



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

Retail Tariff Notification Framework

**A report on the consultation document issued by the
Telecommunications Regulatory Authority**

18 February 2010

MCD/02/10/017

Purpose: To report on the consultation on TRA's proposed Retail Tariff Notification Framework

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List of acronyms

SMP	Significant Market Power
EU	European Union
LRAIC	Long Run Average Incremental Cost
TRA	Telecommunications Regulatory Authority of the Kingdom of Bahrain

1 Introduction

1. On 31 May 2009, the Telecommunications Regulatory Authority of Bahrain (TRA) published a Consultation Document titled “Consultation on Retail Tariff Notification Framework” (ref. LAU/0509/118). This Report summarises the responses received and provides TRA’s views and conclusions on the issues raised by those responses.
2. In the Consultation Document, TRA presented for comment its initial draft of a new retail tariff notification framework for use by operators with Significant Market Power (“SMP”) in retail markets. The Consultation Document posed a number of questions relating to various elements of the proposed framework.
3. TRA has received responses from:
 - Batelco Telecommunications Company B.S.C. (“Batelco”);
 - Lightspeed Communications W.L.L. (“Lightspeed”);
 - Mena Telecom W.L.L. (“Mena Telecom”);
 - MTC-Vodafone Bahrain B.S.C. (“Zain”); and
 - STC-Bahrain (“STC”).
4. The remainder of this document presents the questions set out in the consultation document; summarises the replies received in response to each question and other comments; and sets out TRA’s views and position on the issues raised. Some responses are closely related and so to avoid repetition these have been grouped together.

2 Main changes made to the Retail Tariff Notification Framework as a result of the consultation

5. Based on the comments received on the consultation document, TRA has simplified and made the initial framework more flexible:
 - To notify a tariff, only a margin squeeze or predatory pricing, and an anti-competitive bundling/tying test in the case of a bundle or tie is required.
 - The excessive pricing and undue price discrimination tests have been removed from the default list of tests that should be conducted to notify a tariff (though TRA may subsequently request such tests, should they be considered necessary to assess compliance with the Regulation).
 - The Form is greatly simplified and the requirements to complete detailed calculations have been removed. The Notifying Operator is recommended to follow the proposed analysis set out in the Retail Tariff Notification Guidelines when performing the required tests.
 - TRA has also sought to provide further clarifications where appropriate.
6. The final framework is less prescriptive and provides a better balance between flexibility and certainty. It offers appropriate protection to consumers and guarantees that potentially anti-competitive practices are not introduced.

3 General comments on the proposed framework

Table 1. Summary of responses from stakeholders and TRA’s position – General Comments

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position
Batelco	<p>Proposed framework is a more stringent/onerous regime than anywhere else in Europe.</p> <p>It is more complex, information- and resource-intensive. It is rigid and prescriptive. It limits flexibility and will increase the administrative burden. It does not constitute a reform of the current regime.</p>		<p>The Telecommunications Law empowers TRA to design and implement price controls it considers suitable for the telecommunications sector in Bahrain.</p> <p>The framework has been designed with the specificities of the Bahraini market in mind.</p> <p>Following the comments received, TRA has simplified the framework and made it more flexible and less prescriptive.</p>
	<p>TRA should refrain from any ex-ante regulation or impose only the absolute minimum ex-ante control.</p>	<p>Propose the following alternative:</p> <ul style="list-style-type: none"> a) One-day notification regime introduced for products in SMP markets; b) Declaration that the price is above cost; and c) Statement of relevant wholesale base inputs to support replication of that product. 	<p>TRA does not consider it would be appropriate to remove ex-ante regulation. Exclusive reliance on ex-post competition provisions in markets in which Batelco has SMP would be premature.</p> <p>The alternative proposed by Batelco will not offer any protection to consumers or any guarantees that anti-competitive practices are not introduced. The recent history of tariff approval requests has shown that Batelco, as a notifying Operator, has the incentive and ability to introduce tariffs which could lead, for example, to margin squeeze and abusive bundling if left unregulated. The proposed framework by Batelco will not prevent damage to competition from occurring.</p>

<p>TRA should take into account the wholesale regulation to which Batelco is subject in setting ex-ante retail controls as well as other regulatory obligations (e.g. accounting separation), and other legal provisions.</p> <p>An appropriate approach for TRA to adopt to encourage effective competition would be to require wholesale inputs to be provided by SMP providers, and then, where possible, to withdraw regulation at the retail level. Batelco considers that wholesale regulation is comprehensive, intense and effective.</p>		<p>TRA takes into account wholesale regulation in its competition assessments. For example, in its 2008 SMP Determination, TRA determined that Batelco had no SMP in certain markets despite having a significant market share based on the availability and effectiveness of wholesale regulation. In that sense TRA agrees with Batelco that where wholesale regulation is effective, retail regulation may be withdrawn when appropriate.</p>
<p>Remedy should be appropriate and proportionate.</p>		<p>TRA is of the view that the framework is appropriate and proportionate as it is specifically designed to prevent practices which may be detrimental to the development of competition and to consumers' interests. The recent history of tariff approval requests has shown that Batelco, as a Notifying Operator, has the incentive and ability to introduce tariffs which could lead for example to margin squeeze and abusive bundling if left unregulated.</p>
<p>The Significant Market Power Determination, and the market definition and competition assessment therein, are outdated (based on Q2 2007 data) and require amendments based on market developments.</p>		<p>The SMP Determination was released on 3 June 2008 and was based on a forward-looking analysis. TRA does not consider that it is appropriate or justified to revisit this determination at this point in time.</p>
<p>Tests are not applied elsewhere in an ex-ante context, they are disproportionate. Recent experience in Bahrain shows that they do not work. Some of the tests are unintelligible and presented in an ultra-strict fashion. They require substantial simplification and would</p>	<p>A requirement to demonstrate cost orientation of the proposed tariff based on the latest regulatory accounts would simplify the notification framework.</p>	<p>The Telecommunications Law empowers TRA to design and implement price controls it deems appropriate for the Bahraini telecommunications sector. Having regards to the recent experience with tariff approval (e.g. tariff which would likely have led to anti-</p>

<p>require substantial resources to be properly implemented. Bundle test is more stringent than in certain European countries.</p> <p>There is some overlap between the tests.</p>	<p>competitive margin squeeze and bundling for example), TRA is of the view that the obligations are well targeted and proportionate.</p> <p>Based on the specific comments made on the Guidelines and on the Notification Form, TRA has simplified and clarified the notification framework.</p> <p>As noted in the Guidelines, TRA recognises that there is some overlap between the tests (especially between the margin squeeze and predatory pricing tests) but remains of the view that it is preferable to refer to margin squeeze and predatory pricing separately. TRA also notes that either the predatory pricing or margin squeeze test is required for a particular tariff but not both. Batelco's alternative will not offer protection against abusive bundling, undue discrimination and excessive pricing.</p>
<p>Notification for price decrease should be shorter (e.g. it is one day in Belgium and Greece) given that the aim is to prevent anti-competitive price cut.</p>	<p>TRA notes that there is a very wide spectrum of practices in Europe. In Italy, the advanced notification is 30 days, whilst it is eight weeks in Austria for example. The 20 working days notification period is reasonable and within the range observed in Europe.</p> <p>Price cuts may be anti-competitive and therefore need to be analysed.</p>
<p>Guidelines are opaque and do not provide certainty.</p>	<p>TRA disagrees that the Guidelines are opaque and do not provide certainty. TRA considers that they strike the right balance between flexibility and certainty.</p>
<p>Unclear why the obligations/tests are more appropriate than what is currently in place and</p>	<p>The notification framework is structured around a set of well-targeted tariff controls</p>

why they are appropriate in an ex-ante context.

prohibiting certain practices deemed incompatible with the development of competition and the protection of consumers. This contrasts with the current generic framework which does not provide specific guidance with regards to the tariffs which may or may not be approved.

As explained in the Guidelines, the controls/tests are required to prevent certain practices from occurring and damaging the market. There have been numerous occasions in which the ex-ante approval of tariffs by TRA has prevented Batelco from introducing tariffs which would likely have been anti-competitive (e.g. margin squeeze).

New framework includes additional obligation, i.e. notification of withdrawal.

This is a minor requirement since the Notifying Operator is only required to inform TRA of its intention to withdraw a service; it doesn't have to perform any tests.

Notification Form is disproportionate, in particular with regards to promotion or a small market. Evidence required should be concised, short and fit onto one page.

Based on the comments received TRA has decided to amend the original framework and has greatly simplified the Form and overall framework by notably:

- (a) Removing the "excessive pricing" and "undue price discrimination" tests from the default list of tests that must be conducted to notify a tariff (though TRA may subsequently request such a test, should this be considered necessary);
 - (b) Making the Form more flexible as the requirement to complete detailed calculations has been removed. When carrying out tests, notifying operators
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		are advised to follow the guidance outlined in the Guidelines to ensure that compliance of the notified tariff with the Regulation can be quickly assessed.
Lightspeed	Would like to see a flexible regulatory framework that will not have a negative impact on the development of competition.	TRA considers that the proposed framework will support the development of competition while providing appropriate safeguards.
	Batelco should file all tariffs.	Only the tariffs of services provided in markets in which an operator has SMP should be regulated as per Article 58 of the Telecommunications Law.
Mena Telecom	Considers that the assumption of areas to address with regards to the ability of a Notifying Operator to distort competition should be widened to all potential areas rather than just the wholesale market.	TRA made no such assumption. The Regulation applies to all Licensees determined by TRA to have SMP in any relevant retail markets. As such the framework is focussed on issues that may arise at the retail level.

Table 2. Summary of responses from stakeholders and TRA’s position on compliance concerns

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position
Batelco	Burden of compliance has increased due to increased requirements, additional rules and additional tests, which are complex and will require specialist skill to acquire and understand and implement.		<p>The Telecommunications Law empowers TRA to define price controls by issuing regulations under Article 58 of the Telecommunications Law. Batelco, as a Notifying Operator, has specific obligations imposed on it and it is incumbent on Batelco to mobilize appropriate resources to ensure compliance with the Telecommunications Law and its obligations.</p> <p>Notwithstanding the above, as a result of the modifications made to the framework based on the comments received, the “compliance burden” has been significantly reduced. TRA considers that compliance requirements are proportionate.</p>
	There are ambiguities in the terminology used.		<p>Although a degree of ambiguity and interpretation is unavoidable, on balance TRA considers the framework to be clear and easy to follow, particularly after the amendments made. TRA considers that the framework strikes the right balance between flexibility and certainty.</p>

4 Comments on the Regulation

Table 3. Summary of responses from stakeholders and TRA's position on the Regulation

Respondent	Comments received	Respondent's recommendations	TRA's view & position
Batelco	<p>Regulation should not be made under Section 65 of the Telecommunications Law which deals with anti-competitive practices.</p>		<p>Reference to Article 65 has been removed in the preamble.</p> <p>Nonetheless, TRA is of the view that the notification framework is structured around a set of tariff controls prohibiting certain practices deemed incompatible with the development of competition and the protection of consumers.</p> <p>As such, TRA is of the view that any enforcement action taken by TRA under the Regulation is without prejudice to TRA's power under Article 65 of the Telecommunications Law.</p> <p>TRA also notes that Article 65(f) mentions explicitly that TRA "may issue regulation in connection with the maintenance and regulation of efficient competition in the telecommunications market"</p>
	<p>Scope of undertaking is too broad and can be of any type (consumer protection, wholesale, retail and IT).</p> <p>Any undertaking could be extended into markets where there is no SMP if a product crosses several markets (SMP and non-SMP ones).</p>		<p>Undertakings will be limited to addressing the concerns raised by the notified tariff with regards to compliance with the obligations set out in the Regulation and Article 58 of the Telecommunications Law. This has been clarified in the Regulation.</p>
	<p>"Controlled tariff" could potentially extend to a much broader range of products because:</p>		<p>Some amendments to the definitions have been made to clarify the scope of the</p>

<ul style="list-style-type: none"> (i) Broad interpretation of licensed activities beyond the “licensed activities” specified in Batelco’s licenses (not just carriage, but passive infrastructure supply and installation, customer premises equipment). (ii) Value added services may be affected (e.g. IVR functionality for international calling cards and managed services on top of leased lines services). (iii) IT products and services, either when bundled with regulated services or sold as part of a regulated service (e.g. size of email account). (iv) Bundles of products, even if one regulated product and ten unregulated products are also notifiable. 		<p>Regulation.</p> <p>A definition of Controlled Tariffs is provided in the Regulation.</p> <p>The Guidelines further explain that ancillary services that are necessary for a retail telecommunications service (e.g. connection for a leased line or a fixed line service) should be notified as part of the retail tariff for that service.</p> <p>Changes to non-price terms of a retail telecommunications service should be notified if such changes are expected to <i>materially</i> affect the effective price faced by consumers or the cost incurred by operators. TRA has included in the Guidelines specific examples which should assist, including one on email account size. TRA is of the view that bundles of Retail Telecommunications Services including at least one regulated product should be notified, as TRA considers that a Notifying Operator may have the incentive and the ability to leverage the market power held in one market into other markets when bundling services.</p>
<p>Notification process extends the current approval to: any changes to terms and conditions of retail tariffs which amount to a change in resulting price or the cost of provision of a licensed retail service.</p> <p>Request clarification for the reference to the “cost of provision” or its removal.</p>	<p>Recommend including a materiality test in the regulation regarding terms and conditions as currently drafted in the Guidelines.</p>	<p>TRA accepts Batelco’s suggestion and has amended the Regulation.</p> <p>Reference to cost of provision is required, as a change to terms and conditions may affect the cost of providing a service, and hence whether a tariff complies with Article 58 and the obligations set out in the Regulation.</p>
<p>Notification process extends the current approval</p>		<p>This is a minimal requirement as the Notifying</p>

<p>to withdrawal of tariffs.</p>		<p>Operator does not have to conduct any test but merely inform TRA.</p> <p>The withdrawal of temporary tariffs does not have to be notified.</p>
<p>Notification process extends the current approval to negotiated agreements with large corporate customers.</p>		<p>This is not an extension as Batelco is required under the existing framework to submit all tariffs for TRA's approval.</p> <p>See below the comments on the Guidelines where the changes regarding the treatment of negotiated agreement are explained.</p>
<p>Notification process extends the current approval to promotions, trials, fast response price reduction, sponsorship, prizes, raffles, particular charity, social and sporting events, trials of new and existing products for limited periods, special reductions for charity, public service requirement.</p>		<p>This is not an extension as Batelco is required under the existing framework to submit all tariffs for TRA's approval.</p>
<p>20 working days is too long.</p>	<p>Support a one-day notification period as there are enough safeguards in the proposed process.</p>	<p>TRA considers that the 20-day notification period is appropriate to examine notified tariffs. As indicated above the notification period is reasonable and within the range observed in Europe.</p> <p>Furthermore, as explained above, the alternative proposed by Batelco will not offer any protection to consumers or any guarantees that anti-competitive practices are not introduced.</p>
<p>Batelco is against the replicability requirement because:</p> <p>(i) There is uncertainty regarding the application of the requirement, e.g. Batelco would consider that a managed inet product</p>	<p>Remove the replicability requirement included in Article 3.8 of the Regulation.</p>	<p>TRA remains of the view that the replicability requirement should be included in the Regulation.</p> <p>Some uncertainty is inevitable, but there are clear principles that must be adhered to. The</p>

at a new speed could be replicated by competitors buying WDSL or bitstream and then supporting a managed functionality and/or access to the internet in addition to those inputs.

Batelco also refers to a hypothetical example involving voice calls with live real time colour 3D holograms of the callers.

There are no assurances as to whether a wholesale remedy will extend to areas where Batelco has not got SMP in case a product crosses several markets (SMP and non-SMP ones).

- (ii) Burden of proof has been reversed to Batelco, which has to demonstrate why a product is cheaply replicable by a competitor, rather than TRA explaining why there is a concern with Article 58 of the Telecommunications Law.
- (iii) Fully adequate measures at the wholesale level already exist.
- (iv) Contrary to the safeguards included in Article 3.7 of the Access Regulation, there are no safeguards and qualifications to the replicability requirement in the Regulation.
- (v) No demand test is applied to the product.

replicability requirement is clearly qualified: it will apply only when “[a] Notifying Operator that has been determined by TRA to have a Dominant Position in wholesale market(s) and is required to prepare a reference interconnection or access offer for such products in accordance with Article 57 of the Telecommunications Law, must, when notifying TRA of a new Controlled Tariff for a Retail Telecommunications Service that is vertically-related to that wholesale market, provide a corresponding Wholesale Telecommunications Service in the vertically related upstream market(s) that will allow other Licensed Operators to replicate the Controlled Tariff of the Notifying Operator.”

In other words it only applies to products that fall **within wholesale markets** in which the Notifying Operator has been declared dominant. As pointed out in Batelco’s first example on managed internet product, a competing operator may have to provide its own input in addition to Batelco’s wholesale products to replicate the retail service. Although TRA has not analysed the market, a 3D hologram voice call is unlikely, at the present time, to fall within either a retail or wholesale market in which an operator has SMP status or been found dominant.

A specific demand test is not required because by definition it is met for products which fall in wholesale markets for which the dominant operator is required to prepare a reference offer.

Batelco does not have to demonstrate why a product is cheaply replicable by a competitor.

Article 3.1 of the Regulation	Recommend inclusion of additional flexibility by adding “or other express written instructions or guidance by TRA”.	TRA considers that this would not be appropriate.
No undue price discrimination test is too narrow and prescriptive.		<p>Article 58 of the Telecommunications Law specifically indicates that tariffs should be “non-discriminatory”. Thus, TRA considers that the inclusion of this obligation in the Regulation is fully justified. The proposed analysis contained in the Guidelines is not overly restrictive as practices which: are based on cost differences; are beneficial to consumers; and/or relate to wider social or policy objectives would be acceptable provided they are adequately justified.</p> <p>However, following the comments received, TRA has decided to remove this test from the standard Notification Form. TRA may subsequently request such a test, as part of the notification process, should this be considered necessary in order to assess compliance with the obligation not to unduly price discriminate.</p>
There is no express review, date or provision relating to withdrawal of this regulation. In practice, this can only occur if Batelco is not considered to hold SMP. Because TRA has not committed itself to conducting a market review, there may be a lag.	Batelco therefore recommends that the Regulation include a Sunset Clause.	The Regulation is intended to apply to any operators with SMP status, not only to Batelco. The Regulation will, as for any other instruments issued by TRA, be amended when required.
Lightspeed	Article 2.8 should state that TRA will penalise Notifying operators for intentionally providing false information and/or data.	This is not necessary as there are appropriate provisions in the Telecommunications Law.
	Article 3 should specify that TRA will analyse carefully all submissions and carry out relevant	TRA will analyse and review the notified tariffs to ensure they comply with the Regulation (see

	tests to ensure that notification rules are not violated.		Article 7 of the Regulation). It is not necessary to add an additional provision as it is already covered in the Telecommunications Law.
	Article 4. OLOs should be informed of all notified tariffs.		This will not be appropriate and could stifle innovation. OLOs will be informed when wholesale products are introduced.
	Article 6 should mention that TRA will be very strict with any violation and that TRA will impose fines for breaches. Framework should tackle all practical cases that may arise.		It will not be appropriate to include such a statement in the Regulation. TRA will enforce this Regulation as it enforces any other Regulations and the Telecommunications Law. Fines could be imposed for breach of this regulation. There are appropriate enforcement provisions in the Regulation and the Telecommunications Law to ensure that all practical cases can be addressed.
	Article 8. All information in the Notification Form should be made publicly available due to its high sensitivity and for the purposes of giving a chance to operators to challenge the information and numbers included in the form.		It is precisely to protect the sensitivity and confidentiality of the information contained in the Form that it would be inappropriate to make it publicly available. This could give an unfair advantage to non-SMP operators.
Mena Telecom	Article 2 on the notification process.	Considers that bundled product should be exempted from the notification framework and should remain within the current approval regime in order to provide sufficient protection to new entrants that may not offer a full suite of services.	TRA is of the view that the proposed framework should apply to all types of regulated retail tariffs. The Regulation specifically includes an obligation not to introduce abusive bundles, which will be enforced by TRA.
	Article 2.3 (b) and 2.3 of the Regulation could be subject to manipulation by Notifying Operators.		Any submission by a Notifying Operator would be scrutinised by TRA to assess compliance with the Regulation.

Article 3.4 on margin squeeze. The terms “equally efficient downstream competitor” and “reasonably expected” are highly subjective and therefore could be subject to manipulation.

The tests are as objective as possible and will be assessed based upon the available facts and market experience. Any submission by a Notifying Operator would be scrutinised by TRA to assess compliance with the Regulation.

Article 6. Enforcement of the Regulation and penalties for breach should be far more strict to ensure compliance.

The Regulation and Telecommunications Law provide appropriate enforcement mechanisms and tools to address potential breaches.

Article 8. All information in the Notification Form should be made publicly available due to its high sensitivity and for the purposes of giving a chance to operators to challenge the information and numbers included in the form.

It is precisely to protect the sensitivity and confidentiality of the information contained in the Form that it would be inappropriate to make it publicly available. This could give an unfair advantage to non-SMP operators.

5 Comments on the Guidelines

5.1 Notification of tariffs, treatment of tariffs subject to a rebalancing plan, and application of Article 65

Question 1:

Do you agree with the proposed approach outlined [in Section 1 of the Guidelines within the Consultation document], 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.

Table 4. Summary of responses from stakeholders and TRA’s position on when to notify tariffs and the treatment of tariffs subject to a rebalancing plan

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position
Batelco	Disagrees with the scope of the Regulation as, based on the decision tree, all tariffs would have to be notified.		Figure 1 has been corrected and the Regulation clarified as to which tariff must be notified.
	Approach is more stringent than current approval process. It is a cloaked approval and is disproportionate. It is very resource- and time-consuming.		Similar comments were made by Batelco elsewhere in its submission and have been addressed by TRA in Table 1 above.
	Amount of evidence for any notification should be a mere demonstration that tariffs are “fair, non-discriminatory and based on forward-looking costs”, as per Article 58 of the Telecommunications Law. Any notification should be very brief and concise and should inform TRA that a certain tariff will be introduced or changed in adherence to Batelco’s current regulatory, costing and licensing obligations.		

Unclear how the five tests relate to the principles laid down in the law and whether they represent an improvement compared to the current regime.

Paragraph 8 of the Guidelines is excessive as short-term promotions and/or other promotional activities such as raffles would fall under the regime.

TRA disagrees. Promotions and other promotional activities can be planned in advance. The cost stacks for services should be ready.

Disagrees with the requirement to notify TRA of the withdrawal of services.

This is a minimal requirement as the Notifying Operator does not have to conduct any tests but merely inform TRA.

It is not clear why services subject to an agreed rebalancing plan should also be subject to the ex-ante tests. It is superfluous.

Any rebalancing plan may not cover all eventualities (e.g. bundling of products), hence it is necessary to also notify the tariffs which may be subject to an agreed rebalancing plan.

Finds it unclear why an investigation pursuant to Article 65 of the Telecommunications Law could be launched as a result of the "actual impact of the tariff on the market".

TRA notes that Batelco does not disagree with TRA regarding the possibility of initiating an investigation pursuant to Article 65 of the Telecommunications Law for a notified tariff.

The point raised by Batelco merely relates to one of the examples where an investigation may be warranted.

5.2 Undue price discrimination

Question 2:

Do you agree with the proposed test for the no undue discrimination notification rule [as set out in Section 3.1 of the Guidelines within the Consultation document]? Is it clear how to calculate tariffs and costs for the purposes of performing this test? Are the requirements to pass the test clear? Please elaborate. If you have suggestions and comments regarding these questions please be as specific as possible.

Table 5. Summary of responses from stakeholders and TRA’s position on undue price discrimination

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position
Batelco	An undue discrimination test is normally only applied to wholesale inputs rather than retail outputs. For example, this is the approach followed in many European countries. In addition, there is no academic research showing the detrimental effects of undue discrimination at a retail level.	Remove this test or apply a price cap which is a more explicit way of controlling prices.	<p>This is a relevant issue at a retail level and explicitly referred to in Article 58 of the Telecommunications Law: “tariffs [...] shall be fair and equitable, non-discriminatory and based on forward looking-costs”.</p> <p>Discriminatory practices can be detrimental to competition as the Notifying Operator (especially if it enjoys strong incumbency advantages), can introduce selective price cuts to particular categories of consumers which are targeted by competitors while keeping other prices constant. This type of cross-subsidy may hinder competition.</p> <p>This is also consistent with the obligation not to show “undue preference to specific users” included in the European Union (“EU”) regulatory framework (EU Directive 2002/22/EC Article 17.2).</p>
	In some cases, there could be potential benefits from discriminating between similar products (i.e. offering them on different terms), but it would be		As explained in the Guidelines, discriminatory practices may be justified by cost and other considerations (e.g. increase in output which

difficult to demonstrate that they have different underlying cost structures.

The test is too onerous and disproportionate as Batelco would need to maintain a database incorporating relevant price and non-price data from other operators, in order to comply with the test.

improves welfare, wider policy considerations).

TRA recognises the potential difficulties associated with applying this test in practice across the full range of all possible tariffs.

There would be no need to maintain a database of price and non-price data associated with other operators' products. The price ratios should just be calculated between the notified service and any similar services provided by the notifying operator, which fall within the same market. The wording of the Guidelines has been updated to clarify this.

Lightspeed	Supports the use of the tests proposed		Noted
Mena Telecom	There is potential for manipulation by the Notifying Operator. They could propose that there will be an increase in demand as a result of the price differentiation to try and justify what is actually anti-competitive price discrimination.		Any submission which includes the expected impact on demand would require sufficient justification. TRA will decide on a case-by-case basis, by evaluating the evidence provided, whether this appears reasonable or not, and may request further information where it considers this to be necessary.
STC	STC supports this rule but considers that this test requires excessive cost data and calculations to be provided by the notifying operator in order to pass the test.	Instead, a notifying operator should only need to provide tariffs and costs for the current year (either FAC or LRAIC); price ratios with similar products in the same market; and other information, where relevant.	TRA considers that the calculations could in some cases seem substantial. However, STC's proposal appears to overlap significantly with TRA's proposed analysis.
Zain	Calculation and requirements appear to be clear.	Recommend TRA to organize a workshop with Notifying Operators to facilitate the implementation of the new regime.	TRA notes the suggestion of Zain.

Conclusion

TRA recognises that requiring the submission of quantitative evidence regarding undue price discrimination as part of every tariff notification where this could occur, could be unnecessarily burdensome and challenging to implement in practice. Therefore, TRA has decided to remove this test from the Notification Form. TRA may subsequently request such a test, as part of the notification process, should this be considered necessary in order to assess compliance with the obligation not to unduly price discriminate. Price discrimination is unlikely to be a significant issue in all cases of retail tariff notification and therefore this change reduces the burden on a Notifying Operator.

5.3 Excessive pricing

Question 3:

Do you agree with the proposed test for the excessive pricing notification rule [as set out in Section 3.2 of the Guidelines within the Consultation document]? Is it clear how to calculate tariffs and costs for the purposes of performing this test? Are the requirements to pass the test clear? Please elaborate. If you have suggestions and comments regarding these questions please be as specific as possible.

Table 6. Summary of responses from stakeholders and TRA's position on excessive pricing

Respondent	Comments received	Respondent's recommendations	TRA's view & position
Batelco	<p>In the consultation document it was stated that an ex-ante test for excessive pricing cannot be definitive when applied to a multi-product firm. It was also stated that excessive pricing is unlikely to be maintained at the retail level if wholesale products exist enabling the relevant retail product to be replicated. Therefore, it is not appropriate to introduce an excessive pricing test.</p> <hr/> <p>There is no agreed definition of excessive pricing and international case law is limited.</p> <hr/> <p>Tariffs charged in other jurisdictions are irrelevant in considering whether pricing in Bahrain is excessive, as their tariffs may not be cost reflective and their costs may not be representative of costs faced in Bahrain.</p> <hr/> <p>Exploitative practices such as excessive pricing should be considered "self-correcting" – i.e. any attempt to price excessively would be</p>	<p>TRA should either introduce ex-ante price controls or rely on ex-post competition law rather than the "in-between solution" proposed.</p>	<p>TRA recognises the potential difficulties associated with assessing whether prices are excessive across the full range of all possible tariffs. However, it remains of the view that such a test is important to protect consumers.</p> <hr/> <p>Tariffs available in comparable competitive jurisdictions can assist in the evaluation of whether prices are excessive.</p> <hr/> <p>The market may be unable to "correct" such an increase in prices if there were persistent barriers to entry. Therefore, TRA does not</p>

defeated by new entries.

Self-supply of wholesale inputs through a competitor's own network (e.g. MENA and ZAIN's broadband networks) should be taken into account when considering which markets are vulnerable to excessive pricing.

Marginal cost pricing does not enable an operator in an industry with technical scale economies to cover their upfront investments. Therefore, market power cannot be assessed on the basis of marginal cost pricing.

The combination of the excessive pricing and predatory pricing tests creates a price ceiling and price floor and it could therefore be difficult for Batelco to find prices which TRA would approve.

believe that it is sufficient to assume that this practice would be "self-correcting".

The existence of "self-supply" would be relevant at the market definition and competition assessment stage.

As explained, TRA will come to a view, where appropriate, on whether prices could be considered to be excessive by examining the price-cost differential and also by looking at prices for comparable services in comparable competitive jurisdictions.

TRA has not indicated that prices above marginal costs would be considered excessive.

The excessive pricing test relies on LRAIC+ ("Long Run Average Incremental Cost" + mark-up for common cost) as the appropriate cost standard. The predatory pricing test relies on LRAIC as the appropriate cost standard and does create a 'price floor', as this is the intent of the measure. Thus, the Regulation implies that a proposed price should be greater than LRAIC but not significantly in excess of LRAIC +, unless an appropriate justification is provided.

TRA does not expect this to create an unnecessary or unreasonable constraint for the setting of prices by a Notifying Operator.

Lightspeed	Supports the use of the tests proposed.
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STC	This test is necessary to prevent an operator with SMP from behaving in a potentially exploitative manner.	A notifying operator should only need to provide tariffs / costs for the current year (FAC or LRAIC) and price differential with similar products in other jurisdictions. Current year data should be adequate given the TRA's ability to instigate an ex-post investigation.	TRA notes STC's comment.
Zain	Calculation and requirements appear to be clear.	Recommend TRA to organize a workshop with Notifying Operators to facilitate the implementation of the new regime.	TRA notes the suggestion of Zain.

Conclusion

TRA recognises that requiring the submission of quantitative evidence regarding excessive pricing as part of every tariff notification where this could occur, could be unnecessarily burdensome and challenging to implement in practice. Therefore, TRA has decided to remove this test from the standard notification form. TRA may subsequently request such a test, as part of the notification process, should this be considered necessary in order to assess compliance with the obligation not to price excessively. Excessive pricing is unlikely to be a significant issue in all cases of retail tariff notification and therefore this change should help to reduce the burden on a notifying operator.

5.4 Margin squeezing

Question 4:

Do you agree with the proposed test for the margin squeezing notification rule [as set out in Section 3.3 of the Guidelines within the Consultation document]? Is it clear how to calculate tariffs and costs for the purposes of performing this test? Are the requirements to pass the test clear? Please elaborate. If you have suggestions and comments regarding these questions please be as specific as possible.

Table 7. Summary of responses from stakeholders and TRA’s position on margin squeezing

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position
Batelco	<p>The incumbent’s retail costs should not be used as the benchmark for assessing the margin between the retail price and wholesale price. The scale of the incumbent is likely to mean that the costs they incur are lower than those of their competitors and hence a smaller margin would be permitted.</p> <hr/> <p>In the EU, it is more common to use the network and retail costs of competitors in performing an ex-ante imputation test.</p> <p>Margin squeeze is typically dealt with via an ex-post investigation and not as part of an ex-ante price notification regime.</p> <hr/> <p>It is more appropriate to perform a margin squeeze test using a Net Present Value (“NPV”) analysis in order to take account of upfront investments, rather than a snapshot of profitability in any given year.</p> <hr/>	<p>The test should be removed from the notification form or if it is still included, it should be amended to include alternative network operators in the analysis – i.e. downstream costs should reflect the most efficient combination of the other integrated and non-integrated operators’ own network and downstream costs.</p>	<p>TRA may consider alternative cost estimates, based on the incumbent’s expectation of the costs of its competitors, where this can be provided.</p> <hr/> <p>Both approaches are used in the EU.</p> <p>Both ex-ante and ex-post margin squeeze tests are carried out in Europe.</p> <hr/> <p>EU authorities and NRAs have used both a snapshot and a NPV-based test (over customer lifetime).</p> <p>The NPV-based approach to assessing a margin squeeze is complex and in the interests of simplicity, and to avoid unnecessary burden for the notifying</p> <hr/>

It may be appropriate to amortise some costs over a reasonable period when performing an imputation test. TRA should recognise that some costs are not directly related to individual subscribers (such as marketing, brand building, etc.).

The imputation test should be based on variable costs in the same way as the predatory pricing test. No other jurisdiction would sanction an operator for not covering FAC and a return on capital at the retail level.

Margin squeeze cases are quite complex as shown by the usually long investigation times when such issues are dealt with on an ex-post basis. Therefore they should not be considered on an ex-ante basis.

The test should take account of the range of services in a given notification and should not be applied to a single product

operators, TRA has recommended that a 'snapshot'-based approach be used in performing the ex-ante tariff test. TRA would consider, however, alternative approaches, where these are justified and appropriately supported with the necessary evidence.

This has been proposed in paras 96 and 97 of the Guidelines.

The margin squeeze test takes into account the LRAIC which is the appropriate measure of variable costs for the telecommunications industry (TRA also notes that LRAIC is typically lower than FAC and hence a less stringent cost standard for the notifying operator). This includes the wholesale input price, operating costs, depreciation and the required return on capital.

This is an important obligation which the Notifying Operator should comply with, when the predatory pricing test is not relevant. Ex-ante notification will also ensure that (a) there is reduced need for an ex-post intervention and (b) where such intervention is required, it is more likely to be concluded more quickly, to the benefit of all market participants.

TRA considers it appropriate to conduct the margin squeeze test at the product level. In some cases, it may be appropriate to expand the scope and/or to consider the results within

	Costs of self-supply of wholesale inputs through a competitor's own network (e.g. MENA and ZAIN's broadband networks) should be taken into account when estimating the appropriate cost benchmark.	the context of the relevant market. The existence of "self-supply" would be relevant at the market assessment stage. If this is significant, then it may mean that the retail market is not designated as having SMP and hence notification is unnecessary.
Lightspeed	Supports the use of the tests proposed.	Noted
Mena Telecom	<p>"An equally efficient" non-integrated competitor is a subjective description and it is very difficult to demonstrate that the test has been fulfilled unless this is more clearly defined.</p> <p>Strongly disagrees with the use of the incumbent's downstream costs as a proxy for the downstream costs incurred by a non-integrated competitor, who is likely to be a new entrant. This is due to differences in depreciation and transmission costs. This approach will tend to hinder competition.</p> <p>A "positive margin" would be any figure between zero and infinity. Therefore it would be possible for a Notifying Operator to limit margins to very low levels but still pass the test.</p>	<p>To remove this ambiguity, TRA proposed to use the cost of the Notifying Operator as a proxy for the downstream cost of the non-integrated operator.</p> <p>TRA notes the second point of Mena Telecom and TRA may take this into account where it could have a significant impact.</p> <p>The required cost of capital is included within the measure of costs. Therefore, a zero margin would still ensure that this cost and all other relevant costs are recovered.</p>
STC	<p>This is one of the most important tests for preventing an operator with SMP from potentially exploitative behaviour.</p> <p>Appropriate wholesale regulation will remedy the potential failure in downstream markets and improve competition.</p>	Agreed. This is covered by the requirement to provide a related wholesale product in conjunction with a new retail product under Article 3.2 of the Regulation.

Zain	Calculation and requirements appear to be clear.	Recommend TRA to organize a workshop with Notifying Operators to facilitate the implementation of the new regime.	TRA notes the suggestion of Zain.
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Conclusion

TRA remains of the view that this test should remain part of the tariff notification requirements, in place of the predatory pricing test, where relevant.

5.5 Predatory pricing

Question 5:

Do you agree with the proposed test for the predatory pricing notification rule? Is it clear how to calculate tariffs and costs for the purposes of performing this test [as set out in Section 3.4 of the Guidelines within the Consultation document]? Are the requirements to pass the test clear? Please elaborate. If you have suggestions and comments regarding these questions please be as specific as possible.

Table 8. Summary of responses from stakeholders and TRA’s position on predatory pricing

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position	
Batelco	There is no agreed definition of predatory pricing and case law in this area is currently inconclusive.	Either the test should be removed and TRA should rely on ex-post competition law, or the test should be removed and TRA should rely on the margin squeeze test but apply the exemptions to the margin squeeze which form part of the current predatory pricing test.	TRA does not consider Batelco’s alternative appropriate. TRA also notes that the predatory pricing test is required only when the margin squeeze test is not relevant.	
	The proposed test is based on LRAIC, but normally variable costs are the benchmark for such a test. The reference to FAC as the appropriate benchmark therefore seems excessive compared to international precedent.			LRAIC is the relevant measure of costs in the telecommunications industry. TRA does not refer to using FAC, apart from noting that a Notifying Operator may use it as a proxy, where they are unable to estimate LRAIC. As this is a test aimed at preventing aggressive pricing, TRA would in general expect $P > FAC$ to also satisfy $P > LRAIC$.
	If the price is set below the rebalancing price ceiling, the predation test fails, suggesting that the price must equal the price ceiling implied by the rebalancing plan.			The rebalancing price ceiling is expected to include a contribution for common cost, whereas the predatory pricing test is based on LRAIC. Therefore it should be possible to price below the price ceiling but still pass the predatory pricing test.
Lightspeed	Supports the use of the tests proposed.			

Mena Telecom	<p>“Weaken or drive out a rival or deter new entry” is a subjective statement. Further clarity is required.</p>		<p>This is considered to be sufficiently explained by setting out the “proposed analysis” in the Guidelines.</p>
	<p>The exemptions to the predation test are based on forecasted uptake and therefore could easily be manipulated.</p>		<p>All demand forecasts will be reviewed by TRA and, where necessary, further information will be requested. In particular, sensitivity analysis may be warranted to assess the robustness of the estimates submitted by a notifying operator.</p>
STC		<p>It should be possible to remove the predation test and apply the margin squeeze test instead.</p>	<p>TRA does not believe that this would be appropriate. In some markets the predatory pricing test is relevant and in others the margin squeeze test is relevant.</p>
Zain	<p>Calculation and requirements appear to be clear.</p>	<p>Recommend TRA to organize a workshop with Notifying Operators to facilitate the implementation of the new regime.</p>	<p>TRA notes the suggestion of Zain.</p>

Conclusion

TRA considers that this is an important obligation which the notifying operator should comply with, when the margin squeeze test is not relevant.

5.6 Abusive bundling

Question 6:

Do you agree with the proposed test for the no abusive bundling notification rule? Is it clear how to calculate tariffs and costs for the purposes of performing this test [as set out in Section 3.5 of the Guidelines within the Consultation document]? Are the requirements to pass the test clear? Please elaborate. If you have suggestions and comments regarding these questions please be as specific as possible.

Table 9. Summary of responses from stakeholders and TRA’s position on abusive bundling

Respondent	Comments received	Respondent’s recommendations	TRA’s view & position
Batelco	<p>The consultation does not fully recognise the potential benefits of bundling – i.e. they are not incorporated into the decision tree diagram.</p> <hr/> <p>It is not clear which cost measures should be used to apply the incremental price test.</p> <hr/> <p>The explanations and scenarios are too complex to follow. For example, the definition of incremental price is unclear.</p>	<p>Bundles should be dealt with ex-post under competition law, or the test should be reduced to the following elements:</p> <ol style="list-style-type: none"> 1) existence of competing bundles; 2) can be purchased separately (but pure bundles acceptable if there is a real cost defence); 3) each element of the bundle must be sold above its costs; and 4) if the bundled price is below the sum of each element’s stand-alone cost, a cost justification must be provided. 	<p>The proposed recommendation made by Batelco would increase the data requirements in many cases, as it does not take into account the characteristics of the bundle in indicating which steps would be necessary.</p> <p>The potential benefits in terms of cost efficiencies can be taken into account when performing the tests proposed and a paragraph has now been added to make this more explicit.</p> <hr/> <p>The cost measures relevant to the incremental price test are set out in the table at paragraph 93 of the guidelines within the consultation document.</p> <hr/> <p>The definition of incremental price has been clarified. TRA considers that the framework as explained in the Guidelines is clear enough, practical, appropriate and can be implemented.</p>

	<p>Only 5 out of 17 EU member states apply an ex-ante bundling test.</p>	<p>Having regard to local market conditions and the recent experience with retail tariffs submissions by Batelco, TRA considers that this obligation should be included.</p>
	<p>In some cases it is necessary to consider the market for the bundle rather than markets for the individual products.</p>	<p>When performing market assessments, the decision about whether to define the market for a specific bundle will be taken into account. In addition, if a bundle is replicable, then under the decision tree a test is proposed to determine whether the bundle has been priced in a predatory manner.</p>
Lightspeed	Supports the use of the tests proposed.	Noted
Mena Telecom	Does not understand the difference between the two scenarios.	Scenarios 1 and 2 are intended to explain the evidence that would need to be provided to prove that the bundle complies with “path (1)” or “path (2)”, respectively, in the decision tree diagram – i.e. that the bundle does not create anti-competitive concerns. However, some slight drafting changes have been made to ensure that the scenarios described are clearer.
	Disagrees with the a priori no anti-competitive concerns in the case of mixed bundle and incremental prices above cost. Considers that most OLOs cannot replicate the bundles of a large Notifying Operator and therefore this area requires closer control.	It is well documented that certain types of bundle are capable of having anti-competitive effects, when applied by a dominant/SMP operator while others are not and promote the interest of consumers. TRA remains of the view that the analysis proposed is appropriate and will prevent only anti-competitive bundles from being introduced.
STC	The consultation did not elaborate on the possibility of products being bundled as the result of wholesale agreements across	TRA is not sure what is meant by STC but TRA considers that the framework is generic

	different operators.		enough to address special cases.
	The rule applicable to mixed bundles should be relaxed, as bundling is often demand-led, especially in the case of mixed bundles, in order to limit the number of services which have to be notified (i.e. as a stand-alone service and as a bundle).		It is well documented that certain types of bundles are capable of having anti-competitive effects, when applied by a dominant/SMP operator. TRA remains of the view that the obligation is necessary to prevent the introduction of anti-competitive bundles.
	It is recommended that the margin squeeze test be used instead of predatory pricing tests.		This is already incorporated – i.e. it is explained that if a relevant associated wholesale product is available/required, then a margin-squeeze style imputation test should be followed, otherwise a predatory pricing test should be followed.
	The decision tree diagram should be removed, as it is more complex than the two scenarios described.		Scenarios 1 and 2 describe the evidence required to support the two potential outcomes of the decision tree diagram where a bundle would not be prohibited. The tree diagram is considered necessary to enable the notifying operator to determine the likely decision of TRA in response to any bundled offer.
Zain	Calculation and requirements appear to be clear.	Recommend TRA to organize a workshop with Notifying Operators to facilitate the implementation of the new regime.	TRA notes the suggestion of Zain.

Conclusion

TRA considers the “no abusive bundling” tariff control to be an important obligation which an operator notifying a tariff associated with a bundle should comply with. Based on the comments received, some drafting changes have been made, however, to ensure that the explanation of the evidence required is sufficiently clear.

5.7 Negotiated agreements and installation charges

Question 7:

Please indicate and explain what you believe would be an appropriate value threshold for the notification of specific negotiated agreements with large corporate customers [as discussed in Section 4.1 of the Guidelines within the Consultation document]. Please provide a justification (in the form of bill distribution for example). Do you agree with TRA's proposal for dealing with specific installation charges for leased line services?

Table 10. Summary of responses from stakeholders and TRA's position on negotiated agreements and installation charges

Respondent	Comments received	Respondent's recommendations	TRA's view & position
Batelco	This threshold intervention approach will create hold-ups and therefore will be counter-productive.		The intention was to limit the number of agreements which a Notifying Operator would need to notify. See final approach adopted below
	Buyer power increases with the size of buyers, so selecting a threshold above which tariffs should be notified does not make sense.		Whilst some client may have some buyer power, the larger the contract, the more significant the potential impact is, should the terms agreed be considered anti-competitive. See final approach adopted below
	The threshold selected will not be linked to any measure of competition.		See final approach adopted below.
	The cumulative value of agreements is meaningless – need to assess the level of competition at the point of each separate tender.		See final approach adopted below
	Large corporate customers can easily switch and are not dependent on either Batelco or		TRA considers it quite unlikely that a large corporate customer would move to another

	Bahrain.		country due to a slight delay in agreeing the terms of their telecommunications agreement with Batelco. See final approach adopted below
	It is not clear how TRA will assess if an agreement is competitive or not.		In the same way as any other tariff. See final approach adopted below
	Installation charges should not be regulated as installation is not a licensed activity.		This is incorrect.
Mena Telecom	This approach will encourage Notifying Operators to engage in multiple smaller value agreements with their corporate customers. The threshold should apply to all agreements with the same buyer in aggregate.		The Guidelines indicated that TRA will consider the aggregate value of all contracts for the purpose of applying the threshold, for the reasons outlined by Mena Telecom. See final approach adopted below
STC	Agrees that agreements with large corporate customers should be dealt with differently.	Proposes that such negotiated agreements be signed with minimal ex-post regulatory burden.	See final approach adopted below
		Installation charges should just be dealt with through ex-post regulation.	TRA disagrees. Installation charges should be assessed on an ex-ante basis in the same way as other elements of retail tariffs.
Zain	BHD10,000 / month or 300 lines would be appropriate thresholds.		See final approach adopted below

Conclusion

Having reviewed the comments on the proposed approach for dealing with negotiated agreements and its inherent shortcomings, TRA has decided that the notification process should apply to all tariffs, including negotiated agreements. Thus, it is still a requirement under the new regime to notify negotiated agreements. The ex-ante regulation of standard installation charges for leased lines is still considered to be necessary and not unreasonably onerous.

5.8 Measuring prices and costs

Question 8:

Do you agree with the above guidance on the measurement of tariffs and costs [as set out in Section 5 of the Guidelines within the Consultation document]? Please elaborate. Do you agree with the proposed sensitivity analysis outlined above? Please elaborate.

Table 11. Summary of responses from stakeholders and TRA's position on measuring prices and costs

Respondent	Comments received	Respondent's recommendations	TRA's view & position
Batelco	Costs are calculated annually and this is a time-consuming process. Batelco considers that the requirement to prepare a complex forecast of cost for each tariff proposal is too onerous.		<p>TRA notes that Batelco is already at present providing forecast of cost for certain tariff approval requests where it considers that current unit costs are unlikely to represent a reasonable proxy for forward-looking unit costs.</p> <p>The Guidelines indicate that adjustments should be made to the most recent regulatory accounts, <i>where necessary</i>, to generate estimates of forecast costs. TRA considers this to be reasonable especially now that changes have been made to the Regulation and the Notification Form. Further, forecasts need not be "complex" and to the extent that Batelco can justify that the forecasts are a reasonable proxy of the cost data required, this would be sufficient.</p>
	A demonstration of cost orientation would be sufficient to pass all the tests and should therefore replace the proposed tests.		As acknowledged by TRA in the Guidelines, there is a certain degree of overlap between the various tests. However TRA does not consider that the mere imposition of cost orientation would be sufficient, nor would it

provide appropriate guidance.

Batelco has an FAC model which calculates costs by regulated business area. This could be used to determine the costs of retail products. Batelco also has a LRIC model which calculates costs by network component. This could only be used for estimating the costs associated with wholesale products. Alternatively, Batelco would have to spend a lot of time and money on changing these systems to comply with the new framework.

TRA is happy for a notifying operator to use FAC in place of LRAIC (as explained in section 5.2 of the Guidelines), or any other cost standard, as long as this is justified and consistent with the aim of the Regulation.

Mena Telecom

Quality of service requires an equivalent tangible measure for the purpose of adjusting tariffs.

TRA will consider any proposed adjustments to tariffs on a case-by-case basis and does not consider it appropriate to develop proposed measures of non-price terms such as quality of service at this stage.

STC

Does not agree with this – it should be sufficient to apply the notification tests.

Section 5 is not a set of additional requirements. It contains additional guidance on how to deal with multi-part tariffs, how to measure costs and recommended cost standards, in order to show compliance with the Tariff Controls set out in the Regulation.

This is too complicated and would make it difficult for Notifying Operators to respond on a timely basis.

Notifying Operators should be given the ability to decide which cost measure they will use, as they almost all lead to the same results.

The Regulation and the Notification Form have been amended to enable a notifying operator to offer its own view on the most appropriate way of showing compliance with the Regulation, although this will mean that TRA may have more discretion in deciding whether the operator has actually complied.

Does not agree with the proposed sensitivity analysis.

The Notification Form has been amended to make the requirement to perform sensitivity analysis more flexible. However TRA

considers that sensitivity analysis is an important element to assess compliance with the Obligations set out in the Regulation, especially when the results of a test are somewhat marginal. Sensitivity analysis also enables the timely identification of the key drivers of the results.

Conclusion

The drafting of the guidance on measuring prices and costs has been slightly amended based on the comments received. Further, following the changes made to the Regulation and the Notification Form, the requirements regarding measuring prices and costs are greatly simplified and more flexible.