

Determination No 1 of 2019

Determination issued by the TELECOMMUNICATIONS REGULATORY AUTHORITY to Bahrain Telecommunications Company BSC (“Batelco”) pursuant to Article 65 of the Telecommunications Law regarding Batelco’s constructive refusal to supply and excessive pricing of Wholesale Local Access

30 May 2019

Ref: LAD 0519 163

Confidential Version

ARTICLE 65(F) DETERMINATION

THE TELECOMMUNICATIONS REGULATORY AUTHORITY OF THE KINGDOM OF BAHRAIN

Having regard to Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law of the Kingdom of Bahrain as amended by Decree No.38 of 2017 ("Law") and in particular to Articles 3(b)(2) and 65 and 72 thereof;

Having regard to the Competition Guidelines (Ref: MCD/02/10/019) published by the Authority on the 18 February 2010;

Having regard to the complaint lodged by Rapid Technologies WWL on 9 November 2017 (Ref: LRT-002-3825), alleging infringements of Article 65(b)(1) of the Law by Bahrain Telecommunications Company BSC ("Batelco"), and asking the Authority to put an end to those infringements;

Having regard to all the relevant evidence filed by the licensed operators concerned;

Having given the licensed operators concerned the opportunity to make known their views on the submissions that have been filed:

1. The Authority has investigated whether Batelco's conduct infringed Article 65 of the Telecommunications Law.
2. For the reasons set out in the Annex to this Determination, including the relevant facts and legal matters, the Authority determines that Batelco has not infringed Article 65.
3. This Determination is addressed to Bahrain Telecommunications Company B.S.C.

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DEFINITIONS & ACRONYMS

Authority	Telecommunications Regulatory Authority
Amwaj	Amwaj Islands, situated in the northeast of Bahrain
Bahrain	The Kingdom of Bahrain
Batelco	Bahrain Telecommunications Company BSC
BD	Bahraini Dinars
DDDCS	Authority's Determination of Significant Market Power and Determination of Dominant Position in the Markets for Domestic Data Connectivity Services published on 10 April 2014
Law	Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law of the Kingdom of Bahrain as amended by Decree No.38 of 2017
Level 3	The former Level 3 Communications, an American multinational telecommunications and internet service provider, now part of CenturyLink
Licensed Operator	a person who is licensed to operate a Telecommunications Network or to provide a telecommunications service under Article 25 of the Law
NSA	Naval Support Activity, US Department of Defence Navy site in Juffair, Bahrain
OLO	Other Licensed Operator
Rapid	Rapid Telecommunications WWL
Reference Offer	Authority's Final Order on the Reference Offer of Batelco (MCD/08/16/066) issued on 18 August 2016
STM	Synchronous Transport Module
WDC	Wholesale Data Connectivity
WLA	Wholesale Local Access

1. INTRODUCTION AND EXECUTIVE SUMMARY

1. This determination relates to conduct by Batelco during the period July to November 2017 for the provision of a WLA service to Rapid.
2. The case results from a complaint. The complaint, which was submitted by Rapid on 9 November 2017, alleges that Batelco unreasonably restricted supplying WLA circuits, which constituted a refusal to supply in contravention of Article 65(b) of the Law.
3. An investigation into the allegations made by the complainant was launched in December 2017.
4. A notice under Article 65(e)(1) was issued to Batelco on 12 December 2017.
5. On 26 December 2017, Batelco submitted its response to the complaint.
6. The Authority undertook a site visit to the NSA on 27 August 2018.
7. The Authority asked Batelco for clarifications on 17 January 2019.
8. Batelco responded on 17 February 2019.
9. Given the Authority's analysis presented in this Determination, by this Determination the Authority concludes that Batelco's acts or omissions do not constitute anti-competitive conduct that is prohibited by Article 65 of the Law.

2. THE FACTS

10. Rapid is a Licensed Operator that was established in 2008.
11. Batelco is the incumbent telecommunications provider in Bahrain.
12. In July 2017, Rapid requested from Batelco, a WLA service at a speed of 1 Gigabit/s between Rapid's location at Almoayyad Tower in Seef Area, Bahrain and NSA to provide dedicated connectivity services described below.

2.1 Rapid request for the WLA service under Reference Offer

13. Rapid approached Batelco with a signed order for the WLA connection on 25 July 2017.
14. On 26 July 2017, Batelco accepted Rapid's order. Rapid requested an additional link aggregation to accelerate the delivery of the circuit.
15. Batelco installed the aggregation box in Rapid's premises on 1 August 2017.
16. On 6 August 2017, Rapid received an automated message stating that Batelco did not have fiber available to the requested location.
17. On 15 August 2017, Rapid set up an escalation meeting with Batelco.
18. Rapid alleges that at that meeting, Batelco stated that that these circuits would never be delivered, due to the business impact on Batelco of another licensee providing this circuit. Rapid then alleges that Batelco engaged in a range of other conduct indicating that it would delay the delivery of the circuit.
19. According to Rapid, Batelco further stated that in order to deliver the circuits, Rapid had to further award Batelco a bigger segment of its contract with Level 3, including the international leg, which would be charged at premium in order to enhance the top line.
20. Rapid stated it agreed to this condition in order to ensure proper delivery of the service and avoid liquidated damages that would otherwise arise under its contract with Level 3.
21. According to Rapid, it neither got an order form for the proposal offered by Batelco nor an update on the pending WLA circuits, despite sending more than 10 reminders.
22. Level 3 received a Show Cause Notice from the United States Defence Information Systems Agency on 8 November 2017, notifying it that it was in violation of the terms and conditions of the subject contract awarded on 3 April 2017, with a required service date of 29 May 2017.
23. Both contracts awarded to Level 3 were subsequently withdrawn which in turn meant that Rapid's contract with Level 3 was also terminated.
24. On 9 November 2017, Rapid submitted its complaint against Batelco to the Authority.

3. LEGAL BACKGROUND

3.1 General legal background

25. References to "Articles" (and to each "Article") in this document are a reference to Articles of the Telecommunications Law, unless otherwise specified elsewhere in the document.
26. Article 3(b)(2) requires the Authority to carry out its duties in the manner best calculated to promote effective and fair competition among new and existing Licensed Operators.
27. The Authority is empowered among other matters, to issue regulations, orders and determinations in connection with, among others, Interconnection, Access to the network and its facilities...and the promotion of competition (Article 3(c)(1)).
28. Article 3(c)(2) grants the Authority the power to monitor and investigate compliance with the provisions of the Law and any regulations, orders and determinations made under the Law, both on its own initiative and at the request of any person, and to make such orders and determinations as are necessary to ensure compliance in accordance with the Law.
29. Article 3(c)(4) grants the Authority the power to monitor and enforce compliance with licence terms and conditions by licensees.
30. Article 65(a) prohibits licensed operators from doing or omitting to do anything which has the effect of materially preventing, restricting or distorting competition in any commercial field concerning the telecommunications sector in the Kingdom of Bahrain, where such act or omission is done in the course of operating a telecommunications network, providing a telecommunications service or in connection with any such matter.
31. Article 65(b)(1) defines the act or omission referred to in Article 65(a) to mean:
"[an] abuse by the Licensed Operator, either independently or with others, of a Dominant Position in the market or in a substantial part of it which materially prevents or limits competition in an unfair manner."
32. Article 65(d) stipulates that the Authority shall, when determining whether an act or omission (whether ongoing or temporary) constitutes anti-competitive conduct, have regard to the provisions of the Law and to the conditions of the licence of the relevant operator.
33. Batelco holds a number of Telecommunications Licenses granted to it by the Authority under Article 24 of the Law. These include Batelco's:
 - (a) Individual License for International Telecommunications Facilities;
 - (b) Individual License for International Telecommunications Services;
 - (c) Class License for Internet Services;
 - (d) Class License for Value Added Services;
 - (e) Individual License for National Fixed Services;

(f) Individual License for Very Small Aperture Terminal (VSAT); and

(g) Individual License for Mobile Telecommunications Services.

(together, "Batelco's Licenses").

34. Batelco's Licenses each impose obligations upon Batelco not to engage in anti-competitive conduct in breach of Article 65 of the Law. By way of example, Batelco's National Fixed Services license states:

23.1 *Without derogating from section 65 of the Telecommunications Law, the licensee shall not, alone or together with others, engage in or continue or knowingly acquiesce in any anticompetitive practices and, in particular, the licensee shall:*

- (a) *not engage in anti-competitive cross-subsidization;*
- (b) *not abuse its dominant position;*
- (c) *not enter into exclusive arrangements with third parties for the location of its facilities that are required to provide any of the licensed services;*
- (d) *not enter into any agreements, arrangements or undertakings with any person, including any supplier of services that compete with any of the licensed services, which have as their objective or cause the fixing of prices or other restraint on competition;*
- (e) *not use information obtained from competitors if the objective or effect of such use is anti-competitive;*
- (f) *make available to other licensed operators on a timely basis technical information about essential facilities and other commercially relevant information that is necessary for them to provide telecommunication service; and*
- (g) *not (whether in respect of the tariffs or other terms applied or otherwise) show undue discrimination against particular persons or persons of any class or description as respects the provision of any licensed service.*

3.2 Specific application of Article 65(e) - Notice

35. Article 65(e) requires that before issuing a determination under Article 65, the Authority shall notify the Licensed Operator of the following:

- (a) that it is investigating a possible breach of Article 65 of the Telecommunications Law;
- (b) the reasons that made the Authority believe that a breach has occurred, including any facts or legal matters it considers relevant;
- (c) such further information as the Authority may require from the Licensed Operator to issue its determination;
- (d) where appropriate, the steps the Authority considers the Licensed Operator would have to take in order to remedy the alleged breach;

- (e) giving the Licensed Operator, and any other Person that the Authority considers appropriate to consult, such period as it considers reasonable within which to make written representations in response to the notice.
36. A notice under Article 65(e) of the Competition Law in response to a complaint under Article 72 was issued to Batelco on 12 December 2017 ("Notice"). In accordance with the Competition Guidelines a non-confidential version of the complaint was sent to Batelco. Batelco was invited to respond to Rapid's complaint.

3.3 Specific application of Article 65(f) - Determination

37. Following the Notice, Batelco was given the opportunity to provide written submissions.
38. Batelco responded on 26 December 2017 claiming that it had not breached Article 65.
39. A request for clarifications was sent to Batelco on 20 February 2018. Amongst other things Batelco was requested to clarify the following:

"3- ... Batelco is requested to confirm whether the services originally requested by the NSA are now being supplied? If so, by which service provider? To the extent that Batelco is offering the services to NSA (directly or indirectly through another licensed entity) was Batelco able/required to access the premises to supply the services and if so when?

40. Batelco responded to that request on 28 February 2018. The response included the following:

"The Rapid order was for a WLA AT 1 Gbits/s. Batelco retail has not provisioned any new MPLS circuits T 1 Gbits/s between July 2017 (when the Rapid WLA order was submitted) and the present day."

41. The Authority undertook a site visit to the NSA premises on 27 August 2018.
42. On 17 January 2019, the Authority wrote to each of Rapid and Batelco. The letter states:

The Authority's Site Visit has indicated that Batelco's arguments set out in its submissions dated 26 December 2017 and 28 February 2018 re: availability of fibre at the NSA premises appear to be inaccurate. This could mean that Batelco may have failed to offer access to its telecommunications network.

A refusal to offer such access by an operator designated as enjoying a position of dominance would constitute a breach of Article 57 of the Telecommunications Law; the Access Regulation; Batelco's Reference Offer; and the terms of Batelco's Licences (together the Applicable Provisions)"

As such, while making reference to Article 65 of the Telecommunications Law, the Authority would like to formally notify Batelco that it will be extending the scope of the investigation to incorporate Batelco's conduct in relation to the Applicable Provisions ..."

Pursuant to its powers under Article 53 of the Law, the Authority requested submissions from Rapid and Batelco in relation to the relevance (if any) of Batelco's obligations pursuant to:

- (a) Article 57 of the Telecommunications Law;
 - (b) The Access Regulation;
 - (c) Reference Offer; and
 - (d) The terms of Batelco's Licences.
43. Rapid provided submissions to the Authority as requested.
44. Batelco responded on 4 February 2019 asking for the site visit report which the Authority provided on 10 February 2019.
45. Batelco responded on 17 February 2019 to raise questions about the Authority's site visit report, but not to respond to the substance of the Authority's questions.
46. Following the process referred to above, having issued Batelco with a Notice under Article 65(e), and having reviewed the submissions received on the Notice and the information received following the Notice, the Authority is issuing a determination in accordance with Article 65(f). According to Article 65(f):
- "The Authority shall then determine whether the act or omission is prohibited pursuant to the provisions of this Article, and shall notify the Licensed Operator and any other Person whom it considers it appropriate of the determination issued by it in this respect and the reasons for issuing such determination.*
- Such determination may include the following:*
- 1 *directing the Licensed Operator to do or to refrain from doing such acts as are specified by the Authority in order to remedy, amend or prevent the breach of paragraph (a) of this Article.*
 - 2 *imposing a fine on the Licensed Operator not exceeding 10% of the annual revenues of such operator."*
47. This Authority's reasoning and conclusions as to whether Batelco's acts represent behaviour that is prohibited pursuant to the provisions of Article 65 are set out in this Determination.

4. THEORY OF THE CASE

4.1 Theory of the case: Refusal to supply

48. The theory that has been considered in this investigation is that Batelco had potentially abused its dominant position in the market for the provision of active dedicated connectivity services offered over fixed infrastructure within Bahrain, with the exception of the Amwaj Island area, by engaging in a refusal to supply.

4.2 Legislative requirement

49. In order to demonstrate that a breach of Article 65(a) has occurred, a number of elements have to be satisfied, including the:

- (a) finding that the Licensed Operator who is the subject of the complaint holds, or did hold, over the relevant time frame, a dominant position in a relevant economic market affecting the telecommunications sector in the Kingdom;
 - (b) finding that the Licensed Operator has abused its dominant position; and
 - (c) finding that competition in a market has been materially prevented or limited as a result of such abuse.
50. In turning, finding that the Licensed Operator subject to the complaint holds, or did hold, a dominant position in a relevant market requires first, the Authority to identify the relevant market(s) in question (noting that the market in which the Licensed Operator is dominant, and the affected market, may differ) and secondly, the Authority to find that the said Licensed Operator does or did hold a dominant position in that market.
51. Each of these requirements are considered below.
- 5. MARKET DEFINITION**
52. In defining the relevant market subject to the complaint and then in assessing the presence of any providers with market power in that market, the Authority has had regard to its own Competition Guidelines,¹ international best practice and findings from previous market reviews it has conducted for similar, related products.²
53. The Competition Guidelines describe a clear process and framework for defining a relevant market. In particular, the Guidelines state that “[I]n competition cases, the market definition centres on the product or service directly affected by the alleged anti-competitive conduct.”³
54. The current investigation concerns an alleged abuse of a dominant position. That is, in the language of the Guidelines it is a “competition case”. The Authority, therefore, takes as its starting point, the products that are the subject of the complaint made by Rapid to the Authority. It then follows the hypothetical monopolist test (also known as the SSNIP test)⁴ to determine whether this focal product forms a relevant economic market on its own, or is part of a wider economic market, as a result of possible demand-side and supply-side substitution from the focal product to other products, in the event that a hypothetical monopolist increased the price of the focal product from a competitive level. Indeed, by applying this test the Authority considers both the product and geographic boundaries of the relevant market, in line with the provisions of Sections 2.2 and 2.3 of the Competition Guidelines.
- 5.1 Existing market definition and Significant Market Power / Dominance finding**
55. On 10 of April 2014, the Authority published the DDDCS in which the Authority determined the following markets:

¹ Competition Guidelines: Guidelines issued by the Telecommunications Regulatory Authority”; MCD/02/10/019

² In particular, the Authority has had due regard to its “Determination of Significant Market Power and Determination of Dominant Position in the Markets for Domestic Data Connectivity Services”; MCD/04/14/026.

³ Competition Guidelines, paragraph 31

⁴ Small but significant non-transitory increase in price

1. The retail market for the supply of domestic data connectivity services in Bahrain, with the exception of Amwaj Island.
 2. The wholesale market for the supply of domestic data connectivity services in Bahrain, with the exception of Amwaj Island.
56. The Authority found that Batelco has a position Significant Market Power in the defined retail market and a Dominant position in the defined wholesale market.

5.2 The focal product in this investigation

57. The focal product in this investigation is the provision of a WLA service at a speed of 1 Gigabit/s between Rapid Telecom location at Almoayyad Tower in Seef area ("Point A") and a United States Naval Service Activity ("NSA") located in Juffair area ("Point B").
58. The WLA service is defined as "an active wholesale product[s] providing symmetric and guaranteed data connectivity within the Kingdom of Bahrain between:
- (a) Two of the Access Seeker⁵'s Point of Presence⁶;
 - (b) An Access Seeker Point of Presence and its End User Premises; and
 - (c) An Access Seeker Point of Presence and the Point of Presence of another Licensed Operator (not being Batelco)"⁷
59. Using this WLA service, Rapid would be able to provide dedicated connectivity services (STM4 & STM16) to its customer (Level 3). The alleged refusal of Batelco to supply this service is the subject of the Rapid complaint. As such, the focal product in this investigation is, therefore, the provision of a 1 Gigabit/s active dedicated connectivity service between two points in the Kingdom of Bahrain, in this case between Point A and Point B.
60. In defining the relevant market, the Authority therefore needs to assess the extent of possible demand and supply-side substitutes for this focal product. The Authority's analysis of this is set out below.

5.3 Identifying substitute products for the focal product and defining the relevant product market

61. In identifying the relevant product market into which this service falls, the Authority assesses the extent to which other services may constitute an effective demand or supply side substitute for WLA. In doing this, the Authority first identifies possible substitutes to the focal product and then considers whether, if faced with a SSNIP, consumers would be likely to switch demand in sufficient quantities to a substitute product to render the SSNIP unprofitable (demand side substitution) and if suppliers of substitute products would switch production in sufficient quantities to render the SSNIP unprofitable (supply side substitution). In line with the Competition Guidelines (paragraph 48), the Authority does not assess if a product constitutes a supply side

⁵ Access Seeker: As defined in Schedule 8, Part 1 of Batelco's Reference Offer

⁶ Point of Presence: As defined in Batelco's Service Description 2-16: Wholesale Local Access Service

⁷ As defined in Batelco's Service Description 2-16: Wholesale Local Access Service (WLA)

substitute for the focal product if it has already been identified as a demand side substitute, and vice versa.

62. Having considered the relevant product market, the Authority then goes on to examine the geographic scope of this market.

5.4 Possible substitutes for the focal product

63. The product requested by Rapid is a 1 Gigabit/s service between Points A and B as previously described. The specific WLA product it requested is one provisioned over Batelco's MPLS network. This was to be used, in turn, and as set out above, by Rapid as one link in a chain of fixed network links to accommodate 1 STM4 and 1 STM16 from Kuwait and Afghanistan respectively, to the NSA. Given the capacity of the link that Rapid requested (i.e., 1 Gigabit/s), the Authority believes that the following products could all act as possible substitute products groups:

- (a) passive access products (i.e., access to upstream network infrastructure, which would then be used by an access seeker to self-supply an active domestic data connectivity service);
- (b) active dedicated connectivity services provided over fixed infrastructure at other speeds than 1 Gigabit/s;
- (c) other active dedicated connectivity services provided over wireless infrastructure; and
- (d) fixed wholesale broadband products.

64. This is because the products listed above can, in principle, all deliver capacities of 1 Gigabit/s as required by Rapid. In the case of passive products, that capacity can be self-provisioned, with the access seeker making its own investment in active network equipment and utilising the passive infrastructure provided by the upstream access provider. In the case of active dedicated connectivity services provided over wired infrastructure a number of services from Batelco and other providers deliver speeds below or above 1 Gigabit/s. Lower capacity services could be combined to deliver 1 Gigabit/s. Higher capacity services can be partially used to deliver the 1 Gigabit/s service. Active, dedicated connectivity services provided over wireless infrastructure can typically support capacities in excess of 1 Gigabit/s while in the case of broadband services, it could also be theoretically possible for an access seeker to purchase a 1 Gigabit/s connection over fibre. As such, these should also be assessed as possible substitutes for the focal product.

65. In now considering whether each of these products could act as a substitute to the focal product, the Authority applies the SSNIP test as outlined in the Competition Guidelines, focusing first on demand side substitution and then turning to supply side substitution. In applying this test, the Authority has had, where possible, regard to the factors set out in paragraphs 45 (demand side substitution) and 49 (supply side substitution) of those Guidelines. Given the nature of the services in question, however, and the limited quantitative information available to the Authority on switching behaviour, the Authority has had primary regard to understanding the functionality and characteristics of the different products, in order to assess how likely it is that access seekers will view them as substitutes in the event of a SSNIP.

5.5 Defining the relevant market – implementing the SSNIP test

5.5.1 Passive access services

66. The Authority has considered first whether passive access services form a demand or supply side substitute for an active dedicated 1 Gigabit/s connectivity service. Such services include both dark fibre access and duct access. For the reasons set out below, the Authority considers that this is not the case.

Demand side substitution

67. Dark fibre access includes all products where the supplier rents an unused fibre optic cable ("unlit" with no transmission equipment) to an access seeker. The access seeker then installs its own transmission equipment on both ends of the unlit fibre, to provide a service.
68. In contrast, duct access includes all services where the supplier of the service rents space in a duct and installs its own cable and following that, its own active transmission equipment, to provide a service to consumers.
69. The Authority concludes, however, that following a SSNIP in the price of the focal product, using passive infrastructure to self-supply the product required in this instance (an active dedicated connectivity service between Points A and B) would be unlikely to be an effective substitute. This is for the following two main reasons. As a result, the Authority concludes that passive access services are not a demand-side substitute for an active dedicated 1 Gigabit/s connectivity service:
- Firstly, in a case such as Rapid's, the use of passive infrastructure access is likely to be much more expensive than the use of WLA or another active connectivity product. This is because the cost of additional investment in passive infrastructure or active equipment (or both) is only likely to be efficient if an access seeker expects to establish a significant amount of capacity over that infrastructure / equipment. In other words, the total costs of the provision of active service is driven by the cost of duct, the cost of fibre and the cost of active network equipment. The amount of capacity typically carried by that infrastructure and equipment obviously varies from place to place but can reach tens or even hundreds of Gigabit/s per link. Such utilisation is also driving the unit costs of Batelco's WLA service and hence the prices that are set for that service (BD 2,980.500 in the case of a 1 Gigabit/s link at the time of the alleged abuse). Investing in duct or fibre infrastructure access and self-supplying active equipment just for the provision of a single 1 Gigabit/s link will result in very high unit costs that an access seeker is unlikely to consider a viable substitute if faced with a SSNIP in the price of the focal product.
 - Secondly, the Authority notes that following the publication of the Fourth National Telecom Plan ("NTP4"), the Authority has mandated a formal approval process to grant access to ducts. The Authority's decision was based on the national interest to create a single National Broadband Network, by separating Batelco into a network company (NBNETCo) and a retail company. This means that it may have been challenging for an access seeker, when faced with a SSNIP in the focal product, to procure a passive access service, at least in the case of duct access. While the Authority notes that it may have been possible for an access seeker to purchase access to a fibre (subject to

commercial availability from operators with infrastructure on that link) it does not believe that this would have been a viable substitute for the focal product, for the first reason set out above.

70. Given the above, the Authority concludes that passive infrastructure cannot be utilised economically in this case to establish a link between Points A and B. This means that, in this case, the Authority concludes that passive products were not a suitable demand side substitute for the active dedicated connectivity service.

Supply side substitution

71. The Authority has also considered if passive access would be a supply-side substitute. This entails considering whether a provider of passive access would react to a SSNIP in the active service by switching capacity to offer that service. The Authority concludes that such switching would be unlikely. This is for similar reasons to that set out above. That is, an owner of infrastructure not already providing active dedicated connectivity services over the link between Points A and B would find it uneconomic to invest in additional active network equipment just for the purpose of providing a single 1 Gigabit/s link at a SSNIP from the WLA price at the time of the alleged abuse. The Authority recognises that a provider could offer additional services to other access seekers to lower the unit cost it faces in providing such a service. However, since the price of the focal product in this case takes partially into account the scale of Batelco as a national provider of active dedicated connectivity services, an entrant would be unlikely to achieve that scale over a reasonable period.

5.5.2 Other active dedicated connectivity services provided over fixed infrastructure

72. The Authority has considered next whether other capacities of active dedicated connectivity services offered over wired infrastructure forms a demand or supply side substitute for an active dedicated 1 Gigabit/s connectivity service. For the reasons set out below, the Authority considers that this is the case.

Demand side substitution

73. Active dedicated connectivity services are available at different capacities. For example, Batelco's services range from 64 kilobit/s to 10 Gigabit/s. In this case, when faced with a SSNIP in the price of the focal product, the Authority does not consider that an access seeker would switch its demand to a single lower capacity product. This is because such a lower capacity product would not, by definition, provide the capacity required by the access seeker.
74. However, the access seeker could, in theory, substitute a single 1 Gigabit/s link with several lower capacity links, such as two 500 Megabit/s links, to achieve the same capacity (i.e., 1 Gigabit/s) as the focal product. However, the prices for such links would exceed the price of a 1 Gigabit/s link. For example, for WLA, the price of two 500 Megabit/s products would be in excess of that of a 1 Gigabit/s product even at a SSNIP of 10% in the price of the 1 Gigabit/s product.⁸ This is equally the case for other active dedicated connectivity service capacities on offer. The Authority therefore concludes that active dedicated connectivity services at speeds below 1 Gigabit/s do not, therefore, represent a viable demand-side substitute to the 1 Gigabit/s WLA product. For services with speeds above 1 Gigabit/s, the Authority finds, that the price

⁸ The price of a 500 Megabit/s WLA link at the time of the alleged abuse was BD 1,971.700. The price of two of these links exceeds the price of a 1 Gigabit/s WLA link even if that price is increased by a SSNIP of 10% to BD 3,278.500.

of a 1 Gigabit/s service does not exceed the price of higher speed service even if faced with a SSNIP in the 1 Gigabit/s service.⁹

Supply side substitution

75. The Authority has also considered if other active dedicated connectivity services over fixed infrastructure would be supply-side substitutes. This entails considering whether a provider of other active dedicated connectivity services would react to a SSNIP in the active 1 Gigabit/s service by switching capacity to offer that service. For the reasons set out below, the Authority concludes that such switching would be likely. In particular, a provider of other capacities of active dedicated connectivity services, below 1 Gigabit/s, already has the necessary equipment available to be able to provide a 1 Gigabit/s service. That is, the equipment used for providing services below 1 Gigabit/s is the same equipment used for the provision of a 1 Gigabit/s service. A provider of active dedicated connectivity services below 1 Gigabit/s would therefore face no barriers to expanding its service to also include the 1 Gigabit/s service.
76. The Authority therefore concludes that other speeds of active dedicated connectivity services do form part of the same market as the focal product and so form part of the same product market as the focal product.

5.5.3 Other active, dedicated connectivity services provided over wireless infrastructure

77. The Authority has considered next whether other active dedicated connectivity services offered over wireless infrastructure form a demand or supply side substitute for an active dedicated connectivity service provided over wired infrastructure. For the reasons set out below, the Authority considers that this is not the case and therefore concludes that such services do not form part of the relevant market.

Demand side substitution

78. The Authority is of the view that the characteristics of wireless domestic data connectivity services (i.e. microwave) are different from those on wired infrastructure and as such any demand-side substitution in response to a SSNIP would be limited. This is because:
- (a) Microwave links require dish antennae at each site to have clear line of sight, which is not always possible and can lead to a requirement for additional hops on any route (so increasing costs);
 - (b) Dish antennae must also be located at an appropriate height, which is not always possible / available;
 - (c) Installing new equipment for a wireless link is likely to require planning permissions with the NSA and at Point A which may not have been possible in this instance;

⁹ For example, the 1 Gigabit/s WDC was BD 936.100 at the time of the alleged abuse and does not exceed the price of a 1.25 Gigabit/s WDC at BD 1,048.000, even with a SSNIP in the 1 Gigabit/s service.

- (d) The performance of microwave links can be less reliable and stable than that of fixed wired links hence requiring additional provisions for resilience (e.g. several separate links) at additional costs.

79. Indeed, given these differences between fixed and wireless links, the Authority noted in its 2014 review of domestic data connectivity markets, that there had been limited deployment of wireless links (especially outside of mobile operators using microwave to self-provide backhaul).¹⁰ The Authority is satisfied that this remains the case today, with microwave representing less than 16% of total domestic connectivity circuits.

Supply side substitution

80. The Authority also does not consider that there would be supply side substitution from wireless products in the event of a SSNIP in the price of wired dedicated connectivity products. This is because the availability of wireless infrastructure at the locations of Points A and B does not imply that a provider has any wired infrastructure between Points A and B on which an active dedicated connectivity service over a fixed network could be provided. An operator with wireless equipment would therefore face the same investment options as an access seeker trying to self-supply an active dedicated connectivity service using passive infrastructure. As set out above, the Authority concluded that passive infrastructure was not a sufficient supply side substitute to the focal product to be part of the same market.

5.5.4 Fixed wholesale broadband products

81. Finally, the Authority has considered whether other fixed wholesale broadband products offered over wireless infrastructure form a demand or supply side substitute for an active dedicated 1 Gigabit/s connectivity service. For the reasons set out below, the Authority considers that this is not the case.

Demand side substitution

82. The Authority does not consider that fixed broadband services would have acted as an effective demand-side substitute for the focal product. This is because of the different characteristics of broadband services compared to a dedicated connectivity product, meaning that an access seeker, faced with a SSNIP in the focal product would have been unlikely to switch to using a wholesale broadband product. As set out in the Authority's 2014 market review of Domestic Data Connectivity Services, broadband services are provided over a shared backhaul network and so offered on a "best efforts" basis rather than as guaranteed bandwidth. The shared nature of broadband services can also reduce the quality of service compared to the guaranteed connection of a WLA – resulting in higher latency, while broadband services can also be less secure, due to data being carried over the open internet.¹¹ Furthermore, broadband does not provide a point-to-point service that was specifically required in the contract. Therefore fixed broadband services cannot be considered an effective substitute for Rapid in this case.

Supply side substitution

¹⁰ Ref: MCD/04/14/026, paragraph 81.

¹¹ For the avoidance of doubt, these limitations on broadband services apply to those offered over fixed (copper / fibre) and wireless networks.

83. The Authority considers that a provider of bitstream (wholesale broadband) services would be unlikely to be able to react sufficiently to a SSNIP in the price of high capacity fixed dedicated connectivity services in order for such broadband services to be considered part of the same market. This is because of the additional investment the provider would require in order to be able to provide such a service. Arguably, substitution at relatively low capacity dedicated connectivity services could be possible. However, the Authority notes that it does not have such evidence on this point to merit moving away from the conclusion, as set out in its DDDCS, that fixed broadband services do form part of the same product market as dedicated connectivity services. Indeed, the Authority notes that regulators elsewhere have generally not included broadband services in the same market as dedicated connectivity services. Furthermore, the Authority notes that defining a broader market to include wholesale fixed broadband services would not alter its conclusions regarding Batelco's market power in that market, as set out in the next section.

5.6 Conclusion on the relevant product market

84. Based on the above, the Authority concludes that the relevant product market with regards to the complaint raised by Rapid covers active dedicated connectivity service offered over fixed infrastructure. For the avoidance of doubt, this includes WLA and WDC services offered by Batelco and equivalent services offered by other licensees.

5.7 Defining the relevant geographic market

85. Batelco is the main provider of fixed telecommunications infrastructure in Bahrain along with other licensees who have some limited fixed telecommunication infrastructure.
86. The WLA service requested by Rapid is for connectivity between two points in Bahrain – the NSA in the Juffair area and Almoayyed Tower in the Seef Area.
87. A narrow focus on demand-side substitution is likely to lead to the definition of a very narrow geographic market. This is because the demand for WLA is location specific - a customer requiring a WLA service between two sites is unlikely to regard a WLA service between two other sites as an economic substitute, and a customer moving its point of presence in order to get (alternative) WLA services is unlikely.
88. Despite this, geographic markets are generally defined more broadly than for services provided to individual customers or between pairs of locations. This is done to reflect a common pricing constraint that licensed operators typically face and the fact that the same product is consistently offered in an area greater than any specific link provided. To this end, the Authority's Competition Guidelines set out in Section 2.3 how the Authority will assess the geographic boundaries of a relevant market. These Guidelines set out that, in assessing whether a sub-national market should be defined, the Authority will examine:
- (a) whether service coverage is national;
 - (b) whether pricing is national;

- (c) the extent to which the identity of players with “significant market shares” differs between areas; and
 - (d) the size / materiality of those areas where competitive conditions may differ.
89. As noted in paragraph 55 above, on 10 April 2014, the Authority published its Determination of Significant Market Power and Determination of Dominant Position in the Markets for Domestic Data Connectivity Services. In this the Authority determined the following markets:
- 1. The retail market for the supply of domestic data connectivity services is Bahrain, with the exception of Amwaj Island.
 - 2. The wholesale market for the supply of domestic data connectivity services is Bahrain, with the exception of Amwaj Island.
90. The Authority considers that this geographic market definition was still relevant at the time that Rapid sought the WLA service in question. This is because:
- (a) Batelco's fixed infrastructure over which it offers dedicated connectivity services is national in scope, providing largely ubiquitous connectivity throughout Bahrain. While there have been some examples in other jurisdictions of sub-national markets being defined for some broadband or data connectivity services, these markets have typically been defined where several localised competitors have become established, which has not been the case in the Kingdom. Therefore, Batelco's coverage for providing dedicated connectivity services was national.
 - (b) Batelco's pricing of dedicated connectivity services does not differ by location. This indicates that localised competition had not emerged, and that competitive conditions were likely uniform across Bahrain, with prices set according to those in the RO.

5.8 Geographic market definition

91. The Competition Guidelines state that ex ante market definitions typically reflect the starting point for analysis of current market conditions. Based on the information above, the Authority is satisfied that there has been no relevant change to geographic market conditions since 2014.
92. Given this, the Authority concludes that the relevant geographic market for the product market defined above is Bahrain, with the exception of Amwaj Island area.

5.9 Conclusion as to relevant market for this investigation

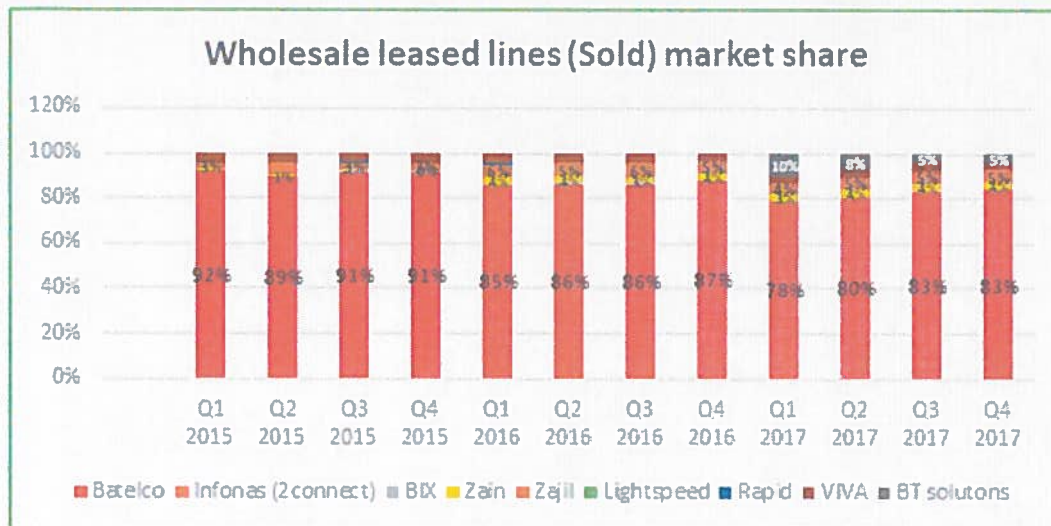
93. The analysis in this Determination has presented the approach set out in the Authority's Competition Guidelines, and the evidence available to the Authority to date. Based on these factors, the Authority concludes that the economic market relevant to the alleged anti-competitive behaviour is the market for active dedicated connectivity services offered over fixed infrastructure within Bahrain and with the exception of Amwaj Island area.

6. DOMINANT POSITION

94. Having defined the relevant market, the Authority now turns to examine the competitive conditions in that market, with a view to identifying if any players hold a dominant position, either on their own or jointly with others.
95. The Authority notes that the Telecommunications Law distinguishes between the concepts of Significant Market Power (SMP) and Dominance. Article 65 of the Law deals with the prohibition of anti-competitive conduct and focuses clearly on Licensed Operators holding a dominant position. That is, the Article states as follows:
- (a) *"A Licensed Operator shall not do or omit to do anything which has the effect of materially preventing, restricting or distorting competition in any commercial field concerning the Telecommunications sector in the Kingdom, where such act or omission is done in the course of operating a Telecommunications Network, providing a Telecommunications service or in connection with any such matter.*
 - (b) *The act or omission referred to in the preceding paragraph mean the following:*
 - 1. *abuse by the Licensed Operator, either independently or with others, of a Dominant Position in the market or in a substantial part of it which materially prevents or limits competition in an unfair manner."*
96. Given the nature of the complaint by Rapid, it is necessary to determine if Batelco held a dominant position in the market identified above during the period of the alleged abuse.
97. In examining whether Batelco held a dominant position, the Authority has looked at both the definition of Dominant Position found within the Law (*"the Licensee's position of economic power that enables it to prevent the existence and continuation of effective competition in the relevant market through the ability of the Licensee to act independently – to a material extent – of competitors, Subscribers and Users"*) and its Competition Guidelines, which guide the Authority in assessing dominance.
98. The ability to act independently, which is a special feature of dominance, is related to the level of competitive constraints facing the licensee in question. For dominance to exist, the licensee concerned must have substantial market power so as to have an appreciable influence on the conditions under which competition will develop. In order to determine if a licensee holds such a position, the Guidelines set out the three main factors the Authority will consider, namely:
- (a) The market shares of individual entities in the relevant markets;
 - (b) Other competitive constraints (constraints from existing competitors, constraints from potential competitors, barriers to entry and expansion in the relevant market and the degree of countervailing buyer power); and,
 - (c) Evidence of behaviour and performance.
99. The following subsections consider points (a) and (b) while point (c) is considered in the subsequent section in relation to Batelco's conduct.

6.2 Market shares of entities in the relevant markets

100. While the Telecommunications Law sets out a market share threshold which can be applied in the assessment of SMP, no threshold is provided for the assessment of dominance. However, as stated in the Competition Guidelines, case law has established a presumption of dominance where an operator has a market share in excess of 50%.¹²
101. The data considered for estimating the market share covers wholesale leased line services. This covers Batelco's range of WLA and WDC services as well as products from other providers equivalent to those services.
102. Market shares in this market covering the period of the alleged abuse are illustrated below.



103. This shows that Batelco's market share in the product market is significantly above 50%, in fact, consistently above 70%.¹³

6.3 Other competitive constraints

104. A Licensed Operator with a very high market share over a given time period may not necessarily have enjoyed a dominant position over that period. This is because a dominant position describes the ability of a licensee to act independently, for example, by restricting output and raising prices above a competitive level. As such, a firm with a high market share may not have this ability, if other players would be able to expand production in the market or enter the market for the first time, or if important customers of the licensee were able to exert some countervailing buyer power on that licensee.
105. However, having considered the characteristics of the relevant market in this case, the Authority is satisfied that Batelco did not, over the course of the alleged anti-competitive behaviour, face these constraints. This is because:

¹² Case law also shows that providers with a market share below 50% may also be found dominant, although there are relatively few examples of providers being found dominant with market shares below 40%.

¹³ The Authority notes that Batelco's share of the relevant market would increase if it also included wholesale fixed broadband services, given Batelco's position as the only provider of such services in Bahrain (excluding Amwaj Island).

- (a) Batelco is the major provider of access products with market shares over 50%, with there being no evidence that its market share was declining over this period.
- (b) At the same time, there are very high barriers to any other licensee entering the relevant market and being able to offer a dedicated connectivity product over a fixed network. This is due both to the economic characteristics of deploying fixed network infrastructure, and also specific restrictions following the promulgation of NTP4 and the government adoption of a single network model (National Broadband Network), most notably the moratorium on accepting new requests for duct access meaning that a potential entrant could not either (a) deploy its own fibre in Batelco duct or (b) lay its own duct and fibre and light that fibre itself to provide an active product. This means that there was no opportunity for new firms to enter the market and therefore put a constraint on Batelco's behaviour.
- (c) Given the number of access seekers operating in the retail market and relying on data connectivity services, no single one is likely to impose countervailing buyer power on Batelco in this market. Indeed, countervailing buyer power can only be exerted where the customer has a credible alternative source of supply, including self-supply. Batelco has not provided to the Authority a clear case for how countervailing buyer power could limit its dominance in this case.

6.4 Conclusion on dominance

- 106. The Authority's analysis presented in this Determination has been based on the approach set out in the Authority's Competition Guidelines and the evidence available to the Authority to date. Based on this, the Authority concludes that at the time of the alleged abuse, Batelco held a dominant position in the market relevant to this case.

7. ABUSE OF A DOMINANT POSITION

- 107. The fact that an undertaking holds a dominant position is not in itself contrary to the Telecommunications Law. However, an undertaking enjoying a dominant position is under a special responsibility not to engage in conduct that may distort competition.
- 108. Article 65(b) of the Telecommunication Law defines abuse by the Licensed Operator (independently or with others) of a Dominant Position in the market, or in a substantial part of it, as behaviour which materially prevents or limits competition in an unfair manner. In the current case, the Authority considers that the potential form of abuse is refusal to supply, based on the evidence that was brought before it.

7.1 Refusal to supply

- 109. As described in the Competition Guidelines section 5.7, refusal to supply can occur when:

"... the incumbent both owns the infrastructure (or network) and provides retail services as well, there can be an incentive for them to act in a way that protects their own position in the retail market."

- 110. Furthermore, the Competition Guidelines set out the conduct that constitutes refusal to supply. In particular, "[t]his can involve limiting or restricting the ability of potential suppliers to use the network" of a dominant provider by "refus[ing] to grant direct

access to certain network facilities or infrastructure and potential competitors have no credible alternative to using that network".¹⁴

111. Finally, in setting out the evidence that the Authority will assess when dealing with any allegations of anti-competitive refusal to supply, paragraph 266 of the Guidelines states:

"TRA will also consider the characteristics of the facilities to which access is being refused with a view to assessing whether it is economically feasible to duplicate them and the extent to which it is indispensable for the party seeking access to it"

112. The footnote to this paragraph then notes that such facilities may sometimes be referred to as "essential facilities".
113. Given the framework within the Guidelines, the Authority has therefore considered the potential abuse in two parts. Firstly, the Authority has assessed whether there is evidence that Batelco has indeed, not supplied Rapid with the WLA product it requested and whether there is any reasonable justification for such a refusal. Secondly, the Authority has considered whether such a refusal meets the tests set out in the Competition Guidelines to judge whether such a refusal was anti-competitive.

7.2 Whether Batelco refused to supply a WLA service to Rapid and its reasons for doing so

114. Having reviewed the evidence so far put to it by the parties, the Authority believes that Batelco's conduct has been potentially exclusionary and, on a common meaning, constituted a refusal to provide Rapid with the WLA service it had requested. The Authority does also not believe that Batelco has provided sufficient justification for not providing this service. The Authority has reached this position on the following grounds:
115. Batelco did not supply Rapid with the 1 Gigabit/s WLA service that Rapid had requested. Batelco's reason was that there was "no fibre available at this location"¹⁵.
116. The Authority conducted a visit to the NSA location on the 27 August 2018, where NSA staff members provided information on the telecommunications equipment and connections available at the Juffair base.
117. The Authority's visit concluded that Batelco had 3 free fibre pairs available at NSA 1 Meet-Me-Room ("MMR"), and only 2 pairs were in use at the NSA 2 (CUP) MMR out of 288 fibre cores.
118. Batelco's dismissal of the Authority's report on the basis that the report is not signed by the Authority, or a member of the USN Staff, is unreasonable. The Authority shall carry out its duties and obligations under Article 3 of the Telecommunication law as it sees fit.
119. Batelco argues that because the site visit was more than 1 year after receiving Rapid's original order, it *"may not accurately reflect the situation at the USN site both at the*

¹⁴ Competition Guidelines, Section 5.7, paragraph 263
¹⁵ Ref: LRT-002-3825, page 5.

*time of the Complaint and at the time non-availability of Fibre was confirmed to Rapid Telecom*¹⁶.

120. The Authority does not accept this argument. Batelco would be aware if they had installed new fibres at NSA since the date of the Rapid complaint.
121. Batelco was provided with the opportunity to present evidence outlining new installations, but did not do so.
122. It would have been in Batelco's interests to present evidence on this point.
123. From the evidence, it would seem that it was within Batelco's ability to provide such evidence but it did not do so.
124. However, the absence of evidence means that it is not possible to draw a conclusion on whether new fibre became available at the site between the date of the complaint and the Authority's site visit.
125. The Authority finds that Batelco's failure to submit relevant evidence has obstructed the investigation.
126. The Authority further notes, that the provision of active connectivity services does not necessarily rely on the availability of spare fibres (from the serving node to the core network). This is because additional equipment, able to increase the capacity of existing fibre cables on the link, can be added to each end of an active link to increase the capacity of existing fibres.
127. This means that regardless of whether there were any fibres available at the time of Rapid's order, it is very likely that Batelco could have undertaken measures to increase the capacity on the link and provide the WLA service to Rapid. Batelco not doing so is considered by the Authority as evidence of potentially exclusionary behaviour towards Rapid.

7.3 Whether Batelco's behaviour amounts to an anti-competitive refusal to supply

128. Although Batelco did not provide to Rapid the WLA service it had requested, the Competition Guidelines make clear that this is not, on its own, sufficient to conclude that a dominant operator has engaged in anti-competitive behaviour contrary to Article 65(b) of the Law. Rather, as set out above, this depends on whether:
 - potential competitors (Rapid in this case, as a potential downstream competitor to Batelco) have no credible alternative to using that network; and
 - it is economically feasible for Rapid to duplicate the facility and the extent to which it is indispensable for the party seeking access to it.
129. Such factors, and particularly the reference to "indispensability" are consistent with established case law and practice elsewhere. For example, under European Union (EU) law precedent and case law from the European Commission, dominant firms are not automatically required to deal with all potential business partners. The European Commission states that "*generally speaking, any undertaking, whether dominant or not, should have the right to choose its trading partners ... The Commission therefore*

¹⁶ Ref: GCL/41/19, paragraph (i).

considers that intervention on competition law grounds requires careful consideration where the application of Article 102 would lead to imposition of an obligation to supply on the dominant undertaking (TRA emphasis).¹⁷

130. The relevant EU law Guidance Paper states that competition problems are likely to arise if the **dominant undertaking competes on the downstream market¹⁸ with the buyer whom it refuses to supply.**¹⁹ In order to establish whether such a refusal to supply violates Article 102 of the Treaty on the Functioning of the European Union (TFEU), the EU law formulates three criteria that need to be satisfied cumulatively (simultaneously). These conditions flow from the case law of the EU Courts, in particular from the Bronner case.²⁰
- The refusal relates to a product or service that is objectively necessary to be able to compete effectively on a downstream market (indispensability);
 - The refusal is likely to lead to the elimination of effective competition on the downstream market, and
 - The refusal is likely to lead to consumer harm.²¹
131. Thus, under these conditions, demonstrating that a refusal to supply constitutes anti-competitive behaviour requires more than showing that the entity concerned held/ holds a dominant position.
132. In the present case under consideration, the Authority notes that Batelco was a potential downstream rival to Rapid. That is, Batelco was a competitor to Rapid for the supply of services to Level 3. This could imply that Batelco could have had cause to refuse to supply the WLA service to Rapid, on the basis that such behaviour could distort competition in downstream markets in Batelco's favour.
133. However, the Authority also notes that Batelco was not the only party who was able to supply the dedicated connectivity service to Rapid. Rather, Rapid sought a quote from both VIVA and Infonas, two parties who also had infrastructure at the relevant location, for the supply of an equivalent service.
134. In response, both parties also acknowledged that they were in a position to supply that service to Rapid. Given this, the Authority does not believe that having access to Batelco's WLA product was objectively necessary for Rapid to be able to offer services in the downstream market in this particular instance. That is, the Authority concludes that even though Batelco held a dominant position in the relevant market, access to its services was not indispensable for Rapid in this case.
135. Given this, it is also not clear that the refusal of Batelco to supply the WLA product to Rapid would have caused it to be eliminated from the downstream market as an effective competitor, or, therefore, led to consumer harm. This is because, by having access to alternative suppliers, Rapid would still have been able to compete

¹⁷ Guidance on the Commission's enforcement priorities in applying Article 102 of the EC Treaty to abusive exclusionary conduct by dominant undertakings ('the Guidance Paper'), paragraph. 75

¹⁸ Downstream market refers to the market for which the refused input is needed in order to manufacture a product or provide a service

¹⁹ The Guidance Paper, para. 76

²⁰ Opinion of AG Jacobs in Case C-7/97, Oscar Bronner GmbH & Co KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co KG et al. [1998] ECR I-7791 ("Bronner judgment"), para. 40; Guidance Paper, para. 81

²¹ The Guidance Paper, para 81

downstream. That is, Batelco is likely to have known that other parties (i.e., Infonas and VIVA) could also have supplied Rapid with this product given that those operators rely on access to Batelco's passive infrastructure on that particular link. That Rapid was not able to use the Infonas or VIVA service, due to the prices proposed by Infonas or VIVA cannot be the fault of Batelco and therefore the Authority believes, should not be taken into account in assessing whether Batelco's behaviour amounted to anti-competitive refusal to supply.

7.4 Conclusion on abuse of a dominant position

136. The Authority's analysis presented in this Decision has been based on the approach set out in the Authority's Competition Guidelines and the evidence available to the Authority to date. Based on this, the Authority concludes that, although Batelco did not provide the WLA service to Rapid, its conduct does not meet the conditions for proving that such behaviour amounted to an anti-competitive refusal to supply as described in the Authority's Competition Guidelines or precedent elsewhere. This is because the provision of a service from Rapid to Batelco does not appear to have been indispensable to Rapid.

8. THE AUTHORITY'S ACTION

8.1 Authority's Determination

137. In view of the above, the Authority has determined Batelco's conduct in not providing the WLA service to Rapid was not a prohibited act or omission under the provisions of Article 65 of the Law.

8.2 Effects of the Authority Determination

138. This determination is issued without prejudice to further investigations by the Authority into Batelco's alleged breaches of the Law referred to above, including in particular:
- (a) Article 35 of the Law;
 - (b) Article 57 of the Law;
 - (c) The Access Regulation;
 - (d) Reference Offer; and
 - (e) The terms of Batelco's Licences.
139. This determination and any further action taken by the Authority is without prejudice to the rights of any other entity to take relevant action as they may deem appropriate under the laws of the Kingdom of Bahrain.
140. The issuance of this determination does not prejudice the Authority's right to:
- (a) Expand the scope of its investigation into this matter; and/or
 - (b) Issue further orders relating to other breaches arising out of the same set of facts.