



صندوق البريد 21529 Box P.O
Seef District - Kingdom of Bahrain
stc.com.bh

stc Bahrain submission to

TRA's Consultation:

“BNET's Proposal to amend its RO by introducing a new service “Closed Bitstream Service” and upgrading the existing WBS Essential and WBS Advanced bandwidths”

(Non-Confidential)

Principal Contact Person:
Telephone number:
Email:
Date:
Reference:

Fehmi Jebali
+973 34011223
fjebali@stc.com.bh
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1 INTRODUCTION

stc Bahrain would like to thank the Authority for the opportunity to comment on the Authority's consultation paper (TRA Ref: LAD 0824 044) regarding BNET's proposal to amend its Reference Offer by introducing a new service "Closed Bitstream Service" and upgrading the existing WBS Essential and WBS Advanced bandwidths issued on 12 August 2024 (the "**Consultation**" or "**Consultation Paper**").

1.1 Structure of response

We have prepared our response to the Consultation to address the specific questions raised by the Authority. This response includes stc's general comments on the statements made in the Consultation Paper, along with stc Bahrain's insights on the particular questions outlined in Section 2 of this response. Each part of the response contains a rationale for stc Bahrain's position.

2 THE PROPOSED AMENDMENTS

Q1. Do you support the introduction of the Closed Bitstream Service (CBS)? If not, please provide your reasons.

No, we do not. The CBS service was not a service that licensed operators have requested and is an attempt by BNET to move up the value chain, leveraging from monopoly wholesale into the competitive enterprise market.

(a) Crowding out of licensed operators

It is crucial to understand that one of the core objectives of the separation policy outlined in the the Fourth National Telecommunications Plan (“NTP4”) is to promote service-based competition. This policy aims to create an environment where retail licensed operators can differentiate their offerings and enhance consumer choice, whilst ensuring that these operators have equivalence of inputs access to the same wholesale fiber-based infrastructure provided by BNET B.S.C.

However, by offering enhancements to the WBS service that could otherwise be delivered by retail licensed operators, BNET undermines this objective. This approach not only threatens to crowd out licensed operators, but also seeks to extend and solidify BNET’s monopoly position in the market.

The CBS, being a turnkey solution, does not allow for the necessary degree of customisation by licensed operators of the basic WBS service. As a result, this limitation diminishes the value of the offerings that licensed operators can provide, effectively reducing them to basic resellers of BNET’s products.

A key method for retail licensed operators to differentiate their services is by building secure layers on top of communication services, such as WDC/DS. Unfortunately, this product hinders that type of service-based differentiation and competition, ultimately stifling innovation and restricting consumer choice in the marketplace. By limiting the ability of licensed operators to create unique offerings, the market risks becoming less competitive and less responsive to consumer needs. The TRA needs to draw a clear “line of business” for BNET to prevent this type of behaviour from occurring in the future. BNET should be required to confine its business to the mandated monopoly provision of basic fixed infrastructure access services and should not be allowed to encroach on, and push its offering up the value chain to operate in the potentially competitive elements of the market¹. In the current light regulatory approach being adopted by the Authority, where a Utility monopoly as BNET is curiously not subject to cost control, the BNET tendency to cannibalize retail providers’ revenues and margins is both anticompetitive and detrimental to the sustainability in retail markets.

(b) Bypassing the ECTC process

¹ For example, in New Zealand, Chorus is prohibited from participating in services above layer 2 services and from providing telecommunications links to end-users (see: <https://comcom.govt.nz/regulated-industries/telecommunications/regulated-services/line-of-business-restrictions>); similar restrictions apply to Openreach in the UK under its Commitments: see <https://www.bt.com/about/bt/policy-and-regulation/our-governance-and-strategy/our-commitments/audit-and-risk-committee/publications-and-dcr-documents>

Under the new process for approving amendments to the reference offer (“RO”), any initiated changes by an Access Provider (in this case, BNET) are to be proposed by BNET for discussions with retail providers to the ECTC, whilst also informing TRA². The ECTC chair then calls an extraordinary general meeting. Within a period of 20 working days, regardless of whether the ECTC is in favour of the change, the TRA is required to review the change against the FRAND principles.

We are not aware that BNET’s proposed CBS service has been put by BNET to the ECTC in compliance with this new process. Despite that it was proposed for discussion by one retail provider in the ECTC meeting of August 4th, 2024, the ECTC process should be followed before the TRA is in a position to consider approval of the CBS service.

(c) Lack of clarity in TRA approval

During a separate and earlier consultation on the process for approving amendments to the RO, we emphasised the need for clearly defined criteria for the TRA's scrutiny stage³. We also advocated for a broader assessment that considers whether the proposed changes are consistent with the regulatory requirements set forth in the Law and associated regulations, including the FRAND principles. This is crucial because a comprehensive evaluation ensures that all amendments not only meet legal standards, but also promote fair competition and equitable access within the market. By incorporating these considerations, the interests of all stakeholders involved can be safeguarded.

(d) BNET should not attempt to engage directly with customers

We view BNET’s attempts to engage with the enterprise retail market with considerable skepticism. BNET should be confined to market engagement with licensed operators through the ECTC process. If BNET wishes to develop new services, then it should consult directly with licensed operators, not leapfrog them to discuss directly with their customers, even where those customers may be government entities with security responsibilities.

If BNET is permitted to engage directly with enterprise customers, then this limits the ability for licensed operators to develop their own downstream services to meet the requirements of these customers and will advantage the enhancements made by BNET over those that may be offered by licensed operators.

(e) Undue discriminating among business customers

BNET did not clarify why the CBS service is exclusively dedicated to security entities. We assume there are no cost differential for BNET to price different prices to different customers for the same product. This practice will lead to anti-competitive behaviour by retail providers initiated at the upstream level.

Q2. Do you support the proposed upgrades to WBS Essential and WBS Advanced bandwidths? If not, please provide your reasons.

² [RO approval process \(tra-website-prod-01.s3-me-south-1.amazonaws.com\); 20231031195332763_jwdmarpo_y1u.pdf \(tra-website-prod-01.s3-me-south-1.amazonaws.com\)](https://tra-website-prod-01.s3-me-south-1.amazonaws.com/20231031195332763_jwdmarpo_y1u.pdf)

³ Page 12: [22473896.1 \(tra-website-prod-01.s3-me-south-1.amazonaws.com\)](https://tra-website-prod-01.s3-me-south-1.amazonaws.com/22473896.1) and Page 13: [August 21, 2003 \(tra-website-prod-01.s3-me-south-1.amazonaws.com\)](https://tra-website-prod-01.s3-me-south-1.amazonaws.com/August_21_2003)

No, we do not support the proposed changes. Before the Authority can approve any modifications, it is essential for the Authority to conduct a comprehensive review of the retail fixed broadband market to identify any competition distortions in the market that require regulatory intervention. stc believes that the market is currently non-competitive and significantly disproportionate and the WBS proposed changes if adopted will create unfair advantages to one operator that will entrench market distortions.

In this context, stc urges the Authority to expedite the review of the retail broadband and domestic connectivity markets, noting that the last review of these markets was conducted in 2014, prior to the separation of the incumbent, and it is crucial to avoid further impacts on competition without a relevant market study.

In our response to Q5, we set out in greater detail our concerns on the impact of the proposed changes on competition in the fixed broadband market, which we believe need to be addressed in that broadband market review, and our recommended course of action. We also highlight that the last SMP determination of SMP position in the retail fixed broadband market was in 2014 (MCD/03/14/018). At the time of the strategic market review in 2015, the TRA said that "...market reviews are typically conducted by the TRA in time spans of 3-5 years, which is broadly in line with the frequency of conducting individual market reviews in most EU countries"⁴. However, despite our repeated requests, the TRA has not conducted an updated market review of the retail fixed broadband market without any justification and in cases where we raised complaints about the SMP operator anti-competitive behaviour, the TRA was unable to conduct ex-post investigations in the appropriate time.

Additionally, stc entreats the Authority to establish a comprehensive costing model and ensure that BNET's pricing is cost-based before approving repeated proposed amendments by BNET to the BNET Reference Offer. Any modifications to the RO pricing or product structure could significantly alter the competitive landscape. For instance, if the WBS pricing structure is modified repeatedly without the appropriate costing and market review, it may strengthen Batelco's hold on its substantial WBS customer base, further limiting competition.

NON-PRICE TERMS

Q3. Do you consider that the non-price terms outlined in the proposed amendments are fit for purpose and meet the reasonable requirements of LOs?

We do not believe BNET should provide a CBS service, which we address in our response to Q1 above.

We believe that the bandwidth options for the WBS services should remain unchanged, pending completion by the TRA of the comprehensive review of the broadband market and the development of the appropriate cost model. We discuss this further in our response to Q4 and Q5 below.

However, if the TRA determines to proceed with approval of BNET's proposed changes, then we have set out several recommendations to limit the adverse anti-competitive impacts on OLOs.

(a) *TRA orders for Batelco*

⁴ para 68; MCD/08/15/062

If the TRA decides to accept BNET's proposed changes without the benefit of a comprehensive review of the fixed broadband market, then we submit that the TRA should order Batelco to either:

- delay implementation of the changes to the WBS services for its customers for a period of 12 months following implementation by the OLOs; or
- prevent Batelco from locking in customers on long-term contracts as a result of the changes to the WBS Service (one option could be achieved by mandating that Batelco provide clear notifications to customers about their rights regarding contract termination, similar to the approach taken in the previous instance.)

In the absence of resolving the problems in the regulatory environment, either option is likely to be a reasonably effective way of enabling OLOs to implement strategies that combat Batelco's market power in the fixed broadband market.

(b) Introduction of a glide path

BNET's proposed changes involve an effective substantial reduction in tariffs for the WBS service. We have seen no evidence to support these tariffs and, as we discuss further in section 5.3(b) below, we are uncertain whether BNET's tariffs are cost-based. In the absence of a completed cost model, recent benchmarking at least suggests that BNET's charges for the lower speed services may be considerably below cost and its charges for the higher speed services may be considerably above cost.

If the TRA decides not to make the orders we recommend in paragraph (a) above, and there is no reliable cost model to provide the necessary assurance, then we recommend that a glide path be put into effect, for the implementation of the proposed changes to the WBS service, for a period of not less than 2 years.

This would provide some relief from the anti-competitive effects of BNET's proposed changes and allow more time for licensed operators to adjust to the changes and further depreciate their investments in 5G networks.

If a glide path is introduced, this should not replace the pressing need for the TRA to complete its cost-modelling exercise for BNET.

Notwithstanding stc above recommendations, the relevant backhaul and aggregation products should be upgraded (without a price increase). This alignment will guarantee that the infrastructure supporting the upgraded WBS service can effectively manage the increased data flow, thereby maintaining high service quality and reliability for end-users. By implementing these proportional enhancements, we will

be able to optimize network performance and prevent potential bottlenecks or degradation in service quality.

PRICE TERMS

Q4. Do you agree that the proposed price terms for the CBS and the upgraded WBS services meet the FRAND requirements?

From the consultation paper, we conclude that the TRA has not undertaken the necessary analysis required to conclude the proposed changes to the entry level WBS services are “fair, reasonable and non-discriminatory” (article 9 of the Access regulation and article 57(b) of the Law).

Much of the TRA’s analysis in the consultation paper concerns its interpretation of the FRAND requirement. The TRA states that “If the price paid by access seeker would allow it to compete effectively in the downstream market and whether the access provider has sufficient incentive to produce and develop the access services over time, then the price may be viewed as a “reasonable” price.” This leads the TRA to analyse retail tariffs in other markets and related issues such as price gradients.

However, we consider the more relevant consideration is the relationship between BNET’s proposed tariffs and the cost of providing the service. While we can see some relevance in a retail tariff benchmarking exercise, we believe the TRA has given too much weight to it in assessing whether BNET’s proposed changes are FRAND. For example, an assessment that is based on retail operators’ gross margins may suggest these margins are sustainable, without acknowledging that retail operators must continually adjust their pricing strategies to remain competitive in the fibre broadband market. As mentioned above, we remain concerned about the lack of clear criteria to be applied by the TRA in assessing whether changes proposed by Access Providers are FRAND.

In the benchmarking exercise to prove the FRAND conditions, TRA has selected different samples of operators for the benchmark of retail fibre broadband prices depending on the Entry level speeds. TRA should have benchmarked Bahrain expected prices to the same sample of countries irrespective of the entry level speeds. We remind TRA about licensees observations during the workshop held at by the Authority on November 4th, 2023 about the new BNET proposed economic regulatory model where most of LOs agreed to benchmarking, provided the same countries in the benchmark set are used for benchmarking all services (as opposed to using particular countries for particular services)- This is, LOs argued, to ensure consistency as there is often cross-subsidisation between services.

LOs considered, however, that benchmarking needs to be complemented by other regulatory tools. LOs considered it is much more relevant and urgent, for the TRA to continue and complete its bottom-up cost-modelling exercise for BNET to assess the total costs involved in producing the wholesale services under the monopoly regime of BNET and then adding a fair margin to determine the price (see further discussion in section 5.3(b) below). In case TRA is particularly focused on the economic sustainability of BNET it would be more appropriate to adopt a rate of return regulation to determine fair and reasonable prices for wholesale prices. Prices under rate of return regulation are considered fair and reasonable because they would give BNET an opportunity to recover the costs it has appropriately

incurred in providing wholesale infrastructure services, and retail providers are protected from paying prices that would provide BNET with monopoly profits. BNET cost of capital should be the allowed rate of return.

Furthermore, a benchmarking of comparable wholesale tariffs in other markets would be a more effective exercise than a retail price analysis. For example, from our recent research, we find that the UK⁵ and Ireland⁶ have materially higher tariffs for wholesale fibre broadband services comparable to BNET's proposed 300Mbps Essential service (UK: 330/50Mbps £19.14 per month (BHD 9.46); Ireland: 300Mbps €23.50 (BHD 9.8), whereas they have materially lower tariffs comparable to BNET's higher speed services (UK: 1Gbps/400Mbps £22.01 per month (BHD 10.88); Ireland: 1Gbps €32 per month (BHD 13.97)⁷. These are regulated prices in markets where operators enjoy a much more beneficial cost structure due to the economy of scale they experience in their production.

We also note that it was only in 2023 that the TRA determined that BNET's previous higher WBS tariffs were FRAND (LAD 0423 001). The TRA now considers that prices that are substantially lower in some cases are also FRAND, without discussion of what caused this changed point of view.

Further, the TRA has given only a brief and high-level assessment of the broader market implications of BNET's proposed changes to the entry level WBS services in the consultation paper. This does not address the very real concerns that we have regarding the consequences of these changes. We discuss this further in our response to Q5 below.

This leads us to conclude that the TRA has not demonstrated that BNET's proposed changes to the WBS services for the entry level service are FRAND.

We discuss our concerns related to the proposed CBS service in our response to Q1 above.

OTHER COMMENTS

Q5. Do you have any other comments regarding BNET's proposal? If you do, please explain these in relation to (a) their impacts on competition; and (b) their impacts on consumers.

Yes, we do. We believe the proposed changes to the entry level WBS services adversely affect competition and therefore adversely affect consumers. We explain our concerns further below.

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<https://www.openreach.com/content/dam/openreach/openreach-dam-files/documents/Equinox-pricing-model-for-Full-Fibre-Broadband-from-April-24-online.pdf>

6

<https://www.comreg.ie/publication/eircom-price-list-wholesale-notification-24-021-tracked>

⁷ Exchange rates: xe.com 9 September 2024

5.1 The proposed changes reinforce Batelco group's market power

The Batelco group is incentivised:

- to preserve or strengthen its position in fibre broadband (where it has a monopoly in the upstream market through its affiliate (BNET) and is dominant in the downstream market); and
- to impair or minimise 5G competition from OLO's (where Batelco group does not have these advantages).

BNET's proposed changes to the entry level WBS services conform to these incentives. By substantially reducing the charges for its entry level wholesale fibre broadband service, potentially below cost, the effect is both:

- to reinforce BNET's monopoly wholesale position (by disincentivising competition from 5G in the Home broadband segment); and
- to reinforce Batelco's dominant retail position (by leveraging off its anti-competitive margin squeeze and long-term contract commercial strategy and encouraging more broadband services onto the fixed network and away from OLO competition over 5G networks).

We believe this behaviour is predatory unless TRA discloses and justifies how it came to the conclusion in Para 28 of the Consultation document that *"There are no signs indicating that BNET is cross subsidizing its broadband services"*.

(a) Disincentivising competition from 5G

If BNET succeeds in significantly increasing the bandwidth of the entry level WBS service for the same monthly recurring charge, it could significantly hinder competition from 5G providers in the Home broadband segment.

As we explained in our letter to the TRA of 24 July, licensed operators have no economically viable or efficient means to improve their 5G bandwidth to match this increase and enhance their offerings to customers in response to BNET's changes. Consequently, consumers may gravitate towards the more attractive fiber option, leaving OLOs with fewer competitive alternatives. While Batelco is also active in both fiber and 5G, it stands to benefit from this situation—as customers shift to fiber, Batelco could gain market share in the broadband segment without needing to innovate its 5G services. This situation may not lead to outright dominance for Batelco, but it could stifle innovation in future services that rely on 5G technology, such as smart grids and autonomous vehicles. Additionally, OLOs may be less inclined to invest in acquiring 5G spectrum in future auctions if they perceive that competing effectively is becoming increasingly difficult, ultimately reducing the spectrum's value.

(b) Reinforcing Batelco's dominant retail position

As we discuss further in section 5.3 below, Batelco reinforces its dominant position by, among other things a long-term customer contract strategy. Once the proposed changes to the WBS service come

into effect, Batelco can be expected to lock-in the majority of its customers through the use of its long-term contracts. For example, Batelco is likely to offer to extend the customer contract term in return for the speed increase at little or no additional cost.

Further, as competition from 5G diminishes and licensed operators need to prefer the fixed network, Batelco's dominant retail position will be further reinforced.

5.2 The TRA's view on broader market implications

In its consultation paper, the TRA acknowledges that MNOs offer a variety of mobile broadband packages that both complement and compete with fibre broadband (para 33) and "recognises that the proposed changes may impact the competitive dynamics between mobile and fixed broadband" (para 44).

However, this does not appear to cause the TRA concern.

In its consultation paper, the TRA dismisses the worries of OLO's by saying that "we believe that it is the responsibility of LOs to determine the pricing and terms of their services in the market, and not BNET's role, as a wholesale provider, to unduly influence retail market dynamics" (para 44).

We agree with that statement. We do not see BNET as having any role in the downstream retail market. However, the TRA's statement does not explain why OLO's concerns about the market implications of the proposed changes are unwarranted. BNET's actions are predatory, in our view, and whether or not a licensed operator can determine the retail terms of its services is only tangentially relevant to the core issue of whether competition is significantly affected by the proposed changes.

In the TRA's letter to us of 11 August, it stated "as a matter of principle it cannot be the case that consumers in Bahrain should be denied advances in one technology because of the capabilities of another. Such a position would result in Bahrain falling behind other advanced telecommunications markets."

We would agree with this statement if it was clear that BNET was effectively regulated and if Batelco's anti-competitive behaviour in the downstream market was eliminated. Bahrain approach of regulating wholesale monopoly prices based on a random pricing benchmarking analysis in a precedent and never seen in other jurisdictions other than at the early stages of market liberalisation during the 80s and 90s of last century. In that case, licensed operators could confidently compete with each other on a level playing field, without any having an anti-competitive advantage in fixed or mobile. Competing licensed operators would choose the technology or mix of technologies that best enables them to compete, rather than the technology that best reinforces their market power. We believe this is the outcome contemplated by NTP6.

However, we are not in this situation in Bahrain. It is our view that BNET may not be effectively regulated and Batelco's anti-competitive behaviour in the downstream market remains unchecked. Bahrain does not risk falling behind other advanced telecommunications markets because one technology is held back, rather it risks falling behind because the regulatory regime is ineffective.

5.3 Problems with the regulatory regime

The regulatory regime and its implementation and enforcement is ineffective because licensed operators cannot have confidence that BNET is effectively regulated and Batelco's anti-competitive behaviour in the downstream market remains unchecked.

(a) *BNET may not be effectively regulated*

a. *Asset transfer process*

NTP4 underscored the importance of an efficiently resourced national broadband network and mandated the transfer of Batelco's wholesale access business to BNET. The TRA established the ECTC in November 2019 to monitor BNET's compliance with regulatory requirements, particularly concerning the asset transfer process and equivalence of inputs obligations. NTP5 required the TRA to determine the appropriate treatment of OLO fibre assets by August 2021. By June 2021, agreements for the transfer of Batelco's assets to BNET were reportedly executed.

We have ongoing concerns regarding the asset transfer process regarding Batelco assets, in particular the lack of transparency regarding proper valuation methodologies and whether compensation for transferred fibre assets properly reflected fair market value. We have raised these issues regarding the valuation process with the TRA, including the need for an independent assessment to ensure fairness, as well as the technical and operational complexities involved in transferring our network assets.

b. *The NRU service*

Related to our concerns over the asset transfer process, we have emphasised in our discussions with the TRA that there is an urgent need for a suitable replacement wholesale product from BNET, especially since the asset transfer would prevent us from deploying our own fibre infrastructure network. This replacement wholesale product is vital for us to remain competitive in the market.

In March 2024, the TRA issued a consultation paper regarding the NRU, designed as the replacement product for OLOs after their asset transfers to BNET (an indefeasible right of use for *existing 'as is' fibre* cables relating to core and backhaul networks, without extending to business connectivity networks). This is the "Network Right of Use" or "NRU" service.

The NRU is intended to be a "remedial measure", allowing operators to continue competing effectively within the Bahraini market. However, we have raised several serious concerns with the TRA about the NRU service, particularly regarding its pricing, the claim that BNET offers wholesale fibre services on an equivalence of input basis and the overall adequacy of BNET's wholesale services. We have argued that the NRU pricing of BD 0.249 per meter per fibre cable might not align with FRAND principles, especially if the compensation for transferred fibre assets did not reflect fair market value.

We have serious concerns about potential conflicts arising from Batelco's exclusive use of the transferred fibre assets (the NRU provides the transferring licensed operator *an exclusive* indefeasible right of use for its own assets), which could undermine BNET's obligation to foster a competitive environment. The implementation of the NRU as currently drafted and approved by TRA could further

entrench Batelco’s already extensive fibre footprint by solidifying its control over critical infrastructure and creating an asymmetry in the cost structure between Batelco and OLOs. As Batelco maintains exclusive use of the transferred fibre assets, this arrangement limits other licensed operators' access to essential network resources, thereby reinforcing Batelco's dominant market position.

c. Compliance with equivalence of inputs

The TRA is responsible for putting in place “*effective mechanisms to monitor the compliance of the Incumbent Operator and the new entity with their respective regulatory and licensing obligations, including the new entity's obligation to deliver equivalence of inputs*” (para 24(g); NTP4)

We have been concerned that BNET may not be delivering equivalence of inputs, as required by law. We have submitted to the TRA that we do not believe there are effective mechanisms in place to monitor compliance with equivalence of inputs.

We do not have confidence that the TRA is adequately monitoring BNET’s compliance. BNET has obligations under law to treat all access seekers on an equivalent basis, but we do not know if it is complying with these obligations or whether it is preferring Batelco through cross-subsidisation and other advantages.

d. BNET cost model

We are uncertain whether BNET’s tariffs are cost-based. The TRA began to discuss a cost model with the industry in 2020, but as far as we are aware, the model has not progressed.

We have stated above that the TRA should continue and complete its bottom-up cost modelling exercise for BNET to assess the total costs involved in producing its wholesale services. In the absence of the completed cost model, we therefore do not know whether BNET’s charges are above or below cost. Benchmarking suggests that BNET’s tariffs may not be cost-based. BNET’s tariffs are opaque and the proposed changes seem arbitrary. This leads to further uncertainty whether BNET is being regulated effectively.

e. Cross-subsidisation by Batelco group

We have previously expressed our concerns over Batelco group engaging in anti-competitive cross-subsidisation, including in the context of the last RO review process in 2023.

Our concern is that Batelco group is using its profits from the supply of BNET wholesale products, facilitating predatory pricing by Batelco from the supply of retail products. Leveraging of dominance in one market to gain an advantage in another is the central issue in the record-breaking fines in the EU levied against Google⁸.

⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581

If cross subsidies by BNET’s wholesale business allows Batelco’s retail business to price below average variable cost (i.e. at a level where every sale generates a loss even before attributing any share of fixed costs), that cross-subsidy will be potentially an abuse of dominance.

In the context of the proposed WBS changes, it is not clear why BNET is proposing changes to these services, but not other wholesale services such as WDC and MDS. It may be because BNET is achieving some efficiency in the provision of WBS services that is not available for the other services, but there is no explanation provided by BNET. Other possibilities include that it is part of a strategy to achieve cross-subsidisation, to the benefit of the Batelco group. TRA is required to disclose its analysis confirming no signs detected of such anticompetitive practice.

(b) Batelco’s anti-competitive behaviour remains unchecked

Batelco has an approximately 80% market share of the retail fibre broadband market and is, accordingly, likely to be dominant.

Batelco reinforces its dominant position by, among other things, its strategy of using margin squeeze and other predatory pricing tactics and long-term customer contracts. OLOs have been unable to expand their share of this market, as a substantial amount of Batelco customers are tied up with these long-term contracts.

a. Predatory pricing

Batelco has been shown to be an aggressive user of predatory pricing tactics to reinforce its dominant position, since at least 2019, which was the subject of a decision by the Authority against Batelco. As another example, we also note our recent complaint against Batelco for predatory pricing in the domestic connectivity market (pending TRA’s investigation since July 3rd, 2024).

The changes to the WBS service will drive up the costs for OLOs, who need to adjust for increased capacity, while having limited access to NRU services. Batelco, with more extensive capacity within its network with a more efficient structure at the upstream fixed backbone level, and a larger legacy network that it can take advantage of through the NRU service, will have lower costs, allowing it to exert a further squeeze on OLOs.

b. Long-term contract strategy

A likely strategy for Batelco will be to offer the 300Mbps service to its retail customers, subject to a renewal of their long-term customer contracts for a further 2 years. Where the retail fibre broadband market is highly concentrated, and Batelco is dominant, this has the effect of locking in customers and reducing the size of the potential market for stc and other operators. This further cements Batelco’s dominance.

This anti-competitive practice by Batelco needs to be investigated by the TRA in accordance with the Competition Guidelines and sanctioned. This should occur before Batelco has the opportunity to lock in customers for a further 2 years.

We say this even though OLOs may offer long-term customer contracts themselves. The fact remains that the addressable market for OLOs has been significantly restricted through Batelco's strategic use of long-term customer contracts, which makes it impractical for a sizeable number of customers to break and shift to an OLO. It is an insidious practice by a dominant operator which must be seriously addressed by the TRA.

5.4 stc's recommendations

We do not consider that the proposed changes are FRAND and we do not believe the TRA can conclude that the changes are FRAND in the absence of a comprehensive investigation and review of the fixed broadband market to determine if there are any imbalances in the market that require regulatory intervention.

If this market review is undertaken, and BNET prices are appropriately assessed based on the underlying cost and a fair rate of return for BNET, then we believe the TRA will find that BNET prices are below cost, BNET is not effectively regulated and Batelco's dominant position in the downstream market needs to be monitored at ex-ante level.

Once these problems are addressed, then the TRA may be able to determine that BNET's proposed changes are FRAND. In the absence of addressing these problems, we consider the TRA is unable to determine that BNET's proposed changes are FRAND.

If our recommendations are not accepted, stc reserves its legal rights to consider all options available to us to ensure a fair and effective regulatory regime applicable to BNET and Batelco.