

Summary of comment received	The Authority's view and conclusion
Question 1: Do you agree with the proposed definitions? Which definitions would you revise? Are additional terms necessary?	
Batelco	
<p>Batelco provides the following comments in relation to some of the draft definitions in Article 1 titled 'Definitions':</p> <p>a. “Advertising” – the definition includes a non-exhaustive list of 22 different varieties of material, but is silent as to what is not included as advertising. Batelco notes that in other jurisdictions, such as the United Kingdom, advertising regulation is split between co-regulatory bodies using a mixture of legally binding measures and more detailed voluntary codes of conduct which cover various forms of advertising (e.g. non-print broadcasting advertising, electronic advertising, etc). Batelco suggests that the TRA ought to be more consistent with the definition of 'Telecommunications' under the Law and relieve itself of the responsibility of regulating advertising in relation to categories (a) and (b). Batelco also recommends the exclusion of (g) to (i) from the list.</p> <p>b. “Applicable Product of Service” – Batelco recommends a more focused scope in the definition within the bounds of the current Telecommunications framework.</p> <p>c. “Consumer” and “Consumer Contract” – Batelco does not agree that “one size fits all” in relation to contract formation and unfair contract terms between business consumers and individual consumers. As such, Batelco suggests that Chapter 3 (consumer contracts/unfair terms), Chapter 5 (consumers with disabilities), Chapter 6 (billing and Chapter 8 (enforcement/submission of consumer contracts for approval) should apply to individuals who are not acting in a business capacity.</p>	<p>a. The Authority would like to bring to Batelco's attention that, while the definition of 'Telecommunications' specifically excludes Broadcasting, the definition of Broadcasting under the law speaks of cable, radio or satellite communication or transmissions which are intended for direct general reception. The Authority would like to make it clear that it is not proposing to regulate broadcast communication. It is instead proposing measures which apply to advertising activities related to Public Telecommunications Services and Telecommunications Equipment (to the extent specified in the proposed Regulation) which, in the case of Article 1(a) and (b), may occur through broadcasting means (advertisements over radio and television). The Authority rejects Batelco assertion that the categories present under the proposed definition of 'Advertising Means' contradict the Law's definition of 'Telecommunications' or 'Broadcasting' by any means. The Authority considers this definition sufficient and does not require further amendments.</p> <p>b. The Authority believes that the definition of 'Applicable Product or Service' is self-explanatory and does not require further clarification.</p> <p>c. The Authority would like to clarify that the provisions of Article 19 apply to standard subscriber agreements. It does not prevent licensees from negotiating non-standard terms and conditions with business consumers. See the Authority's response to Batelco's comments to Question 6 below.</p> <p>d. The Authority has reviewed the definition of 'Consumer' and amended the Regulation accordingly.</p>

d. Batelco also disagrees with the reference to “users” as well as “subscribers”, as some of the express consumer rights in the draft Regulation should relate to the party that signs the contract and not others who happen to use the service.	
Mena Telecom	
Mena agrees with the proposed definitions with additional clarification required which reduces legal uncertainty.	-
VIVA Bahrain	
VIVA agrees with the proposed definitions in Article 1.	-
Zain	
<p>Zain agrees with the proposed definitions but suggests the following:</p> <ul style="list-style-type: none"> a. Adding a definition to Interactive Voice Response (IVR) in the list of “Advertising Means”. b. Changing the term “Commitment Period” to “Contract Term” to define the term of the Consumer Contract – irrespective of whether termination fees apply or not during that term – as this defines the entire period in which the consumer is subscribed to the a service. Zain also recommends changing the already-defined “Commitment Period” to “Minimum Service Period” in order to remain aligned with common industry terminology. c. Zain recommends defining “culturally sensitive” in the Regulation. 	<ul style="list-style-type: none"> a. The Authority agrees with Zain and has amended the Regulation accordingly. b. The Authority agrees with Zain and has amended the Regulation accordingly. c. The Authority believes that “culturally sensitive” is self-explanatory and does not require further clarification.
Question 2: Do you agree with the scope of the Regulation?	
Batelco	
<ul style="list-style-type: none"> a. Batelco has no specific comments in relation to its obligations under the Law but disagrees with the proposed measure under Article 2(3) that all breaches of the Regulation (regardless of who causes the breach and the extent of the breach) are deemed a material breach, especially for breaches committed by Third Parties as defined in the Regulation. b. Batelco’s position is that any breach of this Regulation cannot, by definition, be considered a severe breach of a licence 	<ul style="list-style-type: none"> a. The Authority rejects Batelco’s comment as it considers the language in Article 2(3) to be standard and therefore does not require any amendments. The Authority addresses Batelco’s second point regarding Third Parties below. b. The Authority rejects Batelco’s argument.

condition, which in turn leads to enforcement sanctions under the Law.	
Mena Telecom	
Mena agrees with the proposed definitions with additional clarification required which reduces legal uncertainty.	The Authority is not sure what Mena is requesting further clarification on. The Authority believes that the terms of the Regulation are self-explanatory and do not require further clarification.
VIVA Bahrain	
VIVA believes that licensees should not be held accountable for breaches committed by Third Parties.	See response to Question 4.
Zain	
Zain believes that any breach committed under the proposed Regulation must be assessed on a case-by-case basis, and there recommends to omit the word 'material' from Article 2(3) of the Regulation. Zain also notes that there is no list of relevant legal instruments issued by the Authority where, by way of non-compliance, would result in a material breach of the provisions of Zain's license terms and the Law.	See response above. The Authority rejects Zain's recommendation to omit the word 'material' from Article 2(3).
Question 3: Do you have any other comments on Chapter 1 of the Regulation?	
Batelco	
Batelco has no further comments in relation to Chapter 1 of the Regulation.	
Mena Telecom	
Mena agrees with the proposed definitions with additional clarification required which reduces legal uncertainty.	-
VIVA Bahrain	
VIVA has no other comments in relation to Chapter 1 of the Regulation.	-
Zain	
Zain recommends adding "relevant" to "Third Parties" in the definitions table for clarity and alignment with Article 2(2) of the Regulation.	The Authority has reviewed Zain's comment and has removed the word "relevant" from Article 2(2).
Question 4: Do you disagree with the proposed obligations in relation to advertising activities? If so, please specify and suggest changes.	
Batelco	

<p>a. Batelco believes that it is inflexible to incorporate detailed measures in a regulation rather than guidelines which can evolve over time, as this path is likely to create immediate complex compliance challenges towards operators and advertisers without necessarily benefiting consumers further.</p> <p>b. Batelco submits that out of the general prohibitions in Chapter (misleading actions, misleading omissions, and deceptive advertising), the misleading advertising prohibition under Article 7 is broad enough to protect consumers. Batelco proposes to delete the additional prohibitions relating to “deceptive” advertising and “misleading omissions” (Articles 8 and 9). The proposed additional misleading omissions offence cross-refers to deceptive advertising under Article 8, so deletion of this is also proposed on the basis that a misleading advertising prohibition is reasonable and sufficient.</p> <p>c. Batelco proposes the deletion of “these shall include but not be limited to” in Article 4(1) as it is expected that the Applicable Product or Service in this case would reflect the scope of the Law and not include convergent services or products/services from different service sectors.</p> <p>d. Article 4(2) of the Regulation creates a strict liability regime for Advertisers as defined under the Regulation for all acts or omissions by Third Parties. Batelco notes that there are no express grounds for defence for a licensee even if all reasonable measures have been taken to ensure compliance. Batelco therefore proposes an express defence for Advertisers in this Chapter that liability is not established if:</p> <ul style="list-style-type: none"> • The licensee shows it has taken all reasonable steps to materially comply with the advertising chapter; • Due diligence defence, that is, the offence was committed because of a mistake, reliance, on information supplied by 	<p>a. By virtue of The Telecommunications Law (Article 3(b)) the Authority must carry out its duties in the manner best calculated to, amongst other things, protect the interests of consumers and Users in respect of the provision of service, the quality of service and the protection of personal particulars and privacy of services. Article 3(c)(18) of the Law requires the Authority to exercise all powers and take all actions as may be reasonably necessary with respect to any matters deemed necessary to give effect to the provisions of the Law. The Authority has concerns that, in the absence of a standardised framework and specified obligations that are applicable across all service providers of public telecommunications services, various approaches will be adopted by service providers and that consumers, may not, therefore, be adequately protected. The Authority’s Consumer Protection Guidelines, as the name suggests, merely provide for guidance and do not set clear obligations for service providers to adhere to.</p> <p>b. The Authority has reviewed this position and has amended the Regulation accordingly.</p> <p>c. The Authority does not agree with Batelco in this respect.</p> <p>d. The Authority would like to clarify that any Advertising within the ambit of the Regulation which is carried out without the direct or indirect agreement or consent of an Advertiser, such Advertiser will not be responsible for possible breaches of the Regulation. Having said that, the Authority considers it extremely unlikely that any Third Party would advertise an Applicable Product or Service of said Advertiser without its knowledge or consent, if for no other reason, in that they could be open to legal action by the licensee or from those that may be misled. Additionally, inappropriate Advertising could harm the image of the Licensee and more importantly that of the telecommunications industry. Thus, if an Advertiser claims that this situation has arisen (i.e. advertising outside its control) it would have to establish the relevant</p>
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<p>another person, the act or default of another person, an accident or another cause beyond his control, the advertiser took all reasonable precautions and acted with due diligence to avoid the offence; or</p> <ul style="list-style-type: none"> • Innocent publication defence where in the case of advertisements, if the advertiser can prove that its business is the publishing of advertisements, it received the advertisement in the ordinary course of business and did not know that the publication would be an offence under the Regulation. <p>e. In relation to Article 6 (Obligations of Advertisers), Batelco has the following comments:</p> <ul style="list-style-type: none"> • In the interests of simplicity, Batelco proposes reducing the range of obligations to basic general principles (by reference to review of international comparisons, for example, those at (a) – (d) inclusive and (j) and then move further obligations to guidelines which can provide more specifics to advertisers. • Batelco proposes the deletion of Article 6 para I as there is no further definition or guidance of “conduct commercial dealings with Consumers fairly”. Batelco also notes that the requirement for all Advertisers to ensure consumers understand all documentation and sales advice prior to signing an agreement is a tough standard to prove compliance. • Batelco proposes the deletion of Article 6(n) as whilst Batelco has accepted the scope of the Regulation to apply to Third Parties as defined, the Authority should not expect licensees to monitor and ensure compliance of Third Parties. • Batelco proposes a general principle that an Advertiser is not liable for non-compliance in respect of aspirational 	<p>facts to the satisfaction of the Authority. Specifically, these would be that (a) it had not agreed (directly or indirectly), nor expressly consented, nor had it any knowledge or involvement of the activities of the Third Party; (b) that the Third Party is not its employee, distributor, dealer, agent, sub-contractor or representative; and (c) that once it became aware of the Advertisement it took all necessary steps to stop it. In such cases, unless there is other compelling evidence to the contrary, the Authority will accept that the Advertiser was not responsible for the Advertisement and any possible breaches relating to it. The Authority believes that it is a matter for each Advertiser to put the necessary contractual and compliance measures in place (if it has not already done so) to ensure that its Third Parties do comply with the obligations set out in this Regulation.</p> <p>e. The Authority notes the following:</p> <ul style="list-style-type: none"> • The Authority does not agree to reducing the proposed obligations to basic general principles. The Authority finds that the proposed provisions provide a balance between flexibility and clarity taking into account the state of the industry, the nature of complaints received and consumer protection issues encountered in the past. The Authority is not convinced that such provisions should be removed or modified. • The Authority has reviewed this position and amended the Regulation accordingly. • The Authority refers Batelco to its comments below in relation to Batelco’s response to Question 4. • The Authority does not find this necessary and therefore does not agree with Batelco in this respect. <p>f. The Authority considers that Batelco has misunderstood the principles contained in Article 11 and refers it to Article 11(c): “<i>where the full details cannot be accommodated in the Joint Advertisement, the Advertisers shall include a statement such as “provided by more than one Advertiser”, or words which have the same clear effect.</i>” The</p>
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<p>claims or obvious “puffery” that a consumer is unlikely to take literally.</p> <p>f. Batelco does not believe that in Joint Advertisement the division of legal responsibility can be communicated in that Advertisement, especially considering the form of advertising medium is sometimes truncated by length.</p> <p>g. Batelco suggests that Licensees may address any ambiguities in a written contract rather than in Advertisements.</p>	<p>Authority would like to remind Batelco that in all cases Advertisers ought to read Articles in light of the overarching provision and aim of the Regulation – which is not to deceive or mislead Consumers make false claims, etc.</p> <p>g. The Authority would like to make it clear that, where it is not possible to have the details of the Applicable Product or Service in the same Advertisement, the Advertiser shall: (a) at least state that this is “subject to terms and conditions” or words which have the same effect, and (b) ensure that Consumers are made aware of such terms and conditions before entering into a contract.</p>
<p>Mena Telecom</p>	
<p>Mena agrees that advertisements should be truthful and not misleading but does not believe that it should be liable for breaches of Third Parties.</p>	<p>The Authority refers Mena to its response to Batelco on the same above.</p>
<p>VIVA Bahrain</p>	
<p>a. VIVA believes that there should be a grace period of six (6) months for licensees to comply with the new Regulation to revise advertising content.</p> <p>b. With reference to Article 6(e) VIVA considers that the obligations proposed by the Authority are counterproductive as Advertisers cannot publish all product details and T&Cs in all Advertising Means. VIVA wishes to highlight that the licensee’s website is the main source of comprehensive information related to T&Cs and its products and services for consumers. VIVA suggests that T&Cs should only published on its website rather than mandated to be provided in detail through Advertising Means as defined in the Regulation.</p> <p>c. VIVA notes that price claims such as “up to” and “from” are not considered exaggerations as they are used to summarize and simplify pricing information on advertisements instead of communicating lengthy pricing levels, which would be</p>	<p>a. The Authority refers VIVA to its response to Question 16 below.</p> <p>b. The Authority believes that VIVA has misunderstood the wording in Article 6. Nowhere in the Regulation has the Authority proposed obligations on Advertisers to include all product details and/or all terms and conditions in their Advertising Means. In fact, the Authority has ensured flexibility in this aspect throughout the Chapter. For example, Article 12(3)(a) states that if, because of the nature of the Advertising Means used, certain information is not included in Advertisements, Advertisers shall ensure that they include a statement in the Advertisement such as “subject to conditions” or words which have the same effect. This has been practiced throughout the entire Chapter. Having said that, the Authority has inserted wording in Article 6 to clarify its position.</p> <p>Whilst the Authority promotes providing terms and conditions to Consumers through several different means (rather than just its website) the Authority accepts VIVA’s practice provided that such</p>

<p>impractical and cost-prohibitive. VIVA requests that the usage of claims such as “from” and “up to” should be permitted with sufficient disclosure when referring to products or services offered which are detailed on VIVA’s website.</p> <p>d. In terms of deceptive advertising, VIVA believes that the obligation set under Article 8 is very generic and subjective, leaving it for misinterpretation. VIVA cannot assume the average consumer’s intention when designing or communicating its Advertisements. Also, VIVA cannot communicate all products’ features and details on advertisements because of the limitations of Advertising Means (all information is already on its website). VIVA recommends removing this. VIVA reinstates its argument here when discussing the obligations related to misleading omissions.</p> <p>e. VIVA believes that Comparative Advertisement in relation to competitors’ products and services should be allowed so long as it is conducted fairly using official source(s) of information (VIVA uses the example of a competitor’s website). Such conduct generally includes tariff, speed, product bundling, deals, and offer comparisons. VIVA believes that licensees should be permitted to quote official sources such as Telecommunications Benchmarking Studies that are published by the Authority. Additionally, VIVA requires more clarification as to what is defined as “fair competition” in conducting Comparative Advertisement.</p> <p>f. With reference to Article 12, VIVA believes that as long as a consumer is benefiting from a special offer, there ought to be no need to specify an end date. VIVA should have the right to stop any offer or promotion if it does not achieve its objectives due to abusive behaviour or cannibalization of the market.</p>	<p>information is referenced properly in the Advertisement and is easily accessible.</p> <p>c. The Authority would like to clarify that Article 6(g) does not prevent Advertisers from using price claims in their advertisements. Instead, it prevents the exaggeration of such price claims as to the availability of benefits likely to be obtained by Consumers. For example, in circumstances where some Consumers’ maximum speed falls below it, the maximum speed claim must be prefixed with “up to”. Speed claims are further detailed below.</p> <p>d. The Authority notes VIVA’s comments but does not consider it appropriate to remove the relevant Article or amend it. The Authority is satisfied that these proposed provisions provide a balance between flexibility and detail, taking into account best practice and the needs of the industry in relation to consumer protection. They are to be read in light of the overall objective of the Chapter – this is to say that Advertisers must not mislead, deceive or omit information to Consumers. The Authority finds it confusing and strange that VIVA asserts that it “cannot assume the average consumer’s intention when designing or communicating its Advertisements”. Obviously when designing and communicating an Advertisement which targets a segment of Consumers, VIVA will have to take into consideration the intention, perception, and understanding of the same on a wide and generic level. The Authority does not accept VIVA’s statement in this regard.</p> <p>e. The Authority notes VIVA’s comments and welcomes such practices so long as VIVA complies with the provisions of the Regulation, especially those included in Article 15. The Authority has made changes to Article 15.</p> <p>f. The Authority does not agree with VIVA and rejects its argument.</p>
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g. With reference to the proposed obligations under Article 13 titled ‘Expressions and Statements’:

“Free”: VIVA believes that licensee ought to be allowed to advertise products and services as “free” with reduced quality of service or speed either from the beginning or upon reaching the fair usage policy. VIVA argues again that it is not practical to include all information about the offer in the advertisement itself, and that a reference to its website should be sufficient.

“Unlimited”: VIVA believes that “unlimited” claims ought to be allowed if a consumer has opted in to be charged for unlimited usage in order to enjoy a certain level of quality of service. VIVA also believes that the speed levels stated in its fair usage policy should be set and altered from time to time at its sole discretion.

Speed and network claims: VIVA seeks further clarification as to what it means by “download speeds shall be based on the actual experience of users”. VIVA believes that this is not realistic as it poses technical challenges. This includes technical dependencies and inconsistencies when measuring the actual speed such as the consumer’s device, coverage or another party’s network. Also, VIVA’s access service is based on a wireless network and the actual speed will vary depending on factors such as location of the consumer from the base station. VIVA finds that this puts mobile operators at an unfair disadvantage as compared to fixed broadband operators who are able to make appropriate claims for higher download speeds.

VIVA therefore suggests that licensees are allowed to make network claims that are based on actual network speed configurations, or the package speed being advertised (up to X Mbps, minimum X Mbps, or a maximum of X Mbps). VIVA also believes that network claims based on general network technology or characteristics such as 4G technology ought to be allowed as they are widely used from a commercial standpoint.

g. The Authority comments on the following:

“Free”, in its purest sense, means that a Consumer receives something for nothing: no consideration (except, if applicable, the cost of postage or travel required to collect the offer) passes from the Consumer to the Advertiser. Any limitations, such as reduced quality, usage charges, registration charges, monthly subscriptions and the like are limitations to a service and cannot therefore be advertised as being “free”.

Advertisements must not mislead Consumers about the benefits or results that might be expected from an “unlimited” telecommunications service, or about the existence or impact of any factors under the Advertiser’s control that are likely to affect its usage. “Unlimited” claims are likely to be acceptable for telecommunications services that are subject to self-imposed limitations if they do not restrict or limit a service in a manner contrary to the average consumer’s expectations of an “unlimited” service. In addition, Advertisers should be able to demonstrate that the self-imposed limitations on the speed or usage of a service do not prevent or hinder users from carrying out lawful online activities, such as streaming content, at the Consumer’s normal connection speed.

For example, a claim related to a specific element (i.e. a defined activity) of the service, for instance, “unlimited web browsing”, would only require the Advertiser to show that that element of service meets the criteria listed above. Broadband Consumers are likely to assume that a claim related to “unlimited web browsing” will allow them unlimited use of services such as YouTube or another browser-based streaming service. If an online activity like streaming is excluded from the “unlimited” aspect of the service, this should be clearly stated.

Where the service is subject to a Fair Usage Policy the Advertiser must to clearly state so in the Advertisement and provide the details of the same. The Authority rejects VIVA’s argument that it ought to be able to unilaterally make changes to its Fair Usage Policy ergo the terms and conditions of existing contracts.

<p>h. VIVA also seeks clarification from the Authority as to why it is not allowed to make claims on network characteristics, especially if such claims comply with the proposed obligations under Article 15 of the Regulation in quoting research and statistics in reports.</p>	<p>The Authority considers that speed claims should be based on actual user experience and therefore Advertisers should be able to demonstrate that the speeds in their Advertising can be achieved by a reasonable proportion of the its customers. If an Advertisement does not mention factors that are likely to cause some Consumers to receive speeds significantly below the claimed maximum speed, the Advertisement might be considered misleading. For example, some forms of traffic management will result in a proportion of Consumers receiving speeds at certain instances that are significantly below the Advertised maximum. The wording of significant factors must make clear and prominent – in terms easily understood by consumers – the likely effect of the said factor on Consumers’ ability to achieve an Advertised speed. Furthermore, Advertisers should avoid technical terms unless they are widely understood by Consumers or are explained clearly within the Advertising Mean.</p> <p>h. The Authority agrees with VIVA and has amended the Regulation.</p>
<p>Zain</p>	
<p>a. In Article 6(c), Zain suggest to reword the current wording: <i>“have the ability the to substantiate...”</i></p> <p>b. Zain reiterates, for the avoidance of doubt, that the proposed obligation under Article 6(g) allows licensees to make claims “up to” and “from” in their advertisements.</p> <p>c. With reference to Article 6(i), Zain explains that it is impossible to ensure that consumers understand all documentation and sales advice relating to their agreements. It is of Zain’s opinion that consumers have a responsibility to educate themselves on the contents of the agreements they enter into for products/services. Furthermore, Zain recommends the following change in the current wording: <i>“conduct commercial dealings with Consumers fairly, ensuring using best endeavours to ensure that Consumers...”</i></p>	<p>a. The Authority has reviewed its position and has made amendments to the Regulation.</p> <p>b. The Authority would like to clarify that Article 6(g) does not prevent Advertisers from using price claims in their advertisements. Instead, it prevents the exaggeration of such price claims as to the availability of benefits likely to be obtained by Consumers. For example, in circumstances where some Consumers’ maximum speed falls below it, the maximum speed claim must be prefixed with “up to”. Speed claims are further detailed above.</p> <p>c. The Authority has reviewed its position and has amended the Regulation accordingly.</p> <p>d. The Authority disagrees with Zain.</p>

<p>d. Zain recommends changing the term “Consumer” to “Average Consumer” making reference to Article 6(p).</p> <p>e. Zain argues that there are some instances where the Advertising Means used make it difficult to include the same level of detailed information (Zain uses the example of flyers in comparison to SMS).</p> <p>f. With reference to Article 10, Zain is of the view that allowing Comparative Advertising practices will lead to continuous disputes between licensees when justifying and defining conditions as set out in this Article. Zain therefore recommends disallowing any type of Comparative Advertisement in the future as well as removing this entire Article from the proposed Regulation.</p> <p>g. Zain notes that the proposed obligation under Article 12(2) contradicts its right pursuant to Article 38 of the Civil Law which grants the offeror the right not to specify a limit date as to when an offer ends. Zain also argues that it is not feasible nor is it rational from a competition perspective to state in an Advertisement the date on which the offer commences. Zain recommends omitting this obligation.</p> <p>h. Zain suggests that Article 13(a)(i) should clarify the issue of free benefits that may be advertised as “free” and are not primary costs paid towards the given product/service. Zain uses the example of a subscription to a specific package where the subscriber would be entitled to 100 free international minutes. This benefit, in Zain’s opinion, should not be misinterpreted as an indirect cost towards the main package but considered as an incentive to subscribing to it.</p>	<p>e. The Authority notes Zain’s comment and has inserted additional wording in the Regulation. The Authority refers Zain to its response to VIVA’s comments on the same above.</p> <p>f. The Authority is surprised of Zain’s position as it recalls that Zain and VIVA had engaged in Comparative Advertising practices in the past year. Article 10 makes it very clear that comparisons with competitors are permissible in Advertisements so long as they refrain from judgements and opinions about the said competitor unless the assertions being made are based on facts that can be substantiated, are objective, and have not been unfairly selected. Furthermore, such comparisons must be fair, accurate, not misleading and address comparable Applicable Products or Services. No evidence has been provided for the Authority’s consideration to support Zain’s claim that there will be continuous disputes resulting from this Article. The Authority therefore does not accept removing this Article from the Regulation.</p> <p>g. Article 38 of the Civil Law of the Kingdom of Bahrain states that <i>“the person who makes the offer shall have the choice to withdraw from his offer as long as it is not associated with an acceptance.”</i> This is irrelevant to Article 12(2) of the Regulation. Advertisements are not considered an offer to enter into a binding contract. Rather, they are considered an invitation to treat. No evidence has been provided for the Authority’s consideration to support Zain’s claim that “this is not feasible nor is it rational from a competition perspective” to include end dates for offers in Advertisements.</p> <p>h. A mobile subscription package offers, for example, a certain amount of minutes, text messages and data for one all-inclusive price. Each element is intrinsic to the quality and composition of the package being Advertised for its price point. Because Consumers cannot exercise genuine choice over how many elements they receive for the price being paid, the elements are all included in the package price</p>
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<p>i. Zain proposes to reword Article 13(b)(i) to: <i>“the expression “unlimited” shall mean that an Applicable Product or Service is provided without any limitation on the unlimited offer, save for inherent and asserted technical limitations found in any network.”</i></p> <p>j. Zain states that actual download speeds vary due to different variables and cannot be guaranteed and communicated to consumers at all times, hence the justification for using expressions such as “up to” and “from”.</p> <p>k. Zain suggests the removal of Article 13(d)(i) as it views this obligation counterproductive, aggressive and not properly justified.</p> <p>l. Zain recommends inserting the following wording in Article 14(a): <i>“...made in an Advertisement shall be readily visible, audibly apparent and legible <u>where relevant.</u>”</i></p> <p>m. Zain notes that “non-intrusive” is not defined in Article 17(1) and proposes amending the wording to: <i>“When using Direct Contact Advertisement, Advertisers shall ensure that the number of calls, emails or SMS being sent to a Consumer for Advertising purposes is non-intrusive <u>in accordance with the Bulk SMS Regulation.</u>”</i></p>	<p>and the Consumer has to take all three elements to pay the advertised price. This may not be described as “free”. However, the Authority considers one exception to this. Advertisers may sometimes add elements to their existing packages without increasing the price of the package or reducing the quality or composition of the elements that are already included in the package. In this case, Consumers are likely to regard the element that has been added to the package as additional to the established package for a period after its introduction; once the element has formed part of the package for a long time, consumers are likely to regard it as a standard feature of the package. Advertisers may therefore describe elements that have been added to those already existing packages as “free” for a reasonable period after their introduction. Therefore, the Authority considers that if a package price is payable, Advertisers may describe elements that are included in the package as “at no extra cost” or “inclusive” but may not describe them as “free” unless they have been recently added to an established package without increasing its price or decreasing its quality.</p> <p>i. The Authority does not believe that this insertion is necessary.</p> <p>j. The Authority refers Zain to its response to VIVA above on the same subject matter.</p> <p>k. The Authority has reviewed this position and has amended the Regulation accordingly.</p> <p>l. The Authority rejects Zain’s recommendation.</p> <p>m. The Authority does not consider it necessary to provide further guidance in the Regulation as to what “non-intrusive” means. The Authority would expect Advertisers to exercise their judgement as to what is considered non-intrusive, as well as taking into account all relevant legal obligations.</p>
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Question 5: Do you have any other comments on Chapter 2 of the Regulation?	
Batelco	
<p>a. In relation to Article 13 of the proposed Regulation, Batelco proposes that these measures would be better suited as specific industry advertising guidelines to encourage compliance with the final regulation.</p> <p>b. Batelco notes that in relation to the section on “free” delivery costs are permitted as an exception to the general exclusion of costs to the consumers.</p> <p>c. In relation to “speed” claims, Batelco proposes a modification to part (ii) so that claims <i>can be achieved by a reasonable proportion of the Advertiser’s customer base</i> rather than the whole customer base since broadband speed is not uniform and constant over the whole of the licensed fixed or mobile network. In the case of fixed broadband, testing is carried out as part of the provisioning process.</p> <p>d. Batelco proposes removing Article 13(d) relating to network claims.</p>	<p>a. The Authority refers Batelco to its response above.</p> <p>b. The Authority would like to clarify that Advertisements must not describe an Applicable Product or Service as “free” or “without charge” or similar if a Consumer has to pay anything other than the unavoidable cost of responding to the promotion and collecting or paying for delivery of the Applicable Product or Service.</p> <p>c. The Authority disagrees.</p> <p>d. Agreed and amended.</p>
Mena Telecom	
Mena agrees that advertisements should be truthful and not misleading but does not think it ought to be liable for breaches of third parties.	The Authority refers Mena to its response to Batelco on the same above.
VIVA Bahrain	
Notwithstanding VIVA’s responses to the questions related to Chapter 2 above, VIVA is of the view that the proposed obligations will limit licensees’ abilities to come up with creative advertisements to promote its products and services.	The Authority is satisfied that the measures set out in the Regulation are not severe as VIVA considers, but that they are fair, reasonable and essential in ensuring an appropriate level of consumer protection in the telecommunications industry.
Zain	
Zain does not have any further comments on Chapter 2 of the Regulation.	-

Question 6: Taking into account the interests of consumers, do you consider that the obligations in Chapter 3 constitute an undue burden on service providers?

Batelco

<p>a. Batelco proposes that the measures under Chapter 3 apply to individual customers and not business. While in practice there will be an overlap in principles applying to both categories, the formal legal requirements Batelco submits should be aimed at the mass market because ex ante regulation, in Batelco’s opinion, still applies to the business sector and the Authority has other consumer protection powers for the business sector.</p> <p>b. Batelco is aware that a large number of different retail contracts potentially affected by this Regulation, and therefore proposes a more focused standard terms to be subject to the Regulation, being telecommunications products and services for individual consumers who are not businesses.</p>	<p>a. The Authority would like to make it clear that the provisions relating to Consumer Contracts apply to all standard subscriber agreements, unless stated otherwise. The main hallmarks of a standard subscriber agreement are that:</p> <ul style="list-style-type: none"> • The contract is in standard form, meaning that the terms of it have not been subject to effective negotiation between the parties, and that the contract is being offered on a “take it or leave it” basis; and • The contract is a consumer contract, meaning that the goods and/or services acquired are for personal, domestic or household use rather than for commercial purposes. <p>b. In deciding whether a contract is a standard form agreement or not, the Authority will take into consideration the following factors (and any other that it considers relevant):</p> <ul style="list-style-type: none"> • whether one of the parties had all or most of the bargaining power in the transaction; • whether a party was, in effect, required to accept or reject the terms of the contract in the form in which they were presented; and • the extent to which the parties had an effective opportunity to negotiate the terms of the contract. <p>The Authority is satisfied with the provisions set out in Chapter 3 and does not believe any changes are warranted.</p>
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Mena Telecom

<p>Mena believes that contracts should be fair but we also think that parties should be free to strike a deal which may include contracts with auto-renewal terms that would allow other beneficial terms to the consumer as a trade-off, especially in the case of the business sector.</p>	<p>The Authority refers Mena to its response above.</p>
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<p>Mena also agrees with section (f) provided they do so within a stipulated timeframe of fifteen (15) days.</p>	
<p>VIVA Bahrain</p>	
<p>VIVA considers that the obligations in Chapter 3 constitute an undue burden on licensees particularly in relation to the following obligations:</p> <p>Obligation to provide consumers with physical contracts and full terms and conditions</p> <p>a. With reference to Articles 18(1), 19(1), and 19(5), VIVA believes that licensees ought not to be obligated to provide consumers with physical contracts along with full terms and conditions. VIVA's service application form makes a clear reference to VIVA's terms and conditions, which are available on its website and can be provided in hard copy upon request.</p> <p>Standard contractual terms</p> <p>b. With reference to Articles 19(1) and 19(2), VIVA considers that the fair usage policy is part of its network optimization exercise and that licensees ought to have the ability to change it as they see fit to improve consumer experience. VIVA also notes that it is not feasible to reprint and share new contracts with updated fair usage policies every time it makes changes to the latter. As such, VIVA believes that it is not practical to specify the fair usage policy in detail in the consumer contract and terms and conditions. Disclaimers or reference to the fair usage policy in the website or mobile application ought to be sufficient.</p> <p>c. With reference to Article 19(3)(b) VIVA believes that consumers should only be allowed to withdraw themselves from a contract if there are substantial changes to it where VIVA will provide the consumer with prior notice. Such prior notice should only be applicable for the services within the contract's commitment period and not for pre-paid or post-paid month-to-month</p>	<p>a. The Authority disagrees with VIVA in this respect. Public Telecommunications Operators are obliged to provide Subscribers a physical copy of the signed contract which contains the full terms and conditions.</p> <p>b. The Authority disagrees with VIVA in this respect. Public Telecommunications Operators are obliged to provide Subscribers a physical copy of the signed contract which contains the full terms and conditions.</p> <p>c. VIVA must give notice of such changes and Consumers should have the right to cancel a contract without penalty where the changes are materially detrimental as set out in Article 19(3). In these cases, the consumer should not be materially worse off as a result of VIVA choosing to vary the terms and conditions of its contract, i.e. the fair usage policy in this case.</p> <p>d. The Authority does not disagree with this point.</p> <p>e. The Authority disagrees with VIVA in this respect.</p> <p>f. The Authority expects Public Telecommunications Operators to give adequate notice of material changes whereby Consumers will be given the right to terminate the Consumer Contract without penalty. For example, Telco X supplies high-speed residential broadband. Its contract states that Consumers must agree to receive its service for a minimum term of 12 months. Telco X has included a term in its contract that enables it to change the price it charges, before the expiry of the minimum 12 month term. The Consumer has no right of early termination if this happens. This term is likely to be unfair if it allows Telco X to unilaterally change the price of the service provided,</p>

<p>subscriptions. Additionally, VIVA considers the period of thirty (30) days notification unreasonable and proposes for fifteen (15) days instead.</p> <p>d. VIVA wishes to clarify that if the termination involves a subsidy agreement, then device instalments should still apply and ought to be settled by the consumer.</p> <p>Unfair terms</p> <p>e. VIVA believes that licensees ought to be allowed to include an opt-in option in consumer contracts for automatic contract renewals. VIVA believes that the consumer’s consent should not be required if the consumer continues using the service i.e. sends an SMS, makes a call or consumes data, as this in itself is indicative of the consumer’s intention to renew the contract. VIVA strongly believes that consent to opt-in for renewal should be obtained through electronic means or by SMS rather than being paper-based.</p> <p>f. VIVA argues that consumers ought to be required to send in a notice to the licensee before “having a legal right” to terminate a contract in the event of non-performance or inadequate performance by the licensee. Additionally, VIVA believes that, in the case of vanity numbers, termination fees ought to be proportional to the selling price.</p> <p>g. VIVA considers that the obligation to notify consumers regarding increases in fees, tariffs or charges to be exaggerated as tariffs in the telecommunications sector are very dynamic due to market competition and input costs.</p> <p>Duration of the contract</p>	<p>and the customer has no ability to resist any increase or to exit the contract without penalty. If Telco X had included a term that allowed customers to opt out of the contract without penalty where the price was changed, the potential for unfairness would be greatly reduced.</p> <p>g. The Authority disagrees with VIVA in this respect. If a term could be used to force a Consumer to accept increased costs or penalties, new requirements, or reduced benefits, it is likely to be considered unfair whether or not it is meant to be used in that way. A variation clause can affect the legal balance of the contract even though its intention is to solely facilitate minor adjustments, if its wording means it could be used to impose more substantial changes. This applies to terms giving the Public Telecommunications Operator the right to make changes to contracts at its discretion and without liability.</p> <p>A term which merely says that changes will only be 'substantial' or 'reasonable' is unlikely to be any fairer than one which contains no such qualification. Where the criteria of reasonableness are vague, or clearly meant to include the best commercial interests of the Public Telecommunications Operator, the Authority believes that there will be scope for the Public Telecommunications Operator to change the legal balance unfairly to the detriment of Consumers, simply to protect profit margins.</p> <p>The Authority notes that such terms are more likely to be found fair if:</p> <ul style="list-style-type: none"> • it is narrowed in effect, so that it cannot be used to change the balance of advantage under the contract – for example, allowing variations to reflect changes in a law, to meet regulatory requirements or to reflect new industry guidance and codes of practice which are likely to raise standards of consumer protection; • it can be exercised only for reasons stated in the contract which are clear and specific enough to ensure the power to vary cannot
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<p>h. VIVA recommends allowing contracts that run for more than twenty four (24) months as it can be favourable and justifiable for expensive products.</p> <p>Service quality levels</p> <p>i. VIVA believes that it should not be mandatory to include information related to network quality of service levels included in consumer contracts since quality of service is already monitored by the Authority through quarterly reports. VIVA also argues that it is impossible to commit and specify quality levels in consumer contracts when it relates to mobile networks as there are many dependency factors such as coverage, outages, network traffic, devices, and the like. In this context, VIVA believes that it should not be obligated to <i>“pay compensation to the customer for any loss or damage resulting directly or indirectly because or from the interruption or breakdown of the services for whatever reason”</i> as stated in para 9.2 of its own terms and conditions.</p> <p>Conditions limiting access and use of services</p> <p>j. VIVA believes that it should not be obliged to include information regarding quality of service levels. VIVA states that, in relation to Article 23(2) it will communicate new terms and conditions to consumers and, if it is not reasonably accepted by said consumer, he/she has thirty (30) days to request for cancellation without penalty or termination fee for the service.</p>	<p>be used at will to suit the interests of the Public Telecommunications Operator; or</p> <ul style="list-style-type: none"> • there is a duty on the Public Telecommunications Operator to give notice of any variation, and a right for the consumer to cancel before being affected by it, without penalty or otherwise being worse off for having entered the contract. <p>h. A Consumer Contract must not exceed the maximum period stated in the Regulation, which stands at twenty four (24) months from the date of signature by the Consumer.</p> <p>i. The Authority has made amendments to Article 22. However, the Authority disagrees with VIVA’s argument that it should not be obliged to pay compensation fees for any breakdown or loss to the service.</p> <p>j. The Authority disagrees with VIVA’s comments in this respect.</p>
<p>Zain</p>	
<p>Zain does not consider the obligations enshrined in Chapter 3 to constitute an undue burden on licensees. However, in relation to Article 18(1) Zain cannot guarantee that a physical contract is attainable in all situations. While Zain retail shops are equipped with printers and scanners, there are logistic difficulties in making copies of the signed contract and handing it to the consumer in the case of outdoor sales or sales through indirect authorized channels. Zain</p>	<p>The Authority would like to reiterate that Public Telecommunications Operators are obliged to provide Subscribers a physical copy of the signed contract which contains the full terms and conditions.</p>

<p>states that it will do its best to overcome this issue but suggests that physical contracts be mandatory only for contracts which are entered into in Zain’s retail shops.</p>	
<p>Question 7: Do you disagree with the proposed obligation in relation to subscriber contracts? If so, please specify and suggest changes.</p>	
<p>Batelco</p>	
<p>a. In relation to Article 18, Batelco questions why there is a physical contract requirement when Legislative Decree No. 28 of 2002 on Electronic Transactions (Article 10) allows for contracts to be formed electronically. Batelco does not see an overriding legal requirement for a paper contract with consumers and believes that this measure may hamper online sales, telesales and add-on features. Therefore, Batelco proposes to send an electronic form of the contract to the consumer rather than providing a physical contract.</p> <p>b. Batelco proposes rewording Article 19(1) so as to provide a clear distinction between the core package that a consumer buys and then all the additional tariffs that apply, such as international voice call rates and roaming rates. There should be a signpost or pointer to more non-core detailed information rather than being “all information” included upfront.</p> <p>c. Batelco argues that the obligation set out in Article 19(3) could have unforeseen effects since any minor, trivial or non-core contract change could trigger possible termination. This effect is even more fundamental because the broadest possible range of information has been required to be included in a consumer contract. Batelco therefore suggests that these measures apply to material changes to contract variations – for example, the fair usage policy can be altered on notification and/or international call rates. Also, under (i) and (ii), Batelco recommends removing the reference service being supplied so the termination right does not arise in situations where the licensee withdraws a service feature (for example, voicemail or free calls to helpdesk)</p>	<p>a. Article 10 of Legislative Decree No. 28 of 2002 on Electronic Transactions speaks of formation of contracts taking place electronically. The obligation in Article 18 merely requires that Public Telecommunications Operators provide Consumers with a physical copy of that said contract.</p> <p>b. The Authority believes that the wording of Article 19(1) is clear and self-explanatory and does not require further clarification.</p> <p>c. The Authority refers Batelco to its response above to VIVA’s comments on the same.</p> <p>d. Agreed and amended.</p> <p>e. The Authority disagrees with Batelco in this respect. Public Telecommunications Operators are obliged to provide Subscribers with a physical copy of the signed contract which contains the full terms and conditions.</p> <p>f. The Authority does not find it unreasonable to include information regarding its billing cycles and timeframes in its contracts.</p> <p>g. The Authority does not consider this obligation onerous and impractical.</p> <p>h. The Authority refers Batelco to its response on the same above.</p> <p>i. The Authority does not agree with Batelco’s recommendation.</p>

<p>which are not central to the service being supplied/purchased under the contract.</p> <p>d. Batelco proposes to delete Article 19(3)(iii) as there is no requirement of detriment to the consumer. In this case it is not clear to Batelco what interests the Authority is seeking to protect.</p> <p>e. Batelco proposes that there need not be full printed copies of all possible tariffs, the fair usage policy and other detailed related package features, but that the consumer is made aware on how to obtain these details online.</p> <p>f. Batelco argues that the billing cycle and payment methods are stated on its website and that reinstating it in the consumer contract is unreasonable.</p> <p>g. In relation to Article 19(4)(a) Batelco notes that changing the font to an increase of 20 percent is not practical as this will affect the alignment of Batelco’s terms and conditions.</p> <p>h. In relation to Article 21, Batelco believes that the proposed requirement for contracts not to run for more than twenty four (24) months is a principle more akin to consumer contracts for individuals rather than businesses. Such an approach is not consistent with previous detailed tariff and terms decisions by the Authority under the current regulation affecting Batelco (IPLC contract terms in 2012 – 3 years and MPLS tariffs and terms relaunched in November 2014 – 3 years).</p> <p>i. Batelco recommends to remove “express consent” from Article 21(3) and to replace it with “deemed consent” if the consumer is given sufficient notice. As previously advised to the Authority Batelco submits that it is very difficult to secure “express”</p>	<p>j. The Authority does not agree with Batelco’s recommendation.</p> <p>k. The Authority does not agree with Batelco’s recommendation.</p> <p>l. The Authority does not agree with Batelco’s recommendation.</p> <p>m. The Authority notes Batelco’s comment but does not believe that the obligations related to service quality levels in this regulation conflict with TRA’s initiatives on quality of service. The Authority has made amendments to Article 22 as mentioned above. The Authority does not agree with Batelco in this respect. The Authority realizes that it is not always possible to resolve all issues within specified timeframes, however, it is incumbent upon service providers to keep consumers informed of the repair-time process and advise further timeframes within which they expect to resolve repair issues. The Authority expects that service providers provide their customers with indicative timeframes relating to repair times in their consumer contracts.</p> <p>n. The Authority does not agree with Batelco.</p>
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renewals for its entire customer base as sometimes customers are away, dormant or just do not wish to respond to attempts by a licensee to contact them.

- j. Batelco considers the basis for automatic renewals not balanced between the parties. Should the Authority maintain its original wording Batelco would suggest the use of “on balance” rather than “unquestionably” as it allows renewals to have a mixed effect yet still take effect if that effect is in favour of the consumer.
- k. With regards to the term “upgrades” in Article 21(6) Batelco proposes the “express” is replaced by “deemed or express” and that “unquestionably” is replaced by “on balance”.
- l. Batelco proposes the removal of Article 21(8) as it is impractical with regards to signed written termination forms for service supply in all cases, as well as storage of these forms on an unlimited time basis in case a consumer requests these records.
- m. In relation to Article 22 Batelco notes the existence of separate requirements and TRA initiatives on quality of service. Batelco therefore submits there is no additional need for further regulatory requirements for retail contracts. Batelco would like to mention that not all restoration services are free of charge. Also, Batelco cannot provide specific maximum repair times for all cases.
- n. With regards to Article 23(2) Batelco suggests to make these obligations apply on a forward looking basis, as historically records will be patchy due to operational problems and loss of information over time. The proposed Regulation should allow for different types of records to be kept.

<p>Mena believes that contracts should be fair but also believes that parties should be free to strike a deal which may include contracts with auto-renewal terms that would allow other beneficial terms to the consumer as a trade-off, especially in the case of the business sector.</p> <p>Mena also agrees with section (f) provided they do so within a stipulated timeframe of fifteen (15) days.</p>	<p>The Authority refers Mena to its responses above.</p> <p>The Authority rejects Mena’s recommendation.</p>
<p>VIVA Bahrain</p>	
<p>Notwithstanding its response to Question 6 above, VIVA generally agrees with the proposed obligations in relation to subscriber contracts.</p>	<p>-</p>
<p>Zain</p>	
<p>a. In relation to Article 18(5) Zain states that there is no mention of the terms or minimum commitment period and suggests the wording to be changed to: “<i>...Public Telecommunications Operators shall ensure that no <u>Commitment Period under the Consumer Contract exceeds a fixed...</u></i>”.</p> <p>b. Zain also sees that this restriction is not justified and finds that limiting the period to twenty four (24) months will affect, for example, its enterprise customers segment in making them pay higher advance amounts for device down payments.</p> <p>c. Zain argues that Article 20(2)(f) should not apply to expected frequent changes to some services such as roaming charges. Zain believes that licensees should have the right to make changes to charges due to changes in its cost structures. Zain also argues that it is not necessary to inform the consumer of these changes because tariff details are not included in consumer contracts but are communicated through other means (e.g. website, call centre, retail shops, etc). Zain proposes this new wording: “<i>enabling the Public Telecommunications Operators to increase <u>the prices, fees,</u></i></p>	<p>a. The Authority does not agree with this.</p> <p>b. The Authority refers Zain to its response on the same above.</p> <p>c. The Authority refers Zain to its response to VIVA’s comments on the same. Furthermore, the Authority rejects Zain’s recommended wording.</p> <p>d. The Authority does not believe that this deletion is necessary.</p> <p>e. The Authority does not accept Zain’s position. The Authority refers Zain to its response to comments made regarding speed claims in Advertisements above.</p> <p>f. The Authority rejects Zain’s comments. The Authority does not find that the obligations set out in Article 22(2) are onerous or burdensome. If there are no special arrangements made for retail customers, then the standard information related to repair times, maintenance and service connection/disconnection times must be available to the same.</p>

<p><i>tariffs or changes specified in the Consumer Contract without giving the Consumer the corresponding right to terminate the Consumer Contract.”</i></p> <p>d. Zain recommends amending the wording of Article 21(2) to: <i>Public Telecommunications Operators shall not charge or subscribe a Consumer to a service where the Consumer has not expressly signed for or expressly opted to subscribe to and pay for.”</i></p> <p>e. Zain argues that it is not possible to specify minimum access speeds in absolute figures in Consumer Contracts. Zain states that actual download speeds and user experience vary due to different variables and thus cannot be guaranteed.</p> <p>f. In relation to Article 22(2)(b), (c) and (d) Zain is of the view that these clauses should only be applicable in cases where the internet service has unique characteristics which necessitate disclosing details about:</p> <ul style="list-style-type: none"> • Maximum time for initial connection/disconnection; • Type of the maintenance services offered; and • Maximum repair time for service restoration <p>Zain notes that these details are already included in their contracts with enterprise customers, but argue that it is not necessary to include in their mass retail internet offerings (where standard activation time applies and there is no special maintenance or service repair time being offered). For this reason, Zain recommends adding the phrase <i>“if applicable”</i> to Article 22(2)(b) and (c).</p> <p>g. Zain recommends rephrasing Article 23(1)(a) to include: <i>“Information on the <u>outdoor radio access</u> coverage of service, where the Consumer Contract makes reference to the existence</i></p>	<p>g. The Authority does not believe that this wording is necessary and therefore rejects Zain’s recommendation.</p>
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<p><i>of such information and where a Consumer may obtain this information free of charge.”</i></p>	
<p>Question 8: Do you disagree with the proposed obligations in relation to subscriber contracts? If so, please specify and suggest changes.</p>	
<p>Batelco</p>	
<p>a. Batelco proposes that the provisions in relation to unfair contract terms cover individual consumers not being a business.</p> <p>b. Batelco recommends that these terms are not an automatic prohibition of use, but instead ought to reflect their origin from European (and UK) law insofar as they are a “grey” list of potentially unfair clauses.</p> <p>c. Batelco suggests including an exemption from the prohibition for clauses relating to (a) the subject matter of a contract, or (b) the price of contracts, provided that these terms are transparent and prominent.</p> <p>d. In addition to a “grey list”, Batelco suggesting including a general test of unfair terms and notes the UK’s section 62 of the Consumer Rights Act 2015.</p> <p>e. Batelco requires further clarification with regard to the auto-renewal under Article 20, specifically as to whether this applies to auto-renewal bolt-ons where the Consumer has the option to disconnect the service at any time.</p>	<p>a. The Authority does not agree with Batelco.</p> <p>b. The Authority disagrees with Batelco.</p> <p>c. The Authority disagrees with Batelco. The Authority has inserted additional wording in the Regulation in relation to Article 20(a).</p> <p>d. The Authority disagrees with Batelco.</p> <p>e. Article 20(a) does not apply to bolt-ons where a Consumer has the option to disconnect the service at any time.</p>
<p>Mena Telecom</p>	
<p>Mena believes that contracts should be fair but also believes that parties should be free to strike a deal which may include contracts with auto-renewal terms that would allow other beneficial terms to the consumer as a trade-off, especially in the case of the business sector.</p> <p>Mena also agrees with section (f) provided they do so within a stipulated timeframe of fifteen (15) days.</p>	<p>See above.</p> <p>See above.</p>

VIVA Bahrain	
VIVA wishes to reiterate its concerns regarding Chapter 3 of the Regulation, specifically in relation to the proposed obligation to provide and maintain physical copies of Consumer Contracts. VIVA again suggests that licensees ought to have the option to change terms and conditions whilst notifying its customers about such changes.	See above.
Zain	
Zain has no comments on Chapter 3 of the Regulation.	-
Question 9: Do you disagree with the proposed obligation in relation to subscriber contracts? If so, please specify and suggest changes.	
Batelco	
<p>a. Batelco disagrees with the broad scope of the “minimum” requirements under Article 24(2) and proposes a much shorter statement as to each party’s rights and responsibilities. Batelco does not recommend, for example, as implied under (b) that it follows an enforcement and compliance role.</p> <p>b. Batelco notes that Article 24(2) is too broad to cover all forms of advertisement media.</p> <p>c. Batelco suggests that a reference to Public Telecommunications Operator rather than Advertiser should be made under Article 24(4).</p> <p>d. Batelco argues that if Article 24(5) exists, then the requirement in (3) need not exist. Batelco agrees that there should be a clear reference to a fair usage policy in consumer contracts and that the inclusion of the signpost or link to the fair usage policy in the contract is sufficient, rather than the more general “making clear” requirement.</p>	<p>a. The Authority disagrees with Batelco proposition. It has, however, removed (b) from the Regulation.</p> <p>b. The Authority has already defined Advertisements in the definitions section. The Authority refers Batelco to its response on the same matter above.</p> <p>c. See below.</p> <p>d. Agreed and amended.</p>
Mena Telecom	
Mena agrees with Chapter 4.	-
VIVA Bahrain	

VIVA generally agrees with the proposed obligations related to the fair usage policy except in relation to the 24(2)(c); VIVA is unable to predefine abusive behaviour as VIVA “might not know it beforehand”.	The Authority does not accept this.
Zain	
Zain agrees with the proposed obligations related to the fair usage policy.	-
Question 10: Do you agree that the proposed obligations in Chapter 4 are beneficial to consumers in promoting transparency of information, enabling them to make a more informed choice? If not, please explain why and suggest changes.	
Batelco	
Batelco refers to its response to Question 9.	See above.
Mena Telecom	
Mena agrees with Chapter 4.	-
VIVA Bahrain	
VIVA refers to its response to Question 9.	See above.
Zain	
Zain agrees that the proposed obligations in Chapter 4 are beneficial to consumers in promoting transparency of information, enabling them to make a more informed choice. In relation to Article 24(2)(b), Zain finds the wording confusing and unclear. Zain’s interpretation of this is that Zain must list all of the consumer’s legal obligations and ensure compliance. If this is the case, Zain does not agree with this, as it does not see itself in an advisory position to direct the consumer on his/her legal obligations.	- Noted and amended.
Question 11: Do you agree with the proposed requirements related to consumers with disabilities? If not, please elaborate.	
Batelco	
a. Batelco believes its comments above relating to scope apply here. Batelco also believes that the wording of the proposed obligations ought to allow licensees to choose whether to supply large print or Braille, and for this service to be restricted to standard individual consumer contracts and bills dating back twelve (12) months only.	a. The Authority notes Batelco’s comment and has amended the wording of Article 25(1) accordingly. The Authority also refers Batelco to its response to VIVA’s comments on the same. With regards to the twelve (12) month timeframe, the Authority rejects this recommendation.

<p>b. Batelco suggests that Article 25 should also cover cases of undue influence, duress and fraud as maintaining liability of a nominated individual, rather than being subject to a blanket exclusion of liability. Batelco also suggests that, since “Consumer” is also defined as “user” if the representative is a user of the service as well, the Authority should consider not applying the exclusion of liability (for example, payment) in this instance.</p>	<p>b. The Authority believes that the wording of Article 25 is sufficient and that no changes in this regard are warranted.</p>
<p>Mena Telecom</p>	
<p>Mena agrees as long as there is evidence that the consumer suffers such disabilities.</p>	<p>-</p>
<p>VIVA Bahrain</p>	
<p>VIVA generally agrees with the proposed requirements related to consumers with disabilities. However, VIVA believes that any specific format (Braille, for example) ought not to be mandated on licensees, as it is not practical to implement this. In addition to this, VIVA notes that there are many alternatives such as mobile applications with text-to-speech capabilities that may be used by consumers with disabilities.</p>	<p>The Authority refers VIVA to its response to Zain’s comments on the same below.</p>
<p>Zain</p>	
<p>Zain notes that some ambiguities exist in relation to Article 25(2) regarding the process of nominating a representative for a disabled consumer. Zain requires further clarification whether this is required by way of declaration of a Notary Public.</p>	<p>Public Telecommunications Operators need only ask for a signed letter declaring such nomination for their records.</p>
<p>Question 12: Taking into account the interests of consumers with disabilities, do you consider that the obligations covered by Chapter 5 constitute an undue burden on service providers?</p>	
<p>Batelco</p>	
<p>Batelco refers to its response to Question 11.</p>	<p>See above.</p>
<p>Mena Telecom</p>	
<p>Mena agrees as long as there is evidence that the consumer suffers such disabilities.</p>	<p>-</p>
<p>VIVA Bahrain</p>	

VIVA considers that the proposed obligations under Chapter 5 do not constitute an undue burden on service providers.	-
Zain	
<p>a. In relation to Article 25(1), Zain argues that there are considerable costs associated with publishing documents in Braille format, especially since its customer base with disabilities is quite small and finds that it is not worth purchasing the equipment to print communications in this format. Zain also notes the lack of experience and resources, and suggests that smartphone features and applications to be suffice as alternatives.</p> <p>b. In relation to Article 25(3), Zain recommends the following wording: <i>“A Public Telecommunications Operator shall not hold the nominated individual referred to in Article 25(2) legally liable for a breach in the terms and conditions of the Consumer Contract <u>nor the Consumer shall hold the Public Telecommunications Operator legally liable for any act conducted by the nominated individual on behalf of the Consumer.”</u></i></p>	<p>a. The Authority does not accept this viewpoint. Public Telecommunications Operators are obliged to provide specific measures for disabled Consumers in accessing Public Telecommunications Services. Such measures may include, but are not limited to, the following services:</p> <ul style="list-style-type: none"> • Access to text relay services for Consumers who are hearing- or speech-impaired; • Third party bill management i.e. enabling a nominated friend or relative to act on behalf of a Consumer who needs help to manage their affairs; and • Bills and contracts in formats such as large print or Braille upon request. <p>As such, the Authority does not believe that advancements in handset technology replace the need for Public Telecommunications Operators to have appropriate measures in place to serve disabled Consumers. The Authority also expects Public Telecommunications Operators to take reasonable steps to ensure that such services are widely publicised. This would include ensuring that disabled Consumers are given accurate information when they enquire about relevant services and publishing clear and easy-to-find information on their own websites.</p> <p>b. The Authority believes that the wording of Article 25(3) is sufficient and that no changes in this regard are warranted.</p>
Question 13: Do you agree with the proposed obligations related to billing. Are additional obligations necessary? If yes, please suggest changes.	
Batelco	
<p>a. In relation to Article 26(3) Batelco requires clarification in relation to charging for paper billing where the consumer has opted not to receive electronic bills as there is a legitimate cost to be covered for printing and delivering paper bills.</p>	<p>a. The Authority notes that currently Subscribers may access their standard bills electronically free of charge, however if they request it in a hard copy format, a reasonable charge may apply (for printing and delivering purposes). The Authority does not dispute this position.</p>

b. Batelco notes that free of charge printed bills for ‘senior citizens’ as stated in Article 26(5) is not defined.	b. The Authority considers ‘senior citizens’ as those who have reached or are over the age of retirement under Bahraini law.
Mena Telecom	
Mena did not provide a response to this question.	-
VIVA Bahrain	
VIVA generally agrees with the proposed obligations related to billing. VIVA requires further clarification as to how the Authority defines senior citizen.	-
Zain	
Zain requires further clarification as to how the Authority defines senior citizen. Zain also recommends omitting this paragraph entirely.	The Authority considers ‘senior citizens’ as those who have reached or are over the age of retirement under Bahraini Law.
Question 14: Do you agree with the provisions set out in Chapter 6 for the retention of records and the minimum period for recording them.	
Batelco	
Batelco does not have any major concerns with the provisions set out in Chapter 6 for the retention of records and minimum period for recording them.	-
Mena Telecom	
Mena did not provide a response to this question.	-
VIVA Bahrain	
VIVA agrees with the provisions set out in Chapter 6.	-
Zain	
Zain agrees with the provisions set out in Chapter 6.	-
Question 15: Do you agree with the proposed obligations related to confidentiality? If not, please explain why and suggest changes.	
Batelco	
<p>a. Batelco finds it unclear why service license requirements to ensure a customer’s privacy and confidentiality are duplicated here in this regulation. Batelco does not support multiplication of measures for the same safeguard.</p> <p>b. Batelco notes that the Authority is considering data protection proposals and finds that the current draft regulation in relation to risk management covers measures to maintain or improve</p>	<p>a. The Authority notes this comment but does not believe that it merits any changes to this Chapter.</p> <p>b. The proposed obligations related to confidentiality will not overlap with any future obligations relating to data protection.</p>

physical and electronic security which may potentially overlap with the proposed requirements set out here.	
Mena Telecom	
Mena did not provide a response to this question.	-
VIVA Bahrain	
VIVA agrees with the proposed obligations related to confidentiality.	-
Zain	
Zain agrees with the proposed obligations related to confidentiality.	-
Question 16: What do you consider would be a reasonable timeframe within which any modifications or amendments to consumer contracts and advertisements arising from this consultations should be made.	
Batelco	
<p>a. Batelco proposes that twelve (12) months is a more proportionate and realistic transitional compliance time period under Article 28.</p> <p>b. Batelco proposes that this Chapter only apply to B2C core telecommunications contracts and not business products and services and/or adjacent or non-telecommunications convergent services.</p> <p>c. Batelco proposes deletion of Article 28(4) as there is a separate service license provision to seek approval for changes to standard consumer terms. In addition, Batelco understands that the Authority has a duty under the Law to protect consumers and can issue orders on this matter if it wishes to do so.</p>	<p>a. The Authority has reviewed the timeframe and has extended the implementation period to six (6) months.</p> <p>b. The Authority disagrees.</p> <p>c. The Authority notes this comment but does not believe that it merits any changes to this provision.</p>
Mena Telecom	
Mena considers nine (9) months to be a reasonable timeframe.	The Authority has reviewed the timeframe and has extended the implementation period to six (6) months.
VIVA Bahrain	
VIVA considers six (6) months to be a reasonable timeframe.	The Authority has reviewed the timeframe and has extended the implementation period to six (6) months.

VIVA proposes that the Authority provide an SLA for the overall process in obtaining the Authority's approval after submitting changes to its standard subscriber contracts.	The Authority does not agree with VIVA's proposal.
Zain	
Zain considers six (6) months to be a reasonable timeframe.	Noted and amended.