

**NOTICE AND ORDERS
OF THE SUPREME COUNCIL
OF INFORMATION AND COMMUNICATIONS 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**

3 April 2008

This Notice and Orders ("**Notice and Orders**") issued by the Secretary General of the Supreme Council of Information and Communications Technology (hereinafter, "**ictQATAR**") specifies 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).

The Telecommunications Law (Article 42) provides that ictQATAR may consult with sector participants and interested parties in undertaking any market analysis or market power designation. This final Notice and Orders follows public consultations carried out by ictQATAR including: (1) a "Consultation on Relevant Markets and Designation of Dominant Service Providers in the State of Qatar" dated 23 July 2007 (reference # ICTRA 05/07-NC); and (2) a "Consultation on Proposed terms and conditions of the Public Telecommunications Licenses to be issued to Qatar Telecom (Qtel) Q.S.C. and to a new provider of Public Mobile Telecommunications Networks and Services in the State of Qatar" dated 10 June 2007 (reference # ICTRA 02/07). Both consultation documents may be found at www.ict.gov.qa. The responses to these public consultations have been taken into account in the final analysis of the designation of Qtel as a Dominant Service provider by this Notice and Orders.

Pursuant to the Decree Law and the Telecommunications Law, ictQATAR has determined that Qtel is a Dominant Service Provider in seven retail markets and six wholesale markets.

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 at the sole discretion of ictQATAR in accordance with the requirements of the Telecommunications Law.

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 the methodology operations for market power designation. This Notice and Orders, accordingly, specifies the information required under the Law.

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. Specification of 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. Specification of 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 SPECIFYING RELEVANT MARKETS

In accordance with the analysis contained in the Dominance Consultation document issued by ictQATAR on 23 July 2007 [ICTRA # 05/07] and the Response and Explanatory Memorandum that is being issued together with this Notice and Orders, ictQATAR has determined that the following markets should be specified as relevant markets [hereinafter, the "Specified Relevant Markets"] in accordance with Article 42 of the Telecommunications Law:

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 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;
- (7) Data services including Broadband services;

Relevant Wholesale Markets

- (8) Voice call termination, including local conveyance, on individual public telecommunications networks provided at a fixed location;
- (9) Voice call termination on individual public land mobile networks;
- (10) Physical interconnection;
- (11) Network and Facilities access including access to transmission towers, sites of towers and underground facilities;
- (12) Transit services over public telecommunications networks (including international transit services); and
- (13) Wholesale leased lines and associated services irrespective of the technology used to provide leased or dedicated capacity.

PART E: 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. 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 are attached as Annexures A and B 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 that Qtel is a Dominant Service Provider in all twelve of the specified 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.

Although ictQATAR has selected these thirteen retail and wholesale 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 credible evidence of market failure in other relevant markets prior to completion of the Strategic Sectoral Review in 2010.¹ Similarly, ictQATAR will consider credible 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 scope, 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

¹ 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.

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 F: IMPLICATION AND OPERATION OF THE DESIGNATION OF QTEL AS A DOMINANT SERVICE PROVIDER IN THE SPECIFIED RELEVANT MARKETS

Designation as a dominant service provider in the specified Relevant Markets signifies that Qtel will be subject to specific provisions that are now, or may in the future be included, in the telecommunications law, related regulations, rules, orders, notices, decisions and instructions, and any telecommunications licence issued to Qtel, which are applicable to Dominant Service Providers concerning their conduct and activities in or connected with those markets. This includes the Annexures to Qtel's public telecommunications licenses, and in particular, Annexures D (procedures for implementing and revising tariffs), F (interconnection, access and wholesale services), I (additional obligations for dominant service providers) and J. (transitional fast-track interconnection process), which were previously set out in the Dominance Consultation Document (ICTRA #05/07) as Attachments 1-4).

Signed by:

Dr Hessa Al Jaber
Secretary General

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

Dated: XX April 2008

ANNEXURE A

Consultation Document: Relevant Markets and Designation of Dominant Service Providers in the State of Qatar

ICTRA 05/07-NC

ANNEXURE B

Consultation Response of ictQATAR and Explanatory Memorandum

ICTRA 02/08