



Decision No. 7 of 2021

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

Ref: LAD 0721 060

05 July 2021

Introduction

This is a decision of the Telecommunications Regulatory Authority (“the Authority”) in relation to a complaint submitted by stc Bahrain (“STC”) against Bahrain Telecommunications Company BSC (“Batelco”), pursuant to Article 72 of the Telecommunications Law. The complaint relates to Batelco’s alleged breach of Articles 6(1)(a), 6(1)(b), 8, 12 and 13 of the Consumer Protection Regulation (“the Regulation”) and Schedule 1(2) of the Individual Mobile Telecommunications License (“IMTL”). The alleged breaches relate to the claims made in Batelco’s advertising campaign for its 5G service launched on 3 October 2020 (“the Advertisements”), namely “*First with National 5G Coverage*” and “*Batelco is now the first network with the national 5G coverage in Bahrain*”.

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 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 that Advertisements are factually correct and culturally sensitive, and that this is done so with a sense of responsibility towards Consumers and the community.

Article 8(a) of the Regulation states that a Comparative Advertisement shall be permitted only when the Advertisement is not a Misleading Advertisement.

Article 8(c) of the Regulation states that a Comparative Advertisement shall be permitted only when the Advertisements does not unfairly criticize, discredit, or disparage a competitor or its products and/or services in the Advertisement.

Article 12(b) of the Regulation states that the Advertiser shall ensure that footnotes, disclaimers, words, or symbols qualifying or excluding products or services made in Advertisement shall not contradict, materially qualify, or otherwise alter the basic claims made or implied in the Advertisement.

Article 13(1) of the Regulation provides that the Advertiser shall quote sources when using statistics or results from research studies within the Advertisement.

Article 13(2) of the Regulation stipulates that the Advertiser shall produce the study methodology and results, if requested by the Authority or a Consumer.

Article 13(4) of the Regulation requires Advertisers to ensure that the statistics, quotes, or results from a research study are not misleading, inaccurate or biased.

Submissions

STC submitted the complaint on 7 October 2020. The Authority informed Batelco of the complaint by way of letter dated 12 October 2020 and requested the same to provide comments on STC's submissions pursuant to the Authority's Dispute Resolution Guidelines which it did on 19 October 2020. A second round of submissions was initiated on 26 October 2020 and on 5 November 2020 Batelco replied to the second round of submissions.

Background

STC's submissions

STC submitted that the statements made in the Advertisements, namely "*First with National 5G Coverage*" and "*Batelco is now the first network with the national 5G coverage in Bahrain*" imply that Batelco is the "*first to have a nationwide 5G coverage in Bahrain and prior to other MNOs in the Kingdom*".

STC also submitted that:

- a) these claims are inaccurate, misleading and factually incorrect;
- b) the Advertisements are comparative;
- c) the claims are not substantiated with credible information from a reliable source;
- d) the disclaimer on the Advertisements "*T&C apply, based on 95% outdoor coverage by population as of Oct*", is ambiguous, nonvisible, biased and unsubstantiated;
- e) the Advertisements are in breach of Article 13 of the Regulation since the source behind the claim "the first" is not clearly defined and is biased as it was made as a result of a survey conducted by Batelco itself;
- f) the terms and conditions must be clearly disclosed to consumers; and
- g) Batelco is in breach of the IMTL as the coverage map provided had not been approved in advance by the Authority (considering that the Authority has not yet undertaken the annual network audit), deeming the coverage map as inadmissible, void and redundant.

STC argued that the Advertisements are contrary to the Authority's stated positions in Decision No.10 of 2020, Decision No.11 of 2020 and Decision No.13 of 2020 in respect to such claims.

STC requested the Authority to:

- a) order Batelco to remove the Advertisements immediately; and
- b) invoke its powers under Article 35 of the Telecommunications Law.

Batelco's submissions

Batelco claimed that the Advertisements are fair, truthful, accurate and factually correct and are not directly or indirectly misleading. Batelco also submitted that the claim of national 5G coverage is qualified by a disclaimer which meets the requirements of Article 12 of the Regulation and which clearly states that “*terms and conditions apply and that the coverage claim is based on 95% outdoor coverage by population as of October 2020*”. Batelco asserted that the disclaimer is clear, unambiguous and qualifies the claim of ‘first in national 5G coverage’. However, no further justification was provided as to how it qualifies such claim. Batelco further submitted that the requirement under Article 6(1)(c) of the Regulation is on the Advertiser to disclose the terms and conditions to consumers before the point of sale, rather than disclosing them in the content of the advertisement.

Batelco stated that it will not address allegations on the argument that the Advertisements are comparative due to the reason that an advertisement has to contain the element of “association” in order to be considered as comparative. Reference was made to the Authority’s reasoning in its letter dated 3 September 2020 (Ref. LAD 0920 194):

“All advertisements and marketing practices seek to differentiate competing products/services, but the added element in comparative advertising is that it seeks to associate.”

Batelco also substantiated its claim by providing a link to its online 5G coverage map¹.

Finally, Batelco asserted that it has not breached the IMTL as the requirement for the Authority’s approval in the provisions relates to the *form* of the coverage map, and the provision does not state that coverage maps must be based upon network audits conducted by the Authority.

Legal Analysis

The Authority considered whether Batelco was misleading consumers through its Advertisements, and therefore breaching Articles 6(1)(a), 6(1)(b), 8, 12 and 13 of the Regulation.

Comparative Advertising

Comparative advertising is, as its name suggests, advertising that compares a product or service (directly or indirectly) with the equivalent offering of a competing Licensed Operator. This is usually done to highlight limitations of the competing offering and demonstrates the promoted offering’s superiority. Indeed, the Regulation defines Comparative Advertising as “*Advertising in which one Advertiser draws a comparison between an Applicable Product of Service and that of another Licensed Operator*”.

The Authority however does not regard the Advertisements to fall within the meaning of Comparative Advertisement, as all advertisements and marketing practices by their very nature seek to *differentiate* competing products/services, but the added element in comparative advertisements is that they seek to *associate* with competing products/services. The Authority does not find this to be the case with the Advertisements. Batelco’s claim that it is “the first” with

¹ <https://content.batelco.com/wp-content/uploads/2020/10/04095509/Batelco-5G-Coverage-Map.pdf>

5G national coverage seeks to differentiate itself among competitors by claiming that it had allegedly launched this service before its competitors. The Authority does not find that Batelco had attempted to criticise, discredit or disparage any of its other competitors in the Advertisements, nor did it attempt to associate its own offering with that of its competitors, but rather distinguish itself from others. STC's argument that Batelco had breached Article 8 of the Regulation by engaging in Comparative Advertising practices is therefore not upheld and falls away.

Misleading Advertisement

The Authority considered whether Batelco's claim in being "the first" falls foul of Article 6(1) of the Regulation. To substantiate the claim, the Authority expected Batelco to provide it with evidence which demonstrated that it was indeed "the first" with 5G coverage in the Kingdom. The Authority notes that Batelco has not supported the claims with any substantiation visible within the Advertisements themselves, nor did it provide the Authority with documentary evidence which justified that it is indeed "the first" with national 5G coverage.

In addition to this, the disclaimer in the Advertisement does not make reference to any source in which consumers can check the accuracy of the claims being made, but instead refers to a coverage map. It is worth noting that even if the coverage map is accurate as argued by Batelco, it does not sufficiently cover the claims in the Advertisements. The coverage map only clarifies the locations in which 5G is provided, but it does not indicate that Batelco is in fact "the first" to launch national 5G coverage. Consequently, because the evidence provided (or lack thereof) is insufficient to substantiate Batelco's claim, the Authority considers the disclaimer as inaccurate and the Advertisements as misleading, breaching Articles 12(b) and 6(1)(a) respectively. The operation of the disclaimer in the Advertisements is discussed further below.

STC further argued that according to Article 6(1)(b) of the Regulation, Advertisements must be factually correct with a sense of responsibility towards consumers. As Batelco has not submitted evidence which corroborates the claim of being "the first", the Authority cannot conclude that Batelco has conducted itself within the parameters of Article 6(1)(b).

The Authority does accept Batelco's argument that the terms and conditions do not have to be clearly disclosed to consumers in the Advertisement itself.² Similarly, the Authority does agree that the IMTL requires that the 'form' of the network coverage map is approved by the Authority, rather than its content. As such it does not consider that Batelco is in breach of its IMTL.

Disclaimer

In assessing whether Batelco has made a misleading claim, the Authority considered the operation of Batelco's disclaimer in the footnote of the Advertisements and has given consideration to Article 12(b) of the Regulation. The Authority has assessed whether the disclaimer is prominent, clear and understandable to become part of the overall message of the

² Article 6(1)(c) of the Regulation requires the Advertiser to disclose the terms and conditions to consumers before the point of sale.

Advertisements. In doing so, the Authority considered the test it had applied in *Decision No. 10 of 2020*, 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 Advertisements, "*T&C apply, based on 95% outdoor coverage by population as of Oct*":

- (a) is clearly displayed in the bottom right of the (billboard and website advertisements) and within the text (in the Twitter and Instagram advertisements), rather than in an obscure location;
- (b) is in a readable text size;
- (c) the wording of the disclaimer however does not provide any further context to the claims "*First with National 5G Coverage*" and "*Batelco is now the first network with the national 5G coverage in Bahrain*", as the wording only provides information relating to coverage rather than that which confirms that Batelco is indeed "first" and
- (d) does not contradict the claims made, but it does not corroborate the claims either; the disclaimer provides no information as to the source which Batelco relied on when making the claims "*first with National 5G Coverage*" and/or "*Batelco is now the first network with the national 5G coverage in Bahrain*".

In view of the above, the Authority finds that the disclaimer in the Advertisements failed to satisfy the requirement under part (c) and partially under part (d) as Batelco failed to substantiate its claims as it did not provide any reference to the source of information relied on. The Authority wishes to point out that the reference to a coverage map does not verify or endorse the claims made in the Advertisements in being "the first" with 5G coverage in the Kingdom. The Authority therefore believes that the disclaimer does not qualify the representations made in the statements of the Advertisements. Therefore, the Authority does not consider that Batelco has disclosed all relevant information in the disclaimer as is required by the test in *Decision No. 10 of 2020*. As such, the Authority considers the Advertisements in question to be misleading and in breach of Article 12(b) of the Regulation.

Breach under Article 13 of the Regulation

The Authority considered STC's allegation that the source behind the claim of being "first" is misleading, not clearly defined and biased, thereby putting Batelco in breach of Article 13 of the Regulation. The Authority notes that Batelco did not provide it with a reliable source in response to this allegation, instead it stated that the claim is substantiated by its own coverage map. Therefore, on this basis the Authority finds that Batelco is in breach of Article 13(2) of the Regulation.

Decision

Having considered the submissions made by the parties and the information available to it, the Authority has concluded that the Advertisements in question are misleading within the scope of Articles 6(1)(a) and 6(1)(b) of the Regulation and that the requirements of a disclaimer have not been met by Batelco, thereby breaching Article 12(b) of the Regulation. The Authority has also concluded that Batelco's failure to provide a reliable source confirming its claim of being "the first" puts it in breach of Article 13(2) of the Regulation. It is further concluded by the Authority that Article 8 of the Regulation and Schedule 1(2) of the IMTL have not been breached.

The Authority requires Batelco to withdraw the Advertisements from all media outlets, within seven (7) working days from the date of this Decision.

The Authority advises that should Batelco commit a similar breach, the Authority reserves the right to take appropriate action to ensure compliance with the Regulation including the right to issue an Article 35 Order.



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

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