



**EMERGENCY ORDER NO. 1 OF 2016 ISSUED PURSUANT TO ARTICLE 10.1 OF THE
RETAIL TARIFF NOTIFICATION REGULATION AGAINST BATELCO FOR BREACH OF
ARTICLES 3.1, 9.3(a) AND 9.3(b) OF THE RETAIL TARIFF NOTIFICATION REGULATION**

Ref. LAD0916/175

The Telecommunications Regulatory Authority (the “**Authority**”) refers to its previous correspondence in relation to broadband packages currently being offered by Bahrain Telecommunications Company BSC (“**Batelco**”), under the label of “*Complete digital solution for small businesses*”ⁱ, and in particular to its letter dated 15 June 2016 (ref. MCD/06/16/044) and Batelco’s reply dated 21 June 2016 (ref. GCL/261/16).

For the reasons set out below, the Authority has issued this Order pursuant to its powers under Article 10.1 of Regulation 1 of 2010 on the Retail Tariff Notification Regime (Ref: LAU/0509/119) (the “**Retail Tariff Regulation**”).

Please note that Article 10.1 of the Retail Tariff Regulation is without prejudice to the Authority’s powers set out in Articles 35 and 65 of the Telecommunications Law and the Authority reserves the rights to make such other Orders as it deems fit in relation to the same set of facts.

For that reason this Order focuses on the breaches to the Retail Tariff Regulation only, and does not consider any wider breaches of the Telecommunications Law, Batelco’s licences and Batelco’s Reference Offer.

1 ORDER:

- 1.1 For the reasons cited below, the Authority considers that Batelco has issued an unauthorized retail broadband tariff in respect of the “*Complete digital solution for small businesses*” packages in breach (non-exhaustively) of Articles 3.1, 9.3(a) and 9.3(b) of the Retail Tariff Regulation.

ⁱ <http://batelco.com/business/products-and-solutions/business-internet/small-business-complete-digital-solution/>

1.2 Therefore, with respect to this unauthorized retail broadband tariff Batelco is ordered to:

- (a) Immediately cease the implementation of the *“Complete digital solution for small businesses”* packages;
- (b) Immediately retract the press releases and any other marketing material and communications of any form in relation to the offering of the abovementioned packages;
- (c) Within 7 days of the date of this Order contact all affected customers and notify them in writing, either by email or by posted letter, with the following message;

“The cancellation of the “Complete digital solution for small businesses” packages has been mandated by the Telecommunications Regulatory Authority due to Batelco’s failure to comply with Articles 3.1, 9.3(a) and 9.3(b) of the Retail Tariff Notification Regulation. All Subscribers who subscribe to that packages may request migration to another operator or to an alternative small business packages within 14 days of this notification, such migration to be provided at no extra cost. Otherwise, Subscribers will convert to their previous terms with Batelco (if any) or be moved to the nearest equivalent packages.”

- (d) Within 7 days of the date of this Order issue a statement in the Arabic and English language press in the Kingdom of Bahrain with the same message as set out at paragraph 1(c) above;
- (e) Within 7 days of the date of this Order post this Order and its reasoning in a prominent position on the following webpage <http://batelco.com/business/products-and-solutions/>;
- (f) Within 7 days of the date of this Order provide the Authority with the information requested below at Schedule 1; and
- (g) Within one month from the date of this Order re-instate the tariffs and terms and conditions for Batelco’s retail broadband customers as agreed with the TRA and revert all customers who have signed up to the *“Complete digital solution for small businesses”* to their previous



rates or to the nearest equivalent packages (as applicable) **unless** such customer requests migration to another operator or to an alternative retail broadband packages, in which case such migration will be affected by Batelco at no cost to the customer within the same timescale (i.e. within one month from the date of this Order).

2 REASONING:

2.1 On 15 June 2015 the Authority wrote to Batelco in relation to new retail broadband packages advertised on Batelco's website, labelled as "*Complete digital solution for small businesses*" and making additional requests of Batelco (the "**Authority's Request**").

2.2 The Authority's Request pointed out that:

"According to the Determination of Significant Market Power and Determination of Dominant Position in the Markets for Provision of Broadband Internet Access Services from a Fixed Location issued on 27 March 2014 (Ref: MCD/03/14/018), Batelco has been found to enjoy a position of Significant Market Power in the retail market for the supply of business broadband internet access services from a fixed location."

2.3 In addition the Authority made various requests of Batelco, being:

"to provide the Authority with a detailed justification as to why it has failed to notify the Authority before introducing the package "Complete digital solution for small businesses". Batelco is also requested to confirm the launch date of such package."

2.4 On 21 June 2016 Batelco sent a letter responding to the Authority's Request setting out its reply ("**Batelco's Reply**").

2.5 Batelco's Reply made various contentions in relation to the status of the Authority Request, including that:

"This Offer, launched on 15th April 2016, is intended to address the needs of small home office users using the same functionality and other service characteristics already available to mass market, and not business, broadband customers. This can be seen from the fact that the Offer does not provide for:

(a) *any dedicated customer support or account manager;*

(b) *any enhanced service levels or more stringent key performance indicators than those already available for mass market broadband services*



(c) any different contention ratios (it uses a 1:15 contention ratio); or

(d) any additional functionality that is not already associated with mass market broadband packages (the fixed IP offered is already part of these packages today).”

2.6 For the reasons set out below, the Authority cannot accept that Batelco’s Reply has answered the points raised in the Authority’s Request and as such the Authority has found that Batelco is in breach of the Retail Tariff Notification Regulation.

3 RELEVANT LEGAL PROVISIONS

3.1 The Authority’s Request referred to paragraph 478 (b) of the Determination of Significant Market Power and Determination of Dominant Position in the Markets for Provision of Broadband Internet Access Services from a Fixed Location issued on 27 March 2014 (Ref: MCD/03/14/018) (the “**Dominance Determination**”) setting out that in the Authority’s view that:

“Batelco has a position of SMP in the retail market for the supply of business broadband services from a fixed location.”

3.2 Batelco’s Reply does not seek to challenge the Dominance Determination, but instead seeks to raise arguments that the “*Complete digital solution for small businesses*” is not, in fact, a package aimed at the retail business.

3.3 In determining whether a package is to be considered part of the relevant business retail tariff market, the Dominance Determination at paragraph 120 sets out a list of criteria for the benefit of Licensed Operators:

*“In defining the relevant customer market, the Authority takes note of the operators’ responses and has made some amendments to the list of criteria, concluding that any retail broadband service that fulfils **at least one** of the following criteria could be considered part of the business product market:*

- (a) a service that is offered under the label ‘business’, ‘business customer’ or similar;
- (b) a service that is only offered to customers who are able to present a valid CR number;
- (c) a service that is offered with dedicated customer support, such as with a dedicated account manager, as a standard part of the product



(rather than as an optional extra upon the payment of an additional fee);

- (d) a service that is offered with more stringent key performance indicators or service level agreements than what is typically offered with mass-market broadband products;*
- (e) a service which has a lower contention ratio than what is offered by mass-market broadband products; or*
- (f) a service that includes additional functionality not available to end users of mass-market broadband products, such as domain names, email servers, static IP address etc."*

3.4 A review of the above criteria shows that Batelco's "Complete digital solution for small businesses" offer is a business retail broadband service by virtue of, at a minimum, paragraph 120 (a) & (f) of the Dominance Determination (as can be seen on the Batelco website screenshot found at Annex (A)).

4 THE RETAIL TARIFF REGULATION

4.1 The Retail Tariff Regulation defines "Controlled Tariff" as a "Retail Tariff of a Retail Telecommunications Service in a retail market in which a Licensed Operator is determined by the Authority to have Significant Market Power in accordance with the definition of "Operator with Significant Market" in the Telecommunications Law ("SMP"). Controlled Tariffs shall also include any Retail Tariffs for Bundles of Retail Telecommunications Services comprising at least one Retail Telecommunications Service offered in a retail market in which the Licensed Operator is determined to have SMP".

4.2 Article 2.1 of the Retail Tariff Regulation states,

"This Regulation applies to all Licensed Operators determined by the Authority to have SMP in any relevant retail markets and which intend to introduce, change or withdraw Retail Tariffs in any of those retail markets in which it has been determined by the Authority to have SMP".

4.3 As discussed above in Section 3, by virtue of the Dominance Determination Batelco has been found to have SMP in the retail business broadband market, and as such the terms of the Retail Tariff Regulation relating to SMP operators are directly applicable



to with regards to that market. Accordingly, the “*Complete digital solution for small business*” packages fall with the definition of “*Controlled Tariff*”

4.4 Article 3.1 of the Retail Tariff Regulation states,

“Any Licensed Operator determined by the Authority to have SMP in any relevant retail markets shall notify the Authority of its intention to introduce, change or withdraw any Controlled Tariff. This shall include notifying the Authority of any of the following:

- (a) Introduction of new Controlled Tariffs.*
- (b) Any changes that affect the prices of Controlled Tariffs which relate to existing Retail Telecommunications Services.*
- (c) Any changes to the non-price terms (including terms and conditions) of Controlled Tariffs which amount to a material change in the resulting price or the cost of provision of Retail Telecommunications Services”.*

4.5 Article 5.1 of the Retail Tariff Regulation states:

“The Notification Period shall be twenty (20) working days from the Notification Date. The Authority may extend the Notification Period by written notice to the Notifying Operator in the following circumstances:

“Where the Notifying Operator submits a Wholesale Telecommunications Service for the Authority’s approval in accordance with Article 3.2 of this Regulation”.

4.6 Article 9.3 of the Retail Tariff Regulation states:

“A Notifying Operator may not implement any Controlled Tariff:

- (a) before it has been notified to the Authority.*
- (b) before the expiry of the Notification Period, unless the Authority expressly decides otherwise in exceptional or unforeseeable circumstances...”*

4.7 Batelco did not notify the Authority of its new “*Complete digital solution for small businesses*” packages and as such Batelco failed to comply with its obligations under Articles 3.1, 9.3 (a) and 9.3(b) of the Retail Tariff Regulation.

4.8 Article 10.1 of the Retail Tariff Regulation states:



“Without prejudice to TRA’s powers defined in Articles 35 and 65 of the Telecommunications Law, in the event that the Controlled Tariff is Implemented in breach of this Regulation, the Authority may order the Licensed Operator to:

- (a) immediately cease the implementation of the Controlled Tariff.*
- (b) take any other appropriate measures necessary in order to withdraw the Controlled Tariff or rectify the breach.*
- (c) take any other appropriate measures including refraining from taking particular actions that are deemed necessary to restore the situation existing prior to the implementation of the Controlled Tariff”.*

4.9 Given its finding that Batelco has breached the terms of the Retail Tariff Notification, the Authority makes this Order pursuant to its powers under Article 10.

5 NEXT STEPS:

5.1 For the purposes of this Emergency Order the Authority has not exhaustively detailed every breach of the Telecommunications Law (in particular under Articles 58 and 65), the Licences and the Regulations made by Batelco in relation to the introduction of the “*Complete digital solution for small businesses*” packages.

5.2 It is averred that any such investigation into all such breaches of the Telecommunications Law is best instigated through the Article 35 procedures set out under the Law. Batelco’s compliance, or otherwise, with the terms of this Order shall be considered as part of that investigation process.

5.3 The Authority reserves all of its rights in respect of this matter.


Mohammed Bubashait
General Director
Telecommunications Regulatory Authority
Manama, Kingdom of Bahrain

08/09/2016

Schedule 1

Pursuant to Batelco's obligations under Article 53 of the Telecommunications Law, and in order that the Authority may more fully investigate this matter and make decisions with regards to its powers under Articles 3(c)(2) and 35 of the Telecommunications Law, the Authority requests that Batelco provide the Authority with:

- (A) The names and contact details of all customers that have signed up to Batelco's "*Complete digital solution for small businesses*" packages since it launched in April 2016;
- (B) Copies of all contracts and/or agreements entered into with such customers;
and
- (C) Total revenues generated by Batelco from the "*Complete digital solution for small businesses*" packages since it launched in April 2016.



ANNEX 1

Complete digital solution for small businesses

As the leading digital solutions provider in the Kingdom of Bahrain, we're fully committed to helping start-ups and small businesses grow by helping increase their efficiency and competitiveness. We offer customised cutting edge solutions to help enhance productivity.

Small Business Solution	Basic	Premium	Platinum
	BD 7/month	BD 10/month	BD 15/month
Package Speed	50Mbps	100Mbps	100Mbps
Transmit (GB)	100GB	100GB	150GB
Unlimited	Unlimited	Unlimited	Unlimited
Email (@bnet.bh)	1	1	1
101 Listing	FREE	FREE	FREE
Registration	FREE	FREE	FREE
Wi-Fi Router	FREE	FREE	FREE
Fixed IP*	FREE	FREE	FREE
E Fax	-	FREE	FREE
Voice Number	-	FREE	FREE
Free Calls (Minutes)	-	-	∞ Unlimited