



**Submission to the Telecommunications Regulatory Authority by VIVA BAHRAIN in response
to the Public Consultation issued on 15 December 2015:**

**“Market and Competition Review of the Retail Market for International
Outgoing Calls from Bahrain (Ref: MCD/12/15/096)”**

Non-CONFIDENTIAL Version

Principal contact person:	Ali Barakat
Company:	VIVA Bahrain Closed BSC
Telephone number:	+973 34011136
Email:	abarakat@viva.com.bh
VIVA address:	P O Box 21529, Manama, Kingdom of Bahrain
Date	11 Feb 2016

Introduction

VIVA welcomes the opportunity to respond to this market review. TRA has recognized in its Strategic Market Review and in the present consultation that OTT communications services are growing at a high level, challenging the network operators' business model and economic sustainability. However, TRA does not see the need to consider OTT services as a relevant product in this market.

OTT strategy implies financing the development of services that are at odds with regulation from their initial design stage, which is, concerning data protection rules, for example, exactly the contrary of the "privacy by design" principle.

In contrast, telecoms operators are "compliance oriented" organisations that allocate resources only to projects with a high probability of conforming to current or planned laws or competition requirements.

From this perspective, VIVA believes that it's highly important to address the appropriate market definition and not bypass the problematic dilemma imposed by OTT communications services. In fact, the TRA has the required empirical evidence that OTT directly substitutes international outgoing calls however yet is not including it in the same market. This is in direct contradiction with the TRA latest consultation on "*Market and Competition Review of the Retail Markets for Access to Call Services including Domestic Calls from a Fixed Location, Ref: MCD/12/15/097*" where even in the absence of any empirical evidence, SSNIP test and market shares, TRA recommended to consolidate markets.

VIVA recommends that TRA shall follow the recent courageous decision of the Moroccan NRA where it has decided to allow only licensed telecommunications providers to operate in the Moroccan market which is the same position also notably shared by other progressive GCC countries such as UAE, KSA, and Oman. Bahrain small economy, served by the same number of telecom network operators and investments could be severely hindered by inappropriate regulation.

1. Response to Question 1

Do you agree with the Authority's definition of the market for international outgoing calls from Bahrain? If not, please explain why.

VIVA Answer:

VIVA disagrees with the Authority's definition of the market for international outgoing calls from Bahrain in the view of the exclusion of OTT services from the market definition as highlighted in Para 69 of the consultation.

In Para 61 (demand-side substitution) the TRA recognizes that the market survey it has conducted, shows clearly that OTT services are substituting traditional international services. This is also confirmed by the strong uptake of OTT services' traffic during the last few years relative to the direct international calling services, especially after launching the LTE services early 2014.

Para 61

"When a similar question was asked regarding OTT services, 61% of respondents to the residential survey stated that they would switch to an OTT application if faced with a 10% increase in the price of

international calls from a fixed line. The business survey found that 31% of respondents said that they would switch to making international calls through mobile if the price of a fixed line call increased by 10%.”

Also TRA recognized in its Strategic Market Review (SMR), Para 260, dated August 31st, 2015 that *“the emergence of OTT (notably Skype, Viber and WhatsApp) has an impact on the international calls market, especially on the calling behavior of private users (but arguably, also in terms of the competitive behavior by local licensed operators and on the prices offered to some destinations)”*

In the Consumer survey conducted in 2014 by TRA, 34% of respondents were using OTT communications services to make international calls, as it was stated in the SMR, Para 330: *“There has been a large increase in the usage of OTT communications services amongst residential users; more than 1/3 state that they use OTTs from their mobile phones (notably Skype and Viber)”*.

In Para 346 of the SMR, the substitutability was clearly recognized by the TRA where it has stated that: *“A potential development that might counter the “bundling trend” is the increased adoption of OTT services by end-users. The adoption of OTT services breaks the link between network access and service provisioning. Users relying to a large extent on OTT voice, messaging or video services have no real incentive to subscribe to a bundled plan. On the other hand, operators’ could well respond by including voice “for free” in their bundled offers”*.

VIVA believes that OTT services should be thoroughly assessed as part of this market review especially on its competitive constraint and impact to licensed operators and hence determines what the regulatory measures to be identified by the TRA to minimize such anti-competitive behavior from unlicensed services. This is a principle recognized by the TRA in Para 377 of SMR final report issued in August 2015:

“Whether OTT communications services should be considered belonging to the same product market as more traditional forms of telecommunications services requires however a separate analysis”.

It is definitely the most appropriate opportunity for TRA to conduct such analysis in the most impacted market by OTT communications services.

Traffic trend of OTT Communications Services

Consumer uptake of OTT services has been growing steadily over the past few years on VIVA network, resulting to a significant increase of OTT VoIP data traffic as illustrated below:

Confidential

A significant growth of OTT data traffic on VIVA network shows an evident impact on the traditional international outgoing voice traffic as shown in the below graph, based on the data which we have already shared with the TRA (TRA Ref: MCD/11/15/084) where international MoUs declined by **XX** and VoIP MoUs increased by **XX** in comparison to January 2015 traffic:

Confidential

VIVA considers that market definition should be based on a forward-looking approach, taking into consideration current circumstances and future likely evolution, particularly with regard to the trend of OTT communications services' traffic. We expect that OTT communications services traffic will exceed VIVA legacy international outgoing traffic in the near future.

VIVA therefore recommends to consider OTT communications services amongst the relevant products in the current market definition, where such services are perfectly substituting legacy services and distorting competition, and hence we believe that TRA shall identify what reasonable measures shall be conducted to control such anticompetitive behavior.

Regulatory Treatment of OTT Communications Services

OTT communications services players and their services are highly independent of local regulations. On the contrary, licensed operators are subject to ex-ante regulations and licensing conditions. This is also acknowledged by GSMA in its [response to Draft BEREC Report on OTT services \(BoR \(15\) 142\)](#) states that:

“In relation to communications services, the market is competitive independent of regulation and consumers are extensively using new OTT communication services with popular, attractive and innovative functions and at low cost.

In contrast, traditional communication service providers are burdened by fragmented, prescriptive ex ante regulation.”

In this regard, NRAs such as NKOM, CNMC and ANACOM have found that OTT voice services are substituting traditional voice services and hence they are considered as part of the voice market ([BEREC Report on OTT Services issued in October 2010](#))

2. Response to Question 2

Do you agree with the Authority's view that that no operator holds SMP in the retail market for international outgoing calls from Bahrain? If not, please explain why.

VIVA Answer:

Notwithstanding VIVA position in above response to Question 1, VIVA generally agrees with the Authority's view that no operator holds SMP in the retail market for international outgoing calls from Bahrain.

However, despite the fact the *“inclusion or exclusion of OTT services which will not alter the outcomes of competitive assessment in this market”*, Para 69, in the view that OTT players are not licensed operators, OTT players have to be subject to an ex-ante regulation.

Other countries with much more important economies of scale, have adopted an approach where ISPs have the right to police and shape their traffic and ensure that they are able to monetize their investments properly taking into account specificities of respective telecoms market and national security; e.g. [ANRT](#), the Moroccan Regulatory Authority announced on January 2016 that OTT providers

must hold the appropriate telecommunications licenses to provider their services which is similar to UAE,KSA and Oman regulatory approaches.

3. Response to Question 3

Do you agree with the Authority’s overall conclusions and the resulting implications? If not, please explain why.

VIVA Answer:

VIVA reiterates its request to define OTT communications services in the current market definition, and generally agrees with the Authority’s overall conclusions and the resulting implications that no licensee holds SMP in this retail market.

The above competitive constraints of OTT VoIP unlicensed services and disproportionate regulatory treatment between licensed services and OTT communications services, clearly indicate that there are still gaps in managing OTT services. VIVA recommends that OTT VoIP services, as part of digital communications services available to consumers and competing with legacy telecommunications services, shall be comprehensively examined, using proportionate rules, which shall take into account the specificities and size of the Bahraini telecommunications market, the capabilities of local mobile network operators to respond to such anticompetitive threats and the implication of such services on operators economic sustainability and national security.