DETERMINATION

Dominance in Wholesale Markets

Dominance in Wholesale Markets by Batelco

A Determination issued by the
Telecommunications Regulatory Authority

22 January 2006

Determination No. 1/06

Purpose: *To determine the wholesale markets in which Bahrain Telecommunications Company B.S.C. holds a dominant position.*

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1. Introduction

Pursuant to the Regulation, the Authority may impose access-related obligations on a licensed operator declared to hold a dominant position in a relevant market.

Section 1 of the Law defines "dominant position" as follows: *the Licensee's position of economic power that enables it to prevent the existence and continuation of effective competition in the relevant market through the ability of the Licensee to act independently - to a material extent – of competitors, Subscribers and Users.*

Section 57(e) of the Law states that a dominant operator shall offer access to its Telecommunications Network and Telecommunications Facilities to any licensed operator on request. The Authority is satisfied that "access" encompasses the making available of any telecommunications facilities (or network elements) and telecommunications services by one licensed operator to another for the purpose of providing telecommunications services.

As such, "access" is construed to include:

- resale of specified services to licensed network operators or service providers;
- co-location or other forms of facility sharing (e.g., ducts, buildings, masts);
- access to specified network elements or facilities, including, but not limited to, unbundled local metallic or non-metallic path and line sharing;
- access to technical interfaces, protocols or other key technologies which facilitate the interoperability of services that relate to the relevant market;
- access to specified services needed to ensure interoperability between users of end-to-end services (end-to-end services are those network services provided to customers other than network operators as part of a retail service) relating to that market; and
- access to operational support systems or similar software systems that are needed to enable fair competition in the provision of services relating to that market.

For the purposes of the current Determination, the Authority has applied the adopted process for formally assessing whether an operator holds a dominant position in a relevant market, as set out in the Authority's

Determination of 19 April 2003, under the title “Methodology for Determining Market Power” (the “Market Power Determination”). The process adopted by the Authority for determining market power, as set out in the Market Power Determination, essentially involves:

- the definition of the relevant market or markets; and
- the application of a set of criteria to assess whether a licensee can prevent the existence and continuation of effective competition in a relevant market through its ability to act independently.

2. Relevant Market Approach

The markets have been defined in both the product and the geographical dimension, by using the hypothetical monopolist test, which is the generally accepted method of defining the scope of markets.

Markets have initially been defined at the retail level. This is to ensure that the subsequently defined wholesale markets correspond to the relevant service products for end-users.

3. Defining Relevant Telecommunications Markets in the Kingdom of Bahrain

3.1 The Relevant Retail Markets

The Authority is satisfied that the relevant retail product markets include:

1. retail national voice;
2. retail international voice;
3. retail high-bandwidth data/Internet access;
4. retail broadband data/Internet access; and
5. retail narrowband data/Internet access.

In each case, the Authority finds that the relevant geographic market is the Kingdom of Bahrain, as licences are granted and licensees are entitled to offer services across the Kingdom of Bahrain. However, the Authority has found that Bahrain Telecommunications Company BSC (“Batelco”) does not at present possess infrastructure in the Amwaj Area, due to the arrangements of the developers of that area with another licensed operator that has installed its infrastructure there. Thus, although the Authority is satisfied that the geographic market applicable to this determination is that of the Kingdom of Bahrain, it has found that Batelco is not dominant in a part of this geographic market, namely the Amwaj area.

In defining the above retail markets, the Authority is satisfied that, due to the uniformity of competitive conditions, the business and residential sectors fall into similar markets.

3.2 The Relevant Wholesale Markets

The Authority is satisfied with the adopted approach of deriving the relevant wholesale markets from the retail markets outlined above, by analyzing the level of supply and demand substitution between different candidate definitions.

On this basis, the Authority defines wholesale markets for the purposes of determining the existence of market power, in conjunction with the relevant access inputs listed in Article 3.5 of the Regulation, as follows:

- the wholesale market for high-bandwidth access to customer premises: the relevant access inputs are wholesale leased lines and dark fiber;
- the wholesale market for broadband access to customer premises: the relevant access inputs are unbundled local loops, wholesale DSLs and main distribution frames or concentrators for bitstream access or DSL co-location;
- the wholesale market for narrowband access to customer premises (for the purposes of providing Internet access): the relevant access inputs are narrowband dial-up facilities;
- the wholesale market for access to transmission capacity: the relevant access inputs are wholesale leased lines and dark fiber; and
- the wholesale market for access to international facilities: the relevant access inputs are international outbound call termination facilities and international capacity.

The Authority is satisfied that the identification of the relevant wholesale markets prepares the ground for the assessment of dominance, which the Authority undertakes by assessing the presence of dominance in each of the relevant inputs.

4. Assessment of Dominance in the Relevant Wholesale Markets

The Authority is satisfied with the approach taken to assess whether Batelco holds a dominant position in the relevant wholesale markets.

In deciding which factors should be analysed to assess dominance in the relevant wholesale markets, the Authority notes that Batelco is the only licensed operator currently in operation that already provides, or is able to provide, access to all of the items specified in Article 3.5 of the Regulation. Further, the Authority is satisfied that the overall size of

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Batelco, as suggested by the market data, is a significant factor in an assessment of its market power and is consistent with a finding that Batelco is dominant in the relevant wholesale markets.

4.1 Market for Access to Customer Premises (High Bandwidth)

The Authority is satisfied that the relevant access inputs in this market are wholesale leased lines and dark fiber. Batelco is the only licensee that owns and operates leased lines and dark fiber in Bahrain, and as such is the only licensee able to provide access to these services.

While other existing and new entrant National Fixed Service (NFS) licensees could potentially build fixed telecommunications infrastructure and provide access to leased lines and dark fiber, the Authority does not consider it likely that there would be effective competition to Batelco in the provision of access to dark fiber in the near future, given the relatively high cost of fixed infrastructure and the incumbency of Batelco.

Therefore, as Batelco is the only owner and provider of fixed network infrastructure encompassing leased lines and dark fiber in Bahrain, the Authority considers that it is the only operator capable of providing access to these services.

The Authority is satisfied that Batelco is dominant in the supply of leased lines and dark fiber. Therefore, the Authority is satisfied that Batelco holds a dominant position in the wholesale market for access to customer premises (high bandwidth).

4.2 Market for Access to Customer Premises (Broadband)

The Authority is satisfied that the relevant access inputs in this market are unbundled local loops, wholesale Digital Subscriber Lines (DSLs), and main distribution frames or concentrators for bitstream access or DSL co-location.

4.2.1 Unbundled Local Loops

Batelco is the only licensee that owns and operates local loops in Bahrain, and as such is the only licensee able to provide access to unbundled local loops. Therefore, Batelco currently controls the totality of local loop infrastructure in the Kingdom of Bahrain. As a result of Batelco's high market share and the significant barriers to entry for alternative local loop infrastructure, the Authority is satisfied that Batelco is dominant in the local loops market.

The Authority is satisfied that, as Batelco is the only owner and provider of local loops, it is the only operator capable of providing access to unbundled local loops. Therefore, the Authority is satisfied that Batelco is dominant in the supply of local loop access.

4.2.2 Wholesale DSLs

Batelco is the only licensee that owns and operates direct exchange lines in Bahrain. While other existing and new entrant NFS licensees could potentially build fixed telecommunications infrastructure and provide access to wholesale DSLs, the Authority does not consider it likely that there would be effective competition to Batelco in the provision of access to wholesale DSLs in the foreseeable future. This view reflects the relatively high cost of fixed infrastructure, the length of time required to obtain the necessary permits, if at all possible, the length of time to roll out a fixed network and the incumbency position of Batelco. As such, Batelco is the only operator in a position to offer access to wholesale DSLs.

The Authority is satisfied that the exclusive ownership and provision of wholesale DSLs by Batelco, combined with the high barriers to entry and the absence of countervailing buyer power, demonstrates that Batelco is dominant in the supply of wholesale DSLs.

4.3 Main Distribution Frames (MDF) or Concentrators for Bitstream Access or DSL Co-location

Batelco is the only licensee that owns and operates MDFs and concentrators in Bahrain and as such is the only licensee able to provide access to these particular items. While other existing and new entrant NFS licensees could potentially build fixed telecommunications infrastructure and provide access to MDFs and concentrators, the Authority does not consider it likely that there would be effective competition to Batelco in the provision of access to such facilities and equipment in the foreseeable future. This view reflects the relatively high cost of fixed infrastructure, the difficulty in obtaining the necessary permits, the length of time required to roll out a fixed network and the incumbency position of Batelco.

The Authority is satisfied that, as Batelco is the only owner and provider of fixed network infrastructure encompassing MDFs and concentrators, it is the only operator capable of providing access to such facilities.

The Authority, for the reasons set out above, is satisfied that Batelco is dominant in the provision of local loops, and therefore the Authority is also satisfied that Batelco is dominant in the provision of access to MDFs, concentrators and co-location.

Since the Authority concludes that Batelco is dominant in the supply of local loops, wholesale DSLs and main distribution frames, concentrators for bitstream access and DSL co-location, it also concludes that Batelco is dominant in the wholesale market for broadband access to customer premises.

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4.4 Market for Access to Customer Premises (Narrowband)

The Authority is satisfied that the relevant access input in this market is narrowband dial-up access. Narrowband dial-up access is provided in the Kingdom today through both fixed and mobile networks. Currently, Batelco offers narrowband Internet access over its fixed line infrastructure and provides the greatest part of such access in the Kingdom.

The Authority is satisfied that fixed and mobile retail services operate in separate markets, although it recognizes that this has the potential to change over time. By extension, the Authority concludes that fixed and mobile narrowband dial-up access operate in separate markets.

To provide service in competition with Batelco, an operator must have access to its own local loop infrastructure. For the reasons given above, barriers to entry are high and the Authority therefore sees little chance that significant competition will develop in the near future.

For these reasons, the Authority is satisfied that Batelco holds a dominant position in the supply of fixed narrowband dial-up facilities.

Consequently, the Authority concludes that Batelco is dominant in the wholesale market for fixed narrowband access to customer premises.

4.5 Market for Access to Transmission Capacity and Facilities

The Authority is satisfied that the relevant access inputs in this market are wholesale leased lines and dark fiber. As explained above, the Authority is of the view that Batelco is dominant in the supply of wholesale leased lines and dark fiber. Therefore, the Authority is also satisfied that Batelco is dominant in the wholesale market for access to transmission capacity and facilities.

4.6. Market for Access to International Facilities

The Authority is satisfied that the relevant access inputs in this market are international outbound call termination facilities and international capacity.

4.6.1 International Outbound Call Termination Facilities

Batelco is currently the only provider of access to international outbound call termination facilities. Its very high market share and established relations in terms of commercial agreements with other international carriers lead the Authority to conclude that Batelco is dominant in the supply of international outbound call termination facilities for all international routes.

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4.6.2. International Capacity

Batelco, Northstar and MENA currently offer access to international capacity on commercial terms. Of these three, only Batelco is in a position to offer access to international capacity over satellite, cross-border cable and submarine cable. Therefore, the Authority is satisfied that the market share currently attributable to Northstar and MENA is not significant relative to that of Batelco.

The Authority considers that the competitive situation in this market could change. However, given the relatively lower overall cost of international telecommunications infrastructure compared with national fixed infrastructure, the amount of international capacity currently provided by competitors of Batelco is inadequate in relation to total demand on most routes, and therefore Batelco is likely to operate as the supplier of last resort.

As Batelco is the main provider of access to international capacity over different platforms, and given also the high barriers to entry and the absence of countervailing buyer power, the Authority concludes that Batelco is dominant in this market. However, the Authority recognizes that this situation has the potential to change in due course, at least for some routes.

Since the Authority has concluded that Batelco is dominant in the supply of international outbound call termination and international capacity, it concludes that Batelco is dominant in the wholesale market for access to international facilities.

DETERMINATION

HAVING REGARD TO THE TELECOMMUNICATIONS LAW, THE ACCESS REGULATION, ALL RELEVANT EVIDENCE AND THE SUBMISSIONS MADE BY INTERESTED PARTIES, THE TELECOMMUNICATIONS REGULATORY AUTHORITY HEREBY MAKES THE FOLLOWING DETERMINATION:

I. The relevant wholesale, or operator-to-operator, 'product markets' for access services are as follows:

- The wholesale market for fixed access to customer premises (including high-bandwidth, broadband and narrowband access);
- The wholesale market for access to transmission capacity; and
- The wholesale market for access to international facilities.

II. The geographic scope of all the markets identified above is the Kingdom of Bahrain.

III. Batelco holds a dominant position in all the markets set out in (I) above in the Kingdom of Bahrain, with the exception of the Amwaj area.

IV. Batelco shall provide the Authority with a Reference Access Offer (RAO) for its approval, within two months from the date of this Determination. The RAO should, at a minimum, cover the markets identified under (I) above.

V. This Determination is without prejudice to the obligations that accrue on licensees who hold a dominant position in any other market under the Law, the Access Regulation and/or any other relevant applicable provisions.

VI. This Determination is without prejudice to the TRA's powers under the Law, the Access Regulation, and the outcome of any ongoing or future investigation, consultation or other regulatory process carried out pursuant to such powers, all or any of which may result in the application of different terms and/or findings than those of this Determination.

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VII. This Determination will be reviewed no later than 24 months from the date of its issuance. If, in the Authority's opinion, market circumstances suggest that an earlier review of the determination would be appropriate, or if a market player or other interested party should present a compelling case for an earlier review, then the Authority may undertake an earlier review of the whole or part of this Determination, as it may consider appropriate.

VIII. This Determination shall come into effect from the date of its issuance.

For the Telecommunications Regulatory Authority

A. Andreas Avgousti

General Director

22 January 2006