

Article 35 Order No. 7 of 2020

STC's breach of the provisions of the SIM Card Regulation and the Lawful Access Regulation

- 1 For the reasons set out in the reasoning of this Order, the Telecommunications Regulatory Authority (the “**Authority**”) considers that stc Bahrain B.S.C. (“**STC**”) has:
 - (a) supplied SIM Cards in breach of the provisions of the SIM-Card Enabled Telecommunications Services Registration Regulation (the “**SIM Card Regulation**”) relating to Registration, Verification and Activation; and
 - (b) provided fibre-based telecommunications services without submitting a Lawful Access Capability Plan to the Authority in breach of Article 6.1 of the Regulation requiring Licensees to implement Lawful Access (the “**Lawful Access Regulation**”).
- 2 THEREFORE STC IS ORDERED TO:
 - 2.1 Provide the Authority with written confirmation (and appropriate supporting evidence) that it is fully compliant with its obligations under the SIM Card Regulation in relation to Registration, Verification and Activation within 3 days from the date of this Order.
 - 2.2 Provide the Authority with a Lawful Access Capability Plan in respect of its fibre-based telecommunications services, as is required by Article 6.1 of the Lawful Access Regulation within 30 days from the date of this Order.
 - 2.3 In the event that STC fails to comply with Article 2.2 of this Order, STC is ordered to cease the sale of fibre-based telecommunications services until such time as the Lawful Access Capability Plan has been provided to and approved by the Authority.
- 3 FINES
 - 3.1 STC is ordered to pay:
 - (a) a fine of BD 27,500 in respect of the breach of the SIM Card Regulation within 60 calendar days from the date of this Order; and
 - (b) a fine of BD 37,500 in respect of the breach of the Lawful Access Regulation within 60 calendar days from the date of this Order.

3.2 In the event that STC fails to comply with Article 2 of this Order, then STC shall be liable to a daily penalty BD 100 each day of delay or part thereof.

3.3 STC shall pay the fines set out in Article 3 of this Order in the form of a certified cheque, from one of the accredited local banks, addressed to the Authority.

4 COMPLIANCE

4.1 In accordance with Article 35(d)(3) of the Telecommunications Law, failure by STC to abide by Article 2 or Article 3 of this Order (including the payment of the fines) may lead the Authority to revoke one or more of STC's Telecommunications Licences.



Nasser Bin Mohamed Al Khalifa
Acting General Director
For and on behalf of the Telecommunications Regulatory Authority

28 December 2020

REASONING

Relevant Legal Provisions

- 1 Unless the context otherwise requires, capitalised terms that are not otherwise defined in this Order have the same meaning prescribed by the Telecommunications Law, the SIM Card Regulation or the Lawful Access Regulation (as applicable).
- 2 By virtue of Article 3(a) of the Telecommunications Law the Authority must carry out its duties and exercise its powers efficiently, effectively, regularly, reasonably and in a non-discriminatory and transparent manner.
- 3 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, and to make such orders and determinations as are necessary to ensure compliance.
- 4 Article 3(c)(18) of the Telecommunications Law authorises the Authority to exercise all other powers granted to it and to take all other actions as may be reasonably necessary to give effect to the Telecommunications Law.
- 5 Article 31(2) of the Telecommunications Law empowers the Authority to, inter alia, revoke a licence where such a revocation is in accordance with any of the conditions provided for in such a licence.
- 6 Article 31(3) of the Telecommunications Law empowers the Authority to, inter alia, revoke a licence where such a revocation is in accordance with the provisions of Article 35 of the Telecommunications Law.
- 7 Article 1.1 of the SIM Card Regulation defines an “An Affected Licensee” as “A Licensee that provides SIM-Card Enabled Telecommunications Services”, which itself is defined as “All Telecommunications services provided by an Affected Licensee to a Subscriber by means of a SIM Card (including, unless specified to the contrary, a Prepaid Telecommunications Service)”.
Licensee that provides SIM-Card Enabled Telecommunications Services
- 8 Article 2.2 of the SIM Card Regulation requires all Affected Licensees “to ensure that, in relation to every SIM-Card Enabled Telecommunications Service, Registration, Verification and Activation are carried out in accordance with the provisions of this Regulation”.
to ensure that, in relation to every SIM-Card Enabled Telecommunications Service, Registration, Verification and Activation are carried out in accordance with the provisions of this Regulation

- 9 Article 2.3 of the SIM Card Regulation prohibits any Affected Licensee from providing a SIM-Card Enabled Telecommunications Service to a Subscriber until the completion of Registration, Verification and Activation, with each term defined by Article 1.1 as follows:
- (a) Registration - The process by which the Subscriber Information is recorded within the Subscriber Database.
 - (b) Verification - The process for confirming that the Identification Credentials accurately identify the Subscriber.
 - (c) Activation - The process by which a SIM-Card Enabled Telecommunications Service is enabled such that the Subscriber can access any SIM-Card Enabled Telecommunications Services.
- 10 Article 6.1 of the Lawful Access Regulation provides that “A Licensee must submit a Lawful Access Capability Plan to TRA for written approval should the Licensee wish to provide new Telecommunications services, amend the existing Telecommunications services or make any changes that may affect the implementation of Lawful Access. The Plan shall include the steps to be taken by the Licensee to implement Lawful Access for such services, amendments or changes as the case may be.”

A. Breach of the SIM Card Regulation

Background

- 11 Bahrain Telecommunications Company B.S.C. (“**Batelco**”) submitted a complaint dated 14 June 2020 to the Authority pursuant to Article 72 of the Telecommunications Law in relation to STC’s supply of SIM Cards.
- 12 Batelco’s complaint stated that Batelco considered that STC had been engaging in the unlawful supply of SIM Cards. The complaint explained that staff of Batelco had recently become aware that STC SIM Cards were being sold to consumers within the Kingdom of Bahrain, by STC and/or its agents, which could be used by consumers to procure SIM-Card Enabled Telecommunications Services without having first gone through the process of Registration, Verification and Activation as required by the SIM Card Regulation.

- 13 In support of the complaint, Batelco provided details of three STC SIM Cards which staff of Batelco purchased from three different resellers on 8 June 2020.
- 14 The complaint stated that each of the three SIM Cards was tested by staff of Batelco by purchasing prepaid credit for each card, inserting each card into a mobile handset, receiving and making mobiles calls and downloading data. However, Batelco stated that, at the time of testing, none of the three SIM-Cards had been Registered, Verified or Activated, as required under the SIM Card Regulation.
- 15 The Authority provided a copy of the complaint to STC under cover of a letter dated 15 June 2020, inviting STC's submissions on the complaint in accordance with paragraph 55 of the Authority's Dispute Resolution Guidelines.
- 16 STC responded to the Authority by way of a letter dated 18 June 2020. STC explained that, due to a recent upgrade performed to a module within STC's provisioning system (i.e. the system handling the Registration, Verification, Activation and barring activities for pre-paid packs) which was developed on an old code, a technical issue had arisen whereby mobile data usage was unbarred through certain SIM cards prior to satisfying the Registration, Verification and Activation requirements of the SIM Card Regulation. Although these cards should have been barred until these processes had been undertaken, STC explained that in fact only outgoing calls and SMS services were barred. This meant that the affected cards could be used for incoming calls and data usage.
- 17 STC's response explained that upon receipt of the Authority's letter of 15 June 2020, STC carried out an investigation and identified the affected cards. STC stated that it had then barred and deactivated all services from the affected cards as of 16 June at 4.04am, which meant that they could no longer be used until Registration, Verification and Activation had been completed. STC also explained that it had fixed the issue and barred all STC SIM Card market stocks so that, even if a card was sold without Registration, Verification and Activation having been completed, the consumer would not be able to use any Telecommunications services. Finally STC indicated that it had served warning letters on the relevant resellers in order to seek to prevent the further sale of any SIM Cards prior to satisfying its Registration, Verification and Activation requirements of the SIM Card Regulation.

The Breach

- 18 Having reviewed Batelco's complaint and STC's response, the Authority believes that STC has breached its obligations under the SIM Card Regulation and that such breach constitutes a material breach of the Telecommunications Law.
- 19 Specifically, STC has not met its obligations under Article 2.3 of the SIM Card Regulation requiring it not to provide a SIM-Card Enabled Telecommunications Service to a Subscriber until the completion of the Registration, Verification and Activation processes.

B. Breach of the Lawful Access Regulation

Background

- 20 On 4 June 2020 the Authority received a letter from the National Security Agency of the Kingdom of Bahrain ("**the NSA**"), which stated that STC had been providing fibre-based telecommunications services without having submitted a Lawful Access Capability Plan to the Authority as required by Article 6.1 of the Lawful Access Regulation.

The Breach

- 21 The Authority believes that STC has breached its obligations under the Lawful Access Regulation and that such breach constitutes a material breach of the Telecommunications Law.
- 22 Specifically, STC has not met its obligations under Article 6.1 of the Lawful Access Regulation which require it to submit a Lawful Access Capability Plan to the Authority for its approval where STC wishes to provide a new Telecommunications service.

Effects of the Article 35 Order

- 23 This Order is issued without prejudice to any further investigations the Authority may undertake into STC's alleged breaches of the SIM Card Regulation and Lawful Access Regulation referred to above, and any other breaches which have been or may be committed, or caused to be committed, by STC.

- 24 This Order and any further action taken by the Authority is without prejudice to the rights of any other entity to take relevant action as they may deem appropriate under the laws of the Kingdom of Bahrain.

Fines under this Order

- 25 Article 35(d)(2) of the Telecommunications Law states that the Authority *may*ⁱ issue an order containing a suitable fine on the Licensee provided that such a fine is objectively justified and non-discriminatory. The Telecommunications Law does not provide specific guidance in setting of fines.
- 26 The Authority believes in this instance that financial penalties are appropriate.

Imposition of Financial Penalty

Fining principles

- 27 In setting appropriate fines for STC's infringements in this case, the Authority has taken into consideration the relevant provisions of the Telecommunications Law and the Guidelines for the Setting of the Amount of a Fine for Violations of Article 35 and/or 65 of the Telecommunications Law (the "**Fining Guidelines**").
- 28 The Fining Guidelines reflect the Authority's fining practices to date, which in turn have been guided by international best practices, including the basic methodology used by Ofcom and other telecommunications regulatory authorities when establishing fines for licence breaches.

Procedure followed to determine the amount of the financial penalty

- 29 The Authority has undertaken the following steps in determining the quantum of the fines to be imposed on STC for the breaches set out above:
- 29.1 First, a baseline figure is established by reference to a value that is germane or relevant to the infringement in question;

ⁱ The Arabic version of the Telecommunication Law uses the word "للهيئة". This is translated into English as "may" rather than "shall" as is set out in the Unofficial English Translation.

29.2 This baseline figure may then be adjusted upwards or downwards to take into consideration the following “aggravating” and “mitigating” factors at the Authority’s discretion:

- (a) the degree or severity of the breach in question;
- (b) any gain (financial or otherwise) accrued by the party perpetuating the breach;
- (c) the extent to which the infringement was perpetrated intentionally or recklessly, including the extent to which senior management knew, or ought to have known, that an infringement was occurring or would occur;
- (d) the extent to which any contravention was caused by a third party, or any relevant circumstances beyond the control of the licensee;
- (e) whether in all the circumstances, appropriate steps had been taken by the perpetuating party to prevent or remedy the breach in question;
- (f) any steps taken by the perpetuating party to mitigate the consequences of the breach; and
- (g) any other factors that, in the Authority’s view, constitute an aggravating or mitigating circumstance.

Consideration then will be given to whether the amount of the fine calculated on the basis of the considerations listed above has a sufficient deterrent effect. Finally, a proportionality review of the final amount of the fine is carried out.

A. Breach of the SIM Card Regulation

Calculation of the baseline amount

30 The Fining Guidelines at PART II B: DETERMINING THE AMOUNT OF A FINE TO BE IMPOSED FOR A VIOLATION OF ARTICLE 35 OF THE TELECOMMUNICATIONS LAW THAT IS NOT ADDRESSED UNDER PART 1 sets out those factors that the Authority will have regard to when deciding upon an appropriate level of base fine for a breach of the terms of the Telecommunications Law and/or a Licence.

31 Paragraph 46 of the Fining Guidelines states that:

“to determine the amount of the fine to be imposed for a given infringement, a baseline figure will first be established by the Authority by reference to a value that is germane to the infringement in question...”

32 Paragraph 46 then goes on to give some examples of how the Authority might seek to establish this value. The Authority does not consider that any of the examples given are relevant in this case, in particular as it has not issued a fine previously for a breach of the SIM Card Regulation.

33 As has been stated above, STC’s conduct represents a material breach of the terms of the Telecommunications Law. STC indicated that 1,113 SIM Cards were affected, which the Authority considers to be a not insignificant number.

34 The Authority notes that the purpose of the SIM Card Regulation is to ensure that licensees are aware of the identity of consumers using their services, in particular in light of any national security issues that might arise. Accordingly, the Authority considers that any failure to comply with the SIM Card Regulation is a serious matter.

35 In view of the severity of these issues, the Authority has decided to set a baseline figure of BD 25,000.

Aggravating factors

36 Having established a baseline figure of BD 25,000, the next step of the process is to consider the aggravating factors set out at Paragraph 47 of the Fining Guidelines. Each of these factors is considered below in relation to STC’s breach of the SIM Card Regulation.

Paragraph 47(a): “the degree of severity of the breach or violation”

37 Self-evidently the breach outlined above is a material breach of STC’s obligations under the Telecommunications Law and the SIM Card Regulation.

38 As such the Authority is minded to have regard to this factor when calculating the level of the fine.

39 The Authority therefore considers that it is appropriate to take into account the seriousness of the breach (the “**Seriousness Factor**”) by applying a factor equating to ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Paragraph 47(b): “the duration of the breach or violation”

40 It is unclear from STC’s response when the upgrade of STC’s systems took place and therefore the length of the period during which the affected SIM Cards could have been used by consumers before the Registration, Verification and Activation processes were completed. However, the Authority notes that STC took swift action to remedy the breach upon receipt of the Authority’s letter of 15 June 2020.

41 The Authority therefore considers that it is not necessary to apply a duration factor in this case.

Paragraph 47 (c): “whether the Licensed Operator has a history of infringement (recidivism may lead to significantly increased penalties) during the previous ten years”

42 STC is subject to a previous Article 35 Order (Order No. 2 of 2013).

43 As such STC has a history of infringement and the Authority therefore considers that it is appropriate to apply a repetition factor (the “**Repetition Factor**”) of ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Paragraph 47 (d): “the extent to which the infringement was perpetrated intentionally or recklessly, including the extent to which senior management knew, or ought to have known that an infringement was occurring or would occur”

44 STC has indicated that the breach was caused by an unintentional and accidental technical issue. There is, therefore, no indication that the breach was perpetrated intentionally or recklessly, or that senior management knew of the breach. The Authority also notes that, when the matter was drawn to the attention of senior management by means of the Authority’s letter of 15 June 2020, STC took prompt action to resolve the issue.

45 The Authority therefore considers it is not necessary to apply any adjustment for this factor.

Paragraph 47 (e): “any other factor that in the Authority’s view constitutes an aggravating circumstance”

- 46 The Authority does not consider that any other aggravating factors are relevant in this case.

Conclusion

- 47 In light of these aggravating factors, the Authority has determined that the baseline figure of BD 25,000 should be increased in the percentages indicated above to an overall fine of BD 30,000.

Mitigating factors

- 48 The next step in the process is to consider whether there are any mitigating factors that should be taken into account. Having had regard to the mitigating factors set out at Paragraph 48 of the Fining Guidelines, the Authority notes that STC took timely and effective steps to remedy the breach once it became aware of it. Accordingly, the Authority considers that it is appropriate to apply a reduction of 10% to the baseline figure in this case, so that the overall fine is BD 27,500.

Need to ensure deterrence

- 49 The Authority’s fining practice under Article 35 of the Telecommunications Law and the Fining Guidelines acknowledges the importance of deterrence when determining the amount of a financial penalty.
- 50 The Authority considers that the amount of the fine imposed on STC for its breach of the SIM Card Regulation, set out above should act as a sufficient deterrent against:
- 50.1 any further breaches by STC of the SIM Card Regulation (specific deterrence); and
- 50.2 any material breach of the SIM Card Regulation by other licensed operators, specifically with regards to ensuring that the Registration, Verification and Activation processes are complied with (general deterrence).
- 51 The Authority does not, therefore, consider that there is any need in this case to make any adjustments for deterrence.

Proportionality

- 52 The Authority considers that the payment by STC of a fine of BD 27,500 is proportionate, considering all the circumstances of this case.

Final amount of financial penalty

- 53 Having considered the factors listed above, and any other circumstances relevant to the particular case under consideration, the Authority has determined an appropriate and proportionate fine.
- 54 The Authority notes that there is no maximum fine defined in Article 35 of the Telecommunications Law. Without prejudice to its right to impose any fine under Article 35 that it considers appropriate and proportionate, the Authority believes that a fine in the sum of BD 27,500 is appropriate and proportionate in this case.
- 55 In coming to this decision the Authority has had regard to the fact that failure to comply with the requirements of the SIM Card Regulation is a serious matter in light of the national security issues that might arise.

B. Breach of the Lawful Access Regulation

Calculation of the baseline amount

- 56 Having regard to Paragraph 46 of the Fining Guidelines, the Authority considers that STC's breach of the Lawful Access Regulation is comparable to STC's breach of the SIM Card Regulation described above as both breaches give rise to national security issues.
- 57 As with that breach, it is clear that the failure of STC to submit a Lawful Access Capability Plan is a material breach of a Regulation (in this case the Lawful Access Regulation) and the Telecommunications Law, in particular in light of the national security issues that might arise.
- 58 In view of the severity of these issues and in light of the previous baseline figure applied in relation to STC's breach of the SIM Card Regulation, the Authority has decided to set a baseline figure of BD 25,000.

Aggravating factors

59 Having established a baseline figure of BD 25,000, the next step of the process is to consider the aggravating factors set out at Paragraph 47 of the Fining Guidelines. Each of these factors is considered below in relation to STC's breach of the Lawful Access Regulation.

Paragraph 47(a): "the degree of severity of the breach or violation"

60 Self-evidently the breach outlined above is a material breach of STC's obligations under the Telecommunications Law and the Lawful Access Regulation. The Authority also notes that submission of a Lawful Access Capability Plan forms an important part of a Licensee's obligations regarding national security.

61 As such the Authority is minded to have regard to this factor when calculating the level of the fine.

62 The Authority therefore considers that it is appropriate to take into account the seriousness of the breach (the "**Seriousness Factor**") by applying a factor equating to ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Paragraph 47(b): "the duration of the breach or violation"

63 The breach is not only serious, but is ongoing.

64 The Authority therefore considers that it is appropriate to apply a duration factor (the "**Duration Factor**") of ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Paragraph 47(c): "whether the Licensed Operator has a history of infringement (recidivism may lead to significantly increased penalties) during the previous ten years"

65 STC has been subject to a previous Article 35 Order (Order No. 2 of 2013).

66 As such STC has a history of infringement and the Authority therefore considers that it is appropriate to apply a repetition factor (the "**Repetition Factor**") of ten percent (10%) of the baseline figure, which should be added to the baseline figure.

Paragraph 47 (d): “the extent to which the infringement was perpetrated intentionally or recklessly, including the extent to which senior management knew, or ought to have known that an infringement was occurring or would occur”

67 STC is aware of its obligations under the Lawful Access Regulation and the importance of complying with such obligations, particularly where they relate to national security matters. However, it has failed to do so.

68 The Authority considers that it is a responsibility of STC’s senior management to ensure that obligations of this kind are fully respected.

69 The Authority therefore considers that a senior management factor (the “**Management Factor**”) of twenty percent (20%) of the baseline figure should be added to the baseline figure.

Paragraph 47 (e): “any other factor that in the Authority’s view constitutes an aggravating circumstance”

70 The Authority considers that the aggravating factors referred to above are sufficient and that no other aggravating factor is relevant in this case.

Conclusion

71 In light of these significant aggravating factors, the Authority has determined that the baseline figure of BD 25,000 should be increased in the percentages indicated above to an overall fine of BD 37,500.

Mitigating factors

72 The next step in the process is to consider whether there are any mitigating factors that should be taken into account. At this stage the Authority does not consider that any of the mitigating factors set out at Paragraph 48 of the Fining Guidelines are relevant.

Need to ensure deterrence

73 The Authority’s fining practice under Article 35 of the Telecommunications Law and the Fining Guidelines acknowledge the importance of deterrence when determining the amount of a financial penalty.

74 The Authority considers that the amount of the fine imposed on STC for the breach set out above should act as a sufficient deterrent against:

74.1 any further breaches by STC of the Lawful Access Regulation; and

74.2 any material breach of the Lawful Access Regulation by other licensed operators, specifically with regards to the submission of a Lawful Access Capability Plan (general deterrence).

75 The Authority does not, therefore, consider that there is any need in this case to make any adjustments for deterrence.

Proportionality

76 The Authority considers that the payment by STC of a fine of BD 37,500 is proportionate, considering all the circumstances of this case.

Final amount of financial penalty

77 Having considered the factors listed above, and any other circumstances relevant to the particular case under consideration, the Authority has determined an appropriate and proportionate fine.

78 The Authority notes that there is no maximum fine defined in Article 35 of the Telecommunications Law. Without prejudice to its right to impose any fine under Article 35 that it considers appropriate and proportionate, the Authority believes that a fine in the sum of BD 37,500 is appropriate and proportionate in this case.

79 In coming to this decision the Authority has had regard to the fact that the provision of a Lawful Access Capability Plan is an important part of a Licensee's national security obligations.

Variable Fine for each day of Delay

80 The Authority notes that STC's failure to comply with its obligations is ongoing and that STC has not provided any reasons for this ongoing breach of the Lawful Access Regulation.

- 81 In view of the ongoing nature of STC's breach, in the event that STC fails to comply with Article 2 of this Order, the Authority considers it is reasonable and proportionate for STC to be subject to a daily fine of BHD 100 for each day of delay.

Final provisions

- 82 Issuance of this Order does not prejudice the Authority's right to:
- (i) expand the scope of its investigations into these matters;
 - (ii) issue further orders relating to other breaches arising out of the same sets of facts; and
 - (iii) find, develop or introduce new evidence relating to the alleged breaches described herein.