DECISION

OF THE SUPREME COUNCIL FOR INFORMATION AND COMMUNICATIONS TECHNOLOGY (ictQATAR)

ISSUED TO VODAFONE QATAR Q.S.C.

IN THE MATTER OF QTEL RAMADAN PROMOTIONAL OFFER OF 35 DIRHAMS PER/MINUTE FOR ALL LOCAL AND INTERNATIONAL MOBILE CALLS

27 September 2011

ICTRA 20110927

Executive Summary

The Supreme Council for Information and Communications Technology (ictQATAR), which is the Regulatory Authority for the telecommunications sector in the State of Qatar, issues this Decision to Vodafone Qatar QSC (Vodafone) in respect of a complaint made by Vodafone against Qatar Telecom (QTel) QSC on 1 August 2011 (**Complaint**) concerning a promotional telecommunications service offering by QTel throughout the month of August 2011 whereby QTel customers pay 35 Dirhams (Dhs) per/minute for all international and local calls (**QTel Ramadan Promotion**).

The Complaint was made by Vodafone pursuant to Article 61 of the Telecommunications Law and Clause 3.4 of ictQATAR's Dispute Resolution Rules issued on 7 June 2010.

The Complaint is that the QTel Ramadan Promotion and the related conduct by QTel constitutes predatory pricing and is a contravention of Article 43(6) of the Telecommunications Law 34 of 2006 (Telecommunications Law) and Clause 3.6 of Annexure I of the License for the provision of Public Mobile Telecommunications Networks and Services issued to QTel on 7 October 2007 (QTel's Mobile License).

Vodafone alleged that the QTel Ramadan Promotion constituted predatory pricing and an abuse of dominance by QTel because the offer was below the variable cost of providing such services. Under Article 43(6) of the Telecommunications Law, it is prohibited for a Dominant Service Provider (**DSP**) to supply telecommunications services at prices below long run incremental costs or any other cost standard specified by ictQATAR. Clause 3.6 of Annexure I of QTel's Mobile License prohibits a dominant service provider (DSP) from selling retail telecommunications services at a price that is less than average variable cost. In addition, a DSP may not sell retail telecommunications services at prices above average variable cost but below total cost where this is likely to exclude an efficient competitor from the market.

The tariff for the QTel Ramadan Promotion was approved by ictQATAR on 24 July 2011.

Vodafone has claimed that as a direct result of the QTel Ramadan Promotion, Vodafone expected to incur a margin loss of up to QAR 24 million. This claim is based on assumptions and expectations alleged by Vodafone concerning customers it would lose and reduced margin due to Vodafone responding to the QTel Ramadan Promotion with competitive pricing.

On 31 July 2011, Vodafone made an offer to the public for the Ramadan period (until 31 August 2011) of 34 Dhs per/minute for all international calls which was extended to include local calls and mobile internet.

Both Vodafone and QTel have made submissions in this Complaint.

The Decision by ictQATAR is that:

1. There is insufficient evidence to substantiate a contravention of Article 43(6) of the Telecommunications Law and Clause 3.6 of Annexure I of QTel's Mobile License by QTel; and

2. As no contravention of the Telecommunications Law or QTel's Mobile Licence has been substantiated, ictQATAR cannot establish any actual or perceived loss in margin by Vodafone that can be attributed to anti-competitive behaviour by QTel.

ictQATAR issues this Decision pursuant to Articles 4, 5, 26, 27, 28, 29, 30, 41, 46, 49, 61 and 62 of the Telecommunications Law, and pursuant to Articles 4, 5, 6, 54, 56, 60, 75, 86, 90, 105, 121, 123, 122, 126 in the Executive By-Law, as well as Clause 16 of QTel's Mobile License which provides that ictQATAR shall have the enforcement powers vested in it by the Applicable Regulatory Framework, which is defined in the License at Clause 3 to include the terms and conditions of the License and its annexures, relevant legislation and international treaties, and all regulations, decisions, orders, rules, instructions or notices issued by ictQATAR.

Clauses 3.12 of ictQATAR's Dispute Resolution Rules require ictQATAR to issue a public decision on a Complaint with reasons.

This Decision is final and binding, and is effective immediately.

DECISION

BACKGROUND

1. This Decision is a ruling by ictQATAR on a Complaint made by Vodafone against QTel on 1 August 2011 concerning a promotional telecommunications service offering by QTel throughout the month of August 2011, known as the 'QTel Ramadan Promotion'. Those who had taken-up the QTel Ramadan Promotion offer paid a mobile rate of 35 Dhs per/minute for all international and local calls during the Ramadan period only (starting 1August 2011).

2. Vodafone alleged in its Complaint that the pricing of the offer at 35 Dhs was below the variable cost of providing international calls and amounted to QTel engaging in conduct that constituted predatory pricing which, if substantiated, would be a contravention of Article 43(6) of the Telecommunications Law and Clause 3.6 of Annexure I of QTel's Mobile License.

3. Vodafone also claimed that as a result of the QTel Ramadan Promotion, Vodafone could suffer an estimated reduction in international margin by approximately QAR 24 million for the month of August 2011 and, if QTel was permitted to continue to offer international calling prices below variable cost to all countries, it would restrict Vodafone's ability to effectively compete in the provision of international calls and the wider retail mobile services market.

4. All QTel tariffs are subject to DSP tariff-filing and approval requirements set out in the Telecommunications Law, Executive By-Law 1 of 2009, and Annexure D of QTel's Mobile License. The tariff for the QTel Ramadan Promotion was filed by QTel in accordance with the DSP tariff-filing requirements and was conditionally approved by ictQATAR on 24 July 2011.

The QTel Ramadan Promotion includes the following QTel tariffs:

- C10-03 Control mobile services;
- C11-01 Prepaid mobile services;
- C10-01 Postpaid Mobile Services; and
- B03-01 Business Mobile Services.

This Ramadan Promotion includes the following call services:

- All calls made to national destinations; and
- All calls to international destinations.

5. On 31 July 2011, Vodafone launched its own Ramadan Promotion of 34 Dhs/per/minute for all international and national calls throughout Ramadan.

6. On 24 June 2008, QTel was designated to be a DSP in the following telecommunications markets in Qatar that are relevant in this Complaint:

   "2 Access to the public mobile telecommunications network via a mobile device";
   "3 Publicly available national telecommunications services provided via a

mobile device"; and

"5 Publicly available international telecommunications services". This market 5 comprises calls originated from fixed and mobile devices, which terminate outside of Qatar (on a mobile or a fixed device). These international calls are generally referred to as International Direct Dialing **(IDD)**.

7. On 4 December 2008, ictQATAR formally launched a Regulatory Cost Modeling and Accounting Separation (RAS) exercise to identify the cost of service provision, and to ensure tariffs do not contain any excessive charges as required by Article 29 of the Telecommunications Law. A RAS can also help to identify anti-competitive cross-subsidization or other anti-competitive behavior.

8. In this RAS Instruction, ictQATAR set out the relevant cost base and required the introduction of the RAS according to the cost bases (i) Historic Cost Accounting **(HCA)** and (ii) Cost of Efficient Service Provision (**CESP**). ictQATAR clarified that the planning and implementation of the CESP cost base could follow in due course, after HCA had been implemented. In this RAS Instruction. ictQATAR set Fully Distributed Costs (**FDC**)[1] as the relevant cost standard.

9. On 5 November 2010, ictQATAR sent the "Instruction for Retail Tariff Approval and Notification Procedure applicable to Promotions and Permanent offers" **(Retail Tariff Instruction)** to QTel and Vodafone.
In Section 5 thereof, ictQATAR confirmed that the current cost calculation regime, as set out in the RAS Instruction, was FDC, based on HCA. Therefore, ictQATAR required cost justifications from the service providers which satisfied this approach, including that all relevant cost elements (wholesale and retail) be taken fully into account. Relevant parameters and assumptions used in calculations have to be made transparent and be fully explained.
At a minimum, these include origination and termination costs, retail costs and/or any other cost element incurred and considered as an input for the proposed price of a particular permanent and promotional retail offer.

10. ictQATAR determined that the relevant cost standard for the assessment of DSPs price floors was FDC, based on HCA. This is consistently applied by ictQATAR in approving tariffs of a DSP.

    As set out in the IDD Dispute Decision (**IDD Decision**) on 30 May 2011, in the absence of a RAS which would deliver cost information in the required granular form, ictQATAR has used proxies to estimate the price floor for providing calls. The formulas are discussed in detail in that IDD Decision.

11. Therefore, in absence of a RAS, ictQATAR is consistently applying the following price floor formula to establish whether the advertised retail price for national and IDD calls is below **cost**[2]**:**

[1] also referred to as Fully Allocated Cost (**FAC**)

[2] The formulas in the IDD Decision were simplified. In this Decision ictQATAR discusses the exact formulas.

For international calls, originated from a mobile device

Retail price floor for IDD calls =

$(MOR + IOT) \times 1.3 / (1+G_{IDD})$

For national calls, originated from a mobile device

Retail price floor for national calls =

$(MOR + MTR*\%MT + FTR * (1-\%MT)) \times 1.3 / (1+G_{NAT})$

These formulas are discussed in detail in this Decision below.

12. In this Complaint, Vodafone alleged that, based on the above formulas, QTel's pricing of 35Dhs per minute was below the variable cost of providing such calls and below the price floor threshold Vodafone had assumed as being 52 Dhs per/minute using ictQATAR's formula.

13. Vodafone then alleged that the pricing of the offer was predatory 'by definition', as it was below variable cost. This was regardless of any other predatory conduct QTel may have been engaging in by making the offer, and regardless of any predatory motive/intent/ purpose attached to QTel's conduct.

14. However, Vodafone did submit that behavior by QTel could have 'wider exclusionary effects' on the level of competition in international call markets, especially if it was pricing below variable cost over a longer period.

15. Vodafone took issue with the fact that international calls and national calls had been determined by ictQATAR previously as being in two separate markets, according to the Notice and Orders of ictQATAR and the designation of QTel as a DSP in specified relevant markets in Qatar issued on 24 June 2008. Vodafone claimed that as there were two distinct markets, the assessment of below cost pricing should be ascertained by looking at the costs in each market separately. To not do so could raise concerns about cross-subsidies between markets, and the possibility that such cross-subsidization was anti-competitive.

16. QTel's submissions in the Complaint can be summarized as follows:

- The per/minute price for international calls in the promotion were not below the variable cost of providing such calls and gave QTel a positive margin;
- Vodafone's allegations of adverse commercial impact on its ability to compete in the provision of international calls and in the wider retail mobile services markets are irrelevant to the question as to whether QTel has contravened the Telecommunications Law or its Licenses;
- The fact that Vodafone has set its international call prices during Ramadan in reaction to QTel's prices is a normal feature of a competitive market; and
- ictQATAR approved the tariff for the QTel Ramadan Promotion.

LEGAL BASIS

17. ictQATAR is empowered by Article 4 of the Telecommunications Law to monitor the compliance of licensees with the terms of their Licenses, enforce

appropriate remedies to prevent service providers from engaging in anti-competitive practices, safeguard the interests of customers, including setting rules for tariff regulation and monitor the terms and conditions of telecommunications services provision, and ensure compliance with the Telecommunications Law, Executive By-Law and all regulations and decisions issued by ictQATAR. Under Article 5 of the Telecommunications Law (and Article 6 of Executive By Law for the Telecommunications Law), ictQATAR is authorized to carry out its responsibilities under the Telecommunications Law by issuing regulations, decisions, orders, rules and instructions related to regulating the telecommunications sector in Qatar.

18. Article 6 of the Telecommunications Law provides that the regulations, decisions, orders rules instructions, and notices issued pursuant to the Telecommunications Law shall be transparent and non-discriminatory with respect to all service providers and other market participants. Making decisions in accordance with the provisions of the Law and its Executive By-Law which have a different impact on any service provider or other market participant shall not be deemed discriminatory, if such decisions are due to circumstances particular to that service provider or other market participant (Article 6).

19. ictQATAR is empowered to regulate tariffs under Chapter Six (6) of the Telecommunications Law, and Chapter 5 of the Executive By- Law. The powers under the Telecommunications Law extend to determining the elements of a tariff and approving tariffs (Article 26), issuing decisions to amend tariffs where ictQATAR finds they are not in line with the cost of service provision (Article 29), issuing interim decisions to approve any tariff on a temporary basis (Article 30). Chapter 5 of the Executive By-Law sets out the procedures to be followed by service providers in respect of tariffs.

20. ictQATAR is empowered to set and implement competition policy for the telecommunications sector and ensure consumer protection. According to the Competition Policy and Consumer Protection provisions described in Chapters 9 and 10 of the Telecommunications Law, and Chapters 8 and 9 of the Executive By-Law, ictQATAR monitors and prohibits abuses of market power and anti-competitive practices; confronts anti-competitive practices in order to strengthen competition and safeguard the interests of customers and the public; monitors the terms of service between service providers and consumers; and prevents abusive and misleading commercial practices.

21. Article 41 of the Telecommunications Law prohibits service providers from engaging in anti-competitive practices. Article 75 of the Executive By-Law prohibits dominant service providers from undertaking activities that abuse their dominant position and authorizes ictQATAR to prohibit activities that it determines to have the effect of substantially lessening competition in any telecommunications market. The Telecommunications Law authorizes ictQATAR to remedy anti-competitive practices by obliging concerned persons to cease such actions or activities or to make specific changes in such action or activities to eliminate or reduce their negative impact on competition.

22. Under QTel's Mobile License, Qtel must comply with all decisions and regulations issued by ictQATAR, including this Decision.

23. As such, ictQATAR has the legal authority to rule on and prescribe remedies for QTel's: (1) tariffs in the marketplace; (2) abuse of dominance in any market in which it has been designated to be a DSP; and (3) any contravention of its licenses.

THE COMPLAINT

24. There are four main points Vodafone raises in its Complaint:

    1) QTel's price of 35Dhs/per minute was below the variable cost of providing such calls;
    2) By pricing below variable cost, QTel was engaging in predatory pricing that constituted an abuse of dominance pursuant to Article 43(6) of the Telecommunications Law;
    3) QTel's conduct (including pricing below cost) could have wider 'exclusionary effects' on competition; and
    4) The alleged expectation by Vodafone of a loss of margin of QAR 24 million.

a) QTel's price of 35Dhs/per minute was below the variable cost of providing such calls.

25. In its Complaint, Vodafone claimed that QTel's price of 35Dhs/per minute was below the variable cost of providing such calls in markets in which QTel has been designated as a DSP. Vodafone based this claim on an assumption that a price floor of 52 Dhs per/minute for international calls of a DSP applied to the QTel Ramadan Promotion offer, and that 35 Dhs was below that price floor.

26. Vodafone claimed the 52 Dhs per/minute price floor it had assumed was based on applying the following retail price floor formula ictQATAR had set out in its IDD Decision: Retail price floor = (IOT + MTR) x 1.3 / (1+G), where 'IOT' is the Inter Operator Tariff, 'MTR' is the Mobile Termination Rate and 'G' is the granularity factor for international calls (IDD).

27. It accepted that, in the absence of a RAS which would deliver accurate cost information in the required granular form, ictQATAR had used proxies and estimates to estimate a price floor for QTel to provide international calls in the IDD Decision, but it assumed that price floor was 52 Dhs per/minute.

28. Vodafone used its own costs as proxies for those of QTel, and applied the ictQATAR formula to ascertain a price floor for QTel for the QTel Ramadan Promotion.

    - ictQATAR's Retail price floor = (IOT + MTR) x 1.3 / (1+G);
    - VQ cost = (31.7 +16.6) x 1.3 x 0.963 = 61 Dhs

29. Vodafone then took into account the following factors that may lower the costs/price from Vodafone's proxies including: that QTel enjoyed benefits of scale and scope associated with being a DSP, including: (1) a broader customer

base which may call a range of countries with lower IOTs; and, (2) a customer base which does not optimize its calling on a per/minute basis thereby producing a lower unitization effect.

30. Based on the Vodafone cost of 61 Dhs per/minute and the QTel discounting factors, Vodafone decided that a price floor of 52 Dhs per/minute was fair. However, it appears Vodafone also assumed that a price floor of 52 Dhs per/ minute would apply in the assessment of <u>any</u> QTel tariff for international calls.

31. In its Answer of 7 August 2011, QTel confirmed the per/minute price for international calls in the QTel Ramadan Promotion covered variable costs and, in fact, gave QTel a positive margin.

32. Vodafone provided additional supporting information required by ictQATAR, and alleged that ictQATAR had communicated to Vodafone that the price floor for all international tariffs of a DSP has been set at 52 Dhs per/minute. Vodafone claims ictQATAR confirmed the only exception to a 52 Dhs price floor is spot promotions to countries with natural or humanitarian disasters and these promotions would be limited to a period of two weeks. Vodafone also asserted that ictQATAR had the power to request cost and traffic information from QTel to confirm any pricing below cost.

The Applicable Cost base and Cost standard

33. Article 29 of the Telecommunications Law requires tariffs of DSPs to be based on the cost of efficient service provision without excessive charges which result from the dominant position that the service provider enjoys.

34. Article 43(6) of the Telecoms Law provides that it is considered to be an abuse of dominance when a DSP is supplying competitive telecommunications services at prices below long run incremental costs or any other cost standard specified by ictQATAR.

35. Article 43(7) states that it is considered to be an abuse of dominance to use revenues or transfer a part of cost of a specific telecommunications service to subsidise another telecommunications service supplied by the same service provider except where such subsidy has regulatory approval.

36. Following the RAS Instruction issued by ictQATAR on 4 December 2008, ictQATAR set FDC based on HCA as the relevant cost standard that would apply in regulatory cost assessment until further notice.

37. On 20 January 2010, ictQATAR discussed the RAS Instruction with Vodafone.

38. On 9 August 2010 ictQATAR published an extended version of the RAS Instruction on its website and informed QTel and Vodafone of this.

39. On 5 November 2010, ictQATAR determined that the relevant cost standard for the assessment of a DSP's price floor was FDC based on HCA. This has been consistently applied by ictQATAR in the tariff assessment of a DSP's tariffs.

40. ictQATAR believes that Vodafone may have misunderstood ictQATAR's application of the relevant cost standard to assess the pricing of the QTel Ramadan Promotion.

41. The relevant cost standard is not based on variable cost. It is FDC, based on HCA, pursuant to the RAS Instruction.
Further, variable costs are costs that change in proportion to the activity of a business. In this case, the costs will change if more (or less) calls are made and, in particular, international calls. The variable cost in this case is the IOTs, the out payments to other operators.

42. While ictQATAR cannot disclose QTel's or Vodafone's international call (IDD) costs in a public Decision, ictQATAR can confirm the following:

- the variable cost for such calls are the cost of IDD termination;
- the IDD costs of both operators are in the same range, which means both operators can judge with a reasonable degree of certainty whether variable costs are above or below 35 Dhs per/minute.

Retail tariff approvals and ictQATAR's price floor

43. As set out in ictQATAR's IDD Decision of 30 May 2011, in the absence of a RAS, which would provide accurate cost information in the required granular form, ictQATAR has had to apply cost 'proxies' to estimate the price floor for providing calls and is consistently applying the following price floor formula to establish whether the advertised retail price for national and IDD calls is below cost:

For international calls, originated from a mobile device
Retail price floor for IDD calls =
$(MOR + IOT) \times 1.3 / (1+G_{IDD})$

For national calls, originated from a mobile device
Retail price floor for national calls =
$(MOR + MTR*\%MT + FTR * (1-\%MT)) \times 1.3 / (1+G_{NAT})$

The Mobile Termination Rate (**MTR**) serves as a close proxy for the Mobile Origination Rate (**MOR**). The Inter Operator Tariff (**IOT**) is the out-payment of the local operator for terminating the call abroad.

In case of IDD calls, the MOR and the IOT form the wholesale cost.

National calls can be terminated on the mobile network or the fixed network. For the mobile network the MTR has to be taken into account, for the fixed network the (lower) Fixed Termination Rate (**FTR**). The percentage of mobile terminations is expressed in %MT, (1-%MT) is the ratio of national calls terminated on the fixed network.

In order to arrive at the total cost per/ minute, retail costs such as those for marketing, advertising and billing must be taken into account. An international best practices used to account for these costs is to add between 20% to 30% as retail mark-up to the wholesale cost. To be prudent, ictQATAR has consciously chosen the higher end of the benchmark (30%) for these costs.

QTel's calls are charged per full minute (also referred to as "60/60"). This means that if the actual call duration is 61 seconds, the customer is charged for a full two minutes (120 seconds). Therefore the average call duration of calls has to be taken into account when calculating the price floor. This is reflected in the national (G_{NAT}) and international IDD (G_{IDD}) "granularity factor", which express the difference between the actual (technical) call in exact seconds, versus the billed duration, which is always rounded up to the next full minute (60 sec increment).

Including the "granularity factor" in the formula produces a minimum advertised price. As the "granularity factor" can be significant (i.e. rather short phone calls), the advertised price can be significantly lower than the "pure" rate (e.g. [MOR+MTR] x1.3) without "granularity factor". Therefore the advertised price (AP) has to exceed the price floor. The test for international calls, originated from a mobile device is hence:

$$AR >= (MOR + IOT) \times 1.3 / (1+G_{IDD})$$

44. This price floor has been applied consistently for tariff offers submitted by QTel. It is consistent with the relevant cost standard set by ictQATAR. The factors in the price floor calculation have been chosen prudently, so that ictQATAR can be sure that QTel's prices are not below cost and there is room for QTel to make competitive offers and react to market forces.

45. ictQATAR has received a comprehensive cost-justification from QTel, detailing usage figures during the normal year and the expected usage figures for the Ramadan Promotion period. This cost-justification also included granularity factors and the relevant IOTs. ictQATAR scrutinized this calculation and requested amendments by QTel. Having received a satisfactory amended version from QTel, ictQATAR was confident the proposal was not, on a weighted average for all included call services, below the price floor and hence not below cost.

46. According to the relevant cost standard consistently applied by ictQATAR the retail prices of this short-term offer were found to be above the cost floor.

47. Additionally, in respect of the call types included in this promotion, other call types are priced at the standard rates. This includes calls made using calling cards and calls originating from fixed lines. These calls will increase the average price for international and local calls generally.

48. Vodafone is currently offering the same call services (i.e. national and IDD) in Qatar, and can easily replicate the QTel offer or compete with the offer.

Vodafone has done so, and has undercut the offer with its own 34 Dhs per/minute Ramadan offer.

49. Based on the above and its own tariff assessment, ictQATAR is confident the QTel Ramadan Promotion is not below the cost of providing such calls.

50. In respect of Vodafone's allegations that it was ictQATAR's intention and practice to set an ongoing or permanent price floor of 52 Dhs per/minute that would apply continuously to QTel offers, this seems to be based on a misunderstanding of Vodafone, which is referring to specific countries and not taking into account he "granularity factor".

b) QTel had engaged in Predatory Pricing conduct by pricing below variable cost.

51. Vodafone alleged in its Complaint that by pricing below variable cost, QTel was engaging in predatory pricing according to Article 43(6) and Clause 3.6 of Annexure I of QTel's Mobile License.

52. To clarify, Article 43(6) states that supplying competitive telecommunications services at prices below long run incremental costs <u>or any other cost standard specified by ictQATAR</u> shall be considered as abuse of dominance.

53. Annexure I of QTel's Mobile License places additional obligations on DSPs including at Clause 3.6 which states:

    3.6 Predatory Pricing

    A DSP will not sell retail telecommunications services at a price that is less than average variable cost. In addition, a DSP may not sell retail telecommunications services at prices above average variable cost but below total cost where this is likely to exclude an efficient competitor from the market.

54. Essentially, predatory pricing is conduct of temporarily reducing prices (often below cost) for the <u>purpose or effect</u> of eliminating competitors from a market in the short term, in the hope that relieved of existing competition, the predatory firm will be able subsequently to raise its prices to supra-competitive levels in the longer term.

55. While it is often the motive behind the pricing that substantiates conduct that is predatory, generally pricing below cost is considered a precondition for predatory pricing.

56. Vodafone submits that QTel's conduct is 'by definition' predatory because it assumes 35 Dhs is less than average variable cost or above average variable cost (**AVC**) but below average total cost (**ATC**) in a range where this is likely to exclude an efficient competitor from the market.

57. Firstly, the relevant cost standard applied currently is not AVC, nor is it ATC as we have established above. Hence, in the absence of more accurate cost information, QTel's 35 Dhs per/minute price cannot be deemed by definition to be predatory – irrespective of motive/intent/purpose.

58. Secondly, pricing at 35 Dhs per/minute could not even be considered as a 'pre-condition' for predatory pricing, because it is not below cost based on the relevant cost standard.

59. Thirdly, in respect of the conduct in question, ictQATAR does not believe that the QTel Ramadan Promotion amounts to conduct by QTel for the purpose or effect of eliminating Vodafone from mobile services markets so that QTel may be able to raise its prices to supra-competitive levels in the longer term.

60. There are clear factors that negate a predatory motive by QTel, such as the short length of the promotion period (one month), the religious and cultural significance of cheaper pricing for everyone during the Holy month of Ramadan, and the evidence of some competition between QTel and Vodafone in mobile services markets.

61. In its submission of 11 August 2011, Vodafone submits that while under the ex ante tariff review process, ictQATAR may not have identified that QTel's pricing was predatory. To rest any doubts, ictQATAR takes a wholistic approach to tariff assessment looking at all competition aspects of a tariff in additional to cost of efficient service provision and any apparent abuse of dominance.

62. In this case, ictQATAR has reassessed the tariff for the QTel Ramadan Promotion, the competition aspects, and the circumstances relevant to QTel making the offer, and is confident QTel has not engaged in predatory pricing in any form.

63. To dispel any concerns of Vodafone that QTel may have engaged in other forms of anti-competitive conduct, such as anti-competitive cross-subsidizing between markets, ictQATAR can confirm it is apparent that QTel has not done so.

64. Vodafone rightly stated that ictQATAR had determined in its Notice and Orders designating QTel to be a DSP in all retail markets in Qatar that there were two separate markets for (1) international calls, and (2) local calls. This still applies. However, it should be noted that pursuant to Article 43(7) of the Telecommunications Law, ictQATAR may approve cross-subsidization between markets. In this case, ictQATAR has assessed this issue and is confident that any transfer of revenue or costs from one telecommunications service to another or cross-subsidization between markets is not anti-competitive and has not been done with that motive/intent/purpose by QTel.

c) QTel's conduct could have wider 'exclusionary effects' on Competition.

65. Vodafone claims that QTel's conduct in its pricing has clear potential to have 'a wider exclusionary effect in the retail mobile access and origination market'. Vodafone says this is because it is unable to replicate QTel's international tariffs for any sustained period of time because they are loss-making. Vodafone says the result of this is that Vodafone will encounter serious difficulties in acquiring and retaining customers and would expect to lose significant market share.

66. ictQATAR can confirm that no QTel tariff it has approved has contained apparent loss-making or anti-competitive elements at the time of approval by

ictQATAR. Based on the cost information provided by QTel, there is always some positive margin to be made by QTel which is not just based on lower costs than Vodafone's costs.

67. As a non-dominant service provider, Vodafone has regulatory advantages not granted to QTel that give it market advantages. It is up to Vodafone to compete, and it has done so in this instance by making its own Ramadan offer at 34 Dhs per/minute.

68. Vodafone has expressed a view that QTel's Ramadan Promotion could result in the same type of traffic reduction and customer churn for Vodafone that occurred during a period from 14 December 2009 to 15 January 2010 in which QTel ran an offer for Hala (55 Dhs per/minute) and Dawli card (45 Dhs per/minute) users.

69. During the Hala/Dawli offers, Vodafone's international retail price points were above QTel with the exception of India, which for 10 days was at 44 Dhs per/minute. During this period, Vodafone claims that its revenue fell by 28% and customer numbers declined by 64,000 – at a time when Vodafone had an average customer growth of 40,000 per/month.

70. Vodafone produced untested evidence for this period showing a correlation between a reduction in the number of active customers on Vodafone's network and low prices by QTel. However, there is nothing to substantiate the same outcome will occur in this instance and, in any case, such changes in customer numbers cannot be directly attributed to QTel's pricing as they are a normal feature of a competitive market.

71. QTel claimed in its submission of 7 August 2011 that Vodafone's assertion that the QTel Ramadan Promotion will impact on Vodafone's ability to effectively compete in the market for international calls and the wider retail mobile services market were, firstly, irrelevant to any question as to whether QTel has breached the Telecommunications Law, and, secondly, QTel's offer was the incentive for Vodafone to respond with its own competitive Ramadan offer at a competitive price.

72. Based on the information provided by Vodafone and QTel, ictQATAR does not believe that a 29 day promotion by QTel during Ramadan would restrict Vodafone's ability to effectively compete in the provision of international calls and the wider market of retail mobile services, especially given Vodafone's own similar Ramadan offer at 34 Dhs per/minute/MBs and Vodafone's other competitively-priced services.

d) The alleged QAR 24 m loss of margin by Vodafone

73. Vodafone asserted in its Complaint that anti-competitive conduct by QTel in offering the QTel Ramadan Promotion would have an adverse commercial impact on Vodafone, including an estimated reduction in international margin by approximately QAR 24 million for the month of August 2011, and would result in Vodafone experiencing its first EBITDA loss in the last seven (7) months.

74. While ictQATAR could not find any evidence of anti-competitive conduct by QTel or any real nexus between alleged conduct by QTel and alleged margin loss by Vodafone, it examined the arguments raised about this in Vodafone's Complaint.

75. Vodafone based this on margin reduction and EBITDA loss estimates in two cases: (1) with the QTel Ramadan Promotion, and (2) business as usual without the QTel Ramadan Promotion.

76. Vodafone claimed that with the QTel offer it could expect there would be a margin loss of QAR 24 million and an EBITDA loss based on current monthly profitability. Without the QTel Ramadan Promotion, Vodafone claimed there would be no margin loss and revenue would not be adversely affected.

77. Vodafone then modeled 3 scenarios showing financial outcomes for each scenario:

    1. If Vodafone elected to do nothing (IDD traffic loss and loss of customer base);
    2. What would happen if Vodafone customers called more but spent less during the duration of the QTel Ramadan Promotion (more IDD minutes but less revenue and less margin); and
    3. What would happen if Vodafone customers continued to spend the same amount and talked longer (revenue breakeven but still margin loss).

78. ictQATAR assessed the Vodafone scenarios and the economic data supplied for each and came to the following view.

79. Scenario 1 (Do Nothing) has the least (lowest) direct, immediate, impact on Vodafone's margin on international call traffic. However, Vodafone argues that by adding this assumed low margin loss to a loss of customers which may be recovered over a six months period (the time Vodafone estimates it would take to recover those lost customers), this scenario would be the most expensive of the 3 scenarios due to the high cost of customer loss.

80. The Qatari mobile call markets, and especially the IDD market, are characterized by very price sensitive customers, having dual SIMs, and potentially multiples phones, from both operators, with a high propensity to use the cheapest, currently available IDD offer.

81. We understand that these customers show little brand loyalty, but rather 'take the promotion and run'. In the case of dual SIMs/phones, an operator is not losing the customer, as the subscription remains active, but rather loses the minutes of use to the competitor.

82. Therefore, it could be fair to presume that such additional cost (based on a six month calculation) could be around three times of the direct impact of the 'Do Nothing' scenario. Even if some allowance for losses due to customer churn would be taken into account, this 'Do Nothing' scenario appears to be the most cost effective for Vodafone. Given that, it is difficult to see the basis for Vodafone not only following QTel's initiative, but undercutting QTel's price –

other than that Vodafone chose to compete with QTel in spite of a 'Do nothing' approach costing less.

83. In respect of Scenarios 2 and 3, Vodafone expressed an expectation that customer usage would fall between these two scenarios and both those scenarios presented an international margin loss of around QAR 24 million.

84. We note that a reduction in a margin, which is not an actual loss, is a reasonable expectation in a nascent competitive environment.

85. In this case, Vodafone has not only met QTel's offer, but has chosen to undercut it by offering 34 Dhs per/minute in its own Ramadan offer. If margin loss was of such great concern to Vodafone, then it could have further undercut the QTel offer.

86. Without more accurate information, ictQATAR cannot confirm or reject Vodafone's estimated calculations. Margin is dependent on a multitude of factors, some of which are not known to ictQATAR, but which are partially outside the control of Vodafone. These include customer behavior and expectations, the number of customers in the country at a particular point in time using Vodafone's services, other IDD rates and other offers in the market at the time.

87. In Qatar, IDD markets appear to be very transparent, as people watch the market and are very price sensitive. A lot of telecommunications customers have dual SIM (have both QTel and Vodafone SIM cards), and it is typical in duopolistic markets that when one service provider reduces price in a special offer, there is some response from the competitor.

PROCEDURAL MATTERS

Waiver of requirement for good faith discussions

88. There is no precedent for ictQATAR waiving the requirements of Clause 3.4.2.6 or 3.4.2.7 of the Dispute Resolution Rules whereby a complainant is required to produce certification of attempting to resolve a dispute in good faith prior to filing a complaint, and serve such certification or statement of reasons on the defendant.

89. As the Rules apply in this dispute, Vodafone is required to provide evidence of such an attempt or a statement of reasons why such requirement should be waived. ictQATAR accepts that due to the nature of this dispute, it is not appropriate for Vodafone to fulfill the certification requirement and, thereby, accepts the statement of reasons provided by Vodafone in its letter of 10 August 2011.

Fast Track Procedures

90. Pursuant to Clause 3.9 of the Dispute Resolution Rules, any party may request that ictQATAR implement fast-track procedures to resolve a dispute.

91. Vodafone requested that fast track procedures under sections 3.9.2 (b) and (d) of the Dispute Resolution rules be applied in respect of this Complaint.

92. ictQATAR informed Vodafone and QTel on 1 August 2011, that it had taken into account Vodafone's concerns on this and accepted that, based on the information provided at that stage, there could be a serious economic problem for Vodafone, and that there was a public interest in resolving the complaint as quickly as possible.

93. To that end, ictQATAR required QTel and Vodafone to be bound by the minimum time limits set out in the Dispute Resolution Rules for providing an Answer (no less than 7 days) and any Reply (within 10 days). Due to the nature of the Complaint and the information required from both QTel and Vodafone during Ramadan, ictQATAR did not accept that shorter time limits should be imposed. However, ictQATAR stated clearly to both parties that no extensions would be granted.

CONCLUSION

94. ictQATAR has examined the Complaint made by Vodafone regarding the QTel Ramadan Promotion and issues the following Decision in the matter pursuant to Clause 3.12 of the Dispute Resolution Rules for the reasons stated herein:

    1. There is insufficient evidence to substantiate a contravention of Article 43(6) of the Telecommunications Law and Clause 3.6 of Annexure I of QTel's Mobile License by QTel; and

    2. As no contravention of the Telecommunications Law or QTel's Mobile Licence has been substantiated, ictQATAR cannot establish any actual or perceived loss in margin by Vodafone that can be attributed to anti-competitive behaviour by QTel.

Signed by:

Christa Maria Cramer
Assistant Secretary General
Regulatory Authority

For the Supreme Council for Information and Communications Technology (ictQATAR)

Date: 27 September 2011