

## Strategic and Retail Market Review

3 June 2008

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



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## STATEMENT ON THE STRATEGIC AND RETAIL MARKET REVIEW

### **Purpose**

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

After an extensive consultative process, the Telecommunications Regulatory Authority of the Kingdom of Bahrain (“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.

### **Background**

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

Based on the submissions received, and after undertaking further analysis, TRA defined a package of proportionate regulatory measures which TRA published as a “Draft Statement on the Strategic and Retail Market Review” (“Draft Statement”) on 28 February (Reference MCD/0208/014).<sup>1</sup> The Draft Statement sought comments on the timing of the regulatory measures contained therein. TRA set out its analysis and rationale for these regulatory measures in a “Report on the Strategic and Retail Market Review” (“Report on the Strategic Review”) (Reference MCD/0208/015) published at the same time. This report concluded the August 2007 Consultation.

TRA received contributions on the Draft Statement from Batelco, Friendi Mobile, Mena Telecom, Lightspeed and Zain as well as submissions from the Businesses User Advisory Group (“BAG”) and Consumer Advisory Group (“CAG”). A separate report summarizing these contributions is published separately (Reference: MCD/0508/047]

There were a variety of views regarding the timings of regulatory measures with some submitters calling for shorter timeframes while others asking for much longer timeframes.

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

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<sup>1</sup> In addition to input from consumers, TRA received industry responses from Batelco, Zain, Mena Telecom, Friendi Telecom and Cisco. TRA summarized and addressed the comments received in the separate Report (Reference: MCD/0208/015).

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designed and implemented. Consultative processes are essential as they allow TRA to gather the views of stakeholders. Overall, TRA is of the view that whilst 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.

The Final Statement is no different to the Draft Statement save for slight adjustments to the terminology and clarifications where needed.

### **Next Steps**

TRA has already started the development of some elements of the regulatory package. TRA will keep stakeholders informed on the progress of specific regulatory measures.

### **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.<sup>2</sup> 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:

- 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

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<sup>2</sup> The Second National Telecommunications Plan is available at:  
<http://www.tra.org.bh/en/pdf/TheSecondNationalTelecommunicationPlanEnglishFinal.pdf>.

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- 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 Determination on "Significant Market Power designation in certain relevant retail markets" (Reference: MCD/0508/048) in which Batelco is designated as a licensed operator with Significant Market Power ("SMP") in a number of relevant retail 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.

Based on comments received, and after further analysis, TRA refined its original regulatory proposals. The analysis and rationale that lay behind these regulatory measures is set out in the Report on the Strategic Review.

### **TRA's 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.

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 instruments. Additional wholesale regulations are identified together with measures to remove entry restrictions and to strengthen competition.

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The nine main components of this package are (see Table 1 and 2 below for the full content of each measure):<sup>3</sup>

- ***Regulatory Measure 1: 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 no operator has SMP.

- ***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)***

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 SMP, TRA will replace the current tariff approval process by a notification, supported with ex ante rules. The objective is to achieve 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 complemented by appropriate safeguards (i.e. enforcement procedures).

A multi-year price control/rebalancing plan 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.

- ***Regulatory Measure 3: Introduction of local loop unbundling***

TRA will implement local loop unbundling (“LLU”). 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

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<sup>3</sup> See the Report on the Strategic Review for more details.

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differentiation 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.

- ***Regulatory Measure 4: 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 Batelco's existing systems. TRA is of the view that this feature should be mandated thereby allowing customers to select the least cost route according to the destination being dialled. 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.

Carrier pre-selection process will also be improved to enhance competition.

- ***Regulatory Measure 5: Introduction of a third mobile network operator***

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. In order to use existing infrastructure more efficiently and having regards to environmental considerations, TRA will actively encourage the sharing of infrastructure (e.g. masts) when allowing the new mobile network operator in the market.

As indicated in the Report on the Strategic Review, TRA considers that Mobile Virtual Network Operators ("MVNOs") should be allowed through commercial negotiations only. Having decided to allow another infrastructure-based mobile network operator, regulatory intervention to facilitate MVNOs entry would be inappropriate and disproportionate for the time being. Licensing requirements for MVNOs will be addressed as part of the move to a unified licensing which TRA expects to complete by Q2 2009. No separate process will be initiated

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

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

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wider range of innovative services whilst, at the same time, increasing competitive pressures.

The timing of the removal will coincide with the date at which the frequencies at which the NFWS Licenses operate will be allocated in the Kingdom of Bahrain to mobile services on a primary basis as per the outcomes of the 2007 World Radiocommunications Conference ("WRC-07") of the International Telecommunications Union ("ITU").

- ***Regulatory Measure 7: 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 and fixed number portability.

If necessary, TRA would be 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. This could minimize the cost to the industry of activities beneficial to all operators and ultimately to consumers.

- ***Regulatory Measure 8: 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.

- ***Regulatory Measure 9: Data collection and dissemination***

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.

In line with the Second National Telecommunications Plan and the Telecommunications Law, TRA may implement additional measures that promote competition and market entry for the benefit of consumers. The list of measures above, including as they relate to assigning and/or managing specific spectrum resources in line with the Spectrum Policy, is not exhaustive.

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**Timetable for the implementation of regulatory measures**

The implementation of these proposals will give all the market players 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.

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. TRA's target date for unified licensing is end Q2 2009. Unified licenses will also give operators greater flexibility to offer services and hence to better address consumers' needs.

The table below provides the start date and target date for the nine main regulatory measures defined.

**Table 1: Target timetable for the implementation of regulatory measures**

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 <sup>rd</sup> 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												

Note: MVNOs allowed through commercial negotiations only without regulatory intervention for the time being. Licensing requirements to be addressed as part of the move to a unified licensing framework (expected completion Q2 2009)

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**Details of regulatory measures**

The table below provided additional details on each element of the package.

**Table 2: Timetable and detailed content of each regulatory measure**

Regulatory measure	Comment	Start date	Target date
<b>Retail regulation</b>			
<b>1: Removal of tariff approval process</b>	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
<b>2: Reform of the retail tariff regulation regime</b>	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 baskets of services - Safeguard caps on a few services	Q2 2008	Q4 2008
<b>Wholesale regulation</b>			
<b>3: Local loop unbundling</b>		Q3 2008	Q2 2009
<b>4: Carrier selection ("CS")</b>	Including improvements to existing carrier pre-selection product ("CPS")	Q3 2008	Q2 2009
<b>Measures to remove entry restrictions and to strengthen competition</b>			
<b>5: Introduction of a 3<sup>rd</sup> Mobile Network Operator ("MNO")</b>	Through a competitive and transparent process MVNOs allowed through commercial negotiations only without regulation intervention for the time being. Licensing requirements to be addressed as part of the move to a unified licensing framework which TRA expects to complete by Q2 2009. No separate process will be initiated	Q2 2008	Q4 2008 – Q1 2009
<b>6: Removal of mobility restrictions for National Fixed Wireless Services ("NFWS") licenses</b>	In line with the Final Acts of the World Radiocommunications Conference 2007 – ITU to which Bahrain is a signatory	Q3 2010	17 Nov 2010
<b>7: Number portability (fixed and mobile)</b>	Implementation of number portability based on a cost effective solution	Q2 2008	Q1 2009
<b>8: Data collection and dissemination</b>	- Collection and publication of market data - Consumer survey - Tariff comparator	Ongoing Q3 2009 Q2 2008	Ongoing Q4 2009-Q1 2010 Q2 2009
<b>9: Competition guidelines</b>		Q2 2008	Q4 2008

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

**Table 3: Regulatory measures market by market**

Retail Market	Significant market power	Regulatory measures
<p><b>1</b></p> <p>Fixed access narrowband services markets:</p> <ul style="list-style-type: none"> <li>- 1a: For residential customers;</li> <li>- 1b: For non-residential customers.</li> </ul>	<p>Batelco holds SMP</p>	<p><u>Retail regulation:</u> Removal of tariff approval process Reform of retail regulation regime:</p> <ul style="list-style-type: none"> <li>- 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)</li> <li>- Multi-year price control: rebalancing plan</li> <li>- Low user scheme</li> <li>- Monitoring representative baskets of services</li> </ul> <p><u>Additional wholesale regulation:</u> Local loop unbundling <u>Measure to remove entry restrictions and strengthen competition:</u> Number portability using cost effective solution (to apply to all operators)</p>
<p><b>2</b></p> <p>Domestic calls originating on fixed lines markets:</p> <ul style="list-style-type: none"> <li>- 2a: For residential customers;</li> <li>- 2b: For non-residential customers.</li> </ul>	<p>Batelco holds SMP</p>	<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 means that rates are at least constant in real terms) if domestic calls are not part of the multi-year price control <u>Additional wholesale regulation:</u> Same as market 1 plus carrier selection and improvements to carrier pre-selection</p>
<p><b>3</b></p> <p>Fixed originated international calls markets:</p> <ul style="list-style-type: none"> <li>- 3a: to Zone 1 GCC countries;</li> <li>- 3b: to Zone 2 countries</li> <li>- 3c: to Zone 3 countries;</li> <li>- 3d: to Zone 4 countries.</li> </ul> <p>Mobile originated international calls markets:</p> <ul style="list-style-type: none"> <li>- 3e: to Zone 1;</li> <li>- 3f: to Zone 2;</li> <li>- 3g: to Zone 3;</li> <li>- 3h: to Zone 4.</li> </ul>	<p>Batelco holds SMP in market 3a and 3c</p>	<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 <u>Additional wholesale regulation:</u> Fixed originated calls: Same as market 2</p>

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4	Mobile services (excluding international calls)	N/A	<u>Retail regulation:</u> Removal of tariff approval requirement on Batelco <u>Removal of entry restrictions and strengthening of competition:</u> Introduction of third mobile network operator ("MNO") Mobile Virtual Network Operators ("MVNO") allowed through commercial negotiations only without regulatory intervention for the time being Number portability using cost effective solution (to apply to all operators) Removal of mobility restrictions for the National Fixed Wireless Services ("NFWS") licenses by 17 November 2010
5a	Broadband 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 <u>Additional wholesale regulation:</u> Local loop unbundling
5b	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 at least constant in real terms)
6	Domestic leased lines (6a) International leased lines (6b)	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"> <li>- Collection and publication of market data</li> <li>- Consumer survey</li> <li>- Tariff comparator</li> </ul>

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.