

# CONSULTATION

Consumer Protection Related Consultation

## Consumer Protection Related Consultation

A Consultation Issued by the Telecommunications  
Regulatory Authority  
25 January 2006

The address for responses to this document is:

The Director of Communications and Consumer Affairs,  
Telecommunications Regulatory Authority (TRA)  
PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, email responses may be sent to the Authority's  
email address at [consult@tra.org.bh](mailto:consult@tra.org.bh)

**The deadline for responses is 5p.m. on 28 February 2006**



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### 1 Introduction

Legislative Decree No. 48 of 2002 promulgated the *Telecommunications Law* (the "Law") for the Kingdom of Bahrain ("Bahrain"). The Law created the Telecommunications Regulatory Authority (the "TRA" or "Authority") which has responsibility for the regulation of the telecommunications services industry in Bahrain during its transition to full competition. One of the duties assigned to the TRA in section 3(b)(1) of the Law consists of:

“... carrying out its duties relating to telecommunications services in the manner best calculated to:

1. Protect the interests of subscribers and users in respect of:  
the tariffs charged for services;  
availability and provision of services;  
quality of services; and  
protection of personal particulars and privacy of services.”

Pursuant to these duties, the Authority has prepared this Consultation document with the aim of identifying and where appropriate implementing adequate safeguards for users and subscribers of telecommunications services in Bahrain in each of the three areas being consulted on.

#### 1.1 Consultation process

Interested parties are invited to respond in writing to the TRA with comments and suggestions on this document by no later than 5:00 p.m. 28 February 2006. Once the TRA has considered the responses to the consultation, it will publish a report that: identifies any significant concerns expressed; sets out the TRA's initial position; and highlights any actions that the TRA is minded to take. There will be a public hearing held approximately three weeks after issue date of the consultation to obtain feedback from the public on the various topics of the consultation. After that there will be a two-week period for respondents to send their comments formally to the TRA.

The TRA, while preparing this consultation document, has identified some information that needs to be obtained directly from licensed operators, given the nature of the topics discussed. The TRA will be requesting this information formally from licensed operators. This will enable the TRA to have access to all relevant information prior to reaching a final decision on the issues outlined in this consultation. The information that will be requested from operators is enclosed in a separate annex at the end of this document.

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P.O. Box 10353  
Manama  
Kingdom of Bahrain

Alternatively, email responses may be sent to the Authority's email address at [consult@tra.org.bh](mailto:consult@tra.org.bh).

**The TRA will publish all comments as received unless a respondent expressly asks to have them withheld, in total or in part. If any party wishes to have the whole of its submission withheld, it should state this clearly at the beginning of its submission. If the respondent wishes to have some parts withheld, it should put them in a separate annex and clearly mark them as confidential.**

### 1.2 Scope of the consultation

The TRA is consulting on three areas, all of which impact the extent to which subscribers and users of telecommunications services in Bahrain require protection from the potentially detrimental effects that might arise from the actions of licensees. These are:

- (A) The provision of pre-paid telecommunications services and whether action should be taken to protect consumers against the event of the insolvency of a provider of such services;
- (B) the provision of short message services ("SMS"), telemarketing, fax broadcasting and bulk emails, and whether guidelines or regulations should be introduced to protect consumers from the nuisance element and invasion of privacy that such services may give rise to; and
- (C) the procedure for disconnecting telecommunications services of subscribers for non-payment of bills, and whether guidelines should be implemented to ensure that consumers are protected against the potential harm that may arise from premature disconnection.

Each of the above issues is addressed separately in Parts 2 – 4.

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## **2 The provision of pre-paid telecommunications services**

### **2.1 Introduction**

Pre-paid telecommunications services allow the user to pay for “airtime” before it is used. This mode of payment is preferred by certain users, as opposed to a bill post-paid system, because:

- it is easier to control and limit phone expenses; and
- it is affordable and accessible to those without a credit card or a bank account.

In order to offer pre-paid telecommunications services to users, the service provider must obtain a Value Added Services (“VAS”) license from the TRA. The VAS license is a class license that authorises the licensee to provide enhanced or value-added telecommunications data and/or voice services on a non-exclusive basis over an existing telecommunications network.<sup>1</sup> Along with an initial fee of BD 1,000, there is an annual license fee of 1% of gross annual turnover.

The initial capital investment needed to offer a pre-paid telecommunications service is low and the business can be characterised as a niche market (taking into account that the value of a pre-paid voucher currently ranges between BD 1 and BD 10). However, once the service provider is in business, there will be a combination of unused and partially used pre-paid vouchers in the market. There is, therefore, a significant aggregated potential loss to consumers in the event that such a licensee goes out of business due to insolvency.

This is particularly the case given that:

- (i) the provision of this service is viable for smaller enterprises which may not have the same financial resources available to larger players; and
- (ii) the low value of pre-paid vouchers means that individual consumers are unlikely to be able to seek, or be able to obtain, reimbursement for any loss in the event of the insolvency of the service provider, without an express provision for their compensation.

A further risk in the event of the insolvency of a pre-paid telecommunications service provider is that there would be a resulting loss of confidence in pre-paid telecommunications services among consumers. This would have a

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<sup>1</sup> “Telecommunications network” means the transmission systems and, where applicable, switching or routing equipment and other resources, which permit the conveyance of messages, sound, visual images or signals by wire, radio, optical or other electromagnetic means, including satellite networks and fixed (including internet) and mobile terrestrial networks.

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detrimental effect on all the other providers of similar services and indeed on telecommunications providers generally.

### 2.2 Current legislative framework and its effectiveness

The TRA must approve individual applicants for a VAS license. An applicant must give evidence of its “operational and financial stability” – if applicable, by submitting financial statements, bank statements and list of shareholders.

The existing generic form of the VAS license does not impose any solvency protection provisions. The only obligations imposed on the licensee that act to provide a degree of protection to subscribers for pre-paid services are the duties to:

- (i) prepare a code of practice offering guidance to consumers as to how complaints and disputes will be handled (section 5 of the license); and
- (ii) present regulatory accounts for the licensed activity in accord with the agreed form. The TRA may also require the licensee to submit any other accounting information necessary for effectively supervising and enforcing the license (section 9 of the license).

#### *Consultation:*

*1. Respondents are invited to comment on their confidence in using pre-paid calling services.*

*2. Respondents are invited to give their views on whether there is a need to introduce measures to protect consumers from the potential risks associated with the insolvency of a pre-paid service provider; and on whether the current application process for a VAS license is adequate to protect consumers from the potential risk of a service provider becoming insolvent.*

*3. Respondents are invited to comment on whether they consider the current VAS license provisions, such as the code of practice and presenting regulatory accounts, is sufficient to protect consumers from the potential risk of a service provider becoming insolvent.*

### 2.3 Regulation of pre-paid telecommunications services in other jurisdictions

#### 2.3.1 Europe

In the European Union ("EU") the regulation of electronic telecommunications networks and service providers is primarily conducted under the umbrella of five directives. Providers of pre-paid services fall under these directives as providers of “electronic communications services”.<sup>2</sup>

<sup>2</sup> “A service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks” [Article 2(c) Directive 2002/21/EC (the “**Framework Directive**”)].

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Consequently, member states may not impose conditions on the provision of these services, except insofar as they are authorised to do so by the directives and Article 46 of the European Community ("EC") treaty<sup>3</sup>. Any conditions must be objectively justified in relation to the network or service concerned, non-discriminatory, proportionate and transparent. To date, member states, including the UK, have proved unwilling to impose any such requirements on providers, due to the low denominations of individual cards.

However, the European Commission's DG Internal Market (2004) recently published a consultation paper on the application of the E-money Directive<sup>4</sup> to mobile operators. The consultation argues that pre-paid mobile phone cards could correspond to the definition of e-money. Further, the consultation identifies two associated concerns:

- (i) the risk of insolvency of the e-money institution (in the specific case, the mobile operator) for customers and merchants; and
- (ii) risks stemming from the lack of liquidity to satisfy redemption requests of the e-value by customers and merchants.

If mobile operators are subject to the Directive, then their pre-paid card operations could be made subject to the regulatory requirements applicable to e-money institutions. These include:

- (i) a requirement to maintain a fund equal to 2% of current liabilities or, as a minimum, a set initial capital value below which the value of the funds held cannot fall;
- (ii) restrictions on the nature and scale of investments;
- (iii) prudential supervision (e.g. minimum capital requirements and reporting obligations); and
- (iv) money-laundering requirements.

It is possible to apply for a waiver of all or some of these obligations depending on the scale of the relevant undertaking's financial liabilities relating to outstanding electronic money [normally below €5 million (approximately equivalent to BD 3,330,000/-)]. In part this is to ensure that the regulatory requirements do not impact on competitiveness and the future development of new services and new technologies.

### 2.3.2 Rest of the world

In some states in the United States of America pre-paid calling card providers are required to register with the state regulator. This obligation is explicitly designed to protect consumers against fraud, hidden charges

<sup>3</sup> Article 6, Directive 2002/20/EC (the "Authorisation Directive"). The Treaty exceptions are for public policy, public security and public health.

<sup>4</sup> Directive 2000/46/EC.

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and/or poor service (for example, this obligation exists in both Washington and Texas).

For solvency protection, registration might be associated with a certification regime. The service provider would need to demonstrate its technical, financial and/or managerial resources to obtain a certificate, which would need to be presented to card retailers before cards could be sold. This would be enforceable through financial penalties for the licensee and/or retailer.

In order to protect consumers against insolvency and/or fraud, Singapore and several US states require pre-paid service providers to offer a bond or banker's guarantee in favour of the regulator. The Hong Kong Telecommunications Authority is currently consulting on establishing similar provisions<sup>5</sup>.

Jurisdictions vary in how this obligation is imposed. In Singapore, class licensing has recently been replaced by individual licensing, in order to give the regulator the opportunity to assess the financial strength of providers. The Hong Kong *Telecommunications Ordinance (Cap 106)* requires this service to be licensed - a class license has been recommended as the simplest and lowest-cost regulatory measure to introduce.

Some American states, such as Washington, only require operators to post a performance bond if they cannot meet corporate debt rating standards.

Hong Kong has proposed that, as an alternative to requiring security, pre-paid service providers might be required to maintain a minimum net asset value, which would need to be supported by financial reporting obligations.

This could be enhanced by requiring a greater degree of accounting and/or business separation, including requiring the pre-paid phone card business to be financially separated out as a stand-alone company.

In addition, or as an alternative to this, management restrictions might be considered. These could impose rules in relation to the experience and integrity of those conducting the business or in relation to the use of assets within the business. In particular, to maintain financial security, restrictions on asset stripping and/or borrowing and security might be considered.

### 2.3.3 Possible solutions to protect consumers

One of the methods that could be adopted is to require service providers to set up an escrow account, a trust or a bond in favour of the TRA, in order to protect consumers against insolvency of a service provider. The escrow account or bond would be used to compensate customers in case the service provider goes out of business due to bankruptcy. However, such a commitment would impose additional financial obligations on pre-paid telecommunications service providers.

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<sup>5</sup> Consultation Paper of 15 October 2004 on the Creation of a Class License to Regulate Resale of Telecommunications Services on a Pre-paid Basis.

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Another solution could be issuing a regulation that mandates solvency protection provisions for VAS licensees. The TRA has the power to issue regulations in connection with licensing as per section 3 c (1) of the Law.

Debt rating could be added as an additional criterion in the license application form however this would only apply to future licenses. Debt rating is used as an indicator of the stability and level of risk of insolvency of the operator. This indicator can be used as an instrument for determining whether a potential service provider will be able to meet its obligations, through an independent objective assessment of the applicant.

It would also be possible to consider imposing certain management restrictions on service providers, as discussed in section 2.3.2, to maintain financial security.

### *Consultation:*

*4. Were it considered that measures to address consumer protection for pre-paid services are required, respondents are invited to indicate the most suitable solution among those listed above [i.e., setting up an escrow account, requiring the service provider to offer a bond, issuing a regulation to mandate an obligation against solvency protection for VAS licensees, or including an additional criterion (debt rating) to the license application form].*

*5. Respondents are invited to comment on the costs and competitive effect of requiring providers to establish a security against insolvency.*

*6. Respondents are invited to give information indicating the extent to which pre-paid calling card providers are scrutinised by the standard debt rating agencies and the costs of becoming scrutinised by the standard debt rating agencies*

*7. Respondents are invited to comment on the extent to which the benefit to consumers of this protection would justify the burden of meeting such ratings standards.*

*8. Respondents are invited to comment on the extent to which annual reporting and prudential supervision would be more or less onerous than posting a performance bond.*

*9. Respondents are invited to comment on the impact of business management restrictions on the current state and future development of the market, and the extent to which these might be in the consumer's interest.*

*10. Respondents are invited to propose any alternative solutions for protecting consumers of pre-paid services.*

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### **3 Provision of bulk SMS, telemarketing, fax broadcasting and bulk email**

#### **3.1 Introduction**

This part of the consultation deals with the options available for regulating the mechanisms of sending bulk SMS, telemarketing, fax broadcasting and bulk email, such as “opt in” or “opt out”, determining allowed times of the day for sending these communications and how to unsubscribe.

#### **3.2 About bulk SMS, telemarketing, fax broadcasting and bulk email**

The characteristics of SMS, telemarketing, fax broadcasting and bulk email lend themselves to use for promotional purposes. They can be viewed as useful tools for small and medium sized enterprises to promote their products, services, special offers and discounts. Their availability as a cheap marketing medium could be seen as promoting the efficiency and competitiveness of Bahrain’s economy by allowing smaller firms to compete and gain market recognition without the need for large advertising budgets.

However, these ways of communication may also represent an inconvenience for the recipient and can be considered invasive. The further development of Bahrain’s telecommunications network will allow for the greater, and potentially more sophisticated, use of such technologies for marketing purposes. This in turn raises questions of privacy and the protection of personal data. Furthermore, in some jurisdictions these ways of communication have been used in committing fraud and could also be used for purposes of harassment.

The TRA believes that the successful deployment and use of these services will largely depend on the confidence of users that their privacy and their personal data will not be abused. The aim of this section of the Consultation Document is to consult on what systems of control, if any, should be adopted with regard to the use of unsolicited SMS communications, telemarketing, fax broadcasting and bulk email.

Currently there are no codes of practice which regulate the use of such services or which offer consumers specific safeguards or protection with regard to their privacy. Should a code of practice, or other system, be set up to monitor the unsolicited use of these media, it would also be necessary to establish a set of principles through which breaches can be identified.

#### *Consultation:*

*11. Respondents are invited to comment on the use they currently make of SMS, telemarketing, fax broadcasting and bulk email, and the role these communications play in their marketing strategies.*

*12. Respondents, and especially consumer representatives in Bahrain, are invited to comment on their experience of SMS, telemarketing, fax broadcasts and bulk email. The TRA would be interested to understand the extent to which inconvenience or cost may have been incurred in respect of:*

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- (i) SMS communications;
- (ii) telemarketing;
- (iii) fax broadcasts; and
- (iv) bulk email.

13. The TRA also invites comments from consumers who consider such promotional material to be welcome and informative.

### 3.3 Bulk SMS

#### 3.3.1 Introduction

SMS is a service for sending short text messages (limited to a maximum of 160 characters in English and 70 characters in Arabic) to mobile and fixed phones and is an increasingly popular mode of communication between mobile phone subscribers, as it is generally cheaper than voice communication. Bulk SMS messaging refers to the process of sending large quantities of text messages and is typically characterised by the transmission of a standard message to recipients who may not have given an indication of wishing to receive such SMS communications.

Currently bulk SMS broadcasting is predominantly used by businesses in Bahrain to contact consumers.

#### 3.3.2 Current legislative framework and its effectiveness

As described above, Bahrain currently does not have a code of practice or specific legislation regulating the use or transmission of SMS communications. However, in order to offer SMS to users of telecommunications services, the service provider must obtain a Value Added Services (“VAS”) license from the TRA. The VAS license is a class license that authorises the licensee to provide enhanced or value added telecommunications data on a non-exclusive basis over an existing network.

*Consultation:*

14. Respondents are invited to comment on whether there is a need to introduce measures to control the sending of bulk SMS to consumers.

#### 3.3.3 Regulation of the supply and use of SMS in other jurisdictions

##### **(A) Europe**

The EU has introduced a Directive specifically concerning the processing of personal data and the protection of privacy in the electronic

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communications sector (Directive 2002/58)<sup>6</sup>. The EU legislation considers the transmission of unsolicited SMS messages for direct marketing purposes to be an invasion of privacy. Consequently, unsolicited SMS communications for direct marketing purposes may only be sent to subscribers who have given prior consent (an “opt-in” system).

The Directive adopts a different approach where electronic contact details have been obtained in the course of the sale of a product or service. In such circumstances the details may be used by the enterprise for the marketing of its own similar products. Such communications are permitted, provided the recipient is given an initial opportunity to opt out of receiving such material, and each subsequent communication affords the recipient the opportunity to opt out of receiving further communications (an “opt-out” system).

### **(B) Rest of the world**

In line with the European approach, some jurisdictions have chosen to legislate or regulate with regard to unsolicited electronic communications as a whole (and therefore include provisions regarding bulk email). Such legislation either adopts an “opt-out” approach or an “opt-in” approach.

However, other jurisdictions have sought to examine or develop other strategies to control unsolicited electronic communications. These have included:

- (i) *cooperation within the industry with regard to compiling a list of senders of unsolicited nuisance marketing messages; and*
- (ii) *educating users as to means of avoiding unsolicited electronic communications.*

### 3.3.4 Possible solutions for regulating bulk SMS

One of the solutions for regulating bulk SMS is to adopt an opt-in or opt-out approach as discussed in section 3.3.3(A) and adopted in the EU.

Another solution to be considered is introducing an industry code of practice that sets out the time and frequency for sending bulk SMS, and includes obligations on the sender to specify clearly the cost of the reply to the SMS as well as how recipients can unsubscribe from this service. Some codes of practice also contain opt-in or opt-out requirements. A code of practice can either be developed on a voluntary basis by operators, or issued by the TRA, in which case it would be binding to the industry as a whole. Code of practice breaches are usually not considered breaches of the law (unless otherwise stated by the regulator).

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<sup>6</sup> Directive 2002/58/EC of the European Parliament and of the Council, of 12 July 2002, concerning the processing of personal data and the protection of privacy in the electronic communications sector.

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Another solution to be considered is to include the provisions in the code of practice discussed above in a regulation issued by the TRA, in which case a breach of any of these conditions will be a breach of a regulation.

It would also be possible for the TRA to request that the industry raise awareness among their subscribers on how to avoid receiving such bulk SMS.

### *Consultation:*

*15. Were it considered appropriate for the TRA to seek to regulate the use of bulk SMS within Bahrain, respondents are invited to comment on which of the options discussed above represent the best solution for regulating bulk SMS.*

*16. Respondents are invited to comment on whether bulk SMS should be governed by an opt-in or an opt-out approach.*

*17. Respondents are invited to comment on whether an opt-in/out approach should be provided to subscribers via a toll-free or normal rate number, and in case of opt-in, how the opt-in lists should be compiled and maintained.*

*18. Respondents are invited to comment on whether a code of practice should be published with provisions relating to the number of times bulk SMS can be sent, the existence of an unsubscribe option for recipients within each SMS sent, the frequency of sent messages, opt-in/out lists, etc.*

*19. Respondents are invited to comment on whether the aforementioned provisions in the code of practice should be included as conditions in a regulation, or be published as an industry code of practice.*

*20. Respondents are invited to comment on whether the industry should promote awareness among users on how to avoid unsolicited SMS.*

*21. The TRA further invites suggestions for alternative methods of regulating the use of SMS.*

## **3.4 Telemarketing & fax broadcasting**

### **3.4.1 Introduction**

- Telemarketing :

Telemarketing is the process of marketing a product or service to an undertaking or person by contacting them directly on their telephone. Typically, such calls are unsolicited and directed to both fixed lines and mobile phones. A distinction may be drawn between automated calling systems without human involvement (automatic calling machines), where a subscriber is automatically called and played a pre-recorded message, and person-to-person telemarketing, where the subscriber is called by an individual. This direct involvement of people in the marketing process makes person-to-person telemarketing more expensive for the sender than an automated calling machine. Increasingly, some telemarketers are sub-contractors who make use of sophisticated databases to target potential customers.

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As telemarketing is typically directed at fixed lines and mobile phones, certain subscribers may find that they have been contacted at inappropriate times or have been offered inappropriate products. Moreover, the frequency of contact that a seller may have with a subscriber might cause annoyance and disturbance to such subscriber.

- Fax broadcasting:

A fax broadcast can be used to transmit an advertisement to any other holder of a fax machine. Although some subscribers may find such advertisements to be informative, others may feel that they hinder the receipt of important fax broadcasts or waste paper.

There is a possible distinction to be drawn between the times that an undertaking or business may wish to ensure that unsolicited fax broadcasts are not received (business hours), and the times when an individual would wish to safeguard his fax machine from unsolicited fax broadcasts (non-business hours).

### 3.4.2 Current legislative framework and its effectiveness

As mentioned above, Bahrain does not currently have a code of practice or specific legislation regulating the use of its telecommunications network for the purposes of telemarketing and fax broadcasting. Moreover, telemarketing and fax broadcasting are usually employed by commercial entities to promote their products and services, and the TRA's jurisdiction as regards imposing license conditions and investigating breaches to these conditions is limited to the licensed telecommunications operators in Bahrain. Given that both telemarketing and fax broadcasting would necessarily entail the use of one of Bahrain's licensed telecommunications networks, it could be possible to impose certain conditions on the operators but not directly on the third party initiating the telemarketing phone call.

#### *Consultation:*

*22. Respondents are invited to provide information on the number of telemarketing calls and fax broadcasts received by consumers in Bahrain. Should no precise information on calls be available, estimates can be provided in conjunction with relevant substantiation for these estimates. Such precise information or substantiated estimates would enable the TRA to better evaluate the issue at hand.*

*23. Respondents are invited to comment on whether the number of telemarketing calls and fax broadcasts received by consumers in Bahrain represents a problem or a nuisance .*

*24. Respondents are invited to comment on whether there is a need to introduce measures to regulate telemarketing and fax broadcasting in Bahrain.*

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### 3.4.2 Regulation of telemarketing in other jurisdictions

#### **Europe**

Automated telemarketing in the EU is regulated by Directive 2002/58. The Directive recognises the distinction, highlighted in section 3.3.3, between automated-calling-system telemarketing and person-to-person telemarketing. Automated-calling-system telemarketing is only permitted where prior consent has been obtained.

The Directive does not seek to regulate person-to-person telemarketing. In this regard, member states are free to adopt an opt-out approach. It is this approach which has been adopted by the UK, where a register of subscribers not wishing to receive such calls is maintained.

It should be noted that EU regulations represent the minimum requirements set by the EU for dealing with each issue. Member states have the flexibility of introducing additional obligations or requirements as needed.

### 3.4.3 Regulation of fax broadcasting in other jurisdictions

#### **Europe**

Fax broadcasting in the EU is also regulated by Directive 2002/58, which prohibits the transmission of unsolicited faxes to subscribers who have not given their prior consent to receive such fax broadcasts.

#### **Rest of the world**

As with SMS communications, other jurisdictions adopt either an opt-in or an opt-out approach. Certain jurisdictions combine this with a rigorously enforced code of practice that provides for unsolicited faxes to be of specified length, to be transmitted only at specified times and to contain clear instructions for the recipient to follow so as to ensure that further unsolicited faxes are not received.

### 3.4.5 Possible solutions for regulating telemarketing and fax broadcasting

Taking into account that telemarketing calls and fax broadcasts are usually made by third parties rather than telecommunications operators, and that, as mentioned earlier, the jurisdiction of the TRA is limited to licensed telecommunications operators, the effective action that can be taken by the TRA in the issue of regulating telemarketing calls and fax broadcasting is limited to :

- Introducing measures to ensure that the personal details of subscribers are not sold/provided to third parties for marketing or sales purposes.
- Imposing conditions on operators such as opt-in/out lists and identifying periods during the day when such unsolicited

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communications can be made to subscribers, insofar as operators use telemarketing or fax broadcasts to promote products/services to their own subscribers.

The first option deals with protecting the privacy of the personal data of subscribers. Operators are not allowed to sell the databases of subscriber information to third parties who may then use this information to target certain individuals for telemarketing calls. While this option can reduce the amount of targeted telemarketing and fax broadcasts based on age/sex/occupation criteria, it will not have an effect on telemarketing calls and fax broadcasts made at random by using telephone directories as a source of consumer contact information.

The second option is limited to regulating telemarketing calls and fax broadcasts made by the operator itself. In this case, if the operator wishes to promote a service/product to its own subscribers, it will need to adhere to the conditions set by the TRA, such as the allowed times for contacting subscribers, allowing subscribers to opt out of receiving such calls, etc. These provisions can either be imposed by means of a regulation or by being included in a code of practice for the industry.

It is worth noting that the second option would only affect the telemarketing calls and fax broadcasts made by the operator, and would not have any effect on telemarketing calls or fax broadcasts made by third parties.

### *Consultation:*

*25. Were it considered appropriate for the TRA to seek to regulate the use of telemarketing calls and fax broadcasts within Bahrain, respondents are invited to comment on which of the two options discussed would be more suitable, or whether both options should be implemented.*

*26. If the second option were to be implemented, respondents are invited to comment on whether the provisions should be imposed via a regulation or included in an industry code of practice.*

*27. The TRA invites further suggestions for alternative methods of regulating the use of telemarketing calls and fax broadcasting.*

## **3.5 Bulk email**

### 3.5.1 Introduction

This section of the consultation discusses bulk email received on email accounts of subscribers to Bahrain-based Internet Service Providers (ISPs),

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and does not address the bulk email received on web-based free email accounts, as the latter fall outside the jurisdiction of the TRA.

Bulk email refers to the process of sending large quantities of unsolicited commercial emails ("UCEs"), also known as "junk" email or "spam", to recipients who may not have given any indication of wishing to receive such communications. Typically, an email marketer will buy a list of email addresses from a list broker, who in turn has compiled it by "harvesting" addresses from the internet. If an email address appears on a website, in a chat room, or in an online service's membership directory, it may find its way onto these lists. The marketer then uses special software that can send bulk email messages to all the addresses at the same time.

There are four main issues associated with this form of promotional activity:

- (i) UCEs intrude upon individual privacy.
- (ii) Identifying and deleting unwanted messages places a burden on an individual's time. This may impact on the usefulness and effectiveness of email for consumers.
- (iii) Although sending bulk email is cheap for the marketer, it inappropriately displaces costs onto individuals in the form of connection time, and onto Internet Service Providers ("ISPs") in terms of bandwidth costs and server and disk storage space. UCEs particularly impact smaller ISPs, as bandwidth costs are one of the main elements of their budget.
- (iv) UCEs are often the initial means for criminals, such as operators of fraudulent schemes, to contact and solicit prospective victims for money, or to commit identity theft by deceiving them into sharing bank and financial account information.

In addition, some commercial entities in Bahrain use emails as a means of advertising. These entities can either compile a mailing list by acquiring customers' details following a sales transaction, or use the services offered by Internet Service Providers (ISPs) to send promotional emails to the subscribers of the ISP.

### 3.5.2 Current legislative framework and its effectiveness

Unsolicited emails addressed to Bahrain-based users can either originate in Bahrain or come from abroad and, as such, are out of the TRA's jurisdiction. At present, Bahrain does not have a code of practice or specific legislation regulating the use of its telecommunications network for the purposes of bulk email. There are certain measures that could be introduced to limit the amount of bulk email received; these will be discussed in the sections that follow.

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28. Respondents are invited to give evidence of their experience with respect to the origin of the bulk emails they receive and whether their source is local or international.

29. Respondents are invited to comment on whether bulk emails represent a problem to consumers in Bahrain. Respondents are invited to provide evidence of the extent of this problem in terms of the number of bulk emails received, on average per day for example.

30. Respondents are invited to comment on whether there is a need to introduce measures to regulate bulk email in Bahrain.

### 3.5.3 Regulation of bulk email in other jurisdictions

#### **3.5.3.1 Europe**

Bulk emails in the EU are regulated by Directive 2002/58. The EU legislation considers the transmission of unsolicited emails for direct marketing purposes to be an invasion of privacy. Consequently, unsolicited email communications for direct marketing purposes may only be sent to subscribers who have opted-in.

The Directive adopts a different approach where electronic contact details have been obtained in the course of the sale of a product or service. In such cases, the details may be used by the enterprise for the marketing of its own similar products. Such communications are permitted, provided the recipient is given an initial opportunity to opt out of receiving such material and each subsequent communication affords the recipient the option to opt out of receiving further communications.

In cases other than those mentioned above, member states are given discretion over whether they implement “opt-in” or “opt-out” systems. However, any type of email sent for the purpose of direct marketing which disguises or conceals the identity of the sender, or does not have a valid ‘reply-to’ address, must be prohibited.

#### **3.5.3.2 Rest of the world**

In common with the other forms of bulk promotional activity discussed above, most jurisdictions have chosen to adopt either an “opt-in” approach or an “opt-out” approach (often combined with a requirement to clearly identify the message as an advertisement or solicitation). In addition, some jurisdictions make an exception for bulk emails that are purely factual in nature.

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### 3.5.4 Possible solutions for regulating bulk email

Taking into account that bulk email is usually sent by parties other than the operators, and that, as mentioned earlier, the jurisdiction of license conditions is limited to licensed operators, the effective action that can be taken by the TRA in the issue of regulating bulk email is limited to :

- Introducing measures to ensure that the personal details of subscribers are not sold/provided to third parties for marketing or sales purposes.
- Imposing conditions on Internet Service Providers to install bulk email filters on their email servers, as an additional service to subscribers who do not wish to receive bulk email.
- Imposing conditions on Internet Service Providers to give subscribers the option of not receiving bulk email sent by the ISP itself.

The first option deals with protecting the privacy of the personal data of subscribers. Operators are not allowed to sell or in any form make available their databases of subscriber information (that may include email addresses) to third parties who may then use this information to send bulk email.

The second option would oblige the ISPs to install bulk email filters ( also known as spam filters) on their email servers. In simple terms, the filter is a piece of software that recognizes bulk email messages once received and blocks them from reaching the subscriber's mail box. There are numerous kinds of spam filter available, and their price depends on the criteria used to identify bulk emails and the options they offer for customizing the software to specific needs. This safeguard is currently available by some email providers worldwide for a subscription fee, while others provide it for free.

The third option is relevant to cases where the ISP provides an email advertising service for its subscribers, to which commercial entities can send emails that advertise their products and services to subscribers of the ISP. An example of a condition that could be placed on the ISP would be the obligation to provide an unsubscribe option via email to subscribers who do not wish to continue to receive such emails.

Both the second and third options could either be included imposed by means of a regulation, or contained in a code of practice for the industry.

A further possibility worth considering would be that of raising awareness among consumers on how to avoid bulk emails, for example by using the options readily available on their email software, only giving out their email addresses to parties they know, etc.

#### *Consultation:*

*31. Were it considered that bulk email should be regulated, respondents are invited to comment on which of the options discussed above would best address the problem. Respondents are also welcome to state whether they feel that more than one option should be implemented to*

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*solve the problem of bulk emails.*

*32. Respondents are invited to provide their comments on the second option of requiring the ISPs to implement bulk email filters, with regard to the following questions:*

- should this requirement be mandatory or optional for ISPs ?*
- should this requirement be introduced via a regulation or be included in an industry code of practice?*
- should this service be provided to subscribers for a fee or free of charge?*
- what criteria should be used to evaluate the bulk email filter used, in order to assess whether it provides adequate filtration of unwanted emails?*

*33. Respondents are invited to comment on whether the third option (imposing conditions on Internet Service Providers to give subscribers the option of not receiving bulk email sent by the ISP itself) should be introduced via a regulation or be included in an industry code of practice.*

*34. Respondents are invited to comment on whether awareness among users on how to avoid unsolicited emails (for example, by activating junk email filter options in email boxes) should be promoted, and if so who this responsibility should reside with.*

*35. Respondents are invited to provide suggestions other than the above for managing the problem of unsolicited emails.*

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### **4 The procedure for disconnecting telecommunications subscribers for non-payment**

#### **4.1 Introduction**

Telecommunications operators provide their services for a contractual fee. They have a duty to their shareholders and to customers who pay their bills on time to protect their revenues against fraud and bad debt in that bad debt and non payment result over time in higher telephone bills for all. In the event of non-payment, they are entitled to disconnect their customers.

Disconnection may, however, result in harm to the consumer in terms of embarrassment, inconvenience, the expense of reconnection and lack of access to emergency services. It is therefore important that the disconnection process be fair and transparent.

It is also possible that disconnection affects a segment of the market which is insufficiently large or sought after to exert competitive pressure. The market may not, therefore, provide sufficient commercial incentive for operators to limit the potential detriment caused to vulnerable groups by disconnection.

The markets for fixed line and mobile services may differ in how they are perceived, the credit risk to operators they represent and the cost of connection. The correct balance to be struck between the interests of operators and consumers and the appropriate procedures for disconnection may, therefore, vary between the two services.

#### **4.2 Current legislative framework and its effectiveness**

The TRA currently requires that operators' services be provided on a non-discriminatory basis and approves codes of practice which include provisions on service termination. It does not, however, closely regulate disconnection policies and procedures and has become concerned about possible consumer detriment caused by differences between operators and a lack of rigour and/or due process in the formulation and application of those policies.

Differences between the operators' procedures may enhance competition, as consumers may choose the most favourable terms. On the other hand, a lack of transparency as to the terms may prevent operators from competing with one another and consumers from distinguishing between the packages available.

The TRA recognises that the existing operators routinely provide a series of reminders before disconnecting customers. It also recognises that operators consider alternative remedies, such as flexible payment plans, in cases of hardship. The TRA is, however, concerned about automated billing and enforcement procedures, which mean that disconnection is automatic once a certain number of reminders have been sent. In particular, it is aware of consumer complaints on disconnections that take place where the delivery of the unpaid bill is disputed.

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The TRA acknowledges the credit risk to providers of allowing customers with unpaid debts to continue to access services. It is, however, aware that operators may resort to disconnection in respect of a debt which is genuinely disputed in whole or in part. In particular, it is aware that liability is unclear when a customer mistakenly calls a premium rate number.

The TRA is aware that consumers may have both fixed and mobile accounts with one provider, and that in certain circumstances an operator may wish to disconnect one service due to a debt incurred through another.

Unless there is a clear contractual basis for this approach (which in some cases may not be permissible as it could be considered to be an abuse of dominant position), the TRA does not regard it as appropriate on legal for an operator to disconnect a service in relation to which the customer has maintained all payments because, in relation to another service, the customer has outstanding debts.

The TRA considers that, when a customer has been disconnected in error, the operator should reconnect without charge. It acknowledges that some consumers might feel that additional compensation is due in respect of embarrassment and inconvenience caused. On the other hand, it is aware that in a competitive market it is likely that customers who have experienced poor service from an operator are likely to switch. Enforcing compensatory payments may, therefore, hinder the development of competition in the market.

Disconnection currently entails the loss of all telephone services, including emergency services and other free services such as directory enquiries. However, there is a clear public interest in ensuring that access to emergency services in particular should be as comprehensive as possible and available to consumers at all times.

### *Consultation:*

*36. Respondents are invited to comment on their experiences of disconnection under the current regime by highlighting major issues such as access to emergency services.*

*37. Respondents are invited to comment on the level of transparency of the current disconnection policies implemented by operators, and on whether the current level of transparency is adequate or there is a need for greater transparency with regard to these policies.*

*38. Respondents are invited to comment on whether current means of notifying a consumer of the proposed disconnection are adequate, and whether there is a need to consider alternative notification methods, such as delivery by registered post, telephone reminders or automatic rerouting of outgoing calls to a credit hotline.*

*39. Respondents are invited to comment on whether there is a need to readdress the disconnection policies of operators in Bahrain in order to*

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*ensure better protection of consumer rights.*

*40. Respondents, and especially consumer representatives, are invited to discuss cases where a service was disconnected due to non-payment of another service (i.e. disconnecting a fixed line in response to an unpaid mobile bill). Respondents are also invited to give their views on the impact of this practice on the industry and consumers.*

*41. Respondents are invited to give their views on whether it would be appropriate for operators to make compensation payments to customers who have been mistakenly disconnected, and if so, how compensation payments might best be calculated.*

*42. Respondents are invited to comment on whether disconnected lines should still have access to emergency services, and on the possible impact of not having access to emergency services.*

*43. Respondents are invited to comment, with supporting evidence, on the implications of ensuring that emergency numbers remain accessible via a telephone line which has for all other purposes been disconnected from the national telecommunications network.*

*44. Respondents are invited to consider whether there are any circumstances in which disconnection without notice may be appropriate.*

### **4.3 Regulation of customer disconnection in other jurisdictions**

#### **4.3.1 Europe**

The European framework leaves disconnection to be regulated by the national authorities.

In the UK, the regulator has the statutory power to make approval of a Code of Practice mandatory. This has not, however, been exercised, as the industry has established detailed good practice guidelines covering minimum procedures, publication/transparency of procedures, remedies besides disconnection and minimisation of credit risk.

#### **4.3.2 Rest of the world**

Internationally, there is variation in the manner in which disconnection procedures are regulated and published. In most jurisdictions, such as Hong Kong, Singapore and Canada, operators are obliged to publish their standard terms, which include provisions for service termination.

Some of these jurisdictions go further. In Singapore (and, for the former monopoly providers only, Canada), the provisions of service agreements must

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be authorised by the regulatory agency. In others, such as Australia, compliance with a code is mandatory but the code is set by the industry body.

### 4.4 Possible solutions for enhancing consumer protection

One option would be to require operators to submit their disconnection policies for the TRA to approve. This would entail that all licensed operators in Bahrain document their disconnection policies and subsequently submit them for approval. This requirement could be part of a relevant regulation issued by the TRA.

Another option would be for the TRA to publish guidelines on the minimum requirements for disconnection policies, such as minimum notice periods, delivery methods for bills, etc. The adherence to these guidelines could be mandatory (via a regulation) or voluntary. In either case, the guidelines would represent the minimum requirements for consumer protection, and operators would have the flexibility of developing their policies in line with their business strategies while adhering to the minimum requirements identified by the TRA.

The TRA could also request operators to publish their disconnection policies in simple language, in order to ensure that existing and potential subscribers are aware of the policies. Although this option may not imply changes to existing policies, it would enhance transparency and give consumers the opportunity to make an informed decision with regard to choosing an operator.

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*45. Were it considered that measures need to be introduced to enhance consumer protection with regard to disconnection policies, respondents are invited to comment on which of the options discussed above would best address the issue.*

*46. Respondents are invited to comment on whether the TRA should require operators to submit their policies and procedures for approval. Respondents are further invited to comment on whether this obligation should be introduced by means of issuing a regulation.*

*47. If the TRA were to publish guidelines on minimum requirements for disconnection policies, respondents are invited to comment on whether adherence to these guidelines should be mandatory or voluntary.*

*48. Respondents are invited to comment on whether it would be appropriate to issue such guidelines for both the fixed line and mobile markets, and whether these should differ between the two markets, in what respects and for what reasons.*

*49. Respondents are invited to comment on whether more information should be made available about operators' disconnection policies and procedures. Respondents are also invited to comment on whether there should be an obligation on operators to publish these policies and*

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*whether this obligation should be part of a regulation.*

*50. Respondents are invited to comment on whether specific recommendations should be made to increase accessibility to the operators' published policies for vulnerable groups such as the elderly or partially sighted, e.g. large font and Braille publications.*

*51. Respondents are invited to suggest other solutions that could be implemented to enhance the protection of consumer rights with regard to disconnection policies.*

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### Annex 1

#### Information requested of licensed operators as part of the consultation process

##### 1- The provision of pre-paid telecommunications services

*Licensed operators are requested to provide figures as mentioned in table below that would enable the TRA to assess accurately both the potential financial exposure for individual consumers and the aggregate exposure in the event of a service provider becoming insolvent.*

<b>Accounts</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>
Total Customer Numbers			
<b><i>Profit and Loss</i></b>			
Turnover			
Cost of Sales			
Pre-tax Profit			
<b><i>Balance Sheet</i></b>			
Total Fixed Assets			
Total Current Assets			
Total Current Liabilities			
Total Long Term Liabilities			
Capital Employed			

##### 2- The provision of bulk SMS

*Licensed operators are requested to provide figures (or any other data) that indicate current SMS activity in Bahrain and the extent to which a distinction can be made between SMS communications sent between individuals and bulk SMS.*

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### 3- The procedure for disconnecting telecommunications subscribers for non-payment

*Licensed operators are requested to provide the information below for mobile and fixed markets for the years 2004- 2005, to enable the TRA to assess the business implications of asking operators to refrain from disconnecting consumers for non-payment in cases of a genuine dispute.*

- (i) Total subscribers
- (ii) Average number of monthly overdue accounts
- (iii) Average number of monthly closed accounts (disconnections due to non-payment)
- (iv) Average monthly revenue from customer sales and usage only (do not include revenue from network operations (i.e. interconnection charges).
- (v) Average monthly dinar amount of outstanding (or overdue) customer accounts.
- (vi) Average monthly dinar amount of closed customer accounts (disconnection due to non-payment).
- (vii) Average number of reminders sent to customers before disconnection
- (viii) Number of disconnections that were later a subject of a dispute by the customer