

Guidelines
for
Telecommunications
Infrastructure Deployment

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Telecommunications Regulatory Authority
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Purpose: Report on the responses received to the consultation on the draft Guidelines for Telecommunications Infrastructure Deployment.



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1. Introduction

- 1.1 The Telecommunications Regulatory Authority of the Kingdom of Bahrain (“TRA”) issued on 25 March 2008 a public consultation on its draft document titled “Guidelines for Telecommunications Infrastructure Deployment” (the “Consultation”).
- 1.2 The consultation sought stakeholders’ and public views on the conditions stipulated by the document to remove barriers and consequently enable all suitably licensed operators to deploy their telecommunications infrastructure in public and private properties on equal grounds.
- 1.3 TRA received four (4) responses to the consultation from the following entities:
 - Bahrain Telecommunications Company B.S.C. (“Batelco”);
 - Light Speed Communications (“LSC”);
 - Mena Telecom (“Mena”); and
 - MTC Vodafone Bahrain (“Zain”).
- 1.4 This report summarizes the responses TRA has received and provides further information or clarification wherever appropriate.
- 1.5 This report does not necessarily constitute TRA’s final position on the Guidelines for Telecommunications Infrastructure Deployment.

2. Summary of Responses to the Consultation

2.1 Issue to Resolve

Chapter 13 of the Telecommunications Law has granted authorization to the licensed operators of public telecommunications networks to construct any installation or install connections required for the construction, development or maintenance of their networks on, under, through or alongside public and private properties if certain conditions are satisfied.

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Besides other conditions placed upon exercising this right, the operators must obtain the necessary approvals and permits from the competent authorities before commencing any works. These authorities include the Central Planning Unit (“CPU”) and Municipalities. Batelco, as the only telecommunications provider in Bahrain prior to the coming into force of the Telecommunications Law in 2002, represented the telecommunications industry in the CPU and other government bodies procedures related to laying and maintaining the Kingdom’s telecommunications infrastructure. This system continued after the introduction of competition primarily because it would practically be too complicated if the number of stakeholders within the CPU model increased. However, TRA and new operators have identified this as a major obstacle to the development of their infrastructure and services. TRA considers that the continuation of this system has a negative impact on the development of competition in telecommunications infrastructure in the Kingdom.

As part of its role to promote effective and fair competition among licensed operators, TRA wishes to enable all licensed operators to install their infrastructure in public and private property by setting up and operating a Telecommunications Technical Office (“TTO”) and issuing Guidelines for Telecommunications Infrastructure Deployment. These Guidelines shall provide the necessary general conditions and specifications for all licensed operators of public telecommunications networks and other concerned parties for the design, deployment, operation and protection of telecommunications infrastructure in public and private property.

2.2 General Comments

LSC, Mena and Zain support TRA’s approach in relation to enabling all suitably licensed operators to deploy, operate and maintain their telecommunications infrastructure in public and private properties.

Although Batelco does not object to TRA’s approach in relation to enabling all suitably licensed operators to deploy, operate and maintain their telecommunications infrastructure in public and private properties, it believes the proposed measures by TRA are not appropriate to accomplish this task and may cause discrimination against Batelco as the incumbent operator that owns the absolute majority of the current telecommunications infrastructure.

2.3 Specific Comments

2.3.1 Creation of Telecommunications Technical Office (“TTO”)

TRA indicated in the consultation that it would set up and operate a TTO to interface the telecommunications industry with the CPU, the Municipal One Stop Shop (“MOSS”) and other relevant government planning authorities. It also highlighted a number of benefits that can be achieved as a direct result of the setting up of the TTO.

Two respondents, LSC and Zain, have strongly indicated their support in creating a TTO, as it would provide a single interface between the telecommunications industry and relevant government planning authorities such as the CPU, MOSS and others.

Mena has agreed that the creation of a TTO would make sense from a practical point of view although it might not necessarily avoid holdbacks in the CPU model. Mena did not indicate the holdbacks.

Batelco considered that the functions of the TTO are either already being performed by itself or that a TTO within TRA is not necessary to achieve the stated benefits. It indicated that the resources to fulfill the goals of the TTO may duplicate the resources within Batelco and CPU.

TRA has already indicated reasons that led to the establishment and operating of the TTO in an earlier report titled “Report on streamlining the process related to the planning, building, maintenance and protection of telecommunications networks infrastructure within public road networks” published on 30 March 2008. TRA is of the view that the creation of a TTO is the most suitable alternative for the time being, as it will be TRA’s internal unit responsible for validating the conditions stipulated by Sections 59 and 61 of the Telecommunications Law that are deemed necessary in permitting public telecommunications network operators to construct, develop and maintain their networks in public and private properties. In addition, it will facilitate the interface of the telecommunications industry with the relevant government planning authorities’ models without hindrance to existing public utilities’ and other bodies’ infrastructure deployment processes and procedures.

2.3.2 Access to Rights of Way

TRA in its consultation has suggested a new two-stage process for granting public telecommunications network operators access to the telecommunications rights of way in public properties as assigned by the government authorities. In stage one, the operator wishing to access the rights of way would inform other operators through the TTO of its intention to access the rights of way to enable joint works in case one or more other operators plan to carry out works in the same location concurrently. Upon the completion of this stage, the second stage will be interfacing the telecommunications planned work with the CPU for obtaining other public utilities' and stakeholders' consents.

Zain Bahrain has requested the specification of a timescale for completing stage one, which relates to obtaining telecommunications industry consent in order to ensure the timely completion of the process and avoid delays by other operators.

Batelco has raised the following points with regard to access to the rights of way:

- The recommended operational procedure manual by TRA should be in place before starting the two-stage process.
- Any suggested forms as part of the operational procedure should be in place before starting the two-stage process.
- Works that will not require intrusion on either public or private property should be excluded from the works that must undergo the two-stage process.
- The suggested threshold for works not requiring the two-stage process should be re-set to works of less than (i) 100meter length or (ii) BD 4000 in cost.
- Batelco believes the suggested process does not take into account the requirement to comment on works coming from other utilities via the CPU.
- Unless the process is automated, the TTO system will cause more delay to telecommunications infrastructure deployment.

After taking into consideration all the above comments from the operators, TRA has the following position with regard to access to the rights of way:

- One of the main advantages of introducing a two-stage process will be the encouragement of joint works by public telecommunications operators, which is expected to reduce the up-front cost of telecommunications infrastructure deployment as well as reduce the number of disturbances to public and private properties, thus reducing inconveniences to the public and other stakeholders.
- As indicated in the consultation, it is the intention of TRA to establish and chair a technical committee with members from various operators who will be willing to contribute. The main objectives of the committee will be to come up with comprehensive technical and administrative procedures as well as Key Performance Indicators (“KPIs”) to ensure that the processing of all consultations will be carried out in an efficient and timely manner.
- It is the intention of TRA to introduce as soon as practically possible a fully automated consultation system to help in processing work consultations in a more efficient and timely manner.

2.3.3 Registration

TRA has indicated in the consultation that all suitably licensed operators must register with the TTO in order to be authorized to access the telecommunications rights of way and benefit from all services that the TTO would provide. Operators would be required to pay fees and complete certain formalities for registration.

Batelco has indicated in its response that although it will complete the formalities to register with the office if the suggested procedures are adopted, it would ask TRA to consider why registration is required for Batelco to access its existing infrastructure and how TRA has the power to extinguish use of existing rights of access to Batelco infrastructure.

Section 59 of the Telecommunications Law grants a public telecommunications network operator the right to construct any installation or install connections required for the construction, development or maintenance of its network on, under, through or alongside public property if a number of conditions are satisfied. Section 59(3) of the Telecommunications Law requires that “the operator obtains the necessary approvals and permits from the competent authorities before commencing such works”. Currently the competent authority that coordinates the infrastructure deployment in public properties is the CPU. For operational reasons the CPU has expressed concern over an increase in the number of stakeholders within its model complicating and

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delaying its processes. Such complication and delay would badly impact the public infrastructure deployment in the Kingdom and hinder the development of the national economy. Instead the CPU has agreed with TRA to establish a single entity that represents the whole of the telecommunications industry. TRA had earlier consulted on the establishment of this entity and in a subsequent report submitted that the best method would be the establishment of the TTO. Therefore, to ensure consistency of practice and to balance the requirements of the CPU and the industry, and to fit within the legal process requirements of section 59 of the Telecommunications Law, TRA considers that it is necessary for any public telecommunications network operator requiring to practice its rights in connection with telecommunications infrastructure deployment in public properties to register within the TTO and interface with other public consultation models through the TTO.

TRA does not consider that such a process extinguishes Batelco's rights to access its own infrastructure or any rights of way previously granted. Batelco may still access its infrastructure for the purposes of maintenance, subject to the application of section 59 of the Telecommunications Law and the processes established by the relevant authorities, as per section 59(3) of the Telecommunications Law. As stated above, these processes are developed to:

1. ensure consistency of practice between all operators and equality among them; and
2. balance the requirements of the CPU, other competent planning bodies and the industry.

TRA understands that Batelco may presently be the operator that is affected most by the new processes. However, as other operators develop their own infrastructure the same processes will apply.

2.3.4 Fees

It has been indicated in the consultation that the TTO shall charge fees for processing all types of consultations and permissions to cover the costs of setting up and operating the TTO. The fees shall be reviewed annually and all registered operators will be invoiced quarterly for the fees related to their consultations.

Mena requested in its response more details about the mechanism of deciding upon and distributing the fees amongst the registered operators.

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Zain Bahrain also requested more details about the charging mechanism and indicated that, from an operator's point of view, the services provided by the TTO should justify the fees levied in a transparent manner.

Batelco in its response objected to the imposition of fees on the basis that it already pays an annual license fee to TRA and, unlike what is the case with other operators, the fees would double the costs already incurred by Batelco's operations as part of the CPU wayleave and General Service Notification ("GSN") cycle.

After taking into consideration all the above comments from the operators, TRA takes the following position with respect to the determination and imposition of fees for services offered by the TTO:

- The TTO shall provide consultation services to all registered operators that will include the processing of operator-generated consultations, the processing of other utilities consultations to registered operators who would accordingly provide comments and take the necessary measures to safeguard their infrastructure, provision of information about major projects in the Kingdom of Bahrain, provision of technical consultations to all operators and the public, technical arbitration, and other relevant services. These types of services would require competent and adequate recourses to be employed by the TTO.
- Taking over the current interface responsibility from the incumbent operator will create an opportunity for the latter to reduce the associated operating and manpower costs as there would not be a requirement to duplicate the TTO interface systems which are created to serve the industry as a whole. The new set up will help the industry to save the cost of building similar individual systems whereby multiple operators would carry out the same function.
- It is the intention of TRA to determine the chargeable fees based on an efficient and transparent mechanism. In all cases, the determined amount shall not exceed the amount required to run TTO activities in an efficient and timely manner.
- TRA considers that it is important to follow the cost causation principle in recovering the costs of running the TTO. If these costs were covered by the general license fees (turnover based), operators, which are not deploying their own physical infrastructure and therefore are not using TRA's services, would be disproportionately disadvantaged compared with the operators, which need such services;
- It would not be possible at this stage to accurately determine the cost of TTO activities, as this will largely depend upon the report of the suggested technical

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committee, which will be tasked with producing the technical operations manual. Therefore, the fees can only be decided after employing the suitable staff and systems.

TRA has the power under section 3(c)(1) of the Telecommunications Law to issue regulations, orders and determinations for the implementation of the provisions of the Telecommunications Law, including access to the network and its facilities, access to, acquisition and removal of encumbrances on real property, the promotion of competition and all other matters covered by the Law or the resolution which is necessary to give effect to the provisions of the Law. Section 3(c)(6) of the Law gives TRA the power to collect any fees for services provided by the TRA. Section 18(a)(3) of the Law states that TRA shall fund its operations and activities from fees charged by the TRA for any services that it provides.

Based upon the above sections of the Telecommunications Law, TRA considers that it is duly empowered to charge licensed operators for the TTO services provided by TRA and that this charge can be levied in addition of license fees payable.

2.3.5 Operational Procedures Manual

TRA pointed out in the consultation that it would establish and chair a Technical Committee consisting of suitable technical staff from the registered operators of public telecommunications networks. The main objective of the committee is to prepare, and periodically review, an operational procedures manual to ensure the smooth and efficient day-to-day running of the TTO.

Batelco considers that establishing operational procedures after the TTO and/or the Guidelines have taken effect is not the best practice.

TRA has not yet been able to fully carry out the duties of the TTO to ensure fair and equal treatment to all licenses operators to access public and private properties. Currently the TTO is only managing the key consultation processes while Batelco continues, for operational reasons, to manage wayleaves and GSN applications. Both of these functions will be handed over to the TTO once it is fully operational. TRA has appointed the manager of the TTO but it has yet to employ the suitable resources including experienced staff to efficiently run the daily activities of the office.

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Therefore, the role of the suggested technical committee is vital in completing the process of establishing the TTO and ensuring future smooth and efficient processes. It is important however that full non-discrimination with regard to abilities to deploy networks by the operators is established as soon as possible. Therefore TRA considers that it may be appropriate that TTO starts functioning before all the procedures are fully defined as long as the interim procedures employed are sufficiently clear to the stakeholders.

2.3.6 Basic Rules for Telecommunications Infrastructure Deployment

TRA suggested in its draft document a number of basic rules for planning, designing, deploying, operating and protecting telecommunications infrastructure in order to ensure that telecommunication networks are built and maintained to internationally recognized standards, which will assist in delivering state-of-the-art services to end users.

In its response, Batelco suggested changing the forecasting period for telecommunications access networks to five years instead of seven years as suggested by TRA, as this will appropriately correspond to the freezing period imposed on digging new major roads in the Kingdom of Bahrain, which is currently five years.

TRA agrees with Batelco in this regard and will accordingly change the telecommunications access networks forecasting period to five years instead of seven years.

2.3.7 Telecommunications Rights of Way

TRA has specified in the consultation a number of conditions for controlling access to the telecommunications rights of way by different public telecommunications operators, in order to ensure sensible use of the available limited space which is considered a scarce resource.

Mena in its response has highlighted certain issues with regard to the telecommunications rights of way conditions, which are summarized as follows:

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- The so-called “two ducts in a row” condition is going to make joint construction by different operators difficult, e.g. the one who pays less will get the two upper ducts while the one who pays more will go deeper and get the two lower ducts which are the least accessible.
- Mena believes that it will be fairly easy for Batelco to delay applications and therefore new structures. Therefore, Mena suggests that TRA should strengthen the conditions stipulated by paragraph 1.10 (d) of the Guidelines to ensure no unnecessary delay by Batelco.
- Mena believes that the first public telecommunications operator that will access the telecommunications rights of way is going to have the greatest say in what space is left for subsequent operators. Therefore, TRA should detail further measures to rectify such potential circumstance.

Batelco in its response has highlighted several matters with regard to the telecommunications rights of way conditions, which are summarized as follows:

- In order to reduce risk of damage and service disruption, Batelco requests a revision of the infrastructure clearance distances that will take these issues into account.
- In all cases, Batelco does not support new ducts being built on top or near existing ducts, because this blocks access for the protection and maintenance of existing infrastructure.
- Batelco considers that account needs to be taken of its historical and existing rights when applying the principle stated in the draft Guidelines, according to which says that “it is the intention of TRA to enable the various licensed Public Telecommunications Operators to utilize the assigned rights of way with equal rights”.
- There is no clear definition of “Telecommunications Infrastructure Provider” as this could apply to licensed entities benefiting from a national fixed services license or a broader class of entities, and further clarification is necessary.
- Batelco assumes that limiting the number of ducts in a row to two is applicable to new ducts to be installed in future.
- It is not acceptable to Batelco to keep the clearance between ducts and jointing chambers to 50mm, instead it should be kept to a minimum of 100mm.
- With regard to the condition which allows TRA to limit provision of duct numbers to ensure no one operator consumes a disproportionate amount of the corridor, Batelco considers this condition as vague in application and being a

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superfluous requirement, as there are other rules within the guidelines that specify and do in effect limit consumption of the corridor space.

- Batelco urgently seeks clarification as to whether the rule of limiting the width of jointing chambers to a maximum of 75% of the telecommunications corridor width is applicable to existing chambers or not.

After taking into consideration all the above comments from the operators, TRA considers the following with respect to the concerns raised by the respondents:

- TRA considers the telecommunications rights of way to be a scarce resource that requires an efficient and transparent allocation method to ensure sensible and balanced utilization of the limited space.
- Chapter 13 of the Telecommunications Law grants public telecommunications network operators rights and processes to access public and private properties for the purpose of construction, development or maintenance of their telecommunications infrastructure. It is the duty of TRA to ensure all suitably licensed operators have access to the telecommunications rights of way in a fair manner.
- The minimum clearance distances between the different public telecommunications network operators have been established based on the local and international telecommunications and public utilities infrastructure deployment practices with the aim of ensuring the safety of new and existing telecommunications infrastructure. The minimum distance of 100mm between ducts has been recommended after a thorough study of existing practices, including the one of Batelco, that allow a separation of 50mm between telecommunications ducts and electrical cables. The recommended separation between the different Public Telecommunications Operators' ducts will ensure ducts are not installed on top of each other to allow easy and clear access to lower ducts for future maintenance purposes.
- The rule limiting the width of jointing chambers to a maximum of 75% of the telecommunications corridor's width will apply to future boxes' construction only.
- TRA defines the Telecommunications Infrastructure Provider as "the public telecommunications network operator or any other entity authorized by TRA to roll out telecommunications infrastructure and facilities in public and private property".

2.3.8 Joint Infrastructure Installation

It has been stipulated in the Guidelines for Telecommunications Infrastructure Deployment that telecommunications operators will be required to adopt a joint infrastructure installation method when more than one operator wishes to lay telecommunications infrastructure at the same location and within a timeframe not exceeding one year.

Mena in its response indicated that there might be two issues which require attention. The first one would be the operators disagreeing on what constitutes a “pro-rata basis” which was mentioned in the consultation as the basis of establishing commercial agreements between operators. The second issue relates to the routes requested by operators, e.g. the cases when different routes are requested by operators.

Batelco in its response indicated that it will adopt a joint infrastructure installation method if two or more operators wish to work in the same corridor in the same year, but if there is a dispute between operators which cannot be resolved, then appeal rights should be preserved.

Batelco indicated that it has a serious concern over the requirement to submit annual infrastructure deployment plans to the TTO because of the TTO’s intention to inform other public telecommunications operators of such plans. Batelco considers this an unacceptable breach of legitimate business confidentiality and a breach of TRA’s own guidelines.

After taking into consideration all the above comments from the operators, TRA takes the following position with respect to joint infrastructure installation:

- TRA believes that both the telecommunications industry and the Kingdom of Bahrain as a whole will benefit from the adoption of joint telecommunications infrastructure installation, as this will assist the operators in reducing their costs for constructing networks and at the same time will help in effectively utilizing the telecommunications rights of way, which is considered a scarce resource. Also, the joint works will help in reducing the number of construction works in public roads and accordingly reduce the inconveniences caused to the public.
- The joint work concept will be applicable to works in the same locations only. If there are projects with a mixture of works at the same and different locations

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then the joint work concept will be applicable to the works in the same location only, while works in different locations will be carried out separately.

- Public telecommunications operators will be required to provide to the TTO their annual infrastructure deployment plans that require excavation, in order to share them with other public telecommunications operators and public utilities. The sharing information on deployment plans is already an existing essential practice between the different public utilities providers and public telecommunications operators within the CPU model in order to plan the excavation on public properties and minimize the disturbances to vehicular traffic and to the public.

2.3.9 Excess Duct Space

TRA has indicated in its consultation that every Public Telecommunications Operator will be required to reserve an area corresponding to at least 20% of the useable area in each conduit section for the future rental to other public telecommunications operators based on reasonable and fair prices.

Mena has indicated in its response that it supports the principle of having 20% excess duct space as it is a means of earning revenue. However, it has inquired about what would happen if a public telecommunications operator inserts extra cable into the 20% reserved for others without obtaining permission from the TTO.

Zain indicated that it understands the rationale for mandating excess duct space but it believes the restriction on an operator to use its own excess capacity should not be permanent.

Batelco indicated in its response that it has concerns over the implementation of this condition as it is unnecessarily increasing its cost of deploying telecommunications access networks for indefinite usage by others. In addition, this rule will impact solely on Batelco as part of its wholesale supply terms services, as there are no legal requirements for other licensed operators to provide the excess space in the form of future duct rental.

TRA is adopting such an approach as part of its efforts to encourage infrastructure sharing, which shall assist in maximizing the utilization of existing infrastructure, minimize the up-front capital cost of network deployment and, very importantly, diminish the number of public road interruptions. The benefits of this approach

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include reduced environmental impact and reduced capital and operational costs, which should create opportunities to further reduce the tariffs charged to consumers.

TRA understands that this rule might not be technically or economically feasible in all situations. Therefore it has indicated in the consultation that it may allow public telecommunications operators to apply for an exemption from this condition if they are able to provide supporting justification that this condition is technically or economically unfeasible in a particular case.

2.3.10 Duct Type, Colour & Size

It has been stated in the consultation that each public telecommunications operator will be required to select and use a different colour of ducts and sub-ducts. The purpose of this is to easily identify operators in case of damage from the colour of their ducts. TRA has determined that it will reserve the black colour for the Batelco as it is already in use, while it will grant approval to use other colours selected by new operators on a first-come first-served basis.

Mena inquired in its response whether an operator could reserve a duct colour before registering with the TTO.

As stated previously, colours will be reserved only after registering with the TTO, as the TTO cannot reserve colours for operators that are not ready to deploy infrastructure or do not possess the required licence types.

2.3.11 Clearance from other Telecommunications Services

TRA has specified in its draft guidelines that the minimum clearance from any existing telecommunications infrastructure shall be 100mm. Batelco in its response has requested a minimum clearance of 350mm from any existing infrastructure, on the basis that any smaller clearance distance will lead to damage to Batelco's fixed infrastructure.

TRA believes that, in line with international telecommunications infrastructure practices, e.g. British Telecom Specification LN550 for Underground Duct Laying and Associated Works, and considering the specification currently in practice by Batelco, i.e., Specification for Access Network Works, BTC/1000/CCW, 100mm would be an appropriate clearance to sensibly utilize the limited space of the telecommunications rights of way and at the same time provide reasonable and adequate protection to

existing infrastructure. In its specification, Batelco currently permits a clearance of 50mm with electrical cables.

2.3.12 Inspection Power

TRA has specified in its draft Guidelines that it will carry out random site inspections to ensure public telecommunications operators and their appointed contractors are in compliance with the conditions stipulated by the guidelines. TRA shall order the correction of any irregularities revealed by the inspection.

Batelco believes that the current inspection and supervision powers of TRA under section 77 of the Telecommunications Law are limited to checks on unauthorized or unlicensed equipment and would not extend to physical inspections relating to whether the guidelines had been complied with.

TRA believes there should be a reasonable mechanism to fairly impose the conditions stipulated by the proposed guidelines for the following reasons:

- Ensuring sensible use of the telecommunications rights of way;
- Ensuring smooth and trouble-free infrastructure deployment by different operators on site;
- Compliance with rules and resolutions promulgated by the Council of Ministers in connection with the use of public property; and
- Ensuring the adoption of all necessary precautionary measures to safeguard existing infrastructure and public safety.

TRA considers that section 77 of the Telecommunications Law provides it with broader powers than those suggested by Batelco. TRA therefore considers this covers the inspection powers as described in the Guidelines.

2.3.13 Insurance

TRA has specified in the draft guidelines that each Public Telecommunications Operator should have in force at least employer's liability and public liability

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insurance to indemnify himself against any claim for which the operator, his contractor or subcontractor may be legally liable.

Batelco has requested TRA to consider bespoke insurance cover depending on the public telecommunications operators' proposed activities, which will alter the level of public liability insurance cover suggested by TRA.

TRA considers that there should be a requirement to hold appropriate insurance for employer and public liability, and it will continue to impose a requirement to obtain insurance. TTO will however consider the requirement for bespoke insurance in cases where damage may cause losses beyond the limit of the general public liability insurance on a case by case basis.

2.3.14 Disputes

Batelco raised the point that there are numerous references in the guidelines to the decisions of the TTO being final. Batelco indicated that it does not support such an approach as it attempts to remove rights of appeal and the right to seek remedies in the local courts for any dispute which cannot be resolved between one public telecommunications operator and another.

TRA confirms that any final adopted dispute resolution process and procedure shall be in accordance with the related provisions of the Telecommunications Law and any other related regulations, and shall respect the right of appeal for public telecommunications operators. Moreover, TRA has decided to further clarify provisions related to the appeal procedure in the final version of the Guidelines.