



Decision No. 6 of 2020

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

Ref: LAD/0420/094

20 April 2020

Introduction

This Decision applies to Bahrain Telecommunications Company ("Batelco"), 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 misleading within the scope of Chapter 3 of the Consumer Protection Regulation.

Unless the context otherwise requires, capitalised terms that are not otherwise defined in this Decision have the same meaning prescribed by the Telecommunications Law and / or the Consumer Protection Regulation (as applicable).

The Complaint

The Telecommunications Regulatory Authority ("the Authority") is in receipt of a complaint submitted by stc Bahrain BSC ("STC") on 27 February 2020 ("the Complaint") regarding the advertising activities of Batelco, specifically with regards to its fibre-based broadband internet service ("the Advertisement"), alleging that it breaches Articles 6 and 7 of the Consumer Protection Regulation ("the Regulation"). STC therefore invoked Article 72 of the Telecommunications Law. The Advertisement is reproduced below:



STC claimed that the statement stated in the Advertisement, namely "*enjoy the fastest home internet*" implies to any reasonable person that Batelco is offering the fastest domestic broadband service in the Kingdom of Bahrain, and that no other Licensed Operator is capable of offering a domestic broadband service of equivalent speed. STC submitted that this claim is misleading and

unsubstantiated by Batelco in terms of citing any sources or applicable study in support of such claim.

STC believed that the Advertisement is contrary to the Authority's stated position in Decision No. 4 of 2015 in respect to such claims.¹

STC therefore requested the Authority to: (1) investigate the complaint, and (2) take appropriate action as a result of the investigation.

Batelco's reply

The Authority informed Batelco of the Complaint by way of letter dated 1 March 2020 and requested the same to provide comments on STC'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 15 March 2020 Batelco replied to the Authority's request ("the Reply"). In the Reply, Batelco submitted that the advertisement at issue was quite old, and has since been removed from all of Batelco's social media channels. Batelco noted that, going forward, it "will pay particular heed to Decisions No. 1 and 2 of 2020 in which the Authority considered the misleading nature of any advertisement whilst having regard to Article 6(a) of the Regulation. Batelco also noted that its claim as to the speed of its broadband service was based on results from customers who utilised its speed test server.

Legal Analysis

Alleged misleading nature of the Advertisement

Article 6(1) of the Regulation requires Advertisers to ensure that their Advertisements (as defined in the Regulation) are "*fair, truthful and accurate, and shall not, directly or by implication, mislead or confuse any Consumer*".

¹ Decision no 4 of 2015 under the section titled "Legal Analysis"

A misleading conduct implies a misrepresentation of a product and / or service in a way that is capable of affecting the purchasing decision of a significant portion of targeted audience. This may result from an Advertiser providing false or inaccurate information, or information that is otherwise capable of persuading the targeted audience that the product and / or service at stake presents characteristics which, in reality it lacks. The Authority acknowledges that it is in the very nature of advertising to seek to influence the purchasing decisions of consumers. However, the Authority wishes to highlight that advertising should not do so by providing information capable of misrepresenting the product / service advertised, therefore misleading consumers into ill-informed purchasing decisions. For this reason, the Authority considered whether consumers would understand the claim *"enjoy the fastest home internet"* made in the Advertisement to mean that Batelco was the fastest network operator in the Kingdom at the time the advertisement was seen. To substantiate the claim, the Authority expected that Batelco provide it with evidence which demonstrated that their speeds were faster than any other network operator.

The Authority takes this opportunity to emphasise that, in principle, the burden of proof lies with the party making the claim. However, for the purposes of Article 11(c)(2) and Article 13(1) of the Regulation the onus lies with the Advertiser to respectively (1) prove a speed claim that is made in an advertisement, and (2) quote the source when using results from a study in the advertisement itself. In the present matter, the burden lies with Batelco to substantiate the claim made in the Advertisement. The Authority notes that there appears to be no substantiated source from which Batelco concluded that its subscribers will benefit from *"the fastest home internet"*. Batelco provided no evidence to the Authority, nor did it provide the same in the Advertisement to support its claim that its speeds are indeed capable of providing its subscribers with the "fastest" home internet service in the Kingdom. While Batelco does refer to using a speed test server to justify its claim, Batelco did not provide the Authority with the results or reports of the speed test checker used, nor did it specify to the Authority (or in the Advertisement itself) the specifications it had relied on (for example the timeframe in which it conducted the speed test) in making such a claim.

With no substantiation from Batelco to corroborate its claim, and unable to satisfy the requirements set out in Article 11(c)(2) and Article 13(1) of the Regulation, the Authority could only conclude that by making the bold claim *"enjoy the fastest home internet"* the Advertisement could have the effect of misleading consumers into believing that Batelco is capable of offering "the fastest" home internet service, while no other licensed operator in the Kingdom was able to do the same. Because the evidence provided (or lack thereof from Batelco) was insufficient to prove that subscribers will indeed benefit from *"the fastest home internet"*, the Authority concluded

that the claim has not been substantiated, and is therefore misleading in the absence of justifiable evidence. As a result, the Authority considers that the Advertisement is “misleading” as it is “inaccurate” within the meaning Article 6(a) of the Regulation.

Conclusion

After reviewing the Complaint and the information available to it, the Authority believes that the Complaint is justified and that the Advertisement falls within the scope of Article 6(1) of the Regulation.

The Authority acknowledges that Batelco has discontinued the Advertisement and that it has been removed from all advertising means, and that therefore a decision requiring its removal is inappropriate. The Authority however deems it fit to formally warn Batelco against adopting the practice of making unsubstantiated claims in its future advertisements.

The Authority reserves its rights in relation to this matter.



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

20 April 2020