



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

ANNEX THREE

Regime for Monitoring Functional Separation of Batelco and NBN Compliance

Compliance Monitoring Regime

[] 2018

Ref: []

Draft

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

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List of Acronyms and Definitions

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Authority	The Telecommunications Regulatory Authority
Batelco	Bahrain Telecommunications Company B.S.C
Batelco Retail Entity ('BRE')	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 Monitoring Program	Batelco's internal program to monitor Batelco's compliance with the Undertakings
Commitments	The legally binding commitments given by Batelco as set out in the Undertakings
Eol	Equivalence of Inputs
Equivalence Report	A Batelco report prepared as part of the Batelco Monitoring Program
Framework	The Report on the New Telecommunications Economic Regulatory Framework for the Kingdom of Bahrain dated 15 April 2018
Functionally Separated Entity (FSE)	A new operating division of Batelco established as part of the Undertakings
ICT	Information and Communications Technology
Monitoring Guidelines	This document
Monitoring Regime	The compliance monitoring regime in relation to the 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
NBN Deployment Report	A Batelco report prepared as part of the Batelco Monitoring Program
NTP4	Fourth National Telecommunications Plan
OLO	a licensed telecom operator other than Batelco
Relevant Reporting Commencement Date	Means the date on which the Authority informs Batelco in writing that each of the discrete reporting obligations set out in these Monitoring Guidelines have commenced.
Rest of Batelco	All business units and activities of Batelco other than the FSE (including the BRE)
RO	Reference Offer
Separation Guidelines	The Authority's Separation Guidelines (Guidelines for the Functional Separation of Batelco) published [insert date]
Separation Milestones	The target dates to be achieved by Batelco in relation to the establishment and operation of the FSE as set out in the Undertakings
Separation Milestones Report	A Batelco report prepared as part of the Batelco Monitoring Program
SLA	Service Level Agreement
Single Network	The single telecommunications infrastructure utility network in Bahrain

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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 Batelco
STM	Special Transitory Measure issued by the Authority on [-] (Ref: [-]) pursuant to Article 40(bis)(b) of the Telecommunications Law.
Undertakings Compliance Officer ('UCO')	A senior Batelco employee with responsibility for ensuring Batelco is compliant with the Undertakings
Undertakings	The document setting out the measures Batelco agrees to undertake in relation to the functional separation of Batelco into the FSE and Rest of Batelco

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Introduction

1 Introduction

1. This document is the fourth of a series of documents prepared by the Authority to give effect to the NTP4 policy. It sets out the monitoring activities which the Authority expects Batelco to put in place to ensure that it complies with the Undertakings and as provided for in the Framework, the Separation Guidelines and the NBN deployment targets set out in NTP4.
2. These Monitoring Guidelines also set out how the Authority itself expects to monitor Batelco's compliance with the Undertakings and the NBN deployment targets.
3. 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*). These two documents (along with the STM) are issued in furtherance of the Authority's implementation of the Government policies set out under NTP4 as further articulated by the Authority in its Framework¹. These Monitoring Guidelines are without prejudice to any other compliance and monitoring obligations imposed upon Batelco, including under the STM. Scope of Monitoring Regime
4. The Monitoring Regime is designed to monitor Batelco's compliance with its Commitments including *inter alia*:
 - a. The Separation Milestones.
 - b. Non-discrimination obligations during the Transition Period.
 - c. Eol commitments post the Transition Period.
5. The Authority will also need to monitor closely the conduct of, and interactions between, the FSE and the BRE. One of the benefits of the Commitments is the transparency they provide on the relationship between the FSE and the BRE, in particular on strategic investment decisions. Strong, effective monitoring will be crucial to ensure that FSE acts independently, in the interests of all its customers. To deliver this, the Authority will need to closely monitor two areas:
 - 4.1 compliance with the Commitments related to governance; and
 - 4.2 whether the conduct of the FSE and the BRE reflects the independence necessary for the FSE to achieve the objectives of these Monitoring Guidelines,

¹ Ref: MCD/021/18/005 dated 15 April 2018.

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both in making its own strategic decisions and treating all its customers equally. That is to say that the FSE's strategic decisions both during and after the Transition Period need to be taken in the interests of all its customers and independently from the BRE.

6. This approach will form the basis of the Authority's ongoing monitoring process and monitoring reports. These reports will be published periodically and assess the FSE's compliance with the new arrangements, including any areas of concern.
7. These Monitoring Guidelines sets out the Authority's views on the monitoring to be undertaken by Batelco and the Authority as follows:
 - a. **Batelco (Section 2).** The Authority expects Batelco 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 Commitments. The Authority expects Batelco to nominate a UCO to be responsible for putting in place the necessary processes, monitoring and reporting on compliance to Batelco's board and the Authority.
 - b. **Authority (Section 3).** The Authority will carry out its own external monitoring activities, including the review of Batelco's monitoring and reports, examining complaints raised by OLOs or other stakeholders or investigating self-reported breaches of compliance.
8. The following sections provide further details on the scope of each of the two elements of the Monitoring Regime.
9. The success of the new arrangements (including the Framework) will ultimately, to a large degree, depend on compliance by Batelco with its Commitments. The Authority's response to any potential compliance failures will naturally depend on the nature and 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.

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2 Batelco Monitoring Requirements

10. Batelco is expected to implement the Batelco Monitoring Program by [-]. The Authority also expects Batelco to commit to the implementation and operation of the Batelco Monitoring Program as part of the Undertakings.
11. This section sets out the compliance processes and associated monitoring and reporting arrangements which the Authority expects Batelco to include in the Batelco Monitoring Program.
12. The following section sets out the steps the Authority will take should the Authority find instances of the FSE failing to comply with the Commitments.

2.1 Compliance Process and Monitoring

13. The Authority expects Batelco's internal compliance processes to include the following:
 - a. The appointment of a UCO. The UCO 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 UCO to drive organisational change as required.
 - c. A code of conduct for all Batelco employees, both FSE and the Rest of Batelco.
 - d. A whistle-blowing facility which enables Batelco 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 FSE staff are aligned with the commercial interests of the FSE, and not the Rest of Batelco.
 - f. Establishment of internal sanctioning mechanisms for non-compliance with the Commitments.
 - g. Provision of ongoing support, guidance, and training for Batelco employees with respect to compliance with non-discrimination obligations and other Commitments.
 - h. Establishment of an escalation process to notify the Authority of any breaches with the Commitments or other Authority requirements.
 - i. Regular reporting by the FSE with regard to the FSE's compliance with its EoI obligations. This would include the submission of status reports, as well

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as Key Performance Indicators (“KPIs”) related to non-discriminatory treatment.

14. The UCO should have sufficient authority and budget (including staffing requirements) to implement the Batelco Monitoring Program.
15. The Authority expects that the Batelco Monitoring Program will require the UCO to put in place all adequate arrangements for monitoring all compliance matters. The identity of the proposed individual to fill the role of the UCO 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 UCO is appointed within [-] days from date of the publication of these Monitoring Guidelines.
16. The Authority recognizes that monitoring the interaction between the FSE and the BRE could raise potential risk which could lead to an avenue for the BRE to exert inappropriate influence on the operational and strategic decisions of the FSE. To address this risk, the Separation Guidelines require the FSE to put in place measures in this regard especially in relation to transparency and governance.²
17. These transparency and governance obligations will allow the Authority to monitor closely the interactions between the FSE and the BRE.

2.2 Regular Compliance Reporting

18. Following notification from the Authority of the Relevant Reporting Commencement Date the Authority expects that the Batelco Monitoring Program will include the submission of reports³ relating to Batelco’s compliance with the Commitments, the roll-out of the NBN and its EoI obligations, as set out in the remainder of this section.
19. 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.
20. 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 its Undertakings. The UCO 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 UCO

² See sections 6 and 7 of the Separation Guidelines.

³ The Authority may wish to publish such reports on an as-needed basis, removing commercially sensitive information.

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

Separation Milestones Report

21. Following notification from the Authority of the Relevant Reporting Commencement Date 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.
 - 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.

Equivalence Report

22. Following notification from the Authority of the Relevant Reporting Commencement Date, Batelco will be expected to submit an Equivalence Report on a monthly basis to the Authority and include at a minimum:
- 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 Batelco's UCO 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 FSE) 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.

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23.

24. Table 1 summarises the equivalence KPIs that are expected to be reported on by Batelco. These equivalence KPIs constitute an initial list only. The Authority may require additional equivalence KPIs to be included, removed or amended as required.

Table 1: Illustrative Equivalence KPIs

KPI	Description	Metric
Overall		
Product take-up	Share of FSE product categories used by OLOs and BRE	Percentage by product category
Timescales		
Time to accepting/rejecting pre-order	The time it takes before an OLO/BRE is informed by the FSE 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 FSE 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 FSE 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 FSE 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
Pricing		
Prices	Internal (transfer prices) and external prices charged for each product in accordance with the RO Order.	Relevant prices (one- off and recurring)
Service Levels		
All SLA measures included in the FSE 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.

2.3 Ad-hoc Reporting

25. 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 NBN

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Deployment Milestones, Separation Milestones and equivalence commitments), it must give written notice to the Authority as soon as practicably possible (and in any event within five working days).

26. Any such report should include:
- a. Any 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.
 - 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 the FSE 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.

3 Authority Monitoring Activities

27. The Authority will continue to engage with and closely monitor Batelco's compliance with the Commitments during the separation process and in the long term. In particular, the Authority's monitoring of Batelco's compliance will include, *inter alia*:
- a. Separation Milestones.
 - b. NBN Deployment Milestones.
 - c. Eol commitments post the Transition Period.
28. 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.
 - b. Information requests sent to Batelco/ FSE.
 - c. Complaints from consumers and industry stakeholders.
 - d. Its own *ad hoc* investigations.
29. The Authority will seek to build effective working relationships with the FSE and all other affected licensees to foster an open and collaborative approach to monitoring compliance. The Authority also recognizes that the engagement with affected licensees, as customers of the FSE, is critical to a successful compliance-monitoring

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- regime. The Authority expects to receive formal feedback from affected licensees on an ongoing basis, which feedback may feature in the monitoring reports published by the Authority.
30. The Authority will take prompt action where it is concerned that Batelco may be failing to comply with the Commitments. There could be three key types of potential compliance failure:
- 31.1 a failure by Batelco to provide information requested either voluntarily in accordance with the Commitments or under formal information gathering powers under Article 53 of the Law;
 - 31.2 a failure by Batelco to comply with the specific obligations set out in the Commitments; and
 - 31.3 a failure by Batelco to act in accordance with the 'spirit' of the Commitments, i.e. failure to act independently or to treat customers equally.
31. 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 Batelco, via discussions and/or in writing. The Authority will also take into account:
- 32.1 the extent to which Batelco has self-reported any compliance failure; and
 - 32.2 how quickly Batelco has reported the issue/ compliance failure to the Authority (noting in particular the requirements of Article 30 of these Monitoring Guidelines)
32. The Authority is likely to regard frequent patterns of compliance issues and/or those that present a material risk to the independence of the FSE or the equal treatment of customers as more serious. In these instances, the Authority's concerns will be escalated formally to the UCO or the CEO or Chairman of Batelco. The Authority may also mandate changes to certain processes if needed to resolve the issues of concern. This could include changes to the Commitments and/or the Undertakings to provide for more robust solutions depending on the nature and seriousness of the issues.
33. As noted above, ultimately, if the Authority believes that the Commitments are no longer addressing competition concerns (including non-discrimination obligations), the Authority may consider moving to the imposition of a regulatory solution, consisting in ordering that Batelco puts in place further separation measures pursuant to Article 3 (g) of the Law.
34. In addition, the action the Authority will take in response to Batelco's potential noncompliance with the Commitments will sit alongside the Authority's statutory powers to take enforcement action for failure to comply with Batelco's specific regulatory obligations. It will remain a priority for the Authority to monitor Batelco's compliance

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with its regulatory obligations, in addition to the Commitments, and the Authority will take appropriate action where it becomes aware of potential breaches of such regulatory obligations.

35. Should the Authority as part of its routine monitoring identify any concerns relating to Batelco's 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.
36. If the Authority becomes aware of a breach by Batelco of its commitments in the Undertakings, it has authority to undertake enforcement action including fining Batelco and or requiring it to pay compensation to those affected by the breach.
37. 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 Batelco's compliance with the Undertakings. The members of the group would be nominated by the Authority. Batelco would be required to meet any costs associated with the establishment and operation of this group, including any remuneration to be paid to members of the group.