



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

## DECISION NO 4 OF 2017

### The Complaint

The Telecommunications Regulatory Authority (“the Authority”) is in receipt of a complaint submitted by Etisalcom Bahrain W.L.L (“Etisalcom”) on 30 November 2015 (the “Complaint”), alleging that Bahrain Telecommunications Company B.S.C. (“Batelco”) is not charging Etisalcom the regulated price for SMS termination services when it should be.

The essence of Etisalcom’s complaint is summarized in its complaint submission as follows:

*“Being an OLO, with all the relevant licences to provide SMS services, we believe we should be charged the same approved regulated rate of BD 0.000443/SMS as MNOs charge each other....However, Etisalcom is being charged.... [REDACTED] per SMS by Batelco which has no basis in...Batelco’s Reference Offer.*

*For voice and data services, Etisalcom is charged by the MNOs in accordance with the regulated rates approved in the Reference offer documents. However, when it comes to SMS termination, it seems as if Etisalcom is treated more as a marketing or advertising company running bulk messaging campaigns rather than a local telecom operators licensed to provide SMS services...*

*MNOs charge each other the same regulated rate of BD 0.000443/SMS for A2P and P2P messages”<sup>1</sup>*

Etisalcom considers that Batelco’s conduct constitutes a breach of the tariff control obligations under Article 58 and price discrimination in breach of Article 65 of the Telecommunications Law (“the Law”). Etisalcom states that it is unable to compete with other operators, in particular, international SMS aggregators, who it says are supplied the SMS termination service (STAS) at a lower price. Etisalcom complains that several international SMS wholesalers have refused to sign supply agreements with Etisalcom due to its uncompetitive pricing.

<sup>1</sup> Paragraphs 3.1.2 to 3.1.4 of Etisalcom’s complaint submission



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
Kingdom of Bahrain - مملكة البحرين

Etisalcom refers to previous communication with the Authority concerning this matter and advises that it raised the matter directly with Batelco in accordance with the Authority's instruction.<sup>2</sup> Etisalcom states that Batelco did not respond and continues to invoice it for SMS services at the higher rate and therefore it raised a formal complaint with the Authority.

Etisalcom requests that the Authority direct Batelco to supply SMS termination services at the regulated rate of BD 0.000443/SMS and to issue a credit note for the difference between what Etisalcom has been charged and the regulated rate for the services supplied since it agreed to commercial terms for the supply of the service.

### **Batelco's response**

The Authority informed Batelco of the Complaint by way of letter dated 29 February 2016.

On 21 March 2016, Batelco provided a confidential reply to the Authority ("Reply"). As per paragraph 34 of the TRA's Dispute Resolution Guidelines, a non-confidential version of a submission should accompany any confidential submission and the Authority will not entertain any blanket claim of confidentiality. In the interests of transparency, the Authority has reproduced the following relevant sections of Batelco's response with price related information redacted:

*"Etisalcom agreed commercial termination rates of [REDACTED] SMS on 15 April 2013 with Batelco for an SMS terminating access service that is predominantly for A2P SMS traffic. We recognize there is a small amount of P2P SMS traffic between fixed devices (13xx xxxx) for termination on Batelco's mobile network.*

*Batelco notes that Etisalcom has not paid Batelco any sums for the service since 2013 (amounting to approximately [REDACTED] outstanding)...*

<sup>2</sup> Letter from the Authority to Etisalcom dated 4 May 2015



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

*Following issue of the dominance determination for Batelco dated 1 February 2010, the TRA has not been minded to change the scope of the SMS terminating access service in either reference offer orders issued in 2011 and 2012, nor are the non-price terms proposed to be altered in the current draft reference offer order.*

*Applications are independent of any network, so Batelco believes the regulatory umbrella and oversight need not be extended to A2P traffic. The dominance determination relates to termination of traditional P2P SMS traffic"*

Batelco proposed the following resolution to the dispute:

*"If Etisalcom pays all outstanding debts for the service at the current agreed rate, Batelco offers to:*

- (a) Reduce the agreed commercial rate down to the reference offer regulated SMS termination rate, applied to holders of national fixed services licences as well as mobile network operators for P2P SMS traffic; and*
- (b) Continue to provide the SMS terminating access at the commercially agreed rate for A2P traffic (such as bulk SMS services)"*

#### **Further information from Etisalcom**

On 26 September 2016, in response to a request for further clarification from the Authority concerning Etisalcom's interconnection arrangements, Etisalcom advised that

*"Etisalcom has deployed a proper Short Message Service Centre (SMSC) since the inauguration of the service in December 2012 and have physical SS7 E1 connectivity with all Bahrain Mobile Network Operators (MNOs). We established SS7 links with Batelco in December, 2012.... through our SMSC using GT-13338475 and GT-13338476 for which Etisalcom is being charged separately on a monthly basis..."*



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

*Unlike other international SMS carriers who have SMPP connectivity with local MNOs<sup>3</sup>*

Etisalcom also provided the Authority with a copy of its August 2016 Wholesale & Interconnect invoice from Batelco, highlighting costs for Customer Sited Interconnect (CSI) Link and Signalling Link.

### **Further information from Batelco**

On 27 December 2016, Batelco provided a reply ("**Second Reply**") to a request from the Authority for further information concerning the technical and commercial arrangements that it has in place with other operators for the termination of A2P services on its network. Batelco advised that:

*"Noting that there is no present differentiation between A2P SMS traffic and P2P SMS traffic within Batelco's network, we currently allow for termination of A2P SMS traffic from VIVA and Zain at the regulated rate for the SMS Terminating Access Service. We have however, begun commercial discussions with other MNOs to potentially differentiate between both scenarios"*

Batelco also provided the Authority with copies of completed service requests forms from Zain and VIVA. Batelco reiterated that:

*"Etisalcom was not a licensed mobile operator at the time of requesting the SMS terminating access service on 15 April 2013 and Batelco agreed to provide this service to Etisalcom on a commercial basis. The terms of Batelco's Reference Offer demonstrate that the an operator must hold a mobile license in order to obtain the regulated SMS termination rate in this regard"*

### **Relevant law**

Etisalcom alleges that Batelco has breached Article 58 "Tariffs for Telecommunications Services" and Article 65 "Anti-Competitive Conduct" of the Law. Article 58 sets out Tariff Controls requirements, with sub-Article 58(b) requiring that tariffs charged by Licensed Operators shall be fair and equitable, non-

<sup>3</sup> Email from Mr. Rashed Abdulla Al-Snan to Dr Jean Pierre Scerri dated 26 September 2016



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

discriminatory and based on forward-looking costs. Article 65 of the Law prohibits specified anti-competitive conduct in the course of or in connection with operating a Telecommunications Network or providing a Telecommunications service.

However, as set out in the extracts of the Complaint above, the essence of Etisalcom's concern is that Batelco breached Article 57 "Interconnection and Access" of the Law by failing to offer Etisalcom interconnection with the STAS on the terms and conditions and tariffs set out in Batelco's Reference Interconnection Offer (RIO). This is also the focus of Batelco's Reply.

Article 57 of the Law sets out Interconnection obligations for Public Telecommunications Operators. Article 57(a) of the Law imposes an obligation on operators to negotiate interconnection in good faith and in accordance with the rights and obligations set out in their licences and regulations.

Article 57(b) and (c) place specific obligations on operators found to hold a Dominant Position in a market. Once an operator is determined to be Dominant, it is obliged to publish a RIO approved by the Authority. Article 57(c) of the Law provides that the Dominant operator shall offer Interconnection with any Licensed Operator on request and on the terms, conditions and tariffs set out in its RIO.

The Authority determined that Batelco is dominant in the market for termination services under the "Determination of Dominance in Interconnection Markets" issued by the Authority on 9 August 2003 (the "2003 Dominance Designation"). Batelco's Dominance in these markets was reconfirmed in the Authority's Determination "Dominance designation for termination services on individual mobile networks" published on 1 February 2010 ("the 2010 Determination"). Batelco has published its RIO which is available on its wholesale website.

## **Assessment**

### **1. Is Batelco is obliged to interconnect with Etisalcom on the terms of its RIO**



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

Under Article 57(c) of the Law Batelco is obliged to offer interconnection on the terms of its RIO to any Licensed Operator that requests interconnection.<sup>4</sup>

The definition of a “Licensed Operator” is “a Person who is licensed to operate a Telecommunications Network or to provide a Telecommunications service under Article 25 of this Law”.<sup>5</sup>

Etisalcom holds the following licences:

1. Individual License for International Telecommunications Services (ISL) (19 March 2005)
2. Class License for Value Added Services (VAS) (19 March 2005)
3. Class License for Internet Services (ISP) (26 July 2005)
4. Individual License for National Fixed Services (NFL) (15 May 2006) and
5. Individual License for International Telecommunications Facilities (IFL) (29 August 2006).

Given that Etisalcom is an operator licensed to operate a fixed network in Bahrain, it would appear that Batelco is obliged under Article 57(c) of the Law, to Interconnect with Etisalcom in accordance with the terms and conditions of its RIO.

## **2. Is Batelco obliged to supply Etisalcom with the SMS Terminating Access Service on the terms of its RIO**

Etisalcom is a fixed operator providing integrated ICT solutions in Bahrain and overseas. Etisalcom's business also involves concluding agreements with third party businesses to send SMS messages to mobile phone users in Bahrain for marketing and/or information dissemination purposes.

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<sup>4</sup> “Interconnection” is defined under the Law as “the physical and logical linking of Telecommunications Networks used by the same or a different operator in order to allow Subscribers of one operator to communicate with Subscribers of the same or another operator, or to receive services provided by another operator”

<sup>5</sup> Article 1 of the Law



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

In order for Etisalcom to send these messages to end-users in Bahrain it must terminate its traffic on mobile networks and therefore requires termination services from the MNOs. Etisalcom has confirmed that it receives the regulated rate for voice services it terminates with Batelco.

In its 2010 Determination, the Authority notes that:

*"Termination services are interconnection services. They include voice calls, Short Messaging Services (SMS) and Multimedia Messaging Services (MMS) termination."*

As a result, Batelco's RIO includes the terms and conditions and tariffs for voice, SMS and MMS termination services. At paragraph 13 of the 2010 Determination, the Authority states that:

*"Wholesale termination on mobile networks is also relevant for customers of fixed networks calling customers of mobile networks as well as for off-net SMS and MMS. Hence, it also purchased by fixed operators for terminating fixed originated calls on mobile networks"*

Batelco has confirmed that it supplies MNO licence holders (Zain and VIVA) with the STAS at the regulated tariff. Given that Etisalcom is a Licensed operator in Bahrain, it would appear that Batelco is obliged, under Article 57(c) of the Law and pursuant to Batelco's non-discrimination obligations, to supply Etisalcom with the STAS in accordance with the terms and conditions of its RIO.

### 3. Is there an objective justification for differential treatment of Etisalcom

Article 57(b) of the Law provides that a Dominant operator is bound by non-discrimination obligations in the supply of Interconnection services, requiring that:

*"The tariffs and terms of the Interconnection offered may differ between a Licensed Operator and another only where objectively justifiable on the basis of the type of Interconnection"*

Therefore, Batelco can only supply Etisalcom with the STAS on the different terms than MNOs if it is "objectively justifiable on the basis of the type of Interconnection".



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

The Authority's Competition Guidelines state that:

*"TRA will likely make an "a priori" assumption that discrimination in wholesale markets by a dominant operator is harmful to competition by enabling an operator to leverage dominance between markets...In the event of an alleged breach of Article 57 and/or 65 in this manner, the operator subject to the complaint will be required to provide objective justification for the differential treatment in order to rebut this presumption. TRA will therefore consider whether the customers circumstances can explain the differences in treatment. This will entail primarily considering whether the customers differing circumstances affect the costs of supply and hence the terms offered."*<sup>6</sup>

Batelco's Reply states that it is not obliged to supply Etisalcom with the STAS at the regulated tariff because:

- Etisalcom does not hold a Mobile Network Operators (MNO) licence which is a pre-requisite to enlivening Batelco's STAS supply obligation
- Most of Etisalcom's SMS traffic is Application to Person (A2P) SMS traffic, which Batelco considers does not fall within the scope of the STAS Service Description.

The Authority will consider whether each of these points constitutes an objective justification for differential treatment of Etisalcom below.

### 3.1 Whether Etisalcom needs a MNO licence to be eligible for the STAS

Batelco's position is based on the STAS Service Description set out under the RIO, which states that the STAS is "Available to: Public telecommunications operator with an individual MNO licence and

<sup>6</sup> Authority's Competition Guidelines, Page 56





هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

one or more interconnection links with Batelco.”<sup>7</sup> Batelco says that given that Etisalcom does not hold a MNO licence, it is not and never has been entitled to the regulated rate for STAS.

Clause 3.1 of the Service Description also specifies a list of “pre-requisites” that the parties must meet before Batelco is obliged to supply the STAS. This includes:

- (a) have established interconnection between their mobile networks as contemplated by the Mobile Terminating Access Service Description;
- (b) have established the SMS Interconnect Link. The parties shall equally share the costs of establishing and operating the SMS Interconnect Link. Batelco shall, in accordance with the Joint Working Manual, provision, operate and maintain the SMS Interconnect Link unless otherwise agreed;
- (c) successfully completed any pre-commissioning testing requirements set out in the Joint Working Manual; and
- (d) the other party can supply the first party with the SMS Terminating Access Service on a reciprocal basis

The Authority notes that the Mobile Terminating Access Service (MTAS) Service Description states that it is “Available to: A public telecommunications operator with an individual NFL or MNO licence and having one or more interconnection links with Batelco.”<sup>8</sup>

Etisalcom, as a holder of a NFL with interconnection links with Batelco, is eligible for the Mobile Terminating Access Service (MTAS). Batelco has also confirmed that there is a small amount of P2P traffic which demonstrates that technically, Etisalcom can supply Batelco with SMS on a reciprocal basis. Given that Etisalcom can terminate SMS on Batelco's network, it would appear that Etisalcom has satisfied the technical interconnection requirements under clause 3.1.

<sup>7</sup> Batelco RIO, Schedule 11-6, clause 1

<sup>8</sup> Batelco RIO, Schedule 11-4, clause 1



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

The 2010 Dominance Determination clearly states that termination services are interconnection services and that they may be needed by fixed operators for terminating traffic. Therefore, given that both MTAS and STAS are interconnection services, the Authority can see no objective justification for Batelco limiting the supply of the STAS to MNOs. The Authority considers that such a limitation is inconsistent with the requirements of the 2010 Determination and Batelco's non-discrimination obligations under Article 57(c) of the Law.

### 3.2 Whether A2P messages fall within the scope of the STAS Service Description

Batelco's Reply states that its RIO obligations are confined to Person to Person (P2P) messaging. It explains that most of Etisalcom's SMS traffic is application based (A2P) and therefore independent of the network and ultimately outside the scope of the STAS Service Description.

Batelco notes that in its view, the STAS Service Description was never intended to encompass A2P services and that the Authority has not been minded to change the Service Description to include A2P messages. Batelco argues that it would therefore be an inappropriate extension of the regulatory umbrella to conclude that A2P messages now fall within the scope of the STAS Service Description.

In its Second Reply, Batelco advised that it is technically unable to distinguish between A2P and P2P traffic. It is because of this that Batelco charges the two MNOs the regulated STAS tariff for all SMS traffic terminating on its network – i.e. for both P2P traffic and A2P traffic. Given this, the Authority considers it unlikely that Batelco can in fact definitively state that Etisalcom's SMS traffic is in fact mostly A2P. Regardless of this, the fact that Batelco charges MNOs the regulated rate for A2P traffic means that it should afford the same treatment to Etisalcom.

For these reasons, the Authority does not consider that the fact that most of Etisalcom's SMS traffic is A2P is an objectively justifiable basis for Batelco to charge Etisalcom a different rate for STAS than it charges the MNO licence holders.

The Authority also notes that while the STAS Service Description has not changed, it also does not distinguish between A2P and P2P messages. Therefore, restricting the scope to P2P as Batelco proposes is unjustified.



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

#### 4. Whether Batelco negotiated its commercial SMS agreement in good faith

Article 57(a) of the Law imposes an obligation on operators to negotiate interconnection in good faith and in accordance with the rights and obligations set out in their licences and regulations.

The Authority published its "Determination of Dominance in Interconnection Markets" issued by the Authority on 9 August 2003 (the "2003 Dominance Designation").

Batelco published its RIO, which included regulated rates for the STAS on 31 May 2004. It came into effect on this date and the regulated rate was BD 0.00383 /message. This changed to BD 0.000443 /message under the Reference Offer Order issued on 25 January 2011 and implemented by Batelco on 1 February 2011.

Etisalcom and Batelco agreed commercial rates for SMS termination on 15 April 2013. Batelco considers that as Etisalcom was not a MNO licence holder at this time, it was not eligible for the STAS. It also states that Etisalcom should have submitted a service request for the STAS if it considered that it was eligible for the STAS. Etisalcom has advised that:

*"Before all three mobile operators came out [with] the Reference offers, Etisalcom had separate SMS termination agreements with the MNOs. However, once the RIOs of all MNOs became effective, it was clear to Etisalcom that SMS termination rate must be in line with what is mentioned in the reference offers and that the agreement previously signed is superseded by the reference offers"*

Etisalcom then approached the Authority for confirmation of its view. In a letter dated 4 May 2015, the Authority advised:

*"In addition the Authority has also imposed the remedy of non-discrimination by virtue of which MNOs are required to charge equivalent SMS termination tariffs to any operators seeking to interconnect with its network..."*

*You are therefore encouraged to approach the MNOs individually and ensure that the termination rate being charged is indeed the regulated rate."*



هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

In response, one of the MNOs (VIVA) applied a credit note effective from the date that its Reference offer came into effect (1 October 2014).

Batelco, as a Dominant Operator in the wholesale market for termination services, is obliged to offer and interconnect the STAS on the terms set out in its RIO when requested to do so by a Licensed Operator. For the reasons set out above, the Authority considers that Etisalcom, as a Licensed Operator, is entitled to the STAS upon request. While Etisalcom had a commercial agreement in place with Batelco from 15 April 2013, Batelco's RIO came into effect on 31 May 2004. xxx.

The Authority recognises that STAS as a service is to ensure that local operators can interconnect and terminate their individual subscribers messages (P2P) on MNOs at the set regulated rates. However, Etisalcom occupies a unique position in the market, in that it is a fixed network operator that requires SMS termination services. As a Licensed Operator, Etisalcom is entitled, under Article 57(c) of the Law, to receive regulated services on the terms and conditions set out in a Dominant Operator's RIO.

The Authority considers that the fact that Etisalcom is a Licensed Operator would have been abundantly clear to Batelco at the time Etisalcom approached it about the supply of the termination services. Batelco has also confirmed that it has extended the regulated rate for termination of A2P SMS from Zain and VIVA. The Authority is satisfied that Batelco is obliged, pursuant to its non-discrimination obligations, to extend the same treatment to Etisalcom.

### **Decision**

For the reasons set out above, the Authority considers that, Batelco was and is obliged under Article 57(c) of the Law to offer Etisalcom the STAS at the regulated rate of BD 0.000443 fils/SMS effective as of 1 February 2011, which is the date that this rate came into effect.

In the circumstances, the Authority considers that Batelco should provide Etisalcom with a credit note dated from the date that the parties concluded commercial terms for the supply of the STAS, namely 15 April 2013.

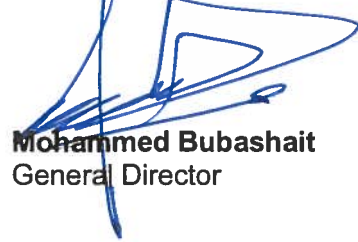


هيئة تنظيم الاتصالات  
Telecommunications Regulatory Authority  
مملكة البحرين - Kingdom of Bahrain

The Authority notes Batelco's comment that it has "*begun commercial discussions with other MNOs to potentially differentiate between [A2P and P2P] both scenarios*". As this issue is not the subject of this complaint, the Authority does not consider it necessary to form a view, at this time, on whether such differentiation is consistent with Batelco's non-discrimination obligations, including under Article 58(b) of the Law.

For the sake of clarity, the Authority notes that this decision does not mean that similar price terms must be extended to other bulk messaging service providers. As a point of reference, the Authority's decision on the Regulation of Wholesale International Inbound Call Services and Review of Call Termination Rates issued on 17 September 2015 (Ref: MCD/09/15/067) allows for Zain, Batelco and VIVA to price differentiate with regards to the call termination rates applicable to internationally originating call traffic.<sup>9</sup>

Yours faithfully,



**Mohammed Bubashait**  
General Director

<sup>9</sup> Reference Offer Orders on Bahrain Telecommunications Company B.S.C., Viva Bahrain B.S.C, and Zain Bahrain B.S.C. setting the regulated call termination rates; Regulation of Wholesale International Inbound Call Services and Review of Call Termination Rates published 17 September 2015