

EMERGENCY ORDER NO. 3 OF 2010

BATELCO'S RETAIL TARIFFS OF INTERNATIONAL CALLS TO INDIA AND BANGLADESH

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ORDER

1. For the reasons cited in the reasoning to this Emergency Order, the Telecommunications Regulatory Authority (“**the Authority**”) orders Bahrain Telecommunications Company BSC (“**Batelco**”) to:
 - (a) Immediately reset the Effective Retail Tariffs (i.e. the retail tariff incurred by the end user after taking into account the compounded effects of any discounts and promotions) to India and Bangladesh (“**Relevant Routes**”) to be not less than the Retail Price Floor determined by the Authority in the reasoning of this Emergency Order, being:
 - (i) to Bangladesh
 - (a) SimSim – IDD 32 fils per minute
 - (b) SimSim – 123 Call 32 fils per minute
 - (c) Fixed – 123 Call 27 fils per minute
 - (ii) to India
 - (a) SimSim – IDD 25 fils per minute
 - (b) SimSim – 123 Call 26 fils per minute
 - (c) Fixed – 123 Call 21 fils per minute
 - (b) Immediately update its website with the reset Effective Retail Tariffs ordered in paragraph 1(a) at all relevant pages.
 - (c) Within 2 working days of the date of this Emergency Order publish the Reset Effective Retail Tariffs in two Arabic, two Urdu, two Hindi, two Bangladeshi and two English language newspapers.
 - (d) Remove from its retail branches and from any commercial or retail channel or agent any promotional material relating to the Relevant Tariffs that advertises the retail tariffs for the Relevant Routes below the Retail Price Floor in this Emergency Order.

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- (e) Within 10 working days of the date of this Emergency Order provide the Authority with a detailed breakdown and explanation of the various tariff structures, discounts and promotions over the last 12 months for each of Batelco's products that allow international calls.
- (f) Within 10 working days of the date of this Emergency Order provide the Authority with all instructions and materials given to Batelco's sales staff or any commercial or retail channel or agent at retail stores and to the 196 call centre – including copies of all manuals, emails, graphics, guidance notes, emails, memos etc. pertaining to discounted rates to the Relevant Routes during the last 12 months.

Effect of this Emergency Order

- 2. This Emergency Order is issued without prejudice to the Authority's investigation into whether the retail tariffs to the Relevant Routes and other destinations were provided below cost and/or constitute a margin squeeze.
- 3. This Emergency Order and any further action taken by the Authority is without prejudice to the rights of any other entity to take relevant action as they may deem appropriate under the law of the Kingdom of Bahrain.
- 4. The issuance of this Emergency Order does not prejudice the Authority's right to:
 - (a) expand the scope of its investigation into this matter;
 - (b) issue further orders relating to other breaches arising out of the same set of facts;
 - (c) find, develop or introduce new evidence relating to the alleged activities described herein.



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

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Effective Date of this Emergency Order

5. This Emergency Order is effective immediately and remains effective until such time as the Authority notifies Batelco.

Issued on 29 July 2010

Dr Mohammed Ahmed Al Amer
Chairman of Board of Directors
Acting General Director
Telecommunications Regulatory Authority
Manama, Kingdom of Bahrain

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REASONING

Relevant Legal Provisions

1. The Authority granted Batelco an International Services Licence on 21 June 2003 pursuant to its powers under the telecommunications law promulgated by legislative decree no. 48 of 2002 (the "**Telecommunications Law**").
2. Article 3(b)(1) of the Telecommunications Law requires the Authority to carry out its duties relating to Telecommunications services in the manner best calculated to protect the interests of Subscribers and Users in respect of the tariffs charged for services.
3. Article 3(b)(2) of the Telecommunications Law requires the Authority to carry out its duties relating to Telecommunications services in the manner best calculated to promote effective and fair competition among new and existing Licensed Operators.
4. Article 3(c)(2) of the Telecommunications Law gives the Authority the power to:

"monitor and investigate compliance with the provisions of this Law and any regulations, orders and determinations made hereunder, both on its own initiative and at the request of any Person, and making such orders and determinations as are necessary to ensure compliance in accordance with this Law and any such regulations, orders and determinations including ordering a Licensee to be restructured into two or more entities, if necessary."
5. Article 3(c)(14) of the Telecommunications Law states that the Authority shall have the power to:

"review tariffs to ensure that they are fair and reasonable and establish the basis for tariff definition and tariff rebalancing plans and other measures for tariff controls for inclusion in Telecommunications Licenses where appropriate and determine tariffs, if necessary, including by benchmarking tariffs charged by a Licensee against tariffs in comparable Telecommunications markets and determining the forward looking incremental costs of providing a Telecommunications service."

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6. Article 3(f) of the Telecommunications Law states that

“Except in emergency cases, the Authority shall, when determining to take measures that will have a material effect on a particular Telecommunications market, give interested parties the opportunity to give their opinions as to such measures within a reasonable period.”

7. With respect to the relevant wholesale tariffs Article 57(e) of the Telecommunications Law states that:

“A Public Telecommunications Operator in a Dominant Position shall offer upon request Access to its Telecommunications Network on fair and reasonable terms to any Licensed Operator. Such operator shall only be under an obligation to offer Access to the ducts if the Authority considers that there is an essential need for such Access, whereby such demand is deemed to exist in the case of Access for a holder of a mobile Telecommunications Licence.

The Authority may publish regulations with regards to Access, including a regulation concerning the reference Access offer similar to a reference Interconnection offer.

If the Authority considers the tariffs and the terms and conditions on which Access is offered by an operator in a Dominant Position are unreasonable, it may determine such tariffs and terms and conditions as it considers appropriate, and the provisions of paragraph (b) of this Article shall apply in this respect.”

8. Article 58(b) of the Telecommunications Law states that

“...[t]ariffs charged by Licensed Operators for their Telecommunications services shall be fair and equitable, non-discriminatory and based on forward-looking costs.

The Authority shall have the authority to review and control tariffs, establish the basis for tariff definition and tariff rebalancing plans and take any other steps in this respect in accordance with the provisions of Article 3(c)(14) of this Law.”

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9. Clause 8.1 of Batelco's ISL License states:

"The licensee's tariffs for the provision of licensed services shall be subject to section 58 of the Telecommunications Law and any regulation made thereunder".

Background

10. On 4 April 2010 Batelco commenced a promotion on prepaid mobile originated VoIP international calls to 13 destinations including to India and Bangladesh. This was to last up to 3 months.
11. It has come to the Authority's attention that Batelco is continuing promotional IDD rates – see <http://www.batelco.com/portal/cp/index.asp> and specifically is advertising promotional IDD rates
- (a) to India at 17 fils per minute (BD0.017) and
 - (b) to Bangladesh at 23 fils per minute (BD0.023).
12. The website does not explain how the rates are accessed however after contacting Batelco's helpdesk number, 196, the Authority understands that this is available when a consumer with an active SimSim line subscribes to a "SimSim International" package. The Authority cannot see an advertisement or explanation for the SimSim International package on Batelco's website.
13. The retail prices on Batelco's 123 Calling Card, which is a VoIP product, are similarly priced. The retail tariffs per minute to India and Bangladesh are found at http://www.batelco.com/portal/fixe/123call_cards.asp and are as follows:
- (a) to India at 15 fils per minute (BD0.015) and
 - (b) to Bangladesh at 22 fils per minute (BD 0.022)

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14. Batelco is also promoting on its website a different pre-paid calling card (PPCC), - see <http://www.batelco.com/portal/fixed/ppcc.asp>. The website notes that "normal IDD rates" which are:
 - (a) to India these are 210 fils per minute (BD0.210) and
 - (b) to Bangladesh 260 fils per minute (BD0.260).These rates apply to both peak and non-peak times.
15. Batelco's promotional website advertises a promotion for a package called "SimSim Home" which advertises Free "500 fils" for international calls every month, available to active lines only – see <http://www.batelco.com/portal/cp/index.asp>. The website shows "New reduced rates" which are:
 - (a) to India 45 fils per minute (BD0.045) and
 - (b) to Bangladesh 55 fils per minute (BD0.055).
16. Since April 2010 Batelco has also promoted its SimSim cards using a "Get BD3 free" with each new SimSim package and a 25% extra credit with SimSim top ups. The Authority understands that these promotions have now ceased.
17. The Authority has also ascertained from the staff of Batelco's retail outlet at Bahrain City Center Mall that Batelco may be offering a promotion that "for every two minutes of international calls, that one of the two minutes is free".
18. In any event Batelco is advertising promotional IDD retail tariffs to India at 17 fils a minute and to Bangladesh at 23 fils a minute, and 123 (VoIP) Calling Card retail tariffs to India at 15 fils a minute and to Bangladesh at 22 fils a minute.
19. It is not clear, and it is not necessary for the purposes of this Emergency Order, to determine if those retail tariffs are the tariffs after taking into account any of Batelco's promotions or discounts.

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20. For the avoidance of doubt this Emergency Order is concerned with what it defines as Effective Retail Tariffs, namely the tariffs that a consumer actually pays per minute after taking into account the accumulative affects of all relevant promotions and discounts on offer from the Licensed Operator.

Basis for Emergency Order

21. The Authority has received complaints from OLOs alleging that their revenues and traffic minute volumes for calls to India and Bangladesh have declined dramatically since April 2010 and that Batelco's retail tariffs are below cost, constitute a margin squeeze and/or predatory pricing.
22. As a result the Authority has commenced an investigation with respect to the alleged below cost pricing and/or margin squeeze and/or predatory pricing and has issued an article 53 Request for Information on 22 July 2010.
23. The Authority has subsequently been informed by a number of OLOs that the Relevant Routes are highly price sensitive and constitute a significant component of their businesses. In order to complete calls to these destinations these OLOs make use of the freephone call origination and wholesale IDD services provided by Batelco through its reference offer. Due to the high degree of price sensitivity of these markets the sustained impact of these promotional retail tariffs to the Relevant Routes has exerted considerable financial pressure upon these businesses. The Authority is satisfied based upon the evidence presented by the OLOs in question that should the current promotional retail tariffs to the Relevant Markets persist there is a real danger of market failure and severe financial distress, or in the worst case exit from the market. Although this might be a result of normal competitive pressures, the Authority is concerned, particularly in the context of an ongoing investigation into allegations of anticompetitive behaviour, to ensure that this does not result from anticompetitive practice. The Authority must carry out its duties in the manner best calculated to protect the interests of Subscribers and Users in respect of the tariffs charged for services and the availability and provision of services and the promotion of effective and fair

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competition among new and existing Licensed Operators (articles 3(b)(1) and (2) of the Telecommunications Law).

24. The Authority has reviewed retail and wholesale costs provided by Batelco over the last 2 years which are attached in Annex A to this Emergency Order. From these costs the Authority has determined that for the purposes of this Emergency Order the Retail Price Floor for international calls to the Relevant Routes are:

- (i) to Bangladesh
 - (a) SimSim – IDD 32 fils per minute
 - (b) SimSim – 123 Call 32 fils per minute
 - (c) Fixed – 123 Call 27 fils per minute
- (ii) to India
 - (a) SimSim – IDD 25 fils per minute
 - (b) SimSim – 123 Call 26 fils per minute
 - (c) Fixed – 123 Call 21 fils per minute

25. Batelco's Effective Retail Tariffs referred to in paragraph 18 are significantly below those costs as shown in the graph in Annex B.

26. This graph shows that Batelco's retail prices for the Relevant Routes are substantially lower than its costs being in percentage terms:

- (i) to Bangladesh
 - (a) SimSim - IDD: 35% below costs
 - (b) SimSim - 123 Call: 44% below costs
 - (c) Fixed - 123 Call: 20% below costs
- (ii) to India
 - (a) SimSim – IDD 43% below costs
 - (b) SimSim - 123 Call: 70% below costs
 - (c) Fixed - 123 Call: 34% below costs

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27. OLOs utilizing Batelco's reference offer products must pay more in wholesale costs to Batelco than Batelco's retail tariffs for the same product on the same routes (mobile originated IDD calls to India and Bangladesh).
28. The Authority is concerned that given:
- given that the charts in Annex A and Annex B shows Batelco's retail tariffs for the Relevant Routes are substantially below its costs,
 - the duration of the promotions on Batelco's retail tariffs to India and Bangladesh and impact on Batelco's wholesale customers and increasing likelihood of exit from the market if the retail tariffs to the Relevant Routes continue at this level,
 - that Batelco has provided incomplete cost stacks with respect to its WSIDD costs used in the cost stack which the Authority has used to approve the WSIDD costs and are therefore likely to be in error,
- that Batelco's retail prices to the Relevant Routes are below those that Batelco's wholesale customers can replicate without sustaining a loss based upon Batelco's approved wholesale charges, that therefore Batelco's retail tariffs for these routes may be below cost and/or may constitute a margin squeeze.
29. Although the Authority has not determined whether Batelco is dominant in a relevant market, the Authority is concerned that should the alleged below cost retail pricing continue that Batelco's wholesale customers may not be able to fairly and efficiently compete with Batelco's retail tariffs and that this will materially prevent, restrict or distort competition.
30. The Authority considers that the continuation of these retail prices may cause irreversible and irreparable harm should Batelco's wholesale customers be forced out of business as a result of alleged anticompetitive below cost pricing, a margin squeeze and/or predatory pricing.

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31. Per article 3(b)(1) of the Telecommunications Law the Authority must carry out its duties in the manner best calculated to protect the interests of Subscribers and Users with respect to the tariffs charged for services and the availability and provision of services.
32. Per article 3(b)(2) of the Telecommunications Law the Authority must carry out its duties in a manner best calculated to promote effective and fair competition among new and existing Licensed Operators.
33. Therefore the Authority considers that on balance the public interest is served by ensuring the long term availability of sustainable tariffs offered as a result of effective and fair competition and that an operator's retail prices do not unfairly or materially prevent, restrict or distort competition in a manner contrary to article 65 of the Telecommunications Law.
34. Furthermore requiring Batelco to raise its Effective Retail Tariffs to India and Bangladesh to not less than the Retail Floor is, on balance, not likely to cause it irreversible and irreparable harm. Whereas if Batelco continues with its retail tariffs to the Relevant Routes and these are ultimately determined to constitute an unlawful retail price, constitute a margin squeeze or predatory pricing, the potential for OLOs to go out of business in the interim is high to severe. The loss of competition (including businesses and employment) and the loss of choice, availability and provision of various international telecommunications services offered to Subscribers and Users as a result of the unfair removal of competition would be irreparable and irreversible and could result in an unlawful material restriction or distortion of competition contrary to article 65 of the Telecommunications Law.
35. For the reasons stated above the Authority considers that it must issue an emergency order pursuant to articles 3(c)(2), 3(c)(14) and 3(f) of the Telecommunications Law to prevent the likelihood of irreversible and irreparable harm to competition in the telecommunications market and to protect the interests of subscribers and users with respect to the availability of services.



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36. The Authority therefore orders Batelco to immediately increase its Effective Retail Tariffs to the Relevant Routes to be not less than the Retail Price Floor for the Relevant Routes until such time as the Authority notifies Batelco.



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**BATELCO'S RETAIL TARIFFS OF INTERNATIONAL CALLS TO INDIA AND
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ANNEX A

[X Redacted]



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ANNEX B

[X Redacted]