

NON-CONFIDENTIAL

Decision and Orders

issued to

Ooredoo Q.S.C ("Ooredoo")
and
Qatar National Broadband Network ("QNBN")

in relation to

QNBN's complaint against Ooredoo for anti-competitive
conduct.

CRA/LU/2016/09/8
September 08, 2016

Purpose

This Decision and Orders sets out the final and binding decision and orders of the Communications Regulatory Authority (“**CRA**” or “**Authority**”) following its review of QNBN's complaint submitted on March 3rd, 2016 against Ooredoo for anti-competitive conduct and abuse of dominance (the “**Complaint**”).

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1 Overview

This Decision and Orders is issued in accordance with both the Dispute Resolution Procedures and the Complaint Resolution Procedures published by the Authority in February 2015 ("**Dispute Resolution Procedures**" and "**Complaint Resolution Procedures**") and sets out:

- (1) a statement of facts in relation to the Complaint upon which the Authority has relied in making its decision and orders (section 2);
- (2) the applicable regulatory framework for the Complaint (the "**Regulatory Framework**" or "**RF**") (section 3);
- (3) the Authority's assessment of alleged breaches of Articles (41) and (43) of Decree Law No. (34) of 2006 on the promulgation of the Telecommunications Law (the "**Telecommunications Law**") (section 4);
- (4) the Authority's assessment of alleged breaches of Articles (20) and (24) of the Telecommunications Law, the Decision of the Board of the Supreme Council for Information and Communication Technology No. (1) of 2009 on the promulgation of the Executive By-Law for the Telecommunications Law (the "**Executive By-Law**"), and the Passive Civil Infrastructure Access Regulation promulgated by CRA President by Decision No. (3) of 2015 (the "**Access Regulation**") (section 5);
- (5) any remedies and sanctions imposed by the Authority in connection with this Decision and Orders (section 6); and
- (6) the Authority's Decision and Orders (section 7).

2 Statement of Facts

2.1 The Complaint

On March 3rd, 2016, QNBN lodged the Complaint with the Authority pursuant to the Dispute Resolution Procedures and the Complaint Resolution Procedures. QNBN alleged that Ooredoo has engaged in anti-competitive conduct by foreclosing the fixed telecommunications market in Qatar and by preventing access to its duct infrastructure in contravention of the Ooredoo Fixed License and the RF; more specifically, by:

- "• Refusing to abide by the term of the [Interconnection Access Agreement (the "**IAA**")]
executed by the parties 26 April 2012, including the processing of duct access requests made by QNBN, all contrary to its specific terms and contrary to the Final Decision of the Authority issued 7 January 2014 (the "**January 2014 Decision**") ... addressing Anti-competitive Conduct by Ooredoo;
- Attempting suspension of the IAA contrary to the term of the said Agreement;
- Failing to publish the Reference Infrastructure Access Offer ("**RIAO**") on its website contrary to the 'Ooredoo RIAO' Order of the Authority dated 25 November 2015 (the "**November 2015 Order**") seriously indicating that Ooredoo will not comply with the

second part of the Order which is the obligation to make the RIAO available to service providers by 15 February 2016."¹

In summary, QNBN made the following claims in the Complaint and surrounding communications in support of its allegations:

- (1) On April 21st, 2015, Ooredoo suspended QNBN's right to submit new access requests in respect of Ooredoo's passive infrastructure under the IAA on the basis of alleged material breaches of the IAA by QNBN (the "**Access Suspension**");
- (2) The Access Suspension was partial from April 21st, 2015 to September 2nd, 2015 (the "**Partial Suspension Period**"), with a full suspension of services from September 2nd, 2015 until the date of the QNBN Complaint (and is ongoing) (the "**Full Suspension Period**"). However, QNBN claims that, in practice, Ooredoo never fully lifted its suspension of access requests following the January 2014 Decision confirming non-competitive conduct by Ooredoo and that the Access Suspension covers a longer period of time.
- (3) There have been a number of operational failures, issues and general problems involving Ooredoo before and following the January 2014 Decision that support QNBN's allegations, including claims that Ooredoo:
 - a. has in effect unilaterally suspended the IAA;
 - b. continues to delay and show reluctance to address requests under the IAA;
 - c. has failed to provide final acceptance and/or inspection responses;
 - d. refuses access to D56 lead-in ducts;
 - e. is not providing sufficient resources for the IAA (including in connection with submitting PRs);
 - f. has imposed unreasonably expensive prices for network upgrades along with unreasonable procedures;
 - g. refuses network engineering integration; and
 - h. refuses access to Ooredoo's drop network;
- (4) QNBN's conduct highlighted by Ooredoo to justify the Access Suspension does not amount to conduct that warrants or permits Ooredoo to suspend access under the IAA, and that the relevant conduct has not and will not cause serious damage to the Ooredoo network or be service affecting;
- (5) Ooredoo is also in breach of the terms of the IAA by not following the dispute resolution process or other relevant provisions of the IAA before initiating the Access Suspension;
- (6) The CEOs of both QNBN and Ooredoo reached an agreement in January 2016 including a framework for resolution of outstanding issues (the "**January 2016 Agreement**"). However, Ooredoo is frustrating and delaying the resolution framework;
- (7) QNBN has suffered and will continue to suffer serious economic harm as a result of Ooredoo's conduct including the Access Suspension and stated its calculations and projections of the revenue impact. As a result of Ooredoo's conduct, QNBN claims that it is prevented from rolling out its network and is frustrated from meetings contractual commitments to suppliers and customers; and

¹ Complaint at page 2.

- (8) Ooredoo's conduct compromises the introduction and implementation of fixed line competition in Qatar, including by not publishing its RIAO allowing non-discriminatory access to its passive infrastructure.

In the Complaint, QNBN requested that the Authority make the following directions and orders:

- "a) Conduct this proceeding in accordance with the fast track procedures prescribed in Article 3.9 of the Dispute Resolution Rules; and
- b) Compel Ooredoo, on an expedited basis, to immediately abide by all terms of the IAA and accord all services in a manner which predated the Final Decision; and
- c) Compel Ooredoo from further suspension of services unless and until it has followed all the steps provided for in the IAA; and
- d) Impose significant financial penalties for every day for which services were suspended (in this regard the Authority should utilize 21 April 2015 as the start date) and continues to be suspended; and
- e) Impose other 'extensive and comprehensive safeguards' as deemed appropriate by the Authority to prevent and prohibit future anti-competitive conduct by Ooredoo in the sub market categorized as duct access.
- f) Require Ooredoo, in combination with the above, to make the RIAO immediately available to service providers."

2.2 Other submissions, meetings and correspondence in relation to the Complaint and related matters

On March 6th, 2016, the Authority invited QNBN and Ooredoo to attend various meetings in March 2016 to discuss the Complaint, including a joint meeting on March 10th, 2016.

On March 10th, 2016, the Authority held the joint meeting with QNBN and Ooredoo and set the timeframes and procedures for resolving the Complaint.

On March 17th, 2016, Ooredoo filed its response to QNBN's request for a "fast track" process to consider the Complaint requesting the Authority to deny QNBN's request.

On March 20th, 2016, QNBN replied to Ooredoo's response to QNBN's request for a "fast track" process to consider the Complaint.

On March 28th, 2016, the Authority issued a decision and orders to QNBN and Ooredoo:

- (1) rejecting QNBN's request for a "fast track" process to consider the Complaint;
- (2) setting timeframes for the process, including for Ooredoo to submit a clear statement explaining Ooredoo's delay in implementing the January 2016 Agreement with proposed steps for implementing the agreement (or strong and detailed evidence why the agreement cannot be implemented);
- (3) underlying the importance of the matter at stake and the risk of irreversible damage to the economy of Qatar;
- (4) encouraging both parties to implement the January 2016 Agreement; and
- (5) stating the Authority would issue an interim order in relation to the Complaint if clear justifications for the Access Suspension were not provided to the Authority.

On March 31st, 2016, Ooredoo filed its response to the Complaint (the "**Ooredoo Response**"). To justify the Access Suspension, Ooredoo asserted that Clause 3.2(b) of Schedule 1 of the IAA enabled it to suspend the approval of new duct access requests. It

asserted that it would not lift the Access Suspension unless QNBN remedied four instances of breach including:

- failure by QNBN to pay an undisputed invoice amounting to QAR 375,000;
- use of unauthorized Joint Box for coil storage;
- use of non-approved contractors; and
- use of unauthorized ducts to provide service to customers.

In addition to requesting QNBN to remedy the above mentioned breaches, Ooredoo had requested that QNBN provide it with unequivocal written assurance that there were no other instances of breach of the IAA that Ooredoo had not discovered and that no further breach of similar nature would occur. Ooredoo also contended that the spirit under which the IAA was signed no longer exists, as, by its assertion, QNBN is no longer a neutral infrastructure provider for all service providers in the State of Qatar. Ooredoo urged the Authority to give due consideration to the context under which the IAA was signed.²

In the Ooredoo Response, Ooredoo also:

- rejected QNBN's claims that Ooredoo had failed to provide Final Acceptance and/or inspection within the contractually stipulated SLA, stating that no Ready for Service dates were included in the Access Requests and that as a result such Access Requests were treated as ad hoc requests. Ooredoo also claimed that many of QNBN's claims had already been discussed and resolved (e.g. the limitation of number of PR's and refusal to adequately resource the IAA); and
- claimed that an interim order would not be necessary and if the Authority were to issue such an order, Ooredoo would ask for assurances and a financial guarantee from QNBN.

On April 3rd, 2016, QNBN wrote to the Authority in relation to the Authority's intent to issue an interim order, claiming that Ooredoo had not answered the Authority when it required strong and detailed evidence justifying the Access Suspension.

On April 4th, 2016, QNBN raised a formal Notification of Ooredoo damaging QNBN's network elements in the Al Jamiaa Street/Dafna area.

On April 5th, 2016, QNBN submitted a reply to the Ooredoo Response (the "**QNBN Reply**"), claiming that Ooredoo's justifications for the ongoing Access Suspension in the Ooredoo Response, while still being inadequate, did not address QNBN's central allegation of anti-competitive conduct to foreclose access to physical infrastructure. QNBN claimed that Ooredoo's purported justification for the continuation of the Access Suspension related to incidents that occurred before the January 2016 Agreement, apart from one incident at the Sheraton (the "**Sheraton Incident**"). QNBN claimed that the Sheraton Incident affected the ducts of customers, not Ooredoo's ducts. QNBN claimed that all other incidents were resolved, or a framework existed for resolution, in the January 2016 Agreement.

On April 6th, 2016, Ooredoo sent to QNBN a notice of termination regarding an alleged material breach of the IAA in relation to the Sheraton Incident and requested that the alleged material breach be rectified within 40 business days (the "**Sheraton Termination Notice**").

On April 10th, 2016, the Authority issued an interim order to Ooredoo and QNBN (the "**Interim Orders**") directing:

² Ooredoo Reply at paragraph 5.4.

- (1) Ooredoo and QNBN to deliver statistics providing at a minimum, the volume, nature, occurrence and scope of any non-compliance matters under the IAA, with an indication of the importance of the non-compliance matters and possible impacts on Ooredoo's network and QNBN's roll out;
- (2) QNBN to remedy all pending non-compliance matters under the IAA formally established at the date of the Interim Orders within 5 calendar days;
- (3) QNBN to notify Ooredoo and the Authority, within 7 calendar days of the Interim Orders, of its commitment to fully comply with the IAA in the future;
- (4) Ooredoo to process all of QNBN's pending access requests under the IAA within 30 calendar days of the Interim Orders and to provide a detailed calendar to the Authority to that effect within 5 calendar days;
- (5) subject to orders (2) and (3), Ooredoo to resume processing new access requests under the IAA within 7 calendar days of the Interim Orders.

In addition to making the Interim Orders, the Authority stated that the Sheraton Termination Notice (mentioned above) was invalid unless Ooredoo was able to demonstrate that:

- the relevant conduct occurred on Ooredoo's network;
- clear notice had already been provided to QNBN that this was the case, contrary to previous information; and
- the relevant conduct occurred after the January 2016 Agreement.

The Authority added that an issue which had been identified more than 18 months ago could not be considered as significant enough to justify a suspension or a termination of the IAA.

The Authority noted the fees of QAR 1,500,000 per year currently paid by QNBN to Ooredoo for supervision, stating that these invalidated Ooredoo's claim that it had no means to supervise QNBN intervention on its network. The Authority argued that such an amount would have allowed Ooredoo to identify any and all non-compliance issues from QNBN as well as allowed it to collect relevant evidence and keep up to date records to bring to the Authority's attention.

Also, in concluding that the issues raised by Ooredoo could have been resolved through a good faith and constructive approach, the Authority, once again, encouraged both parties to implement the January 2016 Agreement.

On April 12th, 2016, Ooredoo responded to QNBN formal notification of Ooredoo damaging network elements (Al Jamiaa street) blaming one of Ooredoo's contractors and rejecting any liability.

On April 12th, 2016, Ooredoo replied to QNBN Reply (the "**Ooredoo Reply**") on the merit of the Complaint and the QNBN Reply, claiming that it had objective justifications for suspending access to new and pending access requests and is legitimate in taking these measures. Ooredoo claimed that QNBN's claim of market foreclosure was unfounded and not sustained by evidence, and that an abuse of dominance could only exist when consumer harm results from the alleged conduct. Ooredoo provided references to international case law examples and also its interpretation of competition and economic principles relating to QNBN's allegations of anti-competitive conduct. Ooredoo also disputed QNBN's version of events relating to the January 2016 Agreement, claiming that the terms of the Access Suspension remained in place after the CEO-level meeting. In addition, Ooredoo (once again) addressed some of the specific matters referred to in the Complaint.

On April 17th, 2016, QNBN submitted separate responses to:

- (1) the Interim Orders, providing its confirmation that all non-compliance issues raised by Ooredoo under the IAA were resolved along with a confidential assessment of the revenue impact on QNBN resulting from the Access Suspension and ongoing delays by Ooredoo; and
- (2) the Ooredoo Reply.

On April 24th, 2016, Ooredoo submitted a response to the Interim Orders issued by the Authority. In summary, to extract only relevant information, Ooredoo:

- (1) expressed concerns regarding the Interim Orders and procedural issues;
- (2) claimed that the Sheraton Incident was unresolved and remained a case of non-compliance under the IAA, and stated that Ooredoo would not allow QNBN to conduct work on its network without Ooredoo's supervision and, at its preference, Authority's presence;
- (3) claimed that QNBN's written commitment to comply with the IAA was insufficient to allow it to "trust QNBN". Ooredoo stated that it also requires a financial security from QNBN, and requires QNBN to inform Ooredoo of any non-conformity or existing or potential harm to Ooredoo's network as a result of the work of QNBN's contractors;
- (4) sought to openly ignore and circumvent the Authority's authority by subjecting its willingness to comply with the direct order of the Authority in the Interim Orders to conditions, i.e. by linking its willingness to process any pending requests under the IAA under orders 2 and 3 of the Interim Orders to the conditions above; and
- (5) refused to resume providing access under the IAA.

On April 24th, 2016, QNBN responded to the Sheraton Termination Notice, claiming that the notice is null and void as it did not follow the process set in the IAA and referred Ooredoo to the Interim Orders.

On April 26th, 2016, QNBN submitted separate responses to Ooredoo's comments on:

- (1) the Interim Orders in its letter dated April 24th, 2016; and
- (2) the alleged damage to QNBN's network, outlining Ooredoo's contradiction regarding each service provider's responsibility towards its contractors.

On May 5th, 2016, Ooredoo provided the Authority with statistics regarding QNBN's non-compliance with the IAA.

On May 11th, 2016, QNBN provided the Authority with statistics regarding QNBN's non-compliance with the IAA.

Other correspondence was received by the Authority that did not contain any further information of relevance or materiality to the Complaint. The Authority looked past most of the argumentative, unhelpful and irrelevant correspondence that has marked this process.

3 Regulatory Framework

The following sources of law and regulation, amongst others (including those referred to in this Decision and Orders), are the basis for these Decision and Orders and comprise the RF.

Article (4(4)) of the Telecommunications Law empowers the Authority to set and enforce the appropriate remedies to prevent service providers from engaging in anti-competitive practices.

Article (4(8)) of the Telecommunications Law empowers the Authority to ensure compliance with the Telecommunications Law, the Executive By-Law and other relevant regulations and decisions.

Article (5) of the Telecommunications Law and Article (6) of the Executive By-Law enables the Authority to take measures including decisions it deems appropriate for the implementation of the provisions of the Telecommunications Law.

Article (20) of the Telecommunications Law requires service providers to, upon receiving a written request from another service provider regarding interconnection and access, enter into negotiations in good faith with the requesting service provider, with the purpose of reaching an agreement on interconnection or access to:

- (1) interconnect networks; and/or
- (2) provide access to telecommunications facilities, including central offices, other sites for equipment, emergency, towers, poles, telecommunications lines or and underground facilities, whenever necessary, in a reasonable manner in order to enable the service providers to serve their customers.

Article (24) of the Telecommunications Law provides that, in addition to the requirements of Article (20), a dominant service provider must meet any reasonable request for interconnection and access to its telecommunications network whenever it is technically possible. In addition, a dominant service provider must apply the same terms and conditions to all service providers obtaining interconnection and access in similar situations, and on the same terms and quality that it provides to itself or any of its affiliates.

Article (25) of the Telecommunications Law provides that, in addition to the requirements of Chapter 5 of the Telecommunications Law, the Executive By-Law and other regulations, rules and instructions may set out additional rights and obligations for dominant service providers, including in relation to requirements for approval of interconnection and access charges, interconnection reference offers, and submission and publication of interconnection and access agreements.

Chapter 4 of the Executive By-Laws sets out certain rights and obligations of service providers and relation to interconnection and access, including Article (47) of the Executive By-Laws which requires, among other things, services providers to enter into good faith negotiations with other Service Providers, on written request, to reach agreement on interconnection or access arrangements within period of (60) days from the date of receipt of the relevant request.

Article (112) of the Executive By-Laws requires service providers with existing telecommunications network facilities to allow other service providers to co-locate their telecommunications network facilities on those existing facilities, including central office premises and other equipment locations, where such co-location is technically and economically feasible.

The Access Regulation requires any person who owns, builds, or directly controls access to passive civil infrastructure in Qatar to grant access to such infrastructure to service providers on a non-discriminatory basis and sets out certain mandatory terms of access.

Article (40) of the Telecommunications Law requires the Authority to monitor and prohibit any abuse of market power or dominant position and anti-competitive practices in accordance with the Telecommunications Law, and apply the appropriate arrangements to confront abuse of market power and anti-competitive practices in order to strengthen competition and safeguard the interest of customers and the public.

The Competition Policy issued by the Authority on October 21st, 2015 in accordance with Article (40) of the Telecommunications Law (the "**Competition Policy**") describes the Authority's approach to assessing complaints of anti-competitive conduct, the types of conduct that can amount to an abuse of dominant position, and the possible defenses or justifications.

The Notice of the Standards, Methodology and Analysis to be applied in the Review of Market Definition and Dominance Designation and for Ex Post Competition Policy Investigations in the Telecommunication Sector in Qatar issued by the Authority on October 21st, 2015 (the "**MDDD Notice**"³).

The Notice and Orders designating OOREDOO Q.S.C. and VODAFONE QATAR Q.S.C. as dominant service providers in specific relevant markets (CRARAC 09/05/2016 A May 09, 2016) (the "**2016 MDDD Notice and Orders**")⁴.

Article (41) of the Telecommunications Law prohibits service providers from engaging in anti-competitive practices. Article 41 also prohibits dominant service providers from abusing their market power or dominance in, or in relation to, the markets in which they are dominant.

Article (43) of the Telecommunications Law describes the conduct and activities that are considered an abuse of dominance, including:

- (1) failing to supply interconnection or access services or facilities to other service providers within a reasonable period of time following their requests;
- (2) failing to supply interconnection or access-related services or facilities to other service providers on the same terms as it provides such services and facilities to itself or its affiliates; and
- (3) performing any actions that have the effect of substantially lessening competition in any telecommunications market.

Article (45) of the Telecommunications Law empowers the Authority to oblige a dominant service provider to cease its anti-competitive actions.

The Dispute Resolution Procedures set out the framework for initiating and resolving disputes between access seekers and access providers, including in connection with allegations of anti-competitive conduct under Chapter 9 of the Telecommunications Law.

Article (46) of the Telecommunications Law allows the Authority to issue decisions to remedy anti-competitive practices or abuse of dominant position, including referring the matter to the public prosecutor to initiate criminal proceedings against the violator.

Articles (67), (70) and (72) of the Telecommunications Law in relation to offences and penalties.

Article (75) of the Executive By-Laws for the Telecommunications Law prohibits dominant service providers from undertaking activities or actions that abuse their dominant position. Article (75) also empowers the Authority to prohibit actions or activities, in addition to those identified in Article (43), that the Authority determines have the effect or likely effect of substantially lessening competition in any telecommunications market.

Ooredoo's Public Fixed Telecommunications Networks and Services License (the "**Ooredoo Fixed License**"), including (without limitation) Annexure F which provides for negotiation

³ <http://www.cra.gov.qa/sites/default/files/MDDD%20Methodology%20Notice.pdf>

⁴ The 2016 MDDD Notice and Orders.

procedures for interconnection, access, and wholesale services and Annexure I which explains that abuse of dominance includes, among other conduct, Tying, Exclusionary Conduct, Anti-competitive Discounts, Cross-Subsidization, and Predatory Pricing.

4 Assessment of the alleged breaches of Articles (41) and (43) of the Telecommunications Law

4.1 General comments

In assessing Ooredoo's conduct under Articles (41) and (43) of the Telecommunications Law (as expanded under Article (75) of the Executive By-Law), the Authority has followed the approach and analytical framework set out in the Competition Policy and the MDDD Notice. The Authority has set out below its assessments of:

- (1) the definition of the market for assessing the Complaint (section 4.2);
- (2) Ooredoo's dominance in the relevant market (section 4.3);
- (3) whether or not Ooredoo's conduct amounts to an abuse of dominance (section 4.4);
- (4) the effects of Ooredoo's conduct (section 4.5);
- (5) whether or not Ooredoo's conduct was justified (section 4.6); and
- (6) appropriate remedies or sanctions (if required) (section 4.7).

The MDDD Notice sets out the steps for Market Definition and Dominance Designation in *ex-ante* and *ex-post* competition cases.

This MDDD Notice was recently used in the Market Definition and Dominance Designation ("MDDD") process, to assess whether a market is susceptible of *ex ante* regulation, taking into consideration the evolution of the market over a foreseeable future period (typically 3 years).

In the 2016 MDDD Notice and Orders, the Authority defined markets pertaining to this case, where Ooredoo was declared as having a Dominant Position (c.f. section 4.2.2 - The 2016 MDDD Process below).

The market definitions and dominance designation for this Complaint may differ from the *ex-ante* market definitions created during the MDDD process. The Authority's approach to assessing market definition and market power in the 2016 MDDD Notice and Orders and the Complaint procedures shall follow the same methodology and be consistent with the approach taken in *ex ante* reviews⁵. It can be set out as follows:

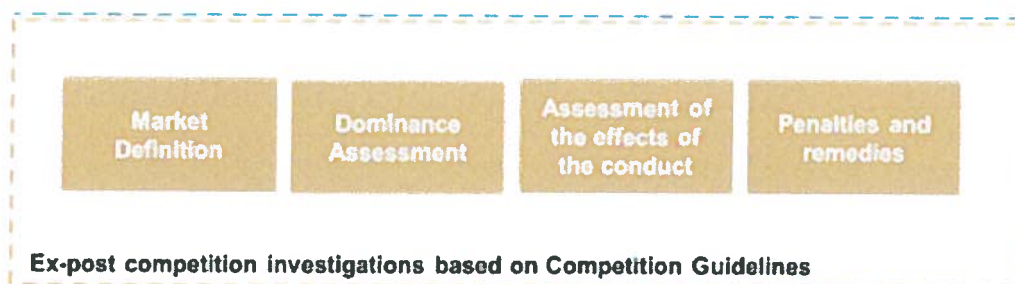


Figure 1 Process Steps of the ex-post investigation

⁵ MDDD Notice at page 9

4.2 Market definition

4.2.1 Overview

As a first step for defining the market for the purposes of the Complaint, the Authority briefly summarises the process for the 2016 MDDD Notice and Orders (the "**2016 MDD Process**"), which included products and services relevant to this Complaint.⁶ This is followed by a definition of the relevant market in the context of the Complaint.

4.2.2 The 2016 MDDD Process

Physical network infrastructure access forms an input to providing all telecommunications services on a retail level. This can be provided based on self-supply (i.e., deploying own physical networks infrastructure) or gaining access to existing physical network infrastructure. At the time, the Authority recognised the merits of reviewing the previous (2010) market definition for "physical access to passive infrastructure" – a single "catch all" market for passive infrastructure. This resulted in more granularly defined product markets to allow for a more targeted regulatory approach to defining markets which identifies and addresses any potential bottlenecks, whilst taking into account the current dynamics in the market.

Any ex ante regulation should focus on prevailing economic bottlenecks. As such, the Authority has reviewed each physical network infrastructure segment to assess whether it constitutes a prevailing bottleneck in the Qatari context. In doing so, it has taken into consideration, amongst others:

- (1) whether competing infrastructure or facilities exist or are likely to exist in the next three years, taking into account of the technical and financial replicability of the infrastructure or facilities;
- (2) the ownership of the existing infrastructure or facilities;
- (3) whether the infrastructure is essential for providing retail telecommunications services; and
- (4) practical considerations (such as, whether the infrastructure or facilities is feasible to share).

In general, the Authority concluded that economic bottlenecks remain in the access network infrastructure and the international gateway facilities. This is because it requires significant investment, time and administrative effort to deploy a national access network or to attract international connectivity to an international gateway facility. In contrast, given the geographic environment in Qatar, deploying, for example, a next generation core network, requires significantly less investment.

⁶ For example:

- Market Definition and Dominance Designation in Qatar - Market definition and review of Candidate Markets Draft for Consultation CRA 2015/05/12/NC;
- Market Definition and Dominance Designation in Qatar - Market definition and review of Candidate Markets with competing infrastructure Final Decision CRA 2015/07/02-A 02 July 2015;
- Market Definition and Dominance Designation in Qatar - Dominance assessment in Relevant Markets (Phase II) Economic Analysis and Response Document CRARAC 09/05/2016 B dated May 09, 2016 ("**2016 MDDD Phase II Response Document**"); and
- NOTICE AND ORDERS DESIGNATION OF OOREDOO Q.S.C. AND VODAFONE QATAR Q.S.C. AS DOMINANT SERVICE PROVIDERS IN SPECIFIED RELEVANT MARKETS CRARAC 09/05/2016 A May 09, 2016 (the "**2006 Dominance Notice and Orders**").

Fixed access network and ducts (including collocation facilities)

Access to fixed access network cables, ducts and associated collocation facilities forms an essential input to providing retail fixed voice, fixed broadband, leased lines, mobile voice and mobile broadband services.

There was no supply-side substitutability for access to the physical infrastructure in the fixed access network. In particular, Ooredoo operates or controls the only nationwide fixed access network in Qatar. QNBN has deployed passive GPON fibre infrastructure in certain parts of Qatar (i.e., in Barwa City, Barwa Commercial and parts of the Westbay). However, given QNBN's limited coverage, the Authority considered it unlikely that QNBN will achieve significant network coverage within the coming years. Further, deploying a national fixed access network requires significant investment, time and administrative effort. Given the overall market size, it remained unclear whether a second national fixed access network would be viable in Qatar. Even if it were viable, it appeared unlikely that such a network would be deployed within the next years.

There are several potential forms of passive access, varying in the degree of investment required by the access seeker. In particular, the access seeker can gain access to dark fibre or request access to the duct network in order to deploy its own fibre cables:

- **Access to dark fibre**

Instead of deploying its own duct and fibre infrastructure, an access seeker can gain access to an existing "unlit" dark fibre in the access provider's access network (assuming there is spare capacity in that network). The access seeker then installs active equipment in the access provider's local exchanges or switches where it hands over the traffic. The access seeker may further require access to the land, exchange /switch buildings, ducts, trenches, joint boxes and poles relevant to the fibre cable access network.

- **Access to ducts and trenches**

Instead of gaining access to existing dark fibre, an access seeker can deploy its own fibre cables in the access provider's duct network (assuming there is spare capacity in the duct network). This requires more investment by the access seeker than under the dark fibre access model discussed above (i.e., it is further upstream). However, there are still clear cost savings from not having to deploy its own duct network. In order to gain access to ducts, access seekers further require access to the land, building, trenches and joint boxes relevant to the access duct network. The access seeker will further require access to and space in the relevant collocation facilities, including, amongst others, switches and exchanges.

The Authority remained of the view that Ooredoo's fixed access network and ducts will remain a key bottleneck facility and thus ensuring regulated access to it is an important enabler of competition in the relevant downstream markets.

At the time, the Authority held no evidence on the demand for or switching between either of the above access options. The only alternative input for providing retail voice and broadband services is active access services. These active access options were not available at that point in time.

Furthermore, the Authority was not aware of any technical reasons that may constrain physical access to Ooredoo's fixed access network ducts, fibre cables and associated collocation facilities. Whilst the Authority recognised potential limitations to providing dark fibre access under Ooredoo's single-fibre GPON infrastructure, this constraints does not hold

for alternative fibre network infrastructure deployed in Qatar. As such, the dark fibre access market remained a relevant component in facilitating downstream competition.

Following these considerations, the 2016 MDDD Notice and Orders confirmed the following two market definitions⁷:

- M8b - Physical access to service provider's dark fiber and copper, including relevant ancillary facilities/services and colocation space;
- M8c - Physical access to service provider's ducts, including relevant ancillary facilities/services and colocation space.

All wholesale and retail markets include all ancillary services that are provided as an adjunct to or in support of these services, including but not limited to mediation hooks, access to OSS/BSS, number translation systems, databases, relevant network and planning information, colocation space, access to facilities, among other ancillary services.

4.2.3 Market Definition for the Complaint

The fact that QNBN has submitted in its Complaint that the Authority should consider compensation starting from 21 April 2015 has no direct impact on the assessment of the related market. On the contrary, the Authority needs to assess the situation from the origin of the acts that underpin the Complaint, which goes far beyond 2015. In that regard, the Authority notes that QNBN's first complaint against Ooredoo related to the termination of the IAA was submitted in 2013 (and resulted in the January 2014 Decision). Further, it appears that, to date, competition does not exist in the fixed market despite the decision of the government to open the fixed market to competition in 2009. Accordingly, the Authority considers that the period for the assessment of the Complaint, and hence the assessment of the market, should start with the formal opening of the fixed market to competition in April 2010.⁸

In relation to the specific market definition, Ooredoo's conduct relates to the IAA which governs access to its duct network (and related passive infrastructure and colocation spaces) that forms an essential input to the provision of all forms of active telecommunications services by Ooredoo and other access seekers, including retail fixed voice services, fixed broadband services, leased lines services, mobile voice services and mobile broadband services.

An access seeker such as QNBN can deploy its own fibre cables in Ooredoo's duct network. This is in line with the services covered in market M8c of the 2016 MDDD (see above). Below the Authority considers whether to amend this market definition for this Complaint.

The overall market situation remains unchanged since the 2016 MDDD Process. As the incumbent operator in Qatar, Ooredoo currently operates the only nationwide duct access network. Alternative duct infrastructure exists only in specific geographic areas, though the scale of those alternative duct networks pales in comparison to the passive infrastructure

⁷ The 2016 MDDD Notice and Orders defined two further passive infrastructure markets: (i) M8a - Physical access to SPs' mobile sites, masts, towers, including relevant ancillary facilities/services and colocation space; and (ii) M8d - Functional access to international gateway facilities required to gain international connectivity (including, but not limited to, physical access to the facilities, colocation space, cross-connects and other relevant ancillary facilities and/or services). Note, however, that M8a is not susceptible to ex-ante regulation.

⁸ Vodafone was granted a Public Fixed Telecommunications Networks and Services License on April 29, 2010.

owned and/or managed by Ooredoo, which connects almost all regions, developments, buildings and dwellings in Qatar.

Most of the alternative duct infrastructure in Qatar exists in infrastructure development projects, such as Lusail, Hamad International Airport, UDC (The Pearl Qatar), Barwa, Msheireb and the Port Authority projects. Those developments are limited in scope and cover a defined and limited geographic area. In addition, the Authority notes that Ooredoo manages and controls, without being exhaustive, the duct infrastructure of Lusail, by far the largest infrastructure development project in Qatar, and also the duct infrastructure of The Pearl Qatar. Kahramaa, Qatar Petroleum and other large organisations have rolled out passive infrastructure that may be used in some areas of Qatar, but in each case, the infrastructure was constructed to cater for the organisation's own needs. The Authority is not aware of access agreements concluded between those organisations and Service Providers. Finally, Ashghal is rolling out duct infrastructure while constructing new roads in Qatar and has demonstrated a willingness to provide access to this duct infrastructure to service providers. However, Ashghal is only able to meet limited needs of Service Providers during the rollout of its duct infrastructure, which it only recently started.

When defining the relevant Product Market, the typical test is a Hypothetical Monopolist Test (the "**HM Test**"). The HM Test assumes the monopolist imposes 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; and whether other suppliers can profitably switch to supplying that product without having to accept huge efforts and costs, making the SSNIP unprofitable (SSNIP Test). If this is not the case, a wider Product Market should be defined.

As has been established previously in the 2016 MDDD Process the neighbouring product markets include (i) Self supply of ducts (i.e. which are self-built), (ii) the use of dark fibre, (iii) the use of active access products such as, for example, regulated leased lines or wholesale broadband services.

- **Self-supply of ducts**

The duplication of Ooredoo's complete national duct network is unrealistic, in terms of cost time and effort. This is also internationally recognized. Given the prohibitive cost, inefficiency and impact of building multiple or duplicative duct networks and related passive infrastructure, most competition authorities around the world consider that such infrastructure is not replicable and cannot feasibly be economically or technically substituted. Duct networks and related passive infrastructure are therefore typically classified as "essential" or "bottleneck" facilities, as they are in Qatar. Duct networks and related passive infrastructure are also subject to *ex ante* regulation in most developed and developing jurisdictions, including the European Union (and its member states), Japan, Australia, Singapore, New Zealand and many others.

- **Use of dark fibre**

In absence of a wholesale product for dark fibre access, this does not constitute an alternative option to duct access for QNBN or Vodafone.

- **Use of active access products**

Regulated leased lines or wholesale broadband is equally not possible, as QNBN's license is confined to passive services. Likewise, in absence of a wholesale product, this does not constitute an alternative option to duct access for Vodafone.

To the Authority's knowledge, alternative duct infrastructure (e.g. Ashghal and Kahramaa) was not available during the relevant period to a scale that was comparable to the duct infrastructure owned or controlled by Ooredoo (see the above). This leads to the conclusion, as already found in the 2016 MDDD Process, that there is no substitutes available for duct access in the fixed access network.

In order to gain access to ducts, the access seeker also requires access to the manholes, colocation facilities (including points of interconnection, handover points, switches and exchanges), land, buildings, trenches, pits and joint boxes relevant to the access duct network, access to OSS/BSS, databases, relevant network and planning information, among other ancillary services.

Given the above, the Authority defines the market for the purposes of this Complaint in line with the relevant market definition for M8c of the 2016 MDDD as:

"Physical access to ducts in all fixed access networks, including access to the relevant ancillary facilities/services and access to and space in the relevant colocation facilities"(the "**Market**").

Effective competition in Qatar requires the ability of all service providers to address the whole of Qatar. For the timeframe of this Complaint, Ooredoo was controlling access to most of the nationwide duct networks. Hence, the Authority defines the Market as a national market in line with the relevant retail markets. The Market pertains to Ooredoo's own ducts and ducts which Ooredoo effectively controls, e.g. in an agency agreement with a developer. This is again in line with the geographic scope of the market M8c of the 2016 MDDD.

4.3 Dominance designation

4.3.1 The 2016 MDDD Process

In the 2016 MDDD Notice and Orders, the Authority designated Ooredoo as dominant in the relevant markets referred to in section 4.2.⁹ This was based on the following considerations:

- Ooredoo has a high share of total supply (including self-supply);
- There are very high barriers to entry and expansion; and
- Vodafone and QNBN are unlikely to be able to exercise countervailing buyer power¹⁰.

4.3.2 Dominance designation for the Complaint

A designation of dominance under the MDDD process does not necessarily automatically correspond to a designation for the purposes of this Complaint that requires an *ex post* assessment of dominance.

⁹ See the 2016 Dominance Notice and Orders.

¹⁰ Countervailing buyer power (or demand-side bargaining power) refers to the relative strength of the buyer in negotiations with prospective sellers. CBP could limit the ability of providers of retail communications services to engage in monopolistic pricing and hence to behave independently of buyers and ultimately of consumers.

As set out above, the Authority cannot see any appreciable divergence from (i) the product and geographic market defined in the 2016 MDDD Notice and Orders and (ii) the duct products defined for the purposes of this Complaint.

Taking a backward looking view, as it is required for the purposes of the *ex-post* investigation, the Authority concludes that the positions of economic strength of the service providers in this market were effectively the same as when the 2016 MDDD Notice and Orders was issued.

In summary:

- There were and remain high barriers to entry and expansion in this Market. Entrants have to invest significant amounts in the civil works required to build the duct network infrastructure for providing both retail and wholesale services. Further, deploying a national duct network requires significant time and administrative effort.¹¹¹²

While there are economies of scope available to developers who can plan the supply of duct into developments when they are built, these are only in limited geographic areas and at the specific times when developments occur.

- Whilst further entry has incurred, this only happened in limited geographic areas with no previous network coverage and limited building coverage at the time (i.e. new developments).¹³
- Ooredoo was and is effectively controlling the largest network of available capacity of duct in Qatar (i.e. Ooredoo owned or controlled almost 100% of the telecom ducts available in Qatar in 2015), and owns and operates the only duct network with national coverage. It was and is the largest supplier of duct to third parties, as well as the largest self-supply of duct in its own network (which should far exceed the limited amount of duct currently supplied by QNBN and developers to third parties in Qatar).
- QNBN and Vodafone are unlikely to be able to exercise countervailing buyer power. The main buyer of duct access in Qatar is currently QNBN. In order for a buyer to exercise countervailing buyer power, it must be able to exert bargaining power over the supplier, for example by having a credible threat to switch demand to an alternative supplier or by deploying its own infrastructure. In the Authority's view, the fact that only Ooredoo currently has a national duct network eliminates any possibility of a credible threat to move to a different provider. The Authority considers that this means that QNBN was unlikely to be able to exercise countervailing buyer power, as it was unable to switch supply from Ooredoo.

¹¹ Civil works (i.e. digging or trenching) represent a high share of the total cost of infrastructure provisioning. A recent study by Analysys Mason suggests that sharing the duct via passive access regulation can lead to cost savings of up to 75%, depending on the need for self-digging by the access seeker. [see EC/Analysys Mason, Support for the Preparation of an Impact Assessment to Accompany an EU Initiative on Reducing the Costs of High-Speed Broadband Infrastructure Deployment (2012) p 2 and 6]

¹² The Authority notes that Ashghal's deployment of ducts was not a pure commercial decision. It further faces lower marginal costs to deploy such infrastructure than telecommunications operators as doing so as part of its transport network developments.

¹³ Private developers who supply duct access are only able to supply these services in the limited geographic location of their developments (within which they are commonly the sole telecommunications infrastructure provider, with an obligation to provide non-discriminatory access to their network on reasonable terms) and these services will typically be used for the provision of fixed access or mobile backhaul from the exchange(s) to the boundary of the development (and / or from a cabinet to an exchange). The Authority currently does not hold information on the size of the duct network of private developers. However, given the overall limitation of their network coverage, the Authority expects this to be limited in scale.

Given the above, the telecom duct infrastructure that is owned and/or controlled by Ooredoo in Qatar is a key bottleneck facility and Ooredoo has a dominant position in the Market for the period covered by the Complaint.

4.4 Assessment of Ooredoo's conduct as abuse of dominance

4.4.1 Introductory comments

As stated in section 2 (Statement of Facts) above, QNBN has alleged that Ooredoo is foreclosing the fixed telecommunications market by preventing access to its duct infrastructure. In summary, QNBN has alleged that Ooredoo:

- (1) is refusing to comply with the terms of the IAA and the January 2014 Decision, including the requirement to process duct access requests made by QNBN;
- (2) has initiated and continues the Access Suspension in breach of the IAA; and
- (3) has not yet published the Ooredoo RIAO in breach of the November 2015 Order.

In summary, in defense of those allegations, Ooredoo has claimed that:

- (1) it has objective justification for suspending access to new and pending duct access requests from QNBN due to the threat to Ooredoo's network resulting from the conduct of QNBN and its contractors;
- (2) QNBN has not sustained its claim for market foreclosure by evidence; and
- (3) an abuse of dominance cannot be sanctioned unless consumer harm is established.

This section 4.4 sets out the Authority's assessment of Ooredoo's conduct as a dominant operator and whether or not Ooredoo has abused that dominant position in contravention of Articles (40), (41) and (43) of the Telecommunications Law and Article (75) of the Executive By-Law. The Authority's assessment of Ooredoo's conduct is focused on abuses by Ooredoo of its dominant position through refusal to supply.

As stated in the Explanatory Document forming the Competition Policy, the Authority is not required to demonstrate that Ooredoo intended to abuse its dominant position. Rather, the Authority is required to demonstrate that, on the balance of probabilities, Ooredoo's conduct amounts to abuse that:

- (1) has caused actual competitive injury; or
- (2) is likely to lead to prevent or substantially lessen competition.¹⁴

Irrespective of Ooredoo's proposed defense that an abuse of dominance cannot be sanctioned unless consumer harm is established,¹⁵ the Authority shall take an all-encompassing view of when an abuse of dominance can take place, in line with the statement from the Competition Policy above and internationally accepted principles relating to dominance. Accordingly, in assessing Ooredoo's conduct, the Authority has considered:

"... whether [Ooredoo's] conduct is likely to foreclose, restrict or distort competition and if so, how likely it is that consumer welfare will be harmed."¹⁶

Also of importance to the Authority in its assessment of Ooredoo's conduct is the Authority's mandate as the Telecommunications Law and the Emiri Decision 42 of 2014 to encourage and support an open and competitive ICT sector that provides advanced, innovative and

¹⁴ Explanatory Document to Competition Policy at section 3.1.

¹⁵ E.g. Ooredoo Response at paragraphs 3.35 to 3.37.

¹⁶ Explanatory Document to Competition Policy at section 3.2.

reliable communications services in Qatar. The Authority has viewed Ooredoo's conduct in light of that objective.

The Authority has followed the methodology in section 3 of the Competition Policy by reference to sections 3.5 and 3.6 of the Explanatory Document to the Competition Policy in assessing whether or not Ooredoo's conduct amounts to exclusionary abuse and/or a refusal to supply. Refusal to supply access to a facility or network can be "actual" or "constructive", with constructive refusal including:

"... offering unreasonable trading conditions, such as unduly delaying or degrading the supply of a product or service or charging unreasonably high prices."¹⁷

4.4.2 Period of the Access Suspension

There is no dispute that Ooredoo suspended access to its duct infrastructure for the Partial Suspension Period and the Full Suspension Period.

Also, strong evidence has been produced to convince the Authority that Ooredoo has not complied (in part or in full) with the January 2014 Decision and has frustrated duct access for a longer period of time through procedural and technical means. It is not necessary for the Authority to define a strict period for the Access Suspension in addition to the Partial Suspension Period and the Full Suspension Period for the purposes of this Decision and Orders, as QNBN has requested the Authority to limit its assessment of financial penalties to begin on the first day of the Partial Suspension Period (i.e. April 21st, 2015). However, the evidence provided of conduct prior to this date is useful to the Authority in its assessment.

4.4.3 Claims of entitlement to suspend access

QNBN claims that Ooredoo had no legal basis to suspend access to its duct infrastructure. While the Authority is not required to delve into contractual interpretation for the purposes of this assessment, it is important to note that Ooredoo has not provided sufficient evidence to establish its right to suspend access under the IAA, which contains no specific suspension rights. Also, Ooredoo has not provided sufficient evidence to demonstrate that it has followed the correct process for resolving the access dispute before the Access Suspension, as alleged by QNBN and required under the IAA. Ooredoo also made a similar allegation against QNBN, namely that QNBN did not follow the dispute resolution process in the IAA before submitting the Complaint.¹⁸ However, QNBN's escalation of this issue to the Authority arises from both Ooredoo's original failure to comply with the dispute resolution process prior to the Access Suspension and also its delays in discussing the matter with QNBN, and delays in resolving and implementing resolutions to the disputes following the January 2016 Agreement. The Authority views this assertion by Ooredoo that QNBN failed to comply with the dispute resolution process in the IAA before submitting the Complaint as diversionary and hypocritical.

Ooredoo has looked to other sources of law to justify the Access Suspension including Article (191) of Law No (22) of 2004 Promulgating the Civil Code (the "**Qatar Civil Code**") and Article (21) of the Telecommunications Law. Suspension under Article (191) of the Qatar Civil Code is likely to require a substantial failure of performance by the other party before it can

¹⁷ Explanatory Document to Competition Policy at section 3.5.1.

¹⁸ E.g. Ooredoo Response at 1.9.

be relied upon. Given the fact that the IAA is silent on suspension, it is unclear how Ooredoo can rely exclusively on this provision of the Qatar Civil Code for its grounds for suspension, which, in any event, would need to be decided by the Courts of Qatar. In relation to Article (21) of the Telecommunications Law, Ooredoo submitted in the Ooredoo Reply that it is not required to:

"... enter into or operate an agreement which is not reasonable in Ooredoo's judgment because it may cause harm to its property or inflict material damage upon its network and telecommunications facilities or negatively affect the performance of either of them."¹⁹

This argument is plainly misconceived and is therefore rejected by the Authority. Ooredoo had entered into the IAA **prior** to the Access Suspension so it cannot refer to Article (21) as a justification for the Access Suspension. Also, as mentioned above, the Authority is not aware of any right to suspend or terminate access under the IAA or under the Qatar Civil Code without a court order. If Ooredoo considers that the IAA requires amendments to provide Ooredoo with necessary rights, it should have followed the appropriate process for suggesting and negotiating those amendments, as provided by the RF. Alternatively, as foreshadowed by Ooredoo in the Ooredoo Response²⁰, it could have introduced the RIAO, which is also a matter of non-compliance in light of the Authority's orders in relation to the RIAO including the November 2015 Order and additional orders issued in June 2016 (the "**June 2016 Order**"). Further, Ooredoo must in future take up any concern or issue with QNBN in relation to QNBN's conduct under the dispute resolution process of the IAA for resolution rather than unilaterally acting in a manner contrary to its license and the RF.

The Authority has not received adequate evidence to establish any contractual or legislative grounds for the Access Suspension, as discussed in more detail in section 5.

4.4.4 Statistics of incidents and measures prior to the suspension

The Authority ordered each party to provide statistics to the Authority detailing the volume, nature, occurrence and scope of any non-compliance matters under the IAA with an indication of alleged damage to Ooredoo's network and any impact on QNBN's roll out.²¹ The Authority received these statistics from Ooredoo on May 5, 2016, and from QNBN on May 11, 2016. Both parties reported 10 incidents that occurred over the last 4 years (the "**Reported Incidents**"). The Reported Incidents account for approximately 1.25 incidents in every 6 months on average (2.5 incident/year).

As a comparison, based on data provided by Ooredoo during proceedings relating to the RIAO, over the course of the first semester of 2015, Ooredoo approved 81 access/provisioning requests submitted by QNBN.²²

It is reasonable to assume that for each provisioning request that was approved by Ooredoo, QNBN made one implementation and laid its own cables or performed other activities in connection with the request. These figures lead to a basic ratio of incidents to implementations of 1.5% per 6 months, i.e.:

¹⁹ Ooredoo Reply at paragraphs 2.51 and 2.65.

²⁰ Ooredoo Response at paragraph 3.19.

²¹ See the Interim Orders and mail dated April 19, 2016.

²² Access/provisioning requests during the first semester of 2015 (source: Ooredoo - Proceeding related to the RIAO)

$$\frac{\text{incidents}}{\text{implementations}} = \frac{1.25}{81} = 1.5\%$$

Another approach of analyzing the volume of the incidents is to measure the ratio of the length of ducts provisioned to QNBN in comparison to the number of incidents. Based on this information, Ooredoo has suffered one incident for every 53 kilometers of ducts provisioned to QNBN.²³

From a purely statistical point of view, the volume of incidents appears to be very low in view of the number of requests made by QNBN. Further, no compelling evidence has been submitted by the parties to explain how the volume of incidents was not able to be managed and resolved quickly and efficiently in accordance with the IAA, through good faith negotiations with QNBN as required by Article (22) of the Telecommunications Law, before Ooredoo suspended access to its duct infrastructure.

The Authority also notes in relation to the incidents mentioned by the parties that:

- (1) several incidents were already identified by Ooredoo in its attempt to terminate the IAA in 2013, as was raised in the Interim Orders and not disputed by Ooredoo in its response;
- (2) the Authority cannot identify any significant, service-affecting incidents that have occurred since Ooredoo temporarily resumed provisioning QNBN access requests on its network, including in 2015 (8 out of 10 incidents are duct interconnection matters); and
- (3) the lack of reaction from Ooredoo regarding incidents identified for more than 3 months and not escalated by Ooredoo as per the relevant process cannot be considered by the Authority as significant enough to Ooredoo to justify a new or continued suspension or a termination.

Consequently, the non-compliance issues raised by Ooredoo to justify the Access Suspension are minor, limited in nature and could have been solved through good faith, constructive and timely negotiations with QNBN. This is comparable to the situation underlying the January 2014 Decision where the Authority (then ictQATAR) found the suspension in that case to be disproportionate to the threat of network harm claimed by Ooredoo. The Authority considers that the Access Suspension in this case, initiated and maintained without any lawful justification, is also disproportionate to the underlying concerns expressed by Ooredoo in its submissions.

4.4.5 Impact on Ooredoo's network and services

Ooredoo criticized the Authority in its response to the Interim Orders where it referred to the small number of incidents, stating that the number of incidents is irrelevant if one or more incidents:

"... harm Ooredoo's network or facilities or where QNBN's actions are carried out with willful negligence and intent, without informing Ooredoo."²⁴

²³ Length (in km) of duct access provisioned to QNBN (source: Ooredoo).

²⁴ Interim Orders at page 4.

There is no specific reference for this test stated by Ooredoo, so presumably it is Ooredoo's categorization of what could amount to a justification for the Access Suspension.

This criticism leads to another dimension of the incidents reported, namely their impact on Ooredoo's network and services. Unfortunately, despite the Authority's request, Ooredoo has failed to explain how and to which extent the alleged incidents of non-compliance to the IAA by QNBN have or may have threatened the integrity or security of its networks or services. Indeed, in its response to the Interim Orders, without identifying where and how it raised its evidence, Ooredoo simply restated that it:

"... has explained how and to which extent those non-compliance matters may threaten the integrity or security of its network".²⁵

In the Ooredoo Response, Ooredoo made the following further statement:

- "2.11 QNBN has not provided Ooredoo to date, an unequivocal assurance that there are no other occurrences of similar action that have been undertaken by QNBN (or its contractors) or where it has engaged in activities that has or may have caused material damage to Ooredoo's network and telecommunication facilities...
- 2.12 Ooredoo is also seriously concerned that in order to attempt to remedy QNBN's use of un-authorized ducts for the provision of services to customers, QNBN has engaged in further activities that are in breach of the IAA; which demonstrate that QNBN has no desire to follow the processes prescribed in the IAA; and which reaffirms Ooredoo's position that QNBN simply cannot be trusted and that it will go to any length, irrespective to whether such activities are legal or not, to meet its own goals...
- 2.13 This, as the Authority will appreciate, leads to the complete destruction of trust that Ooredoo has built and placed with QNBN since April 2012, and raises a major question in Ooredoo's mind: If QNBN is capable of this kind of behavior, then it is legitimate to believe such activities may well have been replicated and repeated across the Ooredoo network.
- 2.14 Therefore, in the absence of complete assurance and complete (and lawful) resolution of the breach occurrences notified to QNBN, Ooredoo has no choice but to maintain the partial suspension of certain obligations under the IAA until all breaches have been resolved and Ooredoo obtains a guarantee from QNBN that no such occurrences remain or will occur in the future."

The Authority does not accept that this line of argument justifies such a drastic measure as the Access Suspension without first seeking to resolve issues through good faith negotiations by following the dispute resolution process in the IAA, and indeed before involving the Authority in its decision.

Consequently, in the absence of a clear statement from Ooredoo of any actual or potential damage or threat to its network or services that would constitute an argument to justify the Access Suspension, the Authority is left to its own assessment and determination of the issue. From the list of incidents mentioned by the parties, the Authority notes that 8 out of the 10 incidents are related to duct interconnection.

²⁵ Ooredoo's response dated April 17, 2016 to the Interim Orders at page 4.

In addition, as the elements sustaining the various cases are supported only by evidence Ooredoo is providing to itself, there is nothing to rebut the argument that the reported duct damage may have resulted from intervention of Ooredoo's non-supervised contractors rather than QNBN.

In light of the above, the Authority cannot assume that Ooredoo's network or services have been threatened or that Ooredoo's customers have been impacted.

4.4.6 Refusal to recommence providing access due to other potential incidents

Ooredoo claimed that the Reported Incidents are only the incidents it has been made aware of and suggested that there may be others, and used this line of argument to justify the ongoing Access Suspension.²⁶ Nonetheless, in response to the Interim Orders, QNBN has provided a formal and unequivocal statement that it fully complies with the IAA.²⁷ Without any evidence to the contrary of other incidents during the relevant period of consideration, the Authority cannot presume that there are other unreported interventions on Ooredoo's network.

Further, as underlined by the Authority in its Interim Orders, QNBN pays to Ooredoo a supervision fee of QAR 1,500,000 each year. With such an amount paid to it, Ooredoo would be expected to hire adequate staff to supervise any interventions by QNBN on Ooredoo's network. In addition, only contractors authorized by Ooredoo can intervene on Ooredoo's network, and the contractors used by QNBN are also used by Ooredoo to conduct its own operations. (The Authority also notes that Ooredoo is not supervising its own contractors on a systematic basis.)

The Authority also notes that Ooredoo is not consistent: in the discussion on the Reference Infrastructure Access Offer ("RIAO"), Ooredoo expressed a clear preference to supervise all and any works by access seekers whereas this is obviously not done in practice.

Therefore, the Authority cannot accept Ooredoo's claim that it had insufficient resources or compensation to supervise QNBN and to avoid and/or identify all interventions on Ooredoo's network.

4.4.7 Other elements to consider

Additional elements lead the Authority towards the conclusion that Ooredoo has not acted in good faith and has engaged in a market foreclosure strategy and has abused its dominant position. Without attempting to be exhaustive, the Authority notes the following elements from the submissions and evidence collected:

- (1) Despite more than three years of consultation and direct negotiation with Ooredoo, Ooredoo consistently raises new issues in order to justify its failure to adequately implement the IAA and to not publish and implement the Approved RIAO, despite several orders (including the November 2015 Order and June 2016 Order) and all the points it raised to the Authority being addressed and answered.
- (2) Vodafone has been unable to reach an agreement with Ooredoo for access, despite Vodafone's full acceptance of Ooredoo's approved RIAO. Ooredoo's justification for

²⁶ E.g. Ooredoo Response at paragraph 2.11.

²⁷ QNBN's response dated April 17, 2016 to the Interim Orders at page 1.

refusing to Vodafone's Acceptance Notice (CLRO/NW/38/2016) are contrary to Clause 3.1 of the approved RIAO.

- (3) When Ooredoo was the sole service provider approving road openings in the Ashghal Road Design and Road Opening systems ("Q-PRO"), it delayed the provision of a Road Opening (RO) approval for more than 200 major requests submitted by QNBN. Ooredoo purported to link its approval on the Q-PRO system to the approval of an Interconnection Request (IR) whenever QNBN planned to install new infrastructure. Such behaviour led the Authority to become part of the Q-PRO process.
- (4) Ooredoo has continually refused to resume provisioning access under the IAA despite the January 2016 Agreement and several statements from QNBN committing to respect the processes set in the IAA.
- (5) Ooredoo has sought to impose new requirements on lifting the Access Suspension in defiance of direct orders from the Authority and submitted an unjustified request for a financial guarantee from QNBN (a Government-owned entity) without legal justification. Ooredoo has not provided any evidence that its refusal to supply is linked to poor creditworthiness on the part of QNBN.
- (6) Neither QNBN nor Vodafone have been able to enter into an agreement to access Lusail's duct infrastructure that is effectively controlled by Ooredoo.
- (7) Neither QNBN nor Vodafone have been able to enter into an agreement to access Ooredoo's duct infrastructure at the Pearl Qatar. Vodafone's requests are now delayed for several years.
- (8) The Authority had to intervene at Hamad International Airport because Ooredoo had over-procured fibre to voluntarily fill strategic duct nodes with its own fibre – to an amount far exceeding any foreseeable needs – preventing other service providers from rolling out their own infrastructure within the airport.
- (9) Throughout the Complaint process, the Authority has actively encouraged the parties to resolve the disputes that underpin the Complaint. The Authority is disappointed that correspondence and submissions between the parties (and including the Authority) have descended into unproductive, diversionary and discourteous interactions. The Authority is particularly concerned with the combative, arrogant and petulant tone and posture of Ooredoo, including in its response to the Interim Orders issued by the Authority in which Ooredoo appears to see itself as above the regulator.

The only inference that can be drawn from such behavior is a deliberate unwillingness to negotiate in good faith in connection with the issues under consideration.

4.4.8 Refusal to supply and abusive conduct

There is no doubt that Ooredoo is refusing to supply QNBN and Vodafone with access to its ducts as required under the IAA, the RIAO and the RF. This includes actual refusal to supply through the on-going Access Suspension and a constructive refusal to supply by unduly delaying a resolution of outstanding issues and/or further access to its duct network.

As mentioned above, Ooredoo was previously found in the January 2014 Decision to have abused its position of dominance by refusing to provide access to its duct network and frustrating attempts to resolve access disputes. Similar conduct is obvious in connection with this Complaint, including elements such as confusion in relation to the scope of access requests (leading to some works by QNBN not being subject to an access request), claims that relatively minor conduct amounts to material breach of the IAA or otherwise justifying suspension of the IAA, failure to follow appropriate procedures, and unsupported claims that

QNB's conduct would cause irreparable harm to Ooredoo's network, among other similarities. The Authority is unwilling to accept for this conduct to continue in any form.

The Authority is not convinced by Ooredoo's assertions that the Access Suspension is not a full suspension as QNB still has use of already installed infrastructure, and that the Access Suspension is temporary and very limited in scope. QNB clearly has no ability to continue its network roll out which relies on access to Ooredoo's duct network. Individually, and when considered together, the Access Suspension, Ooredoo's failure to follow processes set out in the IAA, the resulting delays, material costs and harm to QNB, and the likely impact on consumers and competition, among other issues already mentioned above, clearly amount to an abusive refusal to supply including when viewed in light of the findings of the January 2014 Decision and international examples of abuse of dominance.

The Authority refers, as an example, to the decision of the Italian Competition Authority (known as the "**AGCM**") dated May 9, 2013²⁸ (later upheld by the Italian Council of State on appeal²⁹) (the "**Telecom Italia Case**"), where the incumbent, Telecom Italia, was fined EUR 104 million under EU law³⁰ for refusing access to its duct network (an "essential facility" under EU law) due to, amongst other reasons, its "unjustifiably high" rejection rate of access requests to its network on technical or procedural grounds between 2009 and 2011. This included an allocation of EUR 88.182 million specifically in relation to Telecom Italia's constructive refusal to deal (in addition to a margin squeeze) amounting to an exclusionary abuse. Other conduct of Telecom Italia included undue delays in replying to access requests for active and inactive lines, and imposing service activation terms that were more onerous for competitors than for Telecom Italia's internal business units. The AGCM imposed a higher fine for aggravating circumstance of recidivism, as Telecom Italia was already found to have committed exclusionary abuse of a dominant position. Ooredoo's conduct can be characterised in a similar or comparable light.

In 2011, the Polish SMP operator, Orange Polska S.A. (then Telekomunikacja Polska S.A.) ("**TP**"), was fined over EUR 127.5 million by the European Commission having been found to have abused its dominant position in the Polish broadband access market between 2005 and 2009 by refusing to supply wholesale products, in breach of Article 102 of the TFEU (the "**TP Case**").³¹ TP appealed the TP Case to the European General Court, which appeal was rejected in its entirety.³² TP was under regulatory obligations to allow access to its network and broadband services to allow effective competition in the downstream markets. TP was found to have proposed unreasonable conditions governing access to the wholesale broadband products, delayed negotiations for access to its network, limited access to its network and subscriber lines by (for example) unreasonably rejecting access orders, and refusing to provide reliable and complete information about its network that was indispensable to allow other operators to take business decisions. The TP Case is an example of a regulator considering together various forms of obstructive conduct and practices of an incumbent over a period of time to make a finding of abuse.

²⁸ Italian Competition Authority decision of 9 May 2013, No 24339, Telecom Italia S.p.A.

²⁹ Judgment of the Italian Council of State of 15 May 2015, No 2479, Telecom Italia S.p.A..

³⁰ Treaty on the Functioning of the European Union ("**TFEU**") at Article 102.

³¹ European Commission decision of 22 June 2011, COMP/39.525, Telekomunikacja Polska.

³² Judgment of the European General Court of 17 December 2015, Orange Polska S.A. v European Commission (ECLI:EU:T:2015:1002).

On August 1, 2007, Portugal Telecom received a fine of Euro 38 million under EU and Portuguese law for abuse of dominance in a decision issued by the Competition Authority of Portugal, on the grounds that Portugal Telecom rejected 52 requests from competitors for access to its duct infrastructure between 2001 to 2005 (the "**Portugal Telecom Case**").³³ In its decision, the Competition Authority found that the incumbent's conduct of refusing access fully or partially to key sections of its duct infrastructure had the effect of a refusal to deal. The decision of the Competition Authority was reversed on appeal in the Lisbon Court of Appeal³⁴; however, the Authority can distinguish the reasons underpinning the reversal of the decision at as the Competition Authority used a narrow geographic dimension when defining the relevant market. It considered each duct segment in question to be a different market with, in some segments, feasible alternative inputs to competitors' downstream services being available. That finding is clearly distinguishable in Qatar where the geographic dimension is national.

On November 7, 2005, Orange (France Télécom as it was then known), the incumbent French telecom, was fined EUR 80 million by the French Competition Authority ("**FCA**") for anti-competitive practices relating to the provision of access to its network (the "**France Télécom Case**").³⁵ Having a quasi-monopoly over access to its local loop infrastructure, which was not yet unbundled at the time, France Télécom refused from 1999 to 2000 requests from competing operators to use their own installations in France Télécom's infrastructure, and only offered wholesale services provided that they were implemented on France Télécom's installations.

Considering that this practice prevented third party telecoms operators from developing their own ADSL offers, the FCA first enjoined France Télécom in a February 18, 2000 decision to enable third party operators to effectively compete in the market by providing them with a commercial offer for the access to the local loop, which was considered as essential infrastructure. Ruling on the merits of the case on November 7, 2005, the FCA declared that France Télécom, due to its refusal of access and another anti-competitive practice relating to the pricing of the wholesale offer, abused its dominant position in the local loop market to artificially prolong its quasi-monopoly on the ADSL market. The FCA further stated that these practices were extremely serious and had caused a significant damage to the economy. This decision was eventually confirmed by the Court of Appeal and the French Supreme Court.

On July 20, 2016, the French telecoms regulatory authority ("**ARCEP**") issued a final notice against Orange for breach of its obligations of non-discrimination and transparency in allowing access to its civil engineering infrastructure for the B2B retail market, especially duct and fibre access (the "**Orange Notice**").³⁶ The Orange Notice is the result of an on-going investigation by ARCEP initiated in October 2015 to assess whether the B2B retail market entry conditions are satisfactory to allow new or recent entrants to effectively maintain or develop their positions in the market. The investigation unveiled discriminatory practices by Orange and ARCEP found that Orange was in breach of its regulatory requirements. ARCEP ordered Orange (which continues to enjoy significant power and the largest market share) to:

³³ Portuguese Competition Authority decision of 1 August 2007, PT Comunicações S.A.

³⁴ Judgment of the Lisbon Court of Appeal of 22 December 2010, PT Comunicações S.A.

³⁵ French Competition Authority decision of 7 November 2005, No 05-D-59, France Télécom.

³⁶ ARCEP notice of 20 July 2016 (see press release: <http://www.arcep.fr/index.php?id=8571>).

- provide access to its local loop infrastructure to alternative operators under the same conditions that it provides to itself; and
- meet its obligation to provide information on accessing its civil engineering infrastructures for fibre roll outs on the B2B retail market.

If Orange fails to comply with the Orange Notice, the case could be referred to ARCEP's judgment and enforcement body which may impose a penalty on the operator. The matter is at an early stage, but the underlying issues are similar to the France Télécom Case, where the FCA sanctioned Orange (formerly France Télécom), including through a large fine. This development supports the Authority's approach to take a significant stand against non-compliant and dominant operators. It also demonstrates that, despite the imposition of large fines for similar behaviours, Orange were recidivistic and continued to through anti-competitive behaviours on the basis of its incumbent and dominant position. This matter, in combination with the France Télécom Case, highlights the importance for regulators to take timely steps to dissuade on-going anti-competitive behaviours and to closely monitor the market situation.

On July 20, 2010, Telstra (the traditional incumbent, now privatized) was fined AUD 18.55 million by the Federal Court of Australia (after the regulator initially sought a fine of AUD 40 million) for refusing competitors access to its exchanges between 2006 to 2008 (the "**Telstra Case**").³⁷ While the fine in that case was ordered as a result of Telstra's breach of its carrier license, and not strictly as an abuse of dominance, the Telstra Case shows international precedent of regulators and courts taking a hard line towards allegations of refusal of access.

The Authority notes that Ooredoo has sought to characterise the elements for an offence for abuse via a refusal to supply in the Ooredoo Reply by reference to EU principles and international case law.³⁸ This included references to the Austrian case of *Bronner v Mediaprint*³⁹ and the European Commission's guidance on Article 82 of the EC Treaty and other guidance from European Commission on matters relevant to actions for refusal to deal.

Those sources are not directly relevant to the scope of the Complaint. However, they are of interest to the Authority as they do provide some useful guidance from the Commission, including a confirmation that:

- degradation in service under an agreement to supply can be interpreted as a refusal to supply;⁴⁰ and
- a product or service is more likely to be regarded by the Commission as "indispensable" for competition purposes if the dominant entity has been providing it to another entity previously and the other entity has made substantial investment in reliance on the product or service before being cut off.⁴¹

³⁷ Australian Competition and Consumer Commission v Telstra Corporation Limited [2010] FCA 790, Middleton J.

³⁸ Ooredoo Reply at paragraphs 2.1 to 2.17.

³⁹ Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs und Zeitschriftenverlag GmbH & Co KG [1998] ECR I-7791 (the "**Bronner Case**").

⁴⁰ Official Journal of the European Union, Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/18), 24 February 2009, at paragraph 79.

⁴¹ Official Journal of the European Union, Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/19), 24 February 2009, at paragraph 84.

The Authority does not agree with Ooredoo's assertion that, for an abusive refusal to supply to exist there must be permanent conduct.⁴² Ooredoo quoted from the US case of *Verizon v Curtis v Trinko*⁴³ (the "**Verizon Case**") to support this assertion. The Verizon Case is not helpful in Qatar, being a US case where regulation differs significantly from the regulatory framework in Qatar, for instance with very limited *ex ante* regulation. In addition, it can be distinguished on the facts as it related to an action to implement a judicial doctrine of forced access to infrastructure. Nonetheless, Ooredoo's admitted conduct (i.e. the Access Suspension) remains on-going after more than 12 months, which is itself an adequate period of time. Also, the Authority is satisfied that a clear pattern of behaviour has existed over many years, as set out in detail above, demonstrating that Ooredoo's conduct is unlikely to cease without intervention.

The appropriate test for the Authority to consider for an abuse of dominance is set out in section 3 of the Competition Policy, with guidance provided in sections 3.5 and 3.6 of the Explanatory Document to the Competition Policy. This requires a finding that:

- (1) Ooredoo's duct network is objectively necessary as an input to downstream markets;
- (2) Ooredoo's refusal to supply is likely to eliminate or substantially lessen effective competition on the downstream market; and
- (3) consumers are likely to be harmed.

The first element of the test has already been established in sections 4.2 and 4.3 above. It is clear that access to Ooredoo's duct network is objectively necessary as an input to downstream markets for wholesale and retail telecommunications services. Ooredoo's duct infrastructure can currently only be accessed by QNBN through the IAA.

The remaining elements are assessed in section 4.5 below.

4.5 Effects of Ooredoo's conduct

QNBN has provided the alleged effects of Ooredoo's conduct on QNBN and competition in relevant markets.⁴⁴ This includes:

- (1) foreclosure of the fixed telecommunications market to competition;
- (2) QAR 750,000 per month in lost revenue for failure to provide final acceptance for duct access with an exponential increase with ongoing suspension of the IAA and delay in publishing the RIAO;
- (3) a conservative revenue impact of QAR 34.9 million in 2017 and QAR 57.2 million in 2018;
- (4) impact on consumers including (government consumers), consumer frustration and reduced uptake in telecommunications services;
- (5) reduced service to other competitors and owners of private networks, with Vodafone connections remaining outstanding; and
- (6) failure to realize the benefits of the Government Network and compromise of Qatar's security apparatus.

The Authority has complemented those alleged effects with its own observations and data in this section 4.5 when assessing the final two elements of the abuse offence.

⁴² Ooredoo Reply at paragraphs 2.70 and 2.71.

⁴³ *Verizon Communications Inc v Law Offices of Curtis v Trinko, LLP* (2003) 540 US.

⁴⁴ Complaint at pages 8 and 9.

4.5.1 Ooredoo's refusal to supply substantially lessens and threatens to eliminate effective competition in the downstream fixed and mobile markets

Regulated passive access products, such as access to ducts, facilitate market entry by faster rollout and lowering the cost of deploying network infrastructure.⁴⁵ Instead of deploying their own ducts and trenches, access seekers gain access to the access provider's duct network in order to deploy their own fibres. This in turn allows them to compete in the downstream markets for fixed voice, broadband and leased lines services. Duct access further allows mobile network operators to deploy fibre backhaul to their base stations. As such, duct access does not only facilitate downstream competition in fixed services, but also mobile services. This is a vital point in the rollout of 4G/LTE and even more data (and backhaul intensive) 5G networks.

Duct access further facilitates competition deeper into the value chain than for example active access products. As the access seeker has control over more of the value chain this can lead to better outcomes for end-users, as the access seeker would have more freedom to innovate, rather than relying on product specifications determined by Ooredoo.

Product innovation can be on a number of dimensions:

- new products and enhancements to the capabilities of existing products, enabling new developments in downstream services and better serving groups of customers whose needs are not currently well met;
- pricing – i.e. allowing the access seeker to decide how best to recover costs of the active equipment they operate will allow innovation on tariffs, rather than simply applying tariff gradients that reflect Ooredoo's decisions on wholesale pricing; and
- quality improvements - Allowing access seekers control over a greater part of the value chain, in particular active equipment, should in itself bring an improvement in service quality. The removal of duplicate equipment⁴⁶, which may fault, will also tend to increase service quality. Finally allowing access seekers to roll out new network topologies, which may remove or concentrate active components, for example Cloud Radio Access Networks, could increase quality of service.

Further, any increase in downstream competition is likely to lead to an increased productive efficiency and thus lower end-user prices. Firms with market power have less incentive to minimise costs than firms in competitive markets, where each firm needs to minimise costs in order to be able to fully recover their costs. While ex-ante regulation (i.e. price controls) can give some incentives to minimise costs, the incentives will not be as strong as those under competition. As a result, on a like for like basis, introducing competition into a part of the value chain could be expected to drive down costs of providing, operating and maintaining the associated assets.

In addition, where an operator such as Ooredoo has market power in an upstream/wholesale market it has little incentive to deliver services to competitors in downstream markets in a

⁴⁵ As set out in footnote 11 above, civil works (i.e. digging or trenching) represent up to 80% of the total cost of infrastructure provisioning. As such, sharing the duct via passive access regulation can lead to cost savings of up to 75%.

⁴⁶ For example where access seekers installed customer premises equipment alongside separate Ooredoo network termination equipment, where a single integrated piece of equipment would suffice. This may be a more significant issue for access services than backhaul services.

fashion that will minimise the overall end to end cost for those competitors⁴⁷ as increasing the cost to competitors could increase the market level of prices and hence Ooredoo's overall margins in the downstream market.

The positive impact of passive access regulation (such as duct access) on downstream competition and demand for communications services is well evidenced. For example, in Spain the regulatory authority has focussed on passive access regulation alongside active access regulation since 2009, resulting in additional fibre network coverage (from 10% in 2011 to 45% in 2014), infrastructure-based competition in several parts of the country and a significant increase in high speed broadband connections (e.g. the share of broadband connections with speeds of 30Mbit/s or above in total broadband connections increased from 2% in 2010 to 24% in 2014).⁴⁸ A similar experience has occurred in other European countries.⁴⁹

In the context of Qatar, Ooredoo is the dominant operator in the Market with a non-substitutable service (access to its duct network, which is a bottleneck facility) for downstream markets in the provision of fixed telecommunications services in Qatar. Ooredoo is also dominant in those downstream markets and has a very high market share.⁵⁰ Therefore a refusal by Ooredoo to supply further duct access to QNBN and/or Vodafone will clearly have the effect of substantially lessening effective competition in those downstream markets, if not eliminating competition overall in the long term.

In suspending QNBN's access to its infrastructure, Ooredoo has also undoubtedly caused significant damage to QNBN (noting that QNBN has provided its evaluation of the damage, as referenced above). The Authority is not in a position to assess the exact damage to QNBN. This is not a matter for this decision – it is a matter for the Court – but QNBN's damages are likely to be very significant and it has lost substantially the ability to grow and acquire new customers and to serve its existing customers with new or additional routes, which in turn is likely to harm consumers.

This is not a borderline case where a vast amount of market and economic research is required in order to understand the likely impact of Ooredoo's conduct. Without access to Ooredoo's ducts, the simple fact is that QNBN (and Vodafone) is unable to continue the rollout of its fibre optic network, a key input to its own services and the products and services of other retail service providers, including new providers who wish to enter the Qatar market. The only alternative to access to Ooredoo's duct network would be to construct a parallel duct network, which is not a technically or economically feasible approach.

Allowing Ooredoo's refusal to supply to continue would leave Ooredoo with the means to effectively continue to control the fixed line telecommunications market in Qatar, especially as Ooredoo continues to roll out its own fibre optic cables in parallel to QNBN's rollout. This is

⁴⁷ To the extent that this may differ from costs for Ooredoo's own downstream business due to differences in network structure, the level of demand or lack of full equivalence.

⁴⁸ See Section 7 in the following report: http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/digital-comms-review/WIK_regulatory_approaches_to_risky_bottleneck_assets.pdf

⁴⁹ See, for example, paragraph 5.31 of: http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr-passives/responses/PAG_Annex_A.pdf

⁵⁰ As part of the 2016 MDDD Ooredoo was found to be dominant in the markets for retail national fixed voice and broadband services (M1a, M1b and M1c), retail international fixed outgoing call services (M2a, M2b), retail national and international leased lines (M3 and M4). These dominance findings are in line with those set out in the 2010 MDDD. In all these markets, Ooredoo retained a share of total revenues in excess of 90% until Q2 2015.

completely counter to the goal of a level playing field, which is the outcome desired by the government.

As such, the Authority concludes that this element is satisfied and Ooredoo's conduct is likely to substantially lessen effective competition in downstream markets.

4.5.2 Consumers are harmed

The assertions by Ooredoo that the consumer impact of its conduct is temporary or short term⁵¹ is strongly rejected by the Authority. It is irrelevant whether the abuse is temporary or not to result for it to result in consumer harm.

As mentioned above, to find an abuse of dominance the Authority is not required to demonstrate actual consumer harm, only likely consumer harm. Also as stated in the previous section, this is not a borderline case where a market and economic research is required to establish these elements.

As set out in Section 4.5.1 above, duct access represents an important route to facilitate competition in fixed and mobile downstream markets. By refusing to provide duct access, Ooredoo has therefore prevented the development of competition in these markets.

In doing so, Ooredoo is likely to have maintained artificially high prices for consumers (as evidenced by the non-decreasing trends in retail prices for several fixed services, discussed below). Ooredoo has few (if any) restrictions on its charging practices and is not restricted from charging prices for its fixed telecommunications services that are above a level that would exist in a competitive market. It is able to extract rents from customers, such as those resulting from its leased lines or fixed broadband offers, with excessively high margins for fixed services. Ooredoo has earned high and increasing returns across its fixed services in recent years (see Table 1 below). The situation is particularly marked in the context of international bandwidth provided as part of Ooredoo's international leased line services, where Ooredoo is currently charging QAR 626,200 and QAR 735,280 for a STM 1(155 Mbps) half-circuit from Qatar to other GCC countries and the rest of the world, respectively.⁵² This compares to an average monthly costs per STM 1 of circa QAR [CONFIDENTIAL] in 2014.⁵³ Further, whilst the cost of international bandwidth has fallen (e.g. from QAR [CONFIDENTIAL] per STM 1 in 2012 to QAR [CONFIDENTIAL] in 2014⁵⁴), this is not reflected in Ooredoo's international leased line prices, which have remained virtually unchanged over that period.

The potential impact of this lessening of effective downstream competition is best illustrated when comparing the recent developments in the mobile downstream markets to those in the fixed downstream markets.

- In particular, since Vodafone's market launch in July 2009, it has gained a revenue market share of up to 34%.⁵⁵ The CRA notes with concern that this has fallen in the past quarters to 26%, which is the same level as Q4/2012. The resulting competitive dynamics have provided for significant market growth (in terms of take-up and service

⁵¹ Ooredoo Reply at paragraphs 2.74 and 2.75.

⁵² Ooredoo's Retail tariff: "B02-01 International Private Leased Circuits", available at: <https://www.ooredoo.qa/portal/OoredooQatar/regulatory>

⁵³ Based on Ooredoo's RAS 2014.

⁵⁴ Based on Ooredoo's RAS 2012 and 2014.

⁵⁵ Q2/2014, based on published financials by the Service Providers.

revenues). Consumers have benefited from product innovation, where Qatar is on the forefront of 4G/LTE implementation and also falling prices. Some of the effects are shown in the table below.

- In contrast, very limited competitive effects can be observed in the fixed markets to date. This is despite Vodafone starting to offer retail access, fixed voice and broadband services to predominantly residential customers in selected geographic areas (i.e., at the Pearl, in Barwa City, Barwa Commercial and parts of West Bay) in Qatar in early 2013.⁵⁶ In particular, Vodafone's share of total revenues for retail fixed voice and fixed broadband services remains less than 5% since entering the market. The performance of the fixed market during the period under consideration is less strong than that of the mobile market, discussed above. For example, whilst the number of total fixed subscribers has increased between 2011 and 2015, the household penetration rate has fallen slightly. Retail prices have also remained stable and some have even risen. For example, an international price benchmarking study conducted by the Authority in 2015 revealed that (see also Figure 2 below):
 - Retail fixed access and call prices for residential customers remained broadly unchanged, whilst those for business customers had increased in 2013.
 - Retail fixed broadband prices have fallen for selected residential packages, whilst remaining mostly unchanged for business packages.
 - Limited changes in retail leased lines charges, especially since 2013.

Consequently, Ooredoo has sustained (and even increased) its high margins on fixed services by retaining retail prices for these services unchanged (see above) despite achieving reductions in input costs (such as for international capacity), implying that end users did not benefit from these cost reductions, as would have been the case under competition.

Table 1. Mobile and Fixed service performance indicators, 2011 vs. 2015

Mobile Service Indicator	2011	2015/16 ⁵⁷	Change
Total active mobile subscribers	2.34 mio	4.59 mio	+96%
Penetration rate (% of total population)	137%	184%	+47ppt.
Total mobile service revenues	[CONFIDENTIAL] QAR million	[CONFIDENTIAL] QAR million	44%
Average mobile call price (nat-nat)	[CONFIDENTIAL] QAR/min	[CONFIDENTIAL] QAR/min	-58%
Average price per SMS	[CONFIDENTIAL]	[CONFIDENTIAL]	-46%
Average price for mobile data ⁵⁸	[CONFIDENTIAL] QAR/SMS	[CONFIDENTIAL] QAR/SMS	-68%
	[CONFIDENTIAL]	[CONFIDENTIAL]	

⁵⁶ At the Pearl it relies on wholesale broadband access services from Ooredoo (based on a bilaterally negotiated agreement) and in the remaining geographic areas it relies on QNBN's passive infrastructure (i.e., Vodafone has deployed its own active network infrastructure using QNBN's wholesale products).

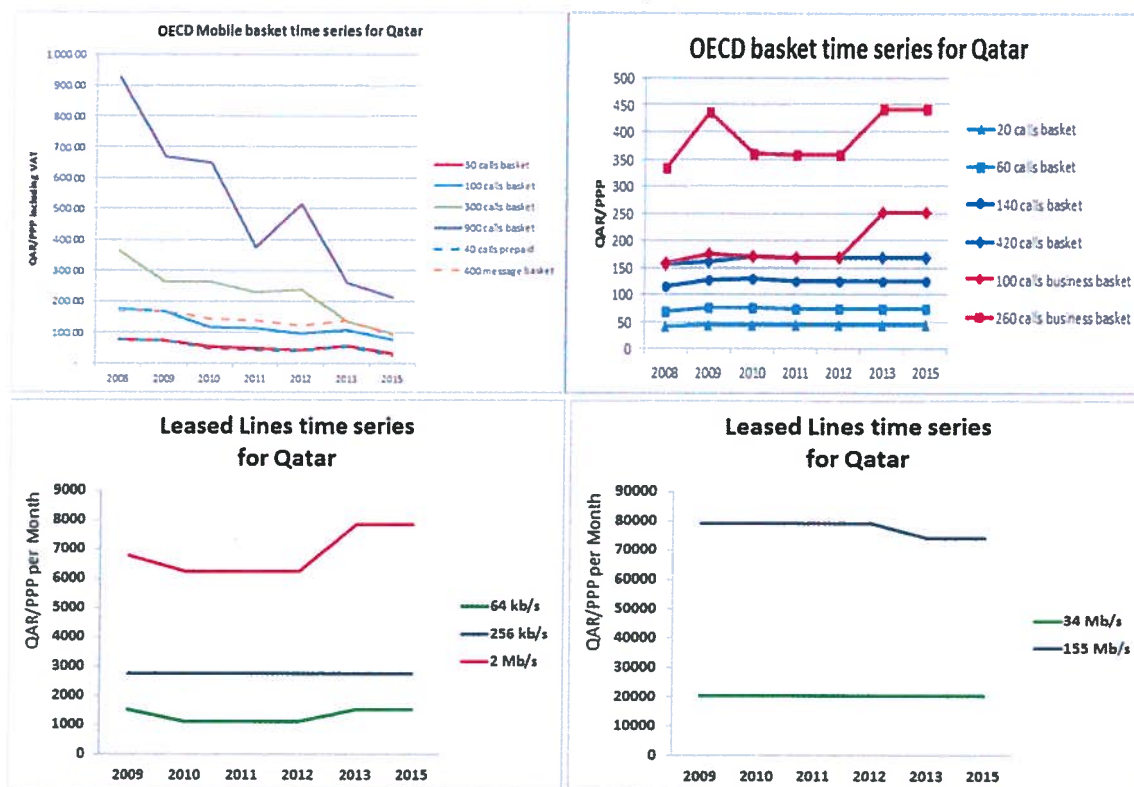
⁵⁷ Based on average during the last four quarters (i.e. Q3 2015 to Q2 2016)

⁵⁸ Source: Average call/SMS/mobile data revenue data submitted by SPs to The Authority as part of the quarterly MDDD Indicator data collection process.

	QAR/MB	QAR/MB	
Fixed Service Indicator	2011	2015	Change
Total fixed subscribers	[CONFIDENTIAL]	[CONFIDENTIAL]	22%
Penetration rate (% of total households)	[CONFIDENTIAL]%	[CONFIDENTIAL]%	-5ppt.
Total fixed service revenues	[CONFIDENTIAL] QR mio	[CONFIDENTIAL] QR mio	54%
Profitability (Profits/Revenues)	[CONFIDENTIAL]% (2013)	[CONFIDENTIAL]%	+5ppt.
Average fixed-to-mobile call price ⁵⁹	[0.62] QR/min	[0.62] QR/min	0%

Source: CRA analysis

Figure 2. Recent price trends for retail mobile, fixed voice and leased line services



Source: CRA analysis

The above is also reflected by Qatar's recent performance in international benchmarking studies:

⁵⁹ National fixed to fixed (on net) calls are largely free of charge. In particular, both Ooredoo and Vodafone offer unmetered local calls as part of their residential fixed line rental product (i.e., Ooredoo offers unmetered calls to other landlines within Qatar and Vodafone unmetered calls to other Vodafone Qatar landlines and mobiles).

- The Authority's recent international price benchmarking study showed that, in 2015, Qatar's mobile voice and data and mobile broadband prices are below or in line with the regional average. This also holds for residential fixed voice services, whilst Qatar has the most expensive business fixed voice service in the GCC, mainly because of high line rental for business phones from Ooredoo. Also, retail broadband prices were comparable to those elsewhere in the region, but remain significantly above those across the OECD.
- Qatar performs well (i.e. rank 27 of 139, in line with UAE and Bahrain) on the 'Networked Readiness Index 2016' prepared by the World Economic Forum⁶⁰. However, whilst this overall performance is based on a strong performance across most sub-indices/pillars, Qatar underperforms on the "affordability" pillar (measuring the affordability of communications services), in particular on "fixed broadband tariffs" (ranking 123 of 139) and "internet & telephony competition" (ranking 125 of 139).⁶¹
- Qatar ranked 13 of 61 countries covered by the IMD World Competitiveness Yearbook 2015⁶² (again, in line with UAE). However, the report states a declining performance of Qatar in terms of "Communications Technology" between 2013 and 2015 (which measures the degree to which voice and data services meet business requirements) and "Connectivity" (which measures the level of connectivity of people and firms).

Another side-effect of having no effective competition is limited innovation and consumer choice. Ooredoo will have few pressures to introduce new products and services, or to improve the delivery of existing products and services to consumers in Qatar. The lack of competition also allows Ooredoo to be non-committal on quality of service.

Given the above, it is clear that consumers have been harmed by Ooredoo's abusive conduct.

4.5.3 Qatar's economy is harmed

Further to the consumer harm resulting from Ooredoo's refusal to supply duct access discussed above, there is also a negative impact on the wider economy in Qatar.

There is a well-established positive impact of communications service take-up and usage on productivity levels and investment levels in the wider economy, as a result of these services enabling companies and individuals to undertake work more effectively and efficiently.⁶³ A selected set of these studies is set out in Table 2 below.

There is also an inverse relationship between prices and demand for communications services (i.e. demand being negatively affected by price). Given this, any adverse effect from a lack in competition in terms of lower take-up and or usage of fixed communications services resulting from Ooredoo's conduct discussed above, is likely to also have negatively affected overall GDP growth in Qatar.

⁶⁰ World Economic Forum, "The Global Information Technology Report 2016", available at: http://www3.weforum.org/docs/GITR2016/WEF_GITR_Full_Report.pdf

⁶¹ See page 162 of the report referred to in footnote 60.

⁶² Available at: <http://www.imd.org>

⁶³ The main productivity benefits commonly associated with communications services include, amongst others, improving information flows between buyers and sellers of certain products; reducing travel time and costs associated with sharing information; improving efficiency of mobile workers; and improving job search and the chances of the unemployed finding employment.

In absence of any the exact price effect of Ooredoo's conduct, it is difficult to quantify the resulting wider economic impact of this conduct. However, applying empirical findings provides an indication on the potential wider economic impact.⁶⁴

- For example, assuming that, in absence of Ooredoo's conduct, broadband penetration would have been 10% higher could have resulted in incremental GDP per capita growth of up to .4%. Based on Qatar's average GDP per capita (in constant 2013 prices) of QAR 360,387 over the period 2011 to 2015, this would equate to an incremental GDP per capita of up to QAR 5,005.
- Similarly, applying the assumed 10% higher broadband penetration rate to the employment effects identified by Crandall (2007) would have implied incremental employment of up to 54,440 per year during that period.⁶⁵

The CRA is conscious that these effects may not be immediately applicable to Qatar, but we note that the overwhelming body of literature confirms a positive correlation between broadband take-up, GDP growth, employment and pricing.

The customers in Qatar have been deprived also of the positive effects of competition. Competition brings new products and service capabilities. The potential has been clearly demonstrated in the mobile sector. Competition also brings price decreases. Not only are the Qatari prices in true international comparison very high. Ooredoo has also introduced (not approved) price increases in the broadband market.

Further, Ooredoo's conduct is also limiting the means for Qatar to diversify its economy in stark contrast to the goals of Qatar National Vision 2030. In fact, a driving force in Qatar's diversification has been its investment in ICT to create a core engine for a competitive economy, universalise access to social services, and create a knowledge-based online society. With huge strides being made to develop and implement policies to help Qatar adapt to fast changing economic and technological landscapes, it is surprising that anyone would act in such a way as to stall innovation and healthy competition. Such behavior is even more

⁶⁴ Overview of selected economic impact studies:

Kumar (2016), "The effects of ICT on output per worker: A study of the Chinese economy": Enhanced diffusion of ICT services (i.e. mobile voice, broadband) have a positive and statistically significant positive effect of economic growth ranging from 0.010 to 0.080.

Kongaut & Bohlin (2014), 'Impact of broadband speed on economic outputs: An empirical study of OECD countries.': Higher speeds for broadband services encourage greater GDP per capita. A 10% increase in broadband speed positively affecting the GDP per capita by 0.8%.

Frontier Economics (2011), 'Contribution of the digital communications sector to economic growth and productivity in the UK' :1% increase in communications equipment investment is linked with a 0.05 – 0.06 percentage point increase in UK economic growth

WorldBank (2010), 'Building broadband: Strategies and policies for the developing world': GDP percentage point increase due to 10 percentage-point increase in penetration: (i) Fixed telephony – 0.43 for high-income countries and 0.73 for low- and middle-income countries: 0.73 (ii) Mobile telephony – 0.60 for high-income countries and 0.81 low- and middle-income countries: 0.81 (iii) Internet – 0.77 for high-income countries and 1.12 for low- and middle-income countries: 1.12 (iv) Broadband – 1.21 for high-income countries and 1.38 for low- and middle-income countries: 1.38

Czernich (2009), "Broadband Infrastructure and Economic Growth": A 10 percentage-point increase in the broadband penetration rate results in a 0.9-1.5 percentage-point increase in annual per-capita growth.

Qiang (2009), 'Information and communications for development: extending reach and increasing impact': A 10% increase in broadband penetration lead to a 1.2% to 1.4% higher GDP. An increase of mobile penetration by 10% on the other hand is linked to an increase of the GDP by 0.6% to 0.8%.

Crandall (2007), 'The effects of broadband deployment on output and employment: a cross-sectional analysis of US data':For every 1 percentage point increase in broadband penetration, employment is projected to increase by 0.2 to 0.3 percent per year.

⁶⁵ Based on employment data in the annual Qatari Labour Force Statistic 2011 to 2015

reprehensible that it jeopardizes the decision of the State of Qatar to build a passive infrastructure open to all service providers and its investment of several hundred million QAR. With the upcoming FIFA World Cup in 2022, the construction of one of the world's most sophisticated and ambitious integrated and connected rail project, the development of some of the most sustainable smart cities in the world and the steady implementation of Qatar National Vision 2030, a robust and open infrastructure and innovative ICT services are a must.

Ooredoo's duct network is the key bottleneck for other service providers (QNBN, Vodafone) rolling out fibre. QNBN fibre is used also by other Service Providers, i.e. Vodafone, to offer Fixed Telecommunication Services to the public. Also, closed user groups (such as government entities and large corporations) can use Qnbn's fibre network to cater for their own needs.

Ooredoo is very well aware that its duct network is not replicable, i.e. there is no practical alternative. Therefore, Ooredoo's blunt refusal to allow other licensed service providers accessing to its duct network does not only impede QNBN directly, but it also substantially lessens competition. As set out above this not only the QNBN and the fixed sector which will suffer. The telecommunications sector is the enabler for the wider ICT (Information and Communications Technologies) environment. Therefore, the negative knock-on effects will also hinder the wider ICT development of Qatar.

Ooredoo's admitted conduct and the pattern of behavior observed by the Authority (as mentioned above) have prevented any significant network roll out by potential competitors and has enabled Ooredoo to build a stronghold and to remain effectively the only company providing fixed services in Qatar.

The Authority has therefore reached the conclusion that Qatar's economy is harmed by Ooredoo's abusive conduct.

4.6 Defenses or justification for Ooredoo's conduct

To rebut a finding of abuse of dominance, Ooredoo has claimed that its conduct was objectively justified as a proportionate response to QNBN's alleged non-compliance with the IAA.⁶⁶ Understandably, no claim for justification of efficiency has been raised.

The burden of proof to establish this defense lies with Ooredoo.

As mentioned in section 4.4.5 above, Ooredoo has not provided adequate evidence to demonstrate how and to which extent the alleged incidents of non-compliance of the IAA have threatened the integrity or security of its networks or services. Simply citing alleged breaches or non-sanctioned conduct is not sufficient; there must be a clear and demonstrable threat to Ooredoo's network or services. This threshold has not been met.

The Authority rejects any assertion that Ooredoo's conduct was (or remains) objectively justified and finds that Ooredoo has abused its position of dominance and acted anti-competitively. By doing so, Ooredoo is also in breach of the Ooredoo Fixed License.

⁶⁶ Ooredoo Reply at paragraphs 2.77 to 2.81.

4.7 Remedies and sanctions

Please refer to section 6 for the remedies and sanctions imposed by the Authority in connection with this section 4.

5 Assessment of alleged breaches of Articles (20) and (24) of the Telecommunications Law, the Executive By-Law and the Access Regulation

In addition to testing QNBN's allegations under the competition provisions of the Telecommunications Law, QNBN's allegations must be assessed under those provisions of the RF which set out Ooredoo's obligations as a "Dominant Service Provider" to provide other service providers with access to its infrastructure.

Article (20) of the Telecommunications Law stipulates as follows:

"... Any service provider must upon receiving a written request from another service provider in respect to interconnection and access, enter into negotiations in good faith with the service provider requesting such interconnection and access for the purpose of reaching an agreement on interconnection or access to:

1. interconnect networks and/or
2. provide access to telecommunications facilities including central offices, other sites for equipment, emergency, towers, poles, telecommunications lines or and underground facilities, whenever necessary, in a reasonable manner in order to enable the service providers to provide their services to their customers."

On June 12th, 2013, the Authority commenced a lengthy consultation process which led to the finalizing of the RIAO in the November 2015 Order which imposed an obligation on Ooredoo to make the RIAO available on its official website within 14 days and to send the agreement implementing the approved RIAO to the Authority and make it available to other licensed operators.

At the date of this Decision and Orders, Ooredoo has yet to fulfill both directions set out in the November 2015 Order, as re-instated in the May 2016 Orders.

Despite the above-mentioned assertions by Ooredoo, Article (25) of the Telecommunications Law provides that the Authority shall determine the rights and obligations of a Dominant Service Provider that includes any requirements relating to the contents and publication of an interconnection reference offer and access agreements. Accordingly, the Authority maintains that Ooredoo is in breach of Article (20) of the Telecommunications Law and the directions set out in the November 2015 Order which is binding as per Article (47) of the Executive Bylaw. In doing so, and given the ongoing Access Suspension, there are currently no viable and working mechanisms whereby Ooredoo makes its wholesale duct access available to any other service providers, including QNBN.

Given Ooredoo's status as Dominant Service Provider, Article (42) of the Telecommunications Law imposes an additional obligation on it to meet any reasonable request for interconnection and access to its telecommunications network whenever it is technically possible. Ooredoo's conduct during the Partial Suspension and Full Suspension

Period, which was confirmed in the January 2014 Decision, is a clear breach of its obligations under this provision.

Ooredoo has claimed that it discharged its obligations with respect to Article (24) of the Telecommunications Law when it entered into the IAA, relying on Article (21) of the Telecommunications Law, claiming that QNBN's access requests during the Suspension Period are not 'reasonable' as they may cause harm to its property or inflict material damage upon its network and telecommunication facilities or negatively affect performance of either of them. The Authority has not received any evidence to support this claim and does not consider QNBN's request for interconnection to fail the reasonableness test set out at Article (24).

Furthermore, as stated in section 4.4.3 above, Ooredoo and QNBN entered into the IAA **prior** to the Access Suspension so it cannot refer to Article (21) as a justification for the Access Suspension.

Ooredoo has further relied on the wording of Article (24) of the Telecommunications Law which provides that:

"In similar situations a dominant service provider must apply the same terms and conditions to all service providers obtaining interconnection and access." (Ooredoo's emphasis)

Ooredoo submits that providing duct access to QNBN is not an equivalent transaction to providing duct access to Ooredoo's own downstream business, arguing that its historical position in the market, its vertical integration, and the fact that QNBN will be accessing or sharing Ooredoo ducts after Ooredoo's infrastructure has already been installed, adds additional consideration in the context of QNBN which sets it apart from Ooredoo and justifies discriminatory behavior towards QNBN. The Authority does not consider that the wording of Article (24) allows Ooredoo, as a dominant service provider, to discriminate in this sense on the basis of QNBN's rights to access and use of the infrastructure.

The Executive By-Laws provide further clarification of this issue, especially Article (49) which provides that every dominant service provider shall ensure that it applies substantially the same terms and conditions to all service providers requiring interconnection or facilities under similar circumstances. Article (49) also requires Ooredoo to provide interconnection and facilities access to all service providers under substantially the same conditions and quality as it provides for its own telecommunications service operations. The Authority interprets Article (24) of the Telecommunications Law and Article (49) of the Executive By-Law to mean that similar 'circumstances' or 'situations' would be satisfied given that both QNBN and Ooredoo are requesting access within the remits of their licences and for the purposes of offering wholesale products to their customers. The Authority does not consider capacity issues and processes for ensuring that the new QNBN cable installations do not cause damage to the existing Ooredoo cable installations to create dissimilar circumstances in the context of Ooredoo granting access to its infrastructure, given that there are rules and processes in place to govern these issues within the wider RF, including the terms and conditions of the IAA.

Nevertheless, the Authority is granted the power to interpret the RF and to provide clarifications on the RF, including circumstances or situations where it is necessary for dominate service providers to discriminate in relation to access to its infrastructure. Article (24) of the Telecommunications Law and Article (49) of the Executive By-Law are in place to protect both the access seeker and access provider from abusive or discriminatory practices

in respect of access to duct infrastructure, not to allow the dominant service provider to refuse access based on its broad interpretation of the considerations allowing discrimination. In light of the conduct of Ooredoo (most notably the Access Suspension), and its various refusals to provide access to QNBN, the Authority finds that Ooredoo has discriminated against QNBN by not providing access to QNBN on the same terms and quality that it provides to itself.

In reaching its conclusion, the Authority has also referred to the Access Regulation which sets out principles and requirements in relation to the supply of access to passive civil infrastructure. Article (4) of the Access Regulation sets out very clear non-discrimination obligations on Ooredoo as an access provider, including the obligation to not discriminate on any basis *"including product, price, processes, quality and engineering rules"* (the Authority's emphasis). While Article (4) of the Access Regulation does provide a similar exemption to the access provider in the event of "differences", such differences must be "objectively justifiable" and the access provider must notify the access seeker and the Authority in writing of such justifications. Taking the arguments put forward by Ooredoo in the Ooredoo Reply, the Authority does not consider the asserted considerations in respect of colocation and capacity issues related to QNBN's access requests to be objectively justifiable differences that would allow a dominant service provider to deny access to its telecommunications infrastructure.

Nevertheless, Ooredoo did not notify the Authority or QNBN in writing of its justification for wishing to deny access to QNBN until well after the commencement of the Access Suspension.

In considering QNBN's allegations in light of the RF as well as the evidence and arguments put forward to the Authority by both QNBN and Ooredoo, the Authority finds that by not publishing its RIAO on its website, and by continuously denying access to its passive civil infrastructure to QNBN by suspending the IAA, Ooredoo is in clear breach of its obligations under Article (24) of the Telecommunications Law, the Executive Bylaw, the Access Regulation and the November 2015 Decision. Such breach does not only have market implications which have been discussed at length throughout this Decision and Orders based on its anti-competitive nature, but also represent an obvious disregard for the very regulatory framework which grants it its dominant position in the Qatari market.

6 Remedies and sanctions

Article (46) of the Telecommunications Law provides the following as remedies specifically for anti-competitive conduct:

"If a service provider engages in anti-competitive practices or a dominant service provider abuses its dominance, the General Secretariat may issue decisions to remedy anti-competitive practices or abuse of dominance and in particular the following:

- 1- obliging the concerned persons to cease the actions or activities causing such practice or to make specific changes in such action or activities to eliminate or reduce their negative impact on competition;
- 2- obliging the concerned service providers to submit periodic reports to the General Secretariat to determine the extent of their compliance with its decisions;
- 3- refer the matter to the public prosecutor to initiate criminal proceedings against the violator."

Article (67) of the Telecommunications Law states that each violation of a term of a licence (including the Ooredoo Fixed License) shall be punished by imprisonment for a period not exceeding one year and a fine not exceeding QAR 1,000,000. Further, Articles (70) and (71) state that each violation of a relevant provision of the Telecommunications Law (which including Articles (24), (41) and (43) of the Telecommunications Law) exposes the violator and the general manager of the relevant company to imprisonment for a period not exceeding two years and/or with a fine not exceeding QAR 100,000. In addition, the Access Regulation has set a non-compliance fee in case of breach of any obligation prescribed in the Access Regulation.

However, the damage resulting from Ooredoo's conduct far exceeds any possible fine. Also, the recidivistic and nonchalant nature of Ooredoo's conduct gives the Authority serious concerns as to Ooredoo's likelihood of compliance with any orders. In that regard, the Authority notes Article (72) of the Telecommunications Law which permits the Authority to impose double penalties in relation to repeated offences within a period of three years from the data of fulfillment of the previous penalty.

The Authority's priority is to encourage effective competition in the fixed telecommunications market through the restoration of a fair level playing field, to benefit of Qatar and its population. Therefore, in addition to other Orders for compliance (specified in section 7 below), the Authority requires Ooredoo to file a "Performance Bond" as a guarantee of its compliance with all obligations in the Ooredoo Fixed License relating to compliance with the RF and the provision of access to its infrastructure, including (without limitation) all relevant obligations stated in clauses 4, 11, 14, 15 and 29 of the Ooredoo Fixed License and the Annexure F and I to the Ooredoo Fixed License. All such relevant obligations are hereby classified as "Secured Obligations" for the purposes of clause 29 of the Ooredoo Fixed License. Clause 29.2 explains that to guarantee the performance of a Secured Obligation, Ooredoo shall provide to the Authority a Performance Bond in accordance with Annexure K of the Ooredoo Fixed License. The Performance Bond must be issued or endorsed by a bank operating in the State of Qatar and shall be in the amount specified by the Authority. The Authority requires a Performance Bond of QAR 15,000,000 to guarantee Ooredoo's compliance with this Decision and Orders.

The requirement to provide a Performance Bond and to comply with this Decision and Orders set out below is an initial step by the Authority to reinstate effective competition and the Authority reserves its rights to take any other action against Ooredoo that is available to the Authority, whether on applicable by a service provider or by its own motion. For instance, the Authority will take further legal action if Ooredoo does not comply with this Decision and Orders by the specified dates for compliance. Further, the Authority may impose double penalties under Article (72) of the Telecommunications Law if Ooredoo does not comply with this Decision and Orders by the specified dates for compliance.

7 Decision and Orders

Based on the facts in section 2, the regulatory framework in section 3, and the analysis in sections 4 and 5, the Authority finds that:

- (1) Ooredoo has committed multiple breaches of Article (22) of the Telecommunications Law by hindering and hampering negotiations with QNBN and failing to exert

reasonable efforts to resolve outstanding disputes in relation to the matters raised in the Complaint;

- (2) Ooredoo has committed multiple breaches of Article (24) of the Telecommunications Law by effectively refusing to provide QNBN and Vodafone with access to its duct infrastructure and discriminating against QNBN by not providing such access to QNBN and Vodafone on the same terms and quality that it provides to itself;
- (3) Ooredoo has engaged in anti-competitive practices and has abused its position of dominance by foreclosing the fixed telecommunications market in the State of Qatar in contravention of Article (41) of the Telecommunications Law;
- (4) Ooredoo has engaged in activities and conduct that constitute an abuse of dominance by failing to supply access to its duct infrastructure and ancillary facilities to QNBN and Vodafone within a reasonable period of time from their requests without justification in contravention of Articles (43(1) and (8)) of the Telecommunications Law.

In view of all above, the Authority orders the following:

- (1) Ooredoo must provide a detailed schedule to the Authority within ten (10) working days (taking Eid into consideration) of this Decision and Orders setting out specific details of each of QNBN's pending access requests, including how and when it proposes to process and fulfill those access requests;
- (2) Ooredoo must process and fulfill all of QNBN's pending access requests submitted under the IAA within twenty (20) working days of this Decision and Orders;
- (3) Ooredoo must resume processing new access requests submitted under the IAA within five (5) working days of this Decision and Orders in accordance with the requirements (including the time frames) of the IAA;
- (4) Ooredoo must not suspend or terminate the IAA unless such act is first approved by the Authority in writing.
- (5) Further, Ooredoo must enter into good faith negotiations with all service providers, and not unreasonably delay those negotiations, on the receipt of interconnection and access requests by any service providers (including in accordance with Article (47) of the Executive By-Laws);
- (6) Ooredoo must sign with Vodafone and implement an access agreement compliant with the Approved RIAO within five (5) working days of the Non Compliance Notice issued to Ooredoo Sept. 4, 2016;
- (7) Ooredoo must provide to the Authority, on the 2nd working day of each month for the previous calendar month, a monthly report signed by Ooredoo's certified accountant and auditor setting out the number of access requests received during the previous month:
 - a. received on its network;
 - b. provisioned on its network; and
 - c. rejected on its network, with full details of the contractual or legislative grounds for the rejection and any relevant documentation or correspondence relating to the rejection;

The CRA may further specify this requirement in due course;

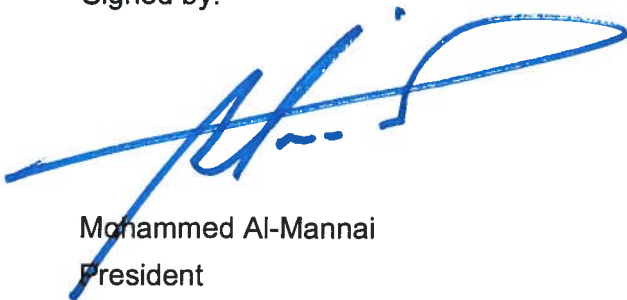
- (8) Ooredoo must provide to the Authority by December 1, 2016 at the latest a Performance Bond in the amount of QAR 15,000,000 in accordance with section 6 above and clause 29 of the Ooredoo Fixed License, to guarantee its compliance with these Orders; and

(9) The Authority directs also QNBN to refer its case to the relevant Court in order to obtain compensation for its damages resulting from Ooredoo's behavior.

Any query or request for clarification regarding this Decision and Orders must be made in writing to the Authority with a copy to the other party. Please note that the submission of a query or request for clarification does not stay any obligation to comply with this Decision and Orders by the specified dates and no extension will be given to account for any failure to comply with the specified dates.

This Decision and Orders is effective from the date of its issuance.

Signed by:



Mohammed Al-Mannai

President

Communications Regulatory Authority

Dated: Sept 8th 2016