



Decision No. 4 of 2015
Complaint against Batelco under Article 72 of the
Telecommunications Law

LAD 0715 106
12 July 2015

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The Complaint

The Authority is in receipt of a complaint submitted by VIVA Bahrain B.S.C. (“**VIVA**”) on 16th February 2015 (the “**Complaint**”), alleging that Bahrain Telecommunications Company B.S.C. (“**Batelco**”) published an advertisement in the Bahrain International Airport that is providing “*false*” and “*misleading*” information to consumers. The advertisement claims that: “**The best 4G LTE is now even better**” (the “**Advertisement**”).

In particular, VIVA claims that, based on the results of “*TRA 2014 Mobile Audit Report*”, Batelco is not qualified to claim that it operates the best 4G LTE network in the Kingdom of Bahrain. As a consequence, VIVA alleges that the Advertisement is “*false*” and, therefore, “*misleading of consumers due to the deceptive information provided*”.

VIVA therefore requests the Authority to: (i) order Batelco to stop the Advertisement; and (ii) take the appropriate action according to the Telecommunications Law in order to safeguard consumers.

The Reply of Batelco

By virtue of a letter dated 25th February 2015 the Authority informed Batelco of the Complaint and requested to provide comments on VIVA's submissions pursuant to Article 53 of the Telecommunications Law. The Complaint was attached to the Authority's letter.

On 11 March 2015, Batelco replied to the Authority's request (“**Reply**”) by submitting both a confidential and non-confidential version of its response.

In its Reply Batelco refutes all the claims put forward by VIVA citing a number of reasons.

First, Batelco alleges that it is “*disproportionate*” for VIVA to be complaining about the Advertisement, since it had been in place for over a year at the time of the Complaint, also taking into consideration VIVA's own widespread advertising campaign published in airports over this time.

Second, Batelco clarifies that it does “*not consider that is fair or reasonable*” for VIVA to put forward such allegations based solely on the mentioned report, in that “[t]here are many measurements set out in other relevant reports, including those published regularly by the Authority such as the TRA Quality of Service Report; and the TRA Market Indicators reports that the Authority should also have regard to”.



Batelco, in particular, claims that, based on the “Quality of Mobile Service 2014 Report”, it is the leading provider of services in the following areas:

- (i) outdoor voice quality;
- (ii) SMS reception quality; and
- (iii) 4G streaming quality.

Additionally, Batelco maintains that it “*carried out significant upgrades and network expansions to its mobile network across Bahrain*”, including:

- (i) “*the recent Batelco nationwide mobile network upgrade and network expansion*”; and
- (ii) the provision of “*4G LTE services to customers and [the] launch [of] the 150Mbps speed for mobile broadband customers*”.

Batelco also mentions that:

- (i) it provides leading high speed mobile in the Kingdom of Bahrain, based on recent NetIndex results of nationwide broadband speed tests; and
- (ii) it was awarded with a number of network and operational awards, including the “Customer Service Provider of the Year Award” awarded in 2014.

Finally, Batelco, alleges that many of the advertisements published by other mobile network operators, including VIVA, use very similar language as the one used by Batelco in the Advertisements.

In light of the above arguments, Batelco refuses VIVA’s claims as it does not believe that it has contravened any particular applicable laws, including consumer protection laws and/or regulation.

Legal analysis

- **The alleged “false” nature of the Advertisement**

VIVA’s Allegations

From the outset, it is worth noting, first, that the reference made by VIVA to “TRA’s 2014 Mobile Audit report” is not accurate, as the Authority did not issue any such report in 2014. Also, VIVA does not clearly refer to any specific paragraph or section of the document that may be relevant for the purposes of assessing the claim. Second, the reference made by VIVA to the Advertisement is quite generic. VIVA merely alleges that the Advertisements was “*recently published*”, without providing any details as to when or for how long the Advertisement was published.



Absent any clear and accurate reference to these aspects, which is incumbent on the complainant to indicate pursuant to the Authority's Dispute Resolution Guidelines (Annex 4, Paragraph 4.6), it is difficult for the Authority to appreciate, first, whether or not the Advertisement is to be regarded as false and, second, the extent to which a potential misleading effect on the consumers, if any, can be envisaged. The Authority takes this opportunity to emphasize that, in general, the burden to prove that the claim is grounded falls on the claimant, and that such burden, in general, cannot be considered discharged by virtue of merely a vague reference to inaccurately quoted documents.

In spite of the lack of clarity in the allegations, the Authority will consider that VIVA refers to the Advertisement that, as also indicated by Batelco in its Reply, was in place already at the beginning of 2014. The Authority will assess this Advertisement against its own publication "Mobile Networks Coverage Audit, Kingdom of Bahrain-2014" ("**Mobile Audit Report**") (1).

The Mobile Audit Report does indeed provide guidance as to the performances of operators and can be regarded to as a parameter to assess whether the Advertisement should be deemed "*false*" and hence potentially "*misleading*".

In this respect, it is noteworthy that the tests reflected in the Mobile Audit Report were run only during a very short period of time, namely from 29th June to 7 July 2014, across the Kingdom's five Governorates. As a result, the outcomes of the audit can only be considered applicable to the relevant period of time and cannot be extended any further. As the Advertisement to which VIVA generically refers was published just "*recently*" before the Complaint was submitted, the outcomes reflected in the Mobile Audit Report cannot be regarded as covering the Advertisement as well.

In any event, the outcomes of the audit reflected in the Mobile Audit Report do not seem to provide any grounds for Batelco to claim that it runs the best network in Bahrain. In fact, the Mobile Audit Report indicates that Batelco's 4G LTE network was not the best performing one under a number of indicators (2).

¹ Available at: <http://tra.bh/en/media/quality-of-service>

² See, for example, population coverage for a 4G user (p. 11 of the Mobile Audit Report), or latency test (page 14 of the Mobile Audit Report).



Batelco's Arguments

Batelco claims that "*many measurements set out in other relevant reports*" beside the Audit Report should be considered when assessing whether or not the Advertisement is "*false*" and hence potentially "*misleading*". In particular, Batelco mentions the "Quality of Service Report, Kingdom of Bahrain, 2014" ("QoS Report") (3).

In this respect, it is worth noting that the analysis reflected in the QoS Report were conducted from 2nd June 2014 to 2nd July 2014 inclusive across the Kingdom's five Governorates. As a result, the outcomes of the audit can only be considered applicable to the relevant period of time and cannot be extended any further. As the Advertisement to which VIVA generically refers was published just "*recently*" before the Complaint was submitted, the outcomes reflected in the QoS Report cannot be regarded as covering the Advertisement as well.

Even if the QoS Report covered the Advertisement as a matter of timing, it is not clear where Batelco has gathered the information supporting the supremacy of its network and referred to in its submissions from.

Indeed, the QoS Report relies on a number of parameters to measure the quality of mobile network services. As the outcomes of the measurements show that the Licensed Operators under assessment perform differently against the different parameters, it is very difficult to maintain that one operator runs a network that is absolutely better than the others.

The circumstance that other Licensed Operators use a similar wording to promote their products and services in their respective advertisements does not really affect the legal assessment of the Advertisement and, as such, has to be regarded as irrelevant.

In any event, it is worth noting that the QoS Report "*is a study and it is a non-binding document. It has no legal effect. The Report does not represent an official position of the TRA, but it is intended to stimulate debate in the part of stakeholders and public. It does not prejudice the form or content of any future proposal by the TRA*" (4). Licensed Operators should refrain from relying on this document beyond what clarified by the Authority.

³ Available at: <http://tra.bh/en/media/quality-of-service/>

⁴ See the 2014 Quality of Mobile Service Report, page 2.



In light of the above considerations, the Authority takes the view that the concept of Batelco's network being "*the best*" is to be regarded as not accurate, to the very least, with respect to the timeframes covered, respectively, by the Mobile Audit Report and the QoS Report, and as unsubstantiated with respect to the timeframes not covered by the mentioned reports.

- **The alleged misleading nature of the Advertisement**

According to Article 60(a) of the Consumer Protection Guidelines published on 29 December 2011, titled "Unfair Trade Practices", "*unfair trade practices include:*

a) *conduct that is misleading and deceptive or is likely to mislead or deceive, including but not limited to:*

- (i) *misleading Consumers through false or deceptive advertising;*
- (ii) *misleading Consumers by giving false or deceptive information or failing to give important information in a clear manner."*

A misleading or deceptive conduct implies a misrepresentation of the product or service in a way capable of affecting the purchasing decision of a significant portion of targeted audience. Such misrepresentation may result from providing false information or information that are otherwise capable of persuading the targeted audience that the product or service at stake presents characteristics that, in reality, it lacks or that lacks characteristics that, in reality, it presents. Such misrepresentation may also result from a partial disclosure of the information relating to the product or service at stake, when the information omitted is relevant to allow a significant portion of the targeted audience to reach a better understanding of the characteristics of the product or service to which it refers and to adopt purchasing decisions accordingly.

Misleading advertisement qualifies as an unfair commercial practice in that it is capable of negatively affecting competition among providers by "stealing away" consumers not based on the actual merits of the product or service, but rather on the suggestion that the advertising has produced. While the Authority concedes that it is in the very nature of advertising to influence the purchasing decisions of consumers, it also wishes to highlight that advertising should not do so by providing information capable of misrepresenting the product or service advertised.

The Authority considers that the Advertisement, by claiming that "[t]he best network is now even better", is capable of leading a significant portion of consumers to believe that Batelco's 4G LTE network performs better than competitors' network in absolute terms. Based on the analysis carried out in the previous section, however, such conclusion is, to the very least, not accurate



and unsubstantiated with respect to the applicable measurements. As a result, the Advertisement has to be regarded as an unfair trade practice for the purposes of the Authority's Consumer Protection Guidelines.

Conclusions

After reviewing the Complaint, the Audit Report, the QoS Report and Batelco's Reply, the Authority believes that the Complaint is justified and that the Advertisement does indeed fall within the scope of the Unfair Trade Practices as set out in the 2011 Consumer Protection Guidelines.

Whereas it might be true that Batelco is committed to improve its network so as to make it "better", as the Advertisement claims, the Authority believes that Batelco's claim that it operates the best network in the Kingdom of Bahrain is not supported or substantiated in either the Audit Report or the QoS Report. If Batelco's claims are not based on the findings of the mentioned reports, Batelco does not really explain in its Advertisement in what aspects it considers its own network to be the best. At best, Batelco failed to provide clear, complete and accurate information to customers, and at worst it gave false information. Either way, the Advertisement cannot be considered trustworthy. As such, the Authority concludes that the Advertisement in question does fall squarely within the definition of unfair trade practices.

Decision

The Authority takes this opportunity to note that, besides Batelco, other Licensed Operators in the Kingdom of Bahrain have recently published advertisements where they claim that they run the "best network" in the country. As such, for the reasons illustrated above, these claims also have to be regarded as inaccurate or unsubstantiated and, therefore, potentially misleading of consumers.

The Authority wishes to provide some guidance as to how such claims should be amended in order to avoid misleading effects. In particular, the claims must provide clear indication as to the criteria on which the claims are based (including the applicable timeframe) and as to the sources where the claims can be verified against the indicated criteria by the general public. In order to be effective, the Authority believes that these clarifications must be clearly visible on the advertisements and must be written with a wording that is understandable to consumers in general.



In light of the above, the Authority requires Batelco to either withdraw the Advertisement immediately from all media, or to amend it according to the guidance just provided within five working days from date of this letter.

Batelco is requested to provide promptly the Authority with written confirmation of the withdrawal/amendment.

The Authority reserves all its rights in respect of the matter including its right to take action pursuant to Article 35 of the Telecommunications Law.

Yours faithfully,

Mohammed Bubashait
General Director
12 July 2015