

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

**DECISION ON QATAR TELECOM (Qtel) Q.S.C. REQUEST SEEKING
MODIFICATION OF ictQATAR ORDERS CONCERNING THE PROVISION OF
VIRGIN MOBILE BRANDED SERVICES**

13 December 2010

- 1- This decision is prompted by a request from Qatar Telecom (Qtel) Q.S.C. to modify ictQATAR’s Decision of 22 July 2010 and its underlying Instructions. ictQATAR treated Qtel’s plea as a request for “reconsideration” of the Decision, and provided Vodafone Qatar the opportunity to provide its views.
- 2- After full and fair consideration based on Qatari laws regarding telecommunications and international best practices, as detailed below, ictQATAR denies Qtel’s request in large part, but grants relief regarding two of Qtel’s suggestions, and so issues revised Instructions. As a further enforcement mechanism, ictQATAR does not expect to approve future tariff promotions for the Virgin Mobile-branded offering until ictQATAR is convinced Qtel has complied fully with the 22 July Decision and this Reconsideration Decision.

I. BACKGROUND:

- 3- The Supreme Council is entrusted with wide-ranging responsibilities and broad powers under the Decree Law No. (34) of 2006 to promote the telecommunications sector, encourage sustainable investment therein and provide for the sector’s orderly development and regulation.¹
- 4- That same law also mandates that ictQATAR safeguard the interests of customers, including setting rules for tariff regulation and criteria for quality of service, and monitoring the terms and conditions of telecommunications services provision.² The Executive By-Law (1) of 2009 further obliges ictQATAR to protect telecommunications consumers from, *inter alia*, “false or misleading claims,”³ and to resolve disputes

¹ The Telecommunications Law No. (34) of 2006 art. 2 (5) & (13).

² The Telecommunications Law No. (34) of 2006 art. 4 (8).

³ Telecommunications Executive By-Law No. (1) of 2009 art. 90.



between service providers.⁴ Pursuant to this latter authority, ictQATAR issued Dispute Resolution Rules.⁵

- 5- After Qtel's introduction of a "Virgin Mobile"-branded service on 13 May 2010, ictQATAR issued an Order on 17 May 2010⁶ and an Instruction on 20 May 2010,⁷ setting forth interim guidelines on how such services could be marketed to the public. In particular, the 20 May Instruction included, as paragraph 7, the command that "Any reference to Virgin Mobile Qatar should be replaced by 'Qtel Virgin Mobile Service' or 'Qtel Virgin Services.'"

⁴ Telecommunications Executive By-Law arts. 121-22; *see also* Telecommunications Law art. 61.

⁵ Dispute Resolution Rules dated 7 June 2010, available on ictQATAR's official website here: [http://www.ictqatar.qa/files/images/ictQATAR%20Dispute%20Resolution%20Rules%2018%20August%202010%20\(2\).pdf](http://www.ictqatar.qa/files/images/ictQATAR%20Dispute%20Resolution%20Rules%2018%20August%202010%20(2).pdf)

⁶ On 17 May 2010, ictQATAR instructed Qtel to discontinue its potentially misleading marketing and branding activities and implement corrective measures to ensure legal compliance. These Orders sought to prevent consumers from being misled about the nature of Virgin Mobile-branded services by requiring that Qtel: (1) cease and desist all dealings with the public in Qatar that represent Virgin Mobile Qatar as a provider of retail telecommunications services; (2) 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; (3) 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; (4) cease all advertising and marketing of Virgin Mobile Qatar services where those services are being represented as being provided by Virgin Mobile Qatar; (5) 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; (6) 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 (7) 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. *See* ictQATAR's letter No. RAL/264/10 dated 17 May 2010.

⁷ On 20 May 2010, ictQATAR provided Qtel with instructions designed to enforce further compliance by Qtel. In particular, ictQATAR required that: (1) all advertising, marketing, promotional and customer materials and information for the Qtel Virgin Mobile Brand prominently display the Qtel logo in the size ratio of 60% Qtel logo/40% Virgin Mobile logo; (2) all retail outlets that distribute Qtel Virgin Mobile products and services prominently display the Qtel logo; (3) all existing unsold Virgin Mobile Starter packs containing SIM cards must carry out a white sticker on the cover with the words "Provided by Qtel" with the Qtel logo in the size and format already approved by ictQATAR prior to being offered commercially and pending the provision of new SIM cards as indicated below; (4) the network identifier associated with the Virgin Mobile SIM be changed to Qtel Virgin; (5) all references to "Virgin Mobile Qatar" be changed to "Qtel's Virgin Mobile Service," or "Qtel Virgin Mobile Services"; (6) Qtel produce new Qtel Virgin Mobile branded SIM cards that prominently display the Qtel logo; (7) Qtel send a text messages to its customers clarifying the name of network and take out an advertisement in Qatar local newspapers, in both 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. *See* ictQATAR's letter dated 20 May 2010.



- 6- In accordance with ictQATAR's Dispute Resolution Rules, Vodafone Qatar filed a formal complaint on 7 June 2010; Qtel answered on 15 June 2010, and Vodafone Qatar replied on 23 June 2010.
- 7- ictQATAR resolved this dispute in a Decision dated 22 July 2010, published on ictQATAR's official website, which appended revised instructions issued to Qtel dated 15 July 2010. The 15 July Instructions compelled Qtel to comply with the Orders and instructions issued on 17 May 2010 and 20 May 2010 respectively, as well as additional obligations and requirements concerning its marketing of Qtel's Virgin Mobile Qatar services. The 15 July Instructions repeated word-for-word paragraph 7 of the 20 May instructions. Familiarity with the Order, Instructions and Decision [hereinafter "Decision"] are presumed; further details on the factual background and applicable legal principles can be found there.
- 8- On 11 November 2010, Qtel submitted an eight-page letter⁸ to ictQATAR, copying Vodafone Qatar, requesting some modifications to the Order, Instructions and Decision regarding the provision of Virgin Mobile-branded services. That letter attached a sixty three (63) page slide presentation of marketing examples from other countries, arguing that the requirements of ictQATAR's decision did not comport with decisions of other regulators in other jurisdictions.
- 9- Vodafone Qatar submitted a letter dated 22 November, 2010, copying Qtel, arguing that it does not know of any legal or factual basis to change the Decision.⁹ Vodafone Qatar supplemented this filing in a 24 November 2010 letter, also copied to Qtel, providing further details on the merits of why Qtel's requested modifications should be rejected.¹⁰
- 10- Qtel submitted a letter dated 22 November 2010,¹¹ copying Vodafone Qatar, arguing that reconsideration was especially appropriate by virtue of the fact that: "Qtel had no preview or visibility of many of Orders prior to their publication on 22 July. This is particularly true of the Orders stipulating that the Virgin Mobile business be renamed 'Qtel Virgin Mobile'.

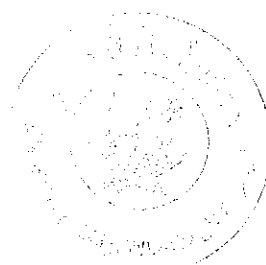
II. DISCUSSION:

⁸ Qtel's letter No. Qtel/Reg-1182-2010-11 dated 11 November 2010.

⁹ Vodafone Qatar's letter dated 22 November 2010.

¹⁰ Vodafone Qatar's letter dated 24 November 2010.

¹¹ Ref. No. Qtel/Reg-1185/2010-11.



11- ictQATAR has carefully reviewed the filings of both parties and considered them in light of the provisions of the Telecommunications Law, Executive By-Law, and international best practices.

A. Service title as 'Qtel's Virgin Mobile Service' or 'Qtel Virgin Mobile Services'':

12- Qtel alleges concerns with the wording 'Qtel's Virgin Mobile Service' or 'Qtel Virgin Mobile Services'. It argues that a formulation in which 'Qtel' precedes 'Virgin Mobile' misrepresents the nature of the Qtel – Virgin Mobile relationship and will confuse customers. Combining the Qtel brand and the Virgin Mobile brand into a single brand name for the Virgin Mobile service is detrimental to both brands as it creates an ambiguous situation around legal ownership and control of that new brand name. According to Qtel, formulations in which 'Qtel' precedes 'Virgin Mobile' create a false impression that Qtel owns the Virgin Mobile brand. The combination, Qtel claims, weakens both Qtel and Virgin Group's rights to their respective brands. Virgin might find, for example, that its ability to strongly defend 'Virgin Mobile' and/or "Virgin" against infringements of the brand in Qatar or elsewhere is weakened. Equally, questions could arise as to whether Qtel or Virgin has more right or obligation to defend the 'Qtel Virgin Mobile' brand. Qtel goes on to characterize the wording as unduly repetitive and burdensome and unnecessary.¹²

13- Qtel also argues that this reconsideration is the first opportunity it has had to dispute the service description as Qtel Virgin Mobile service. Further, Qtel considers ictQATAR's Decision "a living, breathing document. . . [n]ot something intended to be written in stone for perpetuity."¹³

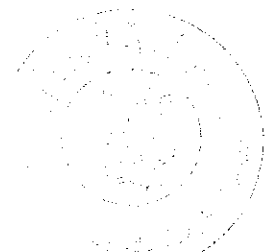
14- Vodafone Qatar rejects the proposition that requiring the word "Qtel" precede the word "Virgin Mobile" will misrepresent the nature of Qtel-Virgin Mobile relationship or cause confusion regarding the ownership of the brand. Vodafone Qatar stated that there have been no material changes in circumstances since 22 July 2010 Decision to justify any changes to the Decision and Orders.¹⁴

15- ictQATAR declines to modify its Decision in this regard. Contrary to Qtel's claim, the requirement that the service be called "Qtel Virgin Mobile", as opposed to Virgin Mobile Qatar, stems at least as far back as 20 May 2010. Indeed, Qtel concedes as much in its 11 November submission where it properly links the required change in service name to the

¹² See Qtel's letter No. Qtel/Reg-1182/2010 dated 11 November 2010, at 4 & 5.

¹³ See Qtel's letter No. Qtel/Reg-1185/2010-11 dated 22 November 2010.

¹⁴ Vodafone Qatar's letter dated 24 November 2010.



20 May Instructions.¹⁵ Accordingly, Qtel had ample opportunity to dispute this formulation during the dispute resolution proceeding.¹⁶ Having failed to raise it then, Qtel has waived the chance to seek further revision here.

16- Even assuming that the matter is properly presented, ictQATAR denies Qtel's request. In its various orders and Instructions and, ultimately the 22 July Decision and associated order, ictQATAR properly found that requiring that the branded service name began with Qtel would best ensure customers were not confused as to the underlying provider of service.¹⁷ This determination was at the heart of the law and policy set forth therein, and can hardly come as a surprise to Qtel. In that light, Qtel's related plea to treat the Decision as elastic fundamentally misstates the Dispute Resolution process. ictQATAR is the authority charged with oversight of telecommunications and information in Qatar, and the Decision applied Qatari law and international best practices to the facts before it. Absent a change in those facts, or the underlying law, the Decision stands. Since July, the law is unaltered, and Qtel has presented no new fact. The Decision "lives" as the authoritative interpretation of Qatari telecommunications law and policy by the expert independent regulator. It became effective immediately upon adoption, and was "cast in stone" unless overturned by a court of competent jurisdiction or a superseded by a change in the law.

17- Nor are Qtel's fears about ambiguity in its relationship to the Virgin companies any more persuasive. ictQATAR is the arbiter of telecommunications policy in Qatar, and has no jurisdiction over trademark contracts between commercial entities. As Vodafone Qatar says, "Qtel's claim that compliance with the Order may cause it to breach intellectual property rights is a direct consequence of its own commercial decisions and something that should have been considered before such activity was entered into."¹⁸ In other words, contractual issues surrounding intellectual property between Qtel and the Virgin companies are a matter for those companies *inter se*, but cannot alter Qatari telecommunication law and policy as authoritatively interpreted by ictQATAR.

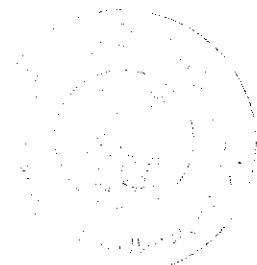
B. "60/40" Dual Logo Branding

¹⁵ Qtel 11 November 2010 letter at 5 ("Order 7 (Published 20 May 2010): *Any reference to Virgin Mobile Qatar should be replaced by 'Qtel's Virgin Mobile Service' or 'Qtel Virgin Mobile Services'*").

¹⁶ ictQATAR takes very seriously any misrepresentation to it by regulated entities. Truthfulness with the regulator is a pre-condition for due process. In this case, however, Qtel's statement was so plainly erroneous, and obviously contradicted within its own submissions, that ictQATAR generously will consider it a mistake rather than an attempt to mislead.

¹⁷ 22 July Decision, ¶¶ 43-47.

¹⁸ Vodafone Qatar's letter dated 24 November 2010, at 5.



18- Qtel challenges that part of ictQATAR's 20 May 2010 instructions that require:

All advertising, marketing, promotional and customer materials and information in respect of Qtel and the services offered with the Qtel Virgin Brand, including all websites, retail outlets, publicity displays, customer contracts and application forms, carrying the Virgin Mobile Logo must display the Qtel logo in the size ratio 60% Qtel logo 40% Virgin logo.¹⁹

19- Qtel provides four reasons. First, it claims that the "60/40" branding requirement increases customer confusion and is inconsistent with international practice. It provides numerous examples of co-branding from other markets with a different "ratio" of brand logos, or where the co-branding is denominated only by a phrase such as "powered by." Qtel's examples are inapplicable. There are only two licensed mobile operators in Qatar and Qatari law currently prohibits MVNOs and resellers (outside limited categories not applicable here) from operating in Qatar. By contrast, most of the countries depicted by Qtel (USA, Canada, Netherland, Belgium, Australia, etc.) have numerous licensed mobile providers and MVNOs in their respective national markets—"Virgin Mobile" in those countries typically is an official MVNO, reseller or similar. As such, with a plethora of officially authorized options available to consumers, the potential for customer confusion arising from co-branding or brand licensing arrangements in these countries is minimal compared to the Qatari market.

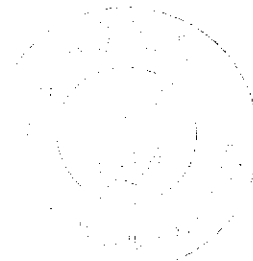
20- Here, by contrast, any approach where the "Qtel" logo did not predominate, or was subordinated to a mere "powered by," could confuse telecommunications consumers into believing that "Virgin Mobile" was a third licensed service provider or MVNO—contrary to law,²⁰ and *per force* confusing under Article 90 of the By-Law.²¹ As Vodafone Qatar says: "Regardless of what the underlying commercial agreements stated between Qtel and Virgin Mobile, the issue is how the public perceive the service. The order as has been issued by ictQATAR prevents any customer confusion in this regard."²²

¹⁹ See Qtel's letter No. Qtel/Reg-1182/2010-11 dated 11 November 2010, at 2, 3 and 4.

²⁰ See 22 July Decision, ¶ 37 n.37.

²¹ Executive By-Law, art. 90 states that "no Service Provider shall make any false or misleading claim or suggestion regarding the availability, price or quality of its telecommunications services or equipment; or the telecommunications services or equipment of another Service Provider. A claim or suggestion is false or misleading if the Service Provider knew or ought to have known at the time it was made that it was false or misleading or that it was likely to deceive or mislead the person to whom it was made."

²² See Vodafone Qatar's letter dated 24 November 2010, at 2.



21- Second, Qtel claims²³ the “60/40” requirement violates the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).²⁴ This, too, is erroneous. Under Article 20 of TRIPS, a violation could only occur if ictQATAR’s ruling “unjustifiably encumbered” the use of Virgin’s trademarks in the course of trade “in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.” To the contrary and consistent with its TRIPS obligations, ictQATAR provided ample justification under Qatari law and international best practices for its rulings.²⁵ ictQATAR’s Decision fully permits use of Virgin marks in Qatar—there is no encumbrance whatsoever.²⁶ Because “Virgin Mobile” is not an authorized service provider in Qatar, the “Virgin Mobile” mark alone does not identify any lawful service in Qatar. The sole requirement is that they be displayed in conjunction with the mark of the provider of the service so as to not be confusing to consumers. This is not detrimental to the Virgin marks, because the “undertaking”, under Qatari law, necessarily is Qtel’s, not “Virgin Mobile’s”. In this regard, TRIPS Article 20 does not preclude “a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.” Indeed, that is exactly what ictQATAR’s Decision demanded—identifying Qtel as the provider of the Virgin-branded service as expressly permitted under TRIPS.²⁷ Like its previous argument, Qtel appears to ignore the differences between Qatari and other laws, which fully justify the Decision and support the “60/40” branding requirement.²⁸

²³ See Qtel’s letter No. Qtel/Reg-1182/2010 dated 11 November 2010, at 3.

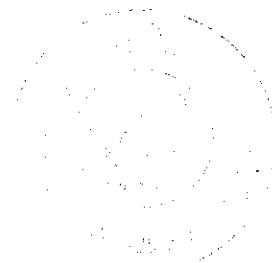
²⁴ Qatar is a party to TRIPS. See Protocol of Accession of the State of Qatar to the Marrakesh Agreement establishing the World Trade Organization, Annex 1C of it entitled Agreement on Trade-Related Aspects of Intellectual Property Rights, published in the Official Gazette of the State of Qatar Volume 13 dated 31 December 2008.

²⁵ See 22 July Decision, ¶ 45.

²⁶ Nothing in ictQATAR’s 22 July decision impairs most favored nation or national treatment of trademarks.

²⁷ See Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, Doc. # 98-2505 (2 July 1998), ¶ 14.277 (“[I]f a foreign company enters into an arrangement with a [signatory country company] it does so voluntarily and in the knowledge of any consequent implications for its ability to use any pre-existing trademark”).

²⁸ See also Vodafone Qatar letter dated 2 December 2010, at 2-3 (TRIPS requires merely that domestic rules governing use of non-national marks with local marks be justified).



- 22- Third, Qtel claims that the requirement is “impractical” in some cases, because the size of some items “is insufficient . . . to allow for the application of two quite distinct logos.”²⁹ ictQATAR disagrees. The decision regulated only the *ratio* of the sizes of the brand logos. Even in small volumes, two logos are common and un-complicated. As Vodafone Qatar showed in an attachment, even on the size of a tiny SIM card, Qtel already includes two logos (Qtel and Hala), plus various brand terms (“Lets connect”) in English and Arabic.³⁰
- 23- Fourth, Qtel asserts that the 60/40 branding rule “compromise[es] Qtel’s ability to effectively utilize its Virgin Mobile service logo in merchandising, product or sponsorship situations.”³¹ To the extent that Qtel fears for the reaction of the Virgin companies, we agree with Vodafone Qatar: “The consequences of Qtel’s actions must solely rely with Qtel and should be dealt with under the terms of their agreement with Virgin Mobile.”³² However, regarding sponsorships, ictQATAR emphasizes that it does not regulate marketing apart from telecommunications and information services. If various Virgin companies registered in the United Kingdom³³ chose to sponsor, say, the “Red Bull Fortress Challenge” tournament in Qatar,³⁴ they are free to contribute financially in return for the display authorized by the event in question. However, neither any Virgin company nor Qtel could sponsor an event in the name of, or merchandize an offering called, “Virgin Mobile Qatar.” There is no such company; that service does not, and cannot now exist under the laws of Qatar, and its presentation on marketing materials—including sponsorship signs—would be misleading under Article 90 of the By-Law.

C. “Over the Air” (OTA) Network identifier and new customer SMS message:

- 24- Qtel complains about the Decision’s requirement that it label its OTA identification as Qtel Virgin Mobile service. Relatedly, it objects to the requirement, and wording of the SMS message ictQATAR ordered be sent to existing and new customers of Virgin

²⁹ See Qtel’s letter Ref No. Qtel/Reg-1182/2010-11 dated 11 November 2010, at 3.

³⁰ See Vodafone Qatar’s letter 24 November 2010, Annex (A).

³¹ See Qtel’s letter No. Qtel/Reg-1182/2010-11 dated 11 November 2010, at 3.

³² See Vodafone Qatar’s letter dated 24 November 2010, at 2.

³³ To ictQATAR’s knowledge, no Virgin entity has a legal or business presence in Qatar. See 22 July Decision, ¶¶ 39, 40.

³⁴ See Vodafone Qatar’s letter dated 22 November 2010, Schedule 1, at 12.

Mobile-branded service. Qtel characterizes at least the SMS obligation as “superfluous.”³⁵ In each case, it proposes to use some variation of ‘Virgin Mobile Qatar’ instead.

25- Vodafone Qatar stated that it reiterates the need for an explanatory SMS, given the need to inform consumers that Qtel, not Virgin Mobile, is the service provider. Similarly, it states that Qtel has provided no compelling reason for any changes.³⁶

26- Qtel’s requested relief regarding SMS and OTA messages are no more than a reworking of its above-discussed objection to the requirement of labeling the service as Qtel Virgin Mobile. Because ictQATAR already has rejected this position, it also denies Qtel’s plea as to the content of SMS and OTA messages.³⁷ Nor, in light of the fact that the Decision found that Qtel had mislead customers by implying that Virgin Mobile Qatar was a new mobile provider, or MVNO in Qatar, is ictQATAR persuaded to drop its requirement that new and existing customers be alerted to the actual identity of the provider of service: Qtel itself.

D. Requirement for prior approval of marketing material:

27- In the 20 May Instructions, ictQATAR required “prior approval” of all of Qtel’s “advertising, marketing, promotions, customer information and public displays.”³⁸ Qtel alleged that this requirement imposes an imposition on the business that will clearly inhibit its ability to compete in the market place and take new propositions, products and messages to market in a quick and effective manner. Qtel stated that this order is both unnecessary (given the existence of a clear set of what will be agreed brand guidelines) and highly burdensome (on both parties).³⁹

28- Vodafone Qatar disagrees. Vodafone Qatar states that given that Qtel acted illegally and without consulting ictQATAR in launching the Virgin Mobile service in May 2010, this requirement remains necessary. According to Vodafone, the fact that it may be

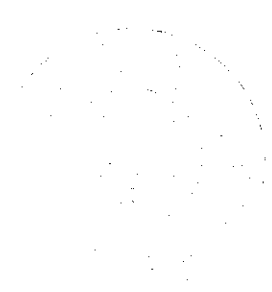
³⁵ See Qtel’s letter No. Qtel/Reg-1182/2010-11 dated 11 November 2010, at 4.

³⁶ See Vodafone Qatar letter 24 November 2010, at 4.

³⁷ ictQATAR does not agree with Vodafone Qatar that ‘Qtel Virgin’ would suffice for the OTA indicator. Despite the limited character count available for OTA messages, Vodafone Qatar already displays an 18 character OTA for Vodafone users roaming on the Qtel network – “Qtel - Vodafone NL” – exactly the same number of characters required to display ‘Qtel Virgin Mobile’.

³⁸ 20 May Instructions issued by ictQATAR, clause 9.

³⁹ See Qtel’s letter Ref No: Qtel/Reg-1182/2010-11 dated 11 November 2010, at 7.



“burdensome” to comply with the law is not a justification for non-compliance or a reason for changing the law.⁴⁰

29- ictQATAR agrees with Qtel. For the most part, the Instructions were intended as interim directives designed to ameliorate the potential for customer confusion. Contrary to Vodafone Qatar’s implication, neither the Law nor the By-Law require pre-approval of marketing or advertising materials.⁴¹ After the Decision, and now this Decision on Reconsideration, ictQATAR considers that the parameters of the requirements of Qatari telecommunications law and policy as applied to Virgin Mobile are sufficiently clear to dispense with the requirement of pre-approval of marketing, etc., materials. The precedent of this case should inform the prospective practices of all service providers, especially Qtel.

30- In addition, ictQATAR will issue in the future a “consumer code” outlining, in a general fashion, lawful and non-confusing, practices of service providers. This consumer code will provide broad and high-level counsel as to practices that conform to Chapter 9 of the By-Law. In light of the foregoing, ictQATAR accepts Qtel’s required modification not to seek pre-approval of Qtel’s advertising materials in this regard from ictQATAR (as reflected in the attached revised Instructions). Of course, nothing herein relieves Qtel of the responsibility for compliance with these Decisions or its obligations under the Public Mobile and Fixed Telecommunications Networks and Services Licenses, nor does it alter the consequences of ictQATAR’s previous referral to the Office of Attorney General for assessment of the appropriate penalty.⁴²

E. Scope of offering at outlets of Virgin Mobile-branded services:

31- In the 15 July Instructions, ictQATAR directed that:

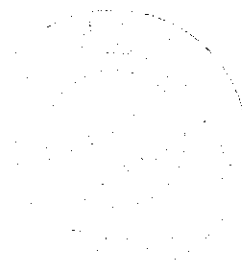
Qtel retail outlets must offer Qtel Virgin Mobile branded products and services. Qtel Virgin Mobile branded outlets, including those within the Virgin Megastores, must offer other Qtel products and services. This applies to all retail locations selling Qtel services, including Qtel Virgin Mobile services.⁴³

⁴⁰ Vodafone Qatar letter dated 24 November 2010, at 5 & 6.

⁴¹ Vodafone Qatar’s 24 November 2010 letter implies (at 6) that the Qtel License Annexure D, requirement for pre-approval of Qtel’s “marketing, promotions, and customer information” requires that ictQATAR review and endorse all Qtel’s advertising beforehand. This claim rests on a misreading of the word “promotions.” Because Qtel is a dominant service provider, ictQATAR must grant prior approval for any *tariff* promotions. But the use of the word “promotion” as a term of art in connection with tariffing cannot be stretched to oblige prior filing and consent of all of Qtel’s advertising material – indeed, were Vodafone Qatar’s reading accurate, ictQATAR would be both overwhelmed and transformed into an organ of official censorship.

⁴² 22 July Decision, ¶¶ 48-49.

⁴³ 15 July 2010 Instructions, clause 3.



Qtel states that it cannot possibly offer “all other Qtel products and services” from Virgin Mobile branded retail outlets. These outlets, says Qtel, were specifically designed for the speedy provision of prepaid SIM cards and a limited inventory of mobile phone hardware. Many existing sales outlets selling Qtel products do not offer Qtel’s full service range. Qtel proposes instead that it be required to offer only a ‘like for like’ products for sale in Virgin Mobile branded retail outlets (i.e. Qtel Hala service prepaid SIM cards and recharge cards). Qtel therefore requests that the relevant wording of this Order be amended to the following “Virgin Mobile branded outlets, including those within the Virgin Megastores, must offer Qtel Hala SIM cards and recharge cards”.⁴⁴

- 32- Vodafone Qatar responds that it interprets the Order not to require Qtel to provide all other Qtel products and services from its Virgin Mobile Kiosks. Indeed, Vodafone Qatar specifically concurs that limiting this to other “like for like” products (such as Qtel Hala prepaid SIMs and recharge cards) would, in Vodafone Qatar’s view, comply with this Order – so long as such other products and services are made available with the same level of prominence as the Virgin Mobile products and services. Despite this concession, Vodafone Qatar opposes amending the Instructions as requested by Qtel.⁴⁵
- 33- Both parties to this dispute accept Qtel’s proposed approach to determining what Qtel products must be offered at Virgin Mobile-branded outlets and kiosks. It would be unusually non-transparent for such an alteration not to be reflected in the official Instructions accompanying this dispute. Accordingly, ictQATAR rejects Vodafone Qatar’s argument to retain superseded Instructions, and so replaces clause 3 of the 15 July Instructions as contained in the attached.

F. Procedural Issues:

- 34- ictQATAR has treated Qtel’s 11 November 2010 letter as a request for reconsideration of the 22 July 2010 decision. ictQATAR does not accept Vodafone Qatar’s argument⁴⁶ that no such reconsideration is possible—due process requires that parties to disputes be afforded a one-time opportunity to seek changes to a decision.⁴⁷ But no further requests for reconsideration will be entertained. And neither the request for reconsideration, nor any action thereon, automatically “stays” the effectiveness of a pre-existing decision.

⁴⁴ Qtel letter Ref No: Qtel/Reg-1182/2010-11 dated 11 November 2010, at 7 & 8.

⁴⁵ Vodafone Qatar letter dated 24 November 2010, at 6.

⁴⁶ Vodafone Qatar letter dated 24 November 2010, at 1.

⁴⁷ Vodafone Qatar submitted a letter on 2 December 2010 itself calling into question some aspects of the 22 July 2010 decision based on a alleged statement from a Qtel representative. Qtel has denied this allegation. ictQATAR declines to rule based on unsupported hearsay. Still, the fact that Vodafone Qatar itself is interested in addressing aspects of the Decision suggests that it recognizes the reconsideration process.

- 35- In the instant Reconsideration, ictQATAR has not relied upon or taken account of the non-public materials submitted by Qtel. Purely *ex parte* submissions have no place in transparent decisionmaking in which inspection by all interested entities is a *sine qua non* of due process.
- 36- In reaching this decision, ictQATAR has followed due process in accordance with the provisions of the Telecommunications Law and the Dispute Resolution Rules. Accordingly – in the interests of fairness and transparency – ictQATAR has disregarded any and all non-public submissions. The written record available to both parties *alone* provides the basis for this Decision and associated Orders. This moots Vodafone Qatar’s argument in section (1.3) in its letter dated 22 November 2010 suggesting that such contacts provide an additional grievance on appeal.⁴⁸

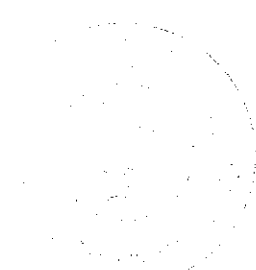
III. CONCLUSION AND ENFORCEMENT:

- 37- After due consideration, ictQATAR confirms the lawfulness and re-affirms the reasoning, of the majority of the 22 July Decision. ictQATAR denies Qtel’s requests for modification of ictQATAR’s existing orders, except with regard to the need to sell Qtel’s products that are similar to the Qtel Virgin Mobile-branded Services (such as other prepaid SIM services) at the Virgin Mobile branded outlets including Virgin Megastores; and (2) the need to seek pre-approval of Qtel Virgin Mobile advertising materials. Attached are revised Instructions reflecting this Decision on Reconsideration.
- 38- The record here establishes that Qtel made efforts to comply with the 22 July Decision and underlying orders and Instructions. However, the evidence (photographs and screen shots) supplied by Vodafone Qatar points to marketing materials containing the “Virgin Mobile” mark without the Qtel mark (contrary to ictQATAR’s “60/40” branding order) and others touting “Virgin Mobile Qatar” (contrary to ictQATAR’s determination that “Virgin Mobile” cannot be marketed as if it were a third mobile operator or MVNO). And Qtel’s own filing⁴⁹ implies that it may not fully have implemented all aspects obliged by the 22 July Decision. Taken together, this suggests that ictQATAR’s prior Orders and Instructions remain partially unfulfilled.
- 39- Full and prompt adherence to the directives of the independent telecommunications and information regulator is required and expected. In circumstances of anti-competitive conduct such as found here⁵⁰ by Qtel (a dominant service provider), the

⁴⁸ Because ictQATAR has not relied on Qtel’s non-public materials, it will not entertain any subsequent request that it make public, or provide Vodafone Qatar, such materials.

⁴⁹ Qtel’s letter No. Qtel/Reg-1182/2010 dated 11 November 2010.

⁵⁰ 22 July Decision, ¶ 45.



Telecommunications Law gives ictQATAR the power to “take all the measures it deems appropriate.”⁵¹ Further, the Applicable Regulatory Framework in Qtel’s mobile license obliges it to “comply with,” *inter alia* “complaints and dispute resolution.”⁵²

40- This controversy began in May. Here in December, seven months later, no one can question that Qtel has had “a reasonable period of time in which to comply”⁵³ with the Decisions and underlying Orders and Instructions. Therefore, in order to ensure swift and comprehensive compliance with the ictQATAR’s various pronouncements, including this Reconsideration Decision and accompanying Order, ictQATAR temporarily will refrain from approving tariff promotions for the Qtel Virgin Mobile branded service until Qtel certifies in writing to ictQATAR (with a copy to Vodafone Qatar) that it has met all its obligations.

41- ictQATAR cautions that further non-compliance will be treated very seriously. ictQATAR has the responsibility to “monitor and prohibit” anti-competitive practices, and thereafter “determine and apply the appropriate procedures and arrangements to confront” such practices.⁵⁴ While reserving its rights to select a suitable sanction at such a time, should ictQATAR be confronted by continued non-compliance, it fully intends to enforce the Telecommunications Law, Executive By-Law and Applicable Regulatory Framework to the fullest extent.⁵⁵

⁵¹ The Telecommunications Law No. (34) of 2006 art. 41.

⁵² Qatar Telecom (Q.S.C.) Public Mobile Telecommunications Networks and Services License (7 October 2007), § 14.1.

⁵³ *Id.*, § 16.

⁵⁴ The Telecommunications Law No. (34) of 2006 art. 40(4-5).

⁵⁵ *See* Telecommunications Law No. (34) of 2006 art. 70 (authorizing, *inter alia*, fines “not exceeding one hundred thousand Riyals” on “any person” violating various enumerated provisions of the law); Qatar Telecom (Q.S.C.) Public Mobile Telecommunications Networks and Services License (7 October 2007), § 17.2 (authorizing, *inter alia*, imposition of structural separation).