



Relevant Markets and Designation of Dominant Service Providers in the State of Qatar

- Final Response Document -

**The Supreme Council for Information and Communications Technology
“ictQATAR”**

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1 EXECUTIVE SUMMARY

The State of Qatar has empowered and authorised the Supreme Council for Information and Communications Technology ('ictQATAR') to liberalise and regulate the communications and information technology sectors under Decree Law No. (36) of 2004 and Decree Law No. (34) of 2006 and the Telecommunications Law ('**Telecommunications Law**'). Together these laws establish the objectives and legal framework for ictQATAR to create the appropriate legal and regulatory conditions for the development of sustainable competition in the communications sector so that, amongst other things, telecommunications may become a factor for promoting social and economic development.

The Telecommunications Law provides the legal basis for ictQATAR to undertake the designation of service providers as Dominant Service Providers in relevant telecommunications markets. The Telecommunications Law and the Licence Conditions provide for specific legal obligations and remedies to be imposed on Dominant Service Providers in the circumstances including those relating to competition policy.

This Document sets out the standards, methodology and analysis adopted by ictQATAR for:

1. Determining the standards and methodology to be applied in determining the degree of market power in relevant markets;
2. Determining the Relevant Markets;
3. Conducting an analysis of the Relevant Markets by applying the identified standards and methodology in the specific circumstances; and
4. Designating a service provider as dominant ("Dominant Service Provider") in each relevant market where the service provider, individually or jointly with others, is found to exercise significant market power, and specifying the circumstances that ictQATAR has relied upon to justify these designations.

It also sets out the legal obligations and remedies that will apply to a Dominant Service Provider in the Relevant Markets in the circumstances.

The framework of analysis including these elements above is referred to herein as the "**Market Review Process**".

Published with this response document entitled 'Relevant Markets and Designation of Dominant Service Providers in the State of Qatar' is the Notice and Orders setting forth the methodology and standards for determining market power and the initial designation of Qatar Telecom (Qtel) Q.S.C. ("**Qtel**") as a Dominant Service Provider in certain Relevant Markets ("**Notice and Orders**").

ictQATAR has developed the Market Review Process and assessed whether market power exists in certain Relevant Markets and whether a service provider

may be designated as a Dominant Service Provider in those markets in accordance with the Telecommunications Law, which explicitly provides for:

1. the designation of Dominant Service Providers under Articles 23, 40 and 42;
2. the imposition of specific legal obligations on Dominant Service Providers in accordance with competition policy under Articles 4, 40, 41, 42, 43, 44 and 46;
3. the application of special interconnection and access obligations to Service Providers and Dominant Service Providers under Articles 18, 19, 23, 24, and 25; and
4. the imposition of tariff obligations on Dominant Service Providers under Articles 27, 28, 29, 31, 32 and 33

All licensed service providers must comply with the Telecommunications Law and the Applicable Regulatory Framework (ARF) as defined in their licences at Clause 3.

This Response and the Notice and Orders designating Qtel as a Dominant Service Provider in certain Relevant Markets following consultations carried out by ictQATAR, including:

(1) Consultation on Relevant Markets and Designation of Dominant Service Providers in the State of Qatar, dated 23 July 2007 and bearing the reference ICTRA 05/07-NC ("**Dominance Consultation Document I**"); and a

(2a) A draft response document entitled "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" dated 3 April 2008 and bearing the number ICTRA 02/08 ("**Dominance Consultation Document II**")

(2b) the accompanying "NOTICE AND ORDERS OF THE SUPREME COUNCIL OF INFORMATION AND COMMUNICATIONS TECHNOLOGY ("ictQATAR") SETTING FORTH THE 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 dated 3 April 2008 ("**Dominance Notice and Orders II**")

(3) 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 and bearing the reference ICTRA 02/07 ("**Licensing Consultation**")

(4) Consultation on Liberalization of the Telecommunications Sector in the State of Qatar dated 23 April 2007 and bearing the number ICTRA 01 ("**Liberalization Consultation**")

These consultation documents may be found at www.ict.gov.qa. ictQATAR has taken into consideration all comments provided in response to these public consultations in reaching its final conclusions in this initial stage of the Market Review Process.

The outcome of the Market Review Process is that ictQATAR has decided to designate Qtel as a Dominant Service Provider in the following markets, effective immediately:

Retail Markets

1. Access to the public telecommunications network at a fixed location;
2. Access to the public mobile telecommunications network via a mobile device¹;
3. Publicly available national telecommunications services provided at a fixed location²;
4. Publicly available national telecommunications services provided via a mobile device³;
5. Publicly available international telecommunications services;
6. Retail leased lines⁴; and
7. Broadband services.

Wholesale Markets

1. Call origination on public telecommunications networks at a fixed location⁵;
2. Call termination on individual public telecommunications networks at a fixed location⁶;
3. Transit Services on public telecommunications networks⁷;
4. Access and call origination on public mobile networks⁸;
5. Call termination on individual public mobile networks⁹;
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.

List 1 Relevant Markets where Qtel has been found having a Dominant Position¹⁰

¹ For the avoidance of doubt this excludes mobile satellite communication

² In some market definitions a differentiation between local/regional/national is made. For the avoidance of doubt this covers the whole area of Qatar.

³ This includes, but is not limited to Voice and SMS Services
This covers the whole of Qatar.

⁴ For dedicated connections and bandwidth

⁵ Call origination is taken to include local call conveyance

⁶ Call origination is taken to include local call conveyance

⁷ This includes international transit services via public telecommunication networks

⁸ This excludes mobile satellite networks

⁹ This excludes mobile satellite networks

¹⁰ For purposes of the Market Review Process and in line with the Telecommunications Law, the terms "significant market power" and "dominance" have the same meaning.

ictQATAR's analysis pursuant to the Market Review Process has focused on the circumstances prevailing in the Relevant Markets and in the State of Qatar at present and for the foreseeable future.

The designation of Qtel as a Dominant Service Provider in the Relevant Markets takes into account the impending grant of Individual Licenses to a new mobile and a new fixed entrant, as well as confirmation through the consultation processes that timely access to a minimum set of wholesale inputs is crucial to the development of competitive telecommunications markets in the State of Qatar. ictQATAR's approach and the outcome of the Market Review Process are fully consistent with well-established international regulatory best practice for conducting competition analysis in respect of the telecommunications sector.

ictQATAR will monitor markets closely as the new mobile and fixed licensees enter markets and will determine whether changes in market definitions and/or dominance designations are required at the appropriate time.

As a result of Qtel being designated as a Dominant Service Provider in the Relevant Markets identified above, Qtel will be subject to obligations and remedies set out in the Applicable Regulatory Framework including in its licenses, the Telecommunications Law and any other relevant legislation and international treaties, and any regulations, decisions, orders, rules instructions or notices issued by ictQATAR, as well as other requirements and conditions applicable to Dominant Service Providers that are (or may in the future be) set forth in the Applicable Regulatory Framework.

2 Introduction

In July 2007, ictQATAR published the Dominance Consultation Document I¹¹, which set out a list of proposed retail and wholesale markets and explained the approach followed by ictQATAR in defining markets and assessing market power and dominance. Comments in response to this Dominance Consultation Document I were submitted by

- ARGOS Consortium (“Argos”),
- Qtel, and
- Etisalat.

At about the same time, ictQATAR issued a Licensing Consultation document containing the proposed terms and conditions of the public telecommunications licenses to be issued to Qtel and new mobile and fixed networks and services providers. Some of the comments submitted in the Licensing Consultation were relevant to the issue of designation of Dominant Service Providers. Where applicable, these comments were taken into account in ictQATAR’s response documents, including this document, and have been cross-referenced.

ictQATAR took into account the responses of the commenting parties and set out its conclusions in Dominance Consultation Document II¹² and an accompanying Draft Notice and Orders II published in April 2008¹³.

With the award of the second mobile license in Qatar (Q2M¹⁴) in November 2007 and the advent of awarding a second fixed licence in Qatar (Q2F¹⁵) ictQATAR conducted a further consultation on the designation of Dominant Service Providers in order to have a more complete perspective of the views of telecommunications market participants (Dominance Consultation Document II). Comments were submitted by

- AT&T,
- PCCW,
- Qtel and
- Vodafone.

and have been taken into account in this document.

¹¹ ictQATAR; “Consultation on Relevant Markets and Designation of Dominant Service Providers in the State of Qatar” “Consultation Document”; 23 July 2007; ICTRA 05/07-NC (“Dominance Consultation Document I”)

NB: The respective Notice and Orders is included in Annex 6

¹² ictQATAR; Draft response document entitled “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”; 03 April 2008; ICTRA 02/08-NC (“Dominance Consultation Document II”)

¹³ ictQATAR; “NOTICE AND ORDERS OF THE SUPREME COUNCIL OF INFORMATION AND COMMUNICATIONS TECHNOLOGY (“ictQATAR”) SETTING FORTH THE 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”; April 2008; ICTRA 02/08A (“Notice and Orders II”),

¹⁴ Qatar 2nd Mobile

¹⁵ Qatar 2nd Fixed

The comments submitted in these consultations confirmed the methodology and approach proposed and applied by ictQATAR in the Market Review Process and the designation of Dominant Service Providers was appropriate and sound. Nevertheless, prior to issuing this response, ictQATAR has revisited its review to ensure a complete and comprehensive market review and designation process. In doing so, ictQATAR has modified the proposed definition of wholesale markets in line with international benchmarks and best practice, and in light of specific market circumstances in Qatar.

When considering the impact of prospective competition, ictQATAR is not persuaded that a new entrant or entrants will have sufficient impact in the **near term** on Qtel's position of dominance in any of the Relevant Markets in which it has been designated as a Dominant Service Provider. Historically and currently, Qtel enjoys a monopoly position in the sector that has been built over many years.

While opening up the sector is expected to attract investment and introduce a degree of competition into telecommunications retail markets, ictQATAR must look beyond the business plans of new entrants, the planned timing of the delivery of new services and the forecasted rates of consumer take-up. ictQATAR will monitor market developments closely and is prepared to respond swiftly to real evidence of substantial changes in market conditions and sustained changes in consumer behaviour.

In respect of Relevant Markets at the wholesale level, ictQATAR is persuaded that the absence today of a mobile or fixed competitor actively operating in the sector does not mean that the specification of a minimum set of relevant wholesale markets must await the actual launch of competitive services. It would be nonsensical to assume that a wholesale market does not exist simply because a formal request for a wholesale service has not yet been made. Qtel currently controls 100 percent of virtually all telecommunications networks, services and related facilities in the State of Qatar. Its competitors will require the use of certain key wholesale inputs in order to launch their own services. The Market Review Process has shown the wholesale markets in which Qtel enjoys a dominant position by having significant market power. Qtel will be subject to the relevant obligations and remedies set out in its telecommunications licenses, in particular, Annexures D (procedures for implementing and revising tariffs), F (interconnection, access and wholesale services), I (additional obligations for dominant service providers) and J (including the transitional fast-track interconnection process).

In the sections that follow, ictQATAR addresses key aspects of its Market Review Process and comments received in the consultations cited above with regard to:

- Standards, methodology and process
- Market definition (retail and wholesale markets)
- Assessment of market power in the Relevant Markets
- Designating a service provider as dominant in Relevant Markets
- Obligations and remedies

3 Methodology and Process

3.1 Approach to Market Definition

The standards and methodology for defining relevant markets derives from the Telecommunications Law and internationally accepted competition law and regulatory principles and practices that are considered to be international best practice for such analysis.

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/service¹⁶ markets and their geographic scope.

The main criteria for a separate product market is "A relevant product market comprises all those products and/or services which are regarded as **interchangeable or substitutable by the consumer**, by reason of the products' characteristics, their prices and their intended use."¹⁷

The geographic scope of the relevant markets is characterised as follows: "The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are **sufficiently homogeneous** and which can be **distinguished from neighbouring areas** because the conditions of competition are appreciably different in those areas."¹⁸

ictQATAR has defined product markets in particular in terms of **supply and demand side substitutability** according to the following two main competitive constraints: (1) how far it is possible for customers to substitute other services for those in question (demand-side substitution); and, (2) how far suppliers could switch, or increase, production to supply the relevant products or services (supply-side substitution) following a price increase.

ictQATAR also has considered other factors that reinforce its broader policy objective of fostering competition while at the same time enabling viable competition to take root during the initial phase of sector liberalization.

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

- supply-side substitutability;
- demand-side substitutability;

¹⁶ For the analysis at this stage the terms "product" and "service" have the same meaning.

¹⁷ EC; "COMMISSION NOTICE on the definition of the relevant market for the purposes of Community competition law." 9/12/1997; OJ C372 ("EC Notice Market Definition ")

¹⁸ EC Notice Market Definition

- 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.

3.2 Approach to Determining Significant Market Power and Dominance in Relevant Markets

In determining whether Dominance¹⁹ or significant market power (SMP) exists in a relevant market identified in accordance with the methodology described above, ictQATAR had proposed to 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**. 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 such an assessment, 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 following criteria have been examined insofar as they are relevant:²⁰

- 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;
- other factors relevant to evaluating the existence of market power in a particular market including
 - duplicability of infrastructure and
 - barriers to entry.

It is ictQATAR's policy to engage in evidence-based analysis where possible and to utilize the most reliable data available. Where accurate or complete information is not available, proxies and reasonable estimates have been utilized. Reference has also been made to jurisdictions that have already

¹⁹ For purposes of the analysis at this stage of the Market Review Process and in line with the Telecommunications Law, the terms "significant market power" and "dominance" have the same meaning.

²⁰ EC; "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")

undertaken similar market reviews for the purpose of evaluating the need for *ex ante* regulation of telecommunications sectors in those jurisdictions.

3.3 Approach to Obligations and Remedies

Once a service provider is designated as a Dominant Service Provider in certain markets following the Market Review Process and pursuant to Article 42 of the Telecommunications Law, the service provider is obliged to comply with certain obligations set out in the Applicable Regulatory Framework.

ictQATAR is empowered to impose remedies and measures on an *ex ante* or an *ex post* basis, as appropriate depending on the circumstances. Article 40 of the Telecommunications Law empowers ictQATAR to monitor and prohibit abuses of market power or of a 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. In addition, Article 4.4 of the Telecommunications Law empowers ictQATAR to establish and enforce appropriate remedies to prevent service providers from engaging in anticompetitive practices prospectively, and to prevent the continuation of abuses that have already taken place.

In case of a vertically integrated Dominant Service Provider, *ex ante* measures are warranted *both* at the retail level and in upstream wholesale markets. **Retail-**level measures are aimed at deterring the Dominant Service Provider from abusing its market power to the detriment of end-user customers. **Wholesale-**level measures are aimed at facilitating competitive entry into retail markets by eliminating potential “bottlenecks” upstream to markets in which products and services cannot be practically replicated by the competitor.

When general *ex ante* measures are not sufficient to prevent anti-competitive practices in certain markets, ictQATAR may impose specific and additional obligations or remedies. Given the very early stage of competition in telecommunications markets in Qatar and in accordance with international best practice, ictQATAR intends to apply *ex ante* regulation where necessary to address competition issues in particular markets or to deal with instances of market failure that cannot be regulated effectively through *ex post*.

However, ictQATAR views *ex post* and *ex ante* regulation as complementary means of addressing anticompetitive conduct and situations of market failure, and will avail itself of both types of enforcement measures as necessary and appropriate under the circumstances in future.

3.4 Consultation Issues concerning ictQATAR’s overall approach

The following questions were posed in the Dominance Consultation documents with regard to ictQATAR’s overall approach:

Question 1	Respondents are invited to comment on the proposed list of factors, standards and methodology used to define the relevant markets.
Question 2	Respondents are invited to comment on the proposed lists of factors, standards and methodology for determining Significant Market Power and Dominance.

The non-incumbent respondents to the Dominance and Licensing Consultations expressed their broad acceptance of the proposed factors, standards and methodology for defining relevant markets and determining significant market power or dominance. There was a consensus confirming the process conformed to international best practice.

However, some issues identified by commenting parties warrant discussion.

In its submission, Argos observed that in conducting market reviews, there were key structural issues that ictQATAR could factor into its analysis including, *inter alia*:

- product/services diversification (e.g., bundling);
- vertical integration;
- status of distribution and sales network; and
- excessive pricing.

ictQATAR agrees that these are relevant factors to be evaluated as part of the Market Review Process and confirms that taking them into account is entirely consistent with the approach that ictQATAR has adopted, as described above.

Qtel expressed concern that ictQATAR may not have given adequate consideration to the impact of prospective competition in assessing market dominance. ictQATAR accepts that in assessing the level of competition in dynamic markets, prospective competition can be an important consideration. However, Qtel has a longstanding monopoly over all services and infrastructure in the sector, and it will take considerable time for new entrants to rollout their networks and begin offering competitive services. In the absence of evidence to the contrary, there appears to be no reliable basis for finding that the entrenched incumbent's market power is effectively limited by the mere prospect of new entrants' arrival. Likewise, neither the potential for the introduction of a new technology nor even the adoption of that technology by a few users changes the nature of the competitive dynamics in a particular market.

ictQATAR will be watching for evidence of competitive activity in each of the Relevant Markets that may effectively change the market dynamics in those markets. Such evidence could be the result of investment by new entrants, consumer adoption of new services, and competitive price changes by all market participants. ictQATAR intends to monitor the impact of its dominance designations as the sector evolves and has planned to conduct a comprehensive review of all relevant markets and dominance designations in 2010.

Qtel also submitted that enactment of an Executive By-Law was a prerequisite to dominance designation.

The provisions of the Telecommunications Law that require ictQATAR to undertake the designation of service providers as Dominant Service Providers and to determine the extent of any significant market power or dominance in a market are clear in this regard²¹.

Article 42²² of the Telecommunications Law merely states that an Executive By-Law, regulations, rules and orders shall specify the standards, methodology and operations for market power designation. It does not state that specification of these factors in an Executive By-Law, regulations, rules and orders must occur prior to ictQATAR carrying out mandatory requirements or otherwise exercising its power under the Telecommunications Law.

This has not been a prerequisite for the designation of dominance or significant market power in other jurisdictions, and would not be so when the steps to follow to make a designation and determine market power are clearly stated in the primary law.

²¹ The Telecommunications Law provides *inter alia*. for

- the designation of Dominant Service Providers under Articles 23, 40 and 42;
- the imposition of specific legal obligations on Dominant Service Providers in accordance with competition policy under Articles 4, 40, 41, 42, 43, 44 and 46;
- the application of special interconnection and access obligations to Service Providers and Dominant Service Providers under Articles 18, 19, 23, 24, and 25; and
- the imposition of tariff obligations on Dominant Service Providers under Articles 27, 28, 29, 31, 32 and 33.

²² The Executive By-Law, regulations, rules and orders shall specify the standards, methodology and operations for market power designation.

4 Definition of the Relevant Markets

4.1 Definition of Relevant Markets

4.1.1 The Markets proposed in the Dominance Consultation Documents in the previous consultations

This chapter 4.1.1 lists the markets contained in Consultation Document I and Consultation Document II.

The list of the Relevant Retail Markets as identified by ictQATAR is in chapter 4.2.3 Designated Relevant Retail Markets on page 32.

The list of the Relevant Wholesale Markets as identified by ictQATAR is in chapter 4.3.3 Designated Relevant Wholesale Markets on page 37.

Based on internationally accepted practice and the current nature and scope of telecommunications markets in the State of Qatar, Dominance Consultation Document I identified a 'baseline' list of relevant markets in which dominance or significant market power was likely to be present. These markets were selected and defined in an iterative process, taking into consideration the existing market structure for telecommunications products and services in terms of facilities, services and functionality, and reasonably foreseeable competitive developments. The following baseline markets were proposed in Dominance Consultation Document I:

Retail Markets

1. Access to the public voice telecommunications network at a fixed location for customers;
2. Publicly available national voice telecommunications calls provided at a fixed location;
3. Publicly available international voice telecommunications service provide at a fixed location;
4. Access to the public land mobile network via a mobile device;
5. Publicly available national voice telecommunications service provided via a mobile device;
6. Publicly available international voice telecommunications service provided via a mobile device;
7. Data Services including broadband services; and
8. Leased Lines

Wholesale Markets

9. Voice call origination and conveyance on the public telecommunications network provided at a fixed location;
10. Voice call termination, including local conveyance, on the public telecommunications network provided at a fixed location;
11. Transit services on the public telecommunications network; this market includes the transit of telecommunications services originated in Qatar including the transit of call to an international gateway;
12. Voice call termination on public land mobile networks;
13. International voice call termination; this market include both the termination of international inbound voice calls;
14. Access for fixed data services, including bit stream services;
15. Wholesale leased lines including terminating and trunking segments;
16. Physical interconnection;
17. Logical interconnection (e.g. IP based traffic);
18. Facilities access;
19. International gateway services;
20. Directory services and databases; and
21. Any wholesale market, other than the above in which a market entrant may request interconnection, access or wholesale products or services.

List 2 BASELINE markets (retail and wholesale) proposed in Dominance Consultation Document
|

This list of proposed markets, derived from the baseline list above, was published in Dominance Consultation Document I:

1. Access to the public voice telecommunications network at a fixed location for customers;
2. Access to the public land mobile network (PLMN) via a mobile device;
3. Publicly available national telecommunications calls provided at a fixed location;
4. Publicly available national telecommunications service provided via a mobile device;
5. Publicly available international voice telecommunications service;
6. Retail leased lines; and
7. Data services.

List 3 Relevant markets set out for consultation in Dominance Consultation Document I

Further analysis and consultation was carried out on these markets and this was reflected in Consultation Document II:

Retail Markets

1. Access to the public voice telecommunications network at a fixed location for customers;
2. Access to the public land mobile network via a mobile device;
3. Publicly available national telecommunications calls provided at a fixed location
4. Publicly available national telecommunications service provided via
5. a mobile device;
6. Publicly available international voice telecommunications service;
7. Retail leased lines; and
8. Data services including Broadband services.

Wholesale Markets

9. Voice call termination, including local conveyance, on individual public telecommunications networks provided at a fixed location;
10. Voice call termination on individual public land mobile networks;
11. Physical interconnection;
12. Network and Facilities Access including access to transmission towers, sites of towers and underground facilities;
13. Transit services over public telecommunications networks (including international transit services); and
14. Wholesale leased lines and associated services irrespective of the technology used to provide leased or dedicated capacity.

List 4 Relevant markets set out for consultation in Dominance Consultation Document II

With regard to **geographic scope**, ictQATAR has consistently taken the view that there is a single geographic dimension and scope for telecommunications markets in the State of Qatar – that being the geographic area of the State of Qatar.

4.1.2 *Applying the Standards and Methodology to define the Relevant Markets*

A summary of ictQATAR's analysis and conclusions with respect to defining the Relevant Markets is set forth below.

4.1.2.1 Relevant Retail Markets

Access markets

ictQATAR considered the nature of the fixed access market. Although access and national calls to other fixed numbers are sold by the only existing service provider, Qtel, as a bundled offering, there are clear indications that the markets for access and calls are separate.

ictQATAR anticipates that with the introduction of competition, consumers may seek to obtain access from one supplier and selected call services, such as international calls on specific routes, from another supplier. With competition in place, some end-users may prefer to purchase both access and outgoing calls from the same supplier, many others may choose alternatives to the one providing access (and the receipt of calls) in order to make some or all of their outgoing calls. A supplier who attempted to raise the price of outgoing calls above the competitive level would face the prospect of end-users substituting alternative service providers. End-users could relatively easily choose alternative suppliers by means of short access codes, (carrier selection via contractual or pre-paid means) or by means of carrier pre-selection.

Therefore, it is possible to identify separate retail markets for access and calls (including related services).

There are **distinct** and separate markets for access for **fixed** and **mobile** networks. This conclusion is based upon the differences in the functional dimensions (demand and supply side characteristics) of fixed and mobile access. The mobile phone is a personal device, whereas a fixed phone and its number is normally used by a number of people. Furthermore with a mobile phone the customer has the liberty to place and receive calls virtually worldwide.

Based on the evidence, there are currently no relevant substitutes in any of the fixed or mobile access or calls markets nor are there any identifiable market segments which at this time, would warrant a more finely granulated market definition.

The access markets for both fixed and mobile services could be defined to include access to broadband networks, or a separate market for broadband access could be identified. Although ictQATAR is not defining separate markets for **broadband access** via fixed or mobile services at this time, ictQATAR may in the future: (i) identify such markets as market conditions and demand patterns evolve, (ii) declare service providers to be Dominant Service Providers in a separate market; or (iii) impose certain obligations on relevant service providers to facilitate competition in the supply of retail broadband, such as mandated wholesale bitstream access or local loop unbundling ("LLU").

National telecommunication services

ictQATAR has considered whether to define a single market for national calls that would include both mobile and fixed calls. ictQATAR holds the view that the market situation does not warrant this for several reasons.

Firstly, the data provided by Qtel in response to ictQATAR's information request demonstrates that there are significant differences between the volume of national calls made by the average fixed and mobile customer. Specifically, the average number of outgoing minutes of national calls per line on the fixed network is approximately [REDACTED] minutes per year. By comparison, the quantity of national call minutes in the pre-paid mobile market is [REDACTED] minutes per year per subscriber. The quantity of national calls in the far smaller post-paid market, is [REDACTED] minutes per year per subscriber. According to Qtel, almost [REDACTED] of its post-paid customers are business users.

Secondly, there are significant differences in the pricing structures of fixed and mobile national calls. Mobile pre-paid consumers pay the same amount for all national calls, whether mobile-to-mobile or mobile-to-fixed. By contrast, for a fixed telephone user, the charges vary depending on whether the call is terminated on a fixed or a mobile network. Specifically, fixed line users pay no incremental charge for fixed-to-fixed national calls²³, but must pay a termination charge for national calls from the fixed network to the mobile network.

Thirdly, the data provided by Qtel shows a dramatic growth in mobile-to-mobile minutes and a **reduction** in the mobile to fixed minutes. This suggests that consumers view fixed and mobile as separate services.²⁴

Finally, fixed and mobile services have fundamentally different service and functional characteristics. By definition, mobile services provide customers with the ability to make calls from, and receive calls at, any location, whereas the fixed service may only be used at a designated location. It appears that customers continue to perceive this service and functional distinction as a significant differentiating factor.

²³ As currently offered by Qtel, the charge for these calls is bundled with the flat-rate charge for access.

²⁴ The calls across networks are shown in Table 1 Calls between networks, below

	2001	2002	2003	2004	2005	2006
Average number of calls to fixed per post paid mobile phone (minutes)	■	■	■	■	■	■
Average number of calls to fixed per pre paid mobile phone (minutes)	■	■	■	■	■	■
Average number of call PSTN to GSM (minutes)	■	■	■	■	■	■

Table 1 Calls between networks
Source Qtel

As there are significant price differences and usage patterns at local level, as well as different service characteristics, ictQATAR has concluded that fixed calls and mobile calls in the national market fall into two separate relevant markets. Indeed, most other jurisdictions continue to define these services as separate markets for purposes of competition analysis.

ictQATAR is also of the view that, based on the available evidence, there are no other relevant substitutes in fixed or mobile calls markets nor are there any identifiable market segments at this time which would warrant more finely granulated market definition.

International services

(Originating from a fixed or mobile terminal in Qatar and terminating abroad)

The market evidence collected by ictQATAR indicates that international calls terminating on fixed and mobile terminals abroad are substitutes for one another and, therefore, should be considered a single market. There are a number of reasons for this conclusion.

The data shows that the number of outgoing international minutes per prepaid line is close to the number of international outgoing minutes on residential fixed lines. In 2006, the figure was ■ minutes for prepaid and ■ minutes for residential fixed. The same close relationship can be found between post-paid mobile outgoing international minutes and outgoing international minutes from business fixed lines: ■ minutes from post-paid mobile and ■ minutes for business fixed lines.

The customer cost for an international call consists of two parts

- The 'call fee'
This is the **same** regardless of whether the call is made from a fixed or a mobile network. Qtel does not differentiate in price whether the call is terminated on a mobile or on a fixed network abroad.
- The 'domestic access component'
If the call is made from a fixed network no 'domestic access component' is charged. In case the call is placed from a mobile network a 'domestic access component' in form of an 'air time' charge applies

average duration of the call	3 minutes				
International call from a fixed network					
	Local Access Fee	call fee	Fixed Call total	Fixed Call average (per minute)	
GCC (typical)	0.00	1.64	4.92	1.64	
Europe (typical)	0.00	2.08	6.24	2.08	
most expensive destination	0.00	2.64	7.92	2.64	
International call from a mobile network					
	Local Access Fee	call fee	Mobile Call total	Mobile Call average (per minute)	Difference Mobile-Fix Call
GCC (typical)	0.35	1.64	5.27	1.76	7.1138%
Europe (typical)	0.35	2.08	6.59	2.20	5.6090%
most expensive destination	0.35	2.64	8.27	2.76	4.4192%

Table 2 Call Termination Rates
Source Qtel's Tariffs

In the absence of data on call-duration, and for the purpose of market definition, it is plausible to assume an average three minute call. When comparing customer costs from calling from a mobile or fixed network for terminating abroad, it appears that a call from a mobile network is, in the worst case, 7% more expensive than a call from a fixed network. The average prices per minute are, therefore, quite uniform.

From a demand side perspective, it appears that consumers perceive international calls from (and to) both fixed and mobile networks to be substitutes.

For the time being the market data suggests that there is one market, for both fixed and mobile origination for international calls terminating abroad.

Leased lines

The key elements in the demand for and supply of dedicated connections (leased lines) are service guarantees, bandwidth and the location or locations to be served.

ictQATAR sought to collect extensive information with regard to leased lines, but relatively limited data appeared to be available with regard to retail domestic leased lines.

Leased lines are typically used by business customers and service providers, to provide a point-to-point connection. Unlike call services, leased lines services do not include switching. Therefore they are distinct from the mobile and fixed line calls markets. Moreover, these services provide significantly higher capacity than switched calls services, at a significantly higher price. In comparison, other managed data products, including broadband Internet, are generally shared at some point and, thus, do not provide guaranteed bandwidth. Further, the end user has less flexibility, as there is more third party management. Also, these products are not usually provided with a standard high level of customer care and although it is possible for consumers to purchase enhanced service levels on some products, it normally falls short of leased line service levels.

Given the unique characteristics of a leased line service, it is considered that consumers who acquire a leased line service are unlikely to switch to an alternative data service. A separate market is, therefore, justifiable. In the future, as infrastructure competition develops and better data services are available, it may be necessary to differentiate between services such as local leased line segments (“leased line tail circuits”), leased lines used for backhaul, and inter-urban circuits.

Broadband Services

Broadband services are an important part of the Market Review Process and were considered by ictQATAR when defining relevant access markets.

ictQATAR has not presumed a single market including both narrowband and broadband. Customers readily move from narrowband to broadband and it is likely to continue in the future. The reverse trend is not foreseeable. Customers value the added functionality of broadband, especially the ‘always on’ feature, the ability to make simultaneous voice calls while accessing the Internet, and the additional speed.

Broadband Services have different technical characteristics than leased lines, which is pointed out above. From a demand side perspective the end-customer prices are typically much lower.

It is therefore justifiable to define Broadband Services as a separate market.

Prospective Retail Markets

ictQATAR is not proposing, at this time, to identify any additional or prospective retail markets or to consider any more finely granulated retail markets. For example, to differentiate between residential and non-residential (business) users, or post-paid and pre-paid mobile customers. ictQATAR is of the view that there currently is insufficient evidence to support the identification of additional or more granular retail markets, but ictQATAR will consider any evidence that may be produced in this regard as the liberalisation process unfolds.

4.1.2.2 Relevant Wholesale Markets

One must not confuse (existing end-user) services with relevant markets. For example, a Fixed Call from Doha to Dukhan consists of several parts:

- Access to the telecommunications network (= Line rental and telephone)
- national telecommunication services
with the wholesale inputs:
 - Call Origination
 - Transit services
 - Termination.

End-user markets often have equivalent end-user products which are well-known and can be easily identified. Wholesale products are less well-known and, in non-competitive markets, wholesale services/products are not established offerings. Therefore, wholesale markets might appear to be a far-fetched construct. As shown in the Fixed Call example above, Qtel is already supplying the various components (= wholesale services/products) to itself.

Wholesale markets, and the related wholesale services exist now - even in the absence of competition.

Fixed Call Origination

After termination, access and call origination are the next least replicable elements of the wholesale inputs required to provide retail call services. At the retail level, a distinction has been made between access and (outgoing) calls.

With respect to calls services, the main elements required to produce such services are call origination, call conveyance/transit (including routing and switching) of varying kinds and call termination. Related elements include signalling and the ancillary services needed, for example, for billing purposes. A supplier that supplies retail telephone services could purchase these inputs separately or together, or produce all of them by constructing an extensive network, or purchase some and produce others.

One direct alternative to the purchase of call origination is to establish an access network (cable, fibre, wireless connection etc.) to the end-user location. Another alternative is to purchase or lease an established network connection to the end-user location (for example through local loop unbundling). Both alternatives entail considerable time and investments, a large proportion of which are sunk. Incumbents continue to enjoy, as regards the local access network, absolute cost advantages due to economies of scale, scope and density. The market for fixed call origination consequently continues to exhibit high and non-transitory barriers to entry. Both the development of alternative access networks (cable, fibre, wireless, etc.) and the degree of local loop unbundling remain, for the time being, limited.

Over the next few years, it is not expected that market entry will occur on such a scale as to make this market tend towards effective competition.

The Relevant Market identified for the purpose of this Market Review Process is 'call origination on public telecommunications networks at a fixed location'. The Relevant Market is considered to comprise call origination for telephone calls and for the purpose of accessing dial-up Internet service provision.

Fixed Termination

Call termination is the least replicable element in the series of inputs required to provide retail call services. Wholesale call termination is required in order to terminate calls to called locations or subscribers. Service providers owning or operating networks to provide telephone services may interconnect at relatively high levels in the network, i.e. at a few Points of Interconnection (POIs). Consequently, call termination arrangements may in practice comprise call conveyance as well as call termination.

Hence, the relevant market for this can be as wide as each network operator. In considering whether this definition is appropriate, it is necessary to examine the possibilities for demand and supply substitution that might constrain the setting of termination charges on a given network. If all (or at least a substantial number of) fixed locations or subscribers in a given geographical area were connected by two or more networks, then alternative possibilities would exist for terminating calls to given locations. Another possible source of supply substitution would

occur if it were possible technically for calls to a given location or end-user to be terminated by a service provider other than the one operating the network that serves the given location. Currently no such supply substitution is possible.

Call termination charges at a wholesale level on a given network might be constrained via demand substitution but there is currently no potential for demand substitution at the wholesale level.

Each market for call termination on an individual fixed network is a monopolistic market with no tendency towards effective competition, where end-users are unable to systematically set up their own call termination.²⁵

In light of this, ictQATAR has determined the Relevant Market to be call termination on individual networks.

Transit Services

In addition to wholesale call origination and call termination, call conveyance or transit will be needed in order to complete a call. Transit services involve the transmission and/or switching or routing of calls. For a service provider providing services to a limited number of end-users, an alternative to using wholesale transit services could be to use interconnected leased lines or dedicated trunk capacity. Transit services refer to the (long-distance) conveyance of switched calls on the public telephone network provided at a fixed location.

This is a different product from the provision of dedicated capacity in itself, even if some transit services are provided over leased circuits or links. The difference is that leased lines provide dedicated capacity between two fixed points whereas transit refers instead to switched calls on the public telephone network provided at a fixed location. Transit services therefore comprise conveyance both between switches on a given network and between switches on different networks, and include pure conveyance across a third network. Some parts of this transit service market could become competitive, but there cannot be a presumption that some switched call conveyance (from an incumbent to an entrant's network) is automatically different from other switched call conveyance (between two entrants' networks).

Mobile Access and Call Origination

Besides call termination, the key elements required to produce a retail service are network access and call origination. Network access and call origination are typically supplied together by a network service provider so that both services can be considered as part of the same market at a wholesale level.

Mobile Termination

As is the case for fixed telephony, termination services are the least replicable input for retail mobile services. Mobile call termination is an input both to the provision of mobile calls (that terminate on other mobile networks) but also to calls that are originated by callers on networks serving fixed locations that terminate on mobile networks. This also applies to SMS termination, although

²⁵ The principle of 'single network dominance' is further discussed in chapter 5.2 Consultation Issues regarding the Market Power in the Relevant Markets

the majority of messages that are terminated originate from other mobile handsets.

Since the termination charge is set by the called network, which is chosen by the called subscriber, the calling party in general does not have the ability to affect or influence termination charges. This is the case under the calling party pays (CPP) principle which is currently common in Europe and other jurisdictions. As the market failure is potentially the same for both call and SMS termination, and as both services are sold as part of the same mobile cluster at both retail and wholesale level, it seems appropriate to deal with them together.

The CPP convention allows the terminating operator to raise its prices without a constraint from either party to the call. The calling party pays a bundled fee and will not see a direct price signal. The receiving party makes no payment by convention so cannot constrain the ability of their terminating operator. To the extent that the increased price reduces the number of calls that a person receives they are worse off. However, this may not be really noticed and the person concerned will not be able to attribute this fall-off in calls to a higher termination rate. Thus, a mobile services provider can readily raise the price of reaching any of their subscribers.

It is clear that the criterion of a high and non-transitory entry barrier is met for mobile termination of voice calls and SMS messages. The fact that a mobile services provider has a collection of customers for which it has a monopoly for terminating traffic cannot be overcome by other service providers regardless of their size. In principle, mobile termination charges might be constrained via demand substitution, but there is no potential for demand substitution at a wholesale level. Demand at the wholesale level is inextricably linked to supply. The service provider (of the caller) is unable to purchase call or SMS termination on a given network from an alternative source.

In general, therefore, whilst it is apparent that end-users who subscribe to mobile services have a choice about the network to which they subscribe and that it is relatively easy to switch between networks, there is limited evidence of widespread constraints on the pricing of wholesale call termination.²⁶

The conclusion at the current time (under a CPP system) is that call termination (by third parties) on individual networks is the appropriate Relevant Market.²⁷

To the extent that the exchange and termination of SMS are similar to voice termination it is open to consider defining and notifying an additional separate market for SMS. For the time being, ictQATAR regards call termination and SMS as part of the same cluster market.

Leased Lines

²⁶ European Commission; "COMMISSION STAFF WORKING DOCUMENT" "EXPLANATORY NOTE" "Accompanying document to the Commission Recommendation 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"; Second Edition 2007; SEC(2007) 1483 final, (C(2007) 5406); p45 ("EC staff working document markets")

²⁷ The principle of 'single network dominance' is further discussed in chapter 5.2 Consultation Issues regarding the Market Power in the Relevant Markets

A leased line is defined as a permanently connected link between two premises dedicated to the customer's exclusive use. The corresponding services and products at the wholesale level are the wholesale inputs required to offer this dedicated transparent transmission capacity at the retail level.

The wholesale inputs required to provide retail leased lines can also be used to provide other symmetric services at the retail level, e.g. symmetric broadband Internet access and other symmetric data services. Since all these retail services offer some type of broadband service at the retail level.

International Gateway Facilities

International gateway facilities includes telecommunication facilities and physical plant utilized in the State of Qatar to enable a Public Fixed or Mobile Telecommunications Network to connect with and switch traffic to or from foreign public fixed or mobile networks, including via terrestrial links, undersea cables or satellite (apart from Very Small Aperture Terminal that are used for the provision of satellite services over Private Networks, and also including international transit links²⁸. International backhaul is an essential input for all international telecommunications services. The construction of international gateway facilities is costly and time-consuming. Entrant service providers are unlikely to undertake or complete such facilities in the near to medium term.

The inability to obtain access to those facilities is likely to restrict or foreclose altogether the availability of competitive sources of supply and constrain the development of competitive international service markets in Qatar.

Access to network and facilities

In a well-developed network exist are a multitude of facilities, which are an essential wholesale input for any new competitor in order to supply domestic and international services. This includes facilities as, but not limited to, buildings, sites, towers, underground facilities, switches, etc.

The final selection of relevant wholesale markets at this point in time, however, raises various issues. At present, there is only one licensed public telecommunications networks and services provider in Qatar and, consequently, the demand for wholesale services that may emerge when competitors are introduced into the sector is currently latent. Nonetheless, based on an assessment of the commercial realities of the extant industry structure and well-documented experience in other jurisdictions where the liberalisation process is more advanced, ictQATAR has identified a list of Relevant Wholesale Markets in the expectation that some or all of the identified markets will emerge after additional telecommunications service providers have been licensed and as they prepare to launch their services in Qatar. It is a fact that the identified wholesale markets actively exist in telecommunications sectors around the world where there is more than one licensed telecommunications service provider.

²⁸ Annexure A of the licenses

4.1.2.3 Geographic Dimension

The question of geographic markets raises economic and policy issues, which will need regular review as markets develop.

The European Commission²⁹, having decade of market definition experience, summarizes as follows:

“The fact that competitors have a supply area which is not national does not suffice to conclude that there are distinct markets. Further evidence relating to demand-side and supply-side substitutability on the relevant market will have to be considered. Regional competitors can indeed exercise a competitive pressure reaching beyond the area in which they are present when the potential SMP operator applies uniform tariffs and the regional competitor is too large to ignore. Moreover, there should be evidence that the pressure for regional price differences comes from customers and competitors and is not merely reflecting variations in the underlying costs.”

Qatar is a relatively 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.

The telecommunications sector is characterized by a high degree of dynamics which comes from both supply and demand-side factors. These dynamics mean defined markets and the designation of dominance in these markets will not remain static over time. However, due to the early state of competition in the telecommunications sector at this point in time, ictQATAR has concluded there is a single geographic scope for telecommunications markets in Qatar being the national geographical area of the State of Qatar.

It is possible that this assessment could change as the liberalization process unfolds, especially if regional 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.

4.1.3 *Consultation Issues to the proposed list of relevant markets and the geographic dimension*

The following general questions were posed in the Dominance Consultation documents with regard to the proposed list of relevant markets:

Question 3	Is the proposed baseline list of relevant product and service markets appropriate in the context of telecommunications markets
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²⁹ EC staff working document markets

in the State of Qatar at the present time?

Question 4 Is it appropriate in this context to define markets in the State of Qatar as having a single national geographic dimension or scope?

Apart from Qtel, the respondents voiced generally broad support for the proposed list of relevant retail and wholesale markets and those markets having a national geographic scope. For example, Argos was generally in agreement with the selection, subject to specific concerns about the treatment of termination markets, the application of the principle of proportionality and the notion of single network dominance. These comments are addressed in the sections that follow.

Qtel expressed concern that the specified markets appeared to be derived from a benchmarking approach rather than the application of objective criteria. ictQATAR is firmly of the view that the specification of Relevant Markets in the circumstances that currently prevail in the State of Qatar -- *i.e.*, a sole monopoly provider facing the prospect of a new mobile and a new fixed entrant -- is accurate and straightforward. As set forth in the Dominance Consultation documents, ictQATAR has examined all reliable information and evidence and has specified those markets, which it deems to be crucial to regulate at this point in time, in order to protect consumers and allow competition to develop. In the future, there may be a need to designate additional markets or ascertain a higher degree of granularity in defining the Relevant Markets (for example, to differentiate business and residential services, or between on-net and off-net termination). In the longer term, as competition develops, ictQATAR would expect to be able to reduce the number of markets from the list.

PCCW noted in its submission that it appeared in the Dominance Consultation II document that some of the granularity of the original list of markets may have been lost with further analysis. The proposed and Relevant Markets are discussed at 4.1.1 and 4.1.2. The Market Review Process required ictQATAR to revisit market definition and a market for call origination was added.

AT&T stressed in its submission the importance of including access to submarine cable stations in the definition of Relevant Markets. This facility is discussed in 4.1.2.2.

Qtel requested further granularity regarding specific products and services that would be included in the various Relevant Markets. ictQATAR takes the position that the Relevant Market definitions are clear enough and are in line with international regulatory best practice. ictQATAR has defined the Relevant Markets so that market participants can work with such definitions and cluster products accordingly.

With respect to the relevant scope of geographic markets, ictQATAR has concluded that the scope of the market is nationwide. The finding of a single geographic market was supported unanimously by the respondents. Qtel was previously in favour of a single geographic market but then took a different view, allegedly based on its views about the fixed licence application process for the second fixed licensee in Qatar and its interpretation of Articles 45, 53 and 42 of

the Telecommunications Law.

ictQATAR has a legal mandate to licence service providers that will compete with Qtel in mobile and fixed telecommunications markets in Qatar. The fixed licence application process is designed to attract applicants that will commit to providing the best possible technical solutions and fixed wire and wireless services to customers in Qatar.

ictQATAR has examined Articles 45, 53 and 42 of the Telecommunications Law in the context of the list of relevant markets proposed and their geographic scope and has concluded that by determining the geographic scope as national, it is not in contravention of the Telecommunications Law. Qatar is a small country with a single major urban area. The ability of service providers to supply services across the State of Qatar is geographically undifferentiated at the present time. In contrast to Qtel's concerns, a second fixed licensee in Qatar will stimulate competition rather than prevent or substantially lessen it. The issue raised by Qtel concerning access to property does not appear to contradict ictQATAR's position or the Telecommunications Law given the economic facts in evidence.

Nevertheless, ictQATAR will monitor the competitive dynamics in terms of assessing any perceived geographic overlap as competition in the telecommunication sector evolves.

4.2 Relevant Retail Markets

4.2.1 Proposed Retail Markets

Taking into account the submissions received on the proposed and relevant markets in Consultation Document I, the following retail markets were put to further industry consultation in Consultation Document II:

1. Access to the public voice telecommunications network at a fixed location for customers;
2. Access to the public land mobile network via a mobile device;
3. Publicly available national telecommunications calls provided at a fixed location;
4. Publicly available national telecommunications service provided via
5. a mobile device;
6. Publicly available international voice telecommunications service;
7. Retail leased lines; and
8. Data services including Broadband services.

List 5 List of Relevant Retail Markets set out for consultation in Dominance Consultation Document II

4.2.2 Consultation Issues regarding the proposed Relevant Retail Markets

The following questions were posed in the Dominance Consultation Documents with regard to the list of proposed relevant markets at the retail level:

Question 5	General comments are invited on the proposed lists of retail markets
Question 6	Should there be separate relevant markets for calls and access for both fixed and mobile calls?
Question 7	Should there be separate national calls markets for fixed and mobile?
Question 8	Should there be a single market for international fixed and mobile calls?
Question 9	Is there justification for identifying a separate retail market for access to broadband networks at this time?
Question 10	Is it appropriate to include broadband access in the access market and leave data services as a distinct market?
Question 11	Are there any additional or prospective relevant retail markets which should be defined at this stage?
Question 12	Should any of the proposed retail markets be defined more granularly at this stage of market liberalization process?

General comments

In general, there was broad support for the proposed list of retail markets. Qtel, however, questioned whether ictQATAR would prove to be flexible in re-defining the relevant markets at a subsequent time. ictQATAR is mindful that a balance needs to be struck between regulatory stability and regulatory flexibility in the face of dynamic industry change. If credible evidence was produced to demonstrate the need for revision of the list of relevant retail markets or the definition of a particular market, ictQATAR would consider re-examining the Relevant Markets. ictQATAR also notes that the list of Relevant Markets and how they are defined will be an important consideration in the 2010 Sectoral Review.

Access and call markets

Qtel also took the position that the current bundle of fixed-network access and calls services (as structured by Qtel, which it concedes involves cross-subsidies) means that there should be a single market for calls and access. This view was not shared by the other commenting parties. Qtel further argued that creating separate markets for calls and access may inhibit infrastructure competition, whereas the respondents and Qtel's potential competitors took the opposite view.

ictQATAR has concluded that the definition of separate access and calls markets is appropriate. Qtel's chosen price structure, established in a monopoly environment, is obviously not the determining factor of what constitutes a Relevant Market or markets for purposes of competition analysis. PCCW supported the finding and said that by separating the markets, predatory pricing and other abuses of Qtel's dominant position could be detected. This market definition may also assist in terms of access codes, technical issues, call routing, access matters, numbering, database access and support systems.

Especially during the initial stages of liberalization, it is important to ensure there are incentives for the development of sustainable and effective infrastructure

competition over time. ictQATAR is mindful that the new entrants may need to rely on the use of Qtel facilities during a transitional period, while they build their networks, develop their brands, and establish a customer base. By defining access and calls markets separately, the new entrants will be able to gain access to critical components of Qtel's infrastructure during a reasonable transition period on the path to full infrastructure competition. This is fully consistent with the "ladder of investment" approach, which has underpinned regulatory policy in virtually all telecommunications sectors in the process of liberalization. ictQATAR will of course closely monitor developments in this area that could impact upon the market definition or an assessment of dominance.

Concerning the access markets for a fixed location ictQATAR would like to clarify, that 'telecommunications' network was used in the definitions rather than the more restrictive 'telephony' used by the EC. For the time being, ictQATAR is not defining a separate market for broadband access³⁰.

The responses to Questions 7 through 12 elicited a number of comments on the relevant retail markets.

International calls markets

There was some debate raised in the submissions as to whether there exists a single market for international fixed and mobile calls (Question 8). Both Qtel and Argos agreed with the proposed combined market definition (fixed and mobile), whereas Etisalat and Vodafone questioned the extent to which such calls are substitutes. The evidence reviewed by ictQATAR indicates that these calls are substitutes, but ictQATAR will continue to monitor market developments and, if necessary, conduct a study to examine the issue. Such a study could be undertaken in advance of the Sectoral Review slated for 2010 (thus allowing time for competitive developments to be factored into the results), but could be conducted sooner if credible evidence was produced.

Broadband services

In terms of retail broadband services (Questions 9 and 10), both Argos and Etisalat argued that the proposed relevant markets were appropriate. Qtel argued that there *could* be a high degree of substitutability and functional similarity between residential broadband and leased data circuits but did not elaborate on these arguments. ictQATAR has therefore decided to adopt its original proposal in this regard, *i.e.*, separate markets for retail leased lines and for data services, including broadband services.

In its submission, Vodafone was looking for clarification under which market "... messaging and other data services over the mobile network ..." were to be included. According to the methodology applied, these data services would be included in the market for data services.

³⁰ As set out in Dominance Consultation Document I; p 12

4.2.3 Designated Relevant Retail Markets

A comprehensive analysis of the factors that led ictQATAR to identify the proposed baseline markets at the retail level is set forth in the Dominance Consultation Documents and in this chapter above. For these reasons, ictQATAR has concluded that its preliminary assessment was sound and designates the relevant retail markets are as follows:

9. Access to the public telecommunications network at a fixed location;
10. Access to the public mobile telecommunications network via a mobile device³¹;
11. Publicly available national telecommunications services provided at a fixed location³²;
12. Publicly available national telecommunications services provided via a mobile device³³;
13. Publicly available international telecommunications service;
14. Retail leased lines³⁴; and
15. Broadband services.

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

List 6 Designated Relevant Retail Markets

4.3 Relevant Wholesale Markets

4.3.1 Proposed Wholesale Markets

Taking into account the submissions received on proposed and relevant markets in Consultation Document I the following wholesale markets were put to further industry consultation in Consultation Document II:

³¹ For the avoidance of doubt this excludes mobile satellite communication

³² In some market definitions a differentiation between local/regional/national is made. For the avoidance of doubt this covers the whole area of Qatar.

³³ This includes, but is not limited to Voice and SMS Services
This covers the whole of Qatar.

³⁴ For dedicated connections and bandwidth

1. Voice call termination, including local conveyance, on individual public telecommunications networks provided at a fixed location;
2. Voice call termination on individual public land mobile networks;
3. Physical interconnection;
4. Network and Facilities Access including access to transmission towers, sites of towers and underground facilities;
5. Transit services over public telecommunications networks (including international transit services); and
6. Wholesale leased lines and associated services irrespective of the technology used to provide leased or dedicated capacity.

List 7 List of relevant wholesale markets set out for consultation in Dominance Consultation Document II

4.3.2 *Consultation Issues regarding the proposed Relevant Wholesale Markets*

The following questions were posed in the Dominance Consultation Documents concerning the proposed treatment of relevant markets at the wholesale level:

Question 13	Comments are invited on the proposed treatment of wholesale services in this Consultation Document, the proposed list of prospective wholesale markets, and the proposed procedure for designating relevant wholesale markets going forward.
Question 14	Is the proposed list of relevant wholesale markets sufficient to promote sustainable infrastructure based competition?
Question 15	Should any additional wholesale markets be identified at this initial stage of market liberalization in the State of Qatar?
Question 16	Which wholesale markets should be prioritized by ictQATAR in its review of markets during the initial period of market liberalization?

General comments

In the Dominance Consultation Documents, ictQATAR was cautious in defining relevant wholesale markets prior to obtaining input from potential market participants. The Dominance Consultation Documents and the Licensing Consultation provided useful insight into the identification of an initial list of wholesale markets that are virtually certain to be characterized by dominance or significant market power, and which will be critical to the ability of new public telecommunications licensees to compete with Qtel during the initial stages of sector liberalization.

Taking into consideration the submissions received with respect to both the key wholesale markets requiring *ex ante* regulation and the harm to competition from any delay in implementing basic regulatory safeguards for these markets, ictQATAR has decided to specify the relevant wholesale markets as set out below at this time.

In the Dominance Consultations, there was widespread agreement in the submissions of non-incumbent service providers that, where necessary, the timely availability and regulation of wholesale services and facilities will be

critical to the development of competitive telecommunications markets in the State of Qatar³⁵.

The need to ensure the timely provision and pricing of wholesale inputs was also a common theme across all submissions from potential competitors to Qtel.

Consistently, those responding to the Licensing Consultation emphasized the need for a regulatory regime which adheres to the principles of transparency, fairness and non-discrimination.

Further, the submissions stressed the need for regulatory intervention both to prevent the foreclosure of competitive markets by a Dominant Service Provider and to ensure the effective operation of wholesale markets³⁶.

In response to Question 13 in the Dominance Consultation, Etisalat argued that it is artificial "...to hold that a wholesale market does not exist simply because a *formal* (emphasis added) request for wholesale services has not yet been made"³⁷.

Argos took the view that it would be premature to make a *final* selection of wholesale markets at this time. Other respondents argued that the proposed list is appropriate and identifies the relevant markets required to ensure effective competition downstream, at the retail level. By contrast, Qtel characterized ictQATAR's identification of wholesale markets as "problematic"³⁸ and argued that the list of wholesale markets should be determined through the interconnection negotiation process.

Wholesale markets to be considered

During the consultation, certain relevant wholesale markets were consistently identified as 'priority' markets for the introduction of competition by potential new entrants.

These included, *inter alia*:

- Voice call termination, including local conveyance, on the public telecommunications network provided at a fixed location;
- Voice call termination on public land mobile networks;
- Physical interconnection;
- Network and Facilities Access including access to transmission towers, sites of towers and underground facilities;
- Transit;
- Leased Lines;
- International voice call termination;
- Access for fixed data services, including bit stream services;
- Logical interconnection (e.g. IP based traffic);
- International gateway services;
- Directory services and databases; and

³⁵ see also discussion below with regard to Question 18

³⁶ for example, see the submission of AT&T International, Inc. in the Licensing Proceeding, responses to Questions 1 and 3

³⁷ Etisalat, page 5

³⁸ Qtel, page 13

- Any wholesale market, other than the above in which a market entrant may request interconnection, access or wholesale products or services.

Argos argued that facilities access would be "...especially critical in respect of international call termination... [and that] ...Q2M must have access at an early stage to Qtel's cable landing rights, for example"³⁹. Thus, there was a proposal that the wholesale markets for facilities access should be extended, or at least clarified, to include (i) access to ducts, poles and other external plant facilities, such as Qtel's cable landing rights and (ii) access to facilities inside customer premises. ictQATAR intends to carefully monitor any issues that arise in this area and will invoke the Fast-Track procedures established by Annexure J, Section 2 of the public telecommunications licenses (hereinafter, the "**Fast-Track Procedures**") as and when circumstances warrant.

There was a strong call among the non-incumbent respondents for **broadband services** (both bitstream services and unbundled local loops) to be made available at the wholesale level. Etisalat argued that such wholesale products and services are vital to ensure that new entrants do not merely become 'non-value-added'⁴⁰ resellers of Qtel services.

At this initial stage of sector liberalization, ictQATAR remains of the view that it would be prudent to allow the market participants to resolve as many issues as possible through commercial negotiation before moving to establish *ex ante* regulations. Should these negotiations fail, ictQATAR would be open to the application of the Fast-Track Procedures and other remedies in order to ensure the supply of relevant wholesale products and services.

In the case of **broadband services**, there is ample experience to be drawn from other countries to swiftly establish the minimum set of wholesale broadband services, features, prices, etc. In any event, ictQATAR fully expects the definition of the relevant wholesale market or markets for broadband services to be an integral element of the 2010 market review.

Etisalat further argued that the supply of "**usable wholesale inputs** (network, OSS and mediation 'hooks')... [*allows*] ...a facilities-based competitor to help neutralize, at least in part, the possibility of a dominant position being abused"⁴¹.

It was therefore Etisalat's position that, as a general principle, Qtel should not be allowed to provide retail services to the public unless and until the underlying wholesale products were made available to competitors. ictQATAR will consider each case as it arises but accepts that Qtel should make its regulated wholesale offerings available to competitors on a timely basis.

Issues relating to **convergence and bundling of services** were raised by several respondents, focusing especially on the interplay between the availability and cost of products and services in wholesale markets, the development of effective competition in retail markets, and the potential foreclosure of competitive markets by the incumbent operator. Both Argos and

³⁹ Argos, page 5. This was strongly supported by other respondents.

⁴⁰ Etisalat, page 7

⁴¹ Etisalat, page 7

Etisalat raised the issue of bundling and its potential anti-competitive effects. For example, anti-competitive conduct through leveraging, some forms of discriminatory pricing and anti-competitive cross subsidies.

As a general proposition, the offering of bundled services to consumers is in the public interest, subject to the following conditions:

- The bundles must increase consumer welfare by offering, for example, greater certainty in the purchase of services and reducing consumers' costs of acquiring new and innovative services.
- The bundles are clearly understood by consumers, and consumers can compare the price of the bundle to the prices of individual components in the bundle in a relatively easy and straightforward manner.
- There is tangible evidence that any cost savings to the consumer by taking the bundled service are objectively justifiable (such as might be demonstrated by greater economies of scale and scope, simplified billing mechanisms, lower retail costs) and not solely delivered through cross subsidies from other unrelated services.
- The underlying wholesale products and services are available to all licensed service providers at cost-based, non-discriminatory and transparent prices and conditions.

These safeguards should help ensure that the potential for anticompetitive conduct by a Dominant Service Provider is minimized. ictQATAR is of the view that sustainable and effective competition will result in competitive prices and a higher quality of service, including innovative bundles of products and services. Thus, the provision of bundled services, whilst encouraged, will be subject to close scrutiny. The provision of bundled services does not necessarily alter the underlying definition of the relevant markets, but ictQATAR will continue to review developments in the sector and exercise its discretion to revise the list or definitions of relevant markets as and when necessary.

In reaching its final decision on this matter, ictQATAR has taken account of practices in other jurisdictions and particularly notes the following comment from the European Commission:⁴²

In many cases, the incumbent is the only firm that is in a position to provide a potential wholesale service. It is likely that there is no merchant [commercial] market as this is often not in the interest of the incumbent operator. Where there is no merchant market and where there is consumer harm, it is justifiable to construct a notional market where potential demand exists. Here the implicit self-supply of this input by the incumbent to itself should be taken into account.

⁴² EC Staff working document markets, para. 3.1

4.3.3 Designated Relevant Wholesale Markets

Based on the outcomes of the consultation process and in line with international benchmarks and regulatory best practice, ictQATAR is initially adopting the following relevant markets at the wholesale level:

7. Call origination on public telecommunications networks at a fixed location⁴³;
8. Call termination on individual public telecommunications networks at a fixed location⁴⁴;
9. Transit Services on public telecommunications networks⁴⁵;
10. Access and call origination on public mobile networks⁴⁶;
11. Call termination on individual public mobile networks⁴⁷;
12. Wholesale leased lines and associated services irrespective of the technology used to provide leased or dedicated capacity;
13. Access to and use of International Gateway Facilities; and
14. 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.

List 8 Designated Relevant Wholesale Markets

These Wholesale Markets that have been determined by ictQATAR include commonly recognised 'bottleneck' services that are regarded by regulators and industry worldwide as the types of wholesale services that would not be practicably replicable in the near to medium term for the provision of competitive services by a new operator entering the sector.

⁴³ Call origination is taken to include local call conveyance

⁴⁴ Call origination is taken to include local call conveyance

⁴⁵ This includes international transit services via public telecommunication networks

⁴⁶ This excludes mobile satellite networks

⁴⁷ This excludes mobile satellite networks

5 Determining the Degree of Market Power

5.1 General Considerations when analyzing the Market Power on the Relevant Markets

ictQATAR has sought to analyse each of the relevant retail markets using the best evidence available to it, including information supplied through market inquiries and by Qtel, and, where complete or accurate information has been unavailable, using reasonable estimates or comparable international benchmarks.

ictQATAR's analysis of market power in the identified relevant markets occurs at a time when Qtel is the sole provider of public fixed and mobile infrastructure, networks and services in the State of Qatar, operating in all of the relevant products and services markets that have been identified. Qtel currently faces no licensed competitors in those markets and, given the scope and scale of the networks and services that Qtel has developed over the past decade under a legal monopoly, Qtel's strong market position as an entrenched monopoly in Qatar is not expected to diminish substantially in the near term, even after the arrival of two new entrants.

The results of ictQATAR's market power analysis, based on the Market Review Process described in this Consultation Document, are summarised below.

Market share

Market shares are – as any other criterion – not conclusive on their own⁴⁸. A recently updated ERG⁴⁹ document, quoting the EC SMP guidelines⁵⁰ reflects the underlying line of thinking

“The economic relevance of market shares as an indicator for the assessment of single dominance derives from economic theory and empirical evidence on the relation between market shares and profitability (in terms of price-cost margins).³ Although theory and empirics indicate that there is a positive correlation between market shares and individual price cost margin, there is no clear-cut relation between a certain market share and the existence of dominance. According to the EC's competition law practise suppliers with market shares below 25 % are not likely to enjoy single

⁴⁸ One of the major developments of the EC 2003 regulatory framework was the abolition of static market-share criteria and the shift to a general competition-law conform approach of defining markets and designating SMP. This gives Regulatory Authorities the tools to react on specific circumstance in the relevant markets and not to rely on a “one size fits all” approach as the 1998 EC regulatory framework was sometimes criticized for.

⁴⁹ ERG; “Revised ERG Working paper on the SMP concept for the new regulatory framework”; ERG (03) 09rev3; September 2005 (“ERG SMP”)

⁵⁰ EC, “Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services”; 2002/C 165/03 (“EC SMP guidelines”)

dominance. According to case law a market share over 50 % would lead to a rebuttable presumption of dominance. In the European Commission's decision-making practice, single dominance concerns normally arise where an undertaking has at least 40 % market share. However, there may even be concerns about dominance where an undertaking has less than 40 %, depending on the size of that undertaking's market share relative to its competitors. ..."

In the initial phases of market liberalisation in the European Union, a service provider could be presumed to have Significant Market Power if it had a market share of more than 25%. In Singapore, the market share threshold signifying dominance in a telecommunications market is set at 35%. Moreover, under most modern competition law frameworks, market shares of more than 50% carry a strong presumption of dominance.

In addition, a snap shot of market shares has less meaning than the development of market shares over time. While persistence of a high market share over time can indicate dominance, declining market shares on the other hand may provide evidence of entry and increasing competition (although this may not preclude a finding of dominance). The fact that, at the start of a liberalisation process, the market share of the monopolist decreases does not necessarily mean that there is no dominance or even less dominance. This is the "natural" effect of the opening of markets to competitors. In emerging or fast growing markets, high market shares are less indicative of market power than mature or slow-growing markets. Fluctuations in market shares may also indicate a lack of market power. The significance of market share in a competitive environment also depends on the distance from the next best competitor and the division of market shares between the other competitors.

In all of the relevant retail and wholesale markets Qtel has 100% market share, as it is the only licensed operator in markets today. Given the long history of its monopoly and considering the factors discussed below, a substantial decrease of its market shares is yet to be seen.

The absolute and relative size of a firm in the relevant market

This refers to the potential advantages, and the sustainability of those advantages, that may arise from the large size of a service provider relative to its competitors. Areas where such advantages may exist include economies of scale. Such advantages may accrue in part due to other activities of the service provider outside markets under consideration.

With an effective 100% share of each of the Relevant Markets, Qtel has both an absolute and relative position of dominance in those markets. Qtel's position is further strengthened by virtue of the relatively small scale of the Qatari telecommunications sector, and the already high levels of adoption and penetration of the services in the Relevant Markets.

Control of infrastructure not easily duplicated

Infrastructure as a wholesale input is needed by market entrants to provide services. One example is control or ownership of a large network that a competitor would find costly and time-consuming to build. Such ownership or control may represent a significant barrier to entry. It is considered to be relevant for the assessment of dominance whether a given facility affords its owner or controller to behave independently from other network operators.

Qtel has developed its networks and facilities over many years. These facilities could not easily be economically replicated in the time period under review. Thus, in terms of control of facilities and infrastructure, Qtel clearly enjoys a dominant position at present.

Absence of or low countervailing power

The existence of customers in a strong negotiating position, which is exercised to produce a significant impact on competition, will tend to restrict the ability of providers to act independently of their customers. When buyers of a certain product/service are large and powerful, they can effectively stop an attempt to increase prices by sellers. Many factors play a role in determining the scale of countervailing power on the part of the buyers. The higher the amount of purchase of services by customers or the higher the proportion of the producer's total output that is bought by a certain customer, the stronger the countervailing power might be. The higher the portion of the costs for a service in relation to their total expenditure and the better informed the customer is, the more sensitive customers tend to be to the price and quality of the service and the more readily they might switch suppliers or reduce demand. Further, the higher a seller's locked-in investment in specific customers (asset specificity), the more willing he will be to negotiate. Overall, this criterion is especially meaningful in wholesale markets, because providers purchasing network services from other providers are, in general, more visible and powerful than retail customers.

Until now, no competitor could viably exist in the retail or wholesale markets without some regulatory assistance.

ictQATAR is aware that there is potential for increased competition to e.g. Qtel's international outbound voice telephony services from VoIP services accessed over the Internet. There is, however, no reliable evidence at this point in time to demonstrate that VoIP has had an appreciable impact on the revenues or volumes of voice traffic carried by Qtel or that such activity constitutes sustainable and effective competition in the market for international voice telecommunications services in the State of Qatar.

Taking into account these facts, there appears to be very little countervailing buying power at present.

Product/services diversification (e.g. bundled products or services)

Product or service diversification can be observed particularly in more mature markets and is characterised by the fact that a service provider is able to provide a "portfolio" of related products and services, with the consequence that the threat coming from competitors who may be unable to offer the same range of services or products would be reduced. In that sense, products/services

differentiation can enable the service provider in question to secure and maintain its client base.

The Qatari telecommunications sector might not be developed in terms of competition. In terms of bundled products, Qtel is already quite active in the fixed and mobile markets, and in converged offerings (Fixed, Mobile, IPTV, etc.), which are offered ubiquitously in Qatar. This poses entrance barriers for a new service provider, especially if it has only a fixed or a mobile licence and cannot immediately compete across the whole country.

Economies of scale, scope and density

Economies of scale arise when increasing production causes average costs (per unit of output) to fall. Economies of scale are common where the production process involves high fixed costs, which is the case in communication markets.

Economies of scope exist where average costs for one product are lower as a result of it being produced jointly with other products by the same firm.

Economies of density exist where (fixed costs) can be distributed over a large number of customers in a given geographic area. These cost advantages are attributed to a high take-up of services in a given geographic area.

Economies of scale, scope and density can act as barriers to entry, as well as an advantage over existing competitors.

Qtel has 100% penetration in the most significant relevant retail markets and, given its market share, it has the ability to realise these cost advantages in the markets. Moreover, as an integrated operator, Qtel has the ability to exploit economies of scale, scope and density in the building and operation of its networks across all assets (such as ducts, civil engineering, fibre and cables).

A highly developed distribution and sales network

Well-developed distribution systems are costly to replicate and maintain, and may even be incapable of duplication. They may represent a barrier to entry as well as an advantage over existing competitors.

Qtel's distribution network is well established. The distribution channels and outlets are well known by the customers and new channels, such as Q-Post and chain stores are being added.

A new competitor has to put in an enormous and time-consuming effort in order to establish an adequate sales and marketing network to compete with the well-established sales and marketing networks of Qtel.

There may be more active competition where there are lower barriers to market entry, growth and expansion. However, the higher the barriers to entry to a market, the more significant these barriers will be in assessing potential competition because, with high barriers to entry, competition will largely be limited to existing market participants.

The threat of potential entry may prevent firms from raising prices above competitive levels, leading to a situation in which no market power is exercised. However, if there are significant barriers to entry, this threat may be weak or absent. Service providers may then be able to raise prices and make consistent

excess profits without attracting additional competition that would reduce those profits over time.

Barriers to market entry plus any evidence of both potential and actual entry are relevant in this assessment.

There are two broad categories of barriers to entry:

- Absolute barriers exist where firms own, have access to, or are granted privileged use of important assets or resources, which are not similarly accessible to potential entrants. These may include legal barriers to entry as foreseen by any licensing regime.
- Strategic barriers arise due to the strategic behaviour of existing market participants, for example through pricing behaviour (such as predatory pricing, price-squeezing, cross-subsidies and price discrimination) or through non-price behaviour (such as increased investment, promotion and distribution). Whilst structural and behavioural aspects can be interwoven, making the absolute-strategic distinction may help to indicate appropriate remedies to address dominance.

Even after legal barriers to entry into these markets are removed, an incumbent service provider usually has the ability to exercise market power for a significant period of time for several reasons. Firstly, it usually takes a new entrant a considerable amount of time to roll-out its network and begin to offer and provide services. Secondly, a new entrant typically faces significant obstacles in competing against an incumbent as a result of network effects, pricing strategies, cross-subsidies, and switching costs. Thirdly, new entrants must overcome significant customer inertia. This often takes years of successful marketing, as well as the development of a solid positive reputation among potential customers. This could be especially challenging in Qatar where, at present, the mobile penetration rate is more than 100 percent (i.e., there are apparently more mobile telephones than people living in Qatar). Consequently, any new entrant will be largely seeking to attract existing Qtel customers.

These factors have been commonly experienced in other countries which confirms the need for effective regulatory intervention to be in place at the start of the liberalisation. Even with the award of additional mobile and fixed licences, the countervailing threat of potential entry is very limited at the start.

Vertical integration

Vertical integration can strengthen dominance by making new market entry harder to achieve due to control of upstream or downstream markets. As such, vertical integration may give an advantage to the integrated firm (over its non-integrated competitors), as access to sales and supply markets might be more easily attainable for the integrated firm. Vertical integration makes it possible to lever market power into upstream or downstream markets. Similar effects can be the result of favourable links a company has with other companies (e.g. affiliated companies) and authorities.

Qtel is undeniably the only fully vertically integrated service provider in Qatar and, as such, enjoys the benefits of being in this position.

Additional considerations in the market analysis

After applying the above methodology in the light of the best available market information, ictQATAR then considered some more factors which follow:

Above-cost prices In a competitive market, prices will be cost-based. In contrast, a firm with significant market power is able to charge prices that are substantially 'above cost'. The market evidence made available to ictQATAR indicates, for example, that Qtel charges prices for international call services that are significantly higher than the cost of the service inputs. Qtel has entered into "settlement agreements" with operators around the world, in which the operators compensate each other for the cost of delivering each other's calls. The market evidence provided by Qtel to ictQATAR confirms that the prices charged to its end users for international calls are significantly higher than the costs that Qtel incurs to provide international services. The data provided to ictQATAR in relation to international settlement rates confirms the analysis and the conclusions drawn from it.

Cross-subsidisation A further indicator of significant market power is the ability to use revenues that are significantly above cost in one market in order to cross-subsidise prices in another market. The data provided by Qtel did not allow a detailed assessment of prices in relation to costs in all markets. However, based on a comparison of Qtel's prices to those in other jurisdictions, Qtel appears to be charging below-cost prices for the bundle "access and national calls", thereby suggesting that anticompetitive cross-subsidisation could be occurring.

High broadband access prices Qtel operates, in large part, a modern and efficient network. Qtel's network exhibits characteristics which, in other markets, would tend to produce low costs and low retail prices including: short line lengths, high quality and consistent diameter copper lines in the access network and high capacity backhaul channels. Thus, Qtel is technically in a position to provide high-speed broadband services at low prices. In the broadband market, however, Qtel's pricing of access and services appears to be relatively high – QRs 200 (40 Euro) per month for 512kbps and QRs 300 (75 Euros) per month for 1Mbps. Data from the Portuguese telecoms regulator, Anacom⁵¹, for November 2006, shows that the average minimum price for broadband in the EU was significantly lower: 15.01 Euros (for the lowest operator) and for the historic operators the average was 20.63 Euros. For 2Mb broadband the EU average was 20.43 Euros. There is no evidence to show why operator broadband costs should be significantly higher in Qatar than in the EU.

In terms of wholesale markets

By applying the methodology set forth above to the typical characteristics of the relevant wholesale markets, and taking into consideration Qtel's ownership and control of the facilities necessary to provide these wholesale services, it is reasonable to expect that Qtel would be found to have the same degree of influencing the market as it has in retail markets.

⁵¹ Anacom 'International comparison of broadband prices' November 2006 (<http://www.anacom.pt/content.jsp?contentId=454901>)

It is apparent Qtel is effectively a Dominant Service Provider in any interconnection, access or other wholesale market in which a new entrant was to request services from Qtel. This assumption rests on the information provided to ictQATAR and near-universal similar experiences in other jurisdictions, which has shown that during the initial phases of liberalisation, it is not possible for a new entrant to replicate certain bottleneck telecommunications infrastructure in the required timeframe for launch of service. It follows that Qtel will be designated as a Dominant Service Provider in the provision of any wholesale services in the relevant wholesale markets.

5.2 Consultation Issues regarding the Market Power in the Relevant Markets

The Dominance Consultation document posed the following questions with respect to ictQATAR's assessment of market power in the specified relevant markets:

Question 17	Comments are invited concerning the analysis of the evidence on the degree of market power in the relevant retail markets.
Question 18	Comments are requested concerning the proposed approach in respect of assessing dominance in the proposed relevant wholesale markets.
Question 19	Is there sufficient evidence at the present time upon which ictQATAR could make a finding of dominance with respect to any proposed relevant wholesale market and develop an effective remedy?
Question 20	Is the application of single network dominance in the context of fixed and mobile termination a useful regulatory principle in the State of Qatar?
Question 21	Is the concept of single network dominance more suitable than designating dominance in a discrete service market such as mobile call termination in the State of Qatar?
Question 22	What should be the implications of the application of single network dominance to termination markets in the State of Qatar to a new entrants' provision of termination services, and to what extent would the principle of countervailing buyer power apply?
Question 23	What other approaches to wholesale market regulation would be appropriate in the State of Qatar?

General comments

In response to the questions above, there was broad consensus on the part of the non-incumbent respondents that Qtel enjoys a high degree of market power in all of the Relevant Markets identified by ictQATAR and support for the analysis and findings of ictQATAR. Qtel, though not disputing the findings, argued that prospective competition must be considered.

One respondent introduced the notion of "super-dominance" concerning Qtel's market position and its control over a variety of essential facilities, as Qtel's

dominant position is neither speculative nor short-lived. The importance of having a Fast-Track Interconnection Process was stressed by this respondent.

As discussed above, ictQATAR remains open to reviewing the designation of dominance in any market where credible evidence is furnished to support such a review. However, the mere prospect of future competition at the retail level is an insufficient basis for a finding that Qtel's monopoly power will be effectively curbed in the near term, without any evidence of the shape or direction that developments in the State of Qatar will take within the foreseeable future.

Question 18 sought input with regard to ictQATAR's approach for assessing dominance in wholesale markets. Qtel referred to its previous comment (in response to Question 13) that the approach of ictQATAR is problematic. Argos and Etisalat argued that Qtel's dominance in wholesale markets will become apparent as soon as the new operators enter the sector. In response to Question 19, Argos and Etisalat both observed that there was already ample evidence for ictQATAR to make an assessment of dominance in wholesale markets.

Both Argos and Etisalat pointed out that one of the critical issues affecting the new entrants would be the timely provision of key inputs and services from Qtel. In Etisalat's view, such wholesale inputs [as are provided in the relevant wholesale markets] "need to be available from the date of grant of license"⁵². This view was shared and reiterated by several of the non-incumbent respondents in the Licensing Consultation.

Qtel raises concern that the "ladder of investment" approach was used as justification for dominance. The "ladder of investment" approach is widely accepted by scholars, the EC, IRG and ERG and forms an agreed base of telecommunications liberalization. When carefully reading the quoted paragraph it clear that ictQATAR did not use the "ladder of investment" approach as justification for dominance.

Qtel and Vodafone requested the inclusion of market share thresholds that may be observed and applied when assessing market power and lifting obligations upon service providers. As discussed at 5.1, market share is only one criterion for determining dominance in a market. According to international competition law conventions, ictQATAR will use several criteria when determining Dominance.

Single Network Dominance (Questions 20-22)

The issue of single network dominance and its regulatory implications were raised in Questions 20-22. Qtel argued for the adoption of the principle of single network dominance⁵³. Etisalat observed that "[t]he usual logical conclusion of a market analysis exercise is to find [that] an operator possessing a given numbering range is effectively dominant in the wholesale market for calls to those numbers"⁵⁴. Argos, commenting on the question of single network dominance, focused on the need for ictQATAR to apply the principle of

⁵² Etisalat, page 10

⁵³ Qtel, page 16

⁵⁴ Etisalat, page 11

proportionality and, hence, apply asymmetric regulation. PCCW was supportive as well.

The treatment of termination markets in accordance with the concept of “single network dominance” is well established in economic literature and has been adopted in countries with “calling party pays” systems. In such markets, the termination of a call across different mobile networks necessarily means that the call is terminating on a competitor’s network. An operator providing termination services would by definition (*i.e.*, termination on its own networks) have a market share of 100 percent and would generally be in a position to charge an above-market price for the service. The terminating operator could also leverage monopoly rents in this market in order to drive down the price for call origination and/or other retail prices (*e.g.*, handset prices) in the mobile market.

In the European Union, the concept of single network dominance is widely accepted with respect to call termination markets. In terms of policy implementation, the European Commission has encouraged national regulators to press mature mobile network operators to adopt symmetrical charges (or at least to follow a glide path to symmetrical charges). Thus for example, Greece is currently in the process of establishing a glide path which will result in symmetrical termination charges among all mobile operators.

However, there are important nuances in the application of single network dominance within the European Union. In the EU Commission Staff Working Document, it was observed that defining the market as call termination on individual networks “does not automatically mean that every network operator has significant market power; this depends on the degree of any countervailing buyer power and other factors potentially limiting that market power. Small networks will normally face some degree of buyer power [from larger networks] that will limit their associated market power”.⁵⁵

Qtel argues that the recognition of single network dominance would inevitably mean that there should be symmetry in the termination rates charged by all licensed operators, and that all termination charges for the same services would need to be symmetrical, *i.e.*, the same for termination across all networks.

The assumption of similar costs for termination across all networks is not necessarily valid. First of all, network scale and technologies are significant in differentiating costs. This is particularly the case for (access) telecommunications networks with huge (sunk) up-front investments where smaller networks are less capable to exploit economies of scale and scope. Hence, they face a higher cost per customer than larger, already well-established operators.

Another factor is that most service providers in more developed telecommunications sectors, face severe competition and have well-developed regulatory accounting systems in place and are able to accurately identify costs. These cost structures, which are reflected in their retail and wholesale tariffs,

⁵⁵ EC staff working document markets, p.177

provide clear incentives to these firms to reduce their cost base. Where this does not happen, regulatory intervention generally occurs.

It is also clear that the imposition of symmetrical termination charges on all service providers may not take into account the potential countervailing bargaining power of the larger service provider. A new entrant's ability to negotiate prices downward may be relatively restricted; the reverse is more likely to be the case with the incumbent, which can use its countervailing bargaining power to mitigate high termination charges set by a new entrant.

The rationale behind treating smaller, new-entrant service providers differently from larger mobile network service providers may also be justified on the basis of the principle of "proportionality". That is, different regulatory treatment may be warranted because the costs incurred by the smaller service provider in complying with the effects of a dominance designation may exceed the benefits to consumers ultimately gained by addressing the particular market problem in question through the imposition of regulatory measures.

There is a related concern that the incumbent service provider, with its much larger market share, could introduce discounted on-net pricing (or higher off-net pricing) in the retail market, locking in the network externalities of termination on the incumbent's own network. In this regard, the competition analysis undertaken on behalf of the European Regulations Group ("ERG") and the ERG's conclusions with regard to the impact of on-net/off-net price discrimination in the provision of mobile services is instructive.⁵⁶

Absent extenuating circumstances, the regulatory position is that each service provider will be designated as a Dominant Service Provider on its own individual network for purposes of termination services provided over its own network. ictQATAR intends to closely monitor the termination charges imposed by the new entrants as well as the impact of any pricing strategies relating to on-net discounting that may be proposed by the incumbent network service provider. ictQATAR will decide at the appropriate time, closer to the launch of competitive services, whether circumstances warrant the designation of either or both new entrants as Dominant Service Providers in the respective markets for fixed and mobile termination on their individual networks.

⁵⁶ ERG; "Revised ERG Common Position on the Approach to Appropriate Remedies in the ECNS regulatory framework"; Final Version May 2006; ERG (06) 33 ; p 36, ("ERG 2006 Remedies")
Cave, Stumpf, Valetti ;"A Review of Certain Markets included in the Commission's Recommendation on Relevant Markets subject to *ex ante* Regulation", "An independent report by Martin Cave, Ulrich Stumpf, Tomasso Valetti"; July 2006; pp 89, 93-94 ("Cave et al 2006 Review")

Other approaches to wholesale market regulation

Finally, in response to Question 23, Qtel repeated its objections to the methodology applied by ictQATAR for assessing market power. Argos argued that ictQATAR needs to be cognizant of the process of convergence and, as markets evolve, should consider changes to relevant market definitions, such as “mobile pricing. . in a larger context and compared to fixed-line and VoIP alternatives”⁵⁷. Etisalat focused its response on various procedural issues and argued that “the regulatory obligations triggered by a dominant provider designation are too vague to provide regulatory certainty and the comfort necessary that swift and effective enforcement will be available”⁵⁸. Etisalat therefore recommended (i) the introduction of specific *ex ante* remedies in relation to each distinct market, (ii) the use of guidelines to provide regulatory certainty, (iii) the publication of detailed regulatory accounts, and, (iv) establishment of an independent adjudicator.

In conclusion, having now considered the evidence and arguments provided by respondents in the consultation process, ictQATAR reaffirms its conclusion that Qtel is a Dominant Service Provider in all of the identified Relevant Retail and Wholesale Markets. The treatment of the new entrant operators with regard to termination on their respective fixed and mobile networks will be examined at a later date, closer to the launch of their services.

⁵⁷ Argos, page 7

⁵⁸ Etisalat, page 12

6 Obligations and Remedies

6.1 Objectives in respect of Obligations and Remedies

In order to develop an effective regime to manage the transition from monopoly to competitive markets it is important to take into account the whole 'value stream' - starting from the retail markets and also covering the wholesale inputs.

It is obvious that a service provider's dominance in these markets creates an inference that obligations and remedies are warranted *both* at the retail level and in upstream wholesale markets. The retail-level remedies would serve to deter the Dominant Service Provider from abusing its market power to the detriment of end-user customers. The wholesale-level remedies would serve to facilitate competitive entry into markets by eliminating potential "bottlenecks" upstream which, ultimately, would appear to be the most effective and only sustainable way to address market power at the retail level, in the absence of effective infrastructure-based competition in the relevant markets.

6.2 Consultation Issues

This section of the Dominance Consultation document sought responses on the application of remedies and other related issues, such as consumer protection and competitive entry. The following questions were posed:

Question 24	Comments are requested on ictQATAR's proposed approach to the application of <i>ex post</i> and <i>ex ante</i> measures and remedies.
Question 25	Comments are invited on the proposed tariff review procedures applicable to Dominant Service Providers as set forth in Attachment 1 of this Consultation Document.
Question 26	Is it necessary, and is there sufficient justification, for ictQATAR to stipulate any additional types of retail remedies or measures at this point in time?
Question 27	Comments are invited concerning the proposed approaches and alternatives to wholesale pricing remedies.
Question 28	Comments are invited on the proposed RIO process and format as set forth in Attachment 2 of this Consultation Document (which reflects the proposed text of Annexure F, Section 4 to the draft licenses.)
Question 29	Comments are invited on the proposed fast-track procedure set forth in Attachment 4.
Question 30	Comments are requested on the proposed list of services that are candidates for application of the fast-track procedure.
Question 31	Comments are requested on the proposed competition requirements that would apply generally, and to Dominant Service Providers in particular, as set forth in Attachment 3.

Ex Post versus Ex Ante Regulation

Question 24 specifically addressed the issue of the application of *ex post* and *ex ante* measures and remedies. Qtel argued that the consultation document focused too heavily on *ex ante* remedies and urged that greater attention be placed on *ex post* measures.

Argos and Etisalat argued that, given the current state of sector development in Qatar, *ex ante* remedies were of paramount importance. Etisalat highlighted its concern that the remedies proposed in the various license Annexures (such as D, F, I) were not adequate to prevent Qtel from behaving anti-competitively. Etisalat argued that, “solely by introducing delay in enforcement, Qtel would adversely affect competitors’ ability to compete in the market”⁵⁹.

One of the respondents in the licensing process, Batelco, reinforced this view by pointing out that “certainty of quick responses to key inputs, including facilities, spectrum and numbers and of prompt effective dispute resolution”⁶⁰ were among the critical issues that needed to be offered to the newly licensed service providers.

ictQATAR recognizes the benefits of relying on market forces and *ex post* regulation, where possible. In the circumstances that currently exist in the State of Qatar, however, Qtel’s *de facto* monopoly position makes the need for effective *ex ante* regulation particularly acute. ictQATAR will not hesitate to rely on *ex post* regulation where it is possible to do so without putting the development of sustainable competition in the telecommunications sector at risk.

Tariff Review Process

Question 25 sought advice on the tariff notification process for dominant and non-dominant operators. Argos agreed in general with the proposed procedures but expressed concern about the procedures for non-dominant operators, and urged that they be relaxed in time. Etisalat provided detailed comments on concepts such as cost-orientation, retail tariff bundling, geographically averaged tariffs, communications to competitors and tariff filings. Qtel expressed the view that the proposed tariff review procedures are disproportionate and inconsistent with international best practice. There was a broad consensus among the commenting parties that there was no need at this time to stipulate any further measures with regard to retail measures and remedies (Question 26).

ictQATAR remains convinced of the need for tariff notification by all public telecommunications service providers at this stage of the sector’s development. However, there is clear justification for different requirements to be applied to dominant and non-dominant operators. The more stringent requirements applicable to the dominant service provider (*i.e.*, for services in the markets in which a service provider is designated as dominant) are fully justified by the risks posed to consumers and to competition. These risks flow directly from the market power that is exercised by the Dominant Service Provider. If, based on experience gained during the interconnection negotiation process, it becomes

⁵⁹ Etisalat, page 13

⁶⁰ Batelco, page 2

clear that more compressed timetables for concluding interconnection agreements or establishing RIOs are realistically achievable, ictQATAR will consider revising the timescales that are set forth in the licenses.

Wholesale price remedies

Question 27 sought further input on the proposed approaches to wholesale price remedies. ictQATAR is acutely aware that the efficacy of these remedies will be critical to the pace at which sustainable and effective retail competition unfolds in the State of Qatar. ictQATAR believes that commercially negotiated agreements between operators are the preferred solution, but decisive interim regulatory measures relating to price, feature functionality, service level agreements and key terms and conditions may be required if agreement cannot be reached.

Argos acknowledged that the establishment of a cost-based pricing system may take some time. Argos and the other non-incumbent respondents in the Dominance and Licensing Consultations favoured benchmarking and asymmetrical price regulation, where necessary, to promote competition.

Qtel sought a clearer articulation of the basis for wholesale regulation and voiced a strong objection to a “bill and keep” system on the ground that if traffic was not symmetrical between the networks involved, Qtel would be denied the ability to recover its legitimate costs. Qtel also reiterated its view that regulation should be applied symmetrically to all licensed service providers and argued that ictQATAR must focus on encouraging investment in infrastructure.

Reference Interconnection Offers

Question 28 sought input regarding the proposed Reference Interconnection Offer (“**RIO**”) process. Although there was widespread agreement that the RIO is fundamental to the development of competition, there was no consensus as to whether the process should be driven by ictQATAR or by the relevant interested parties. Argos agreed that a RIO was not necessarily a pre-requisite to competition and supported the concept of bilateral negotiations as a start. Etisalat sought more detailed regulatory instructions in this regard. Argos argued that the timescale proposed in the consultation document for negotiation of the RIO is too generous and, instead, recommended a shorter period for achieving the various milestones leading up to an interconnection agreement (or regulatory intervention).

ictQATAR continues to believe that in a sector involving two mobile and two fixed-network operators, finalizing an approved RIO is less important than achieving satisfactory bilateral interconnection and access agreements as swiftly as possible. With respect to both interconnection and RIO negotiations, ictQATAR will be available as a resource, as needed, to help facilitate commercial negotiations and will intervene swiftly and decisively in cases where one of the negotiating parties is not acting in good faith or when the negotiations have come to a standstill or exceeded the established deadline.

IctQATAR may request Qtel to prepare a RIO with reasonable timescales for so doing if it considers that this is necessary for the development of the market.

Fast-Track Procedures

The Fast Track Procedures (Question 29) were supported by both Argos and Etisalat, although the latter expressed a concern that this process might remove the incentive to negotiate longer-term interconnection agreements. Etisalat also sought the publication of wholesale prices, or at least the basis for calculating such prices, at this stage. Qtel objected to the Fast Track Procedures and argued that they could allow ictQATAR to act “capriciously”⁶¹. Qtel sought greater clarity on when and how such measures might be implemented.

By contrast, the non-incumbent respondents contended that the Fast Track Procedures should apply to a wide range of wholesale markets. Argos suggested adding collocation with Qtel at its BSCL Node Bs (*i.e.*, towers), whereas Etisalat (through cross-reference to its response in the Licensing Consultation) argued that the Fast Track Procedures should also be applied to national roaming and number portability. Etisalat argued that number portability should be available at the date of the launch of the second mobile licensee.

ictQATAR has adopted the Fast Track Interconnection Process and included in each of the public telecommunications networks and services licenses the basic framework for their implementation. These are transitional measures that will be invoked during the initial phase of sector liberalization where:

- a wholesale input that is important to the development of competition in the sector is involved; and
- it is clear that a reasonable and timely commercial outcome will not be forthcoming absent regulatory intervention.

A typical ‘candidate service’ for the Fast Track Interconnection Process is in the market for “Access to and use of Network and Facilities” as Bit Stream Access and Unbundled Local Loop, including Collocation at Exchange Facilities and Backhaul from the Local Exchange.

It is hoped that the existence of the Fast Track Interconnection Process will motivate both parties to negotiate to reach agreement without resorting to regulatory intervention. Otherwise, ictQATAR will consider each case referred to it for Fast Track interconnection in accordance with a timetable that is in line with the commercial imperatives involved. ictQATAR will resolve any outstanding issues relying on the best evidence available and relevant international benchmarks, after giving both sides an opportunity to present their respective positions in an expedited process. ictQATAR expects that resorting to these procedures will be the exception rather than the rule, but if and when it proves necessary, ictQATAR will issue more detailed rules to govern the Fast Track Interconnection Process.

⁶¹ Qtel, page 21

Other Issues

The consultation also sought responses with regard to the proposed competition requirements that would apply generally and to Dominant Service Providers (Question 31). Argos suggested accounting separation along with the structural separation of wholesale and retail activities. Etisalat supported the requirement to introduce accounting separation.

Argos also highlighted the need to prevent the incumbent from leveraging its market power (especially between wholesale and retail markets), and to regulate 'win-back' behaviour at the retail level. By contrast, Qtel criticized the way in which these remedies were presented and urged ictQATAR to hold further consultations on these issues.

ictQATAR acknowledges the importance of these additional issues raised by the respondents and will initiate separate, more focused consultations to address them in detail over the coming months. ictQATAR notes, however, that it is to Qtel's advantage – as well as that of the industry as a whole – for Qtel to move expeditiously to adopt and implement effective accounting separation systems and procedures. In the absence of reliable cost data, ictQATAR will have no choice but to rely on relevant wholesale pricing benchmarks from other countries, including countries outside the region such as member states of the European Union.

6.3 Obligations and Remedies

All licensed service providers must comply with the Telecommunications Law and the Applicable Regulatory Framework (ARF) as defined in their licenses at Clause 3.

Service Providers who have been designated as Dominant Service Providers in Relevant Markets will have additional obligations imposed upon them generally, and some specific obligations imposed upon them in respect of particular relevant retail and wholesale markets, where necessary.

Ex ante obligations and remedies to be applied to service providers designated as Dominant Service Providers in certain markets are set out in the Telecommunications Law and the ARF, including in any Dominance Designation Notice and Orders issued to a service provider.

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. This 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 liberalization. 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 upon Dominant Service Providers where the timing of a negotiated outcome is critical to licensees meeting their obligations under the ARF or essential to facilitating competition in relevant markets.

The Fast Track Procedure is set out in the Annexure G of the licenses. One of

the possible effects of the Fast Track Procedure is the shortening of the timescales as set out in Annexure F of the licenses.

Ex post obligations and remedies may also be applied to DSPs in certain markets where there is evidence of market failure that may be corrected by additional regulatory requirements, or where additional regulatory requirements can address specific types of anti-competitive conduct or market abuse by a DSP. This would also include ictQATAR taking the necessary decisions, ex post, to enable licensees to meet their obligations under the ARF and facilitate competition in the relevant markets.

In general ictQATAR will apply a rule of proportionality in applying remedies. This means that the remedy is appropriate to the situation that it is intended to remedy.

In respect of the markets in which Qtel has been designated to be a Dominant Service Provider, the ex ante obligations and remedies for DSPs in the Telecommunications Law and in Qtel's licenses will apply and be effective immediately. Where an obligation or remedy is effected by an order of the Supreme Council, such as preparing or participating in a cost study, sufficient reasonable notice will be given to the DSP to comply fully with such an order.

7 The Review Process

Finally, the consultation process sought comments on the Market Review Process:

Question 32	Comments are welcome on the proposed framework for the initial market review, interim market reviews and the Strategic Sectoral Review.
Question 33	What evidence should ictQATAR pay particular attention to in deciding whether or not to review the dominance designation prior to September 2010?

In response to the above questions, Argos argued that the future review should not only occur upon instigation by a licensed service provider but should be commenced by ictQATAR, at its own discretion, if necessary. Argos listed a number of criteria that should be considered to bring forward a review of dominance, including the effectiveness of the interconnection and access regimes and the extent to which prices for wholesale services are helping to sustain effective competition in retail markets.

Etisalat argued that the effect of infrastructure-based competition will take several years and noted that Qtel would likely witness modest falls in market share in the period prior to the proposed review. However, Etisalat recognized that a dramatic fall in Qtel's market share could, in and of itself, be grounds to bring forward the Sectoral Review. Qtel urged the adoption of a specific set of triggers and suggested benchmarks based on reductions in revenue of 20% and/or a drop in price of 10%.

Qtel sought more specific criteria for a finding of dominance or the withdrawal of a designation, and characterized the timeframe for the Sectoral Review as arbitrary.

ictQATAR intends to conduct a comprehensive review of all relevant markets and dominance designations in 2010. However, if actual experience in the marketplace demonstrates the need to bring forward such a review, or if particular markets require specific review in the interim, ictQATAR will be prepared to act as and when necessary. The assurance of active participation in a review process was given by respondents.