



TRA Interim Decision

Termination Of Inbound International Traffic Case IT/D/22Apr06/02

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TRA Interim Decision

Termination of Inbound International Traffic Case IT/D/22Apr06/02

Between:

Emirates Integrated Telecommunications Company PJSC - (EITC)
P.O. Box 73000, Dubai,
United Arab Emirates

Referring Party

and

Emirates Telecommunications Corporation – (Etisalat)
P.O. Box 3838, Abu Dhabi,
United Arab Emirates

Respondent

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Section I: Summary of the Dispute

- 1.1 EITC made a Filing pursuant to the Interconnection Dispute Resolution Procedures (IDR Procedures) requesting the TRA to issue an Interim Decision on the dispute between EITC and Etisalat pertaining to the termination of inbound international traffic.
- 1.2 In its Filing, EITC requested the TRA to issue, pending the Decision in the main case of the interconnection dispute, an Interim Decision obliging Etisalat to terminate inbound international traffic for EITC at the same interconnection price, and on the same terms and conditions as it terminates calls originating from within the UAE.
- 1.3 In its response, Etisalat argued that it has not refused to terminate international inbound traffic which enters the UAE through EITC's network but that it will not terminate such traffic at the same price and on the same terms and conditions applicable to traffic originating from within the UAE.
- 1.4 Based on the above, EITC filed this dispute before the TRA requesting an Interim Decision.

Section II: The Proceedings

- 2.1 On 22nd April 2006, EITC submitted the following disputes before the TRA:
 - (a) Rates for Termination of Mobile Traffic;
 - (b) Termination of Inbound International Traffic;
 - (c) Mobile Number Portability; and
 - (d) Carrier Selection/Pre-Selection
- 2.2 On 25th April 2006, the TRA issued Directive No. (1) of 2006, ordering both EITC and Etisalat to interconnect their respective networks within a specific period of time.
- 2.3 On 1st May 2006, the TRA requested EITC to modify the redacted versions of its Filing and on the same day EITC resubmitted the same to the TRA.

- 2.4 On 3rd May 2006, the TRA delivered copies of EITC's Filings to Etisalat and invited Etisalat to submit, by 8th May 2006, its response on the interim relief requested by EITC in respect of Filings (a) and (b). The TRA also invited Etisalat to submit its substantive responses to the disputes (a) and (b) by 17th May 2006 and by 24th May 2006 for dispute (c) and by 31st May 2006 for dispute (d) above.
- 2.5 On 8th May 2006, Etisalat submitted its rebuttals on the interim relief sought by EITC in respect of disputes (a) and (b) above and requested the TRA to reject EITC's request for interim relief in both cases.
- 2.6 On 10th May 2006, the TRA notified both EITC and Etisalat that it had accepted to consider the interim relief sought by EITC in respect of disputes (a) and (b).
- 2.7 On 20th May 2006, EITC and Etisalat delivered to the TRA a joint letter stating that case (a) had been resolved.
- 2.8 On 21st May 2006 the TRA sent a letter to both EITC and Etisalat, suspending the procedural schedule in case (a), pending a formal application by EITC to withdraw the case in accordance with the IDR Procedures.

Section III: Fulfillment of Conditions to File a Direct Filing

- 3.1 EITC submitted its Direct Filing under Article 4.1.1 of the TRA's IDR Procedures. This Article reads as follows:

“Either Party may refer a Dispute to the TRA in writing if one of the Parties considers in good faith that it is unable to agree with another Party and if after the negotiation period required by these procedures has passed, one of the Parties is of the opinion that prolonged negotiations will not resolve the differences.”
- 3.2 EITC stated that it considers that the parties have reached an impasse with respect to this dispute and that any further attempts to negotiate are unlikely to resolve the differences between the two parties. EITC provided in its submission the history of the negotiations conducted between the two parties.
- 3.3 Etisalat argued in its rebuttal that EITC's request must be rejected by the TRA because the conditions stipulated under Article 4.1 have not been met. Etisalat substantiated its argument by stating that EITC could not

reasonably consider that the parties were unable to agree on the issue in dispute and further, that EITC had not acted in “good faith.” Etisalat also stated that it had offered alternative proposals but they were all refused or ignored by EITC. Etisalat provided its version in respect of the history of the negotiations.

- 3.4 The TRA has considered the history of the negotiations and the evidence presented by both parties in their respective submissions and is accordingly satisfied that the issue in dispute was a subject of extensive discussions in various meetings held by the representatives of both parties. In its submission, Etisalat confirmed that there were a number of meetings held between the two parties during the negotiating period and that in each of these meetings the issue of inbound international traffic was raised in one form or another but without reaching any conclusion.
- 3.5 The TRA takes the view that the mere fact that the Referring Party did not agree to proposals made by the Respondent does not necessarily lead to the absence of good faith because the Referring Party is not obliged to agree to any such proposals. Therefore, the TRA concludes that the parties have attempted to negotiate in good faith and that they were unlikely to reach agreement on the issue in dispute.

Section IV: Conditions to Request an Interim Decision

- 4.1 Article 6.2.1 in the IDR Procedures sets the conditions required for the TRA to issue an Interim Decision. Such conditions are as follows:
- (a) The issue is urgent; and
 - (b) the Referring Party is threatened with a disadvantage which would not be possible or feasible to redress if the situation or actions leading to this disadvantage were allowed to continue; and
 - (c) the damage to the Referring Party is seen to be more serious in weight than the potential harm to the Respondent.
- 4.2 In its submission, EITC argued that the issue is “urgent” because call termination services are an essential component of interconnection and that if EITC is unable to obtain call termination services for international traffic that enters the UAE through its international gateway, it will not be able to enter into supply arrangements with foreign operators and without such arrangements being in place, EITC will have to delay its launch. EITC further submitted that such a delay will cause significant harm to

EITC and Etisalat is unlikely to be at a disadvantage if the TRA is to issue an Interim Decision.

4.3 Etisalat, on the other hand, stated that the TRA must reject EITC's request for an Interim Decision because the conditions stipulated in Article 6.2 above have not been met. In support of its view, Etisalat explained as follows:

- (a) There was no urgency necessitating the issuance of an Interim Decision because EITC was in any event not ready to interconnect until 14th June 2006 and that further work and testing was required on the parties' respective networks in order to accept traffic from each other.
- (b) No significant harm will be caused if the TRA decides to leave the matter to be determined in accordance with the procedures for issuing the Decision in the main case.
- (c) EITC failed to provide reasons in support of the fact that immediate damage will be suffered if the Interim Decision is not issued.
- (d) If the Decision in the main case sets rates which are different from the rates set in the Interim Decision, it would be "practically impossible" for EITC to amend agreements which it may have entered into with international operators.
- (e) EITC will be "at liberty to undercut Etisalat's current inbound termination rates" if Etisalat is required to apply Terminating Call Services rates to EITC traffic received by Etisalat at a point of interconnection (POI) when that EITC traffic originated outside the UAE.

4.4 The TRA has carefully considered the arguments of both parties and concludes that there are merits in issuing an Interim Decision. In reaching the above conclusion, the TRA took into account the following issues:

- (a) The public interest and more specifically the interest of customers is of paramount importance in that customers must be able to place and receive calls from one end to another efficiently and effectively. This interest is stipulated in the Licenses of both EITC and Etisalat in Article 10.2 which states that "*the Licensee undertakes to adhere to the guiding principle that its Customers must be able to place calls to or receive calls from any valid telephone number.*"

- (b) If Etisalat does not accept the handover of EITC traffic that originated outside the UAE, the calls to Etisalat's customers in the UAE will be dropped.
- (c) By virtue of the fact that EITC has been granted the right to operate an international gateway and offer international services, implies that EITC must be able to handle both inbound and outbound traffic, including traffic destined to terminate on Etisalat's network.
- (d) From Etisalat's submissions it has not refused to terminate inbound international traffic entering the UAE through EITC's international gateway; rather, Etisalat's objection is that "Etisalat will not terminate such traffic at the same price and on the same terms and conditions as it terminates call traffic originating from within the UAE." Accordingly, the TRA took the view that it is possible to draw a distinction between the two issues, namely (a) the obligation to terminate inbound international calls and (b) the rates applicable to such traffic, to the extent that the first issue be decided under the requested Interim Decision and the second issue be left for the Decision in the main case.

Section V: The Interim Decision

- 5.1 From the foregoing, the TRA issues, in accordance with its IDR Procedures, the following Interim Decision:
- (a) Etisalat is hereby instructed to terminate on its networks any and all traffic bound for its networks that is presented to Etisalat at a defined POI, whether that traffic originated inside the UAE or outside the UAE.
 - b) Without prejudice to the Decision in the main case, Etisalat shall terminate EITC traffic that originated outside the UAE at the same rates and on the same terms and conditions as is applicable to traffic originating from within the UAE.
 - c) In the event that the rates set by the TRA in a Decision in the main case are different from the rates mentioned in (b) above, the rates set in the Decision will apply retrospectively from the date of the initial interconnection billing between the parties.
 - d) Both Etisalat and EITC shall collect and retain any and all billing data which would be necessary in the event of retrospective re-invoicing.