



Decision No. 10 of 2020

Decision of Telecommunications Regulatory Authority in relation to a complaint submitted by Batelco against stc Bahrain under Article 72 of the Telecommunications Law

18 June 2020

Ref: LAD 0620 132

Introduction

This is a decision of the Telecommunications Regulatory Authority (“the Authority”) in relation to a complaint submitted by Batelco against stc Bahrain pursuant to Article 72 of the Telecommunications Law, in relation to stc Bahrain’s alleged breach of Article 6(1) and Article 7 of the Consumer Protection Regulation (“the Regulation”). The complaint alleges that, stc Bahrain’s advertisement for its fibre-based domestic broadband product in which it describes as “*fiber redefined*” and “*there’s no fiber like stc fiber*”, must be considered inaccurate and misleading. This is because in providing fibre-based broadband services stc Bahrain, for the most part, utilises the national broadband network that is operated and controlled by BNET and to which all licensed operators have access to.

Unless the context otherwise requires, capitalised terms that are not otherwise defined in this Order shall have the same meaning prescribed by the Law and the Regulation (as applicable).

Relevant Legal Provisions

Article 3(17) of the Telecommunications Law grants the Authority the power to examine complaints and resolve disputes arising between Licensees, Licensees and Subscribers or any other Person involved in the Telecommunications industry, and taking necessary and proportionate measures in relation to such matter.

Article 72 of the Telecommunications Law requires the Authority to investigate complaints submitted to it with respect to breach of the provisions of the Telecommunications Law, or breach of the regulations or decisions issued for its implementation, and to issue decisions thereto.

Article 6(1)(a) of the Regulation requires Advertisers to ensure that Advertisements are fair, truthful and accurate, and that they must not (directly or by implication) mislead or confuse any Consumer.

Article 6(1)(b) of the Regulation requires Advertisers to ensure that Advertisements are factually correct and culturally sensitive, and that this is done so with a sense of responsibility towards Consumers.

Article 6(1)(k) of the Regulation requires Advertisers to ensure that Advertisements are not framed as to abuse the trust of the Consumer, or exploit a Consumer’s lack of knowledge and experience.

Article 7(1) of the Regulation states that Advertisers must not engage in Misleading Advertisement, in particular with regard to the existence or nature of an Applicable Product or Service.

Article 12(c) of the Regulation requires Advertisers to ensure that references to detailed terms and conditions in an Advertisement do not have the effect of contradicting, materially qualifying or otherwise altering the basics of any claim made or implied in the Advertisement.

Submissions

Batelco submitted the complaint on 15 April 2020. The Authority informed stc Bahrain of the Complaint by way of letter dated 23 April 2020 and requested the same to provide comments on

Batelco's submission pursuant to the Authority's Dispute Resolution Guidelines published on 25 August 2014. On 7 May 2020 stc Bahrain replied to the Authority's request with its submissions.

Background

Batelco's submissions

Batelco submitted that the first claim – "*fiber redefined*" – would cause any reasonable consumer to think that stc Bahrain is offering a broadband service that is based on new technology or, at the very least, on some improved version of an older technology.

Batelco submitted that the second claim – "*there's no fiber like stc fiber*" – would cause any reasonable consumer to think that stc Bahrain is offering a broadband service that is unique to stc Bahrain and that the service contains features, particularly in terms of quality, for which there is no equivalence amongst other licensed operators in the Kingdom.

Batelco submitted that the advertisement should be assessed in round – i.e. as to the overall impression that it is likely to convey to consumers – and that it is capable of misleading consumers by misrepresenting to them that the advertised fiber-based domestic broadband service has been "redefined" in some manner, and that this redefined service is exclusive to stc Bahrain, with such misled customers likely to make ill-informed purchasing decisions.

Batelco also made references to several sections of previous decisions issued by the Authority on the subject of misleading advertising.

stc Bahrain's submissions

stc Bahrain argued that Batelco's claims are unfounded, and that the statements it has made in the advertisement were only made to distinguish its fibre broadband plans from its competitors' fibre broadband plans. stc Bahrain argued that the statements "*fiber redefined*" and "*there's no fiber like stc fiber*" are based on the fact that stc Bahrain is offering attractive benefits to subscribers, such as unlimited usage from 12 PM to 12 AM, amongst other benefits. stc Bahrain refuted Batelco's allegations and argued that the statements made in its advertisements are not inaccurate or misleading.

Legal Analysis

The Authority considered whether stc Bahrain was misleading consumers through its advertisement of its fibre-based domestic broadband service, and therefore breaching Articles 6(1)(a), 6(1)(b), 6(1)(k) and 7(1) of the Regulation. Specifically, the Authority considered whether consumers would understand "*fibre redefined*" and "*there's no fibre like stc fibre*" to mean that stc offered a broadband service based on new technology, or that which is different from other licensed operators.

For the purposes of this analysis, and in assessing whether stc Bahrain has made a misleading or deceptive claim, the Authority sees it fit to give central focus to the operation of stc Bahrain's disclaimer in the advertisement in question, and has given consideration to Article 12(c) of the Regulation.

It is common practice to see advertisements with limitations or disclaimers using an asterisk (*), 'conditions apply' or other requirements (within the confinements of the Regulation) to effectively qualify claims or statements made in an advertisement, so that they are not misleading or deceptive. These qualifications usually appear close to a lead selling point. If an asterisk appears near the word 'unlimited', for example, an Advertiser may be trying to trade on positive reactions to the selling point, while staying within the law by putting the conditions or limitations in the fine print. Article 12 of the Regulation sets out the conditions and limitations for Advertisers when opting to use disclaimers and exclusions in their advertising activities. The legality of its usage depends on a number of factors and circumstances.

The Authority has assessed the operation of the disclaimer in the advertisement in question, and assessed whether it is prominent, clear and understandable to become part of the overall message of the advertisement. In doing so, the Authority considered in particular:

- a. the placement of the disclaimer in the advertisement, and how it has been displayed;
- b. the prominence of the disclaimer relative to the prominence of the claim;
- c. the wording of the disclaimer; and
- d. whether the disclaimer overrides / contradicts the claim made in the advertisement.

The Authority has determined that the disclaimer made in the advertisement *“unlimited data valid until 31st May”* and *“subscribe by 31st May to enjoy 2 months of free subscription fees. Terms and conditions apply”*:

- (a) is clearly displayed in the bottom left of the advertisement in question, rather than in an obscure location;
- (b) is in a readable text size;
- (c) provides further context to the claims *“fibre redefined”* and *“there is no fiber like stc fiber”* by making statements which qualify them; and
- (d) does not contradict the claim made, but rather provides further information about how stc Bahrain's fiber is “different”.

The Authority does not find the asterisk and associated disclaimer to hide any limitations to stc Bahrain's offering, but rather complements it in that the disclaimer provides further information about the benefits associated to the package. In other words, the fine print text stating *“unlimited data valid until 31st May”* and *“subscriber by 31st May to enjoy 2 months of free subscription fees”* clearly explain further what stc Bahrain means by *“fibre redefined”* and *“there's no fiber like stc fiber”*. The Authority finds that the disclaimer qualifies and is consistent – rather than be in conflict or inconsistent – with the representations made in the headline statements of the advertisement, and as such does not consider the advertisement in question to be misleading or inaccurate. Consequently, the Authority does not consider that any reasonable consumer would interpret stc Bahrain's statements to mean, or gain the impression that, stc Bahrain is offering a fibre-based service based on any different technology, or is different from that of its competitors in that sense.

Decision

Having considered the submissions made by the parties and the information available to it, the Authority has concluded that the advertisement in question is not inaccurate or misleading within the scope of Articles 6(1)(a), 6(1)(b), 6(1)(k) and 7(1) of the Regulation. Therefore, Batelco's claim is not upheld.

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes.

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

18 June 2020