

Draft Position Paper

Legal disclaimer



**The transfer of OLO fibre assets to the Bahrain National
Broadband Network**

Draft Position Paper

**A Consultation Document
issued by
the Telecommunications Regulatory Authority**

18 November 2021

Ref: LAD/1121/107

Request for comments:

The Telecommunications Regulatory Authority invites comments on this consultation document from all interested parties. Comments should be submitted before **4pm on 20 December 2021**.

Responses should be sent to the Authority preferably by e-mail (or by fax or post) to the attention of:

Legal Affairs Directorate

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Telecommunications Regulatory Authority

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Purpose: to set out the Authority' position on how to realise the policy directive set by the Government in NTP5 concerning the treatment of fibre assets currently owned by licensees other than BNET BSC.

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This Consultation is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice. The Telecommunications Regulatory Authority is not bound by it, nor does it necessarily set out the Authority's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Authority. Inappropriate reliance ought not therefore to be placed on the contents of this document.

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Instructions for submitting a response

Instructions for submitting a response

1. The Telecommunications Regulatory Authority (the “**Authority**”) invites comments on this draft Position Paper from all interested parties.
2. The Authority specifically invites comments upon the questions set out within each section of the Paper.
3. Comments should be submitted no later than **4pm on 20 December 2021**.
4. Responses should be sent to the Authority preferably by email (or by fax or post) to the attention of:

Legal Affairs Directorate

LAD@tra.org.bh

cc.MCD@tra.org.bh

Telecommunications Regulatory Authority
P.O. Box 10353, Manama, Kingdom of Bahrain
Fax: +973 1753 2125

5. Responses should include:
 - a. the name of the company/institution/association etc.;
 - b. the name of the principal contact person;
 - c. full contact details (physical address, telephone number, fax number and e-mail address); and
 - d. in the case of responses from individual consumers, name and contact details.
6. The Authority expects respondents to provide a response to the questions raised throughout this consultation document (the consolidated list of questions can be found in the last page of this document). The Authority also invites respondents to substantiate their responses, wherever possible by providing factual evidence to support the responses.
7. In the interest of transparency, the Authority intends to make all submissions received available to the public. The Authority will evaluate a request for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.¹
8. Respondents are required to mark clearly any information included in their submission that is considered confidential. Where such confidential information is included, respondents are required to provide both a confidential and a non-confidential version of their submission. If a part or a whole submission is marked confidential, reasons should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.
9. Once the Authority has received and considered responses to this consultative document, the Authority will issue a final Position Paper on this matter.

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, at http://www.tra.bh/en/pdf/Confidentiality_Guidelines_Final.pdf

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List of acronyms and definitions

Access Seekers	All downstream providers, including Batelco and OLOs
Batelco	Bahrain Telecommunications Company B.S.C
BNET	BNET B.S.C
CCA	Current Cost Accounting
DRC	Depreciated Replacement Cost
ECTC	Equivalence Compliance and Technical Committee
EoI	Equivalence of Input
EoO	Equivalence of Output
ERG	European Regulators Group
Exceptional FAS	Exceptional Facilities Access Service
FFS	Fronthaul Fibre Service
GBV	Gross Book Value
GRC	Gross Replacement Cost
HCA	Historic Cost Accounting
ITU	International Telecommunications Union
MEA	Modern Equivalent Asset
MNO	Mobile Network Operator
NBN	National Broadband Network
NERF	New Telecommunications Economic Regulatory Framework
NRC	Net Replacement Cost
NTP4	Fourth National Telecommunications Plan
NTP5	Fifth National Telecommunications Plan
OLO	Other Licensed Operator
RO	Reference Offer
ROO	Reference Offer Order
TRA, or the Authority	Telecommunications Regulatory Authority of the Kingdom of Bahrain

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1 Introduction and status of this consultation document

10. This draft Paper, issued for consultation, is intended to provide affected stakeholders with clarity over the position the Authority may adopt if it is called upon to use its regulatory powers, as granted to it by the Law, relevant Licences and other Authority Decisions, and/or Determinations and/or Regulations, to intervene in pursuit of the Government's stated policy objective, as first set out in the **NTP4**² and subsequently reaffirmed in the **NTP5**,³ that **BNET** shall be the Kingdom's national provider of fibre based connectivity.⁴
11. This consultation document is issued pursuant to the Position Paper on "How TRA Consults" issued by the Authority on 17 October 2017⁵.
12. 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.
13. This consultation document does not represent a decision by 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.
14. The remainder of this document is structured as follows:
 - a. *Section 2 describes the policy and market context in which this draft Position Paper is prepared;*
 - b. *Section 3 sets out the key principles that should apply to the transfer of relevant assets from OLOs to BNET;*
 - c. *Section 4 describes, in more detail, the Authority's views on the pre-requisites which should be met before asset transfers must take place;*
 - d. *Section 5 sets out a resulting framework for this asset transfer; and*
 - e. *Section 6 considers how the commercial terms of the asset transfer agreements may be negotiated.*

² Resolution No. (29) of the year 2016 Promulgating the Fourth National Telecommunications Plan, The Council of Ministers

³ Resolution No. (17) of the year 2020 Promulgating the Fifth National Telecommunications Plan, The Council of Ministers

⁴ NTP5, paragraph 21a

⁵ <http://www.tra.org.bh/media/document/Position%20Paper%20on%20how%20TRA%20consults1.pdf>

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2 Policy and market context for this Position Paper

15. Over the last three years, the Kingdom's telecommunications sector has undergone significant change, most notably through the creation of BNET as the provider of Bahrain's **NBN**. In this section of the draft Position Paper, the Authority provides an overview of these changes as they relate to the subject matter.

2.1 NTP4 and the establishment of BNET as the single network provider

16. The NTP4, which stated the Government's strategic plan and general policy for the telecommunications sector of the Kingdom of Bahrain for the three year period 2016-19, was issued in May 2016. NTP4 set out, amongst other things, a clear policy for the development of an advanced broadband infrastructure and introduced a number of new objectives for the telecommunications market. Key policies set out in NTP4 included the following:
- a. That ultra-fast broadband products and services will be delivered over a single NBN infrastructure;⁶
 - b. That this single network will be owned by a separate legal entity, which will be legally and functionally separated from the Incumbent Operator (Batelco);⁷
 - c. That the new entity will only provide wholesale products and services, and it will provide these wholesale products and services exclusively to duly licensed operators within the Kingdom of Bahrain;⁸ and
 - d. That the new entity will deliver NBN-based wholesale products and services to the Incumbent Operator's retail business unit(s) and its competitors on an "equivalence of inputs" ("**Eoi**") basis.⁹
17. The policy set out in NTP4 thus represented a fundamental shift in telecommunications policy in the Kingdom, with it moving from its previous policy of promoting infrastructure-based competition in the provision of fixed services, to a policy of promoting service-based competition for fixed services over a single fibre infrastructure. In preparation for this shift, the Authority published, over the course of 2018, a number of guideline documents and position papers, namely:
- a. A report on the New Telecommunications Economic Regulatory Framework ("**NERF**"), published in April 2018;¹⁰
 - b. The Separation of Batelco Guidelines ("**Separation Guidelines**"), published in August 2018;¹¹ and

⁶ NTP4, para. 20

⁷ Ibid.

⁸ Ibid., para. 24 d

⁹ Ibid., para. 24 f

¹⁰ Report on the New Telecommunications Economic Regulatory Framework for the Kingdom of Bahrain, 15 April 2018 (Ref: MCD/02/18/005)

¹¹ Separation of Batelco, Separation Guidelines, 6 August 2018 (Ref: LAD/0818/198)

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- c. The Regime for the Monitoring of Separation of Batelco and NBN Compliance Guidelines (“**Monitoring Guidelines**”), again published in August 2018.¹²
18. In December 2018, the Authority published a consultation on the first draft of the first Reference Offer (“**RO**”) of the Separated Entity (now BNET). In this, the Authority considered, at a high level, the treatment of OLO fibre assets, stating that:
- The implementation of a single network may, in due time, require OLOs to relinquish control of those fibre assets they currently own and control.*
- In determining the appropriate time at which these assets should be decommissioned and / or control relinquished by OLOs, the Authority will take account of the state of the Separated Entity’s service provision and product set. The Authority will have regard to the impact of such process on the Separated Entity and the broader sector.¹³*
19. Further to the above, the Authority awarded to BNET, in June 2019, a Fixed Telecommunications Infrastructure Network Licence. It also, at that time, amended the National Fixed Telecommunications Licences already granted to other providers in the market, including Batelco, to (among other matters, in accordance with a timetable and process to be determined by the Authority, in consultation with the licensee and other stakeholders), migrate the parts of their national fixed telecommunications networks that may be mandated by the Authority, to BNET and/or to decommission such assets.
20. Also in June 2019, the Authority published its first Reference Offer Order (“**ROO**”) to BNET.¹⁴ This Order required BNET to amend its draft RO and offer certain services on mandated terms and conditions to downstream licensees. It also ordered BNET to ensure these services were provided on an EoI basis to all licensees within twenty-four months of the Order coming into effect.¹⁵ Achieving this requires, among other things, for there to be no differentiation in the service levels offered by BNET to Batelco and other licensees, nor any differences in the processes and procedures for ordering such services, reporting faults and so on. This ROO also recognised the likelihood of relevant OLO assets being transferred to BNET in due course.¹⁶
21. Based on this ROO, BNET’s service portfolio consists primarily of active services (save for ‘Exceptional Facility Access Services’ and the Fronthaul Fibre Service, which may consist of passive services),¹⁷ with these active services designed to enable OLOs to offer retail

¹² Regime for Monitoring of Separation of Batelco and NBN Compliance: Compliance Monitoring Regime, 6 August 2018 (Ref: LAD/0818/199)

¹³ A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “**Authority**”) on the draft Reference Offer of the Separated Entity (the “**RO**”), 20 December 2018 (Ref: LAD/1218/347)

¹⁴ An Order issued by the Telecommunications Regulatory Authority on the Reference Offer of NBNetCo BSC(c), 03 June 2019 (Ref: LAD 0619 178).

¹⁵ Ibid, Paragraph 6 of the Order. The Authority notes that BNET was required to ensure some of its services were required to be offered on an EoI basis in a shorter timeframe.

¹⁶ See, for example, Figure 3 of Annex D of the Order, on the BNET price terms, which states, “*The Authority will, in due course, consult with all stakeholders on the decommissioning of OLO fibre assets.*”.

¹⁷ Exceptional Facilities Access Services are services offered to OLOs on an exceptional basis to cater for the needs of Bahrain’s Strategic Partners, following a process defined in the RO.

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broadband and data connectivity services, and to provide own-network connectivity (e.g., cell site backhaul).

22. Recognising the need for all parties to work together to ensure the success of this sector reform in the interests of all parties and end users, the Authority established, in November 2019, the Equivalence Compliance and Technical Committee (“ECTC”), which had been foreshadowed in BNET’s licence provisions previously published by the Authority. Under its terms of reference, the ECTC, among other matters, monitors BNET’s compliance with its obligations (including its licence obligations), provides a forum for other Licensees to raise concerns about BNET’s performance and facilitates the preparation of any new product or service request.¹⁸

2.2 Government policy as set out in NTP5

23. The Kingdom’s **NTP5** was published in October 2020. It covers the Government’s strategic plan and general policy for the telecommunications sector of the Kingdom of Bahrain for the three-year period 2020-23.
24. Among other measures, NTP5 reaffirmed the Government’s policy objective that there should be a single national fibre broadband network in the Kingdom and that:

The Government confirms that BNET shall be the Kingdom’s national provider of fibre based fixed connectivity, using “future proof” and secure network architecture and technologies to offer wholesale network services over the national broadband network to other licensees.¹⁹

25. Furthermore, paragraph 21j of NTP5 requires the Authority to consider the treatment of fibre assets held by other licensees in order to meet the single network objective. That is:

By August 2021, the Authority shall confirm whether BNET services are provided on an equivalent basis and meet the reasonable needs of all licensees. If the Authority so confirms this, it shall work, in consultation with other relevant stakeholders, to determine the most appropriate treatment of OLO fibre assets to meet the single network objective, including due consideration of decommissioning of OLO fibre assets as a possible course of action.

2.3 The transfer of Batelco assets to BNET and next steps in the creation of the single fibre network

26. Since the creation of BNET, the Authority has been working closely with stakeholders across the sector to ensure that the Government’s vision for the sector is realised. This means ensuring that BNET is in a position to both meet its obligations regarding the deployment and operation of its fibre network and that it supports the emergence of effective and sustainable competition downstream, to the benefit of end-users.
27. One critical aspect of this is that the relevant assets BNET uses to provide its services must be owned and controlled by BNET. To that end, the Authority has guided a process whereby

¹⁸ Equivalence Compliance and Technical Committee Terms of Reference, Consultation Report, 07 November 2019 (Ref LAD: 1119 307).

¹⁹ Ibid, paragraph 21a

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the fibre and associated assets owned by Batelco have been transferred to BNET. The various agreements underpinning this process were executed in June 2021. Further details of this separation process, including the Authority's role therein, have been published separately by the Authority.²⁰

28. Batelco assets have now been transferred to BNET.²¹ Therefore, once the Authority is satisfied that all other necessary pre-conditions, as set out in Section 4 of this Position Paper, have been met, it will be necessary for those fibre assets owned, operated and/or controlled by other licensees in the Kingdom to be transferred to BNET.
29. The purpose of this Position Paper is to set out the Authority's views on how this transfer should take place.

Q1. Do you agree with the Authority's summary of the policy and market context to the asset transfer programme?

²⁰ Separation of Batelco: A Report on Asset Allocation, Asset Valuation, Asset Transfer, Asset Lease Agreements, and Transitional Services Agreements, 23 August 2021 (ref: MCD/08/21/013)

²¹ The Authority is currently conducting due diligence on the execution of asset transfer.

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3 Key principles governing the transfer of assets to BNET

30. There are a number of principles which the Authority believes should guide the transfer of relevant OLO assets to BNET. These are described in this section. In the remainder of this document these principles are then used by the Authority in setting out its views on how the transfer should take place.
31. In summary, these principles are as follows:
- a. That, in line with Government Policy as set out above, there shall be a single fibre telecommunications network in the Kingdom;
 - b. That those OLOs who are required to transfer relevant assets to BNET shall have the right to appropriate compensation;
 - c. That BNET, as the party who shall benefit from the transfer of assets, shall be the party that should pay the appropriate compensation; and
 - d. That this transfer should be completed as soon as is reasonably practical after the pre-requisites are met.

3.1 The transfer of fibre assets to achieve the single network objective

32. As set out above in Section 2.2, NTP5 clearly rearticulated that the policy of the Kingdom's Government, first set out in NTP4, is for there to be a single national provider of fixed fibre network connectivity in the Kingdom.
33. Allowing OLOs to continue to operate their own fibre networks, either for the purpose of providing retail services directly to end-customers, or for own-network connectivity, would not, in the Authority's view, be consistent with this policy objective or the overall objectives of Article 40(bis)(a) of the Law²².
34. Under Article 3(e) of the Law, the Authority must act in a manner that is consistent with the objectives of the National Plan for Telecommunications. Given this, the Authority considers it is reasonable to require the OLOs to transfer certain categories of their assets to BNET.
35. In this regard, the Authority considers that the following categories of OLO assets could be considered as "relevant" in this matter:
- a. All fibre cables (including associated joints) from the cables' point of termination on either an optical distribution frame (ODF), patch panel or a fibre network termination point (NTP);
 - b. Any duct (including sub duct) and associated civil engineering (including footway and street boxes) owned by an OLO that supports the fibre cable referred to above, and
 - c. Any poles or aerial devices and associated civil engineering owned by an OLO that supports the fibre cable referred to above.

²² Which states that "Unless the Authority determines otherwise..." no Licensee other than BNET shall "deploy or maintain a fixed telecommunications infrastructure in the Kingdom, including in relation to the deployment and ownership of ducts and fibre optics..."

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36. It is the Authority's understanding that any fibre deployed by OLOs to support the provision of BNET's FFS will have been transferred to BNET upon the completion of the provisioning of the relevant FFS and therefore that fibre will not need to be included as part of the asset transfer process. However, in the case where OLO's fibre for FFS has not been transferred to BNET then that fibre should form part of this process.

3.2 The right to compensation

37. As set out above, in the Authority's view the implementation of Government Policy requires relevant OLO assets to be transferred to BNET.²³
38. The Authority, in delivering and implementing the Government Policy, is mindful of its obligations under Article 3(a) of the Law and its powers under, inter alia, Articles 3(b), 3(c)(1), 3(c)(2), 3(c)(4), 3(c)(5), 3(c)(18), 3(e), 31, 35 and 65 of the Law.
39. The Authority believes that OLOs should be appropriately compensated for this requirement. This has also been reflected in the transfer of assets from Batelco to BNET, which included a detailed exercise to determine a reasonable valuation for those assets. In the interest of the equitable treatment of Licensees, the Authority is minded to recommend replicating, whenever appropriate and recognising the potential differences between the transfer of Batelco assets and the transfer of OLO assets, this process for the OLO assets also²⁴. More details on the Authority's views for how the value of transferred assets could be considered are set out below in Section 6.
40. The Authority has further concluded that in furtherance of both Government Policy and its obligations under Article 3(a) of the Law to "... carry out its duties and exercise its powers efficiently, effectively, regularly, reasonably and in a non-discriminatory and transparent manner..." that compensation to OLOs for completing the asset transfer must be fair and reasonable and neither the process of transfer nor the compensation payable should deviate from the principles of the equitable treatment of licensees enshrined in the Law.
41. As such the Authority, in developing its draft Position Paper, has had wide regard to the pre-conditional nature of the asset transfer taking place, and the fairest and most reasonable process for the transfer to commence and be completed. These matters are considered in further detail in Sections 4 and 4, below.

3.3 Who should pay that compensation

42. As set out above, the Authority believes that OLOs should receive compensation for transferring relevant assets to BNET.

²³ While the Authority recognises that an OLO could choose to decommission its relevant assets rather than transfer them to BNET, in the remainder of this paper the Authority refers, for ease, to situations where an OLO seeks to transfer those assets. It is also the case that, following the asset transfer, BNET could choose to decommission some of the assets it has inherited. In the latter instance, this would be a commercial decision for BNET and goes beyond the scope of this paper.

²⁴ The Authority is also aware that some details of the asset transfer between Batelco and BNET may not be replicated in the asset transfers between OLOs and BNET. This is because of the previous vertical integration between Batelco and BNET.

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43. As BNET shall be the beneficiary of the transfer, the Authority considers that this compensation should be paid by BNET. This is because acquiring relevant assets from the OLOs will benefit BNET in the following ways:
- a. It will, in some cases (such as in relation to developments such as Amwaj Island, where BNET currently does not have infrastructure) increase the reach of BNET infrastructure, meaning BNET will be able to offer services in areas where it previously may not have been able to, without deploying new infrastructure in those places;
 - b. It can increase BNET's addressable market, as OLOs will no longer be able to self-supply certain services and so will, instead, be reliant on access to BNET services.²⁵

Given this, the Authority is comfortable that the compensation due to OLOs for transferring relevant assets to BNET should be provided by BNET, reflecting the situation that would arise in the case of a normal commercially-led transaction. Furthermore, the Authority also notes that BNET has compensated Batelco for the transfer of Batelco assets to BNET, with this compensation reflecting the fair value of the assets transferred. In order to achieve a fair and equitable outcome as between licensees, OLOs must therefore also, in the Authority's view, be appropriately compensated by BNET, taking into account potential relevant differences between the Batelco asset transfer and the OLO asset transfers. It should, however, be for the parties to each transaction to agree the relevant level of compensation, subject to the parties receiving any necessary approvals from the Authority or other bodies in the Kingdom, as may be appropriate.

44. Any costs which BNET reasonably incurs in providing this compensation to OLOs will then be taken into account by the Authority in its reviews of the price terms of BNET's RO.²⁶ This will provide BNET with the opportunity to recover such costs, assuming they have been reasonably incurred (i.e., that these costs reflected a fair and reasonable payment for the assets under consideration).

3.4 The timeframe for carrying out the transfer

45. NTP5 does not provide a timeframe in which the asset transfer must be complete. Rather, it states only that once the Authority has confirmed that BNET services are provided on an equivalent basis and meet the reasonable needs of all licensees, it shall work, in consultation with other relevant stakeholders, to determine the most appropriate treatment of OLO fibre assets to meet the single network objective.
46. Nevertheless, the Authority considers it is important that this matter is resolved expeditiously. This will then allow all parties to plan appropriately, without the uncertainty regarding the treatment of these assets. For example, it will allow BNET to plan the make-up and/or scope of its network, taking into account the assets it shall receive in the transfer, thus enabling it to focus its investment plans accordingly. It will also allow the OLOs to move

²⁵ The Authority is also aware that this could lead to some duplication of fibres on certain routes, meaning that some fibres may not be used efficiently. However, the Authority does not consider that this would affect the overall balance of benefits from the asset transfer.

²⁶ For the avoidance of doubt, the Authority will not allow BNET to include, in its future cost base, any compensation payments which it believes are inflated beyond a reasonable level. This is to prevent such costs being passed on to consumers.

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forward under revised business models and to invest as appropriate, without concern for how such investment could impact the asset transfer. Thirdly, it should also ensure that all downstream operators (i.e., Batelco and OLOs) are treated fairly, in terms of their ownership of relevant fibre assets.

47. The Authority is, however, also aware that any transfer is likely to be time consuming. Reaching a commercial agreement is likely to require a number of steps, which could include detailed survey and audit work to validate the relevant assets. Further, once a commercial agreement is reached, implementing it will also require various actions to be undertaken, as OLOs will need to transition to a position where they are wholly reliant on BNET's RO product set.
48. For example, in the case of Batelco, completing the transfer of its assets to BNET required the parties to complete a number of steps, including:
 - a. Agreeing the final asset allocation plan in order to address the requirements of NTP4, the Separation Guidelines, BNET's licence and the ROO order; and
 - b. Determining and agreeing an appropriate valuation for these assets, including an independent assessment of this valuation.
49. The Authority proposes that the transfer of OLO assets to BNET should be completed as soon as possible after the pre-requisites set out elsewhere in this paper have been met, with parties reaching agreement on the terms of the transfers no later than three months after the publication of the final Position Paper. To that end, it strongly encourages the parties to begin, if they have not already, to develop their positions on this matter, including conducting any necessary survey and valuation work, for example. In the next section the Authority sets out its views on the pre-requisites which it considers must be in place first before these asset transfers are then completed.

Q2. Do you support the Authority's proposed view on the categories of assets which should be transferred by the OLOs?

Q3. Do you support the Authority's proposed view that BNET should compensate each OLO for the transfer of assets?

Q4. Do you support the Authority's proposed view that the transfer of OLO assets to BNET should be completed as soon as possible after the pre-requisites set out in this paper have been met, with agreements on the terms of transfer reached within three months of the publication of this paper? Please provide justifications to your answer.

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4 Pre-requisites for the asset transfers

50. It is essential that the transfer of assets does not diminish the ability of OLOs to offer compelling services downstream and to meet the increasingly complex demands of end-users. It is also essential that such transfer does not hinder the emergence of more effective competition in downstream (retail) markets for fixed broadband, data connectivity and mobile services.
51. The Authority considers that these principles require, in turn, OLOs to be as equally well placed as Batelco to meet the demands of end-users: in terms of the range and quality of services they are able to offer and also in respect of the ease with which they are able to access BNET services. It also requires BNET services to be offered at a sufficient quality to allow OLOs to rely on these for providing downstream retail products, and for BNET's service portfolio to be broad enough to allow OLOs to meet the demands of downstream users.
52. In this section the Authority considers these pre-requisites. It sets out its views on the link between these factors and the asset transfer process and how, if called upon, it will judge whether each pre-requisite has been met.

4.1 The need for BNET services to be provided on an equivalent basis to Batelco and OLOs

53. Ensuring that services provided by a dominant upstream operator are provided on an equivalent basis to all downstream providers (in the context of Bahrain, Batelco and OLOs) is a central tenet of regulation in the telecommunications sector. Indeed, reducing the incentives and ability for an upstream operator to discriminate, by offering access on different terms, is a key driver of network separation, including of the legal separation of Batelco that has taken place in Bahrain.
54. Equivalence is typically defined in one of two ways: Equivalence of Output (“**EOO**”) and Eol, whereby Eol is a stricter form of equivalence, governing not only the final service offered by the upstream entity, but also the processes and procedures supporting service delivery. That is, under Eol, all access seekers (i.e., Batelco and OLOs) must have access to the same systems to order services from BNET, must follow the same processes for ordering, fault reporting and so on, and must receive, from BNET, the same services on the same timeframe.
55. As set out in Section 2 of this Paper, BNET was required, under the terms of the ROO issued to it in June 2019, to ensure all its services were provided on an Eol basis within twenty-four months from the effective date.
56. To monitor BNET's progress towards complying with its obligation to provide services on an Eol basis, the Authority established the ECTC. It has been already also launched an audit of BNET's information systems and the separation of its information technology systems, following which it will be in a position to judge whether this condition has been met.
57. The Authority considers it is critical that Eol is in place before OLOs are required to transfer their assets to BNET. Currently, some OLOs are able, to some extent, to rely on their own fibre assets (where present), thus giving them the ability to self-supply services where they are unable to access BNET services on terms and conditions identical to Batelco. This, in

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turn, supports the OLOs' ability to compete in retail markets with Batelco.²⁷ If this opportunity is taken away from OLOs before they have equality of access to BNET's network, their ability to compete with Batelco is likely to be reduced. This would not be for the benefit of end-users in Bahrain, while it would also run counter to the Authority's duty, under the Law, to promote effective and fair competition.

58. The Authority also notes that this principle is reflected in NTP5. That is, as set out above in Section 2.2, NTP5 only requires the Authority to consider the future of OLO assets if it has already confirmed that BNET services are provided on an Eol basis to all OLOs.
59. Therefore, consistent with the position in NTP5 and with the principles described above, the Authority does not intend to require OLOs to complete the transfer of their assets to BNET before it has confirmed that all BNET services, including possible new services which BNET may be required to add to its network as part of the forthcoming update of its RO, are provided on an Eol basis. For the avoidance of doubt, however, OLOs and BNET must still enter negotiations regarding the future transfer of assets, with these negotiations to be completed as per the timetable set out in this draft paper.

BNET's service portfolio must be provided at a sufficient level of quality and reliability

60. Prior to the asset transfer, OLOs are still able to rely, in the event of network outages, on their own network fibre. Following the asset transfer, this will no longer be possible. This means that OLOs will be more reliant on BNET's infrastructure, both to ensure their own network connectivity and when offering services to retail customers based directly on BNET wholesale services.
61. The Authority therefore considers that a second necessary pre-requisite for the asset transfer is that BNET services are provided at a sufficient level of quality, including with sufficient redundancy, to enable OLOs to rely wholly on BNET infrastructure without any risk to their ability to offer high quality retail services. For example, and without limitation, this requires BNET services to have very high levels of availability, with any network downtime being limited and / or resolved through redundant routing. In other words, it is not sufficient only for BNET services to be provided on an Eol basis to all access seekers. In order to provide services to their own customers, OLOs must also be able to proactively monitor the end-to-end performance of the network and services. That is, OLOs should be provided with the ability to proactively monitor the network services supplied by BNET to the OLOs.
62. The Authority monitors closely BNET's performance in these regards. For example, the ROO issued to BNET includes key performance indicators ("KPIs") that BNET must meet in the delivery of all its services. BNET is also required to report on its performance against such parameters. The Authority considers, therefore, that having BNET meet, consistently, these targets should be a pre-requisite for it requiring the asset transfer to take place. That is because these targets have been set as the minimum acceptable quality of service levels, consistent with access seekers being able to offer compelling retail services. Were BNET

²⁷ On its own, the Authority recognises that, in the absence of Eol, having access to their own fibre is unlikely to be sufficient to enable the OLOs to compete on an equal footing with Batelco. This is because the former Batelco fibre network has a much broader reach than any of the OLOs' fibre networks.

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service performance to fall below these levels with access seekers not having alternative sources of connectivity, the quality of services offered to retail customers would decline.²⁸

63. Based on information provided to the Authority through the process described in the preceding paragraph, the Authority is aware that BNET, in some instances, has not met the performance standards set in the ROO. For example, the Authority is aware of a number of BNET network outages which, had OLOs not had access to alternative routes (redundant to BNET), could have led to significant downtimes for some of the Kingdom's mobile networks. Going forward, it is clear that any consistent failure by BNET to meet its quality of service obligations would lead to a lack of confidence for OLOs investing in emerging network services and causing direct harm to end users in the Kingdom, including both corporate and residential users. This should be resolved, therefore, prior to the asset transfers being enforced.

4.2 BNET's service portfolio must allow OLOs to meet the current and expected future demands of all retail customers

64. The Authority's third pre-requisite for requiring the transfer of OLO assets to BNET relates to the breadth of BNET's service portfolio and ensuring this is also fit for purpose (while also being provided on an EoI basis and at a sufficient quality).
65. This is because the breadth of BNET's service portfolio must be sufficient to:
- a. enable OLOs to offer a retail service portfolio to meet the reasonable, forward-looking demands of end-users, including key corporate and strategic customers in the Kingdom.
 - b. enable OLOs to use BNET services for their own network connectivity, such that they are in a position to offer retail services in line with those seen in other advanced telecommunications markets. For example, MNOs in the Kingdom must have access to backhaul services that enable them to provide high speed, low latency 5G mobile services.
66. As part of its forthcoming review of BNET's second RO, the Authority will consider carefully, taking into account relevant economic, regulatory and technical factors, including the impact of the asset transfer, whether BNET's current service portfolio is fit for purpose, given the demands faced by access seekers in downstream retail markets. If it concludes that it is not, the Authority will consider what other products must be added to the RO, to ensure it then meets this criterion. In the case where it is identified that the OLO asset transfer would create a 'gap' in the RO product set (including the features and functions of those products) offered by BNET then the Authority could conclude that BNET should be obliged to include those other products in its RO before the asset transfer is enacted. This is to make sure that OLOs are no worse off after the asset transfer, than before, in terms of their ability to offer compelling retail services and manage their own connectivity.

²⁸ This is the case whether or not EoI has also been achieved. However, if EoI has also not been achieved, such that Batelco is able to benefit from a higher quality of BNET services than OLOs, the detrimental impact of not meeting this second pre-requisite will be greater.

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Q5. Do you share the Authority's views regarding the necessary pre-requisites that should be in place before it requires OLO assets to be transferred to BNET?

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5 The framework for the asset transfers

67. Taking into account the principles and pre-requisites set out in the preceding sections, the Authority has also considered how, in practice, the asset transfer should be conducted. That is, it has considered the relative merits of supporting the licensees to negotiate, between them, the terms and conditions of these asset transfers, as opposed to the Authority imposing immediately on the parties, the terms and conditions of a transfer.
68. For the reasons set out in this section, the Authority's initial view is that the parties should seek to agree, commercially, the terms of the asset transfers. That is, BNET should engage individually with each OLO with a view to agreeing each transfer, with all parties taking utmost account of the principles set out in this Position Paper and of their legal duties, as licensees in the Kingdom's telecommunications sector including, but not limited to, those set out in Article 65 of the Law.
69. The Authority is aware that under this approach, there is a significant risk that the parties will not, within the required timeframe, be able to agree such terms.
70. It is, however, important that agreement is reached with regards to the transfer within the timeframe set out in this paper. The Authority believes therefore, that it would be appropriate for it to intervene in these negotiations if, two months after the publication of the final Position Paper, it is highly unlikely that agreement between BNET and any other licensee will not be reached within the required timeframe. Parties should be aware that in the event that the Authority does intervene, the final terms of transfer may differ from those which might have been reached under a commercial agreement. It therefore encourages strongly all parties to negotiate the transfer of assets in good faith.
71. In reaching this initial view, the Authority has had wide regard to the provisions of the Law that are concerned with the transfer of real property and/or assets to Licensees and the recommended processes under the Law for such a transfer.
72. Whilst it is only analogous to the current circumstances (in that the envisaged OLO/ BNET transfer will be completed between Licensees in furtherance of Government Policy), the processes of Article 62 of the Telecommunications Law have been relevant to the Authority's considerations as to the issue of compensation (the determination of an appropriate amount of which is considered further in Section 6 of this paper) and the correct, fair and transparent processes that could be facilitated by the Authority to support the asset transfer.
73. As stated, whilst the terms of Article 62 envisage circumstances which are tangential, rather than directly applicable, to the current OLO asset transfer (i.e. Article 62 reflects a more traditional expropriation of the property of private citizens/ companies to an operator rather than those from another Licensee), the Authority's position is that it at least establishes a precedent that the transfer of OLO assets should follow a similar process of negotiation between the affected parties followed, if necessary, by regulatory intervention and oversight only in circumstances where the objectives of NTP5 or the fair treatment of Licensees are jeopardised.
74. Separately, the Authority also notes that pursuant to its powers under the Law, it retains a wide range of options to enforce OLO and BNET Licence terms (including those to the amended OLO Fixed National Licences). However, its preference would be for a negotiated outcome to be achieved in the first instance.

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5.1 Approach 1: Supporting a commercially negotiated outcome for the asset transfers

75. As set out above, under this approach, licensees will be expected to enter into commercial negotiations to agree the terms of the transfer, including, but not limited to, the timeframe and the amount of the consideration paid by BNET to the OLO.
76. The Authority considers that this approach has two main advantages:
- a. The negotiation will require detailed information about the nature of the OLO's relevant assets. By its nature, this information will be in the possession of each OLO and can be provided to BNET – either directly or through BNET and the OLO conducting joint surveys of the network (if required). This information is not, however, ordinarily available to the Authority. For the Authority to take a leading role in the initial negotiations is, therefore, likely to be potentially costly and time consuming, as it seeks to gather the relevant information.
 - b. It is not the role of the Authority to intervene in ordinary commercial negotiations. It does, however, have a role in resolving disputes in the sector and a possible “backstop” role, should negotiations not proceed. Although the need for the asset transfer has been clearly articulated in Government policy (as described in the preceding sections), those policy statements do not direct the Authority to settle the terms of the transfer.
77. The Authority is, however, aware that this approach also has certain disadvantages.
- a. Firstly, given the differences in the bargaining power of different parties, it is possible that relying on commercially negotiated outcomes could lead to BNET agreeing different terms with each OLO. Although not necessarily problematic per se, it is important that any agreed terms do not undermine or contradict those included in BNET's published RO and the Authority's RO Order²⁹ (including any amendments made to BNET's RO as part of the forthcoming review process). Furthermore, it is also important that all agreements are consistent with the requirements of the Law, including but not limited to Article 65.
 - b. Secondly, the Authority recognises that commercial negotiations between the parties may not lead to an agreed outcome. For example, this could be the case if the parties are unable to reach a mutual agreement on the level or nature of the consideration due. This could, in turn, delay, beyond the timeframe set out in the previous section, the completion of the asset transfer.
78. Nevertheless, the Authority also believes that there are mitigation strategies it can deploy to limit these risks. In particular, the terms of all agreements could be provided to the Authority to ensure that the agreements reached are consistent with the Licensee's obligations under the Law and the BNET licence. Furthermore, should the Authority consider that the parties have agreed terms which contravene these obligations, it may take the necessary measures (including issuing such orders, determinations or decisions) as may be necessary to address any competition and/or regulatory lacuna or breach that may have, or could foreseeably in the future, occur.

²⁹ See Section 2.

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79. Finally, the Authority believes that, even though parties should be given the opportunity to reach a commercial agreement, this opportunity must not be open-ended. That is, the Authority believes that, if it appears to be highly unlikely, two months after the publication of the final Position Paper, that parties will be unable to reach a commercial agreement within the required timeframe (i.e., no more than three months after the publication of the final Position Paper), then it will be necessary and appropriate for it to intervene to ensure an asset transfer takes place in a timely manner. Furthermore, by setting out, in this paper, its views on the process for the asset transfer, the Authority hopes to increase the likelihood of the parties reaching agreements. That is, the Authority would expect that the parties will conduct their negotiations around the framework set out here.

5.2 Approach 2: Direct TRA intervention to set the terms of transfer

80. The Authority has also considered whether it should take a more direct role in the completion of the asset transfers, such as directly determining, and enforcing, the terms under which each transfer should take place. The advantages of this approach closely mirror the disadvantages of the first approach. That is, by intervening directly, the Authority can ensure that no party is offered terms which might breach BNET's obligations in the law and/or BNET's licence, or any other relevant aspects of the legal and regulatory framework. Secondly, by intervening now, the Authority could also possibly help to reduce the time needed for the asset transfers to be agreed and completed.
81. However, this approach also has a number of disadvantages:
- a. Firstly, it is not guaranteed that this process will lead to a quicker resolution of the asset transfers. This is because the Authority would have less information than the parties and it would take it longer to assess the value of the assets, with the parties potentially challenging the Authority's analysis and assumptions.
 - b. Secondly, given the number of OLOs, it will be a considerable logistical challenge for the Authority to determine the appropriate value of assets for all licensees. For example, the Authority may need to appoint expert advisers to review, in detail, network information and then conduct a number of separate valuation calculations, particularly if the level of detail included in a licensee's fixed asset register does not provide a sufficient basis for the valuation (see Section 6).
 - c. Finally, it is important that the Authority maintains its role as an independent regulatory authority for the telecommunications sector. To fulfil this role, the Authority must be in a position to adjudicate on relevant disputes and to take decisions for the overall benefit of the sector and the Kingdom, in line with the objectives set out in the Law. To this end, the Authority believes its independence means it should not, unless clearly necessary for the furtherance of government policy and/or the exercise of its obligations under the Law, engage in what should be a commercial process. Indeed, the asset transfer could have significant implications for the sector in future years. So that it can apply its regulatory framework in an independent manner, the Authority believes it should not, where possible, become involved in the terms of this transfer, save potentially to ensure they are compliant with the relevant legal and regulatory framework and do not prevent, restrict or distort competition, or where the parties are unable to agree relevant terms.

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5.3 The Authority's proposed approach

82. Having considered carefully the two approaches described above, and subject to the views of stakeholders, the Authority believes that the parties to the transactions must firstly seek to reach a commercial agreement on the asset transfer. For the avoidance of doubt, this will require BNET to reach separate agreements with each OLO.
83. In these negotiations, parties should be guided by the principles set out in this draft Position Paper, particularly with regard to the assets that should be transferred (Section 3, above) and how any compensation / consideration should be determined (Section 6).
84. However, in light of the timetable in which the agreement should be reached, the Authority does not intend to allow the parties to engage in open-ended discussions. In order that it can carry out its duties and exercise (if necessary) its powers under the Law, the Authority will monitor the progress of the negotiations and be ready to more directly support any set of negotiations as may be required. The Authority shall, therefore, using its powers under the Law³⁰ and provisions in the operators' licences (if necessary):
- a. Require parties to each negotiation to provide the Authority with fortnightly updates on the progress that has been made and the differences that remain, with both parties to a negotiation being required to agree to these updates;
 - b. Require the parties to each negotiation to confirm, not later than two months after the publication of the final version of this Position Paper, whether or not a commercial agreement has been reached or is very likely to be reached within a further month, providing a copy of this agreement to the Authority, if it has been reached;
 - c. And, where those parties have not reached such agreement, to set out i the areas of negotiation that remain to be resolved.
85. The Authority will, at this point, consider, for any negotiations which have not been successfully completed, whether it should, applying its powers under the Law and relevant licences, intervene and set the terms and conditions of that transfer. The exact approach the Authority will take when intervening in any negotiations will depend on the nature of the issues that have still to be resolved. However, this could range from the Authority providing logistical or expert support to negotiations (while still enabling the parties to reach an agreement) to it reviewing submissions from each party and assessing those, in order to determine appropriate terms.
86. The Authority is aware completing commercial negotiations within this timeframe will require the parties to engage fully and positively with the process. The Authority therefore encourages parties to enter negotiations in earnest. The actual transfers of assets can take place after the Authority's confirmation that all BNET services are provided on an EoI basis. Furthermore, the Authority may also choose to intervene earlier in any negotiations if it is clear, either to it, or the parties,³¹ that it will not be possible for the parties to reach a commercially negotiated resolution.

³⁰ Specifically, Article 53, covering the provision of information to the Authority.

³¹ That is, the Authority would be willing to consider any requests from parties to a negotiation for it to intervene in a negotiation. In such instances, the Authority would expect the parties to set out why they do not believe it will be

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Q6. Do you support the Authority's proposed view that it should support commercially negotiated asset transfers, with the Authority only intervening if parties appear unable, two months after the publication of this final Position Paper, to reach a commercially negotiated agreement?

possible for them to reach a resolution consistent with the timeframe set out herein, alongside evidence of the parties having attempted to do so.

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6 Agreeing commercial terms for the transfer

87. As the Authority has set out in Section 3 of this draft Position Paper, it believes it is reasonable for OLOs to expect to receive, from BNET, fair compensation for transferring their assets to BNET. The Authority expects BNET to negotiate individually but consistently with each OLO to identify the appropriate level of compensation.
88. However, the Authority is also aware that it may be called upon to resolve any disputes, should the parties not be able, within the required timeframe, to reach agreement on a suitable level of compensation. Therefore, in this final section of the Position Paper the Authority sets out its current views on how, in the event that it is called upon to resolve any disputes, it is likely to judge the appropriate value of the transferred assets. The parties are under no obligation to take account, in their negotiations, of the position set out by the Authority. However, the Authority does expect that, by publishing its position now and encouraging the parties to take these views into account, it may increase the possibility of parties reaching a commercial agreement.
89. For the avoidance of doubt, the Authority reserves the right to review, in line with its statutory duties, the merits of each individual case in which it is called to take a position. As such subject to consultation, it reserves the right to follow an alternative approach to that set out here. Should it do so, however, the Authority will explain in accordance with its statutory duties why it has chosen, in that particular circumstance, to follow a different approach to that set out in the final Position Paper.
90. Finally, it is important to note that this section focuses on how the value of the relevant assets in any transaction should be determined.

6.1 Determining the underlying value of an asset

91. Given the nature of the asset transfers under consideration, the Authority considers that the level of compensation payable to each OLO should be determined with reference to the underlying value of the assets in question. For instance, this could mean that the level of compensation is determined according to value to the OLO of keeping those assets within their business. This could, in turn, be calculated as the difference in the value of the OLO's business were it to keep those assets and use them to provide connectivity (both at a retail level and within its own network) and the value of the OLO's business were it no longer have those assets.
92. The Authority acknowledges, however, that the type of cash flow analysis suggested by the principles set out in the preceding paragraph could be complex to conduct. For example, this is because the nature of a telecommunications network is such that the passive (fibre) infrastructure that may form part of the transferred assets will be a common input across many (or all) services, over a number of years. Determining the impact on OLO cash flows of an OLO no longer owning its own fibre will, therefore, require a number of assumptions, including in relation to the demand for services, the margins the OLO would earn on those services and how much it would be required to pay to BNET for access to the NBN, following the transfer of assets.
93. Nevertheless, the Authority recognises that, in determining this value, there is appropriate and helpful precedent from the approaches that authorities and licensees have taken to preparing separated regulatory accounts based on a current cost accounting ("CCA")

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approach to asset valuation. This is because the principle behind CCA is also to estimate the forward-looking value of an asset to the business in question. This differs from historic cost accounting (“HCA”) where assets are valued at their initial cost (minus accumulated depreciation).

94. The Authority also recognises that it is possible, under certain circumstances, that the historic book value of assets, as recorded in an operator’s fixed asset register, can provide a useful indicator of the economic value of an asset. However, there may be reasons for the forward-looking value of assets to differ from this historic book value. For instance, as technology changes, the cost of network equipment often falls, with this having been seen around the world in terms of the price trends for equipment. In contrast, where a significant portion of the cost of bringing an asset into service relates to labour costs (such as can be the case with digging trench or installing duct), costs can increase over time with labour inflation, especially where technological progress does not reduce the time required to bring the asset into service. Thirdly, changes in the demand for telecommunications services, and in the ability of licensees to monetise this demand can also affect the underlying value of assets – put simply, if a licensee is able to generate less revenue from an asset in future than it had expected, the forward looking value of that asset will be below its historic value.
95. For these reasons and taking into account also the importance of the asset valuation to all parties, the Authority does not believe it would be appropriate to automatically apply book values based on HCA, were it called upon to consider the value of assets subject to a transfer agreement. The Authority now, therefore, considers how the forward looking value of an asset may be determined in practice.
96. In considering this matter, the Authority also summarises how the value of the Batelco assets that have been transferred to BNET was determined³². Although this involved the transfer of assets between two entities under the same beneficial ownership, the Authority considers that this may also provide useful precedent for the valuation of OLO assets.

Determining the forward looking value of an asset

97. As set out in the literature on CCA,³³ the forward looking value of an existing asset is dependent upon:
 - a. What it would cost to replace the asset today with an equivalent asset (i.e., its net replacement cost, NRC);
 - b. What the asset in question could be sold for (i.e., the value that a licensee would realise by selling the asset to another party); and
 - c. The income that could be generated from continuing to use the asset in question.
98. Within a regulatory setting, current cost asset values have typically derived from estimates of NRC.

³² Section 3.3 of Separation of Batelco: A Report on Asset Allocation, Asset Valuation, Asset Transfer, Asset Lease Agreements, and Transitional Services Agreements issued on 23 August 2021 (ref: MCD/08/21/013)

³³ Including, for example, the ERG (the forerunner to BEREC), in its Common Position Guidelines on Implementing the Commission Recommendation C (2005) 3480 on Accounting Separation & Cost Accounting Systems under the regulatory framework for electronic communications, together with the ITU’s Regulatory Accounting Guide from March 2009.

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99. The Authority considers that this is also likely to be a practical approach to take when examining the value of assets to be transferred to BNET. This is because determining the value of the assets in question using other approaches, such as cash flow modelling, or through the “open market” value of the assets, with any degree of certainty, may not be possible. This is, in turn, because:
- a. There are few, if any, estimates of the “open market value” of assets, while the amount a party is willing to pay will be highly driven by assumptions regarding the future development of the market.
 - b. The economic value of an asset will, as set out above, also be highly assumption driven.
100. For instance, in order to derive an estimate of the economic value of the assets in question, it will be necessary to consider, for a number of years:³⁴
- a. The demand for end-user services under various assumptions around price and market share growth;
 - b. How the licensee would supply these services if it no longer owned the assets under consideration (i.e., the wholesale services it would purchase from BNET), with this, in turn, being driven by assumptions regarding BNET’s service portfolio;
 - c. The amount the licensee will pay for BNET services, taking into account also its assumptions on its retail market shares; and
 - d. The operating costs the licensee may save as a result of no longer having to maintain its own network.
101. Therefore, in the remainder of this section the Authority focuses on how the NRC of relevant OLO assets could be determined. The Authority notes that Batelco and BNET similarly relied on estimates of the NRC of Batelco assets, when agreeing the terms of that asset transfer. As such, the Authority would expect to also consider a NRC approach, should it be required to intervene in any transfer.

Determining the NRC of the assets to be transferred

102. There are a number of possible approaches that could be used to estimate the NRC of assets.
103. As set out above, in some circumstances, historic asset values could be used as a proxy. However, while this might be appropriate for some assets within an overall service cost model or set of separated regulatory accounts (e.g., assets contributing only a small proportion of the value of the overall asset base, or assets with a very short useful life), the Authority considers this is unlikely to be appropriate for the purposes of considering the appropriate level of compensation, except possibly in the case of individual assets which may be of limited value to the parties and for which a current value cannot easily be determined. This is because only a sub-set of each OLO’s assets are part of the asset transfer, while fibre assets are long-lived, with asset lives of around 20 years (with longer lives for duct infrastructure).

³⁴ Given the asset life of fibre, OLOs will need to consider how these factors will change over time. Ideally, these assumptions would cover the entire remaining useful life of the asset. However, given future cash flows are discounted, the key focus (in determining value) is likely to be over the first half of the asset’s remaining life.

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104. The Authority considers that there are then three further approaches (in addition to the historic depreciated value) which could be considered by licensees. These are as follows, although the Authority notes that these are not necessarily mutually exclusive, with different methods possibly being appropriate for different individual assets.

- a. Absolute valuation.
- b. Indexation.
- c. Modern Equivalent Asset Valuation (MEA valuation).

105. In all cases, these approaches begin with the determination of the gross replacement cost (“**GRC**”) of the asset in question. The GRC is the forward looking equivalent to the gross book value (“**GBV**”) of an asset, as recorded in an operator’s fixed asset register. This gross asset value is then converted into a NRC (DRC), to reflect the accumulated depreciation of the asset.

Absolute valuation

106. This method of valuation involves the use of information on the physical quantities of assets and their current unit prices to estimate the GRC. It requires detailed information on the actual quantities and type of assets under consideration and also requires access to the latest current prices for those assets (with this requiring, in turn, a market to exist today for the asset in question). This valuation should include not only the price of materials/equipment but also any other costs that are included in the GBV of the asset in the fixed asset register; for example labour and transport costs of bringing the asset into service. It should also reflect any discounts from equipment vendors’ list prices that operators are able to enjoy.

107. This approach to revaluation is appropriate where the assets in question have not been subject to significant technical change, and thus would, if replaced today, be likely to be replaced by the same type of asset/technology. However, it is also dependent on having accurate information on the physical quantity in the network of the asset in question.

Indexation

108. An indexation method of valuation is appropriate for assets where there has been little technological change and all direct costs that have been incurred and capitalised to date would have to be incurred if the asset were replaced today. The valuation is directly linked to the historical value that is recorded in the fixed asset register, with the GBV of additions in each year altered in line with the index price trend³⁵. It therefore ensures that all relevant costs are included in the valuation. As a result, detailed information on the quantity and specification of assets is not required. This does, however, require detailed financial information in the fixed asset register, most notably the value of assets in a given category that were added to the fixed asset register each year, ideally split into individual components (i.e., showing labour and material costs separately).

109. There are a number of options for the choice of index:

- a. An **internal asset specific price index** could be constructed using price data for the operator concerned.

³⁵ Only additions that have not been fully depreciated are included in the calculation of GRC under indexation.

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- b. An **external asset specific price index**, constructed and updated by third parties could also be used (such as the Telephone Plant Index published by AUS Consultants, which was used in the Batelco asset transfer).³⁶
 - c. In the absence of a suitable asset specific price index, a more **general price inflation index** may be used, for example as produced by national statistical offices.
110. Where an asset class includes a number of different cost elements, for example labour and material costs, a separate index should be used to revalue each component. However, this also requires the operator to be able to distinguish these cost elements within its fixed asset register.

MEA valuation

111. For a number of network elements in a telecommunications network, a particular asset in service may:
- a. no longer be available for purchase from network equipment vendors; or
 - b. no longer represent the modern technology used in network deployment.
112. When revaluing an asset that falls in either of these categories it can, therefore, be necessary to estimate the value of a modern equivalent asset (MEA). Such a valuation may be conducted in a similar manner to the absolute valuation outlined above, though focusing instead on the value of the modern equivalent to the asset currently in place.

The appropriate approach to determining GRC in the context of the proposed asset transfer

113. As set out above, it is the Authority's position that BNET and OLOs should negotiate and reach agreement on the terms of the OLO asset transfers. As such, it is not for the Authority to determine the method for determining the value of those assets, including whether any of the methods described above should be used in any individual transaction. Indeed, the Authority notes that the appropriate approach may not be the same for all categories of asset, or for all OLOs.
114. However, the Authority does note that a MEA valuation approach is unlikely to be relevant in the case of the fibre assets to be transferred to BNET. This is because fibre is already the modern asset.
115. This means that, of the methods described above, absolute valuation and indexation are likely to be more appropriate means. Indeed, this is consistent with the approach that was taken to the valuation of the Batelco assets that have been transferred to BNET. That is, the vast majority of Batelco assets were valued based on an indexation approach, with a small number of assets being valued using the absolute valuation approach³⁷.
116. The Authority also notes, however, that Batelco has, for a number of years, been required to prepare separated regulatory accounts. These accounts (and the input sources for those

³⁶ Please refer to section 3.3 of Separation of Batelco: A Report on Asset Allocation, Asset Valuation, Asset Transfer, Asset Lease Agreements, and Transitional Services Agreements issued on 23 August 2021 (ref: MCD/08/21/013).

³⁷ Please refer to section 3.3 of Separation of Batelco: A Report on Asset Allocation, Asset Valuation, Asset Transfer, Asset Lease Agreements, and Transitional Services Agreements issued on 23 August 2021 (ref: MCD/08/21/013).

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accounts) provided a useful source of information for the asset valuation, meaning that information on the historic value of assets was readily available and not contentious. It is less clear to the Authority whether this level of information will be available for all OLOs. Where it is, this information could again provide the basis for the valuation of assets.³⁸ If this information is not available, for example because an OLO does not record this information in its fixed asset register at a sufficient level of granularity, the parties may need to firstly agree and conduct an independent exercise to determine the value of the assets in the network concerned.

Applying depreciation to the GRC to determine a NRC (DRC) for the assets

117. As set out above, in determining the value of the assets under consideration, it is likely to be appropriate to consider the net, rather than the gross, value of the assets, whereby the difference between the two relates to the depreciation of the assets since they were brought into service.
118. The Authority considers that this depreciation adjustment should, for each OLO, be based on the asset lives it has used, since bringing the asset in question into service, in preparing its statutory accounts (or regulatory accounts, where available). This approach will ensure that each OLO is able to recover the costs of its assets, taking into account the depreciation policies it has applied up to now. This is, again, consistent with the approach taken in the valuation of the Batelco asset portfolio.³⁹

6.2 Other factors to consider in the valuation of assets and the determination of commercial terms for the transfer

119. Alongside estimating the underlying value of relevant assets, the Authority is also aware that a number of other factors could impact the value that either party (i.e., BNET or the OLO) places on the assets in question. As such, these factors could also impact the terms agreed between parties.
120. It is not for the Authority to determine what these factors might be, or how they should be reflected in a commercial agreement between the parties. Rather, it sets out below an indicative (but non-exhaustive) list of possible factors which might be relevant in individual asset transfers. In the event that the Authority is required to intervene in any asset transfer negotiations, it will expect the parties to those negotiations to set out, with evidence, any such factors that they consider relevant to the valuation.
121. In most instances, the Authority also notes that these factors are likely to have been less relevant in the transfer of Batelco assets to BNET, given the continued common ownership of Batelco and BNET and the previously vertically integrated nature of the businesses. As such, this could mean that it would not necessarily be appropriate for the Authority to apply, if required, the same approach to determining the fair valuation of OLO assets in any transfers to BNET, as was applied in the transfer of Batelco assets.

³⁸ The Authority is aware that there can be a time lag before accounting data is available, meaning it may not be possible to conduct the valuation using information on the assets at (or close to) the date of transfer. For example, the Batelco asset valuation was based on GBV information from December 2018, with this then being rolled forward to the date of the transfer. The Authority would expect OLOs follow a similar approach.

³⁹ A prospective approach means only applying the new asset life from the date at which the policy change was introduced.

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122. Firstly, the Authority notes that BNET's existing network is likely to overlap with fibres deployed by OLOs. This will mean that acquiring these fibres from the OLOs will not lead to an expansion in BNET's network reach, nor increase the redundancy of the network, and hence, to the services that BNET can provide. As a result, this may reduce the value that BNET may put on those assets.
123. Nevertheless, in these circumstances the Authority still expects the parties to reach a reasonable commercial agreement over the transfer of these assets. BNET will, for example, benefit by no longer having to compete with an OLO who was able to self-provide this connectivity, so increasing BNET's addressable market and its revenue earning potential. Furthermore, this will also not affect the Net Replacement Cost of these assets, as described above.
124. In addition, the Authority notes that there may be a number of other factors which could affect, either positively or negatively, the value that BNET could place on a given OLO's assets. For example, BNET may be able to benefit from additional business synergies by combining its existing assets and the acquired assets. These may relate to how products are offered, for example, or operating efficiencies for BNET, compared to the costs the OLO incurred in operating the assets. However, it is also possible that BNET operating costs could be relatively higher for assets it has to incorporate into its business. For example, this could be the case if the OLO's assets were poorly maintained, have been supplied by a different vendor to that used by BNET in the rest of its network, and so on.
125. Finally, there may also be reasons why an OLO places a greater value on its assets than implied by the NRC of those assets. In particular, operators may favour having control of a given asset, rather than having to rely on procuring services from a third party. Although the pre-requisites for the asset transfers taking place are designed specifically to reduce these risks to OLOs, the Authority recognises that this could be a factor in the valuation, to the extent it can be estimated by a party.

Q7. Do you agree with the Authority's current views on how parties should consider the value of the assets being transferred to BNET and how the Authority should consider any cases in which it is called to intervene?

Q8. Are there any other factors you consider could impact the value that either party places on an OLO's assets and which should be taken into account, should the Authority be called upon to intervene?

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List of questions

Q1 Do you agree with the Authority's summary of the policy and market context to the asset transfer programme?

Q2 Do you support the Authority's proposed view on the categories of assets which should be transferred by the OLOs?

Q3 Do you support the Authority's proposed view that BNET should compensate each OLO for the transfer of assets?

Q4 Do you support the Authority's proposed view that the transfer of OLO assets to BNET should be completed as soon as possible after the pre-requisites set out in this paper have been met, with agreements on the terms of transfer reached within three months of the publication of this paper? Please provide justifications to your answer.

Q5 Do you share the Authority's views regarding the necessary pre-requisites that should be in place before it requires OLO assets to be transferred to BNET?

Q6 Do you support the Authority's proposed view that it should support commercially negotiated asset transfers, with the Authority only intervening if parties appear unable, two months after the publication of this final Position Paper, to reach a commercially negotiated agreement?

Q7 Do you agree with the Authority's current views on how parties should consider the value of the assets being transferred to BNET and how the Authority should consider any cases in which it is called to intervene?

Q8 Are there any other factors you consider could impact the value that either party places on an OLO's assets and which should be taken into account, should the Authority be called upon to intervene?