A public consultation paper issued by

the Telecommunications Regulatory Authority of the Kingdom of Bahrain

**Amendments to the Consumer Protection Regulation**

14 November 2021

Ref: CAD/21/11/04/04

The address for responses to this document is:

Consumer Affairs Department
Telecommunications Regulatory Authority ("The Authority")
PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the Legal Affairs Department’s email address at ConsumerAffairs@tra.org.bh

The deadline for responses is 4 pm on 14 December 2021
Instructions for submitting a response

The Telecommunications Regulatory Authority (the “Authority”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than 4pm on 14 December 2021.

Responses to this document should be sent to:

Consumer Affairs Department Telecommunications Regulatory Authority
P.O. Box 10353
Manama, Kingdom of Bahrain
Email address: ConsumerAffairs@tra.org.bh

Responses should include:

- the name of the company/institution/association etc;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and e-mail address); and
- in the case of responses from individual consumers, name and contact details.

The Authority expects respondents to provide comments in response to each of the questions set out in this document. The Authority invites respondents to substantiate their responses, wherever possible, by providing factual evidence to support their responses.

All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law, Licences or any other legal / regulatory instruments which respondents are relying upon.

In the interest of transparency, the Authority will make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate requests for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.¹

Respondents are required to clearly mark any information included in their submission which is considered confidential. Where such confidential information is included respondents are required to provide both a confidential and non-confidential version of their submission. If a submission is

¹ The Authority, “A Guidance Paper issued by the Telecommunications Regulatory Authority on its treatment of Confidential and Non-Confidential Information: Guidance Paper No.2 of 2007, 10 September 2007
marked confidential in its entirety, reasons for this should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

Capitalized terms used throughout this document shall have the same meaning attributed to them by the Consumer Protection (Telecommunications Services) Regulation or the Telecommunications Law (as applicable).

SECTION 1

Status of this consultation document

1. This consultation document is issued pursuant to the Position Paper on "How TRA Consults" issued by the Authority on 17 October 2017.

2. The information contained in this document is intended to provide a background on proposed amendments to the Consumer Protection (Telecommunications Services) Regulation dated 4 December 2017 (the "Regulation") that are currently being considered by the Authority. Interested parties should not take any actions in reliance on the information or proposals contained in this document. Any views set out in this document should be considered as indicative and will be subject to further consideration following the receipt of comments from interested parties.

3. This consultation document does not represent a decision of the Authority. The issues discussed in this document remain open to consideration and should not be construed as indicating that the Authority has formed any final opinion or decision on the proposed amendments to the Regulation.

SECTION 2

Background Information and Proposed Amendments

Pursuant to Article 3(b)(1) of the Telecommunications Law of the Kingdom of Bahrain (hereinafter referred to as the "Law") the Authority must carry out its duties in the manner best calculated to, amongst other things, protect the interests of Consumers and Users in respect of the provision of service, the quality of service and the protection of personal particulars and privacy of services. Article 3(c)(18) of the Law also requires the Authority to exercise all powers and take all actions as may be reasonably necessary to give effect to the provisions of the Law.

The Regulation came into force on 4 December 2017 with the aim of harmonising the rules pertaining to Consumer protection across the telecommunications industry by preventing business practices that are unfair to Consumers. Since the Regulation's publication, the Authority has identified a number of prevailing concerns which are not currently addressed by the Regulation or require further detail in order to ensure the provisions of the Regulation are effective in achieving its aim. The proposed amendments to the Regulation are intended to ensure the Kingdom has a comprehensive, balanced and future-proof framework to secure Consumers of digital communications services.

The following provides a brief summary of the types of issues that Consumers have continued to experience since the publication of the Regulation and provides a reference to where the Authority has sought to address each of these issues in the proposed amendments to the Regulation:
2.1 Obligations on Advertisers and the use of speed claims

The Authority has observed that speed claims used by Licensed Operators ("Operators") play a significant role in Subscribers choosing a service provider. A significant proportion of the total complaints received by the Authority in relation to quality of service are concerned with Subscribers not receiving the advertised speeds.

The proposed amendments to Article 11 are intended to ensure that Operators can demonstrate (by way of data maintained by the Operator) that their numerical speed claims are based on the actual experience of their customer base (including at peak times). Non-numerical speeds claims can be misleading as Subscribers may interpret terms such as “fast” or “superfast” differently. As such, non-numerical speed claims must be accompanied by a numerical speed claim. Operators must also ensure that Consumers’ expectations are appropriately managed by informing Consumers of any significant factors likely to impact the achievable speeds.

The proposed amendments to Article 21 (formerly Article 20) provide Subscribers with a right to terminate a Service Contract without penalty if the actual speeds experienced by a Subscriber fall below the Minimum Guaranteed Speed (provided by the Operator as part of the Service Contract) on a daily basis for at least three consecutive days and the Operator fails to resolve the issue within the Target Resolution Time set out in the Code of Practice for the Handling of Consumer Complaints Determination Paper.

Additional amendments to the general obligations on Advertisers have been proposed in Article 6 to ensure advertisements that refer to additional terms and conditions identify where such terms and conditions may be found. Advertisements must also make clear that they are advertisements and that they are made on behalf of the advertiser, so that the purpose of the advertisement is clearly understood by consumers. Proposed amendments to Article 15 reference the need for Advertisers to ensure compliance with all the Kingdom's applicable laws in respect of advertising to consumers. Operators will also be under an obligation to record Direct Contact Advertisements as part of records maintained in accordance with the new Article 17(9). This is to ensure Operators have appropriate records in the event of complaints from Subscribers in respect of Direct Contact Advertisements.

2.2 Early Termination Charges

The Authority has observed Operators often include clauses in their Service Contracts that penalise early termination of the Service Contract, and such penalty charges are sometimes exaggeratedly high and hinder Subscribers from switching providers.

The proposed amendments to Article 18(1) of the Regulation are intended to ensure Operators cannot impose Early Termination Charges that exceed 50% of the outstanding charges that would have been payable by the Subscriber for the remainder of the Minimum Service Period (provided that the Operators shall also be entitled to recover from the Subscribers any amount that was payable prior to the date of termination). We understand Operators provide for a range of Early Termination Charges which vary by product or service. The intention of the proposed amendments is to standardise the Early Termination Charges which may be payable by Consumers in a manner which does not unduly penalise Consumers.

The new Article 20 also provides that Subscribers will be entitled to terminate a Service Contract without incurring Early Termination Charges if the Subscriber can justify within the “Cooling Off Period” (at least 14 days from commencement of the Service Contract) that it has been mis-sold the product/service or that the product/service does not comply
with expectations reasonably based on the representations made by the Operator, and
the issue has been reported to the Operator and has not been resolved by the Operator
within a period equal to the Cooling Off Period following notification from the Subscriber.

2.3 Contract termination

The Authority has observed that Operators sometimes make it more difficult to terminate
a Service Contract than it is to enter the Service Contract, sometimes requiring physical
presence in-branch to do so.

The proposed amendments to Article 19(8) – (10) provide that Operators must ensure a
Subscriber can terminate a Service Contract by: (i) the use of a cancellation form
(substantially in the same form attached to the Regulation as Annex 2); or (ii) by providing
any other clear statement to the Operator of a Subscriber's decision to terminate the
Service Contract. An Operator must also ensure the methods available to terminate a
Service Contract are equally convenient and no more complex than the methods for
ordering that Service. Article 17(2)(t) also ensures that Consumers are expressly informed
of the manner in which a Service Contract may be terminated.

2.4 Unclear terms and conditions and inconsistency in the presentation of offers

The Authority has observed that Operators’ T&Cs sometimes lack the necessary clarity
and Subscribers are sometimes unaware that certain T&Cs exist.

The proposed amendments to Article 17 further develop the list of information that must
be included in all Service Contracts. In addition to the information required under the
current Regulation, Operators would be required to provide details including (among other
things): any minimum services levels as to quality of service (or a statement expressly
stating that no such service levels apply); any credit limits applicable to the service; details
of any Sales Incentives and the applicable terms and conditions; additional details
regarding the limitations or restrictions on the use of the service – Operators will also be
obliged to notify Subscribers when they exceed certain thresholds of volume usage
limitations; rights to terminate the Service Contract; details of Early Termination Fees
(including the mechanism of calculation); etc..

These amendments are designed to ensure the Service Contract includes all pertinent
information relevant to the Applicable Product or Service so that Consumers can make
better, more informed choices.

The amendments also introduce an obligation on Operators to provide Subscribers with a
"Contract Summary" prior to or as soon as possible after entering into a Service Contract.
The Contract Summary summarises the terms which will be of most importance to the
Subscriber and it must be in substantially the same form as that set out in Part A of the
newly included Annex 1 to the Regulation, and in accordance with the guidance as set out
in Part B of Annex 1 and as may be published by the Authority from time to time.

2.5 Notice period for contractual changes

The Authority has observed that Operators on occasion may entice Subscribers with
attractive offers before changing the terms on short notice or without remedy for the
Subscriber.

Article 17 of the Regulation already provides that Operators must allow a Subscriber to
withdraw from a Service Contract without incurring Early Termination Charges in the event
the Operator makes changes which increase the burden on the Subscriber or reduce the
benefit of the Service. However, the prevailing issue seems to arise from Subscribers’ poor awareness of their rights. As such, the proposed amendments ensure Operators are under an express obligation to inform the Subscriber of their right to withdraw from the Service Contract without penalty as part of the Advance Notice given before the contractual changes come into force.

2.6 Billing and Customer receipts

The Authority has observed that Operators sometimes fail to provide receipts to consumers in either hard or electronic copy. When they are provided, they are often only in English. The Authority also wishes to ensure that all bills provided to Subscribers contain sufficient information for the Subscriber to understand the relevance of the bill to the Subscribers' Applicable Product or Service.

The proposed amendments to Article 27 (formerly Article 25) introduce a list of minimum information to be included in each bill, including (among other things): the period to which the bill relates; details of relevant tariffs; discounts or additional charges and the reasons for them; etc.. The proposed amendments also provide a change in emphasis so that detailed bills must be provided unless declined by a Subscriber. All receipts must be provided in both English and Arabic (unless the Subscriber has consented to receive such information in a single language).

2.7 Archiving of offers and records

The Authority has observed that Operators will not always archive their offers online. The fast turnover of offers further compounds the lack of clarity for Subscribers.

The proposed amendments to Article 17 to introduce a requirement to provide Subscribers with a Contract Summary containing key terms in a durable medium are also intended to address this issue as this will provide Subscribers clarity as to the terms of their offer. Proposed amendments to Article 17(9) also require Operators to maintain records about the sales of their services (and any sales incentives).

2.8 Premium rate services

The Authority has observed that the authenticity of evidence provided by Operators to show that a Subscriber has subscribed to a Premium Rate Service is not always verifiable.

The introduction of Article 23 requires Operators to provide Subscribers with certain information via their website at all times and to make Subscribers aware of such information prior to a purchase of a Premium Rate Service. Operators must adopt a two-factor authentication process by requiring that each purchase of a Premium Rate Service requires the Subscriber to physically enter a one-time password to confirm its consent to the purchase. Subscribers should also be able to view and terminate their subscriptions to Premium Rate Services via their online account with the Operator and Subscribers must be informed of this when consenting to the purchase of the Premium Rate Service.
SECTION 3
Consultation Questions

1. Obligations on Advertisers and the use of speed claims:
   (a) Do you agree with the proposed amendments to Article 6? Please explain.
   (b) Do you agree with the proposed amendments to Article 11? Please explain.
   (c) Do you agree with the proposed amendments to Article 15? Please explain.
   (d) Do you agree with the proposed amendments to Article 21 (formerly Article 20)? Please explain.

2. Early Termination Charges:
   (a) Do you agree with maximum threshold at which Early Termination Charges have been set? Please explain.
   (b) Do you agree with the proposals to introduce Article 20 and the minimum duration of the “Cooling Off Period”? Please explain.

3. Contract termination:
   (a) Do you agree with the proposed amendments to Article 19(8) – (10)? Please explain.
   (b) Do you agree with the contents and form of the Model Cancellation Form proposed in Annex 2? Please explain.

4. Unclear terms and conditions and inconsistency in the presentation of offers:
   (a) Do you agree with the proposed amendments to Article 17(2) – (7)? Please explain.
   (b) In particular, do you agree with the introduction of the requirements to provide a Contract Summary and the form and guidance set out in Annex 1 in relation to the Contract Summary? Please explain.

5. Notice period for contractual changes:
   (a) Do you agree with the proposed amendments to Article 17(8)? Please explain.

6. Billing and Customer receipts:
   (a) Do you agree with the proposed amendments to Article 27 (formerly Article 25)? Please explain.

7. Archiving of offers and records:
   (a) Do you agree with the proposed amendments to Article 17(9)? Please explain.

8. Premium rate services:
   (a) Do you agree with the provisions introduced in Article 23? Please explain.