



Decision No. 3 of 2021

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

Ref: LAD 0421 041

20 May 2021

Introduction

This is a decision of the Telecommunications Regulatory Authority (“the Authority”) in relation to a complaint submitted by Bahrain Telecommunications Company BSC (“Batelco”), against stc Bahrain (“STC”) pursuant to Article 72 of the Telecommunications Law. The complaint relates to STC’s alleged breach of Article 12 of the SIM-Card Enabled Telecommunications Services Registration Regulation 2015 (“the Regulation”). The alleged breach relates to STC’s sale of SIM-Cards through self-branded STC kiosks (“the Kiosks”) that are not situated at locations of authorised Approved Resellers or Outlets (as defined).

Unless the context otherwise requires, capitalised terms that are not otherwise defined in this Decision 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 12.1 of the Regulation states that absent the Authority’s specific approval in writing, no SIM-Card shall, after the lapse of seven (7) months following the date of entry into force of this Regulation be sold or offered for sale except through the Point of Sale.

Submissions

Batelco submitted the complaint on 3 December 2020 (the “Complaint”). The Authority informed STC of the Complaint by way of letter dated 27 December 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. On 10 January 2021 STC replied to the Authority’s request with its submissions.

Background

Batelco's submissions

Batelco submitted that STC and/or its agents are, at various locations throughout the Kingdom of Bahrain offering STC SIM-Cards for sale through kiosks, the locations of which do not meet the definition of a Point of Sale under the Regulation. Batelco further submitted that the Kiosks are not situated at locations of authorised Approved Resellers or Outlets, as defined under the Regulation.

In making its submissions, Batelco also made reference to the Authority's letter dated 26 July 2020 (Ref CSD/0720/059) (the "Authority's Letter"), in which the Authority set out the information required to be submitted by licensees wishing to set up self-branded kiosks to offer/ sell SIM Cards to customers, namely, (a) the location(s) of prospective kiosks; (b) the number of kiosks to be set up in total; and (c) confirmation that each kiosk (and the sales agents stationed in said kiosk) will be equipped to directly connect and utilise the licensees' internal electronic systems for the purposes of conducting Registration, Verification and the Registration Renewal Process for SIM-Card Enabled Telecommunications Services.

Batelco believed that this conduct (i.e. the sale of SIM-Cards in breach of Article 12 of the Regulation) was occurring as of 24 November 2020 and was continuing as of 3 December 2020.

Finally, Batelco requested the Authority to:

- a) order STC to immediately desist from the acts and omissions alleged in the Complaint which together constitute the infringing behaviour;
- b) require STC to take all necessary steps to recover all SIM-Cards which have been sold through kiosks that are not permissible under the Regulation; and
- c) impose an appropriate fine in accordance with Article 35 of the Telecommunications Law.

STC's submissions

STC asserted that what Batelco termed as Kiosks fell within the definition of Outlets in the Regulation, and that these *"are owned by stc, operated by stc own sales agents and directly connected and utilize stc's internal electronic systems for conducting the registration and verification processes for the sale of SIM-Cards enabled services"*.

Whilst making reference to its letter dated 27 July 2020 (Ref: STC-0620-Corp-Legal-GA-51)¹, STC further submitted that it had shared with the Authority the list of its Kiosks referred to in the Complaint) with their respective addresses, save for four (4) kiosks that had been established to exclusively expedite the SIM-Card revalidation process before the deadline (31 December 2020). STC submitted that these four (4) kiosks were subsequently removed following the Authority's approval of the extension revalidation deadline.

¹STC's letter providing the required information regarding self-branded kiosks as requested in the Authority's Letter.

Finally, STC submitted that the Kiosks which form the subject matter of the Complaint are in compliance with the Regulation and the definitions of Point of Sale and Outlets. STC requested the Authority to dismiss the Complaint.

Legal Analysis

The Authority considered whether STC is selling SIM-Cards through unauthorised locations, and therefore breaching Article 12 the Regulation.

For the purposes of this analysis, and in assessing whether STC has breached Article 12 of the Regulation the Authority considered the definition of Point of Sale in the Regulation and the information that was provided to the Licensees by way of the Authority's Letter. Under Article 12.1 of the Regulation, SIM-Cards may be sold or offered for sale through the Point of Sale without the Authority's specific approval in writing.

Requirements

The Authority considered the requirements regarding setting up self-branded kiosks as set out in the Authority's Letter. In particular whether STC submitted:

- a. The locations of prospective kiosks;
- b. The number of kiosks to be set up in total; and
- c. Confirmation that each kiosk (and the sales agents stationed in said kiosk) will be equipped to directly connect and utilise STC's internal electronic systems for the purposes of conducting the Registration, Verification and the Registration Renewal Process for SIM-Card Enabled Telecommunications Services.

The Authority has determined that the information above has been provided by STC in its letter dated 27 July 2020 (Ref: STC-0620-Corp-Legal-GA-51).

Point of Sale

The Regulation defines Point of Sale as "*the place where the sale of the SIM-Card Enabled Telecommunications Service has been completed and includes Approved Resellers and Outlets*".

Outlets as defined in the Regulation includes:

"the Licensees' outlets, whether of a temporary or permanent nature that are owned, leased or rented directly by the Affected Licensee and which are directly connected and utilise the internal electronic systems of the Affected licensee for the purposes of conducting Registration, Verification and the Registration Renewal Process for SIM-Card Enabled Telecommunications Services".

STC confirmed that the Kiosks are owned by STC and each Kiosk is equipped with devices (MPOS) to directly connect and utilise the internal electronic systems of STC for the purposes of conducting the Registration, Verification and the Registration Renewal Process as required under the Regulation. For all intents and purposes therefore, the Kiosks fall within the definition of

Outlets. It therefore follows that STC's sale of SIM-Cards through the Kiosks did not fall foul of the Regulation.

In view of the above, the Authority finds that the sale of SIM-Cards through the Kiosks does not breach Article 12 of the Regulation. The locations of the Kiosks as well as the information required in the Authority's Letter have been provided by STC to the Authority.

Decision

Having considered the submissions made by the parties and the information available to it, the Authority has concluded that the Kiosks in question fall within the definition of Point of Sale in the Regulation. Therefore, Batelco's claim is not upheld.



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Acting General Director
For the Telecommunications Regulatory Authority

20 May 2021

