



Decision No. 6 of 2022
Complaints against Batelco under Article 65 of the
Telecommunications Law

Settlement Decision

Ref: LAD 0622 009

27 June 2022

INTRODUCTION

This Decision is addressed to Bahrain Telecommunications Company ("**Batelco**") and relates to Batelco's fibre-based internet broadband speed offer which it had introduced on 30st July 2020 until 29th April 2021 ("**the Infringement Period**") ("thereafter collectively referred to as **Speed Offer**").

The case results from complaints submitted by stc Bahrain and Zain Bahrain respectively, alleging that through the Speed Offer, Batelco was engaging in predatory pricing, thereby breaching Article 65(a) of the Telecommunications Law and Article 11.1 of its Class License for Internet Services.

THE COMPLAINTS

stc Bahrain submitted a complaint on 28 October 2020 and subsequently a complaint was filed by Zain on 5 November 2020. Each alleged that Batelco, through the introduction of the Speed Offer, was in breach of Article 65 of the Telecommunications Law, specifically by engaging in predatory pricing.

Zain followed up on its complaint on 22 February 2021 with a letter detailing Batelco's extension of the Speed Offer, and stc Bahrain did the same on 24 February 2021. In line with standard procedure, the Authority shared the complaints with Batelco for its submissions.

APPLICABLE LEGAL PROVISIONS

Article 3(b) of the Telecommunications states that: "*The Authority undertakes in carrying out its duties relating to Telecommunications services in the manner best calculated to:*

1 *protect the interests of Subscribers and Users in respect of:*

- a) *the tariffs charged for services*
- b) *availability and provision of service*
- c) *quality of services*
- d) *protection of personal particulars and privacy of services*

2 *promote effective and fair competition among new and existing Licensed Operators..."*

Article 3(c)(1) of the Telecommunications Law grants the Authority the power to make such orders and determinations as may be necessary for the implementation of the Telecommunications Law, including determinations in connection with, amongst other things, service tariffs and the promotion of competition.

Article 3(c)(2) of the Telecommunications Law grants the Authority the power to monitor and investigate compliance with the provisions of the Telecommunications Law and any regulations, orders and determinations made under the Telecommunications Law, both on its own initiative and at the request of any person, and to make such orders and determinations as are necessary to ensure compliance in accordance with the Telecommunications Law.

Article 3(c)(4) of the Telecommunications Law grants the Authority the power to monitor and enforce compliance with licence terms and conditions by licensees.

Article 65(a) of the Telecommunications Law prohibits Licensed Operators from doing or omitting to do anything which has the effect of materially preventing, restricting or distorting competition in any commercial field concerning the telecommunications sector in the Kingdom of Bahrain, where such act or omission is done in the course of operating a telecommunications network, providing a telecommunications service or in connection with any such matter.

Article 65(b)(1) of the Telecommunications Law defines the act or omission referred to in Article 65(a) to mean:

“[an] abuse by the Licensed Operator, either independently or with others, of a Dominant Position in the market or in a substantial part of it which materially prevents or limits competition in an unfair manner.”

Article 65(d) of the Telecommunications Law stipulates that the Authority shall, when determining whether an act or omission (whether ongoing or temporary) constitutes anti-competitive conduct, have regard to the provisions of the Telecommunications Law and to the conditions of the licence of the relevant operator.

Batelco provides telecommunications services pursuant to various licences granted to it by the Authority, including a Class License for Internet Services (“ISP”).

Article 11.1 of the ISP granted to Batelco states: *“Without derogating from section 65 of the Telecommunications Law, the licensee shall not, alone or together with others, engage in or continue or knowingly acquiesce in any anticompetitive practices and, in particular, the licensee shall:*

- a) not engage in anti-competitive cross-subsidisation;*
- b) if dominant, not abuse its dominant position;*
- c) not enter into exclusive arrangements with third parties for the location of its facilities that are required to provide any of the licensed services;*
- d) not enter into any agreements, arrangements or undertakings with any person, including any supplier of services that compete with any of the licensed services, which have as their objective or cause the fixing of prices or other restraint on competition;*
- e) not use information obtained from competitors if the objective or effect of such use is anticompetitive;*
- f) make available to other Licensed Operators on a timely basis technical information about essential facilities and other commercially relevant information that is necessary for them to provide telecommunication service; and*
- g) not (whether in respect of the tariffs, charges or other terms applied or otherwise) show undue discrimination against particular persons or persons of any class or description as respects the provision of any licensed service”.*

NOTICE UNDER ARTICLE 65 OF THE TELECOMMUNICATIONS LAW

A notice under Article 65(e)(1) of the Telecommunications Law and paragraph 282 of the Competition Guidelines was sent to Batelco on 5 November 2020 and 15 November 2020 (“**Notices**”). Following the Notices, Batelco was given the opportunity to submit written representations, which it did on 19 November 2020 and 6 December 2020, respectively.

THE AUTHORITY’S INVESTIGATION AND DETERMINATION

In reaching its determination, the Authority has given regard to:

1. Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law of the Kingdom of Bahrain as amended by virtue of Decree No. 38 of 2017 (the “**Telecommunications Law**”);
2. Batelco’s ISP;
3. the Competition Guidelines (ref: MCD/02/10/019) (the “**Competition Guidelines**”);
4. the Guidelines for the Setting of the Amount of a Fine for Violations of Articles 35 and/or 65 of the Telecommunications Law (ref: LAD/0314/039) (the “**Fining Guidelines**”);
5. the complaints lodged by stc Bahrain and Zain Bahrain asking the Authority to put an end to the infringement; and
6. Batelco’s submissions in response to the complaints submitted by stc Bahrain and Zain Bahrain, and to the Notices (defined below).

The alleged conduct relates to an alleged breach of Article 65 of the Telecommunications Law. It consequently implies a corresponding breach of Section 11.1(b) of Batelco’s ISP. The point at issue is whether the Speed Offer was predatory in nature.

Any assessment under Article 65 (and therefore Section 11.1(b) of the ISP Licence) is said to constitute an *ex post*¹ investigation since it is a retrospective analysis of the conduct of a Licensed Operator. The Authority’s analysis for the purpose of its investigation into the Speed Offer in the *ex post* context looked into the specific circumstances of the case and the information available during the Infringement Period².

¹ *Ex post* (after the fact) refers to measures that arise *in reaction* to the decisions and activities of licensed operators.

² By its nature, an *ex ante* assessment will be “forward-looking” (i.e. based on current circumstances and current views of their likely development) whereas *ex post* assessments will be “backward-looking” (i.e. based on current understanding of the circumstances at the time of the alleged abuse).

COVID-19 PANDEMIC

In its submissions, Batelco had argued that it introduced the Speed Offer in order to combat increased demand during the pandemic, and that the special circumstances surrounding the current situation are so extreme that an exception ought to be made, rather than judged *“through the very narrow lens of competition law”*.

The advent of the pandemic and the response to this virus has undoubtedly caused disruption in the way that people, firms, and government ordinarily conduct themselves. While it is true that during this time of crisis Licensed Operators have assisted in national efforts to tackle the consequences of the COVID-19 pandemic, this does not mean that competition rules will no longer apply, nor does it mean that the pandemic can be used as a ‘free pass’ to Licensed Operators to engage in conduct that could lead to harm to consumers in any way.

Notwithstanding this fact, the Authority recognises that Licensed Operators (and Batelco in this case) have assisted in national efforts to tackle the consequences of the COVID-19 crisis. The Authority took regard to the following factors³ in determining the quantum of the penalty imposed on Batelco:

- a. The anticompetitive conduct was taken in exceptional and novel circumstances caused by the advent of the COVID-19 pandemic;
- b. The anticompetitive conduct was taken to alleviate critical and temporary issues arising from the COVID-19 pandemic;
- c. The anticompetitive conduct contributed to the benefit or wellbeing of consumers affected by the pandemic; and
- d. The anticompetitive conduct was temporary in nature (it lasted for 10 months).

SETTLEMENT

On 27 June 2022 Batelco entered into a voluntary settlement with the Authority to resolve the investigation.

Batelco confirmed

that it:

- acknowledges, in clear and unequivocal terms, the Authority’s findings as set out in this Decision;
- will refrain from engaging in anti-competitive practices in the future;
- will pay consideration as outlined in the section titled ‘Penalty’ below;
- will inform, in five (5) working days as of the 1st of August 2022, all subscribers who had subscribed to its Speed Offer during the Infringement Period that they may exit their contract(s) without incurring termination penalties, and the notification shall read as follows:

³ These factors mirror the same in the CMA’s guidance into its approach to business cooperation in response to the pandemic. While the circumstances of each scenario is different, the principles, in the Authority’s reasoned opinion, remain consistent. Link here: <https://www.gov.uk/government/publications/cma-approach-to-business-cooperation-in-response-to-covid-19/cma-approach-to-business-cooperation-in-response-to-covid-19>

"Dear Customer, Kindly note that due to TRA Decision No 6 of 2022 (ref: LAD/0622/009) the Minimum Term for your internet contract on line number SERVICE_ID has ended"

- has accepted a streamlined administrative process to apply for the remainder of the investigation; and
- will renounce its right to appeal the Decision.

PENALTY

Taking all factors and legal provisions into consideration, the Authority considers that the consideration [REDACTED] to be appropriate and proportionate, given the seriousness of the breach and the potential harm to consumers in the Kingdom of Bahrain.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a long horizontal stroke.

Philip Marnick
General Director