

Decision No. 10 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 0821 079

24 August 2021

Introduction

This is a summary 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 Articles 6(1)(a), 6(1)(b), 7 and 8 of the Consumer Protection Regulation (“the Regulation”). The alleged breaches relate to the claims made in STC’s advertising campaign for its 5G mobile service (“the Advertisements”), namely “lead don’t follow #1 for 5G maximum download speed and 5G signal strength”.

Unless the context otherwise requires, capitalized 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 7 of the Regulation requires that Advertisers refrain from engaging in Mislead Advertising.

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(b) of the Regulation states that a Comparative Advertisement shall be permitted only when the Advertiser distinguishes its offerings by highlighting real benefits, innovations, and genuine distinguishing factors.

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

Article 8(d) of the Regulation states that a Comparative Advertisement shall be permitted only when the Advertisement does not unfairly denigrate a competitor's quality of service, so as to reduce public confidence in the products and/or services offered by that competitor.

Submissions

Batelco submitted the complaint on 30 May 2021. The Authority informed STC of the complaint by way of letter dated 31 May 2021 and requested the same to provide comments on Batelco's submissions pursuant to the Authority's Dispute Resolution Guidelines, which it did on 14 June 2021.

Background

Batelco's submissions

Batelco submitted that the statements made in the Advertisements, namely "#1 for 5G maximum download speed and 5G signal strength" imply that STC provides 5G services at the "fastest speeds" and with the "highest level of coverage" which is untrue and incorrect.

Batelco submitted that STC should not be permitted to rely upon the Quality of Mobile Service Report 2020 ("QoS Report") and Mobile Networks Audit Coverage Report 2020 ("Coverage Report") because said reports were made from an end-user perspective and that relying on their findings to convey misleading facts is "contrary to the entire purpose and spirit" of both the QoS and Coverage Reports.

Batelco requested the Authority to:

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

STC's submissions

STC submitted that the Advertisements are in-line with the Authority's stated positions in Decision No.5 of 2020 and Decision No.6 in that the claims made were supported by a reliable source and clear as to the criteria on which the claims are based (maximum download speed and signal strength).

STC further submitted that the Advertisements did not breach any of the provisions of the Regulation as the Advertisements are fair, truthful, accurate and factually correct and are not directly or indirectly misleading.

Finally, STC rejected Batelco's claim that the Advertisements could mislead consumers and that the Advertisement simply distinguished its 5G services by highlighting specific parameters, namely, the maximum download speed and signal strength.

Legal Analysis

The Authority considered whether STC was misleading consumers through its Advertisements, and therefore breaching Articles 6(1)(a), 6(1)(b), 7 and 8 of the Regulation.

Comparative Advertising

Comparative advertising is 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.

The Authority however does not regard the Advertisement to fall within the meaning of Comparative Advertisement, as all advertisements and marketing practices by their nature seek to differentiate competing products/services, but the added element in comparative advertising is that they seek to associate with competing products/services. This principle has already been discussed and emphasised on in Decision No 7 of 2021.

STC's claim that it is leading in 5G maximum download speeds and 5G signal strength simply seeks to differentiate itself among competitors by highlighting real benefits of its services. The Authority does not find that STC had attempted to criticize, discredit or disparage any of its other competitors in the Advertisement, nor did it attempt to associate its own offering with that of its competitors, but rather distinguish itself from others.

Batelco's argument that STC had breached Article 8 of the Regulation by engaging in impermissible Comparative Advertising practices is therefore not upheld.

Misleading Advertising

The Authority considered whether STC was misleading consumers through its Advertisement, and therefore breaching Articles 6(1)(a), 6(1)(b) and 7 of the Regulation. Specifically, the Authority considered whether the reasonable consumer would understand STC's claims to mean that STC offers the fastest 5G services with the highest level of coverage in the Kingdom. Having considered what a reasonable consumer would understand from the claim "#1 for 5G maximum download speed" and "#1 5G signal strength", the Authority does not consider that the same would interpret STC's statements to mean, or gain the impression that, STC is in fact offering the fastest or most extensive 5G service in the Kingdom.

In order to establish whether or not the Advertisement can be regarded as "patently untrue and incorrect", the Authority will assess the Advertisement against the QoS and Coverage Reports.

(i) "#1 5G maximum download speed"

The QoS Report findings reveal that STC did in fact (at the time of the audit) achieve the highest maximum download speed. The Authority rejects Batelco's argument that STC's Advertisement means, either directly, by implication or otherwise, that it has the fastest 5G mobile network.

(ii) "#1 5G signal strength"

The Coverage Report findings reveal that STC did in fact (at the time of the audit) achieve the highest reading for signal strength. The Authority rejects Batelco's argument that STC's Advertisement means, either directly or otherwise, that it has the highest level of coverage across the Kingdom.

It is also worth noting that simply because the QoS and Coverage Reports were made from an "end-user" perspective, it does not follow that Advertisers cannot rely on the findings stated in them for their Advertising purposes. So long as the Advertiser adheres to the provisions of Article 13 of the Regulation, quoting such reports is permissible.

Decision

Having considered the submissions made by the parties and the information available to it, the Authority has concluded that the Advertisements are not in breach of Articles 6(1), 7 and 8 of the Regulation. Therefore, Batelco's claims are not upheld.



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For the Telecommunications Regulatory Authority
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