



Decision No. 1 of 2020

**Complaint against stc Bahrain under Article 72 of the
Telecommunications Law
Misleading Advertisement**

Ref: LAD/0220/039

18 February 2020

Introduction

This Decision applies to stc Bahrain ("STC"), a licensed telecommunications company registered in the Kingdom of Bahrain, providing mobile and fixed services in addition to other licensed services. This Decision:

1. establishes that the Advertisement identified below is inaccurate; and
2. orders STC to vary said advertising campaign.

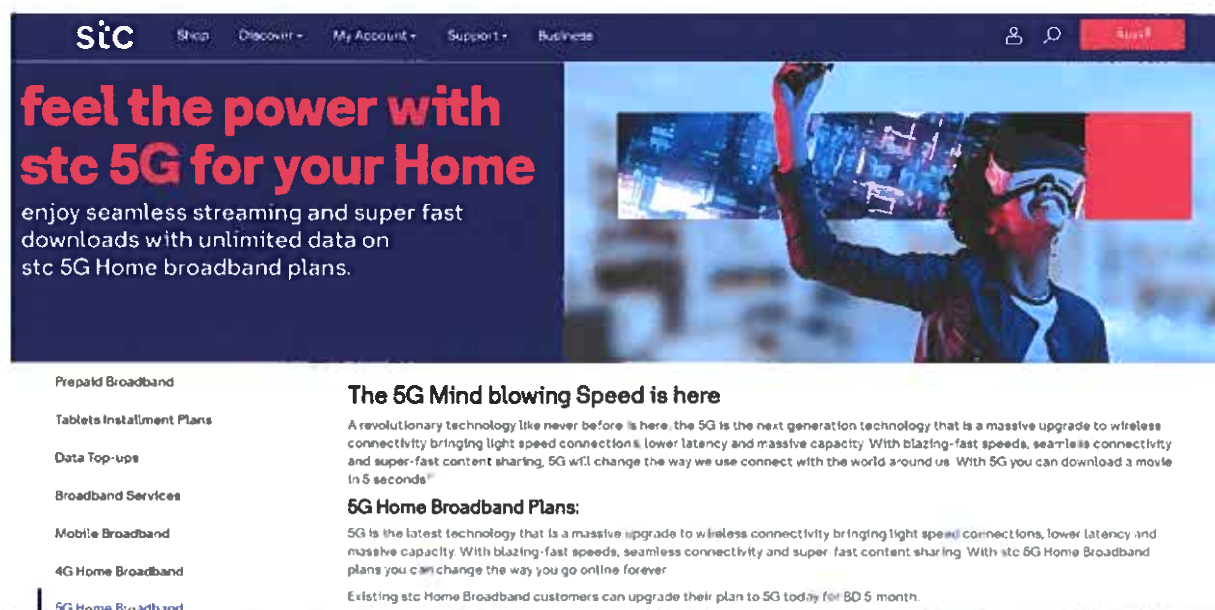
The Complaint

The Telecommunications Regulatory Authority ("the Authority") is in receipt of a complaint submitted by Bahrain Telecommunications Company BSC ("Batelco") on 26 January 2020 ("the Complaint") regarding the advertising activities of STC, specifically with regards to its 5G Home Broadband campaign ("the STC Advertisement"), alleging that it breaches Articles 6 and 7 of the Consumer Protection Regulation and Articles 5 and 6 of Law (35) of 2012 with respect to Consumer Protection. Batelco therefore invoked Article 72 of the Telecommunications Law. The STC Advertisement is reproduced below:



Batelco submitted that the STC Advertisement can only be read as stating that any consumer may receive a 5G home broadband service with 1.3 terabytes of data for only BHD 5 per month.

Batelco noted however that the relevant STC webpage specifies a different commercial offer in respect of the same broadband service, which states that “existing stc Home Broadband customers can upgrade their plan to 5G today for BD5/ month.” A snapshot of this is reproduced below:



Batelco claimed that STC is offering only its existing home broadband subscribers the opportunity to upgrade their existing plans to 5G for an additional BHD 5 per month. Batelco confirmed its understanding to mean that existing home broadband subscribers would have to pay an additional BHD 5 per month on top of their current monthly tariffs, and not that they would pay BHD 5 per month in total, as the STC Advertisement implies.

Batelco believed that the STC Advertisement can only be read as stating that a consumer can receive a 5G home broadband service with 1.3 terabytes of data for only BHD 5 per month. Batelco finally submitted that any advertisement which indicates that an advanced home broadband service would cost a subscriber just BHD 5 per month, when the actual retail price is actually a multiple of that amount, is misleading to consumers.

Batelco therefore requested the Authority to: (a) investigate the complaint, and (b) take appropriate action as a result of the investigation.

STC's reply

The Authority informed STC of the Complaint by way of letter dated 28 January 2020 and requested the same to provide comments on Batelco's submissions pursuant to the Authority's Dispute Resolution Guidelines published on 25 August 2014. The Complaint was attached to the Authority's letter.

On 11 February 2020 STC replied to the Authority's request ("Reply") by submitting a non-confidential version of its response.

In its Reply, STC rejected Batelco's allegation that the STC Advertisement is misleading consumers and that it violated the Consumer Protection Regulation and the Telecommunications Law. STC viewed Batelco's claim to be irrelevant since the term "upgrade" is used in the STC Advertisement, therefore making it clear that the STC Advertisement is targeting existing subscribers and that there is an additional BHD 5 to existing subscribers' home broadband current services.

STC confirmed that it has disclosed all relevant information in it the STC Advertisement – including reference to applicable terms and conditions – pursuant to the requirements set out in the Consumer Protection Regulation.

In light of the above arguments, STC refuted Batelco's claims, as it does not consider the STC Advertisement misleading to consumers.

Legal analysis

The basis of Batelco's challenge takes as its central point that the STC Advertisement is misleading in that it does not make clear that existing subscribers have to pay an additional BHD 5 per month on top of their current monthly tariffs. In its Reply STC argues that the term "upgrade" is used in its Advertisement to clarify this, and that there is reference to applicable terms and conditions. The Authority will now assess the arguments raised by Batelco and STC.

Does the Advertisement make clear that it is targeting existing STC subscribers?

Batelco claimed that the STC Advertisement does not make clear that it is targeting existing STC subscribers, but that it is targeted to a general audience of consumers. STC argued that the term used "upgrade" is sufficient enough to indicate that the Advertisement is targeting existing subscribers. Upon investigation the Authority finds that the Arabic version of the STC Advertisement contradictory to STC's argument; specifically, it omits the term "upgrade" and instead uses the Arabic term for "join". This is shown below:



The literal usage of the term "upgrade" is discussed in a later section below, but for the purpose of this discussion the Authority requires STC to amend the Arabic version of the STC Advertisement insofar that they remain consistent. For future reference the Authority recommends that Advertisers make clear in their advertisements whom the offer applies to (whether it be existing subscribers or new customers).

4G Home Broadband vs 5G Home Broadband

The starting point of the Authority's analysis was to identify STC's current home broadband packages, so as to confirm that all available packages were eligible for a BHD 5 upgrade to 1.5 TB of data. A snapshot of STC's offerings for home broadband is provided below:

Home Broadband

Get an extreme broadband experience for your home with the newest cutting-edge technology in Bahrain. This broadband experience offers:

- Network availability across Bahrain
- Fast and easy installation
- Exclusive & FREE Jawwy TV Home
- Unlimited TV and Video Streaming **

Plans	Monthly Rental	Monthly Data	JAWWY TV Box
Home Broadband 10	BD 10	40 GB	Not included
Home Broadband 14	BD 14*	40 GB	Included**
Home Broadband 17	BD 17*	140 GB	Included**
Home Broadband 22	BD 22*	200 GB	Included**
Home Broadband 32	BD 32*	300 GB	Included**

*Promotional prices for a limited period

**Enjoy UNLIMITED FREE data for video and TV streaming of Jawwy TV with stc Home Broadband plans (Apps section excluded)

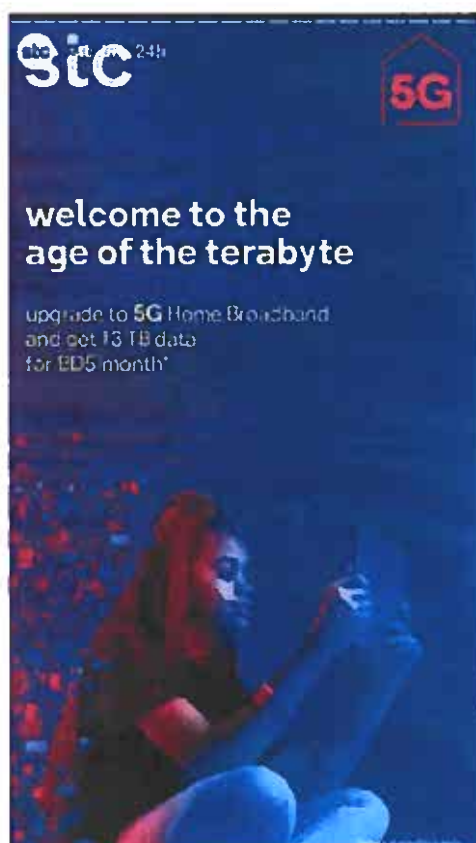
The Authority then turned to STC's new 5G home broadband offers. A snapshot of this is provided below:

Existing stc Home Broadband customers can upgrade their plan to 5G today for BD 5 month

	5G Broadband 20	5G Broadband 26	5G Broadband 36
Price inc. VAT	21 BD	26.25 BD	36.75 BD
5G access	Included	Included	Included
Speed (Mbps) Download/ Upload	40/10 Mbps	60/15 Mbps	Max 5G Speed
Monthly Data Allowance	600 GB	800 GB	1.3 TB
Mobile Benefits			
Free Additional Mobile Data (GB)	3 GB/Month	3 GB/Month	6 GB/Month
Free Minutes to other Networks	N/A	100 Mins/ Month	200 Mins/ Month
Additional Broadband Benefits			
Unlimited weekend rental/month	2 BD/M	1 BD/M	FREE
Unlimited Youtube rental/month	FREE	FREE	FREE
Jawwy TV Box	2 BD/M	2 BD/M	2 BD/M
Extra SIM cards to share	1	2	3

Upon the Authority's investigation, it transpired that only one category of subscribers is eligible to pay an additional BHD 5 on their current home broadband packages in order to benefit from the

1.3 TB of data – specifically the subscribers on the “Home Broadband 32” package. For example, if a subscriber was on the “Home Broadband 14” package, said subscriber would have to pay an additional BHD 22.7 in order to benefit from the 1.3 TB of data on the “5G Broadband 35” package. As such the Authority expounded the scope of its investigation to include the following advertisement (thereafter referred to as “the Advertisement”):



The alleged misleading nature of the Advertisement

The Consumer Protection Regulation defines ‘Misleading Advertisement’ as an “*Advertisement which contains information, statements, or visual presentation which directly or by implication is likely to mislead or deceive the Consumer about an Applicable Product or Service (defined)*”.

The Authority considers that advertisements may be capable of misleading consumers if they misrepresent the price of a product / service (or the way in which it is calculated) in a way that affects the purchasing decision of a consumer. Such misrepresentation may result from providing inaccurate or false information, or information that is otherwise capable of persuading the targeted audience that the product / service at hand presents a price advantage that, in reality, it lacks. This may also result from a partial disclosure of the information relating to the product / service at

stake, when the information omitted is relevant to allow a significant portion of the targeted audience to reach a better understanding of the characteristics of the product / service to which it refers. This ultimately distorts the purchasing decisions of said consumers. Indeed, Article 7(b) of the Consumer Protection Regulation obliges *Advertisers... not to engage in Misleading Advertisement, in particular with regard to the price or the way in which it is calculated.*

According to Article 6(a) of the Consumer Protection Regulation titled 'Obligations of Advertisers', *Advertisers shall ensure that:*

(a) Advertisements are fair, truthful and accurate, and shall not, directly or by implication, mislead or confuse any Consumer.

The terms "fair, truthful and accurate" are broad and subjective, and are not defined in the Regulation itself. Consequently, the Authority will rely on its own reading and interpretation of the impact the Advertisement has on consumers.

When determining whether an advertisement is "inaccurate" or "misleading" it is not necessary to show that the Advertiser (as defined) intended to mislead or deceive.¹ STC argued that there was no intention to mislead subscribers or consumers because of the usage of the term "upgrade". While the Authority can appreciate that STC is referring to the literal usage of the term "upgrade", it is necessary to look beyond specific words used in advertisements in order to assess the overall message and / or impression conveyed to consumers. The Authority does not accept STC's defence of literal usage if the Advertisement is capable of being interpreted in a misleading way. Moreover, the Authority finds that if an advertisement can be interpreted by a reasonable consumer in both a misleading way or a truthful manner (ergo there exists ambiguity), then it will be considered as misleading.

In fact, an advertisement can mislead by unspoken implication as well as by false or inaccurate representations. This may occur, for example, when only part of the truth is told, while unfavourable information that would discredit or contradict the affirmative statements is withheld.² As mentioned above upon the Authority's investigation it transpired that only one category of subscribers who were subscribed to the "Home Broadband 32" tariff plan are indeed able and eligible to benefit from the 1.3 TB of data by paying an additional BHD 5. STC failed to make this

¹ See: Section 18 of the Australian Competition and Consumer Act 2010 and its guidance notes; Section 3 of the UK Code of Non-broadcast Advertising, Sales Promotion and Direction Marketing (CAP Code)

² See: ASA ruling on Opodo Ltd (16 December 2015) complaint ref: A15-291574

known in the Advertisement. The Authority considers that the Advertisement is "misleading" as it is "inaccurate" within the meaning Article 6(a) of the Consumer Protection.

In light of the analysis presented above, the Authority finds the Advertisement inaccurate and false, or at the very least misleading, by the non-disclosure of certain pricing information. The Authority considers that the pricing information withheld is material in the sense that absent its disclosure, the Advertisement misled consumers into believing that they can pay an additional BHD 5 on any current home broadband tariff plan for 1.3 TB of data.

Reference to applicable terms and conditions

The Authority refers to Article 12(c) of the Consumer Protection Regulation which deals with exclusions and disclaimers in advertisements:

"The Advertiser shall ensure that:

(c) references to detailed terms and conditions in an Advertisement shall not have the effect of contradicting, materially qualifying or otherwise altering the basics of any claim made or implied in the Advertisement"

With respect to Article 12(c) the Authority does not consider that STC has "disclosed all relevant information" by the mere usage of this caveat, as it seems to suggest in the Reply. The Authority would like to make it clear that the inclusion of an asterisk or a fine print disclaimer does not remove the potential for a headline to be considered misleading. Article 12(c) makes clear to that such references must not have the effect of contradicting, materially qualifying or altering the basics of any claims made / implied in an advertisement. Service providers must ensure that they do not exclude key terms and conditions (in this case the price or the calculation of the price thereof) from their advertisements, and instead merely reference in the advertisement an asterisk or small print reference to the fact that terms and conditions apply. The Authority believes that it is likely that consumers would gain an impression from the Advertisement that they only had to pay an additional BHD 5 over their current tariff plan for 1.3 TBs of data, when in fact only certain categories of subscribers (those who are subscribed to the higher, more expensive home broadband packages) are eligible for this. In other words, STC subscribers who are currently subscribed to the "Home Broadband 32" package – which costs approximately BHD 32 per month – may benefit from this offer. Finally, the Authority believes that the terms requiring subscribers to be subscribed to certain home broadband packages are indeed essential terms which are not sufficiently brought to the attention of subscribers by the usage of an asterisk or disclaimer in the

Advertisement. As such, the Authority does not believe that the requirement in Article 12(c) has been satisfied by STC.

Conclusion

After reviewing the Complaint, the Reply and all related legal instruments, the Authority considers the Advertisement to be inaccurate, and finds that it falls within the scope of misleading advertising as set out in Chapter 3 of the Consumer Protection Regulation.

Decision

In light of the above, the Authority requires STC to:

- (a) vary the Advertisement from all media outlets and Advertising Means (as defined in the Consumer Protection Regulation); and
- (b) amend the Arabic text in the STC Advertisement and the Advertisement so that it is consistent with the English versions of the same,

within seven (7) days from the date of this Decision.

The Authority reserves all its rights in respect of the matter including but not limited to its right to take further action pursuant to Article 35 of the Telecommunications Law.



Nasser bin Mohamed Al-Khalifa
Acting General Director
For the Telecommunications Regulatory Authority

18 February 2020