DRAFT STATEMENT ON THE STRATEGIC AND RETAIL MARKET REVIEW

Strategic and Retail Market Review

28 February 2008

TRA invites comments on the timing of the regulatory measures contained in this Draft Statement from all interested parties. Comments should be submitted before **4pm on 30 March 2008**.

The address to which responses should be sent is:

The General Director
Telecommunications Regulatory Authority
P.O. Box 10353, Manama, Kingdom of Bahrain

Alternatively, responses may be sent to TRA for the attention of the General Director by email to consult@tra.org.bh or by facsimile to +973 17 532 125.

Purpose: To detail a comprehensive package of proportionate regulatory measures that will further promote competition and the interest of consumers arising out of the August 2007 Consultation on the Strategic and Retail Market Review.

TRA
البحرين
BAHRAIN

هيئة تنظيم الإتصالات
Telecommunications Regulatory Authority

Purpose

The purpose of this Draft Statement is to inform stakeholders about the outcomes of the Strategic and Retail Market Review.

In its Consultation on "Strategic and Retail Market Review" released in August 2007 (the "August 2007 Consultation"), the Telecommunications Regulatory Authority ("TRA") considered a wide range of issues and sought comments on proposed retail market definitions, competition assessment and regulatory measures.

In addition to input from consumers, TRA has received industry responses from Batelco, Zain, Mena Telecom, Friendi Telecom and Cisco. TRA would like to thank all respondents for their valuable input. A report summarizing and addressing the comments received is issued separately (Reference: MCD/0208/015).

Based on the submissions received, and after undertaking further analysis, TRA has defined a comprehensive package of proportionate regulatory measures that will further promote competition and the interests of consumers.

The package will open new investment opportunities and facilitate the growth of the sector. It will contribute to the economic development strategy of the country by supporting the activities aimed at reinforcing the Kingdom of Bahrain as an attractive business location with first class telecommunications services and regulatory framework.

The Second National Telecommunications Plan

The approval by the Council of Ministers of the Second National Telecommunications Plan (the "Second Plan") on 13 February 2008 represents a major milestone for the Kingdom of Bahrain and the telecommunications sector in particular.[1] The Second Plan sets out the Government's overarching vision for the telecommunications sector for the next three years.

The central objective of the plan is to further assist the telecommunications sector to become a major force in the development of the national economy. This requires continuous improvements to the services offered to residential and business users alike in terms of availability, range and prices.

The Government, through the Second Plan, requires TRA and other authorities, within the remit of their mandates, to achieve specific objectives. These objectives include, among others, greater involvement of consumers and businesses, enhancing the investment climate, and the promotion of Internet and broadband use. The objective to continue the development of competition is of particular relevance to the Strategic and Retail Market Review. In this respect, the Second Plan notably reaffirms key requirements for TRA, including:

[1] The Second National Telecommunications Plan is available at: http://www.tra.org.bh/en/pdf/TheSecondNationalTelecommunicationPlanEnglishFinal.pdf.

- TRA's duty to further promote competition and open market entry in the interest of users by removing and/or minimizing barriers to entry and expansion in the telecommunications market;
- TRA's role to take measures to promote competition and ensure that wholesale products, including infrastructure sharing, are available and appropriately priced;
- TRA's role in the design and implementation of appropriate regulatory instruments where competition is not sufficient; and
- TRA's duty to protect vulnerable users whilst moving to a pricing structure that better reflects the cost of providing services.

In its analysis, TRA has taken into account the objectives of the Second Plan to ensure that TRA's regulatory measures are fully consistent with, and support the achievement of, the policy objectives expressed by the Government.

The Strategic and Retail Market Review

One of the key objectives of the Review was to assess and define the form and extent of regulation required. To do so, TRA applied a framework consistent with regulatory best practice. This framework consisted of defining relevant markets, assessing competition and defining appropriate regulatory measures while at the same time removing and/or minimising unnecessary regulation and restrictions so as to allow competitive forces to operate fully.

TRA has released separately a draft Determination of Significant Market Power designation in certain retail markets (Reference: MCD/0208/016) in which Batelco is designated as a licensed operator with SMP in a number of relevant markets.

Recognising the fact that the current regulatory regime has been in operation for a number of years and that it is necessary to adjust regulation over time such that it better reflects market conditions and also supports on-going developments, the conduct of this Strategic and Retail Market Review is particularly timely. The Review also coincides with the approval of the Second National Telecommunications Plan.

The August 2007 Consultation provided an overview of the telecommunications sector, and highlighted the improvements in terms of quality, availability and price of services achieved with the opening of the sector to competition, and the increasing number of competing providers of telecommunications services in Bahrain. It also outlined the main characteristics of current regulation and the key regulatory issues that need addressing.

TRA's main regulatory measures that follows from the Review

Taken together, TRA's regulatory proposals constitute a comprehensive package that will further promote competition and the interests of consumers.

Based on comments received, and after further analysis, TRA has refined its original regulatory proposals. The analysis and rationale that lay behind these regulatory measures is set out in the Report released separately (Reference: MCD/0208/015).

Some measures involve the withdrawal of retail regulation whilst others consist of replacing existing arrangements by more adapted retail regulation and/or the introduction of better-targeted new instruments. Additional wholesale regulations are identified together with measures to remove entry restrictions and to strengthen competition.

The main components of this package are (see Table 1 and 2 below for the full set of measures):

- ***Removal of tariff approval process for all mobile services and fixed international calls to selected destinations***

  TRA will remove the requirement for Batelco to submit its tariffs for approval for its mobile services. This will give Batelco more flexibility to respond to the increasingly competitive market place. The removal will also apply to fixed originated international calls to a large number of destinations where competition is considered to be sufficient.

- ***Major overhaul of the retail regulation regime (including introduction of a notification of tariff changes with ex ante rules, re-balancing and low user scheme)***

  TRA will implement a comprehensive overhaul of the retail regulation regime by developing a set of new instruments. This reform is necessary to adapt regulation to the changing competition landscape.

  In markets in which Batelco has Significant Market Power ("SMP"), TRA will replace the current tariff approval process by a notification, supported with ex ante rules. The objective is to acheive a same-day notification. Hence as TRA will no longer approve tariffs changes, Batelco, as an SMP operator, will, within the limits of the ground rules set by TRA, be free to set its tariffs. It is intended that the new regime will level the playing field and ensure that competition can flourish whilst protecting the interests of users and preventing pricing practices incompatible with the development of competition. The framework will be complimented by appropriate safeguards (i.e. enforcement procedures).

  A multi-year price control will also be developed to allow prices to move closer to the underlying cost of providing services such that entry decisions are no longer distorted. TRA will work with Batelco and other stakeholders to introduce a low user scheme to limit the effect of re-balancing on vulnerable consumers.

  TRA will monitor the price of representative baskets of services to track the extent to which consumers are benefiting from regulation and competition. Safeguard price caps will also be introduced for specific services.

- ***Introduction of local loop unbundling on an exchange-by-exchange basis***

TRA will implement local loop unbundling ("LLU") on an exchange-by-exchange basis where demand for loops exists. TRA considers that LLU can be an essential enabler of further competition at the retail level, especially for the provision of broadband and connectivity services to business users. LLU can be expected to put pressure on prices and to increase product differentiations for the benefits of users. LLU will be an additional wholesale product, not a replacement for any existing products (e.g. bitstream). TRA will seek to add this additional wholesale product in accordance with the process set out in the Telecommunications Law.

- ***Carrier selection and improvement to carrier pre-selection processes***

  The ability of consumers to select and use other operators on a call by call basis is currently not available, although the technical capability exists within the existing Batelco systems. TRA is of the view that this feature should be mandated thereby allowing consumers to select the least cost route according to the destination being dialed. This feature is often preprogrammed into PABX systems and regularly updated to enable businesses to optimize their telecommunications bills. TRA will seek to add this additional wholesale product in accordance with the process set out in the Telecommunications Law.

- ***Award of a third mobile network operator license***

  TRA considers that a continuation of the current duopoly between Batelco and Zain is inconsistent with TRA's duties under the Telecommunications Law and the objective set out in the Second National Plan to remove and/or minimise entry restrictions. Until now, competition in the mobile services market has been limited to a duopoly between Batelco and Zain. A further market entrant can be expected to lead to increased competitive pressures, to bring further prices reductions and innovative offerings, as well as to revitalise the competitive dynamics in the mobile services market.[2] The sharing of masts will be actively encouraged by TRA.

- ***Removal of the mobility restriction for National Fixed Wireless Services ("NFWS") Licenses on 17 November 2010***

  TRA considers that consumers would benefit from the removal of the mobility restriction of the NFWS licences. It would allow the NFWS licensees to offer a wider range of innovative services whilst, at the same time, increasing competitive pressures.

- ***Introduction of number portability for fixed and mobile***

  Number portability will be introduced to facilitate any fixed or mobile customers switching provider by giving them the possibility to retain their existing phone number when changing operator. TRA intends to work with the industry to identify the most cost effective and pragmatic solution to implement mobile-to-mobile and fixed-to-fixed number portability.

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[2] TRA considers that Mobile Virtual Network Operators should be allowed through commercial negotiations.

- ***Development of competition guidelines***

  To accompany the general move away from retail regulation, it is essential for TRA and the market to have in place competition guidelines. These guidelines will set out how TRA intends to apply the competition law provisions contained in the Telecommunications Law and in licence conditions as well as to the type of behaviour TRA may consider anti-competitive. These guidelines will give more certainty to the market.

- ***Consumer Surveys***

  As part of its efforts to strengthen its data collection and dissemination capabilities, TRA will continue to collect and publish market data. TRA will also conduct consumer surveys of residential and business customers on a regular basis.

Indicative timetable for the implementation of regulatory measures

The implementation of these proposals will give Batelco more flexibility to compete, contribute to leveling the playing field, open new investment opportunities and will facilitate the growth of the sector for the benefits of Bahrain. It is expected that this package will lead to overall significant net economic gains.

The details of these measures will be worked out in consultation with the industry once the implementation phase begins.

The development of regulatory instruments will take place against the background of the move away from individual licenses towards a unified licensing framework announced by TRA in August 2007. The introduction of unified licensing seeks notably to lower barriers to entry by reducing the administrative and compliance burden placed on new and existing licensees and reduce the administrative burden placed on TRA. Unified licenses will also give operators greater flexibility to offer services and hence to better address consumers' needs.

The table below provides an indicative implementation timetable on which TRA is seeking comments.

TRA will review its Three year work plan to take into account the conclusions of this Review.

Table 1: Indicative timetable for the implementation of regulatory measures

Regulatory measure	Comment	Start date	Completion date
Retail regulation			
Removal of tariff approval process	For mobile services and for fixed originated international calls to Zone 2 and 4 countries Linked to the reform of retail tariff regulation regime and the development of competition guidelines	Q2 2008	Q4 2008
Reform of the retail tariff regulation regime	- Replacement of current tariff approval process by: - Objective: Same-day notification and ex ante rules:	Q2 2008	Q4 2008

	no undue discrimination, no price squeeze, no predatory pricing, no abusive bundling and no excessive pricing - Multi-year price control / rebalancing plan - Consideration of elapse time charging - Low user scheme - Monitoring of representative consumers baskets of services - Safeguard caps on a few services		
Wholesale regulation			
Local loop unbundling	On an exchange-by-exchange basis where demand exits	Q3 2008	Q2 2009
Carrier selection	Including improvements to existing carrier pre-selection product ("CPS")	Q3 2008	Q2 2009
Measures to remove entry restrictions and to strengthen competition			
Award of a 3rd Mobile Network Operator license ("MNO")	Through a competitive and transparent process	Q2 2008	Q4 2008 – Q1 2009
Removal of mobility restrictions for NFWS licenses	In line with the Provisional Final Acts of the World Radiocommunications Conference 2007 – ITU to which TRA is a signatory	Q3 2010	17 Nov 2010
Number portability (fixed and mobile)	Implementation of number portability based on a cost effective solution	Q2 2008	Q1 2009
Data collection and dissemination	- Collection and publication of market data - Consumer survey - Tariff comparator	Ongoing Q3 2009 Q2 2008	Ongoing Q4 2009-Q1 2010 Q2 2009
Competition guidelines		Q2 2008	Q4 2008

Annex: Details of regulatory measures market by market

The table below provides a summary of regulatory measures market by market.

Table 2: Regulatory measures market by market

	Retail Market	Significant market power	Regulatory measures
1	Fixed access narrowband connections markets: - 1a: For residential customers; - 1b: For non-residential customers.	Batelco holds SMP	Retail regulation: Removal of tariff approval process Reform of retail regulation regime: - Objective: Same-day notification and ex ante rules (i.e. no undue discrimination, no price squeeze, no predatory pricing, no abusive bundling and no excessive pricing) - Multi-year price control: rebalancing plan - Low user scheme - Monitoring representative consumers baskets of services Additional wholesale regulation: Local loop unbundling on an exchange by exchange basis where demand exists Measure to remove entry restrictions and strengthen competition: Number portability using cost effective solution (to apply to all operators)
2	Domestic calls originating on fixed lines markets: - 2a: For residential customers; - 2b: For non-residential customers.	Batelco holds SMP	Retail regulation: Same as retail market 1 plus consideration of introduction of elapse time charging and safeguard cap on rates (e.g. rates allowed to increase in line with the Consumer Price Index ("CPI") per annum which mean that rates are constant in real terms) if domestic calls are not part of the multi-year price control Additional wholesale regulation: Same as market 1 plus carrier selection and improvements to carrier pre-selection
3	Fixed originated international calls markets: - 3a: to Zone 1 GCC countries; - 3b: to Zone 2 countries - 3c: to Zone 3 countries; - 3d: to Zone 4 countries. Mobile originated international calls markets: - 3e: to Zone 1; - 3f: to Zone 2; - 3g: to Zone 3; - 3h: to Zone 4.	Batelco holds SMP in market 3a and 3c	Retail regulation: Fixed originated calls (Market 3a and 3c): Same as market 2 less safeguard cap or multi-year price control Mobile originated calls and fixed originated calls to Zone 2 and Zone 4: Removal of tariff approval process Additional wholesale regulation: Fixed originated calls: Same as market 2
4	Mobile services (excluding international	N/A	Retail regulation:

	calls)		Removal of tariff approval requirement on Batelco Removal of entry restrictions and strengthening of competition: Granting of a third mobile operator license MVNO allowed through commercial negotiations Number portability using cost effective solution (to apply to all operators) Removal of mobility restrictions for NFWS licenses by 17 November 2010
5	Broadband internet access from a fixed location	Batelco holds SMP	Retail regulation: Same as market 1 less multi-year price control and low user scheme Additional wholesale regulation: Local loop unbundling on an exchange by exchange basis where demand exists
6	Dial-up internet access from a fixed location	Batelco holds SMP	Retail regulation: Same as market 1 less multi-year price control and low user scheme plus safeguard cap (e.g. individual rates allowed to increase in line with CPI, which means that rates are constant in real terms)
7	Leased line services (domestic and international leased lines)	Batelco holds SMP	Retail regulation: Same as market 6 Additional wholesale regulation: Same as market 5
			Development of competition guidelines Data collection and dissemination: - Collection and publication of market data - Consumer survey - Tariff comparator

Zone 1: GCC countries;
Zone 2: South Asian countries: Bangladesh, India, Pakistan, the Philippines and Sri Lanka;
Zone 3: Australia, Canada, France, Germany, Greece, Italy, Iran, New Zealand, Thailand, UK, USA, and Yemen;
Zone 4: (rest of the world).