



**Decision No. 2 of 2022**

**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/0322/011**

**09 March 2022**

## 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 breaches of Articles 6(1)(a), 8(a), 8(b), 8(c) and 8(d)<sup>1</sup> of the Consumer Protection Regulation (the “Regulation”). The alleged breaches relates to the claims made in Batelco’s Instagram advertisements for its fibre services, namely “Say No to bad fiber” and “Say Yes to Batelco fiber” (the “Advertisement”) and a marketing campaign for Batelco’s “Reliable, Superfast & Unlimited Fiber” (the “Initial Advertisement”). Screenshots of the Advertisement are attached to this Decision (Annex 1).

Unless the context otherwise requires, capitalized terms that are not otherwise defined in this Decision will have the same meaning prescribed by the Law and/or the Regulation (as applicable).

## Relevant Legal Provisions

Article 3(c)(17) of the Telecommunications Law (the “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 Law requires the Authority to investigate complaints submitted to it with respect to breach of the provisions of the 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 7(d) of the Regulation requires Advertisers to refrain from engaging in Misleading Advertising in particular with regards to the main features of the Applicable Product or Service, such as its availability, benefits, risks, composition, execution accessories, after-sale customer service, complaint handling process, method and date of manufacture, delivery, quantity, fitness for purpose, usage, specifications, geographical or commercial origin.

Article 8 of the Regulation sets the conditions that must be met for a Comparative Advertisement to be permitted.

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<sup>1</sup> The Authority notes that STC inadvertently refers to Article 6 of the Regulation when the provisions it cited relate to Article 8 of the Regulation. Therefore, the numbering of Articles have been adjusted accordingly.

## Submissions

STC submitted the complaint on 02 November 2021. The Authority informed Batelco of the complaint by way of a letter dated 04 November 2021 and requested the same to provide comments on STC's submissions pursuant to the Authority's Dispute Resolution Guidelines, which it did on 11 November 2021.

## Background

### STC's submissions

STC submitted that the statements made in the Advertisement, namely "Say No to bad fiber" and "Say Yes to Batelco fiber" insinuates that the fibre used by Batelco is superior to that of other Licensed Operators.

STC submitted that the Advertisement is a Comparative Advertisement because Batelco made an implicit reference to STC by using its brand colours. STC referred to the Authority's Decision No. 11 of 2020 in support of this allegation<sup>2</sup>. STC claimed that the Advertisement did not meet the requirements for the use of Comparative Advertisements in the Regulation.

STC claimed that the Advertisement portrays its brand in a "bad manner" which in turn has created a misleading advertisement aimed at "falsely deceiving" consumers into having a "pre-conceived notion on the brand."

STC, in supporting its claims, referred to a previous advertisement launched by Batelco on 13 September 2021 ("Initial Advertisement") wherein STC claimed that Batelco used an identical theme and concept to STC's advertisements. STC claimed that in taking both the Advertisement and Initial Advertisement into account, it is clear that Batelco is conveying a message to the public that it has better offers and quality of services than STC, but with no supporting evidence.

STC further submitted the following:

- a) Batelco failed to meet the requirements set out in Article 6(1)(a) and in turn Article 8(a) of the Regulation, specifically due to the fact that it had failed to indicate the criteria on which the claims are based, the sources where the claims can be verified against and the relevant benefits which distinguish its product in comparison to its competition;
- b) Batelco failed to meet the requirements set out in Article 8(b) of the Regulation because the claim that offerings of other licensed operators are "bad" does not highlight real benefits, innovations and genuine distinguishing factors of its own offer;
- c) Batelco failed to meet the requirements set out in Article 8(c) due to the fact that the phrase "Say No to bad fiber" appeared simultaneously with STC's branding colours in the background. STC claimed that this in fact demonstrates Batelco's intention to unfairly discredit and disparage STC's image; and
- d) Batelco failed to meet the requirements set out in Article 8(d) of the Regulation. STC claimed that by taking into account both the Advertisement and the Initial Advertisement, the average person is likely to understand that STC's brand is delivering a "bad" or poor service to the public.

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<sup>2</sup> STC referred to the Authority's position in Decision No. 11 of 2021, namely "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"

Ultimately, STC requested the Authority to implement the following measures:

- a) find Batelco to be in material breach of its regulatory obligations under the Regulation;
- b) order the immediate removal of the Advertisement and Initial Advertisement by Batelco from all of its social media channels and any other Advertising Means;
- c) take necessary orders and determinations pursuant to its powers under the Law to ensure compliance by Batelco; and
- d) impose an appropriate fine on Batelco in accordance with Article 35 of the Law.

#### Batelco's submissions

Batelco denied that it had engaged in any form of Misleading or Comparative Advertising, or that it had breached any statutory obligation or regulatory decision. Batelco further claimed that STC's complaint contained "no substantive evidence and is entirely speculative and subjective".

Batelco claimed that the Advertisement conveys to the public the quality of Batelco's fibre offerings, and that it does not associate its fibre-based services with those of its competitors. Batelco submitted that for this reason, STC's assertion that the Advertisement would be understood by the public to mean that other licensed operator's fibre offerings are "bad" is an "overstretch".

In support of its claim that its Advertisement does not draw any association between the respective fibre-based products of Batelco and STC and that therefore it is not comparative, Batelco referred to the Authority's position in Decision No. 7 of 2021 which stated that: "*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*".

In addressing STC's allegation that the Advertisement breaches the Regulation because the "claim to maintain superior fiber" is not verified, Batelco referred to Article 13.1 of the Regulation and claimed that it is erroneous to assert that the statements made in the Advertisement require source verification as they are not statistical in nature.

Batelco submitted that its Advertisement makes no reference whatsoever, directly or indirectly, to any product or service of any Licensed Operator, be it STC or any other, and that this fact makes the Advertisement fall outside the scope of Comparative Advertisements as defined under the Regulation.

Batelco further submitted that the appearance of the colour purple in one fragment of the Advertisement does not establish a direct or indirect association with STC. Batelco referred to specific text in the Authority's Decision No. 4 of 2015<sup>3</sup> and argued that the Authority's reasoning extends to other aspects of an advertisement, namely the choice of colours used. Batelco concluded this argument by stating that STC does not hold intellectual property rights over the colour purple and that Advertisers are free to adopt various colours from time to time in their advertisements.

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<sup>3</sup> "The circumstances that other Licensed Operators use a similar wording to promote their products and services in their respective advertisement does not really affect the legal assessment of the Advertisement and, as such, has to be regarded as irrelevant", Paragraph 24 of Decision No. 4 of 2015

Finally, Batelco submitted that STC's complaint should be dismissed.

## Legal Analysis

The Authority considered whether Batelco's (i) Initial Advertisement falls foul of Article 8 of the Regulation, and (ii) Advertisement falls foul of Articles 6(1)(a), 7(d) and 8 of the Regulation.

### Comparative Advertisement

Comparative Advertising is, as its name suggests, advertising that compares a product or service 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 or Service and that of another Licensed Operator*".

A Licensed Operator may draw comparison with the competing offer either:

- a. directly – by explicitly naming a competitor, or displaying a competitor's offering e.g. use of images of a rival product; and / or
- b. indirectly or by implication – without naming a competitor but making inferences to the same, making it clear to the audience who or what the comparison is with (irrespective of whether they are explicitly identified), for example if a comparison is made with specific aspects of an unnamed competitor product or service.

The Authority now turns to the question of whether or not the Initial Advertisement and the Advertisement are considered Comparative Advertisements within the meaning provided for in the Regulation.

### Is the Initial Advertisement a Comparative Advertisement?

STC claimed that prior to the circulation of the Advertisement, Batelco had launched a marketing campaign for its fibre-based broadband internet services. STC claimed that although the Initial Advertisement does not explicitly mention "stc Bahrain", it is "*undoubtedly understood by reasonable consumers that Batelco is referring to STC's recent advertisement [of fibre for life] by means of illusion that STC's recent offer is a "Trap"...*". STC continued by arguing that "*taking into account both the Advertisement and Initial Advertisement, it is clear that Batelco is conveying a message to the public that it has better offers and quality of services with no supporting evidence.*"

The Authority notes that STC provided no evidence to corroborate its claim that the Initial Advertisement is understood "without a doubt" by reasonable consumers that Batelco is referring to STC's recent fibre for life advertisement, and that by "means of illusion" STC's recent offer is a "trap". While it is true that Advertisers do not need to explicitly identify another Licensed Operator or the product / service that they are comparing with to be subject to the conditions of Article 8 of the Regulation<sup>4</sup>, whether a Licensed Operator or its products are identifiable (either directly or indirectly) will largely depend on the advertisement, claims, audience, and the context. The Authority had expected STC to provide some analysis as to how the Initial Advertisement created associations with STC's own advertisement, and then going further to explain how this created an impact in terms of meaning and perception to reasonable consumers, as it seems to suggest.

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<sup>4</sup> Decision No [11] of 2020



The Authority had also expected to see STC's preliminary analysis as to how the conditions of Article 8 of the Regulation have been breached by Batelco.

The Authority has repeatedly, in past decisions, emphasised that in principle the burden of proof lies with the party making the allegation and that therefore parties involved in any case which is referred to the Authority are urged to ensure that their submissions include supporting evidence and substantiation.

Because the evidence provided (or lack thereof from STC) is insufficient to:

1. prove that reasonable consumers would undoubtedly understand that Batelco is referring to STC by means of illusion that STC's offering is a trap;
2. determine that the Initial Advertisement falls within the definition of Comparative Advertisement under the Regulation; and
3. show that Batelco had breached the conditions of Article 8 of the Regulation,

the Authority has concluded that the Initial Advertisement does not fall within the scope of Comparative Advertising as set out in the Regulation.

#### Is the Advertisement a Comparative Advertisement?

STC referred to the Authority's position in Decision No. 11 of 2020 in support of its claim that the Advertisement is a Comparative Advertisement because it makes an implicit reference (therefore associating Batelco's products/services) to STC by using its own brand colours.

Whilst the Authority had previously stated that the use of a competitor's brand colours in any given advertisement may establish the existence of association and therefore a Comparative Advertisement, the Authority considers that the facts of this Complaint may be distinguished from those of Decision No. 11 of 2020.

#### *Facts of Decision No. 11 of 2020*

The following facts were considered by the Authority in reaching the conclusion that the advertisement was a Comparative Advertisements under the Regulation:

- a. at the time the advertisement was posted, only two Licensed Operators (the Advertiser and its competitor) were providing the Advertised services, making the intended competitor subject to the comparison very clear despite not being named;
- b. the public's perception of the advertisement clearly indicated the existence of association between the Advertiser and its competitor; and
- c. the colour scheme used in the advertisement was an intrinsic aspect of the advertisement and bore a striking resemblance to the colour scheme of the Advertiser's competitor.

The Authority now turns to the facts of this Complaint, where (unlike the Decision<sup>5</sup> presented above) STC's sole argument in favor of a finding that the Advertisement is a Comparative Advertisement (aside from the Initial Advertisement discussed in the preceding section of this Legal Analysis) is the alleged use of STC's brand colours by Batelco. The Authority notes that the Advertisement employs standard Batelco colour schemes bar a minute detail within a few frames

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<sup>5</sup> Decision No. 11 of 2021

of the Advertisement which showed the text “Batelco Business Center” written on a light pink and purple background.

Aside from the fact that neither STC nor Batelco own intellectual property rights over colours, the Authority considers that the use of a competitor’s brand colours alone would not be sufficient to establish association and therefore a Comparative Advertisement.

In this case, Batelco’s use of STC’s brand colours (as noted above) is such a slight and inconsequential detail which appears in the background of the Advertisement for approximately one second of the eleven seconds Advertisement, such that it is not convinced that a reasonable consumer would associate Batelco’s offerings with those of STC.

Based on the foregoing, the Authority concludes that the Advertisement is not a Comparative Advertisement, as Batelco does not seek to associate its own offerings with that of STC, but rather distinguishes itself from any other Licensed Operator. STC’s argument that Batelco had breached Article 8 of the Regulation by engaging in Comparative Advertising practices is therefore not upheld.

#### Is the Advertisement a Misleading Advertisement?

The Regulation defines a 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 their Advertisements are “*fair, truthful and accurate, and shall not, directly or by implication, mislead or confuse any Consumer*”.

The Authority considers that Batelco’s claim (a claim implicitly stating that other fibre offerings are “bad” thereby implying that Batelco’s are superior) is by its very nature an objective claim. The act of objectively stating that one offering is superior to another, or on the flip side stating that other offerings are inferior, requires sufficient substantiation to avoid misleading consumers into believing that the offerings in question are superior in all relevant and measurable performance metrics.<sup>6</sup>

Advertisements that employ objective superiority claims must be presented in a way which is unlikely to mislead the average consumer<sup>7</sup>. The claim made in the Advertisement relates to the provision of fibre services, and in providing fibre based broadband services (for the most part) Licensed Operators utilize the broadband network that is operated and controlled by BNET and to which all Licensed Operators have access to (at least on paper) on an equivalent basis. Given that all Licensed Operators are initially placed on an equal footing with regards to fibre services, any explicit or implicit superiority claims must make sufficient reference to any specific metric(s) they are based on. This is done to avoid misleading the average consumer, and to highlight to the consumer exactly how a Licensed Operator’s fibre services are superior to that of another.

The Authority however, finds it necessary to clarify that its view on superiority claims does not prohibit a Licensed Operator from employing superiority claims in its Advertisements, instead, it emphasizes the fact that the Advertiser must prove (in the advertisement itself) how its own

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<sup>6</sup> This principle has been explained and employed in Decision No. 16 of 2021.

<sup>7</sup> The Advertising Standards Authority on Objective Superlative Claims, <https://www.asa.org.uk/advice-online/types-of-claims-superlative.html>

offering is superior to that of its competitors by providing both the specific metric(s) it bases its claims on and sufficient substantiation of its claim(s).

Therefore, following the same logic, the specific metric(s) on which Batelco makes its superiority claim must be identified and mentioned in the Advertisement. The Authority notes that Batelco failed to make any reference to the specific metric(s) its claim is based on and that accordingly the Advertisement is capable of misleading consumers with regards to the main features of Batelco's fibre offerings (namely that they are superior to the offerings of other Licensed Operators). Therefore, the Authority considers the Advertisement a Misleading Advertisement as defined in the Regulation, and considers Batelco to be in breach of Articles 6(1)(a) and 7(d) of the Regulation.

### Conclusion

Having considered the submissions made by the parties and the information available to it, the Authority has concluded that the Advertisement in question is a Misleading Advertisement for the purposes for the Regulation and that Batelco is therefore in breach of Articles 6(1)(a) and 7(d) of the Regulation. The Authority has also concluded that both, the Initial Advertisement and the Advertisement do not qualify as Comparative Advertisements and as such, Article 8 of the Regulation has not been breached by Batelco.

### Decision

In light of the above, the Authority requires Batelco to withdraw the Advertisement from all media outlets within five (5) working days from the date of this Decision.

Batelco is required to provide the Authority with written confirmation of the withdrawal of the Advertisement within seven (7) working days from the date of this Decision.

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



**Philip Marnick**  
General Director  
For the Telecommunications Regulatory Authority

09 March 2022



Annex 1

**Say  
No**

**to bad  
fiber.**



**Say  
Yes**

**to  
Batelco  
fiber.**

