



**Final Report on the Consultation for the Draft
Regulation on Wireless Telecommunications
Network Facility Sharing**

Issued by the Telecommunications Regulatory Authority

May 4, 2009

Purpose: To report on the responses to the consultation on TRA's draft Regulation on Wireless Telecommunications Network Facility Sharing.

1. Background

- 1.1 This report summarizes the responses received on the draft Regulation on Wireless Telecommunications Network Facility Sharing issued by TRA on August 11, 2008 (“Consultation”). The deadline for responses was September 8, 2008.
- 1.2 The draft Regulation is intended to implement a Wireless Telecommunications Network Facility Sharing regime applicable to all Licensees that own, manage or lease Wireless Telecommunications Network Facilities.
- 1.3 TRA received comments from:
 - a) Bahrain Telecommunications Company B.S.C. (“Batelco”);
 - b) Light Speed Communications (“LSC”);
 - c) Mena Telecom;
 - d) MTC Vodafone Bahrain (“Zain Bahrain”); and
 - e) Mr. Mohammed Sultan Al Ansari.
- 1.4 The Consultation sought comments on the possibility that TRA issues such Regulation and its possible effect within the current market.

2. Issue to Resolve

- 2.1 On 3 June 2008 TRA issued a Statement on the Strategic and Retail Market Review (“SRMR”)¹ announcing a comprehensive package of regulatory measures. One measure is the introduction of a third mobile telecommunications network operator. TRA indicated it would actively encourage the most sharing and other relevant facilities for wireless telecommunications sites.
- 2.2 Wireless telecommunications network facilities and infrastructure are not easily replicable and when obstacles to their deployment are significant, the sharing of available facilities and infrastructure would be highly desirable as it facilitates entry while safeguarding the interests of the public and concerns of environmental and planning authorities over

¹ <http://www.tra.org.bh/en/pdf/FINALStatementonStrategicandRetailMarketsReview20080603.pdf>

the multiplication of masts and towers. Therefore, facility sharing together with co-location can avoid inefficient and unnecessary duplication of existing wireless telecommunications network facilities and infrastructure.

- 2.3 It is with these factors in mind that TRA prepared a Regulation on Wireless Telecommunications Network Facility Sharing.

3. Purpose and Objective of the Regulation

- 3.1 The consultation points out that the purpose of the Regulation is to implement a sharing regime applicable to all Licensees that own, manage or lease a Wireless Telecommunications Network Facility in accordance with sections 3(c)(1) and 3(c)(13) of the Telecommunications Law.

- 3.2 The consultation points out that the implementation of the sharing of Wireless Telecommunications Network Facilities should assist in:

- a) promoting more environmentally friendly practices, through the minimization of the need to construct and maintain masts;
- b) encouraging socially efficient investment in infrastructure and avoiding wasteful duplication of infrastructure;
- c) reducing operating costs of all wireless telecommunications network operators;
- d) promoting fair competition through the sharing of wireless telecommunications networks facilities which are not easily duplicable and whose multiplication raises environmental and general public concerns;
- e) ultimately providing benefits to consumers in terms of price, quality and availability of services, as well as their environmental concerns.

- 3.3 Batelco in its response considers the introduction of the proposed Regulation is not justified for the following reasons:

- a) the narrow direct beneficiary of the proposed Regulation as the main beneficiary in practice would be the proposed third mobile network operator;
- b) the burden of implementing the proposed regulation would largely fall on Batelco as if for whatever reason a request for sharing was refused under the proposed Regulation, the requesting licensee could always ask Batelco under the reference offer;
- c) the benefit of the Regulation is of a short term nature as it only provides entry assistance to the proposed third mobile network operator;
- d) it is a highly interventionist regulation as site sharing is seldom mandated around the world.
- e) the proposed change is unnecessary and disproportionate as it stands in direct contrast to the purpose of increasing competition; and
- f) the proposed change fails to take into account all costs of introducing the proposed Regulation.

3.4 LSC in its response supports TRA's effort in promoting and encouraging wireless telecommunications network facility sharing. However they expressed concern that TRA is taking too much of a neutral approach in the Regulation as the Regulation provides a lot of room for dominant providers to maneuver their way out of implementing the facility sharing.

3.5 LSC indicated that TRA should not merely encourage infrastructure sharing among operators, but it should have a stricter and firm approach by mandating the sharing of infrastructure and facilities in the mobile market. In addition, TRA should monitor and supervise the process of negotiating and implementing the Sharing Agreements between parties.

3.6 Mena Telecom agrees with the proposed sharing Regulation in principle and believes that, if implemented in a balanced manner, it could bring great efficiencies for the Kingdom and create a truly win-win situation for both Owning and Sharing Licensees.

3.7 Zain Bahrain points out that it supports TRA approach in promoting the facility and site sharing as outlined in the

consultation but it has a number of concerns which should be addressed in order to make the Regulation more workable.

3.8 Mr. Mohammed Sultan Ansari, who responded to the Consultation under his individual capacity, appreciated the efforts by TRA in introducing the proposed Regulation as he believes it would pave the way for the optimal utilization of exiting resources, cost saving and increased competition.

3.9 After taking into consideration all the above comments from the operators, TRA considers the following with respect to the proposed Regulation of the Wireless Telecommunications Network Facility:

a) TRA, as part of its effort to further promote competition in the Kingdom of Bahrain and support the achievement of the second National Telecommunications Plan, has designed a set of regulatory measures as outlined in its SRMR statement. One of the measures is to actively encourage the mast, collocation and other relevant facilities in wireless telecommunications sites.

b) TRA has designed the sharing model, to strike a balance between the infrastructure based and service based competition. It aims to facilitate a faster installation of new radio coverage when either a licensee needs to expand its geographic coverage or increase traffic handling capacity.

c) As a result of public concerns all Mobile Telecommunications Network Operators (MNO) are currently experiencing delays over sites acquisition due to the concern of the planning and environmental authorities over the multiplication of masts and towers. TRA believes that the introduction of such a sharing regime for wireless telecommunications network facilities will contribute into alleviating these concerns and facilitating a faster wireless networks roll out.

d) It is necessary in order to promote fair competition among new and dominant operators, to mandate the facility sharing as suggested in TRA's consultation as this will ensure compliance and successful adoption of sharing facilities and support service competition between operators.

e) TRA has decided to revamp the layout structure of the consulted document in order to produce a better logical

sequence of events that would help the user to smoothly navigate between the contents of the document.

4. Definitions

- 4.1 The consultation clarified terms and definitions building on those in the Telecommunications Law.
- 4.2 Batelco considers the definition of Site, as expressed in the consultation, as too broad as it may include such facilities as its satellite earth station facilities, its maritime services radio masts and its microwave earth stations. Batelco recommends redefining the Site term to make it specific to mobile and WiMAX sites only.
- 4.3 The consultation defines the Site as “a place where a Wireless Telecommunications Network Facility or group of similar facilities is located”. TRA is of the view that this definition is appropriate to promote the sharing as widely as possible. The consultation does allow the sharing of any site that contains wireless facility as long as the sharing is technically and commercially feasible and the sharing would not jeopardize the safety and reliability of operators’ networks or facilities. The consultation provides the right to the Owing Licensees to reject the sharing in case of non feasibility.
- 4.4 The consultation defines the Owing Licensee as the Licensee that owns, manages or leases a Wireless Telecommunications Network.
- 4.5 Batelco recommends redefining the “Owing Licensee” to exclude the management and leasing of Wireless Telecommunications Network as form of ownership as Batelco dose not consider that it has sufficient control over its leased sites to comply with the proposed Regulation.
- 4.6 TRA considers changing the definition of the Owing Licensee to exclude the management and leasing of facilities would practically reduce the number of Sites available for sharing to the minimum as currently the vast majority of wireless networks sites are leased sites by operators. TRA views that the owning operator should spend reasonable efforts with landlords to ensure the leasing terms and conditions allow for the wireless facility sharing.

- 4.7 TRA points out that the current definition of the Owing Licensee is wrongly typed in the consultation. It should read as “Owing Licensee means a Licensee that owns, manages or leases a Wireless Telecommunications Network Facility”.
- 4.8 Zain suggested adding two more definitions, e.g. “Landlord” and “Municipality”, to the Regulation as both may be considered key players in the process of concluding a facility sharing agreement between operators.
- 4.9 TRA of the view that there is no necessity to add the terms Landlord or Municipality as there is no reference to these terms within the contents of the proposed Regulation.

5. Wireless Telecommunications Network Facilities Governed by the Regulation

- 5.1 The consultation states the type of facilities governed by the proposed Regulation which might be summarized as follow:
- a) Wireless Telecommunications Sites;
 - b) Masts, towers and poles;
 - c) Buildings, shelters and rooms;
 - d) Utilities required for the operation of facilities and sites; and
 - e) Cable access, e.g. ducts, routes and trays.
- 5.2 Batelco considers in its response that the scope of sharing is very broad and that the compulsory requirement should just relate to the mast, towers and poles. As example, Batelco is concerned that the sharing of site may extend to the fixed service facilities and equipments as they happen to be on the same site as the wireless facilities.
- 5.3 TRA would like to emphasize that one of the main objectives of introducing the proposed Regulation is to promote fair competition through the sharing of wireless telecommunications networks facilities. Such facilities are not easily duplicable and whose multiplication raises environmental and general public concerns. It should not include other facilities that not covered within the proposed Regulation. Other operators wishing to share other facilities, e.g. fixed services facilities and dark fibre, may approach the concerned dominant operator in line with its applicable reference offer.

6. Obligations to Share Facilities

- 6.1 The consultation lists down a number of obligations to govern the framework of sharing negotiation and provisioning. One of the obligations is to require the Owing Licensee to provide to the Requesting Licensee information necessary to identify the wireless facilities and the relevant costing information.
- 6.2 Batelco considers in its response that there is an imbalance in information disclosure requirements with a sharing Requesting Licensee. It considers the provisioning of costing information to a competitor is anti-competitive conduct. Batelco instead suggests disclosing costing information to TRA only in case of dispute.
- 6.3 While Mena Telecom agrees that the provision of information is necessary for the Sharing Licensee to pursue its sharing plans, it assumes that there may be operators that will seek to abuse this provision.
- 6.4 Taking Batelco's and Mena Telecom's concern into consideration and in order to ensure a better balanced practice, TRA will amend the obligation under paragraph 3.4 of the consultation to make it applicable to all Negotiating Licensees instead of the Owing Licensee only. In addition, it will remove the obligation on the Owing Licensee to provide costing information to the Requesting Licensee. However, in the event of dispute or when requested by TRA the concerned licenses shall be obliged to provide to TRA all relevant information including costing information as set out in Article 13 and 14 of the consultation.
- 6.5 LSC agrees in its response with the concept of first-come, first-served basis provided that TRA closely supervises and ensure that dominant operators do not abuse this concept.
- 6.6 TRA is of the view that it might be unnecessary and impractical to directly supervise owning operators with regard to their day to day administrative and operating procedures and practices to ensure compliance with the proposed Regulation. However TRA shall request operators, from time to time, to demonstrate they are in compliance with the Regulation.

7. Negotiating Procedure

- 7.1 The consultation suggests a timescale of 21 working days for the Owing Licensee to complete the feasibility study, from the date of submitting a Sharing Request. Then another 21 working days to execute a Sharing Agreement. The total timescale to commence sharing will include additional reasonable time required to develop or alter sharing facilities in addition to the timescale required for the feasibility study and executing a Sharing Agreement.
- 7.2 Batelco and Zain Bahrain consider in their responses the timescale (21 working days) to complete the feasibility study and then similar working days to complete the sharing agreement are too tight, especially as Owing Licensees could face multiple requests at one time.
- 7.3 LSC considers in its response the timescale for negotiating a sharing agreement is too long and it would require the Requesting Licensee to expend a lot of time and effort to conclude a sharing agreement which might negatively affect the establishment of effective competition in the market.
- 7.4 TRA is of the view that the suggested timescales are necessary and adequate to reach an informed decision during the feasibility study and then executed a sharing agreement. It is also necessary to add extra reasonable days for the development and alteration of facilities to commence sharing. The extra days will vary from one site to another depending on the extent of development and alterations to facilities. In the event of submitting abnormal number of requests in the same time, e.g. in the event of deploying a complete new wireless network, the parties may mutually agree another reasonable time frames to execute a sharing agreement or refer the case to TRA in case of dispute.

8. Development and Alteration of Facilities

- 8.1 The consultation sets out principles to encourage the constant development and upgrading of the wireless facilities. It encourages reasonable consideration of the facility sharing requests in any development and upgrading plan by the Owing Licensee. In summary the consultation:

- a) Encourages the operators to pursue a policy of constant development of their facilities, taking into consideration future reasonable sharing requirements.
 - b) Mandates Licensees to upgrade their masts or towers in the event of Sharing Request and the capacity is fully utilized.
 - c) Obligates the Requesting Licensee to pay a once-off proportionate payment to compensate the Owing Licensee for the upgrade cost.
 - d) Provides the right for the Requesting Licensee to request a site inspection if it is necessary for assisting it in reaching an informed decision.
- 8.2 Batelco in its response strongly opposes mandating constant development and upgrading of wireless facilities sites for its competitors. It considers the consultation moves the proposed Regulation from sharing to future provisioning of infrastructure with competitors. It also considers that the pricing principle of upgrading facilities fails to take into account commercial rates for alternatives sites, the regulated return on capital employed for Batelco and other potential cost categories.
- 8.3 LSC in its response suggests publishing on TRA's web site maps indicating Owing Licensees' wireless facilities available for sharing. This will enable Requesting Licensees to access the web site and assess their requirements accordingly. It also suggests that TRA verify and approve the upgrade costing model in order to reach fair and timely Sharing Agreements.
- 8.4 Mena Telecom considers the provision of the site inspection rights to the Requesting Licensee may let some of the operators to take advantage of such rights.
- 8.5 Zain Bahrain in its response suggests that the Requesting Licensee pays for any upgrade cost in full as normally the Owing Licensee would not budget for unidentified upgrade requests. The cost could later be deducted from the rental paid to the Owing Licensee by the Requesting Licensee.
- 8.6 TRA points out that it is normal practice for operators to plan and execute annual development programs to develop new networks and facilities, seek efficiencies or upgrade the existing networks and facilities. It would be beneficial for all parties if reasonable consideration of facilities sharing is incorporated

within those plans. Such planning will assist in saving cost of altering facilities, such as masts or towers, after they have been constructed. It is with this views the consultation has encouraged the consideration of sharing requirements within any development or upgrade to the wireless facilities and sites. It is not intended at all to only instigate the development of networks for the benefit of the facility sharing. However, TRA will rephrase the draft Regulation to further clarify this matter.

9. Assessment of Sharing Feasibility

- 9.1 The consultation provides the right for the Owing Licensee to refuse a Sharing Request for the following circumstances:
- a) non availability of space;
 - b) non technical or commercial feasibility; and
 - c) the sharing comprise a threat to the safety and reliability of a network.
- 9.2 The consultation obligates the Owing Licensee to provide written justifications in case of refusal. It also provides the right to the Requesting Licensee to dispute any sharing rejection case. TRA may investigate to reach a decision.
- 9.3 Batelco in its response provides and suggests further refusing reasons where it thinks should be added to the list of refusing circumstances as indicated in the consultation.
- 9.4 LSC in its response is generally against the right of an Owing Operator to refuse a Sharing Request. It believes such right would strengthen the Owing Licensee position in conducting an anti-competitive practices and discouraging the provisioning of effective competition in Bahrain.
- 9.5 Zain Bahrain suggests adding the following reasons to the potential rejections:
- a) Landlord rejects the proposed Sharing Requests; and
 - b) The Municipality or any other planning authority rejects the Sharing Request.
- 9.6 TRA views that the current provisioning within the consultation with regard to the assessment of sharing feasibility is balanced and adequate to encourage the sharing practices among operators. The Regulation provides reasonable protection to

the safety and reliability of Owing Operators networks. Practically it would not be possible to contemplate all Sharing requests and there would be cases where it would not be feasible to adopt the sharing practice. The consultation gives the right to the Requesting Licensee to study and where appropriate challenge a Sharing Request refusal.

- 9.7 With regard to Zain Bahrain suggestion to add the Municipalities and planning authorities to the list of refusal reasons, TRA is of the view that it would not be necessary to explicitly mention those bodies in the proposed Regulation. Normally the sharing would take place in existing sites where planning consents will have been already secured during the first installation time of the facilities. The sharing would request only small modification and upgrade to some of the facilities, e.g. masts and towers, which the planning authorities' approval would only be a matter of formalities provided the operators adhere to the rules and regulations. Similarly with Landlords, operators should ensure that the leasing terms and conditions do allow for sharing specially for new and renewed contracts. For existing contracts the owning operator should expend reasonable efforts with Landlords to enable sharing even with extra incentives.

10. Safety and Protection Arrangements

- 10.1 The consultation specifies a number of precautionary measures to ensure the safety of Licensees' equipments and facilities.
- 10.2 Zain Bahrain suggests in its response extra detailed additional measures to further protect the interest of the Owing Licensees and to hold the Requesting Licensee liable in case of deviation from the standards.
- 10.3 TRA views that there is no need to add extra detailed measures within the proposed Regulation as such details could be incorporated within the Sharing Agreement. However for the protection of the working personnel and public from the emission of radio frequency radiation, TRA feel it would be beneficial to add a new clause to ensure adherence to the local rules and regulations and the international recognized standards.

11. Sharing Facilities and Component Prices

- 11.1 The Draft Regulation consultation mandates that the sharing facilities shall be fair and reasonable based on the actual cost incurred by the provider. It provides the right for TRA to request a justification for a price and adjustment if required.
- 11.2 Batelco in its response considers that the principle of fair and reasonable pricing with actual cost may not take into account the value transferred to the Requesting Licensee in terms of commercial market rent and the ease of network roll out, the regulated return on capital employed and any additional mark-up to incentivise the Owing Licensee as well as security (if any).
- 11.3 TRA does not consider that the points raised by Batelco justify a change of position. Consequently TRA maintains its original view that pricing should be fair and reasonable and based on cost. However it has decided to remove the word “actual”. Where competitive forces are insufficient to lead to a competitive outcome, it is essential that rates are fair and reasonable. Rates that are fair and reasonable are consistent with what would be expected in a competitive environment. They enable the recovery of efficient and relevant costs, including a reasonable return on capital employed commensurate with the risk profile of the investment. This leads to efficient outcomes and there is no justification to provide further incentives to the owning licensee through an additional mark-up as advocated by Batelco. Further TRA notes that the site sharing model of the regulation may not only be beneficial to the Requesting Licensee but also to the Owing Licensee. For example, the revenues derived by the Owing Licensee from the sharing facilities will contribute to reducing its cost of running its wireless network.

12. Dispute Settlement

- 12.1 The consultation defines the dispute resolution process that shall be followed by operators in the event of inter-operator disputes.
- 12.2 LSC in its response considers the timeline to resolve a dispute is very long which would ultimately delay the implementation of facility sharing.

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12.3 TRA is of the view that the suggested dispute resolution process, including the timeline, is balanced and adequate to reach informed decisions. It has been designed in line with other TRA's dispute Rules and Regulations.