

## Compliance Monitoring Regime



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
Kingdom of Bahrain - مملكة البحرين

## ANNEX THREE

### Regime for Monitoring of Separation of Batelco and NBN Compliance

#### Compliance Monitoring Regime

#### Draft for Discussion

**Purpose:** To establish a regime for monitoring Batelco's compliance with the NTP4 policy and associated reports and requirements published by the Authority

## Compliance Monitoring Regime

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**Compliance Monitoring Regime**  
Table of Contents

**Table of Contents**

List of Acronyms and Definitions .....	4
1 Introduction.....	6
1.1 Scope of Monitoring Regime .....	6
2 Batelco Monitoring Requirements .....	8
2.1 Batelco Compliance Process and Monitoring.....	8
2.2 Batelco Undertakings Compliance Reporting.....	9
2.3 Ad-hoc Reporting.....	10
3 SE Monitoring Program .....	12
3.1 SE Compliance Process and Monitoring.....	12
3.2 The Equivalence Compliance Committee .....	13
4 Authority Monitoring Activities .....	16

**Compliance Monitoring Regime**  
List of Acronyms and Definitions

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Authority	The Telecommunications Regulatory Authority
Batelco	Bahrain Telecommunications Company B.S.C
Batelco Board	The board of directors of Batelco
Batelco Retail Entity ( <b>'BRE'</b> )	Batelco's business unit(s) concerned with the delivery and /or provision of retail services to end users and/or subscribers in the Kingdom of Bahrain
Batelco Undertakings Compliance Officer ( <b>'BUCO'</b> )	A senior Batelco employee with responsibility for ensuring Batelco is compliant with the Undertakings
Batelco Undertakings Compliance Report	A report to the Authority prepared by Batelco on Batelco's compliance with its obligations in the Undertakings, including the Batelco Commitments
Batelco Commitments	The legally binding commitments given by Batelco as set out in the Undertakings that relate to the BRE, SE and other relevant business units within Batelco
Equivalence Compliance Committee ( <b>'ECC'</b> )	An SE Board subcommittee comprising SE directors together with industry representatives
Equivalence Report	An SE report prepared as part of the SE Monitoring Program
Framework	The Report on the New Telecommunications Economic Regulatory Framework for the Kingdom of Bahrain dated 15 April 2018 (MCD/021/18/005)
ICT	Information and Communications Technology
Separated Entity ( <b>'SE'</b> )	A legally separated entity which will own, operate and deploy a Fixed Telecommunications Infrastructure Network
Separation Guidelines	The Authority's Separation Guidelines (Guidelines for the Separation of Batelco) published on the 2 <sup>nd</sup> August 2018
SE Board	The board of directors of the SE
SE Commitments	The legally binding commitments given by the SE as set out in the Undertakings
SE Monitoring Program	The SE's internal program to monitor the SE's compliance with the SE Commitments
SE Compliance Report	A report to the Authority prepared by the ECC on the SE's compliance with its obligations in the Undertakings including the SE Commitments
Monitoring Guidelines	This document
Monitoring Regime	The compliance monitoring regime in relation to the Batelco and SE Commitments which the Authority expects to be implemented, as set out in this document
NBN	National Broadband Network
NBN Deployment Milestones	The deployment and performance targets for the NBN as set out in the Undertakings

## Compliance Monitoring Regime

### List of Acronyms and Definitions

NBN Deployment Report	A Batelco report prepared as part of the Batelco Monitoring Program
NTP4	Fourth National Telecommunications Plan
OLO	A licensed telecom operator in the Kingdom of Bahrain other than Batelco
Rest of Batelco	All business units and activities of Batelco other than the SE (including the BRE)
RO	Reference Offer
Separation Milestones	The target dates to be achieved by Batelco in relation to the establishment and operation of the SE as set out in the Undertakings
Separation Milestones Report	A Batelco report prepared as part of the Batelco Monitoring Program
Shared Services	Support services provided by Batelco to both the SE and BRE
Single Network	The single telecommunications infrastructure utility network in Bahrain
SLA	Service Level Agreement
STM	Special Temporary Measure issued by the Authority on [F] pursuant to Article 40(bis)(b) of the Telecommunications Law
Transition Period	The period beginning with the date of the issuance of the STM and ending with the date of issuance of the fixed telecommunication infrastructure network licence to the SE
Undertakings	The document setting out the measures Batelco and/or the SE agrees to undertake in relation to the separation of Batelco into the SE and Rest of Batelco

# Compliance Monitoring Regime

## Authority Monitoring Activities

### 1 Introduction

1. This document is the fourth of a series of documents prepared by the Authority to give effect to the NTP4 policy. As set out in the Separation Guidelines, Batelco is expected to establish the SE to operate the Single Network. This document sets out the monitoring activities which the Authority expects Batelco and ultimately the SE to put in place to ensure compliance with the Undertakings, the STM and the wider objectives of NTP4.
2. These Monitoring Guidelines also set out how the Authority itself expects to monitor compliance with the Undertakings and the requirements of the STM. The proposed timetable for separation envisages the Undertakings being signed by 11th November 2018, the SE to be established by not later than 31<sup>st</sup> December 2018 (including the appointment of a CEO and board of directors) and the transfer of assets and staff to the SE to be completed to the greatest extent practical by 31<sup>st</sup> May 2019.
3. As provided for in the STM, the Authority shall take such steps as are necessary to ensure that the timelines required by NTP4, and at the Authority's own discretion, are adhered to.
4. On that basis, the Authority expects that the Undertakings will include legally binding commitments on Batelco relating to the SE which will subsist until such time as the SE is an independent Licensed Operator.
5. These Monitoring Guidelines have been developed and published in parallel with the Separation Guidelines. These two documents are intended to be read together and cross-references have been made to the relevant paragraph in the Separation Guidelines where more detail can be found (and *vice versa*).
6. These Monitoring Guidelines are without prejudice to any other compliance and monitoring obligations imposed upon the SE and Batelco, including under the STM.

#### 1.1 Scope of Monitoring Regime

7. The Monitoring Regime is designed to monitor compliance with, *inter alia*:
  - a. The Undertakings;
  - b. The STM;
  - c. The Separation Milestones;
  - d. Non-discrimination obligations during and post the Transition Period; and
  - e. Eol commitments post the Transition Period.

## **Compliance Monitoring Regime**

### **Authority Monitoring Activities**

8. Strong, effective monitoring will be crucial to ensure that SE acts independently, in the interests of all its customers. To deliver this, the Authority will need to closely monitor the following areas:
  - 8.1 the implementation of the desired governance framework via the Undertakings;  
and
  - 8.2 the timelines set out in the STM.
9. This approach will form the basis of the Authority's ongoing monitoring process and monitoring reports. These reports will be published periodically and assess compliance with the new arrangements, including any areas of concern.
10. These Monitoring Guidelines set out the Authority's views on the monitoring to be undertaken as follows:
  - a. **Batelco Monitoring Program (Section 2).** Batelco is required to establish internal compliance processes to ensure it is compliant with the Undertakings. The Authority also expects that Batelco will put in place its own monitoring function to check it is compliant with the Batelco Commitments. As noted in the Separation Guidelines the Authority expects Batelco to nominate the BUCO to be responsible for putting in place the necessary processes, monitoring and reporting on compliance to Batelco's board and the Authority. The BUCO will remain in place at least until separation is deemed complete by the Authority.
  - b. **SE Monitoring Program (Section 3).** The Authority expects the SE to establish internal compliance processes to ensure it is compliant with the Undertakings. The Authority also expects that the SE will put in place its own monitoring function to check it is compliant with the SE Commitments. As set out in the Separation Guidelines the Authority expects the SE to establish the ECC within one month of the incorporation of the SE to be responsible for monitoring and reporting of the SE's compliance so that any instances of non-compliance are promptly notified to the Authority.
  - c. **Authority's Monitoring Program (Section 4).** The Authority will carry out its own external monitoring activities, including the review of monitoring and reports of Batelco and the SE, examining complaints raised by OLOs or other stakeholders or investigating self-reported breaches of compliance.
11. The following sections provide further details on the scope of each of the three elements of the Monitoring Regime.
12. The success of the new arrangements (including the Framework) will ultimately, to a large degree, depend on compliance by Batelco with the Undertakings. The Authority's response to any potential compliance failures will naturally depend on the nature and

## **Compliance Monitoring Regime**

### Authority Monitoring Activities

gravity of the breach. Where appropriate, the Authority will take prompt remedial action to address any competition concerns. This could result in the Authority ordering Batelco to implement further separation measures pursuant to Article 3(g) of the Law and/or deciding not to issue relevant Licences.

## **2 Batelco Monitoring Requirements**

13. Batelco is expected to implement the Batelco Monitoring Program by 11<sup>th</sup> November 2018. The Authority also expects Batelco to commit to the implementation and operation of the Batelco Monitoring Program as part of the Undertakings.
14. This section sets out at a high level the Authority's expectations with regards to the Batelco Monitoring Program.

### **2.1 Batelco Compliance Process and Monitoring**

15. The Authority expects Batelco's internal compliance processes to include the following:
  - a. The appointment of a BUCO. The BUCO should be a suitably experienced and qualified person reporting to the Batelco Board;
  - b. A clear chain of accountability for ensuring compliance and empowering the BUCO to drive organisational change as required;
  - c. A code of conduct for employees;
  - d. A whistle-blowing facility which enables staff to report confidentially on matters relating to the Undertakings. This could be leveraging existing whistle-blowing facilities or establishing new facilities;
  - e. Remuneration schemes to ensure the incentives of the BRE staff are aligned with the commercial interests of the BRE;
  - f. Establishment of internal sanctioning mechanisms for non-compliance with the Batelco Commitments;
  - g. Provision of ongoing support, guidance, and training for Batelco employees with respect to compliance with non-discrimination obligations and other Batelco Commitments; and
  - h. Establishment of an escalation process to notify the Authority of any breaches with the Batelco Commitments or other Authority requirements.
16. The BUCO should have sufficient authority and budget (including staffing requirements) to implement the Batelco Monitoring Program.



## **Compliance Monitoring Regime**

### **Authority Monitoring Activities**

17. The Authority expects that the Batelco Monitoring Program will require the BUCO to put in place all adequate arrangements for monitoring all compliance matters. The identity and credentials of the proposed individual to fill the role of the BUCO must be notified in advance by Batelco to the Authority for the Authority's approval. Such notification must be made in sufficient time to ensure that the BUCO is appointed within 30 days from date of the Undertakings.
18. The Authority recognizes that the nature of the separation process raises potential risks which could lead to the BRE being able to exert inappropriate influence on the operational and strategic decisions of the SE. To address this risk, the Separation Guidelines require the SE to put in place measures in this regard especially in relation to transparency and governance.<sup>1</sup>
19. These transparency and governance obligations will allow the Authority to monitor closely the interactions between the SE and the BRE.

## **2.2 Batelco Undertakings Compliance Reporting**

20. The Authority notes that Batelco will have reporting obligations during the Transition Period as set out in the STM.
21. In addition, following acceptance of the Undertakings, the Authority expects that the Batelco Monitoring Program will include the submission of the **Batelco Undertakings Compliance Report**<sup>2</sup> on a monthly basis relating to Batelco's compliance with the Undertakings, as set out in the remainder of this section, specifically:
  - a. The Separation Milestones Report; and
  - b. The Ad Hoc Reports (if and when they arise).
22. Each report is expected to be accompanied by detailed data to enable the Authority to monitor compliance. This will require Batelco to establish appropriate processes to allow for such data to be collected and presented in a format for the Authority to validate and assess.
23. In particular, the Authority expects Batelco to notify and provide evidence to the Authority of the completion of milestones in line with the timelines set out as part of the Undertakings. The BUCO will need to ensure Batelco has robust processes in place to track Batelco's progress against relevant requirements, escalating any non-compliance, or risk of non-compliance, to the Authority in a timely manner. The BUCO will have the

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<sup>1</sup> See sections 6 and 7 of the Separation Guidelines and Section 3 of these Monitoring Guidelines.

<sup>2</sup> The Authority will publish such reports, subject to restrictions due to commercially sensitive information.

## **Compliance Monitoring Regime**

### **Authority Monitoring Activities**

responsibility to escalate such issues to the Authority and will be available to meet with the Authority at the Authority's request.

24. Beyond the Project Plan Milestones and the deadlines set out under Schedule 4 of the STM, the Authority anticipates that there may be separation commitments that can only be implemented after the transition period. The Authority expects Batelco to report on the delivery of any such commitments.

#### **Separation Milestones Report**

25. Following acceptance of the Undertakings, Batelco will be expected to submit a Separation Milestones Report on a monthly basis to the Authority to include details of:
  - a. Any milestones that were due to be achieved in the period covered by the report, including Batelco's assessment of whether those milestones have been met.
  - b. Any milestones expected to be completed in the period following the report.
  - c. If Batelco has not achieved a specific milestone, or does not expect to achieve a future milestone:
    - i. The circumstances giving rise to Batelco's inability to achieve the milestone.
    - ii. Any steps that Batelco intends to take to remedy the failure to achieve the milestone or to reduce the risk of not achieving a future milestone.
    - iii. Any future milestones that are at risk of being delayed and mitigations.

### **2.3 Ad-hoc Reporting**

26. In addition to the regular reports set out above, if Batelco becomes aware of any actual or potential failure to meet its obligations in the Undertakings (including *inter alia* NBN Deployment Milestones, Separation Milestones and Batelco Commitments), it must give written notice to the Authority as soon as practicably possible (and in any event within five working days).
27. Any such report should include:
  - a. Any Batelco Commitments breached or at risk of being breached.
  - b. Where relevant, details of any Separation Milestones not met and reasons for failure to meet any such milestone.

## **Compliance Monitoring Regime**

### **Authority Monitoring Activities**

- c. Where relevant, any equivalence issue that was identified. This should include, at a minimum, details on the parties affected, as well as the duration, nature and reason for the breach.
- d. Any remedial action that Batelco will take and the expected date by which that remedial action will be completed.
- e. Any information on sanctioning or enforcement action taken by Batelco in response to a breach.

**Compliance Monitoring Regime**  
Authority Monitoring Activities

### **3 SE Monitoring Program**

28. This section sets out the compliance processes and associated monitoring and reporting arrangements which the Authority expects the SE to include in the SE Monitoring Program.

#### **3.1 SE Compliance Process and Monitoring**

29. The Authority expects the SE's internal compliance processes to include the following:
- a. The establishment of the ECC.
  - b. A clear chain of accountability for ensuring compliance and empowering the ECC to drive organisational change as required.
  - c. A code of conduct for all employees.
  - d. A whistle-blowing facility which enables SE staff to report confidentially on matters relating to the Undertakings. This could be leveraging existing whistle-blowing facilities or establishing new facilities.
  - e. Remuneration schemes to ensure the incentives of the SE staff are aligned solely with the commercial interests of the SE, and not the Rest of Batelco or BRE.
  - f. Establishment of internal sanctioning mechanisms for non-compliance with the SE Commitments.
  - g. Provision of ongoing support, guidance, and training for SE employees with respect to compliance with non-discrimination obligations and other SE Commitments.
  - h. Establishment of an escalation process to notify the Authority of any material breaches with the SE Commitments or other Authority requirements.
  - i. Regular reporting by the SE on compliance with the SE Commitments.
  - j. Regular reporting by the SE with regard to the SE's compliance with its EoI obligations. This would include the submission of status reports, as well as Key Performance Indicators ("KPIs") related to non-discriminatory treatment.
30. The ECC should have sufficient authority and budget (including staffing requirements) to implement the SE Monitoring Program.
31. The Authority expects that the SE Monitoring Program will require the ECC to put in place all adequate arrangements for monitoring all Undertakings compliance matters.

**Compliance Monitoring Regime**  
Authority Monitoring Activities

**3.2 The Equivalence Compliance Committee**

32. The Authority expects the ECC will be a sub-committee of the SE Board. The ECC will have responsibility for:
- a. Establishing and monitoring a compliance regime as set out in paragraph 29 above.
  - b. Investigating complaints from OLOs relating to SE Commitments compliance.
  - c. Preparing SE Undertakings Compliance Reports and Equivalence Reports.
33. The ECC should comprise the SE Independent Directors together with one representative from Batelco/BRE and two from other licensed operators (“OLOs”).
34. If required, the ECC should be supported by a secretariat (the “**ECC Secretariat**”), paid for by the SE. The ECC Secretariat should not be involved in any other activities and report solely to the ECC.

**SE Compliance Reports**

35. The ECC should prepare monthly SE Compliance Reports setting out:
- a. **Separation Milestones.** Whether the SE has achieved the milestones specified in its Undertakings and implementation timetable;
  - b. **Feedback/Complaints.** A report setting out feedback from the industry, the ECC’s views on the matters raised and proposed steps (if any) to deal with issues raised;
  - c. **Assessment of EOI breaches.** The results of the ECC’s investigations into any potential breach of Eol (whether raised by complaints, self-reported, through the Authority’s monitoring or through the ECC’s monitoring);
  - d. **Assessment of SE’s internal compliance processes.** Including but not limited to reviewing the code of practice, training, and internal processes, identifying any actual or potential breaches of the Undertakings and remedial action taken to address them; and
  - e. **Assessment of other SE Commitments.** An assessment of the SE’s compliance with any other obligations of the SE as set out in the Undertakings.
36. The Authority will publish a copy of each SE Compliance Report received (redacted where appropriate to exclude confidential information).

**Equivalence Report**

37. Once the SE commences supply of services it will be expected to submit an Equivalence Report on a monthly basis to the Authority and include at a minimum:

## **Compliance Monitoring Regime**

### **Authority Monitoring Activities**

- a. A summary of the equivalence KPIs (see below) or other suitable indicators reported separately for BRE and OLOs, highlighting any indicators suggesting a breach of EoI commitments and any further analysis the ECC has undertaken.
  - b. A summary of any breaches or equivalence complaints received in the period covered by the report, including an assessment of whether the complaint is valid (and if so the causes, potential impact and remedy suggested/taken by the SE) or not valid (and if so the reasons why not).
  - c. Reporting on the progress in implementing changes to improve and maintain compliance, such as evidence on any relevant training or employee meetings.
38. Table 1 below summarises the equivalence KPIs that are expected to be reported on by the SE in relation to each product and/or service that it will be required to supply. These equivalence KPIs constitute an initial list only. The Authority may require additional equivalence KPIs to be included, removed or amended as required.

## Compliance Monitoring Regime Authority Monitoring Activities

**Table 1: Illustrative Equivalence KPIs**

KPI	Description	Metric
<b>Overall</b>		
Product take-up	Share of SE product categories used by OLOs and BRE	Percentage by product category
<b>Timescales</b>		
Time to accepting/rejecting pre-order	The time it takes before an OLO/BRE is informed by the SE whether its service request has been accepted or rejected.	Minutes
Time to provision	The time it takes to complete an order. Measured from the date and time which the SE receives a correct and valid application from the customer to the date and time when all of the relevant stages for that service through which an order can pass are completed as acknowledged by the OLO/BRE.	Working days
Time to repair a fault	Measured from the date and time a fault incident was reported to the SE to the date and time the OLO/BRE accept the fault has been rectified.	Working hours (during vs. outside of general working hours)
Time to handle product migration request	Measured from the date and time where a product migration request is received from a customer by the SE to the date and time when all of the relevant stages for the service transition are completed as acknowledged by the OLO/BRE.	Working days
<b>Pricing</b>		
Prices	Internal (transfer prices) and external prices charged for each product in accordance with the RO Order.	Relevant prices (one- off and recurring)
<b>Service Levels</b>		
All SLA measures included in the SE RO Order.		

*Source: the Authority. These KPIs are expected to be reported separately for BRE and OLOs for the purposes of identifying potential non-equivalence.*

39. The Authority will publish a copy of each Equivalence Report received (redacted where appropriate to exclude confidential information).

**Compliance Monitoring Regime**  
Authority Monitoring Activities

## **4 Authority Monitoring Activities**

40. The Authority will continue to engage with and closely monitor compliance with the Undertakings during the separation process and in the long term.
41. As part of the Authority's routine monitoring, the Authority may be informed from a range of sources including, *inter alia*:
- a. Regular reports from Batelco/SE.
  - b. Information requests sent to Batelco/SE.
  - c. Complaints from consumers and industry stakeholders.
  - d. Its own *ad hoc* investigations.
42. The Authority will seek to build effective working relationships with all Licensees to foster an open and collaborative approach to monitoring compliance. The Authority also recognizes that engagement with Licensees, as customers of the SE, is critical to a successful compliance-monitoring regime. The Authority expects to receive formal feedback from Licensees on an ongoing basis, which feedback may feature in the monitoring reports published by the Authority.
43. The Authority will take prompt action where it is concerned that Batelco or the SE may be failing to comply with the Undertakings. The Authority's reaction will depend on the nature and gravity of the concern. Minor or one-off issues are likely to be resolved through engagement with the SE/Batelco, via discussions and/or in writing. The Authority will also take into account:
- 43.1 the extent to which the SE/Batelco has self-reported any compliance failure; and
  - 43.2 how quickly the SE/Batelco has reported the issue/ compliance failure to the Authority (noting in particular the requirements of Article 26 of these Monitoring Guidelines).
44. The Authority is likely to regard frequent patterns of compliance issues and/or those that present a material risk to the independence of the SE or the equal treatment of customers as more serious. In these instances, the Authority's concerns will be escalated formally to the BUCO/ECC or the CEOs or Chairmen of the SE and Batelco. The Authority may also mandate changes to certain processes if needed to resolve the issues of concern. This could include changes to the Undertakings to provide for more robust solutions depending on the nature and seriousness of the issues.
45. As noted above, ultimately, if the Authority believes that the Undertakings are no longer addressing competition concerns (including non-discrimination obligations), the



## **Compliance Monitoring Regime**

### **Authority Monitoring Activities**

Authority may consider ordering that the SE/Batelco puts in place further separation measures pursuant to Article 3(g) of the Law.

46. For the sake of clarity, the action the Authority will take in response to the SE or Batelco's potential non-compliance with the Undertakings will sit alongside the Authority's statutory powers to take enforcement action for failure to comply with the SE/Batelco's specific regulatory obligations. It will remain a priority for the Authority to monitor the SE and Batelco's compliance with its regulatory obligations, in addition to the Undertakings, and the Authority will take appropriate action where it becomes aware of potential breaches of such regulatory obligations.
47. Should the Authority as part of its routine monitoring identify any concerns relating to compliance with the Undertakings, it may carry out a more in-depth assessment of the relevant issues, which might include staff interviews, analysis of documentation and/or on site work.
48. The Authority reserves the right to take additional steps should it have reasons to believe additional monitoring measures are required. Such steps could include the establishment of an independent external oversight group to complement the Authority's own monitoring activities and oversee compliance with the Undertakings. The members of the group would be nominated by the Authority. The SE/Batelco would be required to meet any costs associated with any additional steps.

**Compliance Monitoring Regime**  
 Authority Monitoring Activities

SUMMARY OF KEY MONITORING REGIME REQUIREMENTS

<b>Prepared by</b>	<b>Title</b>	<b>Report to include</b>	<b>Detailed Contents</b>	<b>Reporting Frequency</b>	<b>Reference Monitoring Guideline document</b>
Batelco	<b>Separation Milestones Report</b>  <b>Ad Hoc reports</b>  (Together the <b>Batelco Undertakings Compliance Report</b> )	Progress against milestones  Various matters relating to breaches of Undertakings	<ul style="list-style-type: none"> <li>• If milestones in period were met</li> <li>• Upcoming milestones</li> <li>• Commentary on missed milestones</li> <li>• Potential delays</li> <li>• Batelco Commitments breached or at risk of being breached.</li> <li>• Any equivalence issues identified.</li> <li>• Information on sanctioning or enforcement action taken by Batelco in response to a breach</li> </ul>	Monthly  Ad Hoc	Para 25  Para 26
SE (ECC)	<b>SE Compliance Report</b>	Various matters relating to breaches of Undertakings including Separation Milestones, EOI Compliance	<ul style="list-style-type: none"> <li>• Progress against Separation Milestones.</li> <li>• Industry Feedback/Complaints</li> <li>• Assessment of EOI breaches.</li> <li>• Assessment of SE's internal compliance processes.</li> <li>• Assessment of other SE Commitments.</li> </ul>	Monthly	Para 35
SE (ECC)	<b>Equivalence Report</b>	EOI KPI reporting	<ul style="list-style-type: none"> <li>• Detailed KPI reporting plus other EOI matters</li> </ul>	Monthly	Para 37