

Qatar Telecoms Regulator Gets Tough

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The facts surrounding the introduction of the branded partnership between Virgin Mobile and Qtel in Qatar last year suggest that arguably, a mobile telecommunications services provider may be introduced into the Qatar market-place without a license from the Qatar telecommunications regulator providing the partnership complies with the necessary laws and regulations. However, while this question-mark in the industry remains, the Supreme Council of Information and Communication Technology's final decision to terminate the Qtel/Virgin Mobile partnership shows that it has a zero-tolerance approach when it comes to non-compliance with the telecommunications legal framework.

Telecommunications Regulatory Framework in Qatar

The telecommunications industry is regulated by the Supreme Council of Information and Communication Technology ("ictQATAR"), which was established under the Decree Law No. 36 of 2004.

The main legislation governing telecommunications is the Decree Law No. 34 of 2006 on the Promulgation of the Telecommunications Law (Telecommunications Law). Licensing of telecommunications service providers, interconnection and access, prohibition of anti-competitive practices and abuse of dominance as well as consumer protection are among the matters which fall within the ambit of the Telecommunications Law. In particular, the Telecommunications Law lists a number of activities and conduct that would constitute an abuse of dominance, including "performing any actions that would have the effect of substantially lessening competition in any telecommunications market".

The executive by-laws for the Telecommunications Law were issued in 2009. The by-laws expanded on the matters within the scope of the main law, including consumer protection. Amongst others, the by-laws contained a provision prohibiting service providers from making any false or misleading claims in relation to the price, quality or availability of their services or equipment or that of another provider.

The by-laws also set out the mechanism for resolving disputes between service providers as well as between customers and service providers. In 2010, ictQATAR issued the Dispute Resolution Rules which detailed the procedure for service providers to refer disputes to ictQATAR and the time frame for deciding on such disputes.

On 19 April 2011, ictQATAR issued a notice on anti-competitive conduct (directed at providers of fixed networks, infrastructure and related services), pursuant to its power under the Telecommunications Law to monitor any abuse of market power or dominant position and to determine appropriate procedures for this purpose. The notice details the types of conduct and arrangements or agreements that would be considered anti-competitive.

ictQATAR Decision and Orders against Qatar Telecom (Qtel) Q.S.C.

Qtel is the leading licensed provider of mobile telecommunications services in Qatar. On 13 May 2010, Qtel and Virgin Mobile together launched a branded partnership for a pre-paid mobile service, aiming to combine the coverage and call quality benefits of Qtel's mobile network with the unique brand experience delivered by Virgin Group.

Within days of this launch, ictQATAR issued Qtel with instructions to discontinue its potentially misleading marketing and branding activities, and to implement corrective measures to ensure legal compliance.

In addition to this, Vodafone Qatar, which launched approximately 12 months prior as the second licensed

provider of mobile telecommunications services in Qatar, filed a formal complaint against Qtel over the Qtel Virgin Mobile-branded service (“Qtel Virgin Mobile Service”) a few weeks after the branded partnership was launched, through the dispute resolution mechanism provided in the by-laws. Vodafone claimed that the introduction of the Qtel Virgin Mobile Service, amongst other things, amounted to the introduction of Virgin Mobile into Qatar as a third (unlicensed) mobile telecommunications provider.

The dispute was referred to ictQATAR in accordance with the Dispute Resolution Rules, and in July 2010, ictQATAR rejected Vodafone’s allegation that Virgin Mobile amounted to a third provider. ictQATAR did, however, rule that Qtel had breached the Telecommunications Law through its branding partnership with Virgin Mobile, and that Qtel’s marketing and branding strategies for the Qtel Virgin Mobile Service constituted misleading and deceptive conduct and anti-competitive behaviour in breach of the Telecommunications Law and the executive by-laws issued in 2009 as well as the terms and conditions of Qtel’s license to provide mobile telecommunications services.

ictQATAR had provided Qtel with many instructions designed to enforce compliance with the Telecommunications Law and the executive by-laws issued in 2009, including specific requirements for the display of the Qtel Virgin Mobile brand (to the extent that the logo had to be displayed in the size ratio of 60% Qtel logo/40% Virgin logo), and instructions to cease and desist all marketing and advertising that represented Virgin Mobile as if it were a third mobile operator. These instructions, as well as the July 2010 decision, were re-affirmed in December 2010 when Qtel had requested ictQATAR reconsider and modify its previous instructions and decisions. This December 2010 decision also prohibited Qtel from offering any new promotions for the Qtel Virgin Mobile Services until ictQATAR certified that Qtel had met all its obligations as previously instructed.

However, further non-compliance by Qtel with these instructions resulted in ictQATAR finding on 11 April 2011 that:

1. Qtel Virgin Mobile Services were marketed to the public by Qtel in a manner which was misleading or deceptive;
2. Qtel had engaged in anti-competitive conduct and an abuse of dominance; and
3. Qtel failed to comply with Orders and Instructions previously issued to it by ictQATAR to correct its conduct concerning Qtel’s marketing of its Virgin Mobile Services.

This decision was final and binding, and gave finality to the matter. ictQATAR required Qtel to immediately terminate its Qtel Virgin Mobile Services, remove all marketing materials and products from the marketplace, and cease all trading of Virgin Mobile Services by 4 August 2011. ictQATAR decisions and orders on 11 April 2011 also simultaneously released Guidelines on advertising, marketing and branding of telecommunications products and services in Qatar, which apply to Qtel, Vodafone and all their distributors, dealers and agents.

Closing comments

While ictQATAR’s instructions to Qtel to discontinue its Virgin Mobile Services would favour Vodafone, it remains to be seen whether Vodafone can recover the potential customers that have been ‘lost’ to Qtel’s Virgin Mobile Services, particularly as Qtel planned to automatically migrate all existing Qtel Virgin Mobile services customers to Qtel’s existing Hala service.

In any event, ictQATAR’s decision should be of some comfort to the telecommunications industry and consumers in Qatar. Although the regulator stopped short of determining that Virgin had been operating as a mobile virtual network operator through Qtel, the decision by ictQATAR to take firm action against an operator for anti-competitive conduct and non-compliance of ictQATAR’s instructions is still a positive sign. Given that Qtel had a monopoly over the telecommunications market until Vodafone’s entry in 2008, it is important to ensure that the new entrant be allowed to compete fairly and consumers are offered a viable alternative service provider.

1. To the extent that a telecommunications service provider provides e-commerce services, then Decree Law No. 16 of 2010 on the Promulgation of the Electronic Commerce and Transactions Law (E-Commerce Law) would also be applicable. The E-Commerce Law includes provisions on the legal treatment of and evidential weight given to data messages and electronic signatures, as well as consumer protection provisions.
2. Article 43 of the Telecommunications Law
3. Telecommunications By-Law No. 1 of 2009
4. Article 90 of the by-laws