

REPORT

Strategic and Retail Market Review Second Consultation

Statement on the Strategic and Retail Market Review

A report issued by the Telecommunications Regulatory Authority
3 June 2008

Purpose: To report on the consultation on the Draft Statement on the Strategic and Retail Market Review



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REPORT

Strategic and Retail Market Review Second Consultation

Background

1. This report summarises the responses received on Draft Statement on the Strategic and Retail Market Review (Reference MCD/2008/014) issued by the Telecommunications Regulatory Authority (“TRA”) on 28 February 2008.¹ The draft statement detailed a comprehensive package of regulatory measures to be implemented by TRA and an indicative timetable.
2. The analysis and rationale for these measures was set out in a separate report entitled “Report on the Strategic and Retail Market Review” (“Report on the Strategic Review”) (Reference MCD/0208/015).² That report concluded the public consultation initiated with the publication of the Strategic and Retail Market Consultation document released in August 2007 (“August 2007 Consultation”) (Reference MCD/0807/068) which sought comments on proposed retail market definitions, competition assessment and regulatory measures.³ On 28 February 2008, TRA also published a Draft Significant Market Power (“SMP”) Designation Determination (Reference MCD/0208/016) in which Batelco was designated as a licensed operator with SMP in a number of relevant retail markets.
3. TRA received contributions from Bahrain Telecommunications Company B.S.C (“Batelco”), Lightspeed Communications W.L.L (“Lightspeed”), MTC-Vodafone Bahrain B.S.C. (“Zain”), Mena Telecom W.L.L (“Mena Telecom”), Moobility Telecom International (“Friendi Mobile”) as well as responses from the Businesses User Advisory Group (“BAG”) and Consumer Advisory Group (“CAG”).⁴
4. The consultation on the Draft Statement specifically sought comments on the timing of the proposed regulatory measures, keeping in mind that the details of these regulatory initiatives would be subject to further consultation in due time.
5. For ease of reference, the implementation timetable as set out in the Draft Statement is reproduced below. The annex includes the detailed indicative timetable and regulatory measures market-by-market as contained in the Draft Statement.
6. This report follows the structure of the Draft Statement. There are no material changes between the Draft Statement and this Final Statement, though there have been a number of adjustments to terminology and clarification provided where necessary.

¹ TRA, 2008, Draft Statement on the Strategic and Retail Market Review, February 2008

² TRA, 2008, Strategic and Retail Market Review: A report issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain, 28 February.

³ TRA, 2007, *Strategic and Retail Market Review Consultation*, August.

⁴ The non-confidential versions of those submissions can be found on TRA’s web site.

REPORT

Strategic and Retail Market Review Second Consultation

Regulatory measure	2008				2009				2010			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
1 Removal of tariff approval process for mobile services and fixed originated international calls to certain destinations												
2 Reform of the retail tariff regulation regime												
3 Local loop unbundling												
4 Carrier selection and improvement to CPS												
5 Award of a 3 rd Mobile Network Operator license ("MNO")												
6 Removal of mobility restrictions for NFWS licenses												
7 Number portability (fixed and mobile)												
8 Competition guidelines												
9 Data collection and dissemination												

General Comments

7. Whilst comments were only sought on the implementation timetable, in the interest of clarity and transparency the report also summarizes the views of respondents on specific regulatory measures.

1.1 Responses

8. There are mixed views regarding the nature of the proposed regulatory measures and their timing. Some submitters are calling for shorter timeframes while others are asking for much longer timeframes.
9. Batelco considers that it is inappropriate for TRA to consult only on the timing of measures to be introduced. Despite its disagreements regarding certain regulatory initiatives, Batelco is of the view that the implementation of the program should be significantly accelerated.
10. Whilst Mena Telecom concurs with TRA's willingness to adjust regulation to suit market conditions, it considers that greater regulation is still required in order to protect the competitive environment until it is mature enough.
11. Lightspeed supports regulatory measures that promote investments but considers that the relaxation of ex ante regulatory controls at the retail level is premature as it may negatively affect competition. Lightspeed also stressed that wholesale regulation, in addition to retail regulation, should be maintained.

REPORT

Strategic and Retail Market Review Second Consultation

12. Overall, the CAG is highly supportive of TRA's decisions although it considers that the removal of tariff approval should take place only when OLOs have managed to gain a market share similar to Batelco.⁵ Hence it considers that this initiative is premature. The CAG considers the implementation timetable to be ambitious.
13. Similarly the BAG broadly supports the package outlined by TRA and its timing.⁶ The BAG considers that the package represents another milestone in the direction of increased competition and therefore better services for the business community.
14. All respondents provided useful comments on the content and design of individual regulatory measures. These comments will be taken into account when individual measures are implemented.
15. Several respondents, including Batelco, Mena Telecom and Lightspeed, underlined the need for further consultation at the design and implementation stage of regulatory measures.

1.2 TRA's comments and conclusion

16. TRA has defined this package after extensive consultation with stakeholders. TRA took into account the extensive comments received to the August 2007 Consultation and undertook further analysis to refine its original proposals.
17. In setting the timeline for the implementation of the package TRA takes a holistic view. TRA is mindful in particular of the sequencing of measures, the burden the development of regulatory tools imposes on industry players and the constraints operators and TRA faces. To be effective regulatory measures need to be carefully designed and implemented. Consultative processes are essential as they allow TRA to gather the views of stakeholders. Overall, TRA is of the view that although the timeline defined in the Draft Statement is ambitious to a certain extent, it is realistic and appropriate. Regulation must adapt to changing market conditions in order to support the development of the sector.
18. As indicated previously, TRA will organize public consultations for the development and implementation of regulatory measures where relevant in order to obtain the input of stakeholders.

⁵ In some instances members of the group reached different views on particular items.

⁶ Members of the group reached different views on some items.

REPORT

Strategic and Retail Market Review Second Consultation

Regulatory Measure 1: Removal of tariff approval process for all mobile services and fixed international calls to selected destinations by Q4 2008

19. TRA indicated it will remove the requirement for Batelco to submit its tariffs for approval for its mobile services and fixed originated international calls by Q4 2008. The timing was explicitly linked to the implementation target date for the wider reform of the retail tariff regulation framework and the development of competition guidelines.

1.3 Responses

20. Batelco supports this initiative and considers that it should be implemented immediately. It disagrees with TRA's linkages of the tariff relaxation with other measures.
21. Zain considers TRA's proposals to be reasonable, although it disagrees with the competition assessment of TRA for some markets and accordingly considers that additional markets should remain subject to some form of ex ante retail regulation. Zain is of the view that the change should not occur before Q1 2009 in order to give Zain a reasonable period to adapt to forthcoming regulatory change.
22. Mena Telecom considers the removal of the tariff approval process for some services to be premature as Batelco may be able to regain its dominant position.
23. Lightspeed does not support this regulatory measure and considers that tight regulatory controls should be maintained for mobile services and fixed originated international calls. Lightspeed did not comment on the timeline.

1.4 TRA's comments

24. TRA remains of the view that this initiative should be implemented by Q4 2008 and linked to the implementation dates of the reform of the retail regulation framework and the competition guidelines. This linkage is necessary in order to provide market players with greater certainty prior to relaxing the tariff approval process with regards to the practices that may breach the anticompetitive provisions of the Telecommunications Law and relevant license conditions and how TRA will analyse allegations of anticompetitive conduct. Regulatory Measures 1, 2 and 9 are interlinked. Their development and implementation need to be coordinated and synchronised

REPORT

Strategic and Retail Market Review Second Consultation

Regulatory Measure 2: 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)

1.5 Responses

25. Batelco supports TRA's proposals to reform the tariffs approval process including the narrow multi-year price control on domestic calls and fixed access charges and the same-day notification. Batelco considers that the proposed multi-year control will be equivalent to a rebalancing plan and stresses the importance of putting in place a low-user/low-income plan. Batelco would like to rebalance rates in a short period of time given the cost uncertainty arising out of technological change. With regards to timing, Batelco is of the view that necessary activities should start as soon as possible.
26. Zain's comments at para 21 above apply here too.
27. Mena Telecom is concerned with the lack of details contained in the Draft Statement regarding the reform of the retail price regulation framework proposed by TRA. Mena Telecom did not comment on the timing.
28. Lightspeed supports the development of a rebalancing plan but is of the view that TRA should continue to scrutinize and approve Batelco's tariffs prior to their implementation. Lightspeed considers the introduction of a notification process premature given the state of market development. It argues the notification will not be sufficient to prevent anti-competitive behaviour.

1.6 TRA's comments

29. TRA is mindful of the concerns raised by submitters and will seek to address them during the consultation on the reform of the retail regulation framework.
30. 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.
31. On balance TRA remains of the view that the timing is appropriate. As indicated in the Report on the Strategic Review, after several years of operation, the framework needs to be adapted to the changing competition landscape.

REPORT

Strategic and Retail Market Review Second Consultation

Regulatory Measure 3: Introduction of local loop unbundling by Q2 2009

1.7 Responses

32. Batelco is concerned that it will not be able to recover the cost associated with the development and implementation of this access product. Batelco also notes that those costs are fixed costs independent of the number of exchanges unbundled and hence that the exchange-by-exchange approach proposed by TRA will not make any difference. Batelco considers TRA's completion date of Q2 2009 to be optimistic given the complexities of the process and considering the time taken by other countries to implement local loop unbundling ("LLU").
33. Zain strongly supports the implementation of LLU and considers that its timing should be accelerated if possible.
34. Mena Telecom disagrees with the introduction of LLU at this stage of market development and argues that this will create a barrier to entry.
35. Lightspeed strongly supports the introduction of LLU. Lightspeed did not comment on the proposed timeline.

1.8 TRA's comments

36. LLU will contribute to improving the broadband offers available in Bahrain. 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 differentiation for the benefit of users. It is an essential access product of the broadband value chain. Contrary to Batelco's view, TRA considers LLU to be a complementary and not a substitute access product to bitstream and wholesale DSL.
37. TRA concurs with Batelco that the expected timeline may be tight in light of the challenges involved in introducing LLU. Nevertheless TRA wishes to retain the proposed target taking into account the need not to delay further the unlocking of competition and the time needed for other licensees to develop and launch their own retail service offerings based on this new wholesale product. In light of Batelco's comments regarding the "exchange-by-exchange" approach, TRA has decided to remove any reference to it for now. This and other operational issues will be addressed at the implementation stage.

REPORT

Strategic and Retail Market Review Second Consultation

Regulatory Measure 4: Introduction of Carrier selection and improvement to carrier pre-selection processes by Q2 2009

Responses

38. Batelco is against the introduction of carrier selection ("CS"). Batelco estimates that a review of current carrier pre-selection ("CPS") and implementation of CS could take between two to five months.
39. Whilst Mena Telecom supports making improvements to the CPS processes, Mena Telecom is of the view that CS should not be introduced at this point in time. It argued that the CPS product needs to be ameliorated first and that CS may create further confusion and frustration to end-users.
40. Lightspeed supports this regulatory measure. Lightspeed did not comment on the timeline.

TRA's comments

41. Ensuring that the CPS processes are smooth and efficient is a priority for TRA in order to foster competition in fixed originated calls. CS is a complementary access product that can be introduced at minimal incremental cost contemporaneously to the improvements to the CPS product. Hence, TRA wishes to retain the target date of Q2 2009. This date coincides with the annual reference offer review cycle.

Regulatory Measure 5: Introduction of a third mobile network operator ("MNO") by Q4 2008

Responses

42. Batelco is against the introduction of a third mobile network operator ("MNO"). Notwithstanding its opposition, Batelco considers the timetable to be too long and that the award process could be completed within 10 weeks.
43. Zain is also opposed to the entry of another operator in the market. Zain requests that entry should not take place before Q3 2010.
44. Mena Telecom fears that allowing mobility and a third mobile network operator could result in unsustainable investment and to overcrowding of the market.

REPORT

Strategic and Retail Market Review Second Consultation

45. Lightspeed supports the introduction of a third MNO.
46. Friendi Mobile commented extensively on mobile virtual network operators (“MVNOs”) and the legal and regulatory requirements necessary for their operations.

TRA’s comments

47. 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.
48. The award of a license to a third MNO is an important step which needs to be carefully planned and executed. As such, TRA considers Batelco’s timetable unrealistic. Similarly, the request by Zain to delay the award to at least Q3 2010 is unacceptable. It will take some time for a new entrant to roll out its network and launch its services once granted a license. The date proposed by Zain would unduly further delay competition. TRA also notes that Zain, as the second mobile entrant, has in effect enjoyed protection from further entry for about five years since the award of its license in April 2003. This is three years in excess of the two years provided for in the Telecommunications Law.
49. With regards to MVNOs, TRA reiterates its position as set out in the Report on the Strategic Review, namely that regulatory intervention is presently inappropriate and disproportionate, especially considering TRA’s decision to allow another infrastructure-based mobile network operator to enter the market. Hence, TRA is of the view that MVNO should be allowed through commercial negotiations only.
50. Given TRA’s other projects pipeline and balancing the need to successfully manage the licensing process with the desirability to speed up entry into the market, TRA considers the target date of Q4 2008 to be sound.

REPORT

Strategic and Retail Market Review Second Consultation

Regulatory Measure 6: Removal of the mobility restriction for National Fixed Wireless Services (“NFWS”) Licenses on 17 November 2010

Responses

51. In its submission Batelco repeated arguments previously addressed by TRA in the Strategic and Retail Market Report to support its opposition to this initiative. Batelco did not provide comments on the proposed timing.
52. Zain is opposed to this regulatory measure on the basis that it will negatively impact the business case for its fixed wireless services business. Zain did not provide comments on timing. It considers that the removal of the mobility restriction is not in keeping with the roadmap outlined by TRA during the license award process.
53. Mena Telecom supports this initiative but would like the removal of the mobility restriction to be effective earlier (See also Mena Telecom comments above at para 44 on the third MNO).

TRA’s comments

54. TRA considers that customers 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.
55. Given TRA’s reasoning from removing the mobility restriction on 17 November 2010 as set out in the Strategic and Retail Market Review Report at pages 65-67, TRA considers that the comments received do not warrant a change of position.

Regulatory Measure 7: Introduction of Number Portability by Q1 2009

Responses

56. Batelco is of the view that number portability is not a regulatory priority and that the proposed timeline is unrealistic. Further it contends that the cost of introducing number portability will exceed likely benefits. It argues that TRA should fund the cost associated with the introduction of number portability via the proceeds from the sale of the third mobile license for example.

REPORT

Strategic and Retail Market Review Second Consultation

57. Mena Telecom supports the introduction of number portability. Mena Telecom did not specifically comment on the timing of number portability.
58. The CAG recommended introducing number portability before the award of the third mobile license.

TRA's comments

59. The introduction of number portability in some form or another will benefit customers by facilitating switching and satisfy their demand for number portability. Therefore it should remain a priority. TRA is aware that the timeline is ambitious. However, TRA remains committed to the introduction of number portability at the earliest possible date. TRA's objective is for number portability to be in place before the launch of the services of the third MNO.
60. TRA also notes Batelco's comment that the design of the number portability solution needs to be future proof and to take into account the move to all IP (Internet protocol) networks. This issue will be tackled as part of the implementation phase.
61. As indicated previously, TRA will work with the industry to identify the most cost effective solution to give effect to number portability in Bahrain. If necessary, TRA is minded to consider financing some of the costs of introducing number portability from proceeds of auctions or similar revenues subject to necessary approvals and/or consultations.

Regulatory Measure 8: Data Collection and Dissemination

Responses

62. In principle Batelco supports this initiative and considers the timing appropriate. Batelco also provided useful comments regarding, for example, the treatment of confidential information.
63. Mena Telecom supports the conduct of consumer surveys and their publication. Mena Telecom did not specifically commented on timing.
64. The CAG and BAG recommends conducting the next consumer survey by the end of 2008.

REPORT

Strategic and Retail Market Review Second Consultation

TRA's comments

65. The rationale for the timing proposed by TRA for the consumer survey was to leave sufficient time for the impact of the regulatory package to be felt before undertaking another survey. TRA will nonetheless endeavour to carry out a consumer survey of a narrower scope at an earlier date. This could take the form of a satisfaction survey.

Regulatory Measure 9: Competition Guidelines

Responses

66. Batelco is in favour of this initiative and consider guidelines could be rapidly developed.
67. The guidelines are also supported by Zain who is of the view that they should be published prior to the implementation of the reform of the retail regulation framework.
68. Similarly Lightspeed supports this regulatory measure.

TRA's comments

69. TRA agrees with Zain that the publication of these guidelines should take place prior to or at the same time the new regime for retail regulation comes into effect.

REPORT

Strategic and Retail Market Review Second Consultation

Annex

Table 1: Timetable for the implementation of regulatory measures as contained in the Draft Statement

Regulatory measure	Comment	Start date	Target 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	<ul style="list-style-type: none"> - Replacement of current tariff approval process by: - Objective: Same-day notification and ex ante rules: 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 	Q2 2008	Q4 2008
Wholesale regulation			
Local loop unbundling	On an exchange-by-exchange basis where demand exists	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 3 rd 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 Draft 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	<ul style="list-style-type: none"> - 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

REPORT

Strategic and Retail Market Review Second Consultation

Table 2: Regulatory measures market by market as contained in the Draft Statement

Retail Market	Significant market power	Regulatory measures
<p>1</p> <p>Fixed access narrowband connections markets:</p> <ul style="list-style-type: none"> - 1a: For residential customers; - 1b: For non-residential customers. 	Batelco holds SMP	<p><u>Retail regulation:</u> Removal of tariff approval process Reform of retail regulation regime:</p> <ul style="list-style-type: none"> - 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 <p><u>Additional wholesale regulation:</u> Local loop unbundling on an exchange by exchange basis where demand exists</p> <p><u>Measure to remove entry restrictions and strengthen competition:</u> Number portability using cost effective solution (to apply to all operators)</p>
<p>2</p> <p>Domestic calls originating on fixed lines markets:</p> <ul style="list-style-type: none"> - 2a: For residential customers; - 2b: For non-residential customers. 	Batelco holds SMP	<p><u>Retail regulation:</u> 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</p> <p><u>Additional wholesale regulation:</u> Same as market 1 plus carrier selection and improvements to carrier pre-selection</p>
<p>3</p> <p>Fixed originated international calls markets:</p> <ul style="list-style-type: none"> - 3a: to Zone 1 GCC countries; - 3b: to Zone 2 countries - 3c: to Zone 3 countries; - 3d: to Zone 4 countries. <p>Mobile originated international calls markets:</p> <ul style="list-style-type: none"> - 3e: to Zone 1; - 3f: to Zone 2; - 3g: to Zone 3; - 3h: to Zone 4. 	Batelco holds SMP in market 3a and 3c	<p><u>Retail regulation:</u> 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</p> <p><u>Additional wholesale regulation:</u> Fixed originated calls: Same as market 2</p>
<p>4</p> <p>Mobile services (excluding international calls)</p>	N/A	<p><u>Retail regulation:</u> Removal of tariff approval requirement on Batelco</p> <p><u>Removal of entry restrictions and strengthening of competition:</u> 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</p>
<p>5</p> <p>Broadband internet access from a fixed location</p>	Batelco holds SMP	<p><u>Retail regulation:</u> Same as market 1 less multi-year price control and low user scheme</p> <p><u>Additional wholesale regulation:</u> Local loop unbundling on an exchange by exchange basis where demand exists</p>

REPORT

Strategic and Retail Market Review Second Consultation

6	Dial-up internet access from a fixed location	Batelco holds SMP	<u>Retail regulation:</u> 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	<u>Retail regulation:</u> Same as market 6 <u>Additional wholesale regulation:</u> Same as market 5
			Development of competition guidelines Data collection and dissemination: <ul style="list-style-type: none">- 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).