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

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Abstract:

This study critically examines and compares the rights and obligations of the licensor which is the Ministry of Transportation and Communications (MOTAC) under fiber optic network license contracts in the Kurdistan Region of Iraq (KRI), comparing them with regulatory frameworks in the UK, Qatar, and Iraq. Through comparative analysis, it evaluates MOTAC's dual role as licensor and sector national regulator, focusing on financial entitlements, application of Communications Instructions, support to licensees, and promotion of competition. The study identifies a significant gap due to the absence of a law to regulate the communications sector in the Region, hindering the sector's development and disadvantaging MOTAC's regulatory framework compared to international standards. Notably, MOTAC's practices do not effectively promote competition, contrasting with best practices observed in the UK and Qatar. The study, therefore, recommends urgent enactment of a communications law by the KRI legislator and suggests amendments to MOTAC's regulations to foster a modern and a more competitive telecom market in the region, providing specific recommendations for enhancing MOTAC's regulatory framework accordingly. For this end, it is recommended that MOTAC can benefit from the practice of Qatar's CRA.

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

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المستخلص

تتناول هذه الدراسة، وبشكل انتقادي، حقوق والتزامات المرخص وهو وزارة النقل والاتصالات بموجب عقود ترخيص إنشاء وتشغيل شبكة كابلات الألياف الضوئية في إقليم كوردستان العراق وهي دراسة مقارنة مع الأطر التنظيمية (التشريعات المقارنة) في المملكة المتحدة ودولة قطر والعراق. ومن خلال التحليل المقارن، يتم تقييم الدور المزدوج للوزارة كمرخص ومنظم لقطاع الاتصالات، مع التركيز على الاستحقاقات المالية، وتطبيق تعليمات الاتصالات، ودعم المرخص لهم، وتعزيز المنافسة. وتركز الدراسة على وجود الفجوة الكبيرة الراجعة إلى غياب قانون لتنظيم قطاع الاتصالات في اقليم كوردستان العراق، مما يعيق تنمية القطاع المذكور ويضعف الإطار التنظيمي للوزارة مقارنة بالمعايير الدولية المعتمدة في هذا المجال. والجدير بالذكر أن ممارسات الوزارة لا تعمل على تعزيز المنافسة بشكل فعال، وهو ما يتناقض مع أفضل الممارسات التي لوحظت في المملكة المتحدة ودولة قطر. توصي الدراسة بسن قانون شامل لتنظيم قطاع الاتصالات بشكل عاجل من قبل المشرع الكوردستاني، وتقترح إجراء تعديلات جوهرية على تعليمات الوزارة وذلك بهدف تعزيز سوق الاتصالات وجعله أكثر حداثة وتنافسية، وتقديم توصيات محددة لتعزيز الإطار التنظيمي للوزارة وفقا لذلك. ولتحقيق هذه الغاية، توصي الدراسة بأن تستفيد الوزارة من ممارسات هيئة تنظيم الاتصالات في دولة قطر.

الكلمات المفتاحية: قطاع الاتصالات، إقليم كردستان العراق، تراخيص الشبكة الثابتة، الإطار التنظيمي، المنافسة، تنظيم الاتصالات، حقوق والتزامات مرخصي الاتصالات.

1: Introduction

1.1 General Overview

This paper will focus on the rights and obligations of MOTAC as the licensor, the regulatory authority entrusted with overseeing telecommunications operations in the Kurdistan Region of Iraq (KRI).

Within this, it will outline the specific rights wielded by the licensor and the corresponding obligations incumbent upon them.

By thoroughly examining the rights and obligations of the licensor, 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 jurisdictions in both the UK and Qatar and other countries if needed, thus contributing to a nuanced understanding of the broader regulatory landscape in the telecommunications sector.

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 former.

It can be said that the obligations incumbent upon one party within a contractual arrangement may be construed as corresponding rights vested in the other party, and vice versa. Thus, in the context of a license contract, wherein MOTAC holds certain rights, these would inherently entail corresponding obligations for the licensee. Nonetheless, instances may arise wherein obligations assumed by the licensee could be interpreted as rights accruing to MOTAC, the licensor, or potentially even third parties, including regional operators or the broader customer base.

1.2 Research Problem/Issue

The research issue is to identify and analyze the rights and obligations of the licensor in the context of the legal framework for granting fiber optic licenses awarded by MOTAC in the KRI. Given the existing gaps in legislation and the lack of comprehensive legal guidelines, this study seeks to determine whether the rights and obligations of the licensor are adequately defined and aligned with international best practices. It will also explore whether these rights and obligations are consistent with the legal norms and practices in other jurisdictions, such as the UK, Qatar and Iraq's Informatics and Telecommunication Public Company (ITPC).

1.3 The Aim of the Research

The aim of this paper is to study the rights and obligations of the licensor in the context of fiber optic licenses under the existing legal

frameworks in the KRI, the UK, Qatar and Iraq. It seeks to investigate whether these rights and obligations are well-defined and in compliance with international best practices. Additionally, it will identify any gaps or inconsistencies in the current regulations and propose amendments or new provisions to ensure a robust and effective regulatory framework for licensors.

1.4 Scope of the Study

This paper will focus specifically on the rights and obligations of the licensor concerning fiber optic licenses in the KRI, comparing these with the regulatory frameworks in the UK, Qatar and Iraq. The study will delve into the specific legal aspects that govern the licensor's rights and responsibilities which is MOTAC in this case.

1.5 The Importance of the Study

Understanding the rights and obligations of the licensor is crucial for ensuring that the regulatory framework is clear, fair, and conducive to attracting investment and fostering competition in the telecom sector. This study is important for policymakers, legal practitioners, and stakeholders in the telecom sector in the KRI, as it will provide insights into best practices and highlight areas needing reform. The findings could significantly contribute to the development of legislation that protects the interests of the state while promoting sustainable development in the telecom sector and enhancing competition and transparency to this sector.

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 licensor. It will compare the relevant legislation in the KRI, the UK and Qatar and Iraq if needed. The study will be primarily library-based, using existing literature such as books, journal articles, and case reports.

1.7 Research Structure

The research paper is organized into four chapters, each addressing a critical aspect of the study on the rights and obligations of the licensor under fiber cable network license contracts awarded by MOTAC in the KRI. The first chapter provides an introduction to the research, outlining the research problem, aims, objectives, and methodology. It sets the stage for the detailed analysis that follows by

contextualizing the study within the broader legal and regulatory framework of the Kurdistan Region and Iraq.

The second chapter delves into the specific rights granted to the licensor under the fiber cable network license contracts. It examines the legal provisions, scope, and extent of these rights, analyzing how they align with both national and international standards. This chapter also compares the rights of the licensor with those provided by similar licensing frameworks in other jurisdictions, such as the UK, Qatar and Iraq.

The third chapter focuses on the obligations imposed on the licensor under the same licensing contracts. It scrutinizes the regulatory requirements, compliance measures, and enforcement mechanisms that ensure the licensor fulfills their duties. This chapter also includes a comparative analysis with the obligations of licensors in other countries, highlighting best practices and potential areas for improvement in the Kurdistan Region's framework.

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

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

I. Rights of the Licensor

MOTAC, acting as the licensor within the framework of these executed contracts, has obtained specific rights, the significance of which necessitates examination and discussion. This paper will analyze and compare two main rights under the lienees in question which are right to receive and collect its financial entitlements (or in other words, its dues or shares) and the right to apply the provisions 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 Instructions) and license contract amendments. Both rights will be discussed and compared below.

2.1 Financial Entitlements (Dues) (MOTAC's Shares):[1]

The most important right of the licensor is the right to receive its financial entitlements and dues (whether it is license fee or as revenue share model or in any other form that has been agreed upon) which have been set forth in all the awarded licenses. MOTAC has secured this right in a different way depending on the type of the contract. The financial entitlements (dues) vary depending on whether the license is intercity or intracity.[2] For the latter, MOTAC has, in addition to being the shareholder in the company with 28%,[3] the right to share up to forty percent (40%) of the net profit annually.[4]

In the context of intercity licenses, MOTAC possesses the authority to impose distinct percentages on licensees, delineating their obligations based on revenue generated within and outside the KRI. The first percentage is the fixed eight percent (8%) from the total revenue made from this contract generated inside the KRI territory annually[5]—that is, this requirement entails the licensee's obligation to pay an amount equivalent to this percentage, as indicated in the financial statements submitted to KRG authorities (specifically to the taxation authorities and the companies registrar).[6] Moreover, licensees are further obligated to remit five percent (5%) annually from the total

(1) In the licenses awarded by MOTAC to the licensees, the former has the right to collect its shares from the revenues generated by the latter at the end of each fiscal year.

(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 1; See also the 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 1.

(3) MOTAC and Noortel License Contract, as an intracity type of the license, art 4 (4.1).

(4) Ibid, art 4 (4.2).

(5) MOTAC and DIL License Contract, as an intercity type of the license, art 4 (4.1).

(6) Ibid, art 4 (4.1). Although the provisions of Article 4 stipulate that these payments shall be made annually in accordance with approved international accounting standards, MOTAC has never questioned whether the submitted financial statements prepared by the licensee are adhering to this condition or not. This might be the case in the future.

revenue derived from activities conducted outside the KRI territory, specifically encompassing revenue generated from transactions with non-KRI Iraqi provinces.(1)

It is noteworthy to highlight a significant disparity in the financial obligations imposed by MOTAC upon operators, wherein certain agreements are structured around net profit while others are based on revenues. Such differentiation may raise concerns regarding fair and equitable treatment for two primary reasons.

Firstly, even in instances where an intercity licensee company fails to generate profits within a fiscal period, it remains obligated to fulfill the stipulated financial commitments from its total revenue, potentially creating an adverse investment climate. Conversely, intracity licensees are exempt from remitting any payments to MOTAC in instances where their financial statements indicate a lack of profits or incurred losses.

Secondly, the substantial variance between the percentage levied on net profits versus total revenue presents opportunities for intracity licensees to manipulate their financial records by inflating costs and expenses to minimize net profit,(2) thus undermining the integrity of the arrangement.

Furthermore, it is very important to note that, peculiarly, none of these agreements with the companies (intercity and intracity) are backed by any legal basis—that is, neither the provisions of MOTAC Law nor the provisions of MOTAC Communications Instructions does contain any guidance for MOTAC on the minimum and maximum of these revenue or profit-sharing agreements that have been agreed upon in the license contracts. This seems to be a major flaw which requires immediate remedy, and this shows how important and necessary is a communications law to regulate this sector.

In the absence of such a legislation piece, it is, therefore, advisable for MOTAC to adopt a coherent policy framework that

(1) Ibid.

(2) Even when MOTAC has board members (out of five members) in the board of directors of Noortel Company, this might be the case especially where MOTAC's monitoring, and audit processes are very poor, and the licensees as private sector entities are more advanced especially when it comes to the competent resources and expertise.

ensures uniform treatment of all licensees, thereby fostering an environment of fairness and transparency.(1)

Unlike the case of KRG's MOTAC, the UK legislator through the Communications Act 2003(2) has set forth this subject in a very detailed manner where Ofcom has been thoroughly guided on how to make attractive policies in this regard while making sure that the provisions of the laws are respected.

The Digital Economy Act 2017 (referred to hereinafter as DEA 2017) resulted in a pivotal shift in the funding mechanism of Ofcom, marking a transition towards complete reliance on industry fees and charges.(3) Under this framework, communication service providers, notably those reporting revenues exceeding £5 million, are mandated to pay fees calculated at a rate of 0.0794 per cent of their relevant turnover for the fiscal year ending on December 31, 2021.(4) This financial obligation underscores the regulatory landscape's emphasis on industry accountability and self-sustainability, positioning Ofcom as a financially autonomous entity within the communications sector.

Moreover, providers exercising code powers under the Electronic Communications Code are subject to distinct financial obligations. These operators, benefiting from privileges such as exemption from street works licenses for certain equipment installations, are required to pay an annual fee to Ofcom.(5) For the fiscal period spanning 2023–2024, this fee amounts to £1,000. Additionally, operators seeking to obtain Code powers are mandated to fulfill a one-time charge of

(1) It would be better for MOTAC to have a revenue sharing policy towards the licensees rather than the net profit sharing. Especially taking the current set-up and situation of MOTAC into consideration.

(2) See Communications Act 2003, sections 38 – 43: Administrative charges imposed on providers.

(3) 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-84a2dcdc5bf0> accessed 10 May 2023.

(4) For more details, see Ofcom, 'Ofcom's Tariff Tables 2023-24' (28 March 2023) 5-6 <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ofcom.org.uk/__data/assets/pdf_file/0015/256002/2023-24-tariff-tables.pdf> accessed 4 April 2023. Especially when applying for the Electronic Communications Code, an amount of 10,000 Sterling Pounds is charged for the year of 2023-2024.

(5) Brown and Trapp (n 11).

£10,000, which encompasses Ofcom's administrative costs incurred in processing applications for such powers.(1)

The regulation and organization of this subject matter have been commendably executed, reflecting a meticulous approach to governance within the communications sector. The delineation of financial obligations, as mandated by the Digital Economy Act 2017 (DEA 2017), demonstrates a clear and structured framework for industry stakeholders. Through the establishment of transparent fee structures and administrative processes, Ofcom has effectively balanced regulatory objectives with industry considerations, fostering an environment characterized by clarity, accountability, and regulatory compliance.

In Qatar, the legislator and the regulatory body has dealt with this subject in a very precise manner. The provisions of the law clearly state that the Communications Regulatory Authority (referred to hereinafter as CRA)(2) has the right and the power to determine and impose the license fees and any other charges or fees.(3) In addition to this, the provisions of the by-law also elaborate more on this empower the Minister (previously the Board)(4) to determine license fees, remuneration or any other fees or charges through issuance of regulations, decisions and orders to regulate this matter.(5)

Moreover, the by-law further stipulates that that there shall be certain criteria for the fees and charges applied on the licensees such as: identification of the recipient entity for said fees and charges; determination of fees and charges proportionate to the licensee's revenues; attribution of fees and charges to revenues generated from commercial and operational activities; and alignment of applied fees and charges with the specified objectives set forth by the law.(6)

(1) Ofcom (n 12) 6.
(2) CRA was previously known as ictQATAR. See its website <https://www.cra.gov.qa/>.
(3) See Qatar's Telecommunication Law No. 34 of 2006, as amended by Amended Provisions No. 17 of 2017 (referred to hereinafter as Qatar Telecom Law No. 2006 Amended), art 3 (2).
(4) The phrase of the Board was replaced by the expression of the Minister: see Ibid, the Amended Provisions No. (17) of 2017, art 2.
(5) See the Decision of the Board of Qatar Supreme Council for Information and Communication Technology No. (1) of 2009 on the promulgation of the Executive By-Law for the Telecommunications Law (referred to hereinafter as Qatar Executive By-Law No.1 of 2009), art 22.
(6) Ibid, art 23.

As this is one of the principal rights of the regulator, the CRA, it has been very well established that even the licenses awarded to the providers contain very clear and detailed provisions regulating this matter. For example, the provisions of the all the three licenses awarded to the providers in Qatar have regulated this matter and stipulated the subject of the payments and the fees. The licensee shall initially pay one (1) percent (specified percentage) of the net revenue annually after submitting their audited accounts and financial statements. The amounts shall be paid in advance annually and are exclusive of any tax and or penalties imposed by CRA.[1]

In Iraq, a state-owned company, Informatics and Telecommunication Public Company (referred to hereinafter as ITPC), as the only incumbent provider of the fiber related services, the providers of the services directly lease from the network of ITPC[2], and they are subject to the pricing policies of ITPC.[3]

(1) See 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), art 13 and Annexure H <https://www.cra.gov.qa/document/vodafone-fixed-license> accessed 6 September 2023; See also the License for the Provision of Public Fixed Telecommunications Networks and Services issued to Qatar Telecom (Qtel) on 07 October 2007 where later the provider company changed its name from Qtel to Ooredoo (referred to hereinafter as Ooredoo Fixed License), art 13 and Annex H <https://www.cra.gov.qa/en/document/ooredoo-fixed-license> accessed 8 August 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), art 12 and Annexure H <https://www.cra.gov.qa/document/passive-fixed-telecommunications-networks-and-services-license-to-qnbn> accessed 6 July 2023. Under these licenses, the payment of the fees and contributions have been dealt with in a very well-regulated way.

(2) 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 8, 2, 4 and 7.

(3) Except for the case of Earthlink where it provides services to other ISP providers for the monthly fee through its own network. See the pricing policy of ITPC announced from time to time <https://itpc.gov.iq/>. In Iraq, the Central Government, has the Ministry of Communications (referred to hereinafter as MOC). Previously there was another company for the internet services called SCIS and later was integrated with ITPC and later became ITPC. Although ITPC provides services to the ISPs that would act as the ISP partners of ITPC and once they signed the contract, they will access the whole network of ITPC from all over Iraq except for the KRI territory. Here, ITPC is the competent authority to sign any related fiber optic cable networks contracts to the companies via tendering processes.

Following the aforementioned examination and comparison of diverse regulatory structures concerning the entitlement to financial dues of the licensor, it is our contention that Qatar has presented the most robust mechanisms for their regulation. Consequently, it is suggested that MOTAC could extract valuable insights from the regulatory practices of the State of Qatar pertaining to the oversight of fee payments and contributions associated with license fees and ancillary charges.

II. Application of MOTAC Communications Instructions and License contract Amendments:

the provisions of the license contracts have provided MOTAC with the "right" to apply its Instructions or any other amended or new Instructions on these license contracts.(1) According to the provisions of the awarded licenses, MOTAC has the right to apply its instructions and decision on the licenses. However, it could be argued that this is not a straightforward application and there are other provisions in some of the contracts awarded by MOTAC that seems to have frozen the application of any future legislation that is against the rendered rights of the licensee(2)—that is what is called stabilization clauses.

This is a clear contradiction in the approach of MOTAC that has not, in our view, handled this contract in fair way and this leads to clear violation of its rights in accordance with the provisions of its Instructions(3) and the provisions of the license contract itself.(4) The provisions of the Instructions also assume that the licensee shall abide by the other applicable laws in this area for example, the Law

(1) See MOTAC and DIL License Contract, art 19; see also MOTAC and Noortel License Contract, art 17.
(2) MOTAC and Noortel License Contract, art 5 which reads that "The two parties signed this contract in accordance with the applicable laws and after obtaining all necessary approvals. Any amendment to these laws in the future from any party does not affect the rights contained in this contract, and no amendment may be made to it except with the approval of both parties."
(3) See 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"), art 2 (2.2) where it requires that all licensees shall be obliged to this Instructions and the decisions of MOTAC.
(4) MOTAC and Noortel License Contract, art 17 where it states the provisions of this Instructions shall apply on the licensee; any amended or new instructions shall be applied and are deemed as an integral part of this contract.

Preventing Misuse of Communications Devices in the Kurdistan Region – Iraq No. (6) for the year of 2008 and any other laws and regulations.

However, it is worth noting that even if MOTAC wants to apply amended or new rules and regulations (through instructions or decisions) shall not have the direct application which will lead to an argument that this right of MOTAC is not inconsistent with the current regulatory framework and cannot be applicable to the licenses whenever MOTAC desires. For instance, if there is an amendment to Instructions or a decision of MOTAC affects directly or indirectly the contained and rendered rights to the licensee, it shall require the mutual consent and agreement of both parties in writing[1]—that is, MOTAC does not have the right to exercise this right.

Hence, it may be contended that the bargaining powers of MOTAC have, to some extent, been impeded during the negotiation stages. Moreover, there exists evident discrimination toward the license holders, as certain agreements include stabilization clauses wherein MOTAC waives its governmental and administrative authority, assuming the role of a commercial entity, while such clauses are conspicuously absent in others.[2]

In the UK, Ofcom has the right to amend the and impose new general conditions. As stated earlier, in the UK, there are no contracts or licenses granted by Ofcom rather the providers of ECNs and ECSs are subject to certain general conditions set by the regulator, Ofcom.[3] The conditions shall be general and shall be within the criteria provided by the provisions of the Act and shall go through proper tests which shall be eventually objectively justifiable, non-discriminant and proportionate. This means that Ofcom has the right to revoke, amend or impose new conditions on the providers but it is bound by certain conditions and criteria at the same time. However, usually Ofcom

(1) MOTAC and DIL License Contract, art 13; see also MOTAC and Noortel License Contract, art 12.

(2) The difference between the provisions of the License Contracts of MOTAC and Noortel License Contract on the one hand and MOTAC and DIL License Contract on the other hand.

(3) See Communications Act 2003, sections 45-49.

would conduct prior consultations with the interested stakeholders to have their opinions on the amendments.

Although the UK has, in our view, regulated this subject in a very organized and detailed way,(1) some scholars have criticized the approach of the UK legislator and the regulatory body, Ofcom, in a way that the directives and instructions that could impact the extent or understanding, yet are not integral to the General Conditions, may also introduce ambiguity. Hence, the General Conditions, nor Ofcom website do not exemplify utmost clarity.(2)

In Qatar, CRA possesses the authority to authorize, amend, extend, temporarily halt, revoke, and establish the criteria and procedures governing the issuance of both individual and class licenses. This entails the granting of licenses to specific entities or individuals, modifying existing licenses as necessary, renewing expiring licenses, temporarily suspending licenses, permanently revoking licenses, and setting forth the guidelines and processes for issuing licenses applicable to either individual entities or a broader category of entities.(3)

The minister is also empowered to revise individual licenses, while the CRA holds authority over amendments to class licenses under specific circumstances. These circumstances include compliance with legal frameworks such as the law, by-laws, regulations, or terms outlined in the license itself, as well as adjustments necessitated by changes in international treaties or other relevant laws. Amendments may also be initiated upon request or agreement by the licensee. Moreover, revisions may be triggered due to the licensee's repetitive violations of legal provisions, regulatory mandates, or terms specified in the license, as determined by the minister or the regulator.(4)

Even the provisions of the licenses which have been signed by the licensees and CRA sate that the legal nature of the awarded license contracts is a unilateral administrative granted by CRA in public

(1) Ibid

(2) Anne Flanagan, "Authorizing and Licensing" in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 285-286.

(3) See Qatar Telecom Law No. 2006 Amended, art 3 (1).

(4) See Qatar Executive By-Law No.1 of 2009, art 14.

interest. The latter has the authority to amend or impose new terms and conditions to the license contracts by amending or issuance of new relevant legislation (such as legislation, treaties, and regulatory directives). Additionally, it encompasses compliance with the comprehensive body of regulations, decisions, orders, rules, instructions, or notices promulgated by the regulator both preceding and subsequent to the effective date, collectively referred to as the "Applicable Regulatory Framework."(1)

Consequently, the framework provides the licensor with the flexibility to amend provisions of the license as necessitated by evolving regulatory requirements or shifts in the telecommunications landscape, thereby ensuring continued alignment with the public interest objectives and regulatory imperatives set forth by CRA.(2)

In Iraq, the situation is similar to the one of Qatar but it is not organized in that detailed way and there are still, in our view, certain areas where ITPC has to offer new regulations to boost transparency and competition. For instance, ITPC can imply new policies and regulations which will be applicable to the ISP partners using ITPC's infrastructure.

Henceforth, it can be argued that the regulatory frameworks pertaining to the rights of the licensor are effectively structured in both the UK and the State of Qatar within the telecom sector. Consequently, MOTAC stands to gain valuable insights from these established frameworks and could consider adopting similar regulatory structures. Such adoption could serve dual purposes: firstly, to incentivize both domestic and foreign direct investment, and secondly, to ensure adherence to principles of transparency and competition within the telecommunications industry and the applicable laws in the KRI. Furthermore, it is recommended that MOTAC take proactive measures, such as the enactment of new Instructions, aimed at reconciling any inconsistencies evident within the provisions of the awarded licenses. By doing so, MOTAC can foster greater uniformity and coherence

(1) See all three awarded licenses in Qatar: Vodafone Qatar Fixed License, art 3; QNBN Passive Fixed Telecommunications Networks and Services License, art 3; Ooredoo Fixed License, art 3.
(2) Ibid arts 4.

within its regulatory framework, thereby enhancing clarity and effectiveness in its oversight of the telecom sector.

Under the KRI telecom regulatory framework, specifically the signed license contracts, there are other rights rendered to the licensor, MOTAC. The example of such rights are: the right to impose remedial measures,(1) including penalties and suspension of the work of the company (either partial or in full) in cases of non-compliance;(2) the right to follow-up with the project implementation plan (PIP) of the construction and installation of the fiber network cables;(3) the right to review and approve the sample of the contract between the licensee and its customers(4) and between the licensee and other service providers in the Region.(5)

III. Obligations of the Licensor

As discussed previously, it is acknowledged that the licensor also bears certain responsibilities towards the counterparty of the contract, namely the licensee. The entitlements of the licensee may, in large, mean or be equivalent to the obligations of the licensor. Nonetheless, this chapter aims to shed some light on specific obligations arising from the contractual licenses bestowed by MOTAC toward the licensees and MOTAC Communications Instructions.

3.1 Obligation to Provide Support and Assistance:

one of the primary duties incumbents upon MOTAC in its capacity as both regulator and governmental entity, as well as the contracting party within the licensing agreement, is to extend support and assistance to the licensee as required. This entails facilitating collaboration with other entities of the KRG, such as municipal

(1) MOTAC and DIL License Contract, art 15; see also MOTAC and Noortel License Contract, art 14.

(2) MOTAC and DIL License Contract, art 3 (3.12). However, it is noted that MOTAC has not imposed such penalties on the intracity service providers. So, if an intracity licensee lays its fiber network cables between cities and districts (which is non-compliance), the provisions of their contracts do not contain any such penalty opposite to what were seen in the cases of intercity licenses. This could be deemed inconsistency of the provisions of the two licenses.

(3) MOTAC and Noortel License Contract, art 7 (7.2).

(4) MOTAC Communications Instructions 2012, art 2, (2.3.14.h).

(5) MOTAC and Noortel License Contract, art 3 (3.0.7 and 3.9.8).

authorities, in the implementation of the licensee's project.[1] Additionally, MOTAC is tasked with safeguarding the rights and interests of licensees in the event of any infringements or challenges.[2]

In the UK, Ofcom and other government bodies are tasked to provide this sort of support and assistance especially when it comes to the applications for the use of the existing infrastructure of the other incumbent operators and implementation support letters for the network and service providers.[3] It could be said that the UK has managed this issue in the best interests of the ECNs and ECSs since the regulatory framework has detailed everything when it comes to the operation and the implementation of the projects.[4]

The single regulator of the UK, Ofcom, has taken over five other bodies or entities in the UK government. All these tasks and functions have fallen, since 2003, under the umbrella of Ofcom, which mainly consists of telecommunications and broadcasting services. Part of its task is to support the operators through launching consultations for the purposes of any review or amendment particularly when doing amendments in the general conditions of entitlement and shaping the communications and other related regulations.[5]

Ofcom has been tasked to further provide clarifications and standard cliches in order to regulate the relationship between the

(1) Including support letters to other entities of the KRG, Central Government in Baghdad and even international bodies, especially in the case of procuring materials and equipment and the case of intercity licensee for the international cross border interconnection with the neighboring countries. See MOTAC and Noortel License Contract and MOTAC and DIL License Contract in general.

(2) MOTAC and Noortel License Contract, art 3 (8); see also MOTAC and DIL License Contract, art 5.

(3) See Falcom Chambers, *The Electronic Communications Code and Property Law* (Routledge 2019) where the author discussed the history of the electronic communications code and the evolution of it along with procedures and practical insights and the cases law.

(4) See Communications Act 2003, Part 2, Chapter 1 Electronic Communications Network and Services where under the provisions of the Electronic Communications Code the network and service providers would submit a notice to the regulator, Ofcom to provide the assistance if needed.

(5) Gillian Doyle and Douglas W. Vick, 'The Communications Act 2003: A New Regulatory Framework in the UK' (2005) 11 Convergence 76-77.

network and service providers with the third parties. For example, Ofcom is mandated to formulate a Code of Practice delineating guidelines concerning the disclosure of information by operators, negotiation procedures, and the conduct of operators concerning individuals with a vested interest in land governed by the Code. Additionally, Ofcom is required to devise standard contractual terms for agreements between relevant parties and to provide template notices for mandatory usage under the Code, with discretionary utilization permitted in other instances.(1)

In Qatar, CRA has been tasked to facilitate the implementation and installation of the plans of the licensees whenever they face issues with any other third party—be it public or private entity.(2) Article 53 of Qatar Telecom Law No. 2006 Amended states that CRA will create rules to allow access to private and public property for installing, operating, and maintaining telecommunications facilities, coordinating with relevant authorities as required by law.(3) This implies that the CRA is mandated to provide necessary support to facilitate the construction of fiber networks by licensees. This requirement parallels the directives outlined in the MOTAC Communications Instructions. However, the provisions in Qatar's Telecom Law are articulated with greater clarity and extend more comprehensive support to the licensees.

In instances where a the licensee, despite employing commercially reasonable efforts subsequent to the commencement of negotiations, fails to obtain necessary consent from the relevant government authority overseeing state-owned or controlled lands or facilities for telecommunications network facilities' construction, maintenance, or operation, or to access supporting infrastructure owned or controlled by the state or even the private owner, the former may petition CRA for intervention or exercise its rights in accordance with applicable laws. Upon receipt of such a request, the latter will initiate consultation with the concerned government and/ or provide assistance with the private landowners to facilitate a mutually acceptable resolution. If consensus is not reached within sixty (60) days, CRA

(1) Flanagan (n 31) 370-371.
(2) See Qatar Executive By-Law No.1 of 2009, Chapter Ten where the legislator has tasked the regulator to intervene and provide necessary support for the licensee.
(3) See Qatar Telecom Law No. 2006 Amended, art 53.

may escalate the matter to competent jurisdictional bodies or provide assistance at its discretion. Alternatively, the parties involved may resort to court adjudication to resolve the dispute.(1)

It is worth noting that in Iraq, the situation is similar to the one of MOTAC and the regulator, ITPC would provide support and assistance if needed.

The foregoing examination suggests that the UK and Qatar exemplify potential models for MOTAC to consider adopting. Particularly noteworthy is the regulatory paradigm observed in Qatar, notably exemplified by CRA, wherein a comprehensive framework exists, offering heightened clarity and delineating explicit responsibilities for CRA intervention and support when licensees encounter challenges.

3.2 Promoting Competition:

competition in the telecom sector plays the key role in the process of the sustainability of the sector. After the economic liberalization and deregulation in the 1990s, many developing countries, have established independent economic regulatory agencies to promote competition in specific sectors and independent competition authorities to check anti-competitive practices across the entire economy.(2) Therefore, safeguarding this is usually a task given to the regulator in order to be able to balance it and keep it up and running. Provisions of the regulatory framework (including the license contracts signed and awarded by MOTAC) in KRI cover this obligation and mandates MOTAC to act in this respect.(3) This could be deemed as one of the most critical and prime obligations of MOTAC.(4)

(1) See Qatar Executive By-Law No.1 of 2009, arts 106 -109. See also the remainder of the provisions where CRA has been further tasked with such obligations.

(2) Tripathi, Keyur, Competition in Telecom Sector: The Jurisdictional Tussle between Competition Commission of India and Telecom Regulatory Authority of India (March 27, 2020) SSRN <https://ssrn.com/abstract=3570496> accessed 06 August 2023.

(3) See Law of Ministry of Transport and Communications No. (19) for the year of 2011 (referred to hereinafter as MOTAC Law 2011), art 2 (7) where the legislator has mandated that MOTAC shall grant the licenses and shall not accept any condition which could lead to monopoly. 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.

(4) MOTAC and DIL License Contract, art 3 (9 and 10); see also art 9 which states that the licensee shall not enter any activity that is deemed antitrust.

The national regulators are usually tasked to promote competition and also encourage more investment in the areas depending on the area they regulate. Some argue that depending on the nature of the area whether there is enough competition, the regulators will need to encourage more investment in deploying more networks and enacting policies to serve this mission.(1) MOTAC is tasked with fostering private sector investment within this domain and promoting the progression of telecommunications services in the Kurdistan Region. This entails fostering an environment conducive to competition, precluding monopolistic practices, and equitably allocating scarce resources (such as frequencies) in alignment with the optimal global technological standards, all with the overarching aim of serving the public's best interests.(2)

While the terms outlined within license contracts issued by MOTAC, its Instructions, pertinent legislation, and related statutes have established the framework to foster competitive practices and curb anticompetitive behaviors, the absence of enforceable mechanisms to activate such provisions poses a significant challenge. This regulatory gap potentially facilitates anticompetitive conduct and may ultimately culminate in monopolistic practices. Given the intrinsic relationship between monopoly and competitive markets, the presence of full competition necessitates an enhanced role for regulatory authorities.(3) A pertinent illustration arises from the instances of the license contracts awarded inside cities and districts where the services are provided by a sole provider—as they have exclusivity to provide the services inside the cities and districts.(4)

(1) Wolfgang Briglauer, Carlo Cambini, Thomas Fetzer, Kai Hüschelrath, '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.
(2) See the preamble of MOTAC Communications Instructions 2012; see also art 2 (3.14) and art 2 (5.12).
(3) Colin Blackman and Lara Srivastava, *Telecommunications Regulation Handbook: Tenth Anniversary Edition* (World Bank Publications 2011) 10.
(4) See MOTAC Communications Instructions 2012, art 2 (2.6) where it stipulates the exclusive grant of a license to a single telecom company within cities and districts, or selected areas, on the basis of establishing singular infrastructure akin to traditional public utilities such as roads, pavements, sewage systems, and utilities, may be subject to debate. It can be contended that telecommunications services and fiber network fiber infrastructure differ from conventional infrastructure, as they possess inherent characteristics allowing for overlay and concurrent utilization, a practice widely observed in developed and developing nations, including the UK and Qatar, the legislations to which this study aspires to draw comparison.

It has been argued that the governments should endeavor and make sure that once they privatize the telecom sectors (which is the case of MOTAC when privatizing the fixed networks inside cities and districts) to face competition immediately and shall allow for the new entrants to compete. This will result in competition, better prices and quality of service and it will even bring about innovation. However, it has been argued that promoting competition is very challenging in most developing countries today and is not an easy task for the regulators.(1) Thus, to ensure competition after privatizing an incumbent telecom operator, the government should 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.(2) This never happened with the case of the licenses awarded by MOTAC and instead it took a different approach which was dividing the licenses into intracity and intercity which never served this goal and even has led to certain issues between the operators.(3)

(1) Krystal Lyn UY, 'Adapting Telecommunications Regulation to Competition: A Selection of Key Issues for Reform in the Philippines' (2022) 17 Asian Journal of Comparative Law, 344–368.

(2) William Leon Megginson, *The Financial Economics of Privatization* (Oxford University Press 2005) 283-284.

(3) This is evident in the case of DIL trying to penetrate 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 for building the network inside the cities and the court decided to return the case to the First Instance Court. Later, it seemed that the 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.

Some argue that the governments should never grant exclusivity periods to the licensors during the privatization of a telecom service as this will hinder future investments and will result in having an operator acting as a monopoly in this market or area which will dramatically constraint competition and the economy of the state.(1) However, MOTAC did not take any such steps and award this license for a long period of time (25 years) exclusively to an operator for the inside cities and districts. It could be said that this is one of the major disadvantages towards MOTAC's approach as it is agist the applicable laws of competition in the KRI and will hinder investments in this area.

It is essential to emphasize that within the KRI, there exists no designated authority specifically mandated to oversee competition matters within the telecommunications sector. Nonetheless, the broader topic of competition has been addressed within the framework of the Kurdistan Competition and Antitrust Law. The KRG's Ministry of Trade and Industry in the KRI (KRG's MTAI) has been entrusted with the responsibility of regulating competition and deterring anticompetitive practices across all sectors, including telecommunications.(2)

Furthermore, even if the general provisions of competition law apply to all sectors, sector-specific regulation could still be justified to promote competition in newly competitive markets. Such regulation is deemed needed where competition is not yet effective, new entrants are facing considerable amount of hindrance, the sector faces difficulties in having more competition, or where ex post interventions, under general competition law, are insufficient to ensure competitive market structures. Consequently, ex ante regulation is warranted to monitor and support the gradual development of competitive forces in these sectors.(3)

(1) Ibid

(2) See the Law of Competition and Antitrust in the Kurdistan Region – Iraq No. 3 of the year of 2013 (referred to hereinafter as "Kurdistan Competition and Antitrust Law"), art 2.

(3) Lara Granville and Heather Irvine, 'The Impact of Regulation on Competition in Telecommunications and Piped Gas' (2015) 14 The African Journal of Information and Communication 39.

Regrettably, to date, there has not been a single instance wherein interested third parties, licensees, customers, or even MOTAC have invoked the provisions of this legislation against parties engaging in contravention. This lack of activation may be attributed to the stipulation within the law mandating the establishment of a council by the KRG's MTAI, specifically designated as the Council of Competition Protection and Antitrust Prevention, for the execution of such functions.(1)

Furthermore, an additional legal framework potentially applicable to the operations of licensees under the contracts signed with MOTAC is the Consumer Protection Law in the KRI.(2) Despite the stipulations within this legislation necessitating the formation of a Council tasked with addressing activities deemed violations of consumer rights and interests, it is regrettable that as of present, such a council has yet to be established.(3)

It can be asserted that a significant deficiency exists within the KRI concerning the matters of compensation and prevention of antitrust activities. This deficiency is evidenced by the absence of the establishment of the governmental entities tasked with overseeing and regulating these issues in a manner conducive to fostering competition, enhancing transparency, and ensuring customer protection.

In the UK, the spirit and idea behind liberalizing the market was historically to promote competition.(4) The main reason behind

(1) Ibid, art 4; see also art 6 where it stipulates the areas in which the council is competent. However, any grieving party may recourse to the courts of law for this purpose.
(2) See the Law No. (9) of 2010 on the Enforcement of the Law of the Federal Consumer Protection Law No. (1) of 2010 in the Kurdistan Region – Iraq (referred to hereinafter as Kurdistan Consumer Protection Law) where the Kurdistan Parliament has endorsed and enacted a law to enforce the Iraqi Federal Law in the KRI as well. It is worth mentioning that this law requires the establishment of the Council has not been established yet in the KRI.
(3) See the Iraqi Federal Consumer Protection Law No. (1) of 2010 (referred to hereinafter as Iraqi Consumer Protection Law), Second Chapter, art 4 and 5.
(4) Lisa Correa, The Economics of Telecommunications Regulations, in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 48-54; see also 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) 108-127. Although BT started to have exclusive rights in the beginning as an operator, in 1982, the UK government decided to privatize BT and since then the goal was to promote competition.

separating Openreach from BT was also to foster competition in this sector[1] although the latter may have wanted to avoid, Ofcom orders to support this and to proceed.[2] Ofcom has been tasked to oversee the activities deemed anti-competitive and therefore will take actions accordingly. Under the provisions of the UK Communications Act, one of the obligations of Ofcom is to promote competition wherever it deems appropriate.[3] This subject has been the debate of several lawsuits where Ofcom has been tasked to promote competition particularly in the case of facilitation for the access of leased lines and dark fiber to the communications providers.[4]

There are other functions granted to Ofcom to further promote competition in relation and under the application of the other concerned competition legislation such as Enterprise Act and Competition Act and its application.[5] Further, Ofcom has a shared jurisdiction with the Competition and Markets Authority (CMA) concerning matters pertaining to competition law and consumer protection issues.[6]

It has been evident that in the UK, Ofcom's functions are regulated in a clear manner where it will intervene and decide whenever it deems necessary to protect and promote competition in this sector. For example, the case of the separation of Openreach from BT would be a prime example. Thus, it could be said that the UK's

(1) See 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> accessed 18 August 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, under the concept of Equivalence of Inputs (EOI). This aimed to ensure fair competition by mandating BT to offer the same products, prices, and processes to competitors as to its retail division, thereby incentivizing BT to address deficiencies promptly to maintain competitiveness. By enforcing EOI, Ofcom sought to create a level playing field, promoting competition and benefiting consumers in the telecommunications market.

(2) 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 July 2023.

(3) See Communications Act 2003, section 3 (1.b) and (4.b).

(4) See CityFibre Infrastructure Holdings plc v Office of Communications [2016] CAT 1261 and see also TalkTalk Telecom Group plc v Office of Communications Case [2016] CAT 1259, Final determination, 66, 71, 111.

(5) See Communications Act 2003, Part 5, Chapter 1, sections 369-372.

(6) Ian Walden, "European Union Communications Law" in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 183.

legislator has been successful in this regard. Ofcom also periodically reviews the undertakings of BT in order to make sure it is the track for competition purposes as part of its strategic review process since 2005. BT agrees to undertake several commitments (as required by Enterprise Act) in order to keep track of the competitive markets particularly where it characterized to have the dominant market power.(1)

It has been argued that in order to accelerate broadband development in the MENA region, it is advised that all entry barriers in the telecommunications sector ought to be removed and other actions to be taken such as promoting facilities-based competition within a harmonized regulatory framework to integrate the regional market, enhancing licensing regimes to allow unrestricted sector entry, upgrading the legal status of ISPs to enable infrastructure-based customer access, and establishing or strengthening independent national regulatory authorities to effectively implement ex-ante regulatory provisions for optimal infrastructure utilization.(2)

In Qatar, similar to the regulatory framework in the UK, CRA has been tasked to promote competition and to also make sure that any telecom related activity or practice would not bring about anticompetitive results in the telecommunication sector and markets.(3) It shall be responsible for managing competition policies and regulations in the telecommunications domain within the State's boundaries. It assesses market competitiveness, revises policies to match evolving conditions, identifies key market players, prevents the misuse of market dominance, and implements procedures to tackle anti-competitive actions, all aimed at promoting competition while protecting the welfare of consumers and the public.

Furthermore, CRA is vested with the prerogative to assess whether the behavior of Service Providers constitutes an infringement of market power or dominance or represents any other form of anti-

(1) 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.
(2) 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)103-104.
(3) Qatar Telecom Law No. 2006 Amended, Chapter Nine, art 40.

competitive conduct. Upon establishing such transgressions, CRA is authorized to take appropriate remedial measures. Finally, no individual shall be engaged in activities that obstruct competition or precipitate a deterioration in the telecommunications markets. These activities encompass the formation of agreements between the licensees to regulate pricing and service terms, allocate employment opportunities and contracts, or partition telecommunications markets among themselves.(1)

The legislator has further regulated competition and has further tasked the regulator to issue a notice delineating the standards and methodology for determining the presence of significant market power within a specified relevant market. This methodology is to be published on its website and may undergo periodic revisions as deemed necessary. The methodology encompasses various elements, including defining the relevant telecommunications market(s) in terms of products and geographic scope, and evaluating market power through an analysis of economic and behavioral factors. This evaluation entails assessing the degree to which a licensee individually or in collaboration with others, possesses the autonomy to act independently of customers or competitors.(2)

It could therefore be evident that CRA has been entrusted with the responsibility of regulating and fostering competition within the telecommunications sector. Legislative enactments have been specifically crafted to ensure that licensing procedures facilitate heightened competition. Consequently, licensees are seamlessly integrated into the existing framework conducive to competition within the State of Qatar.

It has been argued that the legislators and regulators widely acknowledge the inadequacy of general competition law in cultivating competitive dynamics within telecommunications markets. This recognition stems from the unique attributes of the telecommunications sector, which warrant a more interventionist approach compared to the application of conventional competition law. These distinctive features encompass the historical dominance of formerly state-owned operators enjoying legal monopolies, persistently high market shares even post-

(1) Ibid, Chapter Nine, arts 41 – 47.
(2) Ibid, Chapter Eight, arts 72-85.

competition introduction, formidable barriers to entry for new infrastructure-building entrants, and the necessity of cooperation among competitors through access and interconnection arrangements for market competitiveness.(1)

In Iraq, ITPC serves as the sole provider and proprietor of the fiber optic networks, while Earthlink operates a separate network. A notable distinction between Iraq and the Kurdistan Region lies in the approach taken by ITPC, whereby it permits, as the owner of the network, its ISP partners, licensed operators, to utilize its network across Iraq (excluding the Kurdistan Region) under specified terms of the right of use. This inclusive policy facilitates competition among all operators within the region. Conversely, Earthlink maintains exclusive control over its network, restricting access to other operators unless a formal agreement is established between them.

The query arises as to how the Ministry of Communications (MOC) or ITPC addresses the issue of competition and confronts the challenge of market dominance power. This encompasses an examination of regulatory measures and policies implemented by these entities to promote competition within the telecommunications sector and mitigate instances of market dominance. MOC the Ministry has taken this subject in a serious manner and has made several bold decisions in order to tackle this issue.(2) The lack of communications law in Iraq has added another layer of issues to the ever-existing issues between both regulators in the country which are Communications and Media Commission (CMC)(3) and MOC. This is in addition to the other

(1) Ian Walden, "Access and Interconnection" in Ian Walden (eds), *Telecommunications Law and Regulations* (Oxford University Press 2019) 443.

(2) 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 October 2023; 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=lHS8TyvXONs&t=42s> accessed 10 October 2023.

(3) However, CMC claims that its decision has legal basis. 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 Sadam 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.

issues related to a weak fixed infrastructure and other issues related to the lack of competition, monopoly in the fixed network and diversifying and boosting the economy of the state and revenues of the state.(1)

Therefore, it has become inevitable that MOTAC (or the KRI's legislator) should endeavor to establish a sector-specific legislation in order to foster competition in way that will allow new entrants and at least the eradication of the exclusivity that the license holders inside cities in the KRI are enjoying it.

Based on the aforementioned comparative analysis, it becomes evident that the regulatory structure governing the telecommunications sector in the Kurdistan Region necessitates substantive reform, particularly concerning the issuance of licenses for the establishment and operation of fiber optic networks. Consequently, MOTAC stands to derive considerable advantage from studying and emulating the strategies employed by CRA in Qatar. By adopting a model that prioritizes competition as foundational to the licensing process, MOTAC can potentially enhance regulatory efficacy and promote a more robust telecommunications landscape within the Kurdistan Region.

MOTAC has been tasked with other obligations such as the settlement of the issues between the licensees themselves and the licensees with their customers and any other related issues.(2)

It is apparent that significant disparities exist in the regulatory approach adopted by MOTAC regarding the delineation of rights and responsibilities of the licensor acting as the regulator within the context of fiber optic cable network license contracts, as compared to the regulatory frameworks observed in the UK (namely Ofcom) and the State of Qatar (namely CRA). Consequently, it is advisable that MOTAC reassesses and refines its regulatory prerogatives to more effectively align with the overarching aims and objectives set forth in its laws and regulations which will lead to thereby serving the collective interests of stakeholders, including contractual parties, other

(1) 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 23 June 2023.
(2) See MOTAC and DIL License Contract, art 16; see also MOTAC and Noortel License Contract, art 15.

operators within the Region and the public interest. This would need to amend mainly the provisions of MOTAC Law and its Instructions.

Conclusion

This paper has critically examined the rights and obligations of MOTAC, the licensor of the license contracts, through a comparative analysis with regulatory frameworks in the UK, Qatar, and briefly with the one of Iraq. It highlighted MOTAC's rights under the awarded licenses, particularly the right to collect financial entitlements. However, the analysis revealed that MOTAC's handling of financial dues and revenue-sharing models does not align with best international practices, especially concerning the categorization of intracity and intercity licenses. Furthermore, the study found that these license contracts have no legal basis—that is, the provisions of MOTAC Law and Instructions do not contain any clause in this regard. The comparison underscored significant shortcomings in MOTAC's approach, emphasizing the need for adopting more structured and equitable regulatory frameworks to enhance transparency, fairness, and competitiveness in the KRI telecom sector.

Regarding the regulatory framework governing MOTAC's application of license contracts demonstrated significant inconsistencies, particularly with the presence of stabilization clauses that limit MOTAC's authority to implement new or amended instructions uniformly. This selective application not only challenges the fairness of MOTAC's regulatory approach but also results in discriminatory practices among license holders. By examining the more structured regulatory environments in the UK and Qatar, where bodies like Ofcom and CRA exercise clearly defined and consistent powers, it becomes evident that MOTAC could enhance its regulatory efficacy. Adopting similar frameworks would promote transparency, competition, and investment in the KRI telecom sector. Therefore, it is imperative for MOTAC to enact new instructions and reconcile the inconsistencies within its licensing provisions to foster greater uniformity, coherence, and adherence to public interest objectives in its regulatory practices.

Further, this paper has also critically analyzed the obligations of MOTAC to provide support and assistance to licensees, in a comparative approach. The analysis underscored the significant role of

MOTAC in facilitating collaboration with other entities and safeguarding licensee rights. The UK, through Ofcom, and Qatar, through CRA, provide robust examples of how regulatory bodies can effectively support licensees, particularly in accessing existing infrastructure and resolving third-party issues. Ofcom's detailed guidelines and CRA's clear mandates for facilitating construction and operation of telecom networks highlight best practices that MOTAC could emulate.

Finally, it examined promoting competition as one of the most pivotal obligations of MOTAC as the licensor for the sector's sustainability and growth in the KRI. While the regulatory framework and license contracts issued by MOTAC aim to foster competitive practices, the absence of enforceable mechanisms undermines these efforts, potentially leading to monopolistic practices. Unlike MOTAC, regulatory bodies such as Ofcom in the UK and CRA in Qatar have established comprehensive frameworks to manage competition, prevent anti-competitive behavior, and support market dynamics effectively. The Kurdistan Competition and Antitrust Law and the Consumer Protection Law both require the establishment of councils to enforce their provisions, which have yet to be formed. This regulatory gap hinders the promotion of competition and the protection of consumer rights in the telecom sector.

The experiences of the UK and Qatar illustrate the importance of a proactive regulatory approach. Ofcom's separation of Openreach from BT and CRA's detailed methodologies for assessing market power and fostering competition serve as exemplary models. MOTAC should consider comprehensive reforms to its regulatory framework, drawing on the best practices from these jurisdictions. Establishing sector-specific legislation focused on competition, eliminating exclusivity clauses in city licenses, and creating enforceable mechanisms to regulate anti-competitive behavior can enhance regulatory efficacy. Aligning MOTAC's actions with international standards will support the entry of new players, foster a competitive environment, and ultimately benefit the telecommunications sector and the public in the KRI.

It could therefore be said that the UK and Qatar models demonstrated comprehensive regulatory frameworks that ensure

competitive environments and support and assistance for licensees, thereby promoting transparency, efficiency, and fairness. This suggests that MOTAC could greatly benefit from adopting similar practices, enhancing its regulatory approach with regard to the rights and obligations of the licensor and particularly promoting competition in this sector as one of the obligations of the licensor to better align with international standards and improve the overall telecommunications landscape in the KRI. However, this ought to start with enactment of a new communications law in order to provide a fair and competitive opportunities to all licensees and operators of this sector in general and particularly the fiber optic cable network operators.

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