



Violation Decision No. (1) of 2011

**Etisalat's Non-Compliance with TRA Price Control
Regulatory Policy**

Redacted Version

Issue Date: 13th March 2011



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

TABLE OF CONTENTS

1	BACKGROUND	3
2	LEGAL REFERENCE	5
3	FINDINGS	6
4	THE VIOLATION DECISION.....	6
5	PUBLICATION.....	7
6	ACKNOWLEDGEMENT AND COMPLIANCE	8



1 BACKGROUND

- 1.1 On 3rd November 2010, in its letter [REDACTED], the TRA notified Etisalat that it would commence a *“general ex-post competition investigation of the telecommunications industry with respect to any contract for Telecommunications Services or related products between a Licensee and their respective retail customer where the duration of the contract exceeds 12 months and where the contract has the potential for anticompetitive customer lock-in or for another anticompetitive effect(s), or where the method(s) used to sell/enforce the contract are of an anticompetitive nature”*.
- 1.2 On 25th November 2010, in its letter [REDACTED], the TRA issued a request for information from Etisalat via TRA RFI [REDACTED], in relation to the TRA's notification on a general ex-post competition investigation of the telecommunications industry related to Retail Customer Contracts (hereinafter **“the Investigation”**), in reference to the TRA's letter TRA/RA/10/865 issued 3rd November 2010.
- 1.3 On 30th December 2010, in its letter [REDACTED], Etisalat submitted its response to TRA RFI [REDACTED], including the copies of all relevant contracts between Etisalat and its retail customers related to the Investigation.
- 1.4 On 6th January 2011, in its letter [REDACTED], the TRA requested information from Etisalat in relation to its response provided via letter [REDACTED] dated 30th December 2010, namely to provide all relevant Etisalat PCR numbers in which the TRA has approved the proposed prices for Etisalat's Blackberry Global Unlimited and/or Domestic Unlimited subscriptions.
- 1.5 On 12th January 2011, in its letter [REDACTED], the TRA requested further information from Etisalat in relation to its response provided via letter [REDACTED] dated 30th December 2010, namely to provide all relevant Etisalat PCR numbers in which the TRA has approved the proposed offers for Etisalat's Blackberry devices and other offers.
- 1.6 On 13th January 2011, in its letter [REDACTED], Etisalat submitted its response in reference to the TRA's letter [REDACTED] dated 6th January 2011, stating that *“The relevant PCR number is [REDACTED] as requested by TRA which is applicable to the list provided in TRA's above referred letter”*.
- 1.7 On 16th January 2011, in its letter [REDACTED], the TRA requested from Etisalat *“further data regarding certain contracts relating to Blackberry Enterprise Services”*.



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

- 1.8 On 19th January 2011, in its letter [REDACTED], Etisalat submitted its response in reference to the TRA's letters [REDACTED] dated 12th January 2011 and [REDACTED] dated 16th January 2011.
- 1.9 On 24th January 2011, in its letter [REDACTED], the TRA informed Etisalat that "Following a detailed analysis of the responses submitted in the above mentioned letters, the TRA is minded to conclude that the aforementioned contracts for Blackberry Enterprise Services between Etisalat and its retail customers ("Relevant Contracts") contain some price and other related terms of service provision that are not in compliance with the TRA's Price Control Regulatory Policy, version 2.1, issued 23rd September 2008", and it invited Etisalat to submit its comments on the TRA's findings by 1st February 2011.
- 1.10 On 1st February 2011, in its letter [REDACTED], Etisalat proposed to meet and discuss with the TRA the findings presented to Etisalat in the TRA's letter [REDACTED] dated 24th January 2011.
- 1.11 On 2nd February 2011, in its letter [REDACTED], the TRA reminded Etisalat that it had not yet received Etisalat's comments and inputs as requested by the TRA's letter [REDACTED] dated 24th January 2011, and it extended its invitation to Etisalat to submit its written comments by 10th February 2011.
- 1.12 On 10th February 2011, in its letter [REDACTED], Etisalat provided the following comments on the TRA's findings as presented to Etisalat in the TRA's letter [REDACTED] dated 24th January 2011:

[REDACTED] (point 5) – Etisalat notes that the price for the [REDACTED] package is above cost with reference to [REDACTED],

[REDACTED] (point 3) – Etisalat notes that a notification letter [REDACTED] dated [REDACTED] was sent to the TRA in relation to this PCR", and

"Etisalat has conducted a thorough analysis of the TRA's other findings as outlined in its letter 24 January 2011 and agrees with the TRA that a number of serious misinterpretations of regulatory requirements appear to have occurred. As a preliminary finding, it is clear that had Etisalat obtained PCR approval for offers that allowed a great degree of flexibility [REDACTED] many of the issues raised by this matter could have been avoided."



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

2 LEGAL REFERENCE

2.1 In its review of this matter, the TRA refers to Federal Law by Decree No. 3 of 2003 Regarding the Organization of Telecommunications Sector, as amended, Etisalat's Public Telecommunication License No. 1/2006 as well as the TRA's Regulatory Framework.

2.2 Federal Law by Decree No. 3 of 2003, as amended, in particular Article 14 stipulates:

"...the Authority shall have the competence to...issue regulations, orders, resolutions and procedures in relation to:

1- tariffs, charges and fees levied by Licensees..."

2.3 The prices which Etisalat charges consumers are subject to its Public Telecommunication License No. 1/2006, which stipulates in Article 3.7:

"The prices that the Licensee may charge its Customers in connection with its Services, as well as the terms and conditions, are subject to Regulation by TRA as specified in the Regulatory Framework in effect at the time. "

2.4 Article 4.1 of the TRA's Price Control Regulatory Policy, Version 2.1, issued 23 September 2008, stipulates the following:

"A Licensee shall request prior approval from the TRA for any new or changed Price, in accordance with the TRA's Price Control Regulatory Procedure."

2.5 Article 1 of the TRA's Price Control Regulatory Policy, Version 2.1, issued 23 September 2008, defines the term "Prices" as:

"...tariffs, charges and fees levied by Licensees as well as any other terms, conditions or other qualifications which may be related to such Prices."

2.6 Article 16.3.2 of Etisalat's Public Telecommunication License No. 1/2006, stipulates that Etisalat may be subject to penalties, payable in accordance with procedures as determined by the TRA, if Etisalat fails to comply with any of the following:

"a) any obligations under the Telecommunications Law or its Executive Order;

b) any obligations within the License; or

c) any obligation contained in the Regulatory Framework in effect at the time."



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

3 FINDINGS

- 3.1 As a result of the Investigation and Etisalat's subsequent response (in particular, see paragraph 1.12) to the TRA's initial findings (see paragraph 1.9), the TRA concludes that Etisalat has violated the TRA's Price Control Regulatory Policy, Version 2.1, issued 23 September 2008. The TRA concludes that in so doing, Etisalat has violated Federal Law by Decree No. 3 of 2003, as amended, and the provisions of Etisalat's Public Telecommunications License No. 1/2006.
- 3.2 A detailed list of the TRA's findings can be found in Annex 1 to this Violation Decision.

4 THE VIOLATION DECISION

- 4.1 In its discretion, and without prejudice to the TRA's rights regarding any future actions with regard to this incident or any other incident, either related or unrelated, the TRA has determined to issue to Etisalat a warning and, in this case, not to proceed to assess a financial penalty.
- 4.2 In addition to the formal warning to Etisalat, expressed in paragraph 4.1 above, the TRA has determined that Etisalat shall comply with the following:
- a) By **31st March 2011** Etisalat shall submit a list of all signed contracts¹ that have been amended by Etisalat to comply with the relevant set of approved PCRs. The list shall include:
- i. Contract title;
 - ii. Name of retail customer;
 - iii. Date of contract commencement;
 - iv. Date of contract termination;
 - v. All telecommunications services covered;
 - vi. Any related products and services offered;
 - vii. Termination provisions
 - viii. Conditions relating to exclusive usage of Etisalat services;
 - ix. Contract amendments²

¹ The TRA may request an actual copy of the amended contract to be supplied at a later date.

² With respect to the contracts supplied to the TRA in Etisalat's letter [REDACTED] dated 30th December 2010.



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

- b) In relation to point a) above, should a customer experience higher costs in securing telecommunications services from Etisalat as a result of the amended contract, Etisalat shall present a letter to the customer stating that the contract is amended due to Etisalat's violation of the TRA's regulatory framework, and making reference to this Violation Decision, no later than 30 calendar days from the date of issuance of this Violation Decision. A copy of the letter shall be submitted to the TRA at the same time.
- c) For the remaining contracts which have not been amended to comply with the relevant set of approved PCRs, by **7th April 2011** Etisalat shall submit a full list of PCRs for TRA review, related to all service offering presented in the relevant contracts identified during the Investigation, in accordance with the TRA's Price Control Regulatory Policy, Version 2.1, issued 23 September 2008. These PCRs shall include a full cost/revenue analysis and shall cover³;
 - i. The retail charge for the domestic limited and global unlimited packages;
 - ii. Any subsidised handsets accompanying the offer;
 - iii. Contract length of the offer;
 - iv. All other relevant terms and conditions of the offer such as exclusivity agreements, terms of contract cancelation etc.
- d) By **14th April 2011** Etisalat shall submit a full and detailed plan of its proposed internal remedies to the violation of the TRA's Price Control Regulatory Policy, Version 2.1, issued 23 September 2008 that will prevent a violation of this nature from occurring again.

4.3 Failure to comply with Schedule 4.2 may result in the TRA setting a financial penalty related to Etisalat's violation of TRA Price Control Regulatory Policy, version 2.1, issued 23rd September 2008.

5 PUBLICATION

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

³ Post the assessment of the new PCRs any contract that is not in compliance with the TRA's PCR policy will be dealt with by the TRA on a case-by-case basis.



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

6 ACKNOWLEDGEMENT AND COMPLIANCE

- 6.1 Etisalat shall notify the TRA in writing of its receipt of this Violation Decision within one (1) working day of the date thereof.

-- End of Violation Decision --



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

ANNEX 1 – TRA's findings on non-compliance with TRA Price Control Regulatory Policy

1 **PRICE RELATED TERMS OF SERVICE PROVISION IN THE RELEVANT CONTRACTS**

In its letter [REDACTED] dated 13th January 2011, Etisalat states that the relevant PCR number, applicable to Global Unlimited and Domestic Unlimited subscription prices offered in the Relevant Contracts, is [REDACTED]. However, the TRA notes that a number of the Relevant Contracts are offered with Global Unlimited and Domestic Unlimited subscription prices below the TRA approved prices in [REDACTED] (see table below).

**TABLE REMOVED
(CONFIDENTIAL INFORMATION)**



2 OTHER RELATED TERMS OF SERVICE PROVISION IN THE RELEVANT CONTRACTS

In its letter [REDACTED] dated [REDACTED], Etisalat states that the relevant PCR numbers, applicable to other related terms of service provision offered in the Relevant Contracts, are:

- [REDACTED];
- [REDACTED];
- [REDACTED];
- [REDACTED]; and
- [REDACTED].

The TRA findings with respect to each of these PCRs are discussed below.

2.1 [REDACTED]

The TRA notes that this PCR was denied in the TRA’s letter [REDACTED] dated [REDACTED].

2.2 [REDACTED]

With respect to the TRA approved [REDACTED], the TRA notes the following:

1. The contract duration offered in the Relevant Contracts ([REDACTED]) exceeds the contract duration in the TRA approved [REDACTED] ([REDACTED]);
2. The PCR applies to handset model [REDACTED] only and not to other Blackberry models such as [REDACTED] and [REDACTED], as provided in the Relevant Contracts;
3. The PCR was approved as a promotion with a duration period of [REDACTED], whereas Etisalat promoted the offer for a longer period of time. For example, the contract date printed on the contract with [REDACTED] is [REDACTED] while the contract date printed on the contract with [REDACTED] is [REDACTED], thus there appears to be a promotional period which extends over [REDACTED];



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

4. The PCR applies to prices of [REDACTED] for the [REDACTED] package and [REDACTED] for the [REDACTED] package only;
5. The price of [REDACTED] for the [REDACTED] package, as offered in the Relevant Contracts, is below the cost of the [REDACTED] package with free [REDACTED] Blackberry as claimed by Etisalat in its letter dated [REDACTED] (cost of package with free [REDACTED] Blackberry device is [REDACTED]); and
6. The TRA does not appear to have received any notice of implementation for [REDACTED].

2.3 [REDACTED]

With respect to the TRA approved [REDACTED] and the contract signed with [REDACTED] on [REDACTED], the TRA notes the following:

1. The PCR was not received by the TRA until [REDACTED];
2. The PCR was approved by the TRA on [REDACTED]. Thus, it appears that the contract with [REDACTED] pre-dates the PCR approval by a period of [REDACTED];
3. The contract duration offered in the Relevant Contracts ([REDACTED]) exceeds the contract duration in the TRA approved [REDACTED] ([REDACTED]);
4. The PCR applies to prices for [REDACTED] package at [REDACTED] and [REDACTED] package at [REDACTED] only; and
5. The TRA does not appear to have received any notice of implementation for [REDACTED].

2.4 [REDACTED]

With respect to the TRA approved [REDACTED], the TRA notes the following:

1. The PCR was not received by the TRA until [REDACTED], while the date of the last signed Relevant Contract, in which the offer was made available, is [REDACTED] (contract with [REDACTED]).



TRA Violation Decision No 1 of 2011, concerning Etisalat's Non-compliance with TRA Price Control Regulatory Policy (Redacted Version)

2. The contract duration offered in the Relevant Contracts ([REDACTED]) exceeds the contract duration in the TRA approved [REDACTED] ([REDACTED]);
3. The PCR applies to prices for [REDACTED] package at [REDACTED] and [REDACTED] package at [REDACTED] only; and
4. In its notice of implementation for [REDACTED] (Etisalat's letter [REDACTED] [REDACTED] dated [REDACTED]), Etisalat informed the TRA that it would launch the PCR on [REDACTED]. Thus, it appears that the above mentioned contract with [REDACTED] pre-dates the launch of the PCR by a period of [REDACTED].

2.5 [REDACTED]

With respect to the TRA approved [REDACTED], the TRA notes the following:

1. The PCR was not received by the TRA until [REDACTED], while the date of the signed Relevant Contract with [REDACTED], to which this PCR applies, is [REDACTED]; and
2. The PCR was approved by the TRA on [REDACTED]. Thus, it appears that the contract with [REDACTED] pre-dates the PCR approval by a period of [REDACTED].