
**Consultation on “RA Standard Consultation Process” –
Responses Submitted to ictQATAR**

The Supreme Council of Information & Communication Technology “ictQATAR”

Telecommunications Regulatory Authority

25 February 2013

On 19 December 2012, ictQATAR's Regulatory Authority (RA) launched a public consultation on the draft "RA Standard Consultation Process" and requested written comments from interested parties.

Three responses were submitted by the following parties (listed in alphabetical order):

1. Qatar National Broadband Network (QNBN)
2. Qatar Telecom (Qtel)
3. Tarun Gupta / India (individual response)

As part of the consultation process and in the interest of transparency and public accountability, ictQATAR is herein publishing all the responses submitted.



January 7, 2013

Mr. Graeme Gordon
Assistant Secretary General
ictQatar
P.O. Box 23264, Al Nassr Tower
Doha, Qatar

Dear Mr. Gordon,

Subject: Regulatory Authority Standard Consultation Process

Please find attached the Submission of Qatar National Broadband Network (QNBN) to the Regulatory Authority Standard Consultation Process.

QNBN supports the initiative to map out and implement a consultative process which will be adhered to by the Regulatory Authority in all future public and industry Consultations. QNBN also applauds ictQatar's stated intention of having open and transparent proceedings.

At the outset QNBN wishes to point out that consultation, by its very nature, is wide ranging and the consultative process is extremely dynamic. Significant decisions impacting service providers are arrived at outside of the process depicted in the flow chart which is the subject of the Consultation herein. ictQatar treats and disposes of many issues which may have a direct bearing on a licensed service provider outside the rigid process depicted in the referenced flow chart. In other words, stakeholders, who may be impacted by an issue and the manner in which ictQatar treats and disposes of such an issue, are not always part of the process leading to an ictQatar decision. QNBN respectfully submits, in line with ictQatar's expressed intention to have open and transparent proceedings, that stakeholders should be appropriately engaged regardless of the form of the consultation.

QNBN respectfully submits that ictQatar adopt, as a principle, the practice that whenever it addresses a matter which may directly impact a licensed service provider, such Licensee will be provided relevant details on the matter being discussed and accorded the opportunity to make representations to ictQatar. Such principle would be very much in keeping with ictQatar's stated desire to be open and transparent.

In reviewing the Standard Consultation Process, QNBN notes that a significant portion of the process is internal to ictQatar. QNBN has no comments to offer with respect to matters internal to ictQatar.

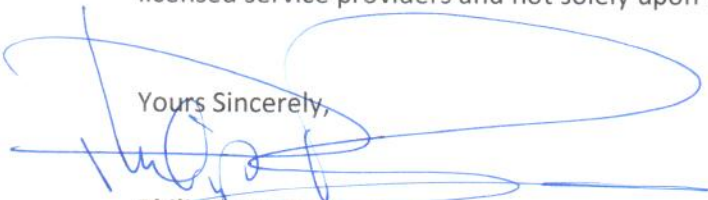


QNBN notes that the Standard Consultation Process fails to address the possibility that parties to a Consultation will want the opportunity to make further submissions upon the Initial Responses filed by Interested Parties i.e. a second round of comments (rebuttals) on the initial comments. QNBN respectfully submits that this opportunity to make further submissions on the initial comments will make for a more balanced and complete public proceeding. The opportunity to make further submissions should be the rule rather than the exception.

In the “Notes” portion of the process document it is stated that “All responses will be carefully considered by ictQatar when finalizing its position.” QNBN notes that in many ictQatar decisions or positions adopted by ictQatar it is far from clear what matters were ‘carefully’ considered by the regulator nor is it clear what weight any submission may have played in arriving at a conclusion on a matter. QNBN respectfully submits, with a view to clarity and transparency, that it stating a decision or a position on a matter, ictQatar should provide its reasoning for arriving at a certain conclusion and the relative weight (or lack thereof) given to various submissions made by interested parties. This would be of far greater value to the regulatory process and interested parties than a verbatim recount of the submissions made. QNBN submits that it should be a critical part of the consultation process for interested parties to be provided with clearly reasoned decisions and positions. In this way participants to the regulatory process can better advise their respective company’s and stakeholders. This, in turn, will result in a more efficient and informed regulatory process.

In concluding QNBN fully supports ictQatar’s stated intention of having open and transparent proceedings and respectfully submits that this intention should apply to all matters which have a direct impact upon licensed service providers and not solely upon the formal consultation process.

Yours Sincerely,



Philip Brazeau
Head of Regulatory
QNBN

Draft Standard Consultation Process

Issued by ictQATAR 19 December 2012

Submission by Qatar Telecom (Qtel) QSC

17 January 2013

Reference letter: Qtel/Reg-2363/2013-01

**Attachment: 1/1 - Qtel's Response on the Consultation Process*

Executive Summary

The issuance of a Draft Standard Consultation Process is a much-needed step in the advancement of ictQATAR's regulatory framework. While a necessary step, the proposed process is far from sufficient to provide the level of transparency, accountability and reliability needed to achieve the shared goals of ictQATAR and the industry. Qtel therefore urges ictQATAR to develop a comprehensive decision-making process with the following elements:

- Provide consistency and clarity regarding the various regulatory instruments ictQATAR issues (e.g. Rule, Guideline, Instruction, Order, Policy, etc.).
- Create specific consultation procedures for each type of decision-making procedures with specific and limited exceptions.
- Provide clarity and details for when ictQATAR will consult privately and publically.
- Develop minimum standards for the decision making process regarding the level of details to be disclosed and the types of comments sought.
- Allow for a second or third round of consultation on important issues or in response to novel issues raised by a party.
- Require transparency regarding information shared with ictQATAR in a particular regulatory proceeding.
- Allow parties to seek changes to a final regulation a limited time after issuance.

Adopting a clear and consistent process with the above elements would bring substantial benefits to the further development of the Applicable Regulatory Framework in a way that will benefit the industry as a whole.

Introduction

Qtel welcomes the opportunity to provide its comments on ictQATAR's draft standard consultation process, as published by ictQATAR on 19 December 2012.

The draft consultation process takes the form of a flowchart, which describes in considerable detail the internal decision-making within ictQATAR and also includes a general description of the proposed interaction with external stakeholders. In particular, the flowchart describes a process by which ictQATAR would provide interested parties and/or the public the opportunity to provide input with regard to proposed regulation. The process would allow 4-8 weeks for such parties to provide written comments and also allow such parties to participate in meetings and/or public hearings "as and when necessary".

Qtel is highly supportive of ictQATAR's efforts to create a more predictable and transparent regulatory decision-making framework. The high-level flow-chart, however does not cover many of the critical matters that should be addressed in describing a system of regulatory decision-making that meets ictQATAR's objectives or provide a level of transparency and predictability commensurate with the industry's needs.

Qtel therefore urges ictQATAR to develop a more comprehensive set of regulations to govern the decision-making process within ictQATAR that provides greater transparency regarding interaction with stakeholders and the various types of decision-making procedures ictQATAR intends to undertake. ictQATAR's Dispute Resolution Rules provide an excellent model for the level of professionalism and detail a future decision-making process should include.

General comments:

ictQATAR's website lists the following as objectives to be achieved through issuance of the draft consultation process:

- streamline and clarify the consultation procedures followed by the Regulatory Authority;
- to set out clearly the role of the Regulatory Authority and the external stakeholders during the preparation of a consultation document and the consultation phase, with indicative timeframes; and
- to accelerate the development of key regulatory documents (e.g., policies, guidelines, instructions) in an open and transparent manner.

ictQATAR's Secretary General is authorized by the Telecommunications Law to, "issue regulations, decisions, orders, rules, instructions, and notices related to regulating the telecommunications sector as specified in this law and its Executive By-law or as delegated to the Secretary General by the Supreme Council to issue them." (Article 5)

The Telecommunications Law also requires the following,

"regulations, decisions, orders, rules, instructions and notices issued pursuant to this Law shall be transparent and non-discriminatory with respect to all service providers and other market participants." (Article 6).

Acting based on the authority in Article 5, ictQATAR has in the past 6 years, issued numerous decisions, instructions, orders, guidelines and other regulatory instruments. Some of these documents have been subject to a public consultation, and others have been issued with little or no notice to Qtel. Many decisions have been issued seemingly with only limited consideration of the relevant facts, or of only the positions of one side of the issue.¹ There are currently no rules in place governing ictQATAR's conduct of the decision-making

¹ See e.g., *Notice Revised Interim Rules for Retail Tariff Assessment* (28 December 2011); See also *Notice and Rules for Installation, operations and access to telecommunications facilities, services and physical infrastructure at the New Doha International Airport*, (24 October, 2012).

process, whether subject to public consultation or otherwise. Moreover, ictQATAR decisions have been issued as "rules", "instructions", "guidelines", "orders" and other titles with little apparent logic or guidance to stakeholders as to the legal or practical significance of these characterizations.

Many regulatory bodies have developed detailed processes for developing and implementing public consultations with regard to their regulatory instruments.² These processes make decision-making by the regulatory body transparent to all parties and include specific management processes to ensure such decisions are not unfairly influenced by one party or another.³ Indeed, ictQATAR has already put in place a robust and detailed procedure for handling disputes, which has been extremely useful in helping ictQATAR manage such processes. In addition, many regulators develop different categories of decision-making procedures for different purposes. This process appears to be reflected in ictQATAR's use of different labels for its different types of decisions, but which has yet to be developed into a formal framework.

The current step of developing a consultation process is a unique opportunity for ictQATAR to further develop its institutional decision-making framework, which would go a long way toward furthering the goals set out above. Qtel urges ictQATAR to go much further than the steps outlined in the 19 December flowchart and to develop a robust and systematic decision-making process that clarifies for all stakeholders how its decisions will be made. Creating a more systematic and organized decision-making process would be a significant step forward in the development of the industry and of the Applicable Regulatory Framework. Qtel therefore proposes that ictQATAR should develop a set of specific decision-making rules modeled on ictQATAR's dispute-resolution rules, which outline clear processes and steps for ictQATAR's decision-making process.

Specific suggestions

- 1. Clarify the purpose and procedures for issuance of different types of regulatory instruments.** ictQATAR should clarify the legal and procedural differences among the various types of regulatory instruments it issues and the particular purposes of each one (e.g. decision, rule, order, notice, instruction, guideline, etc.) and the extent to which each type of instrument is appropriate in various different circumstances.

For example, regulators often use the term "guidelines" to describe a general statement of policy or intentions (as opposed to a specific rule or regulation) in order to enable regulated entities to comply with a concrete,

² See e.g., *Ofcom Consultation Guidelines* November 2007, available at: <http://stakeholders.ofcom.org.uk/consultations/how-will-ofcom-consult>. See also *Rulemaking Process at the FCC* (available at: <http://www.fcc.gov/encyclopedia/rulemaking-process-fcc>)

³ See infodev/ITU, *ICT Regulation toolkit*, § 7.2.1 Overview of the Public Consultation Process, available at: <http://www.ictregulationtoolkit.org/en/Section.2065.html>.

but perhaps more general regulatory obligation.⁴ The terms “rule”, or “instruction” are applied more often to quasi-legislative obligations of broad applicability and described in specific legal terms. Further, the terms “decision” and “order” are often used to describe regulatory actions aimed at a particular party or parties involving a specific set of circumstances. Terms such as “instruction”, “policy” and “determination” have a more ambiguous general meaning. Drawing a clear distinction between these different types of regulatory instruments and outlining the specific procedures that apply to each one would enhance ictQATAR’s decision-making process by promoting consistency, transparency, and regulatory certainty.

- 2. Create specific exceptions to the consultation procedures.** The consultation process should be specific about what types of regulatory decisions require public consultation and under what circumstances ictQATAR could deviate from the consultation process. For example, regulatory authorities will often allow for developing new regulation under abbreviated consultation procedures in emergency situations.⁵ Specific regulation of limited applicability might also be undertaken without broad consultation. Such exemptions, however, should be narrow and specific, so that stakeholders and the public can have confidence in the integrity and transparency of the process.
- 3. State clearly the stakeholders included in the consultation.** The decision-making process should make clear how ictQATAR will determine when it will consult broadly with the public and when it will consult privately with a limited set of stakeholders. Some regulatory decisions may not be appropriate for general public consultation and may require ictQATAR to identify a limited set of stakeholders with which to consult. The decision-making process should adopt public consultation as a general rule in order to promote transparency and predictability and market certainty. Exceptions to the general rule should be narrowly crafted and consistently applied.
- 4. Establish minimum standard elements of each consultation.** The decision-making process should establish a minimum standard for details to be included in proposals for each new regulation. For example, any proposal for new regulation should include a written description of the need for new regulation, the information on which any conclusions are

⁴ See e.g. Ofcom, General Conditions Guidelines, available at <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/general-conditions-guidelines/>

⁵ For example, in Bahrain, the Telecommunications Law requires consultation on issues “that will have a material effect on a particular Telecommunications market” except in emergency situations. See The Telecommunications Law of the Kingdom of Bahrain Legislative Decree No. 48 of 2002, available at: http://www.tra.org.bh/en/pdf/Telecom_Law_final.pdf. In the United States, the FCC may adopt rule changes without prior notice, by issuing a public statement that “notice and public procedure are impractical, unnecessary, or contrary to the public interest.” 47 C.F.R § 1.412 (c) (available at <http://www.ecfr.gov>).

based, the alternatives considered, and the expected result.⁶ Comment should be sought on each element and alternative suggestions considered. Such proposed regulation should be described in written submissions, including workshops, hearings and other oral submissions. The consultation should explain the specific aspects of the new regulation in written format and in a more detailed manner than the flowchart issued to describe the proposed consultation process.

5. **Allow for a second or third round of consultation.** The decision-making process should provide for further comment to be sought in cases where a) the final regulation would differ substantially from the proposed regulation; b) comments by one or more of the parties to the consultation contain or are likely to contain novel issues worthy of comment from other interested parties; and c) matters of substantial importance to the industry where the draft final regulation contains significant detail. Such additional rounds should be preceded by a report on responses received, ictQATAR's initial views and probable final positions that ictQATAR may be considering. Multiple consultation rounds on a number of regulatory initiatives by ictQATAR have led to significant improvement in the final result in several instances.⁷ Qtel supports formalization of this practice with a set of clear criteria for when such action is appropriate.
6. **Create clear procedures for governing communication with ictQATAR.** Stakeholders have an interest in providing information to ictQATAR with regard to pending regulatory matters. Such information is useful and necessary for ictQATAR to craft informed decisions. Where a single stakeholder provides significant information regarding a particular regulatory matter without knowledge of other stakeholders, however, a perception of regulatory bias or favouritism may exist to the extent other interested parties are unable to respond to such communication by correcting inaccurate information or challenging flawed arguments, and real issues of fairness may arise as a result. Many regulators adopt specific procedures to govern the conveyance of written or oral information from interested parties during a regulatory proceeding.⁸ Qtel suggests that a procedure of mandatory disclosures of relevant information (except to the extent commercially sensitive), would

⁶ The U.S. FCC must include the following information in any notice of proposed rule: (a) the time, nature and place of any public proceeding; (b) legal authority for the proposed action; (c) either the terms or substance of the proposed rule or a description of the subjects and issues involved; (d) The docket number; and (e) A statement of the time for filing comments and replies thereto. 47 C.F.R. § 413 (available at <http://www.ecfr.gov>). See also Canadian Radio-television and Telecommunications Commission, (CRTC) Broadcasting and Telecom Regulatory Policy CRTC 2010-958 (available at: <http://www.crtc.gc.ca/eng/archive/2010/2010-958.pdf>).

⁷ For example, ictQATAR consulted several times on the issuance of its initial Dominance designation, a process that substantially improved the end result.

⁸ For example, the U.S. FCC has comprehensive *Ex Parte* rules designed to ensure fairness and transparency in regulatory proceedings. See e.g. FCC, *Ex parte* Rules and other Procedural Rules (April 12, 2012); available at: <http://www.fcc.gov/document/ex-parte-rules-and-other-procedural-rules>

significantly advance ictQATAR's goals of advancing the issuance of regulatory instruments in an open and transparent manner.

- 7. Create a mechanism for interested parties to suggest modifications to a final regulation.** The complex nature of many of the issues that ictQATAR faces means that errors may occur that do not come to light prior to issuance of final regulations, and which may not be readily apparent to ictQATAR. Qtel therefore proposes that ictQATAR institute a mechanism for seeking reconsideration of a particular regulatory decision within a short timeframe following issuance (e.g. 60 days). A request for reconsideration could cover minor elements or the entirety of a final regulation. Such a mechanism was used successfully with regard to ictQATAR decisions involving Qtel's Virgin Mobile brand,⁹ and other regulators make successful use of similar procedures on a routine basis. The basis for such a request for reconsideration should be narrowly limited to matters not considered during the general commenting phase, for example involving novel arguments not presented in the consultation or initial commenting period(s) or novel facts that came to light following the close of the comment period(s).

Conclusion

Qtel regards the decision-making procedures of ictQATAR to constitute the foundation of the regulatory regime. Without fair, transparent and consistent regulatory processes, it will be difficult for ictQATAR to achieve its regulatory goals as an institution and for the telecommunications industry. For these reasons, Qtel supports development of a comprehensive decision-making process that follows the example of the dispute resolution procedures, and which governs all aspects of issuance of regulations of general applicability along the lines described above. At a minimum, such procedures should cover various categories of regulatory instruments, consultation procedures, transparency of information provided to ictQATAR by interested parties, and clearly stated and narrow grounds for deviation from these processes when necessary.

⁹ For example, ictQATAR responded favorably in part to Qtel's request that it modify certain aspects of its 22 July 2010 Decision regarding Qtel's Virgin Mobile branded Services. ictQATAR treated Qtel's request as a "request for reconsideration" and provided Vodafone Qatar an opportunity to respond. See *Decision on Qatar Telecom (Qtel) Q.S.C. request seeking Modification of ictQATAR Orders Concerning Provision of Virgin Mobile Branded Services* (13 December 2010).

Dear ictQatar,

Greetings, I have reviewed the RA Standard Consultation Process draft published on official website.

Below is my point of view towards publishing information into public domain.

It is based on my experience with development privacy framework for DSCI (Data Security Council India) and dealing with Telecom Regulations in India.

Section	Draft Content	Risk	Recommended Content
Notes 4 th Bullet	In the final phase of the consultation process, ictQATAR will merge all the responses received into one PDF file and publish it on its website, along the final document and its response to the key comments received.	Publishing of comments and response in public domain may have negative impact on acceptance of regulatory instrument or may impact industry sentiments. Sensitive information may get disclosed in the form of rationale for inclusion of concealed control while addressing ictQatar requirement or security objective in regulatory instrument. Further it may indicate strong position of ictQATAR on industry sensitive issues, bias towards technology (ex. Blackberry Encryption key escrow etc.).	In the final phase of the consultation process, ictQATAR will merge all the responses received into one PDF file , Conduct risk assessment and shall publish it on its Website based on risk ranking deemed appropriate for public domain, along the final document and its response to the key comments received. Rationale – ictQatar shall conduct risk assessment on the comments and response or any/all information being published into public domain to avoid unauthorised disclosure of sensitive information, confidential or political sentiments towards an issue. The sensitivity of issue shall be determined through risk assessment and all sensitive issues shall be marked confidential and excluded from public domain.