

28 February 2019



Telecommunications Regulatory Authority of Bahrain

Consultation Paper

A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “**Authority**”) on the Authority’s proposed amendments to telecommunications licenses held by the Bahrain Telecommunications Company B.S.C. (“**Batelco**”) following legal separation (“**Batelco Amended Licenses**”).

28 February 2019

LAD/0219/057

The address for responses to this document is:

The Acting General Director
Telecommunications Regulatory Authority
PO Box 10353
Manama
Kingdom of Bahrain

Alternatively, e-mail responses may be sent to lad@tra.org.bh.

The deadline for responses is 16.00 on 28 March 2019.

Purpose: To seek stakeholders’ views on the Batelco Amended Licenses.

1 INSTRUCTIONS FOR SUBMITTING A RESPONSE

1.1 The Authority invites comments on this consultation document from all interested parties. Comments should be submitted no later than 16.00 on 28 March 2019.

1.2 Responses should be sent to the Authority preferably by email (either Word or PDF format) or by fax or post to the attention of:

The Acting General Director

lad@tra.org.bh

Telecommunications Regulatory Authority

PO Box 10353

Manama

Kingdom of Bahrain

Fax number: 17532125

1.3 Responses should include:

- the name of the responding entity;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and email address);
- in the case of responses from individual consumers, name and contact details; and
- a brief statement explaining the interest of the responding entity.

1.4 The Authority seeks comments from stakeholders in the telecommunications industry, the business community and the general public on the proposed Batelco Amended Licenses attached at Annex 1 and Annexes 2 – 7 respectively of this consultation document.

1.5 All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the

Telecommunications Law¹ (the “Law”) or Licenses that the respondent is relying upon.

1.6 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at Annex 8.

1.7 In the interests of transparency, the Authority intends to make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate a request for confidentiality in line with the relevant legal provisions² and the Authority’s published guidance on the treatment of confidential and non-confidential information³.

1.8 Respondents are required to mark clearly any information included in their submission that is considered confidential. Where such confidential information is included, respondents are required to provide both a confidential and a non-confidential version of their submission (in soft copies and not scanned copies). If part or all of the submission is marked confidential, reasons should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

2 STATUS OF THIS CONSULTATION PAPER

2.1 This consultation paper is issued pursuant to the Position Paper on “*How TRA Consults*” issued by the Authority on 17 October 2017⁴.

2.2 Interested parties should not take any actions in reliance on the information or proposals contained in this document. Any views set out in this document should be considered as indicative and will be subject to further consideration following the receipt of comments from interested parties.

2.3 This consultation document does not represent a decision of the Authority. The issues discussed in this document remain open to consideration and should not be construed as indicating that the Authority has formed any final opinion or decision.

¹ The Telecommunications Law of the Kingdom of Bahrain, promulgated by Legislative Decree No. 48 of 2002

² Including Article 23 of the Law

³ http://www.tra.org.bh/media/document/Confidentiality_Guidelines_Final.pdf

⁴ <http://www.tra.org.bh/media/document/Position%20Paper%20on%20how%20TRA%20consults1.pdf>

- 2.4 Once the Authority has received and considered responses to this consultation document, the Authority will proceed with finalising the relevant documents subject to this consultation. If appropriate, the Authority will prepare and publish a consultation report which summarises and responds to the comments received.

3 BACKGROUND TO THE AMENDED LICENSES

- 3.1 The Government's Fourth National Telecommunications Plan ("NTP4") calls for the development of a single national broadband infrastructure network (the "NBN"), encompassing the infrastructure required to enable fixed telecommunications networks in Bahrain.
- 3.2 This NBN should be capable of delivering ultrafast broadband products to consumers and businesses across the Kingdom. The NBN will be operated and deployed by the new legal entity that will be formed (the "Separated Entity" or the "SE") by the legal separation of Batelco.
- 3.3 The Separated Entity will be formed by the separation of the incumbent telecommunications operator, Batelco, into two parts: the Separated Entity and the remaining parts of Batelco's business. The Separated Entity will comprise the appropriate components of Batelco's current wholesale and infrastructure business units, separate from the remaining parts of Batelco's business, including its retail division (referred to as Batelco Retail or BRE).
- 3.4 The Authority has previously consulted upon the process for the separation of Batelco in its consultations on the Monitoring Guidelines, the Separation Guidelines and the Special Temporary Measure⁵, on the Separated Entity License⁶ and the Separated Entity's Draft Reference Offer⁷ (the "Prior Consultations").
- 3.5 Article 3(e) of the Law requires the Authority to "*act in a manner that is consistent with the objectives of*" NTP4 provided that this does not derogate from the Authority's independence as provided for under the Law.

⁵ <http://www.tra.org.bh/media/document/Consultation%20paper%20-vFinal%20for%20publication.pdf>

⁶ <http://www.tra.org.bh/media/document/Consultation%20paper%20on%20SE%20License.pdf>

⁷ <http://www.tra.org.bh/media/document/Consultation%20paper%20on%20SE%20License.pdf>

The Amendments

- 3.6 The Authority believes that amendments to the existing Telecommunications Licenses of Batelco and the licensed operators other than Batelco (“**OLOs**”) are necessary in order to clearly establish the role of the Separated Entity.
- 3.7 The Authority has also issued a separate consultation on the proposed amendments to the Licences of the OLOs.
- 3.8 As a starting point, the Authority believes that a number of amendments are required to be made to the Telecommunications Licenses held by Batelco in order to harmonise the licensing environment during the establishment of the Separated Entity and the separation of Batelco.
- 3.9 The Authority has annexed to this Consultation document, the Amended Licenses, with the Authority’s proposed amendments displayed in track changes:
- (a) the National Fixed Services License (“**Amended NFL License**”) (Annex 1)
 - (b) the International Telecommunications Facilities License (“**Amended IFL License**”) (Annex 2)
 - (c) the International Telecommunications Services License (“**Amended ISL License**”) (Annex 3)
 - (d) the Internet Services Provider License (“**Amended ISP License**”) (Annex 4)
 - (e) the Value Added Services License (“**Amended VAS License**”) (Annex 5)
 - (f) the Mobile Telecommunications License (“**Amended IMTL License**”) (Annex 6)
 - (g) the Very Small Aperture Terminal License (the “**Amended VSAT License**”) (Annex 7)
- (together, the “**Amended Licenses**”)
- 3.10 The Authority has considered international connectivity and specifically which entity within the Batelco group should hold the relevant IFL. Having reviewed

the comments provided by stakeholders in response to the Prior Consultations, the Authority considers that, at least at this point in time, the IFL should remain with Batelco, rather than be held by the SE. The Authority is proposing to conduct a market review of the entire supply chain for international connectivity later this year. The Authority considers it prudent not to take any action at this stage that might pre-judge the outcome of such review.

- 3.11 The approach adopted by the Authority with regards to the amendments is that any changes that have been proposed should be kept to a minimum at this time. The changes made are those which the Authority considers to be directly related to and necessary to facilitate the implementation of the NBN project and establishment of the Separated Entity.
- 3.12 The Authority is cognisant that a wider review of the licensing regime is shortly to be undertaken by the Authority and that as such any wholesale changes to the Telecommunications Licenses' terms (or the licensing regime itself) are best reserved for the outcome of that project.
- 3.13 The Authority notes that there exist some minor idiosyncrasies between certain of the Telecommunications Licenses held by individual Licensees in the same category. The Authority is not proposing to address those idiosyncrasies at this time.
- 3.14 Self-evidently, certain of the Telecommunications Licenses will require greater amendment than others (due to the Separated Entity's role as the operator of the Fixed Telecommunications Infrastructure Network). In particular, changes to Batelco's NFL License will require greater amendment than other types of Licenses (such as the VAS License) that require a lesser degree of necessary harmonisation.
- 3.15 For that reason the Authority has described the amendments proposed to the Batelco NFL License (and the rationale for those amendments) in some detail below.

4 PURPOSE OF THIS CONSULTATION DOCUMENT

- 4.1 This consultation document is concerned with the Amended Licenses that the Authority intends to issue.

4.2 It is also intended to promote transparency in relation to the implementation of the new industry structure. The Authority invites stakeholders to comment on the suitability of the Amended Licenses.

4.3 For completeness, the Authority has included at Annex 8 consultation questions inviting comments on the Amended Licenses.

5 OVERVIEW OF THE AMENDMENT PROCESS

5.1 The Authority's approach to the amendments proposed to the Batelco Telecommunications Licenses is that these will be made by modification to the existing Licenses. The Authority believes that this approach is most in keeping with its duties under Article 31(4) and Article 3(a) of the Telecommunications Law and most appropriate in the circumstances given that:

- (a) The amendments proposed are directly related to and necessary for the NBN project, and therefore are relatively discrete; and
- (b) The complete review of the Licensing framework will shortly commence.

5.2 As such the Effective Date of each License will remain as currently stated and so there will be no need for Batelco to perform obligations currently stated in the Licenses that are linked to these Effective Dates (including certain initial reporting requirements and the payment of License fees). If any Respondent has a query with regards to Batelco's obligations under the Amended Licenses, the Authority invites requests for clarification of such in response to paragraph 15 of Annex 8 ("*Any Other Comments*").

5.3 As the amendments to the Batelco Licenses are being made pursuant to the Authority's powers under Article 31(4) of the Telecommunications Law, there is no requirement for Batelco to consent to the amendments. As such, once the Authority has reached a final view on the amendments, it will notify Batelco that the Amended Licenses have been finalised (indicating the Effective Date from which the Amended Licenses shall apply) are effective and that the Amended Licenses are available for collection from the Authority.

6 OVERVIEW OF THE AMENDED NFL LICENSE

As set out above, the amendments proposed to the NFL License are, of course, more substantive than those made to the other Telecommunications Licenses. This is due to the fact that the creation of the Separated Entity and the granting

of the Separated Entity License will most impact the licensed activities regarding the operation of a National fixed telecommunications network (as defined in the NFL License), as Batelco will no longer operate such a network.

The following are the substantive changes to the NFL License proposed by the Authority with accompanying explanations where relevant. The changes follow the order of the specific sections in the NFL License:

6.1 Definitions

New definitions have been included in the Amended NFL License to reflect the new market structure that will arise as a result of the separation of Batelco.

The definition of "*Affiliate*" has been amended to include specific reference to the Separated Entity.

A number of new definitions have been included as a result of the inclusion of obligations on Batelco to implement separation of its systems and processes from those used by the Separated Entity. These definitions are: "Business Support Systems", "Level 1 Separation", "Level 2 Separation", "Level 3 Separation", "Management Information Systems", and "Operational Support Systems".

The definition of "*Force Majeure*" has been amended to be consistent with that proposed in the SE License (defined below). This change has been included in all of the Batelco and OLO Licenses so that there is parity across the Licenses and no lacuna is created within the licensing framework pertaining to Force Majeure events.

A definition of "Reference Offer" has been included as a result of the inclusion of obligations on Batelco to continue to supply existing products and services and to comply with its existing reference offer.

A definition of "*Separated Entity*" as the holder of the Fixed Telecommunications Infrastructure Network License ("**SE License**") has been included to harmonise the reference in the Amended NFL License with the terms used in the SE License.

In addition the use of "*Structural Separation*" as a defined term has been removed from the Amended NFL License (as has reference to it in the body of the NFL License). The underlying section in the Amended NFL License now

refers merely to “separation”. This is in order to harmonise the remedies available to the Authority across all Licenses and to avoid inadvertent inconsistencies with the SE License.

A new definition of “Undertakings” has been added to cover the measures that Batelco and the SE are required to undertake in respect of the legal separation.

6.2 LICENSEE OBLIGATIONS (Section 3)

a) Section 3.1

The Authority has inserted a new section that recognises the specific obligation of Batelco to comply with the Undertakings, the Reference Offer applicable to those services that will not be offered by the Separated Entity, the Law, regulations and any instrument issued by the Authority. This section is a simple reflection of the current legal framework and has been inserted in order to harmonise the Amended NFL License with the proposed Separated Entity License.

b) Section 3.2

This section confirms that failure to comply with the specific obligations constitutes a serious breach of the license and the Law.

c) Sections 3.3 – 3.6

A number of sections have been included imposing obligations on Batelco to remain a separate legal entity from the SE and to have its own management structure, which mirror provisions in the SE License.

d) Section 3.7

A new section has been included requiring Batelco to continue to offer all products and services that were offered prior to the License being amended, other than products and services being provided by the Separated Entity pursuant to its Fixed Telecommunications Infrastructure Network License. The purpose of this amendment is to ensure that any wholesale products that remain with Batelco will continue to be made available to OLOs including products made available pursuant to Batelco's existing reference offer. The Authority expects Batelco to submit a revised reference offer for approval prior to the NFL being amended.

e) **Section 3.8 and 3.9**

Furthermore, a number of sections have been included, requiring Batelco to implement separation of its systems and processes from those used by the Separated Entity, and to provide to the Authority for its approval a roadmap setting out how this will be achieved. These sections are necessary to complement equivalent provisions in the SE License.

6.3 LICENSED SERVICES (Section 4)

a) **Section 4.2**

The Amended NFL License restricts Batelco from providing the same services as the SE under the SE License: this amendment has been introduced to recognise the role of the Separated Entity as the holder of the Fixed Telecommunications Infrastructure Network License in the Kingdom.

b) **Section 4.3**

Whilst Batelco is able to provide the Licensed services through an Affiliate, the Authority has amended the NFL License to clearly state that this Affiliate cannot be the SE.

c) **Section 4.5**

The Authority has proposed inserting a new article in the Amended NFL License that recognises the new market structure that will arise on establishment of the Separated Entity.

Under the new section 4.5, Batelco will not (without the Authority's permission) be authorised to install, deploy, operate or maintain any fixed fibre assets or fixed telecommunications infrastructure. Where permission is granted, this may be subject to any conditions stipulated by the Authority (including use of such fibre assets, duration etc).

6.4 PROVISION OF ACCESS (previously Section 13)

As Batelco will not have a fixed telecommunications network, the Authority proposes removing this article.

6.5 CONNECTION POINTS (previously Section 16)

As Batelco will not have a fixed telecommunications network, the Authority proposes removing this article.

6.6 BILLING (Section 16)

In order to reflect separation, the Authority has inserted wording at section 16.1 that obligates Batelco to issue bills for itself only and not for any Affiliate (unless the Authority provides written permission otherwise). This mirrors equivalent provisions in the SE License.

6.7 PRIVACY AND CONFIDENTIALITY (Section 21)

The Authority has proposed amendments to this section to ensure that Batelco and the SE remain as separate entities and do not (without the Authority's permission) share confidential information or business secrets. Batelco and the SE will each be required to ensure that they implement appropriate information barriers, processes and systems to prevent unauthorised disclosures and/or inappropriate flow of information between the SE and the rest of Batelco, especially BRE.

6.8 ANTI-COMPETITIVE PRACTICES (Section 22)

The Authority has included a specific reference to the SE in the cross-subsidization provision to ensure that it is clear that Batelco is not to engage with the SE in a manner that would conflict with this provision.

6.9 ACCOUNTING REQUIREMENTS (Section 23)

As noted above, Batelco and the SE need to remain separate. The Authority intends to amend this section to ensure that any accounts to be filed are those of Batelco and are not (without the Authority's permission) an amalgamation of Batelco and SE accounts.

6.10 MODIFICATION, REVOCATION AND TERMINATION (Section 27.1 (d))

The Authority has inserted a new provision relating to the ability of the Authority to modify Licenses if necessary under the Law. This has been introduced to reflect the new Article 31(4) in the Law and to standardise the Amended NFL License with the current Separated Entity License.

7 OVERVIEW OF THE AMENDMENTS TO THE OTHER BATELCO LICENSES

7.1 In order to harmonise the defined terms and obligations across all of the Telecommunications Licenses, the following amendments that have been made to the Amended NFL License will be common to all other Amended Licenses:

- (a) The amended definition of "*Affiliate*" will now be standard to all Batelco Telecommunications Licenses;
- (b) The new definition of "*Force Majeure*" will now be standard to all Batelco Telecommunications Licenses;
- (c) The new definition of "*Separated Entity*" will now be standard to all Batelco Telecommunications Licenses;
- (d) The deletion of "*Structural Separation*" will now be a standard amendment to all Batelco Telecommunications Licenses (where relevant);
- (e) The new definition of "*Undertakings*" will now be standard to all Batelco Telecommunications Licenses;
- (f) The new section on "*Licensee Obligations*" will now be standard to all Batelco Telecommunications Licenses, although not all of the provisions will be relevant to all of the other Licenses;
- (g) The amendments to the "*Licensed [Networks and] Services*" section will now be common to all Batelco Telecommunications Licenses, although not all of the provisions will be relevant to all of the other Licenses;
- (h) Where applicable, the amendment to the "*Interconnection With Other Public Telecommunications Operators*" article will apply across the Batelco Telecommunications Licenses;
- (i) The addition to the "*Billing*" provision will now be standard to all Batelco Telecommunications Licenses;
- (j) The additions to the "*Privacy and Confidentiality*" article will be common across the Batelco Telecommunications Licenses;
- (k) The amendment to the "*Anti-Competitive Practices*" provision will apply across the Batelco Telecommunications Licenses;

- (l) The "*Accounting Requirements*" addition will apply as relevant to the other Batelco Telecommunications Licenses;
- (m) The "*Modification, Revocation and Termination*" provisions as set out in the Amended NFL License will be common to all Batelco Telecommunications Licenses; and
- (n) The "*Compliance*" article as set out in the Amended NFL License will now also be common to all Batelco Telecommunications Licenses.

8 SPECIFIC ADDITIONAL AMENDMENTS TO CERTAIN LICENSES

8.1 Further, amendments to certain of the Batelco Telecommunications Licenses have also been replicated from the Amended NFL License proposed amendments in order to make explicit the right of Batelco to access the Fixed Telecommunications Infrastructure Network.

8.2 In particular the Authority draws the Respondent's attention to the following amendments:

- (a) Article 4.3(a) of the Amended IFL License;
- (b) Article 5.2 the Amended ISL License;
- (c) Article 5.2 the Amended VAS License; and
- (d) Article 5.2 the Amended ISP License.

