



**BNET'S RESPONSE TO  
A PUBLIC CONSULTATION  
ISSUED BY THE TELECOMMUNICATIONS REGULATORY AUTHORITY  
OF THE KINGDOM OF BAHRAIN  
IN RELATION TO 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.**

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***NON-CONFIDENTIAL VERSION***

**BY BAHRAIN NETWORK (BNET) B.S.C (CLOSED)**

**ON 18 SEPTEMBER 2024**

**Our Ref NBN/22/24**

## 1. INTRODUCTION

- 1.1 This submission is made to the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the ‘**Authority**’) by Bahrain Network (BNET) B.S.C (Closed) (hereinafter ‘**BNET**’) in response to a public consultation (the ‘**Consultation**’, and correspondingly a ‘**Consultation document**’) on BNET’s proposal to amend its Reference Offer (the ‘**RO**’) by introducing a new service “Closed Bitstream Service” (“**CBS**”) and upgrading the existing WBS Essential and WBS bandwidths.
- 1.2 Before sharing its detailed comments, BNET would like to refer to its submission to the Authority on 3 September 2024, by which BNET has withdrawn its earlier request for approval of a proposed variation to the RO for the CBS service. As communicated in the same submission, BNET would like to take onboard the Authority's preliminary concerns regarding the product being not limited to “national or public security entities in the Kingdom of Bahrain” and engage in the necessary product design and development as explained in that submission. BNET wishes to revise the service proposal in the future.
- 1.3 BNET would like to bring to the Authority’s attention BNET’s offer to revise the proposed changes to the WBS Essential and WBS Advanced 2 Gbps bandwidth, in particular Frontier Economics’ in-depth analysis which is in support of the anticipated new upgrades in speeds of the existing WBS Essential products and the new high 2Gbps speed of the WBS Essential and Advanced products
- 1.4 BNET’s detailed response to the Consultation using inputs from Frontier Economics is structured as follows. In the first section, we summarize the Executive Summary of the response, following that we have analyzed the overall regulatory framework that has been applied by the TRA in the Consultation. Finally, BNET provides its responses to the questions the Authority raised in the Consultation document.
- 1.5 We would like to further seek from the Authority, in case of granting an approval to BNET’s proposed changes to the WBS, an implementation period until January 2025 to introduce the specific 2 Gbps upgrade as this is dependent on delivery of certain equipment necessary for this particular bandwidth upgrade from BNET’s technology supplier. This fact was not known to BNET when we made the original submission.
- 1.6 BNET’s principal contact for this response is:

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# **BNET RESPONSE TO TRA CONSULTATION ON THE PROPOSED CHANGES TO BNET'S REFERENCE OFFER**

CBS and WBS bandwidth

18 SEPTEMBER 2024

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# 1 Executive summary

We are pleased to submit this response to the TRA's consultation of 12 August 2024 with an extended deadline of 18 September 2024.

Ensuring the effective provision of fibre broadband and connectivity services to consumers and businesses in the Kingdom of Bahrain is essential to the Kingdom's continuing development and to meeting the objectives of NTP6.

As a mission-driven company, BNET is committed to playing its part in this by providing, to other licensees, access to ubiquitous and world-class fibre infrastructure across the Kingdom, and by offering, over that infrastructure, high quality and affordable products and services, in fulfilment of the Government's objectives. It was with this purpose in mind that BNET proposed the changes to its Reference Offer (RO) that are the subject of this consultation. Specifically, BNET initially proposed:

- To respond to the specific demand in the market for a new, secure bitstream service, by introducing the Closed Bitstream Service (CBS);
- To automatically upgrade the speeds on its existing WBS Essential (WBS-E) 100Mbps, 200Mbps, 300Mbps and 500 Mbps products and its WBS Advanced (WBS-A) 100Mbps, 250Mbps and 500Mbps products, without adjusting the prices for these products – so effectively reducing prices for bitstream services by up to two-thirds;<sup>1</sup> and
- To introduce new, higher speed, 2Gbps WBS-E and WBS-A products, with the WBS-E 2Gbps product being priced at the previous price of the 1Gbps product.

Taken together, these second and third initiatives form part of BNET's response to the Government's objective, as set out in NTP6, that by the end of that period, consumers in Bahrain are able to access 1Gbps broadband services as standard. As BNET has previously explained to TRA, it believes that moving gradually to this position, by upgrading products to higher speeds alongside introducing new, ultra-high speeds into the market, is the most appropriate approach to achieving this.

We note that the TRA proposes to accept BNET's proposed speed increases and implied price reductions for all existing WBS-E and WBS-A products of 1Gbps and less. So long as these amendments are passed through to end-users, these changes should support the Kingdom's continued digital transformation.

As explained in the cover to this Submission, on 3 September 2024, BNET has withdrawn its earlier request for approval of a proposed variation to its Reference Offer for the CBS service because it would like to take onboard the Authority's preliminary concerns regarding the product being not limited to "national or public security entities in the Kingdom of Bahrain" and

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<sup>1</sup> The price of WBS-E 300Mbps is proposed to fall from BD21.52 a month to BD7.02 a month.

engage in the necessary product design and development in order to submit a new service proposal in the future.

## **The TRA has erred in its proposal to reject the proposed prices for 2Gbps WBS products**

Whilst the TRA's intent in the consultation is not fully clear, we are surprised by TRA's apparent proposal to reject the introduction of the 2Gbps WBS products (both Essential and Advanced) on the terms proposed by BNET. For the reasons set out in the rest of this response, we are unclear on what basis the TRA is proposing to reject these terms. Having regulatory certainty is essential for any investor in a capital intensive sector such as telecommunications and TRA's proposal to reject these charges without a sound basis risks creating an unstable regulatory environment in the Kingdom, negatively and directly impacting sector outcomes.

Furthermore, for the reasons set out in detail in this response, the TRA's analysis of BNET's proposed price terms for the 2Gbps products appears to be partial and potentially significantly misleading. As such, we believe that the basis on which the TRA proposes to reject BNET's proposed tariffs is unsound. For example, the benchmarking is based entirely on retail prices whilst TRA's calculation of tariff gradients is driven by the number of tariffs a given service provider offers, not by the "steepness" of the gradient between two products of different speeds. When considering BNET's proposal, correcting the calculation of the tariff gradient removes the apparent differences between gradients in Bahrain and other GCC markets.

In addition, whilst the TRA concludes, based on its analysis, that the prices of ultra high-speed broadband products in Bahrain are out of line with those elsewhere, it does not consider properly the role of the retail service providers in this. This is despite the fact that Figure 4 of the consultation shows that, for the three major retail service providers (Batelco, Zain and stc), their margin (i.e., the difference between the retail price they charge customers and the wholesale price charged by BNET for the network service) on a 1Gbps service is around seven to eight times that on the 500Gbps product, even though that margin is relatively similar (in absolute terms) across all other speeds. As we set out later in this response, controlling for this significant increase in the retail margin and correcting the calculation of the tariff gradient shows that, in reality, the tariff gradient for fixed broadband services in Bahrain is actually among the lowest in the region.<sup>2</sup>

Indeed, more generally, attempts to build the market for fibre services in Bahrain is being hampered by the major retail providers not passing on price reductions to consumers. We urge the TRA to consider this in more depth. That is, the TRA should take a more holistic view of the market as it finalises its position on this consultation – denying the proposed changes

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<sup>2</sup> We note that whilst all of TRA's analysis focused on residential grade broadband, supported by WBS-E, it has also rejected the pricing for the 2Gbps WBS-A product, despite providing no evidence for its proposal in this regard. TRA must ensure that all its positions are transparent and evidence based.

to the RO will result only in consumers having access to a more limited product set than needs to be the case – so setting back the Kingdom's path towards meeting the NTP6 targets. For example, and without even considering TRA's analysis, it is unclear why TRA accepted in 2022 the current monthly price of BD60 for a 1Gbps WBS-E product and now rejects, as being too high, a 2Gbps product at that very same price.

### **BNET's proposed way forward**

Were TRA not to revise its consultation position, we are confident BNET would have strong grounds on which to challenge a decision to reject the proposed price points for 2Gbps WBS products. However, any such challenge could lead to a prolonged period of market uncertainty and harm the Kingdom's digital transition.

Given its mission, and despite TRA's proposed intervention, BNET believes it is essential that it is able to continue its path towards introducing higher speed services and encouraging migration to those services. As such and without prejudice to its views on this consultation and any other actions it may choose to take in response, and to ensure that consumers do not miss out on new, higher speed products, BNET is proposing now to reduce the 2Gbps price points set out in its initial proposal and bring these to BD50.4 and BD147 respectively for WBS-E and WBS-A. BNET does so on condition that the TRA allows the automatic upgrading of existing WBS services and the expectation that retail providers will pass on in full the price reductions to new customers.

In the remainder of this response, we respond to TRA's specific questions. Before doing so, however, we comment on the overall framework that the TRA appears to have applied in developing its position. In preparing this response, some sections were contributed by Frontier Economics Ltd, whom BNET has retained to assist it with this response.

## 2 The overall regulatory framework applied by the TRA

It is critically important that any regulatory decision is based on a clearly articulated, well-understood and transparent framework. For the reasons set out in this response, we are concerned that TRA's proposal and the analytical framework it has used to arrive at that proposal, falls short against these criteria.

### 2.1 The legal and regulatory framework applied to the regulation of BNET's RO services and TRA's October 2023 paper

Article 57 of the Telecommunications Law, as amended, requires BNET, as a licensee who has been considered to hold a dominant position in a relevant market, to offer access to its network to any licensed operator on terms and conditions which are fair and reasonable. Only where the TRA considers that such terms are unreasonable may it intervene to set such tariffs, terms and conditions as it considers appropriate.

This Article clearly provides significant scope for interpretation. However, it also means that any TRA intervention to reject proposed prices can only be predicated on a justified view that the said price terms are unreasonable.

Within this context, TRA's "forward look" paper of November 2023 set out TRA's initial thinking on a future economic regulatory model for BNET services (i.e., how it would judge the reasonableness of BNET's prices).<sup>3</sup> This paper reviewed various regulatory models, noting some relative advantages and disadvantages of each. Critically, the TRA recognised (in paragraph 59) the importance of industry determining appropriate price levels and the challenges of TRA seeking to set individual price points, rightly setting a "high bar" on any TRA intervention:

*"We believe the industry is better placed than the TRA to judge the level and relative prices of BNET product portfolio that would achieve our strategic objectives, e.g. stimulate demand from end users (and in turn, BNET customers i.e. the Licensed Operators)."*

The TRA then also set out that in judging whether price terms are consistent with the legal framework and the Kingdom's priorities, it may need to use different pricing approaches for different types of service (paragraph 34). Finally, before proposing to formally consult with the industry on its proposals, the TRA set out its initial conclusion that:

*"...benchmarking may provide a reasonable balance between the need to send appropriate signals to all market players, the ability of the TRA to intervene in the market when necessary and minimises risks to the development of the market."*

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<sup>3</sup> TRA LAD/1023/011

In its engagements with the TRA following the publication of its paper, BNET raised with the TRA, among other points, the challenges of accurately benchmarking appropriate wholesale prices and the critical importance of TRA adopting a consistent regulatory approach (including a consistent approach to benchmarking), both across time and across products. This is because, without a consistent approach to regulation and to benchmarking, the uncertainty – and hence risk – that all players in the market (both BNET and downstream licensees) face increases, with commensurate adverse consequences for the market overall. This is because increases in actual and perceived risk will depress investment in that activity – due to the higher potential reward that investors require to offset against that risk.

## **2.2 Developments since October 2023 and this consultation**

Over the past year, BNET has continued to invest in the development of its network and in the services offered over it. In particular, BNET has given significant thought to how to best achieve the target set in NTP6 that residential customers should, by the end of the period, all be offered, at affordable prices, speeds of over 1 Gbps, with 10 Gbps symmetric speeds for businesses.

However, whilst TRA has not consulted on a long term framework, it does appear to have applied elements of its November 2023 thinking to the current consultation. That is, in its review of BNET's prices, the TRA has placed significant weight on a (limited) benchmarking of retail broadband prices. In so doing, the TRA also appears to have ignored its own advice that it is the industry, and not TRA, who is best placed to judge the levels and relativities of BNET's pricing. In responding to Question 4 of this consultation we set out in detail why TRA's benchmarking is, in a number of ways, misleading. In this part we focus on the principles underlying TRA's approach.

### **2.2.1 Assessing whether a given price is fair and reasonable**

In Section 4A of the consultation, the TRA considers how to interpret the concept of FRAND (fair, reasonable and non-discriminatory) prices.<sup>4</sup> This would appear to then be the basis for assessing whether the price points proposed by BNET are consistent with the requirements of Article 57 of the Law.

In so doing, the TRA states in paragraph 56:

*“One central characteristic of “fair” is to correct any possible imbalance of market power between two sides and to match an outcome in a competitive market, i.e. a “fair” deal for both sides. For “reasonable” in the context of access it could be viewed more as a question of the price. If the price paid by access seeker would allow it to compete*

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<sup>4</sup> We note that Article 57, as amended, does not refer to access prices being non-discriminatory. Nevertheless, BNET offers the same charges are offered to all licensees and provides its RO services on an “equivalence of inputs” basis. As such, BNET charges should be considered non-discriminatory and we note that TRA has not raised any concerns in this regard.

*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.”*

We broadly agree with the TRA's interpretation of “fair” and “reasonable”. That is, a proposed price should be judged “fair” if it is a “fair deal” for both sides – in this case BNET and the downstream licensees. And it should be considered reasonable if the proposed price allows access seekers to compete effectively in downstream markets and gives BNET sufficient incentives to continue to invest in and improve its network.

It is not clear, therefore, on what grounds the TRA has taken the decision not to approve the proposed price points for the 2Gbps WBS products. This is because, as set out below, the TRA has presented no evidence to suggest the proposed prices fail its fair and reasonable test. For example:

- Given the structure of the fixed sector in Bahrain, the proposed price points are clearly a fair deal for both sides – put simply, it is the downstream licensees who choose how to price retail broadband services and there is no basis for considering a BNET price point as being “unfair” to these licensees – BNET prices do not prevent the downstream licensees from recovering their own costs, for instance.
- As regards the reasonability of the price points, again TRA has provided no evidence to suggest that they prevent downstream licensees from competing in retail markets.
  - In markets with vertically integrated providers, this might be assessed by checking for possible margin squeeze between retail and wholesale prices. However, this is not relevant in the Bahrain context.
  - The only other possible interpretation of whether the WBS prices allow downstream licensees to compete in the retail market is whether those prices enable licensees to offer fibre services that can compete with mobile services.<sup>5</sup> The consultation provides no evidence on this – in fact, it suggests that the pricing of fibre and home mobile broadband packages in Bahrain is similar.<sup>6</sup> And, regardless of this, the fact that the MNOs are also the major providers of retail fibre broadband services suggests that the question of whether there is reasonable competition in downstream markets between fixed and mobile broadband is not one which is driven by the pricing of WBS services.
  - Finally, whether the pricing of WBS allows BNET to make a reasonable return sufficient to incentivise its investment is one which BNET is best placed to make and something on which TRA has provided no view. But preventing BNET from moving

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<sup>5</sup> In this regard, we note TRA's most recent market review did not include fixed and mobile broadband services in the same market.

<sup>6</sup> We comment, in responding to Question 4, on the implications of TRA's comparison between fixed and mobile broadband prices.

forward with a price point that it proposes would seem to be diametrically opposed to the principle of ensuring BNET is able to make a reasonable return.

Yet despite this, TRA is proposing to reject the proposed price points for the 2Gbps WBS products. This would appear to be because, according to paragraph 57 of the Consultation Document, the TRA has taken into account a number of other factors, namely:

*“Ensuring Bahrain has sustainable world-leading broadband infrastructure that is capable of providing broadband services, at globally competitive prices ensuring everyone can fully participate in the digital economy.*

*Ensuring Bahrain had dedicated fibre services that meet the needs of businesses ensuring the telecommunications sector fully supports Bahrain as one of the best places to establish and operate a business.*

*Ensuring Bahrain has connectivity capability that enables Licensed Operators (e.g. Mobile Network Operators), to continue to provide the most advanced services possible, at prices that sustain Bahrain’s global competitiveness. This means that LOs, which can no longer deploy their own fibre infrastructure, are not cost disadvantaged compared to other countries.*

*[Ensuring] BNET is a sustainable business that makes a reasonable return, is attractive to investors and therefore can access funds to invest to ensure that Bahrain always has world class fibre infrastructure and services.”*

In paragraph 58, it would appear that TRA concludes that certain prices (i.e., those for 2Gbps services) may need “*adjustments to fully support Bahrain’s competitiveness*”.

We support TRA’s desire to ensure Bahrain provides a globally competitive environment for both businesses and consumers to get online. However, for the reasons set out in response to Question 4, we do not agree with TRA’s analysis that certain of the proposed prices are out of line with international (regional) practice. But even if TRA’s analysis was correct, it still has no basis on which to reject charges for this reason. The TRA’s definitions of fair and reasonable do not make any reference to benchmarking charges in Bahrain to charges elsewhere.

### **3 BNET's responses to Questions 1 and 2**

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

BNET would like to refer to its submission to the Authority on 3 September 2024, by which BNET has withdrawn its earlier request for approval of a proposed variation to the RO for the CBS service.

As explained in the same submission, BNET would like to take onboard the Authority's preliminary concerns regarding the product being not limited to "national or public security entities in the Kingdom of Bahrain" and engage in the necessary product design and development as explained in that submission so that BNET can submit a revised service proposal in the future.

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

As explained in the original BNET submission to the Authority of 29 April 2024, BNET proposed to provide the upgrade to the existing WBS Essential and WBS Advanced bandwidth at no additional cost to the licensed operators. The offer to upgrade the WBS bandwidth at no increase in price was subject to the automatic upgrade of the existing bandwidth.

The preferred approach considered the experience with an alternative approach involving migration of the WBS bandwidth based on individual instructions from each licensed operator adopted following the last approval of the RO in April 2023.

This latter approach unfortunately resulted in extensive communications with all licensed operators and delayed the introduction of new WBS bandwidth to end users in the Kingdom until March 2024 (effectively 11 months after the Authority's approval of the new RO terms), where BNET was able to process the last and final batch for new RO bandwidth migrations. Apart from the delays and the time and effort spent during such back-to-back communication, multiple billing disputes were raised by the licensed operators claiming that they should be charged the new RO rates, despite that fact that the consent for the migration of the relevant circuits was not provided in a timely manner.

BNET prefers avoiding the same cumbersome process that caused significant delays and gave rise to unnecessary billing disputes. As a result, BNET proposal for free of charge bandwidth upgrade is conditional on a simple and clear process of the upgrades.

## **BNET RESPONSE TO TRA CONSULTATION ON THE PROPOSED CHANGES TO BNET'S REFERENCE OFFER**

By allowing BNET to upgrade automatically the WBS speeds taken by downstream licensees, the TRA will help to ensure that these benefits are passed on to consumers. Whilst BNET cannot then control how those downstream licensees set their retail prices, we hope that those licensees will pass on to consumers the effective price reductions that are implicit in BNET's new services. Without doing this, the retail broadband market will not develop to the extent possible and the Kingdom will be less likely to meet its NTP6 targets. As such, we believe the TRA's proposals are appropriate.

**4 BNET's response to Question 3 – Do you consider that the non-price terms outlined in the proposed amendments are fit for purpose and meet the reasonable requirements of LOs?**

Since BNET has withdrawn the proposed CBS product set, there are no changes to the non-price terms in the RO for WBS.

## 5 BNET's response to Question 4 – Do you agree that the proposed price terms for the CBS and the upgraded WBS services meet the FRAND requirements?

For the reasons explained earlier, the response to this question focuses on the proposed changes to WBS services only.

Assuming the benefits are passed on by downstream licensees to their customers, the proposed price terms should benefit the market by making very high speed broadband services more affordable and so more accessible to consumers. This has the potential to drive further adoption of fibre services and support the Kingdom in its efforts to achieve its NTP6 objectives. As set out previously in this response, we believe that the proposed prices meet the requirements to be fair, reasonable and non-discriminatory. Therefore, there is no basis on which TRA can legitimately not accept such terms. In particular:

- BNET's proposal is, in effect, for a significant price reduction (i.e., the proposal is to reduce, on average, the prices for WBS-E 300Mbps, 500Mbps and 1Gbps products by 54%). Assuming these price reductions are passed on to consumers this should, in a well-functioning retail market, drive uptake of fibre services (both in total and shifts to higher speed services) and support the Kingdom to meet its goals.
- Indeed, TRA had previously concluded (in the RO review it did in 2022) that BNET's 100Mbps product price would be set competitively vis-à-vis others in the region. This will now mean that BNET's entry product (which will shift to 300Mbps, at the previous price point for a 100Mbps product) is even more price-competitive. As part of that 2022 RO review process the TRA had also accepted TRA's pricing of its 1Gbps products which, in the case of WBS-E will now be upgraded to a 2Gbps product (i.e., BNET has proposed to price the new 2Gbps product at the same level as the current 1Gbps product). This means consumers on higher speed products will also benefit from BNET's proposals.

Given these clear benefits, it is unclear on what basis TRA has concerns regarding the proposed price terms. However, for the reasons set out below, we believe any such concerns are misplaced and that TRA has failed to properly articulate the reasons behind its proposal to not accept the proposed price terms for the higher speeds. In particular, as set out in detail in the remaining part of our answer to this question:

1. TRA appears to have cherry-picked benchmark data (it has used different countries in different parts of its analysis and it appears to have had little regard to ensuring those benchmarks share similar market characteristics to Bahrain). Its benchmarking also focuses on retail prices – something which is not fully within BNET's control – with TRA making no attempt to control for this in its sample.
2. TRA's calculation of the price gradient is misleading as it is driven by the number of packages on offer, not the "steepness" of the price curve. This does not appear to be

logical. Furthermore, TRA also seems to suggest the pricing gradient would be better without the 2Gbps product – not recognising that rejecting the introduction of that product for that reason would actually harm consumers through reducing consumer choice.

3. TRA has presented data suggesting that, to the extent there is an “issue” with broadband pricing, it is driven by very large retail margins for higher speed services, yet then ignores this in all of its analysis. In the analysis we present below, we find that these margins materially contribute to the TRA’s conclusions and that correcting for their impact should lead to those conclusions to be reversed.
4. In addition, TRA has presented a comparison of fibre and MBB prices. It is not clear what role this played in TRA reaching its position. However, this comparison does demonstrate the importance of not only considering the level of wholesale prices but also the impact of retail market dynamics between fibre and MBB services on the retail prices of fibre services.

### Elements of TRA’s benchmarking of retail prices seem flawed with TRA having cherry-picked data points

Benchmarking telecommunications prices is complex, with operators often providing multiple price points, either to different customer groups or for slightly different product mixes. Prices can also be marketed as “special offers” and include time-limited additional products or price reductions. As a result, benchmarks must be chosen transparently and with care. Best practice would require, for example, a regulator to set out how it has selected its chosen benchmarks and to then “normalise” those across the sample.

We are concerned that TRA’s analysis does not meet these standards. For instance, it has not provided any information on what has driven the choices the TRA has made when deciding which products, offers and countries to include in its analysis. As well as this making it difficult for stakeholders to review properly TRA’s analysis, this also risks creating the impression that the TRA may have “cherry picked” certain data points for its analysis. For example, in Figure 1-A of the consultation, the TRA includes only a selection of international broadband package prices, rather than the full set of prices used in the price gradient analysis presented in Figures 2 and 3. This makes it difficult to replicate TRA’s price gradient analysis and has meant we have had to conduct our own research in order to respond to TRA’s findings.

In sourcing the price data for this analysis, we have further noticed a number of apparent discrepancies in TRA’s analysis. For example, In Figure 1-A of its report, TRA compares retail broadband prices in Bahrain with those in other jurisdictions. In it, the price for Zain’s 100Mbps service seems overstated. The TRA used a price point of BD16.5 while Zain actually offers a similar product at BD13.2 with its only difference being a maximum monthly traffic threshold of 1,100 GB of data. Given that on average, customers who take a 100Mbps product are very unlikely to reach that threshold, we consider this service is, in reality, equivalent to one that has unlimited data. For other jurisdictions, TRA appears to have considered discounted prices

that are only available to a limited number of broadband customers and are not reflective of the prices that broadband customers face on average. For example, for Odido in the Netherlands, the price point selected by TRA is one that only applies to new joiners to a network, not existing or renewing customers.

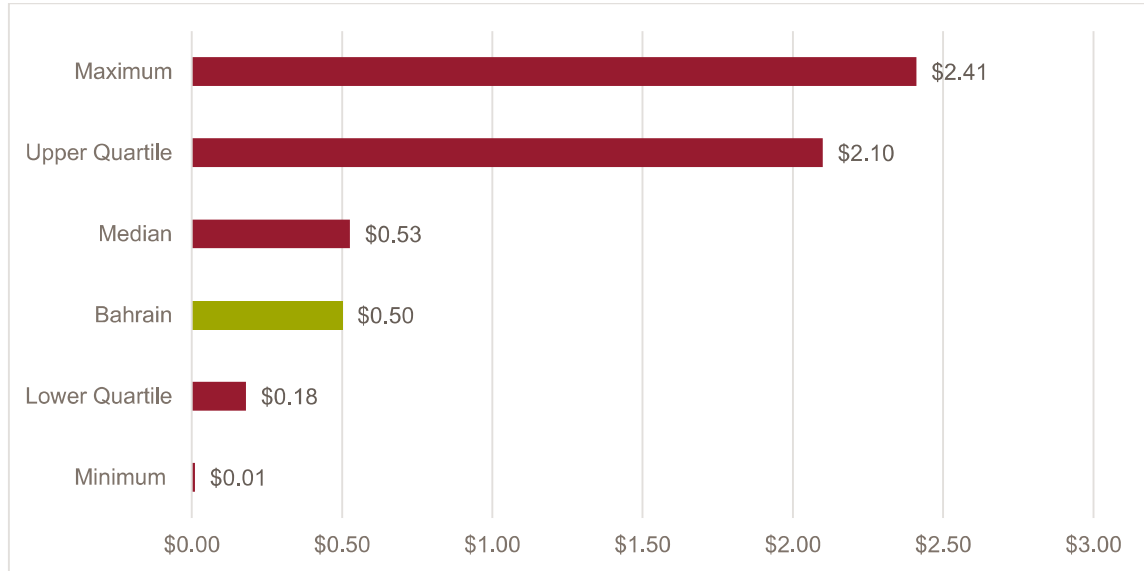
We further note that TRA's benchmarking could be misleading for other reasons. For example, retail services from operators in Bahrain seem to include a range of add-ons. For example, all STC and Zain packages seem to include mobile SIMs or additional mobile data traffic with their retail offers. The same may not be true for retail offers in other jurisdictions, making the offers in Bahrain appear more expensive, despite them providing more value to consumers.

**Any benchmarking needs to be conducted carefully because results are often driven by the chosen sample**

Overall, the benchmarking undertaken by TRA is lacking transparency. For example, it is unclear why the TRA has chosen the sample it has and why jurisdictions such as Hong Kong, Singapore or Lithuania are suitable comparators for Bahrain. Without clarity over who TRA considers reasonable benchmarks, TRA is effectively able to "pick and choose" its comparator set. This places BNET at significant risk – by simply adding or removing countries from a sample, TRA's conclusions and hence approach to regulation could change. Similarly, if a demand-side shock in one market leads to price changes in that market, it is quite possible under TRA's approach that a BNET price that TRA had previously considered to be appropriate would no longer be considered so. This is not a basis for stable and predictable regulation.

Using an alternative benchmark corroborates our concern. For instance, using a dataset from "cable.co.uk" comprising 223 countries, Figure 1 shows normalised prices per Mbps for Bahrain and descriptive statistics of all other countries in the data set. This shows that broadband prices in Bahrain are very similar to the median, i.e. below more than half of the countries reflected in the data.

**Figure 1 : Average price of broadband (USD per Mbps) in Bahrain and other jurisdictions**



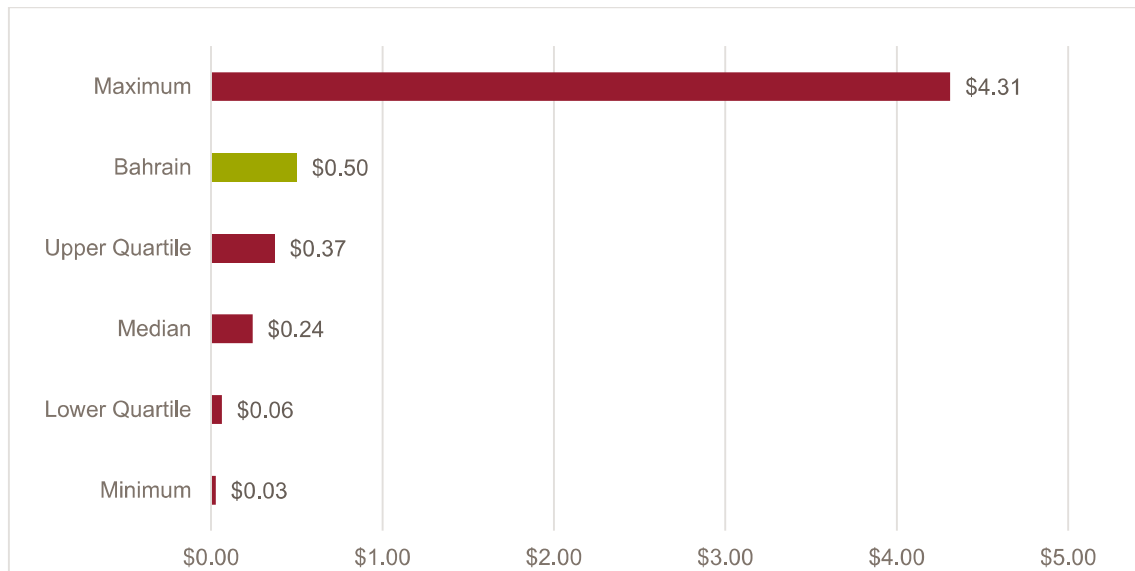
Source: Cable.co.uk (2024)

Note: Jurisdictions other than Bahrain (222) are not shown directly but reflected in the descriptive statistics outlined above.

To eliminate outliers, we calculate the maximum value as 1.5 times the interquartile range (IQR) added to the upper quartile. The same calculation is usually applied to determine the minimum value by subtracting 1.5 times the IQR from the lower quartile. However, when this calculation results in a value below the actual minimum value, the latter is used instead.

In contrast, the perception of Bahrain's broadband pricing changes significantly when the dataset is limited to the countries selected by the TRA. Figure 2 illustrates this by showing that within this specific sample, Bahrain's prices exceed the Upper Quartile, creating the impression of the Kingdom having relatively high broadband prices. Clearly, therefore, the choice of benchmark matters.

Figure 2 : Average price of broadband (USD per Mbps) in Bahrain using TRA's sample



Source: Cable.co.uk (2024)

Note: Jurisdictions other than Bahrain are not shown directly but include the United Arab Emirates, Kuwait, Hong Kong, the United Kingdom, Denmark, Oman, Saudi Arabia, the Netherlands, Finland, Sweden, Qatar, France, Lithuania and Singapore.

The maximum in this sample is higher than in the wider sample due to the IQR approach to eliminate outliers.

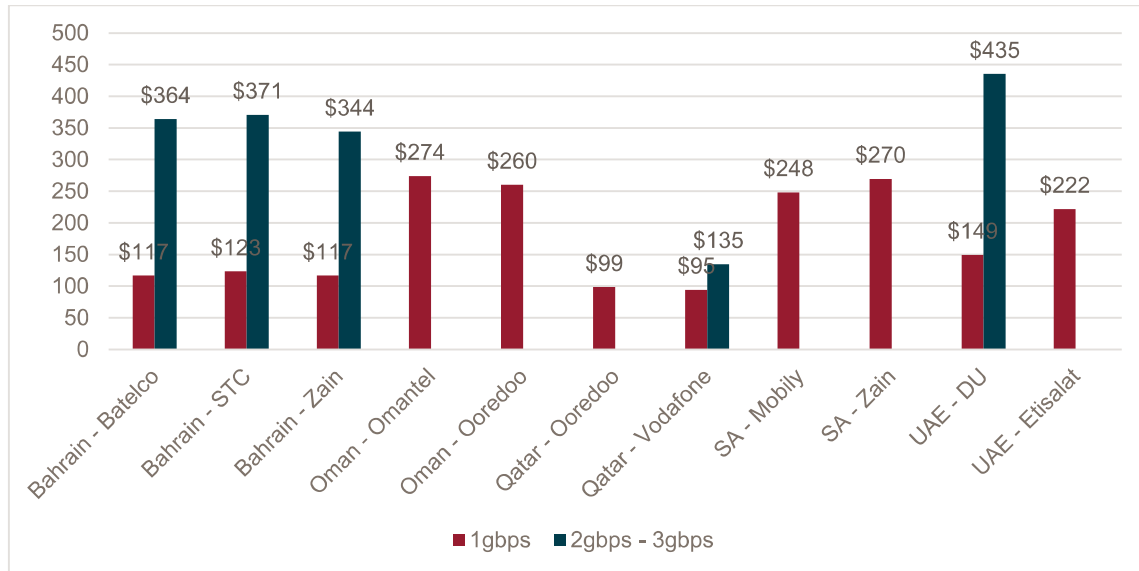
Without a sound basis for including select other jurisdictions, we believe that TRA's focus should be on comparing Bahrain to other GCC Member States. This is for two reasons. Firstly, it is important that Bahrain is regionally competitive, with investors often choosing between GCC states for their investments. Secondly, the telecommunications sectors and economies in each GCC state have a number of similarities, especially structurally (though with some differences). This is likely to mean that operators in the GCC are more likely to have similar cost structures and potentially, similar structures and levels of demand for telecommunications services, than when compared to operators in other jurisdictions.

### TRA's absolute benchmarking of very high speed broadband prices is misleading

In the consultation, the TRA presents price data for higher speed retail broadband products (i.e., 1Gbps products) for just three other markets in addition to Bahrain: Hong Kong, Singapore and Qatar. It is unclear why TRA has chosen such a limited sample, other than perhaps to seek to illustrate that, in its view, 1Gbps services in Bahrain are priced at significantly higher levels than elsewhere.<sup>7</sup> Expanding this analysis to include all GCC Member States and focusing on the assumed level of prices in Bahrain, were BNET's proposal to be accepted and retail providers pass on the implied price reductions, shows that this is not the case. This is set out in Figure 3 below.

<sup>7</sup> We note that TRA describes Figure 1, which contains this data, as comparing entry level price points. It is not clear why this is relevant and why, if this is the case, TRA compares 1Gbps price points in Bahrain to those of other markets, given that 1Gbps products in Bahrain are not entry level products.

Figure 3 Prices for higher speed services in Bahrain and other GCC countries



Source: Internet research

Note: Retail prices for 2Gbps products in Bahrain were proxied using the retail mark-ups on current 1Gbps prices. We comment further on those mark-ups later in this section. The higher UAE-DU package accounts for a speed of 3gbps. This chart omits packages with bandwidth capacities of 5 Gbps, 10 Gbps, and 25 Gbps due to a lack of comparability.

Clearly, the comparisons outlined above casts prices in Bahrain in general and those prices proposed by BNET in a more favourable light than TRA’s comparison (comparing to Singapore, Hong Kong and Qatar only) would suggest.

TRA’s approach to estimate a price gradient is flawed and fails to consider the impact that retail margins earned by downstream licensees in Bahrain have on retail prices

A second pillar on which TRA rests its conclusion to reject BNET’s prices for the 2Gbps WBS products is a comparison of price gradients between low and high speed products. Based on its analysis, TRA concludes that gradients in Bahrain appear much higher than those in other jurisdictions and therefore that the highest speed prices should be reduced. The TRA describes its approach to calculating the gradients as follows (paragraph 21):

*“The price gradient calculates the difference between the highest and lowest priced package over the number of packages offered by the operator, therefore showing the additional amount a customer would pay for an upgrade”.*

We believe this calculation approach is flawed as it means an operator with fewer packages would have a higher gradient than an operator with more packages, even if matching packages have the same prices. To demonstrate this, consider the following example:

1. An operator offers 5 different packages at speeds of 100, 300, 500, 750, and 1,000Mbps at prices of 15, 20, 25, 35, and 60 respectively.

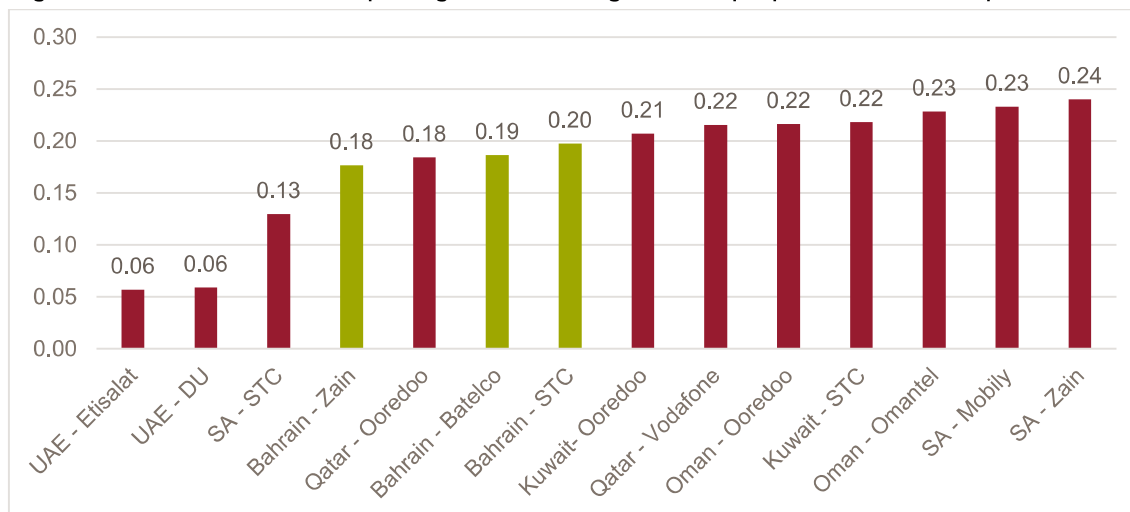
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2. Using TRA's approach to calculate the gradient,  $[(\text{Highest Price} - \text{Lowest Price}) / \text{Lowest Price} / \text{Number of Packages}]$  this pricing structure yields a gradient of 0.6.
3. Removing the 750Mbps package would yield a gradient of 0.75.
4. Further removing the 300Mbps package would result in a gradient of 1 (i.e., an apparently steeper gradient), despite the prices of the remaining packages not changing.

We believe that a gradient that depends on the number of packages in a market risks being misleading. Clearly, under the TRA's approach, BNET adding services with 400, 600, 800, 900 Mbps would significantly improve its position in TRA's benchmark and so logically could lead to TRA concluding that the proposed 2Gbps price was reasonable, even though that price point would not have changed. A more appropriate approach would instead calculate the difference between the prices of two services with different speeds (highest and lowest speed services or any other combination of services) relative to the difference in speed. This would show the incremental price per Mbps, as opposed to an incremental price per package.

When using this alternative approach to calculate the gradient between the highest and lowest speed product prices in each of the markets, the gradient for Bahrain vis-à-vis other jurisdictions in the GCC improves. Instead of estimating a gradient that is, as per TRA's analysis, on average 78% higher in Bahrain than the next lowest, the revised method means that Bahrain's average gradient improves by nearly 30% points. However, this is based on retail prices under the current set of wholesale prices. Of course, the gradient changes with the prices proposed by BNET that are the subject of this consultation. The following chart shows this, by comparing the gradient using the corrected method and the charges that are the subject of this consultation, assuming that the reductions in wholesale prices will be passed on, in full, to consumers (i.e., assuming that the 300Mbps retail price will be equal to the current 100Mbps retail price and the 2Gbps retail price will be equal to the current 1Gbps retail price).

Figure 4 Revised GCC price gradients using BNET's proposed wholesale prices



Source: Operator websites

Note: Gradient for Bahrain based on assumed retail prices for 300Mbps and 2Gbps packages.

This shows that, assuming the implicit price reductions in BNET's wholesale prices are passed on to consumers, the price gradient in Bahrain would be amongst the lowest in the GCC. Whilst the price gradient for the UAE is still significantly lower than those for all the other GCC states, this is the result of lower speed prices in the UAE being relatively high. In reality and as shown in the preceding sub-section, 1Gbps prices in UAE are actually higher than those in Bahrain, assuming BNET's WBS price reductions will be passed on to retail consumers.

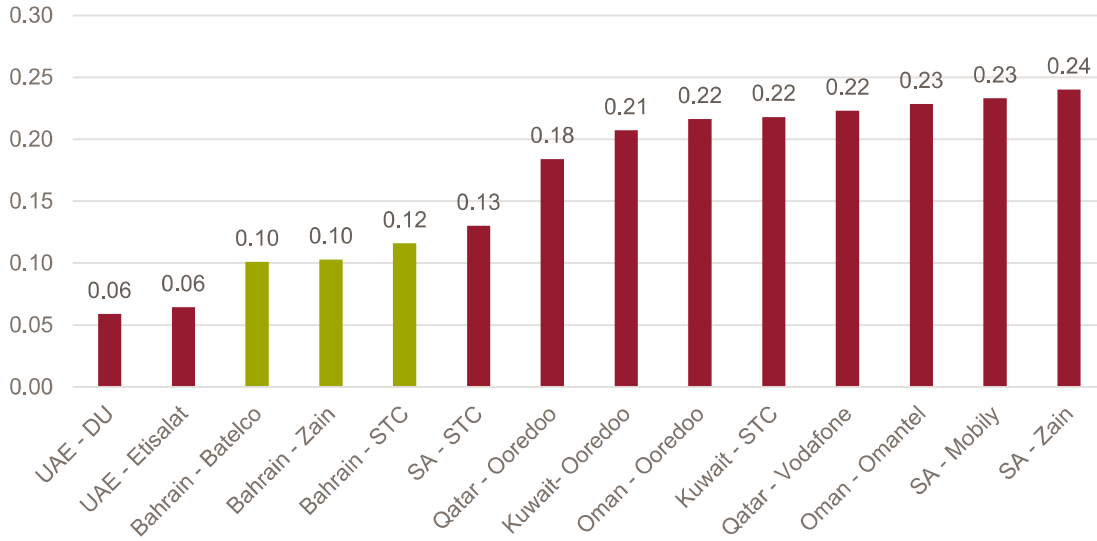
Clearly, this finding alone shows that the analysis on which TRA has chosen to reject BNET's proposed price terms for its 2Gbps WBS products is mistaken. It also shows, in the case of the UAE, the dangers of focusing on one element (price gradients) without also understanding actual price points.

However, we also observe that the TRA's analysis focuses only on how changes to wholesale prices alone are likely to impact on retail prices. As TRA shows in Figure 4 of the consultation, the retail mark-up (on top of the wholesale price) for services up to 500Mbps ranges from BD13 to BD28. However, the mark-up on 1Gbps ranges from BD 154 to 178, a 700% increase. It is clear to us that this mark-up is a significant contributor to the gradient measured for Bahrain. We understand that the level of this retail margin is beyond the scope of this consultation. However, it is also clearly inappropriate to judge the reasonableness of BNET's WBS price terms and corresponding retail prices, without properly accounting for this.

We have not been able to determine the retail mark-up included in retail broadband charges in other jurisdictions. However, by way of illustration, adding a retail mark-up to the 2Gbps wholesale price similar to the retail mark-ups applied by the downstream licensees in Bahrain to lower speed services (<1Gbps), leads to further significant change in the pattern of price gradients. Using retail prices based on BNET's proposed wholesale charges and a margin of ca 21% on the 2Gbps product would actually lead to a price gradient in Bahrain that is significantly lower than in all other GCC jurisdictions bar UAE. This again points to the fact

that TRA's proposal to reject BNET's proposed 2Gbps price points is not supported by the evidence TRA itself has presented.

**Figure 5** Revised GCC price gradients using BNET's proposed wholesale prices and adjusted retail margins



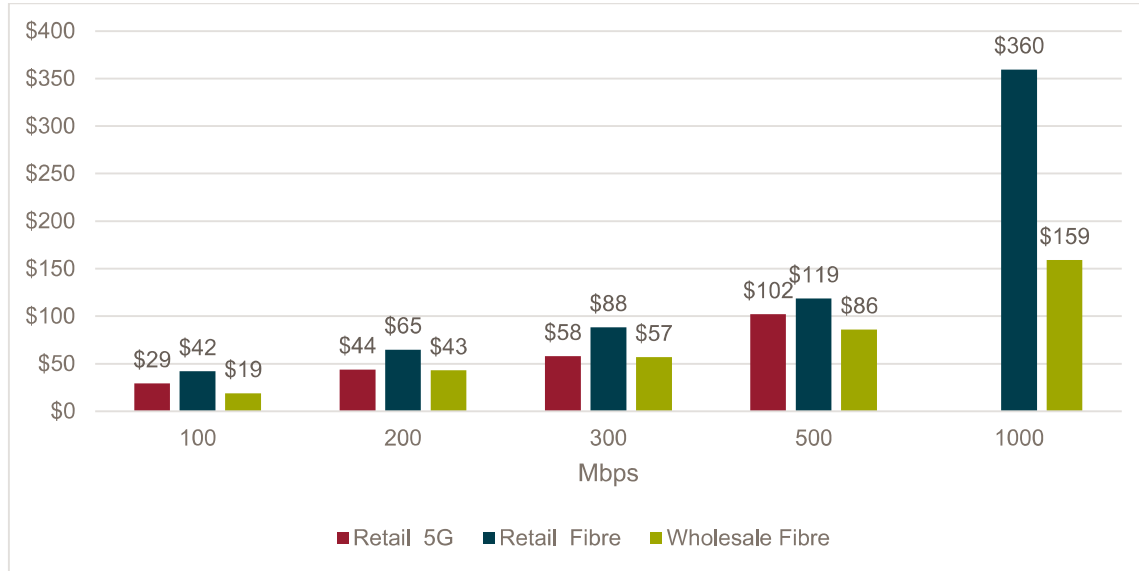
Source: Operator websites

Note: Gradient for Bahrain based on assumed retail prices for 300Mbps and 2Gbps packages. 2Gbps retail margin set equal to that of lower speed services (<1Gbps).

### The relationship between fixed and mobile broadband prices

In its consultation, TRA included a comparison of retail fixed and mobile prices in Bahrain and other jurisdictions. The purpose of the comparison is unclear and TRA does not appear to draw any conclusions from this for the pricing of BNET's wholesale services. We would, however, note that the comparison seems to corroborate our concern that it is not appropriate for the consultation to ignore the role played by retail service providers (access seekers) in determining the price gradients for fibre broadband services.

Figure 6 Comparison of current Bahrain fibre and mobile prices (USD)

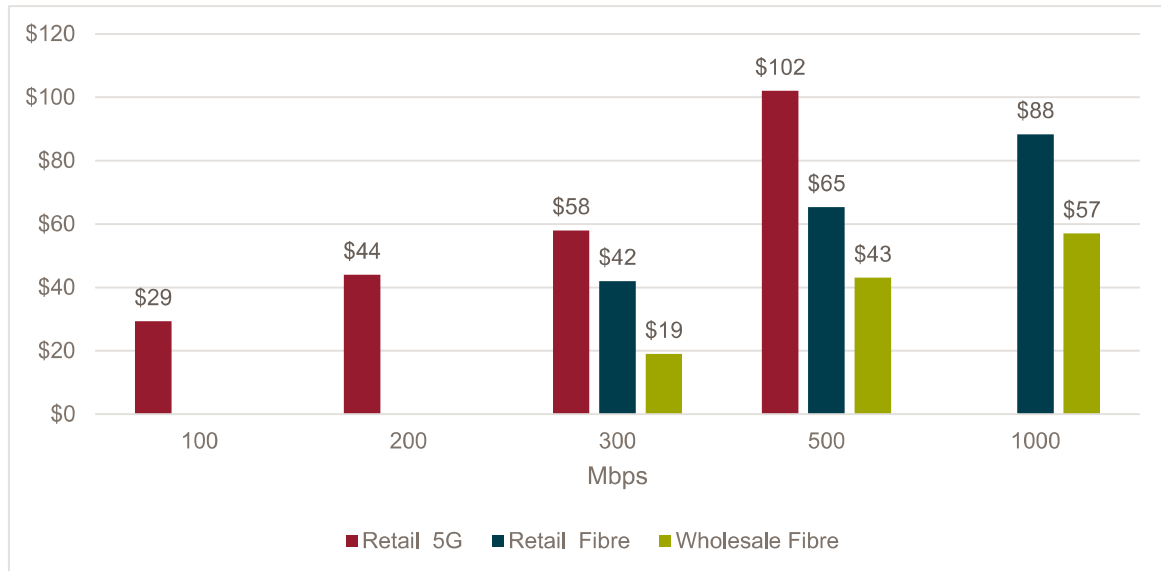


Source: Average retail prices were derived from TRA's Consultation document (p.12)

TRA's assessment shows that mobile broadband prices are consistently lower than those for fibre broadband at equivalent speeds. However, for 100Mbps this is only true because retail margins (in percentage terms) are set at significantly higher levels than those for 300 and 500Mbps (this can be seen in the chart by looking at the difference between the retail and wholesale prices for fibre services at these speeds). This suggests that the major retail providers, who are also the MNOs, have set the retail margin on particular fixed services to ensure there remains a sufficient price gap to differentiate a mobile from a fibre broadband product at the same nominal speed. Similarly, by setting a very significant retail margin on the 1Gbps product, the retail providers are able to clearly differentiate fibre products from the nearest (lower speed) mobile package.

In contrast and as shown in the figure below, if retail fibre prices were based on a single margin (for example, based on the current margins for 300Mbps and 500Mbps services) and the price points for WBS proposed by BNET, retail fibre prices would be considerably below current 5G price points.

Figure 7 Comparison of Bahrain fibre and mobile prices (USD), with amended retail margins



Source: Operator websites. Note: Average retail prices were derived from TRA's Consultation document (p.12). Average retail prices were derived from TRA's Consultation document (p.12)

Such pricing may not be in the individual interests of retail providers offering fixed and mobile services. This is because those operators profit maximise over a mix of fixed and mobile services taking into account retail prices, the costs of their mobile networks (which are to a significant extent fixed and sunk) and costs for outpayments to BNET.

As we have set out previously, we recognise that the retail providers' pricing practices are beyond the scope of this consultation. Nevertheless, this does illustrate that TRA must take care not to assume, as it appears to have done in this consultation, that retail pricing levels are driven primarily by BNET's wholesale charges. For the benefit of consumers, however, it seems important that wholesale price reductions are passed on by retail providers to their end-customers. A blanket reduction of wholesale prices that is not passed on will not benefit consumers or help the Kingdom achieve its objectives from NTP6. Instead, it would serve only to transfer sector revenues to the downstream retail providers.

### Comments on other elements of the TRA's pricing analysis

In the remainder of this part of the response, we comment on other aspects of TRA's analysis

#### The impact of changing broadband speeds on retail providers' costs

In paragraph 45, TRA states that "given the competitive dynamics of the market, the retail LOs would pass the upgrades onto their consumers" "as the upgrades are without any price increase from BNET". We agree with this statement but refer to the dynamics at play between fibre and mobile broadband services outlined in the previous section.

However, in paragraph 46, the TRA notes that “*retail LOs have costs that vary with changes in speed and data volumes*” and that it may not be “*possible to keep the same retail price for a service with a higher speed*”. We would note it is very unlikely that there is material impact on these costs from customers moving to higher speeds. This is because an increase in speed is beneficial to users as content is delivered faster. However, it is unlikely to fundamentally change the consumption pattern, i.e. the amount of content that customers consume. For example, a customer can download a movie more quickly or stream it with less buffering, but is unlikely to watch more movies as a result of an increase in speed. We would therefore expect no or only a very small impact on the retail costs of downstream providers from offering higher speed retail products.

### **The treatment of aggregation links**

BNET proposes to offer one 10G aggregation link for free at one location rather than free 1Gbps links at two locations. The TRA rightly notes that the increase in the capacity of the aggregation link will offset costs associated with the possible increase in peak traffic as a result of the increase in WBS speed. We would further note that the handover at one location, facilitated through the ongoing investments into improving the reliability of BNET's network further reduces the costs that access seekers face for the purpose of interconnecting with BNET's network.

### **The treatment of WBS-Advanced**

In responding to this question, we have focused on the WBS-E product set and TRA's benchmarking of residential (mass market) broadband services. This also reflects the focus of TRA's analysis. For the reasons set out in response to this question, we believe that the TRA has erred in its analysis and that, when corrected, it would not support TRA's proposal to not approve the proposed 2Gbps WBS-E price point. However, it appears that TRA also uses that analysis to determine that the proposed price for the 2Gbps WBS-A product should not be approved.

This is clearly inappropriate and should have been considered on its own merits. However, given that TRA's concerns regarding the pricing of WBS-E are, as we demonstrated here, not supported by the available evidence on regional pricing, it stands to reason that its concerns regarding WBS-A must also, by TRA's own logic of not analysing WBS-A separately, be unfounded.

**BNET's response to Question 5 – 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**

As set out above, we are of the view that, assuming the effective reductions in WBS prices are passed on to end-users, retail fibre broadband prices in Bahrain in absolute terms are not dissimilar to those in other countries in the region. Clearly, given the scale of the price reductions implied by BNET's proposals, end users stand to benefit significantly if these are passed through in full.

In responding to the TRA's previous question, we have also shown that the price gradient analysis conducted by the TRA, and on which rests much of the TRA's conclusion to reject BNET's proposed WBS 2Gbps prices, is flawed. Using a more appropriate method and accounting for the impact that the retail providers' margins have on the retail price, the gradient in Bahrain, if BNET's price proposal is accepted, is in fact similar or even lower than most others in the region.

However, BNET takes seriously the harm that could be done as a result of any delay in the introduction of 2Gbps WBS products, as could be the case if TRA rejected BNET's proposal or BNET sought to challenge such a decision.

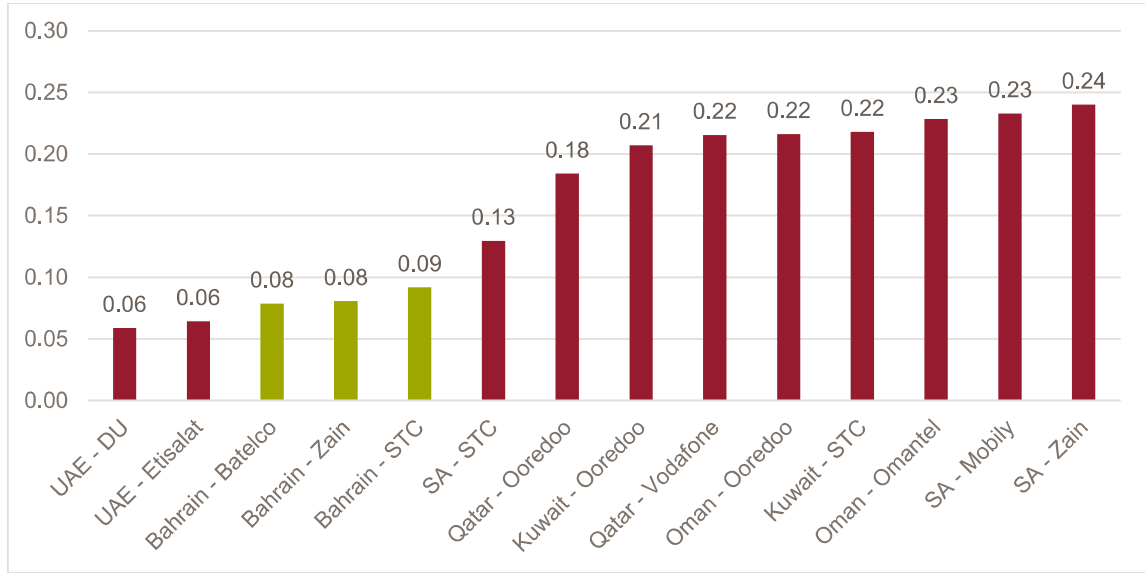
Therefore, as a way forward and on the assumption that speeds offered to end-users will be automatically upgraded, BNET is proposing to further adjust its proposed pricing for 2Gbps WBS-E and WBS-A products, by reducing the price points it proposed on 29 April 2024 and which have been the subject of this consultation, as follows:

- The price of the proposed WBS-E 2Gbps product falling from BD60 per month to BD50.4, and
- The price of the proposed WBS-A 2Gbps product falling from BD175 per month to BD147.

Under these terms and replicating the analysis set out in response to Question 4, the gradient for Bahrain would further decline as illustrated in Figure 8 below.

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**Figure 8** Revised GCC price gradients using a further reduced 2Gbps price and adjusted retail margins



Source: Operator websites

Note: Gradient for Bahrain based on assumed retail prices for 300Mbps and 2Gbps packages. 2Gbps wholesale price set at BD50.400 and retail margin set equal to that of lower speed services.

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