



**Decision No. 15 of 2021**

**Decision of the Telecommunications Regulatory Authority against Zain for breach  
of the Consumer Protection Regulation**

Ref: LAD 1121 100

9 November 2021

## Introduction

This is a decision of the Telecommunications Regulatory Authority (“the Authority”), against Zain Bahrain (“Zain”) pursuant to Article 3(c)(2) of the Telecommunications Law. On 14 October 2021, the Authority opened an own-initiative investigation into Zain to examine its compliance with Chapter 3 of the Consumer Protection Regulation (“the Regulation”). The investigation relates to Zain’s new promotional fibre broadband package advertised as “Fibre BD 5” (“the Offer”).

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(b)(1) of the Telecommunications Law empowers the Authority to carry out its duties in the manner best calculated to protect the interests of Subscribers and Users in respect of, (amongst others) the tariffs charged for services.

Article 3(c)(2) of the Telecommunications Law empowers the Authority to, inter alia, monitor and investigate compliance with the provisions of the Telecommunications Law and any regulations, on its own initiative and to make such orders and determinations as are necessary to ensure compliance.

Article 1 of the Regulation defines Misleading Advertisement as an Advertisement which contains information, statements, or visual presentation which directly or by implication is likely to mislead or deceive the Consumer about an Applicable Product or Service or about the Advertiser.

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(b) of the Regulation states that Advertisers shall not engage in Misleading Advertising with regard to the price or the way in which it is calculated.

Article 7(c) of the Regulation states that Advertisers shall not engage in Misleading Advertising with regard to the existence of a specific price advantage, if available.

## Background

On 18 September 2021 Zain posted advertisements on its Instagram and Twitter pages regarding its fibre broadband package for truly unlimited GB at BD 5 for the first year (“the Advertisements”). The Advertisements include the caption:

- “for only BD 5.250/month (VAT inclusive) you can enjoy our TRULY unlimited fibre!!;
- Two year contract. Second year rental is BD 15.750/month;
- An additional monthly fee of BD 0.525 (Vat inclusive) for a #Fiber router will be charged”.

Information which could trigger an own initiative investigation can come to the Authority’s attention from a number of different sources, but more often than not through its routine monitoring of current offerings made by Licensees on their social media accounts. In these circumstances the Authority gathers publicly available information on a regular basis and may seek further information if it deems necessary.

As part of its investigation into Zain’s compliance with Chapter 3 of the Regulation, the Authority requested Zain in the form of an Article 53 Request<sup>1</sup> to provide it with information relating to the Offer. Based on the information provided by Zain<sup>2</sup> (“Zain’s Response”) and the information publicly available to it, the Authority considers that Zain’s conduct is not consistent with its regulatory obligations for the reasons mentioned below.

While the Authority normally, as part of its assessment, writes to a Licensee whose conduct it is investigating to provide them the opportunity to comment, the Authority considered that it already had sufficient information based on the information publicly available to it and the information provided within Zain’s Response. If it finds that it has reasonable grounds to do so, the Authority pursues enforcement action against Licensees in respect of non-compliance with regulatory obligations to prevent harm to Users of telecommunications services, competition, and to other Licensees.

## Legal Analysis

The starting point of the Authority’s analysis was to confirm that the tariffs charged for the Offer are equivalent to that illustrated in the Advertisements, namely that BD 5.250/ month will be charged for the first year, BD 15.750/ month will be charged for the second year and an additional charge of BD 0.525 will apply. The total monthly charge should therefore equal to BD 5.775/ month for the first year and BD 16.275/ month for the second year.

However, upon the Authority’s investigation and based on Zain’s Response it transpires that an additional monthly charge of BD 1.4 for the fixed telephony voice service is applicable. Therefore, meaning the monthly charge would instead equate to BD 7.175 for the first year and BD 17.675

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<sup>1</sup> Dated 14 October 2021

<sup>2</sup> By way of letter dated 20 October 2021

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for the second year. In Zain's Response Zain specifically admitted to this by stating that *"the gross monthly recurring fee payable by the customer for Zain's Fiber 5 package is BHD 7.175 in the first year and BHD 17.675 for the second year onward"*.

### **Misleading nature of the Advertisements**

The Authority considered whether Zain's Advertisements are misleading and therefore fall foul of Articles 6(1)(a), 7(b) and 7(c) of the Regulation.

A misleading conduct implies a misrepresentation of a product and/or service in a way that is capable of affecting the purchasing decision of a significant portion of a targeted audience. This may result when an Advertiser provides false or inaccurate information, or information that is otherwise capable of persuading the targeted audience that the product and/or service at stake presents characteristics which, in reality it lacks. For this reason, the Authority considered whether consumers would understand the Advertisements to mean that subscribers will have access to unlimited data for two years at a monthly retail tariff of BD 5.775 (incl. VAT) for the first year and BD 16.275 (incl. VAT) for the second year.

#### **a) the way the Offer is presented on social media outlets**

The Authority considered the way the Advertisements are presented on Zain's social media outlets. To expand on the terms of the offer, Zain provides further information as footnotes to the Advertisement, which indicate that BD 5.250 is the monthly tariff for the first year of the contract, that BD 15.750 is the monthly tariff for the second year and an additional monthly fee of BD 0.525 for a fibre router will be charged. The Authority notes that in its Response, Zain indicated that *"all fibre internet broadband packages are subject to an additional monthly rental fee of BHD 1.4 for the fixed telephony voice service"*. This is also illustrated on Zain's website however, the Advertisements do not include this extra charge. The Authority considers this as an omission of necessary information as the additional charges payable are not made visible to consumers on the Advertisements.

In reaching this conclusion the Authority has had regard to what it perceives to be the legitimate expectations of consumers and specifically whether consumers are able, on the basis of the Advertisements (without referring to any other material including terms and conditions or Zain's website) to identify and correctly calculate the total cost per month for the offer. In essence the Authority needs to ensure that consumers are able to make an informed decision as to the overall cost of the contract. In Zain's Response, Zain rightly admits that *"the monthly rental fee of the fixed telephony service and the connection fee are not part of the social media post"* but is listed on Zain's website under the package details. Zain argues that this approach is in line with the industry practice.

It is worth pointing out that Zain is incorrect in stating that its approach is per the industry practice. The Advertising Standards Authority in the United Kingdom for instance, in its report

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dated November 2015<sup>3</sup> states that the “ASA’s current position on fixed broadband advertising states that if consumers are required to take line rental from the marketer in order to obtain the advertised services, marketers should include line rental in quoted prices or state the price of line rental clearly alongside the most prominent prices for the advertised services.” The Authority’s position on this matter is not as rigid as that of its European counterpart however, it does require that as a minimum a footnote should feature in the Advertisements to make it clear that additional charges are applicable.

The Authority therefore finds the Advertisements in breach of Article 6(1)(a) of the Regulation.

b) the actual price paid and the way in which it is calculated

The Authority considers the Advertisements misleading with regards to the actual monthly tariff. Within the meaning of Article 6, Advertisements may be capable of misleading consumers if they misrepresent the price of a product or service or the way in which it is calculated, in a way that affects the purchasing decision of a consumer. Such misrepresentation may also result from a partial disclosure of the information relating to the price of the product or service at stake, when the information omitted may allow consumers to reach a better understanding of the offer and to adopt purchasing decisions accordingly.

As stated above, it transpires that the Offer is subject to an additional charge of BD 1.4/ month for the fixed telephony voice service. Therefore, the Offer would add up to BD 7.175 for the first year and BD 17.675 for the second year. The Authority notes that had Zain clearly specified within the Advertisements that the monthly price would be subject to additional fees (similar to that provided in Zain’s website), then the Authority may have not considered it to be misleading. However, without this clarification, the Advertisements are clearly capable of misleading consumers as to the price of the service and are therefore in breach of Article 7(b) and 7(c) of the Regulation.

In addition, Advertisers are required under Article 6(1)(a) to ensure that their Advertisements are “fair, truthful and accurate, and shall not, directly or by implication, mislead or confuse any Consumer”. Because the Offer as advertised is not clear as to what the monthly tariff would constitute or whether the tariff is subject to additional charges, the Authority concludes that the Advertisements breach Article 6(1)(a).

In light of the above, the Authority finds the Advertisements at the very least misleading, by the non-disclosure of certain pricing information. The Authority considers that the pricing information withheld is material in the sense that absent its disclosure, the Advertisements will mislead consumers into believing that they can subscribe to the Offer for the price of only BD 5.775/ month for the first year and BD 16.275/ month for the second year.

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<sup>3</sup> Fixed Broadband Advertising of Prices- Final Report at page 2.

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## Decision

After reviewing the Advertisements and all related legal instruments, the Authority considers the Advertisements to be misleading within the scope of Articles 6(1)(a), 7(b) and 7(c) of the Regulation.

In light of the above, the Authority now requires Zain, within five (5) calendar days from the date of this Decision, to amend the Advertisements to reflect any additional charges payable.

The Authority reserves all its rights in respect of the matter including but not limited to its right to take further action pursuant to Article 35 of the Telecommunications Law.



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

9 November 2021