

**The Report of the Committee for Promotion of Competition in
the Telecommunications Industry in Israel**
Ministerial Adoption

August 2008

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Professor Reuben Gronau
Committee Chairman

Mr. Mordechai Mordechai
Director General, Ministry of Communications

Greetings,

The Report of the Committee for Detailed Recommendations Regarding Policy and Competition Rules in the Telecommunications Industry in Israel 2008 – Report Adoption, Changes and Emphases

After I have considered and weighed the recommendations contained in the report of the Committee for Detailed Recommendations Regarding Policy and Competition Rules in the Telecommunications Industry in Israel 2008, headed by Professor Reuben Gronau (“The Committee”), which was presented to me in March 2008, I have decided to accept the recommendations of the committee. The competition policy as recommended by the committee is correct policy which is expected to bring about further technological innovation and an increase in the supply of services, while improving the welfare of Israeli consumers. Implementation of the committee’s recommendations will bring about a level playing field, where a large number of players will be able to supply various services, by, *inter alia*, wholesale purchases of communications services, including by leasing the network elements which lead to consumer premises (Local Loop Unbundling – LLU).

Regarding the mobile sector, I believe that in order to reach the goal of increased competition in the mobile sector generally, and in the household segment specifically, a wide range of solutions must be implemented. Therefore, I intend to act to implement the committee’s recommendations on this matter, while working to increase competition in the sector by other means as well. Implementing the committee’s recommendations on this matter entails allowing more mobile operators to build infrastructure, including those operators who will build universal broadband infrastructure using WIMAX technology.

In addition, pursuant to the report of the NERA company and Government Decision No. 2186 regarding the encouragement of virtual operators in the mobile sector, I have instructed the director-general of the Ministry of Communications to act towards establishing a regulatory environment which will allow operators who wish to operate, in agreement with mobile license holders, as MVNO's, including as full MVNO's; this, subject to allowing interested parties an opportunity to present to the Ministry their positions regarding licensing policy of the “virtual operator” (MVNO) model. If, after a 6 month period from the time an MVNO license holder has approached a mobile license holder, no agreement is reached regarding the provision of virtual services, the Minister will investigate the reasons for this lack of agreement, and after hearing the parties involved, will consider enacting regulations in accordance with his powers under the Communications Law.

At the same time, I intend to continue to act to lower switching barriers in the market and to lower barriers to entry, as well as to enact further measures which, in conjunction with

the measures recommended by the committee, will lead to the result of strengthening competition in the mobile sector.

The committee's recommendations, subject to a number of changes and emphases as detailed hereinafter, will be the guiding policy for the Ministry's activities. With the adoption of the recommendations, work will begin to amend existing licenses and create new ones, and to amend secondary and primary legislation, insofar as is necessary to implement the recommendations.

The committee was appointed to assist the Minister in formulating his policy in the communications sector, thereby providing communications companies and investors with a regulatory horizon. However, it should be noted that the communications market is a dynamic one, which is influenced by different factors, such as developing technology and changing consumer behavior; therefore, if and when conditions change in a manner that necessitates a change in policy, it is possible that the Minister of Communications may have to deviate from the committee's recommendations as they have been adopted in this document, while allowing the relevant parties to have their positions heard before him.

1. Structural changes in the fixed sector / Level playing field

Decision taken by Minister of Communications:

In accordance with the committee recommendations, the Ministry will begin to act to prepare the regulatory and pricing infrastructure necessary to establish a wholesale market, including unbundling arrangements (LLU).

At the same time, in order to incentivise "Bezeq" to implement wholesale market arrangements as soon as possible, I have decided that the date on which "Bezeq" will be given the incentives set out in the committee's report, may be brought forward, subject to the fulfillment of all the following conditions:

1. "Bezeq" will be allowed to bring before the Ministry an agreement to supply wholesale services with any given provider who is not a "Bezeq" subsidiary, or a general offer to provide the said services (Reference Unbundling Offer – RUO) ("proposed agreement" and "proposed offer", respectively);
2. Should the Ministry conclude, after it has examined the proposed agreement or the proposed offer, and once changes required by the Ministry are made, as necessary, that it includes all the tariffs and terms necessary to implement all wholesale services in practice, including LLU, Bitstream access, resale, and others, and that the needs of all operators that require these services are met, in an equitable fashion, the agreement or offer will be published as the offer which "Bezeq" will be obliged to propose to all interested parties ("the offer").
3. Once at least one competitor (who is not a "Bezeq" subsidiary) has begun operating on the basis of the offer, including, inter alia, unbundling (LLU), "Bezeq" subsidiaries will be granted permission to provide "service bundles" with no obligation to provide individual services, including telephony and broadband

- “Bezeq” products. In addition, the subsidiaries (including YES) will be granted permission to provide IPTV services, whether on upgraded “Bezeq” infrastructure or via leasing and upgrading the access network, as long as cross-ownership regulations are not breached. At this time, it will be possible to grant specialized domestic telephony licenses to the subsidiaries, to supply non-VOB telephony services.
4. The incentives laid out in paragraph 3 above, will be granted 6 months after the offer is published, even if at that time no competitors (who are not “Bezeq” subsidiaries) are found to be offering services, including by LLU, on the basis of the offer, unless the Ministry shall be convinced that “Bezeq” is impeding the operation of the wholesale market on all levels.

I see great significance in the speed of implementation of the recommendations on this matter. Without a doubt, regulatory certainty is necessary to encourage investment, and it will increase as the process of implementation is shorter.

In order to allow this complex process to be implemented quickly, the Ministry, within the framework of carrying out this policy, should be assisted by an external consulting company with proven experience in the matter. Concurrently, in order to properly regulate the matter, the Ministry requires that a number of professional personnel who will deal with the implementation be recruited as quickly as possible for the relevant Ministry divisions, in coordination with the civil service commission and the budget division of the Ministry of Finance.

I see eye to eye with the committee on the matter of the importance of upgrading the fixed telecommunications infrastructure. As the committee found, the decrease in investment in fixed network infrastructures has caused a relative lag in the development of the said infrastructure in Israel, and has caused the bandwidth offered to the Israeli consumer to be relatively low, compared with average consumer bandwidth in other Western countries. This phenomenon affects the supply of telecommunications services to the public, and negatively impacts other sectors of the economy. Upgrading the fixed infrastructure to a level comparable to other western countries, is the major challenge the Ministry of Communications will face towards the end of this decade. Therefore, insofar as I shall be convinced that further incentives are appropriate, to incentivize “Bezeq” to invest in universal and rapid deployment of next generation networks (NGN), I will act to do so.

2. Tariff Flexibility for “Bezeq” – Alternative Tariff Plans

Decision taken by Minister of Communications:

I hereby adopt the recommendations of the committee regarding tariff flexibility for “Bezeq”. Adoption of the committee’s recommendations regarding tariff flexibility for “Bezeq”, including clear criteria for analyzing alternative tariff plans, is expected to ease the work of analysis and consideration of alternative tariff plans by the regulatory bodies.

In addition, in order to streamline the approval procedure for alternative tariff plans, and in order to provide a higher level of certainty to “Bezeq” regarding the timetables that the company may expect when an alternative tariff plan is requested, I have decided to change the mechanism for the approval of alternative tariff plans, as detailed below.

Regarding the need to streamline the approval process of alternative tariff plans and provide a higher level of certainty to “Bezeq”, the committee has noted that experience of recent years shows that the timetable laid out in the law for approval of alternative tariff plans (60 days) has not always been adhered to. As the committee’s report states, in many cases, a lack of adherence to the timetable is the result of lack of agreement between the Ministry of Communications and the Ministry of Finance, regarding the proper interpretation of “defensive measures”, which is a main criterion in the decision to approve an alternative tariff plan. Therefore, I have decided to act in order to change the mechanism for the approval of alternative tariff plans, such that “Bezeq” will not be required to wait for explicit authorization from both Ministers, and will be allowed to offer the plan once a specified period of time has passed since the request for the plan was filed, unless the Minister of Communications or the Minister of Finance inform the company of their objections during this time period. The mechanism for the approval of alternative tariff plans shall be as follows:

1. “Bezeq” will submit, in writing, to the Ministry of Communications, the details of the alternative tariff plan the company wishes to offer (“the request”).
2. In the request, the company will detail how the plan complies with the criteria set out by the committee, and the company will include all the data necessary for the Ministry to determine that the plan indeed complies with the said criteria.
3. Subject to the provision of sub-section (b) below, “Bezeq” will be free to offer the alternative tariff plan 45 days from the day the request was received by the Ministry of Communications, unless the Minister of Communications or the Minister of Finance has informed the company of their objections to the request, all subject to the following:
 - a. The Minister of Communications will have 30 days from the day that the request was received by the Ministry of Communications, to give notice of his objections. If 30 days have passed and the Minister of Communications has not informed the company of any objections, an additional period of 15 days will be allotted in which the Minister of Finance may give notice of his objections. If the Minister has decided not to object to the request, he will pass the request on to the Minister of Finance.
 - b. Insofar as additional information or clarifications are required by the Ministry of Communications regarding the data received from “Bezeq” under paragraph 2 above (“supplementary information”), and, on the day of receipt of the supplementary information at the Ministry of Communications, less than 15 days remain until the conclusion of the 30 day period in which the Minister may give notice of his objections, this period will be extended, such that from the day of receipt of the supplementary information, the Minister will have 15 days in which to

inform the company of his objection to the request. Should the Minister not inform the company of his objections during the aforementioned 15 days, the Minister of Finance will be allotted an additional period of 15 days, as stated in subsection (a) above, during which he will may give notice of his objection to the request.

- c. "Bezeq" may offer an alternative tariff plan even if the time periods in which the Ministers may object to the request to approve the relevant alternative tariff plan, as stated in subsections (a) and (b) above, respectively, have not passed, if the Minister of Communications, with the agreement of the Minister of Finance, has informed "Bezeq" in writing, before the aforementioned periods have passed, that the Ministers do not object to the request.

4. The Multichannel Broadcasting Sector: The Basic Channel Plan

Decision taken by Minister of Communications:

I agree with the committee's analysis of the competitive and consumer failures in the multichannel broadcasting sector. However, owing to the fact that the committee dealt mainly with the telecommunications sector, and the analysis of the broadcasting sector was not entirely complete owing to a lack of time and resources, I have decided to conduct a more comprehensive investigation of all levels of the broadcasting market. Therefore, and in order to formulate an integrative solution for the broadcasting sector, it is my intention to appoint in the near future a committee to make recommendations for policy and competitive frameworks in the multichannel broadcasting and commercial broadcasting sectors. The chairman of this committee will be someone of experience in the relevant sectors, and the members shall include a representative of the Council for Cable and Satellite Broadcasting, a representative of the Second Authority for Television and Radio, a representative of the Ministry of Communications, and other members as I shall find appropriate. The committee will be required to present its recommendations within a reasonable period of time. I believe that the committee should be given wide jurisdiction regarding the aforementioned topic. I intend to brief the committee to conduct a thorough investigation of the framework set out by the Gronau Committee, including, inter alia, the recommendation regarding the size of the basic channel plan, the pricing of the basic plan, and the removal of restraints on special license holders regarding content. In addition, I intend to instruct the committee to address additional issues in the broadcasting sector, including advertising on the multichannel broadcasting platforms and ways of financing them, and the need to examine the regulatory regime in the commercial broadcast sector, all this in light of anticipated changes in the sector, such as the entry of new content platforms, i.e. IPTV and DTT.

It should be noted that at the time of publication of this document discussions are ongoing between the Ministry of Communications and the Ministry of Finance regarding government decisions in the context of the 2009 State Budget. If government decisions on this matter are taken, the committee will be requested to recommend the required framework for implementing the government decisions, and to set modes of action.

5. Multichannel Broadcasting – Structural Separation of the HOT Group

Decision taken by Minister of Communications:

The Ministry of Communications will act to ensure that the companies comply with the rules of structural separation set out in their licenses, such that the separation will include completely separated management structures, a ban on providing employee services between the companies, separation of all assets, the creation of separate marketing structures, and a ban on transfer of information between the companies (all these excluding the ability to offer service bundles including services of the different companies, as currently set out in their licenses). In addition, and in accordance with my decision to adopt the committee's recommendations regarding the wholesale market, one point that must be emphasized in this matter, is that the structural separation should enable the implementation of the wholesale market generally and of wholesale prices specifically.

6. International Telephony – Entrance of Bodies Connected to Mobile Telephony License Holders to the International Telephony Market

Decision taken by Minister of Communications:

I believe that the committee's recommendation regarding setting a tariff for an international call originating on a mobile network should be advanced, in the context of the interconnection regulations. This will allow the international telephony provider to set the price of international calls by the call destination, while taking into account the fee to be paid to the mobile provider, as set in the interconnection regulations. The tariff that will be set, is the tariff that is set in the interconnect regulations for termination of a call on a mobile network. This amendment to the regulations will be made, subject to hearing the positions of the mobile operators and the international telephony operators.

Regarding the committee's recommendation to allow the entrance of new international telephony providers who are controlled by mobile operators, before such a step, measures must be taken to ensure a level playing field. Therefore, I believe that existing mobile operators (or companies controlled by them) should not be permitted to operate in the international calling sector, before the aforementioned amendment to the interconnection regulations is made, and before the Minister has determined that new entrants, including international operators, are operating in the mobile sector as mobile virtual network operators, or that they have the ability to do so, in the manner described in the introduction to this document, via the creation of a wholesale mobile market. The entrance of mobile operators to the international sector before the aforementioned steps have been taken, may harm the ability of the international operators to compete with the mobile operators in the international sector, and may make it difficult for international operators to compete in the mobile market as stated above, should they wish to do so.

I wish to express my thanks and my great appreciation for the work of the committee members, and to the Ministry of Communications personnel who assisted in its work.

Ariel Atias

Minister of Communications

cc:

Members of the Committee

Adv. Noga Rubinstein, Chief Counsel