



Telecommunications Regulatory Authority of Bahrain

PUBLIC CONSULTATION

A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain in relation to a position paper on the treatment of intra-group revenues in relation to licence fees.

14 May 2020

LAD/0520/107

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.

The deadline for responses is 4:00pm on 18 June 2020.

Purpose: to seek stakeholders' views on a proposed position paper on the treatment of intra-group revenues in relation to licence fees (the "**Position Paper**").

1 INSTRUCTIONS FOR SUBMITTING A RESPONSE

1.1 The Telecommunications Regulatory Authority (the “**Authority**”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than 4:00pm on 18 June 2020.

1.2 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 number17532125

1.3 Responses should include:

- the name of the responding entity;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and email address);
- in the case of responses from individual consumers, name and contact details; and
- a brief statement explaining the interest of the responding entity.

1.4 The Authority seeks comments from stakeholders in the telecommunications industry, the business community and the general public on the Position Paper, attached at Annex 1. All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law¹ or Licences that the respondent is relying upon.

1.5 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at Annex 2.

1.6 In the interests of transparency, the Authority intends to make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate a request for confidentiality in line with the relevant legal provisions² and the

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

² Including Article 23 of the Telecommunications Law

Authority's published guidance on the treatment of confidential and non-confidential information³.

- 1.7 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 (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 DOCUMENT

- 2.1 This consultation document is issued pursuant to the Position Paper on How TRA Consult issued by the Authority on 17 October 2017.
- 2.2 The information contained in this document is intended to provide background on the Position Paper. 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.
- 2.3 This consultation document does not represent a decision of the Authority. The issues discussed in this document remain open to consideration and should not be construed as indicating that the Authority has formed any final opinion or decision on the Position Paper.
- 2.4 Once the Authority has received and considered responses to this consultation document, the Authority will decide whether to proceed to finalise the Position Paper. If appropriate, the Authority will prepare and publish a consultation report which summarises and responds to the comments received.

3 PROPOSED MEASURE

- 3.1 The purpose of the Position Paper is to clarify and affirm the position of the Authority on the treatment of intra-group revenues in relation to licence fees.
- 3.2 Ultimately it is intended to provide guidance to licensees when reporting financial information to the Authority to enable the Authority to calculate the applicable annual licence fees.
- 3.3 The Position Paper confirms that, where a licensee earns revenue from intra-group transactions, this revenue should be valued in accordance with the principles set out in the Position Paper and included for the purposes of calculating licence fees.

³ http://www.tra.org.bh/media/document/Confidentiality_Guidelines_Final.pdf

4 BACKGROUND

- 4.1 Under Article 3(c)(1) of the Telecommunications Law (the “**Law**”), the Authority has the power to issue regulations, orders and determinations as may be necessary for the implementation of the provisions of the Law, particularly in relation to licences and the payment of licence fees.
- 4.2 Pursuant to Article 3(c)(6) of the Law, the Authority has the power to set and collect fees under any licence.
- 4.3 Pursuant to Article 18(a)(2) of the Law, the Authority is to be funded from sources including annual licence fees, based (in the case of an individual licence) on the gross annual turnover of the licensee.
- 4.4 Pursuant to the Revenue Reporting Regulation dated 19 February 2020 (“**the Revenue Reporting Regulation**”), licensees are required to submit by 1st of April of each calendar year an Annual Audited Financial Statement and Revenue Reporting Declaration to the Authority, in order to enable the Authority to calculate the applicable annual licence fees.
- 4.5 The Authority is aware that some licensees have been uncertain as to how to treat intra-group revenues when reporting financial information to the Authority and, in particular, for the purposes of calculating licence fees. The Authority considers that the Position Paper will assist licensees when considering these issues.
- 4.6 The Position Paper clarifies that intra-group revenues arise where a licensee provides services to another part of its corporate group. The Position Paper also provides examples of scenarios where intra-group revenues will commonly arise.
- 4.7 The Position Paper sets out the principles that licensees should follow when valuing intra-group revenues. Where a market value has already been attributed, the Position Paper confirms that this value should be used by the licensee. Where this is not the case, the Position Paper provides that the licensee should attribute a reasonable value, which reflects the economic reality of the situation. The Position Paper notes that this may differ from the value attributed under any contractual arrangements that are in place and it may be relevant to compare the valuation used with the valuation of comparable transactions with third parties.
- 4.8 The Position Paper also sets out the Authority’s expectation that licensees will not engage in artificial base erosion or profit shifting strategies.
- 4.9 Where the Authority finds an apparent discrepancy in how the licensee has valued an intra-group transaction, the Position Paper confirms that the Authority may appoint independent auditors to investigate pursuant to the Revenue Reporting Regulation and may use the valuation of the independent auditors instead of the licensee’s own valuation. This approach is intended to encourage licensees to adopt accurate and fair reporting practices in relation to

their intra-group revenues, whilst allowing the Authority the ability to intervene where it is concerned that this may not be the case.

5 CONSULTATION QUESTIONS

- 5.1 The Authority invites respondents to provide comments in response to each of the questions listed for reference at Annex 2. However, the Authority welcomes responses on any aspect of the Position Paper.