



United Arab Emirates



Interim Decision

National Roaming - Western Region

Case Number: NR/D/19Mar08

Issue Date: 29th May 2008

REDACTED

Telecommunications Regulatory Authority (TRA)
P O Box 26662, Abu Dhabi, United Arab Emirates (UAE)
www.tra.gov.ae



**Interim Decision, National Roaming - Western Region,
Case NR/D/19Mar08, Issued 29th May 2008**

INTERIM DECISION BY

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

CONCERNING AN INTERCONNECTION DISPUTE

IN THE MATTER OF

National Roaming - Western Region

Case Number NR/D/19Mar08

BETWEEN THE REFERRING PARTY:

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

AND THE RESPONDENT:

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



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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 services 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 version of EITC's Direct Filing. The TRA further indicated that the 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 In its Filing, Etisalat specifically requested that the TRA reject EITC's request for the TRA to issue an Interim Decision.

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*



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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 the 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*

2.2 In Article 3.4 (“Request for Interim Decisions”) of its Direct Filing EITC requested that the specific relief referenced above be granted on an interim basis. Accordingly, EITC argued that, in this instance, interim relief was justified based on the following grounds:

- *“the issue is urgent:*

¹ EITC Filing, 19 March 2008, Page i



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- *du's customers continue to be deprived of mobile coverage in the Western Region;*
- *du has sought to obtain national roaming services from Etisalat for a period exceeding 12 months, without success;*
- *national roaming in the Western Region was meant to be provided in early 2007, in line with the commitments given by Etisalat's CEO in discussions with the Director-General of the TRA and the CEO of du in December 2006 and reflected in clause 2.2(b) and (c) of Schedule 4 of the Interconnection Agreement; and*
- *as at the date of this Direct Filing, du has yet to receive national roaming in the Western Region, notwithstanding Etisalat's regulatory obligations to provide this service to du and its contractual obligation to negotiate with du in good faith;*
- *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:*
 - *the continuation of the status quo would result in du's customers continuing to be deprived of mobile services in the Western Region, thereby preventing customers from obtaining national roaming in the Western Region for such period of time as a final decision from the TRA remains pending; and*
 - *the term of the national roaming service is due to expire on 30 April 2008 – while du has sought an extension of the term for national roaming and has sought assurances from Etisalat that roaming will continue beyond the 30 April 2008 in accordance with its ongoing regulatory obligations, du requires national roaming to be made available in the Western Region to ensure that du obtains the benefit of any extension to the term of the national roaming service that is agreed between the parties, or otherwise specified by the TRA;*



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- *the damage to the referring party is more serious in weight than the potential harm to the respondent:*
 - *du continues to face a competitive disadvantage in the mobile segment in the absence of an ability to offer customers mobile coverage in the Western Region;*
 - *du's customers continue to be deprived of mobile coverage in the Western Region in the absence of Etisalat supplying national roaming to du;*
 - *the supply of national roaming in the Western Region does not raise any significant issues for Etisalat, given that it already supplies the service to du in other parts of the UAE (i.e. it is merely extending the service to du through existing capacity) and is able to obtain payment for such services in accordance with the prices set out in Attachment J of the Interconnection Agreement; and*
 - *as du has already paid Etisalat for the national roaming services covered by the forecast in Annexure 4.B of Schedule 4 of the Interconnection Agreement (which includes a forecast for the Western Region), Etisalat has already received payment for national roaming in the Western Region and would therefore only be required to provide services it has already been paid to supply.”²*

3. Conditions to Request an Interim Decision

- 3.1. As per Article 6.2.2 of the TRA's IDR Procedures, *“If an Interim Decision is requested by the Referring Party, it shall clearly identify and set forth the specific grounds supporting the request for interim relief pending the resolution of the full Dispute, including a statement and quantification of the potential harm that may result if interim relief is not provided.”*
- 3.2. With respect to Interim Decisions, the TRA notes that Article 6.2.3 of the TRA's IDR Procedures also sets out three (3) distinct criteria for consideration.

² EITC Filing, 19 March 2008, Page 16



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3.3. Article 6.2.3 specifies that, *“As a standard to accept a request for an Interim Decision, all of the following points must be proven to the satisfaction of the TRA before an Interim Decision is considered:*

- a) The issue is urgent;*
- 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.”*

3.4. Accordingly, the TRA requires that the principles of urgency, feasibility of redress and proportionality of harm which are identified in Article 6.2.3 subparagraphs (a), (b) and (c), respectively, must all be proven in order to substantiate interim intervention by the TRA.

4. Urgency

4.1. According to Article 6.2.3 of the TRA’s IDR Procedures, the first of the three criteria which must underpin a request for an Interim Decision is that, *“...the issue is urgent...”*

4.2. Accordingly, in its request for an Interim Decision, EITC attempted to satisfy this criterion by presenting the following arguments:

- “du’s customers continue to be deprived of mobile coverage in the Western Region;*
- du has sought to obtain national roaming services from Etisalat for a period exceeding 12 months, without success;*
- national roaming in the Western Region was meant to be provided in early 2007, in line with the commitments given by Etisalat’s CEO in discussions with the Director-General of the TRA and the CEO of du in December 2006 and reflected in clause 2.2(b) and (c) of Schedule 4 of the Interconnection Agreement; and*



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- *as at the date of this Direct Filing, du has yet to receive national roaming in the Western Region, notwithstanding Etisalat's regulatory obligations to provide this service to du and its contractual obligation to negotiate with du in good faith;*³
- 4.3. With respect to EITC's statement that its existing customers still do not have mobile coverage in the Western Region, the TRA considers that, in and of itself and without any accompanying explanation or evidentiary justification to logically connect it to the urgency of the matter, this statement alone does not justify interim relief.
- 4.4. Regarding EITC's reference to the twelve (12) month period of negotiations which preceded the submission of its Direct Filing, the TRA considers that, in and of itself and without any accompanying explanation or evidentiary justification to logically connect it to the urgency of the matter, this statement alone does not justify interim relief.
- 4.5. Furthermore, in reference to any discussions which may have been held regarding the Interconnection Agreement which was negotiated between the Licensees, the TRA considers that, in and of itself and without any accompanying explanation or evidentiary justification to logically connect it to the urgency of the matter, this statement alone does not justify interim relief.
- 4.6. Finally, with respect to EITC's statement that Etisalat has a contractual obligation to negotiate interconnection matters in good faith, the TRA considers that, in and of itself and without any accompanying explanation or evidentiary justification to logically connect it to the urgency of the matter, this statement alone does not justify interim relief.
- 4.7. Ultimately, with respect to the issue of urgency, the TRA is not persuaded that any of the issues identified or arguments presented by EITC substantiate the urgency criterion necessary to justify the Interim Decision which EITC has requested.

5. Feasibility of Redress

- 5.1. According to Article 6.2.3 of the TRA's IDR Procedures, the second of the three criteria which must underpin a request for an Interim Decision is that, *"...the Referring Party is threatened with a disadvantage which would not be*

³ EITC Filing, 19 March 2008, Page 16



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possible or feasible to redress if the situation or actions leading to this disadvantage were allowed to continue..."

5.2. Accordingly, in its request for an Interim Decision, EITC attempted to satisfy this criterion by presenting the following arguments:

- *“the continuation of the status quo would result in du’s customers continuing to be deprived of mobile services in the Western Region, thereby preventing customers from obtaining national roaming in the Western Region for such period of time as a final decision from the TRA remains pending; and*
- *the term of the national roaming service is due to expire on 30 April 2008 – while du has sought an extension of the term for national roaming and has sought assurances from Etisalat that roaming will continue beyond the 30 April 2008 in accordance with its ongoing regulatory obligations, du requires national roaming to be made available in the Western Region to ensure that du obtains the benefit of any extension to the term of the national roaming service that is agreed between the parties, or otherwise specified by the TRA;*⁴

5.3. With respect to EITC’s statement that its existing customers still do not have mobile coverage in the Western Region, the TRA considers that, in and of itself and without any accompanying explanation or evidentiary justification to logically connect it to the possibility or feasibility of redress, this statement alone does not justify interim relief.

5.4. Additionally, the TRA considers that EITC’s statement that the impending expiration of the term of an agreement regarding existing national roaming services currently being supplied in other areas within the UAE is immaterial to the instant examination of the provision of roaming services in the Western Region.

5.5. Ultimately, with respect to the possibility or feasibility to redress the underlying circumstance, the TRA is not persuaded that any of the issues identified or arguments presented by EITC substantiate the specific criterion necessary to justify the Interim Decision which EITC has requested

⁴ EITC Filing, 19 March 2008, Page 16



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6. Proportionality of Harm

6.1. According to Article 6.2.3 of the TRA's IDR Procedures, the third of the three criteria which must underpin a request for an Interim Decision is that, "...the damage to the Referring Party is seen to be more serious in weight than the potential harm to the Respondent."

6.2. With regard to this third criterion EITC submitted the following arguments:

"du continues to face a competitive disadvantage in the mobile segment in the absence of an ability to offer customers mobile coverage in the Western Region;

du's customers continue to be deprived of mobile coverage in the Western Region in the absence of Etisalat supplying national roaming to du;

the supply of national roaming in the Western Region does not raise any significant issues for Etisalat, given that it already supplies the service to du in other parts of the UAE (i.e. it is merely extending the service to du through existing capacity) and is able to obtain payment for such services in accordance with the prices set out in Attachment J of the Interconnection Agreement; and

*as du has already paid Etisalat for the national roaming services covered by the forecast in Annexure 4.B of Schedule 4 of the Interconnection Agreement (which includes a forecast for the Western Region), Etisalat has already received payment for national roaming in the Western Region and would therefore only be required to provide services it has already been paid to supply."*⁵

6.3. With respect to the proportionality of harm considerations, the TRA takes particular note of EITC's argument that, "...du continues to face a competitive disadvantage in the mobile segment in the absence of an ability to offer customers mobile coverage in the Western Region..."⁶

6.4. [REDACTED]

⁵ EITC Filing, 19 March 2008, Page 16

⁶ EITC Filing, 19 March 2008, Page 16



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[REDACTED]
(confidential)

6.5.

[REDACTED]
⁸ **(confidential)**

- 6.6. In its review of this material, the TRA determined that the statistical evidence presented by EITC was suggestive of the existence of such a competitive disadvantage as claimed by EITC.
- 6.7. Accordingly, the TRA referred to Etisalat's Rebuttal for an analysis of Etisalat's counter arguments.
- 6.8. In its review of Etisalat's Rebuttal, the TRA notes that Etisalat's fundamental argument was that EITC's request for an Interim Decision was flawed due to the fact that the terms and conditions as well as the rights and obligations relevant to EITC's request were insufficiently clear to allow for planning and performance.
- 6.9. Furthermore, Etisalat argued that EITC's failure to provide any forecasts with regard to the number of customers which it anticipated would utilize roaming services in the Western Region was further evidence of the impracticality of EITC's request.
- 6.10. Finally, with respect to the administrative reporting procedures which EITC proposed in its Filing, Etisalat argued that the satisfaction of such a procedural mandate would be overly burdensome.
- 6.11. In direct response to EITC's allegations that its inability to offer its customers mobile coverage in the Western Region created a competitive disadvantage, Etisalat asserted that, "...EITC does not, so far as Etisalat can tell...provide any evidence in support of this assertion."⁹
- 6.12. In consideration of both Parties' arguments regarding the issue of proportionality, the TRA considers that EITC's evidence is sufficient to justify its assertion that it suffers from a competitive disadvantage in the provision of mobile services.

⁷ EITC Filing, 19 March 2008, Page 13

⁸ EITC Filing, 19 March 2008, Page 13, footnote 12

⁹ Etisalat Filing, 23 April 2008, Page 15



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- 6.13. Furthermore, the TRA does not consider that the arguments presented in Etisalat's Rebuttal were sufficiently persuasive to substantiate its claim that the granting of EITC's request would in fact be more harmful to Etisalat than to EITC.
- 6.14. Accordingly, the TRA finds that EITC did successfully satisfy this third criterion with respect to the proportionality of potential harm.

7. TRA Position

- 7.1. With respect to EITC's request for an Interim Decision the TRA again refers to Article 6.2.3 of the TRA's IDR Procedures.
- 7.2. Based on the arguments presented in its Direct Filing, the TRA notes that EITC was successful in proving to the satisfaction of the TRA that one of the three necessary elements of a request for an Interim Decision did in fact exist in the instant Dispute.
- 7.3. However, the TRA considers that Article 6.2.3 stipulates that all of the criteria must be proven.
- 7.4. Accordingly, the TRA finds that EITC failed to fully satisfy the requisite burden of proof in this matter and that its request for an Interim Decision is therefore imperfect.

8. TRA Interim Decision

- 8.1 Based on the foregoing analysis and in accordance with the TRA's IDR Procedures, the TRA issues the following Interim Decision:
- 8.1.1 The TRA denies EITC's request that the orders specifically sought in EITC's Direct Filing be granted on an expedited basis as part of an Interim Decision.

9. Effective Date

The TRA's Interim Decision shall be effective on the date of its issuance.

10. Acknowledgement

EITC and Etisalat shall notify the TRA in writing of their receipt of this Interim Decision within two (2) business days of the date it is received.