



**Decision No. 6 of 2015**  
**Complaint against VIVA under Article 72 of the**  
**Telecommunications Law**  
**Misleading Advertisement**

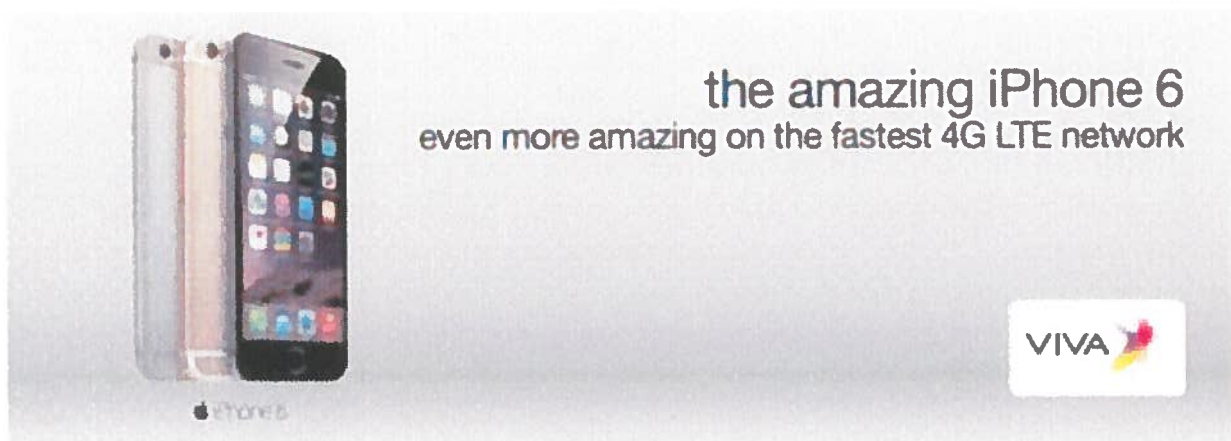
**LAD/1015/147**  
**8 October 2015**



## The Complaint

On 24 December 2014, the Authority is in receipt of a complaint submitted by the complainant (the "Complaint"), alleging that VIVA Bahrain B.S.C. ("VIVA") published an advertisement in the Gulf Daily News Magazine of 23<sup>rd</sup> December 2014 and on VIVA's official website that was providing false and misleading information to consumers. The complainant mentioned in the Complaint that the same advertising might have been published also on other channels.

The advertisement claimed that: **"the amazing iPhone 6 – even more amazing on the fastest 4G LTE network"** (the "Advertisement"). It is reproduced below:



In the Complaint, the complainant maintained that, based on the results of "TRA 2014 Mobile Quality of Service Report" ("QoMS Report"), VIVA is not qualified to claim that it operates the fastest 4G LTE network in the Kingdom of Bahrain. As a consequence, the Advertisement is "false" and, therefore, "misleading of consumers due to the deceptive information provided".

The complainant hence requested the Authority to: (i) investigate the complaint; and (ii) take the appropriate action as a result of the investigation.

## The allegations of the complainant

In the Complaint, the complainant reported the results of the QoMS Report published in the sections referring to the test results for 4G LTE. In particular, the complainant referred to: (i) the Hypertext Transfer Protocol ("HTTP") results; (ii) the web surfing results; and (iii) the streaming results.



**(i) The HTTP Results**

HTTP is an application protocol for distributed, collaborative, hypermedia information systems. Based on the QoMS Report, the measurements carried-out on each network consists of:

- HTTP DL: the time for downloading a file through HTTP;
- HTTP UL: the time for uploading a file through HTTP.

In the Complaint, the complainant only refers to the HTTP DL results for Batelco, VIVA and ZAIN and reports the following figures:

HTTP Test	Under 4G HANDSET	Mobile Operator		
		Batelco	Viva	Zain
HTTP DL	Max throughput (kbps)	81,120	78,077	99,234

The complainant pointed out that, based on the reported information, the complainant “has achieved the maximum throughput download speed of 99,234 Kbps among other mobile operators in the kingdom”, whereas VIVA only reached a maximum throughput download speed of 78,007. Therefore, “VIVA cannot claim the highest speed, based on the report results”.

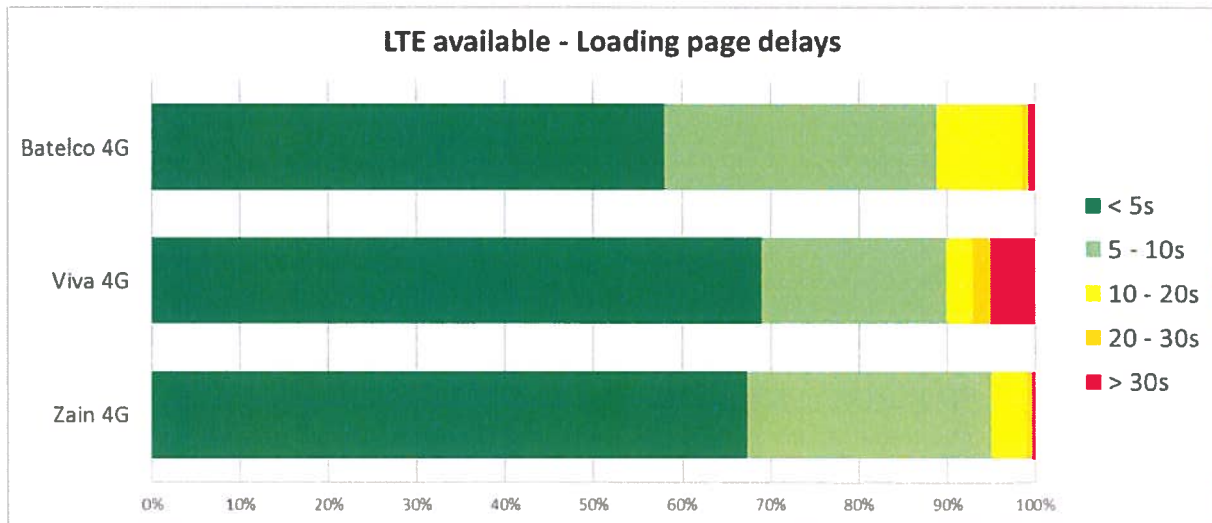
**(ii) Web Surfing Results**

Web surfing assesses the customer experience for web browsing by reference to the download of one of the 10 most visited public homepages as well as one page for each operator. The test takes note of completion time and errors on the page, if any, with a 30 seconds timeout.

In the Complaint, the complainant referred to the web surfing results comprised in the QoMS Report for Batelco, VIVA and Zain reported below:

Web Surfing Test	Batelco	Viva	Zain
Average download time (s)	8.8	7.6	4.8
Min download time (s)	2.3	1.6	0.9

The complainant also referred to the delays in loading pages on the LTE networks of the three operators reported by the QoMS Report, as summarized in the graph below:



The complainant pointed out that, based on the reported information, the complainant has: (i) the lowest average download time (amounting to 4.8 seconds); and (ii) the lowest minimum download time (amounting to 0.9 seconds) among the three operators. On the other hand, VIVA reached only an average download time of 7.6 seconds and a minimum download time of 1.6 seconds. As a consequence, according to the complainant, “VIVA cannot claim the fastest 4G LTE network in terms of web surfing experience in the Kingdom”.

### (iii) Streaming Results

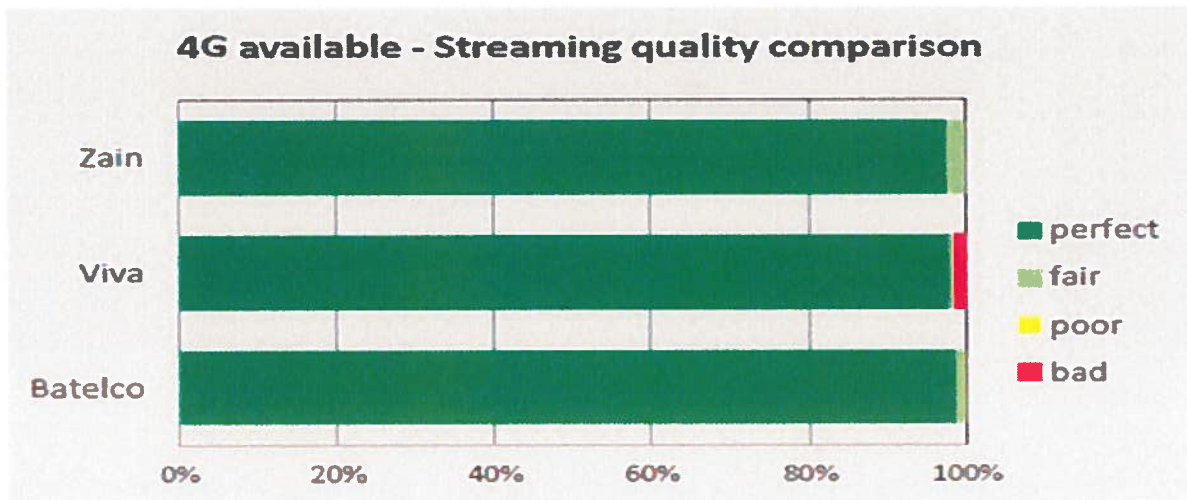
Streaming is a method for transferring data so that it can be processed as a steady and continuous feed. Streaming results are compared to assess the customer experience for video streaming.

Based on the QoMS “[s]treaming measurements have been carried out by assessing the quality of selected YouTube videos with smartphones in order to represent closely as possible the customer experience. The evaluation started when the video was launched and lasted 2 minutes. Each video and audio defect was categorized and its duration was collected in order to determine if the viewing was perfect, fair, poor or bad. Once the sequence had been completed, a grade was given to describe 3 global appraisal criteria (sharpness, audio/video synchronization and sound quality)”. (1)

<sup>1</sup> See page 24 of the QoMS Report.



According to the complainant, the relevant streaming results are summarized in the table below:



The complainant emphasized that, based on the results of the QoMS Report, Batelco and ZAIN were performing almost equally in terms of best streaming services in the Kingdom of Bahrain, with no reported bad results, as opposed to VIVA, which did report bad results. According to the complainant, therefore, “VIVA cannot claim to be the fastest 4G LTE network in terms of streaming services”.

### The Reply of VIVA

With a letter dated 28<sup>th</sup> May 2015, the Authority informed VIVA of the Complaint and requested to provide comments on the complainant's submissions pursuant to Article 53 of the Telecommunications Law. The Complaint was attached to the Authority's letter.

On 11<sup>th</sup> June 2015, VIVA replied to the Authority's request (“Reply”) by submitting a non-confidential version of its response.

In its Reply VIVA claimed that, based on the QoMS Report, it “scores the highest as compared to Batelco and Zain” in the following performance indicators: (i) HTTP DL; (ii) Web results; and (iii) streaming KPIs.



(i) HTTP DL:

HTTP DL			
4G Handset Test	Batelco	VIVA	Zain
<b>Rate of successful data transfers</b>	98.0%	100.0%	99.7%
<b>Statistical accuracy</b>	1.1%	0.0%	0.4%
<b>Average throughput (Kbps)</b>	30,595	35,025	26,117
<b>Max throughput (kbps)</b>	81,120	78,077	99,234
<b>Number of tests</b>	635	720	695

VIVA, pointed out that, *“based on the above HTTP-DL results, [...] it’s more fair to consumers to define the ‘fastest 4G LTE network in Bahrain’ based on the “Average throughput” experienced by customers, in which VIVA scores the highest as compared to Batelco and Zain”.*



(ii) **Web Results:**

Web Results			
4G Handset Test	Batelco	VIVA	Zain
Rate of successful data transfers	99.4%	95.2%	99.7%
Statistical accuracy	0.3%	0.7%	0.2%
Average download time (s)	5.5	4.6	4.8
Min download time (s)	1.3	1.2	0.9
Number of tests	3,162	3,294	2,686

VIVA pointed out that, "based on the actual 4G results shown above, VIVA has the best "Average download time" results as compared to Batelco and Zain". VIVA furthermore pointed that they "believe that the KPI used by VIVA to justify its Advertisement is fairer and defines better the customers experience with regard to web surfing experience over time".





(iii) **Streaming KPIs:**

Streaming KPIs			
4G Handset Test	Batelco	VIVA	Zain
<b>LHV: % of videos set-up and held for 2 min</b>	97.0%	98.0%	97.0%
<b>VPQR: % of videos set-up and held for 2 min, and marked 4</b>	96%	96%	95%
<b>VCQR: % of videos set-up and held for 2 min, and marked 3 OR4</b>	97%	98%	97%
<b>Average delay</b>	3	3	3
<b>Minimum delay</b>	1	1	1

VIVA pointed out that, based on the table above, the complainant claims whereby ZAIN and Batelco were “almost equally providing the best streaming services in the kingdom” is “highly inaccurate”. According to VIVA, “the performance of the streaming services should be referred to the respective overall performance indicator as summarized above in the [QoMS Report] where VIVA scores the highest results for LHV, VPQR and VCQR in comparison to Zain and Batelco”.

As a result, VIVA concludes that “the HTTP DL, Web surfing and streaming results indicate that VIVA has the fattest 4G LTE network with regard to the respective average network performance KPIs as they reflect the overall consistency of customer experience in using VIVA’s 4G LTE network”.

In light of the above arguments, VIVA refused the complainant’s claims, as it did not consider that the Advertisement was either false or misleading to consumers.





## Legal analysis

- **The alleged “false” nature of the Advertisement**

From the outset, it is worth noting that the reference made by the complainant to the circumstance that the Advertisement “*might [have been] published in other channels as well*”, beside the Gulf Daily News Magazine and VIVA’s official website, is extremely vague and unsubstantiated, considering the lack of supporting evidence. Therefore, the Authority cannot rely on such simple allegation to appreciate the materiality of the complainant’s alleged wrongdoing.

The Authority takes this opportunity to emphasize once again that, in principle, the burden to prove that the claim is grounded falls on the claimant, and that such burden, in general, cannot be considered discharged by virtue of merely a vague and unsubstantiated reference to potential facts of which no evidence is provided.

Having said this, the Authority has investigated the Complaint solely by reference to the circumstance of which evidence was provided by the complainant, *i.e.*, that the Advertisement was published on the Gulf Daily News Magazine and VIVA’s official website.

In order to establish whether or not the Advertisement, as published in the Gulf Daily News Magazine and in VIVA’s official website, can be regarded to as “*false*”, the Authority will assess the Advertisement against the QoMS Report <sup>(2)</sup>, as suggested by both the complainant and VIVA.

The QoMS Report does indeed provide guidance as to the performances of operators and can be regarded to as a parameter to assess whether the Advertisement should be deemed “*false*”.

First, the Authority finds it worthy to point out that the audit of the quality of service conducted in the mentioned report “*is a snapshot of the observed quality and performance offered by Mobile Operators at the time of the measurements campaign*”<sup>(3)</sup>.

In this respect, it is noteworthy that the tests reflected in the Mobile Quality of Service Report were run only during a short period of time, namely from 2<sup>nd</sup> June to 2<sup>nd</sup> July 2014 inclusive. The measurements were carried-out between 9:00am and 10:00pm every day except Saturday. <sup>(4)</sup> As a result, the outcomes of the audit can only be considered applicable to the relevant period of time and cannot be extended any further. As the Advertisement to which the complainant refers

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<sup>2</sup> Available at: <http://tra.bh/en/media/quality-of-service>.

<sup>3</sup> See page 4 of the QoMS Report.

<sup>4</sup> See page 6 of the QoMS Report.



was published on 23<sup>rd</sup> December 2014, the outcomes reflected in the QoMS Report cannot be regarded as covering the Advertisement as well.

Second, it is worth noting that the QoMS Report *“is a study and it is a non-binding document. It has no legal effect. The Report does not represent an official position of the TRA, but it is intended to stimulate debate in the part of stakeholders and public. It does not prejudice the form or content of any future proposal by the TRA”* <sup>(5)</sup>. Licensed Operators should refrain from relying on this document beyond what has been clarified by the Authority.

Finally, the Authority points out that, even if the information submitted by VIVA covered the Advertisement in terms of timing and was binding in nature, it would not be relevant for the purpose of assessing whether VIVA 4G LTE network is the fastest one. Indeed, the information provided by VIVA refers to *“the overall consistency of customer experience in using VIVA’s 4G LTE network”*, rather than to the speed of VIVA’s network. As such, the information provided by VIVA is not relevant to confirm that the claim put forward in the Advertisement is true.

With respect to the information provided by the complainant in the Complaint in relation to the “Web surfing results”, the Authority notes as follows:

While the figures relating to the Web surfing test concerning the complainant refer to the test performed on the complainant’s 4G network, the figures relating to the same test concerning Batelco and VIVA actually refer to their respective 3G networks. Therefore, these figures are not comparable with each other for the purpose of establishing whether the complainant performed better or worse than Batelco or VIVA and do not allow to draw any conclusions in this regard.

Web Surfing Test	Batelco <sup>(6)</sup>	Viva <sup>(7)</sup>	Zain <sup>(8)</sup>
Average download time (s)	8.8	7.6	4.8
Min download time (s)	2.3	1.6	0.9

<sup>5</sup> See at page 2 of the QoMS Report.

<sup>6</sup> See at Page 32 of the QoMS Report.

<sup>7</sup> See at Page 39 of the QoMS Report.

<sup>8</sup> See at Page 48 of the QoMS Report.



Whether the reference was made by accident or on purpose, this inaccuracy leads to question the credibility of the allegations contained in the Complaint.

The Authority takes this opportunity to once again urge the parties involved in any case which is referred to the Authority to ensure that their submissions are clear, complete and that they include the appropriate references to the sources where the parties have obtained their information from. Where the parties are quoting documents, whether drafted by the Authority or by any other entity, they must clearly indicate not only where this document is available, but also the exact page(s) where the quoted information is reported.

Having considered this, the Authority does not believe that the QoMS Report allows VIVA to claim that it owns the fastest 4G network in the Kingdom in absolute terms, as the Advertisement suggests.

- **The alleged misleading nature of the Advertisement**

According to Article 60(a) of the Consumer Protection Guidelines published on 29 December 2011, titled "Unfair Trade Practices", "*unfair trade practices include:*

- a) *conduct that is misleading and deceptive or is likely to mislead or deceive, including but not limited to:*
  - (i) *misleading Consumers through false or deceptive advertising;*
  - (ii) *misleading Consumers by giving false or deceptive information or failing to give important information in a clear manner."*

A misleading or deceptive conduct implies a misrepresentation of the product or service in a way capable of affecting the purchasing decision of a significant portion of targeted audience. Such misrepresentation may result from providing false information or information that is otherwise capable of persuading the targeted audience that the product or service at stake presents characteristics that, in reality, it lacks or that lacks characteristics that, in reality, it presents. Such misrepresentation may also result from a partial disclosure of the information relating to the product or service at stake, when the information omitted is relevant to allow a significant portion of the targeted audience to reach a better understanding of the characteristics of the product or service to which it refers and to adopt purchasing decisions accordingly.

Misleading advertisement qualifies as an unfair commercial practice in that it is capable of negatively affecting competition among providers by "stealing away" consumers not based on the actual merits of the product or service, but rather on the suggestion that the advertising has produced. While the Authority concedes that it is in the very nature of advertising to influence the



purchasing decisions of consumers, it also wishes to highlight that advertising should not do so by providing information capable of misrepresenting the product or service advertised.

The Authority considers that the Advertisement, by claiming that "*the amazing iPhone 6 even more amazing on the fastest network*", is capable of leading a significant portion of consumers to believe that VIVA's 4G LTE network performs better than competitors' network in absolute terms as regards 4G LTE network speed. Based on the analysis carried out in the previous section, however, such conclusion is, to the very least, not accurate and unsubstantiated with respect to the applicable measurements. As a result, the Advertisement has to be regarded as an unfair trade practice for the purposes of the Authority's Consumer Protection Guidelines.

### **Conclusions**

After reviewing the Complaint, the QoMS Report and VIVA's Reply, the Authority believes that the Complaint is justified and that the Advertisement does indeed fall within the scope of the Unfair Trade Practices as set out in the 2011 Consumer Protection Guidelines.

The Authority believes that VIVA's claim that it operates the fastest network in the Kingdom of Bahrain is not supported or substantiated in the QoMS Report. Neither did VIVA explain in its Advertisement on which basis it is claiming to be running the fastest network in the Kingdom of Bahrain. In other words, VIVA failed to provide clear, complete and accurate information to customers. Accordingly, the Advertisement cannot be considered trustworthy. As such, the Authority concludes that the Advertisement in question does fall within the definition of unfair trade practices.

The Authority wishes to remind the parties that in Decision No. 4 of 2015 – Complaint against Batelco under Article 72 of the Telecommunication Law <sup>(9)</sup> some guidance was provided as to how advertisements should be amended in order to avoid misleading effects. In particular, Decision No. 4 emphasized that the claims must provide clear indication as to the criteria on which the claims are based (including the applicable timeframe) and as to the sources where the claims can be verified against the indicated criteria by the general public. In order to be effective, these clarifications must be clearly visible on the advertisements and must be written with a wording that is understandable to consumers in general.

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<sup>9</sup> See at <http://www.tra.org.bh/en/legal-instruments/determinations-decisions/>.



**Decision**

In light of the above, the Authority requires VIVA to either withdraw the Advertisement from all media, or to amend it according to the guidance provided by the Authority in previous decisions and mentioned above within five working days from date of this letter.

VIVA is requested to provide promptly the Authority with written confirmation of the withdrawal/amendment.

The Authority reserves all its rights in respect of the matter including its right to take action pursuant to Article 35 of the Telecommunications Law.

Yours faithfully,

**Mohammed Bubashait**  
General Director  
8 October 2015