



**Cross-submission to consultation – Draft Order issued by the
Telecommunications Regulatory Authority on the Reference Offer
of the Bahrain Telecommunications company B.S.C,
15 December 2015 (ref: MCD/12/15/092)**

RESPONDENT (CROSS-SUBMISSION STAGE)

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Non-Confidential Version

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- 1. Please provide any comments you may have in relation to the Authority's premise of fair, reasonable and non-discriminatory terms, conditions and tariffs for regulated RO products and services.**

Comment (CROSS-SUBMISSION STAGE):

1.1 Implications for Batelco

Batelco states that the TRA's primary proposals in the draft Order (particularly the new WDC product and enhanced SLAs) will require a fundamental restructure of BTC's Wholesale, Network and Delivery and IT divisions, which has various cost and timing implications for the company.

VIVA believes that such claims are not true as Batelco is already providing high capacity retail products in the enterprise market, for prices and service levels that almost assure Batelco that no OLO can compete with them.

Time to implement

Batelco has redacted the period that it believes it requires in order to implement the WDC service and enhancements to the WLA service in a timely and professional manner, so it is difficult for us to cross-submit on the credibility of their claims. However, it should be noted that WDC is not a complex product and Batelco is already providing it at retail level. It requires higher capacity equipment (service cards) to make it wholesale-ready.

Implementation costs and impact on resources

Although redacted in the public version of their submissions, from the surrounding words we have the impression that Batelco is claiming enormous implementation costs for the changes proposed by the TRA (paragraph 14). Batelco makes the point earlier in their submission (paragraph 8) that the proposed WDC product "*would involve Batelco's largest ever wholesale project to date*". Batelco also strongly makes the point that the new product requirements could divert Batelco's resources away from its planned commercial activities and other regulatory activities and this will be damaging for the company.

Clearly, this is a key plank in Batelco's argument that the TRA should back away from the proposed regulatory interventions.

Most of these costs will be recoverable from OLOs in MRCs. The TRA is considering applying a 20% mark-up to BU prices to compensate Batelco for the additional costs that Batelco will incur in complying with the strengthened reference offer (paragraph 342 of the draft Order). In section 30.2 of our submissions, we submitted that there may be justification for passing through some of these costs to OLOs in certain circumstances, although we recommended that the TRA satisfies itself that the 20% is a reasonable approximation of these costs.

In section 30.2 of our submissions we discussed the necessity of considering whether the costs are truly incremental. So, for example, any costs that are incurred for systems and processes that are used, or should have been used, by Batelco's downstream business should not be included.

We see a glimmer of this issue in paragraph 32 of Batelco's submissions, where it seems to be suggesting that it does not or would not use a database of its infrastructure (which we have difficulty accepting). But if that database was used by Batelco's downstream business, then the additional cost of the database would not be an incremental cost that should be taken into account. Further, to the extent that Batelco does not use the same systems and processes as OLOs, but they should

have been to comply with non-discrimination obligations, then there should be no additional costs that need to be taken into account either.

In our view, Batelco has plenty of existing resources and capabilities already in place, it's just that they are largely dedicated to supporting Batelco's enterprise and other retail initiatives.

Process going forward

We do not accept that it is proper process for Batelco to engage in closed discussions with the TRA regarding the draft Order, as Batelco proposes in paragraphs 4, 5 and elsewhere in their submissions. We are in a very formal, public phase now, so if Batelco has anything further to say, then it should be within the public Order development process and so subject to scrutiny by OLOs through cross-submission. It should not be through closed discussions between Batelco and the TRA.

We also submit that Batelco's liberal use of redactions in the public versions of their submissions make it difficult for OLOs to test the credibility of much of what they say, which weakens the value of the cross-submission phase.

We encourage the TRA to release more of the redacted information in its submissions and we are prepared to accept reasonable confidentiality restrictions around how we deal with this information. If OLOs are unable to cross-submit on critical information provided by Batelco, then we question whether much weight should be given on this redacted information by the TRA.

1.2 Whether cost-based pricing required

Batelco raises the point that access pricing does not always have to be cost-based (paragraphs 12-13) in order to be "fair and reasonable". It refers to proportionality and then much of the rest of their submission on this point is redacted.

In general terms, we believe that cost-based pricing is necessary where access to the product is non-replicable or close to it. Where access to the product is relatively replicable, then other pricing principles may be appropriate (such as retail-minus). In the current context, the WLA and WDC products are non-replicable or close to it, as a result of the inability of OLOs to deploy their own duct infrastructure, duct access being denied and lack of a dark fibre remedy, among other things.

We therefore believe that cost-based access pricing is necessary for the WLA and WDC products.

1.3 Whether to apply a glidepath

Batelco states that a glidepath should apply to the prices as price reductions of some 70-80% as envisaged in the draft Order would be expected to cause significant market shifts (paragraphs 15-17).

We have several points to make about Batelco's proposal. The first is that a glidepath simply delays the point at which the wholesale products are available at "fair and reasonable" prices. This would cushion Batelco from further competitive pressure and allow them to manage OLOs and the retail market until they are in a position to compete effectively with competitors paying cost-based prices.

The second is that Batelco is aggressive in winning enterprise business. VIVA says that this is substantially due to the fact that Batelco is able to undercut its competitor OLOs as it is not paying the same price for the wholesale inputs (in any real sense) and is able to take advantage of preferable treatment by its upstream business units. We have suggested that the TRA should investigate Batelco's retail pricing in the enterprise market.

VIVA believes that cost-based pricing in accordance with Article 57 of the Law is a necessity for these wholesale products and it should not be delayed. As set out in section 1.6 of our submissions, we consider that the TRA's proposed prices for WLA and WDC products in the draft Order are well above cost-based pricing. In that section, we compare the proposed prices in relation to other alternative solutions, such as point-to-point fixed microwave link fees. This leads us to the view that the proposed prices for WLA and WDC products should decrease to cost-based levels and can be decreased to even lower levels than the TRA recommended and without a glide path.

Batelco must also be subject to meaningful non-discrimination obligations, which we address at length in our submissions. Batelco evident cases of disclosure of OLOs' confidential commercial information shared by Batelco Wholesale division with Batelco International retail division, reported to TRA, confirm that strict processes and rules shall be enforced and monitored by TRA to ensure a decent level of compliance to non-discriminatory obligations.

2. Do you agree with the Authority's proposed general amendments to be made to Batelco's RO? Please explain your position. If you disagree, please propose an alternative.

Comment (CROSS-SUBMISSION STAGE):

3. Do you agree with the Authority's proposal to mandate the introduction of Service Levels for the Wholesale Data Connection and the Bitstream products and services? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

3.1 Comparison to retail SLAs

We note Batelco's claim that the proposed service level regime is "*in many cases a clearer and better level of service delivery and service delivery management than appears at retail*" (paragraph 19(a)).

We are naturally sceptical about this statement, and have recommended that the TRA investigate Batelco's SLA terms for enterprise customers in our submissions (section 23.8), as we fear the opposite may be true. It is likely that the "many cases" Batelco refers to are the retail terms for its smaller customers, rather than its high-value larger customers.

We also note Batelco's reassuring comments in paragraph 19(a) of their submissions about compliance with non-discrimination requirements. However, this is an area where we have considerable discomfort, as is clear from our submissions and our recent anti-competition investigation.

3.2 Investment, training and deployment

Batelco claims that the new service level regime will be a significant stretch and that "[t]o meet them, Batelco would be investing in developing systems and training new resources at considerable cost" (paragraph 19(b)). We address this sort of issue in more detail in section 1.1 of these cross-submissions.

We note with caution Batelco's various comments about workflow management (paragraph 19(b)). This is related to the issue regarding forecasting and its linkage to the service level regime. We believe that Batelco is in the best place to understand the likely workflows that come from providing these wholesale products, in particular bearing in mind that Batelco has the largest market share and should be using the same processes. Batelco has systems and processes for managing internal workflow between its wholesale and enterprise units that could be applied to OLOs.

We are not suggesting that we will not give good faith forecasts to assist Batelco to do its work properly. After all, Batelco’s poor service level performance damages us. However, we do not believe that prescriptive workflow requirements, or the need for highly accurate forecasting, should be a necessary pre-condition to application of the service level regime.

3.3 Exceptions for service level regime

In paragraph 19(c) of its submission, Batelco begins to raise the issue that we highlighted in our submissions around “legitimate exceptions” for Batelco failing to perform. As we discussed in detail in section 6.4 of our submissions, this is an area that the TRA must pay close attention to prevent Batelco driving a “coach and horses” through the service level regime.

As stated in section 6.4 of our submissions, it must be clear that Batelco is responsible for any non-customer caused delay that arises due to matters of network build, lack of engineering resource, Batelco’s contractor issues, permission rights, poor planning, not maintaining relevant database, traffic management requests and way leaves. However, VIVA does accept that customer caused delay where the customer premises or site is not ready or the wrong customer details have been provided by the OLO, these are not within Batelco’s control.

Our approach is in line with Ofcom position of BCMR 2015¹ where it considers three main factors that are causing poor provision performance outside Openreach’s direct control as detailed below:

- **Customer caused delay:**
Ofcom proposed to exclude customer caused delay from the minimum standard where Ofcom stated “*propose that delays caused by customers be excluded from most of the KPIs we propose to require Openreach to provide for assessment of their compliance with our minimum standards and for other reasons*”
- **Non-customer caused delay:**
Ofcom proposed to include non-customer caused delay in the minimum standards considering that “*these delays are wholly or partially within Openreach’s control*” and Ofcom “*do not propose to allow any relief against the standards for this cause of delay.*”
- **Matters Beyond Our Reasonable Control (MBORC):**
Ofcom proposed to include MBORC in the minimum standards for certain instances “*when Openreach’s network has experienced serious damage caused by weather or third parties, or weather prohibits Openreach staff from attending sites where installation or repair work is required*”.

3.4 Whether to apply a “buffer”

Batelco asks for relief from the service level regime where it is performing at “tolerable” levels. It states there should be “*a buffer for delivery of circuits where, for instance, if 70% of orders were delivered within the set KPIs in a given month, no service credits would apply, or some similar ‘tolerance’ level*”.

Batelco misconstrues what is required from an effective service level regime. There should be no such thing as a tolerable threshold of poor performance. If Batelco fall short, then a credit applies

¹ Para 13.126 – 13.129 , BCMR 2015, http://stakeholders.ofcom.org.uk/binaries/consultations/bcmr-2015/summary/BCMR_Sections.pdf

and they don't get paid the full amount for failing to meet the service standards. VIVA has no such arrangement with its customers. VIVA submits that there should be no buffer or tolerable threshold.

3.5 Ofcom's Strategic Review

Against all these submissions by Batelco of exceptions, buffers and tolerances to the service level regime, Ofcom has recently come out just after our February submissions and proposed further enhancing the service level regime that applies to Openreach².

Ofcom is proposing several steps that they intend to take in order to drive a step change in Openreach's service performance (para 5.48), including setting:

"... minimum standards at a level designed to ensure effective competition - so that they meet the needs of consumers and businesses - rather than at a level intended only to return performance to historical levels. Over time we expect to apply minimum standards that rise significantly".

Further, Ofcom went on to state (para 5.49):

"Finally, we will differentiate clearly between the minimum standards, which are a level below which service must never fall, and the average level of performance above the floor that we expect Openreach to achieve".

This is consistent with our view in section 1.5 of our submissions that there should be quality of service condition on Batelco around provisioning and repair time that applies at an aggregate level to Batelco's performance.

When a leading international regulator is deeply concerned about levels of quality of service and is considering further strengthening the service level regime, this is not the time to accommodate Batelco in its desire for leniency.

4. Do you agree with the Authority's proposed definition and description of the service request process? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

4.1 The need for deemed acceptance

Batelco submits (paragraph 21) that there should be no deemed acceptance of an OLO's order if it fails to respond within the Maximum Time for Service Request Confirmation. It points to inadvertent error and incorrect information being provided. If incorrect or insufficient information is provided by the OLO, then Batelco notifies the OLO and the clock stops for the Actual Time for Service Request Confirmation. If there has been error by Batelco and they miss the opportunity to respond to the OLO's Service Request, then Batelco should bear the consequences.

We cannot accept that the concept of deemed acceptance should be removed. There are adequate safeguards in the TRA's proposed approach.

We also note the TRA is not proposing to define any penalties for failure to meet the Maximum Time for Service Request Acknowledgment, although we believe that it should (see section 23.1 of our submissions).

² Statement of initial conclusions from the Strategic Review of Digital Communications, 25 February 2016

5. **Do you agree with the Authority’s proposed definition and description of the service delivery process? Do you agree with the proposed provisions that the Authority considers should apply in case an OLO cancels a Service Request during the delivery process? Please explain and justify your position.**

Comment (CROSS-SUBMISSION STAGE):

5.1 Need for a service request conformation service level

In paragraph 22 of its submissions, Batelco effectively suggests removing the service level associated with the Service Request confirmation. This is an unusual request by Batelco, where it is relatively commonplace internationally to have a service level around confirmation. The reason for this is that OLOs do need to communicate with their customers and waiting for the best part of a week or more for any response from Batelco would be unacceptable to most customers.

5.2 Penalties for failure to notify of RFT/RFS dates

In paragraph 24 of its submissions, Batelco calls for relief from Service Credits for failure to notify OLOs of Expected RFT/RFS dates. Batelco reasons that there may be matters beyond its control and this makes it difficult to predict these dates with accuracy, which therefore means they should not be subject to penalties. VIVA says that matters that are truly outside of their control can be an excuse for failing to meet the delivery time, but this is an area we are wary of, as emphasised in section 6.4 of our submissions. Nevertheless, Batelco should still be required to notify OLOs of the RFT/RFS dates.

And we do not accept Batelco’s point that having a penalty for failing to notify will disincentivise Batelco from providing accurate dates.

6. **Do you agree with the Authority’s proposed definition and description of the fault management process? Please explain your position.**

Comment (CROSS-SUBMISSION STAGE):

6.1 Achievability of timeframes

Batelco claims that the TRA’s proposed timeframes are unachievable, due to *“not only the amount of resources required to meet specific SLAs but also the practicalities involved with reaching and accessing certain premises through congested roads and traffic within the Kingdom”* (paragraph 25).

We have commented in section 1.1 above about Batelco’s resourcing claims. Given the size of Bahrain, we fail to see traffic problems as a reason for reducing the burden of the service level regime on Batelco.

7. **Do you agree with the Authority’s proposed process for the payment of Service Level Penalties? Do you agree that the corresponding rebate(s) shall not be claimed by OLOs but directly reflected by Batelco in the next invoice(s)? Please explain and justify your position.**

Comment (CROSS-SUBMISSION STAGE):

8. **Do you have any comments on the Service Level definitions proposed by the Authority? Please explain and justify your position.**

Comment (CROSS-SUBMISSION STAGE):

9. Do you agree with the Authority’s proposed creation of a Forum on Batelco’s RO? Please explain and justify your position. According to you, what should be the terms of reference of such forum to ensure its effectiveness?

Comment (CROSS-SUBMISSION STAGE):

9.1 Confidentiality

We note Batelco’s comment about one to one communication at account manager level facilitating confidentiality. We have sympathy for this view, although believe that such one to one communication can still take place outside of the Forum construct.

10. Do you agree with the Authority’s proposed approach aiming at limiting the payment of one-off charges for the deployment of a fibre access? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

10.1 Whether the new WDC product is required

In the preamble to its submissions, Batelco objects to findings that a new WDC product for higher capacity throughputs to any “B” end site in Bahrain is a proportionate remedy (paragraph 11 of their submission). We discuss this issue under question 10 as the TRA’s WDC proposal is dealt with in chapter 5 of the draft Order.

Batelco gives five reasons for its objection to the WDC product.

Availability of alternative, enhanced remedies

Batelco’s first reason is that *“alternative remedies already exist in the wholesale market for domestic data connectivity, namely CAT/LLCOs and the WLA products. These are being enhanced in the same DO and proposed prices greatly reduced. Aside from wireless backhaul over fibre to replace microwave, there is no demonstrated critical demand “gap” requiring a new regulated wholesale input to address the perceived market failure”*.

Batelco are essentially saying that the enhanced CAT/LLCOs and the WLA products are suitable for all purposes except backhaul from wireless base stations. The draft Order recorded that Batelco proposed a WOBS service to address wireless backhaul (paragraphs 153, 154 of the draft Order). There were various other limitations and qualifications on this service.

It is unclear what point Batelco is making. The proposed WDC product combines the high-speed CAT service and the high-speed LLCO service. Batelco can’t be saying that the low-speed CAT/LLCO is an adequate alternative remedy.

Neither can Batelco be saying that it has not productised higher bandwidth products. Batelco has been offering high capacities such as STM-64 to US Government Entities in Bahrain, which confirms that Batelco has all bandwidth capacity products ready for end-users at the retail market, and so should also be in a position to supply them to OLOs.

In its domestic data connectivity services determination³, the TRA concluded that there is one wholesale market in Bahrain for domestic data connectivity services including both SDH and

³ Determination of 10 April 2014

Ethernet based products for either access or transmission backhauling use, irrespective of the bandwidth. The TRA went on to say⁴ that it:

“... considers that the competitive conditions in the wholesale supply of domestic data connectivity for the purposes of accessing an end user premises (i.e. customer access) are unlikely to differ substantially from the competitive conditions where domestic data connectivity is supplied for core network transmission purposes”, and it: “... has therefore concluded that it is appropriate to define a single wholesale market for domestic data connectivity services which encompasses both access to end-user premises as well as domestic transmission capacity”.

When it comes to Batelco’s “no demonstrated demand” point, we reiterate the point made by the TRA in paragraph 171 of the draft Order that OLOs will have other uses for the WDC service other than just wireless backhaul, including “the provision of core transmission capacity between OLO’s core nodes, the provision of data connections to large corporate entities, or the provision of transmission links from cable landing stations”.

Impact on investment incentives

Batelco’s second reason is that *“ordering a new WDC product at these price points which are significantly below retail rates reduces Batelco’s incentives to invest in future fibre for the business/enterprise market, at a time when economic policy wishes to encourage more fibre roll out in Bahrain”.*

Batelco’s argument seems to be that retail rates are competitive (when the TRA has found that Batelco has SMP and is in a dominant position in the retail and wholesale markets for the supply of domestic data connectivity services⁵) and that you need these high retail prices to encourage investment.

While we do not deny that pricing is relevant to investment incentives, we say that effective competition is the key factor in encouraging investment and the WDC product, as well as passive remedies, will be critical to promoting that competition.

We see the issues around relativity between the proposed wholesale charge and retail pricing as more the opposite – in other words that Batelco can exert a price squeeze on OLOs. We note BEREC’s recommendation to NRAs on leased line regulation⁶ that:

“NRAs should put in place obligations preventing SMP operators from engaging in margin squeeze.”

BEREC discusses the options of the equally efficient operator (“EEO”) test and the reasonably efficient operator (“REO”) test. We recommend that the TRA considers following BEREC’s recommendation in the Order and look to prevent Batelco from engaging in margin squeeze.

Availability of duct access in business areas

Batelco’s third reason is that *“as a result of the TRA’s previous policy of encouraging provision of passive wholesale remedies (2006 Reference Access Order onwards), by January 2016 approximately*

⁴ Paragraphs 182 and 183

⁵ Determination of 10 April 2014

⁶ Best practice 36, BEREC common position on best practice remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale leased lines (BOR (12) 126)

[X] km of duct is leased to wholesale customers, and these leases are concentrated in the parts of Bahrain where most businesses are located (or on routes to international gateways or main service nodes). The continuing future status of this remedy is not known, but wholesale customers are continued to be supplied with such a wholesale input”.

In our submissions, we set out in some detail the importance of a fit-for-purpose duct access product from Batelco. Batelco’s logic that wholesale customers are using duct and therefore there’s “nothing to see here” does not stand up to scrutiny. Further, we submit that passive access should not be an alternative for effective active products, but rather should be complementary.

We have already mentioned Ofcom’s recent statement of initial conclusions from the Strategic Review of Digital Communications that came out just after our submissions. Ofcom are proposing, the imposition of a robust duct and pole access arrangement as a key part of the UK regulatory regime going forward. They state (paragraph 1.24):

“...Openreach will be required to provide greatly improved systems and processes for access to its ducts and poles. We will require Openreach to provide a new database showing the physical location and characteristics of its ducts and poles. We will implement and enforce these changes, including through our competition powers.”

Availability of commercial deals

Batelco’s fourth reason is that *“bespoke arrangements can still be entered into at commercially acceptable reasonable rates to meet immediate critical requirements. Batelco understands that these requirements as communicated to us are mainly fibre based wireless backhaul, which we have responded to with a competitive commercial offer”.*

We would like to see evidence that supports this claim by Batelco. VIVA’s experience is that bespoke arrangements are not available from Batelco at commercially acceptable reasonable rates. We have had experience of rates being offered by Batelco that exceed the rates in the draft Order by 1000%.

Process issues

Batelco’s final reason is that *“as proposed in the DO, not just investment risk but delivery and demand risks are (with the exception of a low level cancellation charge) are passed completely over to Batelco in the absence of any batching of orders, phased approach or committed forecast or equivalent order management has been encouraged to take place”.*

Batelco may be saying here that there is a substantial demand risk for the WDC service, which we find hard to believe. For so long as Bahrain remains an important country for business, there will be business customers that demand these high performance, high capacity products, as Batelco’s enterprise unit well knows. We address their repeated references to the importance of workflow management and tight forecasting requirements in section 3.2 above.

In paragraph 33 of its submissions, Batelco sets out its preferred view of the world: *“... the WDC service as envisaged by the TRA should still only apply for the purpose of providing wireless operator backhauling services from speeds including and above 300 Mbit/s. We also maintain that the WLA is the appropriate service for all other forms of data connectivity up to and including 1 Gbit/s”.*

VIVA submits that the TRA should not retreat from its proposals to deliver effective, fit-for-purpose WLA and WDC products.

10.2 Non-recurring charges

We note Batelco’s request in paragraph 29 of its submission that they always be able to apply NRCs. We do not accept this request and note there are no apparent reasons given by Batelco to support their view that it should apply in all scenarios. The TRA’s position is clear that NRCs, which are to be capped, should only apply where the new infrastructure is for the OLOs exclusive use for the next 3 years. Otherwise, the costs would be recovered in the MRCs. So, Batelco is effectively saying that it can recover NRC’s even where the OLO is not the exclusive user – including where say Batelco is also going to use the infrastructure?

Due to uncertainty of the capacity of access points, we disagree with Zain’s alternative view that NRCs “... should be based on whether the termination point is (i) accessible to deliver future service for different tenants or (ii) accessible only by single end-user/radio site”.

11. Do you agree with the Authority’s proposal to order Batelco to build a centralised database on fibre access and fibre usage in Bahrain? Do you agree that until such time as a database is made available, Batelco should introduce a 2-working-day presale process? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

12. Do you have any comments in relation to the speeds for which the WDC should be made available?

Comment (CROSS-SUBMISSION STAGE):

13. Do you have any comments in relation to the proposed technical characteristics for the WLA and WDC Aggregation Links?

Comment (CROSS-SUBMISSION STAGE):

14. Would you be interested by the introduction of a synchronisation feature for the WLA? Please explain and justify you position.

Comment (CROSS-SUBMISSION STAGE):

15. Do you agree that Batelco should offer as an option the full end-to-end physical and logical protection of a WLA or WDC Connection for an additional 30% mark-up on top of the applicable MRC? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

16. Do you agree that Batelco should allow the use of a second ingress ports on a CPE provided for a WLA/WDC Connection or a WLA/WDC Aggregation Link? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

17. Do you agree that Batelco should provide a minimum set of information on CPEs used for WLA and WDC Aggregation Links and Connections? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

VIVA can accept Batelco’s position in paragraph 38 of its submissions that information relating to WLA and WDC CPE’s can change from time to time, but consider that the information provided by Batelco should be valid for a period of at least one year.

18. Do you agree that Batelco should continue to be subject to additional QoS reporting obligations for WLA and WDC? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

18.1 QoS reporting requirements

In paragraph 39 of its submissions, Batelco states that the detailed reporting requirements are onerous.

In this regard, we note BERC’s recommendation to NRAs on reporting requirements in leased line regulation⁷:

“The results of monitoring KPIs should be made available to all operators in the market. To determine whether they could have been discriminated against, alternative operators would need to be able to compare the levels of service they have received to those provided by the SMP operators a) to their downstream businesses and b) the industry average.”

This emphasises the important of Batelco’s reporting obligations and that the TRA should not back down in the face of Batelco’s position on this issue.

19. Do you agree that Batelco should implement a test based on ITU-T Y.1564 test methodology and systematically provide a copy of test results to the OLO? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

20. Do you agree that OLOs should have access to Batelco’s BNV system? Should OLO’s customers (i.e. end-users) also have access to such system? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

21. Do you agree that penalties should be paid on a per fault basis for failure to meet a maximum restoration time rather than based on percentage of service availability? Explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

22. Do you agree with the Authority’s proposed introduction of a ‘Premium Support’ service for an additional 20% premium on top of the applicable MRC? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

We note that Zain supports the concept of a premium price for this level of support, but requires clarification that 20% is reasonable. We have stated that “Premium Support” service should not be offered at an additional 20% mark-up on the applicable MRC, considering the small area of Bahrain and the fact that Batelco downstream units enjoy at least this level of support.

⁷ Best practice 24b, BERC common position on best practice remedies imposed as a consequence of a position of significant market power in the relevant markets for wholesale leased lines (BOR (12) 126)

23. Do you agree with the Authority’s proposed Service Level Terms and Penalties for the WLA and WDC products and services? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

23.1 Carve-out for inaccurate forecasting

Batelco claims in paragraph 46 of their submissions that “... where very strict service level terms and penalties apply for any particular product and/or service, there should be associated forecast and other relevant obligations imposed on OLOs for this to take place”.

As previously noted in section 30.3 of our submissions, this is an area where the service level regime could be completely undermined if Batelco is able to require highly accurate forecasting before OLOs should be entitled to benefit from the service level regime.

23.2 Whether a grace period should apply

Batelco asks for a grace period of 12 months in paragraph 49 of its submissions. We cannot accept that Batelco should have a service level amnesty. Batelco is already offering high speed capacities up to STM-64 to its customers at the retail level. It is clear that Batelco is able to provide the same service at wholesale level and so the service level regime should apply immediately.

24. Do you agree with the Authority’s proposed modifications of the Bitstream service description? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

24.1 Higher bitstream speeds

We agree with Zain that the higher speeds of wholesale Bitstream service should be available in the reference offer.

25. Do you agree with the Authority’s proposed Service Level Terms and Penalties for the business Bitstream product and services? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

25.1 Service Levels Terms and Penalties for business Bitstream

As stated in section 23 of our submissions, we believe that our submissions (for WLA and WDC shall be considered by the TRA for the Service Level Terms and Penalties for business Bitstream product and services. Also, we agree with Zain’s comment that the Maximum Restoration Time of 24 hours as stated in Para 390 of the consultation document, is not an acceptable and reliable service level for Bitstream. Hence, we believe that the Maximum Restoration Time should be identical with WLA and WDC products as we proposed in section 23.5 of our submission.

26. Do you agree with the Authority’s proposal to freeze the charges applicable to the business Bitstream and business WDSL? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

27. Do you agree with the Authority’s proposal to freeze the charges applicable to the ISI and CSI link services? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

28. Do you have any comments in relation to the Authority’s review of the other wholesale services (emergency call access, DQ assistance, inter-operator transit, and CPS services)? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

29. Do you have any comments in relation to the Authority’s decision to review the duct access product as part of a separate proceeding? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

30. Do you have any other additional comments with regard Batelco’s RO? Please explain and justify your position.

Comment (CROSS-SUBMISSION STAGE):

30.1 Regulated IPLC products

We note Zain’s view that Batelco should offer regulated IPLC products in the RO. We have a slightly different view. We have stated the importance of passive access when it comes to the CLS routes. If, despite our submissions, adequate duct access and regulated access facilities services in all Batelco’s submarine cable landing stations is not provided (which would be unlawful), then the TRA should reconsider its determination in the wholesale market for international capacities from Bahrain and declare Batelco as dominant.

As highlighted in section 10.2 of VIVA submission, access to landing stations shall be granted under passive access as *“an essential requirement to overcome barriers to entry into the wholesale market for the supply of international capacity from locations within Bahrain”* and at regulated prices.

This has been stated by TRA in Para 180 of its Dominance Determination for Wholesale International Services of February 2013 that: *“access to Batelco’s ducts (and the associated access required to utilise those ducts for the purposes of supplying international capacity) is considered to be an essential element for a competitor to be able to use the GCCIA cable to construct a competitive alternative to Batelco’s international leased line service (as noted below, this applies equally to the case of cables through the KFC)”*

In Para 233 TRA reconfirmed the obligation on Batelco to guarantee duct access for the particular GBI landing station: *“On balance, it is likely that new entry (in the form essentially of the TATA and GBI cables, and [2]) will occur over the relevant timeframe. **The competitive threat posed by the latter in particular is conditional upon effective regulated access to Batelco’s ducts remaining in place**”*.

VIVA believes there is no justifiable reason why only IFC service is regulated in Batelco access offer among all submarine cables landing in Bahrain.

TRA recognizes in Para 171 of the same determination that: *“While Batelco controls the landing station for this cable, access to the landing station is currently regulated through the IFC service following an access dispute between Batelco and Menatelecom”*.

Also TRA stated in Para 173 that: *“However, the ability of the FALCON cable to act as a competitive constraint on Batelco in the supply of international capacity depends on whether access to the cable through the IFC remains and the terms of access charged by Batelco for the IFC service and more generally the ability of Batelco’s competitors to gain access to the cable”*.

In Para 175 TRA confirms that Colocation services in submarine cable landing stations shall be considered as “Essential Facilities”: *“Given that access to a landing station (such as is provided by the IFC service) is a necessary input into the provision of international capacity (as illustrated in Figure 2), the Authority considers that this is the appropriate approach to take in the current market review. This is because a finding of competition in a downstream market (the wholesale market for international capacity) does not mean that the supply of the upstream input (access to the landing station) is also competitive”*.

Since Batelco is also controlling the GBI and FOG landing stations, VIVA is wondering if it is necessary to file disputes against Batelco to guarantee access on fair terms and conditions to colocation services in the remaining submarine cable landing stations such as GBI and FOG! In the case of GBI landing station, VIVA has indeed filed a complaint against Batelco since May 2015 for the TRA to review Batelco’s Colocation T&C of access in the GBI landing station which were significantly more higher (10 times) than the IFC T&C.

VIVA requests TRA to urgently mandate in the current review of Batelco RO the supply on fair, reasonable, and non-discriminatory terms of all wholesale services for providing access to all submarine cable landing stations comprising: cross connection links, licensed international facilities management Space and support facilities.