

TRA Development Review Panel 2005
Report on the operations of the Bahrain
Telecommunications Regulatory Authority (TRA)

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1. Introduction

In the last quarter of 2004, the General Director of the Telecommunications Regulatory Authority (TRA) of the Kingdom of Bahrain commissioned an independent report into the effectiveness of the Authority's workings from a three-person panel, comprising¹:

- Martin Cave (Chair), Professor at Warwick Business School, University of Warwick, UK – an economist with extensive experience of advising regulatory agencies and regulated firms,
- Ian Martin, a financial strategist and analyst at ABN AMRO in Australia, with earlier experience of work in regulatory agencies,
- Christopher Wright, a special adviser on regulation at Slaughter and May, the international law firm, and formerly director of competition at OFTEL, the UK regulator.

The panel visited Bahrain on 14-16 January 2004, and received evidence from: the TRA, the Ministry of Transportation, the Department of Legal Services, the Chamber of Commerce, the Bahrain Consumer Protection Society, Batelco, MTC Vodafone Ltd, and a range of other licensees or potential licensees. This evidence was received in private and on a confidential basis; as a consequence views reported below are not attributed to any organisation.

The panel is very grateful to those who spoke to it for giving their time and expressing their views in a very forthright and helpful way.

In the course of a second visit to Bahrain on 28-30 January 2005, a workshop on the review took place organised by the TRA, at which a number of stakeholders spoke, and at which the panel presented its conclusions. This was followed by an illuminating general discussion.

The panel is grateful to those who attended the workshop, including His Excellency Shaikh Mohammed bin Khalifa Al Khalifa, Under Secretary at the Department of Transportation and members of the TRA Board, including its Chairman Dr. Mohammed J. K. Alghatam.

The panel now presents its final report, which has benefited from all the processes described above. The General Director of the TRA has undertaken to publish the report and to issue a response to it.

¹ Further biographical details are available in the Annexe

2. The Background to the TRA's work

The Government formulated its new policy on from telecommunications in May 2002, enacting the Telecommunications Law in October 2002. The new law liberalised the telecommunications markets in the Kingdom of Bahrain from July 2004, and created an independent agency, the TRA, to regulate the sector. Simultaneously, the Government adopted a Telecommunications Plan to provide a policy framework within which the TRA would operate.

The panel acknowledges the forward-looking and far-seeing nature of these reforms, which lead the way in the region, and believes that they will confer considerable benefits on households and businesses in Bahrain.

During 2003, the TRA, staffed by consultants, took major steps towards implementing the new regime, and most particularly oversaw the licensing and start of operations of the second mobile operator, MTC – Vodafone Bahrain.

In December 2003, a permanent staff was appointed to the TRA, under the direction of a General Director. Our appraisal focuses primarily on what has been done since the start of 2004.

The TRA has three main duties under the Law, (Chapter II, Section 3) which can be summarised as those of

- protecting consumers
- promoting competition
- ensuring the supply of public telecommunications services.

The panel welcomes this specification, which places benefits to consumers (households and businesses) at the heart of the regulatory regime, and adopts these three objectives as the touchstone of its evaluation.

Before discussing the TRA's activities, the panel notes the heavy burdens placed on a regulatory body at the outset of liberalisation. These are highly relevant to our subsequent discussion of priorities.

When telecommunications in Bahrain were a monopoly, the regulatory function could easily be discharged by the Ministry of Transport, as it chiefly comprised the approval of Batelco's prices (see figure 1).

Figure 1. A schematic picture of regulatory duties

Retail price control	Licensing Retail price control Access and interconnection regulation Universal service issues Facilitating entry	Policing, anti-competitive conduct. Limited access regulation
Monopoly	Market opening and transition	Competition
Pre-2004	2004-9?	2009? →

Once liberalisation was put in place, a number of new problems arose: licensing new entrants; regulating the prices at which competitors gain access to Batelco's networks; continuing to regulate Batelco's retail prices (but within a new, competitive framework); developing policy to prevent anti-competitive conduct by Batelco; ensuring universal service provision; and so on.

If the process of competitive entry works, and Batelco's market power is eroded, at some future date competition among operators may make some forms of regulation unnecessary. The regulatory burden will diminish correspondingly.

Nevertheless, that burden remains heaviest now, at precisely the time when the TRA is starting its operations and is least experienced in discharging them, when new entrants are feeling their way, and when Batelco is adjusting to the loss of its monopoly.

3. The Panel's Recommendations and Priorities

Where are we now?

To summarise the current position:

- there are encouraging early results from the introduction of the second mobile licensee in terms of price and quality of service
- we have also seen a number of licences granted, with many more applications in the pipeline
- so the *legal* process of market opening is well advanced.
- but there has been no fixed service entry.

We have therefore looked to see how far immediate needs of new and prospective licensees will be met, as this is the necessary next step on the road to achieving competition in practice.

We started by looking at what we perceived to be the TRA's current regulatory agenda.

The current regulatory agenda and responses to it

Unsurprisingly, licensing of new operators and retail price approvals have together taken up a significant proportion of the TRA's time and resources.

They have an important middle set of priorities:

- separate accounting, because it is the means to understanding the incumbent's network cost base, and hence to establishing fair charging for customers and competitors alike. Several comments were received by the panel that accounting separation requirements are too onerous for new entrants as well as time consuming for the TRA, despite exemptions from detailed regulated accounts for some new entrants.
- wholesale access and interconnect prices, where the TRA has had to make progress across a broad front on the very complex but necessary process of identifying the network components, and the appropriate pricing and regulatory approach, which are key aspects of system and customer access. One of the most widely discussed areas was whether

the TRA should do more at a practical level on interconnection and access.

The decision on whether there should be a third mobile operator, and decisions on rebalancing the tariff, while somewhat less pressing, are also important – especially rebalancing, so as to allow cost-oriented tariffs to be achieved for both retail and wholesale products and services.

The panel's respondents in the sector expressed some concerns over TRA's level of resources and prioritisation of tasks. A widespread concern was that the lack of ready resolution of key market entry issues impacts the financial viability of new investment projects. Some participants suggested the need for a timetable and prioritisation list for key matters such as access to facilitate market entry.

Against this background, what does the Panel think that its own priorities would be?

Our priorities – first tier

Initially, new licensees will be dependent in part on spectrum availability and – crucially – on Batelco to deliver these opportunities at fair and non-discriminatory prices and on time. This is our chief point.

It seems to the Panel that new entrants to the international and broadband markets need key access and interconnect products at guaranteed prices and quality of service, with no discrimination. In particular, they need:

- the ability (on the part of international services licensees and ISPs) to overcome the bottlenecks that constrain access to international connectivity
- the ability (of fixed line licensees) to gain access to customers, via fixed or wireless technologies.

To give more detail on respondents' views, in relation to *international connectivity*, one of the panel's interlocutors noted that although there was intended to be no limit on ISL entrants, the complex licensing process might effectively limit entry. Many

parties considered the pricing of IPLC and ½ circuit from Batelco were high compared with available benchmarks. One suggested they were equivalent to ½ circuit rates to the UK. Another comparison suggested that the price of a half-circuit from Batelco is 20% greater than the price of a half-circuit from Emix of Dubai.

One comment was that the clause in the RIO which says that access seekers cannot use international numbers for calling cards compromised “fair and equal access”, as a Batelco subsidiary does this.

A common issue raised was what additional access to international capacity might be available from FLAG as against that currently available from FOG. The timeframe for access and terms and conditions were not clear. One interested participant said it was also not clear where the landing points would be.

In relation to *access to customers*, several contributors to panel discussions suggested that there should be milestones laid down for access provision. As a rule of thumb, it was suggested, if Batelco offers a comparable retail service, there should be a short turnaround in providing wholesale or access service. If it was not possible for the arbitrator to “be in the ring from the start”, a timetable at least facilitated monitoring. Several access issues were yet to be determined, such as access to ducts, and this was delaying effective entry.

Referring to the recent mobile termination access services, it was suggested that it took the TRA one year to do this and that this was “way too long”. The long timeframe gives Batelco an incentive to delay and prolong the process.

Our priorities – second tier

In the second tier, our list includes:

- streamlining the retail price control regime, in particular moving away from the piecemeal approval of every tariff change. But, while Batelco remains an effective fixed line monopoly, adequate controls will be needed. We have to bear in mind that Batelco would be unlikely to have chosen market liberalisation on its own. There is nothing wrong with that – under most regulatory systems of this type it is in the

interests of the incumbent to push the envelope to some degree – but the regulator has to act as a counter-weight. We recall that the pre-notification of tariffs took several years to be relaxed in other regimes. It is something of a regulator’s mantra that regulation should retreat as the tide of competition advances. But at the moment competition is only prospective. Nonetheless, we think it may be possible to replace the existing individual approval with some scheme of caps on groups of prices (and perhaps floors and ceilings in relation to individual price changes)

- it will also be necessary to take forward work on the remaining suite of interconnect and access products which need to become available to all competitors. Priority may need to be given to the implementation of some of these over others, while retaining a coherent framework.

Some parties commented on the time taken up with tariff filing, noting that in 2004 Batelco filed 54 tariff changes. The TRA approved 36 and rejected nine with a further nine still pending. Of filed tariffs, only a minority of these might need detailed scrutiny. It was argued that filing requirements are too detailed; this may impede price falls which would benefit consumers. However, some parties also noted that it may be too early in the competition process to do away entirely with tariff approval, since Batelco still retains monopoly power over many retail prices.

Finally, there is a set of what we could call “investment” work which will yield fruit principally in the future. The panel’s views on these are as follows:

- we know the third mobile operator review must be carried out, but we are inclined to think that, provided spectrum is available, the market should decide whether there is room for a third mobile network.
- there seemed to be a strong level of interest in this issue and some support for this view from participants.
- provided a timetable for rebalancing is known, this could be tackled gradually. In the meantime, prices would act as an umbrella for new entry – provided that new entrants are aware of the limited time span which may be available to them. Many participants commented on this with several noting that it was important to know the timeframe for

rebalancing as this affected market entry and investment decisions.

- continued work is needed on separate accounting in support of efficient network pricing.

This is not greatly different from the TRA's own agenda, but with some modulation of priorities and flexing of the TRA's approach. We now turn to look at a couple of key strategic issues.

Spectrum issues

We have already noted that wireless technology is a key component in fixed as well as mobile competition.

Several participants noted that it was not always clear where responsibility lies for spectrum management to facilitate market entry. One participant noted there was interest in Fixed Wireless (broadband) Access but that this has not been looked at from a policy viewpoint. There was some concern about the time that it was taking to resolve FWA spectrum issues and delays were causing investors to lose interest.

We have noted that both the Ministry of Transportation and the TRA have distinct roles – the Ministry decides broadly what spectrum is put to what uses (allocation); and the TRA licenses (assigns) frequencies to particular operators. This is not an unusual arrangement by reference to other jurisdictions. However, when it comes to making decisions on harvesting, cleaning up and making available frequency for designated uses, a clear timetable is needed – concentrating on the possible third mobile operator and on fixed wireless access applications.

“Broadband Bahrain”

A second specific initiative we would like to see considered is what we have chosen to call “Broadband Bahrain”.

Experience in other countries has shown that key sectors of the economy – especially an expanding service-based economy – need broadband applications to enable those sectors to fulfil their full potential and growth rates. These applications are therefore key to prosperity through the Kingdom in sectors such as residential,

banking, small and medium-size enterprises, schools and government, as well as in the household sector.

There was a high level of interest shown in this matter by several participants with some parties suggesting this was the highest priority issue and the government may need to play a role. Pricing was also a key issue, including rebalancing to encourage alternative access technologies while another participant suggested broadband rollout was too slow and that cost is a matter of concern. A third participant suggested that PC penetration is low, although payment by instalments is available.

It was noted that the TRA was considering wholesale DSL. Others thought that unbundling local loops was the most critical access issue. The question was raised whether the TRA had the resources to deal with this and make it consistent with the reference offers and accounting separation.

Broadband development is one of the main potential benefits of liberalisation, and yet at present (again as has been found in other jurisdictions previously) the roll-out of broadband appears to be caught in a vicious circle of low initial demand deriving from high prices, leading to low levels of supply and hence high costs. In order to get broadband kick-started, it is necessary to take a long view of the investment and returns, and for the incumbent and those responsible for generating wireless applications to treat this on a project life-cycle, with appropriate assumptions on uptake, and hence cost, in the long run. It will require a concentrated effort to break this log-jam.

4. The Panel's Recommendations on Process

The panel received many comments on the work of the TRA, including some relatively specific comments and criticisms on timeliness and responsiveness, which seem to be related to resource issues and prioritisation. One participant in panel discussions commented that accountability and oversight could be improved. It was suggested that the TRA could further develop this through ongoing dialogue with investors.

There was pride in some quarters over the substance of the reforms. The comment was made that Bahrain was the only Gulf country to set a timetable and keep to it. Another participant suggested that Bahrain could export telecommunications regulation on a regional basis.

We think that the TRA's processes stand up well against international comparators for transparency and consultation, and that this lends a great deal of public legitimacy to its actions and decisions, and underlines its impartiality. However, even if consultation, transparency and impartiality were right all the time, the TRA would never achieve the sublime state where everyone affected by its decisions liked them or agreed equally with them. It will never be possible to achieve perfect consensus.

We have, however, wondered whether some redirection of resources could be achieved:

- by simplifying and speeding up the process of licence approval and price approvals – for example, could the TRA outsource the making up of the dossier on which it makes its decision on licensing? Could it adopt a different and less demanding price approval procedure?
- we also think it is worth asking the question whether inter-operator agreements can be facilitated and accelerated in some way.

Resources

However, we have to recognise (as did many respondents) that the TRA, as much by the availability of staff as by its budget is resource constrained, its staff are few and new, and facing heavy

demands, particularly in this early stage of market opening. They appear to need:

- more specialists in law, economics and technology – so they can be informed customers as well as informed appliers of regulation
- a long-term staff development strategy which recognises the need for them to grow their own skills.

The panel believes there may also be scope for regional or international co-operation, and to pool knowledge and precedent with other regulators. Respondents suggested that the TRA had now begun to find its feet. However, it was also noted, that it faces a steep learning curve, and there was limited expertise in the region. One participant noted MoUs with Jordanian and Greek regulators. Does this offer scope for sharing tasks and resources? The TRC in Jordan was seen by some as a good regulator, which may be used as a benchmark for the TRA. Another suggested the TRA could also share experience with regulators in Jordan and Saudi Arabia. We recognise the constraints on this, particularly in terms of finding suitable comparators, ideally those who are operating in markets where liberalisation is slightly ahead, in order to maximise the transfer of experience. But we are glad that the TRA is investigating these possibilities.

5. Summary and Conclusions

We have some more general observations drawing on our discussions with market participants and experience in overseas telecommunications markets. We recognise that the TRA must work within its statutory obligations, and that it cannot make its own agenda. However, within that constraint, we believe that:

- the TRA's focus needs to move from licensing to facilitating competitive entry
- it has a sophisticated framework for making competition assessments but it should not allow this to impede its ability to make practical progress in key areas – after all, Batelco is overwhelmingly dominant in almost every sector of its operations
- the TRA's dispute resolution process needs to be moved up a gear.

The timely management of relationships between operators needs to be improved and to play a larger role in the dispute resolution process – preferably before a determination is sought from the TRA and the determination and arbitration process then dilutes the importance of the horizontal relationship. There is a need to obtain a more “nimble” approach without ignoring the demands of due process.

Our priorities are thus as follows:

- there should be a fast track for determining the key elements of access and interconnect for new entrants to the fixed line market
- there should be a joint project established with the Ministry of Transportation on spectrum demand and availability
- some means is needed for bringing about the early resolution of disputes between operators
- price control should move to a non-objection process based on price capping with floors and ceilings for individual price changes

- a timetable for tariff rebalancing should be established which is sensitive to the potential for consumer hardship
- the key gaps in TRA resources need to be filled in
- a less labour intensive way of issuing licences is needed, especially for class licences (where an authorisation process might be considered).

The panel hopes that these suggestions will get the TRA off to a good start to its debate on where it goes next, at the threshold of the next exciting stage in the development of telecommunications and telecommunications regulation in the Kingdom.

Annex Biographical Data

Professor Martin Cave - Chairman of the panel

Martin Cave is Professor and Director of the Centre for Management under Regulation, Warwick Business School. He holds bachelor's, master's and doctoral degrees from Oxford University. Until 2001 he was Professor of Economics at Brunel University. He specialises in regulatory economics, especially of the communications sector. He is the author of the *Independent Review of Spectrum Management* (2002) for the UK Government, co-author of *Understanding Regulation* (1999) and co-editor of the *Handbook of Telecommunications Economics Vol. 1* (2002) and *Vol. 2* (2005), and author of many articles in journals.

As well as his academic work he has also undertaken studies for the European Commission and advised regulatory agencies. He was a member of the UK Competition Commission from 1996 to 2002. He has advised the European Commission on broadband and international roaming issues, and assists telecommunications regulatory agencies in the UK, Ireland, Greece, Portugal, Cyprus and Singapore. He is responsible for two studies of spectrum management carried out for the Chancellor of the Exchequer in the UK. He has advised the OECD, especially on telecommunications reform in Eastern and Central Europe.

Mr. Christopher Wright – Panel member

Mr. Christopher Wright is Special Adviser – Regulated Industries in the competition and regulation group at Slaughter and May. His previous career was spent in the UK Government, initially on the restructuring, corporatisation and privatisation of publicly owned industries, notably in the energy sector. This led naturally to work on market liberalisation and economic regulation, including the design and implementation of new legislative frameworks and regulatory regimes. He was responsible for key elements of the restructuring and privatisation of the electricity industry, including the introduction of competition, the drafting of the legislation and licences, the establishment of the regulator and the flotation arrangements.

Mr. Wright subsequently spent some time as the Know-How Fund's resident adviser in Hungary, working on the reform of the oil and gas industries. He was then Assistant Director of Competition Policy at the

Office of Fair Trading and Director of Competition and Licence Enforcement at Oftel, the telecoms regulator.

Since joining Slaughter and May, Mr. Wright has advised many public and private sector organisations, principally in the fields of communications, energy and transport on incorporations, restructurings and mergers and acquisitions under the UK and EC merger control regimes. He has also advised various clients on their regulatory strategy, and on business-critical regulatory initiatives (such as access, price control and business separation). Finally, he has recently advised the UK Government on a complex public-private partnership and two overseas regulators on the implementation of new licensing regimes.

Mr. Ian Martin - Panel Member

Mr. Ian Martin has over 20 years experience in infrastructure economics, telecommunications policy and research. He spent 10 years (1984-1994) with the Australian Department of Transport and Communications, including research and policy advice on Universal Service Obligations (USOs), telecommunications competition and regulation. During this period he helped develop price controls for Telstra including retail price caps and price rules for network access.

In 1992-93 Ian undertook a research exchange with Oftel, the then UK telecommunications regulator, and the Federal Communications Commission, the US communications regulator, where he worked on price controls and other telecommunications regulatory issues.

Since 1994 Mr. Martin has worked as a telecommunications research analyst in the global investment markets with BZW, Macquarie Bank and ABN Amro. In 1997 he was the independent analyst in BZW's role advising the Australian Government on the Telstra privatisation. In 1999 he was the head telecommunications analyst with ABN Amro, which held the lead investment-banking role in the sale of Telstra 2.

Mr. Martin was the head of ABN Amro's alternative network providers European research team based in London in 2000-2001 before leaving to become senior telecommunications strategist at Macquarie Bank. He is now back at ABN Amro helping to rebuild its Australian research team ahead of the forthcoming sale of Telstra 3.