

**Order**  
**Determination of the Cost**  
**of Capital for Service**  
**Providers declared as**  
**having a Dominant**  
**Position**

**CRARAC 2017/12/06**

December 6, 2017

## Table of Contents

<b>1</b>	<b>Background and Introduction .....</b>	<b>3</b>
<b>2</b>	<b>Legal Basis.....</b>	<b>4</b>
2.1	The Emiri Decision .....	4
2.2	The Telecommunication Law .....	4
2.3	The By-Law .....	5
<b>3</b>	<b>Methodology applied to set the Cost of Capital.....</b>	<b>5</b>
<b>4</b>	<b>Order.....</b>	<b>6</b>
<b>5</b>	<b>Compliance with this Order.....</b>	<b>6</b>

5

## 1 Background and Introduction

1. The State of Qatar has empowered the CRA to regulate the Communications sector under the Emiri Decision No. (42) of 2014 Establishing the Communications Regulatory Authority (Emiri Decree), the Decree Law 34 of 2006 (Telecommunications Law), and the Executive By-Law of 2009 for the Telecommunications Law (By-Law).
2. These laws establish the framework and set the objectives for the CRA to create the appropriate legal and regulatory conditions for the development of sustainable competition in the Communications sector so that, amongst other things, telecommunication services may become a factor for promoting social and economic development.
3. The determination of the Cost of Capital (CoC) is relevant for the CRA to fulfil its own responsibilities, which are, amongst others:
  - 3.1 To ensure that prices and charges of SPs are appropriately applied to products and services offered at both a retail and a wholesale level in that they are cost-based;
  - 3.2 To encourage competition and to prohibit anti-competitive practices by preventing DSPs from abusing their position of market dominance;
  - 3.3 By setting conditions for effective interconnection and access ensuring their availability to all SPs.
4. The CoC is a key contributor to the cost base of SPs and appreciably impacts their wholesale and, ultimately, retail charges. A CoC value that provides a SP with a fair return on their capital employed (at the CoC value) ensures the goals of efficient prices and increased competition are adhered to.
5. The current CoC was set on August 5, 2013 (ref. Order ICTRA 2013/08/05-A). According to Clause 5 of this Order:
  - 5.1 the current CoC had to be applied for at least 4 years;
  - 5.2 a review of the CoC was not planned prior to 2017.
6. The CRA started the proceedings to set the new CoC in March 2017 and issued a First Consultation Document on May 8, 2017 (ref. CRARAC 2017/05/08).
7. The Service Providers responded to the First Consultation Document on July 31, 2017.
8. The CRA reviewed the responses of the Service Providers and issued a Response Document and Second Consultation Document on September 24, 2017 (ref. CRARAC 2017/09/24).
9. The Service Providers responded to the Second Consultation Document on November 12, 2017.
10. The CRA reviewed the responses of the Service Providers and issued the Second Response Document (ref. CRARAC 2017/12/06 A), including:
  - 10.1 Responses to the SPs' comments from the second round of Consultation
  - 10.2 A revised economic analysis; and
  - 10.3 A final decision on the Cost of Capital.
11. The documents described above are provided as 'Attachment 1' to this Order.
12. This Order approves the Cost of Capital which was calculated and justified on the basis of the Second Response Document.

## 2 Legal Basis

13. The legal basis for CRA to determine the CoC is described in more detailed below.

### 2.1 The Emiri Decision

14. Under Article 4, the CRA is responsible for regulating the communications information technology and the postal sector, as well as access to digital media, with the aim of providing advanced and reliable telecommunication services across the State. Amongst others, the CRA has to:

14.1 Encourage competition and prohibit or minimize anti-competitive practices, prevent misuse by any person or entity of its market dominance position, and take all necessary measures to achieve this (article 4(3));

14.2 Protect the rights and interests of the public and SPs in the market, promote transparency and provide advanced, innovative and quality services at affordable prices to meet the needs of the public (article 4(4));

14.3 Ensure interconnection and access for all users by setting conditions for effective interconnection and access (article 4(6)).

15. Under Article 15, amongst others, the CRA has to;

15.1 Develop appropriate tariff regulations, giving priority to the telecommunications market, or telecommunications services according to market requirements, and determine fees for retail and wholesale services (article 15(2));

15.2 Ensure appropriate measures are in place to prevent non-compliance acts or activities by dominant SPs, which may significantly impact or reduce competition in telecommunications markets (article 15(4));

15.3 Set regulations for interconnection and access (article 15(5));

15.4 Develop and identify policies and regulations for all services which will foster a competitive market and serve the interests of the consumers (article 15(7)).

### 2.2 The Telecommunication Law

16. CRA has mandated objectives and goals to achieve under the Telecommunications Law. Article 2 outlines the main objectives that apply for the purposes of this Order:

16.1 Enhancing the telecommunications sector's performance in the State of Qatar through encouraging competition and fostering use of telecommunications (article 2(2));

16.2 Encouraging sustainable investment in the telecommunications sector (article 2(5));

16.3 Establishing a fair regime that meets the requirements of the competitive market place through the implementation of interconnection between SPs and all procedures related thereto (article 2(9));

16.4 Ensuring that the regulation of the telecommunications sector remains in line with international rules (article 2(12));

16.5 Ensuring the orderly development and regulation of the telecommunications sector (article 2(13)).

17. Under Article 19(1), the CRA is responsible for undertaking functions and duties in respect of interconnection and access to promote appropriate, effective and low cost interconnection between telecommunications networks, promote access to facilities of other SPs to ensure interoperability and promote the growth of competitive telecommunications services markets.

18. Article 29 requires tariffs to be based on the cost of efficient service provision without any excessive charges which may result from dominance. Under this Article 29, CRA

may issue decisions to amend tariffs where it finds they are not in line with the cost of service provision.

## 2.3 The By-Law

19. Under Article 50(1), the CRA may require that interconnection or access charges of any Dominant SP be subject to Article (29) of the Law and Articles (56), (57), (58) and (59) of this By-Law. The CRA may also direct Dominant SPs to implement specific interconnection or access charges, or changes to such charges, as determined by CRA.
20. Article 50(2) requires that Interconnection and facilities access charges of Dominant SPs designated in accordance with Article (48) of this By-Law shall be cost-based and in accordance with rules or standards determined by CRA.
21. In establishing charges for interconnection or facilities access, Dominant SPs designated in accordance with Article (48) of this By-Law shall comply with any rules or orders applicable to interconnection or access, including any pricing, costing and cost separation requirements as prescribed by the CRA (article 50(3)).

## 3 Methodology applied to set the Cost of Capital

22. The CRA has calculated the Cost of Capital as the Weighted Average Cost of Capital (WACC) pre-tax based on the following formula:

$$WACC = g * RD + (1-g) * RE$$

Where:

- *g is the gearing ratio  $D/(D+E)$  with the  $D$  is the net financial debt and  $E$  is the value of equity;*
  - *RD and RE are respectively the cost of debt and the cost of the equity.*
23. The formula excludes any adjustment for corporate taxation.
  24. The process and methodology used by the CRA reflects international best practice used in WACC determinations.
  25. Article 19 (1) of the Telecom Law requires the CRA to set low Interconnection and Access Charges. This, in turn, directly requires the CRA to set a low WACC. Therefore, it follows that the immediate application of this Article would require the CRA to set the WACC at the lowest possible level.
  26. Nevertheless, other CRA's objectives – such as favoring the investments in infrastructures in Qatar - would suggest the CRA to set a higher Cost of Capital.
  27. In addition, the CRA has to take into account ordinary (i.e. the intrinsic risks associated to a so complex calculation) and contingent factors.
  28. Balancing all the above factors, the CRA has set the WACC at the highest level of the WACC range calculated by the CRA.
  29. The detailed methodology applied by the CRA is fully disclosed in the Second Response Document attached to this Order.
  30. Following due process and best international practices, the responses of the Services Providers will be published on CRA's website, along with this Order.



## 4 Order

31. The CRA sets the pre-tax Cost of Capital for the Dominant Service Providers at 10.45%.
32. The Cost of Capital shall be applied with immediate effect by Dominant Service Providers, including but not limited to:
  - 32.1 Regulatory Accounting Systems;
  - 32.2 Wholesale Charges;
  - 32.3 Cost Justifications submitted to justify Retail Tariff Charges; and
  - 32.4 Any other analyses or cost studies, which may be specified by CRA from time to time.
33. This Order replaces the Order ICTRA 2013/08/05-A, dated August 5, 2013.
34. The CRA will revise the Cost of Capital from time to time. A review of the Cost of Capital is currently not planned prior to 2020.
35. In case of a substantial change in market conditions, the CRA may revise this Cost of Capital rate at any time.
36. A revision of the Cost of Capital can also be initiated by the Service Providers, submitting to the CRA a substantiated request for a revision. The request has to be supported with a reliable and detailed justification and has to be corroborated with relevant facts and figures.

## 5 Compliance with this Order

37. Under Article 11 of the Telecommunications Law, the CRA is required to monitor the compliance of licensees in accordance with their licenses and the accompanying Law and By-Law.
38. Article 4 (14) of the Emiri Decisison (42) of 2014, specifically mandates the CRA to monitor compliance of the Licensees with the regulatory frameworks and to take the necessary measures to ensure their compliance.
39. The CRA will monitor the compliance of the Dominant Service Providers, inter alia, but not limited to against the following criteria:
  - 39.1 Ooredoo shall use the approved Cost of Capital in their Regulatory Accounting System;
  - 39.2 the Dominant Service Providers shall use the approved Cost of Capital in their cost model for Setting the Wholesale Charges;
  - 39.3 For any cost justifications required by the Retail Tariff Instruction the Dominant Service Providers shall use the approved Cost of Capital;
  - 39.4 For any other analyses or cost studies, submitted to the CRA from time to time, Dominant Service Providers shall use the approved Cost of Capital;
40. This monitoring will be carried out upon filing of deliverables.
41. An event of non-compliance shall result in one, or a combination of, the following enforcement provisions as stipulated under the Telecommunication Law:
  - 41.1 Invoking the provisions of chapter sixteen (16) of the Law, whereby the Licensee shall be subject to criminal prosecution as a form of punishment for non-compliance with the relevant provisions of the Law and its license; and
  - 41.2 Such non-compliance shall under Article 70 be punishable as an offence by a term of imprisonment not exceeding two (2) years and or a fine not exceeding one hundred thousand Riyals; or

- 41.3 Such non-compliance shall under Article 67 be punishable as an offence by imposing a term of imprisonment not exceeding one year and a fine not exceeding one million Qatari Riyals; and
- 41.4 Under Article 71, the person responsible for the actual management of the corporate entity, shall be punished with the same penalties assigned to the acts that are committed in violation of the rules of this law, if it is proved that such person was aware of such acts or the breach of his or her duties rendered upon him or her by such management, had contributed to the offense.



Mohammed Ali Al-Mannai

President of the Communications Regulatory Authority

*Attachment 1: Determination of the Cost of Capital for Service Providers (SPs) declared as having a Dominant Position - "Cost of Capital 2017" - Second Response document, including: responses to the SPs' comments from the second round of Consultation, a revised economic analysis and the final decision on the Cost of Capital (CRARAC 2017/12/06 A)*

