

**NOTICE AND ORDERS
OF THE SUPREME COUNCIL
OF INFORMATION AND COMMUNICATIONS TECHNOLOGY
("ictQATAR")
SETTING FORTH THE
STANDARDS, METHODOLOGY AND ANALYSIS FOR DEFINING RELEVANT MARKETS
AND FOR DETERMINING MARKET POWER
METHODOLOGY AND STANDARDS
FOR DETERMINING MARKET POWER
AND
INITIAL DESIGNATION OF
QATAR TELECOM (Qtel) Q.S.C.
AS A DOMINANT SERVICE PROVIDER IN SPECIFIED RELEVANT MARKETS
FOR THE PERIOD 2007 TO 2010**

ICTRA 03/08A

24 June 2008

This Notice and Orders ("**Notice and Orders**") issued by the Secretary General of the Supreme Council of Information and Communications Technology (hereinafter, "**ictQATAR**") specifies the standards, procedures, methodology and circumstances for defining Relevant Markets in the telecommunications sector in the State of Qatar and assessing the degree of market power in those markets. By this Notice and Orders, ictQATAR hereby formally designates Qatar Telecom (QTel) Q.S.C. ("**QTel**") as a Dominant Service Provider in certain relevant markets.

PART A: INTRODUCTION

Decree Law No. (34) of 2006 (the "**Decree Law**") and the Telecommunications Law promulgated thereby ("**Telecommunications Law**") empower and authorize ictQATAR, through the General Secretariat headed by the Secretary General acting under the direction of the Board of Directors, to undertake the designation of Service Providers as Dominant Service Providers, as defined by Article 1 of the Telecommunications Law.

A Dominant Service Provider is one who has market power or dominance in one or more markets, in accordance with Chapter Nine of the Telecommunications Law (Article 1). A Service Provider who is able to dominate markets through acting individually or jointly with others has Significant Market Power (Article 1).

The Telecommunications Law (Article 42) provides that ictQATAR may consult with sector participants and interested parties in undertaking any market analysis or market power designation. This final Notice and Orders follows public consultations carried out by ictQATAR including: (1) a "Consultation on Relevant Markets and Designation of Dominant Service Providers in the State of Qatar" dated 23 July 2007 (reference # ICTRA 05/07-NC); and (2) a "Consultation on Proposed terms and conditions of the Public Telecommunications Licenses to be issued to Qatar Telecom (QTel) Q.S.C. and to a new provider of Public Mobile Telecommunications Networks and Services in the State of Qatar" dated 10 June 2007 (reference # ICTRA 02/07). A further consultation with industry participants and relevant interested parties on ictQATAR's Draft Response to Consultation on

Relevant Markets and Designation of Dominant Service Providers in the State of Qatar, and Notice and Orders of the Supreme Council for Information and Communications Technology: "Response of ictQATAR and Explanatory Memorandum" (ICTRA 02/08) was carried out on 3 April 2008. A final response document entitled "Relevant Markets and Designation of Dominant Service Providers in the State of Qatar dated 24 June 2008 accompanies this Notice and Orders (reference # ICTRA 03/08-NC).

The consultation documents and non-confidential submissions may be found at www.ict.gov.qa. The submissions and responses to all these consultations have been taken into account in the final analysis of the designation of QTel as a Dominant Service provider by this Notice and Orders.

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

This Notice and Orders sets out:

- (1) The legal basis for the Notice and Orders;
- (2) The standards, methodology and procedures for identifying and defining relevant markets and determining whether market power exists in relevant markets;
- (3) The Designation of QTel as a Dominant Service Provider in relevant markets for products and services; and
- (4) The applicable market review process for further designations or withdrawal of same.

This Notice and Orders may be amended from time to time at the sole discretion of ictQATAR in accordance with the requirements of the Telecommunications Law.

PART B: LEGAL BASIS FOR THIS NOTICE AND ORDERS

1. Establishing the Applicable Standards and Methodology

The Decree Law and the Telecommunications Law provide the legal basis for ictQATAR to undertake the designation of service providers as Dominant Service Providers in relevant telecommunications markets.

Article 6 of the Decree Law confers a power which enables the Secretary General of ictQATAR to issue legal instruments including 'orders' and 'notices' for the implementation of the provisions of the Decree Law and Telecommunications Law. Article 5 of the Telecommunications Law confers the same power, specifically in relation to regulating the telecommunications sector.

The Telecommunications Law explicitly provides for the designation of Dominant Service Providers in Articles 23, 40, and 42, and for specific legal obligations to be imposed on Dominant Service Providers including those relating to competition policy such as Articles 40, 41, 42, 43, 44, and 46; interconnection and access such as Articles 18, 19, 23, 24, and 25; and tariffs such as Articles 27, 28, 29, 31, 32, and 33.

Article 42 of the Telecommunications Law provides a legislative framework for undertaking the designation process; determining the extent of Significant Market Power or 'dominance' in a market; and stating what this Notice and Orders must specify, including the relevant products and services markets, the standards, methodology and circumstances relied upon, and the methodology operations for market power designation. This Notice and Orders, accordingly, specifies the information required under the Law.

In addition, Article 40 confers a power which enables ictQATAR, acting through the General Secretariat, to determine the criteria that must be applied in the designation of Service Providers as having Significant Market Power or dominance in identified telecommunications markets and implementing such criteria in any designation process. Article 40 also confers a power to enable ictQATAR to monitor and prohibit abuses of market power or dominant position, and to determine and apply the appropriate procedures and arrangements to confront abuses of market power and anti-competitive practices in order to strengthen competition and safeguard the interests of customers and the public.

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

Once a service provider has been designated as dominant in a particular relevant market, the specific obligations that apply to Dominant Service Providers under the Telecommunications Law and the Applicable Regulatory Framework will have effect in regard to its supply or purchase of products or services in that market.

2. Designating 'Dominant Service Providers'

Article 40 (3) of the Telecommunications Law empowers ictQATAR to determine what criteria will apply in the designation of service providers as having significant market power or dominance in identified telecommunications markets and implementing such criteria in any designation process.

Article 42 prescribes a process for the designation of Dominant Service Providers that includes determining relevant markets; determining the standards and methodology to be applied in determining the degree of market power or dominance in relevant markets; and, conducting a market analysis through applying the identified standards and methodology in the circumstances (**Market Review Process**).

PART C: NOTICE OF STANDARDS, METHODOLOGY AND PROCEDURES TO BE APPLIED IN DEFINING RELEVANT MARKETS AND DETERMINING THE EXTENT OF MARKET POWER IN THOSE MARKETS

1. Specification of Standards and Methodologies Used to Define Relevant Markets

The methodology that ictQATAR has adopted for identifying product, service and geographic markets is drawn from international best practice and the evidence of these markets in Qatar at this point in time. Relevant Markets have been 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 competition analysis. This includes defining the relevant product/service¹ markets and their geographic scope. Moreover, the methodology applied by ictQATAR supports and reinforces its broader policy objective of fostering competition while, at the same time, enabling viable and sustainable competition to take root during the initial phase of the liberalization process.

¹ For the analysis at this stage the terms "product" and "service" have the same meaning.

Factors considered as part of the market definition process include following:

- supply-side substitutability;
- demand-side substitutability;
- distinguishing between relevant retail and wholesale markets;
- determining the geographic scope of those markets;
- evaluating whether there is further customer segmentation;
- evaluating the functional dimension of the identified markets as well as time factors; and
- national differences.

2. Specification of Standards and Methodologies Used to Assess Market Power in the Relevant Markets

In determining whether significant market power or dominance exists in a relevant market identified in accordance with the methodology described above, ictQATAR has reviewed, in particular, the extent to which a service provider, acting alone or jointly with others, is in a position to behave to an appreciable extent independently of customers or competitors. This is the internationally accepted standard for determining whether market power exists in a particular product or service market and whether a service provider is a Dominant Service Provider in that market.

In order to make this assessment, it has been 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 following criteria have been examined insofar as they are relevant:

- market share (and its development over time);
- absolute and relative size of the firm in the relevant market;
- degree of control of facilities and infrastructure that would be uneconomical for another person to develop to provide services in the relevant market;
- economies of scope and scale;
- countervailing buyer power;
- current and potential competitive constraints;
- structural and strategic barriers to entry and expansion; and
- other factors relevant to evaluating the existence of market power in a particular market including:
 - duplicability of infrastructure and
 - barriers to entry.

ictQATAR has applied evidence-based analysis where possible and has utilized the most reliable data available. Where accurate or complete information has not been available, proxies and reasonable estimates have been utilized. Reference has also been made to jurisdictions that have already undertaken similar market reviews for the purpose of evaluating the need for *ex ante* regulation of telecommunications sectors in those jurisdictions.

These are the specified standards and methodology for the purposes of Article 42 of the Telecommunications Law.

PART D: ORDER DETERMINING THE SPECIFIED RELEVANT MARKETS

In accordance with the Market Review Process undertaken by ictQATAR which is explained in more detail in the accompanying response document published with this Notice and Orders (ICTRA # 03/08-NC) , ictQATAR has determined the following markets should be specified as relevant markets in accordance with Article 42 of the Telecommunications Law:

Relevant Retail Markets

1. Access to the public telecommunications network at a fixed location;
2. Access to the public mobile telecommunications network via a mobile device²;
3. Publicly available national telecommunications services provided at a fixed location³;
4. Publicly available national telecommunications services provided via a mobile device⁴;
5. Publicly available international telecommunications services;
6. Retail leased lines⁵; and
7. Broadband services.

Relevant Wholesale Markets

1. Call origination on public telecommunications networks at a fixed location⁶;
2. Call termination on individual public telecommunications networks at a fixed location⁷;
3. Transit Services on public telecommunications networks⁸;
4. Access and call origination on public mobile networks⁹;
5. Call termination on individual public mobile networks¹⁰;
6. Wholesale leased lines and associated services irrespective of the technology used to provide leased or dedicated capacity;
7. Access to and use of International Gateway Facilities; and
8. Access to and use of Network and Facilities
For the supply of domestic and international services, as, but not limited to, access to and use of sites, towers, underground facilities, etc.

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

² For the avoidance of doubt this excludes mobile satellite communication

³ In some market definitions a differentiation between local/regional/national is made. For the avoidance of doubt this covers the whole area of Qatar.

⁴ This includes, but is not limited to Voice and SMS Services
This covers the whole of Qatar.

⁵ For dedicated connections and bandwidth

⁶ Call origination is taken to include local call conveyance

⁷ Call origination is taken to include local call conveyance

⁸ This includes international transit services via public telecommunication networks

⁹ This excludes mobile satellite networks

¹⁰ This excludes mobile satellite networks

PART E: ORDER DESIGNATING QTEL AS DOMINANT IN SPECIFIED RETAIL AND WHOLESALE MARKETS

ictQATAR has conducted a Market Review Process that has included determining the markets to be specified as relevant markets, conducting a market analysis of the Qatari telecommunications sector, consulting the public and industry participants with respect to its analysis, and examining the circumstances and analysis supporting the designation of QTel as dominant in the relevant markets above, based on the standards and methodology set forth in this Notice and Orders that are specified in detail in the document entitled 'Relevant Markets and Designation of Dominant Service Providers in the State of Qatar', attached as Annexure A and incorporated by reference herein.

Having applied the standards and methodology set forth above to determine the degree of market power or dominance that a service provider may have in the relevant markets identified, ictQATAR has concluded that QTel is a Dominant Service Provider in all the specified Relevant Markets for the following reasons:

- (a) QTel is the only Service Provider in all the defined relevant markets;
- (b) There is a clear absence of effective countervailing competitive forces at work in any of the defined markets;
- (c) None of the information provided and considered by ictQATAR substantiates anything less than QTel having Significant Market Power and dominance in those markets;
- (d) QTel enjoys considerable economies of scale and scope;
- (e) QTel enjoys largely unfettered discretion in its production, provisioning and selling policies; and
- (f) Significant barriers to entry exist in the defined relevant markets in which QTel operates.

Although ictQATAR has selected the fifteen retail and wholesale markets above for the purpose of determining dominance or Significant Market Power at this point in time, ictQATAR reserves the right to define and review additional relevant markets as the sector develops and/or if there is credible evidence of market failure in other relevant markets prior to completion of the Strategic Sectoral Review in 2010.¹¹ Similarly, ictQATAR will consider credible evidence of the development of sustainable and effective competition in a particular relevant market as the basis for withdrawing a dominance designation relating to that market, as and when the circumstances warrant.

In respect of the relevant geographic market scope, ictQATAR has concluded that there is a single geographic market in the State of Qatar. Qatar is a small country with a single major urban area. There is no distinction on a geographic basis within the existing market structure, and competitive conditions, including the ability to supply across the State of Qatar, are geographically undifferentiated at the present time. As a consequence, ictQATAR hereby orders the designation of the entirety of the State of Qatar as the relevant geographic market at this point in time. However, it is possible that this assessment could

¹¹ At this time, it is expected that a wide ranging review of markets will coincide with the proposed strategic review of the sector in September 2010.

change as the liberalization process unfolds if regional (international) markets develop for some products and services or if localized markets emerge for certain others. ictQATAR will continue to monitor the competitive dynamics in terms of geographic overlap as the sector evolves.

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

Designation as a Dominant Service Provider in the specified Relevant Markets signifies that QTel will be subject to specific provisions, obligations and remedies that are now, or may in the future be included, in the Telecommunications Law, related regulations, rules, orders, notices, decisions and instructions, and any telecommunications licence issued to QTel (all comprising the Applicable Regulatory Framework), which are applicable to Dominant Service Providers concerning their conduct and activities in or connected with those markets. This includes obligations and remedies contained in the Annexures to QTel's public telecommunications licenses, and in particular, Annexures D (procedures for implementing and revising tariffs), F (interconnection, access and wholesale services), I (additional obligations of Dominant Service Providers) and J. (Transitional Provisions – including Fast-track Interconnection Process).

Additional ex ante obligations and remedies will be applied to Dominant Service Providers in certain markets where it is likely that existing requirements are not sufficient to prevent an abuse of dominance or may be needed to prevent market failure or prevent outcomes that are not in the public interest and which will enable viable competition to take root during the initial phase of sector liberalisation. This would include ictQATAR taking decisions during periods of negotiation between service providers and imposing accelerated timelines in respect of the matters set out in Annexure F or other relevant matters where the timing of a negotiated outcome is critical to Licensees meeting their obligations under the Applicable Regulatory Framework or is essential to facilitating competition in relevant markets.

Signed by:



Dr Hessa Al Jaber
Secretary General

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

Dated: 24 June 2008