



Telecommunications Regulatory Authority of Bahrain

Consultation Paper

A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “**Authority**”) on the Authority’s proposed approach to implementing the separation of Bahrain Telecommunications Company (“**Batelco**”).

12 July 2018

LAD/0718/180

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 26 July 2018.

Purpose: to seek stakeholders’ views on the Authority’s proposed approach to implementing the separation of Batelco.

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 26 July 2018.

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 separation of Batelco, including responses to the documents attached at Annexes 1-3, being:

- (a) Draft Separation Guidelines (Annex 1);
- (b) Draft Monitoring Guidelines (Annex 2); and
- (c) Draft Special Temporary Measure (Annex 3).

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 Licences that the respondent is relying upon.

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

- 1.6 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at Annexes 4-6.
- 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 its consultation process as well as 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 DOCUMENT

- 2.1 This consultation document 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.
- 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.

² Including Article 23 of the Law

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

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

3 PURPOSE OF THIS CONSULTATION PAPER

- 3.1 The background to the separation of Batelco was set out in a previous consultation paper issued by the Authority on 10 May 2018 (“**the Prior Consultation**”).¹
- 3.2 The Prior Consultation sought the views of stakeholders on draft measures to implement separation in a timely and effective manner.
- 3.3 These measures were set out in draft Separation Guidelines, draft Monitoring Guidelines, a draft Special Temporary Measure and a draft Project Plan (together, the “**Separation Instruments**”).
- 3.4 At that time, the Authority was consulting on the possibility of the new single telecommunications infrastructure utility network being operated and deployed by an entity which was functionally separated from the rest of Batelco. In light of the responses to the Prior Consultation, the Authority wishes to clarify that Batelco will be required to establish a new legal entity (“SE”) with a separate board of directors and separate management. The Authority considers that this form of separation is consistent with the objectives of the Fourth National Telecommunications Plan (“**NTP4**”).
- 3.5 The Separation Instruments attached to this consultation paper are revised drafts reflecting this change (as well as other proposed changes in light of the responses received to the Prior Consultation). The proposed changes are summarised in the following section.
- 3.6 The Authority has included in Annexes 4 to 6 consultation questions focussed on the proposed changes to the Separation Instruments and there is no need for respondents to repeat comments already made in response to the Prior Consultation. For this reason, the Authority has adopted a shortened consultation period of two weeks.

4 SUMMARY OF PROPOSED CHANGES TO THE SEPARATION INSTRUMENTS

4.1 Separation Guidelines

- 4.1.1 The Separation Guidelines are designed to assist Batelco, and all other interested parties, in understanding the Authority’s expectations concerning the separation of Batelco and the establishment of the SE. The Separation Guidelines outline structural and behavioural issues

¹ LAD/0518/114

that Batelco should address in the undertakings that will set out its approach to achieving separation (“**the Undertakings**”).

- 4.1.2 The Separation Guidelines specify the requirements for the separation of Batelco, including with respect to governance arrangements and the transfer of assets, products and services, business units, staff and associated systems and processes.

4.2 Monitoring Guidelines

- 4.2.1 The Monitoring Guidelines specify the monitoring activities that the Authority expects Batelco/the SE to put in place to ensure compliance with the Undertakings.

- 4.2.2 A robust compliance monitoring regime provides greater assurance to all stakeholders that separation will be delivered. To this end, the Undertakings should place specific internal and external reporting requirements on Batelco and, where necessary, the SE. To promote transparency, some or all of these reports may be made publically available. The Monitoring Guidelines set out the Authority’s expectations concerning accountability and enforcement processes for non-compliance. The principal changes from the previous version are as follows:

- the inclusion of monitoring and reporting arrangements for the SE; and
- the requirement to establish a subcommittee of the SE board to monitor and report on the SE’s compliance with the Undertakings (“**the Equivalence Compliance Committee**” or “**ECC**”).

4.3 Special Temporary Measure

- 4.3.1 Pursuant to Article 40(bis)(b) of the Telecommunications Law, the Authority has prepared a draft Special Temporary Measure (“**STM**”) to ensure that Batelco is required to supply OLOs with suitable fibre based transitional products and services until such time as the SE is issued with a fixed telecommunications infrastructure licence. Batelco is required to supply these transitional products and services on a “fair, reasonable and non-discriminatory basis” as well as to establish

effective mechanisms for the Authority to respond to any discriminatory conduct by Batelco in the supply of these services.

4.3.2 The principal changes from the previous version are as follows:

- the STM sets out the steps required of Batelco to establish the SE and to put in place the necessary legal agreements and corporate documentation required for the establishment of the SE;
- the STM includes more detailed compliance and enforcement provisions;
- Schedule 2 includes high-level descriptions of the transitional products and services to be provided by Batelco. The Authority considers that these products and services are needed to safeguard equivalence during the transition period. The Authority reserves the right to release in due course more detailed descriptions that will sit alongside the existing Reference Offer and which will assist in the implementation of the access and interconnection regime prior to the establishment of the SE; and
- the STM includes a new schedule (Schedule 4) setting out the project plan milestones to separation that Batelco will be required to achieve.

**ANNEXES ONE TO THREE TO THIS CONSULTATION ARE AVAILABLE ON THE
AUTHORITY'S WEBSITE UNDER "STAKEHOLDERS – CONSULTATION"**

ANNEX FOUR

STM CONSULTATION QUESTIONS

1 **ARTICLE 1: BACKGROUND**

1.1 **Question:** *Do you agree with the provisions of Article 1 of the STM? In particular do you agree with the proposals:*

1.1.1 *That the STM requires Batelco to establish a legally separated entity in accordance with the objectives of NTP4 to establish an independent and customer focused wholesale operator.*

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

2 **ARTICLE 5: ESTABLISHMENT OF THE SE**

2.1 **Question:** *Do you agree with the new provisions of Article 5 of the STM? If not, please state why.*

3 **ARTICLE 8: MODIFICATION, REVOCATION AND EXPIRATION**

3.1 **Question:** *Do you agree with the revised provisions of Article 8 of the STM? In particular:*

3.1.1 *The process for modification or revocation; and*

3.1.2 *The automatic expiry provision.*

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

4 **ARTICLE 9: COMPLIANCE AND ENFORCEMENT**

4.1 **Question:** *Do you agree with the revised provisions of Article 9 of the STM?*

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

5 **SCHEDULE 2: TRANSITIONAL SERVICES AND TIMELINES**

5.1 **Questions:**

5.1.1 *Do you agree with the specific Transitional Products and Services that are included?; and*

5.1.2 *Do you agree with the timelines that are specified in Schedule 2?*

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

6 **SCHEDULE 3: NTP4 FIBRE DEPLOYMENT MILESTONES**

6.1 **Questions:**

6.1.1 *Do you consider the revised targets in column 1 of Schedule 3 of the STM reasonable? If not, please give reasons as to why.*

7 **SCHEDULE 4: PROJECT PLAN MILESTONES TO SEPARATION**

7.1 **Question:**

7.1.1 *Do you agree with the proposed project plan milestones?*

7.1.2 *Do you consider the target dates reasonable? If not, please give reasons as to why.*

ANNEX FIVE
SEPARATION GUIDELINES CONSULTATION QUESTIONS

5 **ARTICLE 2: SEPARATION MILESTONES AND TIMETABLE**

5.1 **Question:** *Do you agree with the revised provisions of Article 2 of the Guidelines? In particular:*

5.1.1 *Do you agree with the requirements for the submission of documents and milestones?*

5.1.2 *Do you consider that any of the requirements should be omitted? If so, why?*

5.1.3 *Do you consider that any other requirements should be included in Article 2? If so, what would you wish to include and why?*

6 **ARTICLE 6: SE GOVERNANCE FRAMEWORK**

6.1 **Question:** *Do you agree with the new provisions of Article 6 of the Guidelines? In particular:*

6.1.1 *Do you agree with the matters which are to be included as a minimum in the SE Governance Framework? If not, why?*

6.1.2 *Do you agree with the proposed SE Scope of Activities? If not, why?*

6.1.3 *Do you agree with the role and reporting requirements of the SE CEO? If not, why?*

7 **ANNEX 2: DRAFT PROJECT PLAN**

7.1 **Question:** *Do you agree with the revised timeframe provided for in the draft Project Plan? If not, what elements of the draft Project Plan do you believe should be altered and/or amended?*

ANNEX SIX

MONITORING GUIDELINES CONSULTATION QUESTIONS

8 ARTICLE 3: SE MONITORING ARRANGEMENTS

8.1 **Question:** *Do you agree with the new provisions of Article 3 of the Guidelines? In particular:*

- 8.1.1 *Do you agree with the matters to be included in the SE's internal compliance processes? If not, please give reasons and state what information should be added or omitted.*
- 8.1.2 *Do you agree with the role of the Equivalence Compliance Committee? If not, please give reasons and state what should be added or omitted.*
- 8.1.3 *Do you agree with the requirement that the ECC prepares monthly SE Undertakings Compliance Reports? Do you agree with the proposed content of the monthly SE Undertakings Compliance Reports? If not, why?*
- 8.1.4 *Do you agree with the details to be included in the Equivalence Report? If not, please give reasons and state what information should be added or omitted.*
- 8.1.5 *Do you agree with the regularity of reporting for the Equivalence Reports? If not, why?*