligations.<sup>62</sup> The reason behind is the European Commission is seeking to utilize a harmonized regulatory approach for a functionality assessment what a company provides and its related market power.<sup>63</sup>

Therefore, the development of regulatory framework's in the EU represents a notable example of an endorsement explicitly along with the adaption of a horizontal process regarding market power and regulatory policies.

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<sup>57</sup> See, for example, Directorate-General for Competition Notice of the definition of the relevant market (1997 OJ C 372/5).

<sup>58</sup> European Commission Notice of the Definition of the Relevant Market (1997 OJ C 372/5).

<sup>59</sup> European Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty Establishing the European Community (de minimis) (OJ 2001, C368/13).

<sup>60</sup> Dyer. K. K & Liskey. G. M 'Antitrust Violations' (2008) 45 American Criminal Law Review 195.

<sup>61</sup> European Commission Guidelines on Market Analysis & the Assessment of Significant Market Power Under the Community Regulatory Framework for Electronic Communications Networks & Services, 2002 O.J. (C 165) 6.

<sup>62</sup> Directive 2002/19/EC.

<sup>63</sup> Frieden. R 'Adjusting the Horizontal & Vertical in Telecommunications Regulation: A Comparison of the Traditional & a New Layered Approach' (2003) 55 Fed. Comm. L.J. 207, at p.214.

One of the key problems with regulation in the EU is the spectrum management, it is too inflexible. As a result, new measures were urgently needed across the EU even after the telecommunications market was fully liberalized in 2002 – although, under Article 9(3) of the Framework Directive, member states are currently allowed to introduce spectrum trading, whilst Article 9(4) of the Directive served to establish the procedural aspects.<sup>64</sup> Moreover, Article 1(1) of the same Directive regarding the Spectrum Decision sought to coordinate policy approaches whilst also harmonizing conditions regarding the radio spectrum's efficient use and availability.<sup>65</sup> Therefore, 'spectrum management' provides both the rationalization and optimization of the use of the radio frequency spectrum to advance new wireless technologies and co-ordinate wireless communications.<sup>66</sup>

In 2005 the European Commission issued a publication for a market-based Communication<sup>67</sup>. This was followed by the Review of the EU regulatory Framework for Electronic Communications Networks & Services<sup>68</sup> that proposed greater flexibility in spectrum management.<sup>69</sup> One of the explanation is that, under Article 8, the telecommunications system is inappropriate for broadcasting since it does not account for pluralism, cultural diversity and public service or recognize audio visual media's specific character.<sup>70</sup> Therefore, the European Broadcasting Union (EBU) put forward the proposal that Article 8(1) requires an amendment that EU member states will guarantee an effective management for all communications services.<sup>71</sup>

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<sup>64</sup> European Commission Decision No.676/2002/EC of 7th March 2002 on a regulatory framework for radio spectrum policy in the European Community..

<sup>65</sup> Ibid.

<sup>66</sup> Faulhaber. G. R. '*The Question of Spectrum: Technology, Management & Regime Change*', in 'The Conference on the Economics, Technology & Policy of Unlicensed Spectrum' East Lansing, MI (2005).

<sup>67</sup> European Commission '*A Market-Based Approach to Spectrum Management in the European Union*' Com (2005) 400 final.

<sup>68</sup> European Commission Communication on the Review of the EU regulatory Framework for Electronic Communications Networks & Services, SEC (2006) 816.

<sup>69</sup> Cave. M '*Independent Audit of Spectrum Holdings*' London (2005), at p.96.

<sup>70</sup> European Broadcasting Union '*EBU Comments on the EU Commission's Proposals for Directives Regarding the Review of the Regulatory Framework for Communications*' (23rd October 2000).

<sup>71</sup> Ibid.

Although sector specific regulation (SSR) plays a crucial and growing role between operators and customers. The EU is experiencing an increased competition among operators. In the EU national levels have been several law suits in telecommunications sector, due to the increasing private damages actions. For instance; “Abuse of dominance: France Telecom-Orange/Wanadoo, Deutsche Telekom; Telefonica (e 152m fine imposed), Telekomunikacja Polska (e 128m fine), TeliaSonera, Slovak Telecom; Agreements between firms: mobile cartel in France (e 534m fine)”.<sup>72</sup>

The European Commission’s digital agenda sets impressive objectives: they would like to have fast broadband (at least 30 Mbps) for everybody by 2020. Furthermore, half of the European population should have access to broadband at speeds level of 100 Mbps by 2020.<sup>73</sup>

### 2.2.2 The Body of European Regulators for Electronic Communications (BEREC)

The European Commission’s declaration of network neutrality as an annex to the legal instruments.<sup>74</sup> In addition, Regulation (EC) No 1211/2009 established the Body of European Regulators for Electronic Communications<sup>75</sup> to encourage individual EU member states' national regulatory authorities to cooperate with the European Commission to contribute to the development and 'function-ability' of the internal market for electronic communications.

The Commission and the national regulatory authorities (NRA) and the Commission have to take into consideration any guidelines, recommendations, or regulatory best practice

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<sup>72</sup> “European Commission - Competition,” accessed June 4, 2014, <http://ec.europa.eu/competition/sectors/telecommunications/legislation.html>.

<sup>73</sup> “Asset.pdf.”

<sup>74</sup> European Commission Declaration on Net Neutrality (2009/C 308/02).

<sup>75</sup> Regulation (EC) No 1211/2009 establishing the Body of European Regulators for Electronic Communications (BEREC) & the Office OJ L 337/1 (25th November 2009).

approved by BEREC.<sup>76</sup>

If a recommendation is adopted, the national regulatory authorities have to produce an analysis of the applicable markets, in accordance with the procedures suggested by the Commission. If the market is marked by the National regulatory authority that is not effectively competitive, whereby companies with a significant market power are forced to comply the law.<sup>77</sup>

### 2.2.3 Net neutrality in the EU

BEREC along with the European commission is actively lobbying for network neutrality and open internet.

EU member states were accepting the proposals concerning the neutrality of technology along with services in relation to spectrum management with individual rights. Problems have risen when the European Parliament has questioned the guidelines implemented by national regulators regarding investments in new broadband, that are not established as part of the 'Telecom Reform Package' in the EU.<sup>78</sup>

Moreover, citizens' rights groups have also argued that if the European Parliament's 'Harbor Report'<sup>79</sup> is probing the network neutrality, having been heavily influenced by American giants of telecommunications including AT&T to establish consensus with the European Council.<sup>80</sup>

However nowadays ninety-six percent of Europeans are without legal right protection to access the open internet; due to a lack of clear and consistent regulation system concerning

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<sup>76</sup> "What Is BEREC?," accessed June 4, 2014, [http://berec.europa.eu/eng/about\\_berec/what\\_is\\_berec/](http://berec.europa.eu/eng/about_berec/what_is_berec/).

<sup>77</sup> "Regulatory Framework for Electronic Communications," accessed June 4, 2014, [http://europa.eu/legislation\\_summaries/information\\_society/legislative\\_framework/124216a\\_en.htm](http://europa.eu/legislation_summaries/information_society/legislative_framework/124216a_en.htm).

<sup>78</sup> Meyer. D 'Net Neutrality clause likely to delay telecoms reform' ZDNet (7th May 2009).

<sup>79</sup> Malcom Harbour's Report on Electronic Communications Networks & Services, Protection of Privacy & Consumer Protection, European Parliament (2008).

<sup>80</sup> Marshall. R 'European Parliament issues blow to Net Neutrality' V3.co.uk (8th May 2009).

network neutrality which is leading to uneven levels of protection.<sup>81</sup>

This destruction is expensive for operators and it has a negative impressions for end-users' and they will have less willingness to consume.<sup>82</sup>

The European Council demanded the Commission In Spring 2013 to create a proposition for attaining a single market in telecoms; namely a legislative package for a "Connected Continent. EU-wide rules are aiming at transparency and guarantee of "net neutrality."<sup>83</sup>

### 2.3 The United States' Telecommunications market

American Telephone and Telegraph Co. (AT&T) from 1876 to 1893 has developed as the foremost commercial power in developing networks and telephone services by Alexander Graham Bell. The telecommunications market in the US has never been owned by the government. This time was no sector-specific regulation and events by telecom companies were carried out by local authorities.

The winner for the title of the most competitive telecommunications markets worldwide is US by devoting over 30 years to figure out trough cases the most effective competition policy and telecom regulations. However it does not mean that the US's system is the best or would be the best solution for any country.

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<sup>81</sup> "EU Actions - Digital Agenda for Europe - European Commission," accessed June 4, 2014, <https://ec.europa.eu/digital-agenda/en/eu-actions>.

<sup>82</sup> "EU Actions - Digital Agenda for Europe - European Commission," accessed June 4, 2014, <https://ec.europa.eu/digital-agenda/en/eu-actions>.

<sup>83</sup> "EU Actions - Digital Agenda for Europe - European Commission," accessed June 4, 2014, <https://ec.europa.eu/digital-agenda/en/eu-actions>.

### 2.3.1 The regulatory framework of US's telecommunications market

President Roosevelt was looking for a more effective ways to control all methods of electronic mass communication by 1933 such as telegraphy, broadcasting and telephony. The following year FCC has been established which is showing the beginning of a complete federal regulation of telecommunications. The FCC has got a broad authorization to regulate all “interstate and foreign commerce in communication by wire and radio.”

In ratifying the Telecommunications Act—the first important renovation of the 62-year-old Communications Act with main goals, including: The distribution of advanced communications networks; competition is to be promoted by every means and the rationalization and improvement of worldwide service packages.<sup>84</sup>

The Telecommunications Act has altered precise competition policy. The Telecom Act has widely maintained the regulatory management of various industry segments, from the beginning till today's existing Communications Act. There was no direction given about the way of regulation to FCC, or about the competing network platforms.<sup>85</sup>

Not only did the Telecom Act preserves the differing approaches to regulating different industry segments, it actually enhanced them through asymmetric regulation. This resulted from a combination of three factors: (1) the desire to refrain from regulating (and therefore squelching) growth technologies such as the Internet; (2) a judgment, based on competition policy principles, to impose more stringent regulation on incumbent local service providers because of their ongoing market power; and (3) simple legislative inertia, which led to the preservation of regulatory regimes more closely linked to the market realities of 1934, 1984 or 1994, than of 2004.<sup>86</sup>

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<sup>84</sup> *Comcast Corporation v. Federal Communications Commission*, 600 F.3d 642 (2010).

<sup>85</sup> *Comcast Corporation v. Federal Communications Commission*, 600 F.3d 642 (2010).

<sup>86</sup> *Comcast Corporation v. Federal Communications Commission*, 600 F.3d 642 (2010).

The antitrust legal framework is provided by the Sherman and Clayton Acts in the US. They prohibit collusion or the creation or preservation of monopolies where any colluding of two or more companies is charged as a criminal or civil act. In case the competition is harmed and they permit the Justice Department and the Federal Trade Commission to review cases.

Section 1 by the 1890 Sherman Act (15 U.S.C. § 1) stipulates:

“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony . . .”<sup>87</sup>

However, under the terms of the Sherman Act 2000 a plaintiff needs to establish several elements to prove there has been an offence in relation to the compliance with competition law.<sup>88</sup> Firstly if there is a conspiracy offence it requires to consist of “an agreement . . . between at least two competitors, for the purpose of . . . unreasonably restraining trade”,<sup>89</sup> but the contractual format and level of success are immaterial where there is an illegal agreement.<sup>90</sup>

U.S. competition policy has three aspects, as it relates to telecommunications. Firstly, over hundred years of common law jurisprudence has the system evolved and there is no single policy even at this point of time. Secondly, there are several agencies in charge of the multiple levels of jurisdiction, there is no single or one agency that is in charge of the competition policy. Agencies are in charge both vertically and horizontally (within the federal

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<sup>87</sup> Albanesius. C 'Senate chair takes on FTC in Net Neutrality fight' PC Mag.com (September 2007).

<sup>88</sup> Leslie. C. R 'Cartels, Agency Costs & Finding Virtue in Faithless Agents' (2008) 49(5) William & Mary Law Review 1621.

<sup>89</sup> *Primetime 24 Joint Venture v. Nat'l Broad. Co.* 219 F.3d 92 (2d Cir. 2000), at p.103.

<sup>90</sup> *United States v. Socony-Vacuum Oil Co.* (1940) 310 U.S. 150, at pp.223-224.

government)<sup>91</sup>

Thirdly, the U.S. is using the combinations of sector-specific regulation along with wide-ranging competition law, which may affect any economic activity.<sup>92</sup>

Consumer protection laws are enforced by the state governments to uphold their own multi-sector utility regulatory organizations, hearing might be civil and criminal allegations and it may review decisions from the FCC as well.<sup>93</sup>

### 2.3.2 National Association of Regulatory Utility Commissioners (NARUC)

The National Association of Regulatory Utility Commissioners (NARUC) was founded in 1889. It was originally a non-profit organization. NARUC is devoted to represent the State public service directives such as telecommunications.<sup>94</sup>

NARUC's mission is to advance the efficiency and quality of public service regulation to serve the public interest better in a fair way.<sup>95</sup>

As the new telecommunications technologies are evolving the responsibility of the regulator changing is quickly. The Telecommunications Committee offers a place for State commissioners to evaluate tendencies and share best practices. The Committee works carefully together with the National Telecommunications; the Federal Trade Commission; the Office of the United States Trade Representative; Information Administration, the Department of Justice; the Federal Communications Commission, and the FBI.<sup>96</sup>

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<sup>91</sup> *N. Pac. Ry. v. United States* (1958) 356 U.S. 1, at p5.

<sup>92</sup> *Cal. Dental Ass'n v. FFC* (1999) 526 U.S. 756, at pp.780-81.

<sup>93</sup> *Nynex Corp. v. Discon, Inc.* (1998) 525 U.S. 128, at p.133.

<sup>94</sup> "National Association of Regulatory Utility Commissioners," accessed June 4, 2014, <http://www.naruc.org/committees.cfm?c=53>.

<sup>95</sup> "National Association of Regulatory Utility Commissioners," accessed June 4, 2014, <http://www.naruc.org/committees.cfm?c=53>.

<sup>96</sup> "National Association of Regulatory Utility Commissioners," accessed June 4, 2014, <http://www.naruc.org/committees.cfm?c=53>.

### 2.3.3 Net neutrality in the US

Network neutrality in the US with the on-going development of the market has proved to be somewhat controversial.<sup>97</sup> There is still a significant political and legal debate going on regarding telecommunications networks and its the achievement of neutrality.

As of 2008 the FCC has decided to appeal against Comcast because it had apparently illegally constrained its users from utilizing software for the purpose of file-sharing.<sup>98</sup> Then, on 6th April 2010, the District of Columbia's Court of Appeal in *Comcast Corporation v. Federal Communications Commission*<sup>99</sup> determined that the FCC cannot force Internet service providers to maintain the 'openness' of their networks.<sup>100</sup>

Nevertheless, despite the introduction of the Internet Freedom Preservation Act 2008 to establish a policy for broadband and directing the FCC to undertake a proceeding to assess competition, the protection of consumers, and choice issues in this regard relating to broadband access. In addition, the Internet Freedom Preservation Act 2008 excluded reasonable network management from regulation since it does not include specifications concerning schemes management, the exact level of autonomy of operators of network management is still somewhat unclear.

Finally, as of 2010 the FCC returned to approve new rules that banned television and cable service providers from limiting competitors access but would not stop internet service providers from charging significantly more for faster access – although the Republicans are seeking to achieve the reversal of this understanding through legislation.<sup>101</sup>

The American Federal Trade Commission sought to encourage a significant level of

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<sup>97</sup> Bimbaum. J. H 'No Neutral Ground in This Internet Battle' The Washington Post (26th July 2006).

<sup>98</sup> Hansell. S 'FCC vote sets precedent on unfettered web usage' The New York Tims (2nd August 2008).

<sup>99</sup> *Comcast Corporation v. Federal Communications Commission*, 600 F.3d 642 (2010).

<sup>100</sup> Gross. G 'Court rules against FCC's Comcast net neutrality decision' Reuters (6th April 2010).

<sup>101</sup> Bartash. J 'FCC adopts web rules' TheSunNews.com (22nd December 2010).

restriction regarding the regulations; since broadband' regulations could have adversely impacted upon consumer welfare.<sup>102</sup>

All main Internet providers encourage an open Internet, except Comcast that has to tolerate the older version of law until 2018.<sup>103</sup>

## 2.4 Recommendations for UAE's telecommunications market

Understanding institutional frameworks and their responsibilities is essential in case of a development of an economically effective telecommunications regulatory environment. The majority of markets have successfully adopted a structure internationally and institutionally.

According to the thesis research among telecommunications regulatory framework in the UAE, EU and US; most of the following elements are considered to be common and to be elaborated – (a) providing for licensing and key resources control (b) issue of competition law; (c) Liberalization of government owned companies; (d) Network neutrality; (e) Role of national regulatory authority

### (a) Licensing

For the effective development of a telecommunications market that is suitably regulated the control of services and networks operations through licensing is fundamental to promote development and guarantee compliance. As we can see in the case of UAE limiting this process potentially acting as an unnatural barrier to competition in opposition the US and the EU market where licensing is done freely whoever is complying with the rules and regulation. As a recommendation for the telecom market licensing in the UAE, the market should be somewhat liberated and the TRA should allow competition by allowing new market entrants not to further strengthen the position of monopoly.

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<sup>102</sup> Federal Trade Commission Staff Report 'Broadband Connectivity Competition Policy' (2007).

<sup>103</sup> Salant, J. D & Peterson, M 'AT&T, Comcast Rout Google in 'Net Neutrality' Battle (Update 1)' Bloomberg.com (20th July 2006).

## (b) Competition law

Recently, the global telecommunication market has shown a trend towards increased competition and greater liberalization. As we can see in the case of EU and US it is crucial to keep up competition for acquiring technological know-how, keeping the prices moderate and to effectively manage telecommunication competition issues for the public welfare and interest.

As it was analyzed earlier in this thesis, the competition law in UAE, EU and the US has similar goals, however the UAE's telecom market is completely exempted under the competition law by the state.

However, to encourage greater competition within the industry and to improve the position of consumers, Etisalat's monopoly was brought to a end in December 2006 by Du.

Certain degree of liberalization of the telecommunications sector in the UAE was resulted of being a member state of the World Trade Organization (WTO) since 1996. Although the UAE has negotiated concessions; with the deadline for complete telecommunications market liberalization was extended to 2015.<sup>104</sup> The WTO was seeking to have the telecommunications sector liberalized completely in a worldwide manner. The aim was to be free from both monopoly and/or government safeguards by 2010. However, clearly this aim was not possible.<sup>105</sup>

Based on the above mentioned findings, the UAE telecom market should be included under the competition law as the WTO has urged it as well.

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<sup>104</sup> AMEinfo.com 'UAE Telecommunication Supreme Committee seeks to liberalize dynamic telecoms sector by 2015' AMEinfo.com (13th May 2006).

<sup>105</sup> Ibid.

(c) Liberalization of government owned telecom companies

In the cases of the EU and US there is a free competition and telecom companies are privately owned; on the contrary the UAE's Etisalat and Du are both government owned which is again just further strengthening the monopoly position. If the UAE would like to follow the successful example of developed countries; it should consider to further liberate the existing two companies.

(d) Network neutrality

Network neutrality has been a controversial issue in UAE, EU and US as well. Nevertheless we can agree that both the EU and the US has shown massive endeavour towards open and unbiased internet access, while in the UAE the TRA is still shutting down certain websites and blocking VOIP calls.<sup>106</sup>

As a recommendation, the UAE should also consider to move towards Network neutrality as much as possible and not blocking websites and services randomly which is again just creating consumer welfare loss.

However, in a broader view of the country's demographics; the UAE has attracted such a high influx of people from other countries (90% of the UAE's population are foreigners) that regulators might have a concern that the mobile voice and data networks might be used for criminal and terrorist actions; such a worry was only increasing the need of communications' monitoring and investigation.<sup>107</sup> Such apprehensions clearly have their foundation and are also somewhat understandable since regional security in the area has come under some significant inspection internationally.<sup>108</sup>

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<sup>106</sup> *Country Profile: United Arab Emirates (UAE)* Library of Congress – Federal Research Division (July 2007).

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

#### (e) Role of National Regulatory Authority

The UAE's TRA; the EU's BEREC and the US's NARUC have similar roles and responsibilities in the three countries; the telecommunications policy development is accomplished with help of the government through the National Regulatory Authority. The law also needs to define a regulator's enjoyment of autonomy from the political structure and provides sufficient guidelines for achieving the boom or deputation of decision-making powers where issues could transcend the Minister and regulators separation.

However as a recommendation for the TRA; it could move towards to an unbiased authority status, for instance by liberated licensing; it should allow competition and not only creating his own telecom company Du for imitating some artificial competition. The TRA should also reconsider a clearer regulation package of what kind of sites should be shut down and for which reason, at the moment it is a very blurry area.

### 3 Chapter - Economic analysis of findings and discussion

As we can see from the above analysis and industry summaries; there is a conflict arising concerning consumer welfare and economic efficiency for telecom firms.

□After examining the developed nations; the EU's and US's liberated and free telecommunications market; it can be stated that UAE's telecommunications market players (Etisalat, Du) behaving as one big monopoly due to their market power. This position is just further strengthened by certain telecom policies such as being exempted under competition law and telecom licenses are not given freely.

Consequently, Etisalat and Du in the UAE's telecommunications market are generating enormous super-normal profits (figure 1) originating from their monopoly.

To prove the above mentioned theory about welfare loss on consumers in the UAE' telecommunications market; a comparative analysis has been conducted about Etisalat's and Du's prices and offers (figure 2) . It is obvious that Du the new "competitor" is offering cheaper prices and better offers than Etisalat. However it can be easily recognized that this is an artificial competition, both providers are still way too expensive compared to the rest of the world's phone rates. For instance rates per minute in the UAE, France and USA are in dollars 0,053; 0, 46 and 0,3 respectively<sup>109</sup>. The UAE's PPP has been analyzed as well and as an outcome UAE is considered to be a high income country but still lower than the US or the EU and the telecom rates are higher.

In conclusion we can see that a monopolist faces no pressure in terms of pricing therefore will charge higher than it would in a competitive situation. The illusion of competition is created between Etisalat and Du that the people have the feeling of having a choice. Therefore the UAE's telecommunications' market comprehends a deadweight welfare

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<sup>109</sup> "Competition Is Key in UAE Telecoms Sector | The National."

loss on consumers, which leads to a diseconomies of scale which is an allocative inefficiency.

Furthermore a monopoly situation is hindering research and development in the telecommunications industry, which is again causes welfare losses for consumers.

## 4 Chapter – Conclusions

Following the research question - “How the structure and policy of the telecommunication industry in the UAE can be changed in order to increase economic welfare and better serve consumers?”- It can be stated that in order to increase social welfare it would be advisable to end the monopoly and to liberate the UAE’s telecommunications market. It can be accomplished by including the telecom sector under the competition law, to permit telecom licences to new entrants; to encourage movements towards net neutrality and finally to decentralize the current government owned status in Etisalat and Du by for instance selling their majority of shares. By allowing competition to flourish it may reduce prices and flourish technological developments.

Throughout history there was an example shown for liberalization by developed countries for developing nations with the message of reassessing their attitude concerning globalization and competition law. It can be recognized that competition is imperfect when foreign investments are prohibited in certain industries.

It is well advertised that the UAE would like to reach the level and economic status of globalized, developed countries. Yet, it is problematic to achieve this goal due to the current government structure, background culture of the country. A possible liberalization becomes more challenging since the UAE has a Sheikdom government structure, whereby consumers rights and complaints disappear due to lack of democracy.<sup>110</sup>

However it has been discussed that there would be an economic need for the liberalization of telecommunications market in order to gain consumer welfare and economic growth, when it comes to implementing a competition friendly law, there is a very different approach between the emerging markets and developing conservative country like the UAE.

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<sup>110</sup> “Viewcontent.pdf,” accessed May 17, 2014,  
<http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=3033&context=etd>.

In accordance with UAE's vision that they want to participate and become a leader in today's global era, it is necessary to realize the need for changes in provisions which are fostering economic growth of the country.<sup>111</sup>

#### **4.1 Benefits, Limitations**

While in the UAE the deregulation and privatization endeavors have been slow, other Arab countries in the Gulf have already recognized the need for opening up their market for domestic and foreign investors. In consequence if Etisalat would like to remain a regional and global player in telecommunications industry, from economic point of view its privatization is unavoidable.

However as we know already the UAE's legislative pillar is not based on democracy. It is in the very interest of the government and their state owned telecommunications company to remain centralized. Firstly for the reason of gaining supernormal profits, secondly they can be in total control of literally everything (collecting data, blocking certain services, deciding on innovations etc.) Therefore we cannot expect substantial changes towards liberalization in the near future.

#### **4.2 Future research**

As far as the future research is concerned of this thesis; it could be continued in the same field but more in detail. For instance there could be a more comprehensive qualitative and quantitative research conducted how the market would behave on a longer term in the case of monopoly continuation and in the case of a hypothetical telecommunications market de-centralization as the WTO suggested as well; with a special focus on consumer welfare and the market efficiency.

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<sup>111</sup> Ibid.

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