

Second Consultation

On Consumer Protection Related Issues

Consumer Protection Related Issues

Second Consultation by the Telecommunications Regulatory Authority

4 February 2007

The address for responses to this document is:

Director of Communications & Consumer Affairs

Telecommunications Regulatory Authority (TRA)

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the Authority's

email address at consult@tra.org.bh

The deadline for responses is **4pm on 4 March 2007**



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1. INTRODUCTION AND CONSULTATION PROCESS

1.1 Introduction

1.1.1 On 25 January 2006 the Telecommunications Regulatory Authority (the “TRA”) launched a public consultation¹ on three areas in which subscribers and users of telecommunications services in Bahrain may require protection. The three areas consulted on were:

- (A) the provision of pre-paid telecommunications services and whether action should be taken to protect consumers against the event of the insolvency of a provider of such services;
- (B) the provision of short message services (“SMS”), telemarketing, fax broadcasting and bulk emails, and whether guidelines or regulations should be introduced to protect consumers from the nuisance element and invasion of privacy to which such services may give rise; and
- (C) the procedure for disconnecting telecommunications services of subscribers for non-payment of bills, and whether guidelines should be implemented to ensure that consumers are protected against the harm that may arise from premature disconnection.

1.1.2 TRA received feedback both through submissions from interested parties and at the public hearing held by TRA on 26 February 2006. The responses received have been summarised in the report on the consultation (“Report summarising responses to the Consumer Protection Related Consultation”²) published on the TRA’s website in conjunction with this consultation.

1.1.3 This second consultation describes details of the measures that TRA proposes to take to address the issues identified in its first consultation paper. As such it reflects the TRA’s consideration of the responses that it received to its consultation.

¹ Reference: CCA/0106/011

² Reference: CCA/0207/012

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1.2 Consultation process

1.2.1 Interested parties are invited to respond in writing to TRA with comments and suggestions on this document by no later than **4:00 p.m. on 4 March 2007**. The address for responses to this Consultation is:

Director of Communications & Consumer Affairs
Telecommunications Regulatory Authority
P.O. Box 10353
Manama
Kingdom of Bahrain

1.2.2 Alternatively, email responses may be sent to the TRA's email address at consult@tra.org.bh.

1.2.3 TRA will publish all comments as received unless a respondent expressly asks to have them withheld, in total or in part. If any party wishes to have the whole of its submission withheld, it should state this clearly at the beginning of its submission. If the respondent wishes to have some parts withheld, it should put them in a separate annex and clearly mark them as confidential.

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2. THE PROVISION OF PRE-PAID TELECOMMUNICATIONS SERVICES

2.1 Proposed solution to be adopted

2.1.1 As a result of its first consultation, and the responses received, TRA considers that the current licensing process and requirements would not provide sufficient safeguards for consumers against the event of the insolvency of a provider of pre-paid telecommunications services. TRA agrees with those respondents who felt that some form of additional security for consumers, even if only nominal, should be required.

2.1.2 Hence, TRA considers that a bank guarantee would be the most appropriate in meeting the objective of providing additional security for consumers whilst not proving a disproportionate regulatory burden, particularly for smaller service providers.

2.2 Reasoning behind adoption of the proposed solution

2.2.1 A number of possible solutions to protect consumers were suggested in the initial consultation paper. These included:

- (i) TRA issuing a regulation that mandated solvency protection provisions for VAS licensees.
- (ii) The addition of a criterion to the application procedure for a Value Added Services ("VAS") license of obtaining a credit rating through an independent assessor.
- (iii) Requiring service providers to set up an escrow account in favour of the TRA.
- (iv) Requiring service providers to provide either a performance bond or a bank guarantee in favour of the TRA.

2.2.2 TRA has approached its consideration of which, if any, of the above measures should be introduced to regulate the provision of pre-paid telecommunications services on the basis that

- (i) The loss to individual consumers as a result of the insolvency of a provider of pre-paid telecommunications services is likely to be small; and
- (ii) Any regulation should not act as a disproportionate burden on smaller providers.

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- 2.2.3 TRA has reviewed the responses received to the consultation process to date and reached the conclusion that it is necessary to introduce a measure that would ensure adequate protection for consumers in case of the insolvency of the provider.
- 2.2.4 The concept of solvency protection provisions covers a wide number of potential measures that TRA could require service providers to comply with. These range from closer prudential supervision of service providers than is already mandated by the current terms of the VAS license (such as minimum capital requirements and reporting obligations) to restrictions on the nature and scale of investments that the service provider may make. It could also take the form of requiring the service provider to maintain a net asset value relative to the amount of pre-paid cards it issues. It is already a requirement of the VAS license that licensees should, if they hold multiple licenses, present TRA with accounts for their licensed telecommunications activities. In addition, TRA has the ability to request periodic information from licensees in order to supervise their activities. However, any report submitted would show only the licensee's historical figures and would not necessarily reflect the licensee's financial position as at the date of reporting. In any case, TRA considers that the additional solvency protection provisions considered might prove unduly restrictive on service providers in relation to the possible harm that may fall to individual consumers as a result of the insolvency of a service provider.
- 2.2.5 Introducing into the application procedure for a VAS license an obligation to obtain a credit rating (whether investment grade or otherwise) would guarantee that the service provider had a certain minimum level of financial resources. In addition, if the credit rating fell below the required level, it would provide an important indication to TRA of actual or potential financial difficulty, enabling it to consider whether any action should be taken under its other powers. Any failure by the service provider to use reasonable endeavours to restore its credit rating could itself be regarded as a breach of the VAS license which TRA could require to be remedied. However, TRA considers that the costs involved in obtaining a credit rating would seem to create a disproportionate compliance burden on smaller service providers compared with other suggested measures. A credit rating is typically used to indicate the financial risk for investors of investing in certain types of debt obligations that may be issued by a company. As such, it is not a measurement that smaller providers of pre-paid telecommunications services would typically be anticipated either to have or be required to have in the conduct

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of their normal course of business. The cost to such smaller providers of obtaining an independent verification of their credit-worthiness from a rating agency would also represent a disproportionate percentage of their overall turnover and profitability when contrasted with larger telecommunications service providers such as Batelco.

- 2.2.6 Requiring service providers to set up an escrow account in favour of TRA would have the effect of guaranteeing that an amount of money was held on trust for use by TRA in the event of an insolvency. The disadvantage of an escrow account is that it would tie up an amount of each service provider's capital, which for a small company could potentially prejudice its ability to compete. It may also act as a disincentive for new companies to enter the market. The possibility that the escrow amount may be invested by the escrow agent to the benefit of the service provider is unlikely to compensate a small company for the restrictions on its capital.
- 2.2.7 As with an escrow account, a performance bond would guarantee certain funds would be available to a third party in the event of the insolvency of a service provider. A performance bond would have the additional benefit that it would not tie up capital as it would operate by allowing TRA to claim compensation from a third party surety in the event of insolvency. A typical performance bond is issued as a percentage of the outstanding liabilities of the issuer at any one time. A bank guarantee acts in a similar manner to a performance bond by ensuring that the liabilities of the service provider would be met by the bank issuing the letter of guarantee (up to a pre-determined maximum) were there to be insufficient funds remaining in the event of the provider's insolvency. In the event of an insolvency, any payment would be made to the TRA. The advantage of both a performance bond and a bank guarantee over an escrow account is that they allow the licensee to maintain liquidity and do not require any of its funds to be tied up. Moreover, the annual fee required by the bank issuing the bond or guarantee is typically a function of the amount required. As such, the cost to smaller providers (who would be expected to provide a commensurately smaller guarantee) would be more proportionate than that required in obtaining a credit rating.
- 2.2.8 The intention behind any of the above financial instruments is that they would ensure that providers without a minimum level of financial resources to support the provision of services would be barred from offering pre-paid services. Moreover, the requirement

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to provide some form of security should act as a deterrent to those potential providers of pre-paid telecommunications services who may otherwise have been tempted to enter the market either on a speculative basis or with the dishonest intent of making off with the proceeds of the sale of these services. In addition, the monies being guaranteed will be employed, as suggested by some respondents to the consultation, to compensate consumers in the event of an insolvency.

2.3 Consultation on the mechanism for implementation of the proposed solution

2.3.1 TRA is minded, therefore, to introduce an additional criterion to the application procedure for a VAS license. This would require the relevant service provider to provide a bank guarantee in favour of TRA within three months of obtaining their VAS license. The guarantee will be accepted from any licensed bank by the Central Bank of the Kingdom of Bahrain.

2.3.2 TRA will provide a grace period of three months starting from the date of publication of the final report for the existing VAS licensees to provide a bank guarantee in favour of the TRA.

2.3.3 TRA considers that the value of the guarantee should initially be a fixed sum to be agreed with the service provider. Once the licensee has been operating for a year, however, the guarantee should be calculated as a percentage of the value of the pre-paid cards in circulation.

2.3.4 In the event of an insolvency, the monies being guaranteed by the insolvent service provider will form a fund that will be employed to compensate consumers that suffer a loss that can be attributable to such insolvency. That fund will be managed by a suitable independent trustee (likely to be an independent accounting firm) appointed by the TRA. Any fees incurred by the trustee will be met by the TRA.

2.3.5 In order to reduce administrative costs it will not be possible for the trustee to verify any individual loss arising from the insolvency. Any person that can produce a pre-paid card that was issued by the relevant insolvent service provider and which has not reached its expiry date at the time of the insolvency will therefore be eligible to apply to the fund. Although the exact procedure may vary according to individual circumstances, TRA anticipates that the mechanism for awarding compensation will be as follows.

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- (i) TRA will announce a time, date(s) and place at which the trustee will receive claims from consumers and award compensation. The announcement will be made on the TRA's website and in at least two daily newspapers (English and Arabic).
- (ii) Applications will be processed in the order that they are received on the day. No other factors will be taken into account.
- (iii) Compensation will be awarded by reference to the face value of each pre-paid card. The exact amounts will be determined by the trustee and will take into account the value of the fund and an estimate of the value of the cards in circulation. TRA anticipates that for pre-paid cards with a face value of less than BD 5 it should be possible to award compensation of BD 1 and for all cards of greater value it should be possible to award compensation of BD 2. TRA intends that awarding compensation on this basis will ensure that the maximum number of applicants to the fund are compensated. TRA will only accept to compensate a maximum card value that worth BD 50 and or a maximum of 5 cards.

Consultation:

- 1) *Respondents are invited to comment on the method of calculating any bank guarantee that should be provided to TRA by each licensee.*
 - (a) *Should the guarantee take the form of a nominal fixed sum or be determined as a percentage of each licensee's pre-paid calling cards in circulation? TRA is currently minded that the value of the guarantee should be fixed for the first year of the license and for each subsequent year should reflect the value of the licensee's cards in circulation at the beginning of that year.*
 - (b) *If a fixed sum, how should the amount be calculated and should it vary according to the financial resources of the relevant licensee?*

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- (c) *If a percentage of the value of pre-paid calling cards in circulation, what should that percentage be?*
- 2) *TRA intend to set up a maximum cap for the compensation that worth BD 50, Is there any need to increase the maximum cap and what are the reasons for such increase?*
- 3) *What other details in relation to setting up a guarantee are required to be identified?*

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3. PROVISION OF BULK SMS, TELEMARKETING, FAX BROADCASTING AND BULK EMAIL

Bulk SMS

3.1 Proposed solution to be adopted

- 3.1.1 After reviewing the responses to its initial consultation, TRA notes that consumers appeared more concerned with receiving unsolicited promotional communications by means of bulk SMS rather than with telemarketing or fax broadcasting. TRA is therefore minded to implement a code of practice through which it applies, at the least, an “opt-out” system in Bahrain by which consumers would be able to choose not to receive further unsolicited communications from the relevant sender.
- 3.1.2 In addition, again in response to consumer representations, TRA is minded to introduce restrictions on the time of day that bulk SMS may be sent.

3.2 Reasoning behind adoption of the proposed solution

- 3.2.1 In its initial consultation paper, TRA identified certain concerns that might arise from the use of bulk SMS as an unsolicited marketing tool. The most tangible concern for consumers is the potentially invasive nature of bulk marketing. However, as the use of electronic marketing in Bahrain becomes more prevalent, its success will reflect the confidence of its recipients that it will not be abused. This leads to more sophisticated concerns regarding questions of privacy and the use to which subscriber personal data is being put (as well as the safeguards in place concerning its transmission between third parties).
- 3.2.2 Balanced against these concerns, TRA noted in its consultation that bulk SMS are a useful tool for small businesses to promote their products and services. In addition, the availability of bulk SMS as a cheap marketing medium could be viewed as pro-competitive as it enables small businesses to compete effectively with larger companies without the need for an equivalent advertising budget. The positive uses to which SMS could be put were also highlighted by respondents to the consultation.
- 3.2.3 TRA suggested a number of forms of regulation that could be put in place to safeguard consumers against the detrimental effects of bulk SMS marketing. These included:

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- (i) the introduction of a voluntary Code of Practice for the industry setting out best practice guidelines such as times of day during which SMS could be sent and the frequency of such communications;
- (ii) the introduction of either a voluntary Code of Practice or a Regulation setting out an obligation on senders of bulk SMS to provide consumers with either an “opt-in” or an “opt-out” requirement;
- (iii) the compilation of an industry blacklist of senders of unsolicited bulk SMS considered to be a nuisance;
- (iv) education of consumers as to means to avoid unsolicited communications, primarily ensuring that personal information was not given out to those that might use it as a marketing tool in an unwelcome manner.

3.2.4 TRA has approached its consideration of which, if any, of the above measures should be introduced to regulate the sending of unsolicited bulk SMS by having regard to ensuring that the regulatory burden imposed on senders of bulk SMS is proportionate to the consumer detriment identified as arising from the receipt of such messages.

3.2.5 The first option considered by TRA was a voluntary Code of Practice for the industry setting out best practice guidelines to be observed by senders of bulk SMS. Respondents who represented the views of consumers all called for TRA to adopt controls regulating at least the frequency with which SMS could be sent and the times of day at which SMS could be sent. TRA recognises that receiving large quantities of unsolicited SMS may inconvenience the recipient and can be considered invasive and a nuisance. TRA notes in this context that a contrast could be drawn between consenting to receive promotional material relating to a particular product or service and receiving such SMS with regard to a broad range of other activities, many of which may be unrelated to the product or service to which the consumer consented to receive material.

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- 3.2.6 From the responses to the consultation it is clear that consumers consider there is a distinction to be drawn between the times of day during which they may wish to receive bulk SMS and those at which it would be considered an invasion of privacy and unwelcome. TRA does not consider in this context that there is any distinction between solicited and unsolicited SMS.
- 3.2.7 Aside from the above proposals, two other possible solutions considered in the initial consultation paper were requiring SMS senders to provide either an “opt-in” or an “opt-out” system.
- 3.2.8 Under an “opt-in” system, unsolicited communications for direct marketing purposes may only be sent to subscribers who have given their prior consent to receiving such communications. By contrast, an “opt-out” system permits such communications, provided that the recipient is given an initial opportunity to object to receiving such material and each subsequent communication affords the recipient the opportunity to opt-out of receiving further communications in the future. The obligation to provide one or other of these options could be included in either a voluntary Code of Practice or a Regulation. It was suggested by a consumer that any opt-out system should be simple to implement by the consumer (for example, sending a SMS in reply). TRA agrees with this view and further agrees with the suggestion that each SMS should clearly state on its face any cost that may be incurred in replying to it. Whilst operators generally favoured consumers paying to opt out, TRA agrees with the consumer preference for a toll-free number to be provided with each communication, the cost of which could be met by the entity sending the marketing SMS.
- 3.2.9 The initial consultation noted that in other jurisdictions the sending of bulk SMS was policed by means of the compilation of an industry blacklist of senders of unsolicited bulk SMS considered to be a nuisance. TRA did not receive any representations on this point and is not minded to pursue it unless it is requested to consider it further.
- 3.2.10 The final option on which TRA consulted was the education of consumers. The easiest way of ensuring that unwanted bulk SMS are not received is to safeguard against giving out personal information to those that might use it as a marketing tool in an unwelcome manner. TRA intends to work with consumer bodies to promote awareness as to means to avoid unsolicited communications. Certain respondents suggested that TRA

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should encourage senders of bulk SMS also to promote awareness among consumers of how to avoid receiving such unsolicited communications. However, the diverse nature of those utilising SMS as a marketing tool means that there are difficulties with this approach. Instead, TRA proposes that licensed operators should be encouraged to publicise any means that they could make available to consumers to filter unwelcome SMS.

3.2.11 Having considered the responses received, TRA considers that the sending of unsolicited bulk SMS for marketing purposes should be regulated through a Code of Practice rather than a regulation issued under the Telecommunications Law. A number of respondents supported the implementation of a Code of Practice for the industry, which would be more flexible than a regulation.

3.2.12 However, senders of bulk SMS need not be based in Bahrain. Operators in particular expressed concern that any Code of Practice would not be binding on overseas marketing companies. Although it recognises the limitations that a Code of Practice would have, TRA considers that this is insufficient reason for it not to take such action as it can to protect consumers. TRA would also wish to explore further with operators the possibility that SMS originating from overseas that were deemed to be a nuisance could be blocked by recipients by means of a filter.

3.3 Consultation on the mechanism for implementation of the proposed solution

3.3.1 TRA therefore intends to publish a Code of Practice that obliges licensees to meet certain criteria when sending bulk SMS to consumers through their networks. As a minimum, such Code of Practice will include provisions requiring senders of bulk SMS to:

- (i) provide an “opt-out” option by which consumers would be able to choose not to receive further unsolicited communications from the relevant sender;
- (ii) provide a toll-free number for consumers wishing to contact the SMS sender to notify them that they wish not to receive further bulk SMS, the cost of which should be met by the bulk SMS sender; and
- (iii) refrain from sending bulk SMS during specified hours.

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3.3.2 TRA further notes that any opt-out system should be simple to implement by the consumer. Consumer preference is for a toll-free number to be provided with each communication, the cost of which should be met by the entity sending the message.

3.3.3 TRA notes that it only has jurisdiction over licensed telecommunications service providers. Rather than being licensed themselves, however, the majority of those who send bulk SMS for marketing purposes (or otherwise) purchase this service from a licensed operator. The SMS sender is then provided with a bulk SMS customer account from which to send messages. This avoids the necessity of obtaining a VAS license. Therefore, to be effective, TRA considers that the Code of Practice should require licensed operators who offer bulk SMS products to other licensed operators or individuals in Bahrain to ensure that the purchaser also comply with its provisions. As a result, responsibility for enforcing its terms and restricting the sending of bulk SMS would also fall on the licensed operator. This could be accomplished by either terminating the infringing SMS sender's customer account or by enabling the recipient to block any nuisance SMS.

3.3.4 TRA also invites views on the mechanism by which a Code of Practice would be enforced. TRA considers that there are two possible mechanisms that could be employed. Under both mechanisms, and in accordance with section 56 of the Telecommunications Law³, consumers would have to bring a complaint to the relevant operator that they were being subjected to nuisance bulk SMS first before lodging their complaint with the TRA.

- (i) TRA would investigate any complaint that a consumer was being subjected to nuisance bulk SMS. It would be for TRA to consider whether the provisions of the Code of Practice had been breached. If it determined that the Code of Practice had been breached, TRA would have the ability to issue the network operator used by the sender of such bulk SMS with a warning. If a sender of bulk SMS were deemed to habitually infringe the provisions of the Code of Practice, TRA would be forced to publish this breach and make it known to the public.

³ As promulgated by Legislative Decree no.48 of 2002.

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- (ii) TRA would appoint an independent officer whose responsibility would be to investigate any complaint. Such officer would subsequently make recommendations to TRA on a proposed solution and any costs that may be incurred in its implementation. However, as above, the responsibility for determining whether the Code of Practice had been infringed, and ultimately whether a sender of bulk SMS should be sanctioned, would remain with the TRA.

3.3.5 TRA is currently minded that the costs of the investigation into a complaint where an operator is found to be at fault for a breach of the Code of Practice would be covered by the operator in question. In all other instances TRA would absorb the costs incurred (either by it or by the appointed independent officer).

3.3.6 TRA has recently established consumer advisory groups for both residential customers and for business users. TRA intends to request the input of these groups on both the content of the Code of Practice and on the mechanism by which it would be enforced. TRA is also minded to seek the views of the consumer advisory groups on specific provisions of the Code of Practice once the second consultation is completed.

3.3.7 At present TRA considers that the protection of consumers from any nuisance that may be caused by the provision of bulk SMS would best be achieved through the mechanism of a Code of Practice. If there are repeated breaches of its provisions, however, TRA will review whether a Code of Practice is the most appropriate mechanism to protect consumers. In the event that TRA decides that the Code of Practice is not achieving its aims, it may decide to issue its provisions as a formal Regulation. TRA intends to review whether the Code of Practice is being satisfactorily observed each year on or immediately after the anniversary of its publication.

Consultation:

1) *Respondents are invited to comment on the following provisions of a Code of Practice that entities sending bulk SMS to consumers in Bahrain would be required to comply with:*

- **Cost:** *should there be an obligation on each sender of bulk SMS to provide a toll-free number, the cost of which could be met by the entity sending the message? In this context, should a distinction be drawn between solicited and*

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Consultation:

unsolicited SMS?

- **Frequency:** *Should a Code of Practice include a provision regarding the frequency with which bulk SMS may be sent? In this context, should a distinction be drawn between solicited and unsolicited SMS?*
 - **Time of day:** *Between which times of day would it be considered reasonable to receive bulk SMS? TRA is minded to restrict the sending of SMS to be between the hours of [09:00] and [20:00].*
- 2) *Respondents are invited to suggest any additional provisions that they consider should be included in a Code of Practice.*
- 3) *Respondents are invited to comment on whether corporate recipients of bulk SMS should have the same rights as individuals.*

Telemarketing and fax broadcasting

3.4 Proposed solution to be adopted

3.4.1 In light of the responses received to the consultation paper, TRA is minded to adopt a Code of Practice that would provide an option to opt out of receiving telemarketing material and unsolicited fax broadcasting.

3.4.2 In response to consumer representations similar to those received in relation to senders of bulk SMS, TRA is minded to introduce restrictions on the time of day that telemarketing and fax broadcasting may be sent.

3.4.3 TRA has already noted (at 3.3.3 above) that it only has jurisdiction over licensed telecommunications service providers. Therefore, if TRA were to implement an “opt-out” system as a Code of Practice it would only apply to telemarketing and fax broadcasting made by licensed operators to their subscribers. TRA hopes, however, that non-licensed users of telemarketing and

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fax broadcasting as marketing tools will voluntarily adopt the provisions of the Code as a set of 'best practice' guidelines.

3.5 Reasoning behind adoption of the proposed solution

3.5.1 In its initial consultation paper, TRA identified certain concerns that might arise from the use of telemarketing and fax broadcasting as unsolicited marketing tools. As with bulk SMS, the most immediate concern for consumers with both methods of communication (although more so with telemarketing than fax broadcasting) is invasion of privacy. In particular, telemarketing is susceptible to persistent misuse in a way that causes annoyance, inconvenience or anxiety to consumers. This is most liable to occur where a call centre uses automated dialling equipment to generate phone numbers for sales staff - if not enough human operators are available when the phone is answered, the equipment hangs up. On a repetitive basis this may give the impression that the recipient is the victim of a nuisance caller or worse.

3.5.2 In addition to concerns about privacy, as with bulk SMS, the compilation and use of databases of information about consumers by marketing companies gives rise to concerns as to the uses to which subscriber personal data is being put (as well as the safeguards in place concerning its transmission between third parties).

3.5.3 In its initial consultation, TRA suggested various possible solutions for regulating telemarketing and fax broadcasting. These included:

- (i) introducing measures that required telemarketing and fax broadcasting companies to provide consumers with either an "opt-in" or an "opt-out" requirement.
- (ii) introducing conditions addressing concerns such as times of day during which calls could be made or faxes sent and the frequency of such communications.
- (iii) introducing measures to ensure that the personal details of subscribers are not sold or otherwise provided to third parties for marketing or sales purposes.

3.5.4 As described in relation to bulk SMS, an "opt-out" system would not restrict businesses making unsolicited calls or sending faxes,

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provided that the recipient is given an initial opportunity to object to receiving such material and each subsequent communication affords the recipient the opportunity to opt out of receiving further communications in the future. Under an “opt-in” system, unsolicited calls and faxes for direct marketing purposes may only be sent to consumers who have given their prior consent to receiving such communications. The obligation to provide one or other of these options could be included in either a voluntary Code of Practice or a Regulation. With an “opt-out” system, as with bulk SMS, where a communication is unsolicited it appears fair and reasonable, in accordance with comments received, for either the caller or the fax broadcaster to provide a toll-free number by which the consumer could request not to receive future messages. In the case of telemarketing calls this could be achieved by the consumer requesting the caller to remove their details from its database.

3.5.5 Consumer respondents appeared most concerned about the time of day at which marketing companies could contact them. This would be of particular relevance and concern in the case of telemarketing, where a call received outside of normal business hours or late at night would be considered more intrusive than one received during the day. So-called ‘silent’ calls (those made with automated dialling equipment without a human salesperson picking up), especially, may be of concern when received after normal business hours. There may also be an issue with the frequency at which calls are made or faxes sent.

3.5.6 The protection of the privacy of the personal data of subscribers is considered in section 5 of this consultation.

3.6 Consultation on the mechanism for implementation of the proposed solution

3.6.1 Having considered the responses that it received to the initial consultation, TRA is minded to regulate the licensed operators’ use of telemarketing and fax broadcasting as unsolicited marketing tools through a Code of Practice. As a minimum, such Code will include provisions requiring those using telemarketing and fax broadcasting to provide:

- (i) an “opt-out” option by which consumers would be able to choose not to receive further unsolicited calls or faxes; and

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- (ii) a toll-free number for consumers wishing to contact the caller or fax sender to notify them that they wish not to receive further communications, the cost of which should be met by the entity sending the message.

In addition, there would be restrictions on the time of day that calls or faxes may be made or sent.

3.6.2 TRA also consults on the mechanism by which a Code of Practice would be enforced. As observed by certain respondents to the consultation, the majority of companies using these forms of advertising do not require licensing by the TRA. TRA has already noted that it only has jurisdiction over licensed telecommunications service providers. Therefore, if TRA were to implement an “opt-out” system as a Code of Practice it would act only as a set of voluntary ‘best practice’ guidelines for non-licensed users of telemarketing and fax broadcasting as marketing tools. TRA considers the fact that a Code of Practice would only be enforceable against licensed operators is not a sufficient reason for TRA not to take such action to protect consumers.

3.6.3 As with bulk SMS, TRA considers that there are two possible mechanisms that could be employed to monitor whether a telemarketer or fax broadcaster is failing to comply with the Code of Practice. Similar to the proposal for the regulation of bulk SMS, consumers would have to bring a complaint to the relevant operator that they were being subjected to nuisance telemarketing call or fax broadcast first before lodging their complaint with the TRA.

- (i) TRA would investigate complaints that a consumer was being subjected to nuisance calls or faxes. It would be for TRA to consider whether the provisions of the Code of Practice had been breached. If it determined that the Code of Practice had been breached, TRA would have the ability to issue the relevant licensed telecommunications service provider responsible for making telemarketing calls or sending faxes with a warning. If the licensed operator was deemed habitually to infringe the provisions of the Code of Practice, TRA would have the option of publishing this breach and make it known to the public.
- (ii) TRA would appoint an independent officer whose responsibility would be to investigate any complaint. Such

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officer would subsequently make recommendations to TRA on a proposed solution and any costs that may be incurred in its implementation. However, as with the proposal for the regulation of bulk SMS, the responsibility for determining whether the Code of Practice had been infringed, and ultimately whether the licensed operator should be sanctioned, would remain with the TRA.

3.6.4 As with bulk SMS, if there are repeated breaches of the provisions of any Code of Practice then TRA will need to review whether it is the most appropriate mechanism to protect consumers. In the event that TRA decides that a Code of Practice is not achieving its aims, it may decide to issue its provisions as a formal Regulation. TRA intends to review whether the Code of Practice is being satisfactorily observed each year on or immediately after the anniversary of its publication.

Consultation:

- 1) *Respondents are invited to comment on the following provisions of a Code of Practice designed to regulate the use of telemarketing and fax broadcasting as unsolicited marketing tools in Bahrain:*
 - **Frequency:** *Should a Code of Practice include a provision regarding the frequency with which calls or faxes may be made or sent by the same entity to the same consumer during a period of 12 months?*
 - **Time of day:** *Between which times of day would it be considered reasonable to receive calls or faxes? TRA is minded to restrict such communications to between the hours of [09:00] and [20:00].*
 - **Silent calls:** *Should there be a provision to restrict the total number of 'silent' calls that an entity may make as a percentage of the overall number of calls made?*
- 2) *Respondents are invited to suggest any additional provisions that they consider should be included in a Code of Practice.*
- 3) *Respondents are invited to comment on whether corporate recipients of calls and/or faxes should have the same rights as individuals.*

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Bulk email

3.7 Proposed solution to be adopted

3.7.1 After reviewing the responses to its initial consultation, TRA agrees with the majority of respondents that the best way to address the problem of unsolicited bulk email is through filtering rather than some form of regulation. TRA considers that any measures taken to filter emails would be best determined by individual consumers. There are a number of suitable filters and firewalls easily available at a consumer level for those who wish not to receive bulk emails.

3.7.2 TRA considers that the difficulty of agreeing the technical specifications of any mandatory requirement on operators or ISPs to filter bulk emails would make such a system unworkable. Therefore, the nature of the filter system that operators or ISPs offer to their subscribers will remain a matter of competitive choice.

3.8 Reasoning behind adoption of the proposed solution

3.8.1 In its initial consultation paper, TRA identified certain concerns that might arise from the use of bulk email as a marketing tool. The four main concerns arising from this form of promotional activity are as follows:

- (i) Intrusion upon individual privacy.
- (ii) Identifying and deleting unwanted messages places a burden on an individual's time. This may impact on the usefulness and effectiveness of email for consumers.
- (iii) Although sending bulk email is cheap for the marketer, it inappropriately displaces costs onto individuals in the form of connection time and onto Internet Service Providers ("ISPs") in terms of bandwidth costs and server and disk storage space. Bulk emails particularly impact smaller ISPs as bandwidth costs are among one of the main elements of their budget.
- (iv) Bulk emails are often the initial means for criminals, such as operators of fraudulent schemes, to contact and solicit prospective victims for money, or to commit identity theft by

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deceiving them into sharing bank and financial account information.

3.8.2 TRA recognises that these concerns do not apply equally to all forms of email marketing. Indeed, email can act as a valuable marketing tool for businesses of all sizes and can also be desirable from a consumer perspective in terms of being kept informed of goods and services, or promotions, that they may be interested in purchasing. The consultation, however, addressed the process of sending large quantities of unsolicited emails, also known as 'junk' emails or 'spam'.

3.8.3 In the initial consultation, TRA suggested various forms of regulation that could be put in place to safeguard consumers against the detrimental effects of such unsolicited bulk emails.

- (i) The introduction of a Code of Practice setting out an obligation on senders of bulk emails to provide consumers with either an "opt-in" or an "opt-out" requirement. Any email which did not have a valid 'reply-to' address or disguised or concealed the identity of the sender would be prohibited.
- (ii) Imposing conditions on ISPs either in the license or through a Code of Practice to provide bulk email filters on their email servers as an additional service to subscribers who do not wish to receive bulk emails.
- (iii) Education of consumers as to means to avoid or limit bulk emails as well as to the dangers that such unsolicited emails pose with regard to potentially fraudulent or other criminal activities.
- (iv) Introducing measures to ensure that the personal details of subscribers are not sold or otherwise provided to third parties for marketing or sales purposes.

3.8.4 As discussed above in relation to bulk SMS, telemarketing and fax broadcasting, one way to enable consumers to control whether to receive marketing emails is to implement either an "opt-in" or an "opt-out" system. The difficulty with implementing either system in Bahrain is the fact that bulk emails are usually sent by third parties other than licensed telecommunications services providers and often originate from outside of Bahrain. As such, a significant proportion of senders of bulk emails falls outside the

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jurisdiction of the TRA, limiting the effective action that TRA can take. Therefore, if TRA were to implement either system as part of a Code of Practice, for non-licensed email senders it would only act as a set of voluntary 'best practice' guidelines. Were TRA to wish to enforce its terms and restrict the sending of bulk emails by those in habitual breach, it would have to rely on the licensed ISPs to terminate the infringing sender's account. However, this sanction would not be available if the origin of the emails was outside Bahrain.

3.8.5 An "opt-out" system could, however, be imposed on ISPs either in the license or through a Code of Practice to give subscribers the option of not receiving bulk email sent by the ISP itself or where the ISP provides an email advertising service which allows commercial entities to send emails that advertise their products and service to email subscribers of the ISP.

3.8.6 The second option consulted on was the imposition of conditions on ISPs, either in the license or through a Code of Practice, that would oblige them to place bulk email filters (also known as spam filters) on their email servers. Several of the respondents to the consultation noted, however, that filters were already offered by the ISPs to their subscribers that allowed the individual consumer to decide whether or not to receive bulk emails. If such a service were not offered by the licensed ISPs, it is readily available in the form of off-the-shelf firewall software offering virus guards and spam filtering for consumers to customize the level of protection according to their specific needs. For bulk emails, this could be by reference to certain words, specific email addresses or based on the number of recipients. The advantage of the consumer being responsible for protection against unwanted bulk emails is that it allows consumers to make the subjective choice as to what constitutes an unwanted email.

3.8.7 TRA agrees that filtering bulk emails is an area in which consumer choice would seem to play a more effective role in determining the appropriate form of protection than imposing regulation on individual operators and ISPs. In addition, TRA considers that the difficulty of agreeing the technical specifications of any mandatory requirement on operators or ISPs to filter bulk emails would make such a system unworkable (and likely to be too unresponsive to technical innovation to remain relevant). Therefore, TRA considers that the nature of the filter system that operators or ISPs offer to their subscribers should remain a matter of competitive choice.

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3.8.8 The final option consulted on was of raising awareness among consumers on how to avoid bulk emails, for example, by using the options already present as part of their email account with an ISP or by taking simple preventative measures such as only giving out personal information to third parties that they trust not to misuse such information. As a result of the positive responses received to this suggestion, TRA is minded to encourage the individual operators and ISPs to raise awareness among their subscribers as to methods by which consumers can limit the number of unwanted bulk emails, including by actively educating their subscribers on the features that they provide.

3.8.9 The protection of the privacy of the personal data of subscribers is considered in section 5 of this consultation.

3.9 Consultation on the mechanism for implementation of the proposed solution

3.9.1 Having considered the responses received, TRA considers that the most efficient method of protecting consumers against any of the risks arising from the use of bulk email as a marketing tool is to promote the use of filters and firewalls, either as provided by ISPs or as commercially available software. Hence, no further action to block bulk email is required at the current stage.

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4. THE PROCEDURE FOR DISCONNECTING TELECOMMUNICATIONS SUBSCRIBERS FOR NON-PAYMENT

4.1 Proposed solution to be adopted

4.1.1 In light of the responses received to the initial consultation, TRA considers that consumers may not currently be adequately protected by the disconnection policies and procedures of telecommunications operators in Bahrain. There is also a lack of awareness on the part of consumers as to the minimum levels of contractual protection that they should expect to receive. As a result, TRA considers that industry and consumers should work together to develop a Code of Practice to be adopted by all telecommunications operators.

4.1.2 The Code will constitute the minimum acceptable standards that telecommunications operators should have to meet if they are to afford adequate consumer protection in relation to the disconnection of their subscribers for non-payment. Operators will be otherwise free to develop their terms and conditions in line with their individual business strategies.

4.1.3 TRA intends to monitor compliance with this Code. After an initial period of one year, if it considers that some or all of the relevant telecommunications operators are failing to comply with the Code, TRA will review whether it may be appropriate to formalise arrangements by means of a Regulation. A Regulation would make compliance with the provisions of the Code mandatory and would also empower TRA to take action against those operators who were persistently failing to comply with its provisions.

4.2 Reasoning behind adoption of the proposed solution

4.2.1 Based on the responses received, TRA considers that certain aspects of the telecommunications operators' current practice do not serve the best interests of consumers. It is clear from the responses that TRA has received to its initial consultation that consumers consider that there should be certain minimum standards which should be observed by all operators. Among others, concerns were raised over the following issues.

- (i) It was of significant concern to consumers that they should be comprehensively and clearly (in simple language) informed at the outset as to the conditions upon which their service could be disconnected by the operator. TRA

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considers that the obligation to do so should be fundamental to any Code.

- (ii) All operators should issue written notifications and contact subscribers in person before disconnecting their service. It was noted by certain respondents to the consultation that some operators may rely on automated disconnection procedures, such as contacting subscribers by SMS.
- (iii) There should be a guaranteed minimum period before any service is disconnected and a minimum number of notifications.
- (iv) Subscribers were concerned that they should be given sufficient time to pay any debt owed before being disconnected. TRA considers that thought should be given to developing a system of repayment planning to allow subscribers in financial difficulties to pay any outstanding debt over an agreed minimum period.
- (v) Disconnection should go through stages (for example, disconnecting the outgoing calls and, after a certain period of time, disconnecting the incoming calls) while access to emergency call numbers should always be available.
- (vi) Certain operators permit outstanding mobile service debts to be transferred either onto another mobile account or even transferred onto a fixed-line account. TRA considers that, in line with jurisdictions such as the UK and Australia, a licensee whom TRA has determined to hold significant market power should treat stand-alone services separately. In particular, the entitlement to a fixed-line service should not be jeopardised by failure to comply with the terms of a mobile service contract.
- (vii) Temporarily out of service and disconnected lines do not always have comprehensive (or even limited) access to emergency numbers. TRA considers that there is a clear public interest in ensuring that comprehensive access to emergency services should be guaranteed at all times.

4.2.2 As a result of the response from the Saudi-Bahraini Institute for the Blind, TRA also wishes to make it mandatory that operators should offer to provide any communication, including bills, either in Braille for the blind or in large print for visually impaired people. However, in the interest of not over-burdening smaller providers this obligation will only be mandatory for those with at

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least 5,000 subscribers. If possible, operators should use reasonable endeavours to contact those subscribers identified as blind or visually impaired in person before disconnecting their service.

4.2.3 There was a very limited response to the consultation on whether consumers should be entitled to compensation in the event that their line is disconnected in error. TRA is not minded to pursue this issue further and intends to leave it to the discretion of the individual operator. As such it will act as a distinguishing feature of their service should operators decide to provide compensation.

4.2.4 Despite some respondents requesting that it regulate disconnection procedures, TRA considers that it would be to the benefit of operators, consumers and the industry in general were a voluntary Code to be established and proven to work.

4.3 Mechanism for implementation of the proposed solution

4.3.1 TRA intends to sponsor a joint industry and consumer working group to recommend the minimum guidelines that should be implemented as a voluntary Code of Practice for all operators to sign up to. The group would comprise four representatives from among the licensed operators, two representatives from the consumer advisory group and two representatives from the business users' advisory group. It will be for the operators to agree which of them will represent the industry.

4.3.2 TRA anticipates that it will be necessary for it to participate in discussions with the working group regarding the possible detailed content of such Code of Practice. To this end, TRA proposes appointing an independent person with a background in law and consumer protection to chair the group. As chairman, their remit would be to resolve any issues of disagreement between the consumer representatives and the operators. Any unresolved issues would be presented to TRA by the independent chairman for determination, along with any comments that he/she may have regarding such issues. In this context, TRA would seek to draw on international best practice for guidance.

4.3.3 The draft Code of Practice developed by the working group will be submitted to the TRA. Once the group submits its recommendation, TRA will publish the draft Code of Practice on its website for comment before issuing it in its final form.

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4.3.4 As a minimum, TRA considers that the Code of Practice should contain provisions that oblige licensed operators to provide subscribers of their services with the following information:

- (i) A statement as to how often subscribers can expect to be billed for the service that they are receiving.
- (ii) A description of what their phone bill will show (for example, rental charges, cost of calls, engineering and connection charges).
- (iii) An option for visually impaired customers to receive communications in either Braille or large print if the relevant operator has a specified number of subscribers.
- (iv) A description of the circumstances in which the operator will be able to disconnect a subscriber, such as a failure to pay an overdue amount or a regular failure to pay bills when they fall due.
- (v) A description of the actions that the operator will take if it does not receive payment by the date shown on the bill. These actions should, as a minimum, include an obligation to contact the customer a certain number of times before finally disconnecting the service (the exact frequency will be left for the group to decide). The operator will be obliged to specify the means by which such notification will be given – either in writing, by telephone or by SMS.
- (vi) Notice of whether there will be any late payment charges on the total bill.
- (vii) Publication of the disconnection policies in printed materials to increase transparency and awareness among consumers.
- (viii) A description of any stages that will have to be gone through before the service is finally disconnected. It will be for the group to decide how many stages there should be, and what will happen at each stage, but TRA suggests that these could include an initial block on making outgoing calls (except for calls to emergency numbers, which should be freely accessible at all times until the line is finally disconnected).
- (ix) Notice of the reasons as to why a subscriber's phone service is being restricted or disconnected. Again, the operator will

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be obliged to specify the means by which such notification will be given – either in writing, by telephone or by SMS.

- (x) Notice of whether a charge will be made for reconnecting to a full service, if a subscriber has outgoing calls blocked, or for reconnecting the line, if a subscriber is disconnected for non-payment of a bill. A list of any such charges should be published by the operator on their website.

4.3.5 TRA also considers that the Code of Practice developed by the working group would benefit from a general “good faith” provision that obliged operators to ensure that subscribers have sufficient time and support to pay any debt owed before being disconnected. The TRA’s concern is to ensure that subscribers in financial difficulties are able to take advantage of a solution such as a system of repayment planning rather than automatically forfeiting their telephone service.

Consultation:

- 1) *Respondents are invited to comment on the following provisions of a Code of Practice designed to impose minimum requirements of disconnection policies:*
 - a) *Method: How should operators inform consumers about payments that are due (e.g. phone calls, written notices, etc.)?*
 - b) *Frequency: How many reminders should operators send to consumers before the service is disconnected? And what is the grace period between each reminder?*
 - c) *How will the disconnection procedure take place? Should it go through a number of stages by which the service is increasingly limited?*
- 2) *Respondents are invited to comment on whether there are other aspects that need to be covered by the Code of Practice.*

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5. THE PROCESSING OF PERSONAL DATA AND THE PROTECTION OF PRIVACY

5.1 Separate consultation to be conducted

5.1.1 TRA described in the section of its initial consultation relating to the provision of bulk SMS, telemarketing, fax broadcasting and bulk email how the future development of Bahrain's telecommunications network will allow for the greater use of such technologies for marketing purposes. In turn, this gives rise to questions regarding the privacy of consumers and the protection of any personal data that consumers may provide to licensees as a result of subscribing to their services. As well as the need to ensure that licensees take appropriate technical and organisational measures to safeguard the security of any personal data that they hold, an issue arises regarding the possible transfer of personal data either to another telecommunications licensee or to third parties for commercial purposes (or otherwise).

5.1.2 As described in detail in the "Report summarising responses to the Consumer Protection Related Consultation", published on the TRA's website in conjunction with this consultation, a general concern was expressed by respondents that subscribers should have confidence that any data they provided to a licensed operator or service provider was kept confidential. The majority of respondents considered that, for each of these forms of communication, measures should be taken to control the use of subscriber data and its provision to third parties.

5.1.3 The TRA's opinion is that the concerns raised by respondents that data relating to subscribers should be kept in confidence and not on-sold by licensed operators without permission are of such a degree of complexity that they could not adequately be addressed as part of the current consultation process on consumer protection. TRA therefore intends to issue a separate consultation paper concerning the processing of personal data and the protection of privacy in communications. The consultation paper will address the following main points:

- (i) The appropriate technical and organisational measures that licensees who provide a telecommunications service should be obliged to take to ensure that the security of their services is safeguarded.

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- (ii) The appropriate technical and organisational measures that licensees should be obliged to take to prevent unauthorised access to communications in order to protect their confidentiality, including both the content of, and any data related to, such communications.
- (iii) The appropriate technical and organisational measures that licensees should be required to take against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. In relation to this point, TRA intends to consult on the extent to which subscribers should be kept informed of the purpose for which any personal data held by a licensee is being processed.
- (iv) The reasons for which personal data may be retained by a licensee and the duration for which such data may be retained.
- (v) The extent to which personal data may be used for commercial or other purposes. In this context, TRA intends to consult on whether, or in what circumstances, personal data may be made available to other licensed operators or third parties.
- (vi) The rights that subscribers should have to enable them to determine which of their personal data are being held, the content of those data and the purposes for which such data are being processed.
- (vii) The supervisory powers and rights of enforcement that TRA has to ensure that licensees comply with any obligations regarding the processing of personal data and the protection of privacy in communications.

5.1.4 TRA requests that comments on the above points are not submitted at this stage unless they are relevant to the issues in sections 2 to 4 above.