



## Telecommunications Regulatory Authority of Bahrain

### Consultation Paper

A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “**Authority**”) on the Authority’s proposed amendments to the Telecommunications Access Regulation (Regulation 1 of 2005) of the Kingdom of Bahrain (the “**Regulation**”).

**30 April 2020**

**LAD/0420/101**

The address for responses to this document is:

The Acting General Director  
Telecommunications Regulatory Authority  
PO Box 10353  
Manama  
Kingdom of Bahrain

Alternatively, e-mail responses may be sent to [lad@tra.org.bh](mailto:lad@tra.org.bh).

The deadline for responses is 16.00 on 4 June 2020.

Purpose: To seek stakeholders’ views on the proposed amendments to the Regulation.

## 1 INSTRUCTIONS FOR SUBMITTING A RESPONSE

- 1.1 The Authority invites comments on this consultation document from all interested parties. Comments should be submitted no later than 16.00 on 4 June 2020.
- 1.2 The Authority may consider extending the period of the Consultation if a reasoned request is made, including in light of the current circumstances regarding COVID-19. A request for an extension should be made within one (1) week of the date of publication of this Consultation. Requests made after this period may not be considered. Where the Authority decides to extend the period of this Consultation, the Authority will publicly notify all interested parties via its website and via e-mail to those persons who are registered with the Authority to receive notifications.
- 1.3 Responses should be sent to the Authority preferably by email (either Word or PDF format) or by fax or post to the attention of:
- The Acting General Director  
lad@tra.org.bh  
Telecommunications Regulatory Authority  
PO Box 10353  
Manama  
Kingdom of Bahrain  
Fax number: 17532125
- 1.4 Responses should include:
- (a) the name of the responding entity;
  - (b) the name of the principal contact person;
  - (c) full contact details (physical address, telephone number, fax number and email address);
  - (d) in the case of responses from individual consumers, name and contact details; and
  - (e) a brief statement explaining the interest of the responding entity.
- 1.5 The Authority seeks comments from stakeholders in the telecommunications industry, the business community and the general public on the proposed amendments to the Regulation attached at Annex 1 of this consultation document.
- 1.6 All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law (the “**Law**”)<sup>1</sup> that the respondent is relying upon.

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<sup>1</sup> The Telecommunications Law of the Kingdom of Bahrain, promulgated by Legislative Decree No. 48 of 2002.

1.7 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at **Annex 4**.

1.8 Respondents are required to mark clearly any information included in their submission that is considered confidential. The Authority will evaluate a request for confidentiality in line with the relevant legal provisions<sup>2</sup> and the Authority's published guidance on the treatment of confidential and non-confidential information.<sup>3</sup> Where such confidential information is included, respondents are required to provide both a confidential and a non-confidential version of their submission (in soft copies and not scanned copies). If part or all of the submission is marked confidential, reasons should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

## 2 STATUS OF THIS CONSULTATION PAPER

2.1 This consultation paper is issued pursuant to the Position Paper from the Telecommunications Regulatory Authority of the Kingdom of Bahrain on how TRA Consults issued on 17 October 2017 ("**Position Paper on How TRA Consults**").

2.2 Interested parties should not take any action 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 receipt of comments from interested parties.

2.3 The 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.

2.4 Once the Authority has received and considered responses to this consultation document, the Authority will proceed with finalising the relevant documents subject to this consultation. If appropriate, the Authority will prepare and publish a consultation report which summarises and responds to the comments received.

## 3 BACKGROUND

3.1 Pursuant to Article 3(c)(13) of the Law, the Authority has the power to encourage, regulate and facilitate Access, including where necessary, enforcing the sharing by Public Telecommunications Operators of the benefit of facilities and properties.<sup>4</sup>

3.2 The Authority oversees a sector specific regulatory framework for Access to Telecommunications Networks and Telecommunications Facilities of Licensed Operators determined to hold a Dominant Position in relevant telecommunications markets in the Kingdom of Bahrain. Article 57(e) of the Law sets out the relevant legal framework and provides that:

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<sup>2</sup> Including Article 23 of the Law.

<sup>3</sup> Guidance Paper No. 2 of 2007, TRA Treatment of Confidential and Non-Confidential Information.

<sup>4</sup> Relevant capitalised terms that are not defined in this consultation document are defined under Article 1 of the Law with "Access" defined as "*the making available of telecommunications facilities and/or telecommunications services to another Licensed Operator for the purpose of providing telecommunications services, and including the connection of equipment by wire or wireless means, access to physical infrastructure including buildings, ducts, cables and masts, access to mobile networks and access to number translation or networks offering equivalent functionality*".

*A Public Telecommunications Operator in a Dominant Position shall offer upon request Access to its Telecommunications Network on fair and reasonable terms to any Licensed Operator. Such operator shall only be under an obligation to offer Access to the ducts if the Authority considers that there is an essential need for such Access.*

*The Authority may publish regulations with regards to Access, including a regulation concerning the reference Access offer similar to a reference Interconnection offer.*

*If the Authority considers the tariffs and the terms and conditions on which Access is offered by an operator in a Dominant Position are unreasonable, it may determine such tariffs and terms and conditions as it considers appropriate, and the provisions of paragraph (b) of this Article shall apply in this respect.*

- 3.3 The current Regulation sets out the processes for the Authority to impose Access Obligations on Licensed Operators declared to hold a Dominant Position in a relevant telecommunications market. Since the issuance of the Regulation in 2005, Bahrain's telecommunications sector has changed significantly. The Government's Fourth National Plan for Telecommunications ("**NTP4**") calls for the development of a single national broadband infrastructure network (the "**NBN**"), encompassing the infrastructure required to enable fixed telecommunications networks in Bahrain. The NBN is to be operated and deployed by the new wholesale only operator, "BNet" B.S.C (also referred to as the Separated Entity or "**SE**"), formed through the separation of Batelco. The Authority is to act in a manner consistent with the objectives of NTP4.<sup>5</sup>
- 3.4 On 2 June 2019, pursuant to its powers and duties under the Law,<sup>6</sup> the Authority issued BNet a Fixed Telecommunications Infrastructure Network License (the "**BNet Licence**"). The BNet Licence authorises BNet to deploy, operate and maintain the Fixed Telecommunications Infrastructure Network and to supply certain wholesale-only products and services to other Licensed Operators. The BNet Licence also sets out general obligations concerning the provision of Access to Licensed Networks and Services and obliges BNet to submit a Reference Offer for the Authority's approval and publish the same once approved.
- 3.5 On 3 June 2019, the Authority issued the first Reference Offer Order (the "**SE ROO**") applicable to BNet which sets the price and non-price terms and conditions upon which BNet is required to supply wholesale products and services. Paragraph 34 of the SE ROO sets out the process for approval of the Reference Offer that the Authority followed in issuing the SE ROO, while paragraphs 18 to 22 set out the process for the SE ROO to enter into force.

#### 4 **PURPOSE**

- 4.1 The Authority has proposed amendments to the Regulation, in order to update and streamline the Authority's process for the issuance of Reference Access Offers ("**RAOs**") under the Regulation.

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<sup>5</sup> Article 3(e) of the Law.

<sup>6</sup> Article 3(c), Article 31(4) and Article 40(bis) of the Law.

- 4.2 The Authority invites stakeholders to comment on the suitability of the proposed amendments. Interested parties may answer all or any of the questions set out in **Annex 4** to this consultation document. The Authority also welcomes comments on any other issues related to the proposed amendments which interested parties may wish to raise. The Authority will consider responses to the consultation process in drafting a final version of the amended Access Regulation.

## 5 THE PROPOSED AMENDMENTS TO THE REGULATION

- 5.1 The Authority's proposed amendments to the Regulation are displayed in track changes in **Annex 1**. A clean version of the proposed revised Regulation are set out in **Annex 2**.
- 5.2 An overview of the key elements of the proposed amendments is set out below. References to the Article numbers in the following sub-headings are to the current Regulation, unless otherwise indicated.

### Definitions

- 5.3 A new definition of "Access Provider" has been proposed, which means a Licensed Operator which has been declared by the Authority as holding a Dominant Position in a relevant market, which would be subject to Access Obligations under the Regulation. The definition also includes the Separated Entity, as the Separated Entity is subject to Access obligations pursuant to its Fixed Telecommunications Infrastructure Network Licence.

Question 1: Do you agree with the new defined term of "Access Provider" and related amendments in the Regulation? If not, why not?

### Article 3.2

- 5.4 Article 3.2 currently states that a Licensed Operator that is obliged to meet all reasonable requests for Access, in the forms mandated by the Authority from time to time, may only refuse to provide such Access on the basis of objective criteria related to technical feasibility or maintenance of network integrity.
- 5.5 The proposed amendments makes reference to "undue risk to health and safety" as a further basis for an Access Provider to refuse Access. This aims to provide Access Providers with an additional reasonable justification for refusing access, consistent with international benchmarks.<sup>7</sup>

Question 2: Do you agree with the proposed addition of "undue risk to health and safety" to Article 3.2 as a further basis for an Access Provider to lawfully refuse Access? If not, why not?

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<sup>7</sup> For example, see Clause 2(6) of the Rules for Access to Physical Facilities issued by the Communications and Information Technology Commission of the Kingdom of Saudi Arabia.

### **Article 3.5**

- 5.6 Article 3.5 currently provides that Licensed Operators may be required to provide various Access services in relation to the eight Telecommunications networks elements or facilities listed in the provision.
- 5.7 The proposed amendments aim to update the list of network elements or facilities to reflect the definition of “Facility” under the BNet Reference Offer. Further, to future proof the Regulation, backhaul (which may become increasingly important for future 5G related Access) has been proposed as a further example of Access services that the Authority may require an Access Provider to provide Access. The list should not be considered to be exhaustive.

Question 3: Do you agree with the proposed amendments to make the list of Access services in Article 3.5 a non-exhaustive list, and the amendments to reflect the definition of “Facility” under the Bnet Reference Offer, as well as the addition of backhaul as a further example of Access services? If not, why not?

### **Article 4**

- 5.8 Article 4.1 currently requires that any Licensed Operator subject to Access Obligations, or is required to provide Access to ducts pursuant to Article 57(e) of the Law, must make available an RAO. Article 4.2 sets out a list of minimum information that must be provided in an RAO.
- 5.9 This provision has been simplified to make reference to the new definition of Access Provider.

Question 4: Do you agree with the amendments to simplify Article 4? If not, why not?

### **Article 5.1**

- 5.10 Article 5.1 currently requires a Licensed Operator to submit its RAO for approval within two months of being declared by the Authority to hold a Dominant Position. The Licensed Operator must also periodically submit a revised RAO for approval either when the Authority mandates additional Access Obligations or amends any Access Obligations, or, in any event, every six months.
- 5.11 The proposed amendments aim to simplify this provision by requiring a RAO to be submitted at the request of the Authority and/or every 24 months, whichever is the shorter. For example, the Authority may request a revised RAO to be submitted if the Access Provider introduces a new Access service or if the Authority mandates additional Access Obligations on the Access Provider. Instead of specifying a time

period in the Regulation, the Authority will reasonably determine<sup>8</sup> the period of time for an Access Provider to submit their RAO, consistent with international benchmarks.<sup>9</sup>

- 5.12 This proposed approach is intended to strike a balance between allowing greater flexibility for the Authority to request a RAO or a revised RAO to be submitted, and reducing the regulatory burden on Licensed Operators who are currently required to submit a revised RAO every six months. This would also benefit the Authority by reducing the burden on its resources as it would not be required to review a revised RAO as frequently as every six months.

Question 5: Do you agree with the proposed amendment in Article 5.1 to the minimum timeframe for submission of a revised RAO? If not, why not?

### **Article 5.2 (Proposed Articles 5.2, 5.3(a) and 5.5)**

- 5.13 Article 5.2 currently requires the Authority to approve the RAO where it determines that the terms and conditions (including tariffs) are fair and reasonable and in compliance with the Law. The RAO will be effective from the date of the Authority's approval. Further, the Authority shall consult stakeholders and may take into account their views before approving a RAO.
- 5.14 The proposed amendments aim to align the wording of this provision with Article 57(e) of the Law, which requires Access to be offered "*on fair and reasonable terms*". To ensure greater transparency in the review process of RAOs, the proposed amendments make reference to other instruments forming part of the regulatory framework which the RAO must comply. For example, the Authority may have regard to guidance that it may publish concerning the assessment of "fair and reasonable" tariffs when reviewing the tariffs proposed in a RAO. It may not always be appropriate in a particular circumstance for the RAO to be effective from the date of approval, therefore the proposed amendments clarify that a different date may be specified.
- 5.15 The proposed amendments suggest that it is appropriate to always take into account the views of Access Seekers before approving a RAO. Therefore, the draft RAO will always be published for consultation, together with the Authority's reasons as to whether or not it proposes to approve the draft RAO as submitted. The Authority's consultation document will set out the process and timeline for the consultation, in accordance with the Position Paper on How TRA Consults. Following the conclusion of the consultation, the Authority may issue an approval letter if it approves the RAO as submitted.

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<sup>8</sup> Noting that the Authority is required to carry out its duties and exercise its powers in accordance with Article 3(a) of the Law. We also note that in the Omani A&I Regulation, the Regulator also has the discretion to determine the time period for submitting an RO (although qualified that for those ROs that are due to be submitted immediately after the A&I Regulation comes into force, they must have been submitted within 30 days of the Regulation taking effect).

<sup>9</sup> For example, see Article 47 of the Access and Interconnection Regulation (Decision No. 25/2016) issued by the Telecommunications Regulatory Authority of the Sultanate of Oman.

- 5.16 As stated in the Position Paper on How TRA Consults, under exceptional circumstances the Authority may, but shall not be obliged to, invite additional comments for a second round of public consultation. For example, if the nature of the submissions received are such that there is strong opposition to the Authority's reasons as to whether or not it proposes to approve the draft RAO, the Authority may undertake a second round of consultation.

Question 6: Do you agree with the proposed amendments to:

- (a) align Article 5.2 with the wording of Article 57(e) of the Law;
- (b) make reference to other instruments forming part of the regulatory framework which the RAO must comply?
- (c) allow the Authority to specify a different effective date from the date of approval of the RAO?
- (d) always require the Authority to consult on an RAO that it proposes to approve?

If not, why not?

**Article 5.3 (Proposed Articles 5.2(b), 5.3(b) and 5.4)**

- 5.17 Article 5.3 currently requires the Authority to issue an Order where it determines that it does not approve certain terms and conditions or tariffs, and stating in a draft Order the terms and conditions that will apply. The Licensed Operator is provided with at least one month to submit a response to the draft Order. The Authority will take into account the response to the draft Order and issue a binding final Order, with a warning that failure to comply constitutes a material breach of the operator's Licence.
- 5.18 As described in paragraph 5.15 above, the proposed amendments clarify that a public consultation will always be conducted when a RAO is submitted for approval. Where the Authority does not propose to approve the draft RAO, it will also publish a draft order setting out the proposed terms and conditions (including tariffs, if applicable) that the Access Provider will be required to reflect in the final version of its RAO.
- 5.19 Following the conclusion of the consultation, the Authority may issue its order in final form. As noted in paragraph 5.16 above, a second round of consultation may be invited in exceptional circumstances.
- 5.20 A Licensed Operator that has been issued with an order will be required to submit a revised draft RAO for approval. If the Authority is satisfied that the revised draft RAO fully reflects the terms of the order, it will issue an approval letter. If not, or if the Access Provider does not submit a revised draft RAO for approval, the Authority will issue a further order deeming the version of the RAO annexed to its previous order to be final and binding.
- 5.21 A flow diagram of the proposed RAO approval process is provided in **Annex 3**.



- 5.22 The Authority proposes to delete the requirement to include a warning to the Licensed Operator that their Licence may be revoked under the Law. The Authority may continue to include such warnings in any order it issues. This deletion from the text of Article 5.3 is intended to simplify the provision.

Question 7: Do you agree with the proposed amendments to Article 5.3:

- (a) to require the Authority to publish a draft order for consultation where it proposes to not approve an RAO?
- (b) setting out the process following the issuance of an order?

If not, why not?

#### **Article 5.4 (Proposed Article 5.5)**

- 5.23 Article 5.4 currently provides that the terms and conditions and tariffs specified in a final Order become effective when the final Order is issued, unless another date is specified in the Order.
- 5.24 The proposed amendments aim to clarify that in the case of an Access Provider who does not submit a revised RAO that reflects the terms of the Authority's order or fails to submit a revised RAO following an order, the terms and conditions for Access set out in the deemed final RAO shall be effective from the date specified in the Authority's order, or if no date is specified, from the date of the Authority's order.

Question 8: Do you agree with the proposed amendment to Article 5.4 to clarify the effective date of the terms and conditions of Access in circumstances where an Access Provider is not cooperative? If not, why not?

#### **Article 5.5 (Proposed Articles 5.5 and 5.6)**

- 5.25 Article 5.5 requires a Licensed Operator to publish (including on its website) an approved RAO within two weeks of its approval. The RAO will remain in force until a revised RAO becomes effective.
- 5.26 This provision remains unchanged, save for:
- (a) the structure of the provision which has been reworded into the proposed Articles 5.5 and 5.6, and the new reference to "Access Provider"; and
  - (b) clarifying that any proposed changes (including updates) to the terms of the RAO must be submitted to the Authority for approval in accordance with Article 5.

#### **Article 5.6 (Proposed Article 5.5)**

- 5.27 Article 5.6 requires approved RAOs to be provided to any person requesting a copy and must be made available at the head office of the Licensed Operator for inspection free of charge during normal office hours.

- 5.28 The proposed amendments require Access Providers to make copies of their approved RAOs or deemed final RAOs available to any Access Seeker within a reasonable time frame. Given the requirement to publish the RAO online, the Authority does not consider there to be a need for a hard copy to also be made available at the head office of the Licensed Operator, and proposes to delete this provision.

Question 9: Do you agree with the proposed amendment to Article 5.6 to:

- (a) clarify that Access Providers must make copies of their approved RAOs or deemed final RAOs available upon request to any Access Seeker within a reasonable time frame?
- (b) remove the obligation on Licensed Operators to keep a hard copy of their RAOs available for inspection at their head office?

If not, why not?

### **Articles 6.1 and 6.2**

- 5.29 Article 6.1 currently requires tariffs for all Access services to be fair, reasonable and non-discriminatory.
- 5.30 Article 6.2 allows the TRA to require a Licensed Operator to provide justification for its tariffs and may require that tariffs in an RAO are adjusted so that they are in accordance with Article 6.1.
- 5.31 The proposed amendments aim to simplify these clauses by removing any substantive assessment of tariffs and instead referring to the Law and any other relevant position papers, guidelines or other instruments issued by the Authority. As noted above, the Authority may issue a pricing paper which will elaborate on the criteria, in particular, the assessment of “fair and reasonable” for the purpose of determining appropriate tariffs in accordance with Article 57(e) of the Law.

Question 10: Do you agree with the proposed amendments to Articles 6.1 and 6.2 that simplify the provisions on tariffs? If not, why not?