

## 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 amendments to Telecommunications Licences held by the Licensed Operators other than the Bahrain Telecommunications Company BSC (“**Batelco**”) (the “**OLOs**”) in light of the legal separation of Batelco (the “**Amended Licences**”).

28 February 2019

LAD/0219/056

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](mailto:lad@tra.org.bh).

The deadline for responses is 16.00 on 28 March 2019.

Purpose: to seek stakeholders’ views on the Amended Licences.

#### 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 28 March 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  
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 modifications of the Amended Licences attached at Annexes 1 - 8 of this Consultation.

- 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 Law<sup>1</sup> (the "Law") or Licences 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 9.

- 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

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

received. The Authority will evaluate a request for confidentiality in line with the relevant legal provisions<sup>2</sup> and the Authority's published guidance on the treatment of confidential and non-confidential information<sup>3</sup>.

- 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<sup>4</sup>.
- 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.

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<sup>2</sup> Including Article 23 of the Law

<sup>3</sup> [http://www.tra.org.bh/media/document/Confidentiality\\_Guidelines\\_Final.pdf](http://www.tra.org.bh/media/document/Confidentiality_Guidelines_Final.pdf)

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

### 3 BACKGROUND TO THE AMENDED LICENSES

- 3.1 The Government's Fourth National Telecommunications Plan ("NTP4") calls for the development of a single national broadband infrastructure network (the "NBN"), encompassing the infrastructure required to enable fixed telecommunications networks in Bahrain.
- 3.2 This NBN should be capable of delivering ultrafast broadband products to consumers and businesses across the Kingdom. The NBN will be operated and deployed by the new legal entity that will be formed (the "**Separated Entity**" or the "**SE**") by the legal separation of Batelco.
- 3.3 The Separated Entity will be formed by the separation of the incumbent telecommunications operator, Batelco, into two distinct legal entities: the Separated Entity and the rest of Batelco. The Separated Entity will comprise the appropriate components of Batelco's current wholesale and infrastructure business units, with the other entity comprising the remaining parts of Batelco's business, including its retail division (referred to as Batelco Retail).
- 3.4 The Authority has previously consulted upon the process for the separation of Batelco in its consultations on the Monitoring Guidelines, the Separation Guidelines and the Special Temporary Measure<sup>1</sup>, on the Separated Entity Licence<sup>2</sup> and the Separated Entity's Draft Reference Offer<sup>3</sup> (the "**Prior Consultations**").
- 3.5 Article 3(e) of the Law requires the Authority to "*act in a manner that is consistent with the objectives of*" NTP4 provided that this does not derogate from the Authority's independence as provided for under the Law.

#### **The Amendments**

- 3.6 The Authority believes that amendments to the existing Telecommunications Licences of Batelco and the OLOs are necessary in order to clearly establish the role of the Separated Entity. The Authority notes that the amendments proposed to the Telecommunications Licences of Batelco will be subject to a separate consultation (as due to the separation process the amendments

<sup>1</sup> <http://www.tra.org.bh/media/document/Consultation%20paper%20-vFinal%20for%20publication.pdf>

<sup>2</sup> <http://www.tra.org.bh/media/document/Consultation%20paper%20on%20SE%20License.pdf>

<sup>3</sup> <http://www.tra.org.bh/media/document/Consultation%20paper%20on%20SE%20License.pdf>

required will, self-evidently, be greater than those proposed for the OLOs' Telecommunications Licences).

3.7 As a starting point, the Authority believes that a number of amendments are required to the Telecommunications Licences held by the OLOs in order to harmonise the licensing environment during the establishment of the Separated Entity and the separation of Batelco.

3.8 The Authority has annexed to this Consultation document, template examples of the following Telecommunications Licences with the Authority's proposed amendments saved in track:

- (a) the National Fixed Services Licence ("**NFL Licence**") (Annex 1)
  - (b) the International Telecommunications Facilities Licence ("**IFL Licence**") (Annex 2)
  - (c) International Telecommunications Services Licence ("**ISL Licence**") (Annex 3)
  - (d) the Value Added Services Licence ("**VAS Licence**") (Annex 4)
  - (e) the Mobile Telecommunications Licence ("**IMT Licence**") (Annex 5)
  - (f) the Class Licence for Internet Services Licence (the "**CIS Licence**") (Annex 6)
  - (g) the Individual Licence for Paging Services (the "**ILPS Licence**") (Annex 7)
  - (h) the Individual Licence for Public Access Mobile Radio Services (the "**PSMR Licence**") (Annex 8)
- (together the "**Licences**" or the "**Telecommunications Licences**")

3.9 The approach adopted by the Authority with regards to the amendments is that any changes that have been proposed should be kept to a minimum at this time, and reflect those amendments that the Authority considered to be directly

related and necessary to facilitate the implementation of the NBN project and establishment of the Separated Entity.

3.10 The Authority is cognisant that a wider review of the licensing regime is shortly to be undertaken by the Authority and that as such any wholesale changes to the Telecommunications Licences' terms (or the licensing regime itself) are best reserved for the outcome of that project.

3.11 The Authority notes that there exist some minor idiosyncrasies between certain of the Telecommunications Licences held by individual Licensees in the same category. The Authority is proposing to consult on either template or generic Licences so references to individual sections must be read in the context of the individual section's subject matter, rather than numerical categorisation.

3.12 Self-evidently certain of the Telecommunications Licences of the OLOs will require greater amendment than others (due to the Separated Entity's role as the operator of the Fixed Telecommunications Infrastructure Network). In particular changes to the respective NFL Licences will require greater amendment than those that require a lesser degree of harmonisation.

3.13 For that reason the Authority has described the amendments proposed to the NFL Licence (and the rationale for those amendments) in some detail below.

#### **4 PURPOSE OF THIS CONSULTATION PAPER**

4.1 This consultation paper is concerned with the Amended Licences that the Authority intends to issue.

4.2 It is also intended to promote transparency in relation to the implementation of the new industry structure. The Authority invites stakeholders to comment on the suitability of the Amended Licences.

4.3 For completeness, the Authority has included at Annex 9 consultation questions inviting comments on the Amended Licences.

#### **5 OVERVIEW OF THE AMENDMENT PROCESS**

5.1 The Authority's approach to the amendments proposed to the OLO Telecommunications Licences is that these will be made by way of modification to the existing Licences (rather than by revoking the existing Licences and issuing new Licences). The Authority believes that this approach is most in

keeping with its duties under Article 31(4) and Article 3(a) of the Telecommunications Law and most appropriate in the circumstances given that:

- (a) The amendments proposed are relatively discrete; and
- (b) The complete review of the Licensing framework will shortly commence.

5.2 As such the Effective Date of each Licence will remain as currently stated and so there will be no need for OLOs to re-perform obligations currently stated in the Licences that are linked to these Effective Dates (including certain initial reporting requirements and the payment of Licence fees). If any Respondent has a query with regards to its obligations under the Amended Licences, the Authority invites requests for clarification of such in response to question 8 of Annex 9 ("*Any Other Comments*").

5.3 As the amendments to the Licences are being made pursuant to the Authority's powers under Article 31(4) of the Telecommunications Law, there is no requirement for the OLOs to consent to the amendments. As such, once the Authority has reached a final view on the amendments, it will notify the OLOs that the Amended Licences have been finalised (indicating the Effective Date from which the Amended Licences shall apply) and that the Amended Licences are available for collection from the Authority.

## 6 OVERVIEW OF THE AMENDED NFL LICENCE

As set out above, the amendments proposed to the NFL Licence are, of course, the most substantive. This is due to the fact that the creation of the Separated Entity and the granting of the Separated Entity Licence will most impact the licensed activities of OLOs operating a National fixed telecommunications network (as defined in the template NFL).

The following are the substantive changes to the NFL Licence proposed by the Authority with accompanying explanations where relevant. The changes follow the order of the specific sections in the NFL Licence:

### 6.1 Definitions

New definitions have been included in the amended NFL Licence to reflect the establishment of the Separated Entity and/or for general consistency across the suite of Licences ("*Force Majeure*" and "*Separated Entity*").

The definition of "*Force Majeure*" has been amended to be consistent with that proposed in the SE Licence. This change has been included in all of the OLO Licences to harmonise the reference in the amended NFL with the terms used in the SE Licence.

A definition of "*Separated Entity*" has been included to harmonise the reference in the amended NFL with the terms used in the SE Licence.

A definition of "*Separated Entity's Reference Offer*" has been added to reflect the inclusion of a new section 3.6.

In addition the use of "*Structural Separation*" as a defined term has been removed from the amended NFL Licence (as has reference to it in the body of the Licence). This is in order to harmonise the remedies available to the Authority across all Licences and to recognise that in certain scenarios, other forms of separation may be more appropriate.

## 6.2 LICENSED NETWORKS AND SERVICES (section 3)

### a) Section 3.2 (a)

The amended NFL Licence includes an authorisation that the Licensee can connect its National fixed telecommunications network to any Fixed Telecommunications Infrastructure Network: this amendment has been introduced to recognise the role of the Separated Entity as the holder of the Fixed Telecommunications Infrastructure Network Licence in the Kingdom.

### b) Section 3.4

At section 3.4 the Authority has included a new section that recognises that ultimately processes may be mandated by the Authority to facilitate the migration of OLO fixed assets to the Separated Entity and/or their decommissioning.

Paragraph 6.22-6.24 of the Authority's consultation on the Reference Offer Order dated 20 December 2018 recognised that:

*"6.22 The implementation of the single network objective may, in due time, require OLOs to relinquish control of those fibre assets they currently own and control.*



6.23 *In determining the appropriate time at which these assets should be decommissioned and / or control relinquished by OLOs, the Authority will take account of the state of the Separated Entity's service provision and product set....."*

6.24 *In due course, the Authority will consult with all affected stakeholders on any proposed decommissioning of OLO fibre assets and will take into consideration the costs and benefits. For the avoidance of doubt, any compensation will have regard to the asset value taking into account depreciation and will exclude any investments in network elements made after 31 December 2018."*

The Authority continues to believe that such migration/ decommissioning is, ultimately, part of the intended objectives of NTP4 to create the NBN.

As such new section 3.4 has been added to the amended OLO NFL to recognise that such a process may be mandated by the Authority subject to consultation and further consideration. This section also recognises that at that future time further amendments to the OLO NFL would be required to reflect the changes in the OLO's national fixed telecommunications networks and therefore the rights and obligations required of OLOs under the OLO NFL. For example, certain obligations would fall away as a result of the decommissioning and/or migration of the underlying OLO assets.

In due course, the Authority will consult with all affected stakeholders on how the decommissioning and/or migration of OLO assets could take place and will, as part of this, consider what level of compensation may be due to the OLOs, to reflect investments undertaken prior to the introduction of the new framework.

c) *Section 3.6*

The Authority has proposed inserting a new section in the OLO NFL that recognises that from the establishment of the Separated Entity:

- Only the Separated Entity shall be allowed to lay new fibre.
- Notwithstanding this, the Authority proposes that in certain exceptional circumstances OLOs may be authorised to lay new fibre. This would require the Authority's prior approval, and would

be subject to the relevant OLO's compliance with any conditions stipulated by the Authority (including use of such fibre assets, duration etc.).

- OLOs will be authorised to take-up fibre services included in the Separated Entity's Reference Offer, such as fibre fronthaul services (or other such services as may be included in the Reference Offer). OLOs will not require an approval or exemption in order to take-up such services.
- OLOs should be allowed to maintain their own fibre assets/networks until such time as they are required to migrate and/or decommission their fibre assets under section 3.4.

The new section 3.6 includes language that articulates the above positions.

### **6.3 LICENSEE OBLIGATIONS (section 4)**

The Authority has inserted a new section to include obligations on OLOs to comply with the Law, regulations and any instrument issued by the Authority.

This section has been inserted in order to harmonise the OLO NFL with the proposed Separated Entity Licence and the future changes that are likely to be proposed to the current Batelco NFL to reflect the new industry structure.

### **6.4 MODIFICATION, REVOCATION AND TERMINATION (section 29.1 (d))**

The Authority has inserted a new provision relating to the ability of the Authority to modify Licences to comply with the Law. This has been introduced to standardise the amended OLO NFL Licence with the current Separated Entity Licence.

### **6.5 COMPLIANCE (section 32)**

This new section clarifies the Authority's existing powers in this area, allowing the Authority to take action against OLOs for failure to comply with the terms of the amended NFL Licence. This provision already exists in certain Licences and the Authority believes that it therefore makes sense for it to be standardised across all Licences.

## 7 OVERVIEW OF THE AMENDMENTS TO THE OTHER OLO LICENCES

7.1 In order to harmonise the defined terms and obligations across all of the OLO Telecommunications Licences, the following amendments that have been made to the OLO NFLs will be common to all other Amended Licences:

7.1.1 The amended definition of "*Force Majeure*" will now be standard to all Telecommunications Licences;

7.1.2 The deletion of "*Structural Separation*" will now be a standard amendment to all Telecommunications Licences;

7.1.3 The amendment to the "*Modification, Revocation and Termination*" provision set out in the NFL will be common to all Telecommunications Licences;

7.1.4 The addition of the "*Compliance*" section set out in the NFL will be common to all Telecommunications Licences.

## 8 SPECIFIC ADDITIONAL AMENDMENTS TO CERTAIN LICENCES

8.1 Further, amendments to certain of the Telecommunications Licences have also been replicated from the NFL proposed amendments in order to make explicit the right of the OLOs that hold such Licences to access the Fixed Telecommunications Infrastructure Network.

8.2 In particular the Authority draws the Respondent's attention to the following amendments:

- (a) section 3.2(a) of the template IFL Licence;
- (b) section 4.2 of the template ISL Licence;
- (c) section 4.2 of the template VAS Licence; and
- (d) section 4.2 of the template CIS Licence.

