

# CONSULTATION REPORT



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority

## Regulation on Commercial Bulk Messages Consultation Report

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## Regulation on Commercial Bulk Messages

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## Regulation on Commercial Bulk Messages

### 1 Introduction

1. This report summarises the responses received to the public consultation and draft Regulation on Commercial Bulk Messages (the "Regulation") issued by the Telecommunications Regulatory Authority ("TRA") on the 16<sup>th</sup> of September 2010.
2. This report is intended to provide the general public with an understanding of TRA's position regarding comments and suggestions made by all interested parties in relation to the introduction of controls to enhance the privacy of telecommunications users in the Kingdom of Bahrain.
3. In the past, TRA consulted a number of times on the introduction of several forms of consumer protection measures, including a public consultation on Consumer Protection Related issues on the 25<sup>th</sup> of January 2006, a second public consultation on Consumer Protection Related Issues on the 4<sup>th</sup> of February 2007, and a public consultation on "Unsolicited Bulk Messages" on the 5<sup>th</sup> of July 2009.
4. With the latest consultations, TRA reaffirmed its position on separating the larger issue of consumer protection from the more pressing matter of unsolicited bulk commercial messages. The latter issue, in TRA's view, is of a great concern to a large segment of consumers in the Kingdom of Bahrain and has to be addressed.
5. The information provided in this report sets out TRA's final position on all cases brought forward by the interested parties. Each comment, suggestion, concern, or argument will be followed immediately by TRA's response and position.
6. This report does not attempt to copy entire submissions, but instead provides a clear and brief summary of each comment from within the respective submissions. The full responses provided by interested parties will
7. be available on TRA's website. Submissions provided in Arabic have been translated to English.

### 2 Objectives of the Regulation

8. TRA is mindful of the potential invasive nature of unsolicited bulk messages to consumers in the Kingdom of Bahrain. It remains TRA's preference that this matter is addressed by Licensed Operators taking the initiative to put in place measures to enhance the privacy of consumers, however, TRA notes that with the exception of one Licensed Operator, no other Licensed Operator has endeavoured to take positive action.
9. In the only instance where a Licensed Operator has taken measures in this regard, TRA notes that such measures are to date ineffective, costly, and are not sufficiently publicized.

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10. The Regulation sets out rules to enhance the privacy of consumers, whereby it considers all consumers – by default – opted out of any commercial bulk messages, sets out the allowed times of day to communicate such messages with consumers, and details the minimum information to be supplied in such messages amongst other matters.
11. Based on the consultation responses, the Authority has made amendments to the definitions on the final Regulation, in order to address the suggestions:
  - a. To widen the scope of the Regulation, the term ‘commercial’ has been removed from the Regulation. As such, the position has been reverted to the Draft Regulation issued in the third consultation.
  - b. To address the issue of determining what a bulk message is, the definition of ‘Bulk Message’ has been amended and defines threshold of a message sent to 100 recipients or more at one time in order for that message to be considered as a bulk message. As such, licensed operators should amend their Standard Subscriber Agreements to reflect these requirements in accordance with the relevant licence clauses.
  - c. To address the issue of international bulk messages, the definition of ‘source’ has been introduced to encompass any licensed operator, bulk messenger, juristic or natural person.
  - d. The concept of Contracted and Uncontracted Sources has been introduced to reduce the dissemination of internationally generated bulk messages.
12. In enforcing the Regulation, TRA has considered the availability of technical solutions to support compliance with the provisions of the Regulation, and considers that a period of one month from the publication of the Regulation in the Official Gazette to be a reasonable amount of time to procure and deploy a suitable technical solution.
13. TRA will, in the future, review the necessity of regulating this aspect of consumer protection and whether transitioning towards industry self-regulation is a viable option or not. This depends largely on the commitment and discipline of affected Licensed Operators in maintaining healthy consumer protection practices, and the availability of data protection laws in the Kingdom of Bahrain.

### 3 Consultation Respondents

14. TRA is thankful to all the responses received from the different parties. As a result of the latest public consultation, TRA received responses from the following entities:
  - Bahrain Consumer Protection Society (BCPS)
  - Bahrain Telecommunications Company B.S.C. (Batelco)
  - Consumer Advisory Group (CAG)
  - Zain Bahrain

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### 4 Consultation Questions

15. **First Question:** *Do you agree with the scope of this Regulation? If not, what would you like to change or add? Please provide detailed reasons for your proposals, including, where relevant, references to the specific provisions of the Telecommunications Law or the licenses.*
16. (BCPS, Batelco and CAG did not provide a direct answer to the first question, but have provided many comments and suggestions that are listed hereunder).

#### Zain's Response to the First Question

17. Zain Bahrain does not agree with TRA on the concept of issuing a Regulation to achieve the objective of protecting consumers in relation to the operation of commercial bulk messages for the detailed reasons provided in Zain's full submission to the consultation. The brief of Zain's submission is as follows.
18. TRA cannot enforce the Regulation on any entity that is not a Licensed Operator. As a result, the Regulation will only slightly hinder Bulk Messengers but not address the problem fully.
19. Instead of a Regulation, Zain recommends TRA publishes a Position Paper on Bulk Messaging similarly to the way TRA addressed the matter of Voice over Internet Protocol ("VoIP") services, and in particular requiring the licensing of Bulk Messengers who effectively, deliberately, and purposely direct their activities to residents of the Kingdom of Bahrain. Zain further believes this possible because the general technical concepts of Bulk Messaging are the same as those used for VoIP.
20. Zain believes that for the most part the problem lies with Bulk Messengers outside the Kingdom of Bahrain where such individuals have access to much lower pricing per message. As such, Zain is unable to determine if incoming messages from outside the boundaries of the country are Bulk / Spam or not, and which foreign operator originated the messages.
21. Licensed Operators will not be able technically to stop delivering Commercial Messages received from other networks of other Licensed Operators, as there are no technical mechanisms available to distinguish between normal messages received from other Licensed Operators' normal subscribers or Bulk Messages.

#### TRA's Position on Zain's Response

22. Through the Regulation, TRA intends to regulate the relationship between Licensed Operators and Bulk Messengers by requiring Licensed Operators to adhere to certain rules before transmitting Bulk Messages. It is not TRA's intention to License each Bulk Messenger as many such individuals have sporadic requirements. TRA does already license, however, such organizations that seek to offer the service commercially to customers within the Kingdom of

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Bahrain. TRA is therefore fully aware of the scope of regulation and the remit TRA has under the law.

23. TRA's position on VoIP differs significantly from the issue of Bulk Messaging. With VoIP, a consumer is subscribing to a telephone service much like any other existing telecommunications service, whereas Bulk Messaging has proved to be highly invasive of consumer privacy and in TRA's view requires better regulation.
24. TRA seeks through the Regulation to ensure all local Bulk Messengers will be subjected by Licensed Operators to the conditions and requirements of the Regulation. With regards to messages originating internationally, TRA has met with a number of solution providers in the past that can address this issue by identifying and significantly reducing the amount of Bulk Messages received.
25. **Second Question:** *What other issues do you think should be included in or excluded from this Regulation?*
26. BCPS, Batelco and CAG did not provide a direct answer to the second question, but have provided many comments and suggestions that are listed hereunder).

### Zain's Response to the Second Question

27. With reference to the Draft Regulation's paragraph 8 which requires Licensed Operators to receive and act on instructions to send Commercial Bulk Messages only for signatories to the bulk messaging code of practice, Zain states that clear processes should be established that govern the different aspects of the relationship between bulk messengers and Licensed Operators (e.g. how to apply as a signatory, notification processes, scripts to communicate different messages, etc.)
28. TRA needs to define how advertisers and bulk messengers are to be considered as having breached the code of practice.

### TRA's Position on Zain's Response

29. The code of practice has been removed and only certain elements of it have been incorporated in the final Regulation. The Licensed Operator's own processes should be updated in light of the requirements of the final Regulation without requiring intervention in this regard by TRA (except the Standard Subscriber Agreements that are subject to TRA's approval).
30. Establishing whether a breach to the Regulation has taken place or not will be determined in the usual course of investigation as TRA currently undertakes for other Regulations, which is through received complaints from consumers or Licensed Operators or through TRA's own investigation.

## 5 Specific Comments and Suggestions

### BCPS' Comment

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31. BCPS requests TRA to mandate that subscribers are empowered to choose whether or not their numbers are listed in the telephone directory – without any charge to the subscriber.

### TRA's Response

32. The matter of telephone numbers being listed in the respective operator's directory or not is out of scope of this Regulation and has no impact on the issue of Bulk Messages.

### BCPS' Comment

33. BCPS suggests that subscribers should individually set the timing window to receive Bulk Messages based on their own preferences. BCPS considers the timing proposed in the draft Regulation suitable for some, but not all, subscribers, such as subscribers working different shifts.

### TRA's Response

34. TRA fully supports the empowerment of subscribers with the choice to select when they wish to receive communications. However, with a very large number of subscribers, it may be unreasonable to mandate such a condition on Licensed Operators, and may prove to be difficult to implement. TRA is of the view that the set timing window is the most common denominator for most residents of the Kingdom of Bahrain, and welcomes feedback from the general public in the future in this regard.

### BCPS' Comment

35. BCPS recommends certain amendments to the Code of Practice requirements, such as the timing of the SMS, and proposes obtaining written acceptance from consumers in order for them to receive commercial bulk messages.

### TRA's Response

36. TRA has separated the larger issue of consumer protection, which was to be addressed using a code of practice, from the matter of Bulk Messages. However, the final Regulation sets the timing of messages to take place within, in TRA's view, reasonable hours for most consumers as per the comments received during number of previous consultations. This timing is set between 09:00 and 20:00 hours – Kingdom of Bahrain time.
37. TRA also addressed the matter of obtaining the consumer's consent by requiring an explicit consent by given by the consumer (no matter the format of such a consent), and such consent be maintained for the legal period as required by Bahrain Law.

### BCPS' Comment

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38. BCPS recommends that Licensed Operators should be prevented from sending Bulk Messages promoting their own raffle-like competitions and draws, and be allowed to send other promotions and bill notifications only.

### TRA's Response

39. TRA's mandate as the telecommunications regulator is very clear in the Law; TRA will address the matter of Bulk Messages only insofar as these messages invade the privacy of consumers. Issues such as the type of different messages that can be sent and whether or not such messages breach public morale or any applicable law are outside the scope of this Regulation.

### Batelco's Comment

40. TRA possesses limited powers to address problems arising out of unwelcome Bulk Messages by way of a regulation, and should consider alternative solutions that may be more effective. The problem of Bulk Messages will not be solved by introducing a Regulation that is binding on mobile operators in the Kingdom of Bahrain alone.

### TRA'S Response

41. TRA is very well aware of its jurisdiction under the law and the geographical limitation of any regulatory measure mandated by TRA. Working within such confines, TRA is of the view that the problem of Bulk Messages can indeed be tackled from multiple angles with the support of the different parties involved – starting with the locally Licensed Operators. Although the problem may not be solved entirely it is certainly a good starting point to reduce the amount of unwelcome Bulk Messages.

### Batelco's Comment

42. Batelco is of the view that a more efficient alternative means of regulating Bulk SMS actively would be to introduce reasonably priced anti-spam filters or other similar tools that protect mobile end customers holistically from unwanted spam.

### TRA's Response

43. As a result of the final Regulation, Licensed Operators will have to deploy suitable technical solutions, which include anti-spam solutions or other similar tools; however, TRA does not support a '*privacy-optional*' and chargeable solution to this issue.
44. In the final Regulation TRA requires that no fees be charged to consumers in order to avoid received Bulk Messages, and TRA does not agree that it should allow Licensed Operators to charge for this service. This should automatically cancel charges that apply currently for such service/solution.

### Batelco's Comment

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45. As a direct result of the Regulation, local mobile operators will suffer from a competition disadvantage compared to international service providers. Unlike local mobile operators, international service providers will not have to face any similar compliance issues, which will consequently make the international service providers very active in the Bahraini market and “spam” Bahraini consumers even more. Local service providers should be given the priority and not be forced out of the market.

### TRA’s Response

46. It is important to note that the nature of most Bulk Messages observed by TRA and reported by consumers is advertising for local businesses, which means that the Bulk Messenger is easily identified. International service providers are acting at the behest of such local Bulk Messengers. In TRA’s view, this does not necessarily equate to Bulk Messages increasing as a result of the Regulation. Using appropriate technical solutions, Licensed Operators should be able to, on a case-by-case basis, blacklist Bulk Messengers that are not caught by default as a result of compliance with the Regulation. Further, to tackle this problem, TRA has limited the time during which the Bulk Messages can be sent through the Licensed Operators Networks. And on the final Regulation, TRA distinguishes between the Bulk Message sent from a source Contracted or a source that Uncontracted with a local Licensed Operators that reinforce the Licensees positions as key players in the Bulk Messaging local market.

### Batelco’s Comment

47. A strict opt-in approach is a far-reaching, onerous and disproportionate requirement. The entire customer base will have to be contacted, which may prove to be inconvenient to consumers and increase the ‘annoyance factor’ that the Regulation is trying to avoid. This approach is out of step with other more flexible measures. Batelco customers who do not want to receive such messages already have the means to opt out.

### TRA’s Response

48. Batelco has not provided details on what it refers to as other *more flexible measures*. In the future, obtaining consent can be made easier if integrated into the processes related to registering new subscribers, according to the final Regulation.

49. Given that any person in the Kingdom of Bahrain can potentially be a Bulk Messenger, it is unreasonable to require Batelco’s consumers to use Batelco’s current chargeable method to opt-out as the costs to consumers will be very high; as stated above and in the final Regulation, TRA places great value on the privacy of consumers, and disagrees with the principal of charging for opting-out.

### Batelco’s Comment

50. Batelco welcomes the principle that Licensed Operators cannot be subject to a “strict liability” regime, since it can only exert contractual control over third

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parties. TRA should acknowledge the limited responsibilities and means of controls of Licensed Operators and deem Licensed Operators compliant with the proposed Regulation for as long as relevant contractual arrangements between the concerned parties are in place. Otherwise, Licensed Operators will face a high and constant risk of non-compliance and potential fines.

### TRA's Response

51. TRA endeavours to always remain reasonable, transparent, non-discriminatory and efficient in the carrying out of its duties. Any measure to be taken by TRA must be measured and proportionate to the case at hand, and TRA will monitor compliance with the Regulation accordingly. Any reported breach of the Regulation will be investigated by TRA as per TRA's normal investigation procedures.

### Batelco's Comment

52. Batelco believes that if the other local mobile operators in the Kingdom of Bahrain were to introduce similar opt-out tools (or anti-spam filters) for their own customer base complemented by an industry-wide accepted Code of Practice, these measures would significantly reduce the impact of unwelcome SMS and would make it unnecessary to issue a relevant Regulation.

### TRA's Response

53. TRA encourages industry self-regulation and applauds efforts by Licensed Operators that contribute positively to the overall consumer experience. The option for Licensed Operators to undertake their own initiative has always been available in the past; TRA's concern with the matter of Bulk Messages is a long-standing one; can be noted from the number of consultations; yet TRA has observed very little being done by Licensed Operators in the way of providing a working solution.
54. TRA will monitor the effectiveness of this Regulation and will update its provisions if and when necessary, with the view of ultimately leading up to the industry not requiring regulatory intervention in the future in this regard. This largely remains for the Licensed Operators to demonstrate to TRA and the general public in the Kingdom of Bahrain.

### CAG's Comment

55. CAG recommends that the Code of Practice should ensure that the consumer has the choice of whether or not to receive Commercial Bulk SMS.

### TRA's Response

56. TRA agrees with this comment and has addressed this matter in the final Regulation.

### CAG's Comment

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57. The draft Regulation consultation document was very difficult to read and understand by the general public. Although the general public is the main audience and main stakeholder of the measures listed in the Regulation, the writing of the Regulation was very formal, written in legalese, and generally not user-friendly. This means that the general public is unaware of the proposed measures and their consequences.

### TRA's Response

58. TRA notes and appreciates the need to communicate with different groups of audiences in the appropriate tone and language, and thanks CAG for bringing this matter to TRA's attention. In the future, TRA will consider the best means to ensure a more inclusive approach to consulting different audience groups

### CAG's Comment

59. CAG indicates that a clear distinction must be made between an individual sending a Bulk Message to a group of friends (during Eid, for example) and another individual who may be running for office. Both are individuals sending a message to a group of people, so how will the code of practice be applied in this case.

### TRA's Respons

60. TRA has studied this case and decided to add the a requirement to the final Regulation that the opt-out option must be possible from any Commercial Bulk Message originating nationally or internationally from any source identified by numbers or Alphanumeric codes and regardless of whether the Bulk Message was solicited or unsolicited.

### CAG's Comment

61. CAG disagrees with the proposal to have a Signatory list, and suggests that this may only force Bulk Messengers to find alternative solutions.

### TRA's Response

62. The requirements to have a Signatory list and the Code of Practice have been removed as mentioned above.

### CAG's Comment

63. CAG highlights the current lists of telephone numbers with the marketing and Public Relations companies. TRA should ensure that those have expressed consent to receive bulk messages. CAG further questions how such organizations have been able to procure the list of numbers in the first place.

### TRA's Response

64. The Regulation will apply equally to such organizations and others; having a list of mobile numbers before the effective date of the Regulation grants no special exemption from the provisions of the Regulation.

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### CAG's Comment

65. Preferences are varied from one individual to another on the type of messages they like to receive; how will businesses be able to attract new customers if they don't have their consent to send them a message promoting their goods or services?

### TRA's Response

66. Upon the final Regulation, it will be breach of Regulation to send any Bulk Messages without consent.

### CAG's Comment

67. TRA should ensure the general public is well aware of the new Regulation by initiating an awareness campaign after the Regulation is made public and enforced.

### TRA's Response

68. TRA will take this suggestion under advisement and, depending on available resources, will endeavour to communicate to the general public the use and the impact of the Regulation.

### CAG's Comment

69. CAG considers that Bulk SMS being sent from abroad is still harmful and should be regulated as well.

### TRA's Response

70. TRA notes CAG's concern. Bulk Messages being sent from abroad or through the Internet may prove somewhat more difficult to address than locally originated Bulk Messages, however, Licensed Operators will be able to address this issue to some extent depending on the technical solution deployed in compliance with this Regulation.

### CAG's Comment

71. CAG advises TRA to propose a Data Protection Act for the Kingdom of Bahrain as a main piece of legislation that governs the protection of personal data within a country.

### TRA's Response

72. A Data Protection Act will encompass a wide-range of issues affecting the privacy of information, and is a multi-stakeholder initiative that TRA will strongly support and contribute to.

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