



A public consultation paper issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain

## **The Review of the Guidelines for the setting of the amount of a fine for violations of Articles 35 and/or 65 of the Telecommunications Law of the Kingdom of Bahrain**

23 October 2018

LAD/1018/286

The address for responses to this document is:

Legal Affairs Department

Telecommunications Regulatory Authority ("The Authority")

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the Legal Affairs Department's email address at [LAD@tra.org.bh](mailto:LAD@tra.org.bh)

The deadline for responses is **4 PM on 25 November 2018**

## Instructions for submitting a response

The Telecommunications Regulatory Authority (“the Authority”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than **4 PM on 25 November 2018**.

Responses to this document should be sent to:

Legal Affairs Department  
Telecommunications Regulatory Authority  
P.O. Box 10353  
Manama, Kingdom of Bahrain  
Email address: [LAD@tra.org.bh](mailto:LAD@tra.org.bh)

Responses should include:

- the name of the company/institution/association etc;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and e-mail address);  
and
- in the case of responses from individual consumers, name and contact details.

The Authority expects respondents to provide comments in response to each of the questions set out in this document. The Authority invites respondents to substantiate their responses, wherever possible, by providing factual evidence to support their responses.

In the interest of transparency, the Authority will make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate requests for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.<sup>1</sup>

Respondents are required to clearly mark any information included in their submission which considered confidential. Where such confidential information is included respondents are required to provide both a confidential and non-confidential version of their submission. If a submission is

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<sup>1</sup> The Authority, “A Guidance Paper issued by the Telecommunications Regulatory Authority on its treatment of Confidential and Non-Confidential Information”, Guidance Paper No.2 of 2007, 10 September 2007  
[http://www.tra.org.bh/en/pdf/Confidentiality\\_Guidelines\\_Final.pdf](http://www.tra.org.bh/en/pdf/Confidentiality_Guidelines_Final.pdf)

marked confidential in its entirety, reasons for this should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law or Licences that respondents are relying upon.

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.

Capitalized terms used throughout this document shall have the same meaning attributed to them by the Telecommunications Law.

## **SECTION 1**

### **Status of this consultation document**

1. This consultation document is issued pursuant to the Position Paper on “How TRA Consults” issued by the Authority on 17 October 2017<sup>2</sup>.
2. The information contained in this document is intended to provide background on the “Guidelines for the setting of the amount of a fine for violations of Articles 35 and/or 65 of the Telecommunications Law” that is currently being reviewed by the Authority. 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.
3. This consultation document does not represent a decision by 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.

## **SECTION 2**

### **Background information**

4. This consultation document sets out the basis for the Authority’s proposed amendments (“Draft Amended Guidelines”) to the Guidelines for the setting of the amount of a fine for violations of Articles 35 and/or 65 of the Telecommunications Law of the Kingdom of Bahrain (“the Current Guidelines”), which was promulgated by Legislative Decree No. 48 of 2002 (“the Telecommunications Law” or “the Law”). A copy of the Draft Amended Guidelines is appended to this Consultation Document.
5. Article 3(c)(1) of the Telecommunications Law empowers the Authority to issue regulations, orders and determinations as may be necessary for the implementation of the provisions of the Law, including those in connection with technical standards and rules, Licenses and payment of License fees.
6. Article 3(c)(2) of the Telecommunications Law empowers the Authority to:
  - a. Monitor and investigate compliance with the Law and any regulations, orders and

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<sup>2</sup> <http://www.tra.org.bh/media/document/Position%20Paper%20on%20how%20TRA%20consults1.pdf>

determinations made 'thereunder; and

- b. Make such orders and determinations as are necessary to ensure such compliance in accordance with the Law and any regulations, orders and determinations made thereunder.
7. Further, Article 3(c)(4) of the Telecommunications Law empowers the Authority to monitor and enforce compliance with License terms and conditions by Licensees.
8. Article 72 of the Telecommunications Law requires the Authority to investigate any complaints submitted to it with respect to breach of the provisions of the Law or breach of the regulations or decisions issued thereunder.
9. Article 35(a) of the Telecommunications Law empowers the Authority to impose an order on a Licensee if there has been (or is likely to be) a severe breach of any provision of the Law or any condition of a License, and to take the measures that it considers necessary to ensure compliance by the Licensee with the provisions of the Law or Licensee.
10. Article 35(d)(2) of the Telecommunications Law states that an order issued by the Authority under Article 35(a) of the Law may provide for the imposition of an appropriate fine on the Licensee, provided that:
  - a. The fine is objectively justified; and
  - b. When assessing the fine, the principle of justice and equality amongst Licensees is taken into consideration.
11. Article 35 of the Telecommunications Law does not set a limit on the amount of the fine that may be imposed for violations of its provisions.
12. Article 65(b) of the Telecommunications Law prohibits a broad range of anti-competitive conduct, including any act or omission by a Licensed Operator that has the effect of materially preventing, restricting or distorting competition in any commercial field concerning the telecommunications sector in the Kingdom of Bahrain including:
  - a. Any abuse by a Licensed Operator of a Dominant Position, either independently or with others, which materially prevents or limits competition in an unfair manner; and
  - b. The conclusion by the Licensed Operator of any anti-competitive agreement,

understanding or the undertaking of any concerted practice which materially prevents, restricts or distorts competition in a market.

13. In line with the Authority's powers under Article 3(c) of the Telecommunications Law, as set out above, Article 65(f)(2) of the Law establishes the legal basis upon which the Authority may impose a fine on a Licensed Operator for violations of Article 65, and sets an upper limit on the quantum of the fine that may be imposed in such cases. The cap is set at 10% of the infringing Licensed Operator's annual revenues.

### **The Draft Amended Guidelines**

14. The aim of the Current Guidelines (and ultimately the Draft Amended Guidelines) is to promote transparent and non-discriminatory practice in setting the amount of any fines that are imposed by the Authority for violations of the Telecommunications Law.

15. Since the Current Guidelines were published in 2014, the Authority has had experience of applying the same in a number of cases, and considers that it is now appropriate to make some limited incremental revisions to the same in order to better reflect decisional practice.

16. The Authority considers that the Draft Amended Guidelines build on the Authority's decisional practices over the years. The changes aim to provide further transparency to the process of penalty-setting and thereby increase certainty for stakeholders in the telecommunications sector.

17. In summary, the proposed changes are:

- a. Further details as to how the Authority will assess the seriousness of an infringement and in particular apply the starting point range (Step 1);
- b. Addition of a further illustrative example of an aggravating factor and some further detail on the requirements for certain mitigating factors (Step 3);
- c. Additional details concerning the financial indicators which the Authority typically uses when assessing proportionality and deterrence (Step 4); and
- d. New text on how the Authority will apply discounts for leniency, settlement or redress schemes (Step 6).

18. The Authority considers that these proposed revisions will add greater clarity and transparency to the penalty setting process in line with decisional practice.

## **SECTION 3**

### **Consultation Questions**

1. Do you agree with the proposed changes made to the approach and methodology for the setting of the quantum of fines for violation of Articles 35 and/or 65 of the Telecommunications Law? Please provide a detailed explanation in your response. Please make specific reference to the paragraph number(s) of the Draft Amended Guidelines that are referred to in your response.
2. Are there any other areas of the Draft Amended Guidelines which you consider could be usefully clarified? Please explain which areas and why.