



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

**Decision No. 7 of 2017**

**Proposed Acquisition of Mena Telecom WLL by VIVA Bahrain BSC**

**A decision issued by the Telecommunications Regulatory Authority pursuant to  
the Telecommunications Mergers and Acquisitions Regulation**

**Regulation No. 3 of 2004**

**04 October 2017**

**LAD 1017 195**





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## **Decision No. 7 of 2017 – Decision declaring that the Qualifying Transaction is compatible with the *Telecommunications Mergers and Acquisitions Regulation 2004***

This decision concerns the Telecommunications Regulatory Authority's ("the Authority") assessment of the proposed acquisition of Mena Telecom WLL ("Mena") by VIVA Bahrain BSC ("VIVA").

On 17 August 2017, VIVA notified the Authority of the Qualifying Transaction in accordance with the requirements of Article 2 of the *Telecommunications Mergers and Acquisitions Regulation*, Regulation No 3 of 2004 issued on 28th September 2004 ("the Regulation"). The proposed acquisition is a "Qualifying Transaction" for the purposes of Article 1.2(b) of the Regulation. Accordingly, the Authority is required to assess whether the proposed acquisition raises any serious doubts as to its compatibility with Article 4 of the Regulation.

On 21 August 2017, the Authority published a request for interested third parties to comment on the Qualifying Transaction. The Authority received one submission from Bahrain Telecommunications Company BSC ("Batelco") on 30 August 2017. In summary, Batelco raised concerns related very broadly to: (i) the estimated market share of the combined entity<sup>1</sup>; (ii) concentration of spectrum by VIVA; and (iii) inconsistency with the single network policy objective under NTP4.

On 14 September 2017, the Authority wrote to VIVA to advise that, on the basis of the information available, the Authority considers that the Qualifying Transaction raises "serious doubts" as to its compatibility with Article 4 of the Regulation. Accordingly, pursuant to Article 3.2(c) of the Regulation, the Authority decided to initiate a Phase 2 investigation of the Qualifying Transaction.

On 19 September 2017, pursuant to Article 7.5 of the Regulation, VIVA met with the Authority to better understand its concerns and consider possible Commitments to remove the Authority's "serious doubts".

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<sup>1</sup> Throughout the Decision, the term 'combined entity' shall refer to the licensed entity post acquisition, which will provide telecommunications services. To the extent and until such time as Mena continues to retain its own separate Commercial Registration number, then the defined term shall also cover Mena.





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After examination of the notification and review of the Commitments made by VIVA, the Authority has concluded that subject to VIVA complying with the Commitments as outlined in paragraph 30 of this decision, the Qualifying Transaction does not raise serious doubts as to its compatibility with the Regulation.

The Authority notes, in accordance with Article 3.6 of the Regulation, that if the Parties breach any of the Commitments or conditions set out in this decision, then the Authority may revoke this decision. This in turn may lead to the imposition of remedies in accordance with Article 9 of the Regulation.

The Authority notes that this matter indirectly raises the question of the Authority's plans for the current 3.5 GHz band and deployment of 5G mobile networks in the Kingdom of Bahrain. For the avoidance of doubt, if the Authority does designate the 3.5 GHz band for mobile services, then it will seek to ensure that all mobile network operators have a fair opportunity to engage in deployment.

The reasons for the Authority's decision are set out in further detail below.

### **The Authority's jurisdiction**

1. The Authority is satisfied that the proposed acquisition is a "Qualifying Transaction" for the purposes of Article 1.2(b) of the Regulation and VIVA has notified the Authority of the proposed transaction in accordance with the requirements of Article 2 of the Regulation and in particular, Article 2.1(b) and 2.5 of the Regulation. The Authority is therefore satisfied that the proposed transaction falls within its jurisdiction. The reasons for this view are set out below.
2. VIVA notified the Authority on 17 August 2017. The Notification states that "*following TRA approval, this transaction will be executed between VIVA and Mena under Article 1.2(b) of the Regulation, for the acquisition by VIVA of 100% of the common equity of Mena*".<sup>2</sup> If the proposed acquisition were to proceed, it would result in a change of control of Mena on a lasting basis.
3. Both VIVA (the Acquiring Party) and Mena (the Acquired Party) are Licensees. VIVA is a licensed operator providing *inter alia* mobile and fixed telecommunications services in Bahrain. VIVA is a fully owned subsidiary of the

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<sup>2</sup> Notification dated 17 August 2017, page 2



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Saudi Telecommunications Company (STC) and launched its commercial services in March 2010. VIVA holds the following licences:

- Individual Licence for Mobile Telecommunications;
  - Individual Licence for National Fixed Services;
  - Individual Licence for International Telecommunications Services;
  - Individual Licence for International Telecommunications Facilities;
  - Class Licence for Internet Services;
  - Class Licence for Value Added Services;
  - Frequency Licences in the 900 MHz, 1800 MHz and 2100 MHz bands; and
  - Frequency Licence for point-to-point communications.
4. Mena is a licensed operator providing *inter alia* national fixed wireless telecommunications services in Bahrain. Mena started its operations in 2004 and is 99% owned by Kuwait Finance House (Bahrain) BSC and 1% owned by Baytik Investment One S.P.C. Mena holds the following licences:
- Individual Licence for National Fixed Wireless Telecommunications Services;
  - Individual Licence for National Fixed Services;
  - Individual Licence for International Telecommunications Services;
  - Individual Licence for International Telecommunications Facilities;
  - Class Licence for Internet Services;
  - Class Licence for Value Added Services;
  - Frequency License for 3.500-3.590 GHz; and
  - Frequency Licence for point-to-point communications.
5. VIVA and Mena provide broadband services to the consumer broadband market as well as the business market within Bahrain. The proposed acquisition will therefore involve a market within or affecting the telecommunications sector in Bahrain.

## Assessment

6. Article 4 of the Regulation sets out two substantive tests which the Authority must apply when assessing a Qualifying Transaction.





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- (i) *Whether the Qualifying Transaction has, or is likely to have, the effect of substantially lessening competition (as per Article 4.1 of the Regulation)*

7. Article 4.1 of the Regulation states that:

*"In assessing a Qualifying Transaction the TRA shall assess whether the Qualifying Transaction has, or is likely to have, the effect of substantially lessening competition in a market within or affecting the telecommunications industry in the Kingdom of Bahrain"*

8. The Authority determines that the relevant markets that may be affected by the Qualifying Transaction are the retail market for the supply of mass market broadband internet access services from a fixed location and the retail market for domestic data connectivity services.
9. The Authority has considered the combined market shares of VIVA and Mena in these two markets. The Authority has computed the market shares on the basis of (i) number of subscribers and (ii) revenues. In all computations, the resultant combined market share analysis together with due consideration of the level of competition in these markets does not lead the Authority to conclude that the Qualifying Transaction will confer an increase in market power that is significant and sustainable.
10. The Authority is satisfied that the Qualifying Transaction will not have, or be likely to have, the effect of substantially lessening competition in a market within or affecting the telecommunications industry in Bahrain. Therefore, the Authority declares that the Qualifying Transaction is compatible with Article 4.1 of the Regulation.

- (ii) *Whether the Qualifying Transaction may result in market outcomes that would be inconsistent with Article 3(b) of the Law (as per Article 4.2 of the Regulation)*

11. Article 4.2 of the Regulation requires that when assessing a Qualifying Transaction the Authority "*shall also have regard to its duties and powers under section 3(b) of the Telecommunications Law*".





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12. For the purposes of this Decision, the Authority has considered whether the Qualifying Transaction, if allowed, would result in a consolidation of spectrum holdings that will be inconsistent with Article 3(b) of the Law, in particular, the obligation on the Authority to carry out its duties in a manner best calculated to “*promote effective and fair competition*”.<sup>3</sup>
13. In addition, the Authority has to consider that, at least in theory, the combined entity may have the opportunity to use this spectrum for early deployment of 5G networks, which is an opportunity that Batelco would not have because it does not have the right spectrum. If substantiated, this outcome could, unless addressed, ultimately be contrary to the original purpose of assigning this spectrum for fixed wireless use and could lead to an imbalance of spectrum holdings amongst licensees.
14. The Authority wrote to VIVA on 14 September 2017 to highlight that this issue raises “serious doubts” as to the compatibility of the Qualifying Transaction with Article 4 of the Regulation.
- (i) *Concentration of Spectrum*
15. Currently, VIVA has 117.4 MHz of the spectrum allotted to public mobile telecommunications networks and Mena has 90 MHz of the spectrum allotted to fixed wireless networks. The 90 MHz of 3.5 GHz band was allotted to Mena (and the other 90MHz to Zain) specifically for the purpose of enabling the supply of national fixed wireless services.
16. The use of the 3.5 GHz band for national fixed wireless services is a Frequency Licence condition and is linked to the ongoing validity of the National Fixed Wireless Telecommunications Service Licence granted to Mena.<sup>4</sup> Moreover, the assigned frequency spectrum may only be used by the licensee until such time as the underlying national fixed wireless licence remains valid and current.

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<sup>3</sup> Telecommunications Law, Article 3(b)(2)

<sup>4</sup> Frequency Licence granted to Mena Telecom WLL dated 8 January 2006 at Section 3.1. See also Schedule A and section 1.2 of the licence which states that “*This licence shall not use the Assigned Radio Frequency Spectrum unless the national fixed wireless licence referred to in section 3.1 is valid and current*”



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17. The Authority also notes that VIVA has committed to comply with the requirements of Mena's licence thereby ensuring that the 3.5 GHz spectrum band is not used for services for which it was not originally assigned. Specifically VIVA has committed to disable the call handover functionality for this spectrum from its Network Operations Centre, in line with the obligations stemming from Section 3 of Mena's National Fixed Wireless Telecommunications Services Licence.
18. Therefore, the combined entity would be in breach of (Mena's) licence and VIVA's commitment if it were to use the 3.5 GHz for a purpose other than to supply national fixed wireless services. In this context, the Authority intends to invoke its powers under Section 3.5 of Mena's National Fixed Wireless Telecommunications Services Licence, in order to rigorously monitor the combined entity's ongoing compliance with the foregoing obligations.
19. The Authority acknowledges that post acquisition, VIVA would have more spectrum than Batelco (but at par with Zain). However, for the reasons set out above, the combined entity's use of any "excess" spectrum will be restricted to the provision of telecommunications services associated with the National Fixed Wireless Telecommunications Services Licence (which services include national fixed telecommunications services and nomadic wireless services) to the specific exclusion of mobile telecommunications services.
20. The Authority therefore concludes that the spectrum that has been allotted to all three holders of Individual Mobile Telecommunications Licences for the provision of mobile telecommunications services is effectively equivalent and will remain so post acquisition. For the avoidance of doubt, it is the Authority's firm view that the combined entity will be sufficiently restricted from using the 3.5 GHz band to obtain an unfair competitive advantage in the provision of mobile telecommunications services.
21. Given the above, and subject to the further Commitments made by VIVA (set out further below), the Authority is satisfied that the consolidation of spectrum that will result from approval of the Qualifying Transaction will not result in the combined entity obtaining a commercial advantage that is contrary to the Authority's duty to "promote effective and fair competition" under Article 3(b) of the Law.







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22. Moreover, the approval of the Qualifying Transaction will likely allow VIVA to utilize spectrum more efficiently by offloading some of the broadband traffic from its congested 1800 MHz band, and in turn improving the quality of its mobile broadband services to its end-users in a manner consistent with the objectives of Article 3(b)(1) of the Law insofar as this refers to the quality of telecommunications service.

(ii) *Early Deployment of 5G*

23. The Authority notes that the portion of the 3.5 GHz band that has been assigned to Mena and Zain is being harmonized by equipment vendors as well as regional telecommunication groups as a “pioneer band” for 5G for enhanced mobile broadband & mission critical applications in Region 1 countries (including Bahrain).<sup>5</sup> For example, the GSMA advises that:

*“the band will be one of the first frequencies to carry 5G traffic, making it a critically important band for mobile operators seeking to offer the power of next generation mobile services to consumers and businesses. And in the process, given their respective national economies a boost”<sup>6</sup>*

24. The Qualifying Transaction does raise the prospect of two of the three mobile network operators (Zain and VIVA) being, in theory, in a position to redeploy their existing spectrum holdings in 3.5 GHz band to provide mobile based services over 5G Networks. The Authority also acknowledges that section 12.2 of the existing 3.5 GHz Frequency Licences effectively provides for an automatic 10 year renewal period upon the request of the licence holder (subject to some conditions). Considered together, these circumstances could lead to the conclusion that, if and when 3.5 GHz band is to be officially designated for the deployment of 5G networks and services, Batelco will not be in a position to engage in the deployment of 5G networks and services in the same manner as its competitors.

25. However, section 20 of VIVA’s IMTL prohibits VIVA from introducing any new IMT technology as defined by the ITU without first obtaining the Authority’s approval.

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<sup>5</sup> ITU, WRC-19

<sup>6</sup> The WRC Series, *Considerations for the 3.5 GHz IMT range: getting ready for use* May 2017, page 2







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This restriction coupled by the restrictions in the Frequency Licence of Mena (specifically Section 3.1) and those prevalent in the National Fixed Wireless Service Licence of Mena (specifically Sections 3.1, 3.2 and 3.3) guarantee that VIVA cannot unilaterally utilize the allotted spectrum in 3.5GHz band to deploy a 5G network.

26. For the avoidance of doubt, the Authority's firm view is that the deployment of a 5G network and the corresponding utilization of 3.5GHz band for the provision of mobile telecommunications services will necessitate the Authority's approval. The Authority foresees that when faced with such a request for approval, it might be necessary to reassign spectrum that has already been allotted to licensees.
27. The Authority notes that, in order to address the potential negative impact that the combined entity's (and Zain's) control over 3.5 GHz band may have on the deployment of 5G networks, VIVA has committed to engage with the Authority on the early reassignment of this spectrum if the Authority determines that this band is required for this purpose prior to the expiry of the current Frequency Licences in January 2022.
28. The Authority is for the afore-mentioned reasons satisfied that current legal and licensing requirements provide sufficient assurance with respect to the Authority's capacity to manage 5G deployment. The Authority declares that the Qualifying Transaction no longer raises any serious doubts as to its compatibility with Article 4.2 of the Regulation.

## Conclusion

29. Pursuant to Article 3.4 and Article 3.5(b) of the Regulation and for the reasons set out herein, the Authority has decided to declare that VIVA's proposed acquisition of 100% of the common equity of Mena is compatible with Article 4 of the Regulation.
30. The Authority's decision is subject to the following conditions:



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1. VIVA (and/or the combined entity) must comply with the terms of Mena's existing Telecommunications Licenses and Frequency Licence, in particular those covered by paragraphs 16, 17 and 25 of this Decision;
  2. VIVA (and/or the combined entity) will disable any call handover functionality for services supplied to its customers via the 90 MHz of spectrum in the 3.5 GHz band;
  3. VIVA (and/or the combined entity) will engage with the Authority on the early reassignment of 3.5 GHz band if the Authority determines that this band is required for the deployment of "5G" networks in the Kingdom of Bahrain;
  4. VIVA (and/or the combined entity) will honour terms and conditions under Mena's existing subscriber agreements; and
  5. VIVA (and/or the combined entity) will assume responsibility for and satisfy any and all of Mena's outstanding invoices, including those issued by the Authority, and ensure that these are cleared before the transaction is finalized.
31. For the avoidance of doubt, and pursuant to Article 44(f) of the Law, the Authority consents to the transfer of Mena's licences, including its Frequency Licence, to VIVA following the combined entity's acceptance of this decision.

**Nasser bin Mohamed Al-Khalifa**  
**Acting General Director**  
**04 October 2017**