

**Lightspeed submission in response to the Public  
Consultations**

**"Retail Tariff Notification Framework"**

**And**

**"Rebalancing for Fixed Services and Price  
Monitoring"**

**Issued by the Telecommunications Regulatory  
Authority in Bahrain "TRA"**

**On 31 May 2009**

## **Introduction:**

Lightspeed welcomes the opportunity to respond to the TRA public consultation on "Retail Tariff Notification Framework" and the public consultation on "Rebalancing for Fixed Services and Price Monitoring" hereinafter referred to separately as the "Consultation Paper"

As a summary of our position, Lightspeed believes that the proposed Retail Tariff Notification Framework should focus in principle on how to tackle the main problem that lies in establishing effective competition in the Bahraini retail markets. Competition is constantly weakened by the anti-competitive practices conducted by abusive SMP operators.

Previous market behavior indicates that dominant operators at the wholesale level having significant market power at the retail level in a relevant market will surely abuse such dominance.

Lightspeed, therefore, believes that the best outcome from such a framework would be to effectively protect competition from unfair discrimination by dominant operators which they might use to unfairly favor their own retail operations or to unfairly discriminate against their competitors. We believe that protecting against dominant operators' unfair discrimination removes the majority of anti-competitive tools that such operators can use to harm competition. Lightspeed also believes that operators with no market power have no chance of using offers to influence market conditions anti-competitively; accordingly we applaud the TRA for not subjecting them to such a notification process.

Lightspeed emphasizes that wholesale offers can be used as a tool to unfairly discriminate against competing licensees in the retail market and accordingly any ex ante regulation implementing tests on retail offers at the retail level should always take into consideration the strategy and the discretion that dominant operators have at the wholesale level. The TRA should pre approve any amendment, alteration and addition to the Dominant's Reference Offer ( which includes Supply Terms), discrimination can be based on prices or non-price actions such as terms & conditions or repair-time or time-to provide.

With regards to the consultation on rebalancing for fixed services and price monitoring, Lightspeed agrees in principle with what the TRA concluded throughout its consultation and believes that the rationale and objectives of allowing fixed line tariffs to move closer to costs is a reasonable and understandable approach. Lightspeed emphasizes that the estimation of costs should be transparent and fair thereby

ensuring that any phases of rebalancing should not exceed the actual costs incurred. Lightspeed stresses on the need to annually study the impact of rebalancing on low income users. The study should not only tackle the effect on basic voice services but should include an analysis of the impact on different telecommunications markets such as the internet.

Lightspeed looks at the Consultation Papers as an opportunity to eliminate anti competitive behaviors in the market and increase market competitiveness and ensure the welfare of small and new operators.

## **Lightspeed submission in response to the public consultation on Retail Tariff Notification Framework**

### **General Comments:**

Lightspeed welcomes the opportunity to respond on the Consultation Paper and realizes the importance of the TRA role in monitoring prices and service retail offers by SMP licensees in the market. Nonetheless, Lightspeed strongly believes that the introduction of a new regulatory framework for retail tariff notification should be restricted by the following important factors:

#### 1- A timely designed and flexible regulatory framework:

Lightspeed supports a simple and flexible notification process that is easily understood by market players, that is not rigid, and that will not negatively affect the establishment of effective competition in the market. Lightspeed stresses that while respecting the concept of time, it is crucial that the facilitation of the issuing of all prices and service offers should never jeopardize the establishment of effective competition in the relevant retail market and accordingly should never allow the SMP licensee to abuse his market power.

Lightspeed emphasizes on the importance of developing a notification framework which enables the TRA to monitor and filter prices and service offers in an efficient, flexible and timely manner thereby protecting the Bahraini telecom market and small operators, enhancing competition and ensuring the welfare of end consumers. Lightspeed stresses that the proposed regulatory framework should be designed with deadlines to meet by the regulator as well as the operators. Sanctions should be imposed on any violations. The TRA should commit itself to meeting the deadlines and imposing sanctions to ensure the effectiveness of the proposed framework. Failing to do so, serious concerns would arise that an ambiguous and complicated notification process would result and accordingly the purpose of establishing such a process will not be attained.

#### 2- A transparent notification framework:

Lightspeed stresses on the importance of the definition of a valid notification form and the information contained within. Lightspeed strongly believes that all information contained within the notification form should be made available upon request by a licensed operator. Lightspeed stresses that market players would be able to request the TRA to stop the implementation of the notified tariff based on false information submitted in the notification form or based on anti competitive behaviors conducted by the SMP operators. OLOs should be given a chance to challenge information and data submitted by the SMP operator in the notification form. Furthermore, small and new operators may wish to challenge the information and data inserted in the tests to ensure compliance with Notification rules (Ex ante rules).

This is of utmost importance hence to ensure that effective competition is gradually introduced to retail markets.

### 3- Protecting and developing Competition at the retail level:

Lightspeed agrees and supports the TRA that a regulatory framework for tariff notification should be established to retail offers by SMP operators in the markets in which these operators have a significant market power. The retail tariff notification process should include cost imputation tests, and check whether there is non-price discrimination in the terms & conditions or timeframes for repair and provision of service or minimum contract duration. The process should also study the effect of dominance at the wholesale level and the impact of actions conducted by dominant operators at the wholesale level to favor their own retail arm at the retail level. This is usually the case hence the dominant operator will always be the sole provider of the essential inputs to providing the service at the retail level.

However, it is worth mentioning that the benefit of introducing such a notification process should be mainly the protection of competition and not the protection of any particular type of operator (large or small). The TRA should immediately intervene if it realizes that such a process hinders the establishment of effective competition in the relevant retail market.

Lightspeed disagrees with the TRA main objective by issuing the Consultation Paper. Lightspeed strongly believes that the main goal of issuing this Consultation Paper is to safeguard competition and ensure that all retail tariffs submitted by SMP operators do not violate the Telecommunications Law and the TRA regulations.

Lightspeed stresses that resources should not define the action required, it should be the other way around. When processes and procedures change or a new process is introduced, the available

resources are evaluated and if new ones are needed, then actions are taken accordingly.

In other words, the resources of today should not be the factor upon which such an important notification process is introduced.

Lightspeed stresses that in order to ensure the establishment of effective competition at the retail level the TRA should ensure "Tight regulatory controls" over Batelco since:

(a) It has dominance (near monopoly market power) in the fixed and leased line markets,

(b) It has total control over critical inputs for which there is no substitute (Local Loops),

(c) It enjoys vertical market power gained from its operations in the retail market through its retail arm,

(d) It has followed a pattern where it has showed anti-competitive behavior and there is no reason to expect that the past behavior has changed.

Accordingly, Lightspeed emphasizes that Batelco should file all tariffs for new services and/or offers and/or bundles and/or converged offers within the relevant retail tariff notification form.

The TRA should appreciate that the retail notification process is not a perfect tool and is required only to act as a preventive protection not an impenetrable shield. Other tools should be developed and introduced consequently to remedy the actions that pass through this protection namely the competition safeguards and Competition Law Instructions. This is of utmost importance to ensure the balance and effectiveness between ex ante and ex post regulations in safeguarding competition in the market.

## **Specific Comments:**

In addition to its General Comments listed above, Lightspeed would like to submit the following specific comments on the proposed Retail Tariff Notification Regulation:

### **1- Article 2- Notification Process**

The TRA are only focusing on the licensee that has been determined to have SMP in a relevant market. The TRA should always link the dominance of the licensee at the wholesale level and whether such dominance would contribute to abuse of power and killing competition at the retail level even if such a licensee is not considered to have SMP in the relevant market.

Further, We believe that an amendment should be made at the end of Article 2.8 that would lead to penalizing any notifying operator for intentionally providing false information and /or data in the notification form. Lightspeed stresses that penalties should be imposed automatically by the TRA on the SMP licensee if it violates the notification framework.

### **2- Article 3- Notification Rules (Ex-ante Rules)**

Lightspeed stresses that there needs to be an Article specifying clearly that the TRA will study carefully any notification of tariffs submitted and will examine the information and numbers provided in the Notification form and conduct all required tests so as to ensure that the notification rules are not violated. This is in line with the main obligation of the TRA of protecting and safeguarding the Bahraini Telecommunications market. Our major concern is that what if the notified tariffs actually violate the notification rules and the TRA does not issue any decision to stop the SMP operator from implementing these tariffs. This is a serious issue that has not been addressed. Lightspeed stresses that there needs to be clear obligations on the notifying operator and the TRA and legal implications and consequences for not meeting these obligations. Lightspeed emphasizes that the main goal of this Consultation Paper is foster the implementation of effective competition on the retail level and to ensure that SMP operators do not abuse their market power.

### **3- Article 4- Implementation of Notified Tariffs**

Lightspeed stresses on the need to inform OLOs of the Notified Tariff by sketching a process to notify all OLOs within a specified period.

### **4- Article 6- Enforcement**

Lightspeed stresses that the proposed enforcement scheme will not achieve the main goal of this Consultation Paper to ensure

that the notification framework and the imbedded ex ante rules actually prohibit licensed SMP operators from abusing their market power. The TRA failed to mention that it will be very strict with any violation committed and the TRA failed to mention the implementation of sanctions such as fines on the SMP operator.

Lightspeed stresses that the proposed notification framework does not tackle and deal with all practical cases that may arise in the market. For example, what if and after the elapse of the implementation of the tariff, an operator in the market objected and accused the SMP operator of conducting an anti competitive behavior. The TRA started to investigate the case and found that an anti competitive behavior has been conducted.

Lightspeed stresses that ex post remedies in the Bahraini telecommunications market are very weak. The Competition safeguard instructions have not been issued, the competition law has not been promulgated and there is no clear regulation for a dispute resolution process.

At this stage one can only imagine the financial losses that the normal operator has incurred. The question of how long would it take to process such a case and will the retail offer stop till a decision has been issued and whether such a case will require a significant period of time and how will the TRA ensure that the SMP operator(s) will abide and respect the retail tariff notification framework? These questions raise major concerns for Lightspeed.

Lightspeed stresses that there is a clear and necessary need to impose huge fines on any violations to this framework. Fines should be consistent with the amount of damages that affected all operators in the market. Failing to impose these fines will inevitably allow SMP operators to abuse their market power and increase their market share. This will, without a doubt, kill competition on the short and long run.

#### **5- Article 8- Confidentiality**

Lightspeed stresses that all information in the Notification form should be made publicly available due to its high sensitivity and for the purposes of giving a chance for operators to challenge the information and the numbers included in such a form. Lightspeed stresses that the TRA should not deal with this framework as a relationship with the notifying operator. The TRA should make available all information relating to the submitted tariff thereby being transparent and ensuring that all market operators and/or stakeholders have a chance to future challenge the submitted documentations.

### **Specific Comments on Retail Tariff Notification Guidelines:**

In addition to its comments stated above, Lightspeed would like to present the following comments on questions raised throughout the Retail Tariff Notification Guidelines.

*Q1 Do you agree with the proposed approach outlined above, in terms of when tariffs should be notified under the Regulation by SMP operators and the treatment of tariffs subject to a rebalancing plan? Please elaborate.*

#### **Comment:**

Lightspeed stresses that retail tariffs should always be notified by SMP operators and should always follow the ex ante rules embedded within the notification process. Lightspeed encourages the TRA to rely on international best practice to implement ex ante regulations that are strong enough to develop competition in the market. The TRA, while relying on international best practice, should customize it to suit the Bahraini market. The TRA for example while benchmarking and comparing pricing methodologies should depend more on practices in GCC and the Middle East and then finally refer to EU countries.

While supporting the TRA in its approach, Lightspeed stresses on the importance of imposing tight regulatory controls on Batelco. If the TRA does not keep a firm grip in dealing with Batelco this will surely affect the level of competition in the market. The higher the level of competition the better the results will be for the end users.

*Q2-Q6*

#### **Comment:**

While supporting the TRA in its general approach, Lightspeed is of the opinion that such tests are usually internationally accepted and adopted. One cannot argue with the logic, economics and theoretical approach in applying these tests. Yet the TRA should not simply mimic international regulatory experience rather than adapting and customizing such an international experience to the needs of the Bahraini market. Lightspeed has a major concern on how would other licensed operators be able to challenge information and data provided by the SMP operator within these tests. OLOs should be allowed a chance and before a new retail tariff is introduced to the market to challenge such a tariff for being anti competitive especially with the lack of effective ex post regulation. As mentioned before, currently the competition safeguards have not been introduced by the TRA. The Competition Law ceases to exist and the dispute resolution process is based on a contractual basis rather than on a legal basis (Supply

Terms vs. Dispute Resolution Regulation to be issued by the TRA). The TRA needs to sketch a certain process that would enable OLOs to be notified and are able to challenge the submitted Notification form at an early stage. The TRA should understand the importance of such an issue especially where anti competitive violations are a major problem in the Bahraini market.

## **Comments on the Public Consultation on Rebalancing for Fixed Services and Price Monitoring**

Lightspeed would like to submit the following comments on the above mentioned consultation:

- 1- Lightspeed agrees in principle with what the TRA concluded throughout this consultation and believes that the rationale and objectives of allowing fixed line tariffs to move closer to costs is a reasonable and understandable approach. Lightspeed emphasizes that the estimation of costs should be transparent and fair thereby ensuring that any phases of rebalancing should not exceed the actual costs incurred.
- 2- Lightspeed stresses that the TRA should accelerate its action on changing the call duration billing mechanism for the benefit of the end-user customers specially for the short-period calls; this charging basis is particularly large; this unit based charging used by Batelco is not in line with international practice and is considered out-dated.
- 3- Lightspeed believes that access would represent a problem to low income users. This will also have a tremendous effect on the internet penetration rate hence all end users would require a land line to acquire the broadband service. Lightspeed applauds the TRA's efforts in proposing solutions yet the proposed solutions do not solve the problem and rebalancing still needs to tackle the concerns of low income users.
- 4- Lightspeed strongly believes that the TRA should work with Batelco on preparing the rebalancing plan, Batelco should not be solely responsible to developing such a plan. This will ensure that the TRA will have a better understanding of the guidance and safeguards that are required to cushion the effect of rebalancing on end users.
- 5- Lightspeed strongly support the TRA's position in that carry over provisions should not be allowed; this point highlights clearly that allowance to adjust prices for a particular year to be used the next year should not be acceptable as it would undermine the progressiveness of rebalancing.
- 6- Lightspeed supports the proposed tariff monitoring framework and emphasizes on the importance of monitoring and tracking on an annual basis the impact of price changes on consumer behavior and on the market in general. This will give a clear

vision to the TRA on how to proceed with its policies for the coming year.