

Article 35 Order No. 1 of 2009
Mena Telecom's Application for Facilities Access to
FLAG Supplied Equipment at Batelco's Salmaniya
Complex

An Order issued by
Telecommunications Regulatory Authority
under article 35 of the Telecommunications Law to
Bahrain Telecommunications Company B.S.C.
on access to the Landing Station for the FALCON
submarine cable

24 November 2009

NB – This version of the order does not contain the reasoning. TRA will publish the reasoning after Batelco has identified and justified to TRA's satisfaction those parts of the reasoning it considers confidential.

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ORDER

**IN THE EXERCISE OF ITS POWERS
UNDER ARTICLES 3, 35 AND 57 OF THE TELECOMMUNICATIONS LAW,
THE AUTHORITY MAKES THE FOLLOWING ORDER:**

1 Menatelecom Access to FLAG Landing Station

1.1 For the reasons set out in the reasoning of this Order, Batelco is hereby ordered to:

- (a) comply with article 57(e) of the Telecommunications Law, condition 7.1 of its International Facilities Licence, condition 13.1 of its National Fixed Services Licence, the terms of the Reference Offer (and in particular Schedule 7) and articles 3.2 and 5.4 of the Access Regulation, and in order to do so, Batelco shall offer to Mena Telecom the right to submit an order for the requested Facilities in accordance with clause 7(b) and 8 of Schedule 7 of Batelco's Reference Offer as requested by Mena Telecom on 29 April 2009 and if such an order is submitted by Menatelecom in accordance with clause 8 of Schedule 7, then by complying with that order. In doing so Batelco shall comply with the procedure outlined:
 - (i) from clause 7(b)(iii) to 7(b)(vii) of Schedule 7 to notify Mena Telecom of any:
 - (A) relevant Make Ready Work,
 - (B) estimated Access Charges,
 - (C) time required to deliver access,
 - (D) security clearance; and
 - (E) any other matters reasonably required for the provision of the requested Facilities Access Services and offering the right to Menatelecom to issue an Order in respect of the Facilities in accordance with clause 7 of Schedule 7.; and
 - (ii) should Menatelecom submit an order in accordance with clause 8 of Schedule 7, Batelco must:
 - (A) comply with all processes outlined therein, and
 - (B) provide the Facilities Access requested by Menatelecom not later than the Advised Delivery Date stated in Batelco's Order Response issued pursuant to clause 8 of Schedule 7.
- (b) Bearing in mind that Menatelecom applied for the Facilities Access on 22 July 2008, 29 April 2009 and most recently on 22 October 2009 (which request followed Batelco's statement to the Authority by letter dated 21 October 2009, and to Mena Telecom by letter dated 22 October 2009 offering collocation at Telegraph House), the Authority considers it reasonable that access to such Facilities be made available within a matter of days of Menatelecom's order.
- (c) The Authority therefore requires Batelco to expedite the process outlined in clause 7 of Schedule 7 to ensure that the offer to Menatelecom of the right to submit an order for the requested Facilities is made to Menatelecom in accordance with clause 7(b) of the Schedule 7 as soon as practicable but in any case not later than thirty (30) working days after the date of this Order (the "**Due Date**"), unless granted an extension to that time limit in writing by the Authority.

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- (d) To this end the fine issued under this Order will be reduced in accordance with the procedure in paragraph 2.1 below for each working day prior to the Due Date that Batelco complies with this Order.
 - (e) Batelco must provide the Authority with a detailed status report on the progress with its compliance with this Order by 4pm on each Thursday from the date of this Order until Batelco has complied with the Order or otherwise agreed with the Authority (including where Menatelecom submits an order, to the date of delivery of the Facilities Access). The Authority may request further information relating to Batelco's compliance with this Order to be provided at any time.
- 1.2 Batelco shall provide Facilities Access Services to Menatelecom on fair and reasonable terms in accordance with article 57(e) of the Telecommunications Law. Should the Authority consider that the tariffs and the terms and conditions on which Access is offered by Batelco are unreasonable, the Authority may determine such tariffs and terms and conditions as it considers appropriate in accordance with article 57(e) of the Telecommunications Law.
- 1.3 On the basis that Batelco and Menatelecom have been negotiating access to the FLAG Landing Station since at least 29 April 2009 the Authority considers that the parties have complied with the negotiation prerequisites of article 57(g) and that should Batelco and Menatelecom be unable to agree the terms and conditions of any access or collocation within a further fifteen (15) working days of the Due Date, either party may refer the dispute to the Authority to resolve such dispute.

2 Fine

- 2.1 Further to the Authority providing Batelco with written notice on 29 September 2009 of its intention to impose a fine under article 35 of the Telecommunications Law as a result of Batelco failing to provide access and collocation services to Menatelecom on a fair, reasonable or non-discriminatory basis as required under:

- (a) Article 57(e) of the Telecommunications Law;
- (b) Articles 3.2 and 5.4 of the Access Regulation;
- (c) condition 13.1 of its National Fixed Services Licence;
- (d) conditions 7.1 of its International Facilities Licence; and
- (e) Schedule 7 of its Reference Offer;

Batelco shall pay:

- (i) a fine of BD 5,038,088.000 discounted by BD 100,000 for each working day for which Batelco complies with this Order by the Due Date; and
 - (ii) a fine by way of periodic payment of BD 100,000.000 for each calendar day after the Due Date, as appropriate, for which Batelco fails to comply with the terms of paragraph 1 of this Order.
- 2.2 Batelco shall pay the fines set out in paragraph 2.1 of this Order not later than 5 working days from the date of Batelco's and Mena Telecom's joint written confirmation of compliance to the Authority with this Order, to the following account:

Account Name: Telecommunications Regulatory Authority
Account Number: 1-0000005433-4
Bank Name: BBK

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3 **Compliance**

The Authority hereby advises Batelco that any failure to comply with the terms of this Order will constitute a material breach of Batelco's National Fixed Services Licence and/or International Facilities Licence, either or both of which may then be revoked pursuant to the terms of article 35(d)3 of the Telecommunications Law.

4 **Entry into force**

This Order shall enter into force on 24 November 2009.

ALAN HORNE

General Director
for and on behalf of the Telecommunications Regulatory Authority

24 November 2009