Supreme Council for Information and Communications Technology (ictQATAR)

A Review of DEFINITION OF RELEVANT MARKETS AND DESIGNATION OF DOMINANT SERVICE PROVIDERS IN THE STATE OF QATAR (MDDD 2010)

Response Document

DRAFT for comments of the Service Providers

03 February 2011

The closing date for submissions is 28 February 2011

non-confidential version (figures of SP excluded)

Table of contents

1. EXECUTIVE SUMMARY

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

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

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

The MDDD 2010 started with a consultation[6] from 27 October 2010 to 4 December 2010 (which was extended upon request of Service Providers ("**SP**") to 12 December 2010). Answers to the consultation were received from Qatar Telecom (QTel) Q.S.C (**"QTel"**) and Vodafone Qatar Q.S.C (**"Vodafone"**)[7] and are considered and discussed within this Response Document ("**RD**").

The specific methodology applied by ictQATAR for Market Definition and Dominance Designation in accordance with the Telecommunications Law and Executive By-Law is set out in detail in the "Notice on the Standards, Methodology and Analysis to be applied in the Review of Market Definition and Dominance Designation in the Telecommunications Sector in Qatar" ("**Methodology Document**"), which is issued as a separated document and published on ictQATAR's website[8]. This Methodology Document also outlines similarities and differences between the approaches in the EU and in Qatar and the process followed by ictQATAR in this review.

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1 See //www.ictqatar.qa/output/page36.asp?docid={D8F5F720-25BD-4D5E-B281-3718C7F5530E}).
2 The ARF comprises the relevant legal provisions in Qatar, inter alia but not limited to the Telecommunications Law, the By-Law, the Licenses of the SP and any related regulations, rules, orders, notices, decisions, directions and instructions.
3 See http://www.ictqatar.qa/files/elaw(1).pdf.
4 See http://www.ictqatar.qa/files/images/The_Telecommunication_Executive_By-Law.pdf.
5 See e.g. http://www.ictqatar.qa/output/page36.asp?docid={53F73254-2C98-4476-8CF7-562247C814B9}.
6 ICTRA 2010/10/26
7 For facilitated reading, also the abbreviation "VF" is used in graphs and figures to depict "Vodafone".
8 www.ict.gov.qa.

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

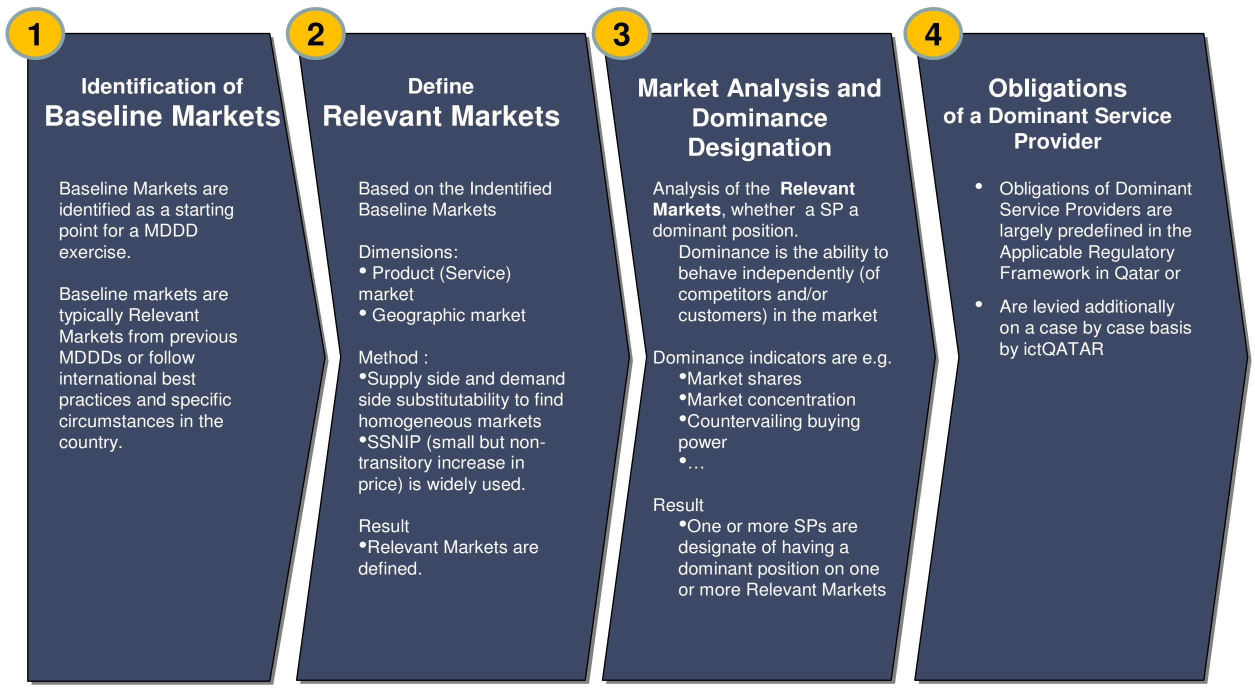

Figure 1: MDDD 2010 Process

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

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

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

As an outcome of the MDDD 2010 Process, ictQATAR defined the Relevant Markets and designated QTel and Vodafone as having a DP in one or more Relevant Markets. This outcome is contained in Figure 2, which also indicates whether a market is considered as being 'dynamic', i.e. susceptible to the Shortcut Process, or is regarded as 'non-dynamic'. This Shortcut Process is further described in section 2.2.

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

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

Obligations of DSPs are described in detail Annex I of the CD of 27 October 2010.

As set out in the CD, the market definition should reflect the dynamic and forward-looking nature of the telecommunications market. ictQATAR envisages that the

[9] See section 2.2 for an explanation of the Short Cut process and the definition of dynamic markets.
[10] This is irrespective of the terminating network abroad, i.e. fixed or mobile.
[11] Leased lines represent dedicated connections and bandwidth.
[12] This includes but is not limited to voice, SMS, MMS, and video calling services. This market covers both access and usage.
[13] This includes data services which are not included in retail market no. 6 such as, but not limited to, broadband Internet services.
[14] This includes e.g. local call conveyance, dial-up services, carrier selection, and carrier pre-selection.
[15] This includes e.g. local call conveyance. Although Vodafone is not yet active in this market, it is being regarded as DSP and the remedies are proposed to apply as of the time when Vodafone commences fixed services.
[16] This includes access to passive infrastructure in a technologically neutral manner for the supply of domestic and international telecommunications services, i.a. but not limited to: access to and use of network and facilities, such as ducts, dark fibre, copper, sites, towers, international gateway facilities and other facilities.
[17] This includes i.a. but not limited to bitstream access.
[18] This includes associated services irrespective of the technology used to provide leased or dedicated capacity.
[19] This includes i.a. but not limited to voice, SMS, MMS, video calls.

defined Relevant Markets are appropriate for approximately the next two to three years. On a reasoned and substantiated request by the market entities or at its own discretion, ictQATAR may start a market definition (and dominance designation) process during this timeframe.

ictQATAR recognises the dynamics of the dynamic markets, as described in the "Shortcut" section 2.2 and will conduct a pro-active quarterly analysis of these dynamics to reassess any the dominance designation of the SPs in the following markets:

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

To that end, and according to Article 62 of the Telecommunications Law and Chapter 13 of the Executive By-Law, ictQATAR requires market data to be submitted by the SPs on a regular, quarterly, basis. This data requirement is outlined in detail in Annexure A of this RD.

2. PROCESS AND METHODOLOGY

2.1 ictQATAR's approach to Market Definition and Dominance Designation

The specific methodology and approach applied by ictQATAR for this review of Market Definition and Dominance Designation is set out in detail in the **Methodology Document** issued separately from this document and published on ictQATAR's website[20].

In October 2010, ictQATAR published a CD which comprised the methodological approach and set out a list of proposed retail and wholesale markets ("**Baseline Markets**"). Comments in response to this consultation were received by QTel and Vodafone in December 2010.

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

Retail Markets

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

Wholesale markets

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

Figure 3: Baseline Markets (Retail and Wholesale) for MDDD 2010

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

Taking into account the submissions received during the public consultation on the MDDD 2010 process, the list of the Relevant Markets is identical to the list of the Baseline Markets, as contained in the CD[21].

[20] www.ict.gov.qa.
[21] The only difference is, keeping in line with the "Termination on individual mobile markets",the word "Call" from the fixed origination and termination market was deleted.

The submissions in the consultation confirm the appropriateness and soundness of ictQATAR's approach, especially with respect to the definition of Relevant Markets and approach for the market analysis.

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

ictQATAR's analysis has focused on those markets where a dynamic element has already become visible and where it is useful already at this stage to consider whether the achieved competitive status allows for scaling back regulation. This dynamic element is, however, only apparent in a limited number of retail markets.

2.2 The Shortcut Process within MDDD 2010

Competition in Qatar effectively started on 29 June 2008 with the licensing of Vodafone in Qatar. A full market offering in the mobile sector by Vodafone followed in the months following licensing. Under its fixed license issued on 29 April 2010, Vodafone is currently only providing broadband services at The Pearl Qatar. Therefore, the majority of retail and wholesale markets (at a fixed location) currently do not display competitive features.

In order to streamline the MDDD 2010 process, ictQATAR, QTel and Vodafone agreed[22] [23] to a "**Shortcut Process"**, focussing on the following retail markets, which have displayed dynamic characteristics ("**Dynamic Markets**"):

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

M6: Public national telecommunications services via a mobile device

M7: Broadband services via a mobile device

Figure 4: The three Dynamic Markets

Regarding the **non-dynamic** Relevant Markets (M1, M2, M4, M5, M8-M14)[24] the SPs and ictQATAR both agree that the designation of a DSP in those markets will be based purely on the market shares, on a lack of countervailing buying power, and on the non-existence of prospective market entry.

The designation of as SP as having SMP or a dominant position in a particular market, is not of itself or per se evidence of what may be deemed an abuse of dominance or anti-competitive conduct. It is merely an indicator that, in light of a forward looking analysis, potential competition problems could arise due to structural characteristics of the market.

[22] This was confirmed in RA-PECO/01 291110 to the SPs
[23] The agreement to this Short Cut process does not constitute a waiver of the rights to comment on remedies
[24] C.f. Figure 2: Result of MDD2010: Relevant Markets and DSP designation page 7

Regarding the **Dynamic Markets,** the SPs and ictQATAR agree that the reassessment of market power in Dynamic Markets will take place in shorter recurring time periods due to rapidly developing competition in those markets. ictQATAR sets out the indicators in Annexure A of this RD to review the Dynamic Markets. ictQATAR requires the SPs to submit these indicators every **three months,** i.e. in the second week of each new quarter for the past quarter, to ictQATAR[25]. If, in due course, those indicators show a significant change in market conditions in any particular market, ictQATAR will start an in-depth investigation in the Relevant Market(s).

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

It was further agreed in the Shortcut process, that the whole area of Qatar constitutes the relevant geographic market.

For the avoidance of doubt, the discussion in the section so far focussed on the **assessment of dominance** in defined relevant markets. As set out in the CD the **market definition** should reflect the dynamic and forward-looking nature of the telecommunications market. ictQATAR envisages that the defined Relevant Markets are appropriate for approximately the next two to three years. On a reasoned and substantiated request by the market parties or its own initiative ictQATAR may start a market definition (and dominance designation) process during this timeframe.

[25] coinciding with the existing quarterly reporting - see Investor Relation Information on SPs web pages

3. DEFINITION OF RELEVANT MARKETS

3.1 General aspects

According to Figure 1, Baseline Markets have been identified in the CD and resulted in the final definition of Relevant Markets as listed in Figure 2. In the CD, ictQATAR described its approach to market definition, highlighting topics like supply side factors, demand side factors, geographic scope of markets and fixed mobile substitutions. The methodological approach was outlined in the CD from 27 October 2010 as well as in the Methodology Document which is published in parallel to this RD.

The following sections consider the submission received by the Service Provider regarding the MDDD.

3.2 Consultation Issues

3.2.1 Aspects of the methodological approach

In the CD the following questions were asked:

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

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

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

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

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

Overall, respondents fully agree with ictQATAR´s analytical framework for market definition.

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

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

ictQATAR at this stage can confirm that it is intended to consider these issues in the further process in the coming years and refers to the Shortcut process in section 2.2.

Vodafone highlighted in its comments on the proposed competition analysis criteria and on the methodology framework, four aspects: (1) relevance of very high market shares; (2) focus on subscriber revenues; (3) additional criteria for assessing dominance; and (4) assessment of joint dominance). It also refers to the EU framework and the EU competition law rules. ictQATAR emphasises it has to apply primarily Qatari Law and the Qatari ARF, but also considers international best practice in this area, e.g. in neighbouring countries and in particular the rules and the legal practices of the European Union if not in contradiction to the ARF. The similarities and differences to the EU framework are set out in section 3 "International best practice for Market Definition and Dominance Designation" in the Methodology Document.

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

Overall, respondents agree with ictQATAR´s competition analysis criteria and on the framework methodology for determining a Dominant Position.

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

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

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

3.2.2 Relevant Retail Markets

ictQATAR has defined 7 Relevant Markets at the retail level (c.f. Figure 2: Result of MDD2010: Relevant Markets and DSP designation. Out of those 7, 4 markets are considered to be “non-dynamic”. As set out in the Shortcut process (section 2.2) the designation of a DSP will be based purely on the market shares, on a lack of countervailing buying power and the non-existence of prospective market entry.
The following questions were posed in the CD with regard to the list of proposed Baseline Markets at the retail level[27]:

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

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

Question 6	Do respondents agree that a further differentiation into residential and business customers is not warranted at this point in time? Please provide an answer for the fixed and the mobile sectors separately and supply evidence if possible.
Question 7	Do respondents agree that defining separate markets for access and services at a fixed location is appropriate? If not, please provide appropriate reasoning.
Question 8	Do respondents agree that only managed VoIP services are part of the relevant market?
Question 9	Do respondents agree on these product definitions? Are there e.g. currently narrowband voice access services offered to a non-negligible scale on any other infrastructure basis in Qatar? Please provide quantitative evidence if this is the case.
Question 10	Do respondents agree that FMS is not sufficient to define a common fixed and mobile market for access and national services? If not, please provide an alternative defintion and the accompanying evidence.
Question 11	Do respondents agree on the relevant products of the market for national services at a fixed location (i) calls to fixed lines, ii) calls to mobile devices, and iii) calls originated for dial-up Internet services)?
Question 12	Do respondents agree with the conclusions of ictQATAR regarding the access and call services markets?
Question 13	As regards the international calls market, one also has to consider business models based on calling cards, telephone shops, dial-in telephone service of relevance next to traditional voice telephony services provided at fixed locations. Do respondents agree that these telephony products will probably be of considerable relevance for the market for <u>international</u> calls given the specific chracteristics in Qatar? Do respondents envisage any other potentially relevant business models for international voice telephony? If so, please provide appropriate evidence. Do respondents agree that the aforementioned international telephony products will probably be of rather limited relevance for the market of <u>national</u> calls? Do respondents envisage any calling card services offered by an alternative provider in Qatar? If so, please provide appropriate evidence.
Question 14	Do respondents agree that the residential and business broadband services are offered in the same market?
Question 15	Do respondents agree with ictQATAR's definition of (i) a distinct broadband services market which excludes narrowband services

	and (ii) a distinct Leased Line market? If not please provide reasoning and give an alternative definition.
Question 16	The degree of supply of Internet and broadband services will also depend on the capabilities of the networks in Qatar and whether up-to-date fixed and mobile technologies will be deployed. Please provide quantitative and qualitative information as to foreseen changes in the network structure which will impact the way customers have fixed (e.g. coax, fibre) and mobile (e.g. LTE) Internet access and the technical capabilities of that access.
Question 21	Do respondents agree with ictQATAR's definition of the retail markets for public telecommunications services provided via a mobile device?
Question 22	Do you consider national and international calling card products to be in separate markets? If yes, what would the markets be and how would they be defined? If no, what market would include calling card products? What are the implications for service providers?

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

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

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

Regarding **Question 8** on managed VoIP, QTel disagrees with ictQATAR's position that only managed VoIP services are part of the relevant market and states that in reality a lot of voice traffic is transported over the IP-network by parties that are not licensed SPs. In QTel's view, it would be flawed not to consider all relevant traffic. QTel did not make additional submissions to substantiate this or give an indication what this total traffic could be. ictQATAR highlights that QTel's response did not address specifically the distinction contained in Question 8 as regards managed vs. unmanaged VoIP services. Question 8 is not related to the quantitative parts of the market but to the qualitative parts of the market. It is not intended to extend the scope of the product market. Vodafone does agree with the proposal of ictQATAR contained in Question 8.

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

Regarding **Question 21** on definition of the retail markets for public telecommunications services provided via a mobile device QTel does not agree with ictQATAR's position to include the markets in the list of Relevant Markets. Although these markets are young and dynamic (according to the proposed Shortcut Process) it needs to take into consideration that there are only two SPs providing services. Furthermore, one can expect that end-users are typically buying "functional basic packages" and/or bundled products from one SP. Hence, ictQATAR has decided to maintain its initial proposition and analysed this market as a Relevant Market.

With respect to **Question 22** QTel considers national and international calling cards to be in separate markets and suggests to include them into corresponding international and national markets. ictQATAR intends to follow that approach in case SPs provide quantitative data on calling cards separately. Vodafone, though, did not launch their calling card product prior to December 2010 and thus no data was available so far.

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

3.2.3 Relevant Wholesale Markets

ictQATAR has defined 7 Relevant Markets on the wholesale level (c.f. Figure 2: Result of MDD2010: Relevant Markets and DSP designation), which are all regarded as non-dynamic.

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

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

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

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

Taking in to account the SPs responses to questions 17 to 20 and 23, ictQATAR takes the view that no modification of the methodological approach or the list of Baseline Markets is warranted. Some specific aspects commented upon by SPs are taken specifically into account.

3.3 Conclusion on Market Definition

Based upon the CD (ICTRA 2010/10/26) and the respective answers and inputs received from the SPs in Qatar, ictQATAR defines the Relevant Markets as depicted in Figure 2. Accordingly, the Baseline Markets and the Relevant Markets as defined in this document are identical.[28]

[28] The only difference is, keeping in line with the "Termination on individual mobile markets", the word "Call" from the fixed origination and termination market was deleted.

4. DOMINANCE ANALYSIS AND DSP DETERMINATION

Once Relevant Markets have been defined, they have to be assessed with respect to a possible position of Dominance (c.f. Figure 1: MDDD 2010 Process). Section 4.1 provides an overview on market developments in all Relevant Markets.

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

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

4.1 Overview

This section applies the market analysis approach on the Relevant Markets. ictQATAR differentiates between dynamic and non-dynamic markets, which results from the Shortcut Process (see section 2.2). For the non-dynamic markets, SPs have agreed that firstly, ictQATAR's method and result of defining markets receives their support and that secondly, due to high market shares and lack of countervailing buying power, the designation of a SP as DSP is consequently correct.

In the data gathering process for the MDDD 2010, ictQATAR found that data partly deviates from the publicly communicated figures for subscribers and revenues, which caused some difficulties with respect to consistency of figures in the analysis and the robustness of results. ictQATAR evaluated the validity and quality of the data submitted and constructed reasonable aggregates as well as conducting consistency checks with the SPs. The selection of data presented in this document thus focuses on dimensions and metrics which fulfil these data requirements and are considered as sufficiently robust for the means of the MDDD 2010 process. Supporting was that, for the time being, the market shares are such, that even in the presence of some deviations an unambiguous conclusion can be drawn. ictQATAR will continue to monitor closely the data published by SPs and the data submitted for regulatory proceedings and take action if necessary.

Figure 5 gives an overall picture and likely development[29] of the Qatari market, as submitted by the SPs and aggregated by ictQATAR. Subsequent figures and graphs may deviate from published figures of SPs due to different requirements by ictQATAR in the MDDD 2010 process and other financial disclosure requirements.

[29] All figures for 2011 and beyond have been forecasted by the SPs and thus represent their estimation.

// company confidential information excluded //

Figure 5: Revenues, Subscribers and Traffic in the Qatari market [company confidential]

As can be seen in Figure 5, the total number of revenues, subscribers and traffic increase over the period from 2008 to 2013 based on SPs forecast in continuation of the growth from previous years. There is only a slight growth of the market figures for revenues and traffic of 6% and 4%, respectively, from 2010 through 2013. Solely the subscriber numbers are forecasted to increase significantly by 16%.

4.2 Non-dynamic markets

4.2.1 Overview

Regarding the **non-dynamic** Relevant Markets (M1, M2, M4, M5, M8-M14)[30] the SPs and ictQATAR agreed that the designation of a DSP will be based purely on the market shares, on a lack of countervailing buying power and the non-existence of prospective market entry.

QTel holds 100% market share as regards termination on its fixed and mobile network (as well as Vodafone in its mobile network) and in each of the fixed-network markets, with absence of market entry and countervailing buying power at the same time. Therefore, these 11 non-dynamic wholesale and retail markets do not exhibit significant competitive signs. As set out in the Shortcut Process (section 2.2) a position of dominance within these markets can be safely inferred, and is such accepted by the SPs, without the need of any further in depth analysis.[31] Nevertheless ictQATAR has undertaken a further analysis of these markets and the competitive development on them.

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

M1 "Access to public telecommunications networks at a fixed location" is characterised by a monopolistic situation in which QTel enjoys 100% market share. The main criterion that has been analysed is the number of fixed access lines and the subscribers, respectively. // company confidential information excluded //
Figure 6 and // company confidential information excluded //
Figure 7 show the distribution and development of the subscribers of access (voice) lines in the fixed network. A steady increase in the numbers has occurred, which is also expected to continue in the coming years forecasted by QTel.

// company confidential information excluded //

Figure 6: Subscribers of access lines at a fixed location broken down by consumer segments [company confidential]

[30] c.f. Figure 2: Result of MDD2010: Relevant Markets and DSP designation page 7

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

// company confidential information excluded //

Figure 7: Number of fixed access lines in Qatar over time [company confidential]

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

4.2.3 M2: Public national telecommunications services at a fixed location

Also for M2 "Public national telecommunications services at a fixed location" data was solely delivered by QTel due to the fact that Vodafone has not launched fixed services until recently. A significant criterion to assess the market and competitive situation is the number of outgoing minutes (calls) from the respective (network) providers to fixed lines and to mobile subscribers. // company confidential information excluded //
Figure 8 shows the development in minutes from the fixed network to other fixed subscriber lines and to mobile subscribers.

// company confidential information excluded //

Figure 8: Number of outgoing national minutes from QTel's fixed network in Qatar [company confidential]

Up until 2010, a substantial growth in traffic can be found. In line with SPs responses to the CD, market developments give no indication for fixed-mobile substitution.

4.2.4 M4: Broadband services at a fixed location

M4 "Broadband services at a fixed location" is characterised by a near-monopolistic situation with QTel as the single provider, as Vodafone's operations are limited to The Pearl Qatar. For an initial assessment of the development of the market the number of subscribers is a suitable criterion, as QTel is currently providing the overwhelming majority of fixed broadband services. The market for broadband is growing, as well as the access bandwidths to which the end users are subscribing. // company confidential information excluded //
Figure 9 shows this development.

// company confidential information excluded //

Figure 9: Broadband services at a fixed location broken down by bandwith and consumer segments [company confidential]

// company confidential information excluded //
Figure 10 shows QTel's total subscribers of dial-up services, as well as DSL services, and their development, which displays a relatively strong increase of residential DSL lines and a small increase of business DSL lines. Dial up services will be completely substituted by broadband services soon. QTel also publicly announced the FTTH

programme in March 2010, where existing connections over copper cables are going to replaced with high-speed fibre connections.

// company confidential information excluded //

Figure 10: Dial-Up and DSL subscribers in Qatar [company confidential]

4.2.5 M5: Retail leased lines

Also M5 for "Retail leased lines" is characterised by a monopolistic situation with QTel being the only provider. The market for national leased lines is growing, which can be seen in // company confidential information excluded //
Figure 11.

// company confidential information excluded //

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

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

There are no specific figures available on origination on public switched networks except the volumes for outgoing national traffic that has already been analysed in conjunction with the corresponding retail market M2 (c.f. section 4.2.3). As QTel enjoys 100% market share in this related retail market, it does also have an identical position in the origination market. Hence, the market is characterised by the absence of competition and is not likely to emerge unless regulatory obligations are implemented.

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

In the market for "Termination on individual telecommunications networks at a fixed location", each SP has a monopoly, i.e. 100% market share in its own network. This result is due to the fact that termination on individual networks cannot be substituted by the corresponding services of another SP. SPs demanding termination of another SP as a wholesale service are required to request this from the respective SP serving the customers subscribed to that network. In accordance with international best practice (as long as the calling party pays principle prevails), the finding of dominance for termination on individual networks is undisputed and each SP on that market has a dominant position *per se*.

// company confidential information excluded //
Figure 12 shows the development of minutes and revenues related to termination on the fixed network of QTel. Although prices are set in the Interconnect Contract between QTel and Vodafone at 0.074 QAR/minute, the volume growth has so far provided with ever rising revenues. Hence, it can be concluded that QTel enjoys a DP in this market.

Vodafone has not yet implemented any fixed wholesale services, and one cannot expect a distinct change in the direct future. As set out above a DP in the termination market is defined *per se* and as such Vodafone will become at the time of market entry dominant on its individual termination market as well.

// company confidential information excluded //

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

4.2.8 M10: Wholesale physical network infrastructure access

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

In line with international best practice, ictQATAR follows the trend to define a generic wholesale infrastructure access market as recently defined within the EU framework.[32]

The EU recommendation speaks about a market for "Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location". This is also being further detailed in provisions and regulatory measures in a number of countries not only in connection with market analyses and dominance designation but also on the legislative level. Access to physical infrastructure and facility sharing has been made an element of the legislative framework in Portugal, Austria, France and Slovenia and that also access to passive infrastructure has been imposed by many national regulators[33]. This has been the case for example in Denmark, Greece, Estonia, Slovenia, Portugal, Germany[34], France as well as Spain.

Most EU member states consistently apply a separation of market for wholesale physical access (EU market 4) and market for wholesale broadband access (EU market 5) whereby the first one deals with wholesale physical access in the form of

[32] The EU recommendation specifies "Wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location", see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:344:0065:0069:EN:PDF, p. 5.

[33] The 15th EU implementation report http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/annualreports/15th/index_en.htm)

[34] The German regulatory authority has just recently (30th January 2011) published the draft of remedy decision which deals not only with wholesale physical access on existing network infrastructure level but also with wholesale physical access to FTTH access lines including ancillary services such as access to passive infrastructure, collocation, ducts, dark fibre, access to street cabinets etc. All of this is comprised in one overall generic market. This has amongst others led regulators to slightly revised concepts as regards remedies for example in the UK where a new wholesale product called active line access respectively virtual unbundling has been developed, which complements different forms of passive and active access and develops the local loop unbundling concept further, a similar approach has been chosen in Austria where also with the latest decision on this market the incumbent operator has been obliged to provide a wholesale product called virtual unbundling (http://www.rtr.at/de/pr/PI26012011TK)

unbundling of the access loop (in whatever technology) and ancillary facilities whereas market five deals with a wholesale bitstream access product which is a managed data stream[35]. This market is defined as wholesale broadband access meaning non-physical or a virtual network access including bitstream access at a fixed location. The wholesale broadband access market is situated downstream from the physical access covered by the wholesale physical access market, and the wholesale broadband access can be constructed using this input combined with other elements.[36]
The overall trend towards a generic wholesale physical access infrastructure market is clearly visible.

4.2.9 M11: Wholesale access to broadband services at fixed locations

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

4.2.10 M12: Wholesale leased lines

For M12 "Wholesale leased lines" no revenue has been submitted for wholesale leased lines in Qatar. Due to the situation in the related retail market, it is evident that the market for wholesale leased lines is also characterised by a dominant position of QTel, given the fact that there is no other licensed SP that has effectively entered the fixed market.

4.2.11 M13: Termination on individual public mobile networks

As in M9 for "Termination on individual telecommunications networks at a **fixed** location", M13 "Termination on individual public **mobile** networks" constitutes an individual network monopoly for each SP offering that service.

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

[35] The European Regulators Group report on "NGA Economic Analysis and Regulatory Principles", 2009, see http://erg.eu.int/doc/publications/erg_09_17_nga_economic_analysis_regulatory_principles_report_090603_v1.pdf

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

If one of the SPs would potentially increase the termination rate, there would be no possibility to switch to another SP for this wholesale service. In order to provide retail services each SP has to accept the terms offered (or to request ictQATAR to resolve the dispute) and thus there is no potential for countervailing buying power. See also section 4.2.7 on fixed termination and the *per se* criteria there.

// company confidential information excluded //
Figure 13 displays the number of termination minutes in individual mobile networks. This comprises traffic from the respective other mobile SP in Qatar plus international incoming traffic to Qatari mobile networks.
// company confidential information excluded //

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

Each SP in that market has a dominant position (monopoly) *per se*.

4.2.12 M14: Access and origination on public mobile networks

There are no specific figures available on origination on public mobile networks except the volumes for outgoing national traffic that will be analysed in conjunction with the corresponding retail market M3 (see section 4.3). Regarding the size of this market, this cannot be quantified as regulatory measures for origination have not been implemented in Qatar. Also, corresponding obligations to offer national roaming services does not exist until now. Hence, the market is not characterised by competition and is not likely to emerge unless regulatory obligations are implemented.

4.3 Dynamic markets

As set out in the Shortcut Process (c.f. section 2.2), due to the competitive developments visible in the market of Qatar, the following retail markets are to be analyzed in more detail in the sections 4.3.1 to 4.3.3 below:

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

The dominance analysis therein will lead to a confirmation or revision of the previous notion of dominance of QTel, or to a first assessment whether dominance exists on the market for broadband services via a mobile device.[37]

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

4.3.1.1 Product market

[37] This market was not defined in the MDDD 2008

ictQATAR considers that international calls terminating on fixed and mobile terminals abroad are substitutes for one another and constitute a single market. The relevant market for international telecommunications services is strongly influenced by expatriates, which are more than 80% of the population.[38] These consumers exhibit mostly elastic demand and are thus very sensitive to price changes, irrespective of whether international calls are made from a fixed or a mobile access. Also, high price competition eliminated substantial price differences for international calls. Therefore, it can be presumed that international calls at a fixed location and at a mobile device constitute a common market.

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

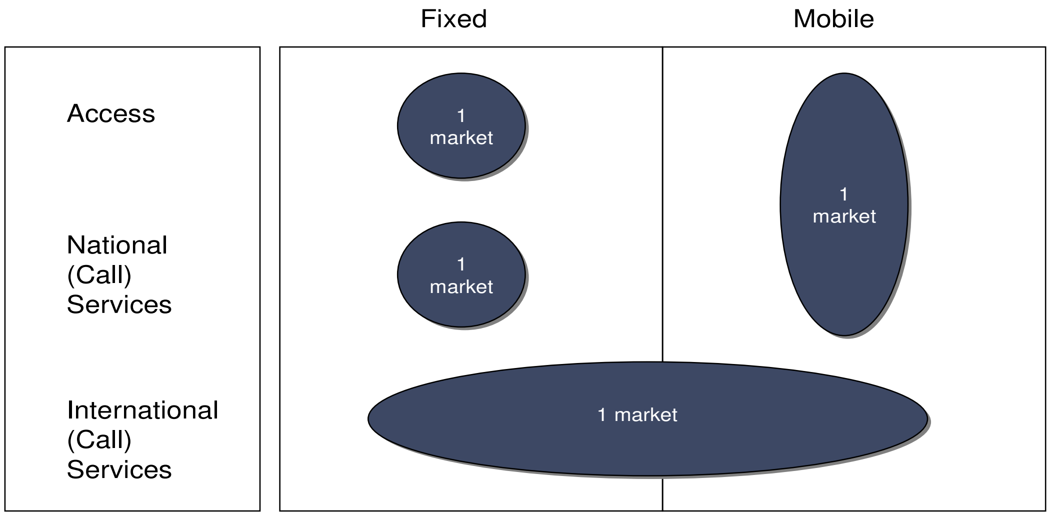

Figure 14: Access and call (services) market at fixed locations and at a mobile device.

// company confidential information excluded //
Figure 15 and // company confidential information excluded //
Figure 16 show that average prices for IDD from a mobile device are close to the corresponding fixed IDD charges in 2010 and are expected to remain on a comparable level in the coming years.
// company confidential information excluded //

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

// company confidential information excluded //
Figure 15 shows the average prices for international outgoing calls from Vodafone (which is currently a "mobile only" operator) and for QTel. // company confidential information excluded //
Figure 16 compares only the prices for international calls from mobile customers. Both figures display, that the prices are very similar for QTel and Vodafone.
// company confidential information excluded //

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

[38] See e.g. http://www.cies.org/country/qatar.htm.

Overall, it can be presumed that international calls originated at a fixed location and at a mobile device constitute a common market.

4.3.1.2 Market analysis

According to the definition of Baseline Markets, ictQATAR considers that international calls terminating on fixed and mobile terminals abroad are substitutes for one another, irrespective of whether international calls are made from a fixed or a mobile access and constitute, therefore, a single market. Furthermore, this market encompasses business and residential consumers, as well as pre-paid and post-paid mobile products. Also, calling cards on the fixed and mobile network represent a relevant product on the market for outgoing international calls.[39]
This market is almost only served by two SPs of which Vodafone is only providing services related to mobile end customers while QTel is also providing the fixed access line related services.

An analysis of regarding calling cards a separate market has been undertaken. It focuses on QTel only, as Vodafone did not launch calling card products prior to December 2010. // company confidential information excluded //
Figure 17 shows the voice traffic from calling cards originating at fixed and mobile devices.
// company confidential information excluded //

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

The following // company confidential information excluded //
Figure 18 displays the corresponding revenue figures.
// company confidential information excluded //

Figure 18: Revenues from Calling Cards [company confidential]

4.3.1.3 Dominance Analysis

// company confidential information excluded //
Figure 19 and // company confidential information excluded //
Figure 20 demonstrate the competitive impact of the market entry of the second licensed operator, Vodafone. Vodafone entered the market in June 2009. Consistent and actual figures, however, are only available for the year 2010, numbers for the years 2011 to 2013 represent estimates. Vodafone was able to gain some minute share // company confidential information excluded //) [company confidential] as well as in revenues (// company confidential information excluded // [company confidential] in 2010.
Vodafone did not only expand the total market, but could also successfully acquire market share from QTel, and is expected to grow further. This is explained in underpricing the incumbent operator, something which is to be seen as a quite typical entrepreneurial behavior for (late) market entrants.

// company confidential information excluded //

[39] Due to market definition of Baseline Markets in the CD, roaming services, international incoming traffic, SMS and MMS as well as (other) data traffic are not regarded as relevant products here. According to the definition of retail Baseline Markets in the CD, SMS and MMS services are relevant products within market number 6 whereas (other) data services (such as broadband Internet) are relevant products within market number 4 and 7.

Figure 19: International voice traffic: minutes [company confidential]

// company confidential information excluded //

Figure 20: International voice traffic: market share (based on revenues) [company confidential]

Article 72 of the Executive By-Law assigns specific importance to the role of market shares, in as much as in the absence of evidence to the contrary, they may deem that an individual SP with a share of more than 40 percent of the Relevant Market is a DSP. According to this, there is a strong presumption of dominance in case of the underlying market of public international telecommunications services in Qatar, where QTel still holds market shares far above that threshold level.

Vodafone realized a significant gain of market shares since 2009. Although this has to be regarded as a rather successful market entry, it remains to be seen whether Vodafone's market share will increase at the same rate or as significantly within the next years. In contrast, international experience indicates a pronounced non-linear development of market shares of mobile entrants, with a decreasing growth pattern in succeeding years.[40] This is mainly due to first mover and other incumbency advantages which are rooted in features such as switching costs, customer inertia, consumer desire for one-stop-shopping, uncertainty about quality, product loyalty, or reputation effects. These advantages constitute barriers to entry and allow the incumbent operator to keep significant retail market shares despite higher average prices and infrastructure-based competition.

As fixed and mobile services are substitutes in this specific market, infrastructure is basically duplicable, and infrastructure-based competition therefore feasible, and has already been established by the market entry of Vodafone. The actual infrastructure duopoly in the market for international telecommunications services also implies that the former control of infrastructure facilities of QTel has been substantially mitigated. But, without established wholesale access obligations, service-based competition remains forestalled. But then, market barriers for infrastructure-based competition remain substantial, as full self-supply of infrastructure goes hand in hand with high sunk costs and economic risks. Consequently, there is no other additional market entry foreseeable by the time this analysis has been undertaken. Given these market structural characteristics, there is no safe evidence to reject the current presumption of QTel's dominance on a forward looking assessment basis, and, in turn, one should not put too much weight on distant forecast values (and underlying forecast methodologies, respectively).

// company confidential information excluded //

Figure 15 complements the market share analysis with a comparison of average prices for international voice traffic services. The implicit average price therein has been defined as the ratio of total revenues divided by total traffic whereby for QTel the average from mobile and fixed outgoing calls has been taken. According to Figure 19, the average price level for international calls has been decreasing significantly since

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

2005 and thus largely irrespective of the market entry of Vodafone in 2009. More details on the price development can be found in section 4.3.1.1. As suggested by the market analysis above, Vodafone undercut the price level of QTel in 2010 (// company confidential information excluded //) [company confidential] and therefore, market entry of Vodafone provides ongoing competitive downward pressure on prices.

The overall market outcome can be additionally assessed by international (price) benchmarking. As motivated before, the average price level can be seen as a crucial indicator of market outcome and performance. According to a price study conducted by Teligen Strategy Analytics, the price level in Qatar as measured by a pre-defined international basket is one of the lowest in Arab countries and below the Arab average.[41] This situation holds more or less for both, fixed (QTel) and mobile (Vodafone) price baskets. Therefore, international price benchmarking indicates – ceteris paribus – a reasonably competitive environment for public international telecommunications services in Qatar.

4.3.1.4 Conclusion

The dominance analysis confirms the assumption that QTel still holds a position of dominance in the market for public international telecommunications services at a fixed location and via a mobile device. This is mainly due to the current level of market shares which are very clearly above the relevant legal threshold levels.

However, market entry of Vodafone has brought about substantial competitive impulses in 2009 and 2010 which will most probably extend to the next few years. It is likely that Vodafone continues to be a serious competitor that exerts competitive pressure within the time horizon of the MDDD 2010, i.e. until 2013. Also, examination of average prices and international benchmarking exhibits competitive market patterns. Thus, the market under consideration shows a clear tendency towards effective competition. But still, one cannot reject the presumption of QTel´s market dominance, due to its high level of market shares in conjunction with market barriers to entry that will persist to some non-negligible extent. This is especially the case as for the time being no further market entry is foreseen. This indicates that barrier to entry are real, as further competition could arise only from licensing further operators. This implies some degree of market power and its potential abuse to the detriment of (actual and future) competitors and, ultimately, to consumers.
The current data does not suggest that sustainable competition has been achieved it is reasonable to reassess the situation on this specific market quarterly to take the dynamic market changes into account (c.f. section 2.2 The Shortcut Process within MDDD 2010 on page 8).

4.3.2 M6: Public national telecommunications services via a mobile device

4.3.2.1 Product market

[41] Source: Teligen (2010), „Strategy Analytics – Insights for Success“.

End users are typically buying “functional basic packages” providing national and international calls, SMS, MMS, data[42] and further services like video calls).
The end users typically buy access and services within the same packages[43]. ictQATAR therefore defines one market for access and national services for those “functional packages”.
Both SPs in Qatar launched a number of such functional basic packages (e.g. Hala, Control, Shahry for QTel and Freedom and Red for Vodafone).[44]

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

4.3.2.2 Market analysis

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

The figures in this section demonstrate that like for international services via a mobile device, also the national market for public telecommunications services via a mobile device has experienced a competitive impact through the market entry of Vodafone. From the data provided it is visible that the entry of Vodafone into the market in June 2009 has taken place in the pre-paid segment only which is, however, the by far larger market in Qatar. On the end of the year 2010 Vodafone had a SIM penetration of // company confidential information excluded // [company confidential].

The figure below shows QTel’s penetration rate of prepaid and postpaid SIMs.

// company confidential information excluded //

Figure 21: QTel’s penetration rate of prepaid and postpaid SIMs [company confidential]

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

Another impact of competition can be seen when looking at the retail prices for mobile subscriptions. Since 2007 a major reduction in retail prices has taken place, however, the largest share of this reduction took place before the market entry of Vodafone, namely in 2008. The prices for prepaid services (QTel’s subscription fees) have decreased substantially from the pre-competition level of 2007, but dropped much less since the introduction of competition in 2009. This development provides a first indication that the structure of the market is developing towards a more competitive setting. // company confidential information excluded //
Figure 22 shows that decrease and that price of QTel and Vodafone for prepaid services are converging.

[42] Broadband services via a mobile device is discussed in 4.3.3 M7: Broadband services via a mobile device
[43] see e.g. the products of QTel at http://www.qtel.qa/Mobiles.do?prodtype=1 (retrieved 18 September 2010).
[44] see e.g. http://www.qtel.qa/Mobiles.do?prodtype=1 and http://www.vodafone.com.qa/go/en/getstarted where packages are called “plans”

// company confidential information excluded //

Figure 22: Price developments in mobile markets in Qatar

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

To underline the abovementioned results another analysis based on the criterion of national traffic development to fixed and mobile networks has been conducted (c.f. // company confidential information excluded //
Figure 23 below). The respective shares shown in the number of outgoing minutes are slightly different to the number of subscribers but with the same tendency.

When looking at the outgoing national voice traffic in totality, one can see that in 2010 the share of Vodafone has already surpassed its share in terms of subscribers. It has reached at the end of the year 2010 a remarkable figure, considering the late market entry in 2009. In 2013 the two SPs combined expect a slightly increased traffic of in contrast to 2010.

// company confidential information excluded //

Figure 23: Outgoing mobile national voice traffic (2010, %ages expressed in mintues) [company confidential]

Based on the projections of the market participants, this situation may fundamentally change in the future. However, at the moment, QTel has almost two-thirds of the overall outgoing national voice traffic compared to one-third of Vodafone. Whether the changes until 2013 will happen as forecast by the SPs cannot be confirmed with certainty.
// company confidential information excluded //

Figure 24: Market shares for outgoing mobile national voice traffic (2010-2013) [company confidential]

A completely different picture compared to the development of the outgoing national voice traffic arises from an analysis of the outgoing national voice revenues as can be seen in // company confidential information excluded //
Figure 25. Currently, QTel has an overwhelming market share and during the forecasted period only minor changes are expected. This holds in the period until 2013 where QTel's shares are still extremely high. Whereas Vodafone submitted complete data, QTel only submitted traffic volumes for mobile to mobile on-net, mobile to mobile off-net and mobile to fixed. QTel submitted revenue for mobile to mobile on-net only. Adding potential revenue for QTel for mobile to mobile off-net and mobile to fix would increase QTel's market share on revenues further.
// company confidential information excluded //
Figure 25: Market shares for outgoing mobile national voice revenues (actual and forecast 2010-2013) [company confidential]

4.3.2.3 Dominance analysis

Looking at market positions of the SPs it also needs to be considered that no further market opening an entry by further competitors is envisaged. This constitutes a barrier to entry as further competition could arise from licensing further operators.

Whereas the trend for voice traffic is very interesting in terms of Vodafone gaining significant market share in a short period of time, the number of outgoing national SMS and MMS shows a less dynamic development and even in 2013 QTel will hold an extensive market share.

The foregoing analysis has focussed to a significant extent on market size and market shares. This is justified due to the fact that article 72 of the By-law assigns specific importance to the role of market shares, inasmuch as the absence of evidence to the contrary, they may deem that an individual SP with a share of more than 40% of the relevant market is a DSP, which is also according to international best practise. According to this, there is a strong presumption of dominance in case of the underlying market of public national telecommunications services via a mobile device. At the end of the year 2010 QTel still holds market shares which are significantly above the threshold level which effectively qualifies for regulation as a DSP.

For Vodafone, it seems likely that the increase in terms of subscribers as well as traffic is continuing. Already in 2011, with respect to voice traffic, Vodafone expects to have gained a significant market share. However, whether this takes place in reality remains to be seen. There is a large gap between Vodafone’s share in traffic and in market share expressed in revenues. As customer behaviour is very volatile and price sensitive, it may be that Vodafone’s high share of minutes is based on low prices (explaining the low market share in revenues).

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

4.3.2.4 Conclusion

The analysis confirms that QTel holds a dominant dominance in M6 for public national telecommunications services via a mobile device. This is mainly due to the current high level of market shares which are clearly above the relevant threshold levels.
The market entry of Vodafone has brought competitive impacts in the last 18 months and, if it continues to do so, will lead to a further strengthening of Vodafone’s market position throughout 2011 and 2012. However, at this point in time, this does neither justify designating Vodafone as DSP in this market nor to lift the DSP designation of QTel.

It is reasonable to reassess the situation on this specific market quarterly to take the dynamic market changes into account (c.f. section 2.2 The Shortcut Process within MDDD 2010 on page 8).

4.3.3 M7: Broadband services via a mobile device

4.3.3.1 Product market

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

1. With the standard subscription (**pay as you go**), which is typically used occasionally, as the price/MB is much higher than the other options.
2. As an add-on pack to the standard subscription (with the same SIM card). For a fixed amount the user gets a fixed amount of data per month. This is typically used by smartphone users and marketed by QTel and Vodafone as **Mobile Internet**. [45,46]
3. **Mobile Broadband** is marketed by QTel and Vodafone as a stand alone subscription with a separate SIM card for e.g. USB modems, data cards and tablet PCs. [47,48]

M7 Broadband services via a mobile device includes the products Mobile Internet and Mobile broadband, whereas the occasional use (pay as you go) remains included in M6.

Throughout the world the interest to use Internet via mobile devices (e.g. smart phones, laptops) has been increasing drastically[49] and these products are gaining importance. Also in Qatar we have seen the introduction of various products in multiple variants from QTel and Vodafone in the last year.

Market developments, also due to technological progress, show that bandwidths in mobile networks are rapidly increasing (from GPRS to EDGE to UMTS to HSxPA towards LTE). Although LTE is not yet implemented, the forward looking character of this MDDD requires considering this technology as relevant in principle. A technology neutral regulation does not differ between technologies, if these all provide the same

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

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

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

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

[49] c.f. Bank of America Merrill Lynch, Global Wireless Matrix e.g. 4Q10

or comparable end user services and the suppliers can switch technology. Modern mobile devices typically use GSM and/or UMTS.

When compared with broadband services provided at a fixed location, mobile broadband is still inferior in terms of speed and availability.

Data services included in M6 are the typically occasional usage of data services (pay as you go, or some allowance included in the standard subscription) via a mobile device, typically a smart phone. Heavy data users typically use a separate (add–on) subscription for smart phones or have separated/dedicated SIM cards for data cards/tablet PCs.

These are, also due to severe price differences, not a viable substitute for "pay-as-you-go" on a per MB basis from a (supply and) demand side perspective. There is very limited or no supply substitutability.

ictQATAR finds that "Broadband Services via a mobile device" constitutes a separate market from "Public national telecommunication service via a mobile device".

4.3.3.2 Market analysis

In the data submitted QTel made a differentiation according to Mobile Internet and Mobile Broadband, Vodafone submitted information on Mobile Internet.

The following // company confidential information excluded //
Figure 26 shows a revenue breakdown between the Mobile Internet and Mobile Broadband products of the SPs and // company confidential information excluded //
Figure 27 shows the Service Providers revenue developments.

// company confidential information excluded //

Figure 26: Mobile Internet and Mobile Broadband: market share based on revenue (EoY 2010) [company confidential].

// company confidential information excluded //

Figure 27: Mobile Internet and Mobile Broadband: development of market shares based on revenue [company confidential].

QTel's combined revenues for Mobile Broadband and Mobile Internet rose slightly from 2009 to 2010, whereas Vodafone's (naturally) increased significantly in the same period. According to the forecast supplied by the SPs there will remain a significant difference till 2013.

The strong position of QTel in this market is in line with the overall strong market share of QTel, shown in the following figure:
// company confidential information excluded //

Figure 28: Total mobile revenues in Qatar [company confidential].

4.3.3.3 Dominance analysis

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

No further market opening and entry by further competitors is envisaged. This constitutes a barrier to entry as further competition could arise from licensing further operators.

4.3.3.4 Conclusion

The analysis above to a large extent rests on subscriber numbers and market shares for revenues and subscribers. Article 72 of the Executive By-Law assigns specific importance to the role of market shares as an effective presumption. This means the threshold level of 40% plays a crucial role in determining significant market power.

For the time being QTel has a significantly larger market share than Vodafone, and it will continue to stay above the threshold level of 40% for the foreseeable future.

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

Due to the strong dynamics it is reasonable to reassess the situation on this specific market quarterly to take the dynamic market changes into account (c.f. section 2.2 The Shortcut Process within MDDD 2010 on page 8).

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

This Annex contains the questionnaire for the Shortcut Process, as described in section 2.2 The Shortcut Process within MDDD 2010 on page 8.

// please see the xlss, which is attached to the e-mail this document was sent with. The contents of this xlsx will be included here in the final version of the Response Document //

6. Annex B - Table of Figures

Supreme Council for Information and Communications Technology (ictQATAR)

NOTICE

of the

STANDARDS, METHODOLOGY AND ANALYSIS TO BE APPLIED IN THE REVIEW OF

MARKET DEFINITION AND DOMINANCE DESIGNATION IN THE TELECOMMUNICATIONS SECTOR IN QATAR

DRAFT for comments of the Service Providers

03 February 2011

The closing date for submissions is 28 February 2011

Table of contents

1 Background and Introduction

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

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

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

Article 42 of the Telecommunications Law provides a legislative framework for undertaking the designation process, determining the extent of significant market power or dominance in a market, stating what any Notice and Orders in this regard must specify, including the relevant products and services markets, the standards, methodology and circumstances relied upon, and the methodology operations for market power designation.

Article 42 also states that ictQATAR may consult with service providers or customers or any other interested parties in the course of undertaking the determination of any market, analysis or market power designation in accordance with the provisions of this article.

Executive By-Law 1 of 2009 provides for a notice to be issued which establishes the standards and methodology that it will apply in determining whether Significant Market Power ("SMP") exists in a particular relevant market (Article 72). Article 72 lists the following elements, factors and criteria that may be included in the methodology to be applied:

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

The process to be followed by ictQATAR can be summarised as follows:

- Defining relevant markets;
- Analyzing the defined relevant markets;
- Assessing the degree of market power in those markets; and
- Designating one or more SP/s as being DSP in each relevant market where the SP/s, individually or jointly with others, is found to exercise SMP[1]

This framework of standards, methodology, analysis and the process are derived from the Telecommunications Law, the Executive By-Law, the previous standards, methodology and analysis applied in the market definition and dominance designation exercise carried out in 2008 prior to the Notice and Orders of 24 June 2008, and from relevant international best practice.

This framework has already been an integral part of the previous Consultation Document ("CD") (ICTRA 2010/10/26 issued October 27th 2010) of the MDDD 2010 process. The methodology applied in this Notice is also in line with the public mobile and fixed telecommunications networks and services licences issued to QTel and Vodafone Qatar QSC (Vodafone) and may be applied to any other individual licensee.

[1] For purposes of the analysis in the MDDD process the terms "Significant Market Power" and "Dominance"/"Dominant Position" have the same meaning.

2 The approach for MARKET DEFINITION, MARKET ANALYSIS AND DOMINANCE DESIGNATION (MDDD) in Qatar

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

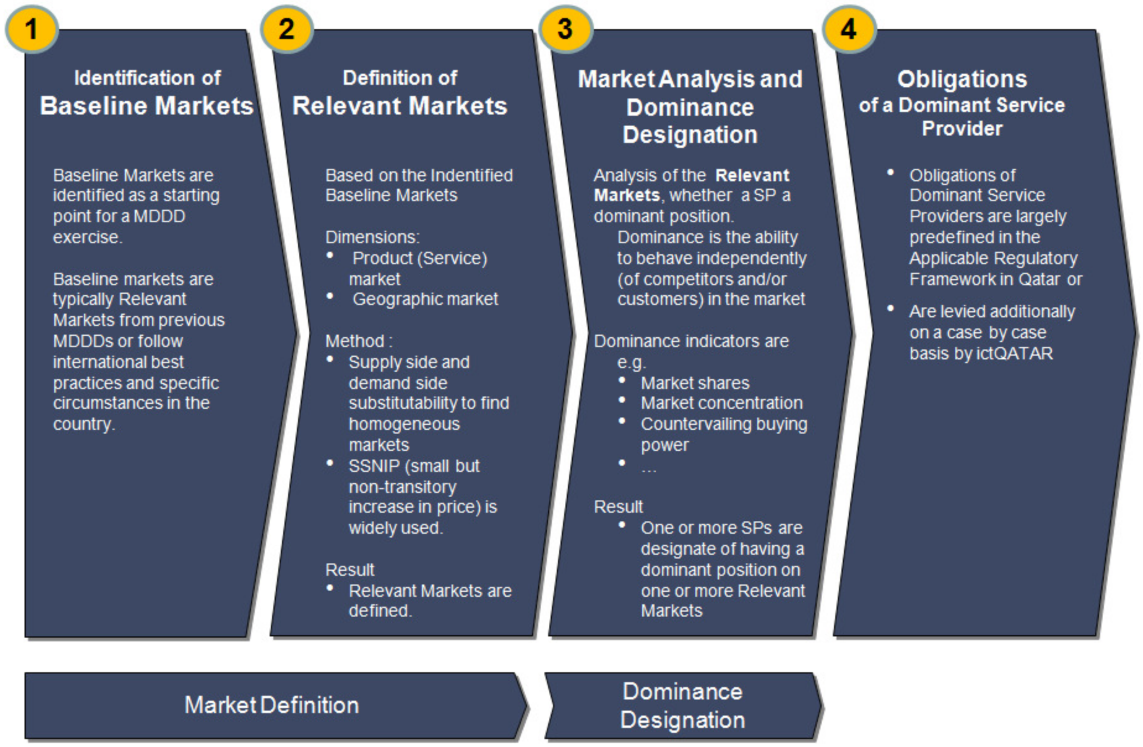

Figure 1 MDDD - generic process

Step (1) Identification of Baseline Markets; and, step (2) Definition of relevant Markets:
The MDDD process starts with an identification of a list of proposed retail and wholesale markets (“Baseline Markets”) in terms of products and geographic scope, which are typically used as Baseline Markets. Following a consultation process and discussions with market entities about the proposed Baseline Markets, ictQATAR defines the Relevant Markets. Together, these two steps form the market definition process, which applies international best practice approach and universal competition law principles. This takes into consideration major criteria for defining markets according to the product specifics and the geographic scope, and considers supply and demand side characteristics. Section 0 provides a description of methods and dimensions of market definition.

Step 3 Market Analysis and Dominance Designation:
According to Article 72(2) of the Executive By-Law, the MDDD process continues with the analysis of the defined Relevant Markets in a quantitative and qualitative respect to determine whether dominance exists in such Relevant Markets. ictQATAR analyzes the extent to which an SP, acting alone or jointly with others, is in a position

to behave to an appreciable extent independently of customers or competitors. Thus, step 3 finally results in the designation of a dominant position in one or more Relevant Markets. The Telecommunications Law explicitly provides for the designation of a DSP in Articles 23, 40, and 42, and for specific legal obligations to be imposed on DSPs including those relating to competition policy such as, but not limited to, Articles 40, 41, 42, 43, 44, and 46; interconnection and access such as Articles 18, 19, 23, 24, and 25; and tariffs such as Articles 27, 28, 29, 31, 32, and 33. Dominance is additionally dealt with in the Executive By-Law in Chapter 8.[2] Additionally, the Licenses of QTel and Vodafone contain obligations for a DSP. Section 0 of this document provides a generic description of methods and criteria used in dominance assessment.

Step 4 Obligations of a DSP:
The obligations of a DSP are set out in the Applicable Regulatory Framework (“**ARF**”)[3] and either apply automatically or are imposed by ictQATAR as required. Most of the obligations affecting DSPs and non-DSPs are largely pre-defined in the ARF.

These four steps are described in the chapters of this Notice.

Section 0 outlines the dimensions and methods of market definition. Section 0 contains the description of the methodology applied for market analysis and dominance designation. Section 0 of this Notice provides a comparison of the MDDD approach applied in Qatar with international best practice focussing on relevant applicable parts of the framework of the European Union (“**EU**”).

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[2] This definition of SMP in the Telecommunication’s By-Law is in practice identical to the contents of the Telecommunications Law. The only difference is the wording “position of economic strength” instead of “strong economic position”.

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

3 International best practice for Market Definition and Dominance Designation

Comparing the Qatari approach to Europe, it is first necessary to understand the way the EU has designed the MDDD process. The EU recommendation on relevant product and service markets[4] refers to a process consisting of three steps which are:

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

With regard to these basic steps of analysis, the approach to Market Definition, Market Analysis and Dominance Designation in Qatar follows international best practise as it builds on the same principles that are applied in EU, as well as other Gulf Cooperative Council ("**GCC**") member states, and other jurisdictions. More specifically, Article 72 of the Executive By-Law contains criteria for assessing the degree of market power which are very similar to the EU framework (see section 0).[5] Also, with regard to principles and methodology of competition law, the Qatari approach is consistent with well-established international regulatory best practice for conducting competition analysis in the telecommunications sector.

The EU framework in itself is built on the existence of three cumulative criteria to determine, whether a telecommunication market is susceptible for ex-ante regulation. The three criteria are: i) the presence of high and non-transitory barriers to entry; ii) a market structure which does not tend towards effective competition; and iii) insufficiency of competition law alone to adequately address the market failures concerned. This three criteria test is not foreseen in Qatar.

Once markets have been defined based on the three criteria test, market analysis is undertaken. Market analysis in the European framework rests on accepted competition law criteria and principles. ictQATAR follow a very similar approach in market analysis.

Based on its results, national regulatory authorities decide about the existence of dominance in the specific market. If dominance is found, at least one of the available remedies has to be levied upon the respective SP (according to articles 9 through 13 of the access directive).[6]

The EU framework can refer to remedies such as transparency, non-discrimination, access, cost accounting, and regulation based on cost-orientation. The revised EU 2010 framework adds "functional separation" of wholesale and retail business units of

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

[5] Framework Directive - see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0021:EN:NOT.

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

the DSP as a further possible remedy.[7] Within the EU framework, however, each specific remedy imposed on a certain SP has to adequately address identified competition problems. Remedies are not predetermined in the EU regulatory framework and have to be selected on a case-to-case basis according to the actual and potential competition problems identified by the national regulatory authorities.

In contrast, the obligations of a DSP are largely pre-defined in the Qatari ARF.

Overall, the Qatari approach exhibits some differences with respect to the final analysis step, i.e. definition of obligations of DSP, when compared to other jurisdictions, most notably, the EU framework. However, this does not change the perspective of largely similar approaches, especially with respect to the preceding steps of market definition and dominance analysis.

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

4 Market Definition – analytical framework

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

4.1 Methodology of market definition

The underlying methodology of market delineation is based on the ARF and economic principles in accordance with competition law principles as set out in Article 72 of the Executive By-Law. With respect to methodological aspects, the Hypothetical Monopolist Test ("**HMT**") has become an accepted standard, and also part of the telecommunications framework.[8] Although direct empirical implementation is often limited in practice, the methodological framework serves as an important conceptual guideline.

The base case scenario describes a Hypothetical Monopolist (**"HM"**), which currently and in future only offers one product/service within a defined area. The HMT seeks to identify the narrowest possible market on a product layer.[9] If the HM would impose a small but significant and non-transitory increase in price (**"SSNIP"**), assuming that the prices of all other products remain constant, the question is whether customers can react adequately by switching to other products without having to accept huge efforts and costs (SSNIP Test). If not, then the HM does not have sufficient market power to raise price. As a consequence, the next closest substitute is added to the initial (set of) product(s) and the HMT is applied again until the point is reached where a HM could profitably impose a price increase. Usually a SSNIP is approximated by 5-10%.[10] The temporal element for market definition should reflect the periodicity and the forward-looking nature of the overall market analyses process. Typically, a time period of approximately two to three years is assumed to be appropriate.

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

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

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

[9] Call termination markets (both fixed and mobile) constitute an exception in communications, since these relate (simultaneously) to the individual firm level.

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

Relevant Markets are identified based on a range of factors aimed at determining the scope of products and services that are reasonable substitutes for one another and, therefore, constitute a discrete market for the purposes of market and competition analysis. This includes defining the relevant product/service[11] markets and their geographic scope. ictQATAR defines product markets in particular in terms of supply and demand side substitutability.

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

4.2 Demand side substitution

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

Demand side substitutability is determined by the extent to which customers of the relevant product under consideration would consider other (similar) products as an acceptable substitute. The closer the similarities from the consumer's viewpoint, the more consumers will switch to the other products. If consumers can switch to available substitute products or use the same products from suppliers located in other areas, then it is unlikely that price increases will be profitable for the HM.

The following elements determine the extent of demand side substitutability:

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

4.3 Supply side substitution

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

From the consumers' perspective, it does not make a difference if potential substitutes pre-existed (prior to the initial price increase) or if they were supplied by firms operating near to the initial market in response to the initial price increase. An economic market is therefore defined by consumer preferences and technology. Hence, supply side substitution might lead to broader market definitions including products that are at first not deemed to be interchangeable by consumers. In telecommunications markets this observation is an important one, since an isolated demand analysis could produce unreasonable and even meaningless results in many

[11] Within the MDDD Process the terms "product" and "service" have the same meaning.

circumstances. Furthermore, not considering supply side substitution at the market definition stage might create an irreversible distortion. For instance, a finding of a significantly high market share (e.g. above 50%) due to a 'too narrow' market definition would usually be associated with a presumption of Dominance, which is unlikely to be broken at the stage of competition analysis.

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

4.4 Relevant geographic markets

In terms of geographic demand and supply side substitution, supply side substitution possibilities are more relevant than demand substitution possibilities. In markets where services depend on a fixed connection, as in most telecommunications markets, it seems very unlikely that a customer in a certain area would substitute supplies from outside the area in reaction to a price increase by a hypothetical monopolist in the area, unless he changes the location of consumption to a place outside the area. As the choice of residence of a certain customer is driven (if at all) only marginally by the price of telecommunications services this scenario does not seem to provide an effective demand side constraint on the HM.

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

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

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

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

4.5 Wholesale markets

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

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

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

4.6 Fixed-mobile substitution (FMS)

In many countries the mobile sector is increasingly exerting competitive pressure on fixed voice telephony markets as well as on broadband services. Fixed-mobile substitution (**"FMS"**) is mainly characterised by an opposing development of volumes in both sectors. In the mobile sector we can observe persistent growth in penetration levels and call minutes whereas fixed access lines and usage have been decreasing steadily for some years in OECD countries.[12] As market data and empirical evidence indicate that FMS differs in regard to different market segments, specific focus needs to be put on the various market segments.

From a purely technological (supply side) point of view FMS is unlikely. This is due to network characteristics, where inputs are not substitutable on a priori grounds (e.g. spectrum vs. fixed fiber networks). Also from a demand side perspective, FMS is limited. This is due to different functional characteristics and QoS parameters on fixed and mobile networks.

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

According to international experience, FMS has not yet materialised to an extent, which would generally allow the definition of common fixed and mobile markets.[13] [14]

[13] Vogelsang, I. (2010), "The relationship between mobile and fixed-line communications: A survey", in: Information Economics and Policy, Vol. 22, 4-17.
[14] The Economist, January 1st 2011, "Hanging up"

5 Market Analysis and Dominance Designation – analytical framework

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

5.1 Criteria

In determining whether dominance or significant market power exists in a Relevant Market, ictQATAR analyzes the extent to which a SP, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. This proposition is international best practise for determining whether market power exists in a particular product or service market and whether a SP is enjoying a dominant position in this market.

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

Article 72 of the Executive By-Law lists the criteria that may be applied as:

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

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

The Telecommunications Law defines Significant Market Power as[15]

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

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

> *"… the operator has and will have, on the relevant market identified, sufficient market power to behave to an appreciable extent independently of competitors, customers, and ultimately consumers…".*[16]

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

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

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

The Telecommunications Law and Executive By Law follow commonly used international competition law concerning MDDD.

The EU SMP Guidelines also list similar criteria taken from the decision making practice of European courts and the European Commission which are to be taken into particular consideration when evaluating Dominance (SMP Guidelines § 78 for "single dominance", § 97 for "collective (joint) dominance").[17] A finding that a relevant market is effectively competitive is a determination that there is neither single nor joint dominance in that market.

[15] This definition of SMP in the Telecommunication's By-Law is in practice identical to the contents of the Telecommunications Law. The only difference is the wording "position of economic strength" instead of "strong economic position".

[16] European Commission (2002), SMP Guidelines, Para 30, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52002XC0711(02):EN:NOT

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

Joint dominance is another potential element of dominance assessment. An important aspect is to what degree a limited number of SPs coordinate measures amongst each other, which could be detrimental in a market and, ultimately, to consumers and, thus, could be regarded as abusive. Joint dominance is likely to be the case where the market satisfies a number of appropriate characteristics, in particular in terms of market concentration, transparency and other characteristics such as: mature market, stagnant or moderate growth on the demand side, low elasticity of demand, similar cost structures and market shares, high barriers to entry, lack of countervailing buying power, lack of potential competition, various kind of informal or other links between the undertakings, or retaliatory mechanisms[18].Once a SP is designated as a DSP in a certain market, the SP is obliged to comply with specific obligations, as set out in the ARF.

5.2 Evaluation of competition criteria

Article 72 of the Executive By Law further provides that the methodology may also provide guidance on the parameters that will be used for measuring market share. After taking into account market factors and circumstances, ictQATAR may deem that an individual SP with a share of more than 40% of a relevant market is a DSP. Articles 73 to 76 of the Executive By-Law complete the legal and regulatory provisions regarding the procedure of market definition and analysis, as well as the assessment of dominance. For purposes of measuring market share, appropriate parameters (such as number of customers/subscribers, number of minutes, revenues or other relevant metrics) are utilized where necessary and based on the market circumstances.

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

From an economic point of view, the level of market share might be a necessary condition for dominance since the potential for contestability is rather of theoretical relevance in communications[19] and thus retains high relevance in any dominance analysis. Market share analysis will, if applicable and reasonable, be complemented by basic forms of distribution figures and concentration ratios (such as Hirschman-Herfindahl Index; absolute and relative firm size).

[18] c.f. EU SMP Guidelines (§97)
[19] For an extensive critique see Martin, S. (2000), "The Theory of Contestable Markets", Purdue University, retrieved from: http://www.mgmt.purdue.edu/faculty/smartin/aie2/contestbk.pdf. For a communications specific application see Briglauer, W., Reichinger, K. (2008), "Chances of Contestabiltiy in Communications – A Sector-Specific Application", in: Intereconomics, Vol. 1, 51-64.

Market share cannot be seen as a sufficient indicator in isolation. The simplicity of traditional market share analysis (based on critical threshold values) disappears, the more markets deviate from static and monopolistic towards dynamic market structures. In the latter case, market share analysis will have to be typically complemented by a wider range of indicators.

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

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

Potential criteria for the assessment of dominance and of effective competition, respectively, have various levels of relevance in various markets. In any case, ictQATAR will choose from the list of criteria provided in the law (on single and joint dominance), and the most appropriate criteria for a particular Relevant Market under consideration.

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

28 February 2011

VODAFONE QATAR Q.S.C ("VQ") RESPONSE TO ICT QATAR'S DRAFT DSP METHODOLOGY AND DRAFT MARKET REVIEW RESPONSE DOCUMENT ISSUED ON 3rd FEBRUARY 2011 POST CONSULTATION ON THE DEFINITION OF RELEVANT MARKETS AND DESIGNATION OF DOMINANT SERVICE PROVIDERS IN THE STATE OF QATAR ("MDDD") DATED 27 OCTOBER 2010.

1. VQ welcomes the opportunity to comment on the Draft Methodology and MDDD response document published by ictQATAR on 3rd February 2011. VQ also appreciates ictQATAR facilitating the short cut process for the MDDD and reducing the focus of the review to the following three markets:

    (i) Public national telecoms service via a mobile device;
    (ii) Public international telecommunications services at a fixed location and via a mobile device; and
    (iii) Broadband services via a mobile device.

2. VQ's response to the Draft methodology and MDDD response document is set out in following points below. It is reiterated that the 2008 DSP designation (i.e QTEL as DSP) which has played an important part in the creation of a fair playing field through the imposition of obligations on the DSP, are critically required to be sustained and enforced to enable VQ to provide sustainable competition in Qatar.

3. It is heartening to note that ictQATAR's analysis in the draft response document has reaffirmed the DSP position of QTEL in all the three dynamic markets as delineated in point 1 above, thus highlighting the need for greater enforcement of DSP rules for maintenance of viability of operations by VQ.

4. However, we would like to differ on ictQATAR's conclusion that further competition can arise only from licensing further operators on account of some degree of market power being held by QTEL, as stated in paragraph 4.3.1.4 :

    "*However, market entry of Vodafone has brought about substantial competitive impulses in 2009 and 2010 which will most probably extend to the next few years. It is likely that Vodafone continues to be a serious competitor that exerts competitive pressure within the time horizon of the MDDD 2010, i.e. until 2013. Also, examination of average prices and international benchmarking exhibits competitive market patterns. Thus, the market under consideration shows a clear tendency towards effective competition. But still, one cannot reject the presumption of QTEL´s market dominance, due to its high level of market shares in conjunction with market barriers to entry that will persist to some non-negligible extent. This is especially the case as for the time being no further market entry is foreseen.* ***This indicates that barrier to entry are real, as further competition could arise only from licensing further operators.*** *This implies some degree of market power and its potential abuse to the detriment of (actual and future) competitors and, ultimately, to consumers.*"

    In a market where DSP obligations, in VQ's opinion, have not fully been enforced, to assume market failure and thus the need for licensing further operators on the basis of average prices while not accounting for cost structures, would be misleading and may potentially destabilize the liberalization efforts which demand continuity in regulatory environment till the new operator is able to build substantial telecommunications network for which significant investments are required to be made. Furthermore, we would also like to reiterate our submission to the Consultation document in December 2010, that there remains a huge disparity in market share between VQ and QTEL on all of the markets on which they operate and it is this asymmetry that compels VQ to remain fully incentivized to actively compete with QTEL in order to capture market share.

5. VQ also notes ictQATAR's comments in the draft methodology document regarding conducting analysis on the possibility of joint dominance in cases where the market satisfies a number of appropriate characteristics, in terms of market concentration, transparency and other characteristics. While we would like to reiterate that under the EU competition law rules, joint dominance is rarely found even in mature markets, let alone in recently liberalized, relatively immature ones such as Qatar, should ictQATAR undertake any such analysis, similar cost structures must be seen as a critical parameter for assessing joint dominance particularly in the scenarios where tariffs may seemingly have settled at certain values possibly leading ictQATAR to believe that there is market failure, although the real causes may be vastly different. We reiterate our submission that there remains a huge disparity in market share between VQ and QTEL that compels VQ to remain fully incentivized to actively compete with QTEL rather than to tacitly coordinate its behaviour with that of QTEL.

6. Further, while we respect ictQATAR's intent to undertake a reassessment of market power in Dynamic markets in shorter recurring time periods, we differ with the proposed review of market indicators every three months as variations over shorter periods may lead to incorrect analysis of market trends. Accordingly, we recommend that though the data submission may be undertaken on a quarterly basis, the reassessment of market power in dynamic markets should be undertaken not earlier than on a yearly basis in order to examine the need for any in-depth investigation in the Relevant markets. This would balance the need for regulatory certainty and a sufficient period of time to assess if there have been significant changes to any particular market. VQ also encourages ictQATAR to set a time period for when the next round of market reviews will be conducted (around 2013).

7. In terms of ictQATAR's intention of publishing the market indicators data, while we are in favour of the same, we feel that instead of detailed segment wise publication of data, consolidated data per segment may be published by ictQATAR which would balance the commercial sensitivity concerns of the data as well as meet the requirements of ictQATAR. It is possible that detailed publication of the data may lead to anti-competitive conduct in the market which though will be addressed by ictQATAR, will be on a post facto basis, thereby leading to loss of business for the interim period till the issue gets fully addressed. Accordingly, we propose that the data may be published as follows :

    a. Market share (subscriptions – Fixed & Mobile)
    b. Revenue share (revenues – Fixed & Mobile)

8. We would like to thank ictQATAR for reassuring that the process of thorough empirical analysis will be undertaken on the basis of concrete available data which is particularly crucial in instances where ictQATAR may be determining any DSP in the market or may be considering any roll-back of ex-ante regulation on any specific market.

9. As regards the methods used for measuring market size and market shares, the draft methodology document (paragraph 5.2) mentions that appropriate parameters (such as number of customers/subscribers, number of minutes, revenues or other relevant metrics) will be utilized where necessary and based on the market circumstances. The consultation paper of 27 October 2010 also mentioned :

Market structure (Competition indicators) :
- Number and distribution of providers
- Development of market shares, concentration measures (HHI, based on revenues,
- minutes, subscribers, etc.; consolidation processes)
- Market entry and exit barriers (supply-side barriers)
- (licenses, technology, product differentiation, etc.)
- Horizontal and vertical interrelationships among input and retail markets

Market conduct (Competition indicators) :
- Pricing policy (current rate situation, development of rates in reference period, relation to relevant
- costs, strategic pricing, reference to interconnection fees (where applicable),
- bundling strategies, pricing strategies influenced by regulation)

- Collusion
- Quality-based competition
- Investment
- Advertising and marketing – product differentiation
- Distribution policy
- R&D – innovation activities

VQ would like to reiterate that sales in value and their associated market share should be considered to better reflect the relative position and strength of each service provider than sales volume/no: of subscribers, particularly in view of the phenomenon of multiple SIM users/connections prevailing in the market. Perhaps a judicious mix of various parameters would be ideal to determine market size and market share metrics.

10. Lastly, as rightly pointed out by ictQATAR, while designation of DSP is the first step after conducting extensive market analysis, the application and enforcement of obligations on the DSP needs to be ensured for effective regulation (please see Annex I Obligations of DSPs of ictQATAR's consultation paper dated 27 October 2010 for a good summary of these obligations). Once designated, the DSP's obligations as defined in the license/ Applicable Regulatory Framework and as per ictQATAR's requirements (accounting separation etc.), must be ensured to have been completed before bringing about any change in the DSP designation status of the concerned operator. In case of non-implementation of the obligations/orders, we recommend that ictQATAR enforces the completion of the DSP obligations in a time-bound manner and accordingly applies remedies. Furthermore, in relevant markets where Qtel has been determined as DSP, we welcome ictQATAR's view on the cost price for a particular service.

Conclusion

The 2008 DSP Designation has played an important part in the development of the telecommunications sector. The obligations on the DSP as and the continued support of ictQATAR in enforcing them are critical to establishment of second entrant in Qatar and development of ICT sector in Qatar.

If, following this consultation/review round, ictQATAR proposes to deviate from the Draft recommendations and methodology materially, ie. remove any DSP designation, VQ respectfully submits that it be given an opportunity for consultation /discussions prior to finalizing the determination.

VQ would welcome the opportunity to meet with ictQATAR to discuss our comments on this topic. Please contact Matthew Harrison-Harvey (matthew.harrison-harvey@vodafone.com); copying Itumeleng Moerane (itumeleng.moerane@vodafone.com) and Jasroop Sandhu (jasroop.sandhu@vodafone.com)

Date: 28 February 2011
Reference No.: Qtel/Reg-1363/2011-02

Ms. Christa Cramer
Assistant Secretary General
The Supreme Council of Information & Communication Technology
ictQATAR
The Regulatory Authority
P.O. Box 23264
Doha, Qatar

Dear Christa,

Subject: Market Definition and Dominance Designation Review – Consultation Response on Draft Methodology Document and Draft Response Document

ictQATAR has as a part of the Market Definition and Dominance Designation (MDDD) review issued two documents for consultation. The first document is a Notice of the standards, methodology and analysis to be applied in the review of the MDDD. The second document is titled "A review of definition of relevant markets and designation of dominant service providers in the state of Qatar. In addition to these two documents, ictQATAR has also sent a letter to the two service providers on 22 February (RA-PECO/01-220211) in which a broad outline is given to the analyses that have been carried out.

Qtel first of all wants to refer to the document it sent to ictQATAR as response to the ictQATAR public consultation document (ICTRA 2010/20/26). The Qtel document contained both figures that had been asked for by ictQATAR in order to perform a quantitative analysis and the answer to number of questions asked by ictQATAR to be part of the basis for the qualitative analysis. Qtel has also sent a letter to ictQATAR where Qtel has asked for the dominance to be lifted from the markets below, considered to be dynamic by both ictQATAR and Qtel.

Before Qtel responded to the qualitative and quantitative questions ictQATAR proposed to introduce a shortcut procedure for the review. The main elements of what Qtel accepted is that the MDDD would focus only on the dynamic markets

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

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The other markets included in the list of baseline markets, which include both fixed wholesale and retail markets and a mobile wholesale markets, would be automatically viewed as relevant markets susceptible to ex ante regulation. For the three dynamic markets Qtel made the following clear statement:

In these markets changes have taken place since the last review which, according to the proposal by ictQATAR, could lead to a revision of the notion of ex ante regulation and dominance (respectively a first assessment of whether ex ante regulation is necessary and dominance exists on the market for broadband services via a mobile device. The focal discussion also includes a discussion on arguments as to whether any of these markets should be defined in the list of relevant markets susceptible to ex ante regulation.

Regarding the response to the qualitative question 5 Qtel responded the following.

"Qtel is of the view that the baseline markets that are proposed are correct. This means, in Qtel's view, that the markets form the basis for the assessment of whether they need to be on the list of relevant markets or not."

In addition to the above Qtel also made it clear that as a prerequisite for accepting the proposed shortcut procedure the remedies that would follow on the decision of dominance in any market would be subject to an analysis and discussion. In general the remedies should be aimed at correcting the competition problems which have been identified and have led to the need of an ex ante regulation.

Qtel agrees that many of the remedies that are imposed upon dominance designation follows directly through the Telecommunications Law, Bylaw and license. However, the specificities of the remedies are not set out in the framework and should be subject of discussion.

In summary, what was agreed between Qtel and ictQATAR regarding the shortcut procedure was that a full scale analysis would be carried out for the three markets, to determine If any of the three markets would be included on the list of relevant markets.

Market definition

In the Notice document there is an outline of the process that ictQATAR should use in the MDDD. It starts with the identification of a list of baseline markets. Following a consultation process and discussions with market entities about the proposed baseline markets, ictQATAR defines the list of relevant markets that are susceptible to ex ante regulation. In the transition from baseline markets to relevant markets the underlying methodology of market delineation should be based on economic principles in accordance with competition law principles. The Hypothetical Monopolist Test which includes the SSNIP-test is the standard test for ictQATAR for market delineation.

The Hypothetical Monopolist Test is only used for market delineation and not for assessment of whether a market is susceptible to ex ante regulation due to insufficient competition. Qtel does not have any objections to the delineations of the baseline markets. Qtel has, however, asked ictQatar to give the details and results of the tests which have been done to identify the need for ex ante regulation on the baseline markets, and include them in the list of Relevant markets, and is still waiting for it.

Under the EU regime the list of relevant markets, i.e. the markets that are susceptible to ex ante regulation, is prepared by the European Commission. In preparing the list the Commission relies on general competition law principles and uses the three criteria test. It is of outmost importance that remedies should only be imposed on markets whose characteristics may be such as to justify sector-specific regulation. When determining whether ex ante regulation is justified or not, the Commission focuses on the question of whether this market is submitted to any barrier to entry, has a clear trend towards competition and whether general competition law is sufficient to remedy the competition problem. This is the three criteria test. The national regulatory authority in the specific country will conduct the three criteria test to assess whether the market has to be included on the national list of relevant markets. The burden of proof that the market is susceptible to ex ante regulation and that an operator is dominant or has significant market power rests with the regulator. All tests and analyses are carried out by the regulator and then shared with the stakeholders in a consultation process.

Under both the EU regime and also the regime used in the USA both the regulator and the operator have access to the test results and both can validate the tests that have been performed. This is necessary as it builds trust and both parties can understand the reasoning of the other.

Qtel has strong objections to the way that ictQATAR has decided to perform the transition from baseline markets to relevant markets susceptible for ex ante regulation. The reason that a lot of careful deliberation is needed in this transition is that markets should, as a rule, not be regulated ex ante for a longer time than is absolutely necessary. The EU has decided to have a three criteria test in order to ensure that markets that are dynamic and sufficiently competitive are not subjected to ex ante regulation. In the US the onus is put on the dominant operator to show that the market no longer needs to be regulated. That leaves the operator with different possibilities in terms of showing the regulator that regulation is no longer needed. Standard tests are obviously performed by the operator.

ictQATAR has conducted tests in the transition from the baseline markets to the relevant markets as this is described in the Notice document. ictQATAR has however, not accounted for which tests it has carried out, how they have been carried out or the result of the tests. In Qtel's view it is sufficient if ictQATAR can provide the test results for the three dynamic markets that are part of the shortcut.

It is important to point out that Qtel has not at any point during the MDDD process agreed to or accepted the a priori established list of relevant markets proposed by ictQATAR. Nor has it agreed to or accepted the proposed outcome of the relevant markets analysis, as it has not been communicated any test details nor results till now.

Qtel has internally done some simple tests to check whether the three markets in question indeed should be regulated ex ante and figure on the list of relevant markets. The result of these tests is that the markets are sufficiently competitive and are not susceptible to ex ante regulation, at least not by the standards and practice used in the EU. ictQATAR has not used the three criteria test. It has however not identified any other test in its place in the Notice document. With the adopted methodology some type of test has to be performed as it otherwise becomes non transparent and possibly arbitrary which markets finally end up on the list.

Qtel cannot accept to be submitted to ex ante regulation and be declared dominant on the three markets without having the possibility to challenge and contest the results of conducted tests.

Market Analysis

Even though Qtel is of the firm view that it is not possible to make specific comments regarding the market analysis since it is at best unclear whether any of the three markets should be on the list of relevant markets Qtel will make some observations.

In determining whether dominance exists on a certain relevant market, ictQATAR, will according to the Notice document, analyze the extent to which a service provider, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. The criteria for the dominance test are set out in chapter 9 of the Telecommunications Law and the Bylaw. According to Article 72 of the Bylaw the criteria to assess are the following.

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- market share;
- absolute and relative size of the SP in the relevant market;
- degree of control of facilities and infrastructure that would be uneconomical for
- another service provider to develop to provide services in the relevant market;
- economies of scope and scale;
- absence of countervailing buyer power, including customer churn characteristics;

- current and potential competitive constraints;
- structural and strategic barriers to market entry and market expansion; and
- any other factors relevant to evaluating the existence of market power in a particular market, including the duplicability of infrastructure and barriers to entry.

The listed criteria are standard and are widely used within competition law. A market share of 40% is in itself not enough to declare that an operator is dominant on a market. Dominance is when an operator can act independently of customers or competitors. In assessing whether an operator can, in fact, behave independently of its customers or competitors all the above factors need to be assessed at least. According to Article 72 of the Bylaw the General Secretariat may, in the absence of evidence to the contrary, deem that a Service Provider with a share of more than 40 percent of the relevant market is a dominant Service Provider. In order to ascertain that there is indeed an absence of evidence to the contrary the other factors must be analyzed. The 40 percent market share is not a rule of presumption which can be used instead of making an assessment.

Using market shares as a presumption for dominance is flawed already for the reason that with only two operators present in the retail market both operators will under full competition have 50 percent each. This is one of the reasons that all other criteria must be assessed. It may perhaps be more correct to interpret the 40 percent market share as a negative threshold meaning that an operator with a market share of less than 40 percent should never be declared dominant. When the market share is above 40 percent the operator may be dominant but the listed criteria must be assessed.

The analysis that ictQATAR has accounted for regarding the three dynamic markets seems, for the main part, be an assessment of the relative market shares. For instance regarding the Public international telecommunications services at a fixed location and via a mobile device (M3) ictQATAR states that:

"Article 72 of the Executive By-Law assigns specific importance to the role of market shares, in as much as in the absence of evidence to the contrary, they may deem that an individual SP with a share of more than 40 percent of the Relevant Market is a DSP. According to this, there is a strong presumption of dominance in case of the underlying market of public international telecommunications services in Qatar, where QTel still holds market shares far above that threshold level." (page 27).

In its conclusion regarding this market ictQATAR finds the following:

"The dominance analysis confirms the assumption that QTel still holds a position of dominance in the market for public international telecommunications services at a fixed location and via a mobile device. This is mainly due to the current level of market shares which are very clearly above the relevant legal threshold levels." (page 28).

The modus operandi for other two markets is quite similar.

It is inconceivable that a dominance designation test should comprise mainly of a calculation of market shares. A lot of time and resources have been spent on the ongoing MDDD and it is clear that the outcome must entail improvement and clear pointers for the future. As has been stated above, ex ante regulation should only exist during a short period of time while, normally, former monopoly markets are opened up. It must be very clear and transparent under which conditions ex ante regulation will no longer be upheld in the respective markets. Qtel, as a dominant designated service provider, has an obligation to its board and owners to explain how the process of dominance designation works and, more importantly, what the roadmap looks like to lifting the dominance.

Regulation in the EU

Qtel accepts that the rules and regulations in Qatar cannot be identical to the EU experience and framework. However, since most of the framework and benchmarks used by ictQATAR is taken from Europe it is important to make sanity checks against those markets.

It may be pointed out that neither under the former ONP-Directives nor in the current NRF, published in 2002, has there any been any retail regulation of the mobile markets in Europe. The mobile wholesale markets were regulated through an amended directive, decided in 1996.

Next step

Qtel is committed to finalising the MDDD and is currently investing resources into the new structure of reporting of figures proposed by ictQATAR.

In order to find a suitable way forward in terms of definition of relevant markets Qtel respectfully requests that a meeting is set out as soon as possible with ictQATAR., At that meeting the parties can go through the respective tests and agree upon what additionally needs to be done in order to conclude the review. I will be in contact with your office in the next days to set up such a meeting.

Yours sincerely,

Yousuf Abdulla Al Kubaisi
Senior Director, Regulatory Management