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Supreme Council of Information & Communication Technology

المجلس الأعلى للاتصالات، تكنولوجيا المعلومات

**NOTICE AND ORDERS
OF THE SUPREME COUNCIL
OF INFORMATION AND COMMUNICATIONS TECHNOLOGY
("ictQATAR")
SETTING FORTH THE METHODOLOGY AND STANDARDS FOR DETERMINING MARKET
POWER
AND DESIGNATION OF
QATAR TELECOM (Qtel) Q.S.C. AND VODAFONE QATAR Q.S.C. AS DOMINANT SERVICE
PROVIDERS IN SPECIFIED RELEVANT MARKETS**

ICTRA 2011/10/31

31 October 2011

This Notice and Orders (**Notice and Orders**) issued by the General Secretariat of Supreme Council of Information and Communications Technology (hereinafter, **ictQATAR**) specifies the standards, methodology, analysis and process applied in the review of Market Definition and Dominance Designation including the review of the degree of market power or dominance of any Service Providers (**SPs**) in the telecommunications sector in the State of Qatar. By this Notice and Orders, ictQATAR hereby formally designates Qatar Telecom (Qtel) Q.S.C. (**QTel**) and Vodafone Qatar Q.S.C. (**Vodafone**) as Dominant Service Providers (**DSP**) in certain Relevant Markets.

PART A: INTRODUCTION

Decree Law No. (34) of 2006 (**Decree Law**) and the Telecommunications Law promulgated thereby (**Telecommunications Law**) empower and authorize ictQATAR, to undertake the designation of Service Providers as DSPs, as defined by Article 1 of the Telecommunications Law.

Articles (40) & (42) of the Telecommunications Law state that ictQATAR shall undertake the designation of the service providers and determination of the extent of their significant market power or dominance in the market. The Executive By-Law, regulations, rules and orders shall specify the standards, methodology and operations for market power designation.

According to the Article (74) of the Executive Telecommunications By-Law No. (1) of 2009 (**Executive By-Law**), ictQATAR shall, from time to time, review its designation of SPs as dominant in the Relevant Markets and the specific requirements imposed upon those SPs as a result of that designation. In doing so, ictQATAR takes into account the presence of new market entrants and evaluates whether market forces are sufficient to safeguard the interest of customers and the public. The initial designation of QTel as DSP in specified Relevant Markets in Qatar took place by decision ICTRA 02/08A on 24 June 2008.

According to the Article (1) of the Telecommunications Law, a Dominant Service Provider is a service provider which enjoys market power or dominance in one or more telecommunications service markets in accordance with the provisions of Chapter Nine of the Telecommunications Law. A Service Provider who is able to act independently of customers or competitors or to dominate a market or markets related to specific telecommunications services, through acting individually or

jointly with others has Significant Market Power (Article 1). For the purpose of Market Definition and Dominance Designation (**MDDD**) the terms Significant Market Power (**SMP**) and Dominance are used interchangeably.

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 Notice and Orders follows public consultations carried out by ictQATAR including: (1) "Public Consultation DEFINITION OF RELEVANT MARKETS AND DESIGNATION OF DOMINANT SERVICE PROVIDERS IN THE STATE OF QATAR (MDDD 2010)" of 27 October 2010 (ICTRA 2010/10/26); (2) Draft "NOTICE of the STANDARDS, METHODOLOGY AND ANALYSIS TO BE APPLIED IN THE REVIEW OF MARKET DEFINITION AND DOMINANCE DESIGNATION IN THE TELECOMMUNICATIONS SECTOR IN QATAR" of 03 February 2011; (3) Draft "A Review of DEFINITION OF RELEVANT MARKETS AND DESIGNATION OF DOMINANT SERVICE PROVIDERS IN THE STATE OF QATAR (MDDD 2010) Response Document" of 3 February 2011.

The consultation documents and non-confidential submissions may be found at ictQATAR's official website: www.ictqatar.qa. The submissions and responses to all these consultations have been taken into account in the final analysis of the designation of QTel and Vodafone as a Dominant Service Provider in one or more Relevant Markets by this Notice and Orders.

This Notice and Order is accompanied by the following final documents in Annexures to this Notice and Orders: (1) "Notice of the Standards, Methodology and Analysis to be applied in the Review of Market Definition and Dominance Designation in the Telecommunication Sector in Qatar" (ICTRA 2011/10/31b) (**Methodology Notice**) in Annexure B, (2) "A Review of Definition of Relevant Markets and Designation of Dominant Service Provider in Qatar (MDDD 2010) - Response Document" (ICTRA 2011/10/31a) (**Response Document**) in Annexure A.

Pursuant to the Decree Law, the Telecommunications Law and its Executive By-Law, ictQATAR has determined that QTel is a DSP in seven retail markets and seven wholesale markets and that Vodafone is a DSP in two wholesale markets.

This Notice and Orders sets out:

1. The legal basis for the Notice and Orders;
2. The Designation of QTel and Vodafone as a DSP in Relevant Markets for products and services;
3. The applicable review process for designations or withdrawal of the same (Annexure A); and
4. The standards, methodology and procedures for identifying and defining Relevant Markets and determining whether market power exists in Relevant Markets (Annexure B).

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 and its Executive By-Law.

PART B: LEGAL BASIS FOR THIS NOTICE AND ORDERS

Establishing the Applicable Standards and Methodology

Articles 40 and 42 of the Telecommunications Law along with Articles (72) and (74) of the By-Law confer a power which enables the ictQATAR to issue legal instruments including "orders" and "notices" for the implementation of the relevant provisions of the Telecommunications Law and its By-Law.

Article 42 of the Telecommunications Law provides a legislative framework for undertaking the designation process, determining the extent of SMP or dominance in a market, stating what any Notice and Orders in this regard must specify, including the relevant products and services markets, the standards and methodology for market power designation. This Notice and Orders, accordingly, specifies the information required under the Law.

Article 42 of the Telecommunications Law also states that ictQATAR may consult with SPs 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.

In addition, Article 40 of the Telecommunications Law confers a power which enables ictQATAR, 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.

Article (72) of the By-Law states that ictQATAR shall issue a notice which establishes the standards and methodology that it will apply in determining whether Significant Market Power exists in a particular relevant market.

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

Once a SP has been designated as dominant in a particular Relevant Market, the specific legal obligations that apply to DSPs under the Telecommunication Law and the ARF will have immediate effect in regard to its supply of services in that market.

Defining 'Relevant Markets' and 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 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. It also states that the Executive By-Law, regulations, rules and orders shall specify the standards, methodology and operations for market power designation.

The Executive By-Law provides for a Notice to be issued which establishes the standards and methodology that will be applied in determining whether SMP exists in a particular Relevant Market. Article 72 of the Executive By-Law lists elements, factors and criteria that may be included in practice. After having consulted with the market ictQATAR has set out the Methodology Notice as a separate document (see Annexure B) which serves as a generic and generally applicable

methodology for the Market Definition and Dominance Designation (MDDD) processes. This process is further set out in section C of this Notice and Orders.

Overview of the MDDD process

In accordance with Article 42 of the Telecommunications Law and Article 72 of the Executive By-Law the MDDD process follows the process steps as described below.



Step (1) Identification of Baseline Markets; and, step (2) Definition of Relevant Markets: The MDDD process starts with an identification of a list of proposed retail and wholesale markets in terms of products and geographic scope, which are typically used as Baseline Markets. Following a consultation process and discussions with market entities about the proposed Baseline Markets, ictQATAR defines the "Relevant Markets". Together, these two steps form the Market Definition process, which applies an international best practice approach and universal competition law principles and takes into account national circumstances. This takes into consideration major criteria for defining markets according to the product specifics and the geographic scope, and considers supply and demand side characteristics. The Methodology Notice (Annexure B) provides a description of methods and dimensions of Market Definition.

Step (3) Market Analysis and Dominance Designation: According to Article 72(2) of the Executive By-Law, the MDDD process continues with the analysis of the defined Relevant Markets in a quantitative and qualitative respect to determine whether dominance exists in such Relevant Markets. ictQATAR analyzes the extent to which an SP, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. Thus, step 3 finally results in the designation of a Dominant position in one or more Relevant Markets. The Telecommunications Law explicitly provides for the designation of a DSP in Articles 19.5, 23, 40, and 42, and for specific legal obligations to be imposed on DSPs including those relating to competition policy such as, but not limited to, Articles 41, 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. Dominance is additionally dealt with in the Executive By-Law in Chapter 8. Additionally, the Licenses of Qtel and Vodafone contain obligations for a DSP.

Step (4) Obligations of a DSP: The obligations of a DSP are set out in the Applicable Regulatory Framework (ARF¹) and either apply automatically or are imposed by ictQATAR as required. Most of the obligations affecting DSPs and non-DSPs are largely pre-defined in the ARF.

The consultation process

ictQATAR has conducted a MDDD process that has included determining the markets to be specified as Relevant Markets, conducting a market analysis of the Qatari telecommunications sector, consulting the public and industry participants with respect to its analysis, and examining the circumstances and analysis supporting the designation of QTel and Vodafone as DSPs in the Relevant Markets above, based on the standards and methodology set forth in this Notice and Orders that are specified in detail in the Methodology Notice and Response Documents attached as Annexure A and Annexure B to this Notice and Orders and incorporated by reference herein.

The MDDD 2010 process started in October 2010 with the public consultations of the Definition of Relevant Markets and Designation of Dominant Service Providers in the State of Qatar - ICTRA 2010/10/26 (CD).

ictQATAR asked for comments by 4 December 2010 but on request of the SPs the consultation period was extended till 12 December 2010. In November 2010 discussions between ictQATAR and Vodafone (8 November) and QTel (9 November) on the CD and the requested data delivery for the quantitative assessment, took place.

In response to the abovementioned CD both, QTel and Vodafone accepted the list of the Baseline Markets proposed by ictQATAR as well as generally agreed with the Relevant Markets definitions and with the Relevant Markets analysis outcome. QTel and Vodafone also delivered data to ictQATAR which allowed conducting the quantitative analysis of the Relevant Markets and the assessment whether dominance exists based on the criteria defined in the ARF.

The second round of the consultation started on the 3rd of February 2011 with the issuance of the Draft Response Document and the Draft Methodology Notice. Prior to that, SPs had agreed to the 'Shortcut Process' (see below). The SPs comments to the second round of consultation were discussed in-depth in meetings on 9 February 2011 (Vodafone) and on 10 February 2011 (QTel) and followed up in writing on 22 February 2011 (RA-PECO/01-220211)

Final responses from SPs were received on 28 February 2011. The circumstances and analysis supporting the designation of QTel and Vodafone as dominant in the Relevant Markets, based on the standards and methodology set forth in this Notice and Orders, are specified in the CD on Relevant Markets and Designation of Dominant SPs in Qatar and in the Response Document, as well as in ictQATAR's Methodology Notice, in Annexure A and Annexure B to this Notice and Orders.

The 'Shortcut Process'

During the consultation, in order to streamline the MDDD 2010 process, ictQATAR, QTel and Vodafone agreed to a "Shortcut Process", focussing on the following retail markets, which have displayed dynamic characteristics (**Dynamic Markets**):

1. M3: Public international telecommunications services at a fixed location and via a mobile device;

¹ The ARF comprises the relevant legal provisions in Qatar, inter alia but not limited to the Telecommunications Law, the Executive By-Law, the Licenses of the SP and any related regulations, rules, orders, notices, decisions, directions and instructions issued by ictQATAR.

2. M6: Public national telecommunications services via a mobile device; and
3. M7: Broadband services via a mobile device.

Regarding the non-dynamic Relevant Markets (M1, M2, M4, M5, M8-M14) the SPs and ictQATAR agree that the designation of a DSP in those markets is based purely on market shares, on a lack of countervailing buying power, and on the non-existence of prospective market entry.

The further implication of the 'Shortcut Process' for the review of telecommunications markets are set out in PART F.

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

The methodology, that ictQATAR has adopted for defining product (service) and geographic markets (Relevant Markets), which applies an international best practice approach and universal competition law principles and takes into account national circumstances and national market specifics. The underlying methodology of market definition is based on the ARF and economic principles in accordance with competition law principles as set out in Article 72 of the Executive By-Law. With respect to methodological aspects, the 'Hypothetical Monopolist Test' has become an accepted standard, and also part of the telecommunications framework. In particular, ictQATAR has defined the Relevant Markets in terms of the nature of substitutable products and services, in situations where the objective conditions applying to competing SPs would be similar or the same. Moreover, ictQATAR has defined 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 (still) initial phase of the liberalization process.

Based on the Methodology Notice, ictQATAR adopts for the MDDD the following process:

- Defining the Relevant Markets;
- Assessing the degree of market power in those Relevant Markets; and
- Designating one or more SPs having a Dominant Position (DP) as a Dominant Service Provider (DSP).

In determining whether a DSP exists in a defined Relevant Market, ictQATAR has reviewed, in particular, the extent to which a SP, acting alone or jointly with others and 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 addition to the Telecommunications Law, the Executive By-Law provides for a notice to be issued which establishes the standards and methodology that it will apply in determining whether SMP exists in a particular Relevant Market. Article 72 of the Executive By-Law thereby also lists the criteria that may be applied. The following criteria in accordance with Article 72 of the Executive By-Law may be applied:

1. market share;
2. absolute and relative size of the firm in the Relevant Market;
3. degree of control of facilities and infrastructure that would be uneconomical for another person to develop to provide services in the Relevant Market;
4. economies of scope and scale;
5. absence of countervailing buyer power, including customer churn characteristics;
6. structural and strategic barriers to market entry and market expansion; and
7. other factors relevant to evaluating the existence of market power in a particular market.

Article 72 of the Executive By-Law entitles ictQATAR to provide guidance on the parameters that will be used for measuring market share, and for ease of administration, in the absence of evidence to the contrary ictQATAR may deem that an individual SP with a share of more than 40 percent of the Relevant Market is a DSP.

ictQATAR engaged in evidence-based analysis where possible and relied on the best data available. Where accurate or complete information were not available, proxies and reasonable estimates were utilized. The specified standards and methodology for the purposes of the market review according to the Article 42 of the Telecommunications Law are described in the Methodology Notice attached as Annexure B of this Notice and Orders.

PART D: ORDER SPECIFYING RELEVANT MARKETS

In accordance with the MDDD process undertaken by ictQATAR, which is explained in more detail in the accompanying Response Document and the Methodology Notice, ictQATAR hereby determines that the following markets are defined as Relevant Markets in accordance with Article 42 of the Telecommunications Law and Article 72 of the Executive By-Law:

Relevant Retail Markets

- M1 Access to public telecommunications networks at a fixed location
- M2 Public national telecommunications services at a fixed location
- M3 Public international telecommunications services at a fixed location and via a mobile device²
- M4 Broadband services at a fixed location
- M5 Retail leased lines³
- M6 Public national telecommunications service via a mobile device⁴
- M7 Broadband services via a mobile device⁵

Relevant Wholesale Markets

- M8 Origination on public telecommunications networks at a fixed location⁶
- M9 Termination on public telecommunications networks at a fixed location⁷
- M10 Wholesale physical network infrastructure access⁸
- M11 Wholesale access to broadband services at fixed locations⁹
- M12 Wholesale leased lines¹⁰
- M13 Access and origination on public mobile networks
- M14 Termination on public mobile networks¹¹

² This is irrespective of the terminating network abroad, i.e. fixed or mobile.

³ Leased lines represent dedicated connections and bandwidth.

⁴ This includes but is not limited to voice, SMS, MMS, and video calling services. This market covers both access and usage.

⁵ This includes data services which are not included in retail market no. 6 such as, but not limited to, broadband Internet services.

⁶ This includes e.g. local call conveyance, dial-up services, carrier selection, and carrier pre-selection.

⁷ This includes e.g. local call conveyance. Although Vodafone is not yet active in this market, it is being regarded as DSP and the remedies are proposed to apply as of the time when Vodafone commences fixed services.

⁸ This includes access to passive infrastructure in a technologically neutral manner for the supply of domestic and international telecommunications services, i.a. but not limited to: access to and use of network and facilities, such as ducts, dark fibre, copper, sites, towers, international gateway facilities and other facilities.

⁹ This includes i.a. but not limited to bitstream access.

¹⁰ This includes associated services irrespective of the technology used to provide leased or dedicated capacity.

¹¹ This includes i.a. but not limited to voice, SMS, MMS, video calls.

The definition of wholesale Relevant Markets includes all ancillary services that are provided as an adjunct to or in support of these services, but is not limited to access to mediation hooks, access to OSS/BSS, databases, relevant network information, collocation space, access to facilities, etc.

PART E: ORDER DESIGNATING QTEL AND VODAFONE AS DOMINANT IN SPECIFIED RELEVANT MARKETS

Designation of QTel having a Dominant Position on one or more Relevant Markets

Having applied the standards and methodology set forth above to determine the degree of Market Power or Dominance that a SP may have in the Relevant Markets identified, ictQATAR hereby concludes that QTel is a DSP in all fourteen of the specified Relevant Markets for the following reasons:

Non-dynamic Relevant Markets

1. For the 11 Non-dynamic Relevant Markets (M1, M2, M4, M5, M8-M14) the designation of Dominance is based purely on QTel's high market shares, on a lack of countervailing buying power, and on the non-existence of prospective market entry. This approach was agreed with QTel as a part of Shortcut Process.

Dynamic Relevant Markets

2. QTel enjoys a market share of above 80% in the Dynamic Markets (M3, M6 and M7) and is likely to continue to maintain a very high market share for the foreseeable future;
3. None of the information and evidence provided substantiates anything less than QTel having Significant Market Power in all the Relevant Markets;
4. Potential competitive constraints from additional market entry are not foreseeable for the near future.
5. QTel enjoys control of facilities and infrastructure which are hardly replicable for alternative operators in the near future.
6. Due to its absolute and relative size, horizontal and vertical integration, QTel enjoys considerable competitive advantages as regards economies of scale and scope.
7. Significant structural and strategic barriers to entry exist in the Relevant Markets; and
8. Competition in mobile markets has effectively only started around 2 years ago in July 2009 with the full market entry of Vodafone.

Designation of Vodafone having a Dominant Position on one or more Relevant Markets

ictQATAR has further concluded that Vodafone is a DSP on the two wholesale terminating markets:

- M9 Termination on public telecommunications networks at a fixed location;
- M14 Termination on public mobile networks

as Vodafone is the only SP on those two Relevant Markets and has as such a 'termination monopoly'. A position of Dominance on the particular termination markets is for each SP regarded as a 'per se' as position of Dominance.

In respect of the relevant geographic market scope, ictQATAR concludes that there is a single geographic market in Qatar. Qatar is a relatively small country with one 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 Qatar, are geographically undifferentiated.

ictQATAR envisages that the defined Relevant Markets are appropriate for approximately the next two to three years. On a reasoned and substantiated request by the market parties or its own initiative, ictQATAR may start a MDDD process.

PART F: THE APPLICABLE REVIEW PROCESS FOR FURTHER DESIGNATION OR WITHDRAWAL OF THE SAME

Following the 'Shortcut Process' as set out above and in Section 2.3 of the Response Document, as well as in Annexure B of the Notice and Orders and according to Article 62 of the Telecommunications Law and Chapter 13 of the Executive By-Law and Article (73) of the By-Law, ictQATAR will conduct market reviews on a quarterly basis and if justified may start a MDDD process to verify the positions of dominance on defined Relevant Markets.

ictQATAR requires market data to be submitted by the SPs on a regular, quarterly, basis. Both, QTel and Vodafone are obliged to submit to ictQATAR on a quarterly basis, coinciding with their quarterly published results (no later than a week after its publication), Basic Indicators on the Relevant Markets. Additionally, ictQATAR request SPs to submit the EoY 2010, Q1/2011 and Q2/2011 indicators no later than by 15 October 2011. These Basic Indicators are set out in Annexure C of this Notice and Orders. These Basic Indicators serve as first indication on the competitive development on the Relevant Markets and enable a reassessment of market power especially in the Dynamic Markets in shorter recurring time periods due to faster developing competition in those markets. If those indicators show a significant change in market conditions in any particular market, ictQATAR may start an in-depth investigation in the Relevant Market(s). The reassessment of the MDDD can be initiated by ictQATAR at any time and is not bound to the periodicity of data reported by the SPs on a quarterly basis.

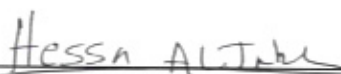
Alternatively, the SPs may address ictQATAR with a substantiated request for a more in-depth analysis in these markets, if they believe that market conditions have changed. The request has to be supported with a reliable and detailed justification and has to be corroborated with facts and figures. The decision and sole discretion as whether to take action in these matters thus continues to rest with ictQATAR.

PART G: IMPLICATION AND OPERATION OF THE DESIGNATION OF QTEL AND VODAFONE AS DOMINANT SERVICE PROVIDERS IN THE SPECIFIED RELEVANT MARKETS

Designation as a DSP in the specified Relevant Markets signifies that QTel and Vodafone will be subject to specific provisions that are now, or may in the future be included, in the Telecommunications Law, the Executive By-Law, related regulations, rules, orders, notices, decisions and instructions, and any telecommunications licence issued. These documents together define the obligations applicable to QTel and Vodafone in the markets in which they are deemed to be DSP.

Additional obligations may be applied to DSPs in certain markets where it is likely that existing requirements are not sufficient to prevent an abuse of dominance or may be needed to prevent market failure or prevent outcomes that are not in the public interest and which will enable viable competition to take root during the initial phase of sector liberalisation.

Signed by:



Dr Hessa Al Jaber
Secretary General ictQATAR

31 October 2011
Date

ANNEXURE A – Response Document

“A Review of Definition of Relevant Markets and Designation of Dominant Service Provider in Qatar (MDDD 2010) - Response Document” is issued as a final document under ICTRA 2011/10/31a

ANNEXURE B – Methodology Notice

The "Notice of the Standards, Methodology and Analysis to be applied in the Review of Market Definition and Dominance Designation in the Telecommunication Sector in Qatar" is issued as a separate Document under ICTRA 2011/10/31b

ANNEXURE C – Basic Indicators following the ‘Shortcut Process’. This list may be amended by **ictQATAR** if necessary.

Metric	Description	Units	Comments	2010	2011	2011	2011	2011	...
				Total	Q1	Q2	Q3	Q4	...
Retail									
Market 1 Access to public telecommunications networks at a fixed location									
Volume / Subscriptions									
Lines (subscriptions)									
- Residential POTS subscriptions	Number of active subscriptions	#	at end of quarter						
- Business POTS subscriptions	Number of active subscriptions	#	at end of quarter						
- Business SDN SR channels	Number of active subscriptions (2 channels per line)	#	at end of quarter						
- Business SDN SR channels	Number of active channels (2 channels per SR access)	#	at end of quarter						
- Business SDN PR subscriptions	Number of active subscriptions (30 channels per line)	#	at end of quarter						
- Business SDN PR channels	Number of active channels	#	at end of quarter						
- Managed VoIP subscriptions	Number of active subscriptions (excludes unmanaged VoIP/VoIP services)	#	at end of quarter						
Total Subscriptions	Sum of POTS subscriptions, SDN SR and PR subscriptions and Managed VoIP subscriptions	#	at end of quarter	0	0	0	0	0	0
Total Channels	Sum of POTS subscriptions, SDN SR and PR channels and Managed VoIP subscriptions	#	at end of quarter	0	0	0	0	0	0
Financial Metrics									
Access revenue (subscription)	Authorized Services according to Annexure B of the Licenses	QAR/quarter							
other revenue 1	Authorized Services according to Annexure B of the Licenses	QAR/quarter	pls specify						
other revenue 2	Authorized Services according to Annexure B of the Licenses	QAR/quarter	pls specify						
other revenue 3	Authorized Services according to Annexure B of the Licenses	QAR/quarter	pls specify						
other revenue 4	Authorized Services according to Annexure B of the Licenses	QAR/quarter	pls specify						
Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter	pls specify						
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0
Market 2 Public national telecommunications services at a fixed location									
Volume / Subscriptions									
National traffic									
- FF (own network)	minutes to fixed national (own network)	#	technical minutes (not billed minutes) / quarter						
- FF (DLO)	minutes to fixed national (other DLO networks)	#	technical minutes (not billed minutes) / quarter						
- FM (own network)	minutes to mobile national (own network)	#	technical minutes (not billed minutes) / quarter						
- FM (DLO)	minutes to mobile national (other DLO networks)	#	technical minutes (not billed minutes) / quarter						
- Calling cards (own and DLO)	minutes from calling cards to call national used on fixed networks	#	technical minutes (not billed minutes) / quarter						
Total Traffic		#	technical minutes (not billed minutes) / Q	0	0	0	0	0	0
Financial Metrics									
National call revenues									
- FF (own network)	revenues from fixed national calls	QAR/quarter							
- FF (DLO)	revenues from fixed national calls	QAR/quarter							
- FM (own network)	revenues from mobile national calls	QAR/quarter							
- FM (DLO)	revenues from mobile national calls	QAR/quarter							
- Calling cards (own and DLO)	revenues from calling cards to call national used on fixed networks	QAR/quarter							
other revenue 1		QAR/quarter	pls specify						
other revenue 2		QAR/quarter	pls specify						
other revenue 3		QAR/quarter	pls specify						
Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter							
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0
Market 3 Public international telecommunications services at a fixed location and via a mobile device dynamic market									
Volume / Subscriptions									
- F1	minutes from fixed to international (fixed and mobile destinations)	#	technical minutes (not billed minutes) / quarter						
- M1	minutes from mobile to international (fixed and mobile destinations)	#	technical minutes (not billed minutes) / quarter						
- Calling cards1	minutes from calling cards to call international (fixed and mobile destinations)	#	technical minutes (not billed minutes) / quarter						
Total Traffic		#		0	0	0	0	0	0
Financial Metrics									
- F1	revenues from fixed to international	QAR/quarter							
- M1	revenues from mobile to international	QAR/quarter							
- Calling cards F1	revenues from calling cards (fixed) to call international used on fixed and mobile networks	QAR/quarter							
- Calling cards M1	revenues from calling cards (mobile) to call international used on fixed and mobile networks	QAR/quarter							
other revenue 1		QAR/quarter	pls specify						
other revenue 2		QAR/quarter	pls specify						
other revenue 3		QAR/quarter	pls specify						
Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter							
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0
Market 4 Broadband services at a fixed location									
Volume / Subscriptions									
BB subscribers - copper based		#	at end of quarter	2					
2Mbps to less than 8 Mbps	All copper based subscribers with advertised downstream speed equal to or greater than 2 Mbps and less than 8Mbps			1					
Above 8Mbps	All copper based subscribers with advertised downstream speed equal to or greater than 8Mbps			1					
BB subscribers - fibre based		#	at end of quarter	2					
2Mbps to less than 8 Mbps	All fibre based subscribers with advertised downstream speed equal to or greater than 2 Mbps and less than 8Mbps			1					
Above 8Mbps	All fibre based subscribers with advertised downstream speed equal to or greater than 8Mbps			1					
BB subscribers - other fixed technology		#	at end of quarter	2					
2Mbps to less than 8 Mbps	All other fixed technology based subscribers with advertised downstream speed equal to or greater than 2 Mbps and less than 8Mbps			1					
Above 8Mbps	All other fixed technology based subscribers with advertised downstream speed equal to or greater than 8Mbps			1					
Total Subscribers		#	at end of quarter	6	0	0	0	0	0
Financial Metrics									
BB subscriptions revenues		QAR/quarter	all technologies (copper fibre other)						
other revenue 1		QAR/quarter	pls specify						
other revenue 2		QAR/quarter	pls specify						
other revenue 3		QAR/quarter	pls specify						
other revenue 4		QAR/quarter	pls specify						
Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter							
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0

Market 5 Retail leased lines

Financial Metrics

Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-						
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter	-						
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0

Market 6 Public national telecommunications service via a mobile device

dynamic market

Volume / Subscriptions

Subscriptions									
- Postpaid	active subscribers	# at end of quarter							
- Prepaid	active subscribers	# at end of quarter							
Total Subscriptions									
Traffic									
- MM (pre)		# technical minutes (not billed minutes) quarter							
- MM (DLO)		# technical minutes (not billed minutes) quarter							
- MF (pre)		# technical minutes (not billed minutes) quarter							
- MF (DLO)		# technical minutes (not billed minutes) quarter							
Total Traffic (national)		# technical minutes (not billed minutes) quarter							
Total SMS and MMS (national)		# end of quarter							

Financial Metrics

Revenues from subscriptions		QAR/quarter							
National call revenues									
- MM (pre)		QAR/quarter							
- MM (DLO)		QAR/quarter							
- MF (pre)		QAR/quarter							
- MF (DLO)		QAR/quarter							
SMS/MMS		QAR/quarter							
other revenue 1		QAR/quarter	pls specify						
other revenue 2		QAR/quarter	pls specify						
Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-						
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter	-						
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0

Market 7 Broadband services via a mobile device

dynamic market

Volume / Subscriptions

Mobile Internet	Separate subscription for for smartphones (same SIM card)	# at end of quarter	e.g. mobile internet						
Mobile Broadband	Data Card subscription for e.g. USB modems (separate SIM card)	# at end of quarter	e.g. mobile broadband						
Total Subscriptions		# at end of quarter							
Mobile Internet	Separate subscription for for smartphones (same SIM card)	GB/quarter							
Mobile Broadband	Data Card subscription for e.g. USB modems (separate SIM card)	GB/quarter							
Total Traffic		GB/quarter							

Financial Metrics

Mobile Internet revenues	Separate subscription for for smartphones (same SIM card)	QAR/quarter							
Mobile Broadband revenues	Data Card subscription for e.g. USB modems (separate SIM card)	QAR/quarter							
Revenue	Authorized Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-						
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter	-						
Total Revenue for the Market		QAR/quarter	-	0	0	0	0	0	0

Wholesale

Market 8 Call Origination on public telecommunications networks at a fixed location	tr/quarter								
Market 9 Call Termination on individual public telecommunications networks at a fixed location	tr/quarter								
Market 10 Wholesale physical network infrastructure access	QAR/quarter								
Market 11 Wholesale access to broadband services at fixed locations	QAR/quarter								
Market 12 Wholesale leased lines	QAR/quarter								
Market 13 Termination on individual mobile network	tr/quarter								
Market 14 Access and call origination on public mobile networks	QAR/quarter								
Total Revenue for all wholesale Markets	QAR/quarter	-							

Revenues: x-check with published financial statements

Fixed Markets (1,2,3 partially,4,5,8-12)

Total revenue for fixed markets (according to Annexure B and other than Annexure B)	QAR/quarter								
Total revenue as per public reporting for retail fixed markets	QAR/quarter								
Difference	QAR/quarter								
Explanation 1	for potential deviation	QAR/quarter							
Explanation 2	for potential deviation	QAR/quarter							
Explanation 3	for potential deviation	QAR/quarter							
Explanation 4	for potential deviation	QAR/quarter							
Explanation 5	for potential deviation	QAR/quarter							
Remaining Difference	QAR/quarter	ideally 0							

Mobile Markets (3, partially, 6, 7, 13,14)

Total revenue for mobile markets (according to Annexure B and other than Annexure B)	QAR/quarter								
Total revenue as per public reporting for retail mobile markets	QAR/quarter								
Difference	QAR/quarter								
Explanation 1	for potential deviation	QAR/quarter							
Explanation 2	for potential deviation	QAR/quarter							
Explanation 3	for potential deviation	QAR/quarter							
Explanation 4	for potential deviation	QAR/quarter							
Explanation 5	for potential deviation	QAR/quarter							
Remaining Difference	QAR/quarter	ideally 0							



A Review of

Definition of Relevant Markets and Designation of
Dominant Service Provider
in Qatar
(MDDD 2010)

Response Document

ICTRA 2011/10/31a

Non-Confidential version

31 October 2011

Final version

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1. EXECUTIVE SUMMARY

This Market Definition and Dominance Designation (**MDDD**) review process is being undertaken by the Supreme Council for Information and Communications Technology (**ictQATAR**) following work already conducted by ictQATAR in 2008 that resulted in Qatar Telecom (Qtel) Q.S.C. (**QTel**) being designated to be a Dominant Service Provider (**DSP**) in seven retail and eight wholesale telecommunications markets in Qatar on 24 June 2008 (**MDDD 2008**)¹.

The designation of QTel as a DSP in these markets was initially based on the fact that QTel was the only Service Provider in all markets, and there was no effective countervailing competitive force in those markets. Also, it was apparent QTel could and did profit from considerable economies of scale and scope, and that QTel was enjoying discretion in its production, provision and selling policies in markets in which there were significant barriers to entry.

ictQATAR has developed the MDDD 2010 Process and assessed whether dominance exists in the specified Relevant Markets in accordance with the Applicable Regulatory Framework (**ARF**)² contained in Chapter 9 (Articles 40 to 47) of the Telecommunications Law 34 of 2006 (**Telecommunications Law**)³, Articles 72 to 76 (Chapter 8) of the Executive By-Law 1 of 2009 for the Telecommunications Law (**Executive By-Law**)⁴, as well as the Licenses to provide Public Fixed and Mobile Telecommunications Networks and Services issued to the Service Providers (**SP**)⁵.

The MDDD 2010 started with a consultation⁶ from 27 October 2010 to 4 December 2010 (which was extended upon request of SPs to 12 December 2010). Answers to the consultation were received from QTel and Vodafone Qatar Q.S.C. (**Vodafone**)⁷ and were considered and discussed within a Draft Response Document which was published on 3 February 2011 and was consulted with the market until 28 February 2011. Comments were received in that period from both SP have been considered in this final version of this Final Response Document (**RD**).

The specific methodology applied by ictQATAR for MDDD in accordance with the Telecommunications Law and Executive By-Law is set out in detail in the "Notice on the Standards, Methodology and Analysis to be applied in the Review of Market Definition and Dominance Designation in the Telecommunications Sector in Qatar" (**Methodology Notice**), which is issued as a separate document and which will be published on ictQATAR's website⁸. This Methodology Notice also outlines similarities and differences between the approaches in the EU and in Qatar and the process followed by ictQATAR in this review. The Methodology Notice was likewise published for consultation on 3 February 2011 and the consultation ran until 28 February 2011. Comments were received by both SP and integrated into the final version.

The overall approach for MDDD follows the process described in Figure 1 below. The steps of the process comprise (1) the identification of Baseline Markets within the Consultation Document (**CD**), (2) definition of Relevant Markets, (3) Market Analysis and Dominance Designation and (4) Obligations of DSPs.

¹ See <http://www.ictqatar.qa/output/page36.asp?docid={D8F5F720-25BD-4D5E-B281-3718C7F5530E}>.

² The ARF comprises the relevant legal provisions in Qatar, inter alia but not limited to the Telecommunications Law, the Executive By-Law, the Licenses of the SP and any related regulations, rules, orders, notices, decisions, directions and instructions.

³ See [http://www.ictqatar.qa/files/elaw\(1\).pdf](http://www.ictqatar.qa/files/elaw(1).pdf).

⁴ See http://www.ictqatar.qa/files/images/The_Telecommunication_Executive_By-Law.pdf.

⁵ See e.g. <http://www.ictqatar.qa/output/page36.asp?docid={53F73254-2C98-4476-8CF7-562247C814B9}>.

⁶ ICTRA 2010/10/26

⁷ For facilitated reading, also the abbreviation "VF" is used in graphs and figures to depict "Vodafone".

⁸ www.ict.gov.qa.

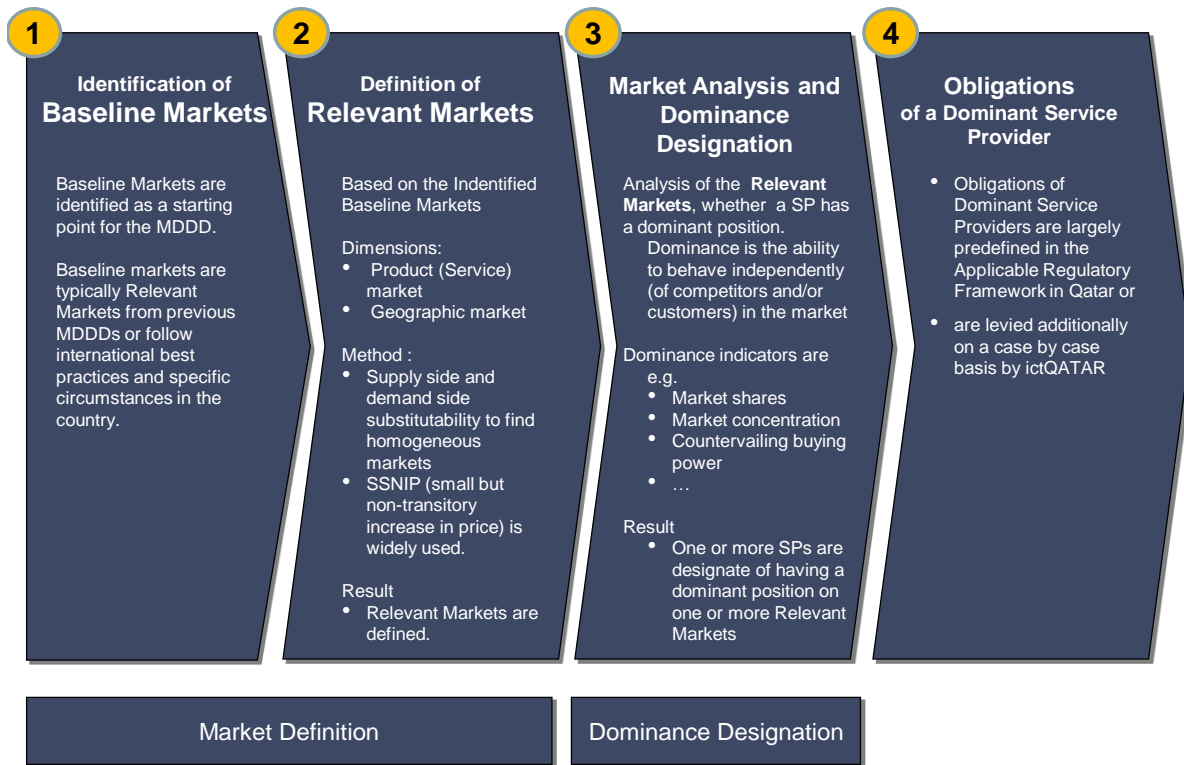


Figure 1: MDDD 2010 Process

Based on the methodology, as set out in the Methodology Notice, this RD sets out the approach that ictQATAR adopts for the MDDD 2010 process:

- Defining the Relevant Markets,
- Assessing the degree of market power in those Relevant Markets, and
- Designating one or more SPs having a Dominant Position (**DP**) as a Dominant Service Provider

This RD discusses and takes into account the submissions of QTel and Vodafone and what is generally applied as international best practices in this regard.

As an outcome of the MDDD 2010 Process, ictQATAR defined the Relevant Markets and designated QTel and Vodafone as having a DP in one or more Relevant Markets. This outcome is contained in Figure 2, which also indicates whether a market is considered as being 'dynamic', i.e. susceptible to the Shortcut Process, or is regarded as 'non-dynamic'. This Shortcut Process is further described in section 2.3.

Relevant Markets		Dynamic ⁹	DSP: QTel	Vodafone
Retail Markets				
Fixed (and international)				
M1	Access to public telecommunications networks at a fixed location	No	Yes	No
M2	Public national telecommunications services at a fixed location	No	Yes	No
M3	Public international telecommunications services at a fixed location and via a mobile device ¹⁰	Yes	Yes	No
M4	Broadband services at a fixed location	No	Yes	No
M5	Retail leased lines ¹¹	No	Yes	No
Mobile				
M6	Public national telecommunications services via a mobile device ¹²	Yes	Yes	No
M7	Broadband services via a mobile device ¹³	Yes	Yes	No
Wholesale Markets				
Fixed				
M8	Origination on public telecommunications networks at a fixed location ¹⁴	No	Yes	No
M9	Termination on public telecommunications networks at a fixed location ¹⁵	No	Yes	Yes
M10	Wholesale physical network infrastructure access ¹⁶	No	Yes	No
M11	Wholesale access to broadband services at fixed locations ¹⁷	No	Yes	No
M12	Wholesale leased lines ¹⁸	No	Yes	No
Mobile				
M13	Access and origination on public mobile networks	No	Yes	No
M14	Termination on public mobile networks ¹⁹	No	Yes	Yes

Figure 2: Result of MDD2010: Relevant Markets and DSP designation

The definition of wholesale markets includes all ancillary services that are provided as an adjunct to or in support of these services, but is not limited to access to mediation hooks, access to OSS/BSS, databases, relevant network information, collocation space, access to facilities, etc.

Obligations of DSPs are set out in Annex I of the CD of 27 October 2010.

⁹ See section 2.3 for an explanation of the Short Cut process and the definition of dynamic markets.

¹⁰ This is irrespective of the terminating network abroad, i.e. fixed or mobile.

¹¹ Leased lines represent dedicated connections and bandwidth.

¹² This includes but is not limited to voice, SMS, MMS, and video calling services. This market covers both access and usage.

¹³ This includes data services which are not included in retail market no. 6 such as, but not limited to, broadband Internet services.

¹⁴ This includes e.g. local call conveyance, dial-up services, carrier selection, and carrier pre-selection.

¹⁵ This includes e.g. local call conveyance. Although Vodafone is not yet active in this market, it is being regarded as DSP and the remedies are proposed to apply as of the time when Vodafone commences fixed services.

¹⁶ This includes access to passive infrastructure in a technologically neutral manner for the supply of domestic and international telecommunications services, i.a. but not limited to: access to and use of network and facilities, such as ducts, dark fibre, copper, sites, towers, international gateway facilities and other facilities.

¹⁷ This includes i.a. but not limited to bitstream access.

¹⁸ This includes associated services irrespective of the technology used to provide leased or dedicated capacity.

¹⁹ This includes i.a. but not limited to voice, SMS, MMS, video calls.

As set out in the CD, market definition should reflect the dynamic and forward-looking nature of the telecommunications market. ictQATAR envisages that the defined Relevant Markets are appropriate for approximately the next two to three years. On a reasoned, supported with the reliable data and substantiated request by the market entities or at its own discretion, ictQATAR may start a MDDD review process during this timeframe²⁰.

ictQATAR recognises the specific characteristics of the dynamic markets, as described in the Shortcut section 2.3 and will conduct a pro-active quarterly analysis of these dynamics to reassess the dominance designation of the SPs in the following markets:

- M3: Public international telecommunications services at a fixed location and via a mobile device;
- M6: Public national telecommunications services via a mobile device; and
- M7: Broadband services via a mobile device.

Following the Shortcut Process and according to Article 62 of the Telecommunications Law and Chapter 13 of the Executive By-Law, ictQATAR requires market data to be submitted by the SPs on a regular, quarterly, basis. This data delivery requirement is outlined in detail in Annexure A of this RD. The reassessment of the market definition and dominance designation can be initiated by ictQATAR at any time and is not bound to the periodicity of data reported by the SPs on a quarterly basis.

2. PROCESS AND METHODOLOGY

2.1 Overview of the MDDD 2010 process

The specific methodology and approach applied by ictQATAR for this review of Market Definition and Dominance Designation is set out in detail in the Methodology Notice issued separately from this document, and was subject to a consultation from 3 to 28 February 2011 and is also published on ictQATAR's website²¹.

ictQATAR has conducted the MDDD 2010 process that included consulting the public and industry participants with respect to its methodology, conducting a market analysis of the Qatari telecommunications sector, determining Relevant Markets and examining the circumstances and analysis supporting the designation of QTel and Vodafone as DSPs in one or more Relevant Markets.

The MDDD 2010 process started in October 2010 with the public consultations of the Definition of Relevant Markets and Designation of Dominant Service Providers in the State of Qatar - ICTRA 2010/10/26 (CD). ictQATAR asked for comments by 4 December 2010, on request the consultation period was extended till 12 December 2010. In November 2010 discussions between ictQATAR and Vodafone (8 November) and QTel (9 November) on the CD and the requested data delivery for the quantitative assessment took place.

QTel (Qtel/Reg-1220/2010-12) and Vodafone submitted their responses on 11 and on 12 December 2010 respectively.

In response to the CD both, QTel and Vodafone accepted the list of the Baseline Markets proposed by ictQATAR as well as generally agreed with the Relevant Markets definitions and with the Relevant Markets analysis outcome. QTel and Vodafone also delivered data to ictQATAR which allowed conducting the quantitative analysis of the Relevant Markets and the assessment whether dominance exists based on the criteria defined in the ARF.

²⁰ In conducting the analysis, ictQATAR takes into account the presence of new market entrants and evaluates whether market forces are sufficient to safeguard the interest of customer and the public

²¹ www.ict.gov.qa.

A second round of consultation on the Draft Response Document and the Draft Methodology Notice started on 3 of February 2011, which lasted till 28 February 2011. Prior to that, SPs had agreed to the 'Shortcut Process' (see below in section 2.3). Discussion with the SPs during the second round of consultation were conducted on 9 February 2011 (Vodafone) and on 10 February 2011 (QTel) and followed up in writing on 14 February 2011 by ictQATAR (RA-PECO/01-140211).

On 17 February 2011 QTel sent a response (Qtel/Reg-1345/2011-02) regarding the Shortcut Process data collection and recalling the discussion points raised during the meeting on 10 February 2011. This submission introduced the notion of a "test" for defining Relevant Markets.

On 22 February 2011 ictQATAR restated its methodological approach to the service providers (RA-PECO/01-220211) and clearly set out that MDDD are distinct steps and must not be confused. ictQATAR also set out that the definition of Relevant Markets applies international best practice approach and universal competition law principles.

On 23 February 2011 QTel asked in its letter (Qtel/Reg-1356/2011-02) ictQATAR to extend the response time to 4 April 2011 in order to allow QTel ample time to prepare a response. On the same day ictQATAR responded (RA-PECO/01-230211) that taken into account the ample period provided for consultation (more than 9 weeks) and the importance of the outcome of the MDDD 2010 for the whole sector, the submission date cannot be extended as this might delay this important regulatory process.

Responses from QTel and Vodafone to this second round of consultation were received on 28 February 2011.

Additionally, after the submission closing date, ictQATAR invited QTel and Vodafone for the meeting on 10 March 2011 to discuss various matters raised by the SPs and to provide further clarification.

In its final response of 28 February 2011 QTel stressed that the tests done by ictQATAR are not sufficient for the assessment of "*whether a market is susceptible to ex ante regulation due to insufficient competition*". QTel insisted that ictQATAR should "*give the details and results of the tests which have been done to identify the need for ex ante regulation on the Baseline Markets*". During the discussion on 10 March 2011 QTel suggested to use the Three Criteria Test applied in the EU (or a similar test) to analyse if a particular Baseline Market is a Relevant Market susceptible for *ex ante* regulation. During the meeting of 10 March 2011 ictQATAR stressed that it has been clearly communicated that MDDD 2010 is based on the MDDD 2008 approach. ictQATAR also clarified that it was clearly set out that a standard competition law approach (which is distinct from the EU Framework for defining markets in telecommunications) is used for the MDDD 2010. None of these foresees any "tests" (e.g. Three Criteria Test) for defining Relevant Markets. ictQATAR referred to the Notice of the European Commission for defining Relevant Markets under a general competition Law approach and the EC Merger Regulation and pointed out that a potential abuse is not the precondition for defining Relevant Markets, but that Relevant Markets are defined when needed.

ictQATAR confirmed that the CD, the Draft Response Document, the Draft Methodology Document and additionally letter RA-PECO/01-220211 to QTel and Vodafone clearly set out this approach.

Regarding QTel's request to provide "test results" for the Relevant Markets, ictQATAR clarified that ictQATAR consistently applied the methodology as described in abovementioned documents. ictQATAR also clarified that there are no additional "tests" (like the Three Criteria Test in the EU Framework) related to the MDDD process foreseen in the ARF or the MDDD in Qatar. ictQATAR underlines, that both QTel and Vodafone accepted the methodology of Baseline and Relevant Markets analysis proposed by ictQATAR and also agreed on the Shortcut Procedure. ictQATAR also pointed out that such "tests", similar to the ones presented by QTel are included in step 3 (see Figure 1) and that as soon as a market is sufficiently competitive the position of dominance will be lifted.

ictQATAR also notes that QTel raised its objections and the potential introduction of a “test” for the definition of Relevant Markets, which amounts to a very different approach as suggested by ictQATAR and confirmed by the SPs, at a very late stage. QTel did not come forward with its suggestion for such a “test” at the appropriate time, i.e. during the first round of the consultation period, where the general methodology was also discussed. ictQATAR clarifies that with respect to the introduction of a “test” for the definition of Relevant Markets no convincing materials, demonstrating the need for such a “test”, have been brought forward.

ictQATAR stresses that its documents have been carefully drafted and no inference of such an approach, including a “test”, can be construed. ictQATAR takes its actions according to the Qatari legal framework and adapts its decision to the state of competition in Qatar. Although ictQATAR is influenced by the underlying philosophy of international best practices like the EU Framework, ictQATAR clarifies that the ARF does not foresee a “test” for defining Relevant Markets. Therefore ictQATAR considers it inappropriate to apply the three criteria or any other “test” for defining Relevant Markets.

ictQATAR also notes that none of the other countries in the region use such “test”.

2.2 ictQATAR’s approach to Market Definition and Dominance Designation MDDD 2010

For the MDDD 2010 ictQATAR proposed in the CD the following Baseline Markets whereby the whole area of Qatar constitutes the geographically market:

Retail Markets

- M1. Access to public telecommunications networks at a fixed location;
- M2. Public national telecommunications services at a fixed location;
- M3. Public international telecommunications services at a fixed location and via a mobile device;
- M4. Broadband services at a fixed location;
- M5. Retail leased lines;
- M6. Public national telecommunications services via a mobile device; and
- M7. Broadband services via a mobile device.

Wholesale markets

- M8. Origination on public telecommunications networks at a fixed location;
- M9. Termination on public telecommunications networks at a fixed location;
- M10. Wholesale physical network infrastructure access;
- M11. Wholesale access to broadband services at fixed locations;
- M12. Wholesale leased lines;
- M13. Access and origination on public mobile networks; and
- M14. Termination on public mobile networks.

These Baseline Markets were defined according to the approach set out in the Methodology Notice.

Taking into account the submissions received during the public consultation on the MDDD 2010 process, the list of the Relevant Markets is identical to the list of the Baseline Markets, as contained in the CD²². No changes were made after the consultation on the Draft Response Document as well as none of the SPs had objections to the list of Baseline Markets as defined by ictQATAR. The submissions in the consultation confirm the appropriateness and soundness of ictQATAR’s approach.

As a result of issues raised during the consultations ictQATAR has decided to revisit a few of its initial proposals. These modifications refer to the separation of markets into “dynamic” and “non-dynamic” markets and their respective regulatory treatment.

²² The only difference is, keeping in line with the “Termination on public mobile markets”, the word “Call” from the fixed origination and termination market was deleted.

ictQATAR's analysis has focused on those markets where a dynamic element has already become visible and where a change in the positions of Dominance might be warranted. This dynamic element is, however, only apparent in a limited number of retail markets.

The circumstances and analysis supporting the designation of QTel and Vodafone as dominant in the Relevant Markets, based on the standards and methodology set forth in the Notice and Orders (ICTRA 2011/10/31), are specified in the CD on Relevant Markets and Designation of Dominant SPs in Qatar and in the following sections of this RD, as well as in ictQATAR's Methodology Notice, in Annexure A and in Annexure B to the Notice and Orders.

2.3 The Shortcut Process within MDDD 2010

Competition in Qatar effectively started on 7 July 2009 with full market entry of Vodafone in the mobile business. Under its fixed license issued on 29 April 2010, Vodafone is currently only providing broadband services at The Pearl Qatar. Therefore, the majority of retail and wholesale markets (at a fixed location) currently do not display competitive features.

In order to streamline the MDDD 2010 process, ictQATAR, QTel and Vodafone agreed^{23,24} to a Shortcut Process, focussing on the following retail markets, which have displayed dynamic characteristics (**Dynamic Markets**):

- M3: Public international telecommunications services at a fixed location and via a mobile device;
- M6: Public national telecommunications services via a mobile device; and
- M7: Broadband services via a mobile device.

Regarding the non-dynamic Relevant Markets (M1, M2, M4, M5, M8-M14)²⁵ the SPs and ictQATAR both agree that the designation of a DSP in those markets will be based purely on the market shares, on a lack of countervailing buying power, and on the non-existence of prospective market entry. The designation of a SP as having SMP or a Dominant Position in a particular market is not of itself or per se evidence of what may be deemed an abuse of dominance or anti-competitive conduct.

Regarding the Dynamic Markets, the SPs and ictQATAR agree that the reassessment of market power in Dynamic Markets may take place in shorter recurring time periods due to rapidly developing competition in those markets. Following the 'Shortcut Process' as set out above and according to Article 62 of the Telecommunications Law and Chapter 13 of the Executive By-Law, ictQATAR will conduct market reviews on a quarterly basis and if justified may start a MDDD process to verify the positions of dominance on defined Relevant Markets. ictQATAR sets out the basic indicators in Annexure A of this RD to review the Dynamic Markets and requires market data to be submitted by the SPs on a regular, quarterly, basis. ictQATAR requires the SPs to submit these indicators every three months, coinciding with their quarterly published results (no later than a week after its publication). These basic indicators serve as first indication on the competitive development on the Relevant Markets and enable a reassessment of market power especially in the Dynamic Markets in shorter recurring time periods due to faster developing competition in those markets. If those indicators show a significant change in market conditions in any particular market, ictQATAR may start an in-depth investigation in the Relevant Market(s). The reassessment of the MDDD can be initiated by ictQATAR at any time and is not bound to the periodicity of data reported by the SPs on a quarterly basis. Thereby, the report should only cover past data from the foregoing quarter. Any forecast data will not be requested.

²³ This was confirmed in RA-PECO/01 291110 to the SPs

²⁴ The agreement to this Shortcut Process does not constitute a waiver of the rights to comment on remedies

²⁵ Cf. Figure 2.

Alternatively, the SPs may address ictQATAR with a substantiated request for a more in-depth analysis in these markets, if they believe that market conditions have changed requiring a fresh in-depth analysis. The request must be supported with reliable and detailed justification and corroborated with facts and figures. The decision and sole discretion whether to take action in these matters thus continues to rest with ictQATAR.

The intention of this process is to monitor whether a SP is still a DSP on particular Dynamic Markets but the more recent and regular reviews are not being undertaken to reassess whether the Baseline Markets are Relevant Markets. This will only be done in the regular MDDD processes.

Vodafone argued that although data could be submitted every 3rd month, any reassessment should not be undertaken earlier than on a yearly basis. ictQATAR has not predefined any period for such reassessment as it depends on the market development and the data available. Therefore, the information submitted by the SPs and the analysis of this data will play a crucial role in defining if and when to initiate a reassessment of the Dynamic Markets.

For the avoidance of doubt, the discussion in the section so far focuses on the assessment of dominance in defined Relevant Markets. As set out in the CD, the market definition should reflect the dynamic and forward-looking nature of the telecommunications market. ictQATAR envisages that the defined Relevant Markets are appropriate for approximately the next two to three years.

3. DEFINITION OF RELEVANT MARKETS

3.1 General aspects

According to Figure 1, Baseline Markets have been identified in the CD and resulted in the final definition of Relevant Markets as listed in Figure 2. In the CD, ictQATAR described its approach to Market Definition, highlighting topics like supply side factors, demand side factors, geographic scope of markets and fixed mobile substitutions. The methodological approach was outlined in the CD from 27 October 2010. Taken into account the comments of the SPs, the outcome is included in the Methodology Notice (ICTRA 2011/10/31b), which is published in parallel to this RD.

The following sections consider the particular aspects of submissions received from the Service Providers during the MDDD process.

3.2 Consultation Issues

3.2.1 Aspects of the methodological approach

In the CD the following questions were asked:

Question 1	Do respondents agree with ictQATAR's proposal to refer to the HMT as a guiding theoretical principle to define Relevant Product Markets? If not, please suggest a reasoned alternative approach.
Question 2	Do respondents agree with ictQATAR's analytical framework for defining products (i.e. supply side and demand side substitution) and geographic markets? If not, please suggest a reasoned alternative approach.
Question 3	How do respondents assess the current and future situation of FMS in Qatar? Please provide reasoning and relevant data if possible.

Regarding **Question 1** and **Question 2**, referring to the framework for market definition, QTel and Vodafone agree with ictQATAR's proposed methodology as well as with the analytical framework for defining products and geographic markets, in general. Vodafone has added, with respect to the analytical framework, that it agrees as far as the framework is in line with the guidance issued by the European Commission in the EU SMP Guidelines. The proposed analytical framework considers the legal requirement in Qatar as well as international best practice, especially in relation to the European framework (EU SMP Guidelines) and therefore, it was not required to modify the methodological approach.

With regard to fixed-mobile substitution (**FMS**) in Qatar (**Question 3**), QTel does not foresee that FMS will exhibit substantial effects over the coming three years and thus agrees with ictQATAR's assessment of that issue. Vodafone agrees as well and points out that:

- there are functional differences between fixed and mobile services;
- mobile services still exhibit some shortcomings in quality of service when compared to fixed connections, e.g. calls dropped or transmission quality;
- consumers value fixed connections, as they enable high speed access to the Internet;
- mobiles offer some other comparative benefits such as SMS/MMS services; and
- national calling in Qatar is currently uncharged and is, below cost. This distorts consumer behaviour as they do not face the full cost of fixed line calling and therefore reduces FMS.

These comments are in line with ictQATAR's proposal for the Baseline Markets.

Overall, respondents agree with ictQATAR’s analytical framework for market definition. ictQATAR has not received any reasoned alternative approach during the consultation period.

Question 4	Respondents are invited to provide reasoned comments on the proposed competition analysis criteria and on the framework methodology for determining a Dominant Position.
Question 5	Is the proposed list of Baseline Markets appropriate in the context of telecommunications markets in the State of Qatar at the present time? If not, please provide reasoned alternative suggestions.

Regarding **Question 4** on the competition analysis, QTel generally agrees and states that it is important that the analysis should cover the expected period until the next review and that market dynamics should be factored in upon deciding on dominance as well as obligations.

ictQATAR at this stage can confirm that it is intended to consider these issues in the further process in the coming years and refers to the Shortcut Process in section 2.3.

Vodafone highlighted in its comments on the proposed competition analysis criteria and on the methodology framework, four aspects: (1) relevance of very high market shares; (2) focus on subscriber revenues; (3) additional criteria for assessing dominance; and (4) assessment of joint dominance. It also refers to the EU framework and the EU competition law rules. ictQATAR emphasises that it applies primarily Qatari Telecommunications Law and the ARF and also considers international best practice in this area, e.g. in neighbouring countries and in particular the rules and the legal practices of the European Union if not in contradiction to the ARF. The similarities and differences to the EU framework are set out in section 3 “International best practice for Market Definition and Dominance Designation” in the Methodology Notice as well as in the discussion raised by QTel on the applicability of the Three Criteria Test below.

With respect to the relevance of very high market shares, ictQATAR has taken note of Vodafone’s considerations. As stated in the CD, the competition situation in individual markets and the specific relevance and importance of various competition indicators must always be assessed on a case-by-case basis. This also holds true for the application of the criterion of market share. In accordance with Article 72 of the Executive By-Law, further criteria are relevant to determine a DSP and may be applied. Beyond that, Vodafone in this respect can be reassured that ictQATAR regarding the assessment of dominance will take into account empirical data given its availability and theoretical economic basis in a thorough and well-balanced analysis. However, the application of the general framework, as set out in the Methodology Notice, will vary from market to market and the intensity of the current as well as the potential future competition on those markets.

In the second round of consultation, as described in section 2.1, QTel argued that the EU approach and especially the Three Criteria Test (**TCT**) ensure that the transition towards competition in dynamic markets is reflected properly. It needs to be pointed out that in Qatar the TCT is not foreseen by the existing ARF. There are also no other or similar tests foreseen in MDDD process as in the Qatari ARF there is no legal equivalent of the EU term “susceptible for ex-ante regulation”.

The Qatari ARF and the European Framework in regard to MDDD may appear prima facie identical, but differ significantly when examined in detail. The specified standards and methodology for the purposes of the market review according to the Article 42 of the Telecommunications Law are described in the Methodology Notice (ICTRA 2011/10/31b) attached also as Annexure B of the Notice and Orders (ICTRA 2011/10/31). This comparison clarifies that the TCT is not embodied in the Qatari ARF and would, in presence of high and non-transitory barriers to entry and in absence of an established Competition Authority, not yield meaningful results. Also other GCC countries do not use the TCT (or a similar test) for defining Relevant Markets.

The following figure demonstrates the differences between the Qatari ARF and the European Framework in regard to MDD:

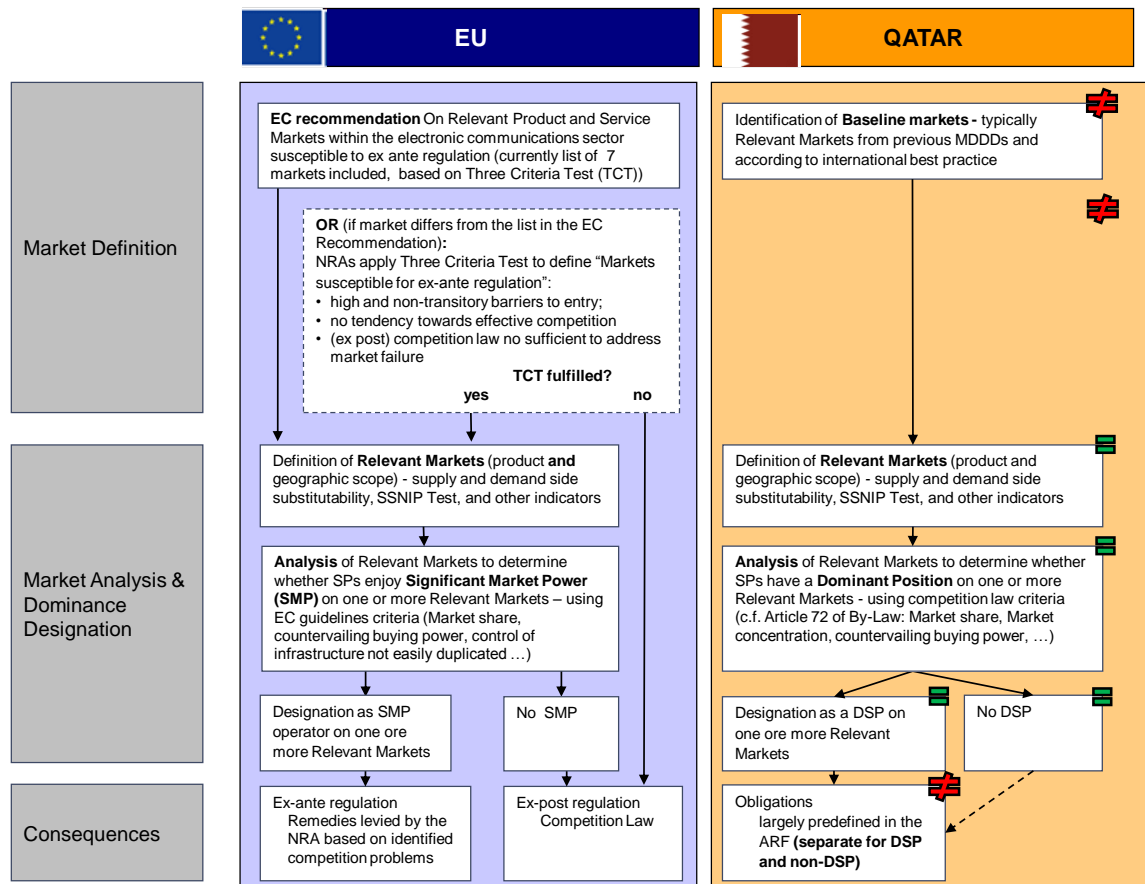


Figure 3: Comparison of MDD process in the EU and in Qatar

QTel in this respect also refers to internal tests (Qtel/Reg-1363/2011-02) it has conducted to check for the three dynamic markets whether they should be regulated ex-ante. However, QTel did not submit data or in-depth analysis which could support its position and QTel's statements remain unproven.

This also refers to QTel's statement that under the EU regime both the regulatory authority and the operator's have access to the test results. According to ictQATAR's experience this is not the case, i.e. neither does the EU framework contain a clause or provision which grants such access to test results nor is it established regulatory practice to make these results available, e.g. for reasons of confidentiality.

Irrespective of the discussion on the elements of the ARF and their applicability, respondents agree with ictQATAR's competition analysis criteria and on the framework methodology for determining a Dominant Position.

The proposed list of Baseline Markets (**Question 5**) has generally been regarded as appropriate by both SPs. Vodafone expresses in its initial position regarding the retail market "Broadband services via a mobile device" that it does not agree with this proposed market definition and submits that broadband services via a mobile device should fall within the market for "Public national telecommunications service via a mobile device"²⁶. ictQATAR in this respect maintains its position

²⁶ Vodafone is basing its reasons for that position on an approach adopted by the Australian Competition and Consumer Commission (ACCC) in the Vodafone Group plc and Hutchison 3G Australia Pty Limited case of 24 June 2009. The ACCC, found that whilst there are two distinct types of mobile telecommunications services offered at retail level – mobile telephony services and mobile broadband (MBB) that they were found to be services in the same Relevant Market. Regarding demand-side and supply-side substitution between mobile telephony and mobile broadband the ACCC found that the former is limited but likely to increase over time and

regarding the Baseline Markets, as set out in the CD. Mobile broadband services require some additional network equipment and partially also other end user devices with typically enhanced capabilities. Furthermore, there is not sufficient demand-side substitutability e.g. regarding the usage for voice and SMS. Therefore mobile broadband (mobile internet) via separate subscriptions for smartphones or via separated/dedicated SIM cards for data cards/tablet PCs, or similar, is not a viable substitute for pay-as-you-go on a per MB basis from a supply and demand side perspective. As a conclusion, there is no or only a limited substitutability. For further details please see section 4.3.3.

With respect to the regulation of mobile retail markets in the EU, QTel's point in the second round of consultation is that such regulation has not taken place in the EU. This must be balanced against the fact that most European countries have licensed new mobile operators as early as 1996 and thus have a market structure with three or more mobile SPs which *per se* intensifies competition.

As a summary of responses of SPs to questions 1 to 5 of the CD, ictQATAR sees no need to modify the methodological approach or the list of Relevant Markets.

3.2.2 Relevant Retail Markets

ictQATAR has defined 7 Relevant Markets at the retail level (Figure 2). Out of those 7, four markets are considered to be "non-dynamic". As set out in the Shortcut Process (section 2.3) the designation of a DSP will be based purely on the market shares, on a lack of countervailing buying power and the non-existence of prospective market entry.

The following questions were posed in the CD with regard to the list of proposed Baseline Markets at the retail level²⁷:

Question 6	Do respondents agree that a further differentiation into residential and business customers is not warranted at this point in time? Please provide an answer for the fixed and the mobile sectors separately and supply evidence if possible.
Question 7	Do respondents agree that defining separate markets for access and services at a fixed location is appropriate? If not, please provide appropriate reasoning.
Question 8	Do respondents agree that only managed VoIP services are part of the Relevant Market?
Question 9	Do respondents agree on these product definitions? Are there e.g. currently narrowband voice access services offered to a non-negligible scale on any other infrastructure basis in Qatar? Please provide quantitative evidence if this is the case.
Question 10	Do respondents agree that FMS is not sufficient to define a common fixed and mobile market for access and national services? If not, please provide an alternative definition and the accompanying evidence.
Question 11	Do respondents agree on the relevant products of the market for national services at a fixed location (i) calls to fixed lines, ii) calls to mobile devices, and iii) calls originated for dial-up Internet services)?

regarding the latter the ACCC found that there is a supply-side substitutability. It needs to be considered that this decision was taken in a different environment (Australia) and on a different subject (in a merger case and not in a regulatory proceeding for MDDD). Also, the decision speaks of limited demand-side substitutability which according to ACCC will be overcome over time, a view which is also specifically relevant for Qatar and thus leads ictQATAR to consider that these products do not belong to the same market in the environment of Qatar and for the time being and the foreseeable future.

²⁷ ictQATAR has also inserted the original questions nr 21 and 22 here as they were listed in the wholesale Section but actually address retail market issues.

Question 12	Do respondents agree with the conclusions of ictQATAR regarding the access and call services markets?
Question 13	As regards the international calls market, one also has to consider business models based on calling cards, telephone shops, dial-in telephone service of relevance next to traditional voice telephony services provided at fixed locations. Do respondents agree that these telephony products will probably be of considerable relevance for the market for <u>international</u> calls given the specific characteristics in Qatar? Do respondents envisage any other potentially relevant business models for international voice telephony? If so, please provide appropriate evidence. Do respondents agree that the aforementioned international telephony products will probably be of rather limited relevance for the market of <u>national</u> calls? Do respondents envisage any calling card services offered by an alternative provider in Qatar? If so, please provide appropriate evidence.
Question 14	Do respondents agree that the residential and business broadband services are offered in the same market?
Question 15	Do respondents agree with ictQATAR's definition of (i) a distinct broadband services market which excludes narrowband services and (ii) a distinct Leased Line market? If not please provide reasoning and give an alternative definition.
Question 16	The degree of supply of Internet and broadband services will also depend on the capabilities of the networks in Qatar and whether up-to-date fixed and mobile technologies will be deployed. Please provide quantitative and qualitative information as to foreseen changes in the network structure which will impact the way customers have fixed (e.g. coax, fibre) and mobile (e.g. LTE) Internet access and the technical capabilities of that access.
Question 21	Do respondents agree with ictQATAR's definition of the retail markets for public telecommunications services provided via a mobile device?
Question 22	Do you consider national and international calling card products to be in separate markets? If yes, what would the markets be and how would they be defined? If no, what market would include calling card products? What are the implications for service providers?

With respect to **Question 6 and Question 14**, whether a differentiation into residential and business customers is not warranted currently, Vodafone agrees with ictQATAR's proposal. QTel does not and argues that business customers are generally offered turn-key solutions which are offered in response to a request for a specific set of solutions, while residential customers are offered off the shelf services. Thus, in QTel's view, it is not possible to use the same approach to analyse these two segments and QTel regards them as different types of markets. QTel does not submit further material to corroborate this.

ictQATAR is of the view that "turn-key" solutions, as referred to by QTel, are already represented by distinct business products, like leased lines which are regularly demanded by business customers within the leased line market. Therefore, ictQATAR is not convinced by this argument and maintains that retail market segmentation into residential and business appears to be neither necessary nor feasible with respect to potential (wholesale) obligations (since corresponding wholesale services would be typically the same in both market segments). Differentiated wholesale products for residential and non-residential customer segments could lead to arbitrage processes. Further, it is not unusual that although a SP differentiates between residential and business products, the selection of the user does not necessarily follow this pattern. Especially, smaller business users in a number of countries have a tendency to purchase a residential product due to usage or price considerations.

Thus, substitutability exists to a certain degree and the products can be regarded to belong to one market²⁸.

Regarding **Question 7, Questions 9 to 12 and Questions 15 and 16** on the relevant products of the market QTel and Vodafone are generally supportive to ictQATAR's view as they on the one hand either agree actively (QTel, Vodafone) or on the other hand do not have any comments due to the Shortcut Process (Vodafone). Thus, SPs do not have substantial objections to the underlying assumptions of the analysis and the consultation process, respectively, as well as the proposed methodology by ictQATAR.

Regarding **Question 8** on managed VoIP, QTel disagrees with ictQATAR's position that only managed VoIP services are part of the Relevant Market and states that in reality a lot of voice traffic is transported over the IP-network by parties that are not licensed SPs. In QTel's view, it would be flawed not to consider all relevant traffic. QTel did not make additional submissions to substantiate this or give an indication what this total traffic could be during the consultation period. ictQATAR highlights that QTel's response did not address specifically the distinction contained in Question 8 as regards managed vs. unmanaged VoIP services. Question 8 is not related to the quantitative parts of the market but to the qualitative parts of the market. It is not intended to extend the scope of the product market. Vodafone does agree with the proposal of ictQATAR contained in Question 8. QTel in the meeting with ictQATAR on 10 February 2011 highlighted the relevance of unmanaged VoIP services and announced that quantitative data to support this would be submitted with the answer to the consultation. However, in its written statement, QTel does not address this issue. ictQATAR will consider the VoIP data if delivered by QTel and will analyse the legitimacy of its inclusion into the scope of particular Relevant Markets during the Shortcut Process.

As regards **Question 13** on international calls, QTel agrees to ictQATAR's analysis of the relevance of calling cards on the markets for national and international calls whereas Vodafone regards the question as not relevant for the MDDD process but "*considers this to be a licensing question which is part of the scope of the Strategic Sector Review*". In ictQATAR's view, the relevant issue is that calling cards can be of different relevance for different types of calls. In this respect ictQATAR clarifies that Question 13 was posed in order to determine the relevant products for international and national calls markets as comprehensively as possible and in order to assign these products precisely to national and international calls markets.

Regarding **Question 21** on definition of the retail markets for public telecommunications services provided via a mobile device QTel does not agree with ictQATAR's position to include these markets in the list of Relevant Markets. "*As regards the new proposed market "Broadband services via a mobile device" QTel fails to see the why that market would need to be identified as a separate market, in case an analysis shows that the retail markets in question should be on the list of Relevant Markets*". Although these markets are young and dynamic it needs to be taken into consideration that only two SPs are providing these services. Furthermore, one can expect that end-users are typically buying "functional basic packages" and/or bundled products from one SP. Hence, ictQATAR has decided to maintain its initial proposition and analysed this market as a Relevant Market. Detailed analysis of the retail mobile markets is performed in section 4.3.3 of this RD. The reasoning and analysis to support the establishing the "Broadband services via a mobile device" market was also a part of the letter to QTel (RA-PECO/01-220211).

With respect to **Question 22** QTel considers national and international calling cards to be in separate markets and suggests to include them into corresponding international and national markets. ictQATAR follows that approach and included national and international calling cards revenues into

²⁸ Also, even if it were possible to identify different segments of these markets with respect to differentiations between corporates, small and medium businesses, and private customers these delineations are not reliable because business persons tend to also place personal calls on their mobile phones and individuals having subscribed in person for e.g. a mobile service often use this phone also for their business purposes

corresponding markets. Vodafone, though, did not launch their calling card product prior to December 2010 and thus no data was available so far.

The responses of SPs to questions 6 to 16 and 21, 22 of the CD, are largely supportive of ictQATAR's approach. Due to the reasoning outlined above, no modification of the methodological approach or the list of Relevant Retail Markets is warranted. Some specific aspects commented upon by SPs are taken specifically into account.

3.2.3 Relevant Wholesale Markets

ictQATAR has defined 7 Relevant Markets on the wholesale level (Figure 2), which are all regarded as non-dynamic.

The following questions were posed in the CD with regard to the list of Baseline Markets mainly referring to the wholesale level:

Question 17	Do respondents agree with ictQatar's definition of the fixed interconnection markets? Do you agree that there is no need to define a transit market at this stage? Please provide comments and evidence on each of the markets separately.
Question 18	Do respondents agree that the differentiation between passive and active wholesale products is useful to delineate markets?
Question 19	Do respondents agree on the product level definition of the wholesale access markets? If not, please provide evidence for deviating opinions? Do respondents consider the availability of passive infrastructure access such as ducts, facilities etc. necessary to overcome certain competitive problems?
Question 20	Do respondents agree with ictQATAR's definition of the retail and wholesale markets for Leased Lines? If not, please provide an alternative definition and relevant evidence.
Question 23	Do respondents agree with ictQATAR's definition of the wholesale markets for public telecommunications services provided via a mobile device?

Regarding **Questions 17** through **20** QTel and Vodafone are generally supportive to ictQATAR's view and agree either actively (QTel, Vodafone) or do not have any comments due to the Shortcut Process (Vodafone).

The proposed definition of the mobile wholesale market (**Question 23**) finds agreement by both SPs. Vodafone raises concerns over ictQATAR's conclusion regarding the market of "Access and origination on public mobile networks" as Vodafone argues that as additional mobile licenses cannot be issued, "further competition can only be introduced if wholesale access and origination is made available through regulatory measures (e.g. MVNO)." In this respect Vodafone states that the licensing regime in Qatar does not provide scope for the introduction of competition through wholesale access. ictQATAR has taken note of Vodafone's concern but is of the view, that the discussion on licensing and on MDDD should be kept separate. ictQATAR agrees, though, that further licensing is not the only possibility to enhance competition in this field. This is outlined in more detail in section 4.3.1.4

Taking in to account the SPs responses to questions 17 to 20 and 23, ictQATAR takes the view that no modification of the methodological approach or the list of Relevant Markets is warranted.

3.3 Conclusion on Market Definition

Based upon the CD (ICTRA 2010/10/26) and the respective answers and inputs received from the SPs in Qatar as well as the second round of consultation to the Draft Response Document, ictQATAR defines the Relevant Markets as depicted in Figure 2.

Accordingly, the Baseline Markets and the Relevant Markets as defined in this document are identical²⁹.

²⁹ The only difference is, keeping in line with the “Termination on public mobile markets”, the word “Call” from the fixed origination and termination market was deleted.

4. DOMINANCE ANALYSIS AND DSP DESIGNATION

Once Relevant Markets have been defined, they have to be assessed with respect to a possible position of Dominance (Figure 1). Sections 4.1 to 4.3 provide an overview on market developments in all Relevant Markets.

QTel and Vodafone submitted quantitative figures for the past and also forecast figures for the coming years. Both operators declared these figures as commercially sensitive (“confidential”), which is warranted on a detailed level. Therefore ictQATAR does not display any detailed figures in this RD, but rather discusses them on a general level.

Nevertheless, both operators publish in their quarterly reports revenue and subscriber figures. QTel divides them further in wireless and wireline. Given the publicity of higher level revenue and subscriber figures and given the importance of the market share criteria (as outlined in Article 72 of the Executive By-Law), ictQATAR considers it appropriate and not in contrast to the SPs’ business interests to display selected market share figures in this RD.

4.1 Overview

This section applies the market analysis approach on the Relevant Markets. ictQATAR differentiates between dynamic and non-dynamic markets, which results from the Shortcut Process. For the non-dynamic markets, SPs have agreed that firstly, ictQATAR’s method and result of defining markets receives their support and that secondly, due to high market shares and lack of countervailing buying power, the designation of a SP as DSP is consequently correct.

In the data gathering process for the MDDD 2010, ictQATAR found that data submitted for the MDDD process partly deviates from the publicly communicated figures. ictQATAR evaluated the validity and quality of the data submitted and constructed reasonable aggregates and also conducted consistency checks. The selection of data analysed by ictQATAR focuses on dimensions and metrics which fulfil these data requirements and are considered as sufficiently robust for the means of the MDDD 2010 process. The deviations were to such small extents that clear, robust and unambiguous conclusions can be drawn. Also currently market shares are such that even in the presence of some slight deviations robust conclusions can be drawn.

Figure 4 below gives an overall picture and estimated development³⁰ of the Qatari market, as submitted by the SPs. Subsequent figures and graphs may deviate from published figures of SPs due to different requirements by ictQATAR in the MDDD 2010 process and other financial disclosure requirements.

(company confidential information excluded)

Figure 4: Revenues (in '000 QAR), Subscribers and Traffic (minutes) in the Qatari market [company confidential]

As can be seen the total number of revenues, subscribers and traffic increase over the period from 2008 to 2013 based on SPs forecast in continuation of the growth from previous years.

It should be mentioned that the majority of Relevant Markets in Qatar is characterized by a monopolistic situation, whereas only on three Relevant Markets there are two SPs. The mere fact of two SPs in the market does not imply the absence of competition. Especially once competition intensifies without an increase in the number of market players, the pure threshold criteria of 40% market share loses relevance.

³⁰ All figures for 2010 and beyond have been forecasted by the SPs and thus represent their estimation.

4.2 Non-dynamic Relevant Markets

4.2.1 Overview

Regarding the non-dynamic Relevant Markets (M1, M2, M4, M5, M8-M14)³¹ the SPs and ictQATAR agreed that the designation of a DSP will be based purely on the market shares, on a lack of countervailing buying power and the non-existence of prospective market entry. Therefore, these 11 non-dynamic wholesale and retail markets do not exhibit significant competitive signs. As set out in the Shortcut Process (section 2.3) a position of dominance within these markets can be safely inferred, and is such accepted by the SPs, without the need of any additional in depth analysis.³² Nevertheless, ictQATAR has undertaken a further analysis of these markets and considered the competitive development on them.

4.2.2 M1: Access to public telecommunications networks at a fixed location

M1 "Access to public telecommunications networks at a fixed location" is characterised by a monopolistic situation in which QTel enjoys 100% market share.

QTel forecasts that for revenues from access to QTel fixed network will be rather stable in next 2-3 years. The main other criterion that has been analysed is the number of fixed access lines and the subscribers, respectively. Figure 5 and Figure 6 show the distribution and development of the subscribers of access (voice) lines in the fixed network. A steady increase in the numbers has occurred, which is also expected to continue in the coming years forecasted by QTel.

(company confidential information excluded)

Figure 5: Subscribers of access lines at a fixed location broken down by consumer segments
[company confidential]

(company confidential information excluded)

Figure 6: Number of fixed access lines in Qatar over time [company confidential]

With respect to this analysis, based on the data delivered by QTel, as well as the fact that Vodafone currently has not started any fixed access services, QTel has 100% market share and a market share of close to 100% can also be assumed for the foreseeable future.

4.2.3 M2: Public national telecommunications services at a fixed location

Also for M2 "Public national telecommunications services at a fixed location" data was solely delivered by QTel due to the fact that Vodafone has not launched fixed services until recently. A significant criterion to assess the market and competitive situation is the number of outgoing minutes (calls) from the respective (network) providers to fixed lines and to mobile subscribers. Figure 7 shows the development in minutes from the fixed network to other fixed subscriber lines and to mobile subscribers.

(company confidential information excluded)

Figure 7: Number of outgoing national minutes from QTel's fixed network in Qatar [company confidential]

From 2006 onwards and up until 2010, a substantial growth in traffic can be found. In line with SPs responses to the CD, market developments give no indication for FMS. The revenues forecast for that market indicates a growth of revenues in next 2-3 years.

³¹ cf. Figure 2

³² Indications as to the start of Vodafone's fixed operation and the expected number of fixed customers were not available.

4.2.4 M4: Broadband services at a fixed location

M4 “Broadband services at a fixed location” is characterised by a near-monopolistic situation with QTel as the single provider, as Vodafone’s operations are limited to The Pearl Qatar. For an initial assessment of the development of the market the number of subscribers is a suitable criterion, as QTel is currently providing the overwhelming majority of fixed broadband services. The market for broadband is growing, as well as the access bandwidths to which the end users are subscribing. Figure 8 shows this development.

(company confidential information excluded)

Figure 8: Broadband services at a fixed location broken down by bandwidth, consumer segments and dial-up subscribers [company confidential]

Figure 9 shows QTel’s total revenues from fixed broadband services, as well as dial-up services. Their development in terms of subscribers displays a relatively strong increase of residential DSL lines and a small increase of business DSL lines. Dial-up services will be completely substituted by broadband services soon. IPTV services revenues are forecasted to grow significantly. QTel also publicly announced the FTTH programme in March 2010, where existing connections over copper cables are going to be replaced with high-speed fibre connections.

(company confidential information excluded)

Figure 9: Dial-Up and DSL subscribers in Qatar [company confidential]

4.2.5 M5: Retail leased lines

Also M5 for “Retail leased lines” is characterised by a monopolistic situation with QTel being the only provider. The market for national leased lines is growing in terms of revenues and subscribers, which can be seen below.

(company confidential information excluded)

Figure 10: Retail leased lines revenues in Qatar [company confidential]

(company confidential information excluded)

Figure 11: Retail leased lines revenues in Qatar [company confidential]

The forecast based on the QTel’s data shows future development of that market. The revenues forecast for retail leased line services also suggests an increase of revenues within next 2-3 years.

4.2.6 M8: Origination on public telecommunications networks at a fixed location

There are no specific figures available on origination on public switched networks except the volumes for outgoing national traffic that has already been analysed in conjunction with the corresponding retail market M2 (cf. section 4.2.3). As QTel enjoys 100% market share in this related retail market, it does also have an identical position in the origination market. Hence, the market is characterised by the absence of competition.

4.2.7 M9: Termination on public telecommunications networks at a fixed location

In the market for “Termination on public telecommunications networks at a fixed location”, each SP has a monopoly, i.e. 100% market share in its own network. This result is due to the fact that termination on individual networks cannot be substituted by the corresponding services of another SP. SPs demanding termination of another SP as a wholesale service are required to request this from the respective SP serving the customers subscribed to that network. In accordance with international best

practice (as long as the calling party pays principle prevails), the finding of dominance for termination on public networks is undisputed and each SP on that market has a dominant position *per se*. Figure 12 shows the development of minutes and revenues related to termination on the fixed network of QTel. Although prices are set in the Interconnect Contract between QTel and Vodafone at 0.074 QAR/minute, the volume growth has so far provided with ever rising revenues.

As set out above a DP in the termination market is defined *per se* and as such Vodafone is a DSP on this market M9 at the time of market entry.

(company confidential information excluded)

Figure 12: Termination in fixed networks (revenues and call volumes) (company confidential)

4.2.8 M10: Wholesale physical network infrastructure access

M10 “Wholesale physical network infrastructure access” encompasses wholesale products which are necessary for the production of various retail products. The market comprises the wholesale market for access lines as well as access to passive infrastructures and specifically defined products. External revenues and access lines provided to other wholesale customers are hardly existent. Hence, no competition or development towards competition can be identified in this market yet and QTel enjoys the DSP position in this market.

In line with international best practice, ictQATAR follows the trend to define a generic wholesale infrastructure access market as recently defined within the EU framework.³³

The EU recommendation speaks about a market for “Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location”. This is also being further detailed in provisions and regulatory measures in a number of countries not only in connection with market analyses and dominance designation but also on the legislative level. Access to physical infrastructure and facility sharing has been made an element of the legislative framework in Portugal, Austria, France and Slovenia and that also access to passive infrastructure has been imposed by many national regulators³⁴. This has been the case for example in Denmark, Greece, Estonia, Slovenia, Portugal, Germany³⁵, France as well as Spain.

Most EU member states consistently apply a separation of market for wholesale physical access and market for wholesale broadband access whereby the first one deals with wholesale physical access in the form of unbundling of the access loop (in whatever technology) and ancillary facilities whereas market five deals with a wholesale bitstream access product which is a managed data stream³⁶. This market is defined as wholesale broadband access meaning a network access based on active network elements including bitstream access at a fixed location. The wholesale broadband access market is

³³ The EU recommendation specifies “Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location”, see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:344:0065:0069:EN:PDF>, p. 5.

³⁴ The 15th EU implementation report

http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/15th/index_en.htm).

³⁵ The German regulatory authority in January 2011 published the draft of remedy decision which deals not only with wholesale physical access on existing network infrastructure level but also with wholesale physical access to FTTH access lines including ancillary services such as access to passive infrastructure, collocation, ducts, dark fibre, access to street cabinets etc. All of this is comprised in one overall generic market. This has amongst others led regulators to slightly revised concepts as regards remedies for example in the UK where a new wholesale product called “active line access” respectively “virtual unbundling” has been developed, which complements different forms of passive and active access and develops the local loop unbundling concept further. A similar approach has been chosen in Austria where also with the latest decision on this market the incumbent operator has been obliged to provide a reference offer for a wholesale product called virtual unbundling (<http://www.rtr.at/de/pr/PI26012011TK>)

³⁶ The European Regulators Group report on “NGA Economic Analysis and Regulatory Principles”, 2009, see http://erg.eu.int/doc/publications/erg_09_17_nga_economic_analysis_regulatory_principles_report_090603_v1.pdf.

situated downstream from the physical access covered by the wholesale physical access market, and the wholesale broadband access can be constructed using this input combined with other elements³⁷.

4.2.9 M11: Wholesale access to broadband services at fixed locations

M11 "Wholesale access to broadband services at fixed locations" is a relevant input for access demand seekers and thus directly related to the respective retail market "Broadband services at a fixed location". The provision of products and services is again only done nearly wholly internally within QTel and serves its own end users. To this point in time there are no revenues (no services sold) from access lines provided to other wholesale customers. Therefore, the market situation itself confirms that QTel is a DSP on the wholesale access to broadband services at fixed locations market.

4.2.10 M12: Wholesale leased lines

For M12 "Wholesale leased lines" no revenue has been submitted for wholesale leased lines in Qatar. Due to the situation in the related retail market, it is evident that QTel holds a DSP position on the market for wholesale leased lines, especially given the fact that there is no other licensed SP that has effectively entered the fixed market and such SP is not expected to enter the market in the foreseeable future.

4.2.11 M13: Access and origination on public mobile networks

There are no figures available on origination on public mobile networks except the volumes for outgoing national traffic that will be analysed in conjunction with the corresponding retail market M3. To this point in time there are no revenues (no services sold) to other wholesale customers. Therefore, the market situation itself confirms that QTel is a DSP on the market and that the market is not characterised by competition.

4.2.12 M14: Termination on public mobile networks

As in M9 for "Termination on public telecommunications networks at a fixed location", M14 "Termination on public mobile networks" constitutes an individual network monopoly for each SP offering that service.

This is due to the fact that termination in individual networks cannot be substituted by the corresponding services of another SP. SPs demanding termination of another SP as a wholesale service are required to request this from the respective SP serving the customers subscribed to that network.

If one of the SPs would potentially increase the termination rate, there would be no possibility to switch to another SP for this wholesale service. In order to provide retail services each SP has to accept the terms offered (or to request ictQATAR to resolve the dispute) and thus there is no potential for countervailing buying power, (see section 4.2.7 and the per se criteria there). Figure 13 displays the number of termination minutes in particular mobile networks for 2010 and forecast up until 2013. This comprises traffic from the respective other mobile SP in Qatar plus international incoming traffic to Qatari mobile networks.

(company confidential information excluded)

³⁷ In a simplified approach this distinction means the EU market 4 rather refers to layer 1 of the network infrastructures whereas EU market 5 refers to layers 2 and 3 of the network infrastructure. The ERG also points out that the majority of national regulators consider that ducts are to be regarded as an ancillary service of EU market 4. France, Germany and the other countries mentioned above are following this approach which very clearly points out that there are network infrastructure elements, which may not even be telecommunications specific, but which are required as a wholesale input to provide the respective service to the end-users.

Figure 13: Voice termination traffic in mobile networks in Qatar [company confidential]

On that market both, QTel and Vodafone are DSPs and have a dominant (monopoly position) *per se*.

4.3 Dynamic Relevant Markets

As set out in the Shortcut Process, due to the competitive developments visible in some of the Relevant Markets, the following retail markets are analyzed in more detail in the sections 4.3.1 to 4.3.3 below:

- M3: Public international telecommunications services at a fixed location and via a mobile device;
- M6: Public national telecommunications services via a mobile device; and
- M7: Broadband services via a mobile device.³⁸

The dominance analysis therein will lead to a confirmation or revision of the previous notion of dominance of QTel, and to a first assessment whether dominance exists on M7 Broadband services via a mobile device, as this market was not defined in MDDD 2008.

The analysis of the non-dynamic Relevant Markets subsequent sections are based on a broad set of competition criteria, as outlined in Article 72 of the Executive By-Law and in line with international competition law.

4.3.1 M3: Public International telecommunications services at a fixed location and via a mobile device

4.3.1.1 Product market

ictQATAR considers that international calls from a fixed location and from a mobile device in Qatar which terminates abroad are substitutes for one another and constitute a single market. The Relevant Market for international telecommunications services is strongly influenced by expatriates, which represent around 80% of the population in Qatar³⁹. These consumers exhibit mostly elastic demand and are thus very sensitive to price changes, irrespective of whether international calls are made from a fixed location and from a mobile device. Also similar prices for international calls can be observed. Therefore, it can be presumed that international calls at a fixed location and at a mobile device constitute a common market.

The consideration of the markets for access, national call services and international call services in fixed and mobile markets lead to the following conclusion as regards the delineation of markets:

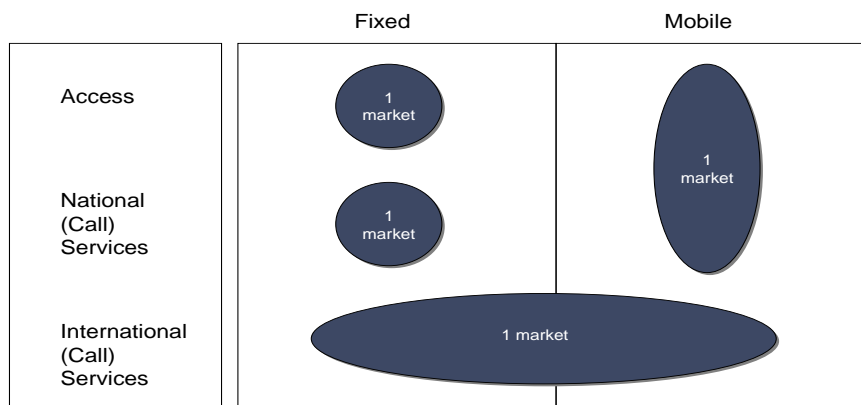


Figure 14: Access and call (services) market at fixed locations and at a mobile device.

³⁸ This market was not defined in the MDDD 2008.

³⁹ Cf. e.g. <http://www.cies.org/country/qatar.htm>.

Figure 15 and Figure 16 show that average prices for IDD from a mobile device are close to the corresponding fixed IDD charges in 2010 and are expected to remain on a comparable, still slightly decreasing, level in the coming years.

(company confidential information excluded)

Figure 15: Average prices (fixed and mobile) for international calls (QAR/min) [company confidential]

Figure 15 shows the average prices for international outgoing calls from Vodafone and for QTel. (company confidential information excluded)

Figure 16 compares only the prices for international calls for mobile customers. Both figures display, that the prices for QTel and Vodafone are similar and follow this trend for the future.

(company confidential information excluded)

Figure 16: Average prices (mobile) for interantional calls (QAR/min) [company confidential]

Summing up the above international calls originated at a fixed location and at a mobile device constitutes a common product market. Furthermore, this market encompasses business and residential consumers, as well as pre-paid and post-paid mobile products.

4.3.1.2 Market analysis

ictQATAR considers that international calls terminating on fixed and mobile terminals abroad are substitutes for one another, irrespective of whether international calls are made from a fixed or a mobile access and constitute, therefore, a single market.

This market is served by two SPs of which Vodafone is largely providing services related to mobile end customers while QTel is also providing fixed access line related services.

An analysis regarding calling cards as a separate market has been undertaken as well. It focuses on QTel only, as Vodafone did not launch calling card products prior to December 2010. Figure shows the voice traffic from calling cards originating at fixed and mobile devices.

(company confidential information excluded)

Figure 17: Voice traffic (minutes) from Calling Cards (fixed and mobile) [company confidential]

The following figure displays the corresponding revenue data.

(company confidential information excluded)

Figure 18: Revenues from Calling Cards [company confidential]

International SMS and MMS traffic has been analyzed separately as well. Figure 19 shows the percentage of outgoing international SMS and MMS for both networks.

(company confidential information excluded)

Figure 19: Outgoing international SMS and MMS [company confidential]

4.3.1.3 Dominance Analysis

Figure 20 to Figure 23 shows the competitive impact of the market entry of the second licensed operator, Vodafone. Vodafone entered the market on 7 July 2009. Consistent and actual figures, however, are only available for the year 2010, numbers for the years 2011 to 2013 represent estimates. Vodafone was able to gain some market share measured in revenues (company confidential information excluded) [company confidential] as well as in voice minutes (company confidential information excluded) [company confidential] in 2010. Nevertheless QTel has and, for the foreseeable future will have a very high market share.

Vodafone did not only expand the total market, but could also successfully acquire market share from QTel, and is expected to grow further. This is explained in underpricing the incumbent operator, something which is to be seen as a quite typical entrepreneurial behavior for (late) market entrants.

(company confidential information excluded)

Figure 20: International telecommunication services revenue – total market share [company confidential]

(company confidential information excluded)

Figure 21: International voice revenues - market share [company confidential]

(company confidential information excluded)

Figure 22: International voice traffic per operator - minutes [company confidential]

(company confidential information excluded)

Figure 23: International voice traffic: minutes [company confidential]

Article 72 of the Executive By-Law assigns specific importance to the role of market shares, in as much as in the absence of evidence to the contrary, they may deem that an individual SP with a share of more than 40 percent of the Relevant Market is a DSP. According to this, there is a strong presumption of dominance in case of the underlying market of public international telecommunications services in Qatar, where QTel still holds market shares far above that threshold level. According to international principles of competition law and best practice, large market shares, i.e., in excess of 50 %, provide, apart from exceptional circumstances, evidence of the existence of a dominant position (see e.g. EC SMP Guidelines⁴⁰ para 75).

Vodafone realized a significant gain of market shares since 2009, but it remains to be seen whether Vodafone's market share will increase at the same rate or as significantly within the next years. In contrast, international experience indicates a pronounced non-linear development of market shares of mobile entrants, with a decreasing growth pattern in succeeding years⁴¹. This is mainly due to first mover and other incumbency advantages, which are rooted in features such as switching costs, customer inertia, consumer desire for one-stop-shopping, uncertainty about quality, product loyalty, or reputation effects. These advantages constitute structural and strategic barriers and allow the incumbent operator to keep significant retail market shares despite higher average prices and infrastructure-based competition.

As fixed and mobile services are substitutes in this specific market, infrastructure is basically duplicable and infrastructure-based competition therefore feasible, and has already been established by the market entry of Vodafone. The actual infrastructure duopoly in the market for international telecommunications services also implies that the former control of facilities and infrastructure of QTel has been mitigated to some extent. But, without wholesale access obligations, service-based competition remains forestalled for any fixed-line business cases. But then, market barriers for infrastructure-based competition remain substantial, as full self-supply of infrastructure goes hand in hand with high sunk costs and economic risks. To launch fixed voice telephony services, an alternative network operator is usually confronted with the following sunk outlays: investment in interconnection measures (such as interconnection negotiations, interconnection links, collocation space or points of

⁴⁰ European Commission (2002), "Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services", Brussels.

⁴¹ Cf. for instance Bijwaard, G., Janssen, M., & Maasland, E. (2008), "Early mover advantages: An empirical analysis of European mobile phone markets", *Telecommunications Policy*, 32, 246-261, or Kretschmer, T., & Grajek, M. (2010), "What does Market Share Buy You? An Empirical Investigation of First Mover Advantages in the Mobile Phone Industry", ESMT working paper, Berlin.

interconnection), where it is rather unlikely that the market can be left without significant loss of investment. The same holds true for investment in billing systems which typically brings a large amount of system integration measures which cannot be recovered when leaving the market. The largest risk of sunk costs and investments however comes with access network activities on the one hand and voice service-specific marketing measures on the other hand. Operators investing in their own access networks have significant advantages with regard to quality and product differentiation, but are facing high sunk investments when leaving the market. The same holds true for marketing measures that cannot be recovered adequately when leaving the market, even when strong trade marks have been established for certain products⁴². Most of these sunk investments refer to both, fixed-line as well as mobile network operators.

Also given these market structural characteristics, there is no evidence to reject the current presumption of QTel's dominance on this Relevant Market on a forward looking assessment basis.

Figure 15 complements the market share analysis with a comparison of average prices for international voice traffic services. The implicit average price therein has been defined as the ratio of total revenues divided by total traffic whereby for QTel the average from mobile and fixed outgoing calls has been taken. According to Figure 15, the average price level for international calls has been decreasing significantly since 2005 and thus largely irrespective of the market entry of Vodafone in 2009. More details on the price development can be found in section 4.3.1.1. As suggested by the market analysis above, Vodafone undercut the price level of QTel in 2010 (company confidential information excluded) [company confidential] and therefore, market entry of Vodafone may provide some ongoing pressure on prices.

The overall market outcome can be additionally assessed by international (price) benchmarking. As motivated before, the average price level can be seen as a crucial indicator of market outcome and performance. According to a price study conducted by Teligen Strategy Analytics, the price level in Qatar as measured by a pre-defined international basket is rather low for the Arab region, but much higher than the OECD average⁴³. This situation holds more or less for both, fixed (QTel) and mobile (Vodafone) price baskets. Therefore, international price benchmarking indicates – ceteris paribus – a reasonably competitive environment for public international telecommunications services in Qatar.

4.3.1.4 Conclusion

The analysis above rests to a large extent on market shares based on revenues, but also on other structural characteristics of this specific market.

Article 72 of the Executive By-Law assigns specific importance to the role of market shares. ictQATAR may, in the absence of evidence to the contrary, deem that an individual SP with a share of more than 40% of the Relevant Market is a Dominant Service Provider. For the time being QTel has a market share significantly exceeding this 40% threshold.

The market entry of Vodafone has brought about substantial competitive impulses in 2009 and 2010 which will most probably extend to the next years. Examination of average prices and international benchmarking exhibits competitive signs.

But still, one cannot reject the fact of QTel's market dominance, due to its high level of market shares in conjunction with market barriers to entry that will persist to some non-negligible extent. This is especially the case as for the time being no further market entry is foreseen.

⁴² Cf. the in-depth analysis undertaken in Briglauer, W., Reichinger, K. (2008), "Chances of Contestability in Communications – A Sector-Specific Application", in: *Intereconomics*, Vol. 1, 51-64.

⁴³ Source: Teligen (2010), „Strategy Analytics – Insights for Success“ and Teligen (2010) Telecommunications Price Benchmarking for Arab Countries 2010 Report from the AREGNET Price Benchmarking Study.

ictQATAR has considered other metrics and material put forward (such as absolute and relative size of one operator, economies of scale and scope, possibility of market entry) and found no evidence, rebutting the presumption that QTel is dominant on this Relevant Market based on the market share threshold criteria, was available.

Therefore, it is justified to designate QTel as a DSP in this market.

The current data does not suggest that sustainable competition has yet been achieved, but the developments in this Relevant Market have been dynamic and in the foreseeable future this situation may change. Therefore it is reasonable to reassess the situation on this specific market quarterly to take the dynamic market changes into account (cf. section 2.3).

Although effective barriers to entry exist, ictQATAR believes that effective competition in a market with two players is theoretically possible. If indicators like price developments, customer behaviour, quality of services and other market indicators will point in that direction, the arguments of barriers to entry or the 40% market share as outlined in Article 72 of the By-Law will play a lesser role in finding a position of Dominance on a Relevant Market.

4.3.2 M6: Public national telecommunications services via a mobile device

4.3.2.1 Product market

End users are typically buying “functional basic packages” providing national and international calls, SMS, MMS, data⁴⁴ and further services like video calls. The end users typically buy access and services within the same packages⁴⁵. ictQATAR therefore defines one market for access and national services for those “functional packages”. Both SPs in Qatar launched a number of such functional basic packages (e.g. Hala, Control, Shahry for QTel and Freedom and Red for Vodafone)⁴⁶.

This market encompasses both, business and residential customers, as well as prepaid and post-paid mobile products.

4.3.2.2 Market analysis

The mobile markets in Qatar are characterised by dynamic elements and the new entrant, Vodafone, has in the last two years been able to gain a considerable footprint in the market, which can be seen in subscribers and traffic shares and in market share expressed in revenues.

The figures in this section demonstrate that like for international services via a mobile device, also the national market for public telecommunications services via a mobile device has experienced a competitive impact through the market entry of Vodafone. From the data provided by SP it is visible that the entry of Vodafone into the market in July 2009 has taken place in the pre-paid segment only which is, however, the by far larger market in Qatar. On the end of the year 2010 Vodafone had a SIM penetration of (company confidential information excluded) [company confidential]. The figure below shows QTel's penetration rate of prepaid and postpaid SIMs.

(company confidential information excluded)

Figure 24: QTel's penetration rate of prepaid and postpaid SIMs [company confidential]

QTel has been able to grow its total customer base throughout 2010, as the total market is still growing.

⁴⁴ Broadband services via a mobile device is discussed in 4.3.3 M7: Broadband services via a mobile device

⁴⁵ Cf. e.g. the products of QTel at <http://www.qtel.qa/Mobiles.do?prodtype=1> (retrieved 18 September 2010).

⁴⁶ Cf. e.g. <http://www.qtel.qa/Mobiles.do?prodtype=1> and <http://www.vodafone.com.qa/go/en/getstarted> where packages are called “plans”

Another impact of competition can be seen when looking at the retail prices for mobile subscriptions. Since 2007 a major reduction in retail prices has taken place, however, the largest share of this reduction took place before the market entry of Vodafone, namely in 2008. The prices for prepaid services (QTel's subscription fees) have decreased substantially from the pre-competition level of 2007, but dropped much less since the introduction of competition in 2009. This development provides a first indication that the structure of the market is developing towards a more competitive setting. Figure 25 shows that decrease and that price of QTel and Vodafone for prepaid services are converging.

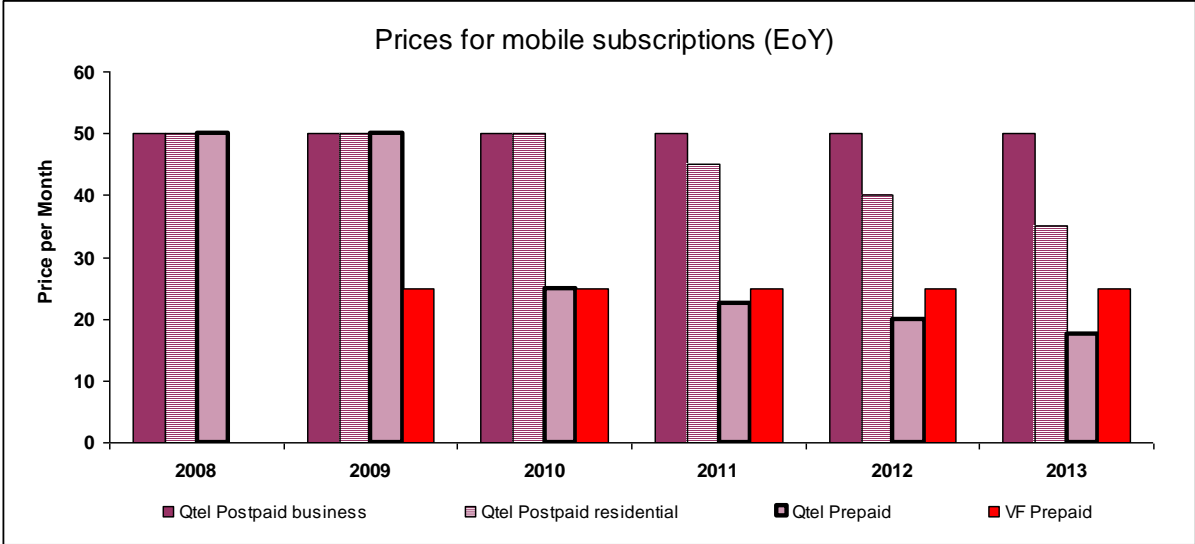


Figure 25: Price developments in mobile markets in Qatar

QTel reduced prices significantly after 2007 and since 2008 has maintained a relatively stable price level, especially for post-paid products, where limited competition has been experienced so far. Vodafone has entered the market in mid 2009 at a significantly lower price level for its prepaid products compared with QTel, and in 2010 the prices have been fairly equal for both. Price competition is a visible factor at least in the prepaid segment.

To underline the abovementioned results another analysis based on the criterion of national traffic development to fixed and mobile networks has been conducted (cf. Figure 26). The respective shares shown in the number of outgoing minutes are slightly different to the number of subscribers but with the same tendency.

When looking at the total outgoing national voice traffic in minutes, one can see that in 2010 the share Vodafone voice volume has already surpassed its share in terms of subscribers. Till 2013 the two SPs combined expect slightly increased traffic.

(company confidential information excluded)

Figure 26: Outgoing mobile national voice traffic (2010, %ages expressed in mintues) [company confidential]

At the moment, QTel has almost two-thirds of the overall outgoing national voice traffic compared to one-third of Vodafone. According to the SP's projections, this might fundamentally change in future.

(company confidential information excluded)

Figure 27: Market shares for outgoing mobile national voice traffic (2010-2013) [company confidential]

A completely different picture compared to the development of the outgoing national voice traffic arises from an analysis of the outgoing national voice revenues. Currently QTel has an overwhelming market share and during the forecasted period only minor changes are expected. This holds in the period until

2013 where QTel's shares are still very high. Whereas Vodafone submitted complete data, QTel – with respect to revenues - submitted data only for mobile to mobile on-net. Adding potential revenue for QTel for mobile to mobile off-net and mobile to fix would increase QTel's market share on revenues even further.

(company confidential information excluded)

Figure 28: Market shares for outgoing mobile national voice revenues (actual and forecast 2010-2013)

[company confidential]

4.3.2.3 *Dominance analysis*

Looking at market positions of the SPs it also needs to be considered that no further market opening and entry by further competitors is envisaged. This constitutes a barrier to entry as further competition could arise from licensing further operators, however, further licensing is not the only means to achieve a more intense competition, see section 4.3.1.4.

Whereas the trend for voice traffic is very interesting in terms of Vodafone gaining substantial market share in a short period of time, the number of outgoing national SMS and MMS shows a less dynamic development and even in 2013 QTel might hold a very high market share. Overall market shares for both SP are presented below.

(company confidential information excluded)

Figure 29: Market shares for public national telecommunication services via mobile device (actual and forecast 2010-2013) [company confidential]

Article 72 of the Executive By-law assigns specific importance to the role of market shares, in as much as the absence of evidence to the contrary, they may deem that an individual SP with a share of more than 40% of the Relevant Market is a DSP, which is also according to international best practise. According to this, there is a strong presumption of dominance in case of the underlying market of public national telecommunications services via a mobile device. At the end of the year 2010 QTel still holds market shares which are significantly above the threshold level which effectively qualifies for regulation as a DSP. However, also the other criteria listed in Article 72 of the By-law have been investigated.

These criteria are, as outlined for market M3 above, related to market barriers including any asymmetries between incumbent and entrant firm. For this market (M6) there are also asymmetries regarding access to inputs, information and business relations, and demand. QTel profits from the same advantages in this market as in market 3 (e.g. economies of scale and scope, access to well established infrastructure) as well as from its long-term relationship to especially business users which are more reluctant to switch providers and are less price sensitive. The well established relationships in the post-paid segment in general (knowledge about consumer behaviour) as well as to business users specifically provide QTel with a significant advantage (such as e.g. regarding the transaction costs to switch or the advantageous on-net traffic).

Although infrastructure of Vodafone has been partially deployed and therefore the advantage of QTel with respect to access and control of infrastructure is smaller than in the MDDD 2008 process QTel as the only provider of access to physical infrastructure and wholesale leased lines has the potential to limit the competitive development of the market also for public national telecommunications services via a mobile device. Thereby, QTel has the possibility to bundle products and services from the mobile and the fixed network to a larger extent than Vodafone, which for the time being, (as Vodafone has not yet entered the fixed market to a considerable extent) creates an effective market barrier and allows QTel to leverage some advantages from the fixed network to the mobile.

For Vodafone, despite some disadvantages stemming from market barriers, it seems likely that the increase in terms of subscribers as well as traffic is continuing. Already in 2011, with respect to voice

traffic, Vodafone expects to have gained considerable market share. However, whether this takes place in reality remains to be seen. There is a large gap between Vodafone's share in traffic and in market share expressed in revenues. As customer behaviour is very volatile and price sensitive, it may be that Vodafone's high share of minutes is based on low prices (explaining the low market share in revenues).

There is, however, a strong reason for qualifying this market as dynamic which requires a more intensive and a more regular oversight in terms of conducting market analysis. It should be noted that the market comprises more than national voice traffic, amongst others also "pay as you go" data traffic, SMS and MMS, a market where Vodafone so far has not reached market shares which are close to the threshold level. Furthermore, it cannot be guaranteed that despite the rather successful market entry of Vodafone, it will continue to grow its market share in a continuous way over the next years.

4.3.2.4 Conclusion

The analysis above rests to a large extent on market shares based on revenues. Article 72 of the Executive By-Law assigns specific importance to the role of market shares. ictQATAR may, in the absence of evidence to the contrary, deem that an individual SP with a share of more than 40% of the Relevant Market is a Dominant Service Provider. For the time being QTel has a market share significantly exceeding this 40% threshold. ictQATAR has considered other metrics and material put forward and found no evidence, rebutting the presumption that QTel is dominant on this Relevant Market based on the market share threshold criteria, was available.

Also the consideration of other criteria of Article 72 of the Executive By-Law lead to the conclusion that QTel is to be designated as a DSP in this market. Therefore, it is justified to designate QTel as a DSP in this market.

The market entry of Vodafone has brought competitive impacts in the last 18 months and, if it continues to do so, will lead to a further strengthening of Vodafone's market position throughout 2011 and 2012. However, at this point in time, this does neither justify designating Vodafone as DSP in this market nor to lift the DSP designation of QTel.

Due to the strong dynamics it is reasonable to reassess the situation on this specific market quarterly to take the dynamic market changes into account (cf. section 2.3).

4.3.3 M7: Broadband services via a mobile device

4.3.3.1 Product market

Market developments, also due to technological progress, show that bandwidths in mobile networks are rapidly increasing (from GPRS to EDGE to UMTS to HSxPA towards LTE). Although LTE is not yet implemented, the forward looking character of this MDDD requires considering this technology as relevant in principle. A technology neutral regulation does not differ between technologies, if these all provide the same or comparable end user services and the suppliers can switch technology. Modern mobile devices typically use GSM and/or UMTS.

Throughout the world the interest to use Internet via mobile devices (e.g. smart phones, laptops) has been increasing drastically⁴⁷ and these products are gaining importance. Also in Qatar we have seen the introduction of various products in multiple variants from QTel and Vodafone in the last year.

Data services via a mobile device are available in the following three ways:

- (1) With the standard subscription (pay as you go), for which the typical pattern of usage is occasionally, as the price per MB is much higher than the other options.

⁴⁷ Cf. Bank of America Merrill Lynch, Global Wireless Matrix e.g. 4Q10

- (2) As an add-on pack to the standard subscription (with the same SIM card). For a fixed amount the user gets a fixed amount of data per month. This is typically used by smart phone users and marketed by QTel⁴⁸ and Vodafone⁴⁹ as Mobile Internet.
- (3) Mobile Broadband is marketed by QTel⁵⁰ and Vodafone⁵¹ as a stand alone subscription with a separate SIM card for e.g. USB modems, data cards and tablet PCs.

M7 Broadband services via a mobile device includes the products Mobile Internet and Mobile Broadband, whereas the occasional use (pay as you go) remains included in M6. Data services included in M6 are the typically occasional usage of data services (pay as you go, or some allowance included in the standard subscription). Heavy data users typically use a separate (add-on) subscription for smart phones or have separated/dedicated SIM cards for data cards/tablet PCs.

4.3.3.2 Market analysis

Mobile Internet and Mobile Broadband are offered by both, QTel and Vodafone. These products show a much lower QAR/MB price than “pay-as-you-go” data. Table below shows the price differences between those services⁵².

⁴⁸ Cf. <http://www.qtel.qa/mobileinternet.do> QTel e.g. markets voice, data, SMS, Internet access via smartphones by selling packages of different data volumes as mobile Internet: “A Mobile Internet Pack is basically a price plan for Shahrly customers where you pay for a defined volume of data for surfing, mailing, downloading and so on. You can also pay as you go - which is probably best for very light users who very occasionally need Internet access. If, during any month you exceed your data allowance (and we will tell you before you do), then you can still surf and simply pay an Out-of-Plan excess charge per MB which will be included in your next bill. ”

⁴⁹ Vodafone also offers Mobile Internet as add on to Freedom and Red accounts, including a fixed amount of data for a set price <http://www.vodafone.com.qa/go/en/getstarted/mobileinternet/mobileinternethome> accessed 1 Feb 2011.

⁵⁰ http://www.qtel.qa/Mobile_Broadband.do: Mobile Broadband service offers internet connectivity from a data only SIM to be used with USB modems, or any 3G-enabled devices. When used with HSDPA compatible devices, Mobile broadband customers can access the Internet in areas across Qatar at similar speeds to those enjoyed by customers on an ADSL broadband connection in the home. QTel provides customers with both a post-paid and pre-paid service offering.

⁵¹ Vodafone offers Mobile Broadband Plans (“Browse the Internet from anywhere at high speed! All you need is a Mobile Broadband plan, a USB stick and your computer.”) in Freedom and Red flavours <http://www.vodafone.com.qa/go/en/getstarted/mobilebroadband/home> accessed 1 Feb 2011.

⁵² http://www.qtel.qa/documents/C10-01_Postpaid_mobile_services.pdf
<http://www.vodafone.com.qa/go/en/getstarted/mobileinternet/mobileinternethome>
<http://www.qtel.qa/documents/C12-01PostpaidMobileBroadband.pdf>
<http://www.vodafone.com.qa/go/en/getstarted/mobilebroadband/home>

"Pay as you go"		MB	QAR	QAR/MB	
QTel	HALA (prepaid)			10.00	
	Shahry (postpaid)			10.00	
Vodafone	Red			2.00	
	Freedom			2.00	
			min	2.00	
			max	10.00	
Mobile Internet		MB	QAR	QAR/MB	Multiple to "pay as you go"
QTel	Mobile Internet 50 MB		50	25	0.50
	Mobile Internet 250MB		250	50	0.20
	Mobile Internet 1 GB		1000	100	0.10
	Mobile Internet 3 GB		3000	200	0.07
Vodafone	Red		75	50	0.67
	Freedom		300	50	0.17
			min	0.07	30 times less expensive
			max	0.67	15 times less expensive
Mobile Broadband		MB	QAR	QAR/MB	Multiple to "pay as you go"
QTel	Lite 2GB		2000	100	0.05
	Plus 5GB		5000	200	0.04
Vodafone	Red		500	100	0.20
	Freedom		2000	100	0.05
			min	0.04	50 times less expensive
			max	0.20	50 times less expensive

Figure 30: Price comparison for mobile data (source QTel and Vodafone webpages)

Due to severe price differences Mobile Internet and Mobile Broadband not a viable substitute for “pay-as-you-go” on a per MB basis from a (supply and) demand side perspective. Even in case of a small but significant increase in price (SSNIP test) it is highly unlikely that the Mobile Internet/Mobile Broadband user will switch to “pay-as-you-go” (rate card) prices. Therefore, from a demand side perspective we do not regard Broadband services via a mobile device as a substitute for M6: Public national telecommunications services via a mobile device, which includes “pay-as-you-go” data.

These products are a good example for the SSNIP text as one can imagine that in the case of an increase for the mobile internet product by 5 to 10% for the relevant packages / plans, customers would not churn to the “pay as you go” product.

Also as broadband services provided via a mobile device are not available with similar speed and quality as for broadband services provided at a fixed location (M4) mobile broadband can today not be regarded as a substitute. Also broadband services provided at a fixed location and mobile broadband show different characteristics in terms of availability.

ictQATAR finds that “Broadband Services via a mobile device” constitutes a separate market from “Public national telecommunication service via a mobile device”. In the data submitted QTel made a differentiation according to Mobile Internet and Mobile Broadband, Vodafone submitted information on Mobile Internet.

The following figure shows the mobile broadband penetration rate based on subscribers:

(company confidential information excluded)

Figure 31: Mobile Internet and Mobile Broadband penetration rates based on subscribers [company confidential].

4.3.3.3 Dominance analysis

The broadband services via a mobile device market in Qatar is dynamic and the new entrant, Vodafone, has in the last two years been able to gain a considerable part of the market regarding the

subscriptions as well as in market share expressed in revenues. The figures demonstrate that like for other dynamic mobile markets also the broadband services via a mobile device market has experienced a competitive impact through the market entry of Vodafone. Nevertheless, as one can see on Figure 32 QTel's market shares based on the revenues remains high and above the 40% threshold foreseen by the ARF.

As shown in the next figure QTel's combined revenues for Mobile Broadband and Mobile Internet decline slightly from 2009 to 2010, whereas Vodafone's (naturally) increased in the same period. According to the forecast supplied by the SPs there will remain a difference for the foreseeable future.

(company confidential information excluded)

Figure 32: Mobile Internet and Mobile Broadband: development of market shares based on revenue [company confidential].

The strong position of QTel in this market is in line with the overall strong market share of QTel, shown in the following figure:

(company confidential information excluded)

Figure 33: Total mobile revenues in Qatar [company confidential].

The figures demonstrate that Vodafone's market entry had a significant impact on the overall market. Vodafone has been able to gain a noteworthy market share for Mobile Internet and Mobile Broadband services. Looking at the forecasts this trend is likely to continue. Due to technical progress and the recent character of this market with first product offerings in 2008, these forecasts are not based on long time series and hence, as any forecast, uncertain.

As for markets M3 and M6 the market share criterion gives a strong presumption for dominance of QTel, not only because at the end of the year 2010 QTel still holds an overwhelming market share, which is significantly above the threshold level which effectively qualifies for regulation as a DSP.

The other criteria according Article 72 of the Executive By-law, as outlined for M3 and M6 above, relate to market barriers including any asymmetries between incumbent and entrant firm. For this market (M7) there are in principle the same asymmetries (access to inputs, information and business relations, and demand) from which QTel can draw advantages. These advantages maybe somewhat smaller than in market M6 due to the fact, that mobile broadband is a "younger" market, in which the historic advantages of QTel are less visible than in market M6. But the technical infrastructure necessary for delivering mobile broadband is largely identical to the infrastructure needed for other mobile services.

Besides a market share well above 50% the same arguments apply as in market M6 (access to input, economies of scale and scope, customer relationship), which indicates a position of dominance according to the criteria given in Article 72 of the Executive By-Law Also, bundling fixed and mobile broadband services gives QTel a further advantage as opposed to Vodafone. This will e.g. limit customer's incentives to churn which is one of the criteria listed in Article 72 of the Executive By-law

No further market opening and entry by further competitors is envisaged. This constitutes a barrier to entry as further competition could arise from licensing further operators, however, further licensing is not the only means to achieve a more intense competition, see section 4.3.1.4.

4.3.3.4 Conclusion

The analysis above rests to a large extent on market shares based on revenues, supported by subscriber shares.

Article 72 of the Executive By-Law assigns specific importance to the role of market shares. ictQATAR may, in the absence of evidence to the contrary, deem that an individual SP with a share of more than 40% of the Relevant Market is a Dominant Service Provider. For the time being, QTel has a market share significantly exceeding this 40% threshold. ictQATAR has considered other metrics and material put forward and found no evidence rebutting the presumption that QTel is dominant in this Relevant Market based on the market share threshold criteria.

Also the consideration of other criteria of Article 72 of the Executive By-Law lead to the conclusion that QTel is to be designated as a DSP in this market. Therefore, it is justified to designate QTel as a DSP in this market.

Due to the strong dynamics, it is reasonable to reassess the situation on this specific market quarterly to take the dynamic market changes into account (cf. section 2.3).

5. Annex A – Reporting required for the “Shortcut” process

This Annex contains the basic indicators for the Shortcut Process, as described in section 2.3 The Shortcut Process within MDDD 2010. This list may be amended if necessary.

METRIC	DESCRIPTION	UNITS	COMMENTS	2010	2011	2011	2011	2011	2011	...
				Total	Q1	Q2	Q3	Q4	...	
Retail										
Market 1 Access to public telecommunications networks at a fixed location										
Volume / Subscriptions										
Lines (subscriptions)										
- Residential POTS subscriptions	Number of active subscriptions	#	at end of quarter							
- Business POTS subscriptions	Number of active subscriptions	#	at end of quarter							
- Business ISDN BRI subscriptions	Number of active subscriptions (2 channels per line)	#	at end of quarter							
- Business ISDN BRI channels	Number of active channels (2 channels per BRI access)	#	at end of quarter							
- Business ISDN PRI subscriptions	Number of active subscriptions (30 channels per line)	#	at end of quarter							
- Business ISDN PRI channels	Number of active channels	#	at end of quarter							
- Managed VoIP subscriptions	Number of active subscriptions (excludes unmanaged VoBB/VoIP services)	#	at end of quarter							
Total Subscriptions	Sum of POTS subscriptions, ISDN BRI and PRI subscriptions and Managed VoIP subscriptions	-	at end of quarter	0	0	0	0	0	0	0
Total lines/channels	Sum of POTS subscriptions, ISDN BRI and PRI channels and Managed VoIP subscriptions	-	at end of quarter	0	0	0	0	0	0	0
Financial Metrics										
Access revenues (subscription)	Authorised Services according to Annexure B of the Licenses	QAR	quarter							
other revenue 1	Authorised Services according to Annexure B of the Licenses	QAR	quarter							
other revenue 2	Authorised Services according to Annexure B of the Licenses	QAR	quarter							
other revenue 3	Authorised Services according to Annexure B of the Licenses	QAR	quarter							
other revenue 4	Authorised Services according to Annexure B of the Licenses	QAR	quarter							
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR	quarter	0	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR	quarter							
Total Revenue for the Market		QAR	quarter	0	0	0	0	0	0	0
Market 2 Public national telecommunications services at a fixed location										
Volume / Subscriptions										
National traffic										
- F.F (own network)	minutes to fixed national (own network)	#	technical minutes (not billed minutes) / quarter							
- F.F (OLO)	minutes to fixed national (other OLO networks)	#	technical minutes (not billed minutes) / quarter							
- F.M (own network)	minutes to mobile national (own network)	#	technical minutes (not billed minutes) / quarter							
- F.M (OLO)	minutes to mobile national (other OLO networks)	#	technical minutes (not billed minutes) / quarter							
- Calling cards (own and OLO)	minutes from calling cards to call national used on fixed networks	#	technical minutes (not billed minutes) / quarter							
Total Traffic		#	technical minutes (not billed minutes) / Q	0	0	0	0	0	0	0
Financial Metrics										
National call revenues										
- F.F (own network)	revenues from fixed national calls	QAR	quarter							
- F.F (OLO)	revenues from fixed national calls	QAR	quarter							
- F.M (own network)	revenues from mobile national calls	QAR	quarter							
- F.M (OLO)	revenues from mobile national calls	QAR	quarter							
- Calling cards (own and OLO)	revenues from calling cards to call national used on fixed networks	QAR	quarter							
other revenue 1		QAR	quarter							
other revenue 2		QAR	quarter							
other revenue 3		QAR	quarter							
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR	quarter	0	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR	quarter							
Total Revenue for the Market		QAR	quarter	0	0	0	0	0	0	0
Market 3 Public international telecommunications services at a fixed location and via a mobile device										
Volume / Subscriptions										
- F.I	minutes from fixed to international (fixed and mobile destinations)	#	technical minutes (not billed minutes) / quarter							
- M.I	minutes from mobile to international (fixed and mobile destinations)	#	technical minutes (not billed minutes) / quarter							
- Calling cards:I	minutes from calling cards to call international (fixed and mobile destinations)	#	technical minutes (not billed minutes) / quarter							
Total Traffic				0	0	0	0	0	0	0
Financial Metrics										
- F.I	revenues from fixed to international	QAR	quarter							
- M.I	revenues from mobile to international	QAR	quarter							
- Calling cards F.I	revenues from calling cards (fixed) to call international used on fixed and mobile networks	QAR	quarter							
- Calling cards M.I	revenues from calling cards (mobile) to call international used on fixed and mobile networks	QAR	quarter							
other revenue 1		QAR	quarter							
other revenue 2		QAR	quarter							
other revenue 3		QAR	quarter							
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR	quarter	0	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR	quarter							
Total Revenue for the Market		QAR	quarter	0	0	0	0	0	0	0
Market 4 Broadband services at a fixed location										
Volume / Subscriptions										
BB subscribers - copper based		#	at end of quarter	2						
2Mbps to less than 10 Mbps	All copper based subscriptions with advertised downstream speed equal to, or greater than, 2 Mbps and less than 10Mbps			1						
Above 10Mbps	All copper based subscriptions with advertised downstream speed equal to, or greater than, 10Mbps			1						
BB subscribers - fibre based		#	at end of quarter	2						
2Mbps to less than 10 Mbps	All fiber based subscriptions with advertised downstream speed equal to, or greater than, 2 Mbps and less than 10Mbps			1						
Above 10Mbps	All fiber based subscriptions with advertised downstream speed equal to, or greater than, 10Mbps			1						
BB subscribers - other fixed technology		#	at end of quarter	2						
2Mbps to less than 10 Mbps	All other fixed technology based subscriptions with advertised downstream speed equal to, or greater than, 2 Mbps and less than 10Mbps			1						
Above 10Mbps	All other fixed technology based subscriptions with advertised downstream speed equal to, or greater than, 10Mbps			1						
Total Subscribers		#	at end of quarter	6	0	0	0	0	0	0
Financial Metrics										
BB subscriptions revenues		QAR	quarter							
other revenue 1		QAR	quarter							
other revenue 2		QAR	quarter							
other revenue 3		QAR	quarter							
other revenue 4		QAR	quarter							
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR	quarter	0	0	0	0	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR	quarter							
Total Revenue for the Market		QAR	quarter	0	0	0	0	0	0	0

Market 5 Retail leased lines						
Financial Metrics						
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-			
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter				
Total Revenue for the Market		QAR/quarter	-	0	0	0
Market 6 Public national telecommunications service via a mobile device						
dynamic market						
Volume / Subscriptions						
Subscriptions						
- Post-paid	active subscribers	# at end of quarter				
- Pre-paid	active subscribers	# at end of quarter				
Total Subscriptions				0	0	0
Traffic						
- M-M (own)		# technical minutes (not billed minutes) /quarter				
- M-M (OLO)		# technical minutes (not billed minutes) /quarter				
- M-F (own)		# technical minutes (not billed minutes) /quarter				
- M-F (OLO)		# technical minutes (not billed minutes) /quarter				
Total Traffic (national)		# technical minutes (not billed minutes) /quarter		0	0	0
Total SMS and MMS (national)		# end of quarter				
Financial Metrics						
Revenues from subscriptions		QAR/quarter				
National call revenues						
- M-M (own)		QAR/quarter				
- M-M (OLO)		QAR/quarter				
- M-F (own)		QAR/quarter				
- M-F (OLO)		QAR/quarter				
SMS, MMS		QAR/quarter				
other revenue 1		QAR/quarter	pls specify			
other revenue 2		QAR/quarter	pls specify			
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter				
Total Revenue for the Market		QAR/quarter	-	0	0	0
Market 7 Broadband services via a mobile device						
dynamic market						
Volume / Subscriptions						
Mobile Internet	Separate subscription for for smartphones (same SIM card)	# at end of quarter	e.g. mobile internet			
Mobile Broadband	Data Card subscription for e.g. USB modems (separate SIM card)	# at end of quarter	e.g. mobile broadband			
Total Subscriptions	Data card subscription and separate SIM subscription	# at end of quarter		0	0	0
Mobile Internet	Separate subscription for for smartphones (same SIM card)	GB/quarter				
Mobile Broadband	Data Card subscription for e.g. USB modems (separate SIM card)	GB/quarter				
Total Traffic	Total data traffic in GB sent by Data Card subscribers	GB/quarter		0	0	0
Financial Metrics						
Mobile Internet revenues	Separate subscription for for smartphones (same SIM card)	QAR/quarter				
Mobile Broadband revenues	Data Card subscription for e.g. USB modems (separate SIM card)	QAR/quarter				
Revenue	Authorised Services according to Annexure B of the Licenses (for this market only)	QAR/quarter	-	0	0	0
Other Revenue	Services other than according to Annexure B of the Licenses	QAR/quarter				
Total Revenue for the Market		QAR/quarter	-	0	0	0
Wholesale						
Market 8 Call Origination on public telecommunications networks at a fixed location						
Market 9 Call Termination on individual public telecommunications networks at a fixed location						
Market 10 Wholesale physical network infrastructure access						
Market 11 Wholesale access to broadband services at fixed locations						
Market 12 Wholesale leased lines						
Market 13 Termination on individual mobile network						
Market 14 Access and call origination on public mobile networks						
Total Revenue for all wholesale Markets		QAR/quarter	-	0	0	0
Revenues: x-check with published financial statements						
Fixed Markets (1,2,3 partially,4,5,8-12)						
Total revenue for fixed markets (according to Annexure B and other than Annexure B)		QAR/quarter		0	0	0
Total revenue as per public reporting for retail fixed markets		QAR/quarter				
Difference		QAR/quarter		0	0	0
Explanation 1	for potential deviation	QAR/quarter				
Explanation 2	for potential deviation	QAR/quarter				
Explanation 3	for potential deviation	QAR/quarter				
Explanation 4	for potential deviation	QAR/quarter				
Explanation 5	for potential deviation	QAR/quarter				
Remaining Difference		QAR/quarter	ideally 0	0	0	0
Mobile Markets (3, partially, 6, 7, 13,14)						
Total revenue for mobile markets (according to Annexure B and other than Annexure B)		QAR/quarter		0	0	0
Total revenue as per public reporting for retail mobile markets		QAR/quarter				
Difference		QAR/quarter		0	0	0
Explanation 1	for potential deviation	QAR/quarter				
Explanation 2	for potential deviation	QAR/quarter				
Explanation 3	for potential deviation	QAR/quarter				
Explanation 4	for potential deviation	QAR/quarter				
Explanation 5	for potential deviation	QAR/quarter				
Remaining Difference		QAR/quarter	ideally 0	0	0	0

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Notice

of the

**Standards, Methodology and Analysis
to be applied in the Review of
Market Definition and Dominance Designation
in the Telecommunication Sector in Qatar**

ICTRA 2011/10/31b

31 October 2011

Final version

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1. Background and Introduction

On 24 June 2008, following public consultation, ictQATAR issued a Notice and Orders setting forth the standards, methodology and analysis for defining Relevant Markets and methodology and standards for determining market power (ICTRA 02/08 and ICTRA 02/08A). The Notice and Orders also designated Qatar Telecom (Qtel) Q.S.C. (**QTel**) as a Dominant Service Provider (**DSP**) in several wholesale and retail markets in the telecommunications sector in Qatar.

This Notice outlines in detail the standards, methodology, analysis and process of Market Definition and Dominance Designation (**MDDD**) including the review of the degree of market power or dominance of any service provider/s in the telecommunications sector at this point in time.

Decree Law 34 of 2006 on the promulgation of the Telecommunications Law and the Telecommunications Law (**Telecommunications Law**) explicitly provides for the designation of DSPs in Articles 19.5, 27, 23, 40 and 42. Article 40(3) of the Telecommunications Law provides for ictQATAR to determine the criteria that must be applied in the designation of Service Providers (**SP**) as having Significant Market Power (**SMP**), or being a DSP in identified telecommunications markets and implementing such criteria in any designation process.

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, stating what any Notice and Orders in this regard must specify, including the relevant products and services markets, the standards, methodology and circumstances relied upon, and the methodology operations for market power designation.

Article 42 also states that ictQATAR 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 1 of 2009 (**Executive By-Law**) provides for a Notice to be issued which establishes the standards and methodology that it will apply in determining whether SMP exists in a particular Relevant Market (Article 72). Article 72 lists the following elements, factors and criteria that may be included in the methodology to be applied:

- definition of the relevant telecommunications market or markets in terms of products and geographic scope.
- assessment of market power based on a review of the economic and behavioural characteristics of the Relevant Market and an examination of the extent to which a Service Provider, acting alone or jointly with others, is in a position to behave independently of customers or competitors.
- assessment of market share, size of the firm, degree of control of facilities and infrastructure, economies of scope and scale, absence of countervailing buyer power, barriers to entry and expansion, and any other factors present in a Relevant Market.

This generic framework of standards, methodology, analysis and the process for Market Definition and Dominance Designation set out in this Notice are derived from the Telecommunications Law, the Executive By-Law, the previous standards, methodology of international best practice and analysis applied in the Market Definition and Dominance Designation process of 2008.

The generic process followed by ictQATAR for MDDD can be summarised as follows:

1. Defining the Relevant Markets:

- Ascertaining demand-side and supply-side substitutability of products and services as well as in terms of geographic market delineation;
 - Distinguishing between Relevant retail and wholesale Markets;
 - Evaluating whether there is further customer segmentation; and
 - Considering other relevant factors such as: national differences, the effects of regulation, product diversification, chain substitution, current and potential competitive constraints, and expected market developments.
2. Assessing the degree of market power in those Relevant Markets, and
 3. Designating one or more SPs having a Dominant Position (**DP**) as a Dominant Service Provider (**DSP**).

The framework contained in this Notice has been an integral part of the analysis contained in the Consultation Document (**CD**) (ICTRA 2010/10/26 issued October 27th 2010) of the MDDD 2010 process. The framework contained in this Notice is also in line with the public mobile and fixed telecommunications networks and services licences issued to Qtel and Vodafone Qatar Q.S.C. (**Vodafone**) and may be applied to any other individual licensee.

2. The approach for Market Definition, Market Analysis and Dominance Designation (MDDD) in Qatar

The overall approach for the MDDD process in Qatar follows the process described in Figure 1 below. The steps of the process comprise (1) the identification of Baseline Markets, (2) definition of Relevant Markets, (3) Market Analysis and Dominance Designation and (4) Obligations of DSPs.

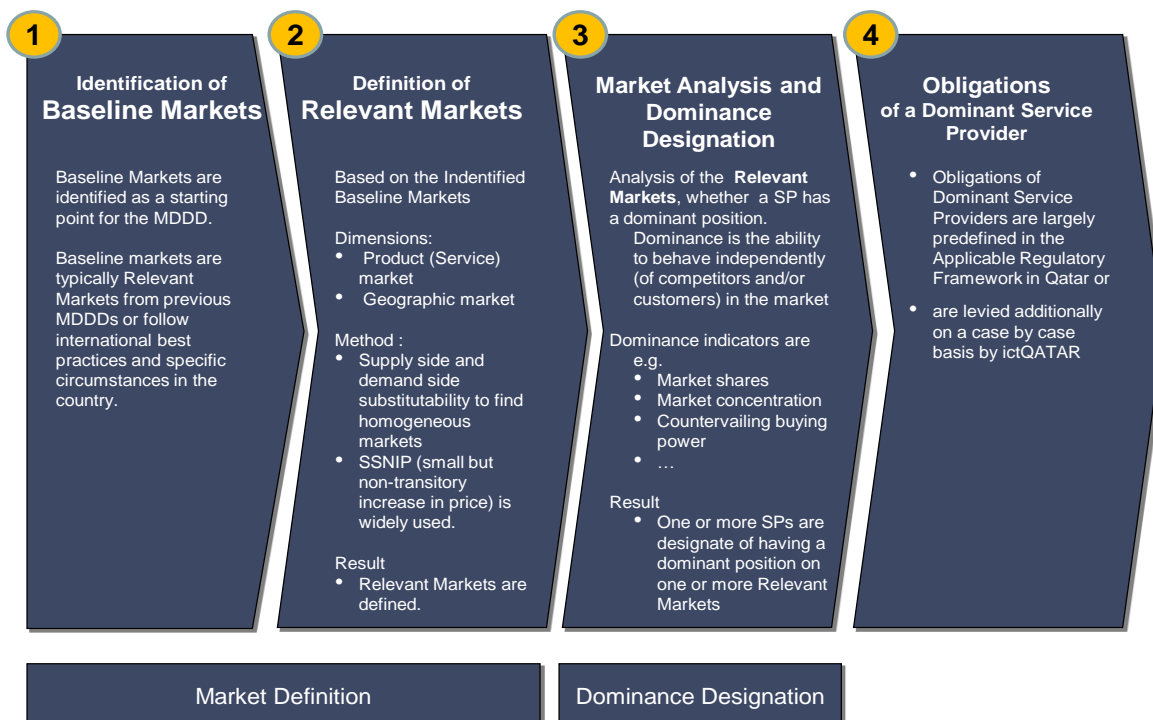


Figure 1: MDDD - generic process

Step (1) Identification of Baseline Markets; and, step (2) Definition of Relevant Markets:

The MDDD process starts with an identification of a list of proposed retail and wholesale markets (**Baseline Markets**) in terms of products and geographic scope. The Baseline Markets identification is based on the ictQATAR experience and on the national market specifics. It takes also international best practice into account. Following a consultation process and discussions with market entities about the proposed Baseline Markets, ictQATAR defines the Relevant Markets. Together, these two steps form the Market Definition process, which applies international best practice and common competition law principles. This takes into consideration major criteria for defining markets according to the product specifics and the geographic scope, and considers *inter alia* supply and demand side characteristics.

Section 4 provides an in-depth description of methods and dimensions of Market Definition.

Step (3) Market Analysis and Dominance Designation:

The Telecommunications Law explicitly provides for the designation of a DSP in Articles 19.5, 23, 27, 40, and 42, and for specific legal obligations to be imposed on DSPs including those relating to competition policy such as, but not limited to, Articles 41, 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. Dominance is additionally dealt with in the Executive By-Law in Chapter 8¹. Additionally, the Licenses of QTel and Vodafone contain obligations for a DSP.

According to Article 72(2) of the Executive By-Law, the MDDD process continues with the analysis of the defined Relevant Markets in a quantitative and qualitative respect to determine whether dominance exists in such Relevant Markets. ictQATAR analyzes the extent to which an SP, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. Thus, step 3 finally results in the designation of a DP in one or more Relevant Markets or may also produce the result that no DSP in one or more Relevant Markets is designated. Definition of relevant markets constitutes a prerequisite for dominance analysis but does not in itself automatically involve any anticipation on single or joint dominance. Section 5 of this Notice provides a generic description of methods and criteria used in dominance assessment.

Step (4) Obligations of a DSP:

The obligations of a DSP are set out in the Applicable Regulatory Framework (**ARF**)² and either apply automatically or are imposed by ictQATAR as required. Most of the obligations affecting DSPs and non-DSPs are largely pre-defined in the ARF³.

The following Section 3 of this Notice provides a comparison of the MDDD approach applied in Qatar with international best practice focussing on relevant applicable parts of the framework of the European Union (**EU**). Section 4 outlines the dimensions and methods of Market Definition. Section 5 contains the description of the methodology applied for market analysis and Dominance Designation.

3. International best practice for Market Definition and Dominance Designation

Some of the elements for MDDD in Qatar appear to be very similar to international best practise, especially the EU approach. On a closer look the approaches differ significantly when examined in

¹ This definition of SMP in the Telecommunication's Executive By-Law is in practice identical to the contents of the Telecommunications Law. In the By-Law, there is a slight clarification to the definition of SMP where it is stated that SMP will also be defined in accordance with the provisions of chapter nine of the Telecommunications Law along with Chapter eight of the Executive By-Law.

² The ARF comprises the relevant legal provisions in Qatar, *inter alia* but not limited to the Telecommunications Law, the Telecommunications Executive By-Law, the Licenses of the SP and any related regulations, rules, orders, notices, decisions, directions and instructions issued by ictQATAR.

³ The list of obligation is also enumerated in the Consultation Document, Annex I Obligations of DSPs.

detail. This section explains indicatively and alongside the presentation in Figure 2 the EU vs the Qatari framework for MDDD.

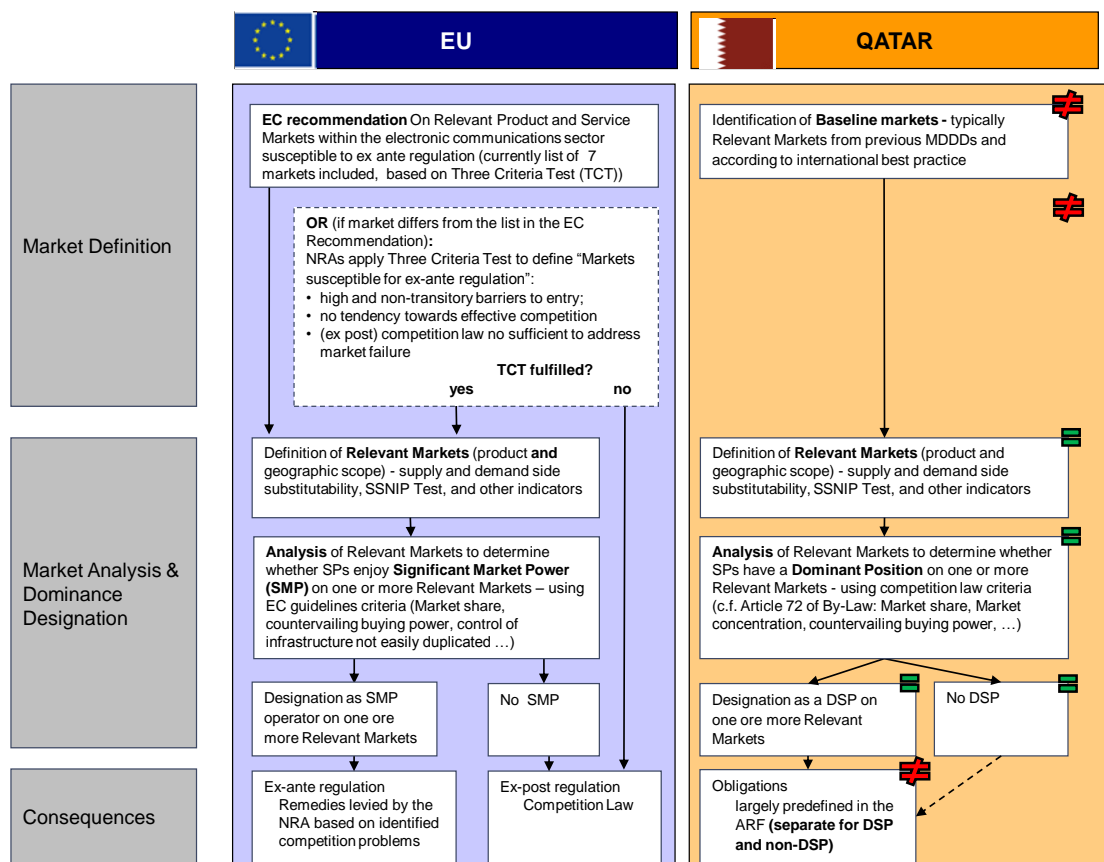


Figure 2: MDDD – Qatari and EU framework

Regarding these basic steps of analysis, the approach to MDDD in Qatar follows international best practise as it builds on the same principles that are applied in EU, as well as other Gulf Cooperative Council (GCC) member states, and other jurisdictions. More specifically, Article 72 of the Executive By-Law contains criteria for assessing the degree of market power which are very similar to the EU framework⁴. Also, with regard to principles and methodology of competition law, the Qatari approach is consistent with well-established international regulatory best practice for conducting market analysis in the telecommunications sector.

The EU recommendation on relevant product and service markets⁵ refers to a process consisting of three steps which are:

- market definition;
- market analysis; and
- dominance designation and the levying of remedies.

This is depicted in the middle column in Figure 2.

⁴ Framework Directive - see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0021:EN:NOT>.

⁵ See European Commission Recommendation of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (notified under document number C(2007) 5406) (Text with EEA relevance), in: OJ L 344, 28.12.2007, pp. 65-69.

However, the EU framework in itself is additionally built on the existence of three criteria to determine, whether a telecommunications market is susceptible for ex-ante regulation (Three Criteria Test – TCT), which have to be cumulatively fulfilled. The European Commission has developed this TCT as an additional “filtering tool” when considering whether a market should be regulated by competition law alone, or whether the market is susceptible to sector specific ex ante regulation. Market delineation results based on substitution patterns are thus subjected to an additional requirement. Therefore, markets have to be relevant according to the SSNIP test and have to fulfil the TCT as well, in order to be deemed as relevant for market analysis and, in case dominance (SMP) is found, for ex ante regulation.

The three criteria are:

1. the presence of high and non-transitory barriers to entry;
2. a market structure which does not tend towards effective competition; and
3. insufficiency of competition law alone to adequately address the market failures concerned.

The European Commission expects the national regulators to follow the same basic criteria and principles when identifying markets other than those appearing in the Commissions’ market recommendation.⁶ Markets failing the test will not be part of subsequent market recommendations from the Commission. Neither should such markets be identified as subject to ex ante sector specific regulation by the national regulators. Due to national/local circumstances, it is of course possible for individual regulatory authorities to find national markets complying with the three criteria, even though the corresponding market analysed by the Commission was not found to meet all three criteria.

As set out above the TCT is not foreseen in the Qatari ARF⁷ and would, in presence of high and non-transitory barriers to entry, not yield meaningful results. The TCT is also not foreseen in other GCC telecommunication frameworks.

Once Relevant Markets have been defined, an analysis whether SPs enjoy SMP or a position of dominance on one or more Relevant Markets is undertaken. Market analysis in the European framework rests on accepted competition law criteria and principles. ictQATAR follows a very similar approach in market analysis as it also rests on competition law principles as set out *inter alia* in Article 72 of the Executive By-Law. Based on the results of the market analysis, European national regulatory authorities decide about the existence of dominance in the specific market. If dominance is found, at least one of the available remedies has to be levied upon the respective SMP operator.⁸

⁶ European Commission (2003), Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ 8.5.2003 L 114/45, section 3.2.

⁷ ictQATAR believes that all references to the EU framework needs to be carefully analysed as there are not always appropriate for Qatari market due to the fact that markets in Europe were opened to competition already in 1996 for mobile and in 1998 for all services. Within the EU framework a broad system of wholesale (as well as retail) regulations has been established for over a decade. Most of the wholesale access obligations (such as ULL; Resale, Bitstream; CPS/CbC; Wholesale Line Rental; cost-based interconnection offers) are not established in practice yet in Qatar. Qatar, in turn, experiences competition in only some of the Relevant Markets since 2009. Furthermore, in the EU countries the Competition Authorities are watching carefully if market players act in the competitive way on the markets which are not regulated ex ante.

⁸ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), in: OJ L 108, 24.4.2002, articles 9 through 13.

The EU framework refers to remedies such as transparency, non-discrimination, access, cost accounting, and regulation based on cost-orientation.⁹ The revised EU framework adds “functional separation” of wholesale and retail business units of the vertically integrated undertaking as a further possible remedy.¹⁰ Within the EU framework, however, each specific remedy imposed on a certain SP with SMP has to adequately address identified competition problems. Remedies are therefore not predetermined in the EU regulatory framework and have to be selected on a case-to-case basis according to the actual and potential competition problems identified by the national regulatory authorities.

In contrast to the EU framework, the obligations of a DSP are largely pre-defined in the Qatari ARF and are thus applied largely automatically once a SP is found to be a DSP in a Relevant Market. Additionally, even if a Relevant Market has been defined it does not automatically lead to the obligatory DSP designation. During the Market Analysis of a Relevant Market it can be found that there is no DSP on that particular market.

Finally, another difference refers to the role of competition law. In the EU, if the market assessment indicates that there is effective competition within a Relevant Market (no SMP operator), then standards and principles of competition law automatically apply to that market. If markets are regulated on an ex ante basis, competition law serves as a complementary form of legislation. Once markets are deregulated competition law replaces all kinds of SMP regulations in the EU framework. This is not the case in Qatar which follows a different institutional approach which does not automatically result in competition law if sector specific deregulation is appropriate.

The Qatari ARF and the European Framework in regards to MDDD appear prima facie identical, but differ when examined in detail. Both frameworks exhibit largely similar methodological approaches with respect to the preceding steps of market definition and dominance analysis. However, there are also significant differences, i.e. with reference to the application of the TCT or with regards to obligations of a DSP.

4. Market Definition – analytical framework

This section describes the methodology underlying the Market Definition process. It first outlines the basic principle of the methodology in section 4.1 and then focuses on the main dimensions of market definition in sections 4.2 to 4.6.

4.1 Methodology of Market Definition

Once the Baseline Markets in terms of products and geographic scope are established, following a consultation process and discussions with market entities about the proposed Baseline Markets, ictQATAR defines the Relevant Markets. The underlying methodology of market delineation is based on the ARF and economic principles in accordance with competition law principles as set out in Article 72 of the Executive By-Law.

⁹ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), in: OJ L 108, 24.4.2002, pp. 7-20.

¹⁰ Functional separation requires a vertically-integrated SP to service its upstream wholesale customers separately from its own downstream operations. Functional separation should only be implemented if remedies cannot ensure non-discriminatory wholesale access (ultima ratio). For various different forms of separation see Cave, M. (2006), „Six degrees of separation: operational separation as a remedy in European telecommunications regulation“, Communications & Strategies, no 64.

With respect to methodological aspects, the Hypothetical Monopolist Test (**HMT**) has become an accepted standard, and also part of the telecommunications framework¹¹. Although direct empirical implementation is often limited in practice, the methodological framework serves as an important conceptual guideline.

The base case scenario describes a Hypothetical Monopolist (**HM**), which currently and in future only offers one product/service within a defined area. The HMT seeks to identify the narrowest possible market on a product layer¹². If the HM would impose a small but significant and non-transitory increase in price (**SSNIP**), assuming that the prices of all other products remain constant, the question is whether customers can react adequately by switching to other products without having to accept huge efforts and costs (SSNIP Test). If not, then the HM does not have sufficient market power to raise price. As a consequence, the next closest substitute is added to the initial (set of) product(s) and the HMT is applied again until the point is reached where a HM could profitably impose a price increase. Usually a SSNIP is approximated by 5-10%.¹³ The temporal element for market definition should reflect the periodicity and the forward-looking nature of the overall market analyses process. Typically, a time period of approximately two to three years is assumed to be appropriate.

The Relevant Market includes all those potential substitute products, which provide a significant competitive constraint on the initial products. When examining the competitive responses, it is not necessary that all consumers (or) producers are willing to switch, but only that enough of them would switch in response to the price increase in order to discipline the HM sufficiently.

Since direct empirical implementation of the HMT is mostly limited, the conceptual understanding of the factors influencing the outcome of the HMT receives a specific emphasis. In principle, the HMT should guide the analysis of market definition alongside all relevant dimensions, which are described below.

Relevant Markets are 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 the purposes of market and competition analysis. This includes defining the Relevant product/service¹⁴ Markets and their geographic scope. ictQATAR defines product markets in particular in terms of supply and demand side substitutability.

References to geographical market delineation, relevant wholesale markets and on fixed-to-mobile substitution will complement this section.

4.2 Demand side substitution

Demand side substitution takes place when consumers prefer to switch from one product to another in response to a change (usually 5 to 10%) in the price of the product. When the HM raises the price, some customers will reduce consumption or will choose not to purchase at all and drop out of the market.

Demand side substitutability is determined by the extent to which customers of the relevant product under consideration would consider other (similar) products as an acceptable substitute. The closer

¹¹ This approach to market definition was introduced by the US Department of Justice (1982 Merger Guidelines, revised in 1992, 1997 and recently in 2010) and is currently being used by regulatory and antitrust authorities worldwide.

¹² Termination markets (both fixed and mobile) constitute an exception in communications, since these relate (simultaneously) to the individual firm level.

¹³ The US Department of Justice refers to a 5% increase whereas the EU SMP-Guidelines (§ 40) refer to a 5-10% increase in price.

¹⁴ Within the MDDD Process the terms "product" and "service" have the same meaning.

the similarities from the consumer's viewpoint, the more consumers will switch to the other products. If consumers can switch to available substitute products or use the same products from suppliers located in other areas, then it is unlikely that price increases will be profitable for the HM.

The following elements determine the extent of demand side substitutability:

- Number of "good" substitutes available at similar prices,
- Income-elasticity of consumers;
- Overall importance of good for consumers;
- Transactions-/switching costs for consumers (demand side barriers);
- Durability of the good; and
- Regulatory environment.

4.3 Supply side substitution

Competitive forces stemming from the supply side substitution are a vital element in market definition. Some firms, already producing a similar product, might alter their production facilities and supply sufficiently homogeneous substitute products to consumers remaining in or re-entering a market.

From the consumers' perspective, it does not make a difference if potential substitutes pre-existed (prior to the initial price increase) or if they were supplied by firms operating near to the initial market in response to the initial price increase. An economic market is therefore defined by consumer preferences and technology. Hence, supply side substitution might lead to broader market definitions including products that are at first not deemed to be interchangeable by consumers. In telecommunications markets this observation is an important one, since an isolated demand analysis could produce unreasonable and even meaningless results in many circumstances. Furthermore, not considering supply side substitution at the market definition stage might create an irreversible distortion. For instance, a finding of a significantly high market share (e.g. above 50%) due to a 'too narrow' market definition would usually be associated with a presumption of dominance, which is unlikely to be broken at the stage of competition analysis.

Effective supply side substitution must be technologically feasible and economically viable, involving no additional investments with significant sunk cost within a relatively short period of time (typically up to two years). Supply side substitution is determined by both firms already in the market and potential new firms entering the market. Possession of assets allows redeploying these without incurring significant (sunk) costs. Obviously, this requirement is not restricted to the production (wholesale) level but applies likewise to the retail level, since supply side substitution would be ineffective if producers were not able to market their "substitute" products to consumers. It is obvious that supply side substitution will only be an effective constraint if consumers also regard the "potential" supply side substitute as sufficiently equivalent in light of the initial (set of) products, i.e. supply and demand side substitution have to interact. If producers manage to offer sufficiently homogenous products within a short period of time, consumers will prefer these products, whenever there is a price discount. As a result, supplied products that are perceived as heterogeneous before redeploying assets, most likely belong to the same market.

4.4 Relevant Geographic Markets

In terms of geographic demand and supply side substitution, supply side substitution possibilities are more relevant than demand substitution possibilities. In markets where services depend on a fixed connection, as in most telecommunications markets, it seems very unlikely that a customer in a certain area would substitute supplies from outside the area in reaction to a price increase by a hypothetical monopolist in the area, unless he changes the location of consumption to a place outside the area. As

the choice of residence of a certain customer is driven (if at all) only marginally by the price of telecommunications services this scenario does not seem to provide an effective demand side constraint on the HM.

The demand of a customer is usually bound to a very limited area. Contrary to this, it is possible that supply side substitution will take place in response to a price increase by the HM. However, in the absence of access regulation, entry in a telecommunications market in a certain area is only possible through rolling out infrastructure to that area. Only if this investment is non-significant and can be realised within a short period this would provide an effective supply side constraint on the hypothetical monopolist. If, on the other hand, homes were already connected with alternative infrastructure, a price increase could well be constrained due to demand and supply side substitution, which, however, would then have to be considered as product specific substitution (as opposed to geographical substitution). Similar to the linkage between demand and supply side substitution, one can also observe a linkage between product and geographical dimensions.

With regard to the geographic market definition in Qatari telecommunication sector, ictQATAR analyse to two main criteria:

- the area covered by a network; and
- the existence of legal and other regulatory instruments.

This approach is also in line with the SMP Guidelines of the EU framework on the assessment of substitution in different areas.

4.5 Wholesale markets

The Market Definition methodology outlined above applies equally to retail and wholesale markets. With respect to the latter, however, there are some specific methodological aspects that have to be considered in addition.

The scope of a wholesale market is, in addition to demand and supply side substitution at the wholesale level, also determined by demand and supply side substitution at the retail level, whenever different wholesale providers are linked to one another through retail markets.

The main difference between wholesale and retail markets is that wholesale products can belong to the same market, even in the absence of direct supply and demand side substitution on this wholesale level, as the downstream (retail) level sees the wholesale inputs as sufficient substitutes. The impact of the restrictions via the retail level on the wholesale market definition will in general be stronger the larger the demand elasticity at the retail level is, the more of a wholesale price change is passed on to the retail level and the larger the ratio of wholesale and retail price. This concept has then to be applied to the question under which circumstances internal sales should be included into the Relevant wholesale Market.

4.6 Fixed-mobile substitution (FMS)

In many countries the mobile sector is increasingly exerting competitive pressure on fixed voice telephony markets as well as on broadband services. Fixed-mobile substitution (**FMS**) is mainly characterised by an opposing development of volumes in both sectors. In the mobile sector we can observe persistent growth in penetration levels and call minutes whereas fixed access lines and usage

have been decreasing steadily for some years in OECD countries.¹⁵ As market data and empirical evidence indicate that FMS differs in regard to different market segments, specific focus needs to be put on the various market segments. Therefore, the extent of FMS will constitute a relevant dimension in future market delineation processes.

However, according to prevailing experience in Qatari markets as well as with international experience, FMS has not yet materialised to an extent, which would generally allow the definition of common fixed and mobile markets^{16,17}.

5. Market Analysis and Dominance Designation – analytical framework

As illustrated in Figure 1, ictQATAR conducts the Market Analysis and Dominance Designation for each Relevant Market. This section describes the underlying legal foundation as well as definitions on essential competition concepts. Section 5.1 sets out the relevant competition criteria for designation of single or joint dominance positions. Section 5.2 contains some remarks on evaluating competition criteria which will always need to be weighed on a case-to-case basis by ictQATAR.

The Telecommunications Law defines Significant Market Power as

“the strong economic position of a service provider in the market that permits it to act independently of customers or competitors, or to dominate a market or markets related to specific telecommunications services, through acting either individually or jointly with others in accordance with the provisions of chapter 9 of this law”.

The definition in the Executive By-Law is practically identical to the definition in the Telecommunications Law¹⁸. These definitions contain core features of “acting independently”, which are very similar to the definition used in the European SMP Guidelines “behave ... independently”:

*“... the operator has and will have, on the relevant market identified, sufficient market power to behave to an appreciable extent independently of competitors, customers, and ultimately consumers...”*¹⁹

Concerning this firm specific definition, the SMP Guidelines²⁰ (§112) overall make an inseparable connection between effective competition (at the market level) and – in legal terms – SMP (or, economically, individual market power at the firm level):

“...the notion of effective competition means that there is no undertaking with dominance on the relevant market. In other words, a finding that a relevant market is effectively competitive is, in effect, a determination that there is neither single nor joint dominance on that market. Conversely, a finding that a relevant market is not effectively competitive is a determination that there is single or joint dominance on that market.”

¹⁵ OECD – (2009), “Communications Outlook 2009“, available at: http://www.oecd.org/-document/44/0,3343,en_2649_34225_43435308_1_1_1_1,00.html, figures 1.1, 3.2 and 3.6.

¹⁶ Vogelsang, I. (2010), “The relationship between mobile and fixed-line communications: A survey”, in: Information Economics and Policy, Vol. 22, 4-17.

¹⁷ The Economist, January 1st 2011, “Hanging up”.

¹⁸ The only difference is the wording “position of economic strength” instead of “strong economic position”.

¹⁹ European Commission (2002), “Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03)”, SMP Guidelines, § 30, Brussels, available at: [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0711\(02\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0711(02):EN:NOT).

The EU SMP Guidelines also list similar criteria taken from the decision making practice of European courts and the European Commission which are to be taken into particular consideration when evaluating Dominance (SMP Guidelines § 78 for "single dominance", § 97 for "collective (joint) dominance").²¹ A finding that a Relevant Market is effectively competitive is a determination that there is neither single nor joint dominance in that market. From this it follows that ictQATAR as an output from the MDDD review may decide that there is a DSP, joint dominance (two or more DSPs) or there is no DSP on a particular Relevant Market.

Concerning market definition and evaluation of market power, the Qatari Telecommunications Law and its Executive By-Law follow commonly used international competition law principles and are in line with best international practise.

5.1 Criteria

In determining whether dominance exists or not in a Relevant Market, ictQATAR analyzes the extent to which a SP, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. This is international best practise for determining whether market power exists in a particular (product or service) Relevant Market and whether a SP is enjoying a Dominant Position (or having Significant Market Power) in this Relevant Market.

In order to assess dominance, it is necessary to determine the extent of market power in the Relevant Markets by evaluating the circumstances prevailing in the sector, including market information and evidence of past customer and supplier behaviour.

The criteria for the assessment of dominance are set out in the Qatari Telecommunications Law in Chapter 9 and its Executive By-Law in Chapter 8.

Based on the Article 72 of the Executive By-Law criteria, ictQATAR may apply the following criteria to assess if a SP is a DSP on the Relevant Market:

- market share of a SP;
- absolute and relative size of a SP in the Relevant Market;
- degree of control of facilities and infrastructure that would be uneconomical for another SP to develop to provide services in the Relevant Market;
- SPs economies of scope and scale;
- absence of countervailing buyer power in the Relevant Market, including customer churn characteristics;
- structural and strategic barriers to market entry and market expansion; and
- any other factors relevant to evaluating the existence of market power in a particular market.

The main criteria used by ictQATAR to measure market share is revenue. Additionally, the number of subscribers, lines, minutes and other relevant indicators may be used to support the evaluation of market share or to analyse the size of the firm.

Based on the Article 72 of the Executive By-Law ictQATAR may deem, in the absence of evidence to the contrary, that an individual SP with a share of more than 40 percent of the Relevant Market is a DSP.

²¹ See European Commission (2002) "Commission Guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and service"; 2002/C 165/03 and Article 72 Executive By-Law.

Joint dominance is another potential element of dominance assessment. An important aspect is to what degree a limited number of SPs coordinate measures amongst each other, which could be detrimental in a market and, ultimately, to consumers and, thus, could be regarded as abusive. Joint dominance is likely to be the case where the market satisfies a number of appropriate characteristics, in particular in terms of market concentration, transparency and other characteristics such as: mature market, stagnant or moderate growth on the demand side, low elasticity of demand, similar cost structures and market shares, high barriers to entry, lack of countervailing buying power, lack of potential competition, various kind of informal or other links between the undertakings, or retaliatory mechanisms²².

Once a SP is designated as a DSP in a certain Relevant Market, the SP is obliged to comply with specific obligations, as set out in the ARF.

5.2 Evaluation of competition criteria

Article 72 of the Executive By-Law further states that the methodology may also provide guidance on the parameters that will be used for measuring market share. Articles 73 to 76 of the Executive By-Law complete the legal and regulatory provisions regarding the procedure of market definition and analysis, as well as the assessment of dominance.

The competition situation in individual markets and the specific relevance and importance of various competition indicators must always be assessed on a case-by-case basis. Ultimately, the overall empirical material available is to be interpreted and weighted on the basis of experiential knowledge (i.e. data), as well as economic theory. ictQATAR will assign priority to certain competition indicators in light of individual market conditions. Accordingly, Article 72 of the Executive By-Law assigns specific importance to the role of market share, in as much as in the absence of evidence to the contrary, this indicator may deem that an individual SP with a share of more than 40 percent of the Relevant Market is a DSP.

Both value sales and volume sales provide useful information but sales in value and their associated market share will usually be considered to better reflect the relative position and strength of each SP²³.

From an economic point of view, the level of market share might be a necessary condition for dominance since the potential for contestability is rather of theoretical relevance in communications²⁴ and thus retains high relevance in any dominance analysis. Market share analysis will, if applicable and reasonable, be complemented by basic forms of distribution figures and concentration ratios (such as Hirschman-Herfindahl Index (**HHI**); absolute and relative firm size). Nevertheless, an HHI calculation is not always an appropriate tool as in a two player market this result will always be above 5,000 and thus a clear indication for a lack of competition in the market. Basic market share analysis will therefore always involve an assessment of the number of operators active in the market as well as their distribution and relative market importance. Also, market shares have to be assessed against the backdrop of respective market barriers since this allows identifying competition within the market as well as potential competition outside the Relevant Market. Only if market shares come along with

²² See European Commission (2002), "Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services (2002/C 165/03)", §97, Brussels.

²³ Commission Notice on the Definition of Relevant Market for the Purposes of Community Competition Law OJ [1997] C 372/5

²⁴ For an extensive critique see Martin, S. (2000), "The Theory of Contestable Markets", Purdue University, retrieved from: <http://www.mgmt.purdue.edu/faculty/smartin/aie2/contestbk.pdf>. For a communications specific application see Briglauer, W., Reichinger, K. (2008), "Chances of Contestability in Communications – A Sector-Specific Application", in: *Intereconomics*, Vol. 1, 51-64.

some non-negligible market barriers they can also be seen as indicative as a source of market power from an economic point of view.

Additionally, the number of SPs in a specific market in itself does not give a clear indication with respect to the status of competition. Indeed, it is possible that a two player market with 50 % market share for each SP may have “better” competitive characteristics than a market with a larger number of players. But, the mere argumentation that a second operator has entered the market and this per se guarantees competition is not sufficient in ictQATAR’s view.

According to the above, market share cannot be seen as a sufficient indicator in isolation (the same holds a fortiori for other indicators, such as the number of operators or barriers to entry). The simplicity of traditional market share analysis (based on critical threshold values) disappears, the more markets deviate from static and monopolistic towards dynamic market structures. With the future intensification of competition, developments such as price competition, quality of service, facilitated switching of customers between different service providers by effective number portability, etc. will be more important than the market share per se.

The evaluation of the other criteria may cover the analysis of the following:

- absolute and relative size of the SP in the Relevant Market – this criterion refers to the advantages that may arise from the large size of an undertaking relative to its competitors;
- degree of control of facilities and infrastructure that would be uneconomical for another SP to develop and to provide services in the Relevant Market – this criterion analyses if the SP has control of a large network that a competitor would find costly, economically inefficient and time-consuming to build. This advantage can be a barrier to potential new market entry;
- SP economies of scope and scale – economies of scale arise when increasing production causes average costs to fall. Economies of scope exist where average costs for one product are lower as a result of it being produced jointly with another product. Economies of scope and scale can be a barrier to entry for other SPs;
- absence of countervailing buyer power, including customer churn characteristics – the existence of customers with a strong negotiating position may restrict the ability of the SP to act independently of their customers;
- current and potential competitive constraints – analyses the possibility of new competitors entering the market within the 2-3 years timeframe and potential constraints existing on the market;
- structural and strategic barriers to market entry and market expansion – the threat of potential competitor entry may prevent the DSP from raising prices above competitive levels. If the market faces significant barriers to entry, this threat may be weak or absent.

The existence of a DSP may be derived from several factors which, taken separately, are not necessarily determinative. But, among these factors a highly important one is the existence of very large market shares. With reference to international case law and best practice, large market shares, i.e. in excess of 50%, provide, apart from exceptional circumstances, evidence of the existence of a dominant position.²⁵ Article 72 of the Executive By-Law establish the 40% market share threshold as an indicator that an individual SP may be deemed as a DSP, in the absence of evidence to the contrary.

²⁵ See European Commission (2002), “Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services”, §75, Brussels, and Case 85/76 Hoffmann-La Roche v Commission, [1979] ECR 461, §§ 39-68.

Potential criteria for the assessment of dominance and of effective competition, respectively, have various levels of relevance in various markets. ictQATAR may use the most appropriate criteria for a particular Relevant Market under consideration.

The need to apply the framework of analysis in its full depth will vary from market to market and the intensity of competition on those markets. With respect to the situation with a quasi-monopolistic market position in many Relevant Markets, due to the recent introduction of competition, the complexity of the overall dominance analysis will likely be reduced substantially, so that not all of the criteria will be always reasonably applicable when conducting the dominance analysis. Also, not all of the criteria have to be fulfilled simultaneously to find a position of dominance and a DSP. As outlined above, market shares could serve as a key indicator in a number of cases and in the absence of other compelling evidence they are in itself conclusive to designate a SP as having a dominant position.