



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority
Kingdom of Bahrain - مملكة البحرين

Article 35 (Draft) Order No. 1 of 2017

Bahrain Broadband's breach of its obligations under Articles 18(a)(1), 18(a)(2), 18(a)(3), 53, 55 and 78 of the Telecommunications Law, Articles 2 and 4 of the Internet Safety Regulation, Article 4(1) of the Lawful Access Regulation and of its License Terms

- 1 For the reasons set out in the reasoning of this Order, the Telecommunications Regulatory Authority (the "**Authority**") considers that Bahrain Broadband Co. W.L.L. ("**Bahrain Broadband**") has:
 - 1.1 failed to comply with Articles 2 and 4 of the Internet Safety Regulation, Article 4(1) of the Lawful Access Regulation and Article 78 of the Telecommunications Law;
 - 1.2 failed to comply with its duty to pay its Spectrum License Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees in breach of the obligations imposed upon it by Articles 18(a)(1), 18(a)(2) and 18(a)(3) of the Law, Article 11 of its Value Added Services License (its "**VAS License**"), Article 13 of its Internet Services Provider Class License (its "**ISP License**"), Article 26 of its Individual National Fixed Services License (its "**NFL License**") and Article 17 of its Individual International Telecommunications Services License (its "**ISL License**"); and under Article 11 of its Frequency License¹;
 - 1.3 failed to provide to the Authority the information in the detail it requested pursuant to an Article 53 Request for Information dated 7 March 2017 (the "**Article 53 Request**") and numerous extensions to the Article 53 Request dated 11 April 2017, 24 April 2017 and 11 June 2017 (the "**Extensions**") in breach of Article 53 of the Telecommunications Law and Article 10 of its Value Added Services License (its "**VAS License**"), Article 12 of its Internet Services Provider Class License (its "**ISP License**"), Article 25 of its

¹ In part as recorded in Articles 4.2 and 4.3 of Resolution No. 3 of 2010 (Telecommunication Regulatory Authority's Schedule of Fees) (the "**Schedule of Fees**").



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Individual National Fixed Services License (its “NFL License”) and Article 16 of its Individual International Telecommunications Services License (its “ISL License”); and

1.4 failed to publish its Code of Practice for dealing with complaints by subscribers in the provision of telecommunications services in breach of Article 55 of the Telecommunications Law and Article 5.1 and 5.2 of its ISP License, Article 5.1 and 5.2 of VAS License, Article 9.1 and 9.2 of its NFL License and Article 7.1 and 7.2 of its ISL License.

2 Therefore Bahrain Broadband is ordered to:

2.1 Within 7 calendar days from the date of this Order provide the Authority with evidence that its ISP System is now ready to be migrated to the Unified Technical Solution Software and linked with the Central Management System as requested by the Authority in its letter dated 18 August 2016;

2.2 Within 7 calendar days from the date of this Order pay all of the outstanding Spectrum License Fees, Fixed Link License Fees, Annual Licence Fees and Numbering Fees owing to the Authority in the sum of BD 152,707.431;

2.3 Within 7 calendar days from the date of this Order provide the complete and detailed information requested by the Authority in the Article 53 Request; and

2.4 Within 7 calendar days issue its Code of Practice for handling of customer complaints.

3 Fines

3.1 Bahrain Broadband is also ordered to pay a fine of BD 232,000 within 7 calendar days from the date of this Order.

3.2 In the event that Bahrain Broadband fails to comply with any of the requirements of Article 2 of this Order, then Bahrain Broadband shall be liable to a daily penalty of BD 1,000 for each day of delay or part thereof.

3.3 Bahrain Broadband shall pay the fines set out in Article 3 of this Order in the form of a certified cheque from one of the accredited local banks addressed to the Authority.



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4 Compliance

- 4.1 In terms of Article 35(d)(3), failure by Bahrain Broadband to abide by the Order (including the payment of the fine) may lead to the revocation of Bahrain Broadband's Telecommunications Licenses including, for the avoidance of doubt, Bahrain Broadband's (i) VAS License; (ii) ISP License; (iii) NFL License; and (iv) ISL License.

Mohamed Hamad Bubashait

General Director

For and on behalf of the Telecommunications Regulatory Authority

13 July 2017



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REASONING

I Relevant Legal Provisions

5 Article 3(c)(2) of the Telecommunications Law empowers the Authority to monitor and ensure compliance with the provisions of the Telecommunications Law (the “**Law**”).

6 Article 3(c)(4) of the Law empowers the Authority to monitor and enforce compliance with License terms and conditions by Licensees.

7 Pursuant to Article 2 of the Internet Safety Regulation Resolution No. (12) of 2016 (the “**ISR**” or the “**IS Regulation**”) ISPs are required to:

“Implement, operate and maintain the ISP System as part of the Unified Technical Solution selected and enforced by the Authority, in accordance with the terms of this Regulation.”

8 Under Article 4 of the ISR, all ISPs are required to ensure that:

“1- it complies with the obligations of Article (2) of this Regulation.

2- the ISP System is continuously connected to the Central Management System.

3- the ISP System is capable of acting as part of the Unified Technical Solution.

...

6- provide the Authority with all information that it may require to effect the implementation of the objectives of this Regulation within the time limits required by the Authority from time to time.

7- it liaise solely with the Authority in relation to all matters relevant to the outcomes and objectives of this Regulation unless otherwise directed by the Authority.”



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9 Pursuant to Article 78 of the Law:

“Every Licensed Operator shall undertake to provide, at its own expense, all technical resources, including Telecommunications Equipment, systems and programs relating to the Telecommunications Network that it is licensed to operate and which allow security organs to have access to the network for fulfilling the requirements of national security, provided that the provision of the service shall continue whilst the required technical resources are provided, giving regard to technical development and in accordance with the provisions of the regulations and decisions issued by the Authority.”

10 Pursuant to Article 4(1) of the Lawful Access Regulation (the “LAR”) it is a fixed obligation that:

“Every Licensee shall implement Lawful Access.”

11 Pursuant to Article 3(c)(6) of the Law the Authority is empowered to:

“set and collect application, initial, annual and renewal fees for Licenses...”

12 Pursuant to Articles 18(a)(1), 18(a)(2) and 18(a)(3) of the Law:

“Funding of the operations of the Authority shall be derived from the following sources:

(1) application, initial and renewal fees charged for Licences.

(2) revenue of annual Licences’ (sic) fees based in the case of an Individual Licence on the gross annual turnover of the Licensee resulting from this Licence, provided that such fees shall not exceed one percent (1%) of such gross annual turnover. Fees for a Class Licence are to be specified in accordance with the conditions provided for in such Licences, or by virtue of a resolution issued by the Authority if such fees are not specified in the Licence.

(3) fees charged by the Authority for any services it provides...”



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13 Pursuant to Article 55 of the Law:

“(a) Each Licensee shall establish procedures for dealing with complaints by Subscribers in relation to the operation of a Telecommunications Network or provision of Telecommunications services.

“(b) The Licensee shall publish the procedures indicated in the regulation referred to in the preceding paragraph in such a manner as the Authority shall prescribe and shall provide a description of those procedures, free of charge, to any Person on request.”

14 Pursuant to Article 53(a) of the Telecommunications Law the Authority has the power to make information requests of Licensed Operators. In particular Article 53(a) states that:

“Licensed Operators shall provide the Authority upon its request with all such information... as is needed to enable the Authority to carry out its duties and exercise its powers as provided for in this Law... The Licensee shall furnish such information to the Authority without delay at such time and in such details as the Authority may specify...”

15 In addition Bahrain Broadband has been granted the following Licenses (the “**Licenses**”) by the Authority which are of relevance to the Authority’s legal analysis of the factual background set out below:

- (a) VAS License;
- (b) ISP License;
- (c) NFL License;
- (d) ISL License; and
- (e) Frequency License.

II Factual Background to Bahrain Broadband’s breaches of the ISR

16 On 2 August 2016 the ISR was promulgated by way of Resolution No. (12) of 2016. All ISPs are required to comply with the provisions of, and their obligations under, the ISR.



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These include implementing, operating and maintaining the ISP System as part of the Unified Technical Solution (as more fully described below).

- 17 Prior to the official promulgation of the ISR, Netsweeperⁱⁱ as representative of the Authority met with Bahrain Broadband to discuss the requirements of the ISR and the Unified Technical Solution. Netsweeper emailed Bahrain Broadband (with members of the Authority cc'd) on 14 April 2016 to request details of Bahrain Broadband's network (including cache solution, if any) diagram.
- 18 After receiving no response from Bahrain Broadband, Netsweeper followed up on its requests by email on 8 May 2016.
- 19 On 10 May 2016, the Authority officially notified Bahrain Broadband of its prospective obligations under the ISR in order to allow Bahrain Broadband to prepare for transfer to the Unified Technical Solution Software and connection to the Central Management System (the "**Notification**").
- 20 The Notification stated that:
- "As you may be aware, compliance with the implementation of the new solution... is required as per the Internet Safety Regulation, which is expected to be published by the LLOC towards the end of the coming week... Licensees will need to procure the required hardware at the earliest opportunity to avoid any risk of non-compliance."*
- 21 On 1 June 2016 the Authority forwarded Netsweeper's 8 May 2016 email to Bahrain Broadband noting that it had "*showed no effort in migrating to the new system*". The Authority added:
- "It has been communicated several times that the solution will need specific hardware to run on, the vendor requested specific information on Thursday 14th of April 2016 and no reply from Bahrain Broadband was received."*

ⁱⁱ Netsweeper is the Unified Solution Software Provider selected by the Authority as per the terms of the ISR.



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The Authority also stated in this email that it would (if necessary) apply the relevant penalties available to it for non-compliance.

22 On the same date, Bahrain Broadband responded and confirmed that it had “a *Linux Firewall*” and asked the Authority to provide it with a list of websites that needed blocking.

23 The Authority responded on 1 June 2016, confirming the requirements of the ISR:

“All ISPs are obliged to implement, operate and maintain a Unified Technical Solution... This has been communicated to you several times and discussed during our meeting in March.

Failure to comply with the Laws and Regulations will be considered as a severe breach of the Telecommunications Law as well as your Licenses.”

24 Bahrain Broadband provided the Authority with details of its network system on 2 June 2016 and Netsweeper responded with hardware requirements and queries regarding the existence of any web cache solution on the same date (“**Netsweeper’s Email**”).

25 On 6 June 2016 the Authority forwarded Netsweeper’s Email to Bahrain Broadband and requested it to action the content of Netsweeper’s Email and to revert to the Authority.

26 On 2 August 2016 the ISR was promulgated by the Authority.

27 Having received no response from Bahrain Broadband in the interim, the Authority formally warned Bahrain Broadband of its ongoing breaches of the requirements of the ISR on 18 August 2016 (the “**Formal Warning**”).

28 The Formal Warning informed Bahrain Broadband that it is:

“...in breach of the Telecommunications Law and the Regulation.”

Bahrain Broadband provided no meaningful response to the Formal Warning.



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- 29 Following the issuance of the Formal Warning there were a number of further emails between Bahrain Broadband and the Authority.
- 30 The Authority once again sent Netsweeper's Email to Bahrain Broadband on 28 September 2016 noting that the content of that correspondence provided Bahrain Broadband with "*a clear way forward on how to proceed with the implementation*" of the ISR.
- 31 On 2 October 2016 Bahrain Broadband responded to the Authority confirming that it had conformed to the hardware requirements and it had informed Netsweeper that it was not using a caching solution. Bahrain Broadband asked the Authority what the next steps were and whether it should request a quote from Netsweeper.
- 32 The Authority responded on 3 October 2016 and informed Bahrain Broadband that it needed to purchase the relevant hardware from a third party vendor and to "*...verify the BoC with [Netsweeper]... in order to comply with the Regulation and avoid non-compliance*" (the "**Final Email**").
- 33 Bahrain Broadband has failed to respond to the Final Email and has provided the Authority with no information at all regarding any substantive steps it has taken to comply with its obligations under the ISR.
- 34 Further, the failure by Bahrain Broadband to ensure that its ISP System (as defined in Article 4 of the ISR) is continuously connected to the Central Management System in turn implies that it is unable to prevent its users or Subscribers from accessing Websites recorded in the Prohibited Material List and/or to comply with all Website Compliance Requests issued by the Authority pursuant to the ISR.

Factual Background to Bahrain Broadband' refusal to pay its Spectrum Licence Fees, its Fixed Link Frequency License Fees, its Annual Licence Fees and its Numbering Fees

Spectrum License Fees



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- 35 On 21 January 2016, the Authority wrote to Bahrain Broadband attaching invoice number SPC/2016/01/00001 in the sum of BD 65,070.000 in respect of Spectrum License Fees. The 21 January 2016 letter sent by the Authority required Bahrain Broadband to notify the Authority of any discrepancy with regards to the invoice by no later than 8 February 2016 if it wished to dispute the invoice.
- 36 Having received no reply from Bahrain Broadband, the Authority sent a reminder in relation to the outstanding Spectrum License Fees on 29 June 2016 and requested full payment of these feesⁱⁱⁱ by 14 July 2016.
- 37 The Authority emailed Bahrain Broadband on 31 August 2016 confirming that the 14 July 2016 had passed yet no payment of the outstanding Spectrum License Fees had been received. No response was received from Bahrain Broadband.
- 38 On 19 January 2017, the Authority issued invoice number SPC/2017/01/0001 in the sum of BD 65,070.000 to Bahrain Broadband. The due date on this invoice was 9 February 2017. The amounts due under this invoice remain outstanding.
- 39 The total outstanding amount due by Bahrain Broadband in respect of spectrum licence fees amounts to BD 130,140.000.

Fixed Link Frequency License Fees

- 40 On 21 January 2016, the Authority wrote to Bahrain Broadband attaching invoice number FRQ/2016/01/00003 in the sum of BD 9,030.000 in respect of Fixed Link Frequency License Fees. The 21 January 2016 letter in respect of the "Renewal of Fixed Links & Confirmation of Frequency Database" required that Bahrain Broadband notify the Authority of any discrepancy with regards to the invoice by no later than 8 February 2016 if it wished to dispute the invoice.

ⁱⁱⁱ The letter of 29 June 2016 refers to both the outstanding Spectrum Licence Fees and Fixed Link License Fees for 2016 (Invoices SPC/2016/01/00001 and FRQ/2016/01/00003 respectively).



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- 41 Having received no reply from Bahrain Broadband, the Authority sent numerous reminders in relation to the outstanding Fixed Link Frequency License Fees, including the letter of 29 June 2016 which requested payment be made by 14 July 2016.
- 42 The Authority emailed Bahrain Broadband on 31 August 2016 confirming that the 14 July 2016 deadline had passed yet no payment of the outstanding Fixed Link Frequency License Fees had been received. No response was received from Bahrain Broadband.
- 43 On 19 January 2017, the Authority issued invoice number FRQ/2017/01/0007 in the sum of BD 9,030.000 to Bahrain Broadband. The due date on this invoice was 9 February 2017. The amounts due under this invoice remains outstanding.
- 44 The total outstanding amount due by Bahrain Broadband in respect of fixed link frequency licence fees amounts to BD 18,060.000.

Numbering Fees

- 45 The Authority notes that in addition to the sums referred to above, Bahrain Broadband has also failed to pay Numbering Fees for Q3 of 2016 (NUM/2016/07/00002), Q4 of 2016 (NUM/2016/10/00002) and Q1 of 2017 (NUM/2017/01/00011) resulting in an outstanding sum of BD 1,499.913.
- 46 The Authority provided Bahrain Broadband with the Q4-2016 invoice in the sum of BD 499.975 on 13 October 2016 by email. The email specified that payment was due "before 13 November 2016".
- 47 On 25 December 2016, the Authority followed up on a telephone call with Fawaz from Bahrain Broadband reminding it that the invoice remained outstanding. As no response was received, the Authority again reminded Bahrain Broadband of the outstanding fees by email dated 26 December 2016.
- 48 George El Aily responded on 27 December 2016 and confirmed that "action will be taken...to remedy the situation". This notwithstanding, no payment has been received to date.



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- 49 In respect of the Q1-2017 invoice in the sum of BD 499.975, the Authority issued this to Bahrain Broadband by email dated 25 January 2017. The email specified that payment was due *"before 16 February 2017"*.
- 50 On 30 April 2017, the Authority issued invoice for Q2-2017 bearing invoice number NUM/2017/04/00008 amounting to BD 499.975 – the amount remains outstanding as the due date specified in the invoice was 24 May 2017.
- 51 Payment has not been received and the amount remains outstanding. There has not been any correspondence from Bahrain Broadband on this issue.
- 52 The total outstanding amount due by Bahrain Broadband in respect of numbering fees amounts to BD 1,999.888.

Annual License Fees

- 53 On 31 May 2017, the Authority issued a letter along with the Annual License Fee invoice for the year 2017 (inclusive of 40% uplift, in line with the Revenue Reporting Regulation) amounting to BD 2,508.061, the due date for payment was mentioned as 22 June 2017. The amount remains outstanding.
- 54 The total outstanding amount due by Bahrain Broadband in respect of annual licence fee amounts to BD 2,508.061.

Total Outstanding Fees

- 55 The total outstanding Spectrum License Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees owed by Bahrain Broadband at the time of this Order are BD 152,707.431.

Factual Background to Bahrain Broadband's Breach of Article 53 of the Law

- 56 On 7 March 2017 the Authority circulated to all Licensees the Article 53 Request related to telecommunications market data. The Article 53 Request set out, in detail, the information requested by the Authority and the reasons for the request.



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- 57 The Article 53 Request required Licensees to complete a questionnaire in order that the Authority could collect relevant data to ascertain the state of the communications market in the Kingdom. The Article 53 Request required Licensees to respond by 4pm on 9 April 2017.
- 58 On 11 April 2017 the Authority sent an e-mail reminder to those Licensees that had failed to provide the market information requested in the Article 53 Request (the “**First Reminder**”). The First Reminder gave all Licensees, including Bahrain Broadband, a deadline of 13 April 2017 to provide the requested responses.
- 59 On 24 April 2017 the Authority spoke with Mr. Fawaz Saleem, Bahrain Broadband’s Technical Manager. Following this conversation the Authority sent an e-mail to Mr. Fawaz attaching a further copy of the Article 53 Request and confirming that Bahrain Broadband’s response was due “*no later than Thursday 27/4/2017*”.
- 60 Bahrain Broadband failed to meet this extended deadline.
- 61 On 11 June 2017 the Authority formally wrote to Bahrain Broadband (Ref: MCD/06/17/056) noting its failure to satisfy the Article 53 Request and requiring that such was replied to by 14 June 2017. The 11 June 2017 letter was clear that should the Article 53 Request remain unsatisfied by that deadline that “*the Authority will be left with no option other than to institute proceedings under Article 35 of the Telecommunications Law...*”
- 62 Bahrain Broadband failed to comply with the Article 53 Request by the 14 June 2017 deadline.

Factual Background to Bahrain Broadband’s breach of Article 55 of the Law

- 63 On 1 June 2015, the Authority issued the determination paper regarding the Consumer Complaints Code (the “**Determination Paper**”). The Determination Paper set out, in detail, the Authority’s request for a Code of Practice to be submitted to the Authority for its approval.



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- 64 The Determination Paper required Bahrain Broadband to provide its Code of Practice “no later than three (3) calendar months from the date of the publication” of the Determination Paper and Consumer Complaints Code.
- 65 The date of publication of the Determination Paper was 1 June 2015. The deadline for the provision of the Code of Practice was therefore on or before 1 September 2015.
- 66 On 28 July 2016 the Authority wrote to Bahrain Broadband reminding it of its obligations under Article 55 of the Law (as set out in paragraph 12 above).
- 67 The Authority outlined to Bahrain Broadband that it was required by its Licenses and the Law to “publish a code of practice for subscribers’ affairs”.
- 68 Bahrain Broadband has failed to provide a Code of Practice or to respond to the Authority’s letter.
- 69 To date Bahrain Broadband has failed to provide the Authority with its Code of Practice, nor has it replied substantively to the Authority in any way whatsoever.

III The Breaches

- 70 Under the terms of the ISR Bahrain Broadband is required to implement, operate and maintain its ISP System as part of the Unified Technical Solution. Despite repeated warnings from the Authority, Bahrain Broadband has failed to comply with its obligations under the ISR.

- 71 Pursuant to Article 2 of the ISR, ISPs are required to:

“Implement, operate and maintain the ISP System as part of the Unified Technical Solution selected and enforced by the Authority, in accordance with the terms of this Regulation.”

- 72 Under Article 4 of the ISR, all ISPs are required to ensure that:

“1- it complies with the obligations of Article (2) of this Regulation.

2- the ISP System is continuously connected to the Central Management System.

3- the ISP System is capable of acting as part of the Unified Technical Solution.



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...

6- *provide the Authority with all information that it may require to effect the implementation of the objectives of this Regulation within the time limits required by the Authority from time to time.*

7- *it liaise solely with the Authority in relation to all matters relevant to the outcomes and objectives of this Regulation unless otherwise directed by the Authority."*

73 Despite repeated warnings issued by the Authority (as set out above), Bahrain Broadband has failed to comply with any of its obligations under Articles 2 and 4 of the ISR and therefore, the Authority considers that Bahrain Broadband is non-compliant.

74 In addition to the aforementioned obligations, in the recitals of the ISR, ISPs are shown that the ISR has been promulgated by the Authority

"Having considered...

The Telecommunications Law... particularly Articles (3), (35) and (78) thereof; ... [and]

Resolution No. 9 of the year 2009 Promulgating a Regulation requiring Licensees to implement Lawful Access..."

75 As such it is explicit in the terms of the ISR that it has been promulgated as part of the system of regulations governing Licensee obligations pertaining to lawful access and the promotion of national security.

76 Under Article 78 of the Law:

"Every Licensed Operator shall undertake to provide, at its own expense, all technical resources, including Telecommunications Equipment, systems and programs relating to the Telecommunications Network that it is licensed to operate and which allow security organs to have access to the network for fulfilling the requirements of national security, provided that the provision of the service shall continue whilst the required technical resources are provided, giving regard to technical development and in accordance with the provisions of the regulations and decisions issued by the Authority."



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- 77 By failing to implement the terms of the ISR, and by failing to deal effectively with the Authority's communications requiring the improvement and upgrade of the technical solutions provided by Bahrain Broadband, Bahrain Broadband has failed to provide "all technical resources... which allow security organs to have access to the network for fulfilling the requirements of national security..." and as such is in breach of its obligations under Article 78 of the Law.
- 78 Finally, in addition to the overarching terms of Article 78 of the Law, Bahrain Broadband has additional obligations under the LAR pertaining to issues of national security.
- 79 The LAR requires that each Licensee Implements Lawful Access (see Article 3 (objectives) of the LAR).
- 80 Implementation of Lawful Access is defined under the LAR as being:
"Implementation of Lawful Access: The Licensee providing all technical resources, including Telecommunications Equipment, systems, programs and communication links, which allow Security Organs to have Access to the Call Content and Access Related Information sent via the Telecommunications network that it is licensed to operate for purposes of fulfilling the requirements of national security."
- 81 In Article 1 of the LAR, Security Organs are defined as "every entity that is concerned with any national or international security matter in accordance with the applicable laws and regulations of the Kingdom of Bahrain."
- 82 Under Article 4(1) of the Lawful Access Regulation it is a fixed obligation that:
"Every Licensee shall implement Lawful Access."
- 83 By failing to comply with the Authority's requests as set out in the Formal Warning and under the ISR, Bahrain Broadband has failed to provide "all technical resources... which allow Security Organs to have Access to the Call Content and Access Related Information sent via the Telecommunications network that it is licensed to operate..." and is consequently in breach of Article 4(1) of the LAR.



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84 On the basis of the foregoing, Bahrain Broadband is, non-exhaustively, in breach of:

- (a) Article 78 of the Law;
- (b) Article 2 of the ISR;
- (c) Article 4 of the ISR; and
- (d) Article (4)(1) of the LAR.

Failure to pay Spectrum Licence Fees, the Fixed Link Frequency License Fees, Annual Licence Fees and the Numbering Fees

85 Under Article 3(c)(6) of the Law the Authority is empowered to:

“set and collect application, initial, annual and renewal fees for Licenses from Licensees”.

86 Under Articles 18(a)(1), 18(a)(2) and 18(a)(3) of the Law:

“Funding of the operations and activities of the Authority shall be derived from the following sources:

(1) application, initial and renewal fees charged for Licences

(2) revenue of annual Licences’ (sic) fees based in the case of an Individual Licence on the gross annual turnover of the Licensee resulting from this Licence, provided that such fees shall not exceed one percent (1%) of such gross annual turnover. Fees for a Class Licence are to be specified in accordance with the conditions provided for in such Licences, or by virtue of a resolution issued by the Authority if such fees are not specified in the Licence.

(3) fees charged by the Authority for any services it provides...”

87 In addition under the terms of its Frequency License Bahrain Broadband is required to pay License Fees to the Authority. As set out above, Bahrain Broadband has ignored



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repeated requests from the Authority to pay its valid Spectrum License Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees.

88 By failing to pay its Spectrum Licence Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees despite repeated requests issued by the Authority, Bahrain Broadband is, non-exhaustively, in breach of the obligations imposed upon it by :

- (a) Articles 18(a)(1), 18(a)(2) and 18(a)(3) of the Law;
- (b) With respect to Frequency Licence Fees, under Article 11 of its Frequency License^{iv};
- (c) With respect to Annual Licence fees under:
 - (i) Article 11 of its VAS License;
 - (ii) Article 13 of its ISP License;
 - (iii) Article 26 of its NFL License; and
 - (iv) Article 17 of ISL License.

Failure to satisfy an Article 53 Request issued by the Authority

89 Pursuant to Article 53(a) of the Telecommunications Law the Authority has the power to make information requests of Licensed Operators. In particular Article 53(a) states that:

“Licensed Operators shall provide the Authority upon its request with all such information... as is needed to enable the Authority to carry out its duties and exercise its powers as provided for in this Law... The Licensee shall furnish such information to

^{iv} In part as recorded in Articles 4.2 and 4.3 of Resolution No. 3 of 2010 (Telecommunication Regulatory Authority's Schedule of Fees) (the "Schedule of Fees").



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the Authority without delay at such time and in such details as the Authority may specify...”

90 By failing to respond to the Article 53 Request and the Extensions as set out above, Bahrain Broadband is in breach of:

- (a) Article 53 of the Telecommunications Law;
- (b) Article 10 of its VAS License;
- (c) Article 12 of its ISP License;
- (d) Article 25 of its NFL License; and
- (e) Article 16 of ISL License.

Failure to publish its Code of Practice

91 Pursuant to Article 55 of the Law:

“(a) Each Licensee shall establish procedures for dealing with complaints by Subscribers in relation to the operation of a Telecommunications Network or provision of Telecommunications services.

(b) The Licensee shall publish the procedures indicated in the regulation referred to in the preceding paragraph in such a manner as the Authority shall prescribe and shall provide a description of those procedures, free of charge, to any Person on request.”

92 By failing to publish its Code of Practice despite repeated requests issued by the Authority (as set out above), Bahrain Broadband is, non-exhaustively, in breach of:

- (a) Article 55 of the Law;
- (b) Article 5.1 and 5.2 of its VAS License;
- (c) Article 5.1 and 5.2 of its ISP License;



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- (d) Article 9.1 and 9.2 of its NFL License; and
- (e) Article 7.1 and 7.2 of its ISL License.

IV Effects of the Article 35 Order

- 93 This Order is issued without prejudice to further investigation by the Authority into Bahrain Broadband's alleged breaches of the terms of the Licenses referred to above, the ISR, the LAR and the Law.
- 94 This Order and any further action taken by the Authority is without prejudice to the rights of any other entity to take relevant action as it may deem appropriate under the law of the Kingdom of Bahrain.
- 95 The issuance of this Order does not prejudice the Authority's right to:
- (a) expand the scope of its investigation into this matter;
 - (b) issue further orders relating to other breaches arising out of the same set of facts;
 - (c) find, develop or introduce new evidence relating to the alleged breach described herein.

V Article 35

- 96 Article 35 may be applied by the Authority in the event that a Licensee has been or is in severe breach of any provision of the Law or any conditions of its License.
- 97 Article 6(a) of the ISR states that:
- "The breach of any provisions of this Regulation by the ISP shall also be deemed to constitute a material breach of its Licenses and the provisions of the Telecommunications Law."*
- 98 Bahrain Broadband has failed to comply with the provisions of the ISR and in doing so has also breached Article 78 of the Law and Article 4(1) of the LAR.



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- 99 In addition Bahrain Broadband has failed to meet valid demands to pay its Spectrum Licence Fees, Fixed Link Frequency License Fees, Numbering Fees and Annual Licence Fees issued by the Authority and has breached the terms of Article 55 of the Law (and the corresponding terms of its Licenses pertaining to Relations with Subscribers as described above).
- 100 The term “License” under Article 1 of the Law is defined as either a Telecommunications License or a Frequency License. This includes the VAS License, ISP License, NFL License, ISL License and Frequency License issued to Bahrain Broadband.
- 101 A “severe breach” is understood to mean a breach that is more than minor and/or transient. The Authority considers that Bahrain Broadband’s failure to comply with the provisions of the ISR is a severe breach not only of the terms of the ISR but also of Article 78 of the Law and Article 4(1) of the LAR.
- 102 The Authority is satisfied that these breaches are severe in light of the important national security objectives of the ISR.
- 103 Further, the Authority considers that Bahrain Broadband’s failure to pay its Spectrum License Fees, Fixed Link Frequency License Fees, Numbering Fees and Annual Licence Fees is also a severe breach of the terms of its ISP Licence, VAS Licence, NFL License, ISL Licence and Frequency License.
- 104 Finally, the Authority also considers Bahrain Broadband’s failure to publish its Code of Practice coupled by its failure to respond to the request for information a severe breach of Articles 53 and 55 of the Law and the terms of its ISP License, VAS License, NFL License and ISL License.

VI Imposition of Financial Penalty

Fining principles

- 105 Article 35(d)(2) of the Law states that the Authority shall issue an order containing a suitable fine on the Licensee provided that such fine is objectively justified and non-discriminatory. The Law does not provide specific guidance on the setting of fines.



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- 106 In setting an appropriate fine for Bahrain Broadband's infringement in this case, the Authority has taken into consideration the relevant provisions of the Law and the Guidelines for the Setting of the Amount of a Fine for Violations of Article 35 and/or 65 of the Telecommunications Law (the "**Fining Guidelines**").
- 107 The Fining Guidelines reflect the Authority's fining practices to date, which in turn have been guided by international best practices, including the basic methodology used by Ofcom and other telecommunications regulatory authorities when establishing fines for license breaches.

Procedure followed to determine the amount of the financial penalty

- 108 The Authority has followed the following steps in determining the quantum of the fine to be imposed on Bahrain Broadband for its various breaches:
- (a) Firstly, a baseline figure is established by reference to a value that is germane or relevant to the infringement in question;
 - (b) This baseline figure may then be adjusted upwards or downwards to take into consideration the following "aggravating" and "mitigating" factors at the Authority's discretion:
 - (i) the degree or severity of the breach in question;
 - (ii) any gain (financial or otherwise) accrued by the party perpetuating the breach;
 - (iii) the extent to which the infringement was perpetrated intentionally or recklessly, including the extent to which senior management knew, or ought to have known, that an infringement was occurring or would occur;
 - (iv) the extent to which any contravention was caused by a third party, or any relevant circumstances beyond the control of the Licensee;



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- (v) whether in all the circumstances, appropriate steps had been taken by the perpetuating party to prevent or remedy the breach in question;
 - (vi) any steps taken by the perpetuating party to mitigate the consequences of the breach; and
 - (vii) any other factors that, in the Authority's view, constitute an aggravating or mitigating circumstance.
- (c) Consideration then will be given to whether the amount of the fine calculated on the basis of the considerations listed above has a sufficiently deterrent effect.
- (d) Finally, a proportionality review of the final amount of the fine is carried out.

Calculation of the baseline amount

109 The Fining Guidelines at PART II B: DETERMINING THE AMOUNT OF A FINE TO BE IMPOSED FOR A VIOLATION OF ART 35 OF THE TELECOMMUNICATIONS LAW THAT IS NOT ADDRESSED UNDER PART I sets out those factors that the Authority will have regard to when deciding upon an appropriate level of base fine for a breach of the terms of the Law and/or an Operator's Licenses.

110 Article 46 of the Fining Guidelines states that:

"to determine the amount of the fine to be imposed for a given infringement, a baseline figure will first be established by the Authority by reference to a value that is germane to the infringement in question..."

111 Article 46 then goes on to give some examples of how the Authority might seek to establish this value. The most relevant example to this case would appear to be any comparable penalties.



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112 With respect to this Order, Bahrain Broadband is in breach of numerous obligations under the Law, each of which must be considered independently when calculating the baseline figure to be determined by the Authority. These are considered in individual detail below.

Bahrain Broadband's breach of Article 53

113 The Authority has reviewed previous comparable orders it has issued for breaches of Article 53 of the Law.

114 The Authority's Article 35 Order No. 10 of 2015, dated 4 March 2015, against 2Connect W.L.L (the "**2Connect Order**") contains a comparable penalty for the failure to comply with an Article 53 Request.

115 2Connect W.L.L. was fined a final amount of BD 37,500 for this failure calculated as a baseline figure of BD 15,000 with aggravating factors increasing the baseline amount by a further BD 22,500.

116 When setting the baseline fine for the 2Connect Order, the Authority had regard to the purpose behind the Article 53 Request, which was to gather information to enable the Authority to carry out a review of the market for the purposes of formulating regulatory strategy.

117 In order for the Authority to carry out its duties and obligations effectively it requires that the information available to it is current and accurate: consequently there are stringent obligations on Licensees requiring that when the Authority makes requests for information that these are taken seriously and responded to expeditiously.

118 Bahrain Broadband's failure to respond to a reasonable and straightforward request for information (in breach of the requirements of the Law and its Licence) has impacted upon the Authority's ability to facilitate this information exchange.

119 In view of the severity of these issues, the Authority has decided to apply the baseline figure for the breach of the Article 53 Request at the same BD 15,000 applied in the previous 2Connect Order.



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Bahrain Broadband's breach of Article 55

- 120 The Authority notes that there are no directly comparable fines that can be drawn upon for a breach of Article 55 of the Law.
- 121 In the absence of any comparable fines, when setting the baseline fine, therefore, the Authority has had regard to the purpose behind the Determination Paper's request for Operators to provide a Code of Practice to the Authority. This was to ensure that the Code of Practice reflected the minimum requirements set out in the Consumer Complaints Code.
- 122 The manner in which consumer complaints are addressed is clearly a matter of public interest and importance to Bahrain.
- 123 Finally, the Authority itself has a responsibility to the public and Bahrain Broadband's failure to respond to the Authority's request for the publication of the Code of Practice (in breach of the requirements of the Telecommunications Law and its Licences) directly impacts consumer welfare.
- 124 In view of the severity of these issues, the Authority has decided to set a baseline figure of BD 10,000.

Bahrain Broadband's breaches of the ISR

- 125 The Authority notes that there are no directly comparable fines that can be drawn upon for a failure to implement the terms of the ISR.
- 126 That said, the Authority notes that when previous Orders have touched, or potentially touched, on issues of national security (especially those which entailed an ongoing refusal by that Licensee to provide information and/or correspond appropriately with the Authority) the penalties that have been applied have, for obvious reasons, been severe^v.

^v See, for example, Order No. 2 of 2016.



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- 127 The Authority further notes that in 2010 it issued an Order to 2Connect W.L.L for a failure to abide by the website blocking regime that was in place before the promulgation of the ISR (Article 35 Order No. 1 of 2010) (the “**Website Blocking Order**”).
- 128 The Website Blocking Order issued 2Connect W.L.L with a fine of BD 43,927,210 for failure to implement the website blocking policy in place at that time in the Kingdom.
- 129 The Authority notes that in this case however, as well as the failure to comply with the relevant website filtering regulations, Bahrain Broadband has failed to abide by any of its obligations under the ISR despite one of the explicit purposes of the ISR being the implementation of national security initiatives. Self-evidently such behaviour is a severe breach of Bahrain Broadband’s obligations as a Licensee.
- 130 As such the Authority believes that a fine in excess of that set out in the Website Blocking Order is merited and has set a baseline fine of BD 70,000 to reflect the severity of this matter.

Refusal to pay valid Licence Fees

- 131 In addition the Authority has had regard to Bahrain Broadband’s refusal to pay its valid Spectrum License Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees.
- 132 These are severe breaches and Bahrain Broadband’s failure to abide by the repeated requests made by the Authority in relation to these legal requirements has revealed a disregard for the regulatory framework that, in the view of the Authority, merits a significant penalty be applied.
- 133 In calculating the baseline the Authority has had regard to the baseline formula applied in the Authority’s Order No. 2 of 2013 issued against Viva Bahrain BSC(c) (“**Viva**”) for a failure to pay the appropriate License fees relating to its Frequency License, its Individual Mobile Telecommunications License and its National Fixed Services License (the “**Viva Order**”). The Viva Order imposed a fine of BD 124,688 upon Viva for failure to pay Outstanding Spectrum License Fees of BD 97,641,926.



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- 134 The Authority notes that whilst the Viva Order is instructive in providing a comparison for the baseline fine, due to the fact that Bahrain Broadband has not paid outstanding fees relating to several categories of License fees (and not just Spectrum License fees) that the precise formula arrived at in the Viva Order would not be appropriate in this case.
- 135 The Viva Order however sets out the principle that in deciding upon a baseline fine for such matters, the Authority should consider the amount of unpaid License fees, the benefit accrued to the Licensee in breach of its obligation to pay such fees and its level of awareness of the breach.
- 136 In this case there can be no doubt that the failure to pay Licence fees is endemic at Bahrain Broadband and the Authority's right to request these sums have been frequently (and deliberately) ignored.
- 137 In addition the current sum owed by Bahrain Broadband to the Authority is huge: BD 152,707.431. This is far higher than was the case in the Viva Order for which a significant fine of BD 124,688 was imposed.
- 138 Self-evidently it is important that Operators expeditiously and accurately satisfy the invoices issued by the Authority. The Authority is a self-funding body and relies upon the revenue generated by (amongst other avenues) the utilisation of spectrum and for charging for the services it provides to Licensees.
- 139 Bahrain Broadband's deliberate and consistent refusal to pay its due and valid Licence fees across a range of subjects has led to it gaining a financial advantage over its rivals who have paid the fees expeditiously (and correctly) and has shown a casual disregard for the Authority's role.
- 140 As such the Authority believes that in this circumstance a baseline fine of BD 50,000 is appropriate to reflect the severity of these matters and is in accordance with the quantum, if not the precise methodology, of fines handed out in similar circumstances.



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Overall Baseline Fine

- 141 Based on the guidance laid out in the Fining Guidelines and the previous orders issued by the Authority, the Authority has calculated that in view of the severity of these issues therefore, the Authority has decided to set a baseline figure of BD145,000 (BD 15,000 + BD 10,000 + BD 70,000 + BD 50,000).
- 142 This sum has been calculated by reference to the baseline fines calculated in previous orders, although the Authority reserves its discretion to revisit the appropriateness of the baseline fine should circumstances dictate that a more appropriate baseline is merited.

Article 47(a) of Fining Guidelines: “the degree of severity of the breach or violation”

- 143 As set out above, the Authority finds that the breaches outlined above are severe breaches of Bahrain Broadband’s obligations under the Law.
- 144 As such the Authority is minded to have regard to this factor when calculating the level of the fine.
- 145 The Authority therefore considers that it is appropriate to apply to the baseline figure to take into account the seriousness of the breach (the “**Severity Factor**”) a factor equating to ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Article 47(b) of Fining Guidelines: “the duration of the breach or violation”

- 146 The Authority notes that the aforementioned breaches are all not only severe, but ongoing.
- 147 As such the Authority is minded to have regard to this factor when calculating the level of the fine.
- 148 The Authority therefore considers that it is appropriate to apply to the baseline figure to take into account the ongoing nature of the breach (the “**Duration Factor**”) a factor



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equating to ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Article 47(c) of the Fining Guidelines: “whether the Licensed Operator has a history of infringement (recidivism may lead to significantly increased penalties) during the previous ten years”

149 It is noted that the Authority has not previously issued an Article 35 Order against Bahrain Broadband for a breach of Articles 53, 78 & 55 of the Law, the ISR and/or LAR or of its Licences and as such, on this occasion, the Authority does not believe that an aggravating factor reflecting a history of infringement needs to be applied.

Article 47 (d) of the Fining Guidelines: “the extent to which the infringement was perpetrated intentionally or recklessly, including the extent to which senior management knew, or ought to have known that an infringement was occurring or would occur”

150 It is noted that all correspondence referred to above was sent to senior management of Bahrain Broadband and therefore the Authority is satisfied that Bahrain Broadband’s senior management was aware of the request to comply with the ISR, satisfy outstanding Spectrum License Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees and publish its Code of Practice.

151 The failure of Bahrain Broadband to satisfy the provisions of the ISR, pay the outstanding Spectrum License Fees, Fixed Link Frequency License Fees, Annual Licence Fees and Numbering Fees and publish its Code of Practice must therefore have been within the knowledge of said senior management.

152 As such the Authority is minded to have regard to this factor when calculating the level of the fine.

153 The Authority therefore considers that a senior management factor (the “**Management Factor**”) of twenty percent (20%) of the baseline figure should be added to the baseline figure.



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Article 47 (e) of the Fining Guidelines: “any other factor that in the Authority’s view constitutes an aggravating circumstance”

- 154 The Authority considers that Bahrain Broadband has for a considerable period of time behaved in an inappropriate manner, at odds with its obligations as a Licensee. The multitudinous nature of the breaches listed above is, in and of itself, evidence that Bahrain Broadband’s attitude to its obligations as a Licensee and the role of the Authority is one of dismissiveness and active non-compliance.
- 155 The Authority is of the view that the egregious manner in which Bahrain Broadband has conducted itself, in ignoring repeated requests from the Authority across a range of issues, is a further aggravating factor for the purposes of the Fining Guidelines.
- 156 The Authority therefore considers that a further aggravating factor (the “**Further Aggravating Factor**”) of twenty percent (20%) of the baseline figure should be added to the baseline figure.

Mitigating factors

- 157 The next step in the process is to consider whether there are any mitigating factors that should be taken into account. The Authority does not consider that any of the mitigating factors set out at Article 48 of the Fining Guidelines are relevant.

Conclusion - Final amount of financial penalty

- 158 Having considered the factors listed above, and any other circumstances relevant to the particular case under consideration, the Authority has determined an appropriate and proportionate fine.
- 159 In conclusion, the Authority sets the fine under this Order (the “**Fine**”) as follows:

$$\begin{aligned} \text{Fine} &= \text{Baseline Fine} + \\ &\text{Baseline Fine} \times \text{Severity Factor} + \\ &\text{Baseline Fine} \times \text{Duration Factor} + \end{aligned}$$



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Baseline Fine x Management Factor+

Further Aggravating Factor

= BD 145,000 + BD 14,500+ BD 14,500+ BD 29,000+ BD 29,000

= BD 232,000

160 The Authority notes that there is no maximum fine defined in Article 35 of the Law. Without prejudice to its right to impose any fine under Article 35 that it considers appropriate and proportionate, the Authority believes that a fine in the sum of BD 232,000 is appropriate and proportionate in this case.

Need to ensure deterrence

161 The Authority's fining practice under Article 35 of the Telecommunications Law acknowledges the importance of deterrence when determining the amount of a financial penalty.

162 The Authority considers that the amount of the fine imposed on Bahrain Broadband for failure to comply with the ISR should act as a sufficient deterrent against:

- (i) any further breaches by Bahrain Broadband of Article 2 of the ISR;
- (ii) any further breaches by Bahrain Broadband of Article 4 of the ISR;
- (iii) any further breaches by Bahrain Broadband of Article 78 of the Law;
- (iv) any further breaches by Bahrain Broadband of Article 4(1) of the LAR;
- (v) any further breach of Bahrain Broadband of Article 18(a)(1), 18(a)(2) and 18(a)(3) of the Law;



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- (vi) any further breaches by Bahrain Broadband of Article 53 of the Law;
- (vii) any further breaches by Bahrain Broadband of Article 55 of the Law; and
- (viii) any further breaches by Bahrain Broadband of the relevant provisions of its Licenses (specific deterrence).

163 The Authority does not, therefore, consider that there is any need in this case to make any adjustments for deterrence.

Proportionality

164 The Authority considers that the payment by Bahrain Broadband of a fine of BD 232,000 is proportionate, considering all the circumstances of this case. In particular, the amount in question is sufficient to reflect the important national security issues at stake in this case.

Variable Fine for each day of Delay

165 The Authority notes that Bahrain Broadband's failure to comply with the ISR is ongoing and that Bahrain Broadband has not provided any reasons for this ongoing breach of the ISR, the LAR, the Law and its Licenses.

166 In view of the ongoing nature of Bahrain Broadband's breaches, in the event that Bahrain Broadband fails to comply with Article 2 of this Order, the Authority considers it is reasonable and proportionate for Bahrain Broadband to be subject to a daily fine of BD 1000 for each day of delay until the requirements of Article 2 of the Order are satisfied or until such time as Bahrain Broadband's licences are revoked (whichever occurs first).