



Traffic Management and Pricing Practices Guidelines

Consultation Report

4 December 2017

Ref: LAD/0817/164

INTRODUCTION

1. On 23 March 2017 the Telecommunications Regulatory Authority (“the Authority”) launched a public consultation on the Traffic Management and Pricing Practices Guidelines (“Guidelines”). The purpose of the public consultation was to invite comments from stakeholders in the telecommunications industry and the general public on its Guidelines.
2. The Authority received responses from Batelco, Viva, Zain, Facebook and Samena.
3. The comments received from Batelco, Viva, Zain, Facebook and Samena are summarised in Annex 1 to this consultation report (“Consultation Report”), as are the Authority’s responses to each comment. The changes to the Guidelines that the Authority has made in response to the comments received from the stakeholders are also set out and explained under Annex 1.
4. The latest draft of the Guidelines is attached to this Consultation Report.
5. This Consultation Report reflects the views of the Authority on comments received in response to the public consultation. The Authority’s views as expressed in this Consultation Report are intended to provide an explanation of the Authority’s position on the comments received from the respondents. To the extent that any statement contained in this Consultation Report is inconsistent with the principles or provisions established under the Guidelines, the Guideline shall prevail.
6. Any capitalised terms that are not defined in this Consultation Report, shall have the same meaning attributed to them by the Telecommunications Law or by the Guidelines.

ANNEX 1: Summary of Responses received on the public consultation questions and the Authority's conclusions

Summary of comments received	The Authority's view and conclusion
General comments	
Samena	
One respondent noted that the general policy issue of net neutrality, which underpins this consultation, may be a transitional issue that could disappear one day.	N/A
Zain, Viva	
Two respondents made a general comment that the causes of network congestion and consequential traffic management practice lie not only with growing demand for OTT services, but also result from problems that mobile operators have in getting access to sufficient spectrum and backhaul capacity.	N/A
<p>1. Do you agree with the scope of the Guidelines?</p> <p>2. Do you have any other comments on the text above?</p>	
Batelco, Samena	
The use of non-binding guidelines to govern this rapidly evolving area was broadly welcomed. However, some concern was expressed that by expressly stating that the Authority would expect operators to comply with the Guidelines, they were being treated as quasi-binding.	The Authority points out that the Guidelines might effectively have a binding effect when the Authority would be asked to rule as to whether or not the conduct of the licensee is contrary to the Consumer Protection.
<p>3. Do you disagree with the proposed text in relation to consumer rights? If so, please specify and suggest changes.</p>	
Batelco	
While reference is made to the Consumer Protection Regulations (Regulations), one respondent suggested that it be made clear that the Regulations take precedence over the Guidelines.	The Authority does not find this to be indispensable, however, it has included a note on this in the Guidelines in order to avoid any uncertainties.
Batelco, Samena, Viva	
Concern was expressed that granting consumers the right to terminate their contract whenever a new traffic management policy or tiered pricing	The Authority accepts this point and has therefore decided to clarify that a consumer termination right would only arise in situations where the operator

structure is introduced is too broadly worded and could lead to abuse. As an alternative, the Guidelines should make the termination right conditional on any change being detrimental to either the obligations or rights of the consumer.	introduced any new traffic management policies and tiered pricing structures that were likely to be detrimental to either the obligations or the rights of existing subscribers. Nevertheless, operators would have the burden of showing that any change would not be detrimental, for at least the vast majority of subscribers.
Viva	
In respect of termination charges, one respondent noted that operators should be able to recover certain service termination fees, in addition to those for any equipment supplied to the subscriber, relating to the costs of onboarding the customer, such as customer care costs.	The Authority disagrees. Unlike in case of terminal equipment where the consumer continues to benefit after service termination, any other cost reflects the operator's own risk when it imposes new policies or pricing structures.
Zain	
On transparency, it was noted that the reference made to consumer 'dashboards' to enable ongoing monitoring and comparison of quality of service metrics would not be possible given their currently available tools. As such, this requirement should either be removed or rendered optional rather than mandatory.	While transparency throughout the consumer life-cycle is considered indispensable, the Authority recognizes that the listed approaches should serve only as examples of possible interaction. In the absence of reasonable efforts by the operators in that regard, the Authority may always re-visit the issue.
Zain	
The notion of 'end users' in the Guidelines was viewed as being too broad by one respondent, who expressed the view that providers of OTT services, who can be viewed as reselling the provisioned network capacity for their own commercial benefit, should not be covered by the Guidelines (Zain).	The Authority notes that the Guidelines are referring to both the providers of OTT services, as well as those that consume these services, to the extent that both are presumed to be dependent on an operator of an IAS to reach each other. The Authority further notes that OTT services would not as such be considered a form of network resale because their providers do not lease the network in the first place.
4. Do you disagree with the proposed text in relation to reasonable traffic management practices? If so, please specify and suggest changes.	
Batelco, Samena	
While the additional criteria for deeming a traffic management practice reasonable were seen as legitimate, there was concern that they should not	The Authority has recognised the need for further flexibility, including the need to recognise as legitimate temporary justifications resulting from force

be viewed as mandatory factors. There were also calls for express recognition that certain events (e.g. cable cuts) may result in the need to implement temporary traffic restrictions, which would be reasonable in those extreme circumstances.	majeure events.
Batelco	
With regard to 'specialised services', one respondent noted that a requirement that such services should result in no interference or impact was too strict a standard.	In order to address this concern, the Authority has replaced the two criteria with a broader, more flexible set of criteria.
Zain	
While agreeing with the proposed additional criterion of non-discrimination of 'essentially similar' services, one respondent stated that compliance would depend on their ability to deploy a deep-packet inspection (DPI) solution, which would enable them to monitor the content carried over their network.	Based on its own understanding of technology, the Authority is of the opinion that DPI is not required for non-discriminatory treatment of content, applications and services. The Authority's position on this matter is without prejudice to the adverse privacy implications of DPI solutions that might require additional lawful justification.
Zain	
The suggestion that the Authority should be able to carry out an ex post review of practices, 'at its discretion', was considered too open-ended and should require justification in each case.	The Authority notes that it has to have full discretion and shall require no justification to carry out a review of any ongoing or past measures adopted by the operators.
Zain	
It was also noted that traffic management techniques over wireless networks will often differ from those over fixed networks, given the particular characteristics of spectrum. Such differences should be expressly recognised in the Guidelines.	The Authority notes that, regardless of the type of the network, any traffic management measures are expected to comply with the Guidelines.
5. Do you disagree with the proposed Black/White Lists which indicate the traffic management practices in which the Authority would presume unreasonable/reasonable?	
Batelco, Samena	
Suggestions were made of additional items for inclusion in the White list, including queuing and lawful blocking.	The Authority has made certain amendments to the White list accordingly.
Viva	

<p>One respondent asked that OTT communication services be declared as a form of unlawful content, which would enable operators to block access to such services, on the basis that they do not comply with local regulations. Allied to this, the Guidelines are criticized for being exclusively focused on the consumer protection consequences of traffic management and pricing practices; without addressing the impact that OTT services are having on the sustainability of the mobile sector within Bahrain.</p>	<p>The Authority notes that consumer protection is one of its core tasks. The Authority further notes that OTT communications are not as such a form of unlawful content. Whereas some of them clearly have adverse impact on the voice and SMS revenues of the mobile sector in Bahrain, they are also a key driver of demand for both fixed and mobile broadband capacity, which makes it difficult to establish net impact on mobile revenues.</p>
<p>Zain</p>	
<p>A request was made that operators be permitted to target traffic management practices against certain traffic types or users when trying to alleviate congestion, rather than be required to impose measures on a non-discriminatory basis against an entire class of content or customer base.</p>	<p>The Authority notes that there might be sufficient grounds to target a specific class of users, and has made some further clarifications in the Guidelines to this end, whereby temporary “measures may specifically target a specific application or service within the class only if congestion is linked to such specific application or service due to exceptional circumstances, such as a cyberattack, or where temporary queuing is necessary in cases of specific major new software releases.”</p>
<p>Zain</p>	
<p>The possible receipt of a verbal order, rather than made in writing, from a law enforcement body requesting the blocking of specific content was challenged as inappropriate.</p>	<p>The Authority notes that due format and procedures with regard to law enforcement orders are beyond its jurisdiction and therefore the Guidelines.</p>
<p>6. Do you have any other comments on Reasonable Traffic Management Practices?</p>	
<p>Batelco</p>	
<p>There was a request for the inclusion of flow-charts to assist operators with decision-making.</p>	<p>The Authority notes the introduction of flowcharts would not be likely to help because it might create a false impression that the Guidelines require a certain process of decision-making. Any traffic management measures are introduced at the operators’ own initiative and are acceptable as long as they stay within the framework of the guidelines.</p>

7. Do you disagree with the proposed text in relation to Reasonable Pricing Practices? If so, please specify and suggest changes.	
Facebook, Batelco	
Concern was expressed that the reference to ‘commercial arrangement with an OTT player’ should not be interpreted as meaning ‘any commercial arrangement’, since there were a range of possible scenarios (e.g. event sponsorship) where an operator agrees a deal with an OTT provider that has nothing to do with preferential treatment for internet access. In addition, an excessive focus on commercial arrangements was seen as potentially inadvertently encouraging operators to favour own content over third party content.	In order to address these concerns, the Authority has amended the Guidelines text as follows: “When evaluating whether agreement-based tiered pricing should be prohibited, the Authority may look at criteria such as whether the arrangement in question involves payment for priority treatment; whether it is exclusive or open to other similar content, services or applications providers and other operators; whether it favours affiliated content, services or applications providers; or how transparent it is.”
Batelco, Samena, Viva	
On zero-rating, some respondents asked for clarity that the requirement to manage a consumer’s usage once their data allowance has been exhausted (Guidelines para. 21), should not be interpreted to mean blocking or throttling in these circumstances would not sometimes be reasonable, especially for pre-paid services. Others felt that there should be no restrictions on continuing to access zero-rated services where an end user with has no data allowance or any such allowance is exhausted (Facebook).	In order to address these concerns, the Authority has introduced a compromise between the interests of consumers, the operators, and OTT providers: “The Authority would not recommend blocking entire traffic that is not zero-rated, and would instead recommend the slowing down of such traffic as a possible measure.”
Viva, Zain, Facebook	
Two respondents called for zero-rating to be prohibited, particularly in relation to OTT communication services that are seen as competing with traditional mobile services, on the basis that such practices undermine competition, harm innovation and will result in long-term damage to the interests of consumers and users. While other respondents supported zero-rating practices.	The Authority notes that it is not seeking to prohibit zero-rating practices, and is only introducing light touch measures to regulate them to the benefit of end-users. This is so because the Authority seeks a compromise between the interests of various stakeholders, notably in relation to consumer interest, long-term competition and investment.
Zain	
It was suggested that tiered pricing models should be permissible where they reflect the extent to which a	The Authority notes that prioritization for end-users with particularly heavy data traffic needs should be addressed

<p>particular resource is shared by, or dedicated to, an end-user. In addition, it was claimed that the Guidelines do not sufficiently address paid prioritization for end-users with particularly heavy data traffic needs.</p>	<p>in the context of the criteria used for 'specialised services'.</p>
<p>8. Do you disagree with the proposed text on Supervision and Enforcement? If so, please specify and suggest changes.</p>	
<p>Batelco, Samena, Viva, Zain</p> <p>Some respondents considered the Supervision and Enforcement section to be unnecessary, given the non-binding nature of the Guidelines. While other respondents agreed with the proposed text.</p>	<p>The Authority notes that supervision is an essential part of the Guidelines, even though not all the breaches of the Guidelines would lead to enforcement action.</p>
<p>Batelco, Samena</p> <p>The list of information categories that the Authority may request from operators was seen as too extensive and included items that operators would not be in a position to make available.</p>	<p>The Authority notes that an operator would need to be able to provide justification why it might not be in position to provide requested information or documentation in certain circumstances.</p>