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 Equivalence Compliance and Technical Committee (the "ECTC"), a committee established pursuant to section 4.13 of the Fixed Telecommunications Infrastructure Network Licence granted to NBNetco B.S.C (c) (the "SE License") and Articles 3(c)4, 3(c)18 and 3(d) of the Telecommunications Law promulgated by Legislative Decree No.48 of 2002 (the "Telecommunications Law").

9 May 2019

LAD/0519/121

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 6 June 2019.

Purpose: To seek stakeholders' views on the ECTC.
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 6 June 2019. No extensions will be granted to this deadline.

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 terms of reference of the ECTC, which set out the role, constitution and powers of the ECTC (the "Terms of Reference"). A copy of the Terms of Reference is attached to this consultation at Annex 1.

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 1.

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
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 ECTC

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 ECTC Terms of Reference represent an amalgamation of two separate bodies that the Authority has previously consulted upon.

3.4 The Terms of Reference will be promulgated pursuant to the Authority’s powers under section 4.13 of the SE License and Articles 3(c)4, 3(c)18 and 3(d) of the Telecommunications Law.

3.5 The Authority is proposing to amend section 4.13 of the draft SE License to refer to the creation of the ECTC (rather than the Equivalence Compliance Committee ("ECC") which was included in the Second SE License Consultation\(^5\)) and the requirement for the SE to comply with the rules of the ECTC (e.g. the Terms of Reference) as follows:

"4.13 The Licensee shall comply at all times throughout the Term of this License, with the rules of the Equivalence Compliance and Technical Committee as determined by the Regulator (including with regard to composition of the Equivalence Compliance and Technical Committee, functions and obligations and the processes for carrying out such functions and obligations)."

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\(^5\) As defined below.
3.6 Article 3(d) of the Telecommunications Law states that:

"d) In the course of fulfilling the duties that are entrusted to it by virtue of this Law, the Authority may when necessary:

1. contract with any third parties and liaise and co-operate with specialised agencies, academic or technical institutes and advisory committees.

2. entrust some of its technical or administrative functions to third parties, authorities or committees that have the required technical and administrative capacities to perform those functions."

3.7 Pursuant to Article 3(c)(4) and 3(c)(18) of the Law, the Authority shall have the power to:

"4. monitor and enforce compliance with Licence terms and conditions by Licensees...

[and]

18. exercising all other powers granted to the Authority hereunder and taking all other actions as may be reasonably necessary to give effect to the provisions of the foregoing paragraphs."

The Previous Consultations

3.8 The Authority has issued a number of previous consultations related to the legal provisions that will govern the constitution and operation of the SE. In particular the Authority has issued public consultations in relation to:

(a) The SE’s Fixed Telecommunications Infrastructure Network License (the “SE License”) dated 28 February (Ref: LAD 2019/055)6 (the “Second SE License Consultation”); and

(b) The SE’s Reference Offer Order (the “SE’s RO”) dated 28 March 2019 (Ref: LAD 0913 082)7 (the “Second SE RO Consultation”).

6 This was the second consultation on the SE License; the first consultation on the SE License did not include any obligations on the SE with regards to the establishment of an ECC. As such only the Second SE License Consultation is referenced in this Consultation.

7 This was the second consultation on the SE’s RO; the first consultation on the SE RO did not include any obligations on the SE with regards to the establishment of an Industry Forum. As such only the Second SE RO Consultation is referenced in this Consultation.
3.9 Under both the Second SE License Consultation and the Second SE RO Consultation, the Authority had proposed that bodies be established that would (i) monitor the SE’s compliance with its regulatory obligations and (ii) provide a forum for Licensed Operators to discuss their technical and operational needs with the SE and for Licensed Operators and the SE to collaborate in the development of manuals, process and procedures to allow for the delivery of the SE’s wholesale products in an efficient and transparent manner.

3.10 Firstly, as part of the monitoring of the SE’s compliance with its independence obligations arising out of the legal separation and Equivalence of Inputs ("EOI") obligations relating to the provision of products to Licensed Operators (including BRE) it was envisaged under the version of the SE License consulted upon on 28 February that an "Equivalence Compliance Committee" would be established by the Authority that would:

"monitor the Licensee's compliance with its obligations (including in relation to the Undertakings, separation of its systems and processes, separation of functions and individuals as between the Licensee and any Affiliate including BRE and the provision of the Licensed Services on an EOI basis), and will investigate and determine complaints from Licensed Operators"

3.11 The ECC envisaged under section 4.13 of the SE License (and consulted upon in the Second SE License Consultation) was developed from the functions of the ECC that had been set out in the Authority's "Regime for Monitoring of Separation of Batelco and NBN Compliance" Guidelines published on 06 August 2018\(^8\) (the "Monitoring Guidelines").

3.12 At paragraph 32 of the Monitoring Guidelines, the Authority set out that:

"The ECC will have responsibility for:

a. Establishing and monitoring a compliance regime [...].

b. Investigating complaints from OLOs relating to SE Commitments compliance.

c. Preparing SE Undertakings Compliance Reports and Equivalence Reports."

\(^8\) Ref: LAD/0818/199
3.13 The proposed ECC was consulted on as part of the Second SE License Consultation and responses were received from BRE (Batelco) and the SE.

3.14 In addition, under the version of the SE’s RO consulted upon on 28 March 2019, it was envisaged that a separate “industry forum” (along the lines of similar bodies in some other jurisdictions where separation has taken place) would also be established to enable Licensed Operators to, among other items, discuss their needs and requirements (including technical requirements) with the SE at regular intervals and address any technical or operational concerns of the industry with regards to the delivery of the wholesale products by the SE (the “Industry Forum”).

3.15 Paragraphs 13 and 14 of the draft SE’s RO stated that:

“13. The SE shall within one (1) month from the effective date of this SE Order and in accordance with any determination issued by the Authority establish an industry forum for Licensed Operators to discuss their needs and requirements, including technical requirements, with the SE at regular intervals (which shall be not less than once a month). The Authority shall determine the parameters for the establishment and function of the industry forum including without limitation the scope, governance and participation, periodicity and location and documentation to be produced within the industry forum. The Authority shall appoint a Chairperson, who will be responsible for convening meetings of the industry forum and determining the agenda for such meetings. The SE shall ensure that it has appropriate representation at each meeting of the industry forum.

14. Within three (3) months from the effective date of this SE Order the SE shall submit for the Authority’s approval a joint working manual which provides technical and operational information in relation to the SE’s supply of the RO Services. The joint working manual shall be developed by the SE as part of the industry forum, in conjunction with Licensed Operators.”

3.16 Paragraphs 7.38 – 7.40 of the Second SE RO Consultation provided further explanation of the intended purpose of the industry forum, as follows:
"7.38 The development and implementation of successful wholesale products and services is reliant on detailed design of processes and procedures as well as a clearly defined technical manual. The operations and maintenance manual sets out how the SE (the Access Provider) and Licensed Operators (the Access Seekers) will work together in detailed and defined processes with specific regards to the interfaces in the processes between the parties.

7.39 These details are commonly set out in a document, which under Batelco's existing wholesale reference offer, is referred to as the Joint Working Manual. Good practice is for these processes, interfaces and technical requirements to be developed with co-operation between the SE and all Licensed Operators in an industry forum ("Industry Forum"). It is the Industry Forum where these discussions take place and the Forum is responsible for the agreement of the processes and technical specifications.

7.40 The Authority has therefore proposed a mandatory requirement in the Draft RO Order for the SE to establish an Industry Forum that will enable, among other items, Licensed Operators to discuss their needs and requirements, including technical requirements, with the SE at regular intervals. The Authority would be entitled to appoint the Chairperson of the Industry Forum and the SE would be required to comply with the reasonable instructions of the Chairperson in accordance with the Chairperson's pre-determined role and responsibilities. The Authority wishes to make it clear that the Chairperson's role is not to replace or overrule SE's management but to facilitate the fair consideration of OLO reasonable requirements."

3.17 The Second SE RO Consultation also went on to set out the proposed role of the Industry Forum:

"7.41 For the Industry Forum to be effective, the Authority proposed that the below terms of reference should apply:

Scope: the scope of the Industry Forum would be limited to technical and procedural matters regarding regulated wholesale access products and services (i.e. technical configurations and wholesale processes).

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9 It should be noted that whilst the language of the Second RO Consultation that described the Industry Forum referred to 'participants' in the forum, the Terms of Reference has amended this language to refer to 'representatives'.
However, the Industry Forum should not provide a platform to discuss issues that may arise for a specific wholesale Connection (e.g. fault impacting a given Bitstream Connection at a specific customer location). In other words, only the general terms (technical or procedural terms) applicable to regulated products and services should be discussed during meetings of the Industry Forum, not specific situations.

**Governance and participation:** the Authority would be authorized to appoint the Chairperson for the Industry Forum and own the agenda of Industry Forum meetings. The SE and all interested Licensed Operators should be able to participate in the Industry Forum meetings. Where relevant and appropriate, the Chairperson may propose to restrict the participation to an Industry Forum meeting to a limited number of Licensed Operators and/or participants per Operator.

**Periodicity and location:** the Industry Forum will meet on a regular basis and the Authority anticipates that meetings would be at least monthly. The Authority proposes that Industry Forum meetings will be held at the Authority’s premises.

**Documentation:** minutes of Industry Forum meetings will be taken by the Chairperson. In addition to forwarding meeting minutes to Industry Forum participants, the Chairperson will forward minutes to the Authority. The Authority reserves the right to publish such minutes on its website, if deemed appropriate.”

3.18 The role of the Industry Forum was further elucidated at paragraphs 6.5-6.6 of Schedule 1 (Main Body Terms) of the draft SE RO that formed the basis of the Second RO Consultation in relation, specifically, to requests from Licensed Operators for New Service Requests:

6.5 If, after preliminary discussions, the Access Provider and the Access
Seeker agree to explore in detail any of the relevant conditions (technical, commercial, legal, etc) which might apply to the supply of the New Service, or if the Access Provider is obliged to provide the New Service within the regulatory framework applicable in Bahrain, the parties shall as soon as reasonably practicable refer the matter to the Industry Forum for discussion and/or development of the following:

(a) an appropriate agreed technical and functional definition of the New Service and outline of its scope;

(b) appropriate commercial terms applicable to the scoping, development, testing, implementation and supply of the New Service, including:

(c) the charges and pricing regime to apply to any or all of those activities considering the likely time and resources required;

(d) the framework, dependencies for, and scope of, any proposed testing and acceptance processes;

(e) a draft timetable for the scoping, development, testing, implementation and supply of the New Service; and

(f) any other matters relevant to the New Service Request.

6.6 When the Industry Forum has concluded those preliminary discussions the Access Seeker, taking into account the Industry Forum’s conclusions, shall:

(a) submit to the Access Provider a comprehensive Statement of Requirements, setting out in detail the proposed aspects of the New Service as identified in clause 6.5;

(b) provide to the Access Provider any further information the Access Provider reasonably requires to enable it to properly scope, develop, implement or supply the New Service; and

(c) revise and reissue the Statement of Requirements as required by the Access Provider where the Access Provider considers that the Statement of Requirements does not properly reflect
the positions covered in the discussions in the Industry Forum.

3.19 The consultation responses to both the Second SE’s License Consultation and the Second SE’S RO Consultation are still being considered by the Authority. As part of this, the Authority has noted comments from one particular respondent in relation to the potential for the ECC to result in an undue regulatory burden on the SE. The Authority does not agree that the ECC structure set out under the Second SE License Consultation would impose an undue regulatory burden on the SE.

3.20 In relation to both the ECC and the Industry Forum, however, having considered the need to promote efficient regulation and reporting upon the SE’s progress, the Authority considers that there is merit in streamlining the processes for each body so as to merge the two bodies and establish a sole entity that will carry out the duties of both entities: this new body will be the ECTC.

3.21 The Authority’s intention is that by amalgamating the ECC and Industry Forum into a single ECTC this will help manage the regulatory burden on the SE and enable it to better focus on compliance with its obligations under the SE License and Reference Offer. At the same time, there will be a single forum in which Licensed Operators can raise issues regarding compliance and/or technical and operational matters on a regular basis, rather than Licensed Operators having to familiarise themselves with, and participate in, two (2) separate bodies.

3.22 The proposed functions and structure of the ECTC are considered in greater depth at paragraph 5 below.

4 PURPOSE OF THIS CONSULTATION DOCUMENT

4.1 This consultation document is concerned with the ECTC that the Authority intends should be established.

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 and fitness for purpose of the ECTC.

4.3 For completeness, the Authority has included at Annex 2 consultation questions inviting comments on the ECTC.
OVERVIEW OF THE ECTC

5.1 The role and structure of the ECTC has been proposed following feedback from stakeholders and with an intention to limit the number of bodies that will be concerned with the compliance by the SE with its regulatory obligations.

Functions of the ECTC

5.2 The ECTC has a number of proposed functions. In particular, it will provide a forum:

5.2.1 to monitor the SE’s compliance with its regulatory obligations arising from separation;

5.2.2 to enable Licensed Operators to raise complaints with the SE and for the parties to seek to resolve such complaints without the need for formal action by the Authority (although this will be available where the issue cannot be resolved);

5.2.3 to review compliance and equivalence reports provided by the SE and provide recommendations for ensuring compliance;

5.2.4 to discuss technical and procedural matters relating to the products and service supplied by the SE, including the development of a joint working manual and/or other operational documentation (such as template order forms); and

5.2.5 facilitate the discussion and development of any new service/product requests.

5.3 In order not to obviate the statutory role of the Authority in dealing with Licensee’s compliance with License obligations and handling complaints by Licensed Operators, the Authority has been explicit in the Terms of Reference that the ECTC is not empowered to make binding decisions regarding assessment of the SE’s compliance with its obligations under the SE License and/or Reference Offer, or regarding resolution of complaints from Licensed Operators against the SE.
5.4 However, it is proposed that the ECTC would be able to provide instructions and/or recommendations and measures to be implemented by the SE concerning operational and/or technical matters relating to the supply of its regulated wholesale products and services.

5.5 The Authority welcomes comments on the extent to which the ECTC should be able to give instructions to the SE on these matters, or whether there are any alternative proposals for ensuring that any issues on operational/technical matters can be resolved swiftly, such that delivery of the relevant products/services is not compromised or delayed by requiring matters to be submitted to the Authority in all cases, with industry encouraged first to seek to find a workable solution.

The Structure of the ECTC and the role of the chairperson

5.6 With regards to the structure of the ECTC, the Terms of Reference propose that this will be comprised of an independent chairperson appointed by the Authority and 10 representatives, being:

(a) 5 representatives appointed by the SE;

(b) 3 representatives appointed by the MNOs (i.e. Viva, Zain and Batelco (BRE)); and

(c) 2 representatives appointed jointly by all other Licensed Operators.

5.7 The Authority believes that this structure achieves an appropriate balance between ensuring that all operators have the opportunity to be represented, as against the respective size of the relevant operators and the need to ensure that meetings are manageable. In relation to the representatives jointly appointed by all other Licensed Operators, there is provision for the Authority to require that the appointments rotate between the operators to ensure fair representation.

5.8 The role of the chairperson appointed by the Authority will be an important one and the Terms of Reference set out the responsibilities associated with the role.

5.9 Under the Terms of Reference, the chairperson's role shall be to:

(a) *convene and chair meetings of the ECTC;*
(b) determine the agenda for meetings;
(c) ensure that written minutes are prepared of each meeting;
(d) ensure that commercially sensitive information is not discussed at meetings;
(e) provide to the Authority copies of the compliance and equivalence reports provided by the SE to the ECTC; and
(f) prepare, or cause to be prepared, written reports to the Authority on the carrying out of its functions and such other matters as the Authority may determine on a monthly basis or as otherwise requested the Authority."

5.10 Additional functions/roles could be added over time by the Authority (if appropriate, following consultation with the industry) to ensure that the ECTC remains fit for purpose.

5.11 In order to ensure the efficient running of the ECTC the Terms of Reference note that the chairperson must be independent. This means that the chairperson must not be associated with any Licensed Operators (including the SE).

5.12 The Authority notes that the chairperson will need to be an individual with sufficient technical skills to be able to act as a facilitator between the SE and the OLOs (including Batelco (BRE)) to discuss and voluntarily resolve compliance issues and/or technical / operational matters. Where appropriate, the ECTC will be able to appoint external advisors to provide advice or assistance, including where a particular issue falls outside the area of expertise of the chairperson.

5.13 The Authority recognises there will be need to be flexibility for the ECTC to establish its own procedures. The Terms of Reference therefore provide that "The chairperson may take such organizational measures as he/she deems reasonably practical in order to ensure efficient operation of the ECTC." Where appropriate, this would enable the chairperson to rotate the subject focus of meetings between technical matters and compliance matters. It would also allow the chairperson to reflect any recommendations made by representatives as the ECTC develops.
5.14 The chairperson also has the power to appoint a secretary to attend meetings, minute proceedings and provide other support as necessary.

5.15 The costs of the chairperson, the secretary and the costs of hosting the meetings of the ECTC will be met by the Authority (although contributions to those costs can be sought from Licensed Operators). Any additional costs incurred by the ECTC including, for example, costs in relation to obtaining external advice to the ECTC or in the preparation of reports or documents for the ECTC would be borne in equal shares by the SE and each of the MNOs. This means that the SE and each MNO would bear a one quarter (1/4) share of any costs. This is separate from and in addition to any contributions that the Authority may require towards the costs of the chairperson, the secretary and/or costs of hosting meetings.

ECTC meetings

5.16 The Terms of Reference envisage that the meetings of the ECTC will be held on a monthly basis for the first year and at the Authority’s offices to ensure neutrality. It is hoped that after this initial period, the requirement to hold meetings may become less frequent, as the new industry structure takes shape. For example, quarterly meetings may be more appropriate. The Authority will consult with the chairperson, and if appropriate, consult the SE and Licensed Operators for their views on the desired frequency of meetings.

5.17 Any Licensed Operator may request the inclusion of an item on the agenda for an ECTC meeting. The chairperson will also invite representations from representatives.

5.18 Although only representatives, the Authority, the Ministry of Transportation and Telecommunications and such other persons as the Authority may determine have the right to attend meetings, the chairperson has discretion to invite other persons, including those with relevant technical knowledge.

5.19 The Authority envisages that proceedings of the ECTC will generally be conducted by means of consensus between the representatives. In cases where it is necessary to approve action to be taken by the ECTC, this will be subject to approval by a majority of the representatives at a meeting. The chairperson will not have a vote, save in respect of a deadlock, where the chairperson will have a casting vote.
5.20 The Authority has proposed that the minimum quorum for a meeting should be the chairperson plus four representatives, provided there is at least one SE representative and one MNO representative. This is to ensure an appropriate balance of representation at any meeting.

5.21 The Authority recognises that a representative may not always have the relevant expertise to discuss the items on the agenda for a meeting of the ECTC. The Terms of Reference therefore envisage that a representative may appoint an alternate in such circumstances (in addition to where a representative is unable to attend), with the prior consent of the chairperson. In particular, it may be the case that Licensed Operators wish to have one individual attend meetings that have a compliance focus and another attend meetings that have a focus on technical/operational matters. The alternate provisions are intended to facilitate this type of arrangement.

First meeting of the ECTC

5.22 The Terms of Reference include matters that should feature in the agenda for the first meeting of the ECTC.

5.23 The draft SE's RO envisaged that the Industry Forum would be established within one (1) month of the effective date of the SE Order i.e., by end June 2019. It is anticipated that the first meeting should be held relatively quickly after establishment. In light of this current consultation on the ECTC, and the need for the Authority to review responses and then finalize the Terms of Reference of the ECTC, it is expected that the ECTC should be established for July 2019 and the first meeting could be held relatively quickly after establishment. The Authority is also mindful that the SE's RO envisaged that the Joint Working Manual would be submitted to the Authority for its approval within three (3) months of the effective date of the SE Order. The Authority welcomes industry's views on both the proposed timeline for establishment of the ECTC and submission of the Joint Working Manual.

5.24 One of the matters is a general reference to "discussions regarding the SE's performance". This is intended to include the matters referred to in paragraph 7.41.5(b) of the Second SE RO Consultation, being "SE's implementation of the price and non-price terms included in the final Reference Offer Order".

5.25 In practice, it is likely that other matters will need to be considered at the first meeting of the ECTC, such as the transfer of any existing supply contracts from
Batelco (BRE) to the SE, the transfer of bank guarantees/security already provided by Licensed Operators to Batelco under Batelco’s current reference offer, the transfer of existing billing disputes and the status of the ordering process through the online portal, as well as views on any priority matters that should be considered by the ECTC.
ANNEX 1

ECTC TERMS OF REFERENCE

1 INTRODUCTION

1.1 The Equivalence Compliance and Technical Committee (the "ECTC") is a committee established by the Telecommunications Regulatory Authority (the "Authority") pursuant to section 4.13 of the Fixed Telecommunications Infrastructure Network Licence granted to NBNetco B.S.C (c) (the "SE License") and Articles 3(c)4, 3(c)18 and 3(d) of the Telecommunications Law promulgated by Legislative Decree No.48 of 2002.

1.2 References in these Terms of Reference to the "Authority" shall include references to the Authority's advisors and/or any third party engaged or appointed by the Authority.

2 FUNCTIONS

2.1 The functions of the ECTC are to:

2.1.1 provide a forum to:

(a) monitor the SE's compliance with its regulatory obligations (including in relation to the separation of its systems and processes, as between NBNetco B.S.C. (c) (the "SE") and the Bahrain Telecommunications Company BSC (c) ("Batelco")), and the SE's progress on achieving the relevant milestones and providing the regulated wholesale products and services on an equivalence of inputs basis;

(b) enable Licensed Operators to raise complaints with the SE and for the parties to seek to resolve such complaints without formal action. In the event that the relevant complaint cannot be resolved between the parties, either party and/or the ECTC may formally refer the complaint to the Authority for resolution;

(c) review compliance and equivalence reports provided by the SE to the ECTC, and provide recommendations to the SE and
to the Authority to ensure SE's compliance with its obligations and equivalence of services as between Licensed Operators;

(d) enable Licensed Operators to raise and discuss with the SE technical and procedural matters relating to the regulated wholesale products and services which the SE is required to supply, including, but not limited to, the preparation by the SE of processes and procedures to support service requests, service delivery, in-life management and other relevant operational matters. Where such processes and procedures are agreed by the ECTC, they shall be documented by the SE in a joint working manual (or equivalent) and related operational documentation; and

(e) facilitate the discussion and development of any new service / product request and outline of its scope, along with the commercial terms applicable to the scoping, development, testing, implementation and supply of the new service / product, including:

(i) the charges and pricing regime to apply to any or all of those activities considering the likely time and resources required;

(ii) the framework, dependencies for, and scope of, any proposed testing and acceptance processes;

(iii) a draft timetable for the scoping, development, testing, implementation and supply of the new service / product; and

(iv) any other matters the chairperson reasonably considers relevant to the new service / product request;

2.1.2 provide instructions and/or recommendations and measures to be implemented by the SE concerning operational and/or technical matters relating to the supply of its regulated wholesale products and services;
2.1.3 report to the Authority in writing on a monthly basis (or as otherwise requested by the Authority) on the carrying out of its functions and such other matters as the Authority may determine and refer matters to the Authority where binding decisions or enforcement action may be appropriate; and

2.1.4 carry out any other functions determined by the Authority as being within the remit of the ECTC.

2.2 The ECTC is not empowered to make binding decisions regarding assessment of the SE’s compliance with its obligations under the SE License and/or Reference Offer, or regarding resolution of complaints from Licensed Operators against the SE.

2.3 The ECTC is not intended to provide a platform to discuss confidential matters or issues that may arise for a specific wholesale connection, which does not concern or affect Licensed Operators and/or the industry more generally. The ECTC will put in place appropriate and proportionate measures to avoid any anti-competitive sharing of confidential information of representatives which may include restricting discussion of specific matters or issues to certain representatives.

3 COMPOSITION

3.1 The ECTC shall be comprised of an independent chairperson appointed by the Authority and ten representatives, being:

3.1.1 five representatives appointed by the SE;

3.1.2 three representatives appointed by the holders of the Licenses for Mobile Telecommunications ("MNOs") (one representative appointed by each MNO); and

3.1.3 two representatives appointed jointly by all other Licensed Operators. If the other Licensed Operators cannot agree the identity of a representative to be appointed amongst them then the chairperson shall have the right to choose one of the individuals proposed by any of the Licensed Operators (subject to section 3.3 below).
3.2 The Authority shall be notified of all representative appointments and appointing Operators shall ensure that appointed representatives have the relevant skills and experience to fulfil their role.

3.3 In relation to the representatives appointed jointly by all other Licensed Operators, the Authority may require that the appointments rotate on a regular basis to ensure all other Licensed Operators have the opportunity to be represented at meetings within a certain period.

3.4 Any representative of the ECTC may be removed at the Authority's discretion, acting reasonably. The Authority shall provide reasoning for its decision to remove any representative.

4 ROLE OF THE CHAIRPERSON

4.1 The role of the chairperson is to:

4.1.1 convene and chair meetings of the ECTC;

4.1.2 determine the agenda for meetings;

4.1.3 ensure that written minutes are prepared of each meeting;

4.1.4 ensure that commercially sensitive information is not discussed at meetings;

4.1.5 provide to the Authority copies of the compliance and equivalence reports provided by the SE to the ECTC; and

4.1.6 prepare, or cause to be prepared, written reports to the Authority on the carrying out of its functions and such other matters as the Authority may determine on a monthly basis or as otherwise requested by the Authority.

4.2 The costs associated with the chairperson, the secretary and the costs of the hosting of the ECTC's meetings shall be agreed and met by the Authority. Any additional costs incurred by the ECTC including, for example, costs in relation to obtaining external advice to the ECTC or in the preparation of reports or documents for the ECTC shall be borne in equal shares by the SE and each of the MNOs.
4.3 The chairperson may take such organizational measures as he/she deems reasonably practical in order to ensure efficient operation of the ECTC.

4.4 The chairperson may appoint a secretary who shall be entitled to attend all meetings and minute the proceedings and otherwise support the chairperson as necessary.

5 ECTC MEETINGS

5.1 For the first year from the establishment of the ECTC, meetings of the ECTC shall be held on a monthly basis at 10am on the first working Sunday of each month. Any change of time or date or any additional meeting shall be notified by at least one week's advance written notice to all representatives and the Authority by the secretary at the request of the chairperson or, if there is no secretary, by the chairperson. After the first twelve (12) meetings of the ECTC have been held, the Authority will consult with the chairperson and may require less frequent meetings.

5.2 ECTC meetings will be held at the Authority's premises, unless otherwise agreed by the Authority.

5.3 Any Licensed Operator may request the chairperson to include an item on the agenda for an ECTC meeting.

5.4 The chairperson will invite representations from the Authority and representatives on a proposed agenda two (2) weeks' in advance of each meeting and shall finalise and circulate the agenda in advance of each meeting, having regard to any representations received and any requests made pursuant to paragraph 5.3 above.

5.5 Matters not on the agenda may be discussed at an ECTC meeting with the approval of the chairperson.

5.6 Draft written minutes of ECTC meetings shall be circulated promptly following the meeting by the secretary (or, if there is no secretary, by the chairperson) to the Authority and all representatives for review, and will be subject to the approval of a majority of the representatives at the next ECTC meeting.

5.7 Following approval, the chairperson will circulate the final version of the minutes to the representatives and the Authority. The Authority reserves the right to publish such minutes on its website, if deemed appropriate.
5.8 Only the representatives (or their respective proxies), the Authority, the Ministry of Transportation and Telecommunications and such other persons as may be determined by the Authority have the right to attend ECTC meetings. However, the chairperson shall have full discretion to invite to meetings such other persons as he/she deems appropriate or as may be suggested by representatives of the ECTC, in each case at the absolute discretion of the chairperson. That shall include, without limitation, inviting attendance by a Licensed Operator that has requested inclusion of an agenda item or attendance by employees or representatives of Licensed Operators or other persons with relevant technical knowledge where technical matters are to be discussed.

5.9 The taking of any action by the ECTC is subject to the approval of a majority of the representatives in attendance at a meeting, with the chairperson having a casting vote in the event of a deadlock. The chairperson will ensure that any dissenting opinions are noted in the relevant minutes.

5.10 The chairperson and four representatives shall constitute a quorum sufficient for a meeting of the ECTC to take place, save that at least one representative appointed by the SE and at least one representative appointed by an MNO must be present. In the event that an ECTC meeting cannot be held for lack of quorum, it shall be adjourned to a date and time agreed by those representatives present, which shall be notified to all representatives in accordance with the notice provisions set out above.

5.11 The representatives may participate in an ECTC meeting by means of a conference telephone or a video conference telephone or similar communications equipment by which all persons participating in the meeting are able to hear and be heard by all other participants without the need for a representative to be in the physical presence of another representative(s) and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting, including for the purposes of constituting the quorum for such meeting.

5.12 Where a representative is unable to attend an ECTC meeting or, having considered the agenda, considers that another person would have the relevant expertise relating to the matters to be discussed, that representative may appoint an alternate to attend in that representative’s place, subject to the prior consent of the chairperson.
6 FIRST MEETING

6.1 The first meeting of the ECTC should include the following agenda items:

6.1.1 noting of the ECTC's terms of reference;

6.1.2 determining the organisational operation of the ECTC;

6.1.3 discussions regarding the SE’s performance; and

6.1.4 development of processes and procedures, including preparation of the joint working manual and related operational documentation.

7 AMENDMENT

7.1 These terms of reference may be amended from time to time (i) by the Authority or (ii) by recommendation of the ECTC and with the approval of the Authority. The ECTC shall review these terms of reference on an annual basis.

8 TERMINATION

8.1 The Authority may terminate the ECTC at any time by serving 30 days' written notice on the chairperson and the representatives.

9 THE STATUS OF THE ECTC

9.1 The establishment of the ECTC and the functions entrusted to it shall not impair, prejudice, restrict in any way or replace the regulatory functions, powers and duties of the Authority.

9.2 The ECTC shall have the authority to procure advice or assistance from external advisors in carrying out its functions, subject to the prior written approval of the Authority. The arrangements for meeting the costs of such advice or assistance shall be as approved between the representatives or, failing approval, as determined by the Authority.
ANNEX 2
ECTC QUESTIONS

QUESTION 1 – FUNCTIONS:
(a) Do you have any comments on the proposed functions of the ECTC (as set out in Section 2 of the ECTC terms of reference (“TOR”))? 

(b) Do you agree that the purpose of the ECTC should be to allow the SE and Licensed Operators to discuss compliance issues in a collaborative manner and to reach an appropriate outcome, without needing to have recourse to the Authority, although recognising, if there was a need for a binding decisions, this would remain a matter for the Authority?

(c) In relation to technical and/or operational matters, do you agree that, in order to ensure a pragmatic approach and resolve issues swiftly, the ECTC should be able to provide instructions and/or recommendations and measures to be implemented by the SE?

If not, please give reasons and state which functions you think should be added or omitted.

QUESTION 2 – COMPOSITION:
Are you satisfied with the composition of the ECTC, as set out in Section 3 of the TOR? In particular, do you agree with:

(a) the number of representatives and those entitled to appoint them;

(b) the ability for the Authority to require rotation of the two representatives appointed by the operators other than the SE and the MNOs; and

(c) the manner by which ECTC representatives may be removed?

If not, please give reasons and state how the composition should be amended.

QUESTION 3 – ROLE OF THE CHAIRPERSON:
(a) Do you agree with the role of the chairperson?

(b) Do you agree with the manner by which any costs associated with the chairperson and the ECTC are to be allocated (as set out in Section 4 of the TOR)?

(c) Do you agree that:

(i) the ECTC should have the option to procure advice/assistance from external advisers in order to carry out its functions?

(ii) the cost of procuring such external advisors should be agreed between the ECTC members or determined by the Authority?
If not, please state why.

(d) Do you agree that the chairperson should have the ability to take such organisational measures as deemed reasonably practical in order to ensure efficient operation of the ECTC?

(e) Do you have any views on how the chairperson should be selected by the Authority, any independence criteria that should apply and the relevant skills and experience that the chairperson should have?

If not, please give reasons and state which roles and/or terms you think should be added or omitted.

QUESTION 4 – PROCEEDINGS OF ECTC MEETINGS:
(a) Do you agree with the method and procedure by which meetings of the ECTC are to be conducted (as set out in Section 5 of the TOR)?

(b) Do you agree with the voting and quorum requirements set out in Section 5.9 and 5.10 of the TOR?

If not, please state why.

QUESTION 5 – FIRST MEETING:
(a) Do you agree with First Meeting agenda items that are detailed in Section 6 of the TOR?

If not, please state which items should be added and/or removed.

(b) Do you agree with the proposed timelines for establishment of the ECTC, the holding of the first ECTC meeting and timeline for submission of the Joint Working Manual to the Authority for its approval?

If not, please state why and provide alternative suggested timelines.

QUESTION 6 – AMENDMENT:
Do you agree with the terms by which the ECTC TOR can be amended (as set out in Section 7 of the TOR)?

If not, please state which terms should be added and/or removed.

QUESTION 7 – TERMINATION:
Do you agree with the Termination provisions set out in Section 8 of the TOR?

If not, please state why.