



Decision No. 5 of 2015
2Connect's Dispute against Batelco -
Level of Bank Guarantee

LAD/0815/135
13 September 2015

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13 September 2015



The Dispute

The Authority has been asked to settle a dispute brought by 2Connect W.L.L. ("**2Connect**") against Bahrain Telecommunications Company B.S.C. ("**Batelco**") through submissions filed on 4th February 2015 ("**Dispute**").

While submitting the Dispute, 2Connect made reference to the bank guarantee that must be raised under Schedule 9 (Supply Terms) ("**Supply Terms**") accompanying current Batelco's Reference Offer against the wholesale services purchased from Batelco ("**Bank Guarantee**"). 2Connect alleged that Batelco requested that the Bank Guarantee be set at a level determined in a way that is not compliant with Clause 20.9 of the Supply Terms, also in light of the interpretation provided by the Authority in its decision no. 1 of 2014 ("**Decision**").

2Connect therefore requested the Authority to set the appropriate level of the Bank Guarantee.

Taking into account that the Authority was informed that the parties could not reach an acceptable conclusion of the Dispute informally on 15 April 2015, the Authority dealt with the Dispute in a formal manner under the Dispute Resolution Guidelines.

The Reply of Batelco and the Comments of 2Connect

By virtue of a letter dated 18th June 2015, the Authority informed Batelco of the Dispute and requested to provide comments on 2Connect's submissions pursuant to Article 53 of the Telecommunications Law. The submissions filed by 2Connect on 4th February 2015 were attached to the Authority's letter. On 7th July 2015, Batelco replied to the Authority's request ("**Reply**").

The Authority invited 2Connect to comment on the Reply and received 2Connect's submission on 2nd August 2015 ("**Comments**").

On 26th August 2015, the Authority invited both parties to provide their comments, if any, on the final draft of this decision by 7th September 2015 in accordance with paragraphs 60 and 61 of the Dispute Resolution Guidelines. Only 2Connect submitted comments on the draft decision.

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Legal analysis

The Allegations and Arguments of the Parties

While submitting the Dispute to the Authority, 2Connect made reference to Clause 20.9 (a) of the Supply Terms, establishing that Batelco may request for a level of security equal to “*the aggregate value of the Charges likely to be payable by the Licensed Operator to Batelco [...] over a three month period of time*”. 2Connect made also reference to the Bank Guarantee expired on 31st January 2015 (“**Expired Bank Guarantee**”), which was set to BD 165,000 by the Decision as a result of the application of the quantification rule provided for by Clause 20.9 (a)(i) of the Supply Terms (the so-called “three month-rule”).

2Connect claimed that Batelco was demanding a Bank Guarantee of BD 165,000 (*i.e.*, the same amount established by the Decision for the Expired Bank Guarantee) although the application of the three-month rule led, according to 2Connect, to an amount of BD 99,000.

In this regard, 2Connect provided the invoices issued by Batelco to be considered for the calculation pursuant to the three-month rule of both the Expired Bank Guarantee and the Bank Guarantee. The amounts reflected in the said invoices are summarized below in Tables 1 and 2 respectively:

Table 1: amounts of the invoices relevant to the Expired Bank Guarantee

Period (Month)	Invoice Amount (BD)	Round up (BD)
October 2013	37,985.78	40,000
November 2013	40,092.6	40,000
December 2013	85,508.92	85,000
Total (for last three months)		165,000



Table 2: amounts of the invoices relevant to the Bank Guarantee

Period (Month)	Invoice Amount (BD)	Round up (BD)
October 2014	28,283.71	30,000
November 2014	36,878.94	37,000
December 2014	31,743.679	32,000
Total (for last three months)		99,000

2Connect pointed out that the invoices issued for November and December 2014 had been sent just recently, and that the invoice for December 2014 "contains supplementary backdated charges".

In light of these considerations, 2Connect proposed to issue:

- a Bank Guarantee of BD 99,000 for a year, calculated by reference to the relevant invoices;
- a Bank Guarantee of BD 66,000 for two months, renewable, which 2Connect would keep pending the Dispute and which 2Connect may extend, adjust or cancel depending on the outcome of the Dispute.

In the Reply ([Annex 1](#)), Batelco first referred to previous correspondence with 2Connect to point out that 2 Connect and Batelco "agreed earlier this year [...] for the level of [Bank guarantee] to be set at BD 99,000". Batelco also clarified that it "reserved [the] right to review this amount, in line with [the Decision] and the terms of the Reference Offer, following the resolution of other pending disputes".

Second, Batelco recalled the conclusions reached by the Decision in respect of the level of Bank Guarantee, and in particular to the so called "three month-rule" set out in Clause 20.9(a) of the Supply Terms. In so doing, Batelco pointed out that, pursuant to the Decision, the level of Bank Guarantee can be determined also by reference to any unpaid amounts from earlier months, provided that they are undisputed.

Finally, Batelco referred to additional elements capable of affecting the quantification of the Bank Guarantee, as set out in the Supply Terms, including:

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- *“other unpaid undisputed invoices that remain outstanding;*
- *other future orders in addition to the current level of services in the pipeline likely to be billable in the next three months and that these plus the current run rate are 25% higher (a variation on the three month rule); and*
- *other elements referred to in the calculation – value of Batelco equipment housed on 2Connect premises or on another property accessible by 2Connect”.*

In the Comments (Annexes 2), 2Connect further pointed out that the information and arguments set forth in the Reply had not been previously communicated to 2Connect. While confirming that the correspondence between the parties hinted to the possibility of a reduction of the bank guarantee amount to BD 99,000 *“on the understanding that Batelco may choose to review the amount following the resolution of other pending disputes between the parties”*, 2Connect claimed that the position of Batelco in this regard is not clear and that the implications thereof are not in line with either the Supply Terms or the Decision.

In particular, according to 2Connect, Batelco's approach would entail a potential change of the level of the bank guarantee depending on the outcomes of separate disputes, which is an option not provided for by Clause 20.9 of the Supply Terms when clarifying how the security must be calculated. In this regard, 2Connect emphasized that its disagreement with Batelco as to the approach suggested by this latter had been made clear in the mentioned correspondence.

2Connect also emphasized that, pursuant to the Decision, among the additional possible elements capable of affecting the quantification of the Bank Guarantee, unpaid invoices are relevant only to the extent that they are undisputed.

2Connect hence clarified that no agreement had been reached between the parties as regards the way forward in the case at stake and that, as a consequence, it insisted in asking the Authority to arbitrate the dispute.

Finally, while commenting the draft of this decision pursuant to Paragraphs 60 and 61 of the Dispute Resolution Guidelines, 2Connect stated that a Bank Guarantee amounting to BD 99,000 and due to expire in February 2016 had already been provisionally issued. The Authority has not received any evidence of this guarantee and neither has it confirmed the veracity of the claim.



The Conclusions of the Authority

To reach its conclusions, the Authority has taken into account the submissions received from the parties in relation to the terms of Batelco's Reference Offer and the draft decision, including but not limited to the Supply Terms. The Authority has also referred to the Decision, while taking in the utmost account the relevant provisions of the Telecommunications Law of the Kingdom of Bahrain.

The Level of the Bank Guarantee

Clause 20.9 (a) of the Supply Terms establish that Batelco may request for a level of security equal to "*the aggregate value of the Charges likely to be payable by the Licensed Operator to Batelco [...] over a three month period of time*". In the Decision, the Authority clarified that the "aggregate value" referred to in the Supply Terms may include any backlog that is due and payable over the coming three months, but limited to clearly undisputed amounts of issued invoices. The Authority hereby refers to the Decision for the underlying reasoning of this conclusion.

The Authority believes that, in line with Clause 20.9 of the Supply Terms as interpreted pursuant to the Decision, while setting the amount of the Bank Guarantee it is appropriate to take into account the last three invoices submitted, namely October 2014 up to and including December 2014. The total amount payable for those three months is BD 99,000 (rounded up).

The Authority considers that, even though the invoices referring to November and December 2014 had not been fully reviewed by 2Connect at the time when the Dispute was submitted, the circumstance that the Authority is not aware of the invoices being disputed implies that, as things stand today, both of them are payable and hence have to be included in the calculation set forth in Clause 20.9 of the Supply Terms.

Scope for Adjusting the Level of the Bank Guarantee

As regards Batelco's argument that they have the right to adjust the Bank Guarantee up further by reference to additional elements capable of affecting the application of the three month-rule, the Authority takes this opportunity to emphasize that the criteria for establishing the level of the Bank Guarantee are set by Clause 20.9 (a) and (b) of the Supply Terms and that it is not up for the parties to determine such level in a discretionary way, whether by reference to other potential pending disputes or by any other means.

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Neither is it up for the parties to determine how often the level of the Bank Guarantee can be reviewed, considering that, pursuant to Clause 20.9 (c), a recalculation of the amount established by reference to the above-mentioned criteria is only possible after 9 months.

As a result, the Authority is not confident that Batelco is allowed "to review the amount [of the Bank Guarantee] following the resolution of other pending disputes between the parties", therefore the Authority rejects their claims

Finally, the correspondence between the parties does not seem to confirm Batelco's view that 2Connect and Batelco have agreed on the way forward in this case. As a result, the Authority will accept to exercise its powers to arbitrate the Dispute.

Decision

In light of the above, the Authority determines that the amount of the Bank Guarantee should be set at BD 99,000, resulting from the sum of the last relevant three invoices issued by Batelco rounded up (BD 30,000 + BD 37,000 + BD 32,000).¹

To the extent that 2Connect has not provided a Bank Guarantee to Batelco to the amount of BD 99,000, then in accordance with Clause 20.5 of the Supply Terms, a Bank Guarantee amounting to BD 99,000 must be provided by 2Connect to Batelco within 5 working days from date of this decision.

In addition, pursuant to Clause 20.9 (c) of the supply terms, the Authority determines that Batelco cannot review the Bank Guarantee before 9 months after this decision is issued.

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
13th September 2015

¹ Table No.2

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13 September 2015

Annex 1

Ahmed Ameen

From: Nadia Alawadhi <Nadia.Alawadhi@btc.com.bh>
Sent: Tuesday, July 7, 2015 8:59 AM
To: Ahmed Ameen
Cc: LAD; James Ibbetson; Mohamed Abdulla Abdullatif
Subject: RE: 2Connect Dispute : TRA decision on level of bank guarantee
Attachments: RE 2Connect Bank Guarantee Renewal

GCL/192/15

Dear Ahmed,

Apologies for the delay in response, I was out of the office on emergency leave for a few days.

Please be advised that this matter has been addressed by Batelco with 2Connect on a number of occasions and we have agreed earlier this year (18 February 2015 – email attached) for the level of bank guarantee to be set at BD 99,000.

We have also reserved our rights to review this amount, in line with the TRA's Decision No.1 of 2014 (dated 23 January 2014) and the terms of the Reference Offer, following the resolution of other pending disputes.

We note that the TRA's Decision in respect of the level of bank guarantee did refer to the 3 month rule in relation to 3 months of invoices but also accepted that this could include any **unpaid backlog** from earlier months provided these were **undisputed** (Decision, page 5 para 3):

*“ On the basis of the foregoing, the Authority does not accept Batelco's argument that all outstanding amounts should be considered for the purposes of calculating the amount of security. **The Authority does however accept that undisputed outstanding amounts may be included in the quantification exercise.**”*

The Reference Offer supply terms with 2Connect also refer to other possible elements to review the BG.

Taking both the TRA Decision and the supply terms together, we note that the BG could be adjusted **up** further if there are:

- **other** unpaid undisputed invoices that remain outstanding
- other future orders in addition to the current level of services in the pipeline likely to be billable in the next 3 months and that these plus the current run rate are **25% higher (a variation on the 3 month rule)**
- other elements referred to in the calculation - value of Batelco **equipment** housed on 2Connect premises or on another property accessible by 2Connect

We trust that the information provided above is of assistance to the TRA. Batelco reserves its legal rights to make additional representations, should the TRA be minded to take further steps in relation to this matter.

Kind regards,

Nadia Al-Awadhi
Legal Counsel, Regulatory
Batelco Group

Tel - +973 17 884194
Mob - +973 39927630

Ahmed Ameen

From: Mahmood Janahi <Mahmood.Janahi@btc.com.bh>
Sent: Wednesday, February 18, 2015 3:45 PM
Subject: RE: 2Connect Bank Guarantee Renewal

Dear Elham,

Further to your letter dated 4 February 2015 (ref 2C/BTC/0439) and 2Connect's recent renewal of the existing bank guarantee, Batelco, as a gesture of good faith, is willing to accept 2Connect's proposed bank guarantee level of BD 99,000 on the understanding that Batelco may choose to review the amount following the resolution of other pending disputes between the parties.

Regards,

Mahmood Janahi

From: Mahmood Janahi
Sent: Thursday, February 12, 2015 9:27 AM
To: 'Elham Al Mosawi'
Cc: 'Liam Hunt'; Ali Mustafa
Subject: RE: 2Connect Bank Guarantee Renewal

Thank you Elham for the below email

Batelco is glad with the approach 2connect has taken to solve this matter and hopefully both companies can find more common grounds to meet and solve other matters in hand in the same manner

Kindly ask you messenger to contact me once he reaches Batelco compound

Regards,

Mahmood Janahi

From: Elham Al Mosawi [<mailto:elham.almosawi@2connectbahrain.com>]
Sent: Thursday, February 12, 2015 9:17 AM
To: Mahmood Janahi
Cc: 'Liam Hunt'; Ali Mustafa
Subject: RE: 2Connect Bank Guarantee Renewal

Hello Mahmood,

Kindly find attached copies of the two Bank Guarantees raised by 2Connect as explained in our dated 4 Feb 2015.

Original copies shall be hand delivered to your offices,

Regards,
Elham

From: Elham Al Mosawi [<mailto:elham.almosawi@2connectbahrain.com>]
Sent: Wednesday, February 04, 2015 17:37

To: 'Mahmood Janahi'
Cc: 'Liam Hunt'; 'Ali Mustafa'
Subject: 2Connect Bank Guarantee Renewal

Hello Mahmood,

Kindly find attached our response to your letter dated 29 Jan 2015, which is carrying reference WS/01/2015. The same has also just been faxed to 17611791.

Regards,
Elham

Elham Al Mosawi
Assistant Manager, Operations

2Connect WLL

12th Floor, NBB Tower
Government Avenue
Manama, Kingdom of Bahrain
elham.almosawi@2connectbahrain.com
Tel: +973 1650 0125
Fax: +973 1650 0109
Mob: +973 3333 2286



Annex 2



2 Aug 2015

Jean Pierre Scerri
Acting director of Legal Affairs
Telecommunications Regulatory Authority
Kingdom of Bahrain

Ref: 2C/TRA/0486
By Email to: jpierre@tra.org.bh and lad@tra.org.bh

Dear Jean,

Subject: LAD 643 - 2Connect-Dispute: TRA Decision on level of Bank Guarantees

With reference to your letter dated 14 July 2015, and carrying reference LAD/0715/107, 2Connect provides hereafter its cross-response to the email from Batelco dated 7 July 2015 and carrying reference GCL/192/15 ("Batelco's response").

2Connect wishes to confirm that the information and arguments indicated in Batelco's response have not been communicated to 2Connect previously and that the only information communicated to 2Connect had been that Batelco accepted reducing the Bank Guarantee amount to BD 99,000 "on the understanding that Batelco may choose to review the amount following the resolution of other pending disputes between the parties" on their email referenced in Batelco's response, and also attached herewith as Document-01.

The wording used by Batelco in Document-01 is not clear and does not translate to the details in Batelco's response to the TRA. In fact, the wording suggests the below points, all of which are not in line with the provisions of the reference offer or previous decision issued by the TRA:

[REDACTED]


As such, Batelco does not seem to differentiate between disputed and undisputed amounts in their claims for payments which may lead into yet another dispute on the level of Bank Guarantees based on Billing disputes disagreements.

2Connect has been very clear in communicating its disagreement with Batelco to their wording in Document-01 as indicated in the Email communication to Batelco on March 5th and July 6th, attached herewith as Document-02 and Document-03 respectively.



For the avoidance of doubt, 2Connect has no issues with following the provisions of the reference offer in setting the level of the Bank Guarantees. However, both parties have not been able to come to an agreement on the way forward to enforce the terms of the Reference Offer, nor the Authority's previous decision on the matter due to Batelco's unilaterally imposed conditions. As such, 2Connect is left with no choice but to refer to the TRA for resolution.

Regards,

 2, Aug, 2015

Elham Al Mosawi

Assistant Manager, Operations

2Connect W.L.L.

توكنكت ذ.م.م. 2Connect W.L.L.

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t +973 1650 0100 f +973 1650 0109 e info@2connectbahrain.com w 2connectbahrain.com

Document 01

Elham Almosawi

From: Mahmood Janahi <Mahmood.Janahi@btc.com.bh>
Sent: Wednesday, February 18, 2015 15:45
Subject: RE: 2Connect Bank Guarantee Renewal

Dear Elham,

Further to your letter dated 4 February 2015 (ref 2C/BTC/0439) and 2Connect's recent renewal of the existing bank guarantee, Batelco, as a gesture of good faith, is willing to accept 2Connect's proposed bank guarantee level of BD 99,000 on the understanding that Batelco may choose to review the amount following the resolution of other pending disputes between the parties.

Regards,

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elham.almosawi@2connectbahrain.com
Tel: +973 1650 0125
Fax: +973 1650 0109
Mob: +973 3333 2286



Document 02

Elham Almosawi

From: Elham Al Mosawi <elham.amosawi@2connectbahrain.com>
Sent: Thursday, March 05, 2015 11:58
To: 'Mahmood Janahi'
Cc: 'Liam Hunt'; 'Ali Mustafa'; 'Nadia Alawadhi'; 'James Ibbetson'
Subject: RE: 2Connect Bank Guarantee Renewal

Dear Mahmood,

Thank you for accepting the Bank Guarantee Level proposed by 2Connect. However, we would like to highlight that the level we proposed is based on the terms of the Reference Offer, which are also the same terms referenced by TRA in their reasoning for Decision No. 1 of 2014. The aggregate value of the charges likely to be payable by 2Connect to Batelco over a three months period is the determining factor in setting the level of Bank Guarantees.

Therefore, unfortunately, 2Connect cannot agree to Batelco's condition as it is not in conformity with the Reference Offer, and would still like to peruse the dispute resolution with the TRA.

However, should Batelco confirm that they will continue to consider the level of the BG on the basis of the aforementioned terms, 2Connect shall agree to the proposal and withdraw the dispute submitted to the TRA which will no longer be required.

Regards,
Elham

From: Mahmood Janahi [mailto:Mahmood.Janahi@btc.com.bh]
Sent: Wednesday, February 18, 2015 15:45
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Cc: 'Liam Hunt'; Ali Mustafa; Nadia Alawadhi; James Ibbetson
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Regards,

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Regards,
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Mob: +973 3333 2286



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Document 03

Elham Almosawi

From: Elham Almosawi
Sent: Monday, July 06, 2015 13:59
To: 'Mahmood Janahi'
Subject: RE: 2Connect Bank Guarantee Renewal

Hello Mahmood,

As indicated in 2Connect's email on March 5th below, 2Connect has rejected Batelco's condition to reduce the amount subject to review; pending the resolve of ongoing disputes. As communicated earlier, 2Connect does not agree with Batelco's condition to review the amount upon resolution of disputes as that condition is not in line with the provisions of the Reference Offer.

This case has been referred to the TRA in order to issue a decision on the matter –the latest correspondence from the TRA on this topic, dated June 18th, reported that Batelco had been invited to comment on 2Connect's non-confidential submission on the subject, surely you would be aware of that?

2Connect's position on the way forward remains as Bank Guarantee levels may be reviewed as per the provisions of the Reference Offer. Therefore, in order to close the matter we would need Batelco's confirmation that the amount of the Bank Guarantee shall be reviewed as per the provisions of the Reference Offer only.

Regards,
Elham

Elham AlMosawi
Assistant Manager, Operations
Operations department
2Connect WLL

12th Floor, NBB Tower
Government Avenue
Manama, Kingdom Of Bahrain
Elham.ALmosawi@2connect.net
Tel: +973 1650 0125
Fax: +973 1650 0109



From: Mahmood Janahi [mailto:Mahmood.Janahi@btc.com.bh]
Sent: Sunday, June 28, 2015 12:16
To: Elham Almosawi
Subject: RE: 2Connect Bank Guarantee Renewal

Dear Elham,

As stated in the below email, Batelco does not require this BG and has accepted to reduce the amount to BD99,000 since Feb 2015.

Please advise the way forward either to release it or wait till it expires

Regards,

Mahmood Janahi

From: Elham Almosawi [<mailto:elham.almosawi@2connect.net>]
Sent: Thursday, June 25, 2015 4:20 PM
To: Mahmood Janahi
Subject: RE: 2Connect Bank Guarantee Renewal

Hello Mahmood,

Seems I've missed your telephone call, I've not been around on my desk much and was out in meetings most of the day yesterday. The Letter you refer to is attached and it was submitted along with the attached Bank Guarantee (now expired) and is with reference to the below email chain.

I hope this clarifies your confusion,

Regards,
Elham

From: Elham Al Mosawi [<mailto:elham.almosawi@2connectbahrain.com>]
Sent: Thursday, March 05, 2015 11:58
To: 'Mahmood Janahi'
Cc: 'Liam Hunt'; 'Ali Mustafa'; 'Nadia Alawadhi'; 'James Ibbetson'
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