

NON- CONFIDENTIAL VERSION

**Determination issued by the
Telecommunications Regulatory Authority to Bahrain
Telecommunications Company B.S.C. and MTC Vodafone
(Bahrain) B.S.C pursuant to section 57(g) of the
Telecommunications Law**

3 January 2005

LAU DC 931

Pursuant to the July Interim Interconnection Agreement (“July IIA”) entered into between the Bahrain Telecommunications Company BSC (“Batelco”) and MTC Vodafone (Bahrain) BSC (“MTC”) (together the “Parties”) on 14 July 2004, the Parties notified the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “TRA”) of an interconnection dispute (the “Dispute”) pursuant to section 57(g) of the Telecommunications Law (the “Law”).

This Determination stands as a complete document, the TRA has looked at each issue individually and as part of the overall dispute between the Parties.

Part A – Background to the Dispute

Legislative and Regulatory Background

1. On 22 April 2003 the TRA granted a mobile services licence to MTC. As Batelco provided services pursuant to section 80 of the Law, the TRA granted various licences to Batelco on 21 June 2003, including a national fixed services licence and a mobile telecommunications license.
2. Section 3(c)(1) of the Law grants the TRA the power to make such regulations, orders and determinations as may be necessary for the implementation of the Law, including determinations in connection with, amongst other things, interconnection, access to the network and its facilities, services tariffs, access to real property and promotion of competition.
3. Section 3(c)(13) of the Law grants the TRA the power to encourage, regulate and facilitate adequate interconnection arrangements, including, where necessary, enforcing the sharing by public telecommunications operators of the benefits of facilities and property.
4. Section 3(c)(17) of the Law grants the TRA the power to examine complaints and resolve disputes between, amongst others, licensees, and the ability to take any necessary and proportionate measures in relation to such matter.
5. Section 57 of the Law deals with, among other things, interconnection and access and provides in section 57(g) that the TRA may resolve disputes where no agreement between public telecommunications operators is reached with respect to interconnection or access disputes within one month of the commencement of negotiations between the parties.

Dispute Background

6. The Parties commenced negotiating interconnection between the MTC mobile network (operated by MTC pursuant to its mobile service licence dated 22 April 2003) and Batelco's fixed and mobile network (operated by Batelco pursuant to its national fixed services licence dated 21 July 2003) in the summer of 2003.
7. On 21 September 2003 the Parties entered into a facilities access agreement and on 14 October 2003 they entered into a link rates agreement. However, the Parties were unable to agree a full interconnection agreement, with the result that the TRA issued an Interim Interconnection Order on 29 November 2003 to facilitate interim interconnection ("Order No. 1"). As the Parties were unable to agree key terms and rates pursuant to Order No. 1, they referred their dispute to the TRA pursuant to section 57 (g) of the Law by letters dated 10 and 11 December 2003. The TRA subsequently made Interim Interconnection Order No. 2 ("Order No. 2") on 15 December 2003 to determine interim interconnection rates and terms.
8. As Order No. 2 expired on 14 March 2004 and the Parties had not reached a full agreement, the TRA issued Interim Interconnection Order No. 3 on 15 March 2004 ("Order No. 3"). This was subsequently updated following the publication by Batelco of its reference offer dated 31 May 2004 by Interim Interconnection Order No. 4 ("Order No. 4") made on 14 June 2004. When Order No. 4 expired on 14 July 2004, the Parties entered into the July IIA.
9. The Parties notified the TRA of the Dispute on 14 July 2004, pursuant to the terms of the July IIA. The TRA responded in a letter to the Parties dated 19 July 2004, which included a Procedure relating to the Dispute to which the Parties agreed. In accordance with the Procedure, the TRA received submissions from the Parties beginning with "Stage 1" submissions dated 2 and 3 August 2004. On 27 October 2004, the TRA issued its Preliminary Analysis.
10. Since the TRA's Preliminary Analysis, the TRA has reviewed Batelco's Response to the Preliminary Analysis of the Telecommunications Regulatory Authority of 24 November as well as MTC's Response of the same day ("Batelco' Response"; "MTC Response", together the "Responses").
11. The TRA has reviewed every point made by the Parties in their respective Responses. However, the TRA has disregarded parts of Batelco's Response, on the basis that Batelco introduces new evidence, which is not permissible under the Procedure. See paragraph 156 onwards below for more details.

12. The TRA has followed the terms of the Procedure at every step. The TRA stated in the Procedure that the “decision may include, but not limited, to the matters listed below”. This was accordingly neither a mandatory nor an exhaustive list.
13. The TRA has determined in this Determination those issues which it has jurisdiction to resolve in accordance with section 57(g) of the Law. Certain items raised by the Parties do not, at this stage, fall within the TRA’s jurisdiction to determine. Regardless of any determination made under section 57(g) or of the terms of any Batelco Reference Interconnection Offer (“RIO”), the Law empowers the TRA to deal with complaints or issues in a number of ways, including but not limited to bringing an action against anti-competitive conduct under the terms of section 65 of the Law. Accordingly, the concern raised that the TRA’s approach in the Preliminary Analysis if implemented, would be “an unlawful refusal to exercise its decision-making powers in these proceedings” is incorrect.
14. This Determination is based upon section 57(g) of the Law and is not part of the dispute resolution procedure of the Batelco Reference Offer (“RO”) as required by the July IIA.
15. It is important for any regulator to be able to safeguard the confidentiality of materials and submissions it receives. The TRA has sought to safeguard such confidentiality in this Determination. Accordingly, there may be confidential points made in the Responses that are not expressly referred to in this Determination, even though they have been considered by the TRA. However, the TRA considers that any such points it took into account did not preclude the Party against which they were made from properly defending its position in this matter, nor was it prejudiced in any way.

Mobile Termination Tariff

16. One of the areas raised by the Dispute concerns the call termination tariff for the termination of calls onto MTC’s network. This part of the Dispute can be addressed by considering the following:
17. What charge should be applied by MTC to Batelco for the termination of calls originating from Batelco’s network (“Tariff for Call Termination”); and
18. Whether charges for call termination between Batelco and MTC should be asymmetric and, if so, the duration of asymmetry (“Charge Symmetry”).

19. In addressing these issues, the TRA notes the inherent interdependency between them. However, the analysis for the purposes of this Determination, as far as is practical, addresses each issue in turn.

Tariff for Call Termination

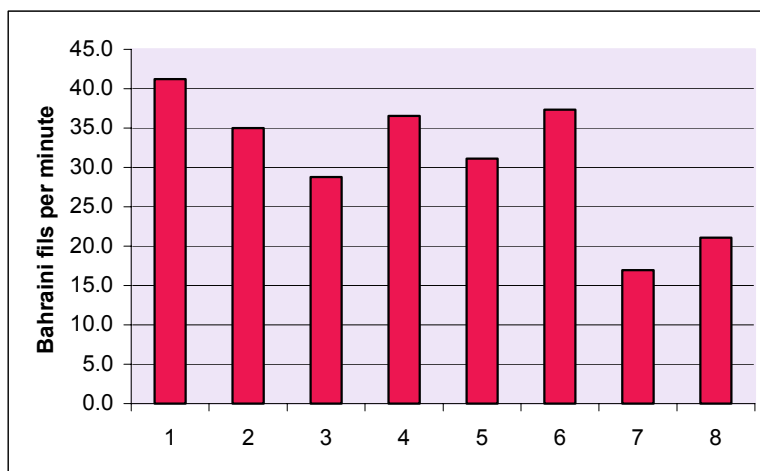
20. The position of the Parties on tariff call termination may be summarised as follows:
- Batelco has proposed¹ a small asymmetry that should be removed in a short period of time (9-12 months) and hence move towards Batelco's termination fees of 12.57 fils per minute. Batelco proposes a rate of **[Redacted - Confidential Information]** fils per minute with a secondary position of **[Redacted - Confidential Information]** fils per minute, if certain arguments are not agreed to by TRA. Batelco made a qualified proposal in which, under certain circumstances, a proposal of **[Redacted - Confidential Information]** fils per minute might be considered acceptable; and
 - whilst MTC would prefer a termination tariff of **[Redacted - Confidential Information]** fils per minute (page 11 Stage 1 submission), MTC is willing (pages 11 and 12 Stage 1 submission) to accept a mobile termination fee of **[Redacted - Confidential Information]** fils per minute with a gradual reduction over a period of five years, provided that a clear effective date for such a tariff is set by the TRA. Thus the termination fee would eventually be the same as Batelco's fee, once MTC has developed its market share and hence has significant volumes of terminating traffic.
21. In determining a mobile termination rate, the TRA has had due regard to economic theory which tends to suggest that mobile termination rates should be set on the basis of the long run average incremental costs ("LRAIC") of an efficient operator and international practice. When the international situation is examined, as set out in the following paragraphs, it is evident that mobile termination rates are often not set at a rate that is directly related to the calculated cost from a cost model (LRAIC or fully allocated historic cost and their many variants). Cost modelling may have been carried out extensively as part of an investigation, but the actual fee may well be more than that produced by cost-calculation and allocation. It is also noted that

¹ See Batelco's submission "Stage 5 materials for the Telecommunications Regulatory Authority" paragraphs 89-107 of the All Parties Version.

even if a cost-based calculation is carried out, there are significant variations in the detailed methodologies and definitions used to determine interconnecting parties' costs, that allow significant variations in the resulting cost-calculation. This could allow for a figure to be set over a wide range while still being classed as "cost oriented."

22. In arriving at its Determination for an appropriate MTC call termination rate the TRA has considered:
- a review of international mobile termination cost models; and
 - the termination rates that MTC should have anticipated.
23. Figure 1 below provides the results of several GSM call termination cost models which have been provided to the TRA by Ovum Limited ("Ovum") in its capacity as an adviser to the TRA. Ovum has consented to the TRA including this information in this Determination but the specific models have not been identified in order to retain commercial confidentiality. The results range from 17 to 36 fils per minute, with an average of 31 fils per minute. It is important to note that the cost levels, as shown in Figure 1, are not necessarily the same as the termination rates.

Figure 1: Results of regulatory cost models for the mobile termination service



Note: Specific cost models have not been identified in order to retain commercial confidentiality of the supplier of this information

-
24. In the context of the recently liberalised market in Bahrain, the TRA has previously provided advice to prospective applicants for the second GSM licence (which was subsequently granted to MTC)

regarding the anticipated level of interconnection rates. In particular, the TRA stated that:

“Benchmark rates indicated here should only be regarded as guidance, while the TRA undertakes its own analysis. The current lowest GSM retail call rate of 16 fils/min and the current fixed to mobile rate of 14 fils/min provide an indication of the upper boundary of any interconnect rates that might apply. The mobile termination rates are expected to be lower than this, and in the range of 10 – 16 fils/min. Fixed termination rates are expected to be in the range of 3 – 6 fils/min.”²

25. The TRA’s indicative rates set out above were based on a review of, amongst other things, Batelco’s relevant cost information available at the time. Subsequent financial information obtained from Batelco continues to support these indicative termination rates. In particular, the TRA approved mobile termination rate in Batelco’s RIO dated 31 May 2004 supports this position.
26. The TRA has considered the points made in the Responses. Although Batelco’s proposal might have been a “contingent proposal”, in terms of the actual rate, the TRA is satisfied that **[Redacted - Confidential Information]** fils per minute represents an appropriate rate. This rate is still below the rate being sought by MTC and significantly below the 31 fils per minute average for the cost of termination as modelled in other countries and calculated as a benchmark by Ovum.
27. The **[Redacted - Confidential Information]** fils per minute rate is also within the range of mobile termination costs in other markets as mentioned at paragraph 23 above. See further paragraph 36 onwards below for an explanation of the reasoning behind this conclusion.

Charge Symmetry

28. The position of the Parties on charge symmetry may be summarised as follows:
 - Batelco contends (point 100, third bullet, of the All Parties Version, Stage 5 submission) that asymmetry between Batelco and MTC must be small and must have a mechanism for the removal of asymmetry over a short period of time;
 - MTC considers (page 11 MTC’s Stage 1 submission) that asymmetric pricing in the short to medium term (i.e. at least 5 years) on a gradually diminishing scale is necessary to reflect MTC’s cost structure and to ensure its survival; and

² Ref: QAA/HTC/001 of 5 February 2003.

- Batelco has indicated (point 107 of the All Parties Version, Stage 5 submission) that it might be willing to accept asymmetry for 9-12 months on the basis of a mobile termination rate of up to **[Redacted - Confidential Information]** fils per minute.
29. The TRA understands that there are generally three reasons for justifying asymmetry in mobile termination rates, which the TRA in principle agrees with:
- Different spectrum used by the operators. The use of 1800 MHz is more expensive since more base stations are required to provide the same geographical coverage. However, this issue does not apply in the dispute between Batelco and MTC since both operators have a broadly similar mixture of 900 and 1800 MHz spectrum.
 - Different market shares (measured in terms of numbers of customers). The idea is that new entrants cannot reasonably be expected to achieve the same economies of scale as the incumbent, no matter how efficient they may be. The TRA appreciates that the extent of such differential can be significantly affected by the dispersion of a new entrant's customer base and the geographical scale of its network. To the extent that economies of scale differences are the result of an operator's incumbency advantage, it is reasonable that rate asymmetry takes place.
 - Different cost of capital. New entrants face a higher level of market risk which generally results in a higher cost of capital compared to incumbent operators, although this risk may be somewhat offset by the use of lower-cost new technologies.
30. It seems evident that Batelco's economies of scale have arisen as a result of its incumbency in the mobile market. MTC has only been active in the market for a matter of months and has as yet only achieved a market share of approximately 13%, as reported in an article in the Gulf Daily News of 7 November 2004.
31. The TRA has also considered the practices in other jurisdictions. Figure 2 illustrates the situation for a range of EU countries. It shows that:
- in all countries, operators with less than 20% market share charge more than operators with greater than 20% market share for mobile termination. (Note that in Spain and Poland there is no operator with less than 20% market share); and

- the extent of the asymmetry varies from 10% to 57%, and is on average 25% (see also paragraph 36 below).

Figure 2: Asymmetry of mobile termination rates in the EU

| Country | Average termination rate of operators above 20% market share (local currency) | Average termination rate of operators below or equal to 20% market share (local currency) | % increase in average termination rates of operators with 20% market share or less |
|----------------|---|---|--|
| Austria | 0.120 | 0.167 | 39% |
| Belgium | 0.146 | 0.188 | 29% |
| Denmark | 0.877 | 0.971 | 11% |
| Finland | 0.095 | 0.110 | 16% |
| Germany | 0.141 | 0.177 | 25% |
| Ireland | 0.119 | 0.138 | 16% |
| Italy | 0.148 | 0.181 | 23% |
| Netherlands | 0.155 | 0.175 | 13% |
| Norway | 0.760 | 1.190 | 57% |
| Poland | 0.578 | N/A | - |
| Spain | 0.148 | N/A | - |
| Sweden | 1.044 | 1.262 | 21% |
| Switzerland | 0.335 | 0.369 | 10% |
| UK | 0.082 | 0.114 | 38% |
| Average | | | 25% |

32. Having considered all of the above, the TRA is satisfied that it is reasonable for MTC to charge higher termination rates than Batelco under current market conditions. However, the TRA considers that asymmetry should only last as long as Batelco enjoys an incumbency advantage over MTC. It is important to note that this advantage will decline over time, and that the rate of decline is not necessarily the rate at which MTC gains market share. If Batelco is more efficient than MTC, it may be able to maintain market share, and it should not be penalised for doing so unless this results from its incumbency advantage. Moreover, while asymmetry may be useful as a means of supporting MTC during market entry, it is equally important that the regulatory regime provides an incentive for MTC to remain/become efficient, and this includes the ability to acquire and retain customers. It is likely, but not necessary, that these principles will result in asymmetry being justified for only 2-3 years which is consistent with the TRA's policy to date.
33. The TRA does not consider that as a principle charges between Batelco and MTC for mobile call termination must necessarily be symmetric or that symmetry should even be an underlying objective. Under section 57(b) of the Law the TRA is specifically empowered to specify the tariffs and terms on which interconnection may be offered for operators in a dominant position should it not approve those in a dominant operator's RIO. Such charges must be fair and reasonable, non-discriminatory, and based on forward looking incremental costs. If two operators were each dominant, there should be no presumption

whatsoever that the charges applicable to each must as a principle be the same. That is, the TRA would independently apply the tariff principles to each operator to determine the applicable charges.

34. The TRA notes that while it is specifically empowered under section 57(b) of the Law to determine interconnection charges for operators in a dominant position, the TRA has no such specific power in relation to operators which have not been determined to be dominant. In the present situation, Batelco has been declared to have dominance in interconnection markets³, while no such declaration has been made concerning MTC. Notwithstanding this, the TRA is specifically empowered to resolve interconnection disputes under section 57(g) and its powers to do so are not restricted, for example, by applying only to a dominant operator. Accordingly, the TRA considers that it has jurisdiction to determine interconnection charges for MTC in order to resolve the present interconnection dispute.
35. Having reviewed the Responses, the TRA is satisfied that the termination rate payable by Batelco to MTC should be **[Redacted - Confidential Information]** fils per minute and that this rate should apply until 31 January 2006 inclusive (approximately a year from the date of the new rates becoming applicable) unless, before that date, the TRA has found MTC to be dominant in the relevant market and as a result has determined MTC's termination rates. The termination rate of **[Redacted - Confidential Information]** fils per minute is an interim arrangement which shall apply without prejudice to any view that the TRA may take at a future time with regard to whether MTC is also dominant which could lead to different termination rates for MTC and Batelco.
36. There is a **[Redacted - Confidential Information]**% discrepancy between Batelco's rate of 12.57 fils per minute and MTC's rate determined in this Determination as **[Redacted - Confidential Information]** fils per minute. In paragraph 30 above, which deals with the difference between the mobile termination rates of entrant and incumbent operators, the range of discrepancies is stated as 10-57% and averaging 25%. Thus the **[Redacted - Confidential Information]** fils per minute proposal is **[Redacted - Confidential Information]** not "beyond the most extreme discrepancy" as claimed by Batelco. It needs also to be noted that Figure 2 above deals with averages of all operators with >20% and <20% market share. However, as noted by MTC the market share difference between Batelco and

³ Refer to the TRA's Determination on Dominance in Interconnection Markets of 9 August 2003 ("Dominance Determination").

MTC is much greater than is the norm for European operators (the most dominant of which has only a 55% market share compared with Batelco's which is approximately 87%). Taking all these points together, it is appropriate that the discrepancy between the MTC and the Batelco termination rates is at the upper end of international norms.

37. The TRA has determined that it should not at this time set the MTC call termination rate beyond 31 January 2006. This is because the structure of the mobile market, and specifically the relative market shares of MTC and Batelco, may change substantially by that time: the Parties in commercial negotiations would be best placed to agree between them the appropriate charges. If the Parties are unable to commercially agree call termination charges for the period following 31 January 2006, either Party (or both) may again seek the intervention of the TRA under section 57(g) of the Law.
38. The policy remains that asymmetry is justified so long as Batelco enjoys incumbency advantages. MTC has requested a very gradual reduction from 31 December 2005 (now this date is set as 31 January 2006) for a period of 3-5 years, but the TRA is not prepared at this stage to set future rates on the basis that MTC is a new entrant with low market penetration, when this could change relatively swiftly. The TRA does not consider it appropriate to define at this stage whether and to what extent incumbency advantages might continue to exist after February 2006.
39. The TRA is satisfied that, once it has set a termination rate which is consistent with international benchmarking, MTC has an incentive to be as efficient as possible to generate a higher margin on top of its actual termination costs. Furthermore, by indicating the situations in which asymmetry may be allowed by the TRA, it is providing incentives for MTC not only to act efficiently but to do so as soon as possible. The TRA in its Determination is thereby encouraging operational efficiency and providing incentives for MTC to achieve greater efficiencies.
40. The TRA is also satisfied that its approach makes commercially negotiated outcomes more likely. If the TRA were to set the termination rates now for a period of say 2, 3, 4 or 5 years, there would be no incentive for the Parties to try and negotiate a different rate, as no Party would be likely to accept a worse position than the TRA's specified rate. The TRA is mindful of the fact that direct negotiations between the Parties are not resolving many of the issues and the TRA is keen to encourage open dialogue and an environment where the Parties can mutually agree on compromise positions.

41. It has to be noted that there is in Bahrain for the time being an extreme case of market dominance since, as mentioned, Batelco is considered to enjoy an approximate 87% market share in mobile services. A new entrant needs to be able to set the termination rates for calls to its own network. This may allow it a margin in its negotiations with an incumbent, e.g., after 31 January 2006, Batelco would be able to negotiate say a lower termination rate with MTC in return for concessions from Batelco that would lead to a resolution of other outstanding issues. If such bargaining position is removed by the TRA, either by fixing rates for too long a period, or by setting an initial cap which is too low, the possibilities for a negotiated settlement of outstanding issues might thereby be substantially reduced.
42. The TRA is satisfied, that as argued by MTC, it should clearly state the date from which the revised rate would take place. The TRA also notes MTC's position that it has agreed to the prevailing **[Redacted - Confidential Information]** fils per minute rate under protest and that accordingly the effective date for the revised rate should be the date of MTC's commercial launch, however, for the reasons set out below it is not satisfied that this is appropriate.

The TRA also has to consider that backdating decisions is not permissible under Bahraini law, and this position is akin to other major jurisdictions such as the EU and UK (where retrospective application of the law and of regulation, if allowed at all, is subject to very strict limits). Both Bahraini law principles, and those of other jurisdictions, such as the EU and UK have general principles against retroactive application of law (and by extension, regulatory measures) that have the possible effect of impinging on the legitimate expectation of recipients. Any exception to this principle would be for example the result of a particular circumstance or intervention (e.g. by national legislation) or otherwise mutually agreed between the Parties. Therefore in the absence of such factors, retrospectivity cannot be implied or applied in the resolution of this dispute.

Additionally, retrospective application of rates could lead in certain cases to an uncertain position, whereby parties negotiate an agreed position, only for them subsequently to refuse to comply on the basis that they are awaiting/seeking a backdated decision from the TRA.

The TRA also notes that MTC, in its Stage 1 submission (page 21) argued that any charges agreed between the Parties (or determined by the TRA) should take effect from the date of entry by the Parties into the relevant interconnection agreement and that such charges should not be retrospectively applied.

Furthermore, the rates had previously been determined under the four Interim Interconnection Orders (Order No.1, Order No.2, Order No.3 and Order No.4 respectively) thus there is no question of backdating rates already determined. Furthermore, for the period between the date of the July IIA between the Parties of 14 July 2004 (which came into effect immediately after Order No. 4) and the date of new rates set by this Determination, an agreement between the Parties appears to exist. However, the TRA accepts that it would be entitled to determine rates from the date that the Parties notified formally that there is a dispute concerning the termination rates. Nevertheless, the TRA considers that for the reasons set out below, it would not be appropriate or reasonable, in all the circumstances, to backdate the new rates, and instead that the new rates should apply from 31 January 2005:

(a) the current rate was based on the initial TRA Orders, taking into account all the facts that were available at the time;

(b) all Order renewals were set at the same rate and the Parties were aware that these would continue (for example, as per TRA's letter of 10 March 2004 to both Parties, ref: LAU/DC/277) until the matter would finally be resolved; and

(c) Batelco would not be allowed to backdate retail charges to end customers and therefore would have to fund any difference itself.

43. Accordingly, the TRA's Determination sets Monday 31 January 2005, approximately one month after the date of this Determination, as the effective date for such revised rates to come into effect. This is intended to allow Batelco time to apply, if it wishes, to the TRA under its license for amended retail tariffs for calls to MTC's network. If Batelco wishes to amend its retail rates, it should do so by 5pm on Monday 10 January 2005, (if it wishes to have these implemented by the time that the new termination rate shall become effective) supplying all relevant and necessary information so as to demonstrate that the retail rates are appropriate, according to section 58(b) of the Law, i.e. that they are "fair and equitable, non-discriminatory and based on forward-looking costs". Also such time is intended to allow for appropriate notification to subscribers concerning any possible changes to the retail rates.

Directory Assistance

44. The substance of the Dispute concerning directory assistance ("DQ") services is in two parts:

- whether MTC should pay Batelco for DQ services where Batelco provides such services to MTC while Batelco does not impose a retail charge for DQ services supplied to Batelco's customers; and
 - if charges are applicable for DQ services, the amount of such charges.
45. Notwithstanding the Dispute, the Parties have made certain statements concerning DQ services in the July IIA. In particular, clause 3.3 of the July IIA (in part) states:
- "... Batelco has decided that it will commence charging for wholesale DQ as of 15 July 2004 as it considers that this is a service that should be paid for by MTCV. The parties note that MTCV states that it does not accept that Batelco should be charging for this service for as long as it does not charge its own customers for it. The parties therefore agree that MTCV shall formally raise the dispute with the TRA and that the parties consent that the TRA shall determine if a charge should be levied and if such a charge should be levied, if at all, what should be the level of it. The Parties also agree that the decision of the TRA shall cover the period from 15th July, 2004, and that the charges, if any, will take effect from the date determined by the TRA."*
46. In the Preliminary Analysis, the TRA considered that, in regard to the first issue for resolution, the obligation for MTC to pay for a DQ service supplied by Batelco should be unrelated to whether or not Batelco chooses to charge its own customers for this service. Rather, the relevant facts were stated to be:
- that in supplying this service to MTC, Batelco necessarily incurs costs for which it is entitled to be compensated; and
 - that in taking this service from Batelco, MTC avoids directly incurring its own costs if it were to self provide this service.
47. Accordingly, in its Preliminary Analysis, the TRA stated an intention to determine that MTC was obliged to pay Batelco for DQ services that Batelco has (i) supplied to MTC since the termination of Order No. 4 and (ii) will supply to MTC in the future. The proposed charge was **[Redacted - Confidential Information]** fils per DQ call received from MTC's customers.
48. Having considered international benchmarks, the TRA found that in a range of mainly EU countries, the average wholesale rate is over 200 fils per 1 minute call.⁴ On this basis, the TRA considered that there
-

⁴ This research conducted for the TRA by Ovum consists of wholesale charges for a one-minute call to directory assistance service applicable in Italy, the United Kingdom, Korea, Switzerland, Ireland, Germany and Belgium.

was no evidence to indicate that Batelco's proposed charge of **[Redacted - Confidential Information]** fils per call was unreasonable.

The TRA has also considered the issue under the terms of section 57(g) of the Law in connection with the terms of section 23 of Batelco's national fixed services licence, and section 22 of Batelco's mobile telecommunications services license in relation to cross-subsidies. The TRA took into account the fact that there may be competition effects and possible market distortion by the absence of charges at a retail level for DQ services whilst an operator is charging for such services at a wholesale level, and also took into account that the introduction of charges to end customers in Bahrain is something connected with the review to be carried out concerning "tariff rebalancing" and the state of the market liberalisation of Bahrain. Considering all the above issues, the TRA is satisfied that, for the purposes of this Determination, a wholesale charge of **[Redacted - Confidential Information]** fils per directory assistance call where Batelco provides a service to MTC customers is appropriate, as in such a case Batelco would be providing MTC not just with access to the necessary information but also with the manpower to deal with such enquiries.

49. However, taking into account the above and the need for MTC to be able to provide DQ services to its own customers, the fact that Batelco is not charging its own fixed or mobile customers directly at present, but at the same time Batelco is not obliged to provide DQ services for free to its competitors, the TRA determines that the above charge shall apply subject to the terms and conditions that are set out in relation to the Directory Listings issue in this Determination. This provision applies irrespective of Batelco charging its customers directly or indirectly for the provision of DQ services.

International Outbound Call Termination

50. The substance of the Dispute concerning international outbound call termination services is in three parts:
- whether international outbound call termination services as provided by Batelco constitute interconnection services and therefore would be subject to cost based charges;
 - if the TRA considers that a "retail minus" tariff is applicable to such services, what would constitute a "substantial" level of discount; and

- whether the relevant retail tariffs to which the discount is applied are those as set forth in Interim Orders No. 2 and 3.

Are international outbound termination minutes interconnection services?

51. The Law defines the term “interconnection” in the definitions section as follows:

“The physical and logical linking of telecommunications networks used by the same or a different operator in order to allow the users of one operator to communicate with users of the same or another operator, or to access the services provided by another organisation.”

52. The TRA does not consider that international outbound call termination services should fall within this definition because the service provided by Batelco is not required to satisfy “any to any” connectivity between any two users. Nor is the international outbound call termination service provided by Batelco to enable a user to access a Batelco service requested by that user. The TRA also notes that in providing international outbound call termination services to MTC, Batelco does not provide a termination service. That is, Batelco conveys the call to an overseas operator which in turn provides a call termination service. As such, Batelco provides only an intermediate transmission service which MTC could itself provide, and is authorized to do so under its individual international facilities licence issued on 9 May 2004. Therefore, MTC can provide its own international gateway facilities and Batelco’s international gateway does not constitute a facility that MTC has no choice but to use, in particular as with effect from 1 July 2004 MTC may offer international gateway services itself.

53. The TRA has already formally expressed its views on the categorization of international outbound call termination for charging purposes in the TRA’s Determination on Dominance in Interconnection Markets of 9 August 2003 (“Dominance Determination”). At paragraph 4.2.1, the Dominance Determination states:

“... TRA does not consider it necessary to require Batelco to provide connection to its international switched services for the SMO on the basis of interconnection (ie LRAIC) rates.”

54. The TRA considers that it is clear that the provision of outbound termination minutes is an access service. The access definition in the

Law is stated as: “*the making available of telecommunications facilities and/or telecommunications services to another licensed operator for the purpose of providing telecommunications services...*” In the case of international outbound call termination, Batelco is providing a transit service between the point of interconnection with MTC and the international gateway, and this is being provided for the purpose of MTC offering its customers an outbound international call service. The issue will therefore be covered under an Access Regulation (which may be issued by the TRA under section 57 of the Law) from the date of entry into force of such Regulation.

What constitutes a “substantial” level of discount

55. In respect of the second issue for resolution, paragraph 4.2.1 of the Dominance Determination states:

*“... the TRA requires that the SMO be provided with access to Batelco’s full range of outgoing international call services at a **substantial discount** to retail prices.” (emphasis added)*

56. In determining this issue, the TRA has considered both the relationship between Batelco’s revenue and costs in the provision of international call services and the levels of discount from tariffs that the Parties have proposed and the basis on which tariffs are currently set. In addition, the TRA was mindful of the basis on which it formed the view in the Dominance Determination that a “substantial” discount should be applied to retail tariffs for services provided by Batelco.
57. Batelco currently supplies international outbound call termination services to MTC on the basis of a **[Redacted - Confidential Information]**% discount to the retail tariffs for international services from mobile services which are approved by the TRA. Batelco’s RO sets a tariff structure for these services which is initially a discount of 20% off the TRA-approved retail tariffs for international calls from mobile services which falls by a further 20% three months after the publication of the RO and falls by another 10% six months after the publication of the RO.
58. These alternative charging approaches may be compared for illustrative purposes by reference to an imaginary international outbound call termination service to a given destination which has a corresponding retail tariff of, for simplicity, BD1 per minute. Under the current **[Redacted - Confidential Information]** % discount to retail rates, this service would be provided to MTC at **[Redacted - Confidential Information]** per minute, i.e., BD1 minus **[Redacted - Confidential Information]** fils. By comparison, the same service

under Batelco’s RO would be supplied to MTC at the following charges at the appropriate dates:

| Applicable Period | Actual Date | Charge per minute |
|--|--------------------------------------|--------------------------|
| Within the first 3 months of the publication of the RO | 1 June 2004 to 31 August 2004 | BD0.800 |
| 3 months following the publication of the RO | 1 September 2004 to 30 November 2004 | BD0.640 |
| 6 months following the publication of the RO | From 1 December 2004 | BD0.576 |

59. This comparison shows that the charging structure in Batelco’s RO results in a **[Redacted - Confidential Information]** charge at the date of this Determination (since 1 December 2004) compared to the current charge structure of a **[Redacted - Confidential Information]**% discount. The RO-based charges represent a 42.4% discount to retail rate at present.
60. In respect of the second issue for resolution, the TRA is satisfied that the **[Redacted - Confidential Information]** discount moving to a 42.4% discount constitutes a “substantial” discount to Batelco’s retail tariffs. That is, this level of discount provides a very large margin within which MTC can set its own retail prices.

Whether the relevant retail tariffs to which the discount is applied are those as set forth in Interim Orders No. 2 and 3

61. The TRA considers that the level of discount as determined above, **[Redacted - Confidential Information]** should be applied to Batelco’s retail tariff list for international services applicable to mobile customers as approved by the TRA and published on Batelco’s website. The TRA considers this reasonable as the published and approved list of prices is more objective and stable.

Speaking Clock Tariff

62. The Parties acknowledge in their submissions (MTC’s Stage 5 submission dated 14 August 2004 at point 25 of the letter, and in Batelco’s Stage 5 submission at points 148 and 149 of the All Parties Version) and have not disputed in the Preliminary Analysis Responses that this issue was resolved in a meeting on 10 August 2004.

International Operator Assist Tariff

63. The Parties acknowledge in their submissions (MTC's Stage 5 submission, dated 14 August 2004 at point 26 of the letter, and in Batelco's Stage 5 submission at points 150 to 152 of the All Parties Version) and have not disputed in the Preliminary Analysis Responses that this issue was resolved in a meeting on 10 August 2004.

Leased Lines

64. The Dispute with respect to leased lines concerns whether Batelco should offer national, international and Internet leased lines at wholesale rates to MTC and, if so, what should be the applicable rates. The position of the Parties on leased lines may be summarised as follows:

- MTC believes (page 41 Stage 1 submission) that national, international and Internet leased lines provided by Batelco to MTC should be provided on the basis of wholesale rates and not on the basis of Batelco's standard retail rates;
- MTC has proposed in its submission of 25 August that the charges for leased lines provided to it by Batelco should be equal to a **[Redacted - Confidential Information]**% discount from Batelco's retail tariff;
- MTC considers (page 41 Stage 1 submission) that leased lines are an access services for which fair and reasonable wholesale rates tariffs must be charged in accordance with section 57 (e) of the Law; and
- Batelco considers (point 154 All Parties Version, Stage 5 submission) that it must be allowed to negotiate resale arrangements on a commercial basis.

65. The TRA is currently in the process of an industry consultation concerning "access" which may have implications for the resolution of this issue. Accordingly, this Determination is without prejudice to the outcome of the access consultation, which may result in different terms applying under any Access Regulation (which may be issued by the TRA under section 57 of the Law) from the date of the entry into force of such Regulation.

66. In analysing the present issue, the TRA has considered that leased line services fall within the definition of access. The term "access" is defined in the definitions section of the Law as follows:

“The making available of telecommunications facilities and/or telecommunications services to another licensed operator for the purpose of providing telecommunications services, and including the connection of equipment by wire or wireless means, access to physical infrastructure including buildings, ducts, and masts, access to mobile networks and access to number translation or networks offering equivalent functionality.”

67. The TRA considers that the supply of leased lines by Batelco to MTC falls within this definition of access on the basis that:

- leased lines constitute telecommunications facilities and/or telecommunications services. That is, the TRA considers that a leased line being a physical link used to convey communications between different places is a telecommunications facility and that the provision of connectivity over a leased line between different places is a telecommunications service;
- both Batelco and MTC are licensed operators; and
- MTC requires leased line services from Batelco in order to provide telecommunications services to its end customers.

68. The Dominance Determination states that without prejudice to the outcome of the access consultation, the TRA expected that international leased lines will be provided by Batelco to other licensed operators in Bahrain at a discount to retail prices (on a “retail minus” basis). In particular, the Dominance Determination states at page 10:

“Without intending to pre-judge the outcome of the forthcoming consultation on “Dominance in certain markets and the provision of access” noted above, the TRA expects that international leased lines will also be required to be provided to licensed operators at a discount to retail prices.”

69. Whether Batelco is dominant in the provision of leased lines, is not to be determined in this Determination, though there appears to be a *prima facie* case that it has significant market power, if not dominance, in the market⁵ for the supply of leased lines in Bahrain (currently both for national and international leased lines) for so long as Batelco is the only supplier of leased lines in Bahrain. Batelco argues that the proposed discounts would act as a deterrent to investment by other operators. If this is truly a concern then, it would only be a short term concern, as the likely move to LRAIC (under any forthcoming Access Regulation which may be issued under section 57

⁵ This is without prejudice to conducting any market analysis and as to the precise scope of the relevant market(s) and any relevant competitive conditions and constraints.

of the Law) would be helpful to restore those incentives at an economically efficient level.

70. In assessing the amount of discount that may be applicable to Batelco’s retail leased line tariff charges for international and national leased lines provided to MTC, the TRA has considered both international benchmark pricing and the level of Batelco’s profitability in the provision of such services. The TRA has constructed a benchmark analysis using up-to-date tariff data derived from the Tarifica information service. This analysis assumes circuits with a 2 km main link and (where appropriate) a 1 km tail circuit at either end. This is the same basic approach as that adopted in the EC's 9th Implementation Report. The results of this benchmark analysis for 128 Kbit/s and 2 Mbit/s circuits are shown in Figure 3.

Figure 3: Leased line benchmarks based on an analysis of current tariffs

| Dinar per annum | 128kbit/s circuits; 2km | 2Mbit/s circuits; 2km |
|-----------------|-------------------------|-----------------------|
| Austria | 770 | 2144 |
| Denmark | 1,226 | 1832 |
| France | 1,673 | NA |
| Germany | 2,100 | 4135 |
| Greece | 819 | 4003 |
| Italy | 2,176 | 5106 |
| Ireland | 707 | NA |
| Spain | 1,908 | 4019 |
| UK | 3,048 | NA |
| Average | 1603 | 3540 |
| <i>Bahrain</i> | <i>3000</i> | <i>14400</i> |

71. As this benchmark analysis indicates that Batelco's leased line prices (prior to TRA-approved tariff reductions in 2004) are very high in comparison to those prevailing in the EU, the TRA sought to analyse leased lines prices in other jurisdictions but found it difficult to find accurate information.
72. The analysis of the available financial information from Batelco in respect of its national and international leased line services indicates that Batelco generates significant accounting profit on these services. On the basis of this information, the TRA considers that there would need to be a very significant discount to Batelco’s retail tariffs to reach a charging structure that would satisfy the provisions of section 57 (e)

of the Law, i.e., “on fair and reasonable terms” (first paragraph of section 57(e)).

73. In assessing the appropriate level of discount that should apply, the TRA is also mindful that other licensees, including for example MTC, may wish to offer leased line services in Bahrain. The TRA is reluctant to force through regulatory intervention a significant reduction in Batelco’s leased line pricing structure that could in effect deter prospective new entrants.
74. In forming a view on the level of discount that should apply, the TRA is mindful of striking a balance between encouraging service competition through lower than retail prices and encouraging infrastructure competition through providing an incentive to MTC and other potential market entrants to develop alternative infrastructure rather than simply relying on Batelco.
75. In addition, the TRA is mindful of Batelco’s cost structure relating to the provision of leased lines in setting the level of discount that should apply.
76. Based on the above, the TRA is satisfied that:
 - international leased lines provided by Batelco to MTC should be provided at a discount of **[Redacted - Confidential Information]**% to Batelco’s current retail tariff for international leased lines. In setting the level of this discount, the TRA has in addition to the points mentioned above, taken into consideration the discounts approved by the TRA on 26 September 2004, as part of Batelco’s new pricing structure; and
 - national leased lines provided by Batelco to MTC should be provided at a discount to Batelco’s current retail tariff for national leased lines, so that the overall discount for each national leased line product is effectively **[Redacted - Confidential Information]**% compared to Batelco’s rates prior to the TRA’s approval of amended rates on 4 December 2004.
77. The TRA notes that MTC has proposed relevant terms and conditions for a commercial agreement concerning leased lines in its submission to the TRA on 25 August 2004 and that Batelco has rejected MTC’s proposal in its submission of 29 August 2004. Given the TRA’s Determination noted above that international and national leased lines services should be provided by Batelco to MTC at a discount: **[Redacted - Confidential Information]**% discount to current retail rates (as at 3 January 2005) for international leased lines and **[Redacted - Confidential Information]**% discount for national leased

lines (compared to Batelco's rates prior to the amended rates on 4 December 2004), the TRA believes that the Parties should be given a further opportunity to reach a commercial agreement in relation to detailed terms and conditions for the supply of leased lines. If the Parties still cannot agree, the TRA will intervene if requested by either Party or both Parties.

78. The TRA is not determining terms and conditions and other details of the commercial agreement to be reached between the Parties, but only the rate.
79. The TRA is satisfied that the same principles ought to apply to the provision of Internet leased lines by Batelco, since there can be no objective justification in having different principles applying depending on how a leased circuit is used.

E1 Half Link

80. This part of the Dispute relates to the Link Rates Agreement entered into by Batelco and MTC on 14 October 2003 (as mentioned in Batelco's Stage 5 submission, All Parties Version of 14 August 2004, paragraphs 158 – 171 and MTC's Stage 1 submission of 2 August 2004 page 18). The fact that this agreement was entered into by the Parties is not in dispute (unlike the alleged reasons as to why MTC entered it, as well as the actual terms of the agreement).
81. Consequently, as a commercial agreement was reached by the Parties, the TRA considers that this issue does not fall within the scope of section 57(g) on the basis that section 57(g) only applies to the "*Authority to resolve such dispute if no agreement in that respect was reached*". In this case, an agreement was reached (irrespective of why and its terms). Accordingly, the TRA considers that it cannot resolve this issue within the scope of the notified dispute pursuant to section 57(g) of the Law. Should MTC choose to bring a separate formal written complaint to the TRA under the appropriate provisions of the Law, the TRA will consider the allegations made by MTC against Batelco and will follow the correct procedures as appropriate.
82. MTC is contractually obliged to pay the agreed rates, unless and until any subsequent ruling is made by the TRA following any investigation under the Law. The TRA has not made any statement that would justify MTC in refusing to make due payment.
83. In relation to MTC's request to the TRA to rule on the tariff issues raised in the five bullet points at the bottom of page 19 of its Stage 1 submission, which MTC claims is not part of the commercial agreement, the TRA's view is that the tariffs were dealt with in the RIO

approval process. However, the TRA will consider the points raised by MTC as part of its forthcoming RIO review.

Co-location Tariff

84. This part of the Dispute relates to the co-location charges charged by Batelco to MTC included in a Facilities Access Rates Agreement entered into by Batelco and MTC. The actual agreement was not included in any of the submissions. However, the Parties refer to it, for example in the definition of ‘Existing Interconnection Agreements’ at clause 1.1 of the July IIA. Furthermore, the facsimile of 21 September from MTC to Batelco (contained at Exhibit C to MTC’s Stage 3 submission dated 14 August 2003) accepts some of the co-location tariffs included in Batelco’s invoice to MTC attached as tab 19 of the Exhibits included with MTC’s Stage 1 submission. Consequently, the fact that an agreement was entered into by the Parties in relation to co-location is not in dispute (unlike the alleged reasons as to why MTC entered it, as well as the actual tariffs charged). As a commercial agreement appears to have been reached by the Parties, the TRA considers that it this issue does not fall within the scope of section 57(g) on the basis that section 57(g) of the Law only applies to the “*Authority to resolve such dispute if no agreement in that respect was reached*”. In this case, it appears that an agreement was reached (irrespective of why and its terms). Accordingly, the TRA considers that it cannot resolve this issue within the scope of the notified dispute pursuant to section 57(g) of the Law. Should MTC choose to bring a separate formal written complaint to the TRA under the appropriate provisions of the Law, the TRA will consider the allegations made by MTC against Batelco and will follow the correct procedures as appropriate.
85. MTC is contractually obliged to pay the agreed rates, unless and until any subsequent ruling may be made by the TRA following any investigation, if undertaken, pursuant to the Law. The TRA has not made any statement that would justify MTC in refusing to make due payment.

Emergency Call Tariff

86. The position of the Parties concerning the emergency call tariff may be summarised as follows:
- MTC objects (page 47 Stage 1 submission) to paying the full PSTN call termination charge for emergency calls originating on MTC’s network on the basis that MTC must bear the cost of call origination and that it is not appropriate for Batelco to use this service as a source of revenue generation;

- MTC requests (page 41 Stage 1 submission) the TRA to rule on what would be a fair and reasonable contribution to Batelco's cost for providing this service;
 - MTC considers (page 20 Stage 1 submission) that it will contribute to Batelco's cost determined by Batelco's incremental cost excluding the profit element; and
 - Batelco notes (point 176 All Parties Version, Stage 5 submission) that MTC has not provided an alternative rate and believes (point 178 All Parties Version) that the PSTN termination charge as set out in Batelco's RIO should apply.
87. The TRA notes that the LRAIC cost of any service includes by definition a cost of capital or profit element. Therefore, it is not possible to have a "cost based charge" which excludes a profit element. MTC in effect wants to pay a lower charge to Batelco for terminating emergency calls. *Prima facie*, the TRA considers that termination of an emergency call would intuitively involve a higher cost than the termination of any other ordinary call on the basis that such higher cost would be a function of the provision of a higher level of redundancy in the network to ensure that emergency calls are appropriately terminated.
88. The TRA considers that the provision of an emergency call termination service at the same charge as for any other call termination is in fact favourable to MTC. MTC's objections to Batelco's offer as set out in the RIO appears to be no more than an objection to the fact that MTC must pay Batelco for call termination of emergency calls while it does not itself generate any revenue for such calls.
89. The TRA notes that Batelco must also face its own costs for the termination of emergency calls and like MTC generates no revenue from originating emergency calls. MTC's requirement to provide an emergency call service is a specific licence obligation reflecting the privilege of operating in a restricted market and is standard international practice for any operator. Accordingly, the TRA does not see any merit in MTC's objection to paying the full PSTN termination charge to Batelco in respect of emergency calls originating on MTC's network.
90. In respect of this issue for resolution, the TRA therefore is satisfied that the relevant provisions of Batelco's RIO as approved by the TRA should apply.

Network Tones and Announcements

91. The Parties acknowledge in their submissions (MTC's Stage 5 submission, dated 14 August 2004 at point 31 of the letter, and in Batelco's Stage 5 submission at points 179 to 180 of the All Parties Version) and have not disputed in the Preliminary Analysis Responses that this issue is no longer in dispute after a meeting held on 10 August 2004.

Backdated Charges

92. This part of the Dispute relates to the date on which charges for services which are shown in Batelco's RIO should apply once an agreement between the Parties is reached. That is, whether or not such charges will apply from a date earlier than the date that a permanent supply agreement is reached between the Parties.

93. The TRA determines that as a principle, the charges applicable to any service provided under any agreement between the Parties should apply from the date of the agreement and should not apply retrospectively. Any exception to this principle would be as a result of a particular circumstance or intervention or otherwise mutually agreed between the Parties.

Suspension and Termination Rights

94. The position of the Parties concerning suspension and termination rights may be summarised as follows:

- MTC objects (page 47 Stage 1 submission) to the structure of Batelco's rights to suspend and terminate an interconnection agreement between the Parties;
- MTC proposes (pages 47 and 48 Stage 1 submission) that terms and conditions equivalent to that used by BT plc would be acceptable to it;
- MTC requests (page 42 Stage 1 submission) the TRA to rule on what specific circumstances and on what grounds Batelco could exercise suspension and termination rights; and
- Batelco notes (point 186 All Parties Version, Stage 5 submission) that this matter has been the subject of detailed discussions and negotiation with the TRA and strongly objects to any changes being made.

95. MTC provided detailed amended terms and conditions concerning suspension and termination in its submission of 25 August 2004.

Batelco rejected all of MTC's proposal in its submission of 29 August 2004.

96. The TRA considers that MTC (page 22, Stage 1 submission) provides sufficient evidence to merit re-considering the RIO approval or parts of it for the reasons set out below, as per the TRA's letter of 24 July 2004 to the Parties as discussed at page 2 of the Preliminary Analysis and elsewhere in that document. MTC stated in its submissions (page 22 Stage 1 submission) that Batelco's suspension rights are "unacceptably broad" and substantiated this with the following evidence and reasons:

- the definition of 'material breach' should be fact-based and not include any failure to pay any sum or to provide/maintain security, irrespective of whether it may be material. MTC stated that this is of real relevance to MTC as it was threatened with disconnection by Batelco in January 2004 on the disputed grounds of technical breach of security requirements;
- the fact that Batelco considers that MTC is likely to use or has in the past used a service in breach of law should constitute grounds of suspension, in particular on the basis that the 'reasonableness' qualifier is, in MTC's view, illusory as suspension occurs on 48 hours notice, therefore MTC has no real opportunity to contest the reasonableness or otherwise of Batelco's view;
- the mere provision of untrue, false, misleading or inaccurate information should not constitute a ground for suspension and that suspension is genuinely warranted if there is a real risk to Batelco's network or to human life; and
- suspension in an emergency situation should be qualified by a reasonableness test.

97. Further MTC stated (page 24, Stage 1 submission) that Batelco's termination rights are "overly broad" and substantiated this with the following evidence and reasons:

- Batelco has the discretion to terminate the agreement if it considers that MTC is likely to use or has in the past used a service in contravention of law;
- "material breach" is defined broadly to include any failure to pay any sum or any failure to provide or maintain security; and

- the provision of untrue, false, misleading or inaccurate information should not constitute a ground for termination.
98. The TRA considers that the relevant terms and conditions of Batelco's RIO concerning suspension and termination may favour Batelco's interests and could be detrimental to access seekers.
99. Consequently, the TRA will consider the points raised by MTC as part of the RIO review.

Ordering and Provisioning

100. The position of the Parties concerning ordering and provisioning may be summarised as follows:
- MTC objects (page 48 Stage 1 submission) to Schedule 5 of Batelco's RIO on the basis that Batelco is in practice free to object, stall or delay any service order at will;
 - MTC requests (page 42 Stage 1 submission) that Schedule 5 be replaced by a new ordering and provisioning mechanism that places on Batelco an appropriate and enforceable obligation to accept and implement service orders in a timely manner; and
 - Batelco notes (point 188 and 189 All Parties Version, Stage 5 submission) that MTC has not provided alternative terms and that clause 3.3 of the Supply Terms and Schedule 5 each expressly provide that a particular service description can include more structured ordering and provisioning requirements.
101. MTC has provided detailed amended terms and conditions concerning ordering and provisioning in its submission of 25 August 2004. Batelco rejected virtually all of MTC's proposal in its submission of 29 August 2004.
102. MTC stated in its submissions (page 25 Stage 1 submission) that the ordering and provisioning terms and conditions give too much latitude to Batelco in accepting and implementing service orders. MTC has substantiated this with evidence and reasons including the following:
- at every stage of the ordering process Batelco has wide powers to reject service orders or to repeatedly delay or stall order implementation at its discretion;
 - Batelco will use "reasonable endeavours" to confirm receipt of orders within 4 working days, while the access seeker "must" respond to Batelco's request for information within 5 working

days (i.e. failure by MTC to respond to an unreasonably long request could result in Batelco cancelling an order);

- Batelco can reject an order for a given reason and require the access seeker to address the reason so that the order be reinstated;
- Batelco has a very wide range of reasons to reject service orders from access seekers; and
- if an order is accepted, Batelco is free to change the implementation date.

103. The TRA considers that the relevant terms and conditions of Batelco's RIO concerning ordering and provisioning may favour Batelco's interests and could be detrimental to access seekers.

104. Consequently, the TRA will consider the points raised by MTC as part of the RIO review.

Quality of Service

105. The position of the Parties concerning quality of service may be summarised as follows:

- MTC wants (page 48 Stage 1 submission) Batelco to include a detailed service level agreement or quality of service schedule in its RIO which sets out appropriate, binding performance levels backed by service credits;
- Batelco notes (point 190 All Parties Version, Stage 5 submission) that it has agreed with the TRA that there will be service levels in future Reference Offers and argues that appropriate service levels need to be properly developed on the basis of experience; and
- Batelco urges (point 196 All Parties Version) the TRA to resist detailed specification of service levels if it is minded to make a determination on this matter.

106. MTC provided terms and conditions concerning quality of service in its submission of 25 August 2004. The material submitted by MTC proposes specific details of expected levels of service. Batelco rejected MTC's proposal in its submission of 29 August 2004.

107. In its RIO Approval of 15 June 2004 the TRA stated that it expects Batelco to develop service parameters in future versions of the RIO. In

addition, the TRA noted that it preferred service parameters to be developed through the agreement of operators.

108. Having reviewed MTC's proposal in relation to this matter for resolution, the TRA considers that it would be premature and disproportionate to impose such specific service levels in Batelco's RIO or in an agreement between the Parties at this time. In taking this view, the TRA is mindful of the following factors:

- that Batelco agrees in principle that it is desirable to have service levels and parameters commercially agreed;
- that Batelco has already agreed with the TRA that there will be service level agreements in future RIOs (also noted in Batelco's Stage 5 material);
- there is considerable risk that service levels imposed now may prove to be ineffective in a relatively short time;
- that effective service levels and parameters should be based on commercial experience; and
- that in the time prior to the development of service parameters any provision by Batelco of poor quality services can be dealt with by the TRA under its extensive powers to intervene *ex post* (for example, against an abuse of a dominant position by Batelco), rather than be prescriptively imposed *ex ante*.

109. In respect of this issue for resolution, the TRA considers therefore that the Parties should be required to negotiate, with a view to reaching an agreement on detailed service levels and parameters between them within 3 months of the issuing of this Determination. The TRA notices MTC's objections that it would rather see the imposition of a service level agreement backed by a service credit scheme. The TRA considers that the Parties are best placed to consider issues of quality of service between themselves. However, the TRA also expects Batelco to progress quality of service in its next (and forthcoming) RIO, when further general guidance as to the issues would be provided by the TRA.

Security Requirements

110. There are four parts to the Dispute concerning security requirements. These parts are as follows:

- whether a security requirement is only imposed for operators with an annual turnover below a threshold level;

- the types of security that may be adopted;
- the right for Batelco to draw on any security; and
- the review of security.

111. As with the Preliminary Analysis, the position of the Parties on each part is summarised in the following table.

| Part | MTC | Batelco |
|---------------------|---|---|
| Security threshold | Security should only apply for operators with an annual turnover of less than BD1 million. (page 48 Stage 1 submission) | Turnover is not a proxy for financial stability, credit worthiness or payment behaviour. A threshold is not appropriate and is discriminatory. (point 196 All Parties Version) |
| Types of security | In the form of an irrevocable guarantee, performance bond or letter of credit. (page 48 Stage 1 submission) | Agrees that security should be limited to an irrevocable guarantee, performance bond or letter of credit, provided that such an instrument is in a form acceptable to Batelco. (point 201 All Parties Version) |
| Drawing on security | Only where MTC has failed pay charges pursuant to clause 6.5 of the Interim Interconnection Orders 2 and 3. (page 48 Stage 1 submission) | Security must be exercisable by Batelco without restriction. (point 202 All Parties Version) |
| Review of security | Batelco must not review security requirements whenever substantial billing disputes are raised. (page 48 Stage 1 submission) | Batelco agrees that it would not trigger a review of security within 12 months of the signing of a permanent supply agreement on the basis of a billing dispute. (point 207 All Parties Version) |

112. In the MTC Response, MTC points out that the table above does not exhaust the issues between the Parties. MTC would further wish the TRA to determine the maximum amount that Batelco can require by way of security, stating that Clauses 19.4 and 19.8 of the RO give Batelco too much latitude; to delete Clause 19.9 in the RO, allowing Batelco to require interconnecting operators to pay charges in

advance; and to determine whether, given the commercial realities in Bahrain, it is realistic to ask that interconnecting operators have certain credit ratings with Moody's or Standard & Poor. These issues, the TRA considers are validly raised by MTC, will be considered by the TRA as part of the RIO review.

113. Further MTC is reiterating a request that the TRA rules as to whether Clause 19.6(b) in the RIO, dealing with drawing on securities should be amended and that the TRA clarifies further what constitutes permissible types of security. The TRA considers that its Preliminary Analysis dealt with the point on "drawing on securities". The TRA has clarified further the position as to permissible types of security below.
114. In summary, this part of the Dispute involves an objection by MTC to the relevant provisions of Batelco's RIO which have been formally approved by the TRA. The TRA has examined each part of the matter in dispute, and considers that:

Part 1: In respect of the security threshold matter, MTC states (page 29, Stage 1) that security requirement should be limited to licensed operators with an annual turnover of less than BD 1,000,000, however, MTC failed to provide clear evidence to substantiate and explain this statement. Consequently, the TRA cannot accept amending the RIO on this basis. Furthermore, the TRA is of the view that the requirement for security should not be subject to a turnover threshold because the TRA considers that risks of default on security are independent of the level of turnover and of any security threshold and that the setting of a threshold is inherently arbitrary. The TRA considers that the relevant provisions of Batelco's RIO as approved by the TRA should continue to apply. Consequently, the TRA cannot accept at this stage amending the RIO on this basis, although MTC is welcome to put forward more evidence in the course of the forthcoming RIO review.

Part 2: With regard to the type of security, the TRA notes that the Parties agree that the security should be in the form of irrevocable guarantee, performance bond or letter of credit. The TRA notes that this is consistent with the definition of Security in Schedule 8 of Batelco's RIO. Schedule 8 of the RIO is wider, encompassing types of security other than irrevocable guarantee, performance bond or letter of credit. The TRA will consider the arguments put forward by MTC that the RIO should be narrowed when it comes to types of security in the course of the forthcoming review of the RIO.

Part 3: With regard to drawing on the security, the TRA notes that MTC states (page 29, Stage 1 submission) that Batelco must only be entitled to draw on the security with respect to unpaid charges. Further MTC considers that Batelco is being granted too much latitude to determine unilaterally that an operator is in breach. However, MTC failed to provide clear evidence to substantiate and explain the statement that drawing on security should be limited to unpaid charges. Consequently, the TRA cannot accept at this stage amending the RIO on this basis. The TRA considers generally that the proposal of MTC may in any event be too narrow, as it would limit the effectiveness of the security provision to apply only to pay unpaid charges, and not, for example, compensation for losses for breach of contract. Accordingly, the TRA believes that although the relevant provisions of Batelco's RIO as approved by the TRA should continue to apply, there appears to be scope for certain clarifications and protection triggers to be considered. The TRA will consider these arguments in the context of the forthcoming RIO review.

Further, MTC considers that Batelco is being granted too much latitude to determine unilaterally that an operator is in breach. The TRA will consider the arguments validly raised by MTC in the course of the forthcoming RIO review.

Part 4: With regard to the review of security, the TRA notes that Batelco has undertaken not to trigger a review of security within 12 months of the signing of a permanent supply agreement on the basis of a billing dispute. The TRA considers this to be reasonable and considers that this should be provided for in the permanent supply agreement between the Parties.

Billing

115. There are four parts to the Dispute concerning billing. In particular, MTC requests (page 48 Stage 1 submission) that:

- link identifiers should not be required for Call Data Records ("CDRs") to be valid;
- clause 2.7 of Schedule 4 of Batelco's RIO be deleted;
- clause 3.2 of Schedule 4 of Batelco's RIO be changed from 10 months to six months; and
- clause 3.6 of Schedule 4 should be made reciprocal.

116. All of MTC's requests involve changes to the relevant provisions of Batelco's RIO as set out in MTC's submission of 25 August 2004. In addition, Batelco rejected MTC's proposed amendments in its submission of 29 August 2004 concerning clauses 2.7 and 3.2. Batelco does not object to MTC's proposed changes to clause 3.6.
117. In respect of the first issue, the TRA has undertaken research into the use of link identifiers and has found *inter alia* the following:
- link identifiers enable calls to be associated with a physical link between two operators;
 - link identifiers are likely to be of significance when two parties cannot reconcile their CDRs and the bill calculations of each party are different; and
 - link identifiers are required as part of the Signalling System 7 ("SS7") information that is transferred between networks.
118. On this basis, the TRA is satisfied that it is prudent for link identifiers to be included in the CDR data between interconnecting networks and as Part A of Schedule 4 – Billing and Collection of Batelco's RIO includes link identifiers, no change is required to the RIO on this issue.
119. In respect of the second of the four billing matters, the TRA considers that MTC (page 30, Stage 1 submission) does not substantiate the reason why clause 2.7 should be deleted. The TRA notes that MTC has proposed amendments to clause 2.7 of Schedule 4 (rather than its deletion) in its submission of 25 August 2004. On the basis that MTC has not substantiated its concerns regarding clause 2.7 of Schedule 4, and has changed its position, the TRA is of the view that it cannot consider the matter raised by MTC for resolution at this stage.
120. In respect of the third of the four billing matters, the TRA considers that MTC (page 30 Stage 1 submission) does not substantiate the reason why the submission dates for invoices should be changed from 10 to 6 months in clause 3.2. The TRA notes that MTC has proposed to delete clause 3.2 of Schedule 4 (rather than its amendment) in its submission of 25 August 2004. On the basis that MTC has not substantiated its concerns and has changed its position, the TRA is of the view that it cannot consider the matter raised by MTC for resolution at this stage.
121. In respect of the fourth billing matter, the TRA noted that Batelco had not rejected MTC's proposed amendments and believed that the Parties have already come to a commercial resolution of this matter. Accordingly, the TRA does not consider that its intervention should be

needed, although it will intervene if requested by one or both of the Parties, if referred to the TRA as a new dispute under section 57(g) of the Law.

122. Consequently, no change is required to the RIO in relation to this fourth billing matter.

Penalty Charges

123. The position of the Parties concerning penalty charges may be summarised as follows:

- MTC objects (page 49 Stage 1 submission) to the penalty charges for access services listed in Schedule 4 of Batelco's RIO on the basis that such charges are unfair and should be deleted;
- Batelco considers (point 223 All Parties Version, Stage 5 submission) that the relevant clauses are identical to equivalent charges in RIOs in other jurisdictions; and
- Batelco also considers (point 231 All Parties Version, Stage 5 submission) that MTC has not provided a meaningful alternative other than deleting the relevant terms.

124. MTC proposed amendments to the terms and conditions concerning the penalty provisions in clauses in Schedule 4 of Batelco's RIO in its submission of 25 August 2004. Batelco rejected MTC's proposal in its submission of 29 August 2004.

125. MTC stated in its submissions (page 30 and 31 Stage 1 submissions) that the penalty charges in the form of under-utilisation, cancellation and removal of capacity charges are both unfair and unreasonable. MTC substantiated this with evidence and reasons including the following:

- under-utilisation charges apply to operators who use less than 80% of forecast capacity. For a unit of 2 Mbit/s capacity, the penalty is half the installation charge. Moreover, the penalty applies to each and every capacity order;
- cancellation penalties of 20% of all connection charges apply whenever the access seeker gives less than 5 working days' notice of the cancellation; and
- the formula for the calculation of the "removal of capacity" charge does not make sense as the applicable penalty charge would not change on the basis of the year in which the capacity

is removed and therefore no to take into account the number of years outstanding on the service order.

126. The TRA considers that the relevant terms and conditions of Batelco's RIO concerning penalty charges may favour Batelco's interests and could be detrimental to access seekers. The TRA will consider the points raised by MTC as part of the RIO review.

New Services

127. The position of the Parties concerning new service mechanisms may be summarised as follows:

- MTC wants (page 49, Stage 1 submission) Batelco to include in its RIO appropriate and enforceable procedures for the timely implementation and provision of new services and facilities;
- Batelco considers (point 234, All Parties Version, Stage 5 submission) that it is prepared to add new services and that this is a requirement under the regulatory framework and is currently designing new terms and rates for new services; and
- Batelco considers (point 233 All Parties Version, Stage 5 submission) that it would be unreasonable if it were to be required to commit to a process for the development of new services until MTC commits to a framework within which services can be both provided and developed.

128. MTC argued in its submissions (page 31 Stage 1 submission) that its position as a new entrant is disadvantaged in the absence of a mechanism for the introduction of new services. In particular MTC has explained that new services are introduced at Batelco's discretion in that it is up to Batelco to seek TRA approval for such introduction as part of the RIO approval process. MTC also noted that new service mechanisms being included in RIOs are in line with standard international practice.

129. MTC in its submission of 25 August 2004 proposed detailed terms and conditions concerning new service mechanisms.

130. Batelco rejected MTC's proposal in its submission of 29 August 2004.

131. The TRA considers that a process for handling demand / requests for new services is a reasonable request on the basis of the evidence put forward by MTC as discussed above and will consider these comments as part of the TRA's RIO review.

“Gagging” Order

132. The position of the Parties concerning the “gagging” order in relation to customer relationships may be summarised as follows:

- MTC wants (page 49 Stage 1 submission) what it describes as the “gagging” requirement in clauses 21.4 and 21.5 of Schedule 9 of Batelco’s RIO to be deleted on the basis that this requirement is unfair and unreasonable;
- Batelco notes (point 237 All Parties Version, Stage 5 submission) that the clause is reciprocal and is designed to avoid a culture of the derogation of other parties or their network; and
- Batelco also notes (point 240 All Parties Version, Stage 5 submission) that there is an almost identical clause in the SingTel RIO.

133. MTC in its submission of 25 August 2004 proposed an amendment (rather the deletion of the clause) to the terms and conditions concerning customer relationships in clause 21.4 of Schedule 9 of Batelco’s RIO. In particular, this consists of the inclusion of the word “falsely” in the following:

*“21.4 Subject to clause 21.5, the Access Seeker must not **falsely** attribute to the Access Provider:
(a) any blame for a fault or other circumstance;
(b) any need for maintenance or upgrade of a network; or
(c) any interruption or suspension, or partial interruption or suspension of a service.”
(emphasis added)*

134. Batelco rejected MTC’s proposal in its submission of 29 August 2004. However, the inclusion of the word “falsely” brings this clause in line with that in the SingTel RIO.

135. The TRA considers that the intention of this reciprocal clause is to prevent parties from making accusations about one another which are false, which the TRA considers to be a reasonable, fair and proportionate clause. The inclusion of the word “falsely” in clause 21.4 makes this intention clear and therefore should be altered during the course of the TRA’s review of Batelco’s RIO.

Non-Discrimination

136. The position of the Parties concerning “non-discrimination” may be summarised as follows:

- MTC wants (page 49 Stage 1 submission) Batelco to include in its RIO a non-discrimination clause such as the one included in Interim Orders No. 2 and 3 on the basis that (page 32 Stage 1 submission) the Law does not contain any express prohibition on discrimination; and
 - Batelco considers (point 242 All Parties Version, Stage 5 submission) that such a clause is unnecessary and inappropriate on the basis that sufficient compliance provisions exist in the Law.
137. MTC in its submission of 25 August 2004 proposed a non-discrimination clause. Batelco rejected MTC's proposal in its submission of 29 August 2004.
138. The provisions of the Law and the conditions of the licenses, do deal expressly as well as implicitly with non-discrimination and apply to the interconnection arrangements between the Parties. In the Law:
- section 57(b) in relation to terms and tariffs of interconnection provides that these "shall be fair and reasonable and non-discriminatory";
 - section 58(b) in relation to tariffs generally charged by licensed operators "shall be fair and equitable and non-discriminatory"; and
 - section 65(b) in relation to the prohibition on abuse of dominance in particular means that a dominant operator shall not act in a discriminatory manner.
139. Condition 23 of Batelco's national fixed services licence also refers to the prohibition on abuse of dominance. On the basis of the above, the TRA therefore considers that there should be no need for a specific non-discrimination provision in the interconnection agreement, nor, it would appear, in Batelco's RIO.

Directory Listing

140. This part of the Dispute involves a request by MTC (page 44 Stage 1 submission) for the TRA to require that Batelco must offer a directory listing service on fair and reasonable terms. Batelco is of the view (point 246 (b) All Parties Version, Stage 5 submission) that this issue has not been "effectively negotiated" between the Parties.
141. MTC has not provided to the TRA proposed terms and conditions for an agreement between the Parties as part of this Dispute resolution process. Therefore, Batelco has been unable to respond.

142. Batelco's RO contains a commercial offer for directory listing services. The TRA has not, however, formally approved this part of the RO.
143. The TRA considers that the material submitted by MTC (page 33, Stage 1 submission) merely expresses a range of generalisations about MTC's concerns with the relevant parts of Batelco's RO. Statements made by MTC that the relevant provisions are "wholly inadequate" or "needs to be rewritten in its entirety" are not substantiated. Furthermore, MTC failed to provide alternative terms and conditions to the relevant parts of Batelco's RO.
144. Having considered this issue further, and its relevance to Directory Assistance above, and taking into account that MTC is required to provide Directory Services to its customers, under the current circumstances and pending either an agreement between the Parties or such other chance in circumstances that would make the provision of the directory database available under appropriate terms and conditions to be supplied to other operators, the TRA determines that the following shall apply:
- a) Batelco shall provide directory assistance services to MTC at a wholesale charge of **[Redacted - Confidential Information]** fils per directory assistance call where Batelco operators provide a service to MTC customers. This charge shall be implemented 20 working days after Batelco has made available to MTC the database of directory listings in a form that can be searched by a professional telecoms operator as provided below, in order to provide MTC with time to implement appropriate searching mechanisms.
 - b) Batelco shall make its database of directory listings available to MTC with provision for searching the database on terms that a typical professional telecoms operator would require, i.e. not searchable only by Internet. Batelco may charge MTC for making this database available either by means of a one-off set-up fee for supplying the database of directory listings or a per search fee. Such fees, one-off or per search, shall be determined by the TRA should the Parties be unable to agree on the level within 30 days of Batelco quoting a price for them. Such quotation to reach MTC at least 30 calendar days before the implementation of charge (a) above can apply. Any per search fee shall be less than the wholesale price of **[Redacted - Confidential Information]** fils per directory assistance call since Batelco will not be providing manpower to answer the calls of MTC customers. In the event that the Parties have not agreed the one-off fee or per search fee, any subsequent

determination by the TRA on the applicable rate shall apply from the date of use of the database.

The provision of the database by Batelco to MTC shall be on such terms and conditions as the Parties may agree. In the event that the Parties cannot agree on the terms and conditions upon which the database shall be supplied, either Party may refer this matter to the TRA for determination.

Restriction to GSM Networks

145. This part of the Dispute is concerned with the application of the commercial agreement between the Parties to the term “mobile networks” and not simply “GSM networks”. MTC objects (page 44 Stage 1 submission) to the limitation to GSM networks and proposes that the broader term “mobile networks” be used.
146. MTC has proposed various amendments to the agreement between the Parties that reflects its view in its submission to the TRA of 25 August 2004. Batelco has not objected to the use of the broader term in its submission to the TRA of 29 August 2004, but has objected in its Response.
147. The TRA acknowledges that it may be unreasonable if the substitution of the term "mobile network" for the term "GSM network" were to impose on Batelco undue additional burdens of planning, implementation and development, however the TRA is aware of the limitation of “GSM networks” as submitted by MTC. Consequently, the TRA determines that the words “GSM networks” should be replaced by the words “GSM networks including the right to provide third generation and associated services” throughout the commercial agreement between the Parties, which the TRA considers should not place any undue additional burden on Batelco.

Waiver of Rights

148. The position of the Parties concerning waiver of rights may be summarised as follows:
 - MTC wants (page 44 Stage 1 submission) clause 24.13 of Schedule 9 of Batelco’s RIO to be deleted on the basis that it is an unfair and unreasonable deprivation of new entrant rights; and
 - Batelco considers (point 254 All Parties Version, Stage 5 submission) that the clause should be retained but is prepared to compromise.

149. MTC proposed amendments to clause 24.13 of Schedule 9 of Batelco's RIO in its submission of 25 August 2004. In particular, this consists of deleting the second sentence of this clause. Batelco has not objected to MTC's proposal in either its submission of 29 August 2004 or in its part of the Preliminary Analysis Responses. Batelco has, however, objected to the second sentence of this clause being deleted in its Response.
150. The TRA shall consider this issue raised by MTC as part of its RIO review.

Material not taken into Account

151. Some of the material submitted to the TRA in relation to this Dispute was not in accordance with the Procedure (i.e. if it was not submitted by the Parties in Stage 1 documents or in response to issues raised by the other Party in Stage 1, or in response to the TRA's request in its letter LAU/DC/580 of 18 August 2004). Accordingly, any such material has not been taken into account by the TRA. The TRA noted in its letter to the Parties dated 4 September 2004, and its follow up letter to MTC of 28 September 2004, that commentary included in materials submitted by MTC on 25 August 2004 will not be taken into account.

Material Submitted by MTC and not taken into account

152. For the reasons below, the TRA has not taken into account in attempting to resolve this Dispute the material submitted by MTC on 25 August 2004 comprising proposed supply agreement terms for:
- MMS Terminating Access Services;
 - Internet Global Connectivity Service (Including BGP routing);
 - ISP-BIX Connectivity Service;
 - IFL/ISL BIX Connectivity Service; and
 - Domain Names Service; and
 - other proposed terms and conditions of commercial agreements provided by MTC, and in particular, MTC's proposed amendments to Schedule 7 of Batelco's RO as provided in the material submitted by MTC on 25 August 2004.
153. In addition, the TRA has not taken into account the commentary included in the materials submitted by MTC on 25 August 2004;

154. Moreover, the TRA has not taken into account other proposed terms and conditions of commercial agreements provided by MTC. In particular, MTC's proposed amendments to Schedule 7 of Batelco's RO as provided in the material submitted by MTC on 25 August 2004.
155. All of the above material is concerned with issues that are outside the scope of the issues raised in Stage 1 submissions. As noted in the Procedure, the TRA made it very clear to the Parties that no new issues may be raised by the Parties after their initial Stage 1 submissions. However, nothing whatsoever precludes MTC (or Batelco) from referring these, or indeed any new, issues to the TRA in accordance with section 57(g) of the Law as a new dispute for resolution, should either Party so wish, so long as the criteria of section 57(g) of the Law are satisfied. Moreover, the TRA will consider the material submitted by MTC as appropriate as part of the approval process for Batelco's next RIO.
156. Where appropriate, the TRA will consider the abovementioned material as part of the approval process for Batelco's next RIO.

Materials Submitted by Batelco and not taken into account

157. By letter dated 30 November 2004, MTC objected to certain paragraphs of Batelco's Response to the Preliminary Analysis being taken into account by the TRA in its Determination. MTC claims that certain of the paragraphs included in Batelco's Response contain new evidence, and as such they should be struck out from the Batelco Response in accordance with the TRA's directions to the Parties.
158. The TRA's opinion on the MTC letter is set out below by reference to its requests for redaction:
- Part III: paragraphs 20-21: paragraph 20 is a statement unsupported by any evidence contained in Batelco's prior submissions to substantiate the claim that MTC obtained the commercial results it wanted from the interim interconnection orders – as a statement of fact it should be redacted. Paragraph 21 is a statement of opinion (that regulatory intervention may lessen commercial incentive to negotiate). Whilst this statement is not contained in any of its submissions, it can be implied from the Batelco position stated in paragraph 68 at pages 15 and 16 of its Stage 5 Submission. Paragraph 21 does not include any new evidence and the TRA considers that there is no need to redact it;
 - Part IV: paragraphs 42-44: these paragraphs contain Batelco's response to the TRA's arguments on economies of scale. They are all expressions of opinion, which do not include new evidence, with the possible exception of the statement of fact at the second

sentence to sub-paragraph 42(a), which as such should be redacted.

- Part IV: paragraphs 51-52: these paragraphs are expressions of opinion and other than the statement about Batelco's fixed to mobile rate of 21 fils/90 second unit, do not include any new evidence. If this tariff is in the public domain, then there is not reason for it to be redacted from Batelco's response. Its inclusion does not prejudice MTC.
 - Part IV: paragraph 59: the statements of fact at the second and third sentences of this paragraph were not included in any of Batelco's prior submissions on this issue. They should be redacted.
 - Part IV: paragraph 62: this paragraph contains expressions of opinion only, and does not include any new evidence.
 - Part IV: paragraphs 65-83: the only statements of fact in these paragraphs are restatements of parts of the Law, whose inclusion in the response does not prejudice MTC. The remainder of the paragraphs contains expressions of opinion on these parts of the Law. No new evidence is contained in the paragraphs.
 - Part IV: paragraphs 103-119: these paragraphs contain new statements of fact (i.e. new evidence) and expressions of opinion on those facts as they bear on the arguments of MTC with respect to ordering and provisioning. As such, they should be redacted. Such a redaction will not in any event prejudice Batelco, who will be able to make these arguments as part of the next RIO review.
 - Part IV: paragraphs 122-124: paragraphs 122 and 123 are statements of fact that were not included in Batelco's prior submissions and should be redacted. Paragraph 124 is an expression of opinion, which does not include any new evidence.
159. These parts identified above as being new evidence, will be deemed by the TRA to have been redacted.

Part B - Determination

HAVING CONSIDERED ALL ADMISSIBLE EVIDENCE AND SUBMISSIONS BY THE PARTIES AND PURSUANT TO SECTION 57(g) OF THE LAW, THE TELECOMMUNICATIONS REGULATORY AUTHORITY HEREBY MAKES THE FOLLOWING DETERMINATION AS BETWEEN THE PARTIES:

1. Mobile Termination Tariff

- 1.1 The charge applied by MTC for termination of calls originating from Batelco's network shall be set at **[Redacted - Confidential Information]** fils per minute.
- 1.2 This rate shall apply from Monday 31 January 2005 until 31 January 2006 inclusive unless, before that date, the TRA has found MTC to be dominant and as a result has determined MTC's termination rates. Should Batelco wish to amend its retail rate as a result of the revised termination rate to be applied by MTC, Batelco should do so by 5pm on 10 January 2005. The TRA will seek to examine, and, if appropriate, to approve such revised retail rates in time for them to become effective on 31 January 2005, so long as the tariff application contains all relevant and necessary information and the retail rates are appropriate.

2. Directory Assistance

- 2.1 The TRA determines that the wholesale charge payable by MTC to Batelco of **[Redacted - Confidential Information]** fils per directory assistance call from MTC customers, if Batelco provides a service to MTC for each directory assistance call, is reasonable. The charges shall apply subject to the conditions set out in section 21: Directory Listing, below.

3. International Outbound Call Termination

- 3.1 The TRA determines that in line with its Determination on Dominance in Interconnection Markets of 9 August 2003 ("the Dominance Determination"), international outbound call termination services as provided by Batelco to MTC are not interconnection services and as such are not subject to incremental cost based or LRAIC based charges.
- 3.2 The TRA determines that until such time as an Access Regulation enters into force, which may be issued by the TRA under section 57 of

the Law, the level of discount **[Redacted - Confidential Information]** shall be applied to Batelco's retail tariff list for international services applicable to mobile customers as approved by the TRA and published on Batelco's website.

4. Speaking Clock Tariff

4.1 The TRA finds that this issue is no longer in dispute.

5. International Operator Assist Tariff

5.1 The TRA finds that this issue is no longer in dispute.

6. Leased Lines

6.1 The TRA determines that leased line services as provided by Batelco to MTC are not interconnection services and as such are not subject to incremental cost based or LRAIC based charges.

6.2 The TRA determines that international and national leased lines services should be provided by Batelco to MTC at the following discounts: **[Redacted - Confidential Information]**% discount to current retail rates (as at 3 January 2005) for international leased lines and **[Redacted - Confidential Information]**% discount for national leased lines (compared to Batelco's rates prior to the amended rates on 4 December 2004). The Parties should be given a further opportunity to reach a commercial agreement in relation to detailed terms and conditions for the supply of leased lines. If the Parties still cannot agree, the TRA will intervene if requested by either Party or both Parties.

The TRA determines that the same rates apply to the provision of Internet leased lines by Batelco.

7. E1 Half Link

7.1 The TRA determines that it cannot resolve this issue within the scope of the notified dispute pursuant to section 57(g) of the Law since a commercial agreement has been reached on this issue by the Parties (the Link Rates Agreement entered into by the Parties on 14 October 2003).

7.2 The TRA will consider the five bullet points at the bottom of page 19 of MTC's Stage 1 submission as part of the RIO review.

8. Co-location Tariff

- 8.1 The TRA determines that it cannot resolve this issue within the scope of the notified dispute pursuant to section 57(g) of the Law since a commercial agreement has been reached on this issue by the Parties (the Facilities Access Rates Agreement entered into by the Parties).

9. Emergency Call Tariff

- 9.1 The TRA determines that the charge applied by Batelco to the termination of emergency calls originating on MTC's network shall be the charge set out in Batelco's Reference Interconnection Offer ("RIO") as approved by the TRA.

10. Network Tones and Announcements

10. 1 The TRA finds that this issue is no longer in dispute.

11. Backdated Charges

- 11.1 The TRA determines that, as a principle, the charges for services supplied under an agreement between the Parties would apply from the date of the agreement and should not apply retrospectively. Any exception to this principle would be a result of a particular circumstance or intervention or otherwise mutually agreed between the Parties.

12. Suspension and Termination Rights

12. 1 The TRA determines it appropriate to consider the concerns raised by MTC through the process of approving Batelco's next RIO rather than in its determination of this dispute.

13. Ordering and Provisioning

- 13.1 The TRA determines it appropriate to consider the concerns raised by MTC through the process of approving Batelco's next RIO rather than in its determination of this dispute.

14. Quality of Service

- 14.1 The TRA finds it appropriate that the Parties negotiate, with a view to reaching an agreement on detailed service levels and parameters between them within 3 months of the date of this Determination.
- 14.2 In respect of this issue for resolution, the TRA determines that the Parties should be required to negotiate, with a view to reaching an agreement on detailed service levels and parameters between them within 3 months of the date of this Determination. The TRA also expects Batelco to progress quality of service in its next RIO.

15. Security Requirements

Turnover Threshold

15.1 The TRA determines that the requirement for security should not be subject to a turnover threshold. Accordingly, the TRA determines that the relevant provisions of Batelco's RIO as approved by the TRA shall continue to apply. However, the TRA will consider the issues raised by MTC as part of its RIO review.

Types Of Security and Drawing On Security

15.2 With regard to the type of security the TRA determines that irrevocable guarantees, performance bonds and letters of credit constitute types of security which Batelco can demand from interconnecting operators. To this extent, it is appropriate that the relevant provisions of Batelco's RIO as approved by the TRA continue to apply. The TRA will consider the arguments put forth by MTC regarding narrowing the scope of the RIO on this matter as part of the RIO review.

In relation to the issue raised by MTC of Batelo being granted too much latitude to determine unilaterally that an operator is in breach, the TRA will consider this issue in the course of the forthcoming RIO review.

15.3 With regard to the right for Batelco to draw on the security, the TRA determines it appropriate that the relevant provisions of Batelco's RIO as approved by the TRA continue to apply, however there appears to be scope for certain clarifications and protection triggers to be considered. The TRA will consider these as part of the forthcoming RIO review process.

Review Of Security

15.4. With regard to the review of security, the TRA notes that Batelco has undertaken not to trigger a review of security within 12 months of the signing of a permanent supply agreement on the basis of a billing dispute. The TRA determines this to be reasonable and finds it appropriate that such undertaking should be provided for in the permanent supply agreement between the Parties.

16. Billing

Link Identifiers

16.1 The TRA determines that link identifiers should be included in the CDR data between interconnecting networks, therefore the relevant clauses of Batelco's RIO as approved by the TRA continue to apply.

Clauses 2.7 and 3.2 Of Schedule 4 Of Batelco's RIO

16.2 The TRA determines that these clauses in Batelco's RIO as approved by the TRA continue to apply.

Clause 3.6 Of Schedule 4 Of Batelco's RIO being made reciprocal

16.3 The TRA determines that it cannot consider the matters raised in this regard at this stage.

17. Penalty Charges

17.1 The TRA determines it appropriate to consider the concerns raised by MTC through the process of approving Batelco's next RIO rather than in its determination of this dispute.

18. New Services

18.1 The TRA determines it appropriate to consider the concerns raised by MTC through the process of approving Batelco's next RIO rather than in its determination of this dispute.

19. "Gagging" Order

19.1 The TRA determines that clause 21.4 of Schedule 9 of Batelco's RIO shall be altered during the course of the TRA's review of Batelco's RIO, to include the word "falsely", as per the following:

*"21.4 Subject to clause 21.5, the Access Seeker must not **falsely** attribute to the Access Provider:*

(a) any blame for a fault or other circumstance;

(b) any need for maintenance or upgrade of a network; or

(c) any interruption or suspension, or partial interruption or suspension of a service."
(emphasis added)

20. Non-Discrimination

20.1 The TRA is satisfied that the provisions of the Law and the conditions of the licenses deal (both expressly and implicitly) with non-discrimination and apply to the interconnection arrangements between the Parties. Accordingly, the TRA finds that there is no need

for a specific non-discrimination provision in either the interconnection agreement nor Batelco's RIO.

21. Directory Listing

21.1 The TRA determines that the following shall apply:

- a) Batelco shall provide directory assistance services to MTC at a wholesale charge of **[Redacted - Confidential Information]** fils per directory assistance call where Batelco operators provide a service to MTC customers. This charge shall be implemented within 20 working days after Batelco has made available to MTC the database of directory listings in a form that can be searched by a professional telecoms operator as provided below, in order to provide MTC with time to implement appropriate searching mechanisms.
- b) Batelco shall make its database of directory listings available to MTC with provision for searching the database on terms that a typical professional telecoms operator would require, i.e. not searchable only by Internet. Batelco may charge MTC for making this database available either by means of a one-off set-up fee for supplying the database of directory listings or a per search fee. Such fees, one-off or per search, shall be determined by the TRA should the Parties be unable to agree on the level within 30 days of Batelco quoting a price for them. Such quotation to reach MTC at least 30 calendar days before the implementation of charge (a) above can apply. Any per search fee shall be less than the wholesale price of **[Redacted - Confidential Information]** fils per directory assistance call since Batelco will not be providing manpower to answer the calls of MTC customers. In the event that the Parties have not agreed the one-off fee or per search fee, any subsequent determination by the TRA on the applicable rate shall apply from the date of use of the database.

The provision of the database by Batelco to MTC shall be on such terms and conditions as the Parties may agree. In the event that the Parties cannot agree on the terms and conditions upon which the database shall be supplied, either Party may refer this matter to the TRA for determination.

22. Restriction to GSM Networks

22.1 The TRA determines that the terms in question should be construed so as to apply to all GSM networks including 3G, and that the wording "GSM networks" shall be replaced by the words "GSM networks

including the right to provide third generation and associated services” throughout the commercial agreement between the Parties.

23. Waiver of Rights

23.1 The TRA will consider the concerns raised by MTC through the process of approving Batelco's next RIO rather than in its determination of this dispute.

24. General

24.1 This Determination is without prejudice to the TRA's powers under the Law and to the outcome of any ongoing or future investigation, consultation or other regulatory process carried out pursuant to such powers, including but not limited to the process of approving Batelco's next RIO and the ongoing industry consultation concerning "access", all or any of which may result in the application of different terms than those of this Determination.

24.2 Nothing in this Determination precludes the Parties from referring to the TRA as a new dispute for resolution any issue that has not been submitted in accordance with the Procedure and has not been determined herein, or indeed any new issues, so long as the criteria of section 57(g) of the Law are satisfied.

24.3 This Determination is binding on the Parties in accordance with section 57(g) of the Law.

24.4 This Determination shall take effect for the date of this Determination save where it expressly states otherwise.

A. Andreas Avgousti

General Director

3 January 2005