



**Equivalence Compliance and Technical Committee Terms of Reference
Consultation Report**

07 November 2019

Ref: LAD 1119 307

1 INTRODUCTION

- .1 On 9 May 2019 the Telecommunications Regulatory Authority (the “**Authority**”) issued a public consultation to seek stakeholders’ views on the Terms of Reference for the Equivalence Compliance and Technical Committee (the “**ECTC**”) (the “**Public Consultation**”), a committee established pursuant to section 4.13 of the Fixed Telecommunications Infrastructure Network License granted to Bnet B.S.C (c) (the “**Bnet License**”) and Articles 3(c)4, 3(c)18 and 3(d) of the Telecommunications Law promulgated by Legislative Decree No.48 of 2002 (the “**Telecommunications Law**”).
- .2 The ECTC Terms of Reference represent an amalgamation of two separate bodies that the Authority has previously consulted upon.
- .3 The purpose of the Public Consultation was to invite comments from interested parties on the establishment of the ECTC, its composition (including the rules for appointment of the members of the ECTC and its chairperson) and its function. The deadline for responses was 16:00 on 6 June 2019. On 6 June 2019, a one (1) week extension to the deadline for responses was granted until 13 June 2019.
- .4 The Authority received responses from Batelco retail (Batelco), Viva, Zain, Kalaam and Infonas.
- .5 The comments received from Batelco, Viva, Zain, Kalaam and Infoas are summarised in Annex 1 to this Consultation Report, as are the Authority’s responses to each comment. Any changes to the ECTC Terms of Reference that the Authority has made in response to the comments received from the stakeholders are also set out and explained under Annex 1.
- .6 The final version of the ECTC Terms of Reference (the “**Final ECTC Terms of Reference**”) is appended as Annex 2 to this Consultation Report.
- .7 This Consultation Report reflects the views of the Authority on comments received in response to the Consultation Document. The Authority’s views as expressed in this Consultation Report are intended to provide an explanation of the Authority’s position on the comments received from the respondents.

List of acronyms and definitions

Art.	Article
Authority	Telecommunications Regulatory Authority of the Kingdom of Bahrain and any successors thereof
Batelco	Bahrain Telecommunications Company B.S.C.- Retail
Bnet	Bnet B.S.C (c) ('BNET')
Bnet Order	The Reference Offer Order issued to Bnet (Ref: LAD 0619 178)
Bnet License	The Fixed Telecommunications Infrastructure Network License granted to Bnet
Consultation Document	The document published on 6 June 2019 which included the Draft Terms of Reference for the ECTC and which solicited responses to a number of questions set out in the Consultation Document
EOI	Equivalence of Inputs
Final ECTC Terms of Reference	The final version of the ECTC Terms of Reference appended as Annex 2 to this Consultation Report
Infonas	Infonas W.L.L.
Kalaam	Kalaam Telecom Bahrain BSC (c)
License	Has the same meaning as given to this term under Article 1 of the Telecommunications Law
Par.	Paragraph
Telecommunications Law / Law	The Telecommunications Law of the Kingdom of Bahrain, which was promulgated by Legislative Decree No. 48 in October 2002
Viva	Viva Bahrain B.S.C.
Zain	Zain Bahrain B.S.C.

Annex 1: Summary of responses received on the Consultation Document questions and the Authority's conclusions

	Summary of comment received	The Authority's view and conclusion
<p>QUESTION 1 - FUNCTIONS:</p> <p>a. Do you have any comments on the proposed functions of the ECTC (as set out in Section 2 of the ECTC terms of reference (“TOR”))?</p> <p>b. Do you agree that the purpose of the ECTC should be to allow Bnet and Licensed Operators to discuss compliance issues in a collaborative manner and to reach an appropriate outcome, without needing to have recourse to the Authority, although recognising, if there was a need for a binding decisions, this would remain a matter for the Authority?</p> <p>c. In relation to technical and/or operational matters, do you agree that, in order to ensure a pragmatic approach and resolve issues swiftly, the ECTC should be able to provide instructions and/or recommendations and measures to be implemented by Bnet?</p> <p>If not, please give reasons and state which functions you think should be added or omitted.</p>		
<p>Batelco</p>		
	<p>(a)</p> <ul style="list-style-type: none"> • Batelco refers to section 1.2 of the TOR where it is stated that the “Authority” shall include references to the Authority’s advisors and/or any third party engaged or appointed by the Authority. • Batelco does not agree with the reference to the Authority’s advisors or any third parties, and suggests the limitation of this definition to the Authority itself, and the inclusion of its advisors where applicable. • Batelco refers to section 2.1.4, 2.2, 3.4, and 9.2, and any other sections which leave the ultimate decision making to the Authority, and believes that these powers should not be passed on to any other party. • Please see Batelco’s responses in Para(s) 3-10 in relation to the function of the ECTC. In consideration of these responses, Batelco agrees that a committee should, essentially, be able to review Bnet’s activity and 	<p>The Authority notes Batelco’s comments.</p> <p>(a)</p> <ul style="list-style-type: none"> • The Authority disagrees with Batelco’s view that section 1.2 of the TOR should not refer to the Authority’s advisors and/or third parties engaged by the Authority. The Authority should be able to draw on the advice of its advisors and/or third parties in accordance with the Authority’s powers under the Law. The Authority notes however Batelco’s concerns that decisions are taken only by the Authority. Accordingly, the Authority has amended the wording in section 1.2 to clarify that final decisions will be taken by the Authority.

compliance with its regulatory obligations. Investigation of any Licensed Operators complaints should be left solely with the Authority.

- Technical and procedural matters should not be discussed by the ECC or the ECTC as it stands. These matters should be handled by a separate committee, or the Industry Forum, as envisaged by the Consultation on the Bnet RO.

(b)

The ECC, when initially proposed, did not include other Licensed Operators. Given that the responsibility of the assurance of EOI lies with Batelco and Bnet, it is unclear as to what input other Licensed Operators will have as to EOI. Any complaints in relation to EOI should be directly referred to the Authority, considering that these complaints may contain confidential matters (Section 2.3 of the TOR) and should not be divulged to uninvolved parties in the industry.

(c)

Batelco generally agrees on the basis that the technical and/or operational matters shall be transferred back within the ambit of the Industry Forum.

- The Authority confirms that as stated in section 2.2 of the TOR, the ECTC is not empowered to make binding decisions regarding assessment of Bnet's compliance with its obligations under the BnetLicense and/or Reference Offer, or regarding resolution of complaints from Licensed Operators against Bnet. The Authority considers that this wording is clear, and therefore no amendment is required to section 2.2 of the TOR.
- As regards Batelco's comment that technical and procedural matters should not be discussed by the ECTC but by the Industry Forum, the Authority draws Batelco's attention to the fact that (as explained in the Consultation Document) the ECTC is an amalgamation of the previously described ECC and Industry Forum. Accordingly, it is necessary and appropriate that the ECTC (as described in the Consultation Document) considers also technical and procedural matters. However, in recognition that effective discussion of equivalence and technical matters will often require different skills sets, the Authority has added wording under section 4.3 of the TOR to provide the Chairperson with clear discretion to establish two sub-committees to deal separately with technical and equivalence related matters on an as needs basis. The Authority considers that the need for such organisational measures may be discussed as an item of business at the first ECTC meeting.
- The Authority considers that section 5.12 (now 5.11) of the TOR makes adequate provision for the appointment of representatives with the relevant skill set and the attendance at meetings of alternative representatives if required.

(b)

- The Authority notes Batelco's comment that the ECC, when initially proposed, did not include other Licensed Operators. This was because the ECC, as originally envisaged, was an internal forum to be set up by Bnet with further reporting obligations to the Authority. However, the Consultation Document is clear that the ECTC is to be established by the Authority with representation from Bnet, Batelco and other Licensed Operators.
- The Authority notes Batelco's statement that responsibility of the assurance of EOI lies with Batelco and Bnet, and Batelco's view

	<p>that it is unclear as to what input other Licensed Operators will have as to EOI. The Authority disagrees with Batelco's views. The Authority notes that the obligations placed on Bnet regarding EOI are designed to ensure equivalence between Batelco and other Licensed Operators and as such, other Licensed Operators are directly impacted by Bnet's compliance (or non-compliance) with its EOI obligations. It is therefore appropriate that other Licensed Operators are included within the ECTC.</p> <ul style="list-style-type: none"> • The Authority points out that section 2.3 of the TOR is clear that the ECTC is not intended to provide a platform to discuss confidential matters or issues that may arise for a specific wholesale connection (e.g., individual disputes). However, more generally, the Authority agrees with Batelco that the Authority shall remain the body responsible for handling complaints and accordingly, the Authority has made appropriate amendments to section 2.1.1 of the TOR to clarify that the ECTC shall be a forum to enable Licensed Operators to raise concerns, rather than complaints, about equivalence. <p>(c)</p> <ul style="list-style-type: none"> • The Authority notes Batelco's agreement, and the Authority refers above to its response under (a) regarding the fact that the Industry Forum is comprised within the ECTC. Accordingly, the Authority does not consider any amendment to the TOR is necessary on this point.
<p>Viva</p>	
<p>(a) The ECTC has two primary functions:</p> <ol style="list-style-type: none"> i. Monitoring Bnet's compliance with its regulatory obligations, particularly with regards to equivalence; and ii. Addressing product related issues of a technical or procedural nature, including new products. 	<p>The Authority notes Viva's comments.</p> <p>(a)</p> <ul style="list-style-type: none"> • The Authority recognises that the compliance and product related functions of the ECTC are different. However, as indicated in paragraph 3.20 of the Consultation Document, the Authority considers there is merit in streamlining the processes for each function so as to merge the two previously considered bodies (i.e.,

- Viva consider that these two functions, with different objectives, should not reside in the same body.
- Monitoring Bnet's compliance is an oversight role, with an inherent tension between the oversight body and Bnet/Batelco. It is similar to an auditing function and (Viva propose) the body should have significant investigatory powers. In Viva answer to question 3, Viva give international examples of bodies that perform these functions.
- The product related functions are designed to facilitate supplier and customer engagement, in an environment where Bnet as supplier must treat all its customers equally. Its focus is on constructive engagement, whereas the oversight role is about compliance.
- The compliance function will involve due process issues, access to confidential information, investigations of suspected breaches, etc. It is a sensitive role. It may be appropriate for members, or at least the Chair, to have a legal background.
- The product related functions will involve technical and operational design. Its focus is on problem solving and product and process improvement. There is less sensitivity involved, as all customers are treated equally, and membership may comprise primarily those with an engineering background.
- There are different ways of organising this; it does not require a committee, provided that a robust industry consultation process is followed by Bnet.
- Viva's concern is that a single body, charged with both of these functions, will have a confusing mandate and will be compromised as a result.
- One solution may be to have a single chairperson, but two committees, one dealing with compliance and the other dealing with product related functions. There may be some common membership among the committees, but not necessarily.

(b)

- No. Compliance issues that arise are likely to be highly sensitive and potentially controversial. Where the issue is whether Bnet has treated

ECC and Industry Forum) into a sole entity that will carry out the duties of both entities: the ECTC. However, the Authority has considered Viva's proposal for two sub-committees and has added wording under section 4.3 of the TOR to provide the Chairperson with clear discretion to establish two sub-committees to deal separately with technical and equivalence related matters if required. The Authority considers that the need for such organisational measures may be discussed as an item of business at the first ECTC meeting.

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- The Authority notes Viva's comment regarding the scope of the investigatory powers of the ECTC and has included a new provision in the TOR confirming that the ECTC is empowered to request information from any Licensed Operator to enable to it carry out its functions. Viva is reminded that ultimately the Authority can exercise its standard investigatory powers under the Law (including requests for information pursuant to Article 53 of the Law) should information not be forthcoming to the ECTC.
- The Authority notes Viva's comments regarding the role of the Chairperson. The Authority agrees that it is important for the Chairperson to have the necessary skill set to perform both a compliance and industry / product related role.
- The Authority considers that new section 3.4.5 of the TOR will help ensure the appointment of representatives with the relevant skills and experience while section 5.12 (now 5.11) of the TOR allows for the attendance at meetings of alternative representatives if required.

(b)

- The Authority notes Viva's concern regarding sensitivity of individual compliance related disputes. The Authority directs Viva however to section 2.3 of the TOR which is clear that the ECTC is not intended to provide a platform to discuss confidential matters or issues that may arise for a specific wholesale connection (e.g., individual disputes). The Authority has made a slight amendment to section 2.3 to clarify that the ECTC is to put in place appropriate and proportionate measures to protect the confidential information

Batelco equivalently to how it treats OLO's, this may require access to sensitive information of Bnet, or of Batelco and OLOs. Because the issues that the committee will be considering are compliance related, it is not likely to be appropriate that these are resolved in a collaborative manner. It is less sensitive for product related functions.

- Viva therefore do not consider that a collaborative approach is required or appropriate in this context.
- The TRA must retain strong powers where Bnet has breached the equivalence obligations, which may be revealed by the committee considering compliance issues. Under section 25 of the Bnet License, the TRA has broad powers in this situation. Viva submit that breaches of the equivalence obligations should be treated with the utmost importance, and the strongest penalties applied, to deter this sort of behaviour by Bnet (and Batelco). Viva also believe that Bnet should be subject to strong penalties by the TRA if Bnet fails to comply with investigation requests from the committee considering compliance.

(c)

- Yes, but – while this may be appropriate in relation to the product related functions – Viva believe that the committee's compliance function should have stronger powers than providing recommendations to be implemented.
- The compliance function should include mandatory reporting and information flows to the committee from Bnet and Batelco and the committee should have strong powers of investigation to assess potential non-compliance. These should be included in the Terms of Reference and the Bnet License should require compliance with these reporting obligations.
- These powers are consistent with the powers of independent oversight groups in the UK (originally, in 2005 and, more recently in relation to the legal separation of BT, in 2018), New Zealand and Italy. The table in Viva's wider response summarises these models.

of representatives which may include restricting discussion of specific matters or issues to certain representatives..

- As regards Viva's comments regarding the Authority's enforcement powers, the Authority directs Viva to the Authority's enforcement powers under the Law. The Authority therefore does not consider any amendment to the TOR is necessary on this point.

(c)

- The Authority notes Viva's comment that the ECTC should have stronger powers regarding compliance, which extend over and above providing recommendations. The Authority directs Viva to paragraph 5.3 of the Consultation Document and section 2.2 of the TOR which confirm that the ECTC's compliance role should not replace or obviate the statutory role of the Authority in this regard. The Authority does not consider it necessary or appropriate for the ECTC to issue binding compliance decisions, but that the power to issue binding compliance decisions should remain with the Authority. To this end, and for the avoidance of doubt, section 2.1.1 of the TOR has been amended to clarify that the ECTC is to be a forum for Licensed Operators to raise concerns relating to equivalence rather than complaints. The Authority considers that this better reflects the advisory and consultative function of the ECTC.
- As regards Viva's comments regarding mandatory reporting obligations on Bnet, the Authority notes that pursuant to section 4.15 of the Bnet License, Bnet is required (among other matters) to: *"ensure that it gives full and timely co-operation to the Equivalence Compliance and Technical Committee and, as a minimum, the Licensee shall dedicate sufficient budget and other resources to its participation in and compliance with its obligations to the Equivalence Compliance and Technical Committee, and shall, provide monthly compliance and equivalence reports to the Equivalence Compliance and Technical Committee, in such form as may be required by the Regulator"* (emphasis added).

- The Authority therefore does not consider any amendment to the TOR is necessary on these points.

Zain

(a)
First two separate forums

- Zain Bahrain firmly believes that it would not be advisable nor prudent to combine the role of compliance monitoring with the contemplated role of industry forums as contemplated in the new ToR based on the reasoning set out in Article 3.2 of the Consultation. The compliance validation role is to assess and validate that Bnet is complying with the milestones and technical and non-technical deliverables set out in Bnet's undertakings, STM, License and the Bnet Order. These include obligations to transfer assets, meet designated fibre rollout timelines, Eol timelines and include investigating breaches, recording and discussing formal complaints from MNOs and all other licensed operators and providing reports and making recommendations to the Authority. Typically, the composition of the compliance validation committee would be defined hitherto based upon specific criteria. The compliance validation role is a formal system which will focus on upholding strict adherence of the Bnet.
- The latter role, on the other hand, is more collaborative and requires joint discussions which may touch on strategy, investment prioritisation, product portfolio and technical requirements. The attendees at the industry forum(s) could involve all licensed operators, with restrictions on the number of attendees proposed by the chairperson.
- Zain firmly believes that these two committees/forums should be distinct as one constitutes a strict compliance/audit/supervision role to ensure conformance to the previously undertakings while the other involves a collaborative effort to discuss plans, strategies, operation and products which may evolve continuously.
- Zain, therefore, disagrees with the reasoning of the Authority that *the amalgamation of the Equivalence Compliance Committee (ECC) with the Industry Forum into a single ECTC will help to manage the regulatory burden*

The Authority notes Zain's comments.

(a)

Two separate fora:

- The Authority notes Zain's views regarding the amalgamation of the compliance and industry / product functions of the ECC and Industry Forum into the ECTC. The Authority disagrees that the amalgamation will necessarily lead to dilution of Bnet's obligations. It is not uncommon for oversight bodies to carry out a number of roles and functions. The Authority remains of the view (expressed in paragraph 3.20 of the Consultation Document) that there is merit in streamlining the processes for each function so as to merge the two previously considered bodies (i.e., ECC and Industry Forum) into a sole entity that will carry out the duties of both entities: the ECTC. The Authority considers that, with the right framework, these various roles can be managed effectively through one body such as the ECTC.
- That said, the Authority has considered Zain's feedback and has added wording under section 4.3 of the TOR to provide the Chairperson with clear discretion to establish two sub-committees to deal separately with technical and equivalence related matters if required. The Authority considers that the need for such organisational measures may be discussed as an item of business at the first ECTC meeting.
- The Authority notes Zain's indication that the separation of roles should be in place for a minimum of five years. The Authority has not proposed any minimum or maximum timeframes regarding the separation of Bnet and Batelco, or for the existence of the ECTC. The Authority considers that the ECTC should remain in place at

on Bnet and enable it to better focus on compliance with its obligations under the Bnet License and Reference Offer. Instead, by combining the committees into one body, the effectiveness of upholding strict compliance by Bnet on its undertakings will be diluted. Zain believes that such separation of roles should be in place for a minimum of five years.

Second: powers granted to each entity

- With reference to the afore-mentioned position, especially in relation to the equivalence compliance forum, the powers of the ECTC under the current ToR are limited, partial and does not give any conformity that ECTC will be empowered to monitor Bnet's compliance with the separation milestones.
- The ECC and the chairman should be granted powers to undertake investigations, requesting information from Bnet and other parties, suggesting remedies and escalations to the Authority. Any default or not cooperating should have regulatory deterrents consequences that are predefined under the ToR. The spirit of this committee is that it is an extension of the regulatory powers of the Authority and not just a committee that meets and discuss topics without tangible binding/enforcement powers. The investigations and findings produced by the ECC are formal and the Authority shall take them into full consideration and not to reinstate the complaint process as set out in the guidelines as doing so will only prolong a process that is already inefficient. Historically typical complaints are taking 2 years to be finalised.
- Based on the above mentioned two points. Zain recommends the removal of sections 2.1.1 (d) and 2.1.1 (e) and to reserve these instead for a separate industry forum which also needs to be established. A separate industry forum should have the opportunity to discuss the following critical areas such as Bnet's investment decisions and expansion/roll-out plans against the backdrop of specific industry requirements.

Therefore, the following two distinct forums structure is recommended:

Equivalence Compliance Committee ("ECC")

- Composition: with reference to Zain's comments in response to question 2.2, Zain recommends the following committee composition with a total of eleven (11) members:

least for as long as necessary to oversee Bnet's compliance with its EOI obligations and/or to support discussions regarding the technical or operational concerns of the industry with regards to the delivery of the product set required under the Bnet Order.

Powers granted to each entity:

- The Authority considers that paragraphs 5.1 – 5.5 (inclusive) of the Consultation Document, and section 2 of the TOR confirm that the ECTC and its Chairperson should have all necessary powers (including powers to request information, undertake preliminary investigations, suggest remedies and escalate matters to the Authority) for the effective discharge of the ECTC's compliance monitoring and industry/product related functions.
- Both the Consultation Document and the TOR (in particular, section 2.2) however make clear that the ECTC is not empowered to make binding decisions regarding assessment of Bnet's compliance with its obligations under the Bnet License and/or Bnet Order and Reference Offer, or regarding resolution of concerns from Licensed Operators against Bnet. Notwithstanding this, the Authority considers Zain's comments regarding timeframes are inaccurate; and the basis for Zain's statement regarding a typical timeframe of two (2) years is unclear, and fails to differentiate between simple and complex disputes.
- As regards Zain's proposed removal of section 2.1.1(d) and section 2.1.1(e), the Authority refers Zain to the Authority's comments under (a) above concerning amalgamation of compliance monitoring and product related functions into the ECTC, rather than establishing separate bodies such as the ECC and Industry Forum.
- The Authority notes Zain's proposals that the:
 - Compliance function of the ECTC should enable, among other items, other Licensed Operators to (i) investigate a complaint and formally provide its findings to the Authority, and (ii) review the quarterly financial performance of Bnet in order to ensure that the business model is aligned with the set-out objectives of

- The independent Chairperson
- Three (3) independent members, selected for example from other regulators, academia and firms experienced in separation matters (e.g. accounting firms)
- Two (2) members from Bnet
- Three (3) members from the MNOs (Viva, Batelco and Zain)
- Two (2) members from all other licensed operators

- Functions: to provide a forum to undertake the following:
 - monitor Bnet's compliance with its regulatory obligations (including in relation to the separation of its systems and processes, as between Bnet and Batelco, and Bnet's progress on achieving the relevant milestones in the Reference Offer Order, undertakings, STM, Bnet License and any other regulatory instrument issued by the Authority; and providing the regulated wholesale products and services on an equivalence of inputs basis;
 - enable Licensed Operators to raise complaints with the ECC and for the parties to seek to resolve such complaints. In the event that the relevant complaint cannot be resolved between the parties, or Bnet fails to remedy the violation, either party and/or the committee may investigate the complaint and formally provide its findings to the Authority for any regulatory action deemed necessary;
 - review compliance and equivalence reports provided by Bnet to the ECC, and provide recommendations to Bnet and to the Authority to ensure Bnet's compliance with its obligations and equivalence of services as between Licensed Operators; and
 - present the quarterly financial performance of Bnet, in order to ensure that business model is aligned with the set-out objectives of allowing Bnet to earn a fair return on investment and balancing the OLOs investment sustainability and retail services affordability.

Industry Forum

- Composition: with reference to Zain's comments in response to question 2.2, Zain recommends the following committee composition with a total of eleven (11) members:
 - The chairperson which is appointed by the Authority or an Executive of the Authority.

allowing Bnet to earn a fair return on investment. It is inappropriate, and contrary to the Authority's role and obligations under the Law, for Licensed Operators to '*investigate*' complaints or to seek to '*review*' Bnet's business model. These functions remain with the Authority.

- Industry / product related function should enable, among other items, the ECTC to set charges and pricing regime for services/products. The Authority is the relevant entity that is responsible for setting / checking Bnet's prices. Accordingly, the Authority has made a small amendment to section 2.2.2(e)(i) to confirm that any discussion of Bnet's prices will relate to proposed prices only.
- The Authority therefore does not consider any amendments to the TOR is necessary on these points.

ECC and Industry Forum:

- The Authority notes Zain's proposals regarding the number of representatives for the ECC and Industry Forum. Firstly, as indicated in response to (a) above, the Authority has confirmed that while the ECTC will remain a single forum, the Authority has added wording under section 4.3 of the TOR to provide the Chairperson with clear discretion to establish two sub-committees to deal separately with technical and equivalence related matters if required. Further, section 5.12 (now 5.11) of the TOR allows for the attendance at meetings of alternative representatives with the requisite skills set as needed.
- Secondly, the Authority notes Zain's view regarding an overall number of eleven (11) representatives for the ECTC. The Authority disagrees with Zain's proposals concerning the requirement for three (3) so-called 'independent' representatives

- Two (2) members from Bnet
- Six (6) members from the MNOs (two from each MNO, Viva, Batelco and Zain)
- Two (2) members from all other licensed operators

- Functions: to provide a forum to:
 - enable Licensed Operators to discuss and prioritise investment plans in terms of infrastructure roll-outs, technology and equipment roadmaps;
 - enable Licensed Operators to raise and discuss with Bnet technical and procedural matters relating to the regulated wholesale products and services which Bnet is required to supply, including, but not limited to, the preparation by Bnet of processes and procedures to support service requests, service delivery, in-life management and other relevant operational matters. Where such processes and procedures are agreed by the Industry Forum, they shall be documented by Bnet in a joint working manual (or equivalent) and related operational documentation;
 - facilitate the discussion and development of any new service/product request and outline of its scope, along with the commercial terms applicable to the scoping, development, testing, implementation and supply of the new service/product, including:
 - i. the charges and pricing regime to apply to any or all of those activities considering the likely time and resources required;
 - ii. the framework, dependencies for, and scope of, any proposed testing and acceptance processes;
 - iii. a draft timetable for the scoping, development, testing, implementation and supply of the new service/product; and
 - iv. any other matters the chairperson reasonably considers relevant to the new service/product request.

(b)

As advised above, Zain recommends that under the ECC a strict compliance issues should be discussed objectively to ensure compliance and the delivery of equivalence of inputs to all providers. While the approach under the Industry Forum should indeed be cordial, constructive, results-oriented, it must focus on the more

who could be selected from other regulators, academia and/or accounting firms. The Authority considers that such appointments would not be practical. In any event, Zain is reminded that should the Chairperson wish to draw on the skills of third parties, this is permitted under section 9.2 of the TOR.

- The Authority has however taken into account general representations from stakeholders regarding the number of representatives of Bnet and in the interests of administrative efficiency and resourcing commitments from Bnet, the Authority has considered further streamlining of the number of representatives of the ECTC. The Authority has therefore proposed in the final TOR that the number of Bnet representatives should be revised to three (3) rather than five (5). The Authority considers that, in light of the revised provisions concerning quorum, Bnet's interests are sufficiently protected by having three (3) rather than five (5) representatives. Further, the Authority also considers that three (3) representatives from Bnet strikes the right balance between fair representation of Bnet's interests while not imposing too great a burden on Bnet resources.

(b)

- The Authority refers to its response to (a) above regarding the amalgamation of functions of the ECC and Industry Forum into the ECTC. The Authority notes that the ECTC's technical functions may complement Bnet's license obligations to ensure that the Licensed Services reflect the reasonable requirements of operators and to consult other Licensed Operators at an early stage in the development of new products and services.

(c)

<p>complex task of ensuring ongoing and sustained compliance in an environment of changing markets and technologies.</p> <p>(c) Zain recommends that both the ECC and a separate industry forum (which will focus on operational and technical issues) should indeed provide instruction and recommendations and measures to be implemented by Bnet.</p>	<ul style="list-style-type: none"> The Authority notes Zain's agreement concerning the ability of the ECTC to provide instructions and recommendations and measures to be implemented by Bnet.
<p>Kalaam</p>	
<p>a. No comments. b. Yes, agree. c. Yes, agree.</p>	<p>Kalaam's comments are noted.</p>
<p>Infonas</p>	
<p>a. Infonas has no comments. b. Infonas understands that the RO and other compliance documents are already binding (to which Bnet is bound by); hence they require no approval from the Regulator, rather than enforcement in case of incompliance. c. Infonas agrees.</p>	<p>Infonas' comments are noted.</p>
<p><u>QUESTION 2 - COMPOSITION:</u></p> <p>Are you satisfied with the composition of the ECTC, as set out in Section 3 of the TOR? In particular, do you agree with:</p> <p>(a) the number of representatives and those entitled to appoint them;</p> <p>(b) the ability for the Authority to require rotation of the two representatives appointed by the operators other than Bnet and the MNOs; and</p>	

(c) the manner by which ECTC representatives may be removed?

If not, please give reasons and state how the composition should be amended.

Batelco

- (a)
- Batelco is of the view that, in the event the ECTC is disbanded into the ECC and the Industry Forum once again, the number of representatives appointed by Bnet should be limited to two or three at a maximum, as administratively it may prove to be problematic to ensure attendance of relevant representatives at every ECTC meeting held. In total, the number of representatives (including the Chairperson) should be equal to eight or a maximum of nine person(s). This would also limit any remuneration costs that may be associated with the appointment of representatives.
 - If the ECTC, however, covers both technical and compliance aspects of the operation of Bnet, then five (5) representatives nominated from Bnet shall suffice as the bulk of the technical discussion shall be initiated by Bnet.
- (b)
- Para 3.13 states that two representatives may be appointed jointly by all other Licensed Operators. Para 3.3 further explains how the representatives are meant to rotate on a regular basis. Batelco requires further clarification as to:
 - Whether only one of these appointed representatives shall be allowed to attend an ECTC meeting at a time; and
 - On what basis shall the representatives be rotated; will the representatives be rotated within specific time periods, or based on the matters to be discussed on the ECTC agenda for the given meeting, or on general expertise.
- (c)

The Authority notes Batelco's comments.

- (a)
- The Authority considers that any proposals regarding the number of representatives for ECC and Industry Forum, in the event that the ECTC is disbanded into two separate bodies, should more properly be dealt with if and when such occasion were to be proposed by the Authority e.g., in any consultation which might be conducted by the Authority at that time. However, the Authority considers that the need for any disbandment should be limited by the providing the Chairperson with the discretion to establish two sub-committees to deal separately with technical and equivalence related matters if required.
 - The Authority points out that the number of representatives that may be nominated by Bnet and other Licensed Operators to participate in ECTC meetings are maximum numbers. This is to be distinguished from the number of representatives needed to form a quorum.
 - However, as noted above the Authority has decided to reduce the number of Bnet appointed representatives from five (5) to three (3).
- (b)
- The Authority confirms that the two (2) representatives appointed jointly by other Licensed Operators who are not MNOs (under section 3.1.3 of the TOR), may both attend the same ECTC meetings.

<ul style="list-style-type: none"> • Batelco generally agrees. It does, however, believe that certain caveats should supplement this provision to ensure that ECTC representatives are not removed on an ad-hoc basis. In particular, Batelco suggests the following: <ul style="list-style-type: none"> ○ An exhaustive—and, if not possible, an indicative—list as to what may constitute as behaviour resulting in removal from the ECTC; ○ Prior written notice to the ECTC representative to allow for some time to find a suitable replacement, who is to be approved and confirmed by the Chairperson and/or Authority. Para 3.4 may be interpreted to mean that the Authority shall have the discretion to replace representatives at any time, which may result in further delay for the ECTC to assemble and discuss on a monthly basis. • Batelco also seeks the Authority’s clarification as to whether or not there are fixed terms that each representative shall be required to serve for, and what the appointment process shall be for these fixed terms (if applicable). 	<ul style="list-style-type: none"> • As regards the basis for rotation, the Authority considers that this should be decided between the group of Licensed Operators appointing these representatives. In the event of any disagreement or failure to appoint a representative between these Licensed Operators, the Chairperson has the right to choose (section 3.1.3 of the TOR). The Authority may decide to rotate these representatives after consulting with the Chairperson (section 3.3 of the TOR). <p>(c)</p> <ul style="list-style-type: none"> • The Authority notes Batelco's proposals that an indicative list of circumstances should be proposed regarding the basis on which a representative may be removed from the ECTC. The Authority agrees that a set of non-binding, non-exhaustive principles would be helpful in this regard, and has amended the relevant provisions in section 3.4 of the TOR. • The Authority confirms that there are no fixed terms for appointments. However, any changes, should be notified to the Authority. The Authority has amended the wording of section 3.2 of the TOR to include specific reference to ‘changes’ to appointments.
<p>Viva</p>	
<ul style="list-style-type: none"> • VIVA disagrees with the proposed structure of the ECTC. Having 5 representatives for Bnet is unfair and not justified which will grant Bnet the ultimate voting power during the process of taking any decision and jeopardize the objectives of the ECTC. Bnet should have an equal voting power with other representatives than Batelco as proposed hereafter. • In respect of compliance functions, Viva believe there should be an independent chairperson to be appointed by TRA, and the committee should include: <ul style="list-style-type: none"> - one appointee from Bnet, instead of five, - one representative from OLOs and other stakeholders, - one appointee from each MNO (Zain, VIVA), and - one independent member to be appointed by TRA. 	<ul style="list-style-type: none"> • The Authority notes Viva’s comments. The Authority has decided to reduce the number of Bnet representatives to three (3). • The Authority disagrees with Viva’s view that there should not be a Batelco representative on the ECTC. Viva’s basis for its view is unclear and risks discriminating against Batelco without robust reasoning.

<ul style="list-style-type: none"> • Viva don't believe there is a strong case for including a Batelco representative on the committee, as the issues it will be dealing with is whether Batelco is advantaged, contrary to the equivalence obligations. More than five members dealing with compliance would be cumbersome. • In respect of product related functions, the composition seems appropriate. 	
<p>Zain</p>	
<p>(a)</p> <p>Zain Bahrain has examined various provisions in the ToR including but not limited to:</p> <ol style="list-style-type: none"> 1. The composition of the ECTC 2. The quorum for decision-making 3. The funding of the work of the ECTC beyond the cost of holding meetings <p>Composition of the ECTC and the Quorum for Decision-Making</p> <p>Article 3 of the ToR proposes the following composition of the ECTC:</p> <ul style="list-style-type: none"> ▪ An Independent Chairman ▪ 5 Representatives appointed by the Separated Entity (Bnet) ▪ 3 Representatives appointed by the MNOs ▪ 2 Representatives appointed by all other Licensed Operators <p>Sections 5.9 and 5.10 set out the voting powers of all representatives (each has a single vote) and the Chairperson and four representatives shall constitute a quorum sufficient for a meeting of the ECTC to take place, save that at least one representative appointed by Bnet and at least one representative appointed by an MNO must be present.</p> <p>Section 5.18 indicates the further representatives from the Authority, the Ministry of Transportation and Telecommunications and such other persons as the Authority may determine have the right to attend ECTC meetings. For the avoidance of any potential confusion, Zain recommend to refer to the ECTC personnel composition as "members" and any other personnel invited to such meetings as "representatives".</p>	<p>The Authority notes Zain's comments.</p> <p>(a)</p> <ul style="list-style-type: none"> • The Authority does not consider it necessary to change reference to '<i>representatives</i>' in the TOR to '<i>members</i>' or the basis for Zain's proposal in this regard. Accordingly, the Authority has not proposed any amendment to the TOR in this respect. • As regards the overall number of representatives at the ECTC, the Authority has decided to reduce the number of Bnet representatives to three (3). <p>(b)</p> <ul style="list-style-type: none"> • Zain's agreement is noted. <p>(c)</p> <ul style="list-style-type: none"> • The Authority notes Zain's concerns regarding section 3.4 and the Authority's ability to remove any representative, at its discretion, provided the Authority acts reasonably. • The Authority has proposed a set of non-binding, non-exhaustive principles would be helpful in this regard, and has amended the relevant provisions in section 3.4 of the TOR.

Accordingly, in Zain Bahrain's opinion, there are significant shortcomings with the governance model based upon the proposed composition of the ECTC and quorum for decision-making:

1. The proposed structure does not include sufficient independent members.
2. The structure, as it stands, essentially pits Bnet against the industry with an equal number of representatives from Bnet as with the rest of the telecommunications industry.
3. Prima facie, this will not help to align the industry. The structure may almost always call for the Chairperson to resort to the use of his/her right to a casting vote to resolve the deadlock.
4. The proposed setup notes that a quorum is constituted if the Chairperson and four representatives are present. This means that if the Chairperson and 2 Bnet representatives along with one Batelco representative are present, the quorum will be considered complete. Given the common shareholding between Bnet and Batelco, one cannot rule out the possibility that there will be instances in which both parties may act in concert.

International best practice on compliance regimes for functional/legal separation requisite the inclusion of independent members in the formed compliance committees. The merit of having such independent members is to reflect the expertise from other industries into the telecom sector to align the national objectives of the country. Zain firmly believes that a reorganisation of the composition is warranted. Zain recommends the following structure of a total of eleven (11) members including:

- The independent Chairperson
- Three (3) independent members, selected for example from other regulators, academia and firms experienced in separation matters (e.g. accounting firms)
- Two (2) members from Bnet
- Three (3) members from the MNOs (Viva, Batelco and Zain)
- Two (2) members from all other licensed operators

A quorum shall be established if the following persons are present:

- Independent Chairperson
- Four representatives provided Zain have (1) One independent appointee – apart from the Chairperson, (2) One appointed by Bnet (3) Two appointed by the MNOs or (1) MNO and one appointed by all other licensed operators.

The proposed quorum will ensure that the interests of the industry are fairly represented in any decision-making process.

<p>Furthermore, Zain recommends the following voting powers distribution:</p> <ul style="list-style-type: none"> ▪ A casting vote for the Chairperson ▪ One vote for each independent member ▪ One vote for Bnet ▪ One vote for each MNO ▪ One vote for each OLO member <p>Accordingly, Zain's response to the following questions should be considered in the context of the above-mentioned positions.</p> <p>(b) Zain agrees with the proposed approach by the Authority to require a rotation of the two representatives appointed by the operators other than Bnet and the MNOs.</p> <p>(c) Zain disagrees with Article 3.4 of the ToR as it jeopardizes the independence of the members of the MNOs and OLOs. Zain recommend that the Authority has the right to raise to the Chief Executive the issue and concerns on the representative, subject that these concerns are being shared by the chairperson as well.</p>	
<p>Kalaam</p>	
<p>a. Not agreed b. Not agreed c. Not agreed</p> <p>REASON: As there are not too many OLO's in Bahrain, there must be one representative selected from each OLO in ECTC.</p>	<p>The Authority notes Kalaam's disagreement. However, save for Kalaam's reasoning at (c), it is unclear what Kalaam's alternative proposals would be.</p> <p>In any event, the Authority has made amendments to the number of Bnet representatives on the ECTC, as well as consequent amendments to the rules on quorum.</p>
<p>Infonas</p>	
<ul style="list-style-type: none"> • Infonas is not satisfied with the composition of the ECTC. 	<p>The Authority notes Infonas' comments.</p> <p>(a)</p>

- The Bnet holds significantly more power by having 5 (five) representatives, which will directly impact 5.9, where in the cases it is necessary to approve an action/s to be taken by the ECTC, that would be subject to approval by a majority of the representatives at a meeting.
 - Infonas proposes that if the Regulator decides not to change Bnet's number of representatives, it should count their vote as 1 (one).
 - Infonas recommend against having representatives counted as individuals, rather to be considered as a group with a limited number of individuals; as some meetings may require more than one person with expertise in different areas (After deciding the agenda and Chairperson's approval).
 - However, casting vote to remain as one, regardless of the number of individuals within a given group.
- a. Please refer to the above.
 - b. Regardless of the rotation, operators with agenda points (other than Bnet and MNOs) should have the right to join any meeting
 - c. Infonas believes that removing representatives should be a joint decision between the ECTC and the Regulator, utilizing the same voting mechanism to decide actions for the ECTC

(b)

- The Authority has decided to reduce the number of Bnet representatives to three (3).

- The Authority notes Infonas' comment regarding the ability of any operator with an agenda point to join the meeting. The Authority notes that section 5.8 of the TOR affords the Chairperson discretion to invite any Licensed Operator to join a meeting, including where that operator has requested inclusion of an agenda item. The Authority therefore has not proposed any amendment to the TOR on this point.

(c)

- The Authority notes Infonas' concerns regarding section 3.4. The Authority does not consider that it is necessary or appropriate for the removal of an individual to be 'voted' on by the other ECTC representatives as this could be misused to target specific operators.
- However, the Authority has proposed a set of non-binding, non-exhaustive principles would be helpful in this regard, and has amended the relevant provisions in section 3.4 of the TOR.

QUESTION 3 - ROLE OF THE CHAIRPERSON:

- a. Do you agree with the role of the chairperson?
- b. Do you agree with the manner by which any costs associated with the chairperson and the ECTC are to be allocated (as set out in Section 4 of the TOR)?
- c. Do you agree that:
 - i. the ECTC should have the option to procure advice/assistance from external advisers in order to carry out its functions?
 - ii. the cost of procuring such external advisors should be agreed between the ECTC members or determined by the Authority?
 If not, please state why.
- d. Do you agree that the chairperson should have the ability to take such organisational measures as deemed reasonably practical in order to ensure efficient operation of the ECTC?
- e. Do you have any views on how the chairperson should be selected by the Authority, any independence criteria that should apply and the relevant skills and experience that the chairperson should have?

If not, please give reasons and state which roles and/or terms you think should be added or omitted.

Batelco

- (a)**
Batelco agree however reiterate its comments listed in this Consultation response in relation to the Chairperson monitoring the operation of EOI and Bnet's compliance to its regulatory obligations only, and shall not extend to technical and/or operational matters.
- (b)**
Batelco agrees that costs associated with the remuneration of the chairperson, secretary, and arrangement of the ECTC meetings should be borne by the Authority. Batelco does not agree that additional costs incurred to seek external advice and matters of that nature should be borne by Bnet and the MNO's, especially if specific external advice is sought out for the benefit of a particular MNO or Bnet, and has no benefit to or involvement from any other MNO.
- (c) (i)**
Batelco believes that if a certain MNO or representative requires external advice and/or assistance, they should do so at their own cost.
- (c) (ii)**
Please refer to Batelco's comments in relation to question 2(b).
- (d)**
Batelco believes that the Chairperson should be the ultimate decision maker of the ECTC.
- (e)**
Batelco suggests the following criteria for the selection of the Chairperson:
- Selected from an impartial pool of candidates with the relevant years of experience in the Telecommunications industry;
 - Fully independent—the Chairperson should have no affiliation or prior affiliation with any of the MNOs and/or Bnet;

The Authority notes Batelco's comments.

- (a)**
- The Authority refers Batelco to the Authority's responses in this regard under question (1) above.
- (b)**
- The Authority notes Batelco's agreement regarding the costs associated with the remuneration of the Chairperson. With respect to costs associated with specific external advice sought solely for the benefit of a particular MNO or for Bnet, the Authority has amended section 4.2 to provide for additional costs to be met by the representatives at a cost agreed between the representatives or, failing approval, to be determined by the Authority.
- (c)(i)**
- The Authority refers to its response above under (b).
- (c)(ii)**
- The Authority refers to its response above under (b).
- (d)**
- Batelco's agreement that the Chairperson should have necessary discretion to take decisions is noted.

<ul style="list-style-type: none"> • The Chairperson should have the applicable skillset; and • The Chairperson should fall within the Authority’s jurisdiction—appointment, remuneration, removal. 	<p>(e)</p> <ul style="list-style-type: none"> • The Authority notes Batelco's proposals regarding the selection criteria for the Chairperson. The Authority agrees in principle with the criteria proposed, which the Authority considers should be non-exhaustive, illustrative list of criteria. Individual circumstances would need to be considered. The Authority does not consider any amendment to the TOR is necessary in this regard. • The Authority notes that the selection of an individual with the appropriate criteria may, however, take time and/or there may be future periods where a new Chairperson is required to be selected. As such, the Authority has amended section 3.1 to note that in the event that a Chairperson is not appointed that the Authority shall fulfil that function on a temporary basis.
<p>Viva</p>	
<p>(a) Yes. The chairperson should also be responsible for notifying the TRA of any potential breaches of Bnet’s regulatory obligations that the committee becomes aware of.</p> <p>(b) Viva considers that all ECTC related costs should be borne by either Batelco or Bnet, as further detailed in Viva answer to paragraph (c) below.</p> <p>(c)</p> <ul style="list-style-type: none"> • Yes, the ECTC should have the option to procure advice or assistance from external advisers. • In terms of who pays, the committee performing the compliance function should be funded entirely from Batelco. This is consistent with the approaches in other countries, discussed above. • In terms of the product related functions, Bnet should bear these costs. It is Bnet that will benefit from the improved services that will result from the committee’s activities, so it should bear all related costs. 	<p>The Authority notes Viva's comments.</p> <p>(a)</p> <ul style="list-style-type: none"> • Viva's agreement is noted. The Authority also notes that section 2.1.3 of the TOR provides the ECTC with a reporting function, which will be performed by the Chairperson under section 4.1.6 and which may include notifying the Authority of compliance concerns. <p>(b)</p> <ul style="list-style-type: none"> • The Authority disagrees with Viva's proposal that all costs should be borne either by Batelco or Bnet. The other Licensed Operators should bear the relevant costs for advice that they require and/or benefit from, so as to reduce incentives for advice to be sought save where required. <p>(c)</p> <ul style="list-style-type: none"> • The Authority refers to its response in (b) above.

<p>(d) Yes</p> <p>(e) Viva propose that the chairperson not be:</p> <ul style="list-style-type: none"> • an employee or former employee of any member of the Batelco group (within the last five years); • a partner, director or senior executive of any firm, company or organisation providing consultancy or professional services to any member of the Batelco group; • a person with close family ties to any person falling within the categories set out in (a) or (b) above; or • a shareholder (directly or indirectly) in a member of the Batelco group. <p>The role of the chairperson will be demanding, particularly in relation to the compliance aspects. Viva propose that the chairperson of the committee dealing with compliance has a legal background, appropriate to the sensitivity of the role. It is not so important that the chairperson is independent of OLOs.</p>	<ul style="list-style-type: none"> • Viva has not provided any evidence for its purported position nor specific reference to approaches take in the countries Viva refers to. • The Authority considers that Licensed Operators should also benefit from improved services and therefore it cannot be assumed that only Bnet should bear such costs. <p>(d)</p> <ul style="list-style-type: none"> • Viva's agreement is noted. <p>(e)</p> <ul style="list-style-type: none"> • The Authority notes Viva's proposals regarding the selection criteria for the Chairperson. The Authority agrees in principle with the criteria proposed save that Viva has failed to justify (i) the proposed timeframe of five (5) years, which the Authority considers is disproportionate; and (ii) why the Chairperson does not need to be independent of OLOs. • The Authority notes that it considers any list of criteria to be non-exhaustive, illustrative list. Individual circumstances would need to be considered. The Authority does not consider any amendment to the TOR is necessary in this regard. • The Authority does not consider that a legal background should be a mandatory requirement in light of the fact that the ECTC is not restricted purely to compliance functions.
<p>Zain</p>	
<p>(a) Yes. Zain Bahrain agrees with the role of the Chairperson. However, Zain Bahrain calls for the following additional context to be set out in the ToR:</p> <p>1. The qualifications required for the Chairperson – including minimum professional experience, any requisite association with the global telecommunications industry and qualifications for independence (including but not limited to the need to be fully independent of any of the licensed operators) – must be set out.</p>	<p>The Authority notes Zain's comments.</p> <p>(a)</p> <ul style="list-style-type: none"> • The Authority agrees in principle with the criteria proposed by Zain under (a) opposite. The Authority considers such criteria to be non-exhaustive, illustrative list. Individual circumstances would need to

2. The Chairperson must be empowered, to direct discussions towards the emergence of a consensus view and sum up discussions so that everyone understands what has been agreed.

(b)
Zain agrees that the costs associated with the chairperson, the secretary, the independent members and the costs of the hosting of the ECC's meetings shall be agreed and met by the Authority.

(c)
Zain agrees that the ECC should have the option to procure advice/assistance from external advisers. Zain also agrees that the cost of procuring such external advisors should be agreed upon by ECC members.

(d)
Yes, Zain agrees with this approach with organisational measures that are not addressed in the ToR or in conflict with the ToR.

(e)
The Chairperson:

1. Should be independent of any of the licensed telecommunications operators in the market. Independence should be defined as a minimum as *"not having held one or more senior executive positions in any licensed operator in the Kingdom of Bahrain in the last 24 months or holding directly or indirectly over 0.05% of the equity of any of the organisations or a first-degree relative (father, mother, son, daughter, husband, wife, grandfather, grandmother, uncle, aunt, nephew, niece, first cousin) to any one of the executive management personnel in any of the MNOs"*.

2. Should possess relevant senior executive experience in the legal, regulatory, accounting, economics, telecommunications or finance professions.

3. Should have at least 20 years' experience with minimum of 8 years in a senior management role.

4. Should be Bahraini national.

be considered. The Authority does not consider any amendment to the TOR is necessary in this regard.

(b)

- Zain's agreement is noted.

(c)

- Zain's agreement is noted.

(d)

- Zain's agreement is noted.

(e)

- (1) The Authority agrees in principle with the criteria listed, save that the threshold of 0.05% is extremely low and likely to be triggered easily. As such the usefulness of such criterion is unclear.
- (2) The Authority agrees in principle on the understanding that these are alternative skills/qualifications. It is not practical to expect one person to have experience in all of these areas.
- (3) The Authority agrees in principle but individual cases would need to be considered.
- (4) The Authority agrees in principle but individual cases would need to be considered, especially given the other criteria i.e., it could be difficult to find a Bahraini national who has not worked for any OLO during the relevant timeframe, or that does not have a shareholding in an OLO.
- The Authority agrees that all representatives of the ECTC should declare any interest in an OLO (other than their employer) as well as any potential conflicting interests. The Authority considers that the Chairperson's role (and the requirement in section 3.2 of the TOR for all representatives to be notified to the Authority) provides sufficient safeguards, and sufficient flexibility for the Chairperson to require such interests to be declared and/or information provided in this regard. Accordingly, the Authority has not made

<p>All members and representatives of the ECC shall be called upon to declare any interests that they have in any of the licensed operators in the Kingdom.</p>	<p>any amendment to the TOR in this regard, although section 3.4 includes avoiding conflicts of interests as one of the principles to which the Authority will have regard in relation to removal of a representative.</p>
<p>Kalaam</p>	
<p>a. Yes, agree. b. Yes, agree. c. (i) Yes, agree. (ii) Yes, agree. d. Yes, agree – provided it is discussed in advance and agreed with ECTC. e. Authority should nominate three candidates based on technical compliance and experience in regard to the telecom industry and knowledge. The representatives of the ECTC should vote in the ideal candidate.</p>	<p>Kalaam's agreement to points (a) to (d) inclusive are noted. The Authority disagrees that the ECTC should vote on the candidate.</p>
<p>Infonas</p>	
<p>a. Yes b. Yes c. (i) yes (ii) yes. However, the costs of procuring such external advisors shall be borne by the requesting parties and Bnet (in case of the requesting party is other than Chairperson). Otherwise, if the request is solely raised by the Chairperson at his discretion, then costs should be agreed between the ECTC members or determined by the Regulator. d. Yes e. Infonas believes that a Chairperson's role is more of a managerial one, hence, strong managerial and technical skills will be required. As the language of the meetings has not been decided in the TOR, the Chairperson should be bilingual (Arabic and English). Infonas suggests that the Authority approach head-hunters to be able to hire the right person and avoid any bias. Industry background of a Chairperson should not be limited to the Bahraini telecommunications market/holding companies of telecommunications</p>	<ul style="list-style-type: none"> • Infonas' agreement to points (a) to (d) inclusive are noted. • As regards Infonas' comments on costs under (c)(ii), the Authority notes that it has made amendments to section 4.2 of the TOR. • With respect to Infonas' proposals concerning the qualifications of the Chairperson, the Authority notes that while desirable a mandatory requirement for the Chairperson to be bilingual could restrict the available individuals from whom the Authority can choose. Individual cases would need to be considered. Regarding linguistic ability, the Authority considers that it should be sufficient to ensure that translation is available as necessary.

companies, as this might impose bias, depending on Chairperson's ex/current employer.

QUESTION 4- PROCEEDINGS OF ECTC MEETINGS:

- a. Do you agree with the method and procedure by which meetings of the ECTC are to be conducted (as set out in Section 5 of the TOR)?
- b. Do you agree with the voting and quorum requirements set out in Section 5.9 and 5.10 of the TOR?

If not, please state why.

Batelco

- (a)
- Batelco seeks the Authority's clarification as to what is meant by "additional meeting" in Section 5.1 of the TOR, and on what basis shall an additional meeting be requested. Should the ECTC cover both technical and/or compliance issues, Batelco is of the view that a monthly meeting may not be enough to serve the purposes of the ECTC committee. It questions what the process for requesting additional meetings from the ECTC shall be, as well as who shall make the ultimate decision to hold the additional meeting.
 - Batelco suggests that the ECTC meeting is held every month for a period of 6 months from the creation of the ECTC, following which ECTC meetings shall be held quarterly or when the need arises. Additionally, Section 5.1 of the TOR states that the Authority will consult with the Chairperson and may require less frequent meetings, however it is in Batelco's view that the Authority and Chairperson consult with MNOs and Bnet as they are operationally involved in day-to-day matters.
 - Batelco requests the Authority's clarification on Section 5.3 of the TOR, in particular in relation to:
 - How and when should a Licensed Operator submit an item to the Chairperson for discussion, given that the proposed agenda shall be approved and distributed to representatives two weeks in advance of each ECTC meeting?
 - Who decides the finality of the agenda? Is it solely the Chairperson?

The Authority notes Batelco's comments.

- (a)
- The reference to '*additional meeting*' in section 5.1 of the TOR is to any meeting other than the monthly meeting referred to in this section, which the ECTC and/or Chairperson may reasonably consider necessary. The Authority considers that any representative could request an additional meeting. The Chairperson should decide (as part of the Chairperson's remit under section 4.3 to take such organizational measures as he/she deems appropriate) whether an additional meeting should be granted.
 - The Authority notes Batelco's suggestion regarding frequency of meetings during and after the first six (6) month period. The Authority disagrees with Batelco's suggestion that after the first six (6) months, the frequency of meetings should automatically be reduced to quarterly. The Authority considers that given the new industry structure and the various functions of the ECTC, it is in the interests of Bnet and other Licensed Operators to have regular discussions concerning the delivery of EOI and the services/products under the Bnet Order and Reference Offer. The Authority considers that the provision of monthly meetings for the first year of establishment of the ECTC strikes an appropriate

- What timeframe should the agenda cover? Is there a specific cut-off time in which the meeting shall be disbanded or will the representatives have to examine each agenda item?

(b)

- Batelco agrees with the voting and quorum requirements set out in Section 5.9 and 5.10, with a small amendment to Section 5.10 to state: "and at least one representative appointed by [each] MNO must be present", to ensure clarity in terms of representation.
- Batelco would also like to put forward to the Authority an enforcement mechanism for voting requirements. For example, if a certain matter was brought to the ECTC's attention more than once or a maximum of two times, then the ECTC would be obliged to pass it on to the Authority to provide a verdict on the said matter.

balance. Notwithstanding this, should the ECTC consider that less frequent meetings are required, the Authority would consider such request. As regards the process outlined in section 5.1 of the TOR concerning a reduction in frequency of meetings, the Authority has amended the wording in section 5.1 to confirm prior consultation with the ECTC representatives. The Authority notes that section 5.10 (now 5.9) of the TOR provides representatives with the flexibility to attend ECTC meetings via video or teleconference, thereby helping to limit the administrative burden of meetings on all parties.

- The Authority considers that the Chairperson should provide further guidance concerning day-to-day matters and processes, including the process for submitting agenda items. This falls within the Chairperson's remit under section 4.3 of the TOR and should be discussed during the first meeting of the ECTC as provided for in clause 6.1.2 of the TOR. Section 5.4 of the TOR provides that the Chairperson has responsibility for finalising the agenda, having regard to any representations or requests received. As regards the duration/timeframe to be covered by the agenda, the Authority considers that the duration of ECTC meetings should be kept to a minimum. The Chairperson should have the discretion to set a maximum duration for each meeting and to decide to address any items on the agenda which could not be discussed, due to timing constraints, at the next ECTC meeting.

(b)

- The Authority notes Batelco's suggested amendment to section 5.10 (now section 5.9) and has amended the section to reflect the Authority's consideration of Batelco's comment.
- The Authority has considered Batelco's suggestion that in the event a specific item is brought to the ECTC's attention more than once / maximum of twice, there should be an obligation on the ECTC to pass this to the Authority. The Authority considers that in principle, there is merit in Batelco's suggestion. However, the Authority considers that this should remain at the discretion of the Chairperson so as to avoid potential delaying tactics and/or 'gaming'. Ultimately, a representative would retain the right to raise a matter directly with the Authority e.g., as part of the normal

dispute resolution / complaint process, provided the necessary grounds for establishing the relevant dispute / complaint are satisfied.

Viva

(a)
Yes

(b)

- A quorum should always have a majority of independent (of Batelco group) members. Viva also consider that the compliance functions require a smaller committee, and a correspondingly smaller quorum.
- Where there is an issue of Bnet compliance to be considered, attendance by a Bnet representative should not be necessary for a quorum (as they could otherwise simply frustrate the proceedings by failing to turn up).

The Authority notes Viva's agreement with (a).

(b) The Authority notes Viva's comments that:

- There should always be a majority of independent representatives other than Bnet and Batelco. The Authority agrees in principle with Viva's proposal and has amended the quorum requirements accordingly, such that the Chairperson, one Bnet representative and the three MNO representatives must be present to constitute a quorum.
- As regards Viva's comments concerning a quorum for compliance matters, the Authority does not see any merit in setting quorum requirements dependent on the functions to be exercised at particular meetings e.g., compliance versus technical / operational product matters. . As regards non-participation by Bnet, the Authority disagrees that the risk of non-appearance by the necessary Bnet representative(s) should automatically mean that Bnet should not be considered as a necessary part of the quorum requirements. The Authority notes that sections 4.14 and 4.15 of the Bnet License require Bnet to participate in the ECTC and dedicate sufficient resources to the ECTC. This includes an obligation on Bnet to ensure appropriate attendance at ECTC meetings. Should Bnet fail to comply with its obligations in this regard under the BnetLicense, this would be treated as a breach of the Bnet License. The Authority would be empowered to take enforcement action (including imposition of fines under Article 35 of the Law) regarding any such breach. However, the Authority has also included wording in section 5.9 (previously 5.10) of the TOR that, where a meeting is adjourned for a lack of quorum, the quorum requirements shall not apply to

	the adjourned meeting, subject to the approval of the Chairperson.
Zain	
<p>(a) Zain agrees with the method and procedure as set out in section 5 of the ToR. With regards to section 5.11, it is imperative that if a representative cannot attend, said representative should notify the Chairperson and/or the ECC secretary in advance (at least 24 hours before convening the meetings). Facilities, in good working order, should be put in place to ensure that a representative participating, through video conference, should be able to participate while causing minimum disruption to the proceedings of the meeting. Where such disruption arises, due to call quality degradation, the Chairperson shall determine within the first 15 minutes of the meeting whether to allow the participant to attend.</p> <p>(b) No. Zain Bahrain does not agree with the voting and quorum requirements as set out in sections 5.9 and 5.10 of the ToR. Instead, as noted in response to Question 2.3 above, a quorum should be established if the following persons are present:</p> <ul style="list-style-type: none"> • Independent Chairperson • Four representatives provided Zain have (1) One independent appointee – apart from the Chairperson, (2) One appointed by Bnet (3) Two appointed by the MNOs or 1 (One) MNO and 1 (One) appointed by all other licensed operators. <p>Zain recommends the following voting powers distribution:</p> <ul style="list-style-type: none"> • A casting vote for the Chairperson • One vote for each independent member • One vote for Bnet • One vote for each MNO • One vote for each OLO member 	<p>The Authority notes Zain's comments.</p> <p>(a)</p> <ul style="list-style-type: none"> • The Authority agrees with Zain's proposal that a minimum twenty-four (24) hours' notice should be given in advance by any representative who is unable to attend the relevant ECTC meeting. The Authority has amended the wording in section 5.12 (now 5.11) of the TOR accordingly. • The Authority notes Zain's proposals regarding restriction of representatives from participating in ECTC meetings due to lack of quality of video conferencing software. The Authority does not consider however that a mandatory cut-off timeframe should be included in the TOR. Rather the matter should be left to the discretion of the Chairperson regarding the individual circumstances (as part of the Chairperson's remit under section 4.3 of the TOR). Cut-off rules could be discussed as part of the organizational measures envisaged under clause 6.1.2 of the TOR. <p>(b)</p> <ul style="list-style-type: none"> • Zain is referred to the comments above on quorum. The Authority has reduced the number of Bnet representatives from five (5) to three (3).

Kalaam	
<ul style="list-style-type: none"> a) Yes, agree. b) Yes, agree. 	<p>Kalaam's agreement is noted.</p>
Infonas	
<ul style="list-style-type: none"> a) In response to 5.5, only urgent matters should be discussed out of the agenda. b) Infonas suggests that minimum quorum meetings should not result in approval of actions to be taken by ECTC without the consensus of all involved parties, including the absent ones. 	<p>The Authority notes Infonas' comments.</p> <p>(a)</p> <p>The Authority agrees in principle, and in the interest of efficient use of time at ECTC meetings, that any discussions outside of the agenda should be kept to a minimum, The Authority however does not consider it necessary at this stage, to mandate in the TOR that this must be limited to 'urgent' items but rather that this should be within the discretion of the Chairperson, taking into account the views of representatives at the relevant ECTC meeting.</p> <p>(b)</p> <p>As regards Infonas' suggestion that consensus of all representatives including absent ones is necessary for approval of actions, the Authority considers that the role of the ECTC is to act as an advisory and consultative forum for industry, rather than a decision making body. The Authority has therefore included additional wording in section 9.1 of the TOR to confirm the nature of the ECTC's role. In light of this, the Authority considers that it is unnecessary to include any additional formal voting provisions in the TOR and has therefore deleted the previous section 5.9. For the same reason, the Authority has decided to delete the reference to agreeing Bnet's processes and procedures in section 2.1.1(d) and to change the reference from "determining" to "discussing" the organisational operation of the ECTC in section 6.1.2 (recognising that decisions on these issues is a matter for the Chairperson under section 4.3). Once the ECTC is in operation, if the Chairperson were to consider that some form of voting mechanism is required, the Chairperson could use their powers under</p>

section 4.3 to put in place such a mechanism (and the Authority has included explicit reference to governance measures in section 4.3 to confirm this). Alternatively, the Chairperson could recommend an amendment to the TOR to the Authority. As regards matters relating to the approval of minutes or timing of adjourned meetings, the Authority has amended the provisions so that the Chairperson will have the ability to approve such matters, where otherwise not approved by the representatives.

QUESTION 5 - FIRST MEETING:

- a. Do you agree with First Meeting agenda items that are detailed in Section 6 of the TOR?**

If not, please state which items should be added and/or removed.
- b. Do you agree with the proposed timelines for establishment of the ECTC, the holding of the first ECTC meeting and timeline for submission of the Joint Working Manual to the Authority for its approval?**

If not, please state why and provide alternative suggested timelines.

Batelco

(a)
Batelco agrees.

(b)
Batelco agrees with the timeline of setting up the ECTC in July 2019, however requires further detail on the timeline for submission of the Joint Working Manual, given its views set out in Para(s) 12-14 of this response.

Batelco's agreement is noted.

As regards the timeline for submission of the Joint Working Manual, the Bnet Order requires Bnet to submit the Joint Working Manual to the Authority for its approval within four (4) months

In order to meet this deadline, the Authority expects Bnet to provide a draft of the Joint Working Manual to the ECTC for discussion with Licensed Operators as soon as practical after establishment of the ECTC.

Viva

a) Yes, agree.

Viva's agreement is noted.

b) Yes, agree.	
Zain	
<p>(a)</p> <ul style="list-style-type: none"> Zain agrees with the proposed first meeting agenda, except the item set out in Section 6.1.4 (<i>development of processes and procedures, including preparation of the joint working manual and related operational document</i>) as this should be left to the separate industry forum. Furthermore, as the forum may discuss trade secrets or confidential information related to the industry as part of the duties and assumed functions, it is advisable to have a confidentiality section in the ToR or have the members sign appointment agreements that includes such confidentiality terms. In addition, each representative shall ensure confidentiality when appointing external advisors. <p>(b)</p> <ul style="list-style-type: none"> Yes, Zain agrees with the proposed timelines for the establishment of the ECC and other Industry Forums and the timeline for submission of the Joint Working Manual to the Authority for its approval. 	<p>The Authority notes Zain's comments.</p> <p>(a)</p> <ul style="list-style-type: none"> The Authority refers Zain to its responses above to Question 1, where the Authority has confirmed that the Authority's position remains that the Industry Forum will be comprised within the ECTC. Accordingly, the Authority has not made any amendment to section 6.1.4 of the TOR. The Authority agrees that it is imperative that commercially sensitive confidential information should not be discussed between representatives at the ECTC. The Authority refers Zain to section 2.3 of the TOR which confirms that the ECTC will be required to put in place appropriate and proportionate measures to protect the confidential information of representatives.. Should representatives be concerned about confidentiality requirements they could raise this with the Chairperson, who could require signature of a confidentiality undertaking from each ECTC representative (e.g., as part of the Chairperson's discretion concerning organizational/governance measures under section 4.3 of the TOR). <p>(b)</p> <ul style="list-style-type: none"> Zain's agreement is noted.
Kalaam	
<p>a. Yes, agree.</p> <p>b. Yes, agree, provided representative from each OLO agree as well.</p>	Kalaam's agreement is noted.

Infonas	
<p>a. Yes, Infonas further suggests "Meeting ground rules" to the First Meeting agenda items. These must be communicated clearly to all representatives and participants</p> <p>b. Yes</p>	<p>Infonas' agreement is noted.</p>
<p><u>QUESTION 6 - AMENDMENT:</u></p> <p>Do you agree with the terms by which the ECTC TOR can be amended (as set out in Section 7 of the TOR)?</p> <p>If not, please state which terms should be added and/or removed.</p>	
Batelco	
<p>Batelco suggests that Section 7.1 of the TOR should be amended to include the process for amendment of the TOR in terms of prior notice to and consultation with the ECTC representatives, as well as clarity as to how these amendments shall be published and when they shall be made effective.</p>	<p>Batelco's comments are noted. The Authority considers that the process envisaged in section 7.1 and specifically in item (ii) within that section provides for sufficient opportunity for consultation within the ECTC. Notwithstanding this, the Authority has amended the wording in (ii) to make this clearer.</p> <p>Any amendments to the TOR require the approval of the Authority and would be published on the Authority's website. The Authority has amended the wording in section 7.1 to confirm that any revised version of the TOR would be made available on its website.</p>
Viva	
<p>Yes, agree.</p>	<p>Viva's agreement is noted.</p>
Zain	

<p>Zain recommends that the terms of reference should only be amended in joint agreement by the Authority and the ECC. This should not be done independently.</p>	<p>The Authority disagrees with Zain's recommendation that the TOR can only be amended with agreement from the ECTC. The ECTC is a body established by the Authority, and there may be circumstances, including legislative changes, where it become necessary for the Authority to be able to amend the TOR. It is inappropriate for the Authority to fetter its powers in this respect. The Authority expects however, such instances of unilateral amendment to be limited.</p>
<p>Kalaam</p>	
<p>Yes, agree.</p>	<p>Kalaam's agreement is noted.</p>
<p>Infonas</p>	
<p>Yes. However, the review period should be on "as needed" basis, rather than annual basis.</p>	<p>Infonas' comment is noted. The Authority has amended the wording in section 7.1 to confirm that any review would be at least annually. The Authority considers that such amended wording provides sufficient flexibility should it become necessary to review the TOR sooner and strikes the right balance.</p>
<p><u>QUESTION 7 - TERMINATION:</u> Do you agree with the Termination provisions set out in Section 8 of the TOR? If not, please state why.</p>	
<p>Batelco</p>	
<ul style="list-style-type: none"> Batelco agrees with the termination provision reflected in Section 9.1, however it also believes that a reciprocal right to dissolve the ECTC should 	<p>Batelco's comments are noted.</p>

<p>be accorded to the members of the ECTC upon unanimous agreement. The members of the ECTC should have the right to disband the committee if it appears that the committee no longer solves its purpose, or is no longer effective in providing recommendations and/or resolutions.</p> <ul style="list-style-type: none"> Batelco does not agree with Section 9.2 as it is irrelevant to Section 8 of the TOR. Notwithstanding the previous comment, Batelco does not agree specifically on the arrangements for meeting the costs of external advice and assistance. As reiterated previously, representatives should bear any incurred costs on advice sought for their own benefit or due to requests originating from such representatives, unless it is commonly understood and agreed between all MNOs and Bnet that such advice is beyond the Authority's powers and provides clarity to the entire industry. 	<ul style="list-style-type: none"> The Authority disagrees that the representatives of the ECTC should be empowered to dissolve the ECTC. The ECTC is a body established by the Authority, among other matters, to assist the Authority in monitoring Bnet's compliance with specific obligations under the Bnet License and Bnet Order. The decision as to whether or not Bnet is in compliance is a decision for the Authority and not ECTC representatives. Therefore, the ultimate decision regarding any potential dissolution of the ECTC must lie with the Authority. Should the ECTC representatives have concerns regarding the usefulness of the ECTC and/or its recommendations, this should be raised directly with the Authority. Such matters may necessitate a change to the ECTC's TOR (as discussed above under Question 6 which relates to section 7 of the TOR) or could ultimately point towards the Authority deciding under section 8 of the TOR that the ECTC should be dissolved. However, this decision must rest with the Authority and not the ECTC representatives themselves. The Authority considers that section 9.2 of the TOR remains necessary. The Authority refers to its responses above regarding the allocation of costs between representatives.
<p>Viva</p>	
<p>Yes, agree.</p>	<p>Viva's agreement is noted.</p>
<p>Zain</p>	
<p>Zain is of the view that the core objective of a compliance committee is to supervise Bnet's obligation post the separation and to provide sufficient assurance and comfort to the industry that fair level ground is established and that industry members are fairly represented. Accordingly, Zain do not think it is wise or reasonable for the Authority to be able terminate the ToR at any time by serving 30 days written notice to the Chairperson and the representatives without providing the viable alternative option, process or forum that adequately achieves the ECC functions and objectives.</p>	<p>Zain's comments are noted.</p> <p>In terms of safeguards, the Authority expects that it would consult on any proposed termination of the ECTC, and that sufficient notice would therefore be provided to the industry i.e., there would not merely be a sudden or unanticipated decision to terminate within thirty (30) days. It could also be a condition of the outcome of the consultation that a viable alternative should be in place. The Authority considers however, that any</p>

	<p>such condition(s) would form part of the consultation and therefore no amendment to section 8.1 of the TOR is required at this stage.</p> <p>Ultimately, Licensed Operators would be able to raise matters directly with the Authority as part of the standard dispute resolution / complaints processes, provided that the necessary criteria to establish a case are satisfied.</p>
Kalaam	
Yes, agree - provided that all pending actions items are addressed upon.	<p>Kalaam's comments are noted.</p> <p>In terms of safeguards, the Authority expects that it would consult on any proposed termination of the ECTC, and that it could be a condition of termination for all pending actions to be resolved (as suggested by Kalaam). The Authority considers however, that any such condition(s) would form part of the consultation and therefore no amendment to section 8.1 of the TOR is required at this stage.</p>
Infonas	
In this section, the Regulator has absolute power to terminate without setting clear termination criteria, which Infonas does not agree with.	<p>Infonas' comments are noted. The Authority points out however that Infonas has not provided any details regarding the suggested termination criteria.</p> <p>In terms of safeguards, the Authority expects that it would consult on any proposed termination of the ECTC.</p>
Other General Comments	
Batelco	
<ul style="list-style-type: none"> Batelco believes that it would be counterintuitive to nominate one member of its team to the proposed ECTC for the duration of one year to undertake 	<ul style="list-style-type: none"> The Authority notes Batelco's comment regarding the individual to be nominated as representative to the ECTC, given the different compliance and technical / operational product roles of the ECTC.

both compliance and technical positions Batelco's representative, who shall be inherently obligated to attend the ECTC monthly meetings in order to stay abreast of any NBN developments, shall have to be familiar in both technical/operational matters as well as compliance matters. The representative in question may not have the relevant expertise to be able to deal with all matters as per the ECTC's agenda.

- As such, the proposed alternate provisions in Para 5.21 of the ECTC Consultation may not be a suitable arrangement in the event that Batelco wishes to appoint an alternate—(1) Batelco would need to know the agenda well ahead of time in order to determine the appropriate representative given the myriad of issues/matters that would be discussed by the ECTC; and (2) Batelco may need more than one representative to sufficiently cover the aforementioned matters in the ECTC agenda.
- Batelco refers to Para 5.3 of the ECTC Consultation regarding its second concern with the function of the ECTC. The Authority states that the ECTC shall not be “empowered to make binding decisions regarding assessment of Bnet’s compliance with its obligations under the Bnet License and/or Reference Offer, or regarding resolution of complaints from Licensed Operators against Bnet.” This is, as per the Authority’s reasoning, for the purposes of retaining the “statutory role of the Authority in dealing with the Licensee’s compliance with License obligations and handling complaints by Licensed Operators”, powers which are accorded to the Authority by virtue of section 3 (c) of the Telecommunications Law No. 48 of 2002 (the “**Telecoms Law**”).
- In light of the above, and given that the Authority does not have a representative within the ECTC, it is not clear how the Authority will have an oversight as to how it plans to solve matters which have reached a deadlock between ECTC representatives.
- Batelco understands that the ECTC's role would also comprise of assessing technical and procedural requirements in regards to Bnet's wholesale products. Batelco also appreciates that the Industry Forum envisaged under Para 7.38 to 7.40 of the second Bnet RO Consultation set out a detailed process as to the design and definition of the aforementioned wholesale

The Authority confirms that Licensed Operators such as Batelco can nominate a different individual for compliance versus technical matters using the alternate provisions under section 5.12 (now 5.11) of the TOR and considers that this is the appropriate mechanism to use.

- As regards advance notice of the relevant agenda items and subject matter for each meeting, section 5.4 of the TOR indicates that the proposed agenda will be circulated two (2) weeks in advance of each meeting. The Authority considers this should provide ample time for Batelco and other Licensed Operators to identify the relevant individual to attend the meeting using the alternate provisions. For meetings that are called on less than two weeks' notice, the Authority has included additional wording to state that the proposed agenda should be circulated as soon as practicable.
- As regards Batelco's concern regarding the Authority's oversight, this function within the ECTC is conducted in the first instance by the Chairperson. The Authority points out that the Chairperson is (a) appointed by the Authority; and (b) part of the Chairperson's role and function is to report to the Authority. The Authority is not precluded from sending additional persons from the Authority to attend ECTC meetings as an observer, should the Authority consider this necessary and appropriate.
- With respect to Batelco's comments on the technical and procedural requirements of Bnet's products, and whether this is still necessary, the Authority notes that the Industry Forum is amalgamated into the ECTC and the ECTC will also consider technical / operational and procedural requirements relating to the products / services under the Bnet Order and Reference Offer.
- In terms of Batelco's comment that the ECTC should not be the only medium to discuss new products and/or services, and that Batelco should be able to do so directly with Bnet, the Authority points out that the EOI and non-discrimination obligations on Bnet restrict Bnet from negotiating specific arrangements with Batelco

<p>products, as well as a medium for approaching the Authority to discuss new service/product requests.</p> <ul style="list-style-type: none"> • Noting the foregoing paragraph, Batelco would first like to query as to whether this process, due to the consolidation of the ECC and the Industry Forum into the ECTC, would be removed and/or be made redundant. • Following on from this point, Batelco would not want the ECTC to be the only medium to discuss new products and/or services. Batelco should be able to approach Bnet directly with their design, technical requirements, and desired pricing regime—referral to the ECTC (or Industry Forum) would further delay the time-to-market. It is with this view that the Batelco suggests reverting to the original process set out in Bnet's Supply Terms. 	<p>(or another Licensed Operator) that is not also available to all other Licensed Operators.</p>
<p>Viva</p>	
<p>-</p>	<p>-</p>
<p>Zain</p>	
<p>-</p>	<p>-</p>
<p>Kalaam</p>	
<p>-</p>	<p>-</p>
<p>Infonas</p>	
<p><i>In response to 5.2.5 page 12</i> One of ECTC's proposed functions is to facilitate the discussion and development of any new services/products. Infonas understands that any outcome of this function <i>will/might</i> result in changes in Bnet's RO. However, this consultation paper fails to</p>	<ul style="list-style-type: none"> • Should the ECTC consider that new products/services should be added to Bnet's Reference Offer, such proposals should be made by the ECTC to the Authority. The process for effecting this would need to be carried out as part of a formal review of the Reference

provide any mechanisms/processes on how the ECTC is going to impact or work in conjunction with Bnet's RO.

In response to 5.6 page 13

Bnet holds significantly more power by having 5 (five) representatives, E.g. this will directly impact 5.9, where in situations where it is necessary to approve action to be taken by the ECTC, the same shall be subject to approval by a majority of the representatives at a meeting. If the Regulator decides not to change Bnet's number of representatives, it should count their vote as 1 (one).

In response to 5.20 page 16

Infonas suggests that minimum quorum meetings should not result in approval of actions to be taken by ECTC without the consensus of all involved parties, including the absent ones.

In response to 5.21

Infonas recommends against having representatives counted as individuals, rather to be considered as a group with a limited number of individuals; as some meetings may require more than one individual with expertise in different areas (*After deciding the agenda and Chairperson's approval*). However, casting vote to remain as one, regardless of the number of individuals within a given group.

In response to 2.1.1 (a)

Infonas suggests having a permanent representative from the project management team overlooking the separation of Bnet and Batelco.

Offer itself, which would include a public consultation on the proposed changes (in line with the Authority's standard procedure regarding Reference Offer reviews). The Authority notes that Schedule 2.2 of the Bnet RO provides a form for a Licensed Operator to request a new (non-RO) service from Bnet.

- Please see the comments above in relation to the number of Bnet representatives, voting rights and quorum.
- The Authority notes Infonas' suggestion for a permanent representative from the Authority's NBN project team to attend ECTC meetings. The Authority does not consider that this should be a mandatory requirement given the role and function of the Chairperson, who is appointed by the Authority and is to report to the Authority regarding ECTC matters. Notwithstanding this, the Authority points out that it is not precluded from sending additional persons from the Authority to attend ECTC meetings as an observer, should the Authority consider this necessary and appropriate.

Annex 2: Final ECTC Terms of Reference

Equivalence Compliance and Technical Committee

Terms of Reference

1 INTRODUCTION

- 1.1 The Equivalence Compliance and Technical Committee (the “**ECTC**”) is a committee established by the Telecommunications Regulatory Authority (the “**Authority**”) pursuant to section 4.13 of the Fixed Telecommunications Infrastructure Network Licence granted to Bnet B.S.C (c) (the “**Bnet License**”) and Articles 3(c)4, 3(c)18 and 3(d) of the Telecommunications Law promulgated by Legislative Decree No.48 of 2002.
- 1.2 References in these Terms of Reference to the “Authority” shall include references to the Authority’s advisors and/or any third party engaged or appointed by the Authority, save that any final decision shall be made by the Authority.

2 FUNCTIONS

- 2.1 The functions of the ECTC are to:

2.1.1 provide a forum to:

- (a) monitor the compliance of Bnet B.S.C (c) (“**Bnet**”) with its regulatory obligations (including in relation to the separation of its systems and processes, as between Bnet and the Bahrain Telecommunications Company BSC (c) (“**Batelco**”), and Bnet’s progress on achieving the relevant milestones and providing the regulated wholesale products and services on an equivalence of inputs basis;
- (b) enable Licensed Operators to raise concerns relating to equivalence with Bnet and for the parties to seek to resolve such concerns without formal action. In the event that the relevant concern cannot be resolved between the parties, either party may formally refer a formal complaint to the Authority for resolution;
- (c) review compliance and equivalence reports provided by Bnet to the ECTC, and provide recommendations to Bnet and to the Authority to ensure Bnet’s compliance with its obligations and equivalence of services as between Licensed Operators;

- (d) enable Licensed Operators to raise and discuss with Bnet technical and procedural matters relating to the regulated wholesale products and services which Bnet is required to supply, including, but not limited to, the preparation by Bnet of processes and procedures to support service requests, service delivery, in-life management and other relevant operational matters, as may be documented by Bnet in a joint working manual (or equivalent) and related operational documentation; and
 - (e) facilitate the discussion and development of any new service / product request and outline of its scope, along with the commercial terms applicable to the scoping, development, testing, implementation and supply of the new service / product, including:
 - (i) the proposed charges and pricing regime to apply to any or all of those activities considering the likely time and resources required;
 - (ii) the framework, dependencies for, and scope of, any proposed testing and acceptance processes;
 - (iii) a draft timetable for the scoping, development, testing, implementation and supply of the new service / product; and
 - (iv) any other matters the chairperson reasonably considers relevant to the new service / product request;
- 2.1.2 provide recommendations and measures to be implemented by Bnet concerning operational and/or technical matters relating to the supply of its regulated wholesale products and services;
- 2.1.3 report to the Authority in writing on a monthly basis (or as otherwise requested by the Authority) on the carrying out of its functions and such other matters as the Authority may determine and refer matters to the Authority where a formal investigation may be appropriate; and
- 2.1.4 carry out any other functions determined by the Authority as being within the remit of the ECTC.

- 2.2 The ECTC is not empowered to make binding decisions regarding assessment of Bnet's compliance with its obligations under the Bnet License and/or Reference Offer, or regarding resolution of complaints from Licensed Operators against Bnet.
- 2.3 The ECTC is not intended to provide a platform to discuss confidential matters or issues that may arise for a specific wholesale connection, which does not concern or affect Licensed Operators and/or the industry more generally. The ECTC will put in place appropriate and proportionate measures to protect the confidential information of representatives which may include restricting discussion of specific matters or issues to certain representatives.
- 2.4 The ECTC may request information from Bnet or any other Licensed Operator to enable it to carry out its functions.

3 COMPOSITION

- 3.1 The ECTC shall be comprised of an independent chairperson appointed by the Authority (failing which the Authority shall act as chairperson) and eight representatives, being:
 - 3.1.1 three representatives appointed by Bnet;
 - 3.1.2 three representatives appointed by the holders of the Licenses for Mobile Telecommunications ("MNOs") (one representative appointed by each MNO); and
 - 3.1.3 two representatives appointed jointly by all other Licensed Operators. If the other Licensed Operators cannot agree the identity of a representative to be appointed amongst them then the chairperson shall have the right to choose one of the individuals proposed by any of the Licensed Operators (subject to section 3.3 below).
- 3.2 The Authority shall be notified of all representative appointments (and any change to such appointments) and appointing Operators shall ensure that appointed representatives have the relevant skills and experience and are of sufficient seniority and authority to fulfil their role.
- 3.3 In relation to the representatives appointed jointly by all other Licensed Operators, the Authority may require that the appointments rotate on a regular basis to ensure all other Licensed Operators have the opportunity to be represented at meetings within a certain

period. The Authority will consult the chairperson prior to making any decision in this regard.

3.4 Any representative of the ECTC may be removed at the Authority's discretion, acting reasonably. The Authority shall provide reasoning for its decision to remove any representative and, in reaching its decision, may have regard to the following principles, which it considers should reasonably apply in relation to representatives:

- 3.4.1 avoiding conflicts of interest;
- 3.4.2 complying with any arrangements relating to confidential information;
- 3.4.3 engaging transparently and honestly with the ECTC;
- 3.4.4 avoiding disruption to the proceedings of the ECTC;
- 3.4.5 having relevant skills and experience;
- 3.4.6 maintaining the integrity and reputation of the ECTC;
- 3.4.7 treating the chairperson and other representatives with respect and courtesy.

4 ROLE OF THE CHAIRPERSON

4.1 The role of the chairperson is to:

- 4.1.1 convene and chair meetings of the ECTC;
- 4.1.2 determine the agenda for meetings;
- 4.1.3 ensure that written minutes are prepared of each meeting;
- 4.1.4 ensure that appropriate and proportionate measures to protect the confidential information of representatives are put in place;
- 4.1.5 provide to the Authority copies of the compliance and equivalence reports provided by Bnet to the ECTC; and
- 4.1.6 prepare, or cause to be prepared, written reports to the Authority on the carrying out of its functions and such other matters as the Authority may determine on a monthly basis or as otherwise requested by the Authority.

4.2 The costs associated with the chairperson, the secretary and the costs of the hosting of the ECTC's meetings shall be agreed and met by the Authority. Any additional costs incurred by the ECTC including, for example, costs in relation to obtaining external advice to the ECTC or in the preparation of reports or documents for the ECTC shall

be met by the representatives at a cost agreed between themselves or, failing agreement, as determined by the Authority (acting reasonably).

- 4.3 The chairperson may take such organizational and/or governance measures as he/she deems reasonably practical in order to ensure efficient operation of the ECTC. Such measures may include establishing two sub-committees for representatives to deal with technical and compliance related matters separately.
- 4.4 The chairperson may appoint a secretary who shall be entitled to attend all meetings and minute the proceedings and otherwise support the chairperson as necessary.

5 ECTC MEETINGS

- 5.1 For the first year from the establishment of the ECTC, meetings of the ECTC shall be held on a monthly basis at 11am on the first working Sunday of each month. Any change of time or date or any additional meeting shall be notified by at least one week's advance written notice to all representatives and the Authority by the secretary at the request of the chairperson or, if there is no secretary, by the chairperson. After the first twelve (12) meetings of the ECTC have been held, the Authority will consult with the chairperson and the representatives and may require less frequent meetings.
- 5.2 ECTC meetings will be held at the Authority's premises, unless otherwise agreed by the Authority.
- 5.3 Any Licensed Operator may request the chairperson to include an item on the agenda for an ECTC meeting.
- 5.4 The chairperson will invite representations from the Authority and representatives on a proposed agenda two (2) weeks in advance of each meeting (or, where a meeting is called on less than two (2) weeks' notice, as soon as practicable) and shall finalise and circulate the agenda in advance of each meeting, having regard to any representations received and any requests made pursuant to section 5.3 above.
- 5.5 Matters not on the agenda may be discussed at an ECTC meeting with the approval of the chairperson.
- 5.6 Draft written minutes of ECTC meetings shall be circulated promptly following the meeting by the secretary (or, if there is no secretary, by the chairperson) to the Authority and all representatives for review, and will be subject to the approval of a majority of the representatives at the next ECTC meeting, failing which the approval of the chairperson.

- 5.7 Following approval, the chairperson will circulate the final version of the minutes to the representatives and the Authority. The Authority reserves the right to publish such minutes on its website.
- 5.8 Only the representatives (or their respective alternates), the Authority and such other persons as may be determined by the Authority have the right to attend ECTC meetings. However, the chairperson shall have full and sole discretion to invite to meetings such other persons as he/she deems appropriate or as may be suggested by representatives of the ECTC, in each case at the absolute discretion of the chairperson. That shall include, without limitation, inviting attendance by a Licensed Operator that has requested inclusion of an agenda item or attendance by employees of Licensed Operators or other persons with relevant technical knowledge where technical matters are to be discussed.
- 5.9 The chairperson and four representatives shall constitute a quorum sufficient for a meeting of the ECTC to take place, save that at least one representative appointed by Bnet and all three of the representatives appointed by the MNOs must be present. In the event that an ECTC meeting cannot be held for lack of quorum, it shall be adjourned to a date and time agreed by those representatives present (or, failing agreement, as determined by the chairperson), which shall be notified to all representatives in accordance with the notice provisions set out above. The quorum requirements shall not apply to any adjourned meeting, subject to the approval of the chairperson.
- 5.10 The chairperson and representatives may participate in an ECTC meeting by means of a conference telephone or a video conference telephone or similar communications equipment by which all persons participating in the meeting are able to hear and be heard by all other participants without the need for a participant to be in the physical presence of another participant(s) and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting, including for the purposes of constituting the quorum for such meeting.
- 5.11 Where a representative is unable to attend an ECTC meeting, the representative shall give the chairperson written notice at least twenty-four (24) hours in advance of the meeting. Where a representative is unable to attend or, having considered the agenda, considers that another person would have the relevant expertise relating to the matters to be discussed, that representative may appoint an alternate to attend in that representative's place, subject to the prior consent of the chairperson.

6 FIRST MEETING

6.1 The first meeting of the ECTC should include the following agenda items:

6.1.1 noting of the ECTC's terms of reference;

6.1.2 discussing the organisational operation of the ECTC;

6.1.3 discussions regarding Bnet's performance; and

6.1.4 identification of processes and procedures in relation to the supply of products and services by Bnet, including preparation of the joint working manual and related operational documentation.

7 AMENDMENT

7.1 These terms of reference may be amended from time to time (i) by the Authority or (ii) by recommendation of the ECTC having consulted with its representatives and with the approval of the Authority. The Authority shall publish any amendments on its website. The ECTC shall review these terms of reference on at least an annual basis.

8 TERMINATION

8.1 The Authority may terminate the ECTC at any time by serving 30 days' written notice on the chairperson and the representatives.

9 THE STATUS OF THE ECTC

9.1 The ECTC is intended as an advisory and consultative forum designed to assist industry with the implementation of the technical and equivalence related issues arising from the separation of Bahrain Telecommunications Company B.S.C. The establishment of the ECTC and the functions entrusted to it shall not impair, prejudice, restrict in any way or replace the regulatory functions, powers and duties of the Authority.

9.2 The ECTC shall have the authority to procure advice or assistance from external advisors in carrying out its functions, subject to the prior written approval of the Authority. The arrangements for meeting the costs of such advice or assistance shall be as set out at section 4.2 above.