

Decision

National Roaming

Case Number: NR/D/19Mar08

Issue Date: 26 October 2008

REDACTED

DECISION BY

THE GENERAL AUTHORITY FOR REGULATING THE TELECOMMUNICATION
SECTOR (TRA) IN THE UAE

CONCERNING AN INTERCONNECTION DISPUTE

IN THE MATTER OF

National Roaming

Case Number NR/D/19Mar08

BETWEEN THE REFERRING PARTY:

Emirates Integrated Telecommunications Company PJSC, 2nd floor, Building 14,
Media City, Dubai Technology & Media Free Zone Authority, P.O. Box 73000, Dubai,
United Arab Emirates **(du)**

AND THE RESPONDENT:

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

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1. Proceedings

- 1.1 On 19th March 2008, EITC made a Filing pursuant to the TRA's Interconnection Dispute Resolution (IDR) Procedures requesting that the TRA order that Etisalat make the necessary preparations and begin the provisioning of National Roaming Service in the Western Region.
- 1.2 Contained within EITC's Filing was Article 3.4 ("Request for Interim Decisions") wherein EITC specifically requested that the relief sought in the Direct Filing be granted on an interim basis pending the resolution of the Case in its entirety.
- 1.3 On 15th April 2008, the TRA sent letter reference TRA/RA/08/194 to EITC wherein the TRA indicated its intention to review the case in its entirety as well as to consider EITC's request for an Interim Decision.
- 1.4 On 15th April 2008, the TRA also sent letter reference TRA/RA/08/193 to Etisalat. Under cover of this letter, the TRA advised Etisalat that the TRA had accepted the Case and delivered to Etisalat a Redacted copy of EITC's Direct Filing. The TRA further indicated that the invitation deadline for Etisalat's response to EITC's request for an Interim Decision would be 23rd April 2008.
- 1.5 On 23rd April 2008, Etisalat submitted a Rebuttal Filing wherein Etisalat specifically responded to EITC's request for an Interim Decision.
- 1.6 On 24th April 2008, the TRA delivered to EITC a copy of Etisalat's Rebuttal Filing on EITC's request for an Interim Decision.
- 1.7 On 4th May 2008, Etisalat submitted a Rebuttal Filing on the main Case.
- 1.8 On 6th May 2008, the TRA delivered to EITC a copy of Etisalat's Rebuttal on the main Case. Furthermore, the TRA indicated that the invitation deadline for EITC's response to Etisalat's Rebuttal in the main Case would be 28th May 2008.
- 1.9 On 28th May 2008, EITC submitted its Surrebuttal Filing in the main Case to the TRA.
- 1.10 On 29th May 2008, the TRA delivered to Etisalat a redacted version of EITC's Surrebuttal Filing in the main Case and invited Etisalat to respond by 22nd June 2008.
- 1.11 On 29th May 2008, the TRA issued an Interim Decision denying EITC's requests for an Interim Decision and delivered an Unredacted copy to EITC and a Redacted copy to Etisalat.

- 1.12 On 1st June 2008 and 3rd June 2008, respectively, Etisalat and EITC acknowledged the receipt of TRA's Interim Decision.
- 1.13 On 22nd June 2008, Etisalat submitted its Surrebuttal in the main Case to the TRA.
- 1.14 On 25th June 2008, the TRA delivered EITC a version of Etisalat's Surrebuttal in the main Case.

2. Requests

- 2.1 In its Direct Filing, EITC requested that the TRA issue the following orders:
 1. *“that Etisalat must commence the supply of national roaming to du in the Western Region (as defined in Attachment I of the Interconnection Agreement) within 30 calendar days of the date of this order on the prices, terms and conditions set out in the Interconnection Agreement;*
 2. *from the date of this order, that Etisalat must commence undertaking all preparatory works required to implement national roaming services in the Western Region within the timeframe specified in Order 1. Etisalat must finalise all such preparatory work prior to the commencement of the national roaming service in Western Region;*
 3. *from the date of this order, Etisalat must provide both du and TRA with weekly reports (continuing until the commencement of national roaming services in the Western Region) that covers:*
 - (a) *the preparatory work it has undertaken as at the reporting date;*
 - (b) *a list of the outstanding items of preparatory work that need to be completed prior to the commencement date of national roaming in the Western Region; and*
 - (c) *the dates on which those outstanding items of preparatory work are to be completed, which must not be later than the commencement date of national roaming in the Western Region;*
 4. *that the supply of national roaming service in the Western Region is to continue for such period of time as Etisalat is required to supply the national roaming service to du in respect of other areas in the UAE that are already subject to national roaming, including for such further period of time as may be agreed by the parties or specified by the TRA (as the case may be); and*

5. *that a failure by Etisalat to commence the supply of national roaming services in the Western Region within the time period specified in Order 1 above will result in Etisalat being considered to be in breach of the Regulatory Framework and will result in enforcement action by the TRA.”¹*

3. Interpretation of the IDR Procedures

In its review of the instant Dispute, the TRA has identified several material disagreements between the Licensees regarding the appropriateness of the Filing under the IDR Procedures as well as the interpretation of the requirements described therein. Accordingly, the TRA has examined these arguments and provided its respective determinations.

3.1 Subject Matter

- 3.1.1 In its Direct Filing, EITC introduced the Dispute with the assertion that, *”Section 3.2 of the TRA’s Interconnection Dispute Resolution Procedures (IDRPs) provides that IDRPs apply in respect of:*

- a. *pre-contractual interconnection disputes; and*
- b. *disputes relating to or arising out of an interconnection agreement, including the implementation, execution, modification, compliance, termination or cancellation of the agreement.”²*

- 3.1.2 Accordingly, EITC contended that its Direct Filing, *“...relates to Etisalat’s failure to implement and comply with, the terms of Schedule 4 of the Interconnection Agreement, and underlying obligations in the Regulatory Framework on which those contractual obligations are based.”³*

- 3.1.3 These “underlying obligations”, EITC argued, are derived from, *“...the terms of [Etisalat’s] public telecommunications licence and the TRA’s National Roaming Policy to offer national roaming services to du in those geographic/population areas of the UAE that have not been covered by du’s mobile network in accordance with the population coverage obligations in du’s licence.”⁴*

¹ EITC Filing, 19 March 2008, Page i

² EITC Filing, 19 March 2008, Page 2

³ EITC Filing, 19 March 2008, Page 3

⁴ EITC Filing, 19 March 2008, Page 11

3.1.4 With respect to its own roll-out obligations, EITC referenced Appendix 1 of its License which provides the following population based roll-out and coverage thresholds which EITC was obliged to achieve:

Confidential information – Redacted to 3.1.5

3.1.5 Relying on the assertion that it had, in fact, satisfied its License obligations in this regard, EITC concluded that, “...pursuant to the terms of its licence, du is entitled to obtain national roaming in those parts of the UAE in which it has not yet deployed its own mobile infrastructure, to achieve nationwide coverage. The Western Region is such an area.”⁵

3.1.6 In its Rebuttal Filing, Etisalat argued that the Dispute was not sufficiently related to the Interconnection Agreement to justify EITC’s submission of the matter to the TRA under the IDR Procedures and that the TRA should therefore terminate the Case in its entirety or reject the Requests contained in EITC’s Direct Filing.

3.1.7 In this regard, Etisalat contended that, “...EITC’s Direct Filing fails to meet even [the] most basic requirement of clearly explaining exactly what pre-contractual or interconnection agreement related issue it is alleged that EITC and Etisalat are in dispute over.”⁶

3.1.8 Accordingly, Etisalat argued that since EITC’s Direct Filing was submitted after the Interconnection Agreement had been implemented; the historical recitation upon which EITC based many of its arguments in this Case was inappropriate for submission under the IDR Procedures.

⁵ EITC Filing, 19 March 2008, Page 17

⁶ Etisalat Filing, 4 May 2008, Page 6

- 3.1.9 To illustrate this point, Etisalat contended that despite the fact that, “...*the Interconnection Agreement was put into effect on 8 February 2007 by TRA Directive No. 1 of 2007.....EITC’s Direct Filing refers to certain conduct alleged to have taken place before this date...*”.⁷
- 3.1.10 Additionally, Etisalat surmised that the fact that the Interconnection Agreement was implemented via TRA Directive (as opposed to being signed by the Parties) disallowed its characterization as being agreed to, therefore disqualifying a determination that the Dispute arose out of an “agreement” consequently precluding its consideration under the IDR Procedures.
- 3.1.11 In addition to its arguments that the foundation of EITC’s Direct Filing was insufficiently based on an agreed upon Interconnection Agreement, Etisalat also made the argument that the enforcement of its regulatory obligations was an inappropriate subject matter for review under the IDR Procedures.
- 3.1.12 Accordingly, Etisalat argued that consideration of a Licensee’s compliance with the TRA’s Regulatory Framework should be, “...*between the TRA and the relevant concerned party having regard to the TRA’s regulatory compliance related enforcement powers, and are not appropriate to be raised or addressed under the IDR Procedures pursuant the TRA’s interconnection dispute resolution powers.*”⁸
- 3.1.13 In its examination of the Parties’ respective arguments, the TRA gives ample consideration to Article 3.2 of the IDR Procedures which specifies that the IDR Procedures may be applied to, “(a) *Pre-contractual interconnection disputes; and (b) disputes relating to or arising out of an interconnection agreement...*”.
- 3.1.14 In this regard, the TRA considers that the scope of the IDR Procedures includes matters which are derived directly out of the Interconnection Agreement as well as those matters which are so integrally tied to the Interconnection Agreement that they cannot be examined outside the context of the Interconnection Agreement.
- 3.1.15 The TRA also refers to Schedule 4 of the Interconnection Agreement which clearly identifies National Roaming as a component of the Interconnection Agreement and a matter which was specifically set aside for further negotiation between the Licensees subsequent to the implementation of the Interconnection Agreement.

⁷ Etisalat Filing, 4 May 2008, Page 6

⁸ Etisalat Filing, 4 May 2008, Page 35

- 3.1.16 Accordingly, the TRA considers that the mere fact that the negotiation of various interconnection issues pre-dated the actual implementation of the Interconnection Agreement does not necessarily disqualify their consideration in a Dispute if such negotiations are relevant to a clear and complete contextualization of the matters at issue in the Dispute.
- 3.1.17 In this regard, the TRA considers that the Interconnection Agreement is fundamentally comprised of issues which were the subject of extensive negotiation prior to its actual implementation, some of which were unresolved at the time of its implementation.
- 3.1.18 With regard to Etisalat's argument that its regulatory obligations should not be the subject of a TRA review in a Dispute, the TRA considers that the scope of the TRA's conciliatory mandate in this regard is clearly defined in Federal Law by Decree No. 3 of 2003, as amended ("the Law").
- 3.1.19 Accordingly, the TRA would specifically refer to Article 38 of the Law which stipulates that the TRA, "*...shall take any needed action as deemed necessary to facilitate the process of Interconnection and to monitor the compliance of all parties to the provisions of the Interconnection Agreements.*"
- 3.1.20 Additionally the TRA references Article 39(1) of the Law which states that if, "*...there is a dispute in relation to Interconnection the parties to the dispute may refer the dispute to the Authority for adjudication and the issuance of binding resolutions.*"
- 3.1.21 Based on these citations, the TRA considers that the Law clearly grants to the TRA the authority to intervene and resolve disputes between the Licensees which are related to the provision of Interconnection Services.
- 3.1.22 Moreover, the TRA considers that due to the fact that the substance of this Dispute is inextricably tied to the Interconnection Agreement itself, the submission of such matters for TRA review under the IDR Procedures was appropriate.
- 3.1.23 Finally, the TRA does not consider that the IDR Procedures create any proscriptive limitations on the power or scope of the TRA's adjudication of matters related to Interconnection and/or Interconnection Agreements as granted to the TRA via the Law.

3.2 Negotiation and Notice Obligations

- 3.2.1 In its Direct Filing, EITC acknowledged the expectation described in the IDR Procedures that the Parties to a Dispute pursue an amicable resolution of the relevant issues prior to referring the

matter to the TRA via the IDR Procedures and that the commencement of negotiation of such resolution be formally transmitted to both the TRA and the adverse Party.

- 3.2.2 Accordingly, EITC stated that, *“Section 4.2 of the IDRPCs requires the party requesting negotiation of an interconnection matter to notify the TRA of its request for negotiation. Section 4.3.2 of the IDRPCs states that in the absence of such notice, the TRA will not consider the requisite 90 day negotiation period as having been satisfied.”*⁹
- 3.2.3 However, EITC argued that its obligation to notify the TRA in this regard was nullified due to the fact that, *“...this requirement should only apply to pre-contractual disputes and is not intended to apply to interconnection disputes arising under the Interconnection Agreement.”*¹⁰
- 3.2.4 Notwithstanding its presumptuous proclamation of exemption from this obligation, EITC argued that it had, in fact, notified the TRA of its desire to commence negotiations with Etisalat during a conversation between the respective senior executives of EITC, Etisalat and the TRA.
- 3.2.5 Specifically, EITC asserted that, *“As the issue of national roaming in the Western Region was raised in CEO discussions with the Director-General of the TRA in December 2006 and clause 2.2(b) of Schedule 4 of the Interconnection Agreement formed part of the TRA’s Directive on 8 February 2007, du respectfully submits that the TRA has had prior notice of negotiations on the issue of national roaming in the Western Region.”*¹¹
- 3.2.6 With respect to EITC’s obligation to notify Etisalat of its request to commence negotiations, EITC stated that, *“On 11 January 2007, du wrote to Etisalat requesting that the parties commence discussions on the provision of national roaming in the Western Region. In du’s view, this marked the commencement date of the 90 days minimum negotiation period.”*¹²
- 3.2.7 With respect to the substance of the actual negotiations, EITC referenced Article 4.1.1 of the TRA’s IDR Procedures which states the requirement that, *“To be able to lodge an interconnection dispute under the IDRPCs, a party must consider in*

⁹ EITC Filing, 19 March 2008, Page 4

¹⁰ EITC Filing, 19 March 2008, Page 4

¹¹ EITC Filing, 19 March 2008, Page 4

¹² EITC Filing, 19 March 2008, Page 4

good faith that it is 'unable to agree' with the other party and...that prolonged negotiations will not resolve the differences."¹³

- 3.2.8 However, EITC argued that Etisalat exhibited a non-responsive posture towards EITC's invitation to negotiate the matter which prevented the Parties from conducting any substantive discussions.
- 3.2.9 Accordingly, EITC submitted as evidence a series of correspondences which it had sent to Etisalat which EITC claimed were illustrative that, *"...du has made significant attempts to negotiate with Etisalat on the issue of national roaming in the Western Region and in most instances has either not received any response from Etisalat, or received responses which make no reasonable attempt to progress negotiations between the parties."*¹⁴
- 3.2.10 However, EITC contended that the "unable to agree" language in the IDR Procedures is somewhat ambiguous.
- 3.2.11 As such, EITC attempted to resolve this perceived ambiguity by asserting that, *"The TRA has not yet considered the meaning of the phrase 'unable to agree' in a dispute about the implementation of the Interconnection Agreement. However, du considers that the phrase "unable to agree" also covers constructive refusals to negotiate."*¹⁵
- 3.2.12 EITC contended that Etisalat's unwillingness to negotiate was a constructive refusal and, therefore, satisfied the relevant requirement in the IDR Procedures.
- 3.2.13 Contrary to EITC's contentions of non-responsiveness, Etisalat asserted that, *"...Etisalat discussed the issue of national roaming in the Non-Negotiated Parts of the Western Region with EITC in the parties' Interconnection Management Committee (IMC) meetings held on 28 June 2007 and 20 August 2007, and further at a specially convened meeting on 12 August 2007, and Etisalat demonstrated a clear willingness to attend further meetings with EITC to discuss the matter further."*¹⁶
- 3.2.14 Accordingly, Etisalat contended that, *"...Etisalat does not believe that EITC can meet the threshold requirement of in good faith considering that the parties are unable to agree with each other on this issue, as required by Article 4.1 of the IDR Procedures in*

¹³ EITC Filing, 19 March 2008, Page 3

¹⁴ EITC Filing, 28 May 2008, Page 9

¹⁵ EITC Filing, 19 March 2008, Page 3

¹⁶ Etisalat Filing, 4 May 2008, Page 11

*order for EITC to be able to refer this alleged 'dispute' to the TRA.*¹⁷

- 3.2.15 In its examination of the notice requirements which are described in the IDR Procedures, the TRA considers that the practical implications of requiring notice must be considered in conjunction with the literal behavioural requirements.
- 3.2.16 Accordingly, the TRA notes that since the issuance of the TRA's Directive No. (1) of 2007 and consequent implementation of the Interconnection Agreement it has been uniformly understood within the industry that various matters were specifically held as open for ongoing negotiations.
- 3.2.17 In this regard, the TRA would refer to its letters reference TRA/DRA/E-1/0436 and TRA/DRA/E-1/4052 dated 28th and 30th November 2005, respectively, wherein the TRA specifically advised both Licensees that the TRA considered that the formal commencement date of interconnection negotiations would be 30th November 2005.
- 3.2.18 Furthermore, the TRA notes that since the inception of these negotiations, the issue of National Roaming Service has historically been an issue of substantial contention and careful deliberation by both Licensees.
- 3.2.19 Accordingly, the TRA considers that, irrespective of any lapses in the communications between the Licensees, the pendency of such negotiations and the specific issues which they encompassed (i.e. National Roaming Service) have been continuous.
- 3.2.20 Ultimately, the TRA considers that despite the Parties' disparate positions regarding the delivery of notice and the diligence of negotiations, the relevant notice and negotiation imperatives described in the IDR Procedures were achieved to the satisfaction of the TRA.

3.3 Demonstration of Harm

- 3.3.1 In its Direct Filing, EITC argued that due to Etisalat's refusal to provide roaming services in the Western Region, EITC was unable to provide nationwide mobile coverage to its customers.
- 3.3.2 Referencing the fact that there are certain parts of the UAE in which EITC has not deployed its own mobile network, EITC indicated that in some such areas, "...du's customers can obtain mobile coverage through the national roaming service currently

¹⁷ Etisalat Filing, 4 May 2008, Page 8

provided by Etisalat....However, there are also other areas in the UAE that are currently excluded from the scope of the national roaming service. These areas include the Western Region.”¹⁸

3.3.3 Accordingly, EITC contended that such limitations in its geographic coverage is, “...a particularly significant issue where consumers are able to obtain greater levels of geographic coverage from the incumbent’s legacy network...”¹⁹

3.3.4 In conjunction with this argument, EITC presented the results of a market research project which examined several factors related to consumer perceptions in the UAE.

3.3.5 As per the results of this research, EITC cited the following conclusions as consistent with its contentions:

Confidential information – Redacted to 3.3.6



3.3.6 Accordingly, EITC concluded that these findings illustrate that,

Confidential information – Redacted to 3.3.7



3.3.7 In its Rebuttal, Etisalat concluded that flaws in EITC’s arguments were representative of a procedural defect in EITC’s entire Filing.

3.3.8 In this regard, Etisalat referenced Annex 1 to the IDR Procedures which requires that the Referring Party present a, “...description of actual or potential damage in case the issue in Dispute is not solved.”

3.3.9 Furthermore, Etisalat offered the following description of its perspective with respect to EITC’s arguments:

¹⁸ EITC Filing, 19 March 2008, Page 12

¹⁹ EITC Filing, 19 March 2008, Page 12

²⁰ EITC Filing, 19 March 2008, Page 13

²¹ EITC Filing, 19 March 2008, Page 13

“[w]hen EITC customers roam on Etisalat’s network, they do not actually receive EITC’s mobile services...they receive Etisalat’s mobile services...The only way for EITC customers to receive EITC mobile services in the Western Region is for EITC to roll out its network in the Western Region so as to be able to serve those customers...EITC’s Direct Filing provides absolutely no evidence or submissions which suggest that it is either not technically or economically possible or feasible for EITC to roll out its own network in the Western Region...;

Any inability of EITC customers to make mobile calls in the Western Region and any lack of geographic and/or population coverage that EITC has in the Western Region is not and will not be caused by the TRA’s failure to grant the EITC Requests in this Case, but rather by EITC’s own commercial decision not to roll out its network in the Western Region.”²²

3.3.10 Additionally, Etisalat argued that any limitations that EITC did experience with regard to its mobile network did not create a competitive disadvantage.

3.3.11 In this regard, Etisalat argued that the actual number of du’s customers which would be likely to roam in the Western Region is “statistically insignificant” and that since its entry into the UAE market, “...EITC’s performance by all accounts indicates that EITC appears to be doing competitively and commercially extremely well...”²³

3.3.12 In its Surrebuttal, EITC argued that Etisalat’s Rebuttal contained arguments and conclusions which were largely irrelevant to the Dispute.

3.3.13 Accordingly, EITC argued that the, “...issue is not whether there is a high or low number of customers that require national roaming in the Western Region at a particular point in time. The issue is one of customer perception and the importance that customers attribute to the availability of nationwide coverage.”²⁴

3.3.14 In this regard, EITC contended that the, “...lack of nationwide coverage reduces the propensity of a customer to subscribe to a mobile service that does not offer the benefit of nationwide coverage.”²⁵

3.3.15 Additionally, EITC argued that its financial performance to date was based on a myriad of factors which are completely unrelated to its ability to receive National Roaming Service from Etisalat.

²² Etisalat Filing, 4 May 2008, Page 24 and 25

²³ Etisalat Filing, 4 May 2008, Page 26

²⁴ EITC Filing, 28 May 2008, Page 18

²⁵ EITC Filing, 28 May 2008, Page 18

- 3.3.16 Accordingly, EITC submitted that, “...*the financial performance of du is an irrelevant consideration...*”²⁶
- 3.3.17 In its Response to EITC’s Surrebuttal, Etisalat raised the contention that, even though EITC’s market survey was redacted from the documents delivered to Etisalat, the validity of the conclusions is based on the causality between the results and roaming services.
- 3.3.18 In this regard, Etisalat posited that, “*To the extent that the redacted material in the EITC Surebuttal may contain evidence regarding the dissatisfaction of EITC’s customers with the quality of EITC’s mobile network coverage, the TRA should ensure that such evidence relates directly to concerns regarding a lack of coverage in the Western Region, and not, for example, to black spots and poor coverage in other parts of EITC’s network.*”²⁷
- 3.3.19 Notwithstanding, Etisalat argued that, “...*there is nothing in the material contained within the EITC Direct Filing nor the EITC Surebuttal which establishes that EITC could not, if it so chose, invest in expanding and developing its network...to match or exceed the coverage of Etisalat’s network.*”²⁸
- 3.3.20 In its consideration of the Parties’ arguments in this regard, the TRA recognizes that an essential element of a Direct Filing under the IDR Procedures is the demonstration of actual or potential harm which has or may befall the Filing Party absent resolution of the underlying issue(s).
- 3.3.21 With respect to this criteria, the TRA considers that the Parties’ respective submissions have not disagreed regarding the fact that EITC’s mobile network does not have the same breadth of geographic coverage as Etisalat’s.
- 3.3.22 However, the Parties have offered substantially divergent perspectives on the reason for such geographic coverage disparities as well as the practical ramifications of such.
- 3.3.23 Irrespective of the Parties’ disagreement in this regard, the TRA does find merit in EITC’s assertion that it suffers a competitive disadvantage due to network coverage limitations which could be remedied through the provision of National Roaming Service which Etisalat is obliged to provide under the specific parameters described in the TRA’s Regulatory Framework.

²⁶ EITC Filing, 28 May 2008, Page 20

²⁷ Etisalat Filing, 22 June 2008, Page 26

²⁸ Etisalat Filing, 22 June 2008, Page 27

4. Interpretation of the Interconnection Agreement

4.1 In its review of the instant Dispute, the TRA takes note that the Parties have relied heavily on their respective interpretations of the Interconnection Agreement in the presentation of their arguments.

4.2 In this regard, as a fundamental premise of its Direct Filing, EITC argued that Etisalat, "...has specific contractual obligations under clause 2.2(b) of Schedule 4 of the Interconnection Agreement to negotiate in good faith to agree the exact areas of the Western Region in which it has sufficient network capacity to make national roaming available to du."²⁹

4.3 With respect to the Interconnection Agreement, EITC specifically cited Clause 2.2 (b) and (c) of Schedule 4 which stipulate:

"As soon as possible (but in any event, no later than 1 Calendar Month) after the signing of the Interconnection Agreement by both Parties, the Parties will commence negotiations in good faith, under the auspices of the TRA, with the intention of agreeing exact areas in the Western Region in which Etisalat has sufficient GSM Network capacity available to make the National Roaming Service available to du.

Subject to the Parties reaching agreement under clause 2.2(b) above, as soon as possible (but in any event, no later than 3 Calendar Months) after the signing of this Interconnection Agreement by both Parties, Etisalat will make available to du the National Roaming Services in the areas of the Western Region agreed in accordance with clause 2.2(b) above..."

4.4 As previously noted in Article 3.2.9 of this Decision, EITC argued that the negotiations envisioned in Clause 2.2(b) did not progress due to Etisalat's failure to make itself available for such discussions.

4.5 Accordingly, EITC concluded that, "*Etisalat has breached both the letter and spirit of clause 2.2(b) of Schedule 4 of the Interconnection Agreement by failing to negotiate with du in good faith and within the specified timeframes.*"³⁰

4.6 In its Rebuttal Filing, Etisalat argued that the fact that the Interconnection Agreement was never memorialized by the Licensees would preclude the attachment of a binding character to any obligations which were contingent on such finalization.

4.7 Specifically, Etisalat argued that, "*...it has not been appropriate for Etisalat to sign the Interconnection Agreement due to its regulatory imposition on the parties by the TRA prior to their having concluded their*

²⁹ EITC Filing, 19 March 2008, Page 11

³⁰ EITC Filing, 19 March 2008, Page 19

commercial agreement in relation to the contents thereof. Accordingly, no formal obligation to negotiate under clause 2.2(b) of Schedule 4 to the Interconnection Agreement has yet arisen [emphasis added]...”³¹

- 4.8** EITC, however, argued that the enforceability of the behavioral obligations contained within the Interconnection Agreement by the Licensees was not predicated on the actual signature of the document.
- 4.9** In this regard, EITC posited that the, “...*TRA Directive creates legally binding obligations on both parties to implement and comply with the terms of the Interconnection Agreement. In issuing the TRA Directive, du considers that the TRA intended to give immediate effect to all provisions of the attached Interconnection Agreement.*”³²
- 4.10** Ultimately, EITC concluded that Etisalat’s arguments in this regard would effectively undermine or wholly invalidate, for an indefinite period of time, any other conditional aspects of the Interconnection Agreement due to the fact that actual signatures had never been affixed to the document.
- 4.11** As such, EITC submitted that, “...*if Etisalat’s interpretation was accepted and Etisalat maintained its current position of not signing the Interconnection Agreement, then any obligation that was contingent upon the signing of the agreement would not have any effect for the period of time that Etisalat maintains this position.*”³³
- 4.12** In its Surrebuttal, Etisalat drew attention to the specific references in the Interconnection Agreement to its “Effective Date”.
- 4.13** In this regard, Etisalat argued that the “Effective Date” as referenced elsewhere in the Interconnection Agreement was clearly distinguishable from specific references to its actual signing.
- 4.14** Accordingly, Etisalat noted, “*As a matter of legal interpretation, Etisalat accepts that TRA Directive No. 1 of 2007 has put the document attached to that Directive, namely the Interconnection Agreement, into legal effect. Accordingly...Etisalat can accept the logic in interpreting references to the “Effective Date” of the Interconnection Agreement (such as in clause 3.3(a) of the Interconnection Agreement) as being to the date when TRA Directive No. 1 of 2007 put the Interconnection Agreement into effect.*”³⁴
- 4.15** Furthermore, Etisalat argued that, “...*clause 2.2(b) of Schedule 4 to the Interconnection Agreement does not refer to the “Effective Date” of the*

³¹ Etisalat Filing, 4 May 2008, Page 36

³² EITC Filing, 28 May 2008, Page 14

³³ EITC Filing, 28 May 2008, Page 14

³⁴ Etisalat Filing, 22 June 2008, Page 19

*Interconnection Agreement, but rather to the act of signing the Interconnection Agreement by both parties.*³⁵

- 4.16** As such, Etisalat maintained its position that the specific references to the signing of the document should be strictly adhered to and as such Etisalat had no obligation to negotiate National Roaming Service.
- 4.17** In addition to the non-binding nature which Etisalat ascribed to the obligation, Etisalat also argued that there was insufficient specificity regarding the actual scale and scope of any such obligation to make performance possible.
- 4.18** Due to the fact that the actual interconnection service requested by EITC was described in the Interconnection Agreement in a manner which presupposed additional negotiations, Etisalat contended that it is, *“...impossible for there to be any breach of either the letter or the spirit of this obligation unless and until the actual areas of the Western Region in which the national roaming service is required to be supplied by EITC and in which it is possible for Etisalat to supply the national roaming service to EITC have first been agreed by the parties.”*³⁶
- 4.19** In its Surrebuttal, however, EITC responded that, *“It should be obvious to Etisalat that du’s request (and this interconnection dispute) is in respect of those parts of the Western Region in which Etisalat does not currently supply national roaming to du.”*³⁷
- 4.20** In its review of the Parties’ respective arguments, the TRA notes that Etisalat’s fundamental obligation to provide National Roaming Service to EITC is derived from the TRA’s Regulatory Framework, and that the Interconnection Agreement itself merely serves to structure, organize and manage the incremental performance of the underlying elements of this regulatory obligation.
- 4.21** In this regard, the TRA notes that the Interconnection Agreement is reflective of many of the collaborative agreements arrived upon by the Licensees in their related negotiations.
- 4.22** Accordingly, the TRA notes that the Licensees’ attributed a specific geographic character to National Roaming Service (i.e. the “Western Region”).
- 4.23** Furthermore, the TRA notes that the Licensees attached specific schedules and chronological parameters to such discussions.

³⁵ Etisalat Filing, 22 June 2008, Page 19

³⁶ Etisalat Filing, 4 May 2008, Page 38

³⁷ EITC Filing, 28 May 2008, Page 13

- 4.24** In this regard, the TRA notes that the relevant regulatory imperative is defined in Article 3.5 of the TRA's Interconnection Instructions, Version 1.2, which stipulates:
- “National Roaming Services offer the Licensed Operator the possibility of using an existing mobile network belonging to the Designated Licensed Operator. Typically, national roaming services are services used to offer Users coverage within a country in areas where a Licensed Operator has no coverage.”*
- 4.25** The instant Case, in and of itself, is indicative of the fact that the clear intention of the TRA as plainly defined in its Regulatory Framework has not been achieved.
- 4.26** Accordingly, the TRA considers that Etisalat has an obligation to provide National Roaming Service to EITC in a manner consistent with the TRA's Regulatory Framework and that both Etisalat and EITC have an obligation to work cooperatively to achieve this end.
- 4.27** While the TRA had intended that the implementation of the Interconnection Agreement would facilitate the achievement of this fundamental imperative, the TRA considers that the Interconnection Agreement shall not be an impediment to achieving this goal.
- 4.28** Furthermore, the TRA considers that the Regulatory Framework does not distinguish National Roaming Service based on geographic criteria nor are the Parties' respective License obligations predicated on a schedule in the Interconnection Agreement.
- 4.29** To the contrary, the TRA considers that the Interconnection Agreement is inherently intended to serve as an operational vehicle to accomplish the fundamentally imperative objectives described in the Regulatory Framework.
- 4.30** However, the TRA considers that in this instance, Etisalat has interpreted and applied the mechanisms described in the Interconnection Agreement in a manner which is contradictory to its principal and unambiguous obligation to provide National Roaming Service to EITC.

5. Conclusion

- 5.1 In its review of this Case and the rendering of this Decision, the TRA has relied on the relevant aspects of the Law, the Regulatory Framework and the applicable License obligations.
- 5.2 Accordingly, the TRA notes that Article 14 of the Law provides the TRA with the power to issue regulations, orders, resolutions and procedures with respect to the telecommunications sector.
- 5.3 Additionally, Article 13 of the Law specifies that the TRA shall exercise its powers to:
- “...ensure that the Telecommunication Services provided throughout the State, are sufficient to satisfy the public demands of those who wish to make use of such services ...”*
- 5.4 With respect to the TRA’s Regulatory Framework, Article 3.5 of the TRA’s Interconnection Instructions, Version 1.2 states that the, *“...Designated Licensed Operator must offer National Roaming Services for the retail services which are offered to its own customers...”*.
- 5.5 Furthermore, Article 2 of the TRA’s National Roaming Services Policy, Version 1.0, stipulates that:
- “Etisalat shall be obliged to provide National Roaming Services in the geographic and/or population coverage areas not covered by the second mobile licensee in accordance with its mobile network rollout as specified in its license.”*
- 5.6 As noted in Article 3.1.4 above, EITC’s License obligation in this regard is to roll-out its own mobile network sufficiently to provide coverage to [REDACTED] **(Confidential information – Previous figure redacted)** of the UAE population.
- 5.7 Additionally, respectively Article 4 and 2 of the TRA’s National Roaming Services Policy, Version 1.0, stipulates, among other matters that:
- “Etisalat shall negotiate with the second mobile licensee the terms, conditions and prices for National Roaming Services.”* and
- “The TRA will inform both licensees when Etisalat’s requirement to offer national roaming expires.”*
- 5.8 For the avoidance of doubt, the TRA would note that EITC has fulfilled its population based roll-out and network coverage obligations and that, furthermore, the TRA has never advised the Licensees that Etisalat’s obligation in this regard had expired.

- 5.9** With respect to Etisalat's License obligations, the TRA notes that Article 10.5 of Etisalat's Telecommunications License No. 1/2006 ("the License") stipulates that:
- "In accordance with the Regulatory Framework in effect at the time, the Licensee shall make available national roaming services to any Other Licensed Operator authorized by the TRA to make use of national roaming services and under the terms, conditions and prices as determined by the TRA."*
- 5.10** Based on the foregoing citations, the TRA considers that there is no uncertainty or ambiguity whatsoever regarding Etisalat's obligation to provide National Roaming Service to EITC.
- 5.11** Notwithstanding, the TRA recognizes that in all of its Requests, EITC has asked that the TRA grant specific relief with respect to the provision of National Roaming Service as it relates to a particular area of the UAE and has referred to that area as the "Western Region".
- 5.12** However, the TRA considers that EITC's License entitlement to receive National Roaming Service is population based and, therefore by extension, Etisalat's corollary License obligation to provide National Roaming Service is population based.
- 5.13** In this regard, the TRA considers that the "Western Region" designation merely identifies a particular geographic area and does not serve any greater purpose with respect to the population based Interconnection Service which is at issue in this Case.
- 5.14** Accordingly, while the TRA does consider that the geographic descriptions of the "Western Region" which are contained in EITC's Direct Filing may be useful to the Licensees for ease of reference, the TRA does not attribute any other substantive value to the term.
- 5.15** In this vein, the TRA considers that provision of National Roaming Service in the so-called "Western Region" is fundamentally indistinguishable from National Roaming Service in any other location in the UAE where Etisalat currently provides National Roaming Service and, therefore, there are no geographic considerations which are germane to the determination of the terms, prices and conditions which characterize the service in the instant Case.
- 5.16** Moreover, the TRA considers that Etisalat maintains a continuing obligation to provide National Roaming Service throughout the entire UAE in any area which exceeds EITC's population based roll-out and coverage obligations.
- 5.17** Accordingly, the TRA considers that Etisalat has an unqualified obligation to provide National Roaming Service to EITC in any

geographic region which is outside the scope of EITC's population based roll-out and coverage obligations.

6. Decisions

6.1 EITC Request (1)

The TRA Orders that, Etisalat shall provide National Roaming Service within the specific geographic area which is described as the "Western Region" in EITC's Direct Filing³⁸ at the same prices, terms and conditions as the National Roaming Service is being provided by Etisalat in other regions of the UAE at the date of this Order. Furthermore, the provision of National Roaming Service shall be in accordance with the timescales described in Article 2.3 of Schedule 4 to the Interconnection Agreement.

6.2 EITC Request (2)

The TRA considers that this Request addresses the lesser included behaviors which are implicitly incorporated into EITC Request (1) and are, therefore, logically redundant and unnecessary.

Accordingly, the TRA denies this Request.

6.3 EITC Request (3)

The TRA considers that this Request solicits TRA intervention which would, in this instance, be overly burdensome to Etisalat and unnecessary to the satisfaction of the Decision in this Case.

Accordingly, the TRA denies this Request.

6.4 EITC Request (4)

The TRA considers that this Request addresses continuing regulatory obligations which have previously been determined and clearly described in the relevant portions of the TRA's Regulatory Framework.

Accordingly, the TRA denies this Request.

6.5 EITC Request (5)

The TRA considers that this Request solicits preemptive and anticipatory regulatory determinations which would properly be left to the discretion of the TRA.

³⁸ EITC Filing, 19 March 2008, Page 1 (see footnote 1)

Accordingly, the TRA denies this Request.

7. Effective Date

This Decision shall take effect on the day it is communicated in writing to the Parties.

8. Publication

At its sole discretion, the TRA reserves the right to make public this Decision, or any parts thereof.

9. Acknowledgement and Compliance

- 9.1** The Parties shall each notify the TRA in writing of its receipt of this Decision within one (1) day of the date thereof.
- 9.2** EITC shall notify the TRA within one (1) day of its submission of a written request for National Roaming Service as described in this Decision.
- 9.3** Etisalat shall notify the TRA immediately upon its acceptance of EITC's written request as well as within one (1) day of its actual provisioning of National Roaming Service as described in this Decision.