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 a draft Order on the residual reference offer of Bahrain Telecommunications BSC(c) ("Batelco") (the "Draft BRE Order").

21 April 2019

LAD/0419/102

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 fsnbn@tra.org.bh

The deadline for responses is 16.00 on 19 May 2019.

Purpose: To seek stakeholders' views on the Draft BRE RO Order and terms of the related BRE residual reference offer ("BRE RO").
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 19 May 2019.

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

The Acting General Director
fsnbn@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 Draft BRE RO Order (Annex 1).
1.5 All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law¹ (the "Law") or Licenses that the respondent is relying upon.

1.6 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at Annex 2.

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

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

2. STATUS OF THIS CONSULTATION DOCUMENT

2.1 This consultation document is issued pursuant to the Position Paper on "How TRA Consults" issued by the Authority on 17 October 2017.⁴

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

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¹ The Telecommunications Law of the Kingdom of Bahrain, promulgated by Legislative Decree No. 46 of 2002, as amended by virtue of Decree No. 38 of 2017.
² Including Article 23 of the Law.
this consultation. If appropriate, the Authority will prepare and publish a consultation report which summarises and responds to the comments received.

3. BACKGROUND TO THE ISSUANCE OF THE DRAFT BRE ORDER

3.1 The Government’s Fourth National Telecommunications Plan ("NTP4") calls for the development of a single national broadband infrastructure network (the "NBN"), encompassing the infrastructure required to enable fixed telecommunications networks in Bahrain.

3.2 This NBN should be capable of delivering ultrafast broadband products to consumers and businesses across the Kingdom. The NBN will be operated and deployed by the Separated Entity ("SE").

3.3 The SE will be formed by the separation of the incumbent telecommunications operator, Batelco, into two distinct legal entities through the establishment of NBNetCo BSC (c) as the SE. The SE will comprise the appropriate parts of Batelco’s current wholesale and infrastructure business units, with Batelco comprising the remaining parts of Batelco’s business, including its retail division (referred to as Batelco Retail or BRE).

3.4 The Authority has, by way of public consultation, sought stakeholder views on the price and non-price terms of the reference offer that should be made available by the SE to Licensed Operators (LAD 1218 347 of 20 December 2018, and LAD 0913 082 of 28 March 2019).

3.5 Batelco is currently required under Article 3(c)(1), Article 57(b) and Article 57(e) of the Law and under Articles 2, 3, 4, 5 and 6 of the Access Regulation\(^5\) to publish a reference offer regarding its regulated wholesale products and services.

3.6 In order to reflect the principles in NTP4 and the new industry structure resulting from the legal separation of Batelco, amendments need to be made to the current wholesale reference offer of Batelco (defined above as “Batelco’s Current Reference Offer”) to reflect the fact that Batelco will cease to provide certain wholesale products and services which form part of the SE’s reference offer and/or to which existing supply agreements for certain legacy services that will not be provided by Batelco (such as

\(^5\) Access Regulation: A Regulation issued by the Telecommunications Regulatory Authority dated 30 April 2005 (the “Access Regulation”).
duct rental) are to be transferred. The Authority confirmed in its consultation paper on the draft Order on the SE's reference offer (the "SE's Reference Offer") and related draft amended reference offer (LAD 0913 082 of 28 March 2019), that the amendments to Batelco's Current Reference Offer, that are to be reflected in the residual reference offer for the products and services to be provided by BRE, would be the subject of a separate approval process.

3.7 The Authority is now consulting on a draft reference offer order and the terms of the related residual reference offer that is to be provided by BRE (the Draft BRE Order). The Draft BRE Order includes the Authority's proposed amendments to the services and to the underlying price and non-price terms in Batelco's Current Reference Offer that will be provided by BRE under the residual BRE Reference Offer (the "BRE RO").

4. PURPOSE OF THIS CONSULTATION PAPER

4.1 This consultation paper is concerned with the Draft BRE Order that the Authority intends to issue in relation to Batelco and specifically the products and services it has to provide. The Draft BRE Order sets out the required revisions and amendments to be made to Batelco's Current Reference Offer that Batelco will be required to reflect in the final BRE RO.

4.2 The modifications required to Batelco's Current Reference Offer that are to be implemented in the BRE RO are set out in the Draft BRE Order, attached in Annex 1 to this consultation paper.

4.3 The Authority invites stakeholders to comment on the suitability of all aspects of the Draft BRE Order and the proposed terms for the final version of the BRE RO.

4.4 The Authority has included, in Annex 2, consultation questions inviting comments on the Draft BRE Order and the proposed product scope and price and non-price terms for the final BRE RO.

5. OVERVIEW OF THE REFERENCE OFFER APPROVAL PROCESS

5.1 The BRE RO is a key regulatory instrument. It sets out the terms and conditions (both price and non-price) on which Batelco will continue to make available those products and services that will remain with Batelco, rather than being provided by the SE under the SE's Reference Offer. The Authority is concerned to ensure that there will be
service continuity for Licensed Operators. At the same time it is necessary to ensure that Batelco’s Current Reference Offer is amended by way of the BRE RO to reflect the new industry structure arising from the legal separation of Batelco and to avoid duplication between the BRE RO and the SE’s Reference Offer. The BRE RO is subject to the Authority’s approval.

5.2 The process for approval of the BRE RO is as follows:

**Step 1:** Batelco submits a draft RO to the Authority, which the Authority reviews.

On 31 March 2019, Batelco submitted to the Authority its proposed residual reference offer, the draft BRE RO, for the Authority’s approval.

**Step 2:** If the Authority approves the draft RO as submitted, the Authority issues an approval letter.

The Authority has reviewed Batelco’s proposals and for the reasons set out in sections 6 and 7 of this consultation paper, the Authority does not consider that the draft BRE RO as submitted, can be approved in its current format. Rather, the Authority considers that Batelco should be required to continue to provide the current Batelco wholesale product set on the basis of the price and non-price terms of Batelco’s Current Reference Offer, save for those amendments which are necessary solely as a result of the legal separation of Batelco, and to reflect those products and services which are included in the SE’s Reference Offer. The draft BRE RO submitted by Batelco proposes changes which are not limited to that. The draft BRE RO therefore requires amendment before the BRE RO can be approved.

**Step 3:** If the Authority does not approve the draft RO as submitted, the Authority issues for consultation a draft order concerning BRE (the Draft BRE Order) setting out the proposed terms that Batelco will be required to reflect in the final version of the BRE RO.

That is the purpose of this consultation. Following the Authority’s review of the responses to this consultation on the Draft BRE RO Order, the Authority proposes to issue the final BRE Order, specifying the terms that must be reflected in the final version of the BRE RO along with the process and timeline for resubmission of a revised draft BRE RO by Batelco for the Authority’s approval. If the Authority approves
the revised draft BRE RO as resubmitted by Batelco, the Authority will issue an approval letter.

Step 4(a): Once the RO has been approved, Batelco must publish within fourteen (14) days on the relevant section of its website relating to BRE, the version of the final BRE RO approved by the Authority; or

Step 4(b): In the event that Batelco does not resubmit a revised BRE RO or the resubmitted draft BRE RO does not fully reflect the terms of the final BRE Order, the Authority will consider the version annexed to the final BRE Order to be final and binding on Batelco. When seeking the supply of services from Batelco, licensed operators, users and consumers will be entitled to rely on the terms of the ERE RO which is annexed to the final BRE Order and published on the Authority's website.

5.3 Should Batelco not comply with the terms of the final BRE Order, then the Authority shall take the necessary enforcement steps to implement the terms of the BRE Order as provided under the Law and Batelco’s Licenses.

6. OVERVIEW OF THE PROPOSED AMENDMENTS TO THE BRE REFERENCE OFFER

6.1 The Authority has suggested revisions to Batelco’s proposals regarding Batelco’s Current Reference Offer that are to be reflected in the product set of the BRE RO, and the related price and non-price terms. For the most part the Authority's suggested revisions relate to the Authority’s objection to Batelco’s proposals to withdraw a number of services from Batelco’s Current Reference Offer which, if approved, would mean that these services would not be provided under the BRE RO, or at all.

6.2 The purpose of the Authority’s proposed revisions to Batelco’s proposals is however to ensure that, following the legal separation of Batelco:

6.2.1 Batelco (BRE) shall not provide the products and services that are included in the SE’s Reference Offer. This includes in particular fibre and copper based wholesale products and services, as further described in the SE’s Reference Offer. This is necessary to reflect the new industry structure arising from the legal separation of Batelco and to avoid duplication between the BRE RO and the SE’s Reference Offer.
Therefore the Draft BRE RO Order provides for the exclusion from Batelco’s Current Reference Offer of products and services which will now and in future be supplied by the SE rather than Batelco. The SE’s Reference Offer includes the following products and services from Batelco’s Current Reference Offer, albeit that some of the following products and services will be rationalised within the SE’s Reference Offer into a smaller number of products and services:

a) Bitstream service
b) Residential Bitstream plus service\(^6\)
c) Local Leased Circuit for OLO (LLCO service)
d) Wholesale Local Access Service (WLA service)
e) Wholesale Data Connection Service (WDC service)

As such, it is appropriate to remove these products and services from the BRE RO. The Draft BRE Order indicates removal of the relevant schedules of Batelco’s Current Reference Offer relating to these products and services, and confirms their exclusion from the BRE RO.

6.2.2 There is continuity of supply regarding those products and services that will remain with BRE, notwithstanding the restructuring involved in the separation of Batelco into two distinct legal entities.

The changes to the product set (including price and non-price terms) in Batelco’s Current Reference Offer that are to be reflected in the BRE RO should therefore be limited accordingly.

The amendments to the draft BRE RO (as provided for in the Draft BRE Order) therefore serve to ensure certainty and clarity to stakeholders including other licensed operators (“OLOs”) and customers as to the continued availability and terms of supply of products and services from Batelco following legal separation.

6.3 As indicated above, it is an important principle of the Draft BRE Order and of the intended content of the BRE RO, that all products and services which are currently

\(^6\) Also referred to in Batelco’s Current Reference Offer as “High speed residential mass market bitstream service".
made available by Batelco (and which will not be affected by the legal separation of Batelco) will continue to be made available by Batelco (through BRE) on the same price and non-price terms (subject only to specific variations provided for in the Draft BRE Order).

6.4 Batelco has requested that various further products and services be withdrawn from Batelco’s Current Reference Offer, and reflected in the BRE RO. However, the Authority’s position is that only those products and services which are being provided by the SE should be excluded from the BRE RO and no further products should be withdrawn by Batelco at this time.

6.5 As regards those further products and services that Batelco has proposed to withdraw from the BRE RO, the views put forward by Batelco are that such products and services are no longer required in the market, either because there are other commercial alternatives and/or there is limited demand from OLOs for these products and services. This is discussed further in section 7 below. While the Authority appreciates Batelco’s concerns that might arise from ongoing requirements to provide products or services that, due to technological advances, may only have limited demand, the Authority considers that requests to withdraw such products and services go beyond the scope of the current consultation. The Authority does not consider it is appropriate for such a decision to be made by the Authority in the present context.

6.6 The purpose of the BRE RO is not to replace or obfuscate the existing regulatory framework (including in particular, the market review framework) under the Law by enabling Batelco to request, as part of the BRE RO process, the withdrawal of regulated products or services from Batelco’s Current Reference Offer based on Batelco’s commercial considerations.

6.7 The Authority’s current position is therefore that a decision to withdraw regulated products and services could only be made following the conclusion of a further review of the relevant market, if the findings of such a review support the withdrawal of the relevant products and services. The Authority considers that this approach is consistent with the regulatory framework.

6.8 The Authority considers that this view does not prevent Batelco from removing from its website the relevant service description schedules for unregulated wholesale products and services that are no longer (and have not been) in existence, and are not provided to OLOs under Batelco’s Current Reference Offer, but possibly for some reason (e.g.,
which may be an administrative oversight) the relevant service description schedules are still available on Batelco’s website. The Authority understands that this is the case as regards those products and services discussed at section 7.9 of this Consultation Paper. The Authority invites stakeholder feedback on whether such products and services are in fact no longer available, and whether there is any continuing demand for such products and services.

6.9 Batelco has proposed in the draft BRE RO a number of amendments to the basis for setting the charges in the version of Schedule 3: Pricing in Batelco’s Current Reference Offer, and to the level of those charges. The Authority, however, does not consider that in order to reflect the objectives of NTP4 and the new industry structure that it is necessary for Batelco to change the basis or level of charges for the products and services that it will provide, rather than being provided by the SE under the SE’s Reference Offer. This is discussed further in section 9 below.

7. SCOPE OF THE PRODUCT SET

Exclusion of products and services from the BRE RO that are to be provided by the SE

7.1 The Draft BRE Order provides for the existing product range in Batelco’s Current Reference Offer to continue to be offered under the BRE RO subject to the removal of the relevant service descriptions and provisions for those products and services which are to be provided by the SE under the SE’s Reference Offer and/or to which existing supply agreements for certain legacy services that will not be provided by BRE (such as duct rental) are to be transferred. Following the legal separation of Batelco, the following products are no longer to be provided by Batelco but will instead be provided by the SE:

7.1.1 Local Leased Circuit for OLO (LLCO);

7.1.2 Customer Access Tail (CAT) Service⁷;

7.1.3 Bitstream Service and Residential Bitstream Plus;⁸

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⁷ The Authority notes that the Customer Access Tail (CAT) service was merged into Wholesale Local Access Service, as contained in the reference offer order for Batelco’s Current Reference Offer. MCD/08/16/056 of 18 August 2016. As noted in this consultation paper, WLA will be merged into the WDC service to be provided by the SE. As such it will not be provided by the rest of Batelco (BRE).

⁸ The latter is also referred to in Batelco’s Current Reference Offer as; “High speed residential mass market bitstream service”.
7.1.4 Wholesale Local Access Service (WLA service); and

7.1.5 Wholesale Data Connection Service (WDC service).

7.2 In addition, the Draft BRE Order provides for the removal of order forms which relate specifically to the above services, in particular the Wholesale Access Order Form, the Bitstream Order Form, Duct Access Licence, Duct Sharing Policy and Duct Sharing Process.

7.3 The Draft BRE Order also provides for the removal of certain products and services from Batelco’s Current Reference Offer related to local loop unbundling services provided over copper assets. The Authority notes that local loop unbundling has been removed as a product referred to in Article 40 of the Law.

7.4 The removal of local loop unbundling services from the BRE RO is consistent with the views in Annex 4 to the Authority’s consultation on a draft Order on the Reference Offer of the SE and related draft amended Reference Offer (LAD 0913 082 dated 28 March 2019), where it is noted the SE’s business case model envisages that legacy copper assets will be transferred to the SE. Therefore, for largely practical reasons, the Authority considers that it would no longer be operationally feasible or efficient for BRE to be required to continue to supply local loop unbundling services as this service is best managed by the owner of the infrastructure. Accordingly, the Authority considers that the following products and services may be withdrawn from the BRE RO. These local loop unbundling services are based on legacy copper assets that will be transferred to the SE, and therefore the Authority is minded to consider that these products and services could be excluded from the BRE RO, given that following the legal separation, it is the SE (to the exclusion of Batelco) that would be able to provide these services from a practical perspective:

7.4.1 Unbundled Metallic Path Service;

7.4.2 Service Node Facilities Management Service;

7.4.3 UMP Backhaul Service; and

7.4.4 UMP Specific Information Service.
Batelco's proposals for withdrawal of other products and services

7.5 Batelco has proposed in the draft BRE RO submitted to the Authority that certain products and services be removed from Batelco's Current Reference Offer and therefore excluded from the BRE RO. The Authority notes that Batelco's reasons for requesting the withdrawal of these products and services appear to be based on Batelco's views that:

7.5.1 There are sufficient alternatives in the market; and/or

7.5.2 The relevant products and services achieve no revenue or, do not generate 'large areas of revenue'.

7.6 The relevant products and services requested by Batelco to be withdrawn and a summary of Batelco's rationale for doing so, are set out below:

7.6.1 PSTN Transit Service: Batelco indicates that there have never been any customers of PSTN Transit Services;

7.6.2 Inter-Operator Transit Access Service: Batelco suggests that diverse routes exist and/or that there is no commercial or market need for the offering;

7.6.3 National Collect Call: Batelco refers to the removal of this service being consistent with the wholesale product roadmap (but without explaining what this roadmap is), and that there are not 'large areas of revenue';

7.6.4 Inbound International Collect Call Access Service: Batelco puts forward the same reasons for withdrawing this service, as those for its requested withdrawal of the National Collect Call service; and

7.6.5 Directory Listing Service: Batelco submits that this service is no longer necessary as there are multiple online search services, and that Batelco generates no wholesale revenue from this service.

7.7 The Authority, has considered Batelco's proposed withdrawal of these products and services. The Authority does not consider that Batelco has provided sufficient justification for the proposed removal of these products and services. The Authority's
views are based on the fact that the provision of each of these services remains subject to an existing dominance determination and is susceptible to ex ante regulation. Until a formal market review is conducted and the Authority determines that this market should no longer be subject to ex ante regulation, Batelco is required to continue to offer the relevant service(s).

7.8 The Authority considers that, having regard to the context of the ongoing work to achieve the objectives of NTP4 and establish a new industry structure, the Authority's principal priority with respect to the BRE RO is to promote continuity of supply. With this in mind, the Authority does not consider it is appropriate to commence such a review or to make such a determination at present. Rather, such market reviews and determinations should be conducted where appropriate, at a later stage, after consultation with stakeholders. Therefore the above products and services should continue to be provided under the BRE RO on the same price terms and non-price terms as those in Batelco's Current Reference Offer. The Authority however, proposes to commence the necessary market review(s) before the end of 2019. Stakeholders are invited to make comments on the Authority's proposed approach, as well as whether there is any current or future demand for the above services.

7.9 The Authority is aware that there may be products and services in Batelco's Current Reference Offer which have, as a matter of fact, been withdrawn from the market. For example, the Authority understands that the Calling Card Originating Access Service and/or the Paging Terminating Access Service has been withdrawn. Stakeholders are invited to provide comments on whether they consider that this is incorrect and that the final BRE Order should require Batelco to continue to make such services available.

7.10 Batelco has indicated that with regard to the Facilities Access Service duct rental services would be provided by the SE, rather than by BRE. The Authority agrees with this position regarding duct rental services. As regards the duct rental aspects of the

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9 Dominance in Interconnection Markets (Ref: ERU/DE/005). In addition to this Determination, the Authority notes that, with respect to (a) the Inter-Operator Transit Access Service, the Authority's final Order on the Reference Offer of Batelco (Ref: MCD/08/15/066) of 18 August 2016 which relates to Batelco's Current Reference Offer, requires provision of this service; and (b) the Directory Listing Service, Batelco is required to provide this service under its current National Fixed Services License (NFL). While the Authority has proposed a number of amendments to Batelco's existing suite of Licenses, which will need to be made as a result of the legal separation of Batelco, the Authority has not proposed to remove or make any substantive amendments to the relevant provisions on directory information (which includes Directory Listing and Directory Assistance Services) in the draft Batelco Amended NFL - Public consultation on the Authority's proposed amendments to telecommunications license held by Batelco following legal separation (LAD0219/057 of 28 February 2019).

10 As noted in the Authority's consultation on the draft reference offer of the Separated Entity (Ref: LAD/1218/347) of 20 December 2018, at paragraph 6.12 "The Authority maintains that requiring the Separated Entity to offer additional duct rental services at this time may compromise the transition to the new industry structure". The Authority anticipates however that existing supply
Facilities Access Services, the Authority considers appropriate amendments should therefore be made to the definition of "Facility" in Schedule 8 (Dictionary) of the BRE RO so as to remove duct, main distribution frame equipment room, local exchange, duct chamber, underground plant and street cabinet from the definition of "Facility". The Authority is interested in stakeholder views regarding whether additional amendments should be made to the definition of "Facility" in Schedule 8 (Dictionary) and therefore which Facilities Access Services should continue to be provided by BRE.

Other products and services that will be included in the BRE RO

7.11 The following services are acknowledged by Batelco to be regulated products and services that will continue to be provided under the BRE RO. Unless otherwise indicated below, Batelco has not proposed any changes to the price and/or non-price terms previously provided by Batelco under Batelco’s Current Reference Offer:

7.11.1 ISI Link.

Batelco has however, suggested that rates should be frozen and that there would not be any new provisioning but just continued provisioning to existing customers. Batelco indicates that it proposes to discuss this with OLOs, and that it proposes to freeze prices on an interim basis, pending discussion with OLOs on alternative interconnection arrangements. The Authority does not agree with Batelco’s proposed approach to restrict provision of this service to servicing legacy customers. The Authority considers that given that this service continues to be subject to ex ante regulation, Batelco is required to continue to provide existing and new provisioning of the service to customers.

7.11.2 CSI Link

Batelco has proposed to make the same changes to this service as those discussed above for ISI Link. The Authority considers that given that this service continues to be subject to ex ante regulation, Batelco is required to continue to provide existing and new provisioning of the service to customers.

7.11.3 Fixed Terminating Access.

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agreements for duct rental services should be transferred to the Separated Entity on the same terms and conditions of those agreements.
7.11.4 Mobile Terminating Access.

7.11.5 Emergency Call Access Service.

Batelco has however proposed a new lower rate for this service, based on revised costs. The proposed rate is included in section 1-7 of the revised Schedule 3 – Pricing. The Authority does not have any objection to the proposed lower rate for this service.

7.11.6 International Inbound Calls to Fixed.

7.11.7 International Inbound Calls to Mobile.

7.12 Batelco has proposed in its submission to the Authority concerning the draft BRE RO that the status and arrangements for Wholesale DSL depend on the arrangements with the SE. The Authority’s position is that the Wholesale DSL service should continue to be provided by Batelco under the BRE RO. Wholesale DSL therefore should not be included in the SE’s Reference Offer.

7.13 This view is consistent with the Authority’s stated position in paragraph 7.5 of the Authority’s consultation on a draft Order on the Reference Offer of the SE and related draft amended Reference Offer (LAD 0913 082 dated 28 March 2019), where it is concluded that following industry feedback regarding the draft SE’s Reference Offer, the Authority considers that Wholesale DSL should continue to be offered by BRE, and not by the SE.

7.14 The Authority further notes that business Wholesale DSL is subject to ex ante regulation as a result of the Authority’s determination for provision of broadband internet access services from a fixed location.¹¹

International Connectivity

7.15 Batelco proposes that the provision of international access should be managed through a separately incorporated entity (not being the SE and not Batelco Retail (BRE)). Batelco further proposes to provide the International Falcon Connection (IFC) Service and International GBI Connection (IGC) Service on unregulated terms.

¹¹ Determination of Significant Market Power and Determination of Dominant Position in the Markets for Provision of Broadband Internet Access Services from a Fixed Location (MCD/03/14/018) of 27 March 2014.
Batelco’s rationale for this view is that there are sufficient alternative options available to operators seeking access to international capacity services to and from the Kingdom of Bahrain and that demand for the IFC and IGC services has been very limited despite ten (10) years of *ex ante* regulation. Batelco proposes to offer these services, subject to any adjustments in scope, on commercial terms, with the price on application. Batelco considers sufficient *ex-post* competition safeguards exist under Article 65 of the Law.

7.16 The Authority does not agree with Batelco’s position. In particular, the Authority considers that the IFC Service must continue to be supplied on the terms set out in Batelco’s Current Reference Offer. This is because, notwithstanding the fact that the Authority has determined\(^\text{12}\) that no operator is dominant in the market for Wholesale International Services, this determination was made subject to Batelco continuing to supply certain services, including the IFC and access to the Gulf Bridge International (GBI) submarine cable on similar terms to the IFC Service.

7.17 As set out in that determination, OLOs can access international capacity by purchasing the International FALCON Connection (IFC) service, which is a regulated service included in Batelco’s Reference Offer.\(^\text{13}\)

7.18 Therefore, the Authority considers that, until a formal review of this market determines otherwise, there remains a regulatory obligation on Batelco (regardless of legal structure and/or entity suggested above by which Batelco might propose for this service to be provided) requiring the IFC Service to be supplied on the terms set out in Schedule 12-14 of Batelco’s Current Reference Offer. For clarity, the Authority expects the IGC Service to continue to be supplied on the same terms. The Authority also notes that it has now commenced a review of the international connectivity services market.

\(^\text{12}\) Dominance Determination for Wholesale International Services - Final Determination - dated 20 February 2013 (Ref: MCD/02/13/016).

\(^\text{13}\) Dominance Determination for Wholesale International Services - Final Determination - dated 20 February 2013 (Ref: MCD/02/13/016) paragraph 26, paragraph 71 and at paragraph 359 where it is stated that “For the avoidance of doubt, the Authority’s finding that the wholesale markets defined in this Final Determination are competitive does not apply to the supply of the IFC service, duct access, and domestic leased lines.”
7.19 The Authority reiterates the view outlined in its consultation documentation dated 28 March 2019 (LAD 0913 082) that “access to International Cable Landing Stations and the cross-connect within the Cable Landing Station will have to be provided by the SE as the entity operating the fixed public telecommunications network.” The Authority welcomes stakeholder responses on whether BRE or the SE is best placed to provide the IFC and IGC Services, as well as comments regarding the service descriptions for these services (and in particular whether the relevant service descriptions are fit for purpose).

8. NON-PRICE TERMS

8.1 The Authority notes that Batelco did not propose any amendments to the non-price terms of Batelco’s Current Reference Offer. Rather, Batelco’s proposals for the BRE RO were to request withdrawal of specific products and services in their entirety.

8.2 The Authority has therefore had regard to the existing schedules in Batelco’s Current Reference Offer, including in particular, the Main Body Terms and Supply Terms.

8.3 Having conducted its own initial analysis of these documents, and in the interests of expediency, the Authority has itself proposed in the Draft BRE RO Order that Schedule 8: Dictionary and Rules of Interpretation and Construction of Batelco’s Current Reference Offer be amended so as to reflect those products and services that are to be provided by the SE and are included in the SE’s Reference Offer. This means for example, that references relating to and/or dependent on fibre based products as well as duct rental services should be removed from Schedule 8 of the BRE RO. A revised version of Schedule 8: Dictionary and Rules of Interpretation and Construction is included at Annex C to the Draft BRE Order, in track changes so as to show the proposed amendments.

8.4 The Authority has not proposed in the Draft BRE Order any amendments to the remaining Schedules in Batelco’s Current Reference Offer and which are to be included in the BRE RO. Notably, the Authority does not consider it necessary for Batelco to amend the terms of Schedule 1: Main Body Terms and/or Schedule 9: Supply Terms to reflect the new industry structure. The Authority considers that since the Main Body Terms and/or Supply Terms are not product or service specific and since Batelco will continue to provide access and interconnection to certain services
in the BRE RO, it has not been necessary to amend the provisions of these particular schedules.

8.5 Further, the Authority considers that while changes may be needed to the Batelco Joint Working Manual, this could be addressed in due course and after approval and publication of the BRE RO. The Authority however, is interested in stakeholders’ views on the necessity and extent of any changes needed to the Joint Working Manual as well as the proposed timing for these.

8.6 Notwithstanding the Authority’s initial analysis regarding the need for changes to the remaining non-price terms and schedules in Batelco’s Current Reference Offer that are to be reflected in the BRE RO, the Authority is interested in stakeholders’ views regarding required changes.

9. PRICE TERMS

9.1 The Draft BRE Order provides for a new schedule of charges, Schedule 3, in place of the existing charges schedule in Batelco’s Current Reference Offer.

9.2 Batelco has proposed that certain products and services in the draft BRE RO are provided on a commercial basis, meaning that their price terms are not regulated.

9.3 In addition to Batelco’s proposed changes to the prices for services such as Emergency Call Access, IFC and IGC services discussed above, Batelco has indicated that the following products and services should be provided on commercial (unregulated) price terms:

9.3.1 SMS Terminating Access Service: where Batelco has proposed changes to the prices for this service, as compared to the existing prices in Batelco’s Current Reference Offer;
9.3.2 International Private Leased Circuit Service;
9.3.3 Speaking Clock Service;
9.3.4 International Operator Assisted Call Service;
9.3.5 Directory Assistance Service (181,188);
9.3.6 Certain parts of the Facilities Access Service (excluding duct rental services and the specific items referenced in paragraph 7.10 above, which are to be excluded from the BRE RO in any event);
9.3.7 Wholesale International Outbound Switched Service (Wholesale IDD);
9.3.8 Freephone Originating Access Service;
9.3.9 Carrier Pre-Selection Service (CPS);
9.3.10 MMS Delivery Service.

9.4 Save for CPS\textsuperscript{14} and Directory Assistance Service\textsuperscript{15} which are subject to ex ante regulation, and Facilities Access Services upon which the Authority is seeking stakeholder views, the Authority does not object to the proposed offering of the other services listed above on a commercial basis. This is because such other services are not subject to a regulatory obligation on Batelco regarding the price terms for these services. Accordingly, the Authority does not object to Batelco’s proposed changes to the prices for the SMS Terminating Access Service.

\textsuperscript{14} CPS continues to be regulated under the CPS Regulation 2004 (MOU/RN/003).
\textsuperscript{15} Dominance in Interconnection Markets (Ref. ERU/DE/005) and Batelco’s current National Fixed Services License (NFL). As noted above, while the Authority has proposed a number of amendments to Batelco’s existing suite of Licenses, which will need to be made as a result of the legal separation of Batelco, the Authority has not proposed to remove or make any substantive amendments to the relevant provisions on directory information (which includes Directory Listing and Directory Assistance Services) in the draft Batelco Amended NFL - Public consultation on the Authority’s proposed amendments to telecommunications license held by Batelco following legal separation (LAD0219/057 of 28 February 2019).
ANNEX 1

Draft BRE RO Order
ANNEX 2

Questions

Please note that all responses to the consultation questions should be fully substantiated and supported by reference to international benchmarks, industry standards or other appropriate evidence.

A. SCOPE OF THE PRODUCT SET

1. Do you support the Authority's proposed approach to the product set that should be included in the BRE RO? If not, please explain your views.

2. Do you agree that the following products and services listed in paragraph 7.11 of the Consultation Paper: ISI Link, CSI Link, Fixed Terminating Access, Mobile Terminating Access, Emergency Call Access Service, International Inbound Calls to Fixed, International Inbound Calls to Mobile, should be included in the BRE RO as regulated products and services? Do you agree that Batelco (BRE) should be required to continue to supply new provisioning of ISI Link and CSI Link services? If not, please explain your views.

3. Do you agree that the products and services listed in paragraph 6.2.1 and paragraph 7.1 of the Consultation Paper: Bitstream, Bitstream plus, LLCO, WLA (including Customer Access Tail (CAT) Service) and WDC, should not be included in the BRE RO, but that these services are to be provided by the SE? If not, please explain your views.

4. Do you agree that the following products and services listed in paragraph 7.4 of the Consultation Paper: Unbundled Metallic Path Service, Service Node Facilities Management, UMP Backhaul Service and UMP Specific Information Service, should not be included in the BRE as these services relate to local loop unbundling? If not, please explain your views.

5. Do you agree with the statements in paragraph 7.9 of the Consultation Paper, regarding service such as Calling Card Originating Access Service and/or the Paging Terminating Access Service that may already have been withdrawn by Batelco? Do you agree that such services therefore do not need to be included in the BRE RO, or do you consider this is incorrect and Batelco should be required to continue to make such services available? Please explain and substantiate your views.
6. Please indicate if you consider any products or services are incorrectly omitted as regulated services from the BRE RO. Please provide a high level product specification and explain why you believe such products should be included as a regulated product/service in the BRE RO.

7. Do you agree with the Authority’s proposals as set out in paragraph 7.6 of the Consultation Paper to reject Batelco’s request to withdraw the following services, and therefore the Authority’s proposal that Batelco should continue to treat the following products as regulated:
   - PSTN Transit Service;
   - Inter-Operator Transit Access Service;
   - National Collect Call Service;
   - Inbound International Collect Call Access Service;
   - Directory Listing Service; and
   - Wholesale International Outbound Switched Service (Wholesale IDD).

If not, please explain why? Please substantiate your position and provide your views on the current and future demand for these products and services.

8. Do you agree with the Authority’s proposal as set out in paragraph 6.7, 7.7 and 7.8 of the Consultation Paper not to decide at this stage on the request by Batelco to withdraw certain further products from the BRE RO, but to rather follow the conclusion of a market review in the future? If not, please explain for which products and services withdrawal would already be necessary in the BRE RO? Please provide any views you might have regarding current and future demand for these services.

9. Do you agree with the Authority’s proposal as set out in paragraph 7.7 (with reference to paragraph 7.6.5) of the Consultation Paper not to approve withdrawal of the "Directory Listing Service", as this product continues to be a regulated service? If not, please explain why?

10. Do you agree with the Authority’s proposal as set out in paragraph 7.10 of the Consultation Paper regarding the relevant items of the Facilities Access Service which should be excluded from the definition of "Facility" in Schedule 8 (Dictionary)? If not,
please explain? Do you consider that any additional items listed in the definition of "Facility" need to be removed from the BRE RO and should instead be included in the SE’s Reference Offer? If so, please explain your views, and how access to these services should be provided? In the event that you consider specific items of the Facilities Access Service should remain in the BRE RO, please also state whether you believe that the prices for such services should be regulated, or made available by BRE on commercial (unregulated) terms. Please substantiate your views.

11. Do you agree that Wholesale DSL should continue to be provided by BRE (as indicated in paragraphs 7.12 to paragraph 14 (inclusive))? If not, please explain why.

12. Do you agree with the Authority’s position in relation to International Connectivity in paragraphs 7.15 to 7.19 (inclusive) of the Consultation Paper, and in particular, in relation to the continued supply of the IFC and IGC Service? If not, please explain why. The Authority is also interested in:
   • Understanding stakeholders’ views on whether the BRE or the SE is best placed to supply the IFC and IGC Services pending the outcome of its market review. Please state a preference and supporting rationale; and
   • Comments on whether the relevant service descriptions are fit for purpose.

13. Please provide comments on any other areas of concern you have regarding the product or services set or any of the services descriptions included in the draft BRE RO.

B. NON-PRICE TERMS

14. Do you consider that the non-price terms, including Main Body Terms, Supply Terms and definitions in the Dictionary, are fit for purpose and meet the reasonable requirements of Licensed Operators?

15. Do you agree with the Authority’s proposed approach in paragraph 8.5 of this Consultation Paper regarding the Joint Working Manual, namely, that while changes may be needed to the Batelco Joint Working Manual, this could be addressed in due course and after approval and publication of the BRE RO? Please provide your views on the necessity and extent of any changes needed to the Joint Working Manual as well as the proposed timing for these.
16. Which additional technical revisions and/or amendments such as removing references to fixed network infrastructure, fibre, duct and related fixed infrastructure terms to the non-price terms of the BRE RO do you consider to be necessary in order to ensure consistency between the SE and BRE product sets? Please explain why.

C. PRICE TERMS

17. Do you agree with the Authority's proposed acceptance in paragraph 7.11.5 of the Consultation Paper regarding the lower rates for Emergency Call Access Service included in section 1-7 of the revised Schedule 3 – Pricing?

18. Do you agree that the products and services listed in paragraph 9.3 of the Consultation Paper, other than CPS, should be provided on a commercial basis (SMS Terminating Access Service, International Private Leased Circuit Service, Speaking Clock Service, International Operator Assisted Call Service, Directory Assistance Service, Facilities Access Service excluding duct rental, Wholesale IDD Service, Freephone Originating Access Service, and MMS Delivery Service)? If not, please explain and substantiate your position?

19. Do you have any other comments not considered specifically above that you wish to make?

If so, please order your comments according to sections in the Consultation Paper or specific aspect of the draft BRE RO.