United Arab Emirates

TRA هيئة تنظيم الاتصالات
TELECOMMUNICATIONS REGULATORY AUTHORITY

DECISION

Carrier Selection and Carrier Pre-selection Interconnection Pricing

CS/E/07Feb07/05

Redacted Version

19th June 2007

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

DECISION BY

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

CONCERNING AN INTERCONNECTION DISPUTE

IN THE MATTER OF

CARRIER SELECTION AND CARRIER PRE-SELECTION INTERCONNECTION PRICING

CASE NUMBER CS/E/07Feb07/05

BETWEEN THE REFERRING PARTY:

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

AND THE RESPONDENT:

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

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The information in this document which is highlighted is confidential and is not included in the Redacted version.

1. THE PROCEEDINGS

1.1 On 7 February 2007, Etisalat submitted a Direct Filing to the TRA requesting that the TRA intervene to resolve a carrier selection and carrier pre-selection interconnection service price dispute between Etisalat and EITC.

1.2 On 8 February 2007, the TRA agreed to consider Requests (a) and (b) and rejected Interim Order Requests (c) A., (c) B. and (c) C.

1.3 On 15 February 2007, Etisalat filed a Petition for Reconsideration requesting that the TRA reconsider its rejection of Requests (c) A., (c) B. and (c) C., relating to interim relief.

1.4 On 1 March 2007, the TRA determined that the Petition for Reconsideration filed by Etisalat was unfounded. As such, the TRA maintained its rejection of Requests (c) A., (c) B. and (c) C.

1.5 On 14 March 2007, EITC submitted its Rebuttal to Etisalat's Direct Filing.

1.6 On 1 April 2007, Etisalat submitted its Surrebuttal to EITC's Rebuttal.

1.7 On 22 April 2007, EITC submitted its Surrebuttal to Etisalat's Surrebuttal.

2. ETISALAT REQUESTS

In its Direct Filing, Etisalat requested the TRA to:

(a) *"issue an order whereby the Parties offer each other fixed line origination using Carrier Selection and Carrier Pre-Selection ("CS/CPS") to international destinations at a charge equal to the applicable retail tariff charged by Etisalat for a call minus 20 percent;*

or in the alternative,

(b) *the Parties be ordered to continue to negotiate, and to not commercially launch CS/CPS until such time as an agreement is reached on the charge to be applied for the provision of CS/CPS by each Party to the other Party, which is consistent with the relevant international benchmarks;*

and

(c) *make the following Interim Orders:*

A. *that the Parties be ordered to execute an Interconnection Agreement which does not impose a contractual obligation on either party to provide CS/CPS, until such time as a charge to be applied for the provision of CS/CPS by each Party to the other Party has been finally determined by the TRA in accordance with this Dispute Resolution Proceeding, or is otherwise agreed between the Parties;*

B. *that the Parties be ordered not to commercially launch CS/CPS until such time as the charges to be applied for the provision of CS/CPS by each Party to the other Party has been finally determined by the TRA in accordance with this Dispute Resolution Proceeding, or is otherwise agreed between the Parties; and*

C. *that the Parties be ordered to amend the Interconnection Agreement following the final determination by the TRA or other agreement by the Parties as to the price to be charged to be applied for the provision for CS/CPS by each Party to the other Party which is in accordance with best relevant international benchmarks."*[1]

[1] Etisalat Filing, 07 February 2007, Page 3

3. ETISALAT REQUEST (a)

In its Direct Filing, Etisalat requested the TRA to:

(a) *"issue an order whereby the Parties offer each other fixed line origination using Carrier Selection and Carrier Pre-Selection ("CS/CPS") to international destinations at a charge equal to the applicable retail tariff charged by Etisalat for a call minus 20 percent;"*[2]

3.1 Methods of Recovering Access Deficit

3.1.1 According to Etisalat, *"Historically it has been the case in most jurisdictions that for public policy reasons the incumbent telephone operator has provided access to the Public Switched Telephone Network (the "PSTN") at charges which are below cost. This 'access deficit' has traditionally been funded through the provision of international services."*[3]

3.1.2 Etisalat contended that its retail minus pricing scheme is the only legal means of recovering its alleged access deficit. Etisalat stated that, *"…the only means of funding the access deficit that is available to Etisalat within the context of the UAE's legal environment is to resort to a charge on CS/CPS."*[4]

3.1.3 Etisalat advanced the argument that, *"…until the time the tariffs are fully rebalanced, an access deficit can only be funded through a limited number of means:*

1. *an interconnection charge for outbound international calls based on retail prices less a discount;*

2. *international inbound termination charges, which are higher than the local termination;*

3. *an access deficit charge and/or a universal service charge added to all interconnection rates;*

[2] Etisalat Filing, 07 February 2007, Page 3
[3] Etisalat Filing, 07 February 2007, Page 13
[4] Etisalat Filing, 07 February 2007, Page 35

4. *a universal service fund, which typically is set up at an advanced stage of competition;*

5. *a surcharge on outbound international call rates; or*

6. *a combination of the above."*[5]

3.1.4 Etisalat proceeded to assert that, *"In Etisalat's case the only mechanism by which the access deficit can be funded is through a charge on CS/CPS because:*

1. *international outbound revenues will be under attack due to competition;*

2. *the TRA has insisted that CS must be provided before tariffs are rebalanced, and further the TRA has indicated that the CS charge and tariff rebalancing are separate issues;*

3. *the TRA has, so far, mandated that inbound international rates will be no higher than local termination rates; and*

4. *the TRA has not set up a scheme whereby Etisalat is to be paid a Universal Service Contribution that could be used to fund the access deficit charge.*

Accordingly, all that is left is to fund the access deficit through a Retail Minus Mechanism applied to the CS/CPS Interconnection Services."[6]

3.1.5 Etisalat employed a series of redacted charts to attempt to illustrate the interplay of various services and revenue streams. Irrespective of its request that the contents of the charts be treated as confidential, on the public record Etisalat claimed that it, "…*is highly dependent on its revenues generated from international calls to fund its access deficit"*[7]

[5] Etisalat Filing, 07 February 2007, Page 15
[6] Etisalat Filing, 07 February 2007, Page 15
[7] Etisalat Filing, 07 February 2007, Page 21

3.1.6 In its Rebuttal, EITC argued that funding an access deficit requires a process that is transparent, proportionate, competitively neutral, separate from interconnection charges and not likely to create a windfall gain for the incumbent operator.

3.1.7 EITC stated that, *"According to international best practice, access deficits (where existing) appear to be most efficiently recovered through development of a separate charge which delivers competitive neutrality in a far more transparent manner than the oft-opaque nature of an access deficit contribution, particularly when 'hidden' within interconnection pricing."*[8]

3.1.8 Among other sources, EITC relied on a World Bank publication for support, specifically citing, "*Whatever means is used to collect ADCs [access deficit charge], they should not be bundled or confined with standard interconnection charges. International trade law and best practice requires ADCs and other payments that promote universality to be collected in a transparent, non-discriminatory and competitively neutral manner.*"[9]

3.2 International Benchmarks

3.2.1 In its Direct Filing Etisalat asserted that it would rely on international benchmarks to propose a retail minus carrier selection and carrier pre-selection interconnection service charge.

3.2.2 Etisalat contended that the TRA's Interconnect Pricing Policy required benchmarking. Etisalat stated that, *"…in the absence of approved Long Run Incremental Costs ("LRIC") to be the primary basis for pricing interconnection services, interconnection prices must be primarily based on international benchmarks."*[10]

[8] EITC Filing, 14 March 2007, Page 16
[9] EITC Filing, 14 March 2007, Page 18
[10] Etisalat Filing, 07 February 2007, Page 7

3.2.3 Etisalat contended that its retail minus pricing scheme was the product of a thorough benchmarking exercise which utilized data from other countries to arrive at the appropriate pricing scheme for the UAE.

3.2.4 Etisalat began its benchmarking exercise with the following assessment of the telecommunication sector in the UAE:

"The current situation in the United Arab Emirates is as follows:

(a) the telecommunications market is at an early stage of competition;

(b) Etisalat, being the existing provider of fixed telecommunications services has a significant access deficit;

(c) Etisalat, being the existing provider of fixed telecommunications services relies on fixed international revenues, and more particularly on outbound fixed international traffic to fund its access deficit; and

(d) Etisalat does not rely on any other option to fund the access deficit."[11]

3.2.5 In outlining its analysis, Etisalat prescribed the following approach and relied on the accompanying criteria:

"In determining a charge for this CS/CPS Interconnection Service, Etisalat has relied on international benchmarks which are relevant in the context of the UAE. The reason why these benchmarks were chosen, is because, the Relevant Benchmark countries are countries:

(a) which were or are at the time when a pricing mechanism was in place to address the funding of the access deficit, at a similar stage of competition as the UAE;

[11] Etisalat Filing, 07 February 2007, Page 8

(b) *which had an access deficit similar in nature to that faced by Etisalat;*

(c) *which relied on revenues generated from international calls to fund the access deficit; and*

(d) *where the means of funding the access deficit is compatible with the interconnection pricing structure in the UAE and applying it does not lead to a distortion of the competitive environment."*[12]

3.2.6 Etisalat clarified its criteria for selecting the countries by stating, "*Consequently, countries who do not have an access deficit or who have an insignificant access deficit are not Relevant Benchmark Countries…*"[13]

3.2.7 Etisalat asserted that this application yielded operators in Jordan, Tunisia, Saudi Arabia, Moldova and Russia as models for the UAE in this dispute.

3.2.8 Etisalat proceeded to assert that all these countries employed a retail minus scheme to fund access deficits. Etisalat then identified the average value of the respective operator's retail minus scheme and arrived at 20% as the appropriate reduction value to be imposed in the UAE.

3.2.9 Based on the foregoing benchmarking analysis, Etisalat concluded that its proposed retail minus scheme is, in fact, the appropriate pricing scheme to be applied to carrier selection and carrier pre-selection interconnection service for calls destined to international locations.

3.2.10 EITC rejected Etisalat's benchmarking exercise contending that the analysis had significant methodological defects.

3.2.11 Primarily, EITC argued that Etisalat misinterpreted the TRA's Interconnect Pricing Policy. EITC argued that while the Policy permitted benchmarking, the exercise should have a cost basis. Specifically, "*In the absence of a cost based pricing model, the TRA's Interconnect Pricing Policy provides that interconnection pricing is to*

[12] Etisalat Filing, 07 February 2007, Page 15
[13] Etisalat Filing, 07 February 2007, Page 30

be developed by reference to international benchmarks as a proxy for cost based prices."[14]

3.2.12 EITC continued on to state that, "…*the very purpose of benchmarking in telecommunications is to approximate the cost of the incumbent operator supplying an interconnection service by reference to international data..."*[15]

3.2.13 EITC argued that the following analysis would have been relevant to the UAE market and more appropriate for this dispute:

"Where international benchmarks are to be used, the correct methodology for selecting "relevant benchmark countries" would involve a two point test:

(i) the jurisdictions chosen must have implemented LRIC based pricing for interconnection services. Where a country has not implemented LRIC based pricing or includes elements in its interconnection pricing that do not reflect the underlying cost of supply (e.g. includes an element for access deficit charge);

- *the relevant country should not be included as part of the benchmark; or*
- *where possible, the element that is not part of the cost of supply (e.g. an access deficit charge) should be excluded; and*

(ii) *once it has been established that the country has LRIC based interconnection charges, factors such as national income, purchasing power parity, network density, population density, urbanization and tele-density should be taken into account."*[16]

3.2.14 EITC argued that a proper benchmarking exercise in this instance should have included only countries that had implemented LRIC based pricing for interconnection services.

[14] EITC Filing, 14 March 2007, Page 6
[15] EITC Filing, 22 April, 2007, Page 7
[16] EITC Filing, 14 March 2007, Page 8

3.2.15 EITC adopted the position that Etisalat's analysis was not cost based and that the purpose of benchmarking is to identify and compare relevant costs.

3.2.16 EITC argued that the absence of direct cost comparisons represented a fatal defect in Etisalat's comparative country analysis as well as the conclusions drawn therefrom.

3.2.17 In its Surrebuttal, Etisalat referred to an ITU publication for support. Specifically, *"…the ICT Regulation Toolkit defines 'benchmarking' and 'international benchmarking' as being "the process of establishing interconnection rates based on rates in other jurisdiction [sic]" and more generally as "the process of establishing the price of a service based on prices in other jurisdictions.""*[17]

3.2.18 Etisalat insisted that an integral part of internationally accepted benchmarking techniques required, "*Gathering price data for the service(s) under consideration in each of the sample countries…*"[18]

3.2.19 In each of its filings EITC maintained its position that, *"…the very purpose of benchmarking in telecommunications is to approximate the costs of the incumbent operator supplying an interconnection service by reference to international data, where local interconnection costs have not been modeled or cannot be readily or reliably ascertained."*[19]

3.2.20 As such, EITC maintained its argument that Etisalat had used improper criteria to select its benchmark countries and then extracted irrelevant conclusions in the subsequent analysis.

3.3 Existence and Magnitude of Access Deficit

3.3.1 In its Direct Filing, Etisalat provided a series of charts and diagrams which were intended to suggest the existence of and estimate the size of its alleged access deficit. Based on Etisalat's contention that the charts contained

[17] Etisalat Filing, 01 April 2007, Page 20
[18] Etisalat Filing, 01 April 2007, Page 21
[19] EITC Filing, 22 April, 2007, Page 7

confidential information, these materials were redacted from the documents provided to EITC.

3.3.2 Etisalat used charts based on its ABC cost model in an attempt to illustrate its contention that its alleged access deficit is approximately [redacted].

3.3.3 Etisalat also used a series of graphical illustrations based on eight western European countries to formulate an alternative estimation of its access deficit. Based on the foregoing analysis, Etisalat suggested that its access deficit could be as high as [redacted].

3.3.4 In addressing the existence of Etisalat's alleged access deficit, EITC referred to the fact that the specific information which Etisalat relied on to identify its alleged access deficit was redacted from the materials provided to EITC and was not available for scrutiny.

3.3.5 EITC did, however, offer the argument that because various services may be employed over the same infrastructure, a straight-line connection between below cost network access initiatives and the resultant operational losses overly simplifies the analysis. EITC contended that, "…*incumbent operators often derive sufficient revenue from a variety of services over the same infrastructure thereby allowing for cost to recover above and beyond any access deficit.*"[20]

3.3.6 Ultimately, EITC argued that establishing the existence and quantum of an access deficit would require definitive justification as well as a separate and affirmative determination by the TRA. EITC claimed that, *"Simply asserting the existence of an access deficit, as Etisalat has done, does not provide a sufficient basis for the imposition of Etisalat's proposed Relevant Benchmark Offer. Independent regulatory verification of the existence and quantum of the alleged access deficit, including analysis to ensure that the access deficit reflects the level that would be expected from an efficient operator, is needed before any recovery is permitted.*"[21]

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[20] EITC Filing, 14 March 2007, Page 16
[21] EITC Filing, 22 April 2007, Page 5

3.4 Effect on the Telecommunication Sector and the UAE Economy

3.4.1 In its Direct Filing, Etisalat argued that employing its retail minus pricing scheme is vital to maintaining and promoting the development of the telecommunication sector in the UAE. Specifically, "*In the event that Etisalat is required to provide the CS/CPS Interconnection Service on the prices that du is insisting on, i.e. the Offered Charges, both Etisalat and the telecommunications industry will be severely harmed.*"[22]

3.4.2 Additionally, Etisalat contended that, "…*if this service [carrier selection and carrier pre-selection interconnection service] is priced at low rates, this would invariably result in spiraling down of international tariffs leading to a loss of value of the industry as a whole and more particularly severely affecting Etisalat's ability to manage the tariff rebalancing or the funding of its access deficit*."[23]

3.4.3 Etisalat also argued that regulatory protection of high revenues for calls destined abroad is in the best interest of the UAE telecommunication sector and the UAE economy as a whole. Etisalat contended that, *"…maintaining this source of revenue and the value of international calls is in the best interest of all consumers in the UAE as they enjoy the benefits of having equal access to the fixed network and the improvements and enhancements made to the fixed network*."[24]

3.4.4 EITC disputed Etisalat's contention that the proposed retail minus scheme is in the best interest of the UAE telecommunication sector.

3.4.5 Furthermore, EITC rejected Etisalat's argument that retail minus carrier selection and carrier pre-selection interconnection service pricing was necessary to maintain the profitability of the sector. EITC argued that, *"…the total international telecoms revenue in the UAE is unlikely to fall in absolute terms as the UAE is experiencing rapid economic and population growth and*

[22] Etisalat Filing, 07 February 2007, Page 18
[23] Etisalat Filing, 07 February 2007, Page 17
[24] Etisalat Filing, 07 February 2007, Page 13

this will tend to counter any potential decline in revenue from lower outbound international calls."[25]

3.4.6 EITC suggested that the sector would likely gain net value based on increased competition and lower retail tariffs. *"This is because the elasticity effects of reducing charges for international services may actually increase total revenues, through an increase in traffic volumes."*[26]

3.4.7 Ultimately, EITC contended that, "…*to the extent that competition from du reduces Etisalat's market power, and Etisalat's ability to set monopoly prices (whether for international outbound calls or otherwise), this will be to the benefit of the UAE as a whole and, in particular, its consumers."*[27]

3.4.8 In its Surrebuttal, Etisalat adopted the premise that revenue protection principles should be used instead of cost oriented interconnection pricing protocols to maintain high revenue in the UAE.

3.4.9 Etisalat claimed that, *"…under du's Offered Charges there is no floor other than cost to the reductions of the tariffs for outbound international calls;"*[28]

3.4.10 Etisalat also rejected EITC's argument that price elasticity would preserve profitability in the sector despite competition driven reductions in retail tariffs. "*Etisalat contends that the revenue which is at risk under du's Offered Charges is of such magnitude and of such fundamental importance to the UAE telecommunications sector that it needs more robust protection than the effect of elasticity as du suggests;"*[29]

3.4.11 Etisalat contended that in liberalized countries, *"…the positive effect on revenues is largely attributable to an increase in subscribers due to broader coverage and technological enhancements, more particularly in the mobile and broadband services;"*[30]

[25] EITC Filing, 14 March 2007, Page 12
[26] EITC Filing, 14 March 2007, Page 11
[27] EITC Filing, 14 March 2007, Page 11
[28] Etisalat Filing, 01 April 2007, Page 31
[29] Etisalat Filing, 01 April 2007, Page 30
[30] Etisalat Filing, 01 April 2007, Page 33

3.4.12 EITC maintained its opposition to Etisalat's position that increased competition in the sector would necessarily result in reduced profitability. Citing a GSM Association publication, EITC argued that, "*The evidence shows that liberalization actually stimulates investment and that the fear of loss of international revenues is illusory*."[31]

3.4.13 Relying on the aforementioned publication, EITC added that increased call volume, higher quality service and lower call prices represented some of the direct benefits that UAE consumers would derive from a more competitive international calls market.

3.4.14 Ultimately, EITC argued that, *"Etisalat's arguments should be seen for what they are – an attempt to retain its international monopoly and to delay du's entry into the fixed line segment*."[32]

3.5 Relevancy of Access Deficit

3.5.1 Etisalat initiated this dispute based on the premise that its access deficit should be funded through a carrier selection and carrier pre-selection interconnection service charge.

3.5.2 EITC responded that access deficit, "…*is not an interconnection dispute issue. This is a regulatory issue between the TRA and Etisalat that exists outside of, and separately from, the cost associated with fixed call origination services*."[33]

3.5.3 EITC also contended that, whether or not Etisalat can support the existence of its alleged access deficit, *"Established regulatory principles that underpin LRIC based pricing provide that the price of interconnection services should reflect only the underlying efficiently incurred cost of supplying the service. These established regulatory principles do not allow operators to recover other costs that are not associated with the underlying cost of supplying the interconnection service (e.g. the inclusion of an alleged access deficit that may exist)."*[34]

[31] EITC Filing, 22 April 2007, Page 12
[32] EITC Filing, 22 April 2007, Page 12
[33] EITC Filing 14 March 2007, Page 13
[34] EITC Filing, 14 March 2007, Page 10

3.5.4 In its Surrebuttal, Etisalat stated that it, *"…agrees that access deficit issues are not an interconnection issue, and stresses that any discussion over Etisalat's access deficit is incidental and secondary to the subject matter of this dispute and that Etisalat has raised the issue of its access deficit only in the context of identifying the Relevant Benchmark Countries;"*[35]

3.5.5 As per Etisalat's Surrebuttal, it is "…*incorrect to contend that the subject matter of Etisalat's Direct Filing is the existence, the quantum and the means of funding Etisalat's deficit."*[36]

3.6 Cost Characteristics for Carrier Selection and Carrier Pre-selection Interconnection Service

3.6.1 In each of its submissions, Etisalat relied on examinations of retail price information rather than underlying cost to formulate its perspective on the appropriate rates for carrier selection and carrier pre-selection interconnection service to be charged in the UAE.

3.6.2 EITC contended that, *"…the cost to Etisalat of providing fixed call origination is the same regardless of the category of the call, or the final destination of the call, that is, whether the call is terminated within the UAE or outside the UAE."*[37]

3.6.3 Specifically, EITC argued that, *"…the network elements used in supplying the call origination service are exactly the same for a national call, international call or toll free number."*[38]

3.6.4 EITC continued on to state that, *"By requiring du to pay a charge that is aligned to the retail price of an outgoing international call, Etisalat has proposed a charging arrangement that bears no relationship to the underlying efficiently incurred cost to Etisalat of supplying the relevant interconnection service – that is, the cost of*

[35] Etisalat Filing, 01 April 2007, Page 11
[36] Etisalat Filing, 01 April 2007, Page 35
[37] EITC Filing, 14 March 2007, Page 3
[38] EITC Filing, 01 April 2007, Page 3

providing fixed call origination services to du. The cost to Etisalat of providing fixed call origination is the same regardless of the category or destination of the call."[39]

3.7 TRA Analysis

3.7.1 International Benchmarks

3.7.1.1 In its Direct Filing, Etisalat put forth the assertion that its retail minus pricing scheme is necessary as a means to recover its alleged access deficit.

3.7.1.2 Specifically, Etisalat contended that, "…*the charge for the CS/CPS Interconnection service has to allow Etisalat to fund the access deficit, until its tariffs have fully rebalanced.*"[40]

3.7.1.3 Etisalat maintained that a retail minus carrier selection and carrier pre-selection interconnection service charge is the only legal mechanism available in the UAE to fund its access deficit.

3.7.1.4 EITC responded that access deficit recovery through a retail minus carrier selection and carrier pre-selection interconnection service charge is an improper mechanism for access deficit recovery.

3.7.1.5 EITC also contended that there are a variety of ways to fund an access deficit besides retail minus.

3.7.1.6 Etisalat presented a graphical benchmark analysis of five countries and proposed a carrier selection and carrier pre-selection interconnection service price set equal to Etisalat's international retail price minus 20%.

3.7.1.7 Etisalat claimed that its benchmark analysis is in compliance with the TRA's Interconnect Pricing Policy.

[39] EITC Filing 14 March 2007, Page 10
[40] Etisalat Filing, 07 February 2007, Page 8

3.7.1.8 Both Parties noted that the TRA's Interconnect Pricing Policy calls for Long Run Incremental Cost (LRIC) as the primary criterion for interconnection pricing for carrier selection and carrier pre-selection interconnection service and in the absence of LRIC information international benchmarks must be used.

3.7.1.9 After careful consideration, the TRA determines that the theoretical basis of Etisalat's retail minus proposal contain the following flaws:

(a) Etisalat relied on the assumption of an access deficit which has not been affirmatively proven to exist nor appropriately quantified;

(b) Etisalat failed to prove that its retail minus pricing scheme would, in fact, be beneficial to the development of the UAE telecommunication sector; and

(c) Etisalat failed to prove its retail minus pricing scheme would be beneficial to the UAE economy in general.

3.7.1.10 In the view of the TRA, Etisalat's benchmark analysis failed to analogize the comparative countries to the UAE in a sufficiently relevant manner to justify its prescribed pricing protocol. Additionally, the TRA determines that should they be used in this case, appropriate benchmarks for carrier selection and carrier pre-selection interconnection service should be reflective of LRIC. Etisalat failed to demonstrate that its benchmarks met that criterion. As a result, the TRA rejects Etisalat's benchmarks from further consideration in this dispute.

3.7.2 Existence and Magnitude of Access Deficit

3.7.2.1 In its Direct Filing, Etisalat offered estimates of the size of its alleged access deficit.

3.7.2.2 Etisalat relied primarily on a series of comparative charts and diagrams to justify its approximation of an alleged access deficit. Etisalat's redaction requests prevented EITC from examining this information and commenting on it.

3.7.2.3 In its assessment of this dispute, the TRA examined Etisalat's conclusions and determined that they are not sufficiently supported by empirical analysis.

3.7.2.4 Furthermore, the TRA is inclined to reject the conclusions arrived at in those charts and diagrams by Etisalat's own statement that the illustrative tools merely "suggest" an access deficit of between [redacted] per year.

3.7.3 Effect on the Telecommunication Sector and the UAE Economy

3.7.3.1 Etisalat claimed that if the TRA did not approve its retail minus based carrier selection and carrier pre-selection interconnection service charge, there would be negative consequences for the telecommunication sector and the UAE economy as a whole.

3.7.3.2 Etisalat promoted the perspective that its retail minus pricing scheme would achieve the dual purpose of funding its access deficit while maintaining the profitability of the telecommunication sector.

3.7.3.3 Conversely, EITC took the position that Etisalat's concerns regarding decreased revenues from newly introduced competition in the sector were without merit. EITC argued that growth and the elasticity effect of lower prices from increased competition would result in increased usage and, subsequently, higher overall revenues. EITC cited numerous international examples of such market dynamics.

3.7.3.4 The TRA concludes that Etisalat failed to provide sufficient evidence that profound decreases in international revenues would necessarily occur if its proposed retail minus 20% pricing scheme was not adopted.

3.7.3.5 Etisalat also took the position that maintaining the current level of international calling prices is a benefit to the UAE economy and consumers.

3.7.3.6 EITC indicated that competitive pricing lowers the cost of doing business and facilitates trade and investment.

3.7.3.7 The TRA is of the opinion that competitively priced telecommunication services are a benefit to consumers and to the UAE economy as a whole. Etisalat’s retail minus scheme would serve to maintain international call prices at or near their current high levels rather than achieving competitive levels. In addition, if Etisalat's retail minus 20% proposal were adopted in the UAE for carrier selection and carrier pre-selection interconnection service, the combination of interconnection charges and international settlements payments would likely make it unprofitable for any other licensee to operate in the international calls market, effectively blocking the possibility of competitively priced international services in the UAE.

3.7.3.8 The TRA, therefore, finds that Etisalat's retail minus proposal may actually serve to undermine or totally preclude competition in the international calls market in the UAE.

3.7.4 Relevancy of Access Deficit

3.7.4.1 In its Request (a), Etisalat proposed a pricing scheme for carrier selection and carrier pre-selection interconnection service whereby the amount charged for originating interconnection for calls destined abroad would be set equal to Etisalat's international retail price minus 20%.

3.7.4.2 In its Direct Filing, Etisalat attempted to justify its retail minus pricing scheme by arguing that:

(a) it has an access deficit;

(b) this access deficit is substantial in size; and

(c) the only legal means of recovery is through carrier selection and carrier pre-selection interconnection service for calls to international destinations.

3.7.4.3 In its Rebuttal, EITC claimed that access deficit issues are not part of this dispute and that a separate regulatory exercise would be needed to establish the existence and quantum of an access deficit and the proper means to fund it.

3.7.4.4 EITC also stated that the recovery of Etisalat's access deficit *"…is not an interconnection dispute issue. This is a regulatory issue between the TRA and Etisalat that exists outside of, and separately from, the cost associated with fixed call origination services."*[41]

3.7.4.5 In its Surrebuttal, Etisalat responded that it is, *"….incorrect to contend that the subject matter of Etisalat's Direct Filing is the existence, the quantum and the means of funding Etisalat's deficit…"*[42]

3.7.4.6 Etisalat also stated that, *"…any discussion over the existence and quantum of Etisalat's access deficit is a matter for Etisalat and the TRA only, and falls outside of the scope of the dispute…"*[43]

3.7.4.7 Etisalat proceeded to assert that, *"Etisalat agrees that access deficit issues are not an interconnection issue, and stresses that any discussion over Etisalat's access deficit is incidental and secondary to the subject matter of this dispute..."*[44]

3.7.4.8 Also in its Surrebuttal, Etisalat stated, *"Etisalat acknowledges and understands that any discussion over the method of funding its access deficit, which will be implemented in the long terms [sic] falls outside the scope of the dispute…"*[45]

3.7.4.9 The TRA accepts the positions of both Parties that the existence, quantum and the means of funding an access deficit falls outside the scope of this proceeding. Therefore, the TRA will make no determination concerning access deficit in this proceeding.

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[41] EITC Filing 14 March 2007, Page 13
[42] Etisalat Filing, 01 April 2007, Page 35
[43] Etisalat Filing, 01 April 2007, Page 7
[44] Etisalat Filing, 01 April 2007, Page 11
[45] Etisalat Filing, 01 April 2007, Page 35

3.7.5 Distinguishing Carrier Selection and Carrier Pre-selection by Call Destination

3.7.5.1 Regulatory Framework

(a) In this dispute, the TRA has been called upon to determine the appropriateness of a separate originating interconnection service based on the destination of the call. To aid in this determination, the TRA turns to the Regulatory Framework and, in particular, the TRA's Interconnection Instructions.

(b) As per Article 3.1 of the Interconnection Instructions, Version 1.2, issued 19th February 2006, the specific categories for originating interconnection service are limited to Carrier Selection and Carrier Pre-Selection. In this instance, the TRA draws careful attention to the fact that the categorization of this service does not include or even suggest consideration of the destination of a call.

(c) The relevant portion of the article provides that, *"Originating Call Conveyance Services are services used for conveying calls to another Licensed Operator at a Point of Interconnection (POI). The call can be for* ***any destination*** [emphasis added] *and will not necessarily terminate within the network of the other Licensed Operator."*

(d) As the "service" itself ends at a predetermined POI between the licensees, any subsequent conveyance beyond that POI is immaterial to the "service."

(e) As such, regardless of where a call ultimately terminates, the interconnection "service" is merely an originating interconnection service.

(f) Therefore, it is the determination of the TRA that the practical application of the originating interconnection "service" in dispute here, as well as the language of the Interconnection Instructions preclude distinguishing carrier selection and carrier pre-selection interconnection service based on the ultimate destination of the call.

3.7.5.2 **Cost Differentials**

(a) In its Rebuttal, EITC rejected Etisalat's retail minus pricing scheme based on the premise that it bears no relevance to the actual cost of supplying the service. Specifically, EITC stated that, *"…the cost to Etisalat of providing fixed call origination is the same regardless of the category of the call or the final destination of the call…"*[46]

(b) Arguing that Etisalat should properly have examined the utilization of specific network elements employed in the actual conveyance of the call, EITC submitted that, *"…the cost of Etisalat conveying a call from a customer's premises equipment to the relevant point of interconnection is the same regardless of whether the call is destined for termination within or outside the UAE, or to a toll free number."*[47]

(c) The TRA takes note of the fact that Etisalat failed to affirmatively refute the contention that there is no difference in originating interconnection cost for calls which terminate in the UAE versus those that terminate abroad.

[46] EITC Filing, 14 March 2007, Page 3
[47] EITC Filing, 22 April 2007, Page 3

(d) The TRA notes that countries that use cost based interconnection do not make a distinction between calls originating domestically and terminating either domestically or abroad.

(e) Based on the facts on hand, the TRA finds that the cost of providing originating interconnection service for calls originating in the UAE and terminating either in the UAE or abroad is fundamentally indistinguishable.

3.7.6 Matters Not in Dispute

3.7.6.1 In its Direct Filing, Etisalat introduced the dispute with the statement that the matter in dispute was isolated to the charges to be assessed for calls to non-national networks.

3.7.6.2 Specifically, in its Direct Filing, Etisalat affirmed that *"Etisalat and du do not currently disagree on the charge payable to fixed call origination services using CS/CPS to national geographical numbers."*[48]

3.7.6.3 Similarly, in its Rebuttal, EITC confirmed that, *"Etisalat has agreed on a charge of 8 fils for single transit and 14 fils for double transit for fixed call origination for national calls."*[49]

3.7.6.4 Based on the formal representations made by both Parties, the TRA concludes that prior to the initiation of this dispute, the applicable charge for national calls had been agreed upon between the Parties.

[48] Etisalat Filing, 07 February 2007, Page 13
[49] EITC Filing, 14 March 2007, Page 3

4. ETISALAT REQUEST (b)

In its Direct Filing, Etisalat requested to the TRA that:

"the Parties be ordered to continue to negotiate, and to not commercially launch CS/CPS until such time as an agreement is reached on the charge to be applied for the provision of CS/CPS by each Party to the other Party, which is consistent with the relevant international benchmarks;"[50]

4.1 TRA Analysis

4.1.1 Section 4.1.1 of the TRA's Interconnection Dispute Resolution (IDR) Procedures allow for a matter to be referred for regulatory intervention in the event that amicable resolution between the Parties appears unlikely. The relevant portion of the IDR Procedures provides that:

"*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;"*

4.1.2 By filing this Request, Etisalat has made the constructive assertion that the matter cannot otherwise be resolved. In its introduction to the dispute, Etisalat made the assertion that, "*…the Parties have reached an impasse with respect to this issue and that any further attempts at negotiation are unlikely to result in an agreement between the Parties on this issue."*[51]

4.1.3 Furthermore, Etisalat argued that EITC, "…*has stated that it is impossible for it to agree to the charges proposed by Etisalat*,"[52] and that, "…*even if Etisalat seeks to negotiate further, there is no reasonable possibility that du is willing to resolve the difference*."[53]

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[50] Etisalat Filing, 07 February 2007, Page 3
[51] Etisalat Filing, 07 February 2007, Page 6
[52] Etisalat Filing, 07 February 2007, Page 6
[53] Etisalat Filing, 07 February 2007, Page 9

4.1.4 In its filings, EITC neither denied accuracy of the aforementioned statements nor offered evidence or argument to the contrary. EITC has maintained the position that, "*There is no reason for the charges for fixed call origination for national calls to be different from the charges for fixed call origination for international calls*."[54]

4.1.5 In so much as neither Party to this Dispute has even suggested that further negotiation would be likely to yield an amicable resolution, the TRA finds that Etisalat's Request that the launch of carrier selection and carrier pre-selection interconnection service be delayed "…*until such time as an agreement is reached on the charge*" is contradictory to its proclamation that, "…*the Parties have reached an irreconcilable difference*."[55] As such, the TRA finds procedural defect and practical inefficiency in Etisalat's Request that the matter be further delayed for additional negotiation.

5. ETISALAT REQUESTS (c) A., (c) B. and (c) C.

Prior to this Decision, these matters were formally rejected by the TRA and the Petition for Reconsideration relating to interim relief was denied.

[54] EITC Filing, 14 March 2007, Page 3
[55] Etisalat Filing, 07 February 2007, Page 9

6. TRA DECISIONS

6.1 REQUEST (a)

6.1.1 The TRA orders that Etisalat shall provide carrier selection and carrier pre-selection interconnection services without regard to the destination of the call. Furthermore, the TRA orders that absent approved LRIC for this interconnection service, Etisalat shall apply the previously agreed upon price for national calls to all calls originating in the UAE.

6.1.2 Furthermore, the TRA reserves the right to take any further action, including but not limited to examining the price level for carrier selection and carrier pre-selection interconnection service in the future without regard for changed circumstance or a specific request from a licensee.

6.2 REQUEST (b)

The TRA finds procedural defect and practical inefficiency in Etisalat's Request that the matter be further delayed for additional negotiations and as such, denies the Request.

7. EFFECTIVE DATE

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