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SAUDI ARABIA – MEASURES CONCERNING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

REQUEST FOR CONSULTATIONS BY QATAR

The following communication, dated 1 October 2018, from the delegation of Qatar to the delegation of the Kingdom of Saudi Arabia, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

1. My authorities have instructed me to request the Kingdom of Saudi Arabia ("Saudi Arabia") to enter into consultations concerning Saudi Arabia's failure to provide adequate protection of intellectual property rights, in particular with respect to intellectual property rights held (or applied for) by entities based in the State of Qatar ("Qatar").

2. The request is made pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article 64.1 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement").

3. This request identifies the measures at issue in Section A, and indicates the legal bases for Qatar's complaint in Section B.

A. Measures at issue

4. The measures at issue in this request include all written and unwritten, published and unpublished, measures (including omissions) that have resulted in Saudi Arabia's failure to protect intellectual property rights, including with respect to intellectual property rights held (or applied for) by Qatari entities or Qatari individuals. The measures, individually and collectively, affect trade-related aspects of intellectual property rights.

5. In June 2017, Saudi Arabia imposed a scheme of diplomatic, political, and economic measures against Qatar. Such measures impacted, *inter alia*, the ability of Qatari nationals to protect intellectual property rights in Saudi Arabia.

6. The multiple Qatari companies severely impacted by these measures include beIN Media Group LLC and affiliates ("beIN"). Saudi Arabia has prohibited beIN from broadcasting its content in Saudi Arabia.

7. Among Saudi Arabia's measures is a 19 June 2017 Circular, issued by the Saudi Ministry of Culture and Information together with the General Commission of Audio and Visual Media. This Circular states that distribution of beIN media content and charging of related fees in Saudi Arabia "shall result in the imposition of penalties and fines and the loss of the legal right to protect any related intellectual property rights".

8. Soon thereafter, in early August 2017, a sophisticated broadcast pirate named "beoutQ" emerged, taking beIN's copyrighted media content (along with beIN's trademarks) without authorization, and making it accessible on beoutQ platforms, via the Internet and satellite broadcasting. beoutQ's unauthorized satellite broadcasts are transmitted via satellites of the Saudi-based Arab Satellite Communications Organization ("Arabsat") to beoutQ's subscribers. To enable

receipt of the satellite broadcasts, beoutQ (an entity based in Saudi Arabia) has sold set-top decoder boxes throughout Saudi Arabia. As a result, beoutQ's unauthorized Internet and satellite broadcasting of beIN's content has been available on a commercial scale.

9. Despite extensive evidence of involvement of Saudi nationals, entities and facilities in the distribution of beoutQ throughout Saudi Arabia (and beyond), the Saudi authorities have refused to take any effective action against beoutQ. Instead, the Government of Saudi Arabia (including both the central and municipal governments) has supported beoutQ, including by denouncing beIN's requests to investigate and prevent the pirate's unauthorized broadcasts, and by promoting public gatherings with screenings of beoutQ's unauthorized broadcasts.

10. The Saudi authorities' support of beoutQ has also taken the form of restrictions on, or other acts or omission that frustrate, beIN's ability to pursue civil actions before the Saudi courts. Through a variety of means, including by preventing independent Saudi legal counsel from representing beIN in Saudi courts, the Saudi authorities have prevented beIN from accessing enforcement procedures against infringement of its intellectual property rights.

11. The copyrighted materials captured by beoutQ's unauthorized broadcasts encompass not only works created by beIN itself, but also works created by content providers from around the world, including the United States, the European Union and its Member States, and Switzerland, which have provided exclusive licenses to beIN for the Saudi Arabian market.

B. Legal bases of the complaint

12. Qatar is concerned that the measures at issue taken by and/or attributable to Saudi Arabia, as described in Section A of this request and further detailed below, are inconsistent with Saudi Arabia's obligations under the TRIPS Agreement.

13. Specifically, certain measures appear to violate:

- (a) Article 3.1 of the TRIPS Agreement, because by creating obstacles for Qatari nationals (including but not limited to beIN), which are not faced by Saudi nationals, that hinder or block their ability to protect¹ their intellectual property rights (including copyrights, broadcasting rights, trademarks and other forms of intellectual property) in the territory of Saudi Arabia, Saudi Arabia has failed to accord to Qatari nationals treatment no less favourable than that accorded to Saudi Arabia's own nationals with regard to the protection of intellectual property.
- (b) Article 4 of the TRIPS Agreement, because by creating obstacles for Qatari nationals (including but not limited to beIN), which are not faced by nationals of other countries, that hinder or block their ability to protect their intellectual property rights (including copyrights, broadcasting rights, trademarks and other forms of intellectual property) in the territory of Saudi Arabia, Saudi Arabia has failed to accord, immediately and unconditionally, to Qatari nationals the advantages, favours, privileges and immunities granted by Saudi Arabia to the nationals of other countries with regard to the protection of intellectual property.
- (c) Article 9 of the TRIPS Agreement, because Saudi Arabia has failed to provide authors of works (including pre-recorded and live programming) with the exclusive rights of authorizing, *inter alia*, the reproduction, broadcasting, rebroadcasting, public performances or public recitation of their works, as required by the Berne Convention for the Protection of Literary and Artistic Works (1971) ("Berne Convention"), as incorporated into the TRIPS Agreement, including Articles 9, 11, 11*bis* and 11*ter* of the Berne Convention.

¹ For greater clarity, the terms "protect" and "protection" have the meaning provided in footnote 3 of the TRIPS Agreement, and encompass "matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement".

- (d) Article 14.3 of the TRIPS Agreement, because Saudi Arabia has failed to provide broadcasting organizations (and the owners of copyright in the subject matter of the broadcasts) with the right to prohibit unauthorised fixation, reproduction of fixation, and rebroadcasting by wireless means of broadcasts.
- (e) Article 16.1 of the TRIPS Agreement, because Saudi Arabia has failed to provide the owners of registered trademarks (including, in particular, Qatari owners) with the exclusive right to prevent all third parties not having the owner's consent from using, in the course of trade, identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.
- (f) Article 41.1 of the TRIPS Agreement, because by restricting intellectual property right holders (including Qatari rights holders) from pursuing civil actions before Saudi courts (or otherwise frustrating their ability to do so), Saudi Arabia has failed to ensure that enforcement procedures against infringement of their intellectual property are available so as to permit effective action against such acts of infringement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringement.
- (g) Article 42 of the TRIPS Agreement, because, by preventing intellectual property right holders (including Qatari rights holders) from bringing enforcement procedures against infringement of their intellectual property (or otherwise frustrating their ability to do so), Saudi Arabia has failed to make available to right holders civil judicial procedures concerning the enforcement of intellectual property rights covered by the TRIPS Agreement.
- (h) Article 61 of the TRIPS Agreement, because – to the extent the infringement involves Qatari-held intellectual property rights – Saudi Arabia has failed to provide for criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale.

14. This request for consultations also concerns any modification, replacement or amendment to the measures identified above, and any closely connected, subsequent measures.

15. Qatar reserves its rights to raise additional matters during the course of these consultations and in any future request for panel proceedings.

16. Qatar looks forward to receiving a reply from Saudi Arabia to this request within 10 days after receipt of this request, as contemplated by Article 4.3 of the DSU, and to fixing a mutually acceptable date for consultations.
