

Decision No. 15 of 2020

Decision of the Telecommunications Regulatory Authority on Bnet's discount proposal for Residential Wholesale Bitstream Services.

03 December 2020

Ref: LAD/1120/239

1 BACKGROUND

1.1 On 1st September 2020, Bnet requested the Authority's approval for a 40% discount for circuit speeds of 20 Mbps and above to the Residential WBS Monthly Recurrent Charge ('MRC') prespecified in Section 1D of Schedule 3 in Annex B, in Bnet's Reference Offer ("the RO").

1.2 The main characteristics of Bnet's request were:

- (a) The discount to the MRC would be applicable to circuit speeds of 20 Mbps and above;
- (b) The proposed discount amounted to 40% on the MRC specified in the RO;
- (c) The proposed promotion window was from 1 October 2020 to 31 December 2020 (on 15 October 2020, Bnet informed the Authority that the promotion window would run from 10 November 2020 to 31 January 2021);
- (d) The discount would be applicable until the review and approval of the new RO prices pursuant to the publication of the new RO (however by virtue of a letter sent on 17 September 2020 Bnet proposed that the discount would apply for a one year term, from 1st January 2021 to 31st December 2021);
- (e) The discount would be applicable only to new orders made during the promotion window, and only to new subscribers. In particular, Bnet clarified that the discount would not be applicable to existing subscribers that are upgraded during the Promotion Period.

1.3 **Table 1** summarises the proposed discounted prices under Bnet's proposal.



Table 1: RO prices and proposed discounted prices

Residential WBS circuit speed	RO Monthly Recurring Charge (BHD)	Discounted Monthly Recurring Charge (BHD)
20Mbps	10.04	6.02
30Mbps	16.14	9.68
40Mbps	21.52	12.91
80Mbps	28.69	17.21
100Mbps	32.28	19.37
500Mbps	75	45

- 1.4 Bnet submitted to the Authority that the proposal was motivated by an overall objective of stimulating fibre take up. Bnet's analysis submitted to the Authority shows, as of August 2020, a significant gap in circuits between forecasted and actual take-up and fibre penetration in Bahrain significantly below coverage.

2 THE CONSULTATION DOCUMENT

- 2.1 On 15 October 2020, the Authority issued a public consultation about Bnet's proposal. In it, the Authority said it considered that lower wholesale prices have the potential to benefit consumers, if they are passed through to end-customers through the retail competition process.
- 2.2 As the discount would apply equally and without discrimination to all licensed operators, lowering their costs per circuit by the same amount, and increasing their retail margins, the Authority considered that licensed operators would all have the possibility to lower their retail prices either proactively or in reaction to an operator lowering their retail prices to attract more customers. As such, it was the Authority's view that the discount has the potential to further stimulate competition in the retail market, with operators using the higher retail margins resulting from the discounts to compete for market share and, ultimately, passing the savings (or significant parts thereof) to end-customers. This would ultimately benefit end-customers.
- 2.3 The Authority referred to its continued engagement with the industry towards Bnet achieving Equivalence of Inputs (EoI) within the set deadlines (i.e. 24 months from Bnet's ROO), including through the Equivalence Compliance and Technical Committee (ECTC). The Authority said it considered Bnet's launch of its new portal to be a significant milestone towards that objective. The Authority stated that, should it proceed with approving the proposed discounted prices, it would monitor the situation particularly during the discount period, to ensure that all licensed operators benefit equally from the offer, i.e. in terms of their customers being treated indiscriminately in relation to connections.

3 STAKEHOLDERS RESPONSES TO THE CONSULTATION

- 3.1 Stakeholders' responses to the consultation are grouped into topics reflected in the headings in this section. The titles of the headings reflect the issues raised by stakeholders, not the Authority's views.

Asymmetric effects of discount

- 3.2 Batelco said it does not agree with the Authority's preliminary view that the proposed discount, as structured, would apply equally and without discrimination to all Licensed Operators in Bahrain. Batelco argued that, given the proposed discount would apply only to new (and not existing) subscribers, this would "unfairly discriminate against Batelco and favour other Licensed Operators" as it would "create a strong incentive for Batelco's subscribers (and particularly those who are out of contract) to switch to other Licensed Operators". Batelco argues that, given its significant share of fixed broadband subscribers, the wholesale discount "would be likely to have an asymmetric effect – i.e. it would result in more customers switching away from Batelco than could possibly switch to Batelco". As such, Batelco argues, the discount would have an "asymmetric and very damaging impact on competition as it would place Batelco at a serious disadvantage in retail broadband markets that are supposed to be level for all players." Batelco also argued that consumers in Bahrain are more interested in high speed and reliability than they are about lower prices.
- 3.3 The Authority maintains what it said in the consultation, namely that the (terms of the) discount would apply equally and without discrimination to all licensed operators. Batelco's arguments are in relation to its effects. As argued by the Authority in the consultation document, the discount has the potential to further stimulate competition in the retail market, with operators using the higher retail margins resulting from the discounts to compete for market share and, ultimately, passing the savings (or significant parts thereof) to end-customers.
- 3.4 The Authority disagrees with Batelco's assessment of the likely impacts of the discount on Batelco. Firstly, the segment of Batelco's customers that are potential switchers is limited and likely to constitute a small fraction of Batelco's customers. There are several reasons for this, including Batelco's brand, customer inertia, contractual commitments, and switching costs.
- 3.5 Secondly, Batelco would be able to offset any potential disadvantage in relation to that segment, with other advantages it inherently enjoys as the incumbent retail operator, including economies of scale.
- 3.6 Thirdly, the effective maximum average monthly retail discount that would be offered by Batelco's main rivals over the standard retail broadband contractual commitment period would be less than 20% given that:
- (a) The average contractual period for Batelco main rivals' residential retail fibre broadband offers above 20Mbps is 24 months but the wholesale discount would be applicable for 12 months.¹

¹ Zain and stc also offers fibre broadband 'without commitment' (i.e. with no minimum contractual period), but at higher prices than with a 24-month contract. However, Batelco can win these customers, who are all



- (b) The WBS MRC is only a fraction of the total cost (hence the retail price) of serving a customer. This means that, if the 20% wholesale discount over the two years is fully passed through to retail customers, the percentage retail price discount would be further diluted, making the maximum retail discount less than 20%.² For example, in the case of 20Mbps and 30Mbps fibre broadband, that maximum retail price discount over two years could be 13.3%.³
- 3.7 Furthermore, other costs such as customer acquisition costs (including marketing costs which are likely to increase during promotion periods) are likely to imply that the wholesale discount will not be fully passed through to retail customers, further diluting the discount at retail level.
- 3.8 The Authority also disagrees with Batelco's views regarding consumers' preferences, which might only apply to a limited segment of customers. In a recent Nielsen survey commissioned by the Authority, when asked about 'suggestions to improve internet services', 80% of respondents suggested to 'reduce charges' compared to 58% who suggested to 'improve the quality of internet'.⁴ This unambiguously proves that price is the most important aspect for consumers.

Impact on 5G investments

- 3.9 Stc and Zain stated that they do not support the proposed discount. They expressed concerns that it would affect the profitability of 5G infrastructure and, therefore, disincentivise MNOs' investment. Referring to NTP4 which, according to Zain, "places an equal emphasis on the importance of availing affordable, secure and robust access to ultra-high speed mobile broadband networks/services", they further argue that the development of fibre broadband should not be promoted at the expense of 5G investment.
- 3.10 The Authority strongly disputes the views of Zain and stc on the likely impacts on 5G investment. Firstly, investment in 5G is driven primarily by mobile services other than mobile broadband, i.e. the bundle of voice, sms, and data which customers purchase to use on their handset through the MNOs' mobile network. It is essentially the demand for 5G for these services that determines the case for investing in 5G networks, and MNOs are undertaking these investments because of such demand. This is further evidenced by the fact that standalone mobile broadband contributed only 16% of the mobile sector revenues in Bahrain in 2019.
- 3.11 Therefore, even if 5G mobile broadband was considered to be part of the same market as fibre broadband (and the Authority does not necessarily agree that it does), the case

potential switchers due to the lack of commitment. Batelco's advantages, combined with the higher prices charged by Zain and stc for these customers means that it can make competitive offers to these customers.

² Assume that a final product is made using 3 inputs: X, Y, and Z. If the cost of input X constitutes $\frac{1}{2}$ of the total cost of the final product for example, a reduction of 20% in the cost of input X will lead to a reduction of $\frac{1}{2} \times 40\%$ of the cost of the final product, that is a 10% reduction overall.

³ The recurring charges for 20Mbps and 30Mbps fibre broadband (10.04BHD and 16.14BHD respectively) constitute c. 2/3 of the retail prices for the equivalent retail offers of stc and Zain (15BHD and 22BHD respectively- prices correct as at 15/11/2020 from stc and Zain's websites). Assuming this relationship is constant, the 20% discount would apply to only 2/3 of the retail prices, i.e. would become a 13% discount on the total retail price.

⁴ Nielsen 2020, TELECOMMUNICATIONS SERVICES RESIDENTIAL MARKET SURVEY 2019, page 35, available at https://tra-website-prod-01.s3-me-south-1.amazonaws.com/Media/Licenses/20200721144135384_ofcstow0_434.pdf



for investing in 5G mobile networks is unlikely to be determined or impacted in any significant way by competitive dynamics in the stand-alone mobile broadband segment. MNOs will invest in 5G as long as the business case for bringing 5G technology to mobile services customers is viable (i.e. has a positive NPV), irrespective of their revenues in other segments such as stand-alone mobile broadband. Additionally, the WBS promotion window is only three months, making it highly unlikely that the discount will have any impact on long-term investment plans in 5G.

- 3.12 Furthermore, the Authority's current view is that mobile and fixed fibre broadband serve different purposes, which are more likely to be complementary. This view is also recognized by stc in its response to the consultation, when stating that "both technologies shouldn't be considered in the same market taking into consideration the technological superiority and stability of fibre connectivity". This further reinforces the view that the discount is unlikely to have any significant impact on 5G investment.
- 3.13 In addition to the foregoing, the Authority believes that it is pertinent to refer to NTP4 which at paragraph 28(a) makes it abundantly clear that "because the level of competition in the (mobile) market presently has been found to be effective ... the introduction of NBN over the period of this plan is likely to have a significant impact on the provision of mobile and fixed wireless services, which may increase uncertainty in the market. It is prudent therefore to remove regulatory uncertainty over this period by clarifying Government's policy in this regard during the period of this plan, thereby *encouraging investment in NBN-based retail services*.⁵"

Equivalence of Inputs

- 3.14 Both stc and Zain raise issues in relation to the new Bnet OSS/BSS portal. Zain argues that, while it assumes the new portal means Batelco has no visibility on OLOs orders, it "has widened the gap of Equivalence of Inputs ("Eol") rather than narrowing it during this period". Zain states that, particularly for WBS orders, the new portal lacks user-friendly features in terms of reporting, order follow-up and appointment scheduling, that were previously available to operators on the old portal, which Batelco continues to use. As a consequence, Zain argues, it had to revert to manual processes despite multiple requests to Bnet that it postpones starting the new portal until it has all the required functionalities, and that all OLOs have reengineered their processes to manual processes. stc makes a similar statement, namely that "Eol is far from being achieved through the launch of Bnet portal", with Bnet "prioritizing Batelco's WBS orders against those of its competitors". To substantiate the latter part, stc refers to a mystery shopping it conducted, which purportedly proves the discrimination. stc further submitted that it will be difficult for the Authority to monitor the situation, to ensure that LOs equally benefit from the discount.
- 3.15 The Authority acknowledges that the industry is going through a transition period, which is made necessary by the separation of Batelco. The benefits of separation will accrue to all OLOs over a far longer period than the transition period. During that transition, systems and processes which were controlled by Batelco are being transferred to Bnet which, in some instances, had to put new systems in place. The Authority considers the launch of the new Bnet portal as a significant milestone *towards* Eol but is aware that this is work in progress and that both Bnet and Batelco are still going through the process to actually achieve Eol. The Authority is following

⁵ Emphasis added.



developments very closely and engaging constantly with both entities to ensure the Eol milestones will be achieved within the set deadlines.

- 3.16 The Authority would like to point out that, according to the Reference Offer Order dated 3 June 2019⁶, Bnet is currently not obliged to offer all its services on an Eol basis. Bnet is required to ultimately offer all its regulated services on an Eol basis within a period of 24 months from the date of the Reference Offer Order. What, however, is crucial is that Bnet abides by its general non-discrimination obligations. The Authority is confident that Bnet appears to be largely compliant with these obligations. The Authority has investigated stc's claim and indications, at this stage, do not denote any intentional malpractices. Bnet denies any discrimination between Batelco and OLOs and, when invited by the Authority to comment on the allegations, explained that both Batelco and OLOs use the same underlining Bnet OSS system for making appointments.
- 3.17 The Authority also notes that stc did not provide enough evidence about its mystery shopping, which would prove discrimination. The Authority also notes that stc did not submit a formal complaint. The Authority will however monitor this issue.
- 3.18 The Authority is constantly engaging with Bnet and Batelco on Eol and separation milestones. The Authority is engaging with Batelco to ensure that it migrates to the new Bnet portal as soon as reasonably feasible. Equally, it is also engaging with Bnet to ensure that the new portal is at the standard expected from a commercial supplier in a competitive environment, despite Bnet being the single fixed broadband network. This will be for the benefit of all LOs (including Batelco) and, ultimately, consumers and businesses in Bahrain. On this important issue, the Authority is complementing the ECTC/JWM's work, in that it is following these particular discussions on the latter platforms and coordinating its own work with that of the ECTC/JWM. In that respect, the Authority invites all LOs to be proactive and actively engage with both Bnet in relation to the functionality of the portal and the integration of their systems with the Bnet system and with the ECTC chair (e.g. by reporting issues during the sessions and by responding to surveys) to ensure that the portal is fit-for-purpose for delivering a highly competitive retail market in Bahrain.

Impact on Batelco's alleged anticompetitive behaviour

- 3.19 Zain states that the WBS price reduction "will, whether intended or not, assist Batelco in defending its position in relation to the numerous anti-competitive behaviour and complaints raised by the industry against Batelco". The Authority does not consider this to be the case but is unable to comment further as the investigation is ongoing.
- 3.20 stc argues that, should the discount be approved, Bnet's discounted prices would likely be below costs, given the fact that the Bnet RO's WBS prices are in line with international benchmarking and that it was unlikely that operators in the benchmark would have prices that are 40% above costs. Zain argued that a change in Bnet's current prices could cause competitive imbalance given that Bnet's current costs are unknown and are presently the object of an evaluation exercise (i.e. the Batelco/Bnet asset valuation exercise currently being undertaken).
- 3.21 Firstly, the Authority points out that, in many jurisdictions in comparable countries, not all the prices of Bistream products are subject to cost-orientation obligations,

⁶ Ref: LAD 0619 178.



particularly the higher speeds. Secondly, benchmarks are often based on a sample range, which average can hide significant discrepancy within the sample. Both arguments mean it is far from straightforward that the discounted prices would be below a relevant measure of Bnet's actual costs.

- 3.22 Secondly, the Authority considers that Bnet's discounted prices do not raise any anticompetitive issues in the wholesale and/or retail markets (e.g. in relation to exclusionary practice).

Other issues raised by stakeholders

- 3.23 stc makes a number of other points, which either do not apply to the discount or the context of the market in Bahrain. For example, stc makes an amalgam between volume discount and the discount proposed by Bnet, which is not volumed-based; between vertical integration and competition, when many retail markets in comparable jurisdictions are competitive despite the incumbent and access provider being vertically integrated; and refers to a "Comreg decision" in a context not applicable to Bahrain, in particular the fact that there is a single fixed broadband network in Bahrain with no competing infrastructure operators in the fixed broadband market.
- 3.24 stc also argues that offering discounted broadband prices to new customers only, "would be discriminatory". The Authority points out that making attractive offers to new customers is a common and, more often than not, a pro-competitive practice in retail markets, especially for new services that face uncertain or weak demand because of, e.g. existing legacy services, need for customers to test to learn about the product.

Extension of discount to the WBS business segment

- 3.25 Eitiscalcom submitted that it agrees with the discount. Eitiscalcom proposed that Bnet goes further by extending the discount to the business segment.
- 3.26 The Authority would like to clarify that any extension of the discount is a decision for Bnet to make, not the Authority, subject to the Authority's approval.

4 THE AUTHORITY'S DECISION

- 4.1 The Authority reiterates its view in the consultation document that the discount has the potential to further stimulate retail competition, with operators using the higher retail margins to compete for market share and, ultimately, passing the savings (or significant parts thereof) to end-customers. The Authority considers that the potential benefits⁷ of the discount significantly exceed any potential concerns raised by stakeholders.
- 4.2 For this reason, the Authority is minded to approve the request for the discounted MRCs and not deny these benefits to end-customers in Bahrain. The discounted MRCs will have a **promotion window of three months starting in December 2020 at a date to be determined by Bnet, and the discount will be applicable for a period**

⁷ These were set out in the Consultation document and summarised at paragraphs 2.1 and 2.2 of the present Decision.



of twelve months starting from 1st January 2021 for orders placed in December 2020, and from the order date for orders placed after 31 December 2020.

- 4.3 The Authority's approval is conditional to Bnet treating all LOs fairly and without discrimination. Bnet currently submits an Eol report to the Authority on a monthly basis. Bnet is required to submit this report on a bi-weekly basis during the promotion window and with more details. In particular, while the report currently aggregates OLO data, the bi-weekly reports that will be provided during the promotion window will be on an OLO by OLO basis. This will enable the Authority to closely monitor any potential discrimination. In parallel, as part of the monitoring of the Separation milestones, the Authority will continue to engage with Batelco and Bnet to ensure that Batelco starts using the portal as soon as reasonably feasible.
- 4.4 Furthermore, Bnet is required to submit an addendum to the RO, showing the new schedule of prices applicable to customers for new connections requested during the promotion window.
- 4.5 The Authority reserves the right to direct Bnet to terminate the discount with or without notice, should the Authority have any concern during the promotion window about the fair treatment of LOs.



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