



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority

A public consultation document issued by the
Telecommunications Regulatory Authority of the
Kingdom of Bahrain

Consumer Protection Regulation

2 June 2016

LAD/0616/107

The address for responses to this document is:

The General Director

Telecommunications Regulatory Authority (“The Authority”)

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the

Authority’s email address at LAD@tra.org.bh

The deadline for responses is **3 July 2016**

Instructions for submitting a response

The Telecommunications Regulatory Authority (“the Authority”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than **4pm on Sunday 3 July 2016**.

Responses to this document should be sent to:

The General Director
LAD@tra.org.bh
Telecommunications Regulatory Authority
P.O. Box 10353,
Manama, Kingdom of Bahrain

Responses should include:

- the name of the company/institution/association etc;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and e-mail address)
- in the case of responses from individual consumers, name and contact details.

The Authority expects respondents to provide comments in response to each of the questions set out in this document. The Authority invites respondents to substantiate their responses, wherever possible, by providing factual evidence to support their responses.

In the interest of transparency, the Authority will make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate requests for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.¹

Respondents are required to clearly mark any information included in their submission which considered confidential. Where such confidential information is included respondents are required to provide both a confidential and non-confidential version of their submission. If a submission is marked confidential in its entirety, reasons for this should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

¹ The Authority, “A Guidance Paper issued by the Telecommunications Regulatory Authority on its treatment of Confidential and Non-Confidential Information:”, Guidance Paper No.2 of 2007, 10 September 2007 http://www.tra.org.bh/en/pdf/Confidentiality_Guidelines_Final.pdf

Section 1

Introduction

1. This section is intended to provide a brief overview of the background to this consultation.
2. This Consultation is issued pursuant to the Authority's Consultation Process Regulation issued by the Authority on 10 August 2003.
3. Pursuant to Article 3(b)(1) of the Telecommunications Law of the Kingdom of Bahrain (hereinafter referred to as "the Law") the Authority must carry out its duties in the manner best calculated to, amongst other things, protect the interests of consumers and Users in respect of the provision of service, the quality of service and the protection of personal particulars and privacy of services.
4. Article 3(c)(18) of the Law requires the Authority to exercise all powers and take all actions as may be reasonably necessary with respect to any matters deemed necessary to give effect to the provisions of the Law.
5. The Authority has a responsibility for overseeing and regulating consumer affairs in the telecommunications sector.
6. Following liberalization, the telecommunications sector has become a dynamic industry and is characterized by intensifying competition with a variety of products and services on offer, the participation of new Licensees and increasing choices to consumers.
7. The result is that consumers, both residential and business, now have much more freedom and choice than several years ago, and retail prices have decreased significantly due to competition between Licensees. Some improvements have been made in quality, but much more is required if consumers are to have the protection as well as services as outlined in the Law.
8. The Authority has introduced a range of measures to improve delivery of quality of services, some of which include:
 - Quality of Service Regulation
 - Consumer Protection Guidelines
 - Determination Paper on the TRA Code of Practice for the Handling of Consumer Complaints
9. The Authority has concerns that, in the absence of a standardised framework and specified obligations that are applicable across all service providers of public telecommunications services, various approaches will be adopted by service providers and that consumers, may not, therefore, be adequately protected.
10. The Authority is therefore seeking the views of respondents in relation to the draft Consumer Protection Regulation (herein referred to as the "Regulation").
11. This Regulation aims to harmonise rules pertaining to consumer protection across the telecommunications industry preventing business practices that are unfair to consumers.

12. This Regulation supplements the Law and fills the gaps where the Law does not reach. Uniform rules about unfair commercial practices will give consumers greater confidence when engaging with service providers for goods and/or services by providing a high common standard of consumer protection.
13. This Regulation would apply to commercial practices before, during, and after a contract is made. This Regulation contains general prohibitions of unfair commercial practices, and, in particular, contains prohibitions of misleading and aggressive commercial practices such as misleading advertising, unfair contract terms, and the like.
14. In order to avoid duplication as well as to modernise and simplify consumer protection rules in the telecommunications industry of Bahrain, this Regulation would repeal the TRA's Consumer Protection Guidelines.
15. The Authority believes that it is important for all interested parties to see the views of others during a consultation. As such, the Authority will publish a summary of all the responses received on the Authority's website as part of the consultation report. In our consultation report, the Authority will give reasons for its decisions and will give an account of how the views of those concerned helped shape those decisions.
16. The Authority supports any pro-consumer measures that complement its proposals contained in this consultative document, whether they are introduced voluntarily by service providers, or otherwise, as long as they are provided in accordance with other legal provisions and/or decisions published by the Authority or by other competent regulatory bodies in the Kingdom.
17. This consultation document is without prejudice to the legal position or the rights and duties of the Authority to regulate the provision of telecommunications services. Any views expressed in this document are not binding on the Authority and are without prejudice to the final form and content of any decisions the Authority may make.
18. This consultation document including the proposed Regulation is not a substitute for any regulation or law and does not constitute legal advice. Inappropriate reliance ought to not therefore be placed on the contents of this document.
19. The Regulation will be kept under review and amended as appropriate in the light of further experience and developing law and practice and any change to the Authority's powers and responsibilities.
20. Capitalized terms used throughout this document shall have the same meaning attributed to them by the Regulation and the Law.

Section 2

REVIEW OF REGULATION AND CONSULTATION QUESTIONS

Chapter 1

Chapter 1 provides a list of defined terms which should serve to assist in the better reading of the Regulation and in the process reduce legal certainty. The scope and application of the Regulation is as follows:

- a. the Regulation applies to all service providers, irrespective of the type of licence they hold, and to their Third Parties;
- b. the Regulation does not affect a service provider's obligations to comply with other laws and regulations of the Kingdom of Bahrain; and
- c. the breach of any provision of the Regulation by a service providers will be deemed to constitute a material breach of its licence(s) and the Law.

The Authority considers that it is important to have a consistent approach across different telecommunications services as consumers, whether businesses or otherwise, are unlikely to have significantly differing views on the likely interpretation of an advertisement. Furthermore, the Regulation fully applies to both individuals and businesses.

1. Do you agree with the proposed definitions? Which definitions would you revise? Are additional terms necessary?
2. Do you agree with the scope of the Regulation?
3. Do you have any other comments on Chapter 1 of the Regulation?

Chapter 2

Chapter 2 sees the introduction of obligations related to advertising activities. Misleading acts and omissions are viewed as unfair commercial practices. The Regulation requires that advertisements must not contain misleading or deceptive claims, or omit material information to the extent that the advertisements are likely to adversely affect a consumer's transactional decision about a particular product and/or service. The Authority intends the Regulation to be based on the enduring principles that advertisements should not mislead, harm or offend. The aim here is to set down rules and requirements which promote the principles of transparency, accountability, proportionality, and consistency, targeted only where regulation is needed and written so that advertisements are easily understood, implemented and enforced. The effect on consumers is considered from the point of view of the average consumer.

This Chapter includes requirements that a service provider will:

- a. not make misleading representations in advertisements;

- b. be liable for breaches of their third parties to this Regulation;
- c. Ensure that content in their advertisements are truthful, accurate, and not misleading to the consumer, or omitting material information;
- d. Ensure that consumers are not misled about who is actually providing the telecommunications products/services in the case of joint advertising;
- e. Not unfairly criticise, discredit, or denigrate a competitor or its services;
- f. Ensure that the use of statistics, quotes, or results from any research is accurate, and that the advert quotes the source of the study;
- g. Not take advantage of a consumer's lack of experience or knowledge;
- h. Ensure that consumers are not misled by certain expressions and statements; and
- i. Adhere to the general principles of behaviour with respect to advertising and promotional activities listed out in this Chapter.

- 4. Do you disagree with the proposed obligations in relation to advertising activities? If so, please specify and suggest changes.
- 5. Do you have any other comments on Chapter 2 of the Regulation?

Chapter 3

Chapter 3 of the Regulation sees the introduction of provisions that address minimum contractual requirements, as well as a non-exhaustive list of terms regarded as unfair contract terms. The following principles are covered by the obligations outlined in this Chapter:

- a. All contracts between service providers and consumers for the provision of telecommunications services will specify the minimum requirements listed in Chapter 3 in a clear, easily understandable and easily accessible form, in English and Arabic.
- b. A contractual term is regarded as unfair when it causes an imbalance in the parties' rights and obligations arising under the contract;
- c. A contractual term is regarded as unfair if it can potentially cause harm to consumers;
- d. Contracts will not include terms to the effect that, at the end of the commitment period, the contract will be automatically renewed for a further commitment period without the consumer's prior written consent;
- e. service providers will give thirty (30) days' notice of any contractual changes particularly those which are likely to:
 - a. reduce the benefit of the contract/service to the customer;
 - b. increase the burden of the contract/service to the consumer; or
 - c. in relation to the consumer, make the benefit of the contract or service different from that previously advertised or contracted for;
- f. Service providers will allow consumers to withdraw from a contract without penalty upon receiving the mentioned notice in relation to (e) if the consumer does not accept the proposed changes.

6. Taking into account the interests of consumers, do you consider that the obligations in Chapter 3 constitute an undue burden on service providers?
7. Do you disagree with the proposed obligations in relation subscriber contracts? If so, please specify and suggest changes.
8. Do you have any other comments on Chapter 3 of the Regulation?

Chapter 4

Some service contracts may be subject to an 'acceptable' or 'fair' level of use by consumers. The Authority expects service providers to implement a clear and transparent policy for dealing with consumer usage above any set thresholds. Usage thresholds or limits must be clearly set out, as should the manner in which they may be updated, amended and made available to consumers.

9. Do you agree with the proposed obligations related to fair usage policy? If not, please elaborate.
10. Do you agree that the proposed obligations in Chapter 4 are beneficial to consumers in promoting transparency of information, enabling them to make a more informed choice? If not, please explain why and suggest changes.

Chapter 5

Chapter 5 introduces obligations on service providers in relation to persons with disabilities. Service providers are required to provide information, such as bills, in formats such as large print or Braille, at no additional cost.

11. Do you agree with the proposed requirements related to consumers with disabilities? If not, please elaborate.
12. Taking into account the interests of consumers with disabilities, do you consider that the obligations covered by Chapter 5 constitute an undue burden on service providers?

Chapter 6

Chapter 6 sees the introduction of obligations on service providers in providing an electronic format of itemised bills, free of charge. In the interest of transparency, itemised bills are essential for consumers to see the breakdown of charges. Consumers should be able to scan through the detailed breakdown of their bills to easily see where they can optimise usage, track dialled numbers, call durations, costs, date and time of calls made, and the like. The Authority notes that service providers already have the necessary information to provide consumers with electronic formats of their itemised bills, and the costs associated are minimal. The Authority therefore proposes that there should be no additional charge to consumers in obtaining itemised bills in electronic format.

Service providers are also obligated to retain records of itemised bills for a period of at least twelve (12) months from the relevant billing date, and must make them electronically available to consumers upon request, free of charge.

13. Do you agree with the proposed obligations related to billing? Are additional obligations necessary? If yes, please suggest changes.
14. Do you agree with the provisions set out in Chapter 6 for the retention of records and the minimum period for recording them?

Chapter 7

Chapter 7 introduces obligations related to confidentiality. Service Providers will be responsible for protecting the information it holds relating to consumers and their communications, and must not collect, use, or retain any consumer information unless the consumer's approval is obtained or is permitted by law.

15. Do you agree with the proposed obligations related to confidentiality? If not, please explain why and suggest changes.

Chapter 8

The Authority considers that any modifications deemed necessary following the publication of this Regulation should be implemented no later than three (3) calendar months from the date of

16. What do you consider would be a reasonable timeframe within which any modifications or amendments to consumer contracts and advertisements arising from this consultation should be made?

publication.