



CONSULTATION ON:

**RELEVANT MARKETS AND DESIGNATION OF DOMINANT SERVICE PROVIDERS IN
THE STATE OF QATAR**

CONSULTATION DOCUMENT

(NON-CONFIDENTIAL VERSION)

The Supreme Council of Information and Communication Technology - “ictQATAR”

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EXECUTIVE SUMMARY

This Consultation Document sets out the standards, methodology and process that the Supreme Council of Information and Communication Technology (“**ictQATAR**”) proposes to adopt for (1) defining relevant markets, (2) assessing the degree of market power in those markets, and (3) designating a service provider as dominant (“**Dominant Service Provider**”) in each relevant market where the service provider, individually or jointly with others, is found to exercise significant market power. For ease of reference, the framework of analysis comprising these three elements is referred to collectively herein as the “**Market Review Process**.” Published along with this Consultation Document is a draft “Notice and Orders -- Methodology and Standards for Determining Market Power and Initial Designation of Qtel as a Dominant Service Provider in Specified Relevant Markets” (“**Draft Notice and Orders**”), which will give effect to the proposals contained in this Consultation Document

This Consultation Document also sets forth ictQATAR’s application of the Market Review Process to the telecommunications sector in the State of Qatar at present and reaches the tentative conclusion that Qatar Telecom Q.S. C. (“**Qtel**”) should be designated as dominant in a number of specified relevant markets.

ictQATAR has developed the proposed Market Review Process and assessed the degree of market power exercised by Qtel in the specified relevant markets in accordance with the Telecommunications Law, which explicitly provides for the designation of Dominant Service Providers (e.g., Articles 23, 40, and 42); the imposition of specific legal obligations on Dominant Service Providers in accordance with competition policy (e.g., Articles 40, 41, 42, 43, 44, and 46); the application of special interconnection and access obligations to Dominant Service Providers (e.g., Articles 18, 19, 23, 24, and 25); and the imposition of tariff obligations on Dominant Service Providers (e.g., Articles 27, 28, 29, 31, 32, and 33).

The proposed Market Review Process is also fully consistent with well-established international regulatory best practice for conducting competition analysis of the telecommunications sector.

The outcome of this consultation will serve as the foundation for key license provisions and regulatory decisions and measures that ictQATAR is empowered to adopt under the Telecommunications Law to promote the development of sustainable competition in the telecommunications sector. Having applied the elements of the proposed Market Review Process to the facts and circumstances of the telecommunications market in the State of Qatar today (and for the foreseeable future), ictQATAR proposes to designate Qtel as dominant in the following seven relevant retail markets at this time:

- (1) Access to the public voice telecommunications network at a fixed location for customers;
- (2) Access to the public land mobile network (PLMN) via a mobile device;
- (3) Publicly available national telecommunications calls provided at a fixed location;
- (4) Publicly available national telecommunications service provided via a mobile device;
- (5) Publicly available international voice telecommunications service;
- (6) Retail leased lines; and
- (7) Data services.

ictQATAR also has identified a list of relevant wholesale telecommunications markets that are expected to manifest themselves following the grant of new licenses for the provision of public telecommunications networks and services to a new mobile and a new fixed network operator, both of which are likely to require certain wholesale access and interconnection services from the incumbent operator in due course. At the appropriate time following the grant of licenses to the new entrants and following further consultation, ictQATAR intends to conclude its review of the relevant wholesale telecommunications markets and proceed with the dominance designation process in those markets where there is evidence of market power. In the meantime, ictQATAR is seeking further inputs with regard to defining the relevant wholesale markets and will continue to gather information through this consultation process, the licensing process, and a comparative examination of the regulatory experience of other countries at similar stages of competitive development.

ictQATAR anticipates that once these initial retail and wholesale market reviews are completed, its designations would continue to apply in the normal course for a period of at least three years. ictQATAR plans to conduct a Strategic Sectoral Review in three years' time that will include a review of the Market Review Process and the relevant retail and wholesale markets. Prior to that review, ictQATAR will consider interim requests for additional designations, or the withdrawal of designations in force, in cases where such changes are justified by the circumstances and evidence in accordance with the principles laid out in the Market Review Process.

Views and comments on this Consultation Document, including its Attachments, are invited from industry participants, other stakeholders and interested parties **by 16 September, 2007**.

PART A: INTRODUCTION AND BACKGROUND

1. CONTEXT OF THIS CONSULTATION

As part of maintaining an open and transparent regulatory process, ictQATAR is initiating this public consultation to seek views and comments from interested parties on its proposed Market Review Process for designating Dominant Service Providers in relevant telecommunications markets in the State of Qatar.

This initial Market Review Process is occurring at a time when the incumbent service provider, Qtel, has enjoyed a legal monopoly in the Qatari telecommunications sector since its inception and continues to operate in the sector without competition. Decree Law (34) of 2006 and the Telecommunications Law (**Telecommunications Law**) terminated that monopoly and provided for competition in the provision of telecommunications networks and services through licensing and other regulatory processes. ictQATAR will implement a telecommunications policy of phased liberalisation, beginning with the selection of one new provider of public mobile telecommunications networks and services and one new provider of public fixed telecommunications networks and services. This managed liberalisation process is intended to create an environment in which Qtel and each of the newly licensed operators will invest in telecommunications infrastructure, offer competing services and earn a reasonable rate of return, while at the same time affording the new entrants a fair chance to develop brand recognition and a customer base. ictQATAR's telecommunications liberalisation policy for the State of Qatar was the subject of a recent public consultation in which interested parties from around the world provided their views and comments. See Consultation on Liberalisation of the Telecommunications Sector in the State of Qatar ("**Liberalisation Consultation**") and ictQATAR's Response to the comments received, which may be found at www.ictQATAR.qa.

ictQATAR is now in the process of awarding public telecommunications licenses to Qtel and to two new providers of public telecommunications networks and services. A public consultation on the proposed terms and conditions of these licenses (“**License Consultation Process**”) was initiated on 10 June 2007, and comments in response were submitted by 1 July 2007.

Both the Liberalisation Consultation and the License Consultation Process raised, preliminarily, a number of issues relevant to the dominance designation process and related issues that are the focus of this consultation. In formulating this Consultation Document, ictQATAR has taken into consideration the views expressed in the comments submitted in these related processes.

ictQATAR also has consulted with Qtel in order to obtain its preliminary views on issues relating to the Market Review Process and the proposed dominance designations. Qtel has provided a response to a detailed information request seeking data on the services it currently provides in the State of Qatar and that response has been factored into ictQATAR’s Market Review Process, along with other factors including Qtel’s exclusive position in telecommunications markets at the present time.

Given the dynamic nature of telecommunications markets and liberalisation of the sector, the standards, methodology and criteria used for designating Dominant Service Providers may change over time. Any such changes would be reflected in the legal instruments specifying the standards, methodology and operations relating to market power designations. Once a service provider has been designated as dominant in a relevant market, the specific legal obligations that apply to Dominant Service Providers under their respective licenses, specific regulations or orders, or otherwise under the applicable regulatory framework would become effective immediately.

2. SCOPE AND FORMAT OF THIS CONSULTATION

This Consultation Document describes the Market Review Process that ictQATAR has developed, pursuant to the Telecommunications Law and the applicable regulatory framework. In keeping with the proposed Market Review Process, ictQATAR has undertaken an analysis of telecommunications markets in Qatar in order to determine whether it is necessary to designate any Dominant Service Providers in accordance with the Telecommunications Law. ictQATAR has also identified proposed remedies to apply to Dominant Service Providers in the relevant markets. The regulatory objectives and legislative framework for undertaking the Market Review Process and for designating Dominant Service Providers is outlined in Section 4.1 below.

The market analysis carried out by ictQATAR pursuant to the Telecommunications Law has produced outcomes which confirm, subject to any additional information that may be provided during the comment stage of this consultation process, that Qtel is a Dominant Service Provider in a number of telecommunications markets, including seven defined retail markets. The analysis also indicates that Qtel, as the sole existing provider of public telecommunications networks and services in the state of Qatar, will be in a strong position to exercise its market power in a number of wholesale markets that are expected to become manifest once the new fixed and mobile operators have been licensed and enter the marketplace.

Given these proposed findings, ictQATAR has prepared a draft “Notice and Orders -- Methodology and Standards for Determining Market Power and Initial Designation of Qtel as a Dominant Service Provider in Specified Relevant Markets,” a copy of which is included as Attachment 6.

ictQATAR welcomes views and comments on its proposed Market Review Process, including the market analysis as applied to the Qatari telecommunications sector, the proposed measures and remedies, and the timetable and process for future market reviews. A comprehensive list of the specific questions posed by this Consultation Document is contained in Annexure A. ictQATAR also invites comments on the draft Notice, including its scope, application and timing. **Comments in response to this Consultation Document and the draft Notice should be submitted to ictQATAR no later than 16 September 2007.** Instructions for preparing and submitting responses are included in Part G of this Consultation Document, and a model covering page is contained in Annexure B.

The main body of this document is structured as follows:

Part A contains an Introduction and background to this Consultation Document and the Market Review Process for designating Dominant Service Providers in relevant markets.

Part B presents the proposed Market Review Process, including the methodology, standards and procedures that ictQATAR proposes to follow in identifying and defining relevant markets and evaluating whether a service provider may be designated a Dominant Service Provider in those markets.

Part C sets forth ictQATAR's determination of the relevant markets for the purpose of designating a service provider as a Dominant Service Provider.

Part D provides ictQATAR's analysis of market power in the determined relevant markets and its proposed findings with respect to the position of Qtel in those markets.

Part E presents the range of measures and remedies that ictQATAR is minded to apply in appropriate circumstances to any service provider designated as a Dominant Service Provider in a relevant market.

Part F describes the review process that is envisaged for reviewing dominance designations in future and the basis for interim reviews that may be requested.

Part G provides instructions for those wishing to respond to this Consultation Document.

This Consultation Document also contains the following attachments:

- Attachment 1: Draft License Annexure D (Procedures for Implementing and Revising Tariffs applicable to Dominant Service Providers);
- Attachment 2: Draft License Annexure F (Interconnection, Access and Wholesale Services – Reference Interconnection Offers);
- Attachment 3: Draft License Annexure I (Dominant Service Provider Obligations);
- Attachment 4: Draft License Annexure J, Section 3 (Fast-Track Interconnection Process);
- Attachment 5: Candidate Services for Fast-Track Interconnection Procedure;
- Attachment 6: Draft Notice and Orders – Methodology and Standards for Determining Market Power and Initial Designation of Qtel as a Dominant Service Provider in Specified Relevant Markets.

3. LEGISLATIVE FRAMEWORK

3.1 Regulatory Objectives

The State of Qatar has empowered and authorised ictQATAR to regulate the Communication and Information Technology sectors under Decree Law No. (36) of 2004 and, specifically, to liberalise the telecommunications sector in Qatar according to Decree Law No. (34) of 2006 and the Telecommunications Law. Together these laws establish the objectives and legal framework for ictQATAR to create the appropriate legal and regulatory conditions for the development of sustainable competition in the telecommunications sector so that, amongst other things, telecommunications may become a factor for promoting social and economic development.

The Telecommunications Law (Article 2) lists the following regulatory objectives:

Objectives

In addition to the objectives which ictQATAR is entrusted to achieve pursuant to article (3) of the Decree Law No. (36) of 2004, as referred to, ictQATAR in its capacity as the supreme authority responsible for regulating the telecommunications sector, shall achieve the following objectives:

1. *promoting the telecommunications sector in order to consolidate national, social and economic development;*
2. *enhancing the telecommunications sector's performance in the State of Qatar through encouraging competition and fostering use of telecommunications services;*
3. *encouraging the introduction of advanced and innovative information and telecommunications technologies to meet the needs of customers and the public;*
4. *increasing customers' benefits and safeguarding their interests;*
5. *encouraging sustainable investment in the telecommunications sector;*
6. *relying, where possible, on market forces to safeguard the interests of customers and the public;*
7. *identifying and addressing anti-competitive practices in the telecommunications sector;*
8. *establishing a fair, objective and transparent licensing regime for service providers;*
9. *establishing a fair regime that meets the requirements of the competitive marketplace through the implementation of interconnection between service providers and all procedures related thereto;*
10. *promoting universal service;*
11. *establishing an effective approval regime for telecommunications equipment;*
12. *ensuring that the regulation of the telecommunications sector remains in line with international rules; and*
13. *ensuring the orderly development and regulation of the telecommunications sector.*

Virtually all of these statutory objectives bear a direct or indirect relation to the formulation and implementation of the Market Review Process. And, in their totality, these objectives are the guiding principles for a range of licensing and regulatory initiatives that ictQATAR is in the process of implementing, including the designation of Dominant Service Providers and the application of appropriate remedies and measures.

4.2 Legislative Framework for the Market Review Process

Decree Law (34) of 2006 and the promulgated Telecommunications Law provide the legal basis for ictQATAR to undertake the designation of service providers as Dominant Service Providers in relevant telecommunications markets.

Article 6 of the Decree Law confers a power which enables the Secretary General of ictQATAR to issue legal instruments including 'orders' and 'notices' for the implementation of the provisions of the Decree Law and Telecommunications Law. Article 5 of the Telecommunications Law confers the same power, specifically in relation to regulating the telecommunications sector.

The Telecommunications Law explicitly provides for the designation of Dominant Service Providers in Articles 23, 40, and 42, and for specific legal obligations to be imposed on Dominant Service Providers including those relating to competition policy such as Articles 40, 41, 42, 43, 44, and 46; interconnection and access such as Articles 18, 19, 23, 24, and 25; and tariffs such as Articles 27, 28, 29, 31, 32, and 33.

Article 42 of the Telecommunications Law provides a legislative framework for undertaking the designation process; determining the extent of Significant Market Power or 'dominance' in a market; and stating what the attached Draft Notice and Orders must specify, including the relevant products and services markets, the standards, methodology and circumstances relied upon, and operations for market power designation. The attached Draft Notice and Orders, accordingly, specifies the standards, methodology, circumstances and operations for market power designation.

In addition, Article 40 confers a power which enables ictQATAR, acting through the General Secretariat, to determine the criteria that must be applied in the designation of Service Providers as having Significant Market Power or dominance in identified telecommunications markets and implementing such criteria in any designation process.

4.3 Procedure for Designating 'Dominant Service Providers'

Article 40 (3) of the Telecommunications Law empowers ictQATAR to determine what criteria will apply in the designation of service providers as having significant market power or dominance in identified telecommunications markets and implementing such criteria in any designation process.

Article 40 provides as follows:

Development and Implementation of the Competition Policy

The General Secretariat shall set and implement the competition policy and the related regulations in the telecommunications sector and in the identified telecommunications markets in the State, and in this respect the General Secretariat shall perform the following:

- 1. review the state of competition in the telecommunications markets in the State and exercise its authorities, functions and powers to consolidate competition in the provision of telecommunications services;*

2. *update the competitive policy and related regulations to reflect the state of competition in those markets, and this must be for the purpose of relying on market forces, where sufficient to safeguard the interests of customers and the public;*
3. *determine the criteria that must be applied in the designation of service providers as having significant market power or dominance in identified telecommunications markets and implementing such criteria in any designation process;*
4. *monitor and prohibit any abuse of market power or dominant position and anti-competitive practices in accordance with this Law; and*
5. *determine and apply the appropriate procedures and arrangements to confront abuses of market power and anti-competitive practices in order to strengthen competition and safeguard the interests of customers and the public.*

Article 42 of the Telecommunications Law prescribes a process for the designation of Dominant Service Providers that includes determining relevant markets; determining the standards and methodology to be applied in determining the degree of market power or dominance in relevant markets; and, conducting a market analysis through applying the identified standards and methodology in the circumstances.

Article 42 provides as follows:

Market Power Designations

The General Secretariat shall undertake the designation of the service providers and determination of the extent of their significant market power or dominance in the market and must prior to making such designation the General Secretariat shall perform the following:

1. *determine relevant products and services markets including the geographic scope or territory;*
2. *determine the standards and methodology to be applied in determining the degree of market power or other standard of significant market power or dominance in relevant markets; and*
3. *conducting an analysis of the relevant products and services markets through applying the identified standards and methodology in specific circumstances.*

The orders designating service providers as having significant market power or dominance must specify the relevant products and services markets and the standards and methodology and circumstances relied upon to justify such designation.

The General Secretariat may consult with service providers or customers or any other interested parties in the course of undertaking the determination of any market, analysis or market power designation in accordance with the provisions of this article.

The Executive By-Law, regulations, rules and orders shall specify the standards, methodology and operations for market power designation.

The Market Review Process is outlined in Part B below and in the attached Draft Notice and Orders, which specifies the standards, methodology, circumstances and operations for market definition and dominance designation.

4.4. Applying Remedies and Measures to Dominant Service Providers

If a service provider is designated as a Dominant Service Provider following the Market Review Process, ictQATAR is empowered to impose remedies and measures on an *ex ante* or an *ex post* basis, as appropriate depending on the circumstances. Article 40 of the Telecommunications Law empowers ictQATAR to monitor and prohibit abuses of market power or of a dominant position, and to determine and apply the appropriate procedures and arrangements to confront abuses of market power and anti-competitive practices in order to strengthen competition and safeguard the interests of customers and the public. In addition, Article 4.4 of the Telecommunications Law empowers the General Secretariat of ictQATAR to establish and enforce appropriate remedies to prevent service providers from engaging in anticompetitive practices prospectively, and to prevent the continuation of abuses that have already taken place.

In accordance with international best practice, ictQATAR intends to apply *ex ante* regulation where necessary to address structural problems in particular markets or to deal with instances of market failure that cannot be regulated effectively through the application of remedies or measures *ex post*. However, ictQATAR views *ex post* and *ex ante* regulation as complementary means of addressing anticompetitive conduct and situations of market failure, and will avail itself of both types of enforcement measures as necessary and appropriate under the circumstances.

PART B: PROPOSED METHODOLOGY, STANDARDS AND PROCEDURES FOR DEFINING RELEVANT MARKETS AND DETERMINING THE DEGREE OF MARKET POWER OR DOMINANCE OF A SERVICE PROVIDER IN THOSE MARKETS

4. APPROACH TO MARKET DEFINITION

In undertaking the designation of Dominant Service Providers pursuant to the Telecommunications Law, ictQATAR proposes first to identify and define the relevant markets that are to be analysed. These markets will be identified based on a range of factors aimed at determining the scope of products and services that are reasonable substitutes for one another and, therefore, constitute a discrete market for purposes of competition analysis. This includes defining the relevant product and service markets and their geographic and territorial scope.

The methodology proposed by ictQATAR for identifying product and service markets is drawn from international best practice. In particular, ictQATAR has sought to define product and service markets in terms of the degree of substitutable products and services where the objective conditions applying to competing service providers would be similar or the same. ictQATAR has also considered other market factors that reinforce the broader policy objective of fostering infrastructure-based competition while at the same time enabling viable competition to take root during the initial phase of the liberalisation process.

Factors to be considered as part of the market definition process include the following:

- Ascertaining demand-side and supply-side substitutability of products and services;

- Distinguishing between relevant retail and wholesale markets and determining the geographic scope of those markets;
- Evaluating whether there is further customer segmentation;
- Evaluating the functional dimension of the identified markets as well as time factors; and
- Considering other relevant factors such as: national differences, the effects of regulation, product diversification, chain substitution, current and potential competitive constraints, current market shares and volumes where such information is available, and expected market developments.

Question 1: Respondents are invited to comment on the proposed list of factors, standards and methodology used to define the relevant markets.

5. APPROACH TO DETERMINING SIGNIFICANT MARKET POWER AND DOMINANCE IN RELEVANT MARKETS

In determining whether significant market power or dominance exists in a relevant market identified in accordance with the methodology described above, ictQATAR proposes to analyse the extent to which a service provider, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. This is the internationally accepted standard for determining whether market power exists in a particular product or service market.

In order to make this assessment, ictQATAR proposes to determine the extent of market power in the relevant markets by evaluating the market information and evidence and applying the following criteria:

- (a) Market share;
- (b) Absolute and relative size of the firm in the relevant market;
- (c) Degree of control of facilities and infrastructure that would be uneconomical for another person to develop to provide services in the relevant market;
- (d) Economies of scope and scale;
- (e) Absence of countervailing buyer power, including customer churn characteristics;
- (f) Structural and strategic barriers to entry and expansion; and
- (g) Any other factors relevant to evaluating the existence of market power in a particular market including, e.g., supply side substitutability, emerging services, etc.

For purposes of measuring market share, appropriate parameters (such as number of lines, number of minutes, revenues or other relevant metrics) will be applied based on the circumstances, and the proportion or percentage of market share thus determined can be used as one indicium of market power or dominance.

It is ictQATAR's objective to engage in evidence-based analysis where possible and to rely on the best reliable data available. Where accurate or complete information is not available,

proxies and reasonable estimates may be utilised. Reference may also be made to comparative benchmarks in the numerous jurisdictions that have already undertaken a similar market review process in evaluating the need for regulation of their telecommunications sectors.

Question 2: Respondents are invited to comment on the proposed lists of factors, standards and methodology for determining Significant Market Power and Dominance.

PART C: APPLICATION OF THE MARKET REVIEW PROCESS TO DEFINE THE RELEVANT PRODUCT AND SERVICE MARKETS

6. IDENTIFYING THE “BASELINE” MARKETS FOR REVIEW

Based on internationally accepted practice and the current nature and scope of telecommunications markets in Qatar, ictQATAR has identified an initial, baseline list of possible relevant markets. These markets have been selected and defined following an iterative process taking into consideration the existing market structure for telecommunications products and services in terms of facilities, services and functionality. This baseline list was then analysed on the basis of competitive constraints, market shares and volumes (where available) and anticipated market developments.

After completing this baseline review, the following possible set of relevant markets was identified:

Retail Markets

- (1) Access to the public voice telecommunications network at a fixed location for customers;
- (2) Publicly available national voice telecommunications calls provided at a fixed location;
- (3) Publicly available international voice telecommunications service provide at a fixed location;
- (4) Access to the public land mobile network (PLMN) via a mobile device;
- (5) Publicly available national voice telecommunications service provided via a mobile device;
- (6) Publicly available international voice telecommunications service provided via a mobile device;
- (7) Data Services including Broadband services; and
- (8) Leased Lines.

Wholesale Markets

- (a) Voice call origination and conveyance on the public telecommunications network provided at a fixed location;

- (b) Voice call termination, including local conveyance, on the public telecommunications network provided at a fixed location;
- (c) Transit services on the public telecommunications network; this market includes the transit of telecommunications services originated in Qatar including the transit of call to an international gateway;
- (d) Voice call termination on public land mobile networks (PLMN);
- (e) International voice call termination; this market include both the termination of international inbound voice calls;
- (f) Access for fixed data services, including bit stream services;
- (g) Wholesale leased lines including terminating and trunking segments;
- (h) Physical interconnection;
- (i) Logical interconnection (e.g. IP based traffic);
- (j) Facilities access;
- (k) International gateway services;
- (l) Directory services and databases; and
- (m) Any wholesale market, other than the above in which a market entrant may request interconnection, access or wholesale products or services.

In respect of the geographic scope, ictQATAR has taken the preliminary view, at this point in time, that there is a single geographic dimension for markets in the State of Qatar. Qatar is a small country with a single major urban area. Competitive conditions, including the ability to supply across the State of Qatar, are geographically undifferentiated at the present time.

However, it is possible that this assessment could change as the liberalisation process unfolds if regional (international) markets develop for some products and services or if localised markets emerge for certain others.

Question 3: Is the proposed baseline list of relevant product and service markets appropriate in the context of telecommunications markets in the State of Qatar at the present time?

Question 4: Is it appropriate in this context to define markets in the State of Qatar as having a single national geographic dimension or scope?

7. DEFINING THE RELEVANT MARKETS – APPLYING THE STANDARDS AND METHODOLOGY TO THE IDENTIFIED BASELINE MARKETS

Having identified a set of possible relevant markets as its baseline, ictQATAR then applied the standards and methodology described in Section B.2 above to define the relevant markets. A summary of ictQATAR’s analysis with respect to the baseline markets is set forth below.

Access markets. ictQATAR considered the nature of the fixed access market. Although access and national calls to other fixed numbers are sold by the only existing service provider, Qtel, as a bundled offering, there are clear indications that the markets for access and calls are separate. Fixed access can, for example, be used to access not only other fixed numbers within Qatar but also international calls and calls to mobiles, which must be paid for separately.

The separation of access and calls into separate markets gives greater opportunities to support and enhance a competitive marketplace. ictQATAR anticipates that with the introduction of infrastructure-based competition, consumers may seek to obtain access from one supplier and selected call services, such as international calls on specific routes, from another infrastructure-based supplier. In light of this eventuality, it is important that ictQATAR be in a position to assess the competitive conditions in the markets for access and calls separately.

Furthermore, ictQATAR has come to the view that there are distinct and separate markets for access for fixed and mobile networks – as for example evidenced by differential tariff structures in the two access markets. This conclusion is also based upon the differences in the functional dimensions of fixed and mobile access.

Based on the evidence, there are currently no relevant substitutes in any of the fixed or mobile access or calls markets nor are there any identifiable market segments which at this time, would warrant a more finely granulated market definition.

The access markets for both fixed and mobile services could be defined to include access to broadband networks, or a separate market for broadband access could be identified. Although ictQATAR is not defining separate markets for broadband access via fixed or mobile services at this time, ictQATAR may in the future: (i) identify such markets as market conditions and demand patterns evolve, and (ii) impose both wholesale and retail remedies, as necessary, to facilitate competition in the supply of retail broadband, such as mandated wholesale bitstream access or local loop unbundling (“LLU”).

National calls. ictQATAR has considered whether to define a single market for national calls that would include both mobile and fixed calls. ictQATAR has decided not to do so for several reasons.

First, the data provided by Qtel in response to ictQATAR’s information request demonstrates that there are significant differences between the volume of national calls made by the average fixed and mobile customer. Specifically, the average number of outgoing minutes of national calls per line on the fixed network is approximately [***] minutes per year by comparison, the quantity of national call minutes in the pre-paid mobile market is [***] minutes per year per subscriber.¹

Second, there are significant differences in the pricing structures of fixed and mobile national calls. Mobile pre-paid consumers pay the same for all national calls, whether mobile-to-mobile or mobile-to-fixed. By contrast, for a fixed telephone user, the charges vary depending on whether the call is terminated on a fixed or a mobile network. Specifically,

¹ The quantity of national calls in the far smaller post-paid market, is [***] minutes per year per subscriber. According to Qtel, almost [***] of its post-paid customers are business users.

fixed line users pay no incremental charge for fixed-to-fixed national calls,² but must pay a termination charge for national calls from the fixed network to the mobile network.

Third, the data provided by Qtel shows a dramatic growth in mobile-to-mobile minutes and a *reduction* in the number of calls to the fixed network from the mobile network (as measured on per line basis). In 2006, calls to the fixed network from prepaid mobile customers averaged [***] as opposed to an average of [***] calls per day in 2001. This suggests that consumers increasingly view fixed and mobile as separate services. (The calls across networks are shown in Table 1, below.)

Finally, fixed and mobile services have fundamentally different service and functional characteristics. By definition, mobile services provide customers with the ability to make calls from – and receive calls at – any location, whereas the fixed service may only be used at a designated location. It appears that customers continue to perceive this functional distinction as a significant differentiating factor. Indeed, most other jurisdictions continue to define these services as separate markets for purposes of competition analysis.

Table 1; Calls between networks (estimates)

	2001	2002	2003	2004	2005	2006
Average number of calls to fixed per post paid mobile phone (minutes)	[***]	[***]	[***]	[***]	[***]	[***]
Average number of calls to fixed per pre paid mobile phone (minutes)	[***]	[***]	[***]	[***]	[***]	[***]
Average number of call PSTN to GSM (minutes)	[***]	[***]	[***]	[***]	[***]	[***]

Source Qtel

As there are significant price differences and usage patterns at local level as well as different service characteristics, ictQATAR has tentatively concluded that fixed calls and mobile calls in the national market fall into two separate relevant markets.

ictQATAR is also of the view that, based on the available evidence, there are no other relevant substitutes in fixed or mobile calls markets nor are there any identifiable market segments at this time which would warrant more finely granulated market definition.

International. The market evidence collected by ictQATAR indicates that fixed and mobile international calls are substitutes for one another and, therefore, should be considered a single market.³ There are a number of reasons for this conclusion.

² As currently offered by Qtel, the charge for these calls is bundled with the flat-rate charge for access.

³ Data provided by Qtel shows that for many international routes there is no differential between mobile and fixed calls from the international gateway.

First, the data shows that the number of outgoing international minutes per prepaid line is close to the number of international outgoing minutes on residential fixed lines. In 2006, the figure was [***] minutes for prepaid and [***] minutes for residential fixed. The same close relationship can be found between post-paid mobile outgoing international minutes and outgoing international minutes from business fixed lines: [***] minutes from post-paid mobile and [***] minutes for business fixed lines.

Second, the charge for international calls is separate from the charge for the domestic access component (mobile or fixed) and is the same regardless of whether the caller accesses the international network over a fixed or a mobile network. In the case of mobile, the customer pays a local call charge (which does not exist for fixed calls) and the standard international call charge (which is the same as for fixed calls). Thus, it appears that consumers perceive they are purchasing two distinct services: access (either mobile or fixed) and international calls.

There also appears, at this time, to be insufficient evidence to suggest that a further refinement of the definition by customer segments would be pertinent to the broader policy objectives. It appears that consumers perceive international calls originated on both fixed and mobile access networks to be substitutes both functionally and also in terms of price.

Leased lines. ictQATAR council sought to collect extensive information with regard to leased lines, but relatively limited data appeared to be available with regard to retail domestic leased lines. However, consistent with international practice, ictQATAR has concluded that leased lines should be treated as a separate market. This service differs significantly from services that make up the domestic mobile and fixed line calls market. Leased lines are typically used by business customers and service providers, often to provide a point-to-point connection. Unlike calls service, leased lines services do not include switching. Moreover, these services provide significantly higher capacity than switched calls service, at a significantly higher price. A separate market definition is, therefore, considered to be justified. In the future, as infrastructure competition develops, it may be necessary to differentiate between local leased line segments (“leased line tail circuits”), leased lines used for backhaul, and inter-urban circuits.

Data Services. The regulatory treatment of broadband services is an important part of the market review process and were considered by the ictQATAR when defining access markets. There are potentially a large number of services provided in addition to access, such as, Voice over Internet Protocol, (“VoIP”), data services and email services that could comprise a market for data services. Generally, such services provide some information content or “value added” over and above basic access services. As such, services in this market are typically not seen as substitutes for services provided in other markets.

Prospective Markets. ictQATAR is not proposing, at this time, to identify any additional or prospective retail markets or to consider any more finely granulated markets, for example, to differentiate between residential and business users, or post-paid and pre-paid mobile customers. ictQATAR is of the view that there currently is insufficient evidence to support the identification of additional or more granular markets, but ictQATAR will consider any evidence that may be produced in this regard as the liberalisation process unfolds.

8. PROPOSED LIST OF RELEVANT RETAIL MARKETS AT THIS POINT IN TIME

Having started with a baseline list of possible relevant markets, and having applied the specified standards and methodologies for defining relevant markets using the best available market information (or where unavailable, based on reasonable assumptions and following best international practice), ictQATAR has determined that the following retail markets should be selected *at this point in time* as the relevant retail markets in which to assess

whether market power or dominance exists. This list differs from the baseline list insofar as it combines into one single market publicly available national voice telecommunications service provided via a mobile device and at fixed locations [

- (1) Access to the public voice telecommunications network at a fixed location for customers;
- (2) Access to the public land mobile network (PLMN) via a mobile device;
- (3) Publicly available national telecommunications calls provided at a fixed location;
- (4) Publicly available national telecommunications service provided via a mobile device;
- (5) Publicly available international voice telecommunications service;
- (6) Retail leased lines; and
- (7) Data services including Broadband services.

Question 5: General comments are invited on the proposed lists of retail markets

Question 6: Should there be separate relevant markets for calls and access for both fixed and mobile calls?

Question 7: Should there be separate national calls markets for fixed and mobile?

Question 8: Should there be a single market for international fixed and mobile calls?

Question 9: Is there justification for identifying a separate retail market for access to broadband networks at this time?

Question 10: Is it appropriate to include broadband access in the access market and leave data services as a distinct market?

Question 11: Are there any additional or prospective relevant retail markets which should be defined at this stage?

Question 12: Should any of the proposed retail markets be defined more granularly at this stage of market liberalisation process?

9. RELEVANT WHOLESALE MARKETS

The proposed baseline list of relevant wholesale markets in which a service provider may be designated as a Dominant Service Provider (see Section C.1 above) is based upon information provided to ictQATAR as part of its market inquiries, international experience and regulatory best practice with regard to the types of wholesale access and interconnection services that would be essential (*i.e.*, not practicably replicable in the near to medium term) for the provision of competitive services by a new fixed or mobile operator entering the sector in Qatar. These are commonly recognised 'bottleneck' services and facilities that are acknowledged as such by regulators and the industry worldwide.

The final selection of relevant wholesale markets at this point in time, however, raises various issues. At present, there is only one authorised public telecommunications service provider in Qatar and, consequently, the demand for wholesale services that may emerge when competitors are introduced into the sector is currently latent.

Nonetheless, based on an assessment of the commercial realities of the extant industry structure and well documented experience in other jurisdictions where the liberalisation process is more advanced, ictQATAR has created a baseline list of relevant wholesale markets in the expectation that some or all of the identified markets will emerge after additional telecommunications service providers have been licensed and prepare to launch their services in the State of Qatar. It is a fact that the identified wholesale markets actively exist in telecommunications sectors around the world where there is more than one telecommunications operator.

Question 13: Comments are invited on the proposed treatment of wholesale services in this Consultation Document, the proposed list of prospective wholesale markets, and the proposed procedure for designating relevant wholesale markets going forward.

Question 14: Is the proposed list of relevant wholesale markets sufficient to promote sustainable infrastructure based competition?

Question 15: Should any additional wholesale markets be identified at this initial stage of market liberalisation in the State of Qatar?

Question 16: Which wholesale markets should be prioritised by ictQATAR in its review of markets during the initial period of market liberalisation?

PART D: APPLICATION OF THE MARKET REVIEW PROCESS TO DETERMINE THE DEGREE OF MARKET POWER

10. ANALYSING THE EVIDENCE ON THE RELEVANT RETAIL MARKETS

ictQATAR has sought to analyse each of the relevant retail markets using the best evidence available to it, including information supplied through market inquiries and by Qtel, and where complete or accurate information has been unavailable, using reasonable estimates or comparable international benchmarks.

ictQATAR's analysis of market power in the identified relevant markets is based on the circumstances existing at this point in time. One such circumstance is the fact that Qtel is the sole provider of public fixed and mobile infrastructure and services in the State of Qatar, operating in all of the relevant product and service markets that have been identified. Qtel currently faces no lawful competitors in those markets and, given the scope and scale of the networks and services that Qtel has developed over the past decade under a legal monopoly, Qtel's strong market position in the relevant markets is not expected to diminish substantially in the near term, even after the arrival of two new entrants.

ictQATAR is aware that there is potential for increased competition to Qtel's international outbound voice telephony services from VoIP services accessed over the Internet. There is, however, no reliable evidence at this point in time to demonstrate that VoIP has had an

appreciable impact on the revenues or volumes of voice traffic carried by Qtel or that such activity constitutes sustainable and effective competition in the market for international voice telecommunications services in the State of Qatar.

The results of ictQATAR's market power analysis, based on the Market Review Process described in this Consultation Document, are summarised below.

10.1 Applying the methodology to analyse market power in the relevant retail markets

(a) *Market share*

In all of the relevant retail markets (and, implicitly, the potential wholesale markets), Qtel has 100% market share as it is the only licensed operator in the market today. ictQATAR has not yet identified a market share percentage above which it will presume a licensee to be dominant absent evidence to the contrary. ictQATAR notes, however, that many other jurisdictions have done so. For example, in the initial phases of market liberalisation in the European Union, a service provider could be presumed to have Significant Market Power if it had a market share of more than 25%. In Singapore, the market share threshold signifying dominance in a telecommunications market is set at 35%. Moreover, under most modern competition law frameworks, market shares of more than 50% carry a strong presumption of dominance.

Qtel has provided no evidence of competitors in response to ictQATAR's information request. In the absence of any evidence confirming the existence of actual competition in any of the identified markets, and in view of the existence of only one service provider in those markets, it is reasonable to presume that Qtel, as the incumbent service provider, is dominant in each of the relevant markets.

(b) *The absolute and relative size of a firm in the relevant market*

With an effective 100% share of each of the relevant markets, Qtel has both an absolute and relative position of dominance in those markets. Qtel's position is further strengthened by virtue of the relatively small scale of the Qatari telecommunications sector and the already high levels of adoption and penetration of the services comprising the relevant markets.

(c) *The degree of control of facilities and infrastructure that would be uneconomical for another person to develop to provide services in the relevant market*

Qtel has developed its networks and facilities over many years. These facilities could not easily be economically replicated in the time period under review. This, in terms of control of facilities and infrastructure, Qtel clearly enjoys a position of market power at present.

(d) *Economies of scope and scale*

Qtel has 100% penetration in the most significant relevant retail markets and, given its market share, it should therefore have the ability to realise the economies of scope and scale available in the market. Moreover, as an integrated operator, Qtel has the ability to exploit both economies of scale and scope in the building and operation of its networks across all assets (such as ducts, civil engineering, fibre and cables). This factor also suggests that Qtel is dominant in the relevant markets.

- (e) *The absence of countervailing buyer power (such as customer churn characteristics)*

Up to this time no legal competitors could exist in any relevant markets for products and services and, accordingly, there is no possibility of customer churn or other evidence of countervailing buyer power to Qtel's dominance due to competitor activity.

- (f) *Structural and strategic barriers to entry and expansion*

The proposed new licensing regime will remove one of the major structural barriers to entry in the market in Qatar. However, several other structural barriers remain. The fact that Qtel owns and controls all of the available network infrastructure and has developed a strong brand during its many years as a monopoly, will leave enduring structural barriers to entry. Further, rights of way enjoyed by Qtel and the location of its infrastructure may well reinforce these structural barriers to entry. The existence of such barriers will reinforce Qtel's dominance in the relevant markets.

- (g) *Any other factors relevant to evaluating the existence of market power in a particular market including, inter alia, supply-side substitutability and emerging services.*

Additional factors that were considered are discussed in the following section.

10.2 Additional considerations in the market analysis

After applying the above methodology in the light of the best available market information, ictQATAR then considered the following:

1.2.1. Above-cost prices. A firm with significant market power is able to charge prices that are substantially 'above cost'. The market evidence made available to ictQATAR indicates, for example, that Qtel charges prices for international call services that are significantly higher than the cost of the service inputs. Qtel has entered into "settlement agreements" with operators around the world, in which the operators compensate each other for the cost of delivering each other's calls. The market evidence provided by Qtel to ictQATAR confirms that the prices charged to its end users for international calls are significantly higher than the costs that Qtel incurs to provide international service.

The data provided to ictQATAR in relation to international settlement rates has been excluded from this document as information that is commercial-in-confidence (c-i-c). However, the data provided by Qtel to ictQATAR confirms the analysis and the conclusions drawn from it.

A further indicator of significant market power is the ability to use revenues that are significantly above cost in one market in order to cross-subsidise prices in a another market. The data provided by Qtel did not allow a detailed assessment of prices in relation to cost in all markets. However, based on a comparison of Qtel's prices to those in other jurisdictions, Qtel appears to be charging below-cost prices for the bundle "access and national calls", thereby suggesting that anticompetitive cross-subsidisation could be occurring.

1.2.2 High broadband access prices. Qtel operates, in large part, a modern and efficient network. Qtel's network exhibits characteristics which, in other markets, would tend to produce low costs and low retail prices including: short line lengths, high quality and consistent diameter copper lines in the access network and high capacity backhaul channels. Thus, Qtel is technically in a position to provide high-speed broadband services at low prices. In the broadband market, however, Qtel's pricing of access and services appears to be relatively high – QRs 200 (40 Euro) per month for 512kbps and QRs 300 (75

Euros) per month for 1Mbps. Data from the Portuguese telecoms regulator, Anacom⁴, for November 2006, shows that the average minimum price for broadband in the EU was significantly lower: 15.01 Euros (for the lowest operator) and for the historic operators the average was 20.63 Euros. For 2Mb broadband the EU average was 20.43 Euros. There is no evidence to show why operator broadband costs should be significantly higher in Qatar than in the EU

1.2.3 Significant barriers to entry. It has been suggested by one participant in a related consultation that there is no need for ictQATAR to define international and mobile retail markets because the policy decision has already been made to license two new entrants. It has also been claimed that the entry barriers to these relevant markets are so low that simply allowing new entry will immediately constrain Qtel's ability to exercise market power in these markets. However, experience in other jurisdictions demonstrates that the removal of legal entry barriers, and the granting of licenses, does not immediately eliminate the market power enjoyed by the incumbent operator. Where market power has diminished, it has occurred over time with the assistance of effective regulatory safeguards and incentives.

Even after legal barriers to entry into these markets are removed, an incumbent operator usually has the ability to exercise market power for a significant period of time for several reasons. First, it usually takes a new entrant a considerable amount of time to roll-out its network and begin to provide services. Second, a new entrant typically faces significant obstacles in competing against an incumbent as a result of network effects, pricing strategies, cross-subsidies, and switching costs. Third, new entrants must overcome significant customer inertia. This often takes years of successful marketing, as well as the development of a solid reputation among potential customers. This could be especially challenging in Qatar where, at present, the mobile penetration rate is more than 100 percent (*i.e.*, there are apparently more mobile telephones than people). Consequently, any new entrant will be seeking, in large part, to attract existing Qtel customers to its network. These factors, as well as experience from other countries, demonstrates the need for effective regulatory intervention, which must be in place at the start of the liberalisation process, and must continue until the market is effectively competitive.

Question 17: Comments are invited concerning the analysis of the evidence on the degree of market power in the relevant retail markets.

11. APPLYING THE METHODOLOGY TO PROSPECTIVE WHOLESALE MARKETS

Although ictQATAR has identified a baseline list of relevant wholesale markets, it proposes to postpone a dominance designation in any or the identified wholesale markets for the time being. After a new entrant is licensed, there will be well documented evidence of its demand for wholesale services as well as evidence of the incumbent's response to the demand for such services. As a result, ictQATAR proposes to postpone the designation of Dominant Service Providers in wholesale markets until one or both of the new licensees are selected.

However, by applying the methodology set forth above to the typical characteristics of the relevant wholesale markets, and taking into consideration Qtel's ownership and operation of the facilities necessary to provide these wholesale services, it could reasonably be expected

⁴ Source: Anacom '*International comparison of broadband prices*' November 2006 (<http://www.anacom.pt/content.jsp?contentId=454901>)

that Qtel would be found to be a Dominant Service Provider in any interconnection, access or other wholesale market in which a new entrant were to request service from Qtel. This assumption rests on the information provided to ictQATAR and near-universal experience in other jurisdictions, which has shown that during the initial phases of liberalisation, it is not possible for a new entrant to replicate certain telecommunications infrastructure in the required timeframe for launch of service. Thus, Qtel is likely to be found dominant in the provision of any wholesale services that are requested by a new entrant if satisfactory terms and conditions are not forthcoming from Qtel. This assumes that there are no fundamental changes in the structure or dynamics of the relevant wholesale markets.

It should also be noted that, in assessing dominance in relevant wholesale markets at this early stage of market development, the principle of “single network dominance” may be useful and applicable, especially in regard to call termination. Were ictQATAR to adopt the principle of single network dominance, Qtel would be designated as having a dominant position in terminating traffic over its own network. This same principle, applied to the new entrants without qualification, could also result in their being designated as dominant in respect of the fixed and mobile termination services which they offer to Qtel and to one another.

The adoption of single network dominance raises a number of issues with respect to which views are sought. For example, ictQATAR notes that the adoption of a single network dominance model need not necessarily lead to regulatory interventions in every case. In the case of relatively small networks, such as a new entrant’s, there may well be sufficient countervailing forces at work in the market to make it unnecessary to apply *ex ante* regulation to wholesale termination services offered by the new entrants. Hence, ictQATAR might not expect to impose symmetrical wholesale price regulation on all service providers offering termination services over their own networks, particularly in the early stages of the liberalisation process.

ictQATAR intends to use the results of this consultation process as an input for further analysis of wholesale markets, with a view to issuing a supplement to its initial dominance designation Notice and Orders if a service provider is designated as a Dominant Service Provider in some or all of the identified wholesale markets.

Question 18: Comments are requested concerning the proposed approach in respect of assessing dominance in the proposed relevant wholesale markets.

Question 19: Is there sufficient evidence at the present time upon which ictQATAR could make a finding of dominance with respect to any proposed relevant wholesale market and develop an effective remedy?

Question 20: Is the application of single network dominance in the context of fixed and mobile termination a useful regulatory principle in the State of Qatar?

Question 21: Is the concept of single network dominance more suitable than designating dominance in a discrete service market such as mobile call termination in the State of Qatar?

Question 22: What should be the implications of the application of single network dominance to termination markets in the State of Qatar to a new entrants’ provision of termination services, and to what extent would the principle of countervailing buyer power apply?

Question 23: What other approaches to wholesale market regulation would be appropriate in the State of Qatar?

PART E: MEASURES AND REMEDIES

12. THE OBJECTIVES IN RESPECT OF MEASURES AND REMEDIES

In order to develop an effective regime to manage the transition from monopoly to competitive markets, the initial focus of ictQATAR is on defining relevant retail markets, assessing whether Qtel. is dominant in those markets, and proposing potential *ex ante* remedies to address the competition issues raised in markets where Qtel has been found to be dominant. Although ictQATAR's initial focus is on retail markets, its determination that Qtel is dominant in these markets creates an inference that *ex ante* remedies are warranted *both* at the retail level and in upstream wholesale markets. The retail-level remedies would serve to deter Qtel from abusing its market power to the detriment of end-user customers. The wholesale-level remedies would serve to facilitate competitive entry into the market by eliminating potential "bottlenecks" upstream which, ultimately, would appear to be the most effective and only sustainable way to address Qtel's market power at the retail level, in the absence of effective infrastructure-based competition in the relevant markets.

Question 24: Comments are requested on ictQATAR's proposed approach to the application of *ex post* and *ex ante* measures and remedies.

13. MEASURES TO ENHANCE CONSUMER PROTECTION

In respect of the relevant retail markets in which Qtel has been designated as 'dominant', one of the fundamental tools for ensuring consumer protection is tariff regulation and price controls. The application of other regulatory safeguards, such as detailed accounting separation procedures, will be evaluated as part of a separate regulatory consultation process at the appropriate time. Moreover, ictQATAR reserves the right to require Qtel to implement carrier pre-selection and/or call-by-call selection pursuant to a timetable that ictQATAR shall establish.

However, ictQATAR proposes to impose a number of *ex ante* obligations on Qtel with immediate effect from the date of the final designation. These provisions are set forth in greater detail in Annexure D of the draft licenses that were published in connection with the Licensing Consultation Process. Key provisions include the following:

- (a) require Qtel to publish all retail prices on its website or in any other manner specified by ictQATAR;
- (b) subject retail price changes to prior approval;
- (c) approve the introduction of new retail services and the discontinuation of existing retail services, including bundles of services;

- (d) impose price controls designed to ensure that Qtel will provide retail telecommunications services at reasonable terms and at prices that are oriented towards costs, including price controls based on a price cap system, international benchmarks or any other appropriate basis;
- (e) require that Qtel offer retail services on an unbundled basis and, where appropriate, on non-discriminatory prices, terms and conditions;
- (f) require that Qtel implement effective billing and dispute settlement procedures;
- (g) require Qtel to implement carrier pre-selection and /or call-by-call selection; and
- (h) require Qtel to adopt procedures to facilitate both wireline and wireless number portability.

These provisions are contained in Annexure D of the draft licenses that were published as part of the Licensing Consultation Process, and upon which comments were invited in the context of that proceeding. However, ictQATAR would welcome any additional comments within the frame of this consultation. For convenience, the updated text of the relevant license provisions is set forth in Attachment 1 of this Consultation Document.

Question 25: Comments are invited on the proposed tariff review procedures applicable to Dominant Service Providers as set forth in Attachment 1 of this Consultation Document.

Question 26: Is it necessary, and is there sufficient justification, for ictQATAR to stipulate any additional types of retail remedies or measures at this point in time?

14. MEASURES TO FACILITATE COMPETITIVE ENTRY

14.1 Terms and Conditions of Wholesale Services – Interconnection and Access

ictQATAR is committed to fostering facilities-based competition and will therefore require that, over time, the new mobile and fixed network entrants deploy significant infrastructure of their own to provide service to their customers. However, ictQATAR recognises that, especially in the initial period following liberalisation, the new entrants will require access to various Qtel services and facilities on a wholesale basis. The new entrants will also need to physically and/or logically interconnect their networks, on a permanent basis, for the exchange of traffic.

ictQATAR proposes to require Qtel and the two new entrants to engage in good faith negotiations regarding the prices, terms and conditions on which Qtel will supply these wholesale services. Where the parties do not reach an agreement within 60 days of the start of negotiations, the requesting licensee may ask that ictQATAR establish the price, terms and conditions on which Qtel must provide the requested services. If Qtel is designated as a Dominant Service Provider in a relevant market for wholesale services, ictQATAR may base the terms and conditions including pricing on any or a combination of the following:

- (a) costs (subject to the application of an appropriate cost methodology, such as incremental costs);
- (b) international benchmarks;

- (c) in the case of wholesale services, a retail-minus cost methodology; or
- (d) in the case of interconnection, ictQATAR may require the parties to adopt a bill-and-keep (*i.e.*, zero compensation) system for the termination of traffic.

In addition, the ictQATAR may also require Qtel to: (1) allow the new entrants to purchase any retail telecommunications service at the same retail prices and, pursuant to the same terms and conditions that Qtel makes such service available to its own retail customers; and (2) allow the new entrants to resell their services to end user customers ictQATAR may also require Qtel to allow the new entrants to purchase any wholesale services at cost in cases where Qtel supplies itself with the same or similar services to support its own retail activities. Finally, ictQATAR may require Qtel to offer certain retail services to the new entrants on a wholesale basis, priced on the basis of a retail-minus methodology, with the discount to be specified by ictQATAR. Similar requirements relating to installation or service delivery times for critical wholesale inputs may also be imposed if Qtel fails to provide services to its competitors that are equivalent to the network services it provides internally to its own retail operations.

These proposed approaches are similar to those set forth in the Liberalisation Consultation Document, upon which comments were requested previously. However, further comments focusing on this Market Review Process are welcome in this consultation.

Question 27: Comments are invited concerning the proposed approaches and alternatives to wholesale pricing remedies.

14.2 Reference Interconnect Offers

Pursuant to Annexure F, Section 4 of the draft licenses applicable to public telecommunications service providers, Dominant Service Providers may be requested by ictQATAR to submit a proposed Reference Interconnection Offer (“RIO”) to ictQATAR for review and approval. The proposed form of the RIO is set forth in the draft licenses and was made available for comment in the Licensing Consultation Procedure. However, further comments focusing on the proposed RIO provisions in the context of the Market Review Process are welcome in this proceeding. For convenience, the updated license text is provided in Attachment 2 of this Consultation Document.

Question 28: Comments are invited on the proposed RIO process and format as set forth in Attachment 2 of this Consultation Document (which reflects the proposed text of Annexure F, Section 4 to the draft licenses).

14.3 Fast-Track Interconnection Process and Candidate Services

Pursuant to Annexure J, Section 3 of the draft licenses applicable to public telecommunications service providers, Dominant Service Providers will be subject to a transitional “fast-track” procedure in respect of interconnection and access services which, upon the request of a new entrant operator, ictQATAR determines should apply in order to establish interim terms and conditions on an expedited basis. The purpose of these transitional fast-track procedures is to ensure that the launch of services by the new entrants is not unnecessarily delayed. For convenience, Attachment 4 contains the updated text of the final license provision on the fast-track procedure. Additionally, Attachment 5 of this

Consultation Document provides a list of potential access and interconnect services that ictQATAR anticipates may be candidates for the proposed fast-track procedure.

Question 29: Comments are invited on the proposed fast-track procedure set forth in Attachment 4.

Question 30: Comments are requested on the proposed list of services that are candidates for application of the fast-track procedure.

14.4 Additional Competition Requirements Applicable Generally and Specifically to Dominant Service Providers

ictQATAR also proposes to include in all public telecommunications licenses a list of competition requirements that will apply generally to Dominant Service Providers. The proposed list, which will be included in its final form as Annexure I to the public telecommunications licenses that will be issued to Qtel and the new entrants, is set forth in Attachment 3.

Question 31: Comments are requested on the proposed competition requirements that would apply generally, and to Dominant Service Providers in particular, as set forth in Attachment 3.

PART F: REVIEW PROCESS

ictQATAR proposes that the Draft Notice and Orders containing the Market Review Framework and the initial designations of Qtel as a Dominant Service Provider in the relevant markets should become effective on formal issue to Qtel and remain effective for a period of at least three years. ictQATAR intends to conduct a comprehensive Strategic Sectoral Review in three years' time that will include a review of the Market Review Process and a review of the relevant retail and wholesale markets.

Prior to that planned review, ictQATAR will consider interim requests for additional designations, or the withdrawal of designations in force, in cases where such changes are justified by the circumstances and evidence in accordance with the principles laid out in the Market Review Framework. Factors that may be taken into account in such a review include: the state of competition in the relevant market and related markets, prevailing market forces and an assessment of whether those market forces are sufficient to safeguard and promote the interests of end-user customers and consumers. ictQATAR takes the view that an erosion of prices, in and of itself, as not a sufficient basis to warrant a review of the dominance designation.

Although ictQATAR anticipates making few changes to the Notice and Orders in respect of the designation of Dominant Service Providers, during the next three years and prior to the conclusion of the Strategic Sectoral Review, ictQATAR may elect to amend the Notice and Orders following public consultation or if it becomes apparent that there may be a Dominant Service Provider in a market not previously identified or in existence. Such amendment may follow the licensing of a new entrant or where there is clear evidence of demonstrated effective demand for wholesale services in the wholesale markets identified.

Question 32: Comments are welcome on the proposed framework for the initial market review, interim market reviews and the Strategic Sectoral Review.

Question 33: What evidence should ictQATAR pay particular attention to in deciding whether or not to review the dominance designation prior to September 2010?

PART G: INSTRUCTIONS FOR RESPONDING TO THIS CONSULTATION DOCUMENT

1. THE CONSULTATION PROCESS – BASIC PROCEDURES

Communications with ictQATAR concerning this Consultation Document must be submitted in writing. **Written comments responding to this Consultation Document should be submitted to ictQATAR no later than 3:00 p.m. (local time in the state of Qatar) on 16 September 2007.** A covering page containing the information set out in Annexure A should be included as the first page of the submission.

Interested parties are invited to answer the questions specifically identified in this document and to provide their views on any other relevant issues. Comments should reference the number of the question being addressed or the specific section of this document if not responding to a particular question. Comments should be submitted:

(1) (preferred) by e-mail to consultation@ict.gov.qa. Responses should be provided in **MS Word** format and the subject reference in the email should be stated as "Dominance Consultation". It is not necessary to provide a hard copy of the response in addition to the soft copy sent by email; or

(2) by hand or by courier, one hard copy accompanied by a CD Rom, to

Dominance Consultation
The Supreme Council of Information and Communication Technology
(ictQATAR)
Dominance Consultation

Al Mirqab Tower, 4th floor
Corniche Road
Doha
Qatar; or

(3) by post, one hard copy accompanied by a CD Rom, to:

Dominance Consultation
The Supreme Council of Information and Communication Technology
(ictQATAR)
P O Box 23264
Doha
Qatar.

2. PUBLICATION OF COMMENTS

In the interest of transparency and public accountability, ictQATAR intends to publish on its official website copies of all comments submitted as part of this consultation process. All comments received will be processed and treated as non-confidential unless otherwise indicated on the covering page submitted by the responding party (see Annexure A).

Parties may request confidential treatment for information that is commercially sensitive, proprietary, or subject to a pre-existing non-disclosure agreement at the time the response is submitted to ictQATAR. Any requests for confidential treatment should be clearly indicated on the covering page, and a non-confidential version of the response must be supplied for publication. Ideally, any confidential information should be included in a separate annexure marked as confidential. Information marked as confidential will not be made available to the public only where there is clear justification for the claim of confidentiality. This matter will be determined solely at the discretion of ictQATAR. By filing comments with ictQATAR in this consultation process, respondents will be deemed to waive all copyrights in their submissions that might otherwise pertain.

ANNEXURE A: Comprehensive List of Questions for Comment

Section	Question No	Question
Part B, §1	1	Respondents are invited to comment on the proposed list of factors, standards and methodology used to define the relevant markets.
Part B, §2	2	Respondents are invited to comment on the proposed lists of factors, standards and methodology for determining Significant Market Power and Dominance.
Part C, §1	3	Is the proposed baseline list of relevant product and service markets appropriate in the context of telecommunications markets in the State of Qatar at the present time?
Part C, §1	4	Is it appropriate in this context to define markets in the State of Qatar as having a single national geographic dimension or scope?
Part C, §3	5	General comments are invited on the proposed lists of retail markets.
Part C, §3	6	Should there be separate relevant markets for calls and access for both fixed and mobile calls?
Part C, §3	7	Should there be separate national calls markets for fixed and mobile?
Part C, §3	8	Should there be a single market for international fixed and mobile calls?
Part C, §3	9	Is there justification for identifying a separate retail market for access to broadband networks at this time?
Part C, §3	10	Is it appropriate to include broadband access in the access market and leave data services as a distinct market?
Part C, §3	11	Are there any additional relevant retail markets which should be defined at this stage?
Part C, §3	12	Should any of the proposed retail markets be defined more granularly at this stage of market liberalisation process?
Part C, §4	13	Comments are invited on the proposed treatment of wholesale services in this Consultation Document, the proposed list of prospective wholesale markets, and the proposed procedure for designating relevant wholesale markets going forward.
Part C, §4	14	Is the proposed list of relevant wholesale markets sufficient to promote sustainable infrastructure based competition?
Part C, §4	15	Should any additional wholesale markets be identified at this initial stage of market liberalisation in the State of Qatar?
Part C, §4	16	Which wholesale markets should be prioritised by ictQATAR in its review of markets during the initial period of market liberalisation?

Part D, §1	17	Comments are invited concerning the analysis of the evidence on the degree of market power in the relevant retail markets.
Part D, §2	18	Comments are requested concerning the proposed approach in respect of assessing dominance in the proposed relevant wholesale markets.
Part D, §2	19	Is there sufficient evidence at the present time upon which ictQATAR could make a finding of dominance with respect to any proposed relevant wholesale market and develop an effective remedy?
Part D, §2	20	Is the application of single network dominance in the context of fixed and mobile termination a useful regulatory principle in the State of Qatar?
Part D, §2	21	Is the concept of single network dominance more suitable than designating dominance in a discrete service market such as mobile call termination in the State of Qatar?
Part D, §2	22	What should be the implications of the application of single network dominance to termination markets in the State of Qatar to then new entrants' provision of termination services, and to what extent would the principle of countervailing buyer power apply?
Part D, §2	23	What other approaches to wholesale market regulation would be appropriate in the State of Qatar?
Part E, §1	24	Comments are requested on ictQATAR's proposed approach to the application of <i>ex post</i> and <i>ex ante</i> measures and remedies.
Part E, §2	25	Comments are invited on the proposed tariff review procedures applicable to Dominant Service Providers as set forth in Attachment 1 of this Consultation Document.
Part E, §2	26	Is it necessary, and is there sufficient justification, for ictQATAR to stipulate any additional types of retail remedies or measures at this point in time?
Part E, §3	27	Comments are invited concerning the proposed approaches and alternatives to wholesale pricing remedies?
Part E, §3	28	Comments are invited on the proposed RIO process and format as set forth in Attachment 2 of this Consultation Document (which reflects the proposed text of Annexure F, Section 4 to the draft licenses).
Part E, §3	29	Comments are invited on the proposed fast-track procedure set forth in Attachment 4.
Part E, §3	30	Comments are requested on the proposed list of services that are candidates for application of the fast-track procedure.
Part E, §3	31	Comments are requested on the proposed competition requirements that would apply generally, and to Dominant Service Providers in particular, as set forth in Attachment 3.
Part F	32	Comments are welcome on the proposed framework for the initial market review, interim market reviews and the Strategic Sectoral Review.

Part F	33	What evidence should ictQATAR pay particular attention to in deciding whether or not to review the dominance designation prior to September 2010?
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**Covering Page for Comments in Response to ictQATAR
Consultation on Relevant Markets and Designation of Dominant Service Providers
in the State of Qatar**

A. RESPONDING PARTY

Name of Individual or Organisation: _____

Point of Contact: _____

Name: _____

Location: _____

Email address: _____

Telephone: _____

B. CONFIDENTIALITY

Do you request confidential treatment of your entire Response?

Do you request confidential treatment of parts of your Response? If so, please provide a copy of a non-confidential version of your Response, marked as such, and tick this box to confirm submission.

CONSENT

By submitting this Response to ictQATAR, the Respondent consents to its publication in full by ictQATAR on its official website or in other media, unless confidential treatment of all or part of the Response has been requested in Part B of this form and approved by ictQATAR.

ANNEXURE D – PROCEDURES FOR IMPLEMENTING AND REVISING TARIFFS⁵

...

1.10.1 *The Licensee shall comply with procedures for Tariff filing, review and publication that are set forth in Section 2 of this Annexure in respect of Tariffs that do not contain any service or service element that falls within a relevant market with respect to which the Licensee has been designated as a Dominant Service Provider.*

...

3. TARIFF APPROVAL PROCEDURES APPLICABLE TO SERVICE PROVIDERS DESIGNATED AS DOMINANT

3.1 *In the event that the Licensee is designated as dominant or as having significant market power in any relevant market, the following procedures shall apply to any and all services or service elements that fall within a relevant market so designated, and to any and all services or service elements contained in the same Tariff as the designated service or services.*

3.2 *The Licensee shall deliver to the Supreme Council any proposed Tariffs or Tariff modifications in both paper copy and electronic “read only” format, unless otherwise instructed by the Supreme Council. Any and all proposed Tariffs must be approved in writing by Supreme Council prior to taking effect.*

3.3 *If any Dominant Service Provider proposes to introduce or modify a Tariff, the proposed Tariff shall be filed with the Supreme Council at least thirty-five (35) days in advance of the proposed effective date of the Tariff. The Supreme Council shall have twenty-eight (28) days in which (a) approve or (b) object to the Tariff and order its suspension, modification or withdrawal, or (c) extend the period for review. If the proposed Tariff is approved, and if it involves any increase in price, the revised Tariff shall be notified to Customers at least twenty-one (21) days, or such other period as the Supreme Council may specify, in advance of the effective date of the Tariff. Such notification can be made by means of newspaper or other advertising or by such other means as the Supreme Council may specify.*

3.4 *If the Supreme Council decides that an extended review of a proposed Tariff is necessary, it shall notify the Licensee in writing and shall*

⁵ This is a provisional text of Annexure [D] and is subject to completion of the Dominance Consultation Process

specify the procedures and timetable for the Tariff review, including any consultation or other relevant process with respect thereto, in accordance with the Applicable Regulatory Framework or as determined by the Supreme Council.

- 3.5 If the Supreme Council declines to approve a proposed Tariff, it shall inform the Licensee of the reasons for such decision.*
- 3.6 The Licensee shall comply fully with any and all procedures relating with the tariff review and approval process, adoption, modification, interpretation or implementation of Tariffs that may be established in the Applicable Regulatory Framework..*

ANNEXURE F – INTERCONNECTION, ACCESS AND WHOLESALE SERVICES

...

4. REFERENCE INTERCONNECTION OFFERS⁶

4.1 *If the Licensee is designated by the Supreme Council as a Dominant Service Provider (“DSP”) in a relevant market or markets and the Supreme Council so requests, the Licensee shall submit a Reference Interconnection Offer (“RIO”) to the Supreme Council for its review within ninety (90) days of receipt of the Supreme Council’s direction.*

4.1.1 *The RIO shall reflect no less favorable terms or conditions than those contained in any relevant interconnection or access agreement then in effect to which the DSP is party and shall comply with pertinent decisions of the Supreme Council and the Applicable Regulatory Framework.*

4.1.2 *The Supreme Council shall decide on the procedures and timetable for review and implementation of the RIO depending on the circumstances, including industry or public consultations in respect of the RIO. The Supreme Council shall issue a decision to approve, modify or reject the RIO or parts thereof. The RIO shall not be effective until approved by the Supreme Council and shall comply with any requirements specified by the Supreme Council, including but not limited to stipulations relating to price, service quality or technical aspects.*

4.2 *The RIO shall:*

4.2.1 *be clearly written and organized in a logical and consistent manner;*

4.2.2 *be modular, allowing a requesting licensee to purchase only those interconnection and/or access services that it wants to obtain; and*

4.2.3 *be sufficiently detailed to enable a requesting licensee that is willing to accept its prices, terms and conditions to obtain interconnection and/or access services without having to engage in substantive negotiations with the DSP.*

4.3 *The RIO must contain at least the information specified in Section 2.1 of this Annexure, as applicable. In addition, the RIO shall include any other material, information or data specified by the Supreme Council at the time of making the request referred to in Section 4.1 of this Annexure, as well as the following:*

⁶ *This is a provisional text of Annexure [F] Section 4 and is subject to completion of the Dominance Consultation Process.*

- 4.3.1 *a list and description of the interconnection and access services offered;*
- 4.3.2 *information regarding the availability of interconnection and/or access services – including the address of each exchange, the geographical boundaries of the area served by each exchange and points of presence for internet access and IP based traffic – and the procedures that the DSP will use to notify the requesting licensee in the event any interconnection and/or access service ceases to become available at any location;*
- 4.3.3 *a description of the quality of service that the DSP will provide – including the means by which quality of service will be measured, the timeframe within which any short-comings will be corrected and the amount and manner in which the requesting licensee will be compensated for any failure by the DSP to meet the quality of service standards;*
- 4.3.4 *a description of any operational and technical requirements that the requesting licensee must comply with to avoid harm to the DSP's network;*
- 4.3.5 *a description of any restriction or condition that the DSP intends to impose on the terms of the offer contained in the RIO – including any situations in which capacity, technical or operational constraints will limit the ability of the DSP to meet requests for interconnection and/or access services, and any situation in which a DSP will not offer (or will limit or condition an offer of) interconnection and/or access to a requesting licensee;*
- 4.3.6 *a description of the means by which a requesting licensee can order currently available interconnection and/or access services – including the contact Person, the expected number of days from order to provisioning, the means by which provisioning will be monitored (including quality of service testing procedures), the procedures for reporting operational and technical problems, the procedures and timeframes for correcting any such problems, and the amount and means by which the DSP will compensate the requesting licensee for any unreasonable provisioning delays;*
- 4.3.7 *a statement of the terms on which the DSP will protect confidential information provided by the requesting licensee, and the terms on which the DSP requires the requesting licensee to protect its confidential information, in connection with any interconnection and/or access agreement – including a description of the standards to be used to determine whether information is confidential;*
- 4.3.8 *a provision stating that, where the parties are unable to resolve disputes through negotiation within a reasonable period of time, either party may refer disputes regarding interconnection arising from the implementation of the RIO to the Supreme Council for resolution; and*
- 4.3.9 *a provision stating that the DSP will obtain the Supreme Council's written approval before unilaterally suspending or terminating the interconnection and/or access agreement.*

ANNEXURE I: Additional Obligations of Dominant Service Providers

1. ACCOUNTING AND STRUCTURAL REQUIREMENTS

1.1 Cost Studies

When ordered by the Supreme Council, a Dominant Service Provider ("DSP") will prepare or otherwise participate in a cost study of its public telecommunication service. The service provider will comply with all requirements contained in the Supreme Council's order. For convenience, references to a DSP's obligations in this annexure relate to those services falling within markets with respect to which the service provider has been designated as a Dominant Service Provider.

1.2 Independent Auditor

When ordered by the Supreme Council, a DSP will retain, at its own expense, a qualified independent auditor deemed satisfactory by the Supreme Council.

1.3 Accounting Procedures

- (a) *If directed to do so by the Supreme Council, a DSP shall adopt and implement a cost accounting system that will enable the Supreme Council to verify that, except where the Supreme Council has provided otherwise, the charge for each public telecommunications service provided by service provider is cost-oriented. The service provider will disclose the main categories under which costs are grouped and the rules used for the allocation of costs to each service category. The service provider will implement this requirement in four stages:*
- (i) *Within 6 months of an order issued by the Supreme Council designating the service provider as dominant, the service provider will provide to the Supreme Council a written status report regarding planning for the cost accounting system.*
 - (ii) *Within 12 months of an order issued by the Supreme Council designating the service provider as dominant, the service provider will complete all planning regarding the cost accounting system, and will submit to the Supreme Council for its review and approval a complete description of the proposed cost accounting system.*
 - (iii) *Within 18 months of the an order issued by the Supreme Council designating the service provider as dominant, the service provider will provide to the Supreme Council a written status report regarding implementation of the cost accounting system.*
 - (iv) *Within 24 months of the an order issued by the Supreme Council designative the service provider as dominant, the service provider will fully implement the cost accounting system in the form approved by the Supreme Council.*

- (b) *The DSP will make any changes to the cost accounting system methodology that the Supreme Council may require.*
- (c) *The DSP will direct its independent auditor to conduct an audit, not less than once per year, and to render an opinion, a copy of which shall be promptly delivered to the Supreme Council, as to whether the service provider has complied with the methodology approved by the Supreme Council.*

1.4 Accounting Separation Requirements

- (a) *If ordered by the Supreme Council, a DSP will adopt accounting separation procedures that will include the following:*
 - (i) *establishing separate accounts for each service category specified by the Supreme Council;*
 - (ii) *where feasible, allocating costs, revenues and assets directly to the appropriate service category;*
 - (iii) *allocating joint costs, joint revenues, and jointly used assets to the appropriate service category using the allocation methodology specified by the Supreme Council; and*
 - (iv) *recording the transfer of assets from one service category to another service category using the methodology specified by the Supreme Council.*
- (b) *If the Supreme Council directs a DSP to adopt accounting separation procedures, the service provider will direct its independent auditor to conduct an attest audit, not less than once per year, and to render an opinion, a copy of which shall be promptly delivered to the Supreme Council, as to whether the service provider has complied with the methodology specified by the Supreme Council.*

2. DISCLOSURE OF NETWORK TECHNICAL INFORMATION

2.1 Initial Disclosure

- (a) *Within 90 days of the effective date of a license issued to a DSP in accordance with the Telecommunications Law (or an order designating a service provider as dominant in a relevant market or markets), the service provider will disclose by publication on its external website technical specifications and other information about the service provider's telecommunications facilities or services in respect of any designated relevant markets which are required by:*
 - (i) *end users to interconnect terminal equipment to the network; or*
 - (ii) *other service providers to provide interoperable telecommunications services.*
- (b) *The information will be sufficiently detailed to enable deployment of equipment and services that can interconnect to and/or interoperate with the service provider's network.*

2.2 Advanced Disclosure of Network Changes

- (a) *At least six months prior to implementing any change in the technical specifications in its network, a service provider will disclose by publication on its external website any technical specifications or other information regarding the change that is required by:*
 - (i) *end users to interconnect terminal equipment to the network; or*
 - (ii) *other service provider to provide telecommunications services.*
- (b) *The information will be sufficiently detailed to enable deployment of equipment and services that can interconnect to and/or interoperate with the service provider's network.*

3. ABUSE OF DOMINANT POSITION

3.1 General Prohibition

A DSP will not take any action that has, or is likely to have, the effect of substantially lessening competition in any public telecommunications service market in the State of Qatar. The service provider will respond promptly to any inquiry from the Supreme Council regarding conduct the Supreme Council determines may violate this prohibition, and will promptly cease any such conduct when directed to do so by the Supreme Council.

3.2 Exclusionary Conduct

Absent an objective business justification, a DSP will not enter any agreement, enforce the provision of any existing agreement, or take any action that denies or substantially restricts the ability of another service provider to access facilities or use services that are necessary to provide public telecommunications services in the State of Qatar or between Qatar and any location outside of Qatar.

3.3 Tying

A DSP will not require a customer that wants to purchase a specific public telecommunications service, as a condition for purchasing that telecommunication service, to also purchase any other good or service, whether from the service provider, an affiliate or a third party.

3.4 Anti-competitive Discounts

A DSP will not offer a significant discount from the price of any public telecommunications service, not justified by any objective factor, that has the effect of foreclosing another licensed service provider from a significant portion of any public telecommunication services market. In particular, the service provider will not offer:

- (a) *loyalty discounts, in which the service the provider offers a discount on the condition that the customer not purchase service from another service provider;*
- (b) *volume discounts based on a customer's total expenditure, but that are applied only to charges for public telecommunication services that are subject to effective competition; or*

- (c) *selective discounts that are available only to customers that have the greatest ability to switch to alternative suppliers.*

3.5 Anti-competitive Refusals to Deal

Absent a legitimate business justification, a DSP will not refuse to provide another service provider with access to any service, system or information that the other service provider requires in order to provide public telecommunications services within the State of Qatar or between Qatar any other location.

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.

3.7 Cross-subsidisation

Unless approved by the Supreme Council, a DSP will not use revenues from the provision of a public telecommunications service that is not subject to effective competition, or transfer a part of the cost of a public telecommunications service, to cross-subsidise the price of any retail telecommunication service that is subject to effective competition.

3.8 Price Squeezing

A DSP will not provide a public telecommunications service, or provide access to any facility, that another service provider requires in order to provide a retail telecommunications service at a price that is so high that an efficient service provider could not profitably sell its retail telecommunications service. In particular, the DSP may not offer a wholesale telecommunications service at a price that exceeds the price for an equivalent retail telecommunications service, unless the service provider provides justification to, and receives written authorisation from, the Supreme Council.

3.9 Predatory Network Alteration

A DSP shall not alter the existing technical specifications of its network, or adopt new technical specifications, if this imposes significant costs on another service provider, or degrades the operation of another service provider's network, absent a legitimate business, operational or technical justification.

ANNEXURE J – TRANSITIONAL PROVISIONS

...

3. FAST-TRACK INTERCONNECTION PROCESS⁷

- 3.1 *Notwithstanding any other procedural requirements set forth in this License or otherwise in the Applicable Regulatory Framework, in the event that the Supreme Council approves a request from the holder of a Public Telecommunications License to implement accelerated procedures to facilitate the establishment of interim terms and conditions for interconnection and/or access services or products in a market in which the Licensee has been designated as dominant, the Licensee shall comply with the fast-track procedures, including an accelerated timetable for negotiation between the parties, determined by the Supreme Council for the purpose of expediting the implementation of interconnection and/or access arrangements.*
- 3.2 *If the parties cannot reach agreement within the negotiation period stipulated by the Supreme Council, the Supreme Council may intervene and determine the terms and conditions that will apply until and unless the parties agree on mutually acceptable alternative terms and conditions. Any terms and conditions determined by the Supreme Council will be subject to subsequent review by the Supreme Council pending the completion of proceedings in accordance with the general provisions of the Applicable Regulatory Framework relating to interconnection and access.*

⁷ This is a provisional text of Annexure [J] and is subject to completion of the Dominance Consultation Process.

1. ACCESS TO INTERNATIONAL CABLE CAPACITY

1.1 Collocation at International Cable Landing Stations

ictQATAR may require Qtel to allow a Requesting Licensee to collocate equipment at Qtel's cable landing stations in order to access the Requesting Licensee's international cable capacity or the capacity of any third party.

1.2 Connection to International Cable Capacity

ictQATAR may require Qtel to connect a Requesting Licensee's collocated equipment to the Requesting Licensee's international cable capacity or the capacity of any third party.

1.3 Backhaul from International Cable Landing Stations

ictQATAR may require Qtel to provide a Requesting Licensee with backhaul from Qtel's cable landing stations to the any point of interconnection within Qatar specified by the Requesting Licensees.

1.4 Wholesale International Cable Services

ictQATAR may require Qtel to provide International Private Leased Circuits ("IPLCs") to the Requesting Licensee on a wholesale basis.

2. ACCESS TO INTERNATIONAL SATELLITE CAPACITY

2.1 Collocation at Satellite Earth Stations

ictQATAR may require Qtel to allow a Requesting Licensee to collocate equipment at Qtel's satellite earth stations in order to access the Requesting Licensee's space segment capacity or the space segment capacity of any third party.

2.2 Satellite Uplink and Downlink Services

ictQATAR may require Qtel to provide a Requesting Licensee with satellite uplink and/or downlink services in order to allow the Requesting Licensee to access its space segment capacity or the space segment capacity of any third party.

2.3 Backhaul from Satellite Earth Stations

ictQATAR may require Qtel to provide a Requesting Licensee with backhaul from a Qtel's satellite earth stations to any point of interconnection within Qatar specified by the Requesting Licensees.

3. BIT STREAM ACCESS AND UNBUNDLED LOCAL LOOPS

3.1 Collocation at Exchange Facilities

ictQATAR may require Qtel to allow a Requesting Licensee to collocate equipment at a Dominant Service Provider's exchange in order to interconnect with a Dominant Service Provider's Digital Subscriber Loop Access Multiplexer ("DSLAM") or comparable network equipment. ictQATAR also may require Qtel to allow a Requesting Licensee to collocate its own DSLAMs or comparable and associated equipment at Qtel's exchanges.

3.2 Backhaul from the Local Exchange

ictQATAR may require Qtel to provide a Requesting Licensee with backhaul from a Qtel's exchanges to any point of interconnection within Qatar specified by the Requesting Licensees.

3.3 Unbundled Local Loops

The Supreme Council may require Qtel to provide a Requesting Licensee with access to unbundled local loops, and to conditions the loops to support DSL traffic.

4. WHOLESALE LOCAL LEASED CIRCUITS

4.1 Collocation at the Serving Exchange

The Supreme Council may require Qtel to allow a Requesting Licensee to collocate equipment at Qtel's Serving Exchanges in order to access wholesale Tail Circuits provided by a Dominant Service Provider.

4.2 Connection to Tail Circuits

The Supreme Council may require Qtel to connect a Requesting Licensee's collocated equipment to the Tail Circuits.

4.3 Access to Wholesale Full Circuits

The Supreme Council may require Qtel to provide Requesting Licensees with access to full local leased circuits between one or more End User location/s and a point of interconnection specified by the Requesting Licensee on a wholesale basis.

DRAFT
NOTICE AND ORDERS OF THE SUPREME COUNCIL
OF INFORMATION AND COMMUNICATION TECHNOLOGY
(“ictQATAR”)
SETTING FORTH THE METHODOLOGY AND STANDARDS
FOR DETERMINING MARKET POWER

AND

INITIAL DESIGNATION OF
QATAR TELECOM (Qtel) Q.S.C.
AS A DOMINANT SERVICE PROVIDER IN SPECIFIED RELEVANT MARKETS
FOR THE PERIOD 2007 TO 2010

[_____, 2007]

This Notice and the accompanying Orders (“**Notice and Orders**”) issued by the Secretary General of the Supreme Council of Information and Communication Technology (hereinafter, “**ictQATAR**”) establish the standards, procedures, methodology and circumstances for defining relevant telecommunications markets in the State of Qatar and assessing the degree of market power in those markets. By this Notice and Orders, ictQATAR hereby formally designates Qatar Telecom (*Qtel*) Q.S.C. (“**Qtel**”) as a Dominant Service Provider in certain relevant markets.

PART A: INTRODUCTION

Decree Law No. (34) of 2006 (the “**Decree Law**”) and the Telecommunications Law promulgated thereby (“**Telecommunications Law**”) empower and authorize ictQATAR, through the General Secretariat headed by the Secretary General acting under the direction of the Board of Directors, to undertake the designation of Service Providers as Dominant Service Providers, as defined by Article 1 of the Telecommunications Law.

A Dominant Service Provider is one who has market power or dominance in one or more markets, in accordance with Chapter Nine of the Telecommunications Law (Article 1). A Service Provider who is able to dominate markets through acting individually or jointly with others has Significant Market Power (Article 1).

After undertaking a review of the sector to determine whether or not any Dominant Service Provider or Providers exist in relevant markets for telecommunications products and services in the State of Qatar pursuant to the Decree Law and the Telecommunications Law, ictQATAR has designated Qtel as a Dominant Service Provider in seven initial retail markets, and has identified certain wholesale markets as further candidates for designation once the demand for products and services in those markets becomes manifest following the issue of licenses to new providers of public telecommunications networks and services in the State of Qatar.

This Notice and Orders sets out:

- (1) The legal basis for the Notice and Orders;
- (2) The standards, methodology and procedures for identifying and defining relevant markets and determining whether market power exists in relevant markets;
- (3) The Designation of Qtel as a Dominant Service Provider in relevant markets for products and services; and
- (4) The applicable review process for further designations or withdrawal of same.

This Notice and Orders may be amended from time to time following public consultation.

PART B: LEGAL BASIS FOR THIS NOTICE AND ORDERS

1. Establishing the Applicable Standards and Methodology

The Decree Law and the Telecommunications Law provide the legal basis for ictQATAR to undertake the designation of service providers as Dominant Service Providers in relevant telecommunications markets.

Article 6 of the Decree Law confers a power which enables the Secretary General of ictQATAR to issue legal instruments including 'orders' and 'notices' for the implementation of the provisions of the Decree Law and Telecommunications Law. Article 5 of the Telecommunications Law confers the same power, specifically in relation to regulating the telecommunications sector.

The Telecommunications Law explicitly provides for the designation of Dominant Service Providers in Articles 23, 40, and 42, and for specific legal obligations to be imposed on Dominant Service Providers including those relating to competition policy such as Articles 40, 41, 42, 43, 44, and 46; interconnection and access such as Articles 18, 19, 23, 24, and 25; and tariffs such as Articles 27, 28, 29, 31, 32, and 33.

Article 42 of the Telecommunications Law provides a legislative framework for undertaking the designation process; determining the extent of Significant Market Power or 'dominance' in a market; and stating what this Notice and Orders must specify, including the relevant products and services markets, the standards, methodology and circumstances relied upon, and operations for market power designation. This Notice and Orders, accordingly, specifies the standards, methodology and operations for market power designation.

In addition, Article 40 confers a power which enables ictQATAR, acting through the General Secretariat, to determine the criteria that must be applied in the designation of Service Providers as having Significant Market Power or dominance in identified telecommunications markets and implementing such criteria in any designation process. Article 40 also confers a power to enable ictQATAR to monitor and prohibit abuses of market power or dominant position, and to determine and apply the appropriate procedures and arrangements to confront abuses of market power and anti-competitive practices in order to strengthen competition and safeguard the interests of customers and the public.

Given the dynamic nature of telecommunications markets, and the liberalization of the sector, the standards, methodology and criteria used to designate Dominant Service Providers may change over time. Any such changes will be reflected in the legal instruments specifying the standards, methodology and operations for market power designation, including but not limited to this Notice and Orders

Once a service provider has been designated as dominant in a particular relevant market, the specific legal obligations that apply to Dominant Service Providers will have immediate effect in regard to its supply of services in that market.

2. Designating 'Dominant Service Providers'

Article 40 (3) of the Telecommunications Law empowers ictQATAR to determine what criteria will apply in the designation of service providers as having significant market power or dominance in identified telecommunications markets and implementing such criteria in any designation process.

Article 42 prescribes a process for the designation of Dominant Service Providers that includes determining relevant markets; determining the standards and methodology to be applied in determining the degree of market power or dominance in relevant markets; and, conducting a market analysis through applying the identified standards and methodology in the circumstances.

PART C: NOTICE OF STANDARDS, METHODOLOGY AND PROCEDURES TO BE APPLIED IN DEFINING RELEVANT MARKETS AND DETERMINING THE EXTENT OF MARKET POWER IN THOSE MARKETS

1. Standards and Methodologies Used to Define Relevant Markets

The methodology that ictQATAR has adopted for identifying product, service and geographic markets is drawn from international best practice. In particular, ictQATAR will define the relevant product and service markets in terms of the nature of substitutable products and services, in situations where the objective conditions applying to competing service providers would be similar or the same. Moreover, ictQATAR will define relevant markets in ways that reinforce its broader policy objective of fostering infrastructure-based competition while at the same time enabling viable competition to take root during the initial phase of the liberalization process.

The market definition process will involve the following:

- (a) Ascertaining demand-side and supply-side substitutability of products and services;
- (b) Distinguishing between relevant retail and wholesale markets;
- (c) Evaluating whether there is further customer segmentation;
- (d) Evaluating the functional dimension of the identified markets as well as time factors; and

- (e) Considering other relevant factors such as: national differences, the effects of regulation, product diversification, chain substitution, current and potential competitive constraints, current market shares and volumes where such information is available, and expected market developments.

2. Standards and Methodologies Used to Assess Market Power in the Relevant Markets

In determining whether significant market power or dominance exists in a relevant market identified in accordance with the methodology described above, ictQATAR will review, in particular, the extent to which a service provider, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. This is the internationally accepted standard for determining whether market power exists in a particular product, service or geographic market.

In order to make this assessment, ictQATAR will evaluate the following criteria:

- (a) Market share;
- (b) Absolute and relative size of the firm in the relevant market;
- (c) Degree of control of facilities and infrastructure that would be uneconomical for another person to develop to provide services in the relevant market;
- (d) Economies of scope and scale;
- (e) Absence of countervailing buyer power, including customer churn characteristics;
- (f) Structural and strategic barriers to entry and expansion; and
- (g) Any other factors relevant to evaluating the existence of market power in a particular market including, e.g., supply side substitutability, emerging services, etc.

For purposes of measuring market share, appropriate parameters (such as number of lines, number of minutes, revenues or other relevant metrics) will be applied based on the circumstances, and the proportion or percentage of market share thus determined will be used as one indicium of market power or dominance.

ictQATAR will engage in evidence-based analysis where possible and rely on the best data available. Where accurate or complete information is not available, proxies and reasonable estimates may be utilized. Reference may also be made to comparative benchmarks in the numerous jurisdictions that have already undertaken a similar market review process in evaluating the need for regulation of their telecommunications sectors.

These are the specified standards and methodology for the purposes of Article 42 of the Telecommunications Law.

PART D: ORDER DESIGNATING QTEL AS DOMINANT IN SPECIFIED RETAIL MARKETS

ictQATAR has conducted an analysis of the Qatari telecommunications sector and completed a comprehensive public consultation with respect to its analysis in accordance with the Market Review Process. The circumstances and analysis supporting the designation of Qtel as dominant in the relevant markets, based on the standards and methodology set forth in this Notice and Orders, are specified in the Consultation Document on Relevant Markets and Designation of Dominant Service Providers in the State of Qatar, and in ictQATAR's Explanatory Memorandum in response thereto, which is attached as Annexure A and incorporated by reference herein.

Having applied the standards and methodology set forth above to determine the degree of market power or dominance that a Service Provider may have in the relevant markets identified, ictQATAR has concluded the following:

Qatar Telecommunications (Qtel) Q.S.C. is a Dominant Service Provider in all the defined relevant markets for the following reasons:

- (a) Qtel is the only Service Provider in all the defined relevant markets;
- (b) There is a clear absence of effective countervailing competitive forces at work in any of the defined markets;
- (c) None of the information provided and considered by ictQATAR substantiates anything less than Qtel having Significant Market Power in those markets;
- (d) Qtel enjoys considerable economies of scale and scope;
- (e) Qtel enjoys largely unfettered discretion in its production, provisioning and selling policies; and
- (f) Significant barriers to entry exist in the defined relevant markets in which Qtel operates.

Based on the conditions in the marketplace at present, ictQATAR hereby orders the designation of Qtel as a Dominant Service Provider in the following initial list of retail markets *at this point in time*:

Relevant Retail Markets

- (1) Access to the public voice telecommunications network at a fixed location for customers;
- (2) Access to the public land mobile network (PLMN) via a mobile device;
- (3) Publicly available national telecommunications calls provided at a fixed location;
- (4) Publicly available national telecommunications service provided via a mobile device;
- (5) Publicly available international voice telecommunications service;
- (6) Retail leased lines; and

(7) Data services including Broadband services.

Although ictQATAR has selected these seven retail markets for the purpose of determining dominance or Significant Market Power at this point in time, ictQATAR reserves the right to define and review additional relevant markets as the sector develops and/or if there is evidence of market failure in other relevant markets prior to completion of the Strategic Sectoral Review in 2010.⁸ Similarly, ictQATAR will consider evidence of the development of sustainable and effective competition in a particular relevant market as the basis for withdrawing a dominance designation relating to that market, as and when the circumstances warrant.

In respect of the relevant geographic market, ictQATAR has concluded that there is a single geographic market in the State of Qatar. Qatar is a small country with a single major urban area. There is no distinction on a geographic basis within the existing market structure, and competitive conditions, including the ability to supply across the State of Qatar, are geographically undifferentiated at the present time. As a consequence, ictQATAR hereby orders the designation of the entirety of the State of Qatar as the relevant geographic market at this point in time.

However, it is possible that this assessment could change as the liberalization process unfolds if regional (international) markets develop for some products and services or if localized markets emerge for certain others. ictQATAR will continue to monitor the competitive dynamics in terms of geographic overlap as the sector evolves.

PART E: ORDER IDENTIFYING CANDIDATE WHOLESALE MARKETS FOR FUTURE DESIGNATION

ictQATAR is not at this time in a position formally to designate Qtel as a Dominant Service Provider in any relevant wholesale markets. As soon as a new entrant is licensed to provide public telecommunications services in the Qatari telecommunications market, well documented experience in virtually every other country in the world with liberalized telecommunications sectors confirms that demand for wholesale access and interconnection services will soon become manifest.

ictQATAR is therefore identifying the following candidate wholesale services for designation as and when a duly licensed new entrant provides evidence that (1) it has requested a relevant service, and (2) it has been unable to negotiate reasonable terms and conditions on a commercial basis with Qtel under the standard interconnection procedures or the fast-track procedures set forth in the Annexures F and J of the relevant public telecommunications licenses.

Qtel's position in the following 13 candidate wholesale markets has been identified as requiring close scrutiny for future designation as dominant:

⁸ At this time, it is expected that a wide ranging review of markets will coincide with the proposed strategic review of the sector in September 2010.

Relevant Wholesale Markets (Provisional)

- (1) Voice call origination and conveyance on the public telecommunications network provided at a fixed location;
- (2) Voice call termination, including local conveyance, on the public telecommunications network provided at a fixed location;
- (3) Transit services on the public telecommunications network; this market includes the transit of telecommunications services originated in Qatar including the transit of call to an international gateway;
- (4) Voice call termination on public land mobile networks (PLMN);
- (5) International voice call termination; this market include both the termination of international inbound voice calls;
- (6) Access for fixed data services, including bit stream services;
- (7) Wholesale leased lines, including terminating and trunking segments;
- (8) Physical interconnection;
- (9) Logical interconnection (e.g. IP based traffic);
- (10) Facilities access;
- (11) International gateway services;
- (12) Directory services and databases; and
- (13) Any wholesale market, other than the above in which a market entrant may request interconnection, access or wholesale products or services.

PART F: IMPLICATIONS OF THE DESIGNATION OF QTEL AS A DOMINANT SERVICE PROVIDER

Designation as a dominant service provider in the defined relevant markets signifies that Qtel will be subject to specific provisions in the telecommunications law, related regulations, rules, orders, notices, decisions and instructions, and any telecommunications licence issued to Qtel, that contains provisions applicable to Dominant Service Providers concerning conduct and activities in or connected with those markets.

ANNEXURE A: Explanatory Memorandum

[To be inserted]