

Public Consultation on Licenses

Consultation Report

10 June 2019

Ref: LAD 0619 181

1 INTRODUCTION

- 1.1 In light of the legal separation of Bahrain Telecommunications Company B.S.C. (“**Batelco**”) to form a new entity (the “**Separated Entity**” or the “**SE**”) to operate and deploy a single national broadband infrastructure network, on 28 February 2019 the Telecommunications Regulatory Authority (the “**Authority**”) launched a public consultation (the “**Consultation**”) comprising:
- (a) a second consultation on the Authority’s proposed Fixed Telecommunications Infrastructure Network License (the “**Amended SE License**”) to be issued to the Separated Entity;
 - (b) a consultation on the Authority’s proposed amendments to the telecommunications licenses which will continue to be held by Batelco following legal separation (“**Batelco Amended Licenses**”); and
 - (c) a consultation on the Authority’s proposed amendments to telecommunications licenses (the “**Amended OLO Licenses**”) held by the Licensed Operators other than Batelco (“**OLOs**”).
- 1.2 The purpose of the Consultation was to invite comments from interested parties on the Authority’s proposed SE License (which included changes from the previous version consulted on) and proposed amendments to the Batelco Amended Licenses and OLO Amended Licenses, in light of the establishment of the SE. The deadline for responses was 16:00 on 28 March 2019.
- 1.3 The Authority received responses from BRE (Batelco), Viva, Zain and NBN (Batelco). NBN (Batelco) is the proposed Separated Entity.
- 1.4 The comments received from BRE (Batelco), Viva, Zain and NBN (Batelco) are summarised in Annex 1 to this Consultation Report, as are the Authority’s responses to each comment. Any changes to the Licenses that the Authority has made in response to the comments received from the stakeholders are also set out and explained under Annex 1.
- 1.5 This Consultation Report reflects the views of the Authority on comments received in response to the Consultation Document. The Authority’s views as expressed in this Consultation Report are intended to provide an explanation of the Authority’s position on the comments received from the respondents.

List of acronyms and definitions

Amended SE License	The amended version of the SE License which was consulted on as part of the Consultation
Amended OLO Licenses	The amended versions of the telecommunications licenses held by the OLOs which were consulted as part of the Consultation
Art.	Article
Authority	Telecommunications Regulatory Authority of the Kingdom of Bahrain and any successors thereof
Batelco	Bahrain Telecommunications Company B.S.C.
Batelco Amended Licenses	The amended versions of the telecommunications licenses held by Batelco which were consulted as part of the Consultation
BRE (Batelco)	Bahrain Telecommunications Company (B.S.C.) – Retail
Consultation	The consultation published on 28 February 2019 which included the Amended SE License, the Batelco Amended Licenses and the Amended OLO Licenses and which solicited responses to a number of questions set out in the consultation document
Consultation Report	This report
EOI	Equivalence of Inputs
EOO	Equivalence of Outputs

License	Has the same meaning as given to this term under Art. 1 of the Telecommunications Law
NBN (Batelco)	Bahrain Telecommunications Company (B.S.C.) – Wholesale
NERF	The New Telecommunications Economic Regulatory Framework published by the Authority on 15 April 2018
OLO	Licensed Operators other than Batelco
Telecommunications Law / Law	The Telecommunications Law of the Kingdom of Bahrain, which was promulgated by Legislative Decree No. 48 in October 2002
Separated Entity/SE	The new legal entity that will be formed through the legal separation of Batelco
SE License	The Fixed Telecommunications Network License to be issued to the SE
Viva	Viva Bahrain B.S.C.
Zain	Zain Bahrain B.S.C.

Annex 1

Amended SE License:

Summary of responses received and the Authority's conclusions

Summary of comment received	The Authority's view and conclusion ¹
Section 2: Definitions Question: Do you agree with the changes to the definitions in section 2?	
BRE (Batelco)	
<ul style="list-style-type: none"> Business Support Systems”, “Management Information Systems”, “Level 1 Separation”, “Level 2 Separation”, “Level 3 Separation”, and “Operational Support Systems” should be removed from the SE License (see BRE’s comments on Section 4.11). 	Business Support Systems etc.: The Authority has considered BRE (Batelco)’s response. The Authority disagrees that BSS, MIS, OSS and the related references to Level 1 Separation, Level 2 Separation and Level 3 Separation should be removed from the SE License as the separation of systems and processes is an integral part of the necessary

¹ The Authority notes that it in addition to the amendments summarised in this Consultation Report, that the Authority has also amended section 1 of the SE License to include a number of “*Conditions Subsequent*” which the SE must comply with in order to allow for the continuation of the terms of the SE Licence post-promulgation.

- BRE suggests the deletion of “BRE” from the SE License. The SE License is a permanent document issued for a minimum period of fifteen (15) years and should use referencing separate to the separation project, noting that BRE will have a different brand name and identity in the near future.
- **EOI:** BRE considers the exceptions listed by Ofcom in its definition of EOI as essential through the transition period. EOI is taken to mean the following:

“Equivalence of Input or EO means that the Dominant Provider must provide, in respect of a particular product or service, the same product or service to all Third Parties and itself on the same timescales, terms and conditions (including price and service levels) by means of the same systems and processes, and includes the provision to all Third Parties and itself of the same Relevant Commercial Information about such products, services, systems and processes as the Dominant Provider provides to its own divisions, subsidiaries or partners. In particular, it includes the use by Dominant Provider of such systems and processes in the same way as other Third Parties and with the same degree of reliability and performance as experienced by other Third Parties.

In this definition “the same” means exactly the same subject only to:

- (i) trivial differences;*
- (ii) Differences relating to the following:*
 - (a) Credit vetting procedures;*
 - (b) Payment procedures;*
 - (c) Matters of national and crime related security, physical security, security required to protect the operational integrity of the network;*
 - (d) Provisions relating to the termination of a contract;*
 - (e) Contractual provisions relating to requirements for a safe working environment; and*
 - (f) such other differences as the Authority may from time to time consent to in writing.”*

- **ECC:** BRE is of the view that the mechanism for oversight of SE’s service levels and provisioning process needs to be counterbalanced by an examination of efficiency and the Authority should not create an

milestones to achieving EOI. The Authority has therefore retained the definitions of these terms in the SE License.

The Authority notes BRE (Batelco)’s comment regarding the future brand name and identity for BRE. The definition of BRE in the SE License however, is not dependent on a specific brand name or identify. As such the Authority does not propose any amendments to the relevant definition.

EOI: The Authority has considered BRE (Batelco)’s comments regarding Ofcom’s approach to exceptions to EOI. The definition of EOI in the SE License already includes reference to trivial differences. Whilst a number of the proposals for exceptions to the EOI principles made by BRE (Batelco) are not appropriate, the Authority can see merit in accepting some of the suggested categories (in relation specifically to Credit vetting procedures and Payment procedures). The Authority has therefore amended the definition of EOI in the SE License accordingly.

ECC: The Authority has considered BRE (Batelco)’s concerns that the ECC - may pose an excessive regulatory burden on the SE. The ECC is a critical element in ensuring appropriate oversight of SE’s compliance with its obligations and its progress to delivering EOI in accordance with

excessive regulatory burden on SE. The NERF emphasized the importance of proportionate regulatory intervention so that costs did not exceed the benefit of a particular measure or remedy and, in its current state of implementation, the ECC may pose an excessive regulatory burden on the SE.

- **NERF:** BRE reiterates its comments in its submission to the Authority dated 24 January 2019, in that the NERF should not be included in the SE License as the NERF contains flexible guidelines and is based on the then-current study of the economic and regulatory market in the Kingdom of Bahrain. Incorporating the NERF in the SE License would give it a legally-binding status, which is not the objective of the NERF. The NERF sets out broad principles for the functional separation of Batelco, and not the legal. If the Authority wish to incorporate the NERF in the SE License, inclusion may necessitate a revision of the NERF and its principles to suit the legal separation. Furthermore, the NERF sets out the general guidelines and steps for separation, which would be more suited for the Undertakings.
- **Undertakings:** BRE disagrees with the amendment to the definition, in particular to the replacement of “have agreed” with “are required”. The Undertakings are a set of changes and measures that Batelco board of directors has agreed upon and committed to the Authority. Contrary to a license document wherein obligations are imposed on an operator, the undertakings contain voluntary commitments discussed and agreed with the Authority.

the timescales set out in the SE License. However, the Authority is proposing to merge into a single body (to be named the ECTC) the functions of the ECC and the functions of the Industry Forum on technical matters set out in the draft SE’s Reference Offer.

NERF: The Authority notes BRE (Batelco)’s comments regarding the NERF. The Authority has removed references to the NERF in the SE License.

Undertakings: The Authority notes BRE (Batelco)’s comments. The Authority considers that the Undertakings should be a binding document on Batelco and the SE. Batelco and the SE are still to submit a final executed version of the Undertakings to the Authority. The Authority therefore has proposed minor changes to the definition of Undertakings in the SE License to reflect the current status of the Undertakings.

NBN (Batelco)

- **Equivalence Compliance Committee** – NBN cannot see why the TRA has chosen to move away from the approach set out in the Monitoring Guidelines and which is more generally in line with the approach taken internationally.
 - NBN identifies that there are some flaws in the structure of ECC as set out in the Monitoring Guidelines (particularly around the

The Authority refers NBN (Batelco) to the Authority’s response to BRE (Batelco) above in relation to the ECC (to be named the ECTC).

FTIN: The Authority notes NBN (Batelco)’s concerns about referring in the SE License to the asset transfer and services agreement (ATSA) that

representation of OLOs on a board committee of NBN), it suggests that there is no reason to completely move away from the approach that was previously consulted on. It is also not appropriate to embed such a potentially interventionist agency internal to NBN and give it legal force via the Licence before the substance of the board is established and agreed.

- NBN proposes that the concept of the ECC be moved to the Governance Protocol and should remain a monitoring, reporting and advisory board on NBNetco commitments but with some independent members, in alignment with the initial proposal in the Monitoring Guidelines. Its composition should be determined by NBNetco, with a focus on independence. It should include two independent members and a member from the Regulator on an observer role and act as a centralized contact point for NBN customers. This would be in line with the Equality of Access Board set up by BT/Openreach and also with the OBARCC set up under the later BT Commitments. Critically, it would result in the non-discrimination regime being supported by independent members, while any complaints or issues being raised, as being picked up by customers, who will be most highly attuned to particular issues.

- **Fixed Telecommunications Infrastructure Network** - NBN believe that inclusion of reference to the asset transfer agreement in the definition of the network agreement is inappropriate. The asset transfer agreements are bilateral between parties and subject to their own terms, including termination. Therefore references to the asset transfer agreement and such other legal documentation as may be approved and/or required by the Regulator, does not add certainty to the definition of network and increases confusion.
- **Levels of Separation** – NBN notes the definition of various levels of separation. It refers the TRA to its more detailed comments on systems separation in its responses. NBN suggests removing these provisions and believes the TRA should instead state an objective based approach

is to be put in place between Batelco and the SE. The reference to the ATSA is intended to ensure the FTIN is clearly delineated from Batelco's remaining assets. This is particularly the case, given the fact that the FTIN is being established under the new industry structure and does not currently exist as a recognised network, and given the absence of completion of the necessary asset audit and details regarding allocation of the relevant assets to NBN (Batelco). The Authority therefore has not proposed any amendments to the definition of FTIN. **Levels of Separation:** The Authority notes NBN (Batelco)'s comments regarding levels of separation. The separation of systems and processes is an integral part of the necessary milestones to achieving EOI, and cannot be left purely to the SE to determine. The Authority has therefore retained the definitions of these terms in the SE License.

Undertakings: The Authority notes NBN (Batelco)'s comments regarding its views on the function of the Undertakings as compared against the SE License. The Authority does not consider that the SE License and Undertakings are mutually exclusive. The Undertakings should not be in conflict with the SE License, but rather the Undertakings should expand on the obligations in the SE License and provide further detail on implementation. The Authority therefore has retained reference to the Undertakings in the SE License.

Business Support Systems etc: As noted above regarding the Authority's comments on the Levels of Separation, the separation of systems and processes is an integral part of the necessary milestones to achieving EOI, and cannot be left purely to the SE to determine. The Authority has therefore retained the definitions of these terms in the SE License

<p>regarding Eol and non-discrimination. NBN would determine the most efficient and cost effective approach to systems separation to fulfill Eol and non-discrimination and would set this out in the Undertakings. NBN would commit to producing a roadmap that would outline how it would intend at this stage to meet these objectives. NBN would commit to transparency around progress on that roadmap and also transparency on the effectiveness of separation measures.</p> <ul style="list-style-type: none"> • Undertakings – the Undertakings perform a completely different function to the Licence and should not therefore be set against the other and the core principles underpinning separation are set out in the Undertakings and enforcement and oversight set out in these documents. • Business Support Systems, Operation Support Systems and Management Information Systems – NBN suggests to remove these definitions as they relate to the separation steps to be undertaken and not appropriate for inclusion in the Licence. 	
<p>Viva</p>	
<p>Yes, with the exception of:</p> <ul style="list-style-type: none"> • Definition of BRE: “as part of their Licensed Telecommunications services”. Viva do not understand what this insertion is intended to clarify. Any Batelco business that is concerned with the delivery of retail telecoms services should be captured by this definition. Suggest that the new words be deleted. • Definition of Force Majeure: Viva are cautious about the reference to “governmental or States’ acts or regulations. As such regulations etc. mainly apply to Batelco and SE, Viva has asked whether this exception will be used by Batelco or SE as an excuse not to comply with the license terms because they claim those regulations affect their performance. Viva propose that “governmental or States’ acts or regulations” only be regarded as Force Majeure with the approval of the 	<p>BRE: The Authority notes Viva’s comment. The reference to “as part of their Licensed Telecommunications services” is intended to clarify that only licensable activities are captured. The Authority does not consider there is any inconsistency between the wording in question and Viva’s stated position. Accordingly, the Authority has retained this wording in the SE License.</p> <p>Force Majeure: The reference to “governmental or States’ acts or regulations” is a standard component within recognised “Force majeure” provisions and the burden of proof would be on Batelco and the SE to demonstrate existence of the relevant event. The Authority disagrees that the wording in the final sentence is confusing. Viva has already raised</p>

<p>TRA. The last sentence of this definition is also confusing. The word “wilful” may apply not only to acts, but also to neglect and failure to take reasonable precautions, which Viva don’t think is the intention. This should be clarified.</p> <ul style="list-style-type: none"> • Definition of Undertakings: Viva submit that the definitions should clarify that the Undertakings are to be approved “or determined” by the Authority and that this should be done after consultation with the industry, not just agreed by the TRA. Viva have serious concerns about Batelco’s draft undertakings. 	<p>this comment in its responses to the Authority’s first consultation on the draft SE License (LAD/1218/344 of 13 December 2018). As noted in the Authority’s response to Viva’s comment, the Authority considers it is clear that the word “wilful” only applies to acts. The Authority has therefore not made any amendment to the definition of Force Majeure in the SE License.</p> <p>Undertakings: The Authority notes Viva’s comments regarding the Undertakings. The Authority considers that the reference to measures that Batelco and Viva “<i>are required</i>” to undertake provides sufficient protection against Batelco and the SE agreeing and/or implementing measures that have not been approved by the Authority (which may be after consultation with the industry, where the Authority deems this appropriate).</p>
ZAIN	
<p>Zain has the following comments with regards to the definitions in section 2:</p> <ul style="list-style-type: none"> • “Eol” definition: recommend removing the proposed addition (“in relation to the Licensed Services”), as it gives the notion that Eol is limited to licensed services whereas SE is allowed to provide other commercial services on non-Eol basis. • “Eol” definition: the trivial differences and such other differences as agreed with the regulator must be publicised to all relevant stakeholders. • It is important to add to "Equivalence Compliance Committee" the responsibilities related to monitoring and deciding on investments and fibre infrastructure roll-out plans. • The proposed addition in “Fixed Telecommunications Infrastructure Network” has a reference to (Batelco), this should be changed to Separated Entity in line with document structure. • Recommend including the right to access to ducts in the proposed definition of "Licensed Services". • The definition of "Reference Offer Order" is not sufficiently detailed, Zain 	<p>EOI: The Authority notes Zain’s comment. The Authority disagrees that the SE should be required to ensure EOI regarding non-licensable services. The Authority therefore has not amended the definition of EOI in this respect.</p> <p>The Authority notes Zain’s comment regarding transparency of any trivial differences or other differences agreed with the Authority. The Authority agrees that such differences would need to be communicated to the industry. The Authority does not consider however that a specific obligation should be included in the SE License on this point. The Authority considers Zain’s concern is addressed by the Authority’s general obligation to carry out its duties and exercise its powers in a transparent manner (Art. 3a) of the Law). The Authority therefore has not amended this aspect of the SE License.</p> <p>ECC: (now to be renamed ECTC): The Authority disagrees with Zain that the ECC’s remit should be extended to <i>decide</i> on investment and fibre roll-out plans.</p>

therefore recommend changing it to (order issued to SE to issue a reference offer document that include required regulated service under the Telecommunications Law and other regulatory instruments).

- The SE is bound to provide basic connectivity services on merely low connectivity layers (i.e. layer 1 or layer 2)¹. Therefore, Zain reiterates that the regulated services provided by the SE will not include any internet service and thus, the required web filtering capability is irrelevant. Accordingly, Zain recommends omitting the definitions of "Relevant Public Authority" and "Website".
- To ensure transparency with the industry, Zain recommends to add in the end of "Undertaking" definition the following text "and published to the public".

FTIN: The Authority disagrees that the reference to 'Batelco' in the definition of 'Fixed Telecommunications Infrastructure Network' should be removed. The ATSA relates to assets that will be transferred from Batelco to the SE. Therefore it is appropriate that reference to Batelco in this provision remains.

Access to ducts: The Authority notes that duct access is not a Telecommunications Service and as such should not feature in the definition of the term "Licensed Services".

The Authority has amended the definition of "Licensed Services" in the SE License to clarify the status of duct access and the circumstances under which provision of access to ducts may be desirable/necessary.

Reference Offer Order: The Authority does not consider that the definition of Reference Offer Order requires amendment along the lines proposed by Zain. The Authority considers that the combination of the terms 'Reference Offer Order' and 'Reference Offer' are clear. Nevertheless the Authority has amended the definition of 'Reference Offer' so as to include specific reference to 'regulated' wholesale products and services.

'Relevant Public Authority' and 'Website': The Authority notes Zain's comment regarding web filtering capability. The Authority considers that even if the SE is not providing internet services, the SE will need to ensure that the underlying (bitstream) services provided by the SE to Licensed Operators has capability for web filtering. Accordingly the Authority has retained the references to "Relevant Public Authority" and "Website" in the SE License.

Undertakings: The Authority notes Zain's recommendation of additional wording to clarify that the Undertakings will be published to the public.

	<p>The Authority does not consider such wording is necessary since the publication of the Undertakings, if approved by the Authority, would be published by the Authority and not by the SE.</p>
<p>Section 3: Status of the Licensee</p> <p>Question: Do you agree with the changes to the provisions relating to the status of SE?</p>	
<p>BRE (Batelco)</p>	
<ul style="list-style-type: none"> • Section 3.1: BRE seeks the Authority's clarification as to what 'independent management' and 'governance criteria' mean. BRE agrees with a specific degree of independence in relation to SE's management from BRE except for reserved matters specified under the SE's Governance Protocol. BRE notes that there may be specific circumstances in which reserved matters should be dealt with by Batelco Group key Stakeholders, irrespective of SE and BRE's legal separation. It would be expected that the SE acts in accordance with the scope of its powers as set out in Batelco's Governance Protocol including in relation to matters on financial authority limits as well as matters which under the Commercial Companies Law (Art. 111) have to be referred to the shareholders. • Section 3.2: Branding of SE and/or BRE is a purely commercial exercise within the remit of BTC's board of directors and management. BRE suggests that this clause be deleted. Additionally, BRE wishes to highlight that the wording 'close proximity' is not clear in meaning and function as it could be taken to mean physical proximity and not brand resemblance. • Section 3.3: BRE considers that appointment and/or nomination of the SE's Chief Executive Officer is a matter for the BTC and NBNNetco Board of directors and subject to the governance framework. 	<p>Section 3.1: The Authority notes BRE (Batelco's) comments regarding independent management and governance criteria. The Authority recognises that independence will need to be assessed in context and that it is inappropriate to seek to set an exhaustive list of criteria for assessing this term. At a principles level, independent management will require that the persons in management roles and functions within the SE cannot also occupy roles or functions within BRE and the rest of Batelco. From a practical perspective there may need to be instances, particularly at the outset of the SE's operations, where the Authority would need to approve the sharing of certain functions/roles between the SE and BRE (subject to suitable safeguards being in place). With respect to governance criteria, the Authority wishes to point out that the Governance Protocol provided by Batelco and the SE will not take precedence over the SE Licence and/or other legal instruments published by the Authority and as such the Governance Protocol has to align with the latter. The Authority therefore, has not amended this aspect of the SE Licence.</p> <p>Section 3.2: The Authority recognises that the choice of branding is a purely commercial exercise within the remit of BTC's board of directors and management. However, the positioning of branding as between the SE and BRE is relevant for ensuring independence between the two entities both legally and in practice. Customers of either entity must not be confused as to which entity they are engaging with. This includes confusion that could arise by positioning the respective brands in close</p>

- **Section 3.4.1-3.4.2:** BRE do not believe that this should be included as a license condition as this is a fluid structure depending on the most cost efficient and effective approach and remains subject to revisions. Furthermore, BRE suggests to remove paragraph 2 of 3.4.2 as this poses as an extreme measure. BRE considers that shared services should be authorised subject to ensuring compliance with non-discrimination and information controls.
- **Section 3.5:** BRE believes the statement must be qualified as it should recognise that the SE is part of a wider Batelco group and may benefit from certain group wide efficiencies so long, as mentioned previously, that these do not negatively impact on compliance with non-discrimination and information control obligations.

proximity to one another. For example, as regards the legal separation of Openreach from BT in the UK, Openreach was prohibited from referring to 'BT' or 'British Telecommunications' in its branding and other safeguards were put in place to avoid any confusion between the brands. The Authority notes that the current SE License has taken into account the feedback on the wording relating to the separation of branding received from the SE and has proposed additional wording that the Authority has considered (see below response to NBN (Batelco) on this aspect).

The Authority therefore, has not amended this aspect of the SE License.

Section 3.3: The Authority recognises that the choice of individual fulfilling the role of CEO (or equivalent) for either the SE or rest of Batelco is a matter for the respective entities. Section 3.3 however is expressly concerned with ensuring that the same person (whoever that individual might be) cannot act as CEO (or equivalent) for both the SE and rest of Batelco. This is a critical requirement to ensure independence of the SE. The Authority therefore, has not amended this aspect of the SE License. Should however, the Undertakings contain a clear commitment in this regard which is not limited in time and which is carved out from the relevant provisions regarding SE's / Batelco's ability to vary the Undertakings, then the Authority would be minded to reconsider the continued necessity of this clause.

Art. 3.4: The Authority notes Batelco's Article 53 submissions. According to Batelco's submission Batelco proposes to keep the following functions separate:

- i. Legal;
- ii. Regulatory;
- iii. Product Development;
- iv. Sales;
- v. Marketing;
- vi. Customer Care; and
- vii. Network Management

	<p>The Authority acknowledges Batelco's proposal to set up two separate units within the Finance Department reporting to the CFO. However, this proposal runs explicitly contrary to the Authority's instructions that the Finance Department and its staff members and the Company Secretary (amongst others) have to be completely separate rather than operating as a shared function. Similarly, for the purposes of achieving EOI, it is imperative that the IT Department operates as a separate unit. As such, the Authority is willing to accept the set-up proposed by Batelco for a temporary period such that by 31 December 2019, the Finance and IT Departments and the Company Secretary have to be completely separated.</p> <p>Section 3.5: The Authority recognises that the SE should be able to benefit from certain group wide efficiencies. The Authority disagrees with BRE (Batelco) that section 3.5 restricts the SE from benefiting from group wide efficiencies, as appropriate. The Authority, therefore, has not amended this aspect of the SE License.</p>
<p>NBN (Batelco)</p>	
<p>Section 3.1</p> <ul style="list-style-type: none"> ○ the TRA has introduced a requirement that NBN should have its own board of directors and independent management in accordance with the governance criteria specified by the Regulator. NBN suggests that such a provision is inappropriate to be included within the Licence. The governance criteria are neither defined nor are they clear as to how they would be set. This gives the Regulator an unduly wide scope to intervene with the governance of NBN in a way that NBN suggests is neither necessary nor proportionate. The TRA has not demonstrated why it is necessary to move away from the approach that was outlined in the Separation Guidelines and the Monitoring Guidelines whereby issues of governance would be dealt with in 	<p>Section 3.1: The Authority disagrees with NBN (Batelco)'s view that inclusion of a requirement for the SE to have its own board of directors and independent management is inappropriate for the SE License. As explained above in response to BRE (Batelco)'s comments regarding the reference in section 3.1 to the governance criteria specified by the Authority, the Authority will have regard to the Governance Protocol provided by Batelco and the SE. The Authority will likewise, also have regard to the Undertakings to be provided by Batelco and the SE. However, the Authority must retain the right to set additional governance criteria to ensure non-discrimination principles and delivery of EOI, in the event that the Authority considers this is not sufficiently addressed in the Undertakings or Governance Protocol. Without enabling the Authority to specify such criteria and monitor compliance with the same, but relying simply on the outcome, would fail to provide sufficient safeguards to</p>

<p>the Undertakings and the Protocol. The Regulator should be focused, for the most part, on the outcomes or the market failure it is seeking to address through separation. As such, the obligation for NBN should simply be to ensure that any outcome it delivers fulfills criteria of non-discrimination, information controls and protection and independence. It is for NBNNetco and the wider Batelco group to define the rules of Governance so long that such rules ensure the achievement of the above principles.</p> <ul style="list-style-type: none"> ○ NBN is currently developing a number of instruments that would provide the Regulator and the wider industry the necessary non-discrimination, information controls and protection and independence. These include: Information control and access policy; Independence of the NBNNetco Board in setting its commercial policy; and Rules of information segregation at procurement/legal/corporate affairs level. <p>Section 3.2:</p> <ul style="list-style-type: none"> ○ The drafting in this Art. is unclear. Suggested rewording: <i>“the Licensee shall develop and maintain a brand which shall not relate to (or in any way convey the impression that it relates to) and or integrate any aspect of the brand of BRE”</i>. ○ NBN proposes that the appropriate place for the rules relating to the use of brand is the Governance Protocol and not the Licence. <p>Section 3.3</p> <ul style="list-style-type: none"> ○ NBNNetco disagrees with this section - this is a matter best determined by Batelco and not for the Licence. The Licence is an instrument that authorizes the Licensee to perform certain activities and is not designed to determine the corporate structure of the licensee. Appointment of the NBNNetco CEO is for the NBNNetco Board and subject to the Undertakings and Governance Protocol. Whilst Art. 28(c)(1) of the TRA states that 	<p>avoid an anti-competitive outcome or market failure. There would be increased risk that the principles of non-discrimination and EOI would not be met. However, in order to address NBN (Batelco)’s concerns regarding the method by which the criteria would be set, section 3.1 has been amended to clarify that the governance criteria would be set out in a binding legal instrument.</p> <p>The Authority looks forward to receiving the instruments to which NBN (Batelco) refers which the Authority considers must be consistent with the SE License. At this time and in the absence of being in receipt of the same, the Authority does not consider it is possible to comment on the suitability of the instruments referenced.</p> <p>The Authority therefore, has not amended this aspect of the SE License.</p> <p>Section 3.2: The Authority has considered NBN (Batelco)’s proposed amendment to the current wording. The Authority has amended the relevant provision in the SE License as follows: <i>“The Licensee’s corporate identity or branding shall not be the same as or relate to, or in any way convey the impression that it relates to, or is such that it could be confused with, that used by BRE. The Licensee shall not position its corporate identity or branding in close proximity to that used by BRE or integrate any aspect of the corporate identity or branding used by BRE within that used by the Licensee.”</i></p> <p>Section 3.3: The Authority disagrees with NBN (Batelco)’s view that this provision is inappropriate for inclusion in the SE License. As noted above in response to BRE (Batelco)’s comment on this provision, the Authority recognises that the choice of individual fulfilling the role of CEO (or equivalent) for either the SE or rest of Batelco is a matter for the respective entities. Section 3.3 however is expressly concerned with ensuring that the same person (whoever that individual might be) cannot act as CEO (or equivalent) for both the SE and rest of Batelco. This is a critical requirement to ensure independence of the SE. The Authority</p>
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a Licence may include such terms and conditions as the Authority determines are necessary and reasonable, Art. 29(e) provides that Individual Licences shall have standardized conditions as far as practicable and any differences shall be for objectively justifiable reasons. NBN notes that the TRA has not established clear objective reasons why such a provision, which is not found in any other individual licence, is required to be inserted into NBN's licence. It is a matter for NBN to construct its board and appoint the CEO in a manner which will deliver on its corporate purpose and to ensure compliance with its regulatory obligations.

Section 3.4

- NBN disagrees with the new section 3.4 which sets out what functions must not be shared as from the effective date. NBN notes that the use of shared functions is not only accepted internationally in circumstances of functional and legal separation but was also foreshadowed in NTP4, the NERF and the separation guidelines (see the BT undertakings and the recent BT commitments as well as regimes such as New Zealand and Singapore which also accepted the use of shared functions).
- NBN's proposal for shared functions are set out in the submission pursuant to the Art. 53 Request for Information provided to the Authority on 14 March 2019.
- NBN will also set out the arm's length arrangements concerning shared functions and make this available to the Authority as part of the development of its governance framework. This approach, of setting out clear obligations, but with penalties for failure, is appropriate. There is no rationale for taking the approach at the outset that a more proportionate route is not effective and moving to an unjustifiably interventionist stance before a more proportionate approach is in place and has had a chance to be properly implemented and reviewed.

notes that as regards the legal separation of BT and Openreach in the UK, Ofcom required Openreach's CEO to be appointed by and accountable to the Openreach Limited Board, and for the Openreach Board to be independent of the rest of BT. This included a requirement that a majority of directors on the Openreach Board are independent of BT group.

The particular circumstances of the legal separation require, among other items, that the SE is legally independent from the rest of Batelco, the SE will deliver the relevant products and services on a non-discriminatory basis and on an EOI basis. In order to comply with these principles and obligations, it is fundamental that sufficient independence is established in practice and from the top down. As a minimum, this means that the CEO (or equivalent) of the SE cannot be the same person as the CEO (or equivalent) of BRE. The Authority therefore, has not amended this aspect of the SE License.

Section 3.4: The Authority notes NBN (Batelco)'s comments regarding shared functions. The Authority fully understands that there may need to be certain functions which are shared between the SE and Batelco, post separation. However, these shared functions should be limited. It is imperative that the SE has the necessary resources and functions to enable it to perform its obligations on an independent basis and deliver on EOI. In addition please refer to the Authority's response to BRE's corresponding comments.

The Authority looks forward to receiving copies of the SE's arm's length arrangements with Batelco. These arrangements must ensure there is sufficient independence between the SE and Batelco, and that in practice, there is no unfair advantage being granted to BRE, in the implementation of these arrangements. It is therefore important that the Authority is able to exercise oversight of these arrangements and their implementation at a practical level, and take the necessary measures to address any issues that arise. The Authority therefore, has not amended this aspect of the SE License.

<p>Section 3.5</p> <ul style="list-style-type: none"> ○ As NBNetco is a 100% subsidiary of BTC, there will be some degree of control, direction and influence on its broader strategy. This may include overall group direction. The overarching aim for the Regulator is to enable a framework that allows downstream operators to compete on a level playing field through ensuring non-discrimination, information controls and access. It needs to be clearly recognized that NBN is part of the wider Batelco group and that certain matters will be reserved matters for the BTC board. NBN notes that this model has been accepted internationally and the proposals here are entirely unjustified. The focus in the BT Commitments is of adequately protecting the confidential information of the OLOs and of keeping adequate records to ensure this is done. This should be the focus of the TRA along within ensuring that the framework allows all downstream operators to compete on a level playing field. 	<p>Section 3.5: The Authority recognises that the SE is a 100% subsidiary of Batelco and that there will need to be, for example, reporting up to Batelco group, and that broader strategies are set at group level. The Authority disagrees with NBN (Batelco) that section 3.5 is inconsistent with acknowledgment that there will be certain matters reserved for the Batelco board. However, in the interests of clarity the Authority has amended the language in section 3.5 to recognise that the requisite legal obligation on the SE will be that it shall independently formulate, determine and make its own decisions and in particular shall not act under the control, direction or influence of BRE in respect of its commercial and operational policy.</p>
<p>Viva</p>	
<p>Viva are concerned that the Licensee must have an independent-controlled board of directors and that the other members of the Batelco executive team cannot be executives in the Licensee. The TRA should recognise the requirements under NTP4 for additional investment from interested parties and Viva suggest a provision be inserted in the licence in this regard.</p> <p>Viva's other concerns on Section 3 are:</p> <ul style="list-style-type: none"> • Separated entity and independent board: this provision does not clearly state that the Licensee must have an independent-controlled board of directors. Such a board would provide for all, or at least a majority of, directors to be independent of Batelco, with one of those independent board members being Chair. Propose that section 3.1 be amended to insert "<i>independent-controlled</i>" before board of directors. • Chief executive: Viva proposed that the independent directors must meet independence criteria that it proposed and be appointed by a 	<p>The Authority notes Viva's comments, some of which have been raised in response to the Authority's consultation on the first draft SE License (LAD/1218/344 of 13 December 2018) and responded to in the Authority's consultation report (LAD/0219/054 of 28 February 2019).</p> <p>Separated entity and independent board: The Authority notes Viva's views that the SE must have an independent-controlled board of directors. The Authority refers Viva to the Authority's response to this point as set out in the Authority's consultation report on the first draft SE License (referenced above). The Authority considers that the requirements in section 3.1 for the SE to have its own board of directors and independent management, along with the additional protections in section 3 of the SE License strike an appropriate balance between ensuring sufficient independence of the SE while at the same time not unduly restricting the SE's corporate freedom in this area. The Authority therefore, has not amended this aspect of the SE License.</p>

nominations committee established by the TRA. If the board of directors is not independent-controlled, how can the TRA regard the Separated Entity as being independent of Batelco? Viva also want clarity on what “independent management” means in this context. Viva believe it should mean independent of the management of any Affiliate (including BRE). Regarding section 3.3: Viva comment that this should also apply to other members of the Batelco executive team (including the chief financial officer).

- **Section 3.4 – Independent functions:** Regarding paragraph (a), Viva recommend adding “*research and development, strategy development, compliance, governance, vendor management and specification, design, plan, build and delivery of technical or network developments*”. The Licensee should have the independent competency to carry out its own developments and thinking.
- **Section 3.5: Independent commercial and operational policy:** Viva submit that the words “and operational” be added before “policy” at the end of the last sentence.
- **Transition to investment by OLOs:** Viva note the Government’s requirements in NTP42 that:

“In order to maintain a fair and transparent sector in the long-term, the new entity shall allow for additional investment by interested parties, including licensed operators in the Kingdom of Bahrain, after three years from the date of issuance of this Plan, and within guidelines established by the relevant entities”.

Viva have submitted on this requirement in the past and that there has been no mention of it in the consultation documents that have been released in the last 12 months or so.

- Government recognised that third party investment was necessary “*in order to maintain a fair and transparent sector in the long-term*”. Third party investment in SE is also a means of

Chief executive: The Authority notes Viva’s proposals for independence criteria and appointment of independent directors. The Authority refers Viva to the Authority’s above response regarding the SE’s board. The Authority considers that it is necessary to strike an appropriate balance between ensuring sufficient independence of the SE while at the same time not unduly restricting the SE’s corporate freedom in this area. The Authority considers the provisions included in section 3 of the SE License strike the appropriate balance.

The Authority notes Viva’s comments regarding independent management. The Authority considers that independence will need to be assessed in context and that it is inappropriate to seek to set an exhaustive list of criteria for assessing this term. At a principles level, independent management will require that the persons in management roles and functions within the SE cannot also occupy roles or functions within BRE and the rest of Batelco.

As regards Viva’s comment that section 3.3 be extended to other members of the executive team including the CFO, the Authority considers that this is sufficiently addressed in the provisions in section 3.4 of the SE License.

The Authority therefore, has not amended these aspects of the SE License.

Section 3.4: The Authority notes Viva’s proposal for additional wording regarding research and development etc. to be included in section 3.4 of the SE License. The Authority considers that the existing wording in section 3.5 of the SE License along with section 5.2 of the SE License sufficiently address Viva’s concerns in this area. The Authority also notes the inclusion of provisions on an Industry Forum within the draft SE Reference Offer, which could, among other things, engage with industry on the development of new products and services and their design. While

<p>achieving proper structural separation and the strongest possible assurances of independence for the Licensee. It may be difficult to revoke the Separated Entity's Licence once it is issued, so co-ownership of the Licensee will be an important bulwark against the risk of persistent discriminatory behaviour by the Licensee and Batelco.</p> <ul style="list-style-type: none"> • Viva believe that the Licence should provide for additional investment by interested parties from this date. This should be a key obligation on the Licensee. This obligation means that any additional investment after May 2019 may be provided by interested parties – and not just from Batelco. OLOs should be able to invest on the same basis as Batelco has invested to that date. • By this process, Batelco's shareholding in the Licensee will gradually reduce as more capital is raised. The TRA should provide further details of these requirements and Viva would like to be consulted as a potential interested party. • Viva propose that a new section 3.6 be added in the following terms: <i>"The Licensee shall ensure that, where any additional investment is required, interested parties, including OLOs, may invest on the same basis as Batelco and in accordance with requirements set out from time to time by the Authority".</i> 	<p>the current proposal is for this Industry Forum to be merged with the Equivalence Compliance Committee in the SE License, referenced above as the ECTC, the purpose and rationale of the Industry Forum described in the draft SE Reference Offer remains the same.</p> <p>The Authority therefore, has not amended this aspect of the SE License.</p> <p>Section 3.5: The Authority agrees with Viva's proposed insertion and has amended the relevant provision of the SE License accordingly.</p> <p>Transition to investment by OLOs:</p> <p>Given the stage at which the project is expected to reach by the end of NTP4, mandating the SE to allow such investment is not appropriate at this time since full separation has not been completed.</p>
<p>ZAIN</p>	
<p>Yes.</p>	<p>Zain's agreement is noted.</p>
<p>Section 4: Licensee obligations</p>	
<p>Question: Do you agree with the changes to the provisions of section 4 of the SE License?</p>	
<p>BRE (Batelco)</p>	

- **Section 4.1.1:** BRE suggests removing this as the License and the Undertakings have different functions. While the license authorises the SE to operate a Fixed Telecommunications Network and provide Telecommunications services, the Undertakings set out the commitments BTC and SE are agreeing to execute to legally separate BTC.
- **Section 4.1.3:** Similarly, the Asset Transfer Agreements between Batelco and SE are contracts between the two parties to ensure the delivery of the separation project and should not be a license condition.
- **Section 4.2:** BRE disagrees with the Authority's reasoning to retain the term 'serious' and refers the Authority to paragraph 87 of the Rebuttal to the Flag Arbitration where the Authority accepted the translation of Art. 35 of the Telecommunications Law as 'severe'. BRE also reiterates its comments in its First Response to the SE License Consultation.
- **Section 4.4:** BRE is unclear as to which entity will bear the cost for removal or relocation of the telecommunication equipment and/or infrastructure (should it not be borne by the SE).

Section 4.1.1: The Authority notes BRE (Batelco)'s comments. The Authority disagrees with BRE (Batelco)'s reasoning on this point. It is appropriate that the SE's compliance with the Undertakings is included within the Licensee's obligations in section 4.1 of the SE License. The Authority therefore, has not amended this aspect of the SE License.

Section 4.1.3: The Authority refers BRE (Batelco) to the Authority's response regarding section 4.1.1 of the SE License. In addition, the reference to the ATSA is intended to ensure the FTIN is clearly delineated from Batelco's remaining assets. This is particularly the case, given the fact that the FTIN is being established under the new industry structure and does not currently exist as a recognised network, and given the absence of completion of the necessary asset audit and details regarding allocation of the relevant assets to the SE. It is therefore appropriate for the License, and for section 4.1.3 to contain reference to the ATSA.

Section 4.2: The Authority does not consider that there is any need to amend the reference to "serious" in this section. A breach of section 4.1 will be treated as a serious breach of the SE License, which in turn shall be treated as a relevant breach of the Law for the purposes of Art. 35 of the Law.

Section 4.4: The Authority notes BRE (Batelco)'s comments. The decision regarding costs of any removal and/or relocation of telecommunications equipment and/or infrastructure, including the entity responsible for such costs, would need to be assessed at the relevant time. The Authority does not consider any amendment to the relevant provision is needed in this regard.

NBN (Batelco)

Section 4.1.1

- The Undertakings are a series of detailed commitments BTC and NBN provide to the Authority for the separation of NBN and should not be inconsistent with the Licence. NBN refers to its general comments on the nature of the licence wherein the latter should be limited to defining the general terms and conditions for operation of the telecommunications network and/or provision of telecommunication services and not define how BTC and NBNetco will proceed with legal separation. As such, the Undertakings do not serve as an alternative to the Licence. NBN therefore believes that this clause be deleted.

Section 4.1.3

- The transfer of assets is a bilateral agreement between BTC/Licensee and NBNetco wherein the parties will obviously be bound by their obligations under the agreement. Like any agreement, this will include termination and force majeure clauses and is subject to amendment, variation or termination or even of being struck down by a court for invalidity. As such, this cannot be part of the licence as in case of termination (whether because of breach or otherwise) or force majeure or invalidity, this clause in the licence is effectively rendered redundant.
- In addition, to give an agreement the status of a licence provision, effectively places NBN in a situation of double jeopardy as any breach of the agreement renders it not only subject to potential contractual penalties but also to penalties under the Telecoms Law for breach of the licence provision.
- The term '*Other such legal documentation*' is vague and creates more uncertainty in the Licence. NBN refers to the principles in the Telecoms Law on licence conditions that they should be necessary and reasonable and that the terms and conditions of individual licences should not differ overly. It does not believe that the regulator has made out clear arguments why such a far-reaching provision should be included in NBN's licence. If the regulator wishes to add specific provisions to NBN's licence it should follow the process for amendment set out within

Section 4.1.1: The Authority notes NBN (Batelco)'s comments regarding the Undertakings. The Authority agrees that the Undertakings should not be inconsistent with the SE License, and that they do not serve as an alternative to the SE License. Instead, the Authority considers that the Undertakings must complement and expand on the underlying obligations on the SE in the SE License. It is therefore appropriate that the SE License, and specifically section 4, includes reference to the Undertakings. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.

Section 4.1.3: The Authority notes NBN (Batelco)'s comments regarding the ATSA. It is imperative that the SE has the necessary assets and resources to fulfil its obligations under the SE License. It should not be possible for Batelco and/or the SE to frustrate performance of the SE's obligations under the SE License for example, by terminating the ATSA. It is important that there are sufficient deterrents in the SE License alongside sufficient powers and enforcement measures for the Authority to prevent this from occurring.

The reference to '*other such legal documentation*' recognizes that in the event Batelco and the SE fail to provide a properly detailed ATSA that ensures the SE has the necessary assets and resources to fulfil its obligations under the SE License, other legal documentation may need to be put in place to direct Batelco to transfer the relevant assets and resources within a specified period of time. This might include (for example) legal documents relating to the transfer of real estate assets, the novation of third party agreements (and their re-execution), legal documentation relating to SLRB and VAT payments (if required). In order to ensure NBNetCo and BRE are separated in accordance with the objectives of NTP4 it is right (and necessary) that the Authority retains within its purview matters relating to the legal formalisation of the process of separation (however that ultimately occurs).

<p>the law and that licence, rather than using such a catch all provision. This should not be before the asset transfer is finalized.</p> <p>Section 4.2</p> <ul style="list-style-type: none"> ○ The TRA has suggested that any breach of the licence is self-evidently a serious matter. NBN agrees that a breach is a matter of seriousness but that does not mean that it is a serious breach. The insertion of the word serious before breach prejudices that nature of the breach. NBN repeats its request that the word serious be deleted. ○ If the TRA continues to adopt the view that serious must remain then NBN suggest that this wording must be adopted across all OLO licences. ○ NBN notes the draft wording of the BRE licence amendments adopts the serious breach wording but that the OLO licence amendments does not include this wording. If any breach of a license is a serious matter then NBN cannot see any justification for the failure to include this wording in the OLOs licences and would request that this wording be added so that all operators are operating on a level legal playing field. <p>Section 4.5</p> <ul style="list-style-type: none"> ● 30 days advance notice may not be possible in case of emergencies and therefore NBN suggests carving out emergencies from this section. 	<p>Section 4.2: The Authority notes NBN (Batelco)’s comments regarding seriousness of breach of the SE License. The Authority considers that it is appropriate to retain such wording in section 4.2 of the SE License for the reasons set out above in relation to the same comment raised by BRE (Batelco), as it is limited to those items specified in section 4.1 of the SE License (and equivalent provisions in the Amended BRE Licenses) which are not applicable for OLOs and therefore are not present in the Amended OLO Licenses. The SE is being granted a unique position as the relevant entity that will deploy and operate the Single Network, and in this regard can be distinguished from OLOs.</p> <p>Section 4.5: The Authority notes NBN(Batelco)’s concern regarding cases of emergency. The Authority agrees that in cases of emergency shorter notice than thirty (30) days may be appropriate. The Authority has amended section 4.5 accordingly. Cases of emergency however, by their very nature should be rare, and this provision should not serve as a means of avoiding the underlying requirement to provide advance notice to the Authority and Licensed Operators of any major changes to the SE’s network.</p>
<p>Viva</p>	
<p>Serious breach</p> <ul style="list-style-type: none"> ● Viva propose that the word “serious” be replaced with “material” and that the words “without limitation,” are added at the beginning of section 4.2. Breaches of the Licence itself are likely to be material breaches in some cases, such as breaches of the obligations in section 3. <p>Network changes</p> <ul style="list-style-type: none"> ● In section 4.5, the Licensee must notify the Regulator and all affected parties of any “material changes in its network that would require material changes to equipment and systems of other parties”. Viva propose that 	<p>Serious breach: Viva is referred to the comments above in relation to the word “serious”. The Authority does not consider it is necessary to include the words ‘without limitation’ at the beginning of section 4.2. Section 4.2 relates specifically to the matters listed in section 4.1. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p> <p>Network changes: The Authority has considered Viva’s comments and refers Viva to the Authority’s response to Viva on this matter in the Authority’s consultation report (LAD/0219/054 of 28 February 2019). The</p>

<p>the Licensee notifies the Regulator and other parties of any changes to the Licensee's network that would require any changes to the equipment and systems of other parties.</p> <ul style="list-style-type: none"> Viva also propose that section 4.6 applies if the Authority considers that a change "would or is likely to" cause another Licensed Operator to make major changes. <p>Reference Offer</p> <ul style="list-style-type: none"> Section 4.9 provides that the Licensee shall, at the Authority's request and/or every 24 months, submit a draft Reference Offer. However, under the Telecoms Law and the Access Regulation, a dominant operator is required to present a Reference Offer for the Authority's approval every 6 months. Viva propose that clause 4.9 be amended to refer to every 6 months, rather than every 24 months, to align with these legal requirements. Alternatively, the TRA may provide that, if the Licensee is declared to be in a Dominant Position, the Reference Offer must be approved every 6 months from that date, not 24 months. 	<p>Authority disagrees with Viva's suggestion as the requirement to cover "any" changes would be too broad and ultimately unworkable.</p> <p>Similarly the Authority does not consider it necessary or appropriate to incorporate Viva's proposed qualifier "or is likely to" cause another Licensed Operator to make major changes. The Authority considers such qualifier would render the relevant obligation too broad and ultimately unworkable.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p> <p>Reference Offer: The Authority notes Viva's comment regarding the requirement for the SE to present a Reference Offer to the Authority for approval every six (6) months. The Authority refers Viva to the Authority's previous response to Viva on this matter in the Authority's consultation report (LAD/0219/054 of 28 February 2019).</p> <p>Viva's reliance on Art. 57 of the Law with regards to the obligations on the SE is incorrect. The obligations on the SE in relation to the Reference Offer derive, at least initially, from the SE License rather than a dominance designation. Viva's reliance on Art. 57 as the basis for the SE's obligations in relation to the Reference Offer and/or Access are misplaced. The Authority does not consider therefore that any amendments are required.</p>
<p>ZAIN</p>	
<p>In general, Zain agrees with the changes to the provisions of section 4 of the SE Licence. Nonetheless, the section should include a clear timetable or reference to the fibre coverage obligations.</p>	<p>The Authority notes Zain's comment regarding the need for a clear timetable or reference to fibre coverage obligations. The Authority refers Zain to section 7 of the SE License which requires the SE to deploy the Licensed Network in accordance with any deployment targets determined by the Authority from time to time. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>

Question: Do you agree with the proposed minimum requirements stipulated for the coverage maps that should be provided under section 4.7 of the SE License?	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
NBN (Batelco)	
NBN agrees in principle to the requirements of 4.7 and has made some minor modifications to the Licence provisions on coverage maps.	<p>The Authority notes NBN (Batelco)'s proposed deletion of the final sentence of section 4.9 of the SE License which refers to the minimum level of detail that must be included in the coverage maps. The Authority disagrees with NBN (Batelco)'s deletion. It is important that a minimum level of detail is guaranteed to the industry.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Question: Do you agree with the proposed dates for systems separation specified in section 4.11 of the SE License?	
BRE (Batelco)	
<ul style="list-style-type: none"> BRE does not agree with the inclusion of the different levels of separation in the SE License in section 4.11. 	The Authority notes BRE (Batelco)'s comments regarding the levels of separation in section 4.11 of the SE License.

<ul style="list-style-type: none"> The levels of separation are of an operational nature, which involve complex processes and dependencies between BRE and SE. The levels of separation should not be included as a license condition as they would be taken to be legally-binding in nature, whereas given the complexity of the project, BRE and SE should have a degree of flexibility in the manner in which they implement separation as long as the respective delivery date of legal separation is met. Further, in relation to systems separation: BRE notes that the provision of its telecommunications services is underpinned by the systems contemplated to be separated under the NFL. Any material change to the separation of the systems would need to be carefully crafted, as any negative impact on systems separation would inherently affect BRE's end customers and create inefficiencies for a certain period of time. Drastic systems separation would disrupt BRE's core business operations, which would disadvantage BRE in comparison to OLOs. 	<p>Systems and processes separation are fundamental components of ensuring the SE delivers EOI within the specified timeframe. It is therefore appropriate that the levels of separation are binding.</p> <p>The Authority notes that section 4.11 provides room for flexibility in the timetable and procedure. In considering submissions by the SE on the systems and processes milestones and timetable the Authority will have due regard to the impact on the SE, BRE and all other Licensed Operators. The complexity of the project however cannot be used as a reason not to deliver on EOI.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
<p>NBN (Batelco)</p>	
<p>Section 4.11</p> <ul style="list-style-type: none"> NBN proposes that the plan and timeline for systems separation be moved to the Undertakings. Nevertheless, NBN notes that the revised clause 4.11 sets out a very aggressive timetable for systems separation, particularly that of physical separation. NBN notes that internationally the experience has been that systems separation issues generally take far longer than the time periods envisaged. In the case of the BT undertakings, the original physical systems separation date was set at 30 June 2010 (almost 5 years after the original Undertakings were given). Even this however proved to be inadequate and there followed a series of variations to the systems separation requirements. NBN cites this example as an illustration that there is a need for flexibility and realism around the setting of any dates for systems separation. It also notes that as the Undertakings were varied over time there was an increasing focus on access controls and audit to ensure the protection of 	<p>The Authority notes NBN (Batelco)'s proposal for the systems separation plan and timeline to be moved to the Undertakings. The Authority does not consider the Undertakings to be mutually exclusive with the SE License.</p> <p>The Authority notes NBN (Batelco)'s reference to the BT Undertakings. The example of separation of BT and Openreach in the UK (which was originally functional separation under the 2005 Undertakings, before legal separation was required in the 2017 Commitments in lieu of structural separation) as quoted by NBN (Batelco), focuses on one aspect of the separation without also noting the context of the position in the UK. Referencing timelines in the BT example is isolation provides limited insight of its relevance for the position in Bahrain.</p> <p>The Authority notes that other examples exist where much shorter timelines have been achievable such as, the vertical separation of O2 in</p>

<p>customer information and non-discrimination and NBN would urge the TRA to take such a flexible approach that can protect the interests of the OLOs.</p>	<p>the Czech Republic. The incumbent operator (O2) created a separate wholesale-only infrastructure company (Ceska telekomunikacni infrastruktura - CETIN) in June 2015.</p> <p>The Authority understands that this separation process - from the moment that management decided to separate O2's wholesale business to the moment CETIN started working as a separate company - took nine (9) months. This separation process included organisational, legal and contractual changes, as well as some changes to technical systems.</p> <p>The Authority also understands that complete system separation took a further twelve (12) months to implement and that in the interim, CETIN put in place provisional organisational solutions to safeguard against sharing of confidential information between CETIN and O2.</p> <p>The Authority does not suggest that the Czech Republic example should necessarily be the benchmark for Bahrain. However, this example does show that separation has been achieved within a considerably shorter timeframe than the UK.</p> <p>The Authority considers that the overarching timeline set out in section 4.11 is appropriate and provides sufficient flexibility for NBN (Batelco) regarding specific elements of the systems and processes separation referenced in subsections 4.11.1 to 4.11.3 inclusive. However, it is fundamental to delivery of EOI within the specified timeline that there is a staged provision of systems and processes separation, as required in section 4.11 of the SE License. Access controls and audit will also be an important feature which should complement, and not replace, systems and processes separation.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
<p>Viva</p>	
<p>No. The biggest problem is that Level 1 separation must apply from the Effective Date and Level 2 separation as it applies to BSS systems must be prioritised.</p>	<p>It is important that there is a staged provision of systems and process separation.</p>

<ul style="list-style-type: none"> Under section 4.11.1, the Licensee is to be given a further 9 months (from the Effective Date) to reach Level 1 systems separation. This means that, over that 9 month period, BTC staff will be able to see the service information associated with all of the customers using the Licensee's network, independent of whether they are Batelco customers or an OLO's customers. This is not acceptable. Viva submit that Level 1 systems separation be in place from the Effective Date, as follows: <i>"4.11.1 Level 1 Separation of the Licensee's Management Information Systems, Business Support Systems and Operational Support Systems from the Effective Date,"</i> Batelco staff must be restricted, through access controls, from accessing information about OLO customers through the Licensee's systems from the outset. <p>Art. 4.11.2</p> <ul style="list-style-type: none"> As submitted previously, Viva believe that the Licensee's BSS systems (order management, customer invoicing, fault reporting and CRM) generally need to be transitioned to level 2 systems separation before the OSS systems. Viva therefore propose that section 4.11.2 be revised as follows: <i>"4.11.2 Level 2 Separation of the Licensee's Business Support Systems by no later than six (6) months from the Effective Date and the Licensee's Management Information Systems and Operational Support Systems by no later than eighteen (18) months from the Effective Date; and"</i> 	<p>The separation of systems and processes will take time and the Authority recognises this. However, the physical separation should be considered separately from access control and the SE should ensure that only the correct staff member will be able to access service information relevant to its customers from the effective date.</p> <p>The controlling of access to systems, processes and data is complementary to the separation of the systems and processes.</p> <p>The Authority understands the benefits that Level 2 Separation will bring over Level 1 Separation especially with regards to certain functionality of the BSS system. However, the Authority is mindful of the complexity of many of the physical changes required and does not consider that providing a maximum of six (6) months from the effective date to complete the Level 2 Separation of the Licensee's Business Support Systems is a target that could be met. This view is taken after considering the current situation in Bahrain as well as international benchmarks for completion of separation.</p>
<p>ZAIN</p>	
<p>Yes.</p>	<p>Zain's agreement is noted.</p>
<p style="text-align: center;">Section 5: Licensed Network and Services</p>	
<p>Question: Do you agree with the changes to the provisions of section 5 of the SE License?</p>	

BRE (Batelco)	
<ul style="list-style-type: none"> BRE does not agree with the changes to section 5.4. BRE understands this section to mean that EOI is applicable from the Effective Date of the SE License and during the entirety of the transition period. BRE does not believe that this is technically and practically feasible, and its previous responses to the Authority have outlined that Licensed Services shall be provisioned on an EOO basis during the transition period, unless otherwise required. As such, BRE would suggest retaining the clause's original wording, or wording to that effect. 	<p>In light of these comments, the Authority has reworded section 5.4 of the SE License as follows:</p> <p><i>“During the Initial Period the Licensee shall provide the Licensed Services on an EoO basis, unless required by the Regulator to provide the Licensed Services on an Eol basis. Within one (1) month from the Effective Date, the Licensee shall provide a single common interface for Licensed Operators to order and track the progress of orders for the Licensed Services.”</i></p>
NBN (Batelco)	
<p>Section 5.4</p> <ul style="list-style-type: none"> This is a significant change from the previous iteration where the products and services were to be offered on EOO and, where required, on Eol. This change allows EOO only after obtaining the Regulator's approval. As currently drafted, unless the regulator had given his approval prior to issue of the licence, this would imply that all services should be offered on an Eol basis from day 1. As the TRA knows this is not possible, so NBN will need to obtain the TRA's approval to provide services on an EOO basis during the initial period. NBN suggests that the change in position is effectively making more work for the Authority and for NBN and would suggest that the wording revert to what it was previously and risks constant technical breach processes which are highly distracting and will further distract resource from the critical task of establishing a pragmatic, proportionate and effective non-discrimination model that customers trust. NBN proposes to move the online interface development and milestones to the Undertakings. <p>Section 5.6</p>	<p>Section 5.4: As noted above in the response to BRE (Batelco), the Authority has reworded section 5.4 of the SE License.</p> <p>The Authority notes NBN (Batelco)'s proposal to move the online interface development and milestones to the Undertakings. As noted above, the Undertakings and the SE License are not mutually exclusive. However, the Authority considers that, given the importance of availability of an online interface for ordering and tracking of orders, this should remain in the SE License. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p> <p>Section 5.6: The Authority notes NBN (Batelco)'s concerns that it should be able to benefit from certain group arrangements. The Authority considers that section 5.6 does not hinder NBN (Batelco) from benefitting from such arrangements provided that these arrangements do not impact on principles of non-discrimination, information controls and access and independence. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>

<ul style="list-style-type: none"> • NBN seeks further clarification on the scope of this provision as it appears to not recognize NBN as a 100% owned subsidiary of Batelco and where NBN may benefit, legitimately, from certain group arrangements to the extent that such arrangements do not impact on principles of non-discrimination, information controls and access and independence. • Certain assets may be shared with other Batelco functions including BRE e.g. certain buildings in the Batelco HQ location. 	
<p>Viva</p>	
<p>Section 5.2</p> <ul style="list-style-type: none"> • The wording of section 5.2 should also address new product requests initiated by Licensed Operators in a fair and equal manner. The risk that must be addressed is that the Licensee does not respond to the innovation needs of downstream service providers, or that it prioritises the needs of BRE. Viva propose the following be added at the end of section 5.2: <i>“The Licensee shall study all bona fide product development requests from individual Licensed Operators in a fair and equal manner and shall report back to the Licensed Operator with its response, copying the Equivalence Compliance Committee and the Regulator”.</i> • Viva also propose adding: <i>“The Licensee shall use an industry forum to discuss future NBN technology with Licensed Operators”;</i> and <i>“The Licensee shall undertake periodic external benchmarking of its wholesale product offering against offerings on overseas fibre-based NBNs and report the results of that benchmarking to Licensed Operators, the Equivalence Compliance Committee and the Regulator”.</i> <p>Section 5.3:</p> <ul style="list-style-type: none"> • There should be restrictions on the Licensee participating in markets where it would have an undue advantage arising from its market power 	<p>Section 5.2: The Authority notes Viva’s concerns regarding new product requests. The Authority notes that the Authority’s consultation paper on the draft Reference Offer Order and associated Reference Offer of the Separated Entity published on 28 March 2019 (LAD 0913 082)) provides for a mechanism for new product / service requests (Schedule 2) and Industry Forum in which technical and operational aspects of products and services offered by the SE and/or requested by OLOs, would be addressed. Section 5.3 of the SE License requires the SE to ensure that services provided are in accordance with the terms of the Reference Offer, which includes the new service request process. The Authority considers that the final wording in section 5.2 provides sufficient transparency regarding the SE’s assessment of OLO comments, such that if requested by the Equivalence Compliance & Technical Committee and/or the Authority, the SE shall provide details regarding its consideration of the comments from OLOs so as to demonstrate the SE’s compliance with its obligations under section 5.2. The Authority considers this position strikes the relevant balance between transparency, and the need to avoid administrative delays that might arise from a more extensive reporting framework. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p> <p>Section 5.3: The Authority notes Viva’s comments regarding the restrictions on the SE’s ability to participate in other markets. Viva has</p>

<p>in upstream access network service markets. Batelco may have strategic incentives to allow the Licensee to leverage its monopoly into downstream competitive areas, but such moves must be restricted. Viva propose that section 5.3 be clarified by adding the following sentence at the end:</p> <p><i>“For the purposes of this section 5.3, the Licensee shall not:</i> <i>(a) offer access and interconnection above layer 2;</i> <i>(b) directly or indirectly control a downstream wholesale or retail provider; and</i> <i>(c) horizontally expanding into non-fixed networks”.</i></p> <p>Section 5.8:</p> <ul style="list-style-type: none"> • Before a copper service can be withdrawn, an equivalent fibre service should be readily available at no additional cost to the Licensed Operator or the end user. The Authority should determine this roadmap if it does not agree with the version presented by the Licensee. 	<p>already raised these comments in response to the Authority’s first consultation on the draft SE License (LAD/1218/344 of 13 December 2018). The Authority’s position remains that the Authority considers the cross-reference to the Reference Offer in the definition of “Licensed Services” clarifies the services that the SE is authorised to provide.</p> <p>As regards Viva’s comments on restrictions on SE participating in markets where it would have an undue advantage etc, the Authority notes that section 15 of the SE License prohibits the SE from engaging in anti-competitive practices, and there are general requirements on the SE in the SE License to comply with the Law and any decisions, orders, determinations etc.</p> <p>Section 5.8: The Authority notes Viva’s comments regarding the need for an equivalent fibre service to be available at no additional cost before a copper service can be withdrawn. Viva has already raised these comments in response to the Authority’s first consultation on the draft SE License (LAD/1218/344 of 13 December 2018). The Authority’s position remains that it does not consider that these are matters for the SE License.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on these aspects.</p>
<p>ZAIN</p>	
<ul style="list-style-type: none"> • To ensure that the SE is fulfilling its role of a NBN, it is restricted from offering other commercial services other than the Licensed Services. Zain therefore recommend the following amendments: <p>Section 5.1: <i>The Licensee is authorised to deploy, install, operate, manage and maintain the Licensed Services and only to provide the Licensed Services.</i></p> <p>Section 5.3: <i>The Licensee shall only provide the Licensed Services only on a wholesale basis and in accordance with the terms of the Reference Offer.</i></p>	<p>The Authority notes Zain’s proposed wording regarding the restrictions on the SE from offering commercial services other than the Licensed Services. To the extent that the provision of services requires a License under the Telecommunications Law, the only Licensed Services that the SE will be authorised to provide are those set out in the SE License.</p> <p>As regards Zain’s comment on section 5.3, the Authority’s remit extends to telecommunications services which therefore means that it has no</p>

<ul style="list-style-type: none"> Zain is of the view that the added section 5.10 should be omitted entirely, as these are specific retail services. The SE has the obligation to provide basic connectivity services and not tailored specific retail services. 	<p>jurisdiction over services that do not require a telecommunications licence.</p> <p>Section 5.10 serves to confirm that the SE must ensure that the Licensed Services enable OLOs to continue to comply with their retail obligations under their respective Licenses (e.g., USO requirements in OLOs' National Fixed Network Licenses). The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
<p>Question: Do you agree with the proposed establishment of an Equivalence Compliance Committee, including its proposed role, composition and procedure for ensuring sufficient oversight of the SE's compliance with its obligations under the SE License?</p>	
<p>BRE (Batelco)</p>	
<p>Please see BRE's comments under the definition of ECC under Section 2 (above).</p>	<p>BRE (Batelco)'s comments are noted. The Authority refers BRE (Batelco) to the Authority's responses above in this regard.</p>
<p>NBN (Batelco)</p>	
<p>Yes. NBN recommends that the ECC should essentially be a reporting, monitoring and investigative function acting on defined issues, raised externally and internally and with rapid resolution processes, which themselves are transparent to the Authority and trusted by customers. This is in line with the role adopted by similar bodies such as the original BT Equality of Access Board and now the Openreach Board, Audit, Risk and Compliance Committee (OBARCC).</p>	<p>NBN (Batelco)'s comments are noted.</p>
<p>Viva</p>	
<p>Yes.</p>	<p>Viva's agreement is noted.</p>
<p>ZAIN</p>	
<p>Zain agrees with the proposed establishment of an Equivalence Compliance Committee, including its proposed role, composition and procedure for ensuring</p>	<p>Zain's comments are noted. The Authority considers that the definition of the ECTC is wide enough to cover monitoring and deciding on</p>

<p>sufficient oversight of the SE's compliance with its obligations under the SE Licence. The section or the definition should clearly indicate that responsibilities of the Equivalence Compliance Committee includes monitoring and deciding on investments and fibre infrastructure roll-out plans.</p>	<p>investments and fibre infrastructure roll-out plans to the extent such are relevant to the SE's compliance with its obligations under the SE License. The Authority therefore has not proposed any amendment to the relevant provision on these aspects.</p>
<p>Question: Do you agree with the proposed process regarding the SE's obligation to consult on proposed new products and services at the early stages of development? If so, how should the parameters be framed regarding the type of products and services that the SE should consult on? How should the Authority best define the relevant stage of development during which Licensed Operators should be involved, the proposed duration for consultation, and measures to ensure sufficient oversight as to how the Licensee has assessed the views from Licensed Operators?</p>	
<p>BRE (Batelco)</p>	
<ul style="list-style-type: none"> • BRE generally agrees with the proposed process set out in section 5.2 in relation to the SE's obligations to consult on proposed new products and services. BRE wishes to highlight, however, that there may be certain circumstances where an operator would require a new input from the SE on an urgent basis, so the three month timeframe set out before the introduction of the input may be excessive. • BRE suggests that a caveat is included in section 5.2 where if there is an urgent and justifiable market need for a new product and/or service from any licensed telecommunications operator, the particular product and/or service would not be subject to the typical process of approval. The product and/or service could undergo a quick consultation process and period of about a maximum of two weeks. 	<p>The Authority notes BRE (Batelco)'s comments. The Authority considers that section 5.2 relates to situations where the SE proposes new products and services. Section 5.2 does not prevent Licensed Operators from proposing new products and services using the new request mechanism (Schedule 2) under the Reference Offer (see the Authority's consultation on the draft SE Reference Offer Order and related SE Reference Offer LAD 0913 082 of 28 March 2019), so as to request the availability of a new product / service within an expedited timeframe. The provision of such product / service would need to be made available to all OLOs on a non-discriminatory basis. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p> <p>The Authority has included clarification that consultation of Licensed Operators should be by way of written notice on the SE's website, unless stipulated otherwise by the Authority.</p>
<p>NBN (Batelco)</p>	
<ul style="list-style-type: none"> • Section 5.2 (as currently drafted) means that every product and service has to be consulted upon including where these are innovative products and not necessarily impact OLOs immediately. 	<p>The Authority refers NBN (Batelco) to the Authority's response above to BRE (Batelco).</p>

<ul style="list-style-type: none"> • This may restrict OLOs if the latter wishes for a fast track product development to ensure speed to market. NBN believes that there should be flexibility in its interactions with OLOs for the development of products and services and that the Authority should not dictate the operational development of these products and service. • NBN would ensure that any product or service developed is immediately made available to all OLOs. In any case any requirement for mandated customer engagement should be limited to licensed products and services. There is a material risk that this inflexible process will restrict innovation. For example, while some customers may be focused on quality and delivery parameters for services to meet their customer needs, others will be more price sensitive and less concerned on aggressive SLAs. • These different requirements are best met via a detailed and effective customer engagement process, with the Authority only operating as a back stop in the event of disagreement. The present, overly regulatory interventionist approach will not deliver that goal. • This process and procedure should be covered under the reference offer to ensure maximum flexibility for OLOs and customers. 	
Viva	
<p>Yes, although Viva is concerned about the Licensee's responsiveness to product development proposals from licensed operators. Please see comments under section 5 above.</p>	<p>Viva's comments are noted. The Authority refers to its previous responses to Viva's comments regarding section 5 above.</p>
ZAIN	
<p>Yes.</p>	<p>Zain's agreement is noted.</p>
Question: Do you agree with the proposed obligation for the SE to provide distress emergency and safety telecommunications services for shipping?	

BRE (Batelco)	
[No response received]	---
NBN (Batelco)	
Sections 5.9 – 5.10 This is out of scope for NBN and NBN requests this be deleted as these services do not fall under the core competence of NBN Co. This is also in conflict with NBN's general obligation to provide licensed services on a wholesale basis only.	The Authority believes that it is more efficient and appropriate that the SE provide the services referred to in section 5.9. The Authority disagrees with NBN (Batelco)'s comments regarding section 5.10, which relates to the underlying wholesale provision of Licensed Services such that OLOs can comply with their retail obligations (e.g., USO requirements under OLOs' National Fixed Licenses). The Authority therefore has not proposed any amendment to the relevant provision on this aspect.
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Section 14: Privacy and Confidentiality	
Question: Do you agree with the changes to the provisions of section 14 of the SE License?	
BRE (Batelco)	
Please see BRE's general comments under Section 3 (Status of this License) with regard to SE acting on a "stand-alone" basis. BRE understands that there may be certain instances or parameters whereby SE cannot act independently from	BRE (Batelco)'s comments are noted. The Authority refers BRE (Batelco) to the Authority's responses regarding section 3 above.

Batelco in relation to retention/exchange of confidential information between BRE and Batelco.	
NBN (Batelco)	
NBN generally agrees to the changes in section 14 of the SE Licence	NBN (Batelco)'s agreement is noted.
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Section 16: Accounting requirements	
Question: Do you agree with the changes to the provisions of section 16 of the SE License?	
BRE (Batelco)	
BRE believes that the amendments to section 18 of the SE License do not address BRE's initial issues with the distinction between the SE's obligations under the regulatory framework and its financial obligations under the Commercial Companies Law.	The Authority disagrees with BRE (Batelco)'s views on this provision. The Authority's position remains that the Authority considers that section 16 of the SE License is appropriate in view of the particular position held by the SE. The Authority notes that, once again, NBN (Batelco) has not raised concerns in relation to these provisions.
NBN (Batelco)	
[No response received]	---
Viva	

<p>Viva believe the Licensee should produce the initial set of these accounts within 3 months of the Effective Date. 12 months is too long. Also, Viva request to have the regulation/rules to be mandated on the SE to generate its regulatory accounts consulted with the industry.</p>	<p>The Authority notes Viva's comment which was raised by Viva in response to the Authority's first consultation on the draft SE License (LAD/1218/344 of 13 December 2018).</p> <p>The Authority's position remains that there will, necessarily, be a period required for the SE to become operational and prepare relevant accounts. Furthermore, it is not standard practice to consult on an operator's particular financial accounts.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
ZAIN	
<p>Zain agrees with the changes to the provisions of section 16 of the SE Licence. For the avoidance of doubt, the separate accounts stipulated in section 16.1 is in reference to separate accounts for each regulated service and not separate accounts for license and non-licensed services.</p>	<p>Zain's comments are noted. Section 16.1 of the SE License does refer to separate accounts for each licensed service. The Authority has not proposed any amendment to the relevant provision on this aspect.</p>
<p>Section 25: Compliance</p> <p>Question: Do you agree with the changes to the provisions of section 25 of the SE License? Do you consider that the proposed provisions enabling the Authority to require the SE to make available additional products and services provides an appropriate incentive for the SE to comply with its obligations under the SE License? Do you consider that further measures should be expressly listed in this section? For example, should specific reference be made to the Authority's ability to authorise Licensed Operators to deploy fibre assets in certain circumstances and/or for the Authority to be able to award further fixed telecommunications licenses under the Law?</p>	
BRE (Batelco)	
<ul style="list-style-type: none"> Section 25.1.1 is an excessive measure and is not in line with the enforcement powers the Authority has under the Telecommunications Law. BRE believes that the way the sub-clause is currently drafting provides that there is no risk bearing by the Authority. BRE suggests that if this measure was to be included, a specific process would need to be 	<p>The Authority disagrees with BRE (Batelco) that section 25.1.1 of the SE License is an excessive measure. The Authority's powers under Article 35 of the Law would extend to requiring the SE to make available additional products and services.</p>

<p>drafted into the clause on how the Authority shall implement/obligate the SE to make additional products and services available.</p> <ul style="list-style-type: none"> • Additionally, a proviso should be appended to the sub-clause stating that the sub-clause would only come into force for the purpose of meeting an operator's genuine need, and to the extent that the provision of additional services and products would promote fair and effective competition. 	<p>The Authority has however amended section 25 to make clear that the exercise of this remedy, if required, would be made via the powers under the existing regulatory toolkit set out under the Law.</p>
<p>NBN (Batelco)</p>	
<ul style="list-style-type: none"> • NBN rejects the changes made to section 25 as these are excessive and disproportionate. In case of non-compliance with the license, the Authority has clear powers as set under the Telecommunications Law. It cannot include additional remedies in the license outside of the provisions of the Telecommunications law. To do so is to act ultra vires. • The mandating of a product particularly the terms and conditions around it requires extensive consideration of a wide number of factors including technical, financial and others which require adequate consultation and due process. This provision effectively imposes a permanent remedy on NBN which impacts its commercial and financial viability with no accountability on the part of the Regulator. • NBN notes that the question refers to the Regulator's ability to grant additional fixed infrastructure network licenses. NBN notes that this would appear to be ultra vires the TRA's powers and completely out of step with the Telecommunications Law and the government intention in NTP4. NBN note that article 40(bis) refers to "<i>the Fixed Telecommunications Infrastructure Network License available.</i>" This is clearly a reference to a single licence in line with the view of the Government in NTP4. Whilst the provision allows for some discretion in the TRA to allow people to deploy fibre without this license, there is clearly only the intention that there should be one such licence. • Furthermore, the remedy the Authority seeks to include in Section 25 is a permanent remedy that impacts financially and commercially NBN and 	<p>Please refer to the Authority's preceding comments.</p> <p>The Authority disagrees with NBN (Batelco)'s comments concerning the Authority's ability to grant additional fixed infrastructure network licenses. The Authority notes that NBN (Batelco)'s comments regarding exclusivity are similar to those raised by BRE in response to the Authority's first consultation on the draft SE License (LAD/1218/344 of 13 December 2018). As stated by the Authority in response to BRE's comment on this position, the SE License has been drafted to be consistent with the objectives of NTP4. Art (40 bis) does not grant exclusivity and so this should not be included in the SE License. It is possible, according to Article 40(bis), to issue other FTIN Licenses. However, we understand that in light of single network objective there is no intention to direct the issuance of another FTIN License at this time. The Authority therefore has not proposed any amendment to the relevant provision on these aspects.</p>

where the risks associated with the provision of such products and services are solely born by NBN.	
Viva	
Yes. Viva notes that the Licence is not exclusive. To the extent that the TRA seeks to impose requirements relating to the migration/decommission of OLOs fixed assets, then that will be managed under the OLO licences, as proposed. However, to avoid gaming by the Licensee, Viva do see merit in being explicit about the Authority's ability to authorise Licensed Operators to deploy fibre assets in certain circumstances and/or for the Authority to be able to award further fixed telecommunications licences under the Law.	Viva's agreement with the principles under section 25 is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Other changes	
Question: Do you agree with the other changes to the SE License not specifically referred to above?	
BRE (Batelco)	
<ul style="list-style-type: none"> BRE notes that the Authority has not taken its comments on Section 26.1 (Notices) into consideration. BRE believes that the method of notice is imperative so as to define valid notice delivery. BRE suggests the following amendment to Section. 20.1 (d): <i>"a determination of the Regulator [pursuant to the Telecommunications Law] that such modification(s) is/are necessary to comply with the Telecommunications Law.</i> 	<p>The Authority remains of the view, as expressed in response to BRE (Batelco)'s comments on the Authority's first consultation on the draft SE License (LAD/1218/344 of 13 December 2018) that the Authority does not believe that amendments to this section are necessary.</p> <p>The Authority disagrees that it is necessary to add the wording proposed in square brackets, as it is clear that a determination by the Authority has to be in compliance with the Law. Reference to the Law is already included at the end of this sentence.</p> <p>The Authority therefore has not proposed any amendment to the relevant provisions on these aspects.</p>

NBN (Batelco)

Section 4.8

- NBN requests the deletion of the word 'subcontract' in section 4.8. NBN uses a number of subcontractors as part of its operations and requiring that NBN obtains prior approval for each and every sub-contractor will only lead to inefficiencies and administrative burden on NBN. The use of sub contract resource is entirely standard procedure in telecoms network deployment globally. Issues around protection of confidential information will be dealt with in the NBN policies and procedures and systems access and will be monitored by a properly constituted ECC. NBN requests clarification that it will be able to use existing and future sub contracts without the need for prior consent for network roll out and maintenance and that the pre-approval cited in the licence is heavily limited and centres on the wider sub-contracting of the licence obligations to a third party.

Section 4.9

It is not clear why the Regulator's internal guidelines are referenced in the NBN licence. At best, the principles governing the Regulator's actions are defined in the Telecommunications Act, in particular at Art. 3. NBN requests deletion of the additions to section 4.9 as this represents another instance where the Regulator attempts to confer it more powers and discretion as envisaged under the Telecommunications Law. The Regulator already has a number of instruments that defines its approval of the Reference Offer including the Access Regulation.

Section 4.12

NBN proposes to move the details and roadmap of systems separation to the Undertakings.

Section 6

- NBN notes that section 6.1 has had an addition made to it which requires that any agreements entered into with third party entities are entered into by the Licensee on a stand-alone basis.

Section 4.8: The Authority disagrees with NBN (Batelco)'s comments regarding restrictions on sub-contracting. The provision in section 4.8 of the SE License applies to the SE's rights, duties, liabilities, obligations and privileges under the SE License. It does not therefore extend to the employment of sub-contractors for the performance of certain aspects of their day-to-day operations. It does not therefore prohibit the SE from standard commercial subcontracting arrangements to third parties. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.

Section 4.9: The Authority notes NBN (Batelco)'s comment regarding internal guidelines. The Authority disagrees that this in some way seeks to confer additional powers on the Authority than those conferred under the Law. The Authority considers that its powers to adopt such guidelines is sufficiently addressed by the Authority's powers in Art. 3 of the Law. Nevertheless, the Authority has qualified the reference to process in section 4.9 as being that set out in relevant legal instruments.

Section 4.12: The Authority refers NBN (Batelco) to its response regarding NBN (Batelco)'s comments on section 4.11 above. The Authority notes NBN (Batelco)'s proposal for the systems separation plan and timeline to be moved to the Undertakings. The Authority does not consider the Undertakings to be mutually exclusive with the SE License. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.

Section 6: The prohibition under Section 6 is fundamental to ensure compliance with non-discrimination principles and delivery of EOI.

- NBN suggests that this would prevent NBN from taking advantage of framework agreements that might be negotiated by its parent company for which any of its subsidiaries might benefit without any improper interaction between NBN and BRE.
- The regulator should be focusing on the important issues, which are non-discrimination and EoI and not be concerned with attempting in advance to prevent NBN from properly enjoying the efficiencies and potential cost savings. This is the type of issue that should be left to the ECC to monitor if necessary.

Section 6.1: Agreements entered into with third parties on a stand-alone basis.

NBN wishes to benefit from certain group and joint purchasing agreements, but always consistent with its wider obligations and competition law.

Section 7.1 Deployment targets: Deployment targets set by the Authority from time to time.

NBN's obligations regarding Deployment targets are already set in NTP4. NBN has made certain suggestions in the marked up licence to make this reflect the policy position.

Section 8 Quality of service

This clause gives the Authority a huge discretion to intervene in the crafting of commercial offers on the critical issue of quality of service. This should be set by the customers and also such changes could have material impact on the cost base and efficiencies of NBN. This is not a matter for the Authority. It should be set by dialogues between NBN and OLOs.

Section 9 Interruptions to service

There must be appropriate caveats for network emergencies.

Section 17.1

The provisions on regulatory reporting cede undue discretion on the Authority in this regard and should be caveated.

Accordingly, it is necessary that the SE must enter into agreements in its own name and on its own behalf, and not simply be a party to BRE agreements or those concluded in the name of the rest of Batelco. The Authority however, does acknowledge that SE could benefit from group efficiencies and has therefore accepted to introduce a variation to the clause such that SE may benefit from framework agreements subject to the pre-approval of the Authority.

Section 6.1: Please see the Authority's response above regarding section 6.

Section 7.1: The Authority notes NBN (Batelco)'s proposal to include specific reference to NTP4 and fix the Deployment targets to NTP4. As NBN (Batelco) itself has recognised elsewhere in its responses, the SE License will be in effect for a period of time well beyond NTP4. Therefore, it is inappropriate to link specifically to NTP4.

Section 8: The Authority notes NBN (Batelco)'s comments regarding quality of service obligations. The Authority points out that this provision is included in existing National Fixed Licenses on which the SE's Fixed Telecommunications Infrastructure Network License is based. The Authority does not consider any amendments to this provision are necessary.

Section 9: The Authority notes NBN (Batelco)'s comments regarding the need for caveats for network emergencies. The Authority considers this is sufficiently addressed as the provision is concerned with intentional interruptions in the '*normal course of business*'. The Authority points out that this provision is included in existing National Fixed Licenses on which the SE's Fixed Telecommunications Infrastructure Network

<p>Section 19 Term of Licence</p> <p>NBN is content with the automatic renewal provisions now included in the Licence.</p> <p>Sections 22 – 23</p> <ul style="list-style-type: none"> • The provisions of Internet Safety Regulation are not applicable to NBNNetco as it is a wholesale service provider. The technology solutions managing access to websites are deployed by the retail operators and managed centrally by the Regulator. This method of operations should ideally continue post the award of licence and subsequent formation of NBNNetco. Therefore, 22.2(a) should be removed. • Similarly, the obligations related to the ‘Implementation of Lawful Access’ are applicable to retail operators as per the current Lawful Access regime. Unless the Regulator clearly highlights what it means by Implementation of Lawful Access in the context of a wholesale provider, NBN propose deletion of clause 22.2 b. • A more general comment is that it would be better to make a reference to the regulations that are applicable to NBNNetco instead of adding specific obligations such as the ones mentioned under clause 22.2 (a) and (b). • The obligation under clause 23.2 is above and beyond the requirements of article 3 of the CTI Risk Management Regulation and in most cases it would be practically impossible to meet the requirements of clause 23.2 of the license. Hence the wordings of clause 23.2 should be replaced with that of clause 3A(2) of CTI Risk Management Regulation. 	<p>License is based. The Authority does not consider any amendments to this provision are necessary.</p> <p>Section 17.1: the Authority disagrees with NBN (Batelco)’s concern that ‘<i>undue discretion</i>’ is ceded to the Authority. The Authority must be in a position to require the SE to provide the necessary information to enable the Authority to assess the SE’s compliance with its obligations under the License. Sufficient safeguards are in place under the Law regarding the exercise of the Authority’s discretion (e.g., Art. 3 of the Law).</p> <p>Section 19: NBN (Batelco)’s comments are noted.</p> <p>Sections 22-23: NBN (Batelco) made similar comments on these provisions in response to the Authority’s first consultation on the draft SE License (LAD/1218/344 of 13 December 2018). The Authority remains of the view that the operator of the FTIN should ensure compliance with the relevant requirements relating to Lawful Access and Critical Infrastructure.</p>
<p>ZAIN</p>	
<p>No further comments.</p>	<p>---</p>
<p>Viva</p>	

<p>Section 1 Grant of Licence</p> <ul style="list-style-type: none"> • In respect of section 1.2: Viva do not regard the Report on the NERF as an adequate foundational document for this Licence. The Report on the NERF should be updated by the TRA to properly reflect the requirements of the Law and NTP4 prior to the Licence being issued. <p>Section 4.12 Systems and separation reporting requirements</p> <ul style="list-style-type: none"> • In respect of section 4.12 (reporting requirement), Viva believe that it is important that this process of transition of systems through Level 1 through to Level 3 should be subject to independent review and audit. The Equivalence Compliance Committee, or preferably a competent independent auditor advising the Committee, should investigate and sign off on the Licensee’s compliance, beginning in respect of Level 1 systems separation on the Effective Date and every 3 months thereafter for the first year and every 6 months for the next year. <p>Section 8 Quality of Service Requirements</p> <ul style="list-style-type: none"> • Quarterly updates should be sufficient under section 8.2, but that the Authority should be able to require more frequent updates, e.g., if there has been a persistent breach of the quality of service standards. <p>Section 9 Interruptions to the Licensed Services</p> <ul style="list-style-type: none"> • The reference to “in the normal course of business” in section 9.1 is confusing. • It may be contemplated that SE may intentionally interrupt in an emergency situation where it is impractical to obtain prior TRA approval, but if that’s the case then it should be clearly stated. In all other instances, the Licensee should obtain the TRA’s prior approval for any intentional interruption. <p>Section 15 Anti-competitive Practices</p>	<p>Section 1: The Authority notes Viva’s comments regarding the NERF [The Authority has removed references to the NERF in the SE License]</p> <p>Section 4.12: Viva’s comments are noted. The Authority is not restricted from availing of such professionals as it may consider necessary or appropriate, including the ECTC. The Authority therefore does not consider any amendments to this provision are necessary.</p> <p>Section 8: Viva’s comments are noted. The Authority does not consider any amendments to this provision are necessary.</p> <p>Section 9: The Authority notes Viva’s comments regarding section 9, which Viva has already raised in its responses to the Authority’s first consultation on the SE License (LAD/1218/344 of 13 December 2018). As noted in the Authority’s responses to Viva, the Authority has introduced a number of safeguards in the SE License to alleviate any broader concerns of the SE favouring BRE over its own retail arm. The Authority considers these provisions are sufficient and therefore, the Authority has not proposed any amendment to section 9.</p> <p>Section 15: The Authority notes Viva’s comments regarding section 15, which Viva has already raised in its responses to the Authority’s first consultation on the SE License (LAD/1218/344 of 13 December 2018). As noted in the Authority’s responses to Viva, the Authority remains of the view that this provision does not conflict with EOI and, the Authority believes it is an important additional protection. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p> <p>Section 19: The Authority notes Viva’s comments regarding section 19, which Viva has already raised in its responses to the Authority’s first</p>
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<ul style="list-style-type: none"> References to “undue” preference, advantage and discrimination in section 15.1 are misleading and misguided in the context of equivalence. Equivalence of inputs requires exactly the same services, processes etc. There is no overlay of “undue” in EoI. Therefore, the word “undue” should be deleted wherever it appears in section 15.1. <p>Section 19 Duration and Renewal</p> <ul style="list-style-type: none"> The licence period may exceed the term of Batelco’s own licence - Viva believe that SE’s licence, for so long as SE is owned or controlled by Batelco, should align with Batelco’s own licence. Viva 	<p>consultation on the SE License (LAD/1218/344 of 13 December 2018). As noted in the Authority’s responses to Viva, the Authority remains of the view that the SE License is a standalone license that is specific to the SE, as a legally separate entity within the Batelco group.</p>
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Batelco Amended Licenses:
Summary of responses received and the Authority's conclusions

Summary of comment received	The Authority's view and conclusion
<p>Definitions</p> <p>Question: Do you agree with the changes to the definitions section? If not, please give reasons and state which terms you think should be added or omitted.</p>	
<p>BRE (Batelco)</p>	
<ul style="list-style-type: none"> It is unfitting to include “Level 1 Separation”, “Level 2 Separation”, “Level 3 Separation” and “Undertakings” as definitions or obligations to undertake in the NFL. These definitions could be introduced in a separate instrument issued by the Authority that would reflect the separation roadmap. BRE notes that the definition of “Business Support Systems” includes “fault notification” which is inaccurate. Batelco suggests replacing “fault management” with “assurance notification”. 	<p>The Authority notes BRE (Batelco)’s comments. The Authority refers BRE (Batelco) to its responses on these items under the relevant section in the SE License.</p> <p>It is important that the relevant terms reflect those in the SE License and are consistent with those. The Authority therefore has not proposed any amendment to the relevant provisions on these aspects.</p>
<p>Viva</p>	
<ul style="list-style-type: none"> Definition of Force Majeure and Undertakings: Viva have the same comments as those above in response to Q1 of the SE License Consultation. Definition of Reference Offer: the definition should refer to the Reference Offer “approved or determined by the Authority”, not just “approved” by the TRA. 	<p>The Authority notes Viva’s comments. The Authority refers Viva to its responses on these items under the relevant section in the SE License.</p>

ZAIN	
<ul style="list-style-type: none"> To avoid misunderstanding, Zain recommend the following changes to the definition of (Level 1 Separation): <i>“means, whilst both the Licensee and the Separated Entity would continue to share the same applications, only employees of the Licensee would be only able to access functions and data relating to the Licensee through the use of user access controls”.</i> The definition of “Business Support Systems” should distinctly restrict the Licensee from any system access related to the infrastructure, fibre rollouts and inventory information. Zain considers the amendments to the Force Majeure definition sufficient. Nonetheless, “States” is a capitalised word that is not defined in this License nor in the Telecommunications Law. 	<p>The Authority refers Zain to its responses on these items under the relevant section in the SE License.</p> <p>It is important that the relevant terms reflect those in the SE License and are consistent with those. The Authority therefore has not proposed any amendment to the relevant provisions on these aspects.</p>
<p>Section 3: Licensed Obligations</p> <p>Question: Do you agree with the provisions of section 3 of the Amended NFL License? If not, please state why and state which terms you think should be added or omitted.</p>	
BRE (Batelco)	
<ul style="list-style-type: none"> The phrase “and/or any other regulatory instruments issued by the Regulator” should be omitted from section 3.1 (e) of the NFL as Telecommunications operators have no legal obligation to comply with regulatory instruments issued by the Authority which are not legally binding in nature. BRE does not understand why a completely new breach test (“serious breach”) is now being created when the Telecommunications Law provides for severe/material breach. BRE therefore proposes that only severe or material failures to comply with license obligations triggers enforcement proceedings in accordance with the law. BRE does not agree with provisions of section 3.2 which state that <i>“Failure to comply with any of the obligations in section 3.1 shall</i> 	<p>Section 3.1(e): The Authority does not agree that the new wording in section 3.1(e) of the NFL obliged licensees to comply with regulatory instruments which are not legally binding in nature. The Authority therefore does not believe that any change to the text in section 3.1(e) is necessary.</p> <p>Serious breach: BRE(Batelco) is referred to the comments above in relation to the word “serious”.</p> <p>Section 3.2: The Authority notes BRE (Batelco)’s comments regarding the consequences of Batelco’s failure to comply with the roadmap for systems separation and the relationship with this and a breach of the Law. The Authority considers that BRE (Batelco) has misunderstood the operation of this section. A breach of section 3.1 will be treated as a serious breach of the</p>

<p><i>constitute a serious breach of this License and the Telecommunications Law</i>". Since a specific roadmap to achieve separation is not part of the Telecommunications Law, it shall not be considered a breach of the Law should Batelco fail to meet any part of any timetable and procedure provided to achieve the intended separation.</p> <ul style="list-style-type: none"> • BRE notes that the provisions of section 3.2, or a similar section which sets out the constitution of a severe breach of the Telecommunications Law, is not set out in the Amended Other Licensed Operators' (OLOs) National Fixed License. In this regard, BRE refers to Art. 29 (e) of the Telecommunications Law, which states that "Individual Licenses shall have standardized terms and conditions as far as practicable, and any differences shall be for objectively justifiable reasons." BRE takes this opportunity to highlight the importance of applying the same license terms across all OLOs' licenses (including BRE). • BRE believes that sections 3.3, 3.5 and 3.6 of the NFL are to be omitted and replaced with an obligation on BRE to comply with the governance protocol submitted to the Authority, which sets out Batelco's views in relation to the shared functions and structure of the Separated Entity and BRE. 	<p>NFL, which in turn shall be treated as a relevant breach of the Law for the purposes of Art. 35 of the Law.</p> <p>The Authority considers that it is appropriate to retain such wording in section 3.2 of the NFL, as it is limited to those items specified in section 3.1 of the NFL (and equivalent provisions in the SE License) which are not applicable for OLOs and therefore are not present in the Amended OLO Licenses. The provisions in section 3.1 are necessary to ensure adherence of BRE to the equivalent non-discrimination principles to which the SE is subject under the SE License. The legal separation of Batelco into two separate entities (the SE and the rest of Batelco (BRE)) results, among other items, in the SE being granted a special position as the relevant entity that will deploy and operate the Single Network, which also needs to be reflected in the BRE suite of Licenses including the NFL. In this regard, the position of each of SE and BRE can be distinguished from OLOs.</p> <p>Section 3.3, 3.5 and 3.6: The Authority disagrees that sections 3.3, 3.5 and 3.6 should be omitted and replaced with a reference to the governance protocol, that is to be submitted by Batelco and the SE. The Authority refers BRE (Batelco) to the Authority's responses on these matters raised in the section on the SE License.</p> <p>The Authority therefore has not proposed any amendment to the relevant provisions on the above aspects.</p>
<p>Viva</p>	
<p>Viva has the same comments as those made in response to the SE License Consultation in respect of:</p> <ul style="list-style-type: none"> • Serious or material breach; • Compliance with the undertakings; • Separate legal entity and independent board and management; • Chief executive requirements; • Independent functions; 	<p>The Authority notes Viva's comments. The Authority refers Viva to its responses on these items under the relevant section in the SE License.</p>

<ul style="list-style-type: none"> • Systems separation; and • Provision of a roadmap <p>Viva also has the following comments on Section 3:</p> <ul style="list-style-type: none"> • IFL licence should be with SE not Batelco – pursuant to Paragraph 3.10, TRA Consultation Paper. 	
ZAIN	
Yes.	Zain's agreement is noted.
<p>Section 4: Licensed Services</p> <p>Question: Do you agree with the changes to section 4 of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.</p>	
BRE (Batelco)	
<ul style="list-style-type: none"> • BRE would appreciate the Authority's amendment to section 4.4 of the NFL to replace the phrase "<i>reasonable advance notice</i>" with "<i>at least ninety (90) days' advance notice</i>". BRE believes that a fixed ninety day period would be serve as a reasonable advance period to revoke any approval issued by the Authority pursuant to section 4.3. • Section 4.5: BRE seeks the Authority's clarification on the mechanism of obtaining the Authority's written approval to deploy, operate or maintain a fixed fibre asset or fixed telecommunications infrastructure and/or install, operate or manage a fixed telecommunications network in the Kingdom of Bahrain. • Mainly, BRE is concerned on how to obtain the aforementioned approval prior to the NFL's amendment date. 	<p>Section 4.4: The Authority notes BRE (Batelco)'s proposal for a minimum ninety (90) days' notice period to be provided before the Authority could revoke its approval under section 4.3. The Authority does not consider such restriction on its discretion is warranted in this provision.</p> <p>Section 4.5: Should BRE (Batelco) wish to seek the Authority's prior approval to deploy, operate or maintain a fixed fibre asset or fixed telecommunications infrastructure etc., BRE (Batelco) should contact the Authority using the standard channels of communication. BRE (Batelco) would be required to substantiate its request.</p> <p>For the reasons stated above, the Authority therefore has not proposed any amendment to the relevant provisions on the above aspects.</p>
Viva	
Yes.	Viva's agreement is noted.

ZAIN	
<ul style="list-style-type: none"> Section 4.1: Zain disagrees with the proposed amendment of replacing “national fixed telecommunications network” with “Fixed Telecommunications Infrastructure Network”. The latter is related to access physical infrastructure service only, and therefore does not cover the list of call/traffic conveyance services mentioned in this section. Furthermore, the license and service obligations of the Fixed Telecommunications Infrastructure Network belongs to the Separated Entity and not the Licensee. 	<p>The Authority notes Zain’s comment regarding the replacement of reference to ‘national fixed telecommunications network’ with ‘Fixed Telecommunications Infrastructure Network’. The Authority understands that post-separation, BRE will not operate its own national fixed telecommunications network without the Authority’s approval, but will purchase from the SE any inputs needed to provide the BRE services. The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
Previous Section 13: Provision of Access	
Question: Do you agree with the deletion of the previous section 13? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)’s agreement is noted.
Viva	
<p>Viva consider the deletion of the Access provision in section 13 to be premature. Batelco may well still be considered dominant, it is too early to know, and the provision of Art. 57 will apply anyway if they are. Therefore, Viva propose that section 13 be reinstated.</p>	<p>The Authority notes Viva’s comment regarding previous section 13 (Provision of Access) in the NFL. The Authority understands that post-separation, BRE will not operate its own national fixed telecommunications network without the Authority’s approval, but will purchase from the SE any inputs needed to provide the BRE services</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on this aspect.</p>
ZAIN	
Yes.	Zain’s agreement is noted.
Previous Section 16: Connection Points	

Question: Do you agree with the deletion of the previous section 16? If not, please five reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Current Section 16: Billing	
Question: Do you agree with the provisions of section 16.1 of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Section 21: Privacy and Confidentiality	

Question: Do you agree with the changes to section 21 of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	
<ul style="list-style-type: none"> • While SE must not be permitted to disclose any OLO confidential information to Batelco (including confidential information about OLO customers), there should be an equivalent obligation on Batelco to immediately notify the TRA or the Equivalence Compliance Committee of any OLO confidential information that it receives from SE, not to use that information in any way and, if required by the TRA, to destroy that information. This is particularly important during any period of Layers 1 or 2 systems separation. • Batelco should be subject to the same obligations in respect of SE confidential information that it receives, where that information has not been provided at the same time and in the same manner to OLOs. 	<p>The Authority has considered Viva's comments. The Authority considers that the current provisions in section 21 provide sufficient safeguards to ensure BRE would not be permitted to receive and/or act on confidential information incorrectly received from the SE. The Authority notes that the provision in section 21 of the NFL reflects the equivalent provision in section 14 (Privacy and Confidentiality) of the SE License.</p> <p>The Authority therefore has not proposed any amendment to the relevant provision on the this aspect</p>
ZAIN	
Yes.	Zain's agreement is noted.
Section 22: Anti-Competitive Practices	
Question: Do you agree with the changes to section 22 of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	

Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Section 23: Accounting Requirements	
Question: Do you agree with the changes to section 23 of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
BRE generally agrees but seeks the Authority's clarification on the exact timeframe on which BRE's accounts are to be drawn up and presented separately from those of the Separated Entity.	<p>The Authority considers that as from the Effective Date BRE (Batelco) is to ensure that by the next regulatory due date for submission of accounts, BRE (Batelco) must have complied with the provisions in this section regarding separation of accounts. By way of the clarification sought, the Authority notes that the relevant current regulatory requirements would require the regulatory accounts to be submitted to the Authority annually.</p> <p>The Authority believes that it would make sense to synchronise the submission dates for BRE (Batelco) and the SE to the same date. The Authority notes that the Amended Accounting Separation Regulation² states that the regulatory accounts should be submitted six months after the accounting period. The accounting period for Batelco is January to December, so this would mean that BRE (Batelco) and SE should submit their regulatory accounts in June.</p> <p>The Authority is, however, mindful that given the short time between the 2 June 2019 (when separation is to be implemented) and the end of June (when the regulatory accounts would be due) that only limited information might be available at the time of the first filing date and would therefore approach those submissions with a requisite degree of pragmatism.</p>

² A Regulation issued on 02 August 2004 and amended on 1 March 2018

Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Section 27: Modification, Revocation and Termination	
Question: Do you agree with the provisions of section 27.1(d) of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Section 30: Compliance	
Question: Do you agree with the provisions of section 30 of the Amended NFL License? If not, please give reasons and state which terms you think should be added or omitted.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	

Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Universal Amendments to All Batelco Licenses	
Question: Do you agree with the proposal to reflect relevant amendments to all of the Batelco Telecommunications Licenses (as applicable)? If not please state why.	
BRE (Batelco)	
Please refer to the comments raised above as applicable to the Batelco Telecommunications Licenses.	BRE (Batelco)'s comments are noted. The Authority refers BRE (Batelco) to the Authority's responses above.
Viva	
Yes.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
Specific Additional Amendments to Certain Licenses	
Question: Do you agree with the specific additional amendments to the Batelco Telecommunications Licenses referred to at paragraph 8 of the consultation document? If not please state why.	
BRE (Batelco)	
Please refer to the comments raised above as applicable to the Batelco Telecommunications Licenses.	BRE (Batelco)'s comments are noted. The Authority refers BRE (Batelco) to the Authority's responses above.

Viva	
Notwithstanding Viva's position on the NFL proposed amendments, Viva agrees with the specific additional amendment to the Licences referred to at para 8.	Viva's agreement is noted.
ZAIN	
Yes.	Zain's agreement is noted.
International Connectivity Question: Do you agree with the Authority's proposed approach in relation to international connectivity that, at least at this point in time, the IFL should remain with Batelco, rather than be held by the SE? If not please state why.	
BRE (Batelco)	
Yes.	BRE (Batelco)'s agreement is noted.
Viva	
No: <ul style="list-style-type: none"> Viva have proposed that the cable landing station may be owned by Batelco, pending the review to be conducted by the TRA, but that the cable landing station should be operated by SE, with the licence obligations being with SE. If the review finds that it is unnecessary for SE to have the IFL licence to minimise the anti-competitive impacts of any bottlenecks, then the TRA may issue an IFL licence to Batelco. If the review finds that it is necessary for SE to have the IFL licence to minimise the anti-competitive impacts of any bottlenecks, then the 	As per the consultation on the draft SE Reference Offer Order and Reference Offer, the Authority is planning to leave access to international connectivity with BRE. The Authority is proposing however, to commence a market review of the entire international connectivity supply chain shortly. Following that review, it may be necessary to re-evaluate this position. <p>In respect of the provision of access to international connectivity (as distinct from provision of capacity), the Authority is of the view that the cross-connect service should be provided by the IFL holder; in most cases, this will be the local landing party of the cable system.</p>

<p>SE licence remains in place and the TRA should order Batelco to transfer ownership in the relevant assets to SE.</p> <p>Viva has other comments about international connectivity:</p> <ul style="list-style-type: none"> The main constraint impacting competition in the access to international cables is related to the exorbitant cross connect and colocation charges applied by Batelco which is controlling most of cables landing stations in the Kingdom. In this regard, Viva understood that, in application of the Government policy in the NTP4, the Authority is reviewing the international connectivity supply chain to remove anti-competitive impact of any bottleneck. The Authority's relevant position is to promote for competition in the provision of international connectivity, in line with the Government policy, where In the Framework (Para 81.d), the TRA stated that: <i>"...Landing stations could be controlled by the FSE, the operator or any other entity.</i> A compromise may be to keep the cable landing station owned by Batelco, pending the review to be conducted by the TRA, but that the cable landing station should be operated by SE, with the licence obligations being with SE. Viva points to NTP4 where the Government has recognised the importance of competition in the provision of international connectivity and made recommendations accordingly. 	<p>The current IFC and IGC Services included in BRE Reference Offer will be in line with this approach. As indicated above, this position may be re-evaluated upon completion of the market review of the entire international connectivity supply chain.</p> <p>In relation to third party assets relating to international connectivity passing over the King Fahad Causeway (KFC), the Authority considers that these are equivalent to international cables and are therefore not part of the scope of SE or the Single Network objective.</p> <p>The Authority is of the view that the SE's scope should end at the cable landing station (or equivalent in case of KFC and GCCIA). The demarcation point of the SE's network should in principle end at this point, which may be at a terrestrial location within Bahrain.</p> <p>The Authority further considers that access to and usage of these international assets should be part of the review to be commenced shortly by the Authority of the entire international connectivity supply chain.</p>
<p>ZAIN</p>	
<p>Yes – at this point in time, IFL should remain with Batelco.</p>	<p>Zain's agreement is noted.</p>
<p>Any Other Comments</p> <p>Question: Do you have any further comments or suggestions on the amendments proposed by the Authority?</p>	
<p>BRE (Batelco)</p>	

<ul style="list-style-type: none"> Section 14 (Provision of Services for Resale) should be removed from the NFL and all other Batelco Telecommunications Licenses and not carried over from an earlier services licence model. BRE notes that the SE License and regulatory framework caters for the provision of access and/or interconnection with the licensed fixed network. One interpretation of the section is that this was originally intended for resale of a Batelco retail service by an OLO. This clause was believed to have been originally designed for a different and earlier industry structure where other licensees may not have fully been able to roll out their networks and a resale obligation (whatever its scope was intended to be) may have been necessary. In practice the clause has never been activated. BRE believes that the duration of the NFL and all other Batelco Telecommunications Licenses shall be for a period of fifteen (15) years, in line with the duration of the Separated Entity's licenses. 	<p>The Authority notes BRE (Batelco)'s comments regarding section 14 of the NFL. The Authority considers that more general amendments to the licensing framework can be addressed as part of the Authority's wider licensing review project. The changes that are to be made to BRE's suite of existing Licenses at this time, are intended to be limited to those necessary as a result of the legal separation of Batelco into the SE and the rest of Batelco.</p> <p>As regards BRE (Batelco)'s comment regarding duration of the NFL, the Authority notes that pursuant to section 26.1, the NFL automatically renews for further periods of ten (10) years unless the Licensee is, for example, in material breach. There are similar provisions in BRE's other Licenses. The Authority considers that the automatic renewal provisions provide sufficient continuity and certainty for BRE (Batelco).</p> <p>The Authority therefore has not proposed any amendment to the relevant provisions on these aspects.</p>
Viva	
No.	---
ZAIN	
<ul style="list-style-type: none"> Zain's concern under Section 4.1 is applicable to the similar amendments made to section 6 (public payphone services), section 7 (provision of public emergency call service) and section 9 (provision of operator assistance services). Section 19 – radiocommunications and frequency allocation; Zain believes that this existing clause could be misused by the fixed operators to use the radiocommunication as an access to reach the end-users directly. Therefore, Zain recommends deleting this section. 	<p>The Authority refers to its earlier comments above in relation to section 4.1, 6.7 and 9.</p> <p>The Authority therefore has not proposed any amendment to the relevant provisions on these aspects.</p> <p>Zain's proposal related to section 19 will be reviewed as part of its Review of the Licensing Regime project. The edits that have been contemplated in this instance are limited to those which are deemed essential to reflect the new regulatory framework.</p>

OLO Amended Licenses:
Summary of responses received and the Authority's conclusions

Summary of comment received	The Authority's view and conclusion
DEFINITIONS	
Do you consider the amendments to the Force Majeure definition sufficient? <i>If not, please give reasons and state which terms you think should be added or omitted.</i>	
Viva	
Yes	Agreement noted.
ZAIN	
Yes; but "States" is a capitalised word that is not defined in this License nor in the Telecommunications Law.	Noted. The Authority does not consider however that it is necessary to change or define the term "States" which is generally understood.
Do you agree with the addition of the Separated Entity definition? <i>If not, please give reasons and state which terms you think should be added or omitted.</i>	

Viva	
Yes.	Agreement noted.
ZAIN	
Yes.	Agreement noted.
Do you agree with the deletion of the definition of “Structural Separation”? <i>If not, please give reasons and state which terms you think should be added or omitted.</i>	
Viva	
Yes.	Agreement noted.
ZAIN	
Yes.	Agreement noted.
SECTION 3: LICENSED NETWORKS AND SERVICES	
Do you agree with the provisions of section 3.2 (a) of the amended NFL License? <i>If not, please give reasons and state which terms you think should be added or omitted.</i>	
Viva	
Yes.	Agreement noted.

ZAIN	
<p>Yes, but to limit the SE or any holder of a Fixed Telecommunications Infrastructure Network License from entering into a commercial agreement with a Licensee that could give rise to discrimination and therefore represent an anti-competitive act – Zain recommends the following modification to section 3.2 (a):</p> <p><i>“any Fixed Telecommunications Infrastructure Network in line with any Reference Offer agreements entered into with any holder of a Fixed Telecommunications Infrastructure Network License.”</i></p> <p>Alternatively, agreements should be a defined word and capitalised to reflect the requirement that only the agreements that are approved by the Authority and offered on a non-exclusive and non-discriminatory basis are permissible.</p>	<p>The Authority has considered Zain’s proposed modification to section 3.2(a). The Authority does not consider it necessary to amend the text of section 3.2(a). The reference to ‘agreement’ already covers supply agreements entered into between the Separated Entity and OLOs, such as Zain under the framework of the Separated Entity’s Reference Offer. The Authority notes that restricting the reference to ‘agreements’ in this section to Reference Offer agreements could inadvertently restrict OLOs’ ability to avail of any exceptional cases (as envisaged in section 3.6 of the Amended OLO NFL and in the Authority’s consultation paper on the draft Reference Offer Order and associated Reference Offer of the Separated Entity published on 28 March 2019 (LAD 0913 082)). Commercial agreements regarding exceptional cases would not form part of the Reference Offer and therefore would not be included in section 3.2(a) if Zain’s proposed amendment were accepted.</p> <p>The Authority notes Zain’s concerns that the Separated Entity should be required to ensure services are offered on a non-exclusive and non-discriminatory basis. The Separated Entity is required to ensure under the SE License and under the Reference Offer Order to the Separated Entity that services under the Reference Offer are provided on an equivalence of input basis (which includes ensuring that services are provided on a non-discriminatory basis).</p> <p>Any complaints of discrimination can continue to be raised with the Authority by way of an <i>ex post</i> complaint under the relevant provisions of the Law.</p>
Do you agree with the provisions of section 3.4 of the amended NFL License? <i>If not, please give reasons and state which terms you think should be added or omitted.</i>	
Viva	
No.	

<ul style="list-style-type: none"> Requirements to migrate and/or decommission network under section 3.4 can only apply following the issuance of the Fixed Telecommunications Infrastructure Network Licence to SE (not the much earlier Amendment Date). Until the licence is issued, these requirements cannot apply. Viva objects to the proposed wording of section 3.4 related to the migration/decommission of OLOs fixed assets. Any expropriation of OLOs' assets shall be fairly compensated in accordance with Bahrain Constitution [Art. 9(c)] and within the limits of the law. Viva requests that the Authority commit to engage with OLOs on the transfer of their fixed Assets to the SE to reach an agreement with licensees on any eventual transfer of licensees' assets. Viva requests to amend section 3.4 as follows: <i>"The Licensee shall, in accordance with a timetable and process to be determined by the Regulator (in consultation with the Licensee and other stakeholders), migrate the parts of its National fixed telecommunications network that may be mandated by the Regulator to the Separated Entity and/or decommission such assets [in accordance with the law]. The licensee shall be fairly compensated for the transferred assets in accordance with the Constitution. The migration and/or decommissioning timetable and process shall include the necessary amendments required to this Licence as a result of the migration and/or decommissioning of the relevant parts of the Licensee's National fixed telecommunications network. These include without limitation relevant amendments to and/or disapplication of the relevant provisions in section 14 (Provision of Access), section 17 (Network Termination), section 20 (Access to Land) that are dependent upon the Licensee operating and managing a National fixed telecommunications network"</i> 	<p>The Authority notes Viva's comments regarding the date for migration and/or decommissioning when compared to the date of issuance of the Fixed Telecommunications Infrastructure Network License to the Separated Entity. The Authority intends for the effective date of the FTIN to the Separated Entity and the effective date for the Amendments to OLOs' Licenses and to BRE's Licenses (Amendment Date) to be aligned i.e., they will take effect on the same day. There should therefore not be any gap in time, that should be a cause of concern for Viva.</p> <p>The Authority notes Viva's comments regarding migration and/or decommissioning of assets and, compensation. Section 3.4 and section 3.6 of the Amended NFL clearly envisage consultation with the Licensee and other stakeholders, prior to any proposed migration and/or decommissioning of assets. It is the Authority's current expectation that such consultation could include matters such as process, timetable, whether any compensation could be paid etc. (taking into account appropriate valuation methods). The Authority cannot commit to a specific process at this time, as it is as yet uncertain when any such consultation might take place. The Authority notes Viva's comments regarding the interpretation of Art. 40(bis)(a). The Authority does not agree with Viva's interpretation of this Article.</p> <p>Article 40(bis)(a) clearly restricts deployment and maintenance of fixed telecommunications infrastructure including establishment and ownership of ducts and fibre optics by anyone other than FTIN Licence holders, except in the circumstances determined by the Authority.</p> <p>There is no restriction on the nature of assets included within the reference to 'fixed telecommunications infrastructure' in Art. 40(bis)(a) such that Viva can properly draw the conclusion that it cannot be required to migrate and/or decommission active assets, or that fixed wireless infrastructure should be carved out from Art. 40(bis)(a) and therefore from section 3.4 and section 3.6 of the final Amended OLO NFL.</p>
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<ul style="list-style-type: none"> • The TRA may not, under article 40(bis)(a), require that an OLO migrate any active infrastructure to SE or decommission that infrastructure under section 3.4. • Viva does not accept that the definition of “National fixed telecommunications network” in the OLO licence means the same as “fixed telecommunications infrastructure” in article 40(bis)(a). • Viva believes article 40(bis)(a) applies to fixed [fibre/wired] infrastructure. In particular, it does not include fixed wireless infrastructure. • Therefore, sections 3.4 (and 3.6) should not apply to the broad definition of National fixed telecommunications network (which includes fixed wireless) under the licence. It should apply to the fixed fibre network, excluding equipment and, where approved by the TRA, dark fibre. 	
ZAIN	
<ul style="list-style-type: none"> • Section 3.4 reflects a prospective intent of the Authority to call for a mandatory transfer of or outright decommissioning of parts of the Licensee’s national fixed telecommunications network (including fibre assets and incidentally wireless assets based on the current definition of “national fixed telecommunication network”) to the Separated Entity. • Zain is concerned about having to relinquish control of its existing fibre assets without having an opportunity to thoroughly assess the implications of such transfer or decommissioning – including the impact on network operations and the impact on financials of a write-down of assets. 	<p>The Authority notes Zain’s comments with regard to transfer (migration) and/or decommissioning of assets.</p> <p>The Authority does not consider Zain’s proposed insertion into section 3.6 of the final Amended OLO NFL of a condition that migration and/or decommissioning is subject to the Licensee’s acceptance. Such wording gives a clear incentive to OLOs to withhold consent at will.</p> <p>OLOs will be afforded the opportunity to make their views on migration and/or decommissioning known during the consultation process which is referenced in section 3.6 of the final Amended OLO NFL.</p> <p>In relation to Zain’s argument regarding private property, the SE’s mandate and scope is to provide a national broadband network in accordance with the single network objective which includes serving the needs of private</p>

- The fibre assets represent private property protected by private ownership and constitutional rights in accordance with the laws of Bahrain.
- More importantly, these are integrated network elements of Zain's network and are crucial for its operations. The intrinsic value the fibre assets have and continue to provide to Zain in running its operation far exceeds monetary compensation such as the net book value (NBV) of the asset. The relinquishing of this invaluable asset may inadvertently require an expensive restructuring of the entire network design.
- Major changes will need to be made such as altering hub sites topology and distribution, sites aggregation rerouting, modifying the logical and geo-redundancy setups, reaching international capacities, systems and contents dispersal. This will entail high costs and time, operational and technical burdens.
- Any mandatory request to transfer ownership or decommission the fibre assets should require consultation with Zain and should allow Zain to evaluate impacts thoroughly and for both parties to make informed decisions on the economic and operational feasibility of the mandate.

Accordingly, the clause should be amended to:

The Licensee may be called upon migrate the parts of its National fixed telecommunications network that may be mandated by the Regulator to the Separated Entity and/or decommission such assets. The migration and/or decommissioning exercise shall be done in accordance with a timetable and process to be determined by the Regulator (in consultation with the Licensee and other stakeholders) and subject to mutual acceptance by the Regulator and the Licensee, based on the outcome of a thorough evaluation and feasibility study. The migration and/or decommissioning timetable and process shall include the necessary amendments required to this License because of

developments. However, exceptional circumstances may apply and this may be considered as part of the mechanisms to be developed between the Ministry and the Authority.

In respect of Zain's comments regarding compensation, please see the Authority's response to Viva's comments on the same above.

<p><i>the migration and/or decommissioning of the relevant parts of the Licensee's National fixed telecommunications network. These include without limitation relevant amendments to and/or repeal of the relevant provisions in section 14 (Provision of Access), section 17 (Network Termination), section 20 (Access to Land) that are dependent upon the Licensee operating and managing a National fixed telecommunications network.</i></p>	
<p>Do you agree with the provisions of section 3.6 of the amended NFL License? <i>If not, please give reasons and state which terms you think should be added or omitted.</i></p>	
<p>Viva</p>	
<p>No.</p> <ul style="list-style-type: none"> The requirement not to install additional fibre assets under section 3.6, can only apply following the issuance of the Fixed Telecommunications Infrastructure Network Licence to SE (not the much earlier Amendment Date). Until the licence is issued, these requirements cannot apply. See Viva's additional comments re: section 3.6 and the definition of National fixed telecommunications network above. 	<p>Please see the Authority's comments above.</p> <p>The Authority notes Viva's comments regarding the date from which the requirement not to install fibre would run, when compared to the date of issuance of the Fixed Telecommunications Infrastructure Network License to the Separated Entity. The Authority intends for the effective date of the FTIN License to the Separated Entity and the effective date for the Amendments to OLOs' Licenses and to BRE's Licenses (Amendment Date) to be aligned i.e., they will take effect on the same day. There should therefore not be any gap in time, that should be a cause of concern for Viva.</p>
<p>ZAIN</p>	
<p>Yes – however, nothing in this section should preclude Zain's right to deploy fibre or other fixed network infrastructure within private lands/properties.</p>	<p>Please see the Authority's response above with regard to Zain's concerns on section 3.4 of the Amended OLO NFL. The Authority does not consider there is any such restriction in Art. 40(bis)(a) such that fibre network infrastructure within private lands/properties is excluded.</p> <p>As detailed above, the SE's mandate and scope is to provide a national broadband network in accordance with the single network objective which includes serving the needs of private developments. However, exceptional</p>

	circumstances may apply which could be considered as part of the mechanisms that might be developed between the Ministry and the Authority.
SECTION 4: LICENSEE OBLIGATIONS	
Do you agree with the provisions of section 4 of the amended NFL License? In particular that the Licensee will comply with:	
<p>(a) the terms of the Telecommunications Law / regulations; and</p> <p>(b) all decisions / determinations / orders / any other regulatory instruments issued by the Authority;</p> <p><i>If not, please state why and state which terms you think should added or omitted.</i></p>	
Viva	
Yes, broadly. Licensees have to comply with the Telecoms Law and regulations, so paragraph (a) is fine. Viva propose that paragraph (b) apply to such decisions etc. lawfully made by the TRA.	The Authority notes Viva's comments. The Authority does not consider however that any change is required to the current wording. In the event of any ' <i>unlawful</i> ' decisions etc, Viva would enjoy rights of redress under the Law.
ZAIN	
Yes.	Agreement noted.
SECTION 29: MODIFICATION, REVOCATION AND TERMINATION	
Do you agree with the provisions of section 29.1(d) of the amended NFL License? <i>If not, please give reasons and state which terms you think should be added or omitted.</i>	
Viva	
Yes, broadly. As with section 4, determinations must be lawfully made by the TRA.	The Authority notes Viva's comments. The Authority does not consider however that any change is required to the current wording. In the event of

	any ' <i>unlawful</i> ' determinations etc, Viva would enjoy rights of redress under the Law.
ZAIN	
Yes.	Agreement noted.
SECTION 32: COMPLIANCE	
<ul style="list-style-type: none"> Do you agree with the provisions of section 32 of the amended NFL License? <i>If not, please state why.</i> 	
Viva	
Yes.	Agreement noted.
ZAIN	
Yes.	Agreement noted.
UNIVERSAL AMENDMENTS	
Do you agree with the proposal to reflect the amendments to all of the OLO Telecommunications Licences? <i>If not, please state why</i>	
Viva	
Yes.	Agreement noted.
ZAIN	
Considering Zain's comments to the amendments made to the NFL, Zain agrees with the proposal to reflect the amendments to all of the OLO Telecommunications Licences.	Agreement noted.

SPECIFIC ADDITIONAL AMENDMENTS TO CERTAIN LICENSES	
Do you agree with the specific additional amendment to the Licences referred to at para 8 of the main body of the Consultation Document, above. <i>If not, please state why.</i>	
Viva	
Notwithstanding Viva's position on the NFL proposed amendments, Viva agrees with the specific additional amendment to the Licences referred to at para 8 of the Consultation Paper.	Viva's comments are noted and addressed above.
ZAIN	
Considering Zain's comments to the amendments made to the NFL, Zain agrees with the specific additional amendment to the Licences referred to in paragraph 8 of the main body of the Consultation Document.	Zain's comments are noted and addressed above.
ANY OTHER COMMENTS	
Do you have any further comments or suggestions on the proposed amendments proposed by the Authority?	
Viva	
(a) Section 1 Grant of Licence <ul style="list-style-type: none"> • Viva proposes the word "install" be reinstated in section 1.1 and that sections 3.4 and 3.6 apply to restrict that right in the appropriate circumstances (see further below). (b) Section 2 Definition of Reference Offer <ul style="list-style-type: none"> • Viva has previously submitted that, under the Telecoms Law, the Authority may specify the terms if it does not approve of the Reference Offer. Accordingly, Viva believes that the definition of Reference Offer 	The Authority has considered Viva's comments regarding section 1.1 of the Amended OLO NFL and has re-inserted into the final Amended OLO NFL, reference to the word ' <i>install</i> ', along with the caveat that the right to install fibre would be limited in accordance with the provisions in section 3.4 and section 3.6 of the final Amended OLO NFL. The Authority has considered Viva's comments regarding the definition of the Separated Entity's Reference Offer in section 2 of the Amended OLO NFL. The Authority does not consider that it is appropriate or necessary to include specific reference to ' <i>or determined</i> ' by the Authority. The concept of

<p>should refer to the Reference Offer “approved or determined by the Authority”, not just “approved” by the TRA.</p> <p>(c) Section 28 Duration and renewal</p> <ul style="list-style-type: none"> Viva proposes that the licences of the OLOs and Batelco line up in terms of duration. The OLO licences should extend to 21 June 2029 (see section 26.1 of Batelco’s licence). 	<p>an Authority directed (or ‘determined’) process is already included within the approval process. The Authority directs Viva to the description of the Reference Offer process as set out in the Authority’s consultation on the draft Reference Offer Order and associated Reference Offer of the Separated Entity published on 28 March 2019 (LAD 0913 082)).</p> <p>The Authority has considered Viva’s comments regarding duration of the Amended OLO NFL. The Authority does not propose any amendment to the term as expressed in section 28 of the final Amended OLO NFL. The License provides for automatic renewal, unless the Licensee is in breach of the terms of the License. The Authority considers that the automatic renewal provisions in section 28 of the final Amended OLO NFL sufficiently address Viva’s concerns.</p>
<p>ZAIN</p>	
<ul style="list-style-type: none"> For the avoidance of doubt, Zain’s current IMTL licence has distinctly different structure than the form presented in this consultation. Therefore, such proposed amendments should be reflected in the actual forms of IMTL license. Zain is of the view that the NFL contains many obsolete sections that are not relevant anymore and therefore should be omitted or updates accordingly, mainly: <ul style="list-style-type: none"> Section 8 – provisions of directory information services; to be omitted as it is not relevant with the technological advancement. Section 9 – provisions of operator assistance services; to be omitted as it is referring to an obsolete service. Such service is not relevant with the current technological advancement. Section 12.2(b); relevant authority is an ambiguous wording – suggest adding a definition to avoid any confusion during the execution of such provision. 	<p>The Authority notes that Zain’s current IMTL License has a different structure than the template form presented in the consultation. The Authority will incorporate the amendments presented in the consultation into Zain’s IMTL License.</p> <p>The Authority notes Zain’s additional comments regarding the Amended OLO NFL. While some of these provisions may appear obsolete, the Authority points out that the purpose of the consultation and the proposed amendments to OLOs’ and Batelco’s current suite of Licenses is to address changes which are necessary as a result of the separation of Batelco into distinct legal entities. The exercise is not to address more general updating of Licenses, which will be the subject of a separate project for this specific purpose. Accordingly, the Authority is not addressing or making any changes to the sections identified by Zain in the column opposite, at this time.</p> <p>As regards Zain’s comment on section 14 of the Amended OLO NFL, the Authority notes that OLOs such as Zain will still be required to provide access to their national fixed telecommunications networks, at least until any such time as migration and/or decommissioning might be required under section</p>

<ul style="list-style-type: none"> ○ Section 14 – provision of access; this section was deleted in the proposed amendment of Batelco’s NFL and accordingly it should also be deleted in OLO’s NFL. ○ Section 21 – radiocommunications and frequency allocation; Zain is of the view that this existing clause could be misused by the fixed operators to use the radiocommunication as an access to reach the end-users directly. Therefore, Zain recommends deleting this section. 	<p>3.4 and section 3.6 of the final Amended OLO NFL. This position is distinct from the rest of Batelco under its Amended NFL, given that as far as the Authority understands Batelco – as distinct from the Separated Entity - will not have a national fixed telecommunications network to which access should be granted. Therefore, the Authority has not removed section 14 from the final Amended OLO NFL.</p>
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