



**Decision No. 3 of 2022**

**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 0322 013

9 March 2022

## 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 Articles 6, 8 and 11(a)(iii) of the Consumer Protection Regulation (“the Regulation”). The alleged breaches relate to the claims made in three of STC’s advertisements relating to its fiber broadband packages, namely “*why pay BD 17.6 instead of BD 5.5?*” (Advertisement 1), “*6 months free Fiber*” (Advertisement 2) and “*starting at BD 5.5 – switch your Fiber to stc*” (Advertisement 3), collectively referred to as (“the Advertisements”).

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 1 of 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*”.

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

Article 11(a)(iii) of the Regulation states that Advertisements shall make clear the extent of the commitment the Consumer must make to take advantage of a “free” offer.

## Submissions

Batelco submitted the complaint on 6 February 2022. The Authority informed STC of the complaint by way of letter dated 13 February 2022 and requested the same to provide comments on Batelco’s submissions pursuant to the Authority’s Dispute Resolution Guidelines which it did on 20 February 2022.

## Background

### Batelco's submissions

#### Advertisement 1

Batelco submitted that Advertisement 1 is a comparative advertisement as it makes “clear and unambiguous” reference to Batelco’s fibre packages. Batelco stated that the top section of Advertisement 1 refers to Batelco’s current cheapest package of BD 17.6 against a red background (Batelco’s principal brand colour) and the bottom section sets out STC’s claimed monthly price of BD 5.5 against a purple background (STC’s principal brand colour).

Batelco also submitted that Advertisement 1:

- a) is a misleading advertisement because it conveys the message that STC’s broadband service is three times cheaper than the equivalent Batelco service and consumers would infer that the colour choices made by STC are used to create reference to Batelco.<sup>1</sup>
- a) is untruthful and inaccurate as the monthly price of BD 5.5 is an introductory promotional offer and not the actual ongoing package price which rises to BD 16.5 in the second year. The monthly price of BD 5.5 is also subject to additional charges,<sup>2</sup> meaning that the actual monthly price would be BD 7.76.
- b) deliberately compares STC’s purported monthly price against Batelco’s monthly price of BD 17.6 to give the impression that Batelco’s service is three times more expensive.

Batelco claimed that STC’s footnotes are insufficient to address the above and that a Licensed Operator should not be permitted to present its service as three times cheaper than that of a competitor when such a claim is patently untrue.

#### Advertisement 2

Batelco submitted that Advertisement 2 is untruthful and inaccurate as STC claims to offer “6 months free Fiber”, but according to the fiber plans advertised on STC’s website, none of the packages offer 6 months of free fiber. Batelco also submitted that STC does advertise on its website “switch to stc fiber or 5G and get 6 months for FREE”, but Advertisement 2 does not make reference to this, nor does it make clear what conditions must be met in order to benefit from the offer. Batelco argued that STC is in breach Article 11(a)(iii) in this regard.

#### Advertisement 3

Batelco submitted that Advertisement 3 is also a comparative advertisement, in that its red and purple colour scheme is clearly intended to draw a direct comparison between Batelco and STC. Batelco also submitted that STC again indicates that its broadband service is three times cheaper than that of Batelco, a claim which is untruthful and inaccurate for the same reasons set out regarding Advertisement 1.

Batelco requested the Authority to order STC to remove all the Advertisements in all formats including billboards.

<sup>1</sup> Batelco referenced the Authority’s position in Decision No. 11 of 2020 where it stated that “colours used in branding create associations with businesses in the minds of consumers, therefore creating an impact in terms of meaning and perception both consciously and subconsciously”.

<sup>2</sup> Covering a connection fee, a monthly rental fee, a monthly router rental fee and VAT.

## STC's submissions

### Advertisement 1

STC examined each of the conditions set out in Article 8 of the Regulation in claiming that Advertisement 1 is not a comparative advertisement.

- a) STC claimed that Advertisement 1 is not a misleading advertisement as all applicable charges were disclosed in the footnote of the advertisement. STC also claimed that its offer remains on average more than 30% cheaper than Batelco's offer.
- b) STC claimed that the price offering highlights the real benefits to consumers to enable them to make a fair choice.
- c) STC submitted that Advertisement 1 merely compares the two companies' offerings by highlighting the price difference without any discredit to competition. STC claimed that the comparison is allowed on the condition that there is no disparagement, and the aim is not to denigrate the competitors brand or products. STC claimed that highlighting the main feature of its product by comparing it to a competitive offering would not amount to disparagement or denigrating the rival's image. STC cited an ECJ ruling in this regard: *"No discrediting of a competitor even where attention is drawn to a price difference on a product that is greater than the average difference across products as a whole".*<sup>3</sup>
- d) STC claimed that the price comparison in Advertisement 1 does not have the effect of unfairly denigrating Batelco's quality of service to reduce public confidence and that consumers may still opt for Batelco's products despite the higher price.

### Advertisement 2

STC claimed that the fiber plans advertised on STC's website as referred to by Batelco concern the fiber plans that are offered to new customers, in contrast to Advertisement 2 which targets consumers that have existing fibre plans with other licensed operators. Therefore, as claimed by STC, Advertisement 2 only targets consumers who desire to switch their fiber to STC as indicated on the link to the offer on the website.

### Advertisement 3

STC submitted that Advertisement 3 does not meet the qualifying conditions for comparative advertisement. STC further submitted that the red colour is part of STC's colour chart. STC also added that Advertisement 2 is not comparing its broadband offer price to a competition price but rather detailing the price components of its new offer. Therefore, as argued by STC, Advertisement 3 cannot be considered comparative or untruthful and inaccurate.

<sup>3</sup> Pippig Augenoptik GmbH & Co KG against Hartlauer Handelsgesellschaft GmbH (Case C-44/01).

## Legal Analysis

The Authority considered whether STC was misleading consumers through its Advertisements, and whether the Advertisements fall within the meaning of Comparative Advertising, therefore breaching Articles 6 and 8 of the Regulation.

### Advertisement 1

Advertisement 1 clearly discloses in the footnote that the monthly tariff for the first year amounts to BD 5.5 and in the second year it would amount to BD 16.5. The footnote also makes clear that router and line rental fees apply. The Authority in Decision No. 13 of 2021 stated its position that it requires “that as a minimum a footnote should feature in the Advertisement to make it clear that additional charges are applicable”, therefore the Authority does not consider STC’s display of its BD 5.5 offer in itself as misleading.<sup>4</sup>

In considering Advertisement 1 as a whole, the Authority turned to the question of whether or not the Advertisement is considered a Comparative Advertisement within the meaning provided for in the Regulation. 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. Advertisers do not need to explicitly identify another Licensed Operator or the product/service they are comparing with. The Authority believes that colours used in branding create associations with businesses in the minds of consumers. Therefore, by displaying BD 17.6 against a red background, customers will understand that STC is referring to Batelco. STC argued that the red colour is part of STC’s “colour chart”, however displaying Batelco’s price against the red colour makes it hard to believe that STC’s marketing team were not referring to Batelco in creating this advertisement.

Although the Regulation permits Comparative Advertising, Article 8(a) of the Regulation states that the Advertisement must not be a Misleading Advertisement. Article 6(1) of the Regulation requires Advertisers to ensure that their Advertisements are “fair, truthful and accurate and shall not, directly or by implication, mislead or confuse any Consumer”. The Authority notes that STC in displaying its offer of BD 5.5 in comparison to that of Batelco’s (BD 17.6), it does not identify that unlike STC, Batelco’s price is inclusive of the line rental and the router rental fees. The Authority believes that in making such a claim, Advertisement 1 could be capable of leading a significant portion of consumers to believe that STC’s offer is over BD 12 cheaper than that of Batelco’s – when this is not the case. Such claim is considered, to the very least, inaccurate. In order to make a comparison verifiable, the Advertisement must include or direct consumer to sufficient information to allow them to understand the comparison. The Authority finds that although the disclaimer includes details about STC’s additional charges, the reasonable consumer would compare BD 17.6 to BD 5.5 rather than comparing BD 17.6 to the “like-for-like” tariff (which would amount to BD 7.799 for the first year and 18.799 for the second year). Therefore, as Advertisement 1 is not an equal comparison, the Authority finds that the claim as it would be understood is unfair and is likely to mislead a significant portion of consumers.

The Authority therefore finds Advertisement 1 in breach of Article 6(1)(a) and that the conditions under Article 8(a) of the Regulation have not been satisfied.

<sup>4</sup> This reasoning also applies to Advertisement 3.



## **Advertisement 2**

The Authority considered whether the claim “6 months free fiber” falls foul of Article 6 of the Regulation. The Authority notes that as stated by STC, the “6 months free fibre” offer only applies to consumers switching from another operator to STC. This is also illustrated on STC’s website, however, Advertisement 2 does not include this information. The Authority considers this as an omission of necessary information as the condition of being a “switching customer” is not made visible to consumers on the Advertisement.

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 Advertisement 2 (without referring to any other material including STC’s website) to identify that the offer only applies to customers switching to STC. In essence the Authority needs to ensure that consumers are able to make an informed decision as to the applicability of the offer. The Authority therefore finds Advertisement 2 in breach of Article 6(1)(a) of the Regulation.

The Authority also considered the application of Article 11 of the Regulation. Article 11(a)(iii) states that “Advertisements shall make clear the extent of the commitment the Consumer must make to take advantage of a “free” offer”. STC must therefore make clear in the advertisement that customers who are current subscribers of operators other than STC are eligible to benefit from the 6 months free offer. In absence of this substantiation, the Authority finds STC’s usage of the term “free” in Advertisement 2 breaches Article 11(a)(iii) of the Regulation.

## **Advertisement 3**

The Authority considered whether Advertisement 3 falls within the meaning of Comparative Advertising. Comparative advertising as discussed in the analysis of Advertisement 1 above, is advertising that compares a product or service with the equivalent offering of a competing Licensed Operator. As concluded above, the Authority does find the usage of the colour red as indirectly creating an association with Batelco. However, the Authority notes that the Regulation permits comparative advertising as long the advertisement meets the conditions under Article 8 of the Regulation. The Authority finds that Advertisement 3 meets these conditions and that the mere use of the colour red in Advertisement 3 is not sufficient grounds to put STC in breach of Article 8 of the Regulation.

Batelco also submitted that Advertisement 3 is untruthful and inaccurate, the Authority however, for the same reasons pointed above<sup>5</sup> disagrees with Batelco and finds that Advertisement 3 is not misleading and therefore not in breach of Article 6 of the Regulation.

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<sup>5</sup> see footnote n 4.

## Decision

Having considered the submissions made by the parties and the information available to it, the Authority has concluded that Advertisement 1 is misleading and comparative within the scope of Article 6(1)(a) and Article 8 of the Regulation; Advertisement 2 is misleading within the scope of Article 6(1)(a) and that the requirements for using the expression 'free' have not been met, thereby breaching Article 11(a)(iii) of the Regulation; and Advertisement 3 is not breach of the Regulation.

The Authority requires STC to within five (5) days from the date of this Decision to:

- a) withdraw Advertisement 1 from all media outlets (including billboards); and
- b) withdraw Advertisement 2 or amend it to include that only switching customers may benefit from the offer (or words to that effect); and
- c) provide the Authority with written confirmation of the withdrawal/amendment of the Advertisements.



**Philip Marnick**  
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For the Telecommunications Regulatory Authority

9 March 2022