

Article 35 Order No. 1 of 2024

Batelco's breach of Articles 24 and 43 of the Telecommunications Law and Clause 19 of its Individual Mobile Telecommunications Licence

1 For the reasons set out in the reasoning of this Order, the Telecommunications Regulatory Authority (the "TRA") considers that Bahrain Telecommunications Company B.S.C ("Batelco") has, during the month of December 2022, operated a Telecommunications Network using a Telecommunications Frequency without a Licence and/or utilised frequencies that were not licensed to it.

2 **THEREFORE BATELCO IS ORDERED TO:**

Within seven calendar days from the date of this Order confirm to the TRA that it is only using spectrum that has been licensed to it in accordance with Articles 24 and 43 of the Telecommunications Law (the "Law").

3 **FINES**

Batelco is ordered to pay a fine of Fifty Thousand Bahraini Dinars (BHD 50,000) within 30 calendar days from the date of this Order to the following account:

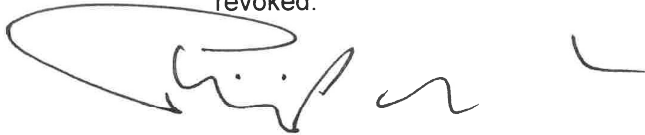
Account Name: Telecommunications Regulatory Authority

Account Number: 1-0000005433-4

Bank Name: BBK

4 **COMPLIANCE**

In accordance with Article 35(d)(3) of the Law, the TRA warns Batelco that if it fails to abide by Article 2 or Article 3 of this Order, its Telecommunications Licence(s) may be revoked.



Philip Marnick
General Director
For and on behalf of the Telecommunications Regulatory Authority

6 February 2024

REASONING

I. Relevant Legal Provisions

- 1 Unless the context otherwise requires, capitalised terms that are not otherwise defined in this Order have the same meaning prescribed by the Law.
- 2 Article 3(c)(1) of the Law permits the TRA to issue regulations, orders and determinations as may be necessary for the implementation of the provisions of the Law, including in particular those in connection with Licences and payment of Licence fees and frequency migration.
- 3 Article 3(c)(2) of the Law empowers the TRA to monitor and investigate compliance with the provisions of the Law, and to make such orders and determinations as are necessary to ensure compliance.
- 4 Article 3(c)(4) of the Law empowers the TRA to monitor and enforce compliance with Licence terms and conditions by Licensees.
- 5 Article 3(c)(10) of the Law empowers the TRA to approve Telecommunications Frequencies Licences to Licensed Operators in accordance with the National Frequency Plan.
- 6 Article 3(c)(11) of the Law allows the TRA to monitor those who are authorised to use of Telecommunications Frequency in the Kingdom, and ensure compliance in accordance with the law and to ensure the efficient use thereof.
- 7 Article 24(a) of the Law prohibits the operation of a Telecommunications Network using a Telecommunications Frequency without a Licence.
- 8 Article 42(b) of the Law provides that the TRA is responsible for co-ordination, assignment and monitoring the enforcement of Telecommunications Frequencies.
- 9 Article 43 of the Law prohibits the operation of a Telecommunications Network which uses frequency spectrum without obtaining a Licence from the TRA.

- 10 Clause 19.1 of the IMTL permits Batelco to apply to the TRA for the right to use frequencies or frequency bands in accordance with a Frequency Licence granted to it.
- 11 Clause 19.2 of the IMTL places an obligation on Batelco to use only such radiocommunications frequencies or frequency bands as have been authorised by means of a Frequency Licence granted to it.

II. Factual Background

- 12 Spectrum is an essential input to the provision of mobile services - mobile network operators' businesses cannot exist without it. Mobile Network Operators (“MNOs”) are granted frequency allocations in the form of Licences for the use of frequency bands. The TRA has granted Frequency Licences to all MNOs – including Batelco and stc Bahrain – that authorise MNOs to use spectrum in a number of frequency bands – namely the 800MHz, 900MHz, 1800MHz, 2100MHz, 2600MHz and 3500MHz bands.
- 13 By way of historical background, on 19 September 2013, the TRA granted Batelco a Mobile Licence (LSU/LC/286/AA) (the “IMTL”) and a number of Frequency Licences (collectively referred to as the “Frequency Licences”) including:

- 13.1 Frequency Licence bearing reference number DLM/2/1715 authorising the use of the following frequencies:

User Terminal Transmit Frequency Band (MHz)	Base Station Transmit Frequency Band (MHz)
3600-3700	3600-3700

and

- 13.2 Frequency Licence bearing reference number LSU/LC/F/004 authorising the use of the following frequencies:

Frequency Band	Mobile Station Transmit Frequency Band (MHz)	Base Station Transmit Frequency Band (MHz)
900 (MHz)	890 – 901.8	935 – 946.8
1800 (MHz)	1760 – 1780	1855 – 1875
2100 (MHz)	1935 – 1945	2125 – 2135

and

13.3 Frequency Licence bearing reference number LCU/LC/MS/13/11 authorising the use of the following frequencies:

Frequency Band	Mobile Station Transmit Frequency Band (MHz)	Base Station Transmit Frequency Band (MHz)
900 (MHz)	N/A	N/A
1800 (MHz)	1780 – 1785	1875 – 1880
1900 (MHz)	N/A	N/A
2100 (MHz)	1945 – 1950 1970-1975	2135 – 2140 2160-2165

- 14 By virtue of Clause 1 of the Frequency Licences, Batelco was assigned the frequency spectrum described in paragraphs 13.1, 13.2 and 13.3 above.¹
- 15 It is important to point out that the TRA’s investigation into Batelco’s conduct relates solely to the use of unlicensed spectrum within the 2100 MHz band. In other words, the TRA has no reason to believe (at this moment in time) that Batelco’s use of spectrum in the other frequency bands is a matter of concern. Accordingly, for the purposes of these proceedings, the focus of the TRA is restricted to Batelco’s use of spectrum within the 2100 MHz frequency band.
- 16 On 25 July 2022, the TRA initiated discussions with the three MNOs concerning frequency migration plans, with the aim of coordinating the migration of frequencies in the 2100 MHz and 900 MHz frequency bands. The discussions ran to 2 February 2023, with the final migration occurring in February 2023 for both ranges. The migration exercise was proposed in order to achieve contiguity within the various frequency bands which in turn leads to more efficient mobile networks and services.
- 17 On 23 November 2022, the TRA, while referring to Batelco’s Frequency Licence (Ref DLM/2/1715) which was due to expire on 30 November 2022, invited Batelco to submit an application form (the “**Application**”), which if accepted by the TRA, would grant Batelco the right to use 100 MHz of spectrum in the 3.5 GHz band (3600 MHz – 3700 MHz) for a period of fifteen (15) years starting from 1 December 2022. The Frequency Licence in

¹ Batelco is also granted, by virtue of Frequency Licences, spectrum usage rights in the 800 and 2600 MHz bands. These Licences are not, however, relevant to these proceedings and have therefore not been included.

question related solely to Batelco's right to use spectrum in the 3.5GHz band. It did not confer upon Batelco the right to use spectrum in any other frequency band.

- 18 Batelco submitted its Application on 30 November 2022. As part of the Application, Batelco declared that, "if the Applicant is awarded a Frequency Licence by the Authority pursuant to this Application, [Batelco] agrees and accepts:

omissis

e. to the amendment of Frequency Licence bearing reference number LSU/LC/F/004 so that the table in Schedule A titled Assignment of Radio Frequency Spectrum shall be replaced by the following table:

Frequency Band	Mobile Station Transmit Frequency Band (MHz)	Base Station Transmit Frequency Band (MHz)
900 (MHz)	891.2 – 903	936.2 – 948
1800 (MHz)	1760 – 1780	1855 – 1875
2100 (MHz)	1940 - 1950	2130 – 2140

f. to the amendment of Frequency Licence bearing reference number LCU/LC/MS/13/11 so that the table in Schedule A titled Assignment of Radio Frequency Spectrum shall be replaced by the following table:

Frequency Band	Mobile Station Transmit Frequency Band (MHz)	Base Station Transmit Frequency Band (MHz)
900 (MHz)	N/A	N/A
1800 (MHz)	1780 – 1785	1875 – 1880
1900 (MHz)	N/A	N/A
2100 (MHz)	1950 - 1960	2140 – 2150

- 19 Furthermore, Batelco in its Application declared that, "the Authority has assigned to it frequency spectrum that is different to that mentioned in this Application Form ('the Old Spectrum'). Batelco understands that the Authority has allowed Batelco to continue using the Old Spectrum for a maximum period of four (4) months **from the effective date** of the Frequency Licence **for the purposes of migrating from the Old Spectrum to the frequency bands mentioned in paragraphs 3(e) and 3(f)**". (emphasis added)
- 20 The draft Frequency Licence annexed to the Application referred solely to the 3500MHz frequency band (at Schedule A). Undertakings 3(e) and 3(f) referred to other Frequency Licences in other bands which had not been approved or granted by the TRA at that juncture but which were being considered as part of the frequency migration process.

- 21 On 21 December 2022 the TRA confirmed to Batelco its acceptance of the Application. In so doing, the TRA requested Batelco to make payment of invoices relating to application fees and annual Frequency Licence fees covering exclusively Batelco's right to use frequencies in the 3500MHz frequency band for the month of December 2022.² The invoice provided a breakdown as to how the total amount had been calculated by reference exclusively to the 3500MHz frequency band (set out at "*Details of calculation of P2A Spectrum licensing Fee for one month*").
- 22 Batelco was not invoiced in relation to the frequency bands at undertakings 3(e) and 3(f). Batelco must have been aware that it had not been granted a new or modified Licence and had not been invoiced for the new frequencies and that therefore the undertakings alone could not entitle it to the use of the new frequencies in the 2100 MHz band. Those invoices were in fact provided by way of an email dated 06 February 2023 which attached TRA Invoices SPC\2023\02\0002 and FRQ\2023\01\0110 (provided to the Regulatory Team at Batelco). The first of those invoices (dated 05 February 2023) is specifically stated as being "*SPC Annual 900 – 1800 – 2100*". This is consistent with the TRA's approach to the 3500 MHz band where usage was contingent upon the appropriate approvals being given and the spectrum Licence Fee being paid.
- 23 During the months of December 2022 and January 2023, the TRA carried out its mobile audit test. The purpose of this test (which the TRA carries out approximately on an annual basis) is, amongst other things, to gauge the performance of Bahrain's mobile networks and the user experience.
- 24 The mobile audit tests measure a number of different metrics within the MNOs' networks. Of relevance to these proceedings are the measurements relating to the "Smartphones data tests on hotspots³".
- 25 As part of its annual mobile audit tests, the TRA also maintains a logfile recording the MNOs' test results across the different metrics measured. The logfiles contain data on various network parameters, including information on the frequencies used by an MNO to serve its customers. Each frequency band can be identified by its E-UTRA Absolute Radio

² See invoice FRQ-2022-12-00036 dated 20 December 2022.

³ A hotspot is a location where radio configuration allows better data transfer performances for each operator on its mobile network.

- Frequency Channel Number (“**EARFCN**”). The EARFCN value serves as a distinctive identifier for any given frequency band. In practice, each MNO has its own unique EARFCN values corresponding to the licensed frequency bands it operates within.
- 26 The TRA conducted a series of tests (including tests on sixty (60) Batelco hotspot locations) during a two (2) month time frame (December 2022 to January 2023). The hotspots comprise of both outdoor and indoor locations and are meant to simulate what a consumer would experience in terms of average and maximum speeds. The purpose of these tests was to provide two results – the Average Throughput (for both downlink and uplink) and the Maximum Throughput (for both uplink and downlink). The results of the tests show that Batelco was using spectrum that went beyond the 1950 MHz frequency for the uplink and 2140 MHz frequency for the downlink that was assigned to it by virtue of the Frequency Licence referred to in paragraph 13.3 above. In so doing, Batelco used frequencies that had been assigned to stc Bahrain and for which stc Bahrain pays Frequency Licence fees for the right of use of those frequencies.
- 27 In February and March 2023, the TRA analysed the audit results. When reviewing the logfiles pertaining to the results of Batelco’s hotspot tests, it was evident that within the span of five days⁴, and across 12 different locations Batelco had utilised frequencies that it was not licensed to use (the findings are documented in Annex A to this Order). Specifically, the results concluded that Batelco had been using frequencies bearing the unique ID EARFCN 300⁵, which at the time were licensed to, and being used by stc Bahrain.
- 28 On 20 March 2023, the TRA notified Batelco of its preliminary findings and specifically that “it appears that Batelco has made use of frequencies which have not been assigned to it.” The TRA requested Batelco to provide an explanation.
- 29 In its letter dated 23 March 2023, Batelco, while not contesting the TRA’s factual findings that Batelco had used frequency bands that had been licensed to stc Bahrain, claimed that by virtue of the Application (specifically undertakings 3(e) and 3(f) therein), it possessed all necessary spectrum usage rights. Furthermore, Batelco stated that it was

⁴ 25 December 2022 to 29 December 2022.

⁵ This unique ID translates to the following centre frequencies: 1950 MHz for Uplink and 2140 MHz for Downlink, which in turn means that Batelco exceeded the 1950 MHz it was licensed to utilize.

- authorized to continue its use of the Old Spectrum for a period of four months from 1 December 2022 for the purpose of migrating to the frequency bands listed in undertakings 3(e) and 3(f).
- 30 On 17 April 2023, the TRA informed Batelco that the use of the Old Spectrum was intended for migration purposes only.
- 31 On 1 June 2023, the amended Frequency Licences bearing reference numbers LCU/LC/MS/13/11 and LSU/LC/F/004 (the “**Amended Frequency Licences**”) were signed by Batelco by virtue of which Batelco accepted that it was licensed, from the effective date of the amendment, to use the frequency range 1940 – 1960 MHz within the 2100MHz frequency band in lieu of the frequency range 1935 – 1950 MHz and the frequency range 1970 – 1975 MHz in the 2100MHz band that it had hitherto been licensed to use. According to Clause 1.1 of the Amended Frequency Licences, the effective date of the amendment was February 2023. In other words, Batelco was only licensed to use the frequency range 1940 – 1960 MHz as of February 2023. Before that date, Batelco was licensed to use the frequency ranges 1935 – 1950 MHz and 1970 – 1975 MHz, whilst stc Bahrain was licensed to use the spectrum within the 1950-1970MHz.

III. Consideration

Use of unlicensed Frequencies

- 32 Articles 24 and 43 of the Law prohibit the operation of Telecommunications Networks or Radiocommunication Equipment which utilize frequencies without obtaining a Frequency Licence from the TRA. In essence, a prohibition on the use of unlicensed frequencies.
- 33 From 19 September 2013 to February 2023, within the 2100MHz band, Batelco was licensed to use the 1935-1950 and 1970-1975 frequencies. The TRA's test revealed that between 25 and 29 December 2022 Batelco was using frequencies beyond the 1950 MHz that had been assigned to it. Those frequencies, on the dates in question, were licensed for the use of stc Bahrain. Put simply, on the dates that the tests were carried out, Batelco was using frequencies which it was not licensed to use. This puts Batelco in breach of Articles 24 and 43 of the Law and of Clause 19.2 of its IMTL.

- 34 Under Clause 19.2 of the IMTL Batelco is only entitled to use frequency bands for which it has been granted a Frequency Licence. The Frequency Licence for the 3500MHz frequency band does not include any other bands and as such undertakings 3(e) and 3(f) are irrelevant. A prima facie breach of Article 19.2 of the IMTL has occurred.
- 35 Batelco contends in its letter dated 23 March 2023, that (i) the TRA's letter of 23 November 2022, (ii) the Application submitted by Batelco on 30 November 2022 for the award of Frequency Licence in the 3.5GHz band and (iii) the TRA's letter of 21 December 2022 implied that it was granted "all spectrum rights of use having effect from 1 December 2022."
- 36 This argument is simplistic and incorrect. In the first instance, Batelco's argument conveniently neglects the fact that the use by Batelco in December 2022 of spectrum that had been assigned to stc Bahrain was not for migration purposes because the migration exercise was (with the agreement of all mobile operators including Batelco) carried out in February 2023. Secondly, the effective date of the amendments to Batelco's Frequency Licence covering its right to use spectrum in the 2100 MHz is February 2023. Batelco's signature of the Frequency Licence is a clear indication that it also accepts the effective date of that allocation. What is therefore material in this context is the date of assignment of the new spectrum (February 2023) because it is from that date (February 2023) that Batelco was licensed to use the Old Spectrum and the new spectrum simultaneously for a short period of time and for migration purposes only. The effective date that is referred to in the Application accompanying the TRA's letter of 23 November 2022 relates exclusively to the date of the new spectrum Licence for the 3.5GHz frequency band.
- 37 Batelco contends in its letter dated 12 December 2023 that by not following the statutory process vis-à-vis its modifications of the Frequency Licence set out in the Law, the TRA has erred procedurally and that Batelco has "*utilized the Amended Spectrum in a manner consistent with the Authority's treatment of the 3.5GHz Band*".
- 38 It is irrelevant that the approval of the 3500MHz Licence took place in December 2022 but the Licence itself was not signed until March 2023. Articles 3(c)(1) and (10) of the Law give the TRA specific power to issue determinations in connection with Licences and

- approve Telecommunications Frequencies Licences and that is separate from its power under Article 44 of the Law to grant such Licences.
- 39 The TRA can therefore approve a Telecommunications Frequency Licence which can be enforced and/or utilised while it is not yet formally granted (so long as the appropriate invoice payments have been made and the express permission of the TRA granted). This is consistent with the TRA's power under Article 3(c)(11) of the Law to monitor those authorised to use of Telecommunications Frequency, and ensure compliance in accordance with the Law and the efficient use thereof.
- 40 Approval is the key requirement and will not be given without Licence Fee payments being made. Approval of the 3500MHz band Frequency Licence was accompanied by a payment from Batelco unlike the asserted approval of the new frequency in the 2100MHz band for which Batelco made no payment. The 2100MHz band had clearly not been "purchased" in this case but at the time of Batelco's usage was the property of stc Bahrain and no approval had been given by the TRA. The fact that Batelco was not invoiced for the usage of the 2100MHz frequency band until February 2023 (by way of TRA Invoice SPC\2023\02\0002) supports that position.

The Breach

- 41 The TRA is of the view that Batelco's conduct is in clear breach of Clause 19.2 of the IMTL and Articles 24 and 43 of the Law.

IV. Effects of the Article 35 Order

- 42 This Order is issued without prejudice to any further investigations the TRA may undertake into Batelco's breaches of the terms of the IMTL and the Law.
- 43 The issuance of this Order does not prejudice the TRA's right to:
- 43.1 Expand the scope of its investigation into this matter;
 - 43.2 Issue further orders relating to other breaches arising out of the same set of facts;
 - 43.3 Find, develop or introduce new evidence relating to the alleged breach described herein.

V. Fines under this Order

44 Article 35(d)(2) of the Law states the TRA *may*⁶ issue an order containing a suitable fine on the Licensee provided that such a fine is objectively justified and non-discriminatory. The Law does not provide specific guidance in the setting of fines.

45 The TRA believes in this instance that financial penalties are appropriate.

VI. Article 35

46 Article 35 may be applied by the TRA in the event that a Licensee has been or is in severe breach of any provision of the Law or any conditions of its Licence. The term "Licence" under Article 1 of the Law is defined as either a Telecommunications Licence or a Frequency Licence. This includes the IMTL issued to Batelco.

47 A "severe" breach is understood to mean a breach that is more than minor and/or transient. The TRA considers that this case satisfies these elements. Mobile spectrum is a scarce national resource to the Kingdom. Batelco's use of frequencies that were not licensed to it but were in actual fact licensed to stc Bahrain is therefore a severe breach of Articles 24 and 43 of the Law.

48 Furthermore, Batelco's illegal use of frequencies has caused distortion to the results of the TRA's mobile audit tests, wherein Batelco's network performance was artificially boosted to portray an image to the consumer that is neither truthful nor fair.

VII. Imposition of Financial Penalty

Fining principles

49 Article 35(d)(2) of the Law states that the TRA shall issue an order containing a suitable fine on the Licensee provided that such fine is objectively justified and non-discriminatory. The Law does not provide specific guidance on the setting of fines.

⁶ The Arabic version of the Telecommunication Law uses the word "للمهيئة". This is translated into English as "may" rather than "shall" as is set out in the Unofficial English Translation.

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

Procedure followed to determine the amount of the financial penalty

- 52 The TRA has undertaken the following steps in determining the quantum of the fines to be imposed on Batelco for the breaches set out above:
- 52.1 First, a baseline figure is established by reference to a value that is germane or relevant to the infringement in question;
- 52.2 This baseline figure may then be adjusted upwards or downwards to take into consideration the following "aggravating" and "mitigating" factors at the TRA's discretion:
- a) the degree or severity of the breach in question;
 - b) any gain (financial or otherwise) accrued by the party perpetuating the breach;
 - c) the extent to which the infringement was perpetrated intentionally or recklessly, including the extent to which senior management knew, or ought to have known, that an infringement was occurring or would occur;
 - d) the extent to which any contravention was caused by a third party, or any relevant circumstances beyond the control of the licensee;
 - e) whether in all the circumstances, appropriate steps had been taken by the perpetuating party to prevent or remedy the breach in question;
 - f) any steps taken by the perpetuating party to mitigate the consequences of the breach; and

g) any other factors that, in the TRA's view, constitute an aggravating or mitigating circumstance.

52.3 Consideration then will be given to whether the amount of the fine calculated on the basis of the considerations listed above has a sufficient deterrent effect.

52.4 Finally, a proportionality review of the final amount of the fine is carried out.

Calculation of the baseline amount

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

54 Article 46 of the Fining Guidelines states that:

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

55 Article 46 then goes on to give some examples of how the TRA might seek to establish this value. The most relevant example to this case would appear to be any comparable penalties.

56 As has been stated above, Batelco's conduct represents a serious breach of the terms of the Law and the IMTL. As such, the TRA is minded to have regard to the most serious instances of regulatory breach that have been previously punished by it by way of fines.

57 The TRA notes that in its Article 35 Order Number 2 of 2016⁷, it had imposed a fine on 2Connect for (amongst other breaches) a breach of Article 24(b) the Law, which prohibits the connection to Telecommunications Networks without possessing the necessary permissions in its Licences. In that instance, 2Connect connected to a

⁷ Ref LAD/0216/011

- Telecommunications Network without possessing the necessary Licences (with the required permissions therein). The baseline figure in that case was set at BHD 1,000,000.
- 58 Despite the fact that in the 2Connect case as well as in this case the breach relates to an infringement of Article 24 of the Law (requirement to obtain a Telecommunications Licence), the TRA acknowledges that there are differentiating factors. Specifically, 2Connect's conduct was caught by Article 24(b) of the Law while this investigation relates to Article 24(a) of the Law. In addition, 2Connect had been held to have intentionally breached Articles 53 and 78 of the Law and the Lawful Access Regulation. This conduct manifestly had implications on the ability of the TRA to discharge its responsibilities with regards to other agencies, ministries and organs of the Kingdom.
- 59 Furthermore, the underlying nature of the breaches outlined in Order Number 2 of 2016 was characterized by an extended and intentional pattern of obfuscation, concealment, deception and deliberate negligence by 2Connect.⁸ It was held at the time, that the breach posed a threat to the national security of the Kingdom of Bahrain as a whole.
- 60 Whilst both instances involved a breach of Article 24 of the Law (requirement to obtain a Telecommunications Licence), Batelco's breach occurred with a system screened to prevent harmful interference and to ensure no disruption to public telecommunications services. Therefore, the contexts and potential consequences are notably distinct.
- 61 While the Fining Guidelines provide that the TRA should follow precedent involving comparable breaches, the TRA retains the discretion to set adjusted baseline figures to reflect the specific details of the individual case in question. This approach ensures a nuanced and case-specific evaluation, allowing for the assessment of the breach within its distinct context and potential impact, which might warrant deviations from the established precedents.
- 62 In light of this, it is reasonable for the TRA to apply a reduced baseline figure to that established in Order Number 2 of 2016 to take into account that none of the other breaches nor the elements of obfuscation, concealment, deception and deliberate negligence present in the 2Connect Case manifest themselves in this case, to reflect the specific

⁸ See Paragraphs 83 and 84 of Order Number 2 of 2016.

circumstances of this breach, the fact that there was little risk (if any) of harmful interference and the fact that this case is limited to a breach of Article 24(a) insofar as it refers to the operation of a Telecommunications Network using a telecommunications Frequency without the appropriate Frequency Licence.

- 63 Based on the foregoing, and whilst considering the seriousness of Batelco's breaches, the TRA has decided to set a baseline figure of Fifty Thousand Bahraini Dinars (BHD 50,000).

Aggravating factors

- 64 Having established a baseline figure of BHD 50,000, the next step of the process is to consider the aggravating factors set out at Article 47 of the Fining Guidelines. The relevant factors are considered below in relation to Batelco's current breaches.

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

- 65 Batelco has made use of a scarce resource to the Kingdom without obtaining the necessary Licence which the TRA considers to be a very serious matter.
- 66 Self-evidently this is a severe breach of Batelco's obligations under the Law and the IMTL.
- 67 As such the TRA is minded to have regard to this factor when calculating the level of the fine.
- 68 The TRA therefore considers that it is appropriate to take into account the seriousness of the breach (the "**Seriousness Factor**") by applying a factor equating to ten percent (10%) of the baseline figure, which should be added to the baseline figure.

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

- 69 It is noted that Batelco has been served with two Article 35 Orders over the course of the past ten years, namely:
- 69.1 Article 35 Order No. 1 of 2018; and
- 69.2 Article 35 Order No. 1 of 2019.

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

Mitigating factors

- 71 The next step in the process is to consider whether there are any mitigating factors that should be taken into account.

Article 48(a): “any steps taken by the Licensed Operator to remedy or mitigate the consequences of the breach”

- 72 Licensing frequency usage is essential because spectrum for mobile communications services is not a shared resource. The concurrent use of the same frequency bands by different MNOs within the same licensed areas carries a high risk of harmful interference. In this case, there was no evidence of harmful interference.

- 73 The TRA believes that in considering the circumstances surrounding the breach committed by Batelco, it is imperative to take into account the limited scope of the unlicensed frequency usage. Batelco’s utilization of unlicensed frequencies was confined to a specific subset of its operations, specifically 12 out of 60 hotspot locations.

- 74 Moreover, the TRA recognizes that these 12 hotspot locations were indoor premises, effectively screened from public access and usage. This controlled environment ensured that the unlicensed frequencies did not propagate beyond the confines of these premises, thereby mitigating potential harmful interference to the broader public spectrum.

- 75 Accordingly, the TRA considers that it is appropriate to apply a mitigating factor (the “**Mitigating Factor**”) of ten percent (10%) of the baseline figure, which should be deducted from the baseline figure.

Article 48(c): “clear evidence of substantive co-operation on the part of the infringing Licensed Operator enabling the enforcement process to be conducted more speedily/effectively”

- 76 The TRA notes that Batelco has substantively co-operated with the investigation, demonstrating transparency and responsiveness by providing comprehensive details and

promptly addressing any further queries posed. This in turn has significantly enhanced the effectiveness of the TRA's enforcement process.

- 77 Accordingly, the TRA considers it appropriate to apply a mitigating factor (the “**Cooperation Factor**”) of ten percent (10%) of the baseline figure, which should be deducted from the baseline figure.

Final amount of financial penalty

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

- 79 In conclusion, the TRA sets the fine under this Order as follows:

$$\begin{aligned}
 \text{Fine} = & \quad \text{Baseline Figure} + \\
 & \quad \text{Baseline Figure} \times \text{Seriousness Factor} + \\
 & \quad \text{Baseline Figure} \times \text{Repetition Factor} - \\
 & \quad \text{Baseline Figure} \times \text{Mitigating Factor} - \\
 & \quad \text{Baseline Figure} \times \text{Cooperation Factor} \\
 \\
 = & \quad \text{BHD } 50,000 + \text{BHD } 5,000 + \text{BHD } 5,000 - \text{BHD } 5,000 - \text{BHD } 5,000 \\
 \\
 = & \quad \text{BHD } 50,000
 \end{aligned}$$

Need to ensure deterrence

- 80 The TRA's fining practice under Article 35 of the Law and the Fining Guidelines acknowledges the importance of deterrence when determining the amount of a financial penalty.

- 81 The TRA considers that the amount of the fine imposed on Batelco for the breaches set out above should act as a sufficient deterrent against:
- 81.1 any further breaches by Batelco of the Law and the relevant provisions of the IMTL (specific deterrence); and
- 81.2 any material breaches of the Law and any Licence held by other licensed operators (general deterrence).
- 82 The TRA does not, therefore, consider that there is any need in this case to make any adjustments for deterrence.

Proportionality

- 83 The TRA therefore considers that the payment by Batelco of a fine of Fifty Thousand Bahraini Dinars (BHD 50,000) is proportionate, considering all the circumstances of this case.