

ANNEX THREE

NOTIFICATION OF A SPECIAL TEMPORARY MEASURE UNDER ARTICLE 40(BIS)(B) OF THE TELECOMMUNICATIONS LAW UNDERTAKEN BY THE TELECOMMUNICATIONS REGULATORY AUTHORITY

1. BACKGROUND TO THE SPECIAL TEMPORARY MEASURE

- 1.1 Pursuant to Article 40(bis)(b) of the Telecommunications Law, the Telecommunications Regulatory Authority (the “**Authority**”) hereby issues this STM to the Bahrain Telecommunications Company (“**Batelco**”). This STM is issued to Batelco in furtherance of the Authority’s implementation of the policies set out under NTP4 in relation to the deployment of a Fixed Telecommunications Infrastructure Network and the implementation of the approach set out in its Report on the New Telecommunications Economic Regulatory Framework for the Kingdom of Bahrain¹.
- 1.2 This STM requires Batelco to:
- 1.2.1 Supply Licensed Operators upon request with specified products and services during the period of transition to Batelco’s separation on fair, reasonable and non-discriminatory terms (Article 4);
 - 1.2.2 Set up the SE in accordance with the objectives of NTP4 to establish an independent and customer focused wholesale operator (Article 5); and
 - 1.2.3 Achieve milestones in regard to fibre deployment with a view to meeting the deployment and performance targets set out under NTP4 (Article 6).

2. DEFINITIONS

- 2.1 For the purposes of this STM:
- a. A meaning or definition provided for any word, phrase or expression under the Telecommunications Law shall also be applicable to such word, phrase or expression in this STM, unless the context requires otherwise.
 - b. The definitions set out in the body of this STM or in Schedule 1 shall apply.

3. DURATION

- 3.1 The effective date for this STM is 2nd August 2018 (the “**effective date**”) and it will remain valid until it expires in accordance with Article 8.

4. TRANSITIONAL PRODUCTS AND SERVICES

- 4.1 Batelco shall provide, by means of its national fixed telecommunications network, the Transitional Products and Services in the Kingdom of Bahrain.

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

- 4.2 During the Term, Batelco shall take all necessary actions for the prompt commencement of provision of the Transitional Products and Services in accordance with:
- 4.2.1 Government Policy;
 - 4.2.2 directions issued by the Authority;
 - 4.2.3 the terms within this STM;
 - 4.2.4 the Undertakings that are approved by the Authority;
 - 4.2.5 the “Project Plan Milestones”; and
 - 4.2.6 Schedule 4 of this STM.
- 4.3 Batelco may, with the prior written approval of the Authority, provide any of the Transitional Products and Services through the SE provided, however, that Batelco shall continue to be fully liable for any obligation arising in relation to the provision of such Transitional Products and Services. During the Term all existing obligations with regards to the provisions of Access and Interconnection to Licensed Operators shall remain incumbent upon Batelco.
- 4.4 The Transitional Products and Services shall be supplied to all duly Licensed Operators upon reasonable request.
- 4.5 The Transitional Products and Services shall be provided on a fair, reasonable and non-discriminatory basis including in relation to:
- 4.5.1 Price terms; and
 - 4.5.2 Non-price terms, particularly in relation to:
 - (a) Quality of service; and
 - (b) Operational performance as detailed in the connection, activation and fault rectification service levels for each Transitional Product and Service.
- 4.6 Without prejudice to Article 57(f) of the Law, Batelco shall ensure the privacy and confidentiality of information and business secrets obtained in the course of its business from any Person to whom it provides the Transitional Products and Services by establishing and implementing reasonable internal procedures for maintaining privacy and confidentiality of such information subject to any requirement under law. Batelco shall maintain sufficient information on its privacy and confidentiality procedures to satisfy the Authority, at its reasonable request, that the requirements of this Article 4.6 are being met. This shall include ensuring that information provided by other Persons for the purpose of access and/or interconnection to the Transitional Products and Services is used for no other purpose other than the purpose for which such information is provided, and that such information is only available to Batelco staff whom are essential to facilitate the provision of such product(s) or service(s).

5. ESTABLISHMENT OF THE SE

- 5.1 During the Term, Batelco shall take all necessary steps to establish the SE in accordance with:
- 5.1.1 Government Policy;
 - 5.1.2 directions issued by the Authority;
 - 5.1.3 the terms within this STM;
 - 5.1.4 the Undertakings that have to be submitted by Batelco and approved by the Authority; and

5.1.5 the “Project Plan Milestones”; and

5.1.6 Schedule 4 of this STM.

6. DEPLOYMENT OF FIBRE NETWORK

6.1 Batelco shall continue to deploy fibre infrastructure in accordance with the “NTP4 Fibre Deployment Milestones” set out in Schedule 3 of this STM.

7. APPOINTMENT OF INDEPENDENT CONSULTANT(S)

7.1 The Authority may appoint one or more independent consultant(s) (the “**Consultant(s)**”) to manage and administer all aspects of this STM. In the event of such appointment Batelco shall give all necessary assistance to the Consultant(s) (and/or any third party appointed by the Consultant pursuant to Article 7.3.1) to carry out the objectives of its/their appointment(s) (including the expeditious provision of any documentation requested by the Consultants’ staff and/or access to databases, physical infrastructure, business information or any other technical or non-technical resource held by Batelco).

7.2 The Consultants’ role may include preparing all documentation necessary for the performance of the obligations under this STM, including, but not limited to, those relating to all legal, accounting, corporate, economic, regulatory, commercial, industry communications and consultations, financing and other associated activities. The Authority may direct Batelco to act in accordance with the documentation prepared by the Consultant(s).

7.3 Where an appointment is made by the Authority in accordance with Article 7.1:

7.3.1 the Consultant(s) may appoint any other third party to assist with the Consultant’s activities in accordance with the terms of their appointment;

7.3.2 the Consultant(s) shall be solely accountable to the Authority and not to Batelco for the completion of its activities;

7.3.3 the Consultant(s) shall operate independently of Batelco and Batelco shall have no right to direct or manage the Consultant(s) as to its activities;

7.3.4 all costs and expenses of the Consultant(s) shall be borne by Batelco; and

7.3.5 notwithstanding the appointment of the Consultant(s), the Authority shall retain all regulatory responsibility for compliance with this STM in accordance with the Telecommunications Law.

8. MODIFICATION, REVOCATION AND EXPIRATION

8.1 This STM may be modified or revoked in any of the following ways at any time:

8.1.1 by written agreement between the Authority and Batelco;

8.1.2 by the Authority if the Authority determines that such modification or revocation is necessary for the purpose of safeguarding equivalence between Licensed Operators or otherwise implementing Government Policy, provided that the Authority shall have given Batelco one (1) month written notice of the proposed modification or revocation.

8.2 The Authority confirms that if any substantive modification to this STM is proposed during the Term, that the Authority will consult on such modifications as proposed in accordance with the practices established in its Position Paper “*How TRA Consults*” issued by the Authority on 17 October 2017.

8.3 Unless modified pursuant to Article 8.1, the STM shall automatically expire on the effective date of a Fixed Telecommunications Infrastructure Network Licence.

9. COMPLIANCE AND ENFORCEMENT

9.1 Should Batelco fail to comply with any of the deadlines set out in the Schedules to this 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, including:

- a. requiring Batelco and/or the SE to execute any legal documentation to achieve the objectives of NTP4 (such documentation to be drafted and finalised by the Authority at Batelco's sole cost in the event that Batelco fails to comply with the deadlines set out in Schedule 4);
- b. applying shortened consultation periods or finalising and adopting documentation on an interim basis without prior consultation;
- c. requiring Batelco to bear the cost of any additional resource required by the Authority to review draft documentation provided by Batelco in a shortened timeframe; and
- d. requiring Batelco and/or the SE to take any and all actions necessary to achieve the objectives of NTP4.

9.2 Without prejudice to the Authority's powers under Article 35 of the Law, compliance with such orders/determinations as are envisaged under Article 9.1 shall be a precondition of the Fixed Telecommunications Infrastructure Network Licence being awarded to the SE.

9.3 Without prejudice to the Authority's powers under Article 35 of the Law², the Authority reserves the right to issue such Emergency Orders and/or other such legal instruments requiring Batelco to comply with the terms of this STM and the wider objectives of NTP4. For the removal of doubt the Authority notes that compliance with the terms of this STM is of paramount importance to the satisfaction of the objectives of NTP4 and that as such any penalties that may be issued by the Authority for breaches of this STM will need to be commensurate with such severity.

9.4 Without prejudice to any other reporting obligations imposed upon Batelco in furtherance of Government Policy, Batelco shall provide written updates to the Authority concerning its compliance with this STM every month.

9.5 Batelco shall report on a monthly basis in accordance with the Interim Fibre Deployment Monitoring Framework having utmost regard to the NTP4 Fibre Deployment Milestones set out in Schedule 3.

9.6 In accordance with the provisions of Article 35 of the Law, the Authority may impose fines upon Batelco should it fail: (i) to meet the targets for the launch of the Transitional Products and Services set out in Schedule 2; and/or (ii) to meet the NTP4 Fibre Deployment Milestones set out in Schedule 3; and (iii) to meet the Project Plan Milestones to Separation set out in Schedule 4.

9.7 Batelco shall ensure that the submissions in Schedule 4 are restricted to a reasonable length commensurate to the nature of the submission itself. Where the Authority determines, in its sole discretion, that any submission is frivolous and vexatious, the Authority reserves the right to take action in accordance with this STM including without limitation the rejection of that submission.

² The Authority refers Batelco to the guidance set out in the Fining Guidelines (LAD 0314 039)

10. STEP-IN RIGHTS

- 10.1 Where Batelco fails to comply with obligations under this STM on a repeated basis, the Authority may appoint one or more individuals (“**Step-in Team**”) to perform such obligations on Batelco’s behalf.
- 10.2 The Step-in Team shall be selected by the Authority based on expertise in relevant areas, such as law, economics, IT, operations and finance.
- 10.3 Batelco shall:
- (a) provide full cooperation to the Step-in Team;
 - (b) allow the Step-in Team to interview Batelco employees without warning and without the presence of other Batelco staff in order to obtain information necessary to perform its role;
 - (c) comply with any directions issued by the Step-in Team; and
 - (d) bear all costs and expenses incurred by the Step-in Team.

SCHEDULE 1
DEFINITIONS & ACRONYMS

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| Interim Fibre Deployment Monitoring Framework | means the framework for the Authority to monitor the deployment of fibre infrastructure by Batelco during the period of transition to the new industry structure set out under NTP4 |
| SE | means the separated entity which will own, operate and deploy a Fixed Telecommunications Infrastructure Network |
| Government Policy | means the Government Policy set forth within NTP4 |
| NTP4 | Fourth National Telecommunications Plan |
| STM | Special Temporary Measure |
| Telecommunications Law | means The Telecommunication Law of the Kingdom of Bahrain, promulgated by Legislative Decree No. 48 of 2002 as amended |
| Transitional Products and Services | means the products and services referred to in Schedule 2 as determined by the Authority from time to time and/or any other products or services which Batelco may be required to supply to achieve the objectives of NTP4 |

SCHEDULE 2

TRANSITIONAL PRODUCTS AND SERVICES AND TIMELINES

Batelco is to make available the following Transitional Products and Services to Licenced Operators by 1 September 2018. Batelco is to offer the Transitional Products and Services on fair, reasonable and non-discriminatory terms, including in relation to tariffs. The tariffs and terms of the Transitional Products and Services must be appropriate to safeguard equivalence.

1. TRANSITIONAL DATA SERVICE (“TDS”)

The TDS is an active wholesale product providing symmetric, synchronous, dedicated and uncontended data connectivity within the Kingdom of Bahrain between a Point of Presence of an Access Seeker and an End User Premises/Point of Presence.

The TDS is to be provided over Batelco’s fibre network.

The TDS must include data rates of a minimum of 1 Gbit/s, but it can include other data rates to meet Licenced Operators’ requirements.

2. TRANSITIONAL BITSTREAM SERVICE (“TBS”)

2a. The TBS residential is an access product that enables a Licenced Operator to provide ultra-fast broadband products and services to residential mass-market end users broadband customers by connections over a digital pathway across Batelco’s GPON network.

2b. The TBS non-residential is an access product that enables a Licenced Operator to provide ultra-fast broadband products and services to non-residential end users broadband customers by connections over a digital pathway across Batelco’s GPON network.³

The TBS must include download data rates of a minimum of 100 Mbit/s, but it can include other data rates to meet Licenced Operators’ requirements.

3. TRANSITIONAL INTERNATIONAL CROSS-CONNECT SERVICE (“TICCS”)

The TICCS is an active wholesale service, enabling Licensed Operators to access international capacity services provided by submarine cable operators at the Batelco international cable landing stations located in the Kingdom of Bahrain.

The TICCS is to comprise one or more fibre based connections from the Point of Presence of an Access Seeker at an international cable landing station to the international demarcation point of the submarine cable.

The TICCS must include, as a minimum, the data rates of 1 Gbit/s and 10Gbit/s.

³ For the avoidance of doubt, non-residential customers referred to here are not business customers to be served in accordance with the deployment targets for business customers under Paragraph 17 of the NTP4 and Schedule 3 of the STM.

SCHEDULE 3
NTP4 FIBRE DEPLOYMENT MILESTONES

Paragraph 17 of NTP4 provides the following deployment and performance targets:

For residential customers: ultra-fast broadband access enabling downstream data rates of a minimum 100Mbit/s for 95% of households; and

For business customers (i.e. customers with commercial registrations) and public radio communications Stations: ultra-fast broadband access enabling symmetric and uncontended data rates of minimum 1 Gbit/s, with 100% coverage.

These deployment and performance targets are to be met by the end of the NTP4 implementation period. In order to achieve these targets, Batelco is obliged to meet the following fibre deployment milestones set out in the table below (where they fall after the date of this STM). These targets are based on the information available to the Authority at the time of issuance of this STM.

| Date | Residential/GPON Passed targets (%) | Business/P2P Passed targets (%) |
|-------------------|-------------------------------------|---------------------------------|
| 31 May 2018 | 57 | 20 |
| 30 June 2018 | 57 | 26 |
| 31 July 2018 | 58 | 33 |
| 31 August 2018 | 59 | 40 |
| 30 September 2018 | 62 | 47 |
| 31 October 2018 | 64 | 55 |
| 30 November 2018 | 68 | 63 |
| 31 December 2018 | 73 | 69 |
| 31 January 2019 | 78 | 75 |
| 28 February 2019 | 83 | 81 |
| 31 March 2019 | 86 | 88 |
| 30 April 2019 | 90 | 95 |
| 31 May 2019 | 95 | 100 |

SCHEDULE 4
PROJECT PLAN MILESTONES TO SEPARATION

| Task Name | Finish |
|---|-------------------------------------|
| SE Undertaking Submission | |
| Submit Undertakings | 6 September 2018 |
| SE Business Case Submission | |
| Submit initial business case (with RO submission) | 26 August 2018 |
| Submit finalised business case | 2 December 2018 22 December 2018 |
| Reference Offer Order (including product set) | |
| Submit initial Reference Offer product categories | 5 August 2018 |
| Submit draft Reference Offer | 26 August 2018 |
| Publish Reference Offer | 24 March 2019 |
| Establishment of SE | |
| Submit proposal as to the type of legal entity (e.g. WLL, BSC(C), BSC etc.) that | 31 July 2018 |
| Submit details as to the ownership of the new entity (including the identity of the | 31 August 2018 |
| Submit draft copy of the Memorandum and Articles of Association of the new | 31 August 2018 |
| Submit draft copy of the legal agreement that Batelco envisages will govern the | 31 August 2018 |
| Submit draft copy of the Governance Protocol Document that Batelco proposes | 31 August 2018 |
| Incorporate and obtain all necessary Ministerial and regulatory approvals to | 31 December 2018 |
| Execute final version of the Governance Protocol Document | 31 December 2018 |
| Execute final version of the Memorandum and Articles of Association of the new | 31 December 2018 |
| Execute final version of the legal agreement between Batelco and the new entity | 21 January 2019 |