

Rights and Obligations of the Licensee under the Construction and
Operation of the Fiber Cable Network License Contracts in the
Kurdistan Region* (Comparative Legal Analysis)

حقوق والتزامات المرخص له بموجب عقود ترخيص إنشاء وتشغيل شبكة كابلات الألياف
الضوئية في إقليم كردستان (دراسة تحليلية قانونية مقارنة)

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Abstract

This research addresses the issue of the absence of a law for the regulation of telecommunications sector in the Kurdistan Region. It will, thus, focus on the regulation of rights and obligations for licensed operators of fiber optic cable networks under contracts issued by the Ministry of Transportation and Communications (MOTAC) of the Kurdistan Regional Government (KRG). Given the pivotal role of fiber optic backbone networks in regional connectivity, the study employs a comparative approach to analyze these rights and obligations in relation to legislative frameworks in the UK, Qatar, and Iraq. It assesses MOTAC’s efficacy in defining licensee responsibilities, examining alignment with applicable laws and regulations in the KRI and with international best practices and conformity with legal standards observed in comparator legislations. The study identifies shortcomings in MOTAC’s approach, particularly the separate licensing of intracity and intercity networks, which may impede competition and future investments. Recommendations highlight the urgent need for Kurdistan legislator to enact a comprehensive communications law to regulate this critical sector and amend MOTAC’s regulations to ensure licensees have adequate rights for the construction and expansion of their networks and operating them, thereby fostering a competitive telecom sector conducive to regional growth. It has been recommended that for MOTAC to have a modern regulatory framework, the practice of CRA in Qatar mainly and the Ofcom of UK could be beneficial.

Keywords: telecom sector, Kurdistan Region of Iraq (KRI), fixed network licenses, regulatory framework, competition, telecommunications regulation, telecommunications.



المخلص

يتناول هذا البحث مسألة غياب قانون لتنظيم قطاع الاتصالات في إقليم كردستان، مركزاً على تنظيم حقوق والتزامات المرخصين بتشغيل شبكات كابلات الألياف الضوئية بموجب العقود الصادرة عن وزارة النقل والاتصالات في حكومة إقليم كردستان. وبالنظر إلى الدور المحوري الذي تلعبه شبكات الألياف الضوئية الأساسية في الاتصالات الإقليمية، تتبنى الدراسة نهجاً مقارناً لتحليل هذه الحقوق والالتزامات بالنسبة للأطر التشريعية في كل من المملكة المتحدة وقطر والعراق. تقيم الدراسة فعالية وزارة النقل والاتصالات في تحديد مسؤوليات المرخص لهم، وتفحص مدى التوافق مع التشريعات المطبقة في إقليم كردستان وأفضل الممارسات الدولية، مع الالتزام بالمعايير القانونية المتبناة في التشريعات المقارنة. وتحدد الدراسة أوجه القصور في نهج الوزارة، ولا سيما في مسألة العقود المبرمة مع الشركات المرخصة لتشغيل الشبكات داخل المدن وبين المدن، والتي قد تعيق المنافسة والاستثمارات في المستقبل. تسلط التوصيات الضوء على الحاجة الملحة لإقليم كردستان إلى سن قانون شامل لتنظيم قطاع الاتصالات فيه وتعديل تعليمات الوزارة لضمان حصول المرخص لهم على الحقوق الكافية لبناء وتشغيل الشبكة وتطويرها، مما يعزز قطاع الاتصالات التنافسي الذي يفضي إلى النمو. وقد تمت التوصية بأن تستفيد الوزارة من الممارسات المتبعة لدى هيئة تنظيم الاتصالات في كل من دولة قطر والمملكة المتحدة بشكل رئيس، لتطوير إطار تنظيمي حديث في هذا الخصوص.

الكلمات المفتاحية: قطاع الاتصالات، إقليم كردستان العراق، تراخيص الشبكة الثابتة، الإطار

التنظيمي، المنافسة، تنظيم الاتصالات، الاتصالات السلكية واللاسلكية.

1: Introduction

1.1 General Overview

Following the signature of the license contracts awarded by the Ministry of Transportation and Communications (MOTAC), there would be several legal implications upon both parties. This paper will discuss the rights and obligations of the licensee, the companies which have constructed and operate the fiber cable networks in the Kurdistan Region. It will also compare and contrast these rights and obligations with the ones of the other legislations namely the UK's Ofcom and the State of Qatar's Communications Regulatory Authority (CRA). It will touch upon the case of Iraq's Informatics and Telecommunication Public Company (ITPC).

By thoroughly examining the rights and obligations of the licensee, this paper aims to provide a comprehensive overview of the contractual dynamics governing telecommunications operations in the KRI. Moreover, through comparative analysis and evaluation, it seeks to illuminate similarities and disparities in the regulatory frameworks across different legislations of the UK,

Qatar and Iraq, thus contributing to a nuanced understanding of the broader regulatory landscape in the telecommunications sector. Furthermore, what has complicated the issue is the separation of the intracity and intercity approach which has deteriorated this market and has led to some sort of monopoly inside cities and districts in the KRI.

To begin with, every contractual arrangement entails specific rights and obligations for the involved parties. Similarly, the license contracts established between MOTAC, and the operators assign various rights and obligations to the latter. It is important to note that some obligations incumbent upon one party within a contractual arrangement may be construed as corresponding rights vested in the other party, and vice versa.

1.2 Research Problem/Issue

In the absence of a communications law, MOTAC has regulated telecommunications through a Communications Instructions (issued by MOTAC) which lack the robustness of legislation. The question would be whether this has resulted in discrepancies in the licensee's rights and obligations set forth in awarded license contracts, potentially discouraging investment and hindering competition? The research problem is, thus, to identify and analyze the rights and obligations of licensees within the existing legal framework of such licenses. Given the legislative gaps and lack of comprehensive legal guidelines, this study aims to determine whether the licensees' rights and obligations are adequately defined, aligned with international best practices, and consistent with legal norms and practices in other jurisdictions such as the UK, Qatar, and Iraq. Finally, the question of whether MOTAC has treated the licensees in a fair and equitable manner while awarding these license contracts, particularly the rights and obligations of the latter.

1.3 The Aim of the Research

The objective of this research paper is to conduct a comprehensive analysis of the rights and obligations of licensees under the fiber optic licensing frameworks in the KRI, the UK, Qatar, and Iraq. This study aims to evaluate the extent to which these rights and obligations are clearly articulated and aligned with international best practices. Furthermore, it seeks to identify any deficiencies or inconsistencies within the current regulatory regimes and to recommend necessary amendments or new provisions to establish a robust and effective legal framework for the regulation of fiber optic licenses.



1.4 Scope of the Study

This paper will discuss the rights and obligations of the licensee under the license contracts awarded by MOTAC for the construction of fiber optic cable networks in the KRI. It will compare these rights and obligations with the ones under other regulatory frameworks in the UK, Qatar and Iraq.

1.5 The Importance of the Research

As noted previously, the absence of necessary legislation necessitates jurisprudence to assess the communications sector in the KRI. This need is particularly pressing due to the scarcity of literature in this field. This paper aims to elucidate the rights and obligations of licensees as delineated in the provisions of license contracts. Moreover, it is crucial to compare these provisions with regulatory frameworks in other countries included in this comparative study. Such an analysis is vital for policymakers, legal professionals, and stakeholders in the KRI telecom sector, as it will offer insights into best practices and pinpoint areas in need of reform. The results of this study could play a pivotal role in shaping legislation that safeguards the state's interests while fostering sustainable development in the telecom sector and enhancing competition and transparency.

1.6 Research Methodology

The research methodology will adopt a legal comparative approach, utilizing the black letter method to analyze the rights and obligations of the licensee. It will compare the relevant legislation in the KRI, the UK, Qatar and Iraq. The study will be primarily library-based, using existing (related) literature such as books, journal articles, and case reports.

1.7 Research Structure

The research paper is structured into four chapters, each addressing a pivotal aspect of the study concerning the rights and obligations of the licensee under the license contracts granted by MOTAC in the KRI.

The first chapter introduces the research, detailing the research issue, objectives, significance, and methodology. It establishes the foundation for the subsequent analysis by placing the study within the broader legal and regulatory framework of the Kurdistan Region and Iraq.

The second chapter explores the specific rights conferred upon the licensee under these license contracts. It examines the legal provisions, scope, and extent of these rights, analyzing their alignment with both national and international standards. This chapter also includes a comparative analysis of the rights of license holders under similar licensing frameworks in other jurisdictions, such as the UK, Qatar, and Iraq.

The third chapter addresses the obligations imposed on the licensees under these license contracts. It scrutinizes the regulatory requirements, compliance measures, and enforcement mechanisms ensuring that licensees fulfill their responsibilities. This chapter also offers a comparative analysis of the obligations of licensees in other countries, identifying best practices and potential areas for improvement within the Kurdistan Region's regulatory framework

The final chapter synthesizes the findings from the preceding chapters, presenting the overall results of the study. It discusses the compatibility of the licensee's rights and obligations with existing laws and international practices. Based on this analysis, the chapter offers recommendations for legal reforms and policy enhancements aimed at addressing identified gaps and strengthening the regulatory framework for fiber optic cable network licenses in the Kurdistan Region.

This structured approach ensures a thorough examination of the licensee's rights and obligations, providing valuable insights and practical recommendations for policymakers, legal practitioners, and stakeholders in the telecom sector.

2: Rights of the Licensee

The rights of the licensees should be clearly defined under the licensing framework of the regulating bodies.¹ It may happen that the obligations of the licensor could be deemed as the rights of the licensee—that is the obligations of MOTAC in these license contracts may be considered as the rights of the companies, the licensees. However, this chapter will discuss some of those rights granted to the licensees under the provisions of these license contracts and compare them with the ones of the other regulatory frameworks, if applicable, in order to show whether the licensees have been granted with sufficient rights compared to the ones under other comparative legislations. This chapter will be dedicated to discussing two rights of the licenses which are: the ownership in the networks and the right to interconnect its network nationally and internationally with other networks.

2.1 Ownership of the fiber optic cable network: the right to own the network is very critical for any operator that would intend to invest in constructing a huge network. The investors would have to recover the money that they bury building these fiber networks. This right has been set forth in the contracts awarded by MOTAC—the provisions of these contracts states that: 'the licensee under this contract is entitled to establish, install, operate, and



manage a private network of optical cables using the latest technologies in the field of telecommunications and the internet.² Furthermore, the provisions of the contract awarded by MOTAC has set forth this right as a default right for the licensee to own this private network infrastructure fully including all the fiber cables, the equipment, and the systems necessary to run and operate such network; also, any other assets (movable or immovable) to this network.³

As previously noted, subsequent to 2005, the Kurdistan Region lacked any fiber optic network infrastructure and corresponding operators. MOTAC held exclusive control over the fixed copper networks within the Region during this period. Following the enactment of Investment Laws and other legislative measures, notably the oil and gas law, in 2006 and 2007 respectively, significant foreign and local investments flowed into the Region. This step was followed by enacting MOTAC Law⁴ which laid the foundations for further developments and the basis for the activities of this Ministry. In response, MOTAC made the strategic decision to award license contracts and grant the full ownership of the resulting networks to the licensees.⁵

It could be said that this provision stands out as one of the most pivotal and fundamental rights bestowed upon the licensees through the terms of the contracts awarded by MOTAC.

In the UK, operators of the fiber cable networks also own (whether individually or collectively with other persons through joint-stock companies) their networks and have the rights to operate. The prime examples are Openreach and other owners of provider of ECNs and ECSs (namely, Vodafone, Virgin Media, Talk Talk, Sky, City Fiber and etc...⁶

Some scholars argue that the main idea of the Telecommunications Act 1984 of the UK was to make BT privatized.⁷ Also, the subsequent acts have focused on further privatizations. In 2005 BT legally bound itself and undertook to make a separate operational entity for the purpose of providing access services to BT and other operators.⁸ Ofcom further strengthened the independence of Openreach in the market⁹ even though BT tried to avoid this independence of Openreach.¹⁰

In Qatar, the situation is similar to the one of the UK and MOTAC where the licensee has been authorized to lay the fiber cable networks and have the ownership of these networks. Although the provisions of the contracts do not directly or explicitly state that the licensee can own these networks, it is clear through the context of the provisions that the licensee has been authorized to utilize this network and to do legal action on it including selling it to a new

licensee but subject to certain approvals.¹¹

In Iraq, surprisingly, ITPC licensed partners cannot be the owners of the fiber optic cable networks and the ownership belongs to ITPC only. This is because ITPC is a state-owned company, and the fixed networks (including fiber) has not been liberalized yet. Even if the fiber optic cable was laid down as the last mile connection to connect a customer or premises, by the operation of the law, ITPC owns the fiber optic cables in Iraq.¹² It could therefore be stated that ITPC's strategy differs from the ones of the other regulators compared in this study.

It is worth mentioning that Iraq does not have a communications law which is the same case of MOTAC. Although the mobile operators, wireless ISPs and media affairs in Iraq are regulated by CMC law,¹³ the never-ending tussle between CMC and ITPC/MOC and the lack of a proper legislation to separate powers and authorities of these regulating entities have added another layer of the issues to the already existing problems related to infrastructure, competition, monopoly of ITPC and boosting the economy of the country.¹⁴

The key difference between these regulatory regimes is that even if the licensees own the networks, they still have to share their existing networks with other operators but, of course, in exchange for a fair amount of money.¹⁵

It can therefore be said that the aforementioned attribute serves as a compelling inducement for investors to allocate capital in the region, as they would retain ownership over the infrastructure they establish. Consequently, the approach undertaken by MOTAC mirrors the ones of the UK and the one of CRA but unlike the one of ITPC), thereby warranting recognition as a commendable strategy.

2.2 The right to interconnect¹⁶ with other networks inside and outside the KRI (international interconnection): this interconnection right can be divided into two three main categories. The first one is that any intercity fiber network provider can interconnect its network with the neighboring countries where the KRI has direct geographical territorial interconnection with which are mainly, Turkey, Iran and Syria. This right¹⁷ is deemed as one of the very important and unique rights that the licensee will be able to bring internet capacities from the international internet content providers in the other countries in which the big datacenters are located. Under this category, the licensee (most probably) brings and procures capacities from outside into the KRI.¹⁸

The second category of the interconnection is that the licensee is authorized to interconnect with the other Iraqi cities (albeit, after obtaining the licensor's approval) where the KRI has the geographical territorial interconnection with



which are mainly, Kirkuk and Ninewa Governorates of Iraq.¹⁹ Under this category, the licensed operators by MOTAC (in almost all cases) deliver and sell capacities towards the rest of Iraq and even the other countries, the Gulf countries.

The third facet of this entitlement pertains to the fixed network provider's prerogative to interconnect with other fixed network providers, whether intercity with intercity or intracity with intercity network providers.²⁰ Given that MOTAC issues licenses for both intracity and intercity networks, it becomes imperative for both categories to establish interconnections at junctures where their respective networks intersect, thereby complementing each other's infrastructure. Particularly critical for intercity licensees is the ability to access intracity networks, as this access facilitates the interconnection of their own network at relevant points and enables engagement with the networks of other providers.

The strategic geography of the KRI has given the importance of this route that the current telecom capacities flowing into Iraq are mainly provided through the terrestrial route from Europe, into Turkey and then into the KRI and Iraq utilized by the other telecom service providers mainly, mobile operators and the other wireless service providers in both KRI and Iraq.²¹

Primarily, the initial condition necessitates the procurement of MOTAC's authorization; however, the Instructions do not specify whether such authorization should be in written form or designate the authorized individual or entity within MOTAC vested with the authority to grant approval. This ambiguity may be construed as a procedural deficiency within MOTAC's directives. Furthermore, compliance dictates that the cross-border point assumes a formal status. This entails that the said cross-border must undergo formal recognition and acknowledgment by the KRG's Ministry of Finance and Economy (referred to hereinafter as "MOFAE"), a process contingent upon consultation with and approval from the Iraqi Federal Government.²²

Moreover, the licensed company can only interconnect in one of the formal cross-border points with outside the KRI and under the supervision of the concerned parties in the KRG's COM.²³ This statement is vague and has not been explained further in MOTAC's Instructions nor under the provisions of the licenses. It can therefore be construed that the company is required to obtain the written approval of KRG's COM. However, it has not specified the concerned party or entity in the KRG's COM and how this approval shall be obtained. Usually, the licensee shall submit a written letter to MOTAC, and the latter will escalate it to KRG's COM—which is usually the Presidency of Diwan.

Finally, in accordance with stipulated provisions, licensees are mandated to engage in cooperative efforts in instances where interruptions occur in the provision of services. Such interruptions may arise from various factors, including outages or fiber optic cable disruptions experienced by one of the licensees acting as the service provider. It is incumbent upon the remaining licensees to extend support and undertake measures conducive to ensuring the continuity of services.²⁴ Furthermore, it is mandated that the method of interconnection adhere to the default condition of utilizing fiber optic cable.²⁵

However, this right is not free from issues and there are certain major issues that face these licensees today. This is true especially in the case of the intercity fiber network providers when applying for the access and interconnection with the intracity fiber network providers.²⁶ Although MOTAC has tried to regulate this and has even set forth a commercial policy²⁷ in this regard, the operators have rarely benefited from it. The main reasons for this could be the peculiar approach of the separation of the intracity and intercity licenses where they always consider each other as competitors rather than cooperators.

A prominent critique directed at this policy is the failure to adjust prices in response to the substantial growth in internet traffic²⁸ since 2015 where the price policy was issued once and has not been updated since then. This stagnation over the course of eight years is deemed highly irregular, resulting in various complications. Particularly noteworthy is the persistent endeavor by intercity operators to expand their networks into inside cities and districts—the prime example would be the tussle between DIL and the intracity operator on a battle that the former expands its networks inside the cities and districts of Erbil and Duhok.²⁹ Despite repeated adjudication before the courts, resolution has proven elusive primarily due to the jurisdictional authority vested in MOTAC to adjudicate such matters.

In the UK, this right has been regulated for many years and since the 1980s and even after the adoption of the European Interconnection Directive in 1990s where all operators (ECNs and ECSs) were required to interconnect and to accept any request for interconnection. Especially the need for the leased line regulation.³⁰ This is by entering into interconnection arrangements and different commercial models and methods between the operators and providers.³¹ This right allows any operator to request to interconnect its network the one of the other providers in order to ensure that the users of one network are able to communicate with the users of the other networks³² and to secure the provision



of the best quality of service to the users.³³ This subject received further importance after the establishment of Ofcom in 2003.

The regulatory framework in the UK³⁴ has structured this subject in a very detailed manner which has covered all types of interconnections and network accesses.³⁵ This is especially important when the new entrant/operator comes into the market, the regulator has provided the interconnection as a right to interconnect its network with the existing operators.³⁶ Interconnection has been defined under the regulatory framework established by the Communications Act 2003 in the UK as the linking of electronic communications networks for the exchange of traffic. Additionally, network access has also been defined in a way that encompasses more than just interconnection. It encompasses access to a variety of electronic communications networks, services, and facilities needed for providing electronic communications services.³⁷

In the UK, operators enjoy unfettered liberty to engage in interconnection activities with any operator, domestically or internationally, provided that they adhere to the overarching conditions governing interconnection. Given the diverse landscape comprising both major and minor Internet Service Providers (ISPs) and fixed network providers within the UK, interconnections occur across various tiers. Frequently, these interconnections take place at Internet Exchange Points (referred to hereinafter as "IXPs") and data centers, which assume a pivotal role by congregating multiple operators within a singular or multiple locations, facilitating their interconnection.³⁸ Notably, this facilitation is not without cost, as operators typically incur fees and are subject to specific commercial agreements or arrangements. Nonetheless, this operational framework does not preclude operators or fixed network providers from establishing bespoke one-to-one interconnection agreements, whereby interconnections are directly forged between them.

It could therefore be said that the UK has addressed this issue in a very well-organized manner particularly the right of interconnection with other cross-border points where the operators are authorized to interconnect in as many cross-border points as they desire and how to also interconnect inside the UK.

In Qatar, CRA has been entrusted with the authority to delineate the rights, obligations, and stipulations governing interconnection and access, and is tasked with supervising and ensuring adherence to these regulations. Any licensed fixed network provider shall have the right to engage in negotiations, conducted in good faith, with another provider with the aim of reaching an arrangement on interconnection and access; also, the providers are entitled to interconnect and

access to the services or facilities provided by another provider, contingent upon the terms delineated within the interconnection and access framework.³⁹

Similar to the case of the UK, the operator in the Qatar has the right to either interconnect with other network providers inside the territory of the State or to interconnect with the networks of the other providers in the neighboring countries, including the interconnection right with the submarine (subsea) cable network providers in the licensed landing stations.⁴⁰

CRA shall issue the necessary regulations, orders and notices to make sure that the terms and conditions and processes of interconnection and access are all clear and the licensee has the right to request for this interconnect and access right by submitting a written request to any other service provider to enter into bona-fide negotiations in order to provide its customers with its services and to connect its network points everywhere.⁴¹

The provisions of the license contracts awarded by CRA to the operators in Qatar contain very detailed terms and conditions and are explanatory enough. A full annex has been dedicated to set the terms and conditions of the access and wholesale services where the conditions of the request and the durations have clearly mentioned. If the parties (access seeker and access provider) do not reach an agreement within 60 days, each party may refer the case to the CRA.⁴² It could therefore be said that the approach of CRA in Qatar is an appropriate one and covers the details of this subject matter where the KRI's MOTAC can benefit from.

In Iraq, this right has been granted to the operators and they will have the right to interconnect both locally and on cross-border points with the neighboring countries. Thus, any company that becomes authorized ISP by ITPC will have the right to locally interconnect with any other ISP and will have the right to bring telecom capacities in the formal cross-border points of Iraq including from the landing stations where the sea cables are landed in Al-Faw. ITPC authorizes its ISP partners to interconnect in one main cross-border point and in two other secondary cross-border points—totaling in three cross-border points.⁴³

However, there are certain conditions which shall be met and respected such as the capacities shall go through ITPC's IGWs. The ISP shall submit in a letter to ITPCs whenever the former activates new capacities and applies for upgrades and downgrades.⁴⁴ Because ITPC has not been privatized and the network is still owned by ITPC as a state-owned entity, the ISPs can procure their capacities from the network providers of the neighboring countries and



transmit it through and over the network and the equipment of ITPC for the duration of their contract. Today, all borders are open for all ISPs to which they desire to interconnect provided that certain requirements are fulfilled.

The organization of this right by all concerned comparative legislations, including that of MOTAC, has generally been commendable. However, there exists a notable gap in the seamless interconnection with international formal cross-border points. It is advised that MOTAC should adopt a more liberal approach in this regard to harmonize its legal framework with pertinent laws, particularly competition laws, and to adhere to regional and international best practices.⁴⁵ This recommendation finds support in comparative analyses, such as those pertaining to Iraq as a regional approach on the one hand; and, Qatar and the UK as international approaches, on the other hand, which underscore the benefits of such alignment.

In this chapter we discussed the rights of the licensee under the license contracts awarded by MOTAC and compared them with the similar schemes of the other jurisdictions. It could be argued that the rights of network ownership and interconnections are the two most important rights granted under the licensing regime of MOTAC which have been dealt with in different ways under other comparative legislations. Notably, the right to own a network was not the case under the regulatory framework Iraqi ITPC. Thus, in order to understand the other legal implications of these license contracts in question, the obligations of the licensee under MOTAC's regime will be discussed and compared with the obligations of the licensees in the other jurisdictions in the following section.

3: Obligations of the Licensee

In examining the contractual landscape established by MOTAC for the operation of fiber cable networks in the KRI, it is imperative to outline the obligations encumbered upon the licensee—the companies responsible for the construction and operation of these networks. This chapter delves into the main multifaceted obligations vested upon the licensees and elucidates their significance within the framework of regulatory compliance and market dynamics. From the construction and operation of network infrastructure to regulatory compliance, each facet of the licensee's obligations carries profound implications for the seamless functioning of telecommunications infrastructure.

Furthermore, this discourse will endeavor to compare these obligations against regulatory frameworks in analogous legislations, such as the UK's Ofcom and the State of Qatar's CRA mainly (and of Iraq's ITPC, if needed) to ascertain the adequacy and comparability of the rights and obligations conferred

upon the licensees. By scrutinizing these obligations through a comparative lens, a comprehensive understanding can be gleaned regarding the extent to which licensees are endowed with requisite rights and responsibilities vis-à-vis their counterparts in other regulatory environments in question.

As previously explained, some of the rights of the licensor will now, by default, become the obligations of the licensee under the license contracts awarded by MOTAC such as the MOTAC's shares (financial dues that the licensees pay to MOTAC) and the application of MOTAC's Instructions. This chapter will therefore focus on two of these obligations which are solely licensee's obligations which are: the construction and operation of the network and the compliance of the licensees.

3.1 The construction and operation of a network: the very first obligation on the licensee is the establishment of a network in accordance with the scope of the license and to secure the coverage of the services in the geographical territory of the license as stipulated in the provisions of the license contracts. The licensee is obligated under this contract to establish, install, operate and manage a private fiber network cable and to install and operate the latest technologies and to operate in the geographical areas within the borders of the Kurdistan Region.⁴⁶ It is worth mentioning here that the operators are also required to replace the copper-based connections (if there is any) with the fiber optic cables.⁴⁷

Furthermore, the licensee will have to establish its network within a timeframe that has been agreed upon and set forth in the license contract. In addition to that, the licensee is required to submit a PIP shall report on a monthly basis to MOTAC. If there is any deviation from this PIP, the former shall notify the latter in order to approve it.⁴⁸ The coverage threshold and the duration to cover certain area of license territory differs from the license of intracity to the one of intercity. With regard to the former, the licensee is required to cover 70% of the residential and commercial areas.⁴⁹ While the provisions of the intercity license contract do not explicitly stipulate the threshold of the coverage,⁵⁰ they states that after the delivery of the 50% of the coverage, the licensee shall submit a formal request to extend the period in order to reach 75% coverage—which, it is believed to be an initial coverage threshold for the intercity type of the license contracts.⁵¹

With respect to the period to deliver the aforementioned minimum network coverage, it will again vary depending on the type of the license contract. For the intracity networks, the period is 5 years from the date of the contract



signature date⁵² whereas for the intercity network providers is only 2 years.⁵³ It is worth mentioning that provisions of MOTAC Instructions do not state when this “specified period” of the 2 years will officially start and be counted.⁵⁴ If the licensee do not execute and deliver the coverage percentage, they will face financial penalties. The penalty structure will vary depending on the type of the licensee—whether it is intracity⁵⁵ or intercity or even cancelation of contract.⁵⁶

To further complicate the situation, potential complications and ambiguities may arise regarding the fulfillment of coverage percentages within the specified timeframes. For instance, in the event that the licensee fails to achieve the mandated percentage of network coverage, the method by which MOTAC is expected to ascertain these percentages becomes a matter of contention. As of the date of writing this thesis, there exists a notable absence of tools or mechanisms⁵⁷ enabling MOTAC to accurately gauge or measure these percentages. Consequently, the imposition of financial penalties outlined within the provisions of both types of license contracts and those articulated in MOTAC’s Instructions has not been enforced or exercised.⁵⁸

It is, however, worth mentioning that by now, this obligation upon the licensee has become obsolete as all fiber network providers have surpassed this percentage required as minimum network coverage. Therefore, it could be said that this condition stipulated in the provisions of the license contracts of MOTAC is deemed to be a valid condition upon the licensee but, albite, lacks certain mechanisms and tools to measure and control. An issue that may recur pertains to the duplication of investments and infrastructure within a specific geographical area,⁵⁹ wherein licensees possess the opportunity to mitigate such duplicative costs through the collaborative sharing of their networks.⁶⁰

In the UK, all authorized operators are required to build their networks within the scope and timelines given to them.⁶¹ The operator will also, by default, be required to operate such networks. As previously discussed after the separation of Openreach from BT, in most of the areas in the UK, Openreach, as the biggest fiber network provider,⁶² has been obliged to share its infrastructure with other operators. Furthermore, the regulation of this condition in the UK is different from the one stipulated in the license contracts of MOTAC where in the UK, Ofcom will usually plan for promoting investment in the fiber networks.⁶³

Although Ofcom continually obliges the operators to invest in building their fiber networks and more expansions,⁶⁴ they frequently monitor the areas where Openreach intends to do investment to avoid double investment⁶⁵ and to

make sure that Openreach will share its physical infrastructure access (PIA) to other operators.⁶⁶ In such a case, Ofcom would impose certain regulated charges and prices as a reference for Openreach to share its network infrastructure with BT and other service providers.⁶⁷

It could therefore be said this subject has been regulated by Ofcom in the UK and Openreach and other network providers are supposed to first apply their plans with Ofcom for approvals while expanding their fiber networks. However, Ofcom's approach aims to encourage investment in networks by fostering competition among network providers in areas where it's viable since it believes that such competition can offer consumers substantial advantages over a model reliant on regulated access to BT's network and wholesale services.⁶⁸

In Qatar, the licensee is required to build and operate a network which will enable the licensee to provide authorized telecommunications networks and services.⁶⁹ Similar to the approach of MOTAC, CRA has mandated that the license holder shall adhere to the precise deployment and coverage standards and provide the authorized services related to this network within the scope of the license and within the timelines stipulated in the provisions of the license. Should the licensee fail to fulfill any of these coverage requirements, they may face penalties or sanctions. Furthermore, it is the licensee's responsibility to acquire all essential planning permissions, construction permits, easements, rights of way, or other necessary authorizations for the construction of its networks in order to meet its coverage obligations.⁷⁰

It is evident that the license holder under the regulatory framework of CRA shall deliver the network rollout and the coverage of the authorized services within different phases depending on the type of the license—the rollout and coverage PIPs will be divided into phases which usually ranges between 12 to 36 months.⁷¹ Every six months following six months after the effective date, the licensee is required to provide a comprehensive written status report to CRA. This report should outline the licensee's advancements in fulfilling the coverage obligations and the continuing coverage obligation, and it must adhere to a format and level of detail approved by CRA.⁷²

The licensee shall certify to CRA, within one month of each completion deadline for relevant coverage obligations, that such obligations have been met. This certification must be supported by detailed network plans, data on coverage, independent verification of fulfillment, and a decision from the board of directors of the licensee shall be provided approving the certification.⁷³

The licensee shall promptly and comprehensively respond to any requests



for information from CRA regarding the coverage of its network. The latter reserves the right to conduct an independent audit of the licensee's network performance at its discretion. This audit may occur after receiving certification from the licensee regarding the fulfillment of coverage obligations and continuing coverage obligations, or if the licensee fails to provide such certification. The licensee is obligated to fully cooperate with CRA, and any third-party experts appointed by the latter for conducting such audits.⁷⁴

The licensee is not permitted offer the authorized or mandatory telecommunications services specified in the license document in certain geographical areas unless they have submitted the appropriate regulatory performance bond or another bond for each coverage obligation in those areas. These bonds must be provided within three months from the effective date.⁷⁵ These bonds must be payable to CRA and issued or endorsed by a bank operating within the State of Qatar. Failure to comply with the minimum coverage obligation set by CRA, the licensee may be required to provide additional annual bonds of QAR 100 million until obligations are met.⁷⁶

The licenses awarded by CRA in Qatar are very detailed where all the obligations regarding network rollout and service delivery are explained in its provisions and annexures. Noteworthy is the stipulation in Qatar wherein coverage alone is deemed insufficient; rather, licensees are mandated to ensure both coverage and the effective provision of services to designated areas within specified PIPs. This disparity between the approaches of CRA and MOTAC is evident through the mechanisms that CRA can exercise which it will make sure that this obligation is respected by the licensee while MOTAC's approach lacks such mechanisms. Consequently, Qatar's regulatory framework may offer potential benefits for MOTAC particularly in providing certain and assertive mechanisms for the smooth and efficient delivery of the networks and services.

Regarding ITPC's Iraq, the authorized ISP companies are not supposed to own the networks they build and operate—since ITPC, as the state-owned company, itself will build and operate its own network. Even if the ISPs build some portions or last miles of the networks, they will still have to hand over these networks and lease back the services from ITPC.⁷⁷ It is also worth mentioning that MOC and ITPC have taken certain bold decisions to promote competition and open up the market for marketing the ITPC's network to all ISPs and MNOs in their territory and the level of competition is, to some extent, available but the issue is the dilemma of the existing old and weak cable networks infrastructure there.⁷⁸ In addition to the fact that telecommunications

sector is one of the five sectors that has heavily attracted both national and international direct investment in Iraq,⁷⁹ the telecom investment projects have been in building the mobile and wireless networks rather than the fixed networks, such as fiber cable infrastructure.

Thus, it could be said that this obligation has been regulated in Qatar in the most sophisticated way where it serves the interests of both the regulator and also the public interest—that is, MOTAC can employee such an obligation in its future regulatory framework.⁸⁰

3.2 Compliance by the licensee: the provisions of the awarded contracts by MOTAC impose a general obligation (or a group of certain obligations) on the licensee which is to comply with the terms and conditions of the license contract.⁸¹ While this obligation appears generic at first glance, MOTAC has evidently aimed to address a key issue between intracity and intercity license holders, particularly regarding network expansion and license scope. MOTAC has mandated that these license holders (intracity and intercity operators) must not exceed the boundaries of their respective license scopes and are required to cooperate by providing each other with access and interconnection to their networks when necessary.

A critical point to highlight is the disparity in the wording of this provision between the license contracts awarded to intracity and intercity licensees. In the case of the latter, the licensee is required to comply with both the terms and conditions of the license contract and the applicable laws. Conversely, the intracity licensee is not explicitly obligated to adhere to applicable laws. This discrepancy could be construed as discriminatory against intercity license holders, potentially leading to issues related to unfair treatment by MOTAC towards its operators.⁸² Furthermore, this constitutes a clear violation of the general licensing conditions stipulated in MOTAC's Instructions, which mandate that all licensed entities comply with MOTAC's Instructions, decisions, and all applicable laws and regulations in the KRI.⁸³ This inconsistency not only undermines the principle of equal treatment but also raises concerns about the integrity and fairness of MOTAC's regulatory framework.

With regard to the obligation of cooperation between the intracity and intercity operators, the provisions of the license contracts stipulate that they must collaborate and coordinate based on mutually agreed contracts. This cooperation may involve:



- Intercity license holders have the right to utilize available and empty ducts of the intracity network within cities for its installation of its private fiber cable network.
- Intercity license holders have the right to utilize dark fibers of the intracity network if the ducts are available.
- Intercity license holders have the right to use ducts for fiber extension while simultaneously utilizing dark fibers for extended distances.
- Intercity license holders shall provide dark fiber to the intracity network licensees for necessary connections within different locations in the region while it stipulates that the intracity network operators cannot lay fiber cables between cities and districts.
- Intercity license holders shall supply intracity operators and licensed ISPs with wholesale internet services and point to point leased line services.

This cooperation shall be in accordance with contracts concluded between the two types of licensees and in exchange for a real rental cost, or cooperation must be by providing mutual services after submitting a request by the licensee and sending a copy to MOTAC for information and follow-up. This request shall be responded within 15 days by the license holder, either approving the request or stating the reasons for non-implementation. If the licensee and the requester cannot agree on costs and implementation timelines, MOTAC will determine the actual rental costs and implementation periods. These determinations are binding on both parties.⁸⁴

This means that the operators are first obliged to negotiate the prices and aspects of cooperation in order to reach an agreement. If that does not seem feasible (mainly due to the denial from the operator of the network of that particular area, MOTAC will provide the requester with other options including allowing the requester to construct its own network segment in that area.

If implementing the provisions in sections 3-3-1, 3-3-2, 3-3-3, and 3-4 is not possible, the licensee has the right to extend a private fiber network, using a micro-trenching system on paved streets. The licensee can also provide services to other licensed telecommunications companies, provided no agreement is reached with the Fixed Telephone Network Company. However, if the licensee is the cause of the disagreement, their request will be disregarded.⁸⁵

The intercity licensee must not construct network segments inside the boundaries of the cities and districts (where only intracity licensee has such rights), MOTAC will issue a warning to the company to remove this violation, including raising the cable, filling in the excavations, and removing the rubble

resulting from the violations within a period not exceeding ten (10) days, and if the violation is not removed within the aforementioned period, MOTAC will take further action which includes penalties such as imposing a fine of 50,000 IQD per meter of non-compliant segments; technical disconnection and confiscation of non-compliant segments without compensation. Furthermore, the same fines will be applicable for any incomplete excavation work. Finally, additional measures, including potential suspension of work, for repeated violations.⁸⁶

The provisions of MOTAC Instructions also require that all operators have to provide a stable service where they have to compensate for their customers in case of service disruption and outages due to technical issues.⁸⁷

Based on the analysis above, it can be stated that the separation of these two types of licenses (intracity and intercity) has not resolved the persistent issues faced by intercity licensees, who have continually sought to build their network segments within city and district boundaries. The exclusivity⁸⁸ granted to intracity licensees has led to conflicts between operators and contradictions with the current applicable laws, particularly the provisions of competition and investment laws, as well as MOTAC's own laws and regulations. This situation underscores the need for a more integrated and fair licensing framework to address these ongoing challenges effectively. It is widely thought that this could severely harm competition.⁸⁹

However, It has been argued and recommended by scholars that the governments should develop some regulatory frameworks where they ensure that there is enough competition after privatizing an incumbent telecom operator, they should also establish clear legal and regulatory frameworks, mandate regulatory bodies to promote competition, and encourage foreign investment, thereby protecting new entrants' financial and legal interests against a powerful incumbent.⁹⁰ This is unfortunately lacking, to a very wide extent, in the case of KRG's MOTAC.

In the UK, as stated the regulatory framework does not require the ECNs and ECSs providers to obtain a license to operate. Therefore, there will be no such provisions to oblige these operators to comply with the terms and conditions of the license contracts or agreement. However, they are subject to the conditions of general application (general conditions of entitlement). These conditions constitute the regulatory requirements that all ECNs and ECSs providers must comply with in order to offer services within the UK. These are comprised of three primary categories,⁹¹ with Part A resembling the overarching conditions for compliance established by MOTAC within its license contracts.⁹²



Part A is called ‘Network functioning conditions’ which stipulates that the communication providers shall respect certain obligations. The first one is the general network access and interconnection obligations. The scope of this requirement mandates that all ECNs and ECSs providers⁹³ engage in negotiations for interconnection agreements with other network providers upon request, aiming to finalize such agreements within a reasonable timeframe. Moreover, it necessitates that all communications providers maintain the confidentiality of information acquired during the process of network access negotiations and to utilize such data solely for its intended purpose and maintain its confidentiality to prevent any competitive advantage from being gained by unauthorized parties.⁹⁴

This condition further mandates that all ECNs and ECSs providers comply with standardized technical protocols, encompassing compulsory EU standards and specifications, as well as considering other European and international standards and specifications. It applies universally to all providers and requires adherence to EU-mandated standards. If EU standards are not available, providers must adhere to international standards recommended by other well-known organizations, ITU for example.⁹⁵

Under the general conditions of entitlement, there are certain requirements which are not applicable to the ECNs and ECSs providers but rather to the providers of voice and other mobile networks and broadcasting services.⁹⁶ However, there is one requirement that all ECNs and ECSs providers shall establish agreements with emergency organizations and public authorities to ensure their networks and services can be quickly restored or maintained during a disaster.⁹⁷

It has been noted that the UK is one of the prominent examples of the countries that has successfully undergone structural reforms in its telecom sector.⁹⁸ The operators do not have any limitations of the intercity and intracity licenses or territory distribution. The operator can lay or lease fibers from Openreach whenever and wherever deems feasible.⁹⁹ The adherence of operators has been thoroughly and effectively managed by Ofcom, with its regulatory obligations systematically distributed across the three primary areas discussed above. It is recommended that MOTAC consider adopting the obligations delineated under the general conditions of entitlement within the UK’s Ofcom regulatory framework and adopt it into its regulatory framework. This approach may offer valuable insights and guidelines for enhancing regulatory compliance and operational efficiency within MOTAC.

In Qatar, all licensees have been required to comply with the provisions of the awarded license. CRA is authorized to oversee and ensure that licensees adhere to the terms of their licenses. It will carry out the tasks required to enforce this oversight authority.¹⁰⁰ CRA will define the terms and conditions for all licenses, monitor licensees' compliance, and take necessary actions to ensure adherence.¹⁰¹ The general obligations for the licensee to comply to the provisions of their licenses are established by both the law and the executive by-law in Qatar. The specific compliance requirements are detailed within the provisions of the license itself.

The licensee, along with its officers, subcontractors, and agents, must adhere to the license terms and conditions, including all parts of the applicable regulatory framework and any future amendments.¹⁰² There are also other compliance obligations stipulated under the provisions of the awarded licenses in Qatar where the licensee is obliged to adhere to the applicable regulatory framework, including directives from CRA covering a wide range of areas such as consumer protection, competition, and network standards. This encompasses issues like dispute resolution, pricing, and equipment approval. Additionally, they must proactively adjust their business operations to foster competition as directed by CRA, ensuring compliance with specified timelines and requirements.¹⁰³

Moreover, the licensee is prohibited from engaging in practices that could impede competition and must fully cooperate with investigations into any alleged anti-competitive behavior. They are also barred from passing on any associated costs, such as fines or penalties, to their customers. These stringent measures aim to uphold fair competition and consumer protection within the telecommunications sector while ensuring the licensee's accountability for their actions.¹⁰⁴

The licensee must furnish services to retail and wholesale customers in line with the regulations outlined in the applicable laws and regulations, encompassing tariff procedures, service continuity, disconnection protocols, and quality standards. Furthermore, the licensee must adhere to network roll-out and coverage obligations as specified in the license contract, securing all necessary permits and authorizations for network construction. Failure to meet these obligations may lead to penalties or sanctions imposed on the licensee.¹⁰⁵

There are also dedicated annexes of certain obligations to which the licensee is required to comply. For instance, ensuring the provision of services meets specified quality standards and submitting regular compliance reports to



CRA—failure to meet these standards may result in penalties, refunds to affected customers, or corrective actions within a specified timeframe. Furthermore, the licensee is mandated to meet designated coverage obligations and completion deadlines outlined in the license contract, ensuring comprehensive network coverage across specified areas in Qatar. To fulfill these obligations, the licensee must provide regulatory performance bonds, submit detailed progress reports, and take prompt corrective action in case of non-compliance.¹⁰⁶

Also, there are other obligations with regard to the access and sharing of the networks of the operators with each other for regulated and affordable prices. Dominant service providers are mandated to comply with accounting and structural requirements, disclose network technical information, and refrain from engaging in anti-competitive practices, as directed by CRA, to ensure fair competition and consumer welfare in the telecommunications sector.¹⁰⁷

Under the regulatory framework of ITPC, all licensees are mandated to adhere fully to the provisions stipulated within the licensing framework, decisions made by the ITPC, and the pertinent laws and regulations.¹⁰⁸ This operational approach bears resemblance to that of Qatar's CRA. However, a significant complication arises from the dual role of ITPC as both regulator and network owner, effectively functioning as the operator. This dual role has resulted in a notable deterioration in the quality of services provided over its network infrastructure. A pivotal distinction between the regulatory regime of ITPC and that of MOTAC lies in the licensee's authorization to operate within both intercity and intracity domains across any territory within Iraq, excluding the KRI. Furthermore, it is noteworthy that the licensee is not permitted to construct Fiber-to-the-Home (FTTH) networks, as this aspect is governed by a separate licensing framework.¹⁰⁹

Based on the preceding discussion, it becomes evident that the obligation of compliance imposed on licensees bears similarity to the general obligations delineated by Ofcom in the UK. In both regulatory frameworks, licensees are authorized to operate throughout the entirety of Qatar, encompassing intracity as well as intercity areas. Moreover, there are no restrictions imposed on the construction of fiber networks as long as overarching obligations are met. This stands in stark contrast to the regulatory landscape governed by KRG's MOTAC, wherein licensees are solely authorized to operate within designated city and district boundaries or the corridors connecting them. Consequently, this disparity has triggered significant challenges for operators within the KRI.

Hence, it is advisable for MOTAC to glean insights from the regulatory practices of Qatar's CRA to enhance the existing operational constraints and enhance regulatory framework efficacy.

It is therefore recommended that MOTAC should address this issue by, on the one hand, granting the right to build more networks and make it accessible to all operators, whether within cities or between them; on the hand and in parallel, ensuring that attractive and affordable price schemes are offered for any licensed operator to access the network of the other. This approach will, to some extent, align MOTAC's regulatory framework with international best practices and ensure consistency with national legislation. By doing so, MOTAC can foster a more equitable and efficient telecommunications environment.

It is pertinent to acknowledge that under MOTAC's regulatory framework, as well as those of the comparative regimes examined within this study, licensees are subject to additional obligations beyond those previously discussed. These include requirements to secure necessary approvals from municipalities and other relevant governmental entities for the construction or installation of specific segments of fiber networks. Additionally, licensees are obliged to collaborate with other entities to ensure compliance with security standards, maintain confidentiality, uphold transparency, and safeguard consumer and customer privacy. While these obligations exhibit a high degree of similarity across the various jurisdictions under examination, they will not be extensively discussed within this chapter due to their consistent nature.

It has thus been observed that the provisions outlined within the awarded license contracts, as well as MOTAC's Law and its Instructions, encompass various aspects that align with the objectives of its regulatory framework and adhere to the applicable laws and regulations within the KRI. However, a significant impediment to the effective application of such provisions lies in the absence of an independent, neutral, and sector-specific regulatory body and the absence of a new and piece of legislative statute to regulate communications activities. Examples such as the UK's Ofcom and Qatar's CRA highlight models from which the KRG's MOTAC can derive valuable insights.

Consequently, it is strongly advocated that MOTAC institute an independent regulatory entity dedicated to overseeing the telecommunications sector within the Region. This regulatory body should be endowed with the requisite authority to intervene as necessary, particularly in addressing concerns pertaining to competition, market dominance, and the rights and obligations of license contract parties. This undertaking necessitates an immediate convening



of an international conference followed by consultation with esteemed independent international or regional institutions to revise MOTAC's Law and subsequent Instructions. Subsequently, stakeholders, including license contract operators, should be engaged in collaborative efforts to amend license contract provisions in alignment with the new regulatory framework.

This strategic initiative will enable MOTAC to adopt international best practices within the telecommunications sector, fostering competitive market dynamics and catalyzing increased foreign investment inflows into the Region and finally bring about more revenues to MOTAC in particular and to the KRG in general.

Furthermore, it is essential to recognize that there exist additional obligations not addressed in this study which include obligations related to competition, dominance in market power, access and interconnection regulations, environmental protection measures, and taxation policies, encompassing financial dues and guarantees for performance bonds. These could be subject for further research and studies.

4: Conclusion

This paper has critically examined the rights and obligations of the licensees under the awarded license contracts by MOTAC—through a comparative analysis with regulatory frameworks in the UK, Qatar, and briefly with the one of Iraq. It highlighted the rights of the licensed companies, notably the ownership rights of fiber networks and the entitlement to interconnect with other national and international fiber network providers and operators. The study found that both rights are very lucrative and unique granted to the licensees which are important for investors especially when a huge number of investments is needed to build such networks. Having said that, the peculiarity of the separation of the networks intracity and intercity is a real dilemma that needs to be addressed and tackled by enacting a new communications law or amendment of the existing laws and regulations of MOTAC. The step will better serve a more structured and equitable regulatory frameworks to enhance transparency, fairness, and competitiveness in the KRI telecom sector.

However, the obligations imposed upon licensees are comparatively simplistic and fail to encompass the nuanced complexities seen in other jurisdictions. This means that these obligations do not respond to the very lucrative rights granted to the licensees. Additionally, the peculiar obligation imposed on network operators regarding intercity and intracity operations may be perceived as discriminatory rather than regulatory, further highlighting the pressing need for comprehensive reform within the KRI's regulatory framework.

Furthermore, the study found the disparity in wording between intracity, and intercity license contracts is notable; intracity licensees are not explicitly required to comply with applicable laws, unlike intercity licensees. This discrepancy, potentially discriminatory against intercity operators, violates MOTAC's general licensing conditions, which mandate compliance with all applicable laws and regulations, thereby undermining the integrity and fairness of MOTAC's regulatory framework. Some have pointed out that this will be very detrimental to competition.¹¹⁰

It has been evident that the compliance obligations for licensees in the KRI resemble those set by Ofcom in the UK, and CRA in Qatar allowing unrestricted fiber network construction across the nation, unlike KRG's MOTAC, which limits operations to specific areas, thereby posing challenges for operators and suggesting that MOTAC could enhance regulatory effectiveness by adopting practices from especially Qatar's CRA and the UK.

Hence, it has been concluded that Qatar has regulated the licensee's obligation in a highly sophisticated manner, balancing the interests of both the regulator and the public. MOTAC could consider incorporating a similar obligation into its future regulatory framework.

In light of these observations, it has become apparent that fundamental reform is indispensable across all facets of the regulatory framework in the KRI to harmonize with international best practices and cultivate an enabling environment conducive to the telecommunications sector. The first step in this regard is to enact a communications law in the KRI. Such reform efforts hold the potential to attract increased investment into the Region's telecommunications sector, thereby enhancing revenues for MOTAC.

By modernizing regulatory structures and mechanisms, the KRI can enhance investor confidence, stimulate competition, and promote innovation within the telecommunications industry. This, in turn, is poised to generate substantial economic benefits, including job creation, infrastructure development, and technological advancement. Consequently, as the telecommunications sector thrives under an improved regulatory regime, MOTAC stands to benefit from heightened revenues, further bolstering its capacity to facilitate sustainable growth and development initiatives across the Region.

In order for MOTAC to enhance the regulatory framework in the KRI, it has been recommended to benefit from the international best practices, namely the case of the CRA in Qatar where the rights and obligations of the licensee have been equally organized under the licensing regimes. Thus, Qatar would be a valuable lesson for MOTAC to learn from.



- (¹) See Hank Intven, Jeremy Oliver and Edgardo Sepulveda, “Licensing Telecommunication Services” in Hank Intven (eds), *Telecommunications Regulation Handbook* (infoDev 2000) 5.
- (²) The License Contract signed between MOTAC and DIL Technology (previously Iraqcell) Company under General No. 12, Registry No. 1 on 23/04/2014 (referred to hereinafter as MOTAC and DIL License Contract), art 2 (1).
- (³) Ibid, art 17; see also License Contract signed between MOTAC and Noortel Company under General No. 79, Registry No. 1 on 31/03/2015 (referred to hereinafter as MOTAC and Noortel License Contract), art 2 (2.7) and art 4 (4.1). The construction and operation of the network could be construed as both an obligation imposed on the licensee and a corresponding right granted to it simultaneously.
- (⁴) Law of Ministry of Transport and Communications No. (19) for the year of 2011 (referred to hereinafter as MOTAC Law 2011) was enacted by the Kurdistan Parliament. This law bestowed MOTAC to fully privatize telecom sector in the KRI and allowed it to award such license contracts. It is noteworthy that MOTAC Law 2011 repealed the old law entitled the Law of Ministry of Communications in the Kurdistan Region – Iraq No. 14 of the year 2006.
- (⁵) See the Preamble of MOTAC’s Instructions of the Field of Communications in the Kurdistan Region, Part One, No. 1 of the year of 2012 (referred to hereinafter as “MOTAC Communications Instruction”). Following the enactment of MOTAC’s new Law in 2011 and the subsequent issuance of its Communications Instructions in 2012, MOTAC embarked on the issuance of licenses, thereby effecting a comprehensive liberalization and privatization of the telecommunications sector within the Region.
- (⁶) See UK’s Office of Communications, (referred to hereinafter as “Ofcom”), ‘Choosing the Best Mobile, Broadband and Landline Provider’ <<https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/quality-of-service>> accessed 27 October 2023.
- (⁷) Ian Walden, Helen Kemmitt and John Angel, “The Telecommunications Regime in the United Kingdom” in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 112 – 113.
- (⁸) Ibid 125 – 126.
- (⁹) Ofcom, ‘Strengthening Openreach’s Strategic and Operational Independence’ (26 July 2016), <<https://www.ofcom.org.uk/consultations-and-statements/category-1/strengthening-openreaches-independence>> accessed 05 November 2023; see also Ofcom, “Delivering a more independent Openreach Statement on releasing the BT Undertakings pursuant to section 154 Enterprise Act 2002” (13 July 2017) 7-9 <<https://www.ofcom.org.uk/consultations-and-statements/category-3/delivering-a-more-independent-openreach>>

- [independent-openreach](#)> accessed 18 November 2023. See the rest of the documents where it explains how in 2005, BT agreed to operational separation undertakings with Ofcom, creating Openreach to provide access products equally to all wholesale customers, including BT's own divisions. This resulted in maintaining a fair competition in the UK telecom market. By enforcing EOI, Ofcom sought to create a level playing field, promoting competition and benefiting consumers in the telecommunications market.
- (¹⁰) Angela Monaghan and Julia Kollewe, "BT avoids Openreach breakup but Ofcom orders more investment" (The Guardian, 26 July 2016) <<https://www.theguardian.com/business/2016/jul/26/bt-avoids-openreach-breakup-ofcom-orders-more-investment>> accessed 12 November 2023.
- (¹¹) Vodafone License for the Provision of Public Fixed Telecommunications Networks and Services issued to Vodafone Qatar on 29 April 2010 (referred to hereinafter as Vodafone Qatar Fixed License), arts 25 and 26 <<https://www.cra.gov.qa/document/vodafone-fixed-license>> accessed 04 November 2023; see also the License for the Provision of Passive Fixed Telecommunications Networks and Services which have been issued by the Supreme Council of Information and Communications Technology- ictQATAR issued to: Qatar National Broadband Network Company - Q.NBN on 22 July 2012 (referred to hereinafter as QNBN Passive Fixed Telecommunications Networks and Services License), arts 24 and 25 <<https://www.cra.gov.qa/document/passive-fixed-telecommunications-networks-and-services-license-to-qnbn>> accessed 27 November 2023.
- (¹²) ITPC and DIL Contract, 'Participation Contract to Market and Transmit Communications Capacities through the National Optical Cable Network and International Land Border Crossings' (referred to hereinafter as 'ITPC and DIL ISP Contract'), arts 5 and 23 (5). It is worth mentioning that ITPC will fully own the fiber network but the ownership of other equipment (such as routers, ODFs, SFPs and necessary equipment to operate the last mile of the network) shall belong to the ISP companies during and after the contract period.
- (¹³) However, Iraqi Communications and Media Commission (CMC) which is the regulator for the mobile operators and other wireless ISPs and media related affairs in Iraq. It claims that its decisions have legal basis which rely on a communications law. The reason for this is attributable to the Coalition Provisional Authority Order No. (65) for the year of 2004 Iraqi Communications and Media Commission (hereinafter referred to as "CPA Order No. 65"). This order was issued after toppling down the Saddam Hussien Regime, and Paul Bremer, the Administrator of Iraq during the transitional period of Iraq. This order is equivalent to the laws enacted by the Iraqi Parliament, and it is still in effect. This order creates CMC.
- (¹⁴) For further reading, see Dr. Ali Al-Khuwailidi, "Telecom Sector and Internet in Iraq: Issues and Solutions" Al-Baida Center for Studies and Planning, 2022 <<https://www.baidarcenter.org/posts/1571>> accessed 10 December 2023.
- (¹⁵) This will be further discussed in the obligations of the licensee.



- (¹⁶) The subject of access and interconnection with other operators may similarly be construed as an obligation incumbent upon the licensee.
- (¹⁷) See MOTAC and DIL License Contract, art 3 (3.11). The licensee is expressly prohibited from exercising dispositional rights, including but not limited to selling, reselling, leasing, subleasing, or engaging in any other legal transactions involving this entitlement. Rather, the licensee is granted the privilege of utilizing this entitlement solely for the purpose of interconnection. It is to be noted that MOTAC retains absolute legal authority over this entitlement. Thus, the licensee is afforded only the right to derive benefit from it. Consequently, should the licensee opt to transfer ownership of their network for any reason, such action does not automatically entail the transfer of the cross-border interconnection entitlement. The decision to permit such transfer remains the exclusive discretion of MOTAC.
- (¹⁸) Ibid, art 2 (2.2).
- (¹⁹) Ibid, art 3 (3.7) “the licensee cannot connect their network to external networks without the Ministry’s approval. The licensee must provide a detailed map of connection points and cannot grant any form of privacy to external networks.”
- (²⁰) MOTAC Communications Instructions 2012, art 2 (2.5.5 – 2.5.10).
- (²¹) See the report of ITPC on the activated capacities on all Iraqi cross-border points, 30.11.2023. However, this report does not show the capacities which are utilized inside the KRI as this report only shows the telecom (mainly internet) capacities activated through the international gateways (IGWs) of ITPC and the MOC. As for the KRG’s MOTAC, there are no gateways to officially monitor the internet capacities entering the KRI. This shows a clear distinction between the approach of ITPC and the one of MOTAC where it is highly recommended that MOTAC has its own IGWs to monitor the traffic (for security and non-security reasons) and the volume of the capacities entering the KRI.
- (²²) KRI has several geographical land cross-border points which are not formal and international yet. Therefore, MOFAE has been authorized to consult with the Iraqi Federal Government and obtain the approval of the latter to recognize and announce a cross-border point as a formal. As a sovereign matter, the Iraqi Federal Government shall decide whether to recognize the formality of such borders. See Bas News, “Seven Kurdistan Border Crossings Await Baghdad’s Recognition” (09 November 2023) <<https://www.basnews.com/en/babat/829643>> accessed 20 December 2023.
- (²³) MOTAC Communications Instructions 2012, art 2 (2.5.11, d).
- (²⁴) This is one of the major issues where the licensees acting as service providers should cooperate and coordinate with each other when the services of one of the operators faces outages by providing support and back-ups and redundancy for each other. The case of the fiber network providers in the KRI lacks this since MOTAC has no tools or mechanisms of forcing them to not only support each other but interconnect with each other.
- (²⁵) Ibid, art 2 (2.5.11, e).

- (²⁶) This is evident in the case of DIL trying to penetrate this and expand its network inside the cities and districts of Erbil and Duhok. See Noortel vs DIL Case No. 131/ B 5/ 2017 on 28.09.2017 brought before the Court of First Instance in Erbil and the Decision the Court of Appeal of Erbil District No. 75/ T Q M/ 2017 on 23.10.2017 where Noortel has filed a lawsuit against Korek Telecom as a customer of DIL which has built the network inside the cities and the court decided to return the case to the First Instance Court. Later, it seems that both companies have agreed on some sort of settlement and this case was never proceeded again. This belief stems from the fact that the intercity network providers are determent that sooner or later MOTAC will need to amend their license contracts and will allow them to build their networks inside the cities and districts of the KRI and there will be no more discriminations against them. See also Noortel vs DIL Case No. 2012/ B 3/ 2023 on 23.10.2023 a recent lawsuit of Noortel against DIL brought before the Court of First Instance in Erbil where Noortel claims the violation of the provisions of their license with MOTAC and request the court to suspend all the activities of DIL inside cities and districts. It will be interesting to see the final decision of the court on this case as the case is still ongoing before the court. It is likely that the court will decide in favor of DIL, although this may take a year or two to be finalized or the parties may reach a settlement with the approval of MOTAC.
- (²⁷) See the Ministerial Orders No. 4189 and No. 4190 30.11.2015 issued by MOTAC. The orders have set forth a price policy and price ranges for the requests of the intercity operators to access and lease the dark fiber of the network of the intracity operator; also, the requests of the other licenses ISPs and mobile operators inside cities to access and lease the network of the intracity operator.
- (²⁸) See the World Bank Group: World Development Report 2021 “Data for Better Lives” 2021 <<https://wdr2021.worldbank.org/stories/crossing-borders/>> accessed 25 January 2024.
- (²⁹) See the Case No. 131/ B 5/ 2017 on 28.09.2017 brought before the Court of First Instance in Erbil and the Decision the Court of Appeal of Erbil District No. 75/ T Q M/ 2017 on 23.10.2017 where Noortel has filed a lawsuit against Korek Telecom as a customer of DIL for building a fiber network serving Korek and other customers where surprisingly the Appeal Court decided to return the case to the First Instance Court for further reviews. Later, it seems that the companies have reached to a settlement where the case was never proceeded by the plaintiff.
- (³⁰) Lisa Correa, “The Economics of Telecommunications Regulations” in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 68-75.
- (³¹) Ian Walden, “Access and Interconnection” in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 443-448.
- (³²) Ibid, 436.
- (³³) In the UK, the subject of access and interconnection mainly includes and has been interlinked with the access and interconnection of the mobile and fixed network operators



(whether it is a voice call or a data). In the case of MOTAC's licenses, however, this subject is limited to the physical interconnection between the fiber network operators and the other operators, namely mobile network operators (MNOs) which are licensed by CMC in Baghdad. The MOTAC's licensees can share their network with other licensed ISPs and operators such as wireless ISPs or any other licensed operator by MOTAC.

⁽³⁴⁾ For further understanding of UK's Telecom Sector, please see Alexander Brown and David Trapp, "In brief: telecoms regulation in United Kingdom" Lexology (23 June 2023) <<https://www.lexology.com/library/detail.aspx?g=ca6e3eb1-b465-4f00-83eb-84a2dc5b5bf0>> accessed 10 May 2023.

⁽³⁵⁾ See DLA PIPER, *Telecommunications Laws of the World, the Full Handbook* (2017) <<https://www.dlapiperintelligence.com/telecoms>> accessed 19 May 2023.

⁽³⁶⁾ Walden (n 31) 437.

⁽³⁷⁾ See Communications Act 2003, s 151 (2, 3 and 4).

⁽³⁸⁾ Interconnecting at a public internet exchange brings benefits such as consolidating interconnections, where each ISP requires only one interconnection circuit to peer with multiple networks. This reduces complexity and costs associated with managing multiple interconnection points. Additionally, some exchanges offer standard bilateral agreements among members, simplifying negotiations and streamlining the establishment of peering relationships. Adhering to these agreements saves time and resources that would otherwise be spent on individual negotiations, promoting efficiency and facilitating the exchange of traffic between networks at the exchange point. See Walden (n 31) 484-485.

⁽³⁹⁾ Qatar Telecom Law No. 2006 Amended, Chapter Five, art 18.

⁽⁴⁰⁾ Natalija Gelvanovska Michel Rogy Carlo Maria Rossotto, 'Broadband Networks in the Middle East and North Africa, Accelerating High-Speed Internet Access' in Natalija Gelvanovska Michel Rogy Carlo Maria Rossotto (eds), *Broadband Networks in the Middle East and North Africa, Accelerating High-Speed Internet Access* (Directions in Development, the World Bank 2014) 65.

⁽⁴¹⁾ See Qatar Executive By-Law No.1 of 2009, arts 46-47.

⁽⁴²⁾ See Annex F of Vodafone Qatar Fixed License; see also Annex F of QNBN Passive Fixed Telecommunications Networks and Services License.

⁽⁴³⁾ ITPC and DIL ISP Contract, art 4 (1 and 2).

⁽⁴⁴⁾ Ibid, 4, (8).

⁽⁴⁵⁾ However, the necessity of a communications law must be emphasized. The KRI legislator should enact a modern communications law immediately and it is also recommended that an international conference should be organized by participating all stakeholders, policymakers, scholars, economists and investors and then the outcomes of this conference to be reflected in the statutes. MOTAC could also do some sort of consultations which is the case of the national communications regulators in both Qatar and the UK. This will

lead to a competitive market for the existing and future operators to invest and expand in the Region.

(⁴⁶) See MOTAC and DIL License Contract, art 2; see also MOTAC and Noortel License Contract, art 2. Building such a network will depend on whether the license is intracity or intercity.

(⁴⁷) In the KRI the copper network was there in some small areas for the home telephone services and it was therefore replaced by the fiber network cables immediately after MOTAC awarded these contracts prior to 2010. Therefore, this made the work of the operators easier compared to the ones of the UK (for example) as they are required to replace the copper with fiber.

(⁴⁸) Ibid, art 2 and art 7; see also Ibid, art 7.

(⁴⁹) MOTAC and Noortel License Contract, art 7 (7.8 and 7.9).

(⁵⁰) MOTAC and DIL License Contract, art 7.

(⁵¹) Ibid, art 7 (7.6 and 7.7).

(⁵²) MOTAC and Noortel License Contract, art 7 (7.8).

(⁵³) See MOTAC Communications Instructions 2012, art 2, (2.5.6).

(⁵⁴) It could be argued that this period maybe similar to the one stated in the intracity license contracts which will start from the signature date of the contract.

(⁵⁵) See MOTAC and Noortel License Contract, art 7 (7.11, 7.12 and 7.13). According to these provisions, a penalty structure is established for delays, as follows: for the first six months of delay, a penalty of 50,000,000 Iraqi Dinars (IQD) is imposed. If the delay extends beyond the initial six months into the second six-month period, the penalty increases to 100,000,000 IQD. For delays entering the third six-month period, the penalty escalates to 200,000,000 IQD, equivalent to approximately 150,000 USD based on the Central Bank of Iraq (CBI) exchange rates. It is important to note that, under no circumstances, shall the delay period exceed 18 months.

(⁵⁶) See MOTAC and DIL License Contract, art 7 (7.8, 7.9 and 7.10). According to these provisions, a penalty structure is established for delays which is similar to the ones of the intracity applications but in a more aggressive way which is as follows: for the first six months of delay, a penalty of 300,000,000 Iraqi Dinars (IQD) is imposed. If the delay extends beyond the initial six months into the second six-month period, the penalty increases to 600,000,000 IQD. For delays entering the third six-month period, the penalty escalates to 900,000,000 IQD, equivalent to approximately 681,000 USD based on the Central Bank of Iraq (CBI) exchange rates. It is important to note that, under no circumstances, shall the delay period exceed 18 months.

(⁵⁷) Although the provisions of the Instructions require that a special committee (in cooperation with the representatives of the other concerned parties) follow up with the projects and the PIPs if required. It could be said that no such committees did or have done



such follow-ups. See MOTAC Communications Instructions 2012, art 2, (2.5.9). However, due to the fact that all these periods are now lapsed and have no value as the last contract awarded by MOTAC was more than 8 years ago and by now, all the companies have surpassed such network coverage thresholds. Thus, this obligation is now deemed to be obsolete.

(⁵⁸) See the remainder of both MOTAC and Noortel License Contract, art 7; and MOTAC and DIL License Contract, art 7.

(⁵⁹) The authors have pointed out that this issue could be mitigated through implementing measures that establish a regulatory framework supporting new investment models like co-investment and infrastructure sharing. Such frameworks would effectively assist operators in avoiding redundant investments. For further reading see Wolfgang Briglauer, Carlo Cambini, Thomas Fetzner, Kai Hüscherlath, 'The European Electronic Communications Code: A Critical Appraisal with a Focus on Incentivizing Investment in Next Generation Broadband Networks' (2017) 41 Telecommunications Policy 949-950. Also, sharing the infrastructure (particularly the passive parts) could definitely maintain a higher level of competition and has been defined as the highest form of cooperation. See Alexiades, P., & Shortall, T., 'The advent of 5G: Should technological evolution lead to regulatory revolution?' (2016) Competition Policy International 1–13.

(⁶⁰) MOTAC lacks any sort of approach or remedy in case where there are double investment or double networks.

(⁶¹) See Ofcom, General Conditions of Entitlement, Unofficial Consolidated Version (2023) 1 <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ofcom.org.uk/__data/assets/pdf_file/0023/256343/unofficial-consolidated-general-conditions-May-2023.pdf> accessed 20 May 2023.

(⁶²) As of July 2023, Openreach's fiber broadband infrastructure emerged as the preeminent network within the UK, extending its reach to 10.9 million premises and it facilitates network access for more than 600 communications providers. See Statista, 'Size of full fiber broadband networks in the United Kingdom as of July 2023, by operator' (13 February 2024) <[https://www.statista.com/statistics/1411292/size-of-full-fiber-broadband-networks-united-kingdom/#:~:text=Openreach's%20fiber%20broadband%20network%20was,BT%20Group\)%20and%20regulator%20Ofcom.](https://www.statista.com/statistics/1411292/size-of-full-fiber-broadband-networks-united-kingdom/#:~:text=Openreach's%20fiber%20broadband%20network%20was,BT%20Group)%20and%20regulator%20Ofcom.)> accessed 18 February 2024.

(⁶³) Ofcom, 'Promoting Competition and Investment in Fiber Networks, Initial Proposals – Approach to Remedies' (29 March 2019) 2-8, 19-20 <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ofcom.org.uk/__data/assets/pdf_file/0018/142533/consultation-promoting-competition-investment-approach-remedies.pdf> accessed 22 February 2024.

(⁶⁴) Ofcom plans to deliver highspeed and decent broadband internet services to all premises. See Ofcom, 'Connected Nations 2022 UK Report' (15 December 2022) <chrome-

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(⁶⁵) Ibid, 18-19.

(⁶⁶) Ofcom, 'Promoting Competition and Investment in Fibre Networks: Wholesale Fixed Telecoms Market Review 2021-26, Volume 1: Overview, Summary and Structure' (18 March 2021) <chrome-extension://efaidnbmnnnibpcajpcgclclefindmkaj/https://www.ofcom.org.uk/__data/assets/pdf_file/0022/216085/wftmr-statement-volume-1-overview.pdf> 25 February 2024.

(⁶⁷) This is to make sure that there is a balance between the investments which are made by the network providers and the prices of the services for the end users. See Rory Cellan-Jones, 'TalkTalk and Openreach: Is the UK Full-Fibre Fit?' (BBC, 08 February 2018) <<https://www.bbc.com/news/technology-42991558>> accessed 03 March 2024. Also to make sure that the level of competition has been maintained. See Carla Raffinetti, 'Licensing of Communications Networks and Services: Case Study of Market Liberalization in South Africa and the United Kingdom' (2015) 14 The African Journal of Information and Communication 54.

(⁶⁸) Ofcom (n 63) 8-9.

(⁶⁹) QNBN Passive Fixed Telecommunications Networks and Services License), art 11.

(⁷⁰) Ibid, art 11.

(⁷¹) Ibid, Annex G, 2.

(⁷²) See Vodafone Qatar Fixed License, Annex G, 4.

(⁷³) Ibid Annex G, 5.

(⁷⁴) QNBN Passive Fixed Telecommunications Networks and Services License), Annex G, 1.

(⁷⁵) Vodafone Qatar Fixed License, Annex G, 3.

(⁷⁶) Ibid, Annex G, 8-9.

(⁷⁷) See ITPC and DIL ISP Contract, arts 2 and 4 and 7. However, according to the provisions of this contract, the ISP is required to add new paths to the network of ITPC but these are mainly the last-miles and the small portions where the ISP does not have the right to operate it rather leasing it back from ITPC. See provision of article 5 of this contract.

(⁷⁸) Dr. Hiyam Al-Yasiri, Minister of Communications of Iraqi Federal, 'The Rabbit of Corruption Precedes the Turtle of the Internet, Part 1' (with Mala Talal TV Program on UTV, 03 October 2023) <https://www.youtube.com/watch?v=r69g0_RYhd4&t=16s> accessed 10 March 2024; see also Dr. Hiyam Al-Yasiri, Minister of Communications of Iraqi Federal, 'The Rabbit of Corruption Precedes the Turtle of the Internet, Part 2' (with Mala Talal TV Program on UTV, 04 October 2023) <<https://www.youtube.com/watch?v=IHS8TyvXONs&t=42s>> accessed 11 March 2024.



- (⁷⁹) Republic of Iraq, Council of Ministers, Prime Minister's Advisory Commission, 'Private Sector Development Strategy 2014 – 2030' (April 2014) <<http://iraqieconomists.net/en/wp-content/uploads/sites/3/2014/09/Private-Sector-Development-Strategy-2014-2030.pdf>> accessed 20 March 2024.
- (⁸⁰) This does not mean that the approach of UK's Ofcom cannot be beneficial for MOTAC despite being very complex for the case of KRI.
- (⁸¹) MOTAC and DIL License Contract, art 3 (3.1) where it states that "The Licensee hereby agrees, for himself, his subsidiaries, affiliates, and agents (if any), to assume and adhere to all terms and conditions set forth in this license agreement and applicable law."
- (⁸²) MOTAC and Noortel License Contract, art 3 (3.1) where it has not required Noortel to comply with any applicable laws.
- (⁸³) MOTAC Communications Instructions 2012, art 2, (2.2).
- (⁸⁴) MOTAC and DIL License Contract, art 3 (3.3 and 3.4); see also MOTAC and Noortel License Contract, art 3 (3.3 - 3.9) which has covered some of these obligations.
- (⁸⁵) MOTAC and DIL License Contract, art 3 (3.5); see also MOTAC and Noortel License Contract, art 3 (3.3 - 3.6) which has covered some of these obligations.
- (⁸⁶) MOTAC and DIL License Contract, art 3 (3.12).
- (⁸⁷) MOTAC Communications Instructions 2012, art 2, (2.3.14) (2.5.12) and (2.6.15). The provisions of the Instructions mandate that licensed companies draft their contracts with customers in Kurdish, Arabic, and English. However, this requirement has largely been disregarded, with most contracts being available only in Kurdish and Arabic (or in one of these two languages only). Additionally, the provisions stipulate that contracts must contain clear and transparent conditions, as well as fair and competitive pricing for customers. The contracts are also required to specify the speed of the offered capacities, detailing the amount of capacity per second (uploading and downloading speed). Furthermore, a sample of these contracts must be approved by MOTAC. These conditions have not been adhered to, likely due to MOTAC's inefficacy in monitoring and enforcing compliance. This lack of enforcement undermines the regulatory framework and raises questions about MOTAC's ability to fulfill its regulatory duties effectively.
- (⁸⁸) Generally, when a regulator grants exclusivity to an operator in the telecom sector, the operator's revenue is expected to increase due to the exclusivity period. However, it could be argued that MOTAC did not consider this factor when drafting its intracity license agreements. Furthermore, exclusivity may result in diminished growth and a reduction in operational efficiency. See Intven, Oliver and Sepulveda (n 1) 5.
- (⁸⁹) Krystal Lyn UY, 'Adapting Telecommunications Regulations to Competition: A Selection of Key Issues for Reform in the Philippines' (2022) 17 Asian Journal of Comparative Law, 344–368.

- (⁹⁰) William Leon Megginson, *The Financial Economics of Privatization* (Oxford University Press 2005) 283-284.
- (⁹¹) See Ofcom, 'General Conditions of Entitlement' <<https://www.ofcom.org.uk/phones-telecoms-and-internet/information-for-industry/telecoms-competition-regulation/general-conditions-of-entitlement>> accessed 11 April 2024.
- (⁹²) Also, a requirement in Part C will be discussed later when it requires that the communication providers shall protect the consumers by ensuring that providers will observe certain obligations while selling their services to the consumers.
- (⁹³) This does not mean that the general conditions of entitlement do not require other communications providers to comply with these conditions. These conditions are applicable to all communications providers especially the ones listed in Part A and B. There are some conditions which are applicable on mobile operators such as the ones stipulated in Part C.
- (⁹⁴) See Ofcom (n 61) 2.
- (⁹⁵) Ibid, 3.
- (⁹⁶) Such as the availability of services and access to emergency services, emergency planning and must carry obligations under Part A, Part B and Part C obligations.
- (⁹⁷) See Ofcom (n 61) 7.
- (⁹⁸) Yao-kuo Eric Chiang, 'Horizontal Model for Regulatory Reform of Communications – The Layers Model, Reform in Malaysia and the UK, and Proposals for Taiwan' (2013) 8 National Taiwan University Law Review 7.
- (⁹⁹) Ofcom (n 63) 69-70, 114.
- (¹⁰⁰) Qatar Telecom Law No. 2006 Amended, art 11.
- (¹⁰¹) Qatar Executive By-Law No.1 of 2009, Chapter Three, arts 31-46.
- (¹⁰²) See the awarded licenses by CRA: License for the Provision of Public Fixed Telecommunications Networks and Services issued to Qatar Telecom (Qtel) on 07 October 2007 where later the provider's name changed from Qtel to Ooredoo (referred to hereinafter as Ooredoo Fixed License), art 4 <<https://www.cra.gov.qa/en/document/ooredoo-fixed-license>> accessed 8 May 2024; and see Vodafone Qatar Fixed License, art 4; and see also QNBN Passive Fixed Telecommunications Networks and Services License, art 4.
- (¹⁰³) Ibid, art 14, art 13 and art 14 respectively.
- (¹⁰⁴) Ibid.
- (¹⁰⁵) QNBN Passive Fixed Telecommunications Networks and Services License, arts 9-11.
- (¹⁰⁶) Ibid, annex E and G.
- (¹⁰⁷) Ibid, annex F and I.



(¹⁰⁸) ITPC and DIL ISP Contract, arts 2, 4, 12, 23 (9).

(¹⁰⁹) Ibid, arts 12 (7) and 23 (12).

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