

**THE SUPREME COUNCIL FOR INFORMATION AND
COMMUNICATIONS TECHNOLOGY (ICTQATAR)**

DECISION

22 JULY 2010

1. The Emir of the State of Qatar His Highness Sheikh Hamad Bin Khalifa Al Thani established the Supreme Council for Information and Communications Technology (“ictQATAR”) in 2004 to be the supreme authority responsible for regulating the telecommunications sector in Qatar.¹ ictQATAR’s objectives are to encourage competition in the telecommunications sector; increase customers’ benefits and safeguard their interests; address anti-competitive practices; and ensure the orderly development and regulation of the telecommunications sector.²

2. As the independent telecommunications regulatory authority for the State of Qatar, ictQATAR is charged with ensuring that licensed telecommunications providers comply with the terms of their licenses and with the Telecommunications Law enacted in 2006, promoting and protecting competition in the telecommunications marketplace, safeguarding the interests of consumers, and acting as a neutral arbiter in disputes between licensed operators. Furthermore, ictQATAR is the administrative body that is charged under the laws of Qatar with having the requisite technical and subject matter expertise necessary fairly and expeditiously to adjudicate violations of our telecommunications laws.

3. The telecommunications sector in Qatar has benefitted from sweeping changes in recent years. For many years, telecommunications in Qatar—fixed and mobile services—were offered only by the state-controlled operator, the Qatar Public Telecommunications Corporation (now Qatar Telecom (Qtel) QSC). The State of Qatar began a process of liberalization beginning with the establishment of the independent telecommunications regulator, ictQATAR, in 2004 and the enactment of the Telecommunications Law in 2006. Today the telecommunications sector in Qatar is mature and enjoys the benefits of robust competition between two licensed mobile service providers.

4. Vodafone Qatar’s 7 June 2010 filing constitutes a formal complaint under the formal dispute resolution procedures issued by ictQATAR. Pursuant to those procedures, ictQATAR has the authority to issue a final, binding decision on the issues presented in Vodafone Qatar’s complaint. While ictQATAR has the authority to resolve issues such as those presented in this case independently, as it did with its 17 May 2010 and 20 May 2010 Interim Orders and Instructions, ictQATAR is pleased that both Vodafone Qatar and Qtel have chosen to avail themselves of the formal dispute resolution process to resolve this dispute. Consistent with international best practices, adjudications of this sort provide regulators with the opportunity to compel production of the facts of a

¹ Telecommunications Law art. 2.

² *Id.*

dispute, consider the arguments of all interested parties and render a final, expert judgment on the overarching issues presented. In this instance, adjudication is the appropriate procedure to ensure that all parties are afforded due process and that ictQATAR's final decisions constitute fair and equitable applications of the Telecommunications Law.

5. Both parties have been highly responsive to ictQATAR's requests throughout this formal adjudication and have demonstrated admirable respect for the Supreme Council, the proceeding, and the public. The presence of concerned and vigilant telecommunications providers, like Vodafone Qatar and Qtel, ensures the public will continue to reap the myriad technological and economic benefits born of competition far into the future.

I. SUMMARY

6. On 13 May 2010, Qatar Telecom (Qtel) Q.S.C. ("Qtel") introduced Virgin Mobile branded services, styled as "Virgin Mobile Qatar," into the Qatari mobile telecommunications marketplace. From the time it was made aware of the introduction of those services, ictQATAR has been diligently investigating the circumstances surrounding Qtel's association with the Virgin Mobile brand. Both of Qatar's licensed mobile telecommunications providers, Vodafone Qatar and Qtel, were made aware of ictQATAR's ongoing investigation. Both Vodafone and Qtel provided ictQATAR with significant input during the course of its investigation and at all times acted with the diligence expected of licensed operators in a vibrant competitive marketplace.

7. During the course of its initial investigation, ictQATAR determined that Qtel presented the Virgin Mobile service in a fashion that could have been understood or perceived to be a third entrant in the telecommunications marketplace, rather than as a branded service provided by Qtel. ictQATAR also determined preliminarily that the original marketing and branding strategies for Qtel's Virgin Mobile service constituted misleading or deceptive conduct and anti-competitive conduct in violation of the Telecommunications Law, the Executive By-Law 1 of 2009 (Executive By-Law), and the terms of Qtel's license. As a result, on 17 May 2010, ictQATAR ordered Qtel to discontinue its potentially misleading marketing and branding activities. On 20 May 2010, ictQATAR provided Qtel with further instructions designed to bring Qtel's Virgin Mobile marketing and promotional materials into compliance with Qatari law.

8. As the telecommunications regulatory authority for Qatar, ictQATAR continued to investigate and monitor the situation after issuing its orders and instructions to Qtel. To that end, on 31 May 2010 ictQATAR sent a letter to Vodafone Qatar informing the company that, if it believed that Qtel was in breach of the Telecommunications Law, it should file a formal complaint with ictQATAR against Qtel pursuant to Article 61 of the Telecommunications Law. On 7 June 2010 ictQATAR sent Dispute Resolution Rules to both Qtel and Vodafone indicating that these rules should be used in respect of the current matter or any future disputes. In accordance with these rules, on 7 June 2010, Vodafone Qatar filed a document styled as an "Appeal" of ictQATAR's earlier actions, which asserted that Qtel's provision of Virgin Mobile branded services was not in

compliance with the Telecommunications Law (“Complaint”). On 15 June 2010, Qtel filed a formal answer (“Answer”) to Vodafone Qatar’s Complaint. On 23 June 2010, Vodafone Qatar filed a reply (“Reply”) to Qtel’s Answer.

9. ictQATAR carefully has reviewed the filings of both parties and considered them along with applicable Qatari law, relevant facts, and, where appropriate, international best practices. It has been transparent and non-discriminatory in its fact-finding and review. After due consideration, ictQATAR has determined that Virgin Mobile is a branded service of Qtel and not an unlicensed third mobile telecommunications provider. Virgin Mobile is not an actual provider, seller, or reseller of mobile telecommunications services in Qatar. As such, the provision of Qtel’s Virgin Mobile branded services to the public do not require a separate telecommunications license under Article 9 of the Telecommunications Law. The services are provided to the public under Qtel’s mobile telecommunications networks and services licence.

10. However, in offering and providing those services, Qtel has engaged in potentially confusing marketing and sales techniques to promote its Virgin Mobile branded service and engaged in possible anti-competitive practices. After thoroughly reviewing the information at hand, ictQATAR has determined that Qtel’s Virgin Mobile services were marketed in a manner that was misleading, anti-competitive, and an abuse of dominance for the period commencing 13 May 2010 and ending 18 May 2010. Accordingly, ictQATAR has determined that Qtel must follow certain branding, marketing, and customer service guidelines when marketing its Virgin Mobile branded services in Qatar to prevent confusion in the future. On 15 July 2010, ictQATAR issued an Order that extended and amended previous orders and instructions to Qtel, and imposed additional obligations and requirements on Qtel in respect of offering Qtel Virgin Mobile branded services to the public (Non-confidential Version at Exhibit A). This most recent Order is to be read with the earlier Orders and Instructions of 17 May 2010 (Non-confidential Version at Exhibit B) and 20 May 2010 (Non-confidential Version at Exhibit C) which continue to apply.

11. ictQATAR has also determined that Qtel should be compelled to pay an appropriate fine for its unlawful actions during the period from 13 to 18 May 2010 and has referred this matter to the Office of the Attorney General for assessment of an appropriate penalty. Furthermore, it has been suggested that Qtel’s actions during this period may constitute violations of laws other than the Telecommunications Law. As matters may arise under these laws that are outside of ictQATAR’s jurisdiction, ictQATAR has referred these issues to the Office of the Attorney General for potential further action.

II. FACTS

12. On 23 April 2007, ictQATAR released to the public a consultation document titled *Consultation on Liberalization of the Telecommunications Sector in the State of Qatar* that outlined ictQATAR’s general policy for liberalizing telecommunications in the State of Qatar and solicited comments from interested parties in response to its policy proposals. In particular, ictQATAR sought comment on a framework and process for

regulating the incumbent operator, Qtel, and awarding two new licenses for the provision of (1) public mobile networks and services and (2) public fixed networks and services, both in competition with Qtel. ictQATAR also stated that it did not intend to award additional infrastructure-based licenses for the provision of public telecommunications services until the end of the initial three-year phase of liberalization.

13. ictQATAR awarded licenses to provide fixed and mobile telecommunications services to Qtel on 7 October 2007. ictQATAR then awarded a second mobile license to Vodafone Qatar on 29 June 2008 and a second fixed license to Vodafone Qatar on 29 April 2010.

14. ictQATAR began another transparent round of consultation with the issuance of a consultation document titled *Licensing Framework* on 10 May 2009 seeking comment from interested parties. ictQATAR stated that its position would be to uphold the intention set out in the 2007 consultation, whereby no new public telecommunications infrastructure-based licenses would be issued before the 2010 Strategic Sector Review. ictQATAR recently has commenced its Strategic Sector Review and informed Qtel and Vodafone Qatar in writing of it on 13 June 2010. The review is expected to be completed by the end of 2010. The review will include a consultation phase that will allow Qtel, Vodafone Qatar, and any other interested party to make input on licensing and market structure issues.

15. On 13 May 2010, Qtel introduced Virgin Mobile branded services in Qatar. ictQATAR immediately began investigating the circumstances surrounding Qtel's association with the Virgin Mobile brand after it was made aware of the introduction of those services and the potential for people to be confused or misled. On the same day that the Virgin Mobile brand was introduced in Qatar, ictQATAR issued a public statement confirming that there are only two licensed mobile operators in Qatar.

16. ictQATAR's preliminary investigation indicated that Qtel's initial offering of Virgin Mobile branded services was marketed in a manner that was likely to confuse the general public by suggesting that a third mobile telecommunications provider had entered the Qatar marketplace. As a result, on 17 May 2010, ictQATAR instructed Qtel to discontinue its potentially misleading marketing and branding activities and implement corrective measures to ensure legal compliance. Specifically, ictQATAR's 17 May 2010 Orders to Qtel, attached hereto as Exhibit B, sought to prevent consumers from being misled about the nature of Virgin Mobile-branded services by requiring that Qtel:

- a. cease and desist all dealings with the public in Qatar that represent Virgin Mobile Qatar as a provider of retail telecommunications services;
- b. cease providing to the public any pricing and other terms and conditions or promotional materials for telecommunications services being represented as Virgin Mobile Qatar services;
- c. cease supplying numbers in the "3" range to Virgin Mobile Qatar where those numbers have been represented as being offered by Virgin Mobile Qatar to the

- public and/or are being allocated by or purchased from Virgin Mobile Qatar by the public;
- d. cease all advertising and marketing of Virgin Mobile Qatar services where those services are being represented as being provided by Virgin Mobile Qatar;
 - e. cease providing SIM cards, mobile phones or other telecommunications products or services to the public by Virgin Mobile Qatar where those products or services have been represented as being provided solely by Virgin Mobile Qatar;
 - f. implement measures that will preserve and protect the non-disclosure of any information or data provided by persons who have sought, obtained or purchased a telecommunications product or service from Virgin Mobile Qatar or branded as such, that is in the possession or control of Qtel or its agents; and
 - g. provide any refund sought from the public for a product or service provided by Virgin Mobile Qatar where that product or service was represented to the public as being a product or service provided by Virgin Mobile Qatar.
17. On 20 May 2010, seven days after Qtel's introduction of the Virgin Mobile branded service in Qatar, ictQATAR provided Qtel with further instructions designed to enforce further compliance by Qtel (Exhibit C). In particular, ictQATAR required that: (1) all promotional, marketing, and customer materials for the Qtel Virgin Mobile Brand prominently display the Qtel logo, (2) all retail outlets that distribute Qtel Virgin Mobile products and services prominently display the Qtel logo, (3) the network identifier associated with the Virgin Mobile SIM be changed to Qtel Virgin, (4) all references to "Virgin Mobile Qatar" be changed to "Qtel's Virgin Mobile Service," (5) Qtel produce new Qtel Virgin Mobile branded SIM cards that prominently display the Qtel logo,³ (6) Qtel send a text message to its customers clarifying the name of the network and take out an advertisement in Qatar local newspapers, in both the Arabic and English languages, titled "Qtel Public Announcement and Apology" stating that it was "sorry if there has been any confusion" about the Virgin Mobile brand.
18. As there appeared to be some doubt that the matter had been fully resolved, on 31 May 2010 ictQATAR sent a letter to Vodafone Qatar, giving the company the opportunity to file a formal complaint if it believed that Qtel was violating the Telecommunications Law or Executive By-Law. On 7 June 2010 ictQATAR sent Dispute Resolution Rules to Qtel and Vodafone Qatar that should be followed in this case or in future similar disputes between service providers.
19. On 7 June 2010, Vodafone Qatar filed a document entitled "Appeal Against ictQATAR Decision..." constituting a complaint (the "Complaint"). Vodafone Qatar

³ While some existing Qtel-Virgin Mobile customers already have SIM cards that display only the Virgin Mobile name and logo, this instruction will ensure that future customers receive clearly branded merchandise. Given the high cost of complying with this instruction and the time required for re-manufacturing, ictQATAR gave Qtel a reasonable time to produce and distribute new SIM cards.

alleged in the Complaint that Qtel's launch of Virgin Mobile services violated the Telecommunications Law because Virgin Mobile had been established as a third mobile telecommunications provider in Qatar without a license. Vodafone Qatar requested ictQATAR place additional requirements on Qtel's use of the Virgin Mobile brand.

20. On 15 June 2010, Qtel filed an 'Answer..' to the Complaint filed by Vodafone Qatar. Qtel defended its relationship with Virgin Mobile as a branding arrangement that is consistent with Qatari law and international best practice. Qtel urged ictQATAR to dismiss or reject Vodafone Qatar's Complaint, withdraw the interim restrictions on its use of the Virgin Mobile brand, and prevent Vodafone Qatar from further damaging Qtel's Virgin Mobile branded service offerings. Vodafone Qatar filed a 'Reply' on 22 June 2010.

21. On 15 July 2010, ictQATAR issued Orders compelling Qtel to comply with existing Orders and instructions issued on 17 May and 20 May 2010 respectively, as well as additional obligations and requirements concerning its marketing of Qtel's Virgin Mobile Qatar services (Exhibit A). Consistent with the ictQATAR Dispute Resolution Rules, ictQATAR issued the 15 July 2010 Orders and this decision after having provided Vodafone Qatar and Qtel with a full and fair opportunity to present their views regarding the appropriate terms of service of the Virgin Mobile brand in Qatar.

III. TELECOMMUNICATIONS LAW

22. ictQATAR is empowered by the Telecommunications Law to issue licenses to telecommunications providers; monitor the compliance of licensees with the terms of their authorizations; enforce appropriate remedies to prevent service providers from engaging in anti-competitive practices; safeguard the interests of consumers; and ensure compliance with the Telecommunications Law and the Executive By-Law.⁴ However, ictQATAR is not empowered to adjudicate claims seeking redress under the Commercial Law, Consumer Protection Law or other Qatari laws.⁵ ictQATAR is authorized to carry out its responsibilities under the Telecommunications Law by issuing regulations, decisions, orders, rules and instructions related to regulating the telecommunications sector in Qatar.⁶ Article 6 of the Telecommunications Law requires that actions taken by ictQATAR be transparent and non-discriminatory with respect to all service providers and other market participants.⁷

23. The Telecommunications Law contains a licensing requirement in Article 9. It states that "[n]o person shall without a License" (1) provide "telecommunications

⁴ Telecommunications Law art. 4.

⁵ In both its Complaint and Reply, Vodafone Qatar asserts that Qtel breached Articles 69 and 70 of the Commercial Law. See Vodafone Qatar Complaint ¶ 20; Vodafone Qatar Reply ¶ D (23). Because ictQATAR has no jurisdiction over disputes arising under the Commercial Law, ictQATAR does not adjudicate these allegations.

⁶ Telecommunications Law art. 5; Executive By-Law art. 6

⁷ Telecommunications Law art. 6.

services to the public in return for a direct or indirect fee, whether the services are provided to all the public or a segment thereof, including the resale of telecommunications services obtained from another person, even if only one person benefits from such a service;” (2) “own or operate a telecommunications network used for the provision of telecommunications services to or for the public in return for a direct or indirect fee;” or (3) “own or operate any other telecommunications network.”⁸

24. In addition to issuing licenses, ictQATAR is empowered to set competition policy for the telecommunications sector in Qatar and to ensure consumer protection.⁹ According to the Competition Policy and Consumer Protection provisions described in Chapters 9 and 10 of the Telecommunications Law and Chapters 8 and 9 of the Executive By-Law, ictQATAR monitors and prohibits abuses of market power and anti-competitive practices; confronts anti-competitive practices in order to strengthen competition and safeguard the interests of customers and the public; monitors the terms of service between service providers and consumers; and prevents abusive and misleading commercial practices.¹⁰

25. In particular, Article 41 of the Telecommunications Law prohibits service providers from engaging in anti-competitive practices.¹¹ Article 75 of the Executive By-Law prohibits dominant service providers from undertaking activities that abuse their dominant position and authorizes ictQATAR to prohibit activities that it determines to have the effect of substantially lessening competition in any telecommunications market.¹² In addition, Article 51 of the Telecommunications Law requires that service providers act in accordance with fair dealing practices.¹³ Article 90 of the Executive By-Law prohibits service providers from making any false or misleading claim or suggestion regarding the availability, price, or quality of its telecommunications services.¹⁴ The Telecommunications Law authorizes ictQATAR to remedy anti-competitive practices by, among other things, ordering concerned persons to cease such actions or activities.¹⁵

26. The Telecommunications Law Article 61 recognizes that disputes may arise between service providers in Qatar now that the telecommunications sector has been liberalized to foster competition.¹⁶ Accordingly, ictQATAR is authorized to resolve disputes arising between service providers and issue final and binding decisions before

⁸ Telecommunications Law art. 9.

⁹ Telecommunications Law art. 40; Telecommunications Law art. 2 (4); Telecommunications Law 4 (8).

¹⁰ Telecommunications Law art. 40.

¹¹ Telecommunications Law art. 41.

¹² Executive By-Law art. 75.

¹³ Telecommunications Law art. 51.

¹⁴ Executive By-Law art. 90.

¹⁵ Telecommunications Law art. 46.

¹⁶ Telecommunications Law art. 61; *see also* Executive By-Law art. 121.

the parties take their dispute to the courts.¹⁷ Indeed, a suit regarding the dispute may not be accepted by any judicial body unless a decision is issued by ictQATAR or sixty days from the submission of the dispute to ictQATAR have elapsed.¹⁸

27. Pursuant to its rulemaking authority,¹⁹ ictQATAR promulgated dispute resolution rules to assist in the fair and efficient resolution of disputes. Where a dispute has been submitted to ictQATAR, the regulator is authorized to (1) assign members of its staff to attempt to resolve the dispute; (2) issue a binding decision to resolve the dispute; (3) take any other action it deems appropriate; and (4) direct the parties to refer the dispute to a competent Court.²⁰

IV. DISCUSSION

28. Under its rules, ictQATAR has committed to reaching a decision on formal complaints within 60 days of the complaints being “submitted” by the filing of the complainant’s reply. ictQATAR places great importance on providing both parties with a fair and transparent proceeding in accordance with Qatari Law. ictQATAR is the administrative body charged under the law with interpreting and enforcing the Telecommunications Laws of the State of Qatar. All determinations, judgments, and orders contained herein reflect ictQATAR’s expert interpretation of these laws as applied to the facts of the present dispute.²¹

A. Virgin Mobile is Not a Third Mobile Provider Under Qatari Law

29. Vodafone Qatar asserts that “Qtel and Virgin Mobile sought to establish Virgin Mobile to the public as a third mobile telecommunications services provider in the State of Qatar.”²² Vodafone Qatar further claims that, by representing Virgin Mobile as a third operator, Qtel and Virgin Mobile actively sought to breach the Telecommunications Law in pursuit of financial gain. Vodafone Qatar believes that the entry of a third provider into the marketplace would seriously harm its business.²³ Vodafone Qatar also claims that ictQATAR represented that it would not permit a third entrant into the mobile public telecommunications market until after completion of a strategic sector review and that, by

¹⁷ Telecommunications Law art. 61.

¹⁸ *Id.*

¹⁹ Executive By-Law art. 4; Executive By-Law art. 6.

²⁰ Executive By-Law art. 123.

²¹ ictQATAR has carefully considered all of the arguments in Vodafone Qatar’s complaint in reaching this final decision on an accelerated schedule at Vodafone Qatar’s request, but in the interest of efficiency, this Order does not specifically discuss arguments that are not pertinent to the decision. Moreover, for some of the allegations not addressed by this Order, Vodafone Qatar has failed to supply the requisite evidence to support its claims. In addition, for those issues where we have not found for Vodafone Qatar it is also because, in ictQATAR’s expert opinion, Vodafone Qatar has failed to meet its requisite burden of proof as the complainant in this proceeding.

²² Vodafone Qatar Complaint ¶ 17.

²³ Vodafone Qatar Complaint ¶ 29.

allowing Qtel to continue to sell its Virgin Mobile service, ictQATAR has breached the terms on which Vodafone Qatar was granted its license. In paragraph 25.5(a) of the Complaint, Vodafone Qatar summarizes that “Virgin Mobile may either be a branded product...sold by Qtel or a distributor selling Qtel products and services,” but not both. Qtel claims that Virgin Mobile is a branded service provided by Qtel and not a separate provider of telephone services in Qatar.²⁴

30. ictQATAR finds that Virgin Mobile is not a separate provider of mobile telecommunications services.²⁵ The facts on record show that Virgin Mobile does not sell or resell mobile services as a facilities-based operator or a Mobile Virtual Network Operator (MVNO) established by either Virgin Mobile or Qtel nor does it own or operate any network facilities.²⁶ Rather, the record shows that Virgin Mobile has agreed to provide Qtel with consulting services and the use of its brand name in exchange for valuable consideration.²⁷ As such, any of Vodafone Qatar’s claims that rely upon “Virgin Mobile Qatar” acting as an actual provider of telecommunications services in Qatar, including the alleged breach of the terms upon which Vodafone Qatar’s license was granted, are hereby dismissed.²⁸

²⁴ Qtel Answer ¶¶ 23-24

²⁵ However, ictQATAR does agree with Vodafone Qatar’s claim that Qtel marketed its services in a manner designed to create the impression that there was a third entrant. See Section IV (C) for a detailed analysis.

²⁶ ictQATAR notes that it has repeatedly and publicly reaffirmed its intent not to license a third mobile operator in the State of Qatar until after the completion of the strategic sector review, and has not done so. Nevertheless, it should be noted that ictQATAR has never made a representation to Vodafone Qatar or any other party that rises to the level of a binding commitment not to grant a third mobile public telecommunications license or permit additional service-based competition prior to the completion of the strategic sector review. Rather, ictQATAR has made it clear that its objective “is not to create a duopoly or any other form of oligopoly but rather to achieve competition which works to the benefit of the economy and consumers.” Moreover, “ictQATAR has a clear objective of achieving a competitive marketplace and will take whatever steps are necessary to achieve that objective.” See [Consultation on Liberalization of the Telecommunications Sector in the State of Qatar: Summary of Comments and Responses of ictQATAR](#), 10 June 2007, at 3, 19. To be clear, however, ictQATAR reiterates once again that it does not intend to license a third mobile operator until at least after the completion of the upcoming strategic sector review.

²⁷ As Vodafone Qatar accurately points out, “Technically, the Telecoms Law has no definition that accurately recognises the model that Qtel has introduced with Virgin Mobile.” As such, ictQATAR has looked to the language of the Telecommunications Law, relevant facts, prior consultations, international best practices, and its technical expertise to determine the legal classification and appropriate treatment of Qtel’s Virgin Mobile service.

²⁸ This Order does not address potential breaches of other Qatari laws, such as the Commercial Law or Consumer Protection Law, by Qtel or Virgin Mobile, which ictQATAR has referred to the Office of the Attorney General for investigation and possible remedial action. See *infra* Section IV (C) (2).

1. Qtel's Virgin Mobile Branded Services are not Offered by a Third Facilities-Based Operator

31. There are only two facilities-based telecommunications providers in Qatar, Vodafone Qatar and Qtel. Facilities-based providers must own and operate physical network elements in the state of Qatar, lease spectrum access, and provide telecommunications service to customers directly over those facilities. Neither party has claimed that Virgin Mobile owns or operates any physical network facilities in the State of Qatar. In addition, ictQATAR can confirm that Virgin Mobile has not leased any spectrum in Qatar. Finally, all of the customer contracts for customers subscribing to Qtel's Virgin Mobile branded services are with Qtel, not Virgin Mobile.²⁹

2. Virgin Mobile is not an MVNO

32. Vodafone Qatar implies that the Virgin Mobile offering may be an MVNO based upon opinions expressed in the press which were based on public statements from Virgin Mobile and Qtel.³⁰ During its investigation, ictQATAR found no evidence that representatives of Qtel or Virgin Mobile called Qtel's Virgin Mobile service an MVNO in any public statement. The references provided by Vodafone Qatar included characterizations by media outlets unattributed to any direct source. However, the facts speak for themselves; press characterizations carry little weight in determining the legal status of Virgin Mobile in Qatar.

33. Generally speaking, MVNOs are mobile telecommunications providers that enter into arrangements with facilities-based operators to purchase airtime and resell it to consumers. Qatar does not have an official statutory or regulatory definition so ictQATAR turned to prominent international regulators for guidance. For example, in the United States, the Federal Communications Commission states:

MVNOs execute a contract with [the facilities-based provider] to buy wireless service from [the facilities-based provider] to resell under their own brand to customers and perform all marketing, billing, collections and customer service for the customers they activate. MVNOs establish and maintain the relationship with its customers. MVNOs own the relationship with their customers and establish their own calling plans and pricing.³¹

34. The United Kingdom's Office of Communications defines MVNOs in a similar manner:

²⁹ See Qtel Response to ictQATAR Information Request, 23 June 2010 (attached hereto as Exhibit D).

³⁰ Vodafone Qatar Complaint ¶¶ 15.12 & 17.

³¹ See United States Federal Communications Commission, [*Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*](#), FCC 10-81 ¶ 31 (2010).

Mobile Virtual Network Operators (MVNOs) offer mobile telecoms services to customers by reselling wholesale minutes that they have purchased from an existing infrastructure owner (a Mobile Network Operator, MNO).³²

35. Clearly, under either definition, the MVNO must purchase wholesale wireless minutes or services from a facilities-based telecommunications operator and maintain direct privity with its customers. Such a provider would require a license to provide mobile telecommunications services in Qatar under Article 9 of the Telecommunications Law because that operator would be “reselling” telecommunications services obtained from another person to the public.

36. In its Answer, Qtel claims that “The VMQ branded services are not being provided by a mobile virtual network operator (MVNO) that is or could be required to be licensed in order to provide services to the public.”³³ Qtel goes on to state “nothing in the agreements between Virgin and Qtel can reasonably be interpreted to establish Virgin as a provider of mobile telecommunications services in Qatar.”³⁴ Vodafone Qatar’s Reply asserts that Qtel misrepresented Virgin Mobile to be an operator or MVNO.³⁵

37. Based on its review of the record, ictQATAR is satisfied that (1) Virgin Mobile does not purchase wholesale minutes or services from Qtel, (2) Virgin Mobile does not sell or resell mobile minutes or services to consumers, and (3) Qtel maintains privity with customers that subscribe to Qtel Virgin Mobile branded services. In addition, Qtel itself holds the authorization for the tariffs of its Virgin Mobile branded services. The tariff was filed in full compliance with the Telecommunications Law and Annexure D of Qtel’s license.³⁶ Thus, the facts here do not show sufficient indicia that Virgin Mobile is acting as an MVNO under Qatari law.³⁷

³² See United Kingdom Office of Communications, [The Communications Market, Interim Report](#) at 76 (2006).

³³ Qtel Answer ¶ 19

³⁴ Qtel Answer ¶ 24.

³⁵ Vodafone Qatar Reply ¶¶ D (IV) (17) – (22)

³⁶ The Qtel tariff implementing the Qtel’s Virgin Mobile branded service was approved by ictQATAR. The tariff is available at <http://www.qtel.qa/documents/C11-02PrepaidMobileServices-v2.pdf>. The file number of the approval letter is: RA-PETA/01-130510.

³⁷ Moreover, Virgin Mobile cannot be considered a reseller of telecommunications services under the laws of Qatar. It is not established as a Qatari company and is not buying services from any Qatari-licensed operator. As conceived in the *Licensing Framework Consultation*, the holder of a Resale (Retail) Class License will be allowed to purchase services from an Individual Public Telecommunications Licensee at retail rates to resell to consumers. See [Licensing Framework Consultation Document](#), Second Consultation, ICTRA 05/09-LF-Consult at 21-22 (10 May 2009). Currently, only a limited class of parties will be eligible to benefit from a Resale (Retail) Class License. These parties include hotels, residential complexes, public call offices, Internet cafés and wireless Internet zones. As Virgin is neither purchasing telecommunications services at retail rates from Qtel nor a member of the limited class of eligible holders of a Resale (Retail) Class License, it could not be considered a reseller of telecommunications services under applicable Qatari Law.

3. Virgin Mobile is a Branded Service Provided by Qtel

38. Qtel characterizes its relationship with Virgin Mobile as follows:

The VMQ-branded services are offered by Qtel under a brand license agreement and associated consultancy arrangements between Qtel and Virgin . . . Qtel is authorised by Virgin to use the Virgin Mobile brand in providing mobile telecommunications services in Qatar. Qtel also benefits from marketing, advertising, and public relations consulting services from Virgin in connection with its VMQ-branded offerings. Qtel and not Virgin or Virgin Mobile is the provider of the mobile telecommunications services in the State of Qatar.³⁸

39. Based on the Service and Trademark Agreements between Qtel and the Virgin companies, ictQATAR is convinced that the legal relationship between the parties is a branding and consultancy arrangement.³⁹ Qtel is providing mobile telecommunications services, for which it holds a license and proper tariffs, under the brand name of Virgin Mobile.⁴⁰ Qtel provides Virgin Mobile with valuable consideration in exchange for the right to utilize Virgin Mobile's brand for advertising and marketing. Virgin Mobile also provides Qtel with consulting services to assist with the marketing of Virgin Mobile branded services. All customer contracts are with Qtel as a service provider, just as they are for Qtel's other branded services. The U.K. company Virgin Mobile does not have any legal or business presence as a telecommunications operator or service provider in Qatar. Moreover, neither Virgin Management LTD nor Virgin Mobile Qatar are distinct legal entities in Qatar subject to ictQATAR's jurisdiction, and no entity by either name either purchases wholesale minutes from Qtel or resells such minutes to the public.⁴¹ As such, to the extent that Vodafone Qatar's Complaint alleges infractions against Virgin Mobile LTD or Virgin Mobile Qatar rather than Qtel, those portions of the Complaint are hereby dismissed.

B. Qtel Has Not Established an MVNO to Sell its Virgin Mobile Branded Services.

40. Qtel also has not established an MVNO to sell its Virgin Mobile Qatar branded services. ictQATAR has found no evidence to indicate that Qtel has established a separate corporate entity to market its Virgin Mobile branded service. ictQATAR has reviewed the relevant corporate registration, all of the relevant facts, and the Services

³⁸ Qtel Answer ¶ 23.

³⁹ Qtel has submitted to ictQATAR the Services and Trademark Agreements entered into by Virgin and Qtel. ictQATAR has reviewed the documents and determined that the legal relationship between the companies is properly defined as a branding and consultancy arrangement.

⁴⁰ Vodafone Qatar itself clearly states that it is "not against companies selling products which involve other brands or sponsorships with well-known branded companies." See Vodafone Qatar Reply ¶ D (IV) (29).

⁴¹ See Qtel's Response to ictQATAR Information Request, 23 June 2010 (attached hereto as Exhibit D) and Qtel-Virgin Management Limited Services Agreement § 4.1 (attached hereto as Exhibit E).

Agreement between Qtel and Virgin Management LTD and is satisfied that no separate legal entity has been established by Qtel to sell or resell Qtel's Virgin Mobile branded service as an MVNO.⁴²

41. Though it has been brought to ictQATAR's attention that Qtel has filed a commercial registration for a Virgin Mobile Qatar branded retail space, the registration is in Qtel's name, not Virgin Mobile Qatar's nor for or on behalf of Virgin Mobile.⁴³ This registration indicates that Qtel is the corporate entity that will control the retail space, regardless of the brand name associated with it. Additionally, the customer contract for services is between the customer and Qtel – not between the customer and a branch called 'Virgin Mobile'. The terms and conditions that apply to the service are Qtel's, not Virgin Mobile's. As, however, it has been alleged that Qtel may have breached other aspects of the Commercial Law, ictQATAR has asked the Attorney General to investigate this commercial registration and its validity and effect.

42. Moreover, utilizing the methodology set forth in Section IV (A) (2) above, it is clear that Qtel has not established an MVNO since (1) Qtel has not established a separate corporate entity to purchase wholesale minutes or services, (2) Qtel has not established a separate corporate entity to sell or resell mobile minutes or services to consumers, and (3) Qtel maintains privity with all customers that subscribe to Qtel's Virgin Mobile branded services. Moreover, as stated previously, Qtel's Virgin Mobile Services are provided pursuant to a lawful tariff approved in respect of Qtel.

C. Qtel's Marketing of its Virgin Mobile Branded Service was Anti-Competitive, Misleading, and an Abuse of Dominance in Contravention of Qatari Law.

43. Qtel's initial marketing efforts implied that "Virgin Mobile Qatar" was, in fact, a new mobile provider in Qatar. The potential for confusion in this case was, and remains, particularly high given that Virgin Mobile is a well known mobile services provider in the United Kingdom. This Order, along with the 15 July 2010 Order (Exhibit A), aims to correct the inaccurate public perception of "Virgin Mobile Qatar" caused by these deceptive marketing efforts, penalize Qtel for its unlawful actions, and prevent similar misleading tactics from being utilized in the future.

1. Commencing 13 May 2010 and Ending 18 May 2010 Qtel Unlawfully Created the Impression That "Virgin Mobile Qatar" was a New Mobile Provider in Qatar.

44. Vodafone Qatar asserts that Qtel and Virgin Mobile sought to represent that "Virgin Mobile Qatar" was a third entrant into the mobile market from the time of Virgin Mobile's original launch (13 May 2010) until the time when Qtel suspended sales of

⁴² See *infra*, Section IV (A) (2) for ictQATAR's analysis of the requirements for establishing an MVNO.

⁴³ Commercial Registration 21183/40

Virgin Mobile branded services (following Orders from ictQATAR).⁴⁴ Qtel categorically denies that the advertising and branding for Virgin Mobile was in any way unlawful.⁴⁵

45. ictQATAR has investigated this matter extensively and, based on the evidence gathered, determined that the activities and conduct of Qtel concerning Virgin Mobile service in Qatar resulted in: (1) the potential for persons being misled or deceived by false or misleading claims or suggestions regarding telecommunications services, in contravention of Article 90 of Executive By-Law; (2) anti-competitive conduct and an abuse of dominance by Qtel in contravention of Article 41 of the Telecommunications Law and Article 75 of the Executive By-Law; and (3) unfair dealing in violation of Article 51 of the Telecommunications Law. It was on the basis of these findings that ictQATAR ordered Qtel to cease aspects of the marketing of its Virgin Mobile branded service offerings on 17 May 2010 and issued further instructions to Qtel regarding the modification of its marketing and branding of such services on 20 May 2010. This was also the basis for amending and extending these Orders and requiring additional obligations on Qtel in the Orders of 15 July 2010.

2. ictQATAR has Issued an Order Detailing the Additional Conditions That Qtel Must Follow to Lawfully Market Qtel's Virgin Mobile Service in Qatar.

46. Vodafone Qatar asserts that the Orders issued by ictQATAR on 17 May 2010 and further instructions of 20 May 2010 were insufficient to remedy the misleading branding and marketing practices of Qtel in connection with Qtel's Virgin Mobile service. Vodafone Qatar provides several examples of representations and behavior that it believes to be disingenuous, touching on the public representations of Qtel's Virgin Mobile offering on the Internet, in retail spaces, and on the telephone. Vodafone Qatar also suggests specific remedies for each of the allegedly unlawful practices it identifies.⁴⁶ Qtel asserts that it has made its relationship with Virgin Mobile clear from the start and that its branding does not misrepresent that relationship.⁴⁷

47. ictQATAR has reviewed the information provided by both parties, the relevant facts, and the applicable laws, and has determined that Qtel must implement additional remedial measures to prevent further confusion in the marketplace. These continuing and additional remedial measures are detailed in the Orders issued to Qtel by ictQATAR of 15 July 2010 (See Exhibit A).

⁴⁴ Vodafone Qatar Complaint ¶¶ 15-17.

⁴⁵ Qtel Answer ¶ 46.

⁴⁶ Vodafone Qatar Complaint ¶ 25.

⁴⁷ Qtel Answer ¶¶ 42 – 46.

3. Qtel is Subject to Penalties for Its Unlawful Actions to be Determined by the Office of the Attorney General

48. Because Qtel violated Articles 41 and 51 of the Telecommunications Law and Articles 75 and 90 of the Executive By-Law, ictQATAR has determined that Qtel should be compelled to pay a penalty to the State of Qatar for its unlawful actions. Accordingly, ictQATAR is referring this matter to the Office of the Attorney General for assessment of an appropriate fine.

49. It has also been suggested that Qtel and/or Virgin Mobile's actions may have violated provisions of the Commercial Law (specifically Articles 69 and 70)⁴⁸ and/or other Qatari laws. Potential violations of these laws are beyond the scope of ictQATAR's jurisdiction. Therefore, ictQATAR refers this matter to the Office of the Attorney General for appropriate action.

D. ictQATAR's Procedures Have Been Consistent with the Laws of Qatar

50. Vodafone Qatar contends that the process used by ictQATAR to issue Orders to Qtel did not comply with Qatari law in two respects. First, Vodafone Qatar claims that ictQATAR failed to provide Vodafone Qatar with copies of the Orders to Qtel as well as its reasoning regarding acceptable uses of Virgin Mobile services in Qatar. Second, Vodafone Qatar argues that ictQATAR failed to consult with Vodafone Qatar regarding the appropriate terms of Virgin Mobile services in Qatar prior to issuing the first set of Orders.⁴⁹

51. Article 6 of the Telecommunications Law requires orders issued by ictQATAR to be transparent and non-discriminatory. Non-confidential versions of the Orders of 17 May and 15 July 2010, the Letter of Instruction of 20 May 2010, and this final decision satisfy the requirements of Article 6 because they have been publicly released after a transparent process in which all parties have been provided with due process and an opportunity to participate.

52. ictQATAR was not required formally to consult with Vodafone Qatar prior to issuing Orders to Qtel. ictQATAR's dispute resolution rules allow the regulator to impose remedial measures during an investigation and prior to the issuance of a final Order or decision without consultation. Consultation prior to issuing an Order is not always possible due to the need to act swiftly to protect consumers while conclusive

⁴⁸ See Footnote 28.

⁴⁹ Vodafone Qatar Complaint ¶ 33-35. It should be noted that Vodafone also complains that ictQATAR did not take quick and affirmative action to stop Qtel's unlawful actions and has asked ictQATAR to take the extraordinary measure of imposing an interim remedy that would suspend sales of Qtel's Virgin Mobile Services until the conclusion of the proceeding. See Vodafone Qatar Reply ¶ B (16). Not only does Vodafone Qatar fail to make an evidentiary showing of "irreparable harm," as is typically required for parties seeking this type of injunctive relief, but this request is also inconsistent with Vodafone Qatar's oft-stated desire for a complete and transparent consultation proceeding prior to rendering a decision.

evidence is being obtained and prior to issuing Orders. Indeed, in this instance, Vodafone Qatar was not injured by the Orders or instructions issued by ictQATAR to Qtel; rather ictQATAR's prompt action on 17 May and 20 May 2010 limited the effects of any public or market confusion and/or anticompetitive and unfair practices.

53. Moreover, public consultation is not required when ictQATAR adjudicates violations of Qatar's telecommunications laws. Consistent with international best practice, ictQATAR has committed to consulting with the public about its policy proposals that it will broadly apply to the entire telecommunications industry. For example, ictQATAR consulted with the public in 2007 and 2009 on its policy proposals to liberalize the telecommunications sector in Qatar. In this case, ictQATAR was investigating conduct which appeared to be in breach of the law. ictQATAR was not considering a policy proposal that broadly would apply to the entire telecommunications industry. In any event, Vodafone Qatar has participated in the process, where appropriate, for resolving Qtel's violations of Qatar's telecommunications laws through the complaint/dispute process.

54. This adjudicative proceeding represents more than the resolution of a dispute between two telecommunications providers. Rather, this proceeding was the appropriate way for ictQATAR to bring to light all of the facts concerning Qtel's involvement with the Virgin Mobile Qatar brand and render a well considered, final decision regarding Qtel's actions. Consistent with international best practices, adjudications of this sort provide regulators with the opportunity to compel production of the facts of a dispute, consider the arguments of all interested parties and render a final, expert judgment on the overarching issues presented. This proceeding has at all times been conducted in a manner that is transparent, fair, and consistent with due process and international best practices. This decision and the previous Orders and instructions reflect the expert opinions of ictQATAR in its role as the telecommunications regulatory authority for the State of Qatar and, as such, are final and binding on all effected parties.

E. Vodafone Qatar's Requests for Document Production and Oral Hearing are Denied

55. Vodafone Qatar requests production of several documents referenced in Qtel's Reply, purportedly in accordance with Section 3.8 of ictQATAR's Dispute Resolution Rules, and a short oral hearing as allowed by Section 3.7.1 of ictQATAR's Dispute Resolution Rules.⁵⁰ Both Section 3.8 and Section 3.7.1 of the Dispute Resolution Rules are permissive, allowing ictQATAR the discretion to require oral arguments or document production if and when it determines that those actions are necessary. In this proceeding, ictQATAR is satisfied that it has received all of the information necessary to make a full, fair, and transparent decision. Requiring the parties to prepare oral arguments and/or to produce documents would only needlessly delay the resolution of this dispute, to the detriment of the public in Qatar. As such, ictQATAR has decided not to convene an oral hearing or to require Qtel to produce the documents requested by Vodafone Qatar.

⁵⁰ See Vodafone Qatar Reply ¶ C(8) and E.

V. CONCLUSION

56. The Telecommunications Law and its Executive By-Law are intended to promote competition in the provision of telecommunications services to the people in Qatar. Such competition benefits the public through innovative offerings and lower prices. Violations of these laws undermines these competitive benefits and thus must be prevented and remedied promptly if they occur.

57. ictQATAR has conducted an investigation which included filings by both Qtel and Vodafone Qatar, and considered applicable Qatari law, relevant facts, and, where appropriate, international best practices. ictQATAR has been thorough, prompt, and impartial, as befits an independent regulator. After due consideration, ictQATAR concludes that Virgin Mobile is a branded service of Qtel and not an unlicensed third mobile telecommunications provider. “Virgin Mobile” is not present in Qatar, either as an actual provider, seller, or reseller of mobile telecommunications services, nor has Qtel established a separate corporate entity to resell its Virgin Mobile branded services. As such, the provision of Qtel’s Virgin Mobile-branded service does not require a license under Article 9 of the Telecommunications Law.

58. However, Qtel has employed potentially confusing marketing and sales techniques to promote its Virgin Mobile branded service and engaged in possible anti-competitive practices. After thoroughly reviewing all available information, ictQATAR has determined that Qtel’s Virgin Mobile services were marketed in a manner that was misleading, anti-competitive, and an abuse of dominance for the period commencing 13 May 2010 and ending 18 May 2010. As a result, ictQATAR issued Orders on 17 May and 15 July 2010, and instructions on 20 May 2010 requiring Qtel to follow certain conduct regarding branding, marketing, and customer service when marketing its Qtel-Virgin Mobile branded services in Qatar to prevent potential future customer confusion. The conditions set forth in the Orders and instructions are sufficient to ensure that Qtel is in compliance with Qatari law and that the citizens of Qatar are provided with full and complete information regarding their mobile telecommunications options. ictQATAR will continue vigilantly to monitor the situation to make certain that Qtel complies with the terms of this decision, the Orders of 17 May and 15 July 2010 and the instructions of 20 May 2010.

59. In addition, ictQATAR has determined that Qtel should be compelled to pay an appropriate fine for its unlawful actions during this period and has referred this matter to the Office of the Attorney General for assessment of an appropriate penalty. Furthermore, it has been suggested that Qtel’s actions during this period may constitute violations of other Qatari laws including the Commercial Law (specifically Articles 69 and 70)⁵¹. Since conflicts arising under these laws are outside of ictQATAR’s jurisdiction, ictQATAR has referred these issues to the Office of the Attorney General for potential further action.

⁵¹ See Footnote 28.

EXHIBIT A

15 July 2010 Orders (Revised) to Qtel

EXHIBIT B

17 May 2010 Orders from ictQATAR to Qtel

EXHIBIT C

20 May 2010 Letter of Instruction from ictQATAR to Qtel

EXHIBIT D

Qtel's Response to ictQATAR's Information Request

EXHIBIT E

Extract from Qtel-Virgin Management Limited Services Agreement §4.1 and §5.1.2