CONFIDENTIAL INFORMATION HAS BEEN REPLACED BY [✂]

RESPONSE

TO

THE TELECOMMUNICATIONS REGULATORY AUTHORITY OF BAHRAIN (TRA)

REFERENCE OFFER DRAFT ORDER

(REF MCD/09/10/089)

BY

BAHRAIN TELECOMMUNICATIONS COMPANY (BATELCO) BSC

ON

7 NOVEMBER 2010

(Our Ref GCL/425/10)

Reference Offer Price Terms Draft Order Response

1. Batelco refers to the TRA's letter dated 23 September 2010 (your ref MCD/09/10/089) enclosing a Draft Order in respect of certain elements of Batelco's Reference Offer dated 1 April 2010. In this response the TRA's draft is generally referred to as the Draft Order, Reference Offer price terms Draft Order, or ROPTDO.

2. Batelco refers to its request dated 11 October 2010 (ref GCL/392/10) regarding an extension in relation to replying to the ROPTDO and thanks the TRA for allowing an extra period in which to reply.

3. It is apparent that considerable time and effort has gone into the clear manner of presentation of the ROPTDO. Batelco welcomes this effort and acknowledges that this presentation assists in clarifying issues that need to be addressed now and in the future.

4. The clarity of the paper helps identify some recurring issues on which Batelco would say it and the TRA can and should engage in closer dialogue. Notable among these are:

   a) the seeming paradox of a growing scope and depth of access services in increasingly competitive markets;

   b) the principle of fair and reasonable pricing for access services, including as informed by (a);

   c) the cost treatment of Next Generation Network assets;

   d) asset lives;

   e) the recovery of copper access costs, in the context of (a) – (d) and also by reference to line rental and social obligations; and

   f) the treatment of wholesale activity costs generally - and of special concern the calculation of Interconnection Specific Costs.

5. Batelco submits that Batelco and the TRA should endeavour to work through these issues with the intention of resolving them together and ideally removing them from the list of issues which recur each cycle of review.

6. Batelco also notes two issues which arise in the context of the Reference Offer which are not addressed by the TRA in the ROPTDO and these should also be discussed:

a) the delivery of inbound international traffic to customers; and

b) the provision by Batelco of wholesale outbound international switched services.

7. Additionally, Batelco feels that it must raise concern over two TRA practices regarding the treatment of audited regulatory accounts:

a) having very recently approved the APM which is the basis on which the audited regulatory accounts are prepared[1], the TRA now proposes to selectively change decisions already made in the APM approval issued by the TRA with instructions on 7 February 2010. This has the effect of driving different results in the recalculated cost stacks. Batelco submits that this must not happen – the figures used are the output of a formally approved methodology under the Accounting Separation Regulation and changes, if changes are appropriate, these should be made in the APM which will flow into cost calculations in future RO submissions;

b) where the TRA makes an adjustment to a basis of calculation (for example, assessing the number of minutes which should apply to a calculation), this change sometimes applies across the whole cost model (thus ensuring that costs are reallocated elsewhere) and sometimes is only applied in the case identified (thus discarding costs from the model). Batelco submits that this approach is arbitrary, especially where no guidance or explanation is given for the difference, and this appears to Batelco to be both unreasonable and unfair.

8. All the issues identified above are addressed in this response, together with other service-by-service issues in the TRA's order.

9. Additionally, this submission includes:

a) separate comments at Annex A on the material considered to be confidential and non-confidential by the TRA; and

b) in relation to the proposed "price freeze" for freephone origination at paragraph 150, separate additional freephone origination statistics at Annex B showing that since imposition of Emergency Order Number 3 on 29 July 2010, traffic has not returned to Batelco's network on routes to India and Bangladesh (which would be expected if a margin squeeze had been taking place). We also enclose detailed examples of retail offerings from competitors showing rates well below the ordered floors at Annex B part 2.

[1] See Accounting Separation Regulation, Article 1.3

10. Batelco would welcome the opportunity, as has been the practice in most of the last seven years of Reference Offer review, to discuss any or all of these issues with the TRA in meetings.

Implementation of the order

11. ROPTDO requires (at paragraphs 5 and 2) that the final order should take effect on the day that it is made and be reflected in the Batelco pricing schedule within two working days. Batelco submits that the TRA should not impose this requirement, because:

a) the calculation of price changes which apply on a particular date can be onerous, especially as this will in many cases require the manual recalculation of accounts to assess apportionment of rates – this is particularly problematic in the case of any service with a usage threshold and additional charges;

b) A matter that was recognised by the TRA in its approval letter dated 17 September 2009 for the Reference Offer below:

> *" Given the protracted time taken to finalise the review, the TRA would ideally have liked to have the new Reference Offer take immediate effect. However due to operational constraints we agree on this occasion to set the effective date to October 1 2009. The TRA does however request Batelco to communicate the new Reference Offer prices to OLO as soon as possible so that they can begin to prepare any changes to their retail offering in advance of the effective date."*

c) the effective date of price changes in approved or agreed Reference Offers has been adjusted to take into account billing cycles and we would recommend the same practice should apply here to minimise implementation costs and reduce the prospect of billing disputes

d) The Access Regulation provides that the publication deadline is two weeks from the final order (please see Access Regulation Article 5.5). The more onerous requirement to have revised, reviewed and published the pricing schedules within two working days should not be applied.

e) The ROPTDO at paragraphs 300-302 requires Batelco to offer Business WSDSL without CPE. This is not just a price point change. **[✂]**
[✂]
[✂]
[✂]

[✂] Please see paragraph 144 and 145 for our views in relation to this requirement.

12. The matters referred to in paragraph 11 are of general application. However, they are exacerbated in respect of this ROPTDO because Batelco wholesale is in the process of deploying a new wholesale billing system. A period of parallel running of the old billing system and the new billing system commenced on 1 November 2010. Therefore the imposition of new prices at an "odd" date will require manual intervention in both systems and manual calculation or recalculation of bills.

13. Batelco suggests that a preferable approach in relation to this cycle of review would be to agree (or order) that all price changes take effect from the 1st day of the calendar month following the TRA approval or order of the Reference Offer.

14. Batelco also suggests that in future reviews, the date of effect of any changes in the order should be selected in a manner that gives rise to the least likelihood of billing errors or disputes, which would be the first day of a calendar month.

15. In relation to publication, Batelco considers that if fair and reasonable charges are approved by the TRA (i.e. the charges in the third column of Table 1, together with a summary of the implementation schedule), we can send these to OLOs within two working days following the date of issuance of the approval and that the terms of Article 5.5 of the Access Regulation should remain operative, being full publication takes place within two weeks. If the prices are the subject of an order, they will have appeared on the TRA website anyway and OLOs will be notified at the same time as Batelco.

Other Changes to the Reference Offer

16. In paragraph 3, TRA orders further changes to the Reference Offer. In respect of these proposed changes, Batelco comments as follows:

    a) 3a – interconnection terms - Batelco makes substantial comments on this issue at paragraph 62 - 64..

    b) 3b – Batelco agrees to this change

    c) 3c – Batelco agrees to this change

    d) 3d – Noted with thanks. Batelco submits that it is not necessary for this to appear in an order. This service will be removed from the Batelco Reference Offer, whether or not a final order is made.

    e) 3e – Batelco submits that it is not necessary for this to appear in an order. Batelco notes that the TRA has declined the request to remove the service from the offer. Batelco will not remove this service from the Batelco Reference Offer, whether or not a final order is made.

f) 3f – Noted with thanks. Batelco submits that it is not necessary for this to appear in an order. This service will removed from the Batelco Reference Offer, whether or not a final order is made.

g) 3g – Batelco does not understand the second part of this comment. **[✂]**
[✂]
[✂]
[✂]
[✂] Batelco would welcome the opportunity to meet and discuss those terms with the TRA.

The premise of fair, reasonable and non-discriminatory tariffs

17. The TRA's pricing policy position is that:

The Authority considers tariffs to be fair and reasonable if such tariffs are based on relevant, efficiently incurred economic costs calculated on a forward-looking incremental basis, including the regulated rate of return on capital employed[2]*.*

18. Batelco urges the TRA not to adopt this inflexible pricing policy position. Batelco refers the TRA to many previous submissions on this point.

19. The Telecommunications Law plainly differentiates between interconnection services and access services. (They are referred to separately, defined differently, treated differently, etc). Among the differences expressly identified in the law are the pricing principles which are to apply.

20. The pricing principle for interconnection services is set out in section 57(b) of the Telecommunications Law. The pricing principle for access services is set out in section 57(e) of the Telecommunications Law.

21. The TRA's proposed pricing policy has the effect of substantially eliminating the difference between the two pricing principles in the Telecommunications Law. Batelco view is that to do this:

a) Is not in the best interests of consumers, the development of competition or the national interest because it removes, without good reason, a valuable flexibility in pricing access services, which flexibility enables the Authority to, among other things:

[2] See paragraph 17, Draft Reference Offer Order.

i. facilitate and encourage the development of commercial access solutions;

ii. exercise variable and especially light-handed regulatory touches depending on the state of the market[3];

iii. signal to the market the prospect of removal of regulatory intervention;

iv. differentiate between categories of service suppliers or service acquirers, or categories of services, including to establish pro-investment pricing signals and to best align the telecommunications industry with its expected role in the economic future of Bahrain.

b) is inconsistent with the drafting of the Telecommunications Law and the clear intention of the Authority in issuing the Access Regulation; and

c) significantly undermines the validity of variable pricing principles used previously, or elsewhere by the TRA (wholesale DSL, IPLCs and LLU, for example) giving rise to regulatory uncertainty and the consequences for investment incentive which that brings.

22. Batelco's view, consistently expressed, has been that the TRA should not establish a single dogmatic pricing principle for access services. As an example:

> "A dominant licensee is not required to set access prices on a forward looking incremental cost basis, although it is presumably free to do so. Depending on the circumstances, a reasonable price may be set as a result of:
>
> a) commercial negotiations;
>
> b) the dominant licensed operator's historical costs;
>
> c) a retail minus approach; or
>
> d) some other basis, such as benchmarking"[4].

23. Batelco refers the TRA to its own report at the time of release of the Final Draft of the Access Regulation:

The TRA accepts that the principle for "forward looking incremental cost" applies to interconnection services in accordance with section 57(b) of the Telecommunications Law and does not specifically apply to access services under

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[3] Batelco would request that the TRA take note that (a) two other wireless-based access networks have been operational for considerable time and have substantial market share; (b) there have been substantial improvements in microwave technology and that there is much greater market penetration of this technology than previously; and (c) a new access network is going to be deployed. This is likely to begin deployment and be operational not later than 2012 in Batelco's view.

[4] Batelco Submission to the TRA on Draft Access Regulation 5 March 2005 at page 15.

section 57(e). The relevant pricing principle for access services is "fair and reasonable terms" as set out in section 57(e).[5]

24. With regulation occurring at many levels of the supply chain, an adherence to the principle of "consistency of analysis" means that any errors in costing decisions can be expected to be rigidly passed through the entire chain, creating distortions at every level. A more flexible pricing approach allows for some "shock absorbers" along the chain.

25. However, Batelco welcomes the removal by the TRA of the policy position that has appeared in many previous Reference Offer reviews that commercial agreements are not a guide to fair and reasonable pricing.

TRA and "replicability"

26. Batelco agrees that one of the premises of wholesale regulation is its potential to facilitate competition in downstream markets[6]. However, Batelco is of the view that, with respect, the TRA takes the notion of replicability too far.

27. Batelco is of the view that replicability is a useful tool of analysis:

    a) to assess whether reasonable wholesale regulation is being applied at a sufficiently low, common denominator, level to support the development of competition in downstream markets; and

    b) as a result, to identify layers of regulation which are above a sensible level of wholesale regulation addressing "bottlenecks" and which can be withdrawn from regulation or subject to lighter touch regulation; and

    c) to assist in the assessment of retail prices, provided that it is not used too inflexibly.

28. Batelco submits that the concept of replicability should not be applied in the context of a wholesale review, to:

    a) create new wholesale obligations to "fill in the gaps" between a sensible level of wholesale regulation addressing "bottlenecks" and the whole scope of retail offerings – this is a function for commercial operators and markets to perform; nor

[5] Report by the TRA dated 30 April 2005 on the Consultation in respect of the Draft Access Regulation.
[6] Paragraph 18 and 19, ROPTDO.

b) act as a material substantive brake on the vibrant development and implementation of innovative retail services, pending an assessment in a wholesale review of their "replicability". In other words, the replicability test in respect of pricing should be applied in review of retail tariff proposals and not during the course of a review of the Reference Offer;

29. Batelco urges the TRA not to allow the problems identified in paragraphs 28.a and 28.b to operate in concert to effectively "lock down" all flexibility in the development and offering of Batelco products.

Context and Chronology

30. The Reference Offer assessment is the third and final stage of three steps which take place being:

a) Accounting procedures manual ("APM") submission, assessment and approval;

b) Audit and production of the regulatory accounts for FAC and CCA (LRIC); and

c) Submission of the wholesale Reference Offer for assessment.

Step 1 – the APM

31. This comprised a full, exhaustive and thorough review by the TRA of Batelco's APM which commenced on 16 June 2009 and was completed on approval of that APM after resubmission with additional instructions for modification on 7 February 2010.

32. The modifications during the assessment in summary were:

a) CCA valuations and related substantial volumes of financial information;

b) submission of extra regulatory accounts of LRIC even though these are not part of the legal requirement under the accounting separation regulation and determination; and

c) request for reporting extra cost details on the regulatory accounts which required system development (details in P&L and BS items)

33. On approval, the instructions covered the following subject areas:

a) Treatment of duct;

b) MPLS core routers – cost driver;

c) Buildings;

d) Air-conditioning;

e) MPLS router numbers;

f) Proforma statements;

g) MPLS router utilisation rates;

h) Routing factor table;

i) CCA only valuation in LRIC accounts;

j) Disaggregated LRIC account details and operating cost split between direct opex and depreciation;

k) Asset life;

l) CCA – valuation/price trends;

34. The APM approval letter also mentioned steps 2 and 3. In relation to step 3, the submission date was confirmed for 1 April 2010 and the TRA stated:

*" **TRA requires Batelco to submit its Reference Offer in hard and soft copy with fully functioning spreadsheets.** If Batelco wishes, TRA is prepared to hold focused meetings to assist Batelco in preparing its submission as it relates to new products. For such meetings to be effective, Batelco would need to prepare and circulate in advance relevant material."*

Step 2 – the regulatory accounts

35. According to a pre-agreed extended timetable, Batelco was set 25 February 2010 as the submission date for the 2008 regulatory audited accounts for both FAC and CCA (LRIC) costs. This deadline was duly met.

36. In previous years the TRA has asked questions in relation to the figures submitted in the audited regulatory accounts. Although Batelco considers that this round of questions should not comprise a re-auditing of the regulatory accounts, it has duly answered the TRA's queries in relation to the regulatory accounts. This year a separate Article 53 request was made in relation to these accounts on 27 May 2010 which required Batelco to respond by 1 July 2010. This overlapped therefore with the Reference Offer assessment period.

Step 3 – the Reference Offer

37. The impression made in the Draft Order was that after the end of steps 1 and 2, Batelco failed to document stage (c) adequately despite being asked. Batelco considers this was not the case. Batelco followed the detailed format of previous

Reference Offer submissions which had been approved or ordered after an assessment period involving written submissions and face to face meetings. On 1 April 2010, a covering letter summarising changes was submitted together with a tracked changes proposed draft schedule 3 price list and 12 annexes of costing information, spreadsheets and explanation. Previously agreed or ordered calculation methodologies were followed in relation to:

a) all the traffic based products;

b) WDSL;

c) Bitstream; and

d) Narrowband CAT and LLCO network elements.

38. In the covering letter, Batelco reserved its position in case the TRA had any questions in relation to the regulatory accounts submitted on 25 February 2010 upon which the submission was based. In other words, there was a potential step 2 round of questions still open in relation to the regulatory costs where Batelco was not sure of the impact.

Previous Reference Offer approval, workshops and Article 53 requests

39. During discussions which preceded the approval of the Reference Offer on 17 September 2009, a number of possible areas were identified for workshops, with provision of working spreadsheets. The TRA recognised there were areas which required investigation in further detail. The likely topics arising from those discussions were:

(a) ✂

(b) **[✂]**

(c) ✂

(d) **[✂]**

(e) ✂

(f) **[✂]**

40. After introduction of the new wholesale prices on 1 October 2009, no invitations were received from the TRA by Batelco for any preparatory workshops (or “focused meetings”) until issue of the APM approval letter on 7 February 2010. Prior to that date, Batelco’s regulatory resources were instead involved with other significant

matters such as Step 1 above and the investigation and issue of the Article 35 order relating to the Falcon Cable Landing Station on 24 November 2009.

41. Since the regulatory accounts were not submitted until 25 February, Batelco effectively had a 5 week time period to prepare any pre-submission material and engage with the TRA in any workshop. This was particularly challenging because the same teams were now actively working on the price, service description and field test activities for the LLU project during this time window.

42. Despite this, on 22 and 23 March, Batelco made two separate requests to meet the TRA prior to the Reference Offer submission to discuss the ISC calculation, wholesale activity costs and the proposed allocation per product, draft duct cost, wdsl and bitstream. The latter two proposals were added because Batelco wholesale was keen to fast track new wholesale prices for these products.

43. On 24 March Batelco was informed the TRA was not available for such a meeting due to staff not being in the office, but at the time it was thought that there would be a meeting in about mid-April soon after the step 3 submission.

44. In that same e-mail and <u>one week before</u> the submission date, Batelco was advised for the first time:

" In preparing the Batelco submission, it would be useful, as per the requirements of Art 57 and RO submission practice to:

- *Justify the proposed charges in light of the relevant legal provisions, including Art 57*
- *Provide all supporting documents and in particular fully functioning and appropriately documented spreadsheets to enable TRA to follow the calculations*
- *Explain and justify changes to previously agreed positions, if any, so that the review can be more focused*
- *Provide 2007 and 2008 comparison of cost stacks where it can facilitate the understanding the movement of costs*

Best of luck in preparing your submission"

45. Contrary to any express requirement of Article 57 and "RO submission practice", this was a significant potential change of standard and scope between:

a) previous RO submissions between 2006 and 2009 inclusive; and

b) the requirement expressed the previous month for hard and soft copies with fully functioning spreadsheets.

46. Despite the change and potential widening of scope, there was however:

(a) no specific reference to explaining shifts in cost bases; and

(b) in particular, no requirement to documenting changes in network evolution.

At this point, Batelco also had not received any questions in relation to step 2 which might have alerted it to what the TRA might be thinking.

47. Before the Step 3 submission, the parties did not hold the TRA's foreshadowed workshops. These workshops would have allowed worthwhile interaction between the parties and greater understanding of the changes taking place between accounting periods before submission of the Reference Offer. It would have also provided an opportunity to find out exactly what the TRA would be looking for in a submission and for Batelco to explain what it would be possible to produce in the available timescales.

Draft Order comments

48. The Draft Order states:

" Despite Batelco being fully cognisant of the evolutions taking place in its network it failed to provide the Authority with any supporting explanation or justification for the changes proposed in its original submission."

There is also a further reference to a failure of Batelco to document the submission material properly.

This statement unfortunately gives the impression that Batelco has deliberately withheld information about these changes, and the documentation submitted was substandard.

49. Batelco considers these findings clearly inaccurate and unfair in their current form, because as explained above:

(a) the 2010 submission was extensive and of a similar standard to previous years;

(b) Step 2 (questions on the costs and regulatory accounts) had not been completed when Step 3 started;

(c) possible new documentation requirements which were different to the one advised the previous month were stated one week before submission and only in response to an invitation request to have a workshop; and

(d) no pre-submission work had taken place between the parties which would have assisted a meeting of expectations this year.

"Sustainable" pricing

50. At paragraph 22, the TRA makes an observation about unsustainable price points. Batelco notes that of the factors that may go towards establishing cost-based prices, capitalisation of assets is one influence, but the capacity and number of users are others (Batelco queries whether this corresponds to the TRA's own reference to 'utilisation factors' in the same paragraph?). Batelco considers that the TRA's reference to unsustainable prices is quite unfortunate, given that one of the examples cited as a "significant variation" (duct rental) was specifically foreshadowed by Batelco in its previous submission. Batelco makes further reference to this issue at paragraph 105 to 112. Batelco raises a similar flag this cycle in relation to SDH transmission costs at paragraph 67 and urges the TRA to take this into account in formulating prices.

Post Step 3 assessment process – "the next level"

51. Instead of holding a mid-April workshop, over six weeks after Step 3 on 17 May 2010, Batelco was informed that the TRA had completed its preliminary analysis and now wanted to take the assessment " to the next level". The TRA issued a 110 question Article 53 request requiring a further set of written material in addition to the annexes A-L submitted on 1 April 2010. These questions primarily focussed on costing questions which overlapped with Steps 1 and 2.

52. On 18 May 2010 Batelco submitted an email stating its concerns about the purpose of the approach adopted by the TRA. On 23 May 2010, the TRA issued a detailed line by line rebuttal and stated that Batelco had failed to document changes in its cost base in the Reference Offer submission.

53. However, the TRA agreed to meet Batelco to review these questions, and this Article 53 request alone (not the answers) required three meetings to review on 24, 25 and 26 May 2010. Batelco considers these meetings helped to narrow down and clarify the scope of the TRA's requirements and were fruitful since Batelco had a better idea what was required by the TRA.

54. The following two and a half months however involved a painstaking question and answer process. Batelco was legally required to write down responses on a cold, remote and arm's length basis, all under the use of the TRA's formal legal information gathering powers under Article 53 and fining powers under Article 35. With the exception of one conference call in August, there were a series of written follow up questions and answers, together with new questions. This iterative process also converged with detailed written questions and answers in relation to the LLU project and 2009 APM, all involving the same Batelco team members.

55. We believe the repeated questioning and iterations could have been avoided by instead investing time in the working relationship through face to face workshops rather than through a time consuming written process. Batelco is often unclear about exactly what the TRA wants in terms of outcomes unless it is explained and articulated in meetings. To avoid follow up questions and frustration, Batelco can also explain what is easy to provide, what will take more time and what is impractical to do (but offer alternatives). This way of working can avoid the impression of obstructiveness brought about by remote written responses and no other interaction whatsoever.

56. This process was justified by the TRA because of an "information assymmetry" and alleged "failure by Batelco to document". Batelco would submit the perceived problem could also be seen as a result of:

(a) poor communication between the working teams (TRA and Batelco),

(b) use of one method of communication (formal legal requests) which inhibited, stultified and slowed down the process;

(c) a previously unannounced and opaque shift in the TRA's approach "to the next level" for the first time in a Reference Offer assessment;

(d) failure to adequately and efficiently take into account the use of Batelco resources by the TRA to meet these "next level" requirements as well as other projects; and

(e) confusion and fatigue arising from too much information and too many information requests, some of which was being provided not just in this assessment but in other work flows.

57. Batelco highlights the amount of documentation it provided overall to the TRA, not just through the Reference Offer and accounting procedures manual process. Aside from consultation responses in 2009, Batelco made 36 Article 53 submissions in one calendar year

58. Batelco would also observe there was no incentive whatsoever for Batelco not to co-operate in the post step 3 assessment process. After the introduction of the retail tariff regulation, we note that the TRA has suspended four major retail tariff notifications for broadband and data products for the whole of the Reference Offer assessment period between April 2010 and now, pending final findings from this exercise. This has significantly harmed Batelco Retail's ability to respond in a timely fashion to competitive pressure. Unlike last year, where broadband products were fast tracked, the TRA has been unwilling to split the assessment process to alleviate some of the delays.

59. In order to promote better communication, mutual respect of each party's position and circumstance and a more harmonious working relationship in the future, Batelco submits that the context section of the Draft Order in its current state is removed, should a final Order be issued. In Batelco's view, publication of such a section will promote polarisation and a negative spiral of claim and counter-claim. Instead, Batelco urges the establishment of proper work planning meetings to ensure more efficient use of resources and a more measured and less indiscriminate use of Article 53 requests over a reasonable time period.

ISI AND CSI INTERCONNECTION LINKS

Removal of 10 year cancellation charge period

60. At paragraph 77 of the ROPTDO, the TRA asserts that Batelco has established a contractual commitment period of 10 years for ISI and CSI interconnection link services. This is incorrect.

61. The Supply Terms between Batelco and each OLO, unless agreed otherwise, have an automatic annual renewal. See clause 2.2 of Schedule 9 to the Batelco Reference Offer. Within the parameters of the Supply Terms, some services provided by Batelco have a fixed contract period (or allow for one) and other services have a minimum contract period. Some services do not have either. Technically, ISI and CSI interconnection link services do not have a specific contract period or a minimum contract period.

62. However, there is a charge which applies in the event of cancellation of interconnection capacity, which charge is time period oriented and has the effect of commercially establishing minimum service duration. The period of expected minimum service duration was established by Batelco in 2003 based on a survey of world's best practice at that time. The charge has been in the Batelco Reference Offer which has been reviewed, approved, ordered and agreed by the TRA many times since. The current formula for the cancellation charge was specifically reviewed, re-written and requested by the TRA in 2005.

63. Batelco understands that there may be grounds for revisiting this formula. However, Batelco says that this review should be equitable, informed by principle, and not affect arrangements entered into at the date of the revision since all the equipment investment made in those links was made on the basis that it was underpinned by that investment commitment.

64. Batelco makes the following comments in respect of the matters raised by the TRA:

   a) even if the only principle to apply was cost recovery (an idea with which Batelco would not necessarily agree) then an economic assessment based on

5 years may be superficially reasonable. However, the active equipment at one end (in the case of ISI) or both ends (in the case of CSI) of the interconnection is not the only component of the interconnection link. The interconnection link will also consist of fibre, duct, duct space, and chamber space. TRA is elsewhere in the Draft Order proposing that some of these components have much longer lives than 5 years (up to 40 years –see table 36).

b) The TRA assumes that active equipment can be redeployed for other uses. This is not always the case. **[✂]**
[✂]
[✂]
[✂]
[✂]. The TRA's formula for assessing the charges which apply for the early cancellation of interconnection capacity already took into account the requirement to seek to redeploy the equipment, and further discounted the result to take into account the possibility that a future reuse might be possible.

c) as regards paragraph 35. Due to technological upgrades and supplier discounting supporting equipment Batelco has changed all interconnection equipment and none of the assets originally deployed has passed 5 years as the first interconnection introduced has been for Zain in 2004.

Bands

65. Batelco is not proposing in the RO submission to change the banding as this change was previously agreed with the TRA in September 2009 despite the failure of the TRA to document the change in the approval letter. Batelco and the TRA have agreed that the actual average of links in each band shall be used to set the pricing point and not the arithmetic average of each band or the maximum in each band. This understanding can be confirmed by the TRA by undertaking a backwards calculation of the current prices which have been approved and calculated by the TRA. The links table below formed part of Batelco's Article 53 part one response dated 30 June 2010:

OLO	End of 2008		End of 2009	
	No. of CSI	No. of ISI	No. of CSI	No. of ISI
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]
[✂]	[✂]	[✂]	[✂]	[✂]

In order to calculate the average, one should also consider that **[✂]** have two points of interconnection, hence divide the links number by 2 in order to get the number per POI to calculate the average of each band.

TRA should use the following actual average number of links in each band in its reverse calculation being:

a) 10.75 for the first band,

b) 26.5 for the second band; and

c) 63 for the third band.

This is based on link figures at the end of 2008.

66. At paragraph 75 and again at paragraphs 79-81 TRA records incorrectly the position taken by Batelco in relation to the appropriate bands within which ISI and CSI links should be priced.

SDH transmission cost

67. Batelco has submitted to the TRA that the current figure of total number of E1's is overstated and that, even when considering the concatenated circuits, the cost of E1's on SDH will increase. Batelco requests the TRA to reconsider its findings, follow the last year's calculation approach and allow for a rise in costs for next year's figure.

Access Fibre Network Cost

68. The TRA states at paragraph 84, that it considers that the access fibre cost should be calculated on the basis of unadjusted cable length and not the adjusted cable length. Batelco considers that the allocation using the ***adjusted*** cable length is the appropriate calculation. Batelco would refer the TRA again to the series of questions and explanations on this point during the course of the review. If the TRA would consider that a discussion on this point is helpful then this could be arranged promptly. Actual access fibre length is the total of used and unused fibre laid. By calculating the cost based on the unused/used length this results in ***under recovery*** of the access fibre cost. Batelco believes that, on the premise that used fibre will increase in the future, the TRA should follow the calculation approach taken last year, and allow for a "cost buffer" here and not base the cost on total actual access fibre length.

69. Batelco would also refer the TRA to the powerpoint presentation "Confidential Annex A" presented to the TRA dated 9 December 2009, which illustrated the duct cost allocation performed by Batelco, together with the responses to the follow up question on 14 December 2010. This allocation methodology formed part of the APM was not subject to modification or instructions and was approved by the TRA on 7 February 2010.

70. Batelco notes that the formula in paragraph 84 appears to be in error, as the number of E1s should be used in the denominator of the calculation, not in the numerator. In order to deliver an interconnection one fibre is used and this is not related to the number of E1s activated as Batelco supplies a channelized STM-1 (63 E1s) as an intrinsic part of the product. The cost recovery of this fibre needs to be allocated on the number of E1s and not multiplied by the number of E1. We believe the TRA has not followed the formula in their calculation and has divided by

the number of E1's not multiplied by it). In other words, Batelco considers the calculation result is correct, but the formula used is not.

Protection line

71. Batelco's view is that its assessment of protection line costs is appropriate because protection lines are part of the cost of fulfilling the service levels associated with the interconnection service. As a result, Batelco uses additional fibre resources to support its service levels. Batelco submits that this support should reasonably be taken into account. Batelco has not referenced 4 fibres, as reported by the TRA, but rather 2 fibres.

72. Protection has been implemented by Batelco in its network and in relation to this product. This is both logical (protection within the supplied equipment) and physical (protection using diverse routes). There are levels to each type of protection implemented. **[✂]**
[✂]
[✂]
[✂]
[✂]
[✂] Physical protection forms part of Batelco's Reference Offer today. If the TRA considers that no account should be taken of the protection implemented by Batelco, then Batelco considers that protection circuits will be withdrawn from the wholesale interconnection service configuration as these findings mean Batelco is not able to recover its costs when protection has been deployed.

Network and equipment cost

73. In relation to paragraph 91, the TRA is only taking into account existing OLOs and not new OLOs. The network equipment used for new OLOs is not on average 2 years old. The application of this principle would be less problematic if the TRA were to establish differential pricing for existing and new customers.

74. In the formula set out at paragraph 92, Batelco notes the following:

    a) in the depreciation formula, Batelco did not use equipment capacity. It is unclear what equipment capacity the TRA is referring to. Is it network usage capacity? Is it equipment salvage value? Is it equipment life expectancy? The TRA appears to be basing its calculation on information neither used by Batelco, nor disclosed by the TRA to Batelco. Batelco submits that this is not the approach which has been used successfully in the past to resolve such issues.

b) With regards to the Return on Capital formula, Batelco considers that TRA's proposed formula appears sound.

c) The S & M percentage of **[✂]** applied by Batelco is directly extracted from the 2008 costing model which is the final result of running the model based on the methodology agreed with the TRA. Although the S&M percentage may differ between various network equipment (access copper, CPE, core, etc.), the S&M percentage is in the range of **[✂]** Typically, most assets have a low book value, and so the proportionate S & M percentage is relatively high but reflects maintenance cost by Batelco or third party sub-contractor staff. The figure of 9% proposed by the TRA cannot be accepted as it is completely out of the appropriate range and will not enable Batelco to recover its maintenance costs. Arriving at the S & M percentage for network assets follows the methodology explained in the APM, more specifically Appendix 7.5.3 and 7.4.4. Hence, the resulting percentage should not be retrospectively revised in its value since the method of arriving at the percentage has been already approved by the TRA just seven months ago as part of the AS / FAC section of the APM.

Wholesale activities

75. .The TRA's draft conclusions are to use the same wholesale activities cost used for CAT/LLCO as no wholesale cost information is available for ISI and CSI links.

76. Batelco considers that the assumption that the same bottom-up cost assessment for CAT/LLCO should apply to ISI/CSI Links is problematic. The support costs for ISI/CSI are allocated under the ISC and recovered on a per minute basis, not per signalling link. The use of the CAT/LLCO BD14.73 which covers only the setup costs does not reflect all the support costs on these links.

77. Batelco would also refer the TRA to our comments on wholesale activity costs below.

Ordered price

78. Batelco submits that a consistent calculation methodology, along the lines Batelco thought had been agreed in the last assessment, should be followed and that all the above factors favour a review of the proposed prices in the Draft Order for links in order to avoid a sharp proposed price increase next year. As explained in the original submission made on 1 April, Batelco reserves its position in relation to the calculation of the average number of "hops" until such time as the complete position can be accurately surveyed.

INTERCONNECTION SERVICES

Discrepancies in Routing Factors

79. The comments made by the TRA with regards to the routing factors at paragraphs 125 and 126 have been accepted and have already been reflected as a change in the 2009 Routing Factor table.

80. Batelco notes however that in relation to table 24 (relating to SMS terminating access) and similar tables where the TRA applied the routing factor to the interconnect specific charge CN90, that CN90 is not a network element which is capable of being adjusted by a routing factor, therefore it should be the complete full charge. Although cost element CN90 is presented in minutes as it is a charge that is added to the interconnection services, Batelco does not consider it reasonable to make this subject to a fractional routing factor percentage

Mobile Data services conversion factors

81. Batelco notes the TRA's analysis and findings made after an assessment period of nearly six months. Batelco would suggest that, like the approach taken to SMS and MMS in 2007, before a change is made, the findings are based not on selective benchmarks, but on actual measurements made in Batelco's network in Bahrain. In the meantime the original assumptions should remain pending that survey.

82. The TRA's Draft Order also mentions that a finding of a one third versus two thirds 2G/3G split for mobile data traffic is inconsistent with Batelco's 50:50 assumptions to allocate radio area network cost between 2G and 3G in general. We refer to Batelco's earlier Article 53 responses on this point about the difficulties in measuring a precise split for the volume of traffic and instead using the actual percentage split in number of nodes which was then rounded to take account of the capitalisation of those assets in 2008.

83. At paragraph 136, the TRA refers to an ISC finding. This finding is discussed in detail in paragraphs .168 – 197.

Frozen fixed interconnection charges

84. Batelco acknowledges the arrangement described by the TRA at paragraph 138. Batelco had understood that this accord was reached in 2008.

PSTN transit service

85. (Left blank intentionally).

86. Batelco notes that the PSTN transit service provides a switched minute substitute for an LLCO. It is designed to allow an OLO to send switched minutes between two points of interconnection that the OLO has with Batelco. Batelco considers that

the reasons that there is no demand, currently or forseeably, for this service include:

a) the vast majority of OLOs use CSI and have only one point of interconnection with Batelco;

b) in a small geographic market like Bahrain, the chances are very low that even an OLO with two points of interconnection will rely only on the Batelco network for carriage between POIs/customer regions; and

c) under the TRA's access pricing regime the cost of an LLCO at 2048 kbps is less than the cost of a single CSI link and certainly lower than two of them.

87. In any event, Batelco acknowledges that the TRA has declined the request to remove the service from the offer. Batelco sees no need for this topic to remain in a final order as Batelco will commit that it will not remove this service from the Batelco Reference Offer, whether or not a final order is made.

Mobile interconnection charge

88. There are many and varied reasons why account values change from one year to the next - for example: new cost centres are introduced, old cost centres are deleted, cost centres are merged, cost drivers change, allocation keys change, etc.

Mobile conveyance GMSC

89. Batelco agrees that the name change is sensible and appropriate.

Paging Terminating Access

90. Noted.

SMS Terminating Access

91. At paragraph 148, the Authority sets the interconnection charge for SMS terminating access as set out in the cost stack reproduced there.

92. The comments made by the TRA with regards to the routing factor have been accepted and already reflected as a change in the 2009 Routing Factor table.

93. However - CN90 is not a network element. It should be a full charge, not subject to a Routing Factor. It is presented in minutes because it is a charge that is generally added to the interconnection services which are charged in minutes. However Batelco considers that there is no compelling reason that this charge should be subject to a Routing Factor percentage. Batelco notes that this same comment applies in respect of paragraphs 136 and 137 on ROPTDO page 42.

94. In relation to the split between 2G/3G, Batelco considers that its previous responses to TRA should be sufficient to explain our method:

"Based on our understanding, 2G & 3G nodes and interswitches are minutes based, therefore, the cost is more optimally derived by the traffic volumes rather than any other measure such as licensed frequency use. However, and as explained to TRA in previous submissions and when the initial RO questionnaire was issued by the TRA in May, the current data system is not capable of providing a clear cut volume of traffic on 2G vs 3G.

For example, if a call was initiated on a 3G network, the whole volume of traffic would be captured as 2G if at any time during the call the caller travels to a non-3G area network where the call would be re-routed to 2G network. As a result of the system's inability to provide perfectly accurate data in terms of traffic volume, costing team has applied 50-50% on 2G vs. 3G.

The key basis that was considered for deriving the percentage split between 2G and 3G is the number of coverage nodes on 2G vs. 3G. In 2008, node B (3G network) count was 187, whereas BTS (2G network) was 239. Accordingly, a rounding percentage was applied as 50%-50% given the fact that around 60% of the 3G assets were capitalised during the same year. Batelco reserves its position in relation to this point pending issue of a proposed RO preliminary finding or Draft Order by the TRA.

Conveyance of Emergency calls

95. As previously advised to the TRA when the new number ranges were introduced, Batelco requests the TRA to take into account that emergency calls are conveyed not just according to the submitted cost stack for 999. Codes 990, 992, 994 and 996 are emergency services which have a different cost stack which is identical to standard fixed PSTN termination. Therefore calls to these numbers shold be charged at the wholesale level according to the PSTN termination rate.

Freephone from mobile

96. At paragraph 150, the TRA acknowledges that Batelco's costs for this service have increased and that this justifies an increase in the charge for the wholesale service.

97. The TRA declines to order the increase pending further investigation of the anti-competitive conduct complaint against Batelco resulting in Emergency Order No 3 dated 29 July 2010.

98. Batelco submits that the TRA's approach is not justified since:

a) on the TRA's own analysis, TRA is ordering Batelco to supply a service below cost;

b) The TRA has already ordered a retail price floor in respect of certain services which the TRA says alleviates the allegedly anti-competitive behaviour; and

c) at the time the TRA ordered the retail price floor, the TRA already had the revised cost stack for the service on which the TRA based its calculation of the freephone origination service and can, and should have, taken that revised cost stack into account in setting its retail price floor;

99. Batelco now experiences greater prejudice than set out in the TRA's analysis which it says justified the Emergency Order #3.

100. The TRA's retail price floor was designed by TRA to address and remove any alleged anti-competitive effect. The TRA offers no explanation as to why a further increase in the retail price floor corresponding to the increase in the freephone origination charge would not also address and remove any alleged anti-competitive effect.

101. **[✂]**
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

102. Batelco is of the view that the TRA should not be referring here to the assessment of call origination in the response to Emergency Order No. 3.

Directory assistance service for call to 181 and 188

103. Batelco may accept the TRA's approach in the calculation of the weighted average cost per call, however, Batelco disagrees with the volume of minutes used in arriving at the average cost per second. TRA have used not only the DQ traffic, but have also added scenarios that are not related to the 181 and 188 call scenarios.

104. Following the TRA's approach through using the relevant call scenarios in arriving at the total DQ traffic, the resultant figure of the weighted average cost per call would be 113.470 fils. The calculation details used by Batelco are described in the following table.

	Item	Value	Unit
a	Numbered of 181 answered calls in 2008	[✂]	answered calls
b	Numbered of 188 answered calls in 2008	[✂]	answered calls
c	total traffic of 181 calls in 2008	[✂]	seconds
d	Total traffic of 188 calls in 2008	[✂]	seconds
e	Average duration of 181 and 188 calls	[✂]	seconds
f	Total DQ traffic in 2008	[✂]	minutes
g	Total DQ traffic in 2008	[✂]	seconds
h	Operating cost of "36110 Customer Assistance Centre in 2008"	[✂]	BD
i	Average cost per second	[✂]	fils
j	Weighted average operating costs per call (181 and 188 calls)	[✂]	fils

DUCT ACCESS SERVICE

105. At paragraph 160, the TRA notes a marked increase between the duct rental access price for 2009 and the proposed price for 2010.

106. Batelco considers that the emphasis given to this proposed increase is somewhat unfortunate. This issue was foreshadowed by Batelco in 2009 and the TRA regrettably failed to give that prediction proper regard. In its response dated 6 August 2009 to the TRA's 2009 review of duct charges, Batelco urged the TRA[7] not to force any change to the 2008 duct charge. The reasons given by Batelco for urging this approach included that:

   a) the TRA had not completed its review of other charges and Batelco was very confident that changes made in those areas were likely to increase the rental charge;

   b) cost elements were missing from the duct rental cost stack which would increase the rental figure in future years; and

   c) the duct kilometre value included duct lengths used, in Batelco's view, improperly in the calculation.

107. In that submission, Batelco specifically noted that a significant rate reduction in 2009 would make an increase in price in subsequent years more problematic. This was at a time when a price increase was foreseen.

108. Faced with the reality of a cost increase, the TRA now proposes to take steps which have the effect of reducing the cost base (Batelco submits that this reduction is quite artificial), including two steps which Batelco views as improper:

   a) the first is to revisit the asset life of some ducts, doubling them, just 7 months after the approval of the detailed asset lives schedule used by Batelco in the APM on which the preparation of the audited 2008 Batelco regulatory accounts is based; and

   b) the second is to construct and impute, without enquiry or evidence, the existence of significant administrative cost recovery through one off charges which are deducted from the cost base.

109. In Batelco's view the TRA should not take those steps, because to revisit asset lives outside the formal APM review and approval procedure:

[7] See paragraphs 116 to 118

a) is not consistent with the Accounting Separation Regulation which clearly sets out the basis upon which regulatory accounts have to be prepared in accordance with an APM approved by the TRA, not economic depreciation calculations

b) undermines the integrity of the regulatory account audit process and function where an independent expert third party checks whether the regulatory accounts have been prepared in accordance with the TRA approved APM;

c) is arbitrary and in Batelco's view potentially contrary to Article 3 of the Telecommunications Law, given that, as recently as 17 June 2010, the TRA stated that it had expressed concerns about the length of asset lives, it proposed longer alternative lives for a broader range of assets (freehold buildings both network and non-network) and said:

   " TRA looks forward to discuss the issue of asset lives with Batelco in the proposed July 2010 workshop where this issue can be discussed further, ***including how the changes in lives should be implemented in the 2009 regulatory accounts****."* (emphasis added)

   The TRA also said earlier on 7 February 2010 when it approved the APM:

   " TRA continues to have serious concerns over the asset lives used by Batelco. International comparisons (sic) TRA will examine closely the appropriateness of the asset lives currently used ***in the next APM****." (emphasis added)*

   The effect of the Draft Order is to apply a retrospective adjustment to the previously approved values in the 2008 APM and the costs in those 2008 regulatory accounts, all contrary to the expressed positions of the TRA during 2010.

110. In relation to the development of a hypothetical recovery of one-off charges, TRA states at paragraph 181 that it is not in a position to assess whether the charges are fair and reasonable. Batelco submits that the TRA has made well known enquiries in the market about the level of the charges, so that if there were any reason to understand that consumers of the service considered that the charges were not fair and reasonable, that this would be reflected in the TRA's assessment.

111. Batelco also considers that there is no discrepancy nor double counting. As communicated with the TRA, the reason for the difference noted by the TRA between the illustrative table and (Table 1: Duct - NP10), is because the illustrative table reports the operating cost not taking into account the cost of capital, while table 1:Duct does include the total cost inclusive of the cost of capital.

112. Batelco understands that the TRA accepted the justification and encouraged Batelco to provide detailed cost breakdowns in future submissions, to avoid the need for such clarification.

CATs and LLCOs (Part 10, para 190 – 241)

Wholesale activity costs

113. At paragraph 200, the TRA by using a bottom-up calculation of charges excludes the entirety of WS02-WS05 cost components and the majority of WS01 costs. Batelco does not agree with this position and the assumptions made and seeks the TRA's rationalization of this approach. How is this justified?

Copper costs

114. The TRA in paragraph 201.a uses a cost of copper assessed at BD6.09 which the TRA states reconciles back to the regulatory accounts. Batelco makes more observations in relation to copper costs in relation to the copper contribution section below.

MSAN costs

115. Batelco strongly disagrees with the TRA that NGN G.SHDSL cost should be applied across all circuits (legacy and NGN). G.SHDSL Card is used for NGN circuits only to which cost should be allocated accordingly, based on the matching principle. In other words, the NGN cost should be divided by NGN circuits only. Batelco refers the TRA to the view noted by Batelco in July 2010:

> *"As explained above, G.SHDSL is utilized only by narrowband NGN circuits, therefore the total cost of AN20 MSAN G.SHDSL was divided by only NGN circuits. It would be incorrect if we used the total circuits (legacy and NGN) as a base to calculate the cost per unit as it is not utilized by the legacy circuits."*

Batelco does not agree with the TRA that NGN G.SHDSL cost should be applied across all circuits (legacy and NGN). G.SHDSL Card- as explained to the TRA previously - is used for NGN circuits only, to which cost should be allocated accordingly, based on the matching principle. In other words, the NGN cost should be divided by NGN circuits only The level of capitalisation can only be provided to the asset class level, in other words only MSAN's capitalisation can be extracted not the service cards within the MSAN. Accordingly, MSAN's capitalisation (also communicated to the TRA) is 77% in 2008 and 92% in 2009.**[✂]Transmission**

116. Paragraphs 206 to 214

Batelco refers the TRA to the detailed written explanation of the shifts in figures submitted on 5 August 2010 which concluded:

" The result of the internal exercise showed a net higher cost allocated to the CN52 due to the increased bandwidth, and a higher cost per MB as the number of overestimated capacity removed is higher than the BB circuits not included. We would therefore recommend this area of costing is not reviewed until subsequent Reference Offer assessments (reflecting the data cleansing exercise to be completed afterthe SDH migration project is completed)."

The SDH migration project is still underway **[✂]**
[✂]
[✂] and Batelco internally is commencing the necessary data cleansing exercise

Profitability

117. At paragraph 217, the TRA states that 2008 CAT/LLCO prices have allowed Batelco to recover more than its costs. Batelco notes that this observation is:

a) somewhat unusual, since it is the only service in the Reference Offer review in respect of which this observation is made, and Batelco is of the view that there may be other services which do not recover their costs and a more holistic view may be appropriate; and

b) appears likely to be an artificial assessment (although working is not provided for the assessment) because:

i. cost elements may be being discarded by the TRA before the assessment; and

ii. even if no costs are discarded, a multiplication of costs by circuits is not warranted, because the average number of circuits during the year will be less than the total – if orders are distributed evenly throughout the year then the average duration of cost recovery will be half, or less, while components of the costs are not.

HIGH SPEED CATs/LLCOs

118. In relation to high speeds CATs and LLCOs, ROPTDO states at paragraph 220, (and in paragraph 194b and the notes to table 42) that "the charges proposed by Batelco are neither fair nor reasonable". Batelco objects to the TRA characterising these figures as charges proposed by Batelco. The cost stack for these services is not charges proposed by Batelco. Batelco was requested by the TRA to prepare a

generic cost stack for high speed CATs/LLCOs[8] subject to futher discussion on technical provisioning and did so on 1 April 2010 but without proposing prices in schedule 3.

119. Batelco agrees with the TRA's initial assessment - at least in so far that the cost stack-based charges for high speed CATs/LLCOs are unlikely to give rise to fair and reasonable charges on a case by case basis. Batelco also considers that the charges calculated by the TRA and proposed to be ordered are, in the same manner, neither fair nor reasonable, for the following reasons.

120. The circumstances of high speed CAT/LLCOs are far less homogeneous than narrowband circuits. Factors which can materially impact the homogeneity include:

i. the nature of equipment already installed at either and both ends of the connection;

ii. the nature of services operating at either and both ends of the connection;

iii. the current requirements and current forecast requirements for services and equipment at either and both end of the connection at the time of the order; and

iv. the extent of the preference of the OLO for a customised solution.

121. It follows that a generic cost stack may not, or indeed is unlikely to, represent the cost of providing a "price on application" configuration. Just as one example, it may be that a customer configuration and requirements for high speed service justifies the installation of a Batelco network node, which will change the relative cost components of core and access network.

122. As an aid to the TRA's understanding, Batelco would note that this is similar in some ways to the issues arising from trying to constructively price in advance IPLCs (although obviously the factors influencing the outcome are different and in the case of CATs/LLCOs the factors are all physically within Bahrain).

123. The inclusion of these services in the Reference Offer is not necessary, as for some time Batelco has for some time provided and commits to the TRA that it will continue to provide OLOs with "price on application" in relation to high speeds connections. Batelco is not aware that any OLO has raised a concern that they

8 Please note the TRA's Article 53 request dated 7 April 2009 in the previous RO assessment, our comments on the issue in our response to the draft RO order and the TRA's 17 September 2009 approval letter in relation to high speed CATs and LLCOs where higher speed costs were to be included in the 2010 submission after discussion and agreement with respect to the technical provisioning of those circuits.

are unable to get a price on application or that there is any issue about a refusal to supply services.

124. Batelco submits that there is no persuasive reason why the existing "price on application" process is inadequate. While there is less up front price transparency with a "price on application" approach, there is much greater price accuracy and granularity when the configuration is customised to the access seeker's needs.

125. Batelco also notes that it has provided the TRA previously with details of some high speed CATs/LLCOs which were configured commercially. If the TRA insists on proceeding with a Reference Offer service in respect of high speed CATs/LLCOs, Batelco would argue that all existing high speed CATs/LLCOs installed or on commercial offer as at the date of the order should be grandfathered outside the scope of the order. If the TRA still decides to have specific prices for high speed CATs/LLCOs delivered over SDH, we suggest that the published price points represent price ceilings for that particular product in that year to assist more transparent price information in the commerical market and to discourage excessive pricing for those products.

126. Batelco considers that the market for high speed connections in Bahrain is competitive, or prospectively competitive and requests the TRA to engage in a market review which has been overdue since 22 January 2008.

127. Whilst this market review is undertaken and if the TRA is unwilling at this point to maintain the current position broadband SDH based CATs and LLCOs out of the scope of the approved or ordered Reference Offer.

128. Batelco also notes that the high speed CAT/LLCO product, while it serves some particular needs, is less flexible than product alternatives. Batelco would observe that:

a) An NGN-based MPLS product could provide: speed flexibility as it can be configured at any speed from 4MB to 1GB;

b) Batelco has already sold retail MPLS circuits to wholesale customers; and

c) we have received informal but no Reference Offer schedule 2 requests for an MPLS service.

129. **[✂]**
[✂]
[✂]

a) **[✂]**
[✂]
[✂]

b) **[✂]**
[✂]
[✂]

c) **[✂]**
[✂]
[✂]

d) **[✂]**

i. **[✂]**
[✂]
[✂]
[✂]
[✂]

ii. **[✂]**
[✂]
[✂]
[✂]
[✂]
[✂]

130. At paragraph 212, the TRA takes issue with the operational data which derive transmission cost of SDH circuits. Batelco refers the TRA to its answer in relation to the SDH modernisation project on 5 August 2010.

The result of the internal exercise showed a net higher cost allocated to the CN52 due to the increased bandwidth, and a higher cost per MB as the number of overestimated capacity removed is higher than the BB circuits not included. We would therefore recommend this area of costing is not reviewed until subsequent Reference Offer assessments (reflecting the data cleansing exercise to be completed after the SDH migration project is completed).

131. Batelco has already reported to the TRA that the result of its calculations was likely to be an increase in costs.

132. In the same way that in 2009, Batelco warned the TRA that it should not unduly adjust the duct rental in anticipation of an increase, Batelco submits that the TRA

should not adjust the SDH transmission cost until after the results of that exercise have been finalised, as the preliminary indications are for the same result (i.e. increased costs) on core SDH transmission.

IPLCs

133. Batelco submits that the TRA should treat Batelco in this review on the basis that the finding that Batelco is dominant in the wholesale market for access to international facilities is worthy of further enquiry and must be revisited since a review has been legally overdue since 22 January 2008.

134. Batelco submits that the relevant access inputs for the market identified by the TRA in the 2006 Determination should be considered as individual markets. Specifically:

a) a distinct market for the supply of international transmission capacity into Bahrain; and

b) a distinct market for the supply of international outbound call termination services from Bahrain to specific geographic areas.

135. The services supplied in each market are distinct and not substitutable. Batelco submits that the TRA should recognise these distinct markets and should determine that Batelco is not dominant, and has no significant market power, in each of these markets.

136. Pending the performance of a formal market review, Batelco submits that it is unreasonable and in breach of section 3(a) of the Telecommunications Law, that Batelco should be regulated in a continuously more aggressive manner in respect of its wholesale international services, including IPLCs. Batelco therefore proposes, if the TRA wishes to proceed with the publication of broadband iplc prices for zone one destinations for the first time, that those prices shall be deemed to be price ceilings to discourage excessive pricing.

137. At paragraph 259, ROPTDO refers to the calculation of copper costs. Copper costs are addressed at paragraphs 146 – 162 below.

138. At paragraph 60, the ROPTDO identifies an error in the calculation of S&M cost. Batelco acknowledges that this calculation was in error. Batelco agrees with the TRA's assessment of the error and expects that the explanation as to how it occurred likely flows from that assessment.

BITSTREAM AND WHOLESALE DSL

Access Port (MSAN Combo Cost)

139. Batelco has incorporated the assumption that the DSLAM was not used by the end of 2008 and communicated this clearly to the TRA. ,Batelco has documented this to the TRA in its costing spreadsheets and has confirmed this during the RO workshop as well as in the formal correspondence in relation to the same subject. In fact, Batelco's costing response on this point was:

"Based on the fact that DSLAM is no longer a used element within the network by any product or service, it has been agreed that it would be satisfying to the TRA to only provide information on DSLAM that shows the decline in its value in the books of statutory accounts, more specifically, the net book value of the asset over the required specified period."

DSLAM NBV* (BHD)	2007	2008
	[✂]	[✂]

*Please note that the value of DSLAM would ultimately be removed from the books in 2009.

140. At paragraph 272, the TRA uses an estimate of costs to determine the appropriate price for the unit port costs. The TRA has settled on BD1 for this estimate. Batelco requested the working by which the TRA derived BD1 as an appropriate estimate on 11 October and the TRA has explained on 12 October:

" In relation to the other elements you refer to in your letter, TRA has exercised its informed judgment having regards to available evidence and absent further information."

141. In relation to the suggested unit port cost charge, Batelco submits that the TRA has miscalculated the cost of the MSAN. The TRA has assumed that all customers are using both the DSLAM and MSAN network elements. This is not the case as a single customer is connected on either an MSAN or a DSLAM. A single customer cannot be connected on both. By using this assumption the TRA has calculated the cost of the access port to be BD1.36 per port and then allocated a cost of BD1 based on an informed judgment.

142. If a mixture of MSAN and DSLAM is used based on the TRA's methodology, Batelco suggests that a more rigorous evidence based approach would be to calculate a weighted average cost considering the number of customers on MSAN and the number of customers on DSLAM during 2008. Taking the number of customers in mid-2008, this would produce a cost of BD 0.714..

143. Batelco's calculation using the weighted average number of customers and full DSLAM cost is:

	Total cost	Number of customers	Weighted avg	%	Unit cost
MSAN	[✂]	[✂]	[✂]	[✂]	[✂]
DSLAM	[✂]	✂	[✂]	[✂]	[✂]
Total	[✂]	[✂]	[✂]	**100%**	[✂]

Applying part of the DSLAM cost based on the weighted average number of customers results in a calculation of:

MSAN = **[✂]**

DSLAM = **[✂]**

Thus, the total unit cost would be **[✂]** Batelco would also advise the TRA that the provisional MSAN cost for 2009 is **[✂]**.

Business CPE

144. Batelco notes the TRA's proposals for the use of the CPE for business WDSL to be optional, but there is no explanation in the Draft Order why the arguments previously put forward by Batelco on this issue are not fair and reasonable and no articulation why on balance the TRA considers this is appropriate.

145. Batelco submits that this should not be introduced for the following reasons:

(a) the cost and time of the internal IT implementation work;

(b) the number of business WDSL customers is **[✂]** at the time of writing and is relatively small compared to the number of wholesale WDSL customers and retail inet business customers;

(c) Batelco Retail require business CPE to be provided to its customers and WDSL is a resale wholesale product reflecting this;

(d) there are proposals in the LLU order dated 14 September 2009 to withdraw the WDSL service from the Reference Offer if the LLU service is deemed to be fit for purpose. Such a change will therefore not only be relatively costly, but perhaps also time limited if WDSL is withdrawn as a service;

(e) making the business CPE optional is not non-discriminatory as required by the access regulation because it goes beyond the replication of equivalent retail products.

(f) there are other wholesale products available to customers wishing to supply their own CPE to customers (bitstream).

(g) quality of service compliance requirements are compromised if the wholesale customer exercises its option to use its own CPE for business WDSL. Batelco has more confidence in maintaining quality of service levels through use of its own supplied CPE so far as business customers are concerned.

(h) despite having to make the internal IT development changes, Batelco doubts whether there is sufficient demand for such an option. There were no request from wholesale customer when this was explained to the TRA earlier this year and only one request received after that meeting.

(i) this marks a change in approach since the last Reference Offer assessment considered the issue, but the parties agreed not to introduce the option. Batelco does not know what has materially changed in the marketplace in the past year to justify such a requirement.

[✂]
[✂]
[✂]
[✂]
[✂]

COPPER CONTRIBUTION

146. At paragraph 282 TRA, without advance warning or consultation cuts across 8 years of TRA policy.

147. The TRA has not previously allowed the recovery of copper costs from wholesale products to become established.

148. Batelco submits that the TRA should not seek to separate this issue from the question of rebalancing, with which it is undoubtedly linked. Indeed, TRA notes that:

"traditionally, the cost of copper has been attributed to the provision of basic voice telephony. Broadband services have been seen as incremental to voice services and therefore have not received any contribution towards the cost of copper. This approach is appropriate when tariffs are balanced."

149. The TRA's mandate on tariff rebalancing is plain. The Telecommunications Law provides TRA with the power to :

develop formulae, <u>tariff rebalancing plans</u> and other measures for tariff controls for inclusion in Telecommunications Licenses where appropriate[9](emphasis added)

150. The subordination of TRA policy to the requirements of national policy is set out in section 3(e) of the Telecommunications Law, which states that:

In the fulfilment of its duties and the exercise of its powers, the Authority shall act in a manner that is consistent with the objectives of the National Plan for Telecommunications.

151. The Second National Plan for Telecommunications dated 13 February 2008 states, in respect of rebalancing:

Therefore, the Government requires TRA to ensure that there is a full rebalancing of tariffs of fixed telephony (i.e., by eliminating cross-subsidies between different services provided by the dominant provider).

152. Batelco submits that the TRA should not be implementing policy steps that undermine a fair rebalancing of tariffs. The TRA's reference to Batelco's submission on 30 June 2009 in relation to line rebalancing is very selective. Batelco regrets that the TRA makes no reference to any part of the submissions of the other respondents to that consultation. The TRA makes no reference to the context in which Batelco's comments about copper contribution were made. Batelco's response was to the effect that the issue needed to be creatively considered with a broad view of product offerings and taking a market-wide approach to the question of what to do about line and service tariffs in a changing world. The issue of copper contribution must be seen in that context. Batelco highlights the following from the introduction to the Batelco's 30 June 2009 submission in relation to the line rebalancing consultation:

[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

[9] Telecommunications Law 3c(14)

[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

153. Batelco also refers to the following passage:

[✂]
[✂]
[✂]
[✂]

154. [✂]
[✂]

[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

155. The TRA gives no indication that it has considered whether (and to what extent) other revenues are being counted in the calculation that Batelco's wholesale division and retail divisions are now being expected to contribute towards the cost of access services – in respect of broadband services.

156. [✂]
[✂]
[✂]
[✂]
[✂]

157. [✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

[✂]
[✂]
[✂]
[✂]

158. Batelco submits that the TRA's current approach does not fulfil the TRA's own policy prescription for this issue. In May 2009, at the same time that the TRA's consultation on rebalancing was in preparation, TRA made the following observations on this issue, in the order on the RAO from 24 May 2009:

"No provision of the Telecommunications Law or the Access Regulation requires TRA to take into account any purported access deficit in the determination of tariffs for access services included in the Reference Offer." TRA RAO Order 24 May 2009 (para 21).

AND

"In TRA's view, numerous services, including basic voice and data service, broadband access and leased lines are all delivered over the access network infrastructure and therefore the recovery of all costs associated with the copper access network should not be expected from the line rental charge alone." TRA RAO Order 24 May 2009 (Para 40).

159. **[✂]**
[✂]
[✂]
[✂]

(a) **[✂]**
[✂]

(b) **[✂]**

(c) **[✂]**

(d) **[✂]**

160. **[✂]**
[✂]
[✂]
[✂]
[✂]

[✂]
[✂]

161. [✂]
[✂]
[✂]
[✂]
[✂]

162. Batelco view is that in relation to the TRA's current proposal in the ROPTDO:

a) [✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

b) [✂]
[✂]

c) [✂]
[✂]
[✂]
[✂]
[✂]
[✂]

d) [✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

e) [✂]

(i) **[✂]**
[✂]
(ii) **[✂]**
[✂]
(iii) **[✂]**
[✂]

[✂]

(iv) **[✂]**
[✂]
(v) **[✂]**
[✂]
(vi) **[✂]**
[✂]
(vii) **[✂]**

f) **[✂]**
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]
[✂]

INTERCONNECT SPECIFIC COSTS

163. Batelco would agree that interconnect specific costs set at 0.7 fils/min is a fair and reasonable result provided that the recovery of major access project costs (such as the upfront costs of LLU) are not recovered from that amount.

164. Batelco notes that the ISC has been established under the supervision of the TRA from its inception in 2003 onwards[10]. The amount and the policy basis for establishing the fair and reasonable amount have been reviewed by the TRA repeatedly and been the subject of consistent dialogue throughout the period 2003-2009.

TRA's general observations about wholesale costs:

[10] It is not correct, and indeed is misleading, to state as the TRA does at paragraph 315 that the ISC was initially set at 1 fils in the Reference Interconnection Order dated 6 August 2006. The ISC was set at 1 fils at the end of 2003. The TRA acknowledged in 2004 that Batelco may have under recovered costs on the basis of cost discounting by the TRA of cost figures.

165. At paragraph 316, the TRA makes some observations about costs which Batelco submits should be revisited.

166. The observation that year on year costs should remain stable is not safe.

a) There are many and varied reasons why account values change from one year to the next - for example: new cost centres are introduced, old cost centres are deleted, cost centres are merged, cost drivers change, allocation keys change, etc.

b) The costs associated with wholesale activity can be lumpy. Examples of some lumps include (i) development and drafting of a reference interconnection offer (2003); (ii) the development of a wholesale costing model (FAC – 2003/4, LRIC 2005); development and drafting of a reference access offer including material new services (2006); development and implementation of LLU (2009-ongoing); implementation or upgrade of new inter-operator systems including the billing system currently being deployed;

c) while the set of activities classified as wholesale-related might become stable over time, this is not an assurance that all the activities and costs associated with those activities have been effectively captured in the past. Indeed, Batelco has in the past noted that the TRA's treatment of wholesale costs has resulted in costs "falling between the cracks"[11]. Where such costs are later identified TRA should not dismiss the changes.

167. Batelco notes that the TRA states in paragraph 316 c that Batelco has not explained why it needed to do offline calculations for the ISC and at table 59 it had not provided cost information for the ISC based on 2006 regulatory costs. We consider the language and the reference misleading because we have provided the TRA with the cost information and explained that at that point in time there had been no IT development to the model allowing reporting of a breakdown of the costs, merely an overall amount. An offline calculation was therefore essential to ensure transparency. The cost details for the 2006 based ISC was also compiled manually for the TRA instead.

TRA's specific observations about cost components:

Other Reconciliations and Capital Projects

168. At paragraph 343, TRA removes item "Other reconciliation and capital projects" from CN90. This reconciliation account is mainly the net balance of all receivable

[11] See for example, our 4 May 2009 response to the Draft RAO order relating to WDSL and bitstream, sections on wholesale non-network costs – bitstream and wholesale non-network costs – WDSL (paras 32-46).

and payable accounts between Batelco and OLOs. The balances are usually settled in the following year. If TRA would like to have a meeting to discuss the validity of this item then Batelco would be pleased to arrange it.

Market Comm cost centre

169. Batelco is open to understand further the basis on which the suggested BD10,000 is derived or, in the alternative, the TRA to suggest a more cogent methodology for the allocation of Market Comm department cost that fairly and reasonably takes account of the methodology applied by Batelco, which we believe is more logical and sensible to use other than just an absolute figure with no apparent basis.

170. Please note that the cost allocated is not a pure direct cost of staff only, it also includes indirect cost as well as other overhead cost (for example, support and unattributable cost). The cost related to website cannot be identified prior to allocation and this is why we have used the dedicated staff analysis to segregate the cost of website from retail. Nevertheless, in consideration of the TRA concerns with regards to the over-allocation of website cost to CN90, as a possible way forward, the costing team has revised the cost driver that is used to allocate website cost, from “product list of wholesale vs retail” to “Number of pages updated for Wholesale vs number of pages updated for Retail”. Accordingly, the percentage allocation of website cost to CN90 on this basis would reduce from 64% to 17% only and consequently 2% out of the overall total department cost (63K in value) would be allocated to CN90.

171. We consider this is still an underestimate requiring revision because:

a) Batelco is still a vertically integrated organisation with a wholesale arm and retail arm. Every piece of marketing and advertising will contain not just information about a specific retail product, but also general messages about Batelco and Batelco’s integrated brand. The general messages and the brand are common to both wholesale and retail customers.

b) Prior to February 2010 when a new licence condition was introduced requiring website details for licensed retail prices, the sole regulatory requirement for updating Batelco’s website arose on the wholesale rather than the retail side as a result of the requirements of the access regulation. This would therefore divert “marcom” costs more towards wholesale rather than retail in terms of necessary updates and changes.

c) The TRA has taken into account retail generated minutes in relation to traffic based on the non-discrimination principle, but has not taken into account all costs which would be caused if retail was a stand alone or unintregated arm of Batelco wholesale. Marcom and other cost categories would represent higher values on this basis.

172. Please could the TRA therefore reconsider allocating just **[✂]** to the ISC out of a total of **[✂]** for marketing and communications.

173. Legal and Regulatory

The TRA has left this proposed cost item in the current review. This item is based on management estimates of the time spent by GCL staff members on interconnection products only in 2008. During that particular year, there was only one main staff member supporting wholesale for the whole of 2008. Other cost allocations have been made to access products through wholesale activity charges which have been reduced by the TRA in other parts of this Draft Order. Following the TRA's approach towards including recovery of costs on access products under the ISC (which Batelco does not agree with), currently some of these costs either should go back in under the ISC or be allowed to be fully recovered under wholesale activities. Instead they are being discounted in both areas. Batelco also anticipates that legal and regulatory costs for 2009 and subsequent years in this area will increase from resources deployed on interconnection products only in 2008.

174. Costing and regulatory

Batelco is proposing to recover 73% of this cost category at the wholesale level because the regulatory finance team devotes the majority of its time towards wholesale. The team is split between FAC and CCA (LRIC) activities and the latter only applies to wholesale products, some of which are costed using LRIC cost information. Out of FAC, 23% of time has been allocated to wholesale, the remainder related to retail (primarily retail tariff proposals.

175. The TRA's conclusion, in paragraph 347, requires further work and investigation between the parties as identified in the previous Reference Offer assessment round as the TRA is proposing removal of substantial cost items under this item and at the same time reducing or disallowing wholesale activity costs Batelco notes that certain of these items are the subject of parallel assessment in the subsequent 2009 APM.

176. As a result of the deficiencies identified above, Batelco says that the cost information that the TRA uses to assess the ISC is not accurate.

Appropriate traffic base

177. TRA compounds this inaccuracy with a very extreme policy proposal that all Batelco fixed and mobile minutes should bear interconnect specific costs. Batelco submits that this should not be the applicable policy and very strongly opposes the notion that the ISC should be recovered from on-net minutes.

178. Batelco notes that the TRA relies for its analysis and justification of its position on a view taken by another regulator, Ofcom, in 2004. Batelco submits that the TRA must form its own view based on the regulatory regime which applies in Bahrain.

179. The RA identifies that there are four relevant principles which the TRA considers should apply to the appropriate method for the recovery of cost:

a) Cost causation

b) Cost minimisation

c) Distribution of benefits

d) Competition and discrimination

180. The principle of cost causation points to the recovery of costs from the traffic associated with the activities that give rise to the costs – i.e the wholesale interconnection traffic only. All of the costs allocated are related to activities which are caused by inter-operator activity. This is not a question of theory. That is the conclusion to which that important principle points.

181. Batelco acknowledges that the TRA is seeking to take into account other principles. If such a consideration is consistent with the pricing principle for interconnection services embedded in the Telecommunications Law, Batelco urges that those principles should be seen in their proper context and be given a proper weighting.

182. The principle of cost minimisation does have a role to play, but this role needs to be properly assessed and balanced against other factors:

a) The primary effect here is illusory. On matters of allocation, the principle can only act such that Batelco either chooses to allocate costs so that they are absorbed in some other part of Batelco's business or the TRA will force such allocation. This is not the application of principle, rather it is a subsidy of OLOs by Batelco.

b) The principle, when applied here, also has the unreasonable material effect of "double handling". The TRA is proposing to decide that 44% of Batelco's relevant costs are to be denied – and therefore must be recovered from elsewhere in Batelco's business. The TRA is using the principle of cost minimisation to require that the remaining 56% of costs are to be borne, in the majority, by Batelco.

c) As to the underlying costs, there are limits to how much of the actual costs Batelco can currently control. A significant component of the costs is driven by actions of the TRA. Furthermore, the TRA hopes to encourage Batelco to deploy more resources in respect of wholesale activities and not less.

d) The principle has little scope to apply. Some costs are removed completely by the TRA. Allocations based on Batelco staff analysis are ignored and the TRA instead imposes its own assessments. Other costs are untouched. The proposal that Batelco can or should exercise rational cost control in the face of arbitrary cost assessment has little to recommend it. No part of any of the 11 major cost categories considered by the TRA show any sign of having been treated by the TRA positively on the basis of any year on year cost reduction[12].

183. The principle of distribution of benefits already applies. Those customers who benefit from off-net connections already do pay the costs of establishing interconnection services:

a) Batelco retail customers who call off-net to OLO customers already pay the imputed equivalent of an ISC in the termination rates paid to OLOs, which form part of the retail charges applied to those customers. Those charges recover the OLO equivalent of Batelco's wholesale costs.

b) Batelco retail customers for connection services who use the interconnected services of OLOs, such as CPS and international calling services, pay an ISC through the origination charges which form part of their retail charges.

c) OLO retail customers, in the reverse of scenario (a) pay an ISC.

184. Batelco submits that, as proposed, the TRA's application of this principle goes too far. Subscribers who only call on-net do not benefit in the way that the TRA describes and yet the TRA requires such callers to contribute to costs. This is a misapplication of the principle stated.

185. In all calling cases, the retail users do not benefit in the way described by the TRA from access products such as local loop unbundling. Batelco's retail customers, and the retail customers of minute-based voice service providers, should not be subsidising LLU-access-based OLOs.

186. In relation to the principle of discrimination, while Batelco understands the argument, Batelco view is that the notion of discrimination is misplaced. Batelco's retail customers must, one way or another, pay:

[12] Please also see the discussion of the historical exercise which TRA committed to perform and has not performed.

a) ALL of the costs of the on-net and intra-Batelco off-net equivalent to wholesale costs;

b) ALL of the costs which the TRA denies recovery of in respect of wholesale costs; and

c) the equivalent of an ISC in respect of calls made off-net to OLOs. Batelco notes that with the single exception of Zain, OLOs are free to set their termination rates at a level to over recover their equivalent of ISCs;

187. Batelco proposes that the TRA reconsider its approach. If TRA remains minded to apply a wider distribution of the costs, then this should be limited to intra-Batelco off net traffic. Batelco view is that it is not an appropriate policy to apply this cost to any on-net traffic since:

a) The cost causation principle cannot apply at all

b) The cost minimisation principle is of extremely limited application;

c) The benefits principle espoused by the TRA does not apply; and

d) It is dangerous to conclude that the discrimination principle points in this direction, when the discrimination principle may in fact point to a different conclusion, given the costs already borne (directly or otherwise) by those minutes.

188. If, despite Batelco's submissions, the TRA remains minded to apply a widely-cast minutes policy, Batelco view is that the TRA should not include or publish any of the analysis in paragraph 356 of the 2010 ROPTDO since:

a) the analysis is of no function or utility;

b) the analysis is extraordinarily inflammatory and prejudicial;

c) the analysis is not the analysis that in 2009, the TRA committed to perform

d) the analysis is quite different from a similar exercise performed in 2009 using different figures.

189. Batelco notes that the TRA has ordered, approved, agreed or acquiesced in the level of the ISC from 2003 to 2009.

190. A change in TRA policy now does not give any valid reason as to why. Argument that ISC should carry costs of access service violates the boundary between interconnection and access services. Independent of any over-recovery

considerations, it is not correct that minute-based interconnection services should be expected to carry costs of access services like introduction of LLU.

This is not what was agreed

191. Batelco observes that most recently during 2009, a set of principles was agreed between Batelco and the TRA in relation to some outstanding and contentious Reference Offer issues. The pricing principles were agreed to have effect from 1 October 2009.

192. Batelco is of the view that the 2009 arrangement relevantly provided that:

a) that there would be a full study of costs/minutes/methodology in the next Reference Offer round.

b) the assessment would look at historic costs and calculations, but no adjustment would be made in ISC going forward on the basis of historical calculations.

193. The then Director General TRA, in September 2009 (your ref GDO/0909/031), committed to perform an assessment of the "historical composition", including a backward looking analysis in order to "inform the review".

194. This is not what has taken place in the 2010 Reference Offer review.

a) The TRA has not performed an assessment of the historical composition.

b) Nor has the backward looking analysis been used to inform the current review.

195. Instead, a current review has been performed and then the outcome of that current review has been used to reconstruct an artificial backward looking reassessment of the figures. Of particular concern in that approach:

a) The TRA takes historic numbers and manipulates them by the same percentages that apply to current numbers. Given that many of the cost categories currently applied did not exist in past years, this creates a very high level distortion;

b) TRA then applies, in retrospect, a policy which it did not apply at the time in relation to the minutes over which the costs were allocated;

c) TRA then assesses an "over recovery"

196. Batelco view is that this approach is:

a) wrong at law – since possible outcomes of the past if a different policy or price had applied other than the one determined by the TRA to be fair and reasonable is an irrelevant consideration to the setting of an interconnection price;

b) inconsistent with the commitment made by the TRA to Batelco in 2009;

c) unhelpful to the setting of the current ISC since it is so inflammatory;

d) gratuitous and unnecessary;

197. Specifically, the TRA's analysis:

a) Takes an aggressive position in respect of current costs;

b) Ignores <u>actual</u> historic cost under recovery by:

   i. ignoring all the costs incurred in 2003;

   ii. reconfiguring all historic costs by imputing similar cost reductions

MATTERS NOT ADDRESSED IN THE REFERENCE OFFER

International Inbound Traffic To Fixed And Mobile Networks

198. Batelco proposed in its Reference Offer submission of 1 April 2010 that a wholesale buffer should be allowed in respect of the delivery of international inbound traffic delivered to mobile and fixed networks. Batelco notes that this concept has the in-principle support of other operators in Bahrain who invest significantly in customer-connection network infrastructure.

199. Batelco's submission in support of that proposal (please see Annex G of the Reference Offer submission) suggested as an alternative that a floor be put in place on inbound charges, consistent with benchmarks recommended by the Arab League Committee of Telecommunications with respect to voice termination. Batelco indicated regional precedent for this option.

200. The TRA has not engaged with these proposals in the ROPTDO. This delivery service is an access service. Batelco considers that the terms of Article 5.2 and 5.3 of the Access Regulation require the TRA to make a determination of the terms and conditions proposed by Batelco in respect of its regulated access services. Batelco would not agree with a proposition that the TRA can by silence select not to engage with this issue.

201. If the Access Regulation were to allow for the TRA not to engage with a proposal in a Reference Access Offer – not a matter on which a settled view is necessary - Batelco submits that this ought not be the case here. The issue is not new. It was first raised in 2005 and resolved by the TRA in favour of a buffer. It was again raised in 2006 and ultimately, after arbitration proceedings had been commenced, resolved in favour of a buffer, albeit a reducing buffer. Batelco submits that the rationale provided by the TRA for the removal of the buffer has been proven by more than three years experience to have been sound in theory, but not justified in practice.

202. Batelco therefore submits that the basis for the glidepath itself should be reassessed and that the TRA must revisit the question of the wholesale buffer.

203. Batelco had understood from previous discussions that in past reference access offer submissions, the TRA had not approved a Batelco proposal to include an "uplift" on the inbound delivery service on three possible bases:

a) Batelco and the TRA had already agreed a glidepath for this rate and that glidepath was still in place;

b) international benchmarks presented by Batelco were not persuasive; and

c) the TRA's understanding was that the bilateral Bahrain US Free Trade Agreement ("USFTA") did not allow such an arrangement

204. Batelco repeats its arguments in favour of a buffer, which Batelco considers have been extensive. In particular we would like to draw your attention to:

a) Batelco's written submission for a stay in the RIO arbitration proceedings dated 30 September 2006 (and the transcripts of hearings on 2 and 8 November 2006)

b) Batelco's buffer rationale overview – Annex H of the RO submission dated 4 December 2008 (ref CL/451/08)

c) Batelco's subsequent submissions during that assessment dated 29 January 2009 (GCL/44/09), 21 April 2009 (GCL/186/09 – pages 5-6 and annexes C-E) and 14 May 2009 (GCL/226/09)

Consumer welfare

205. Batelco requests the TRA to consider consumer welfare in Bahrain and would reiterate the point that the rate reduction merely exports financial benefit abroad, and does not benefit the Bahraini customer (not just Batelco customers, but customers of other licensed operators) in the manner that the TRA anticipated that it would.

206. Since the beginning of the glidepath, overall inbound traffic volumes appear to Batelco to remain flat (see the table reproduced below) either implying that the inbound international calls are relatively demand inelastic and/or that the far end operators have not passed on the benefit of lower termination rates to customers. Batelco believes in the light of the effect of retail price reductions on outbound international call volumes in Bahrain, that the latter scenario is more likely.

207. Summary figures are set out below showing there has been no compensating effects of higher volumes arising from the price reductions (both in the glidepath and the underlying cost stacks):

Minutes 000's	2007	2008	2009
[✂]	**[✂]**	**[✂]**	**[✂]**
[✂]	**[✂]**	**[✂]**	**[✂]**
[✂]	**[✂]**	**[✂]**	**[✂]**

Source: Batelco wholesale

[✂]
[✂]
[✂]

US Free Trade Agreement

208. In Batelco's submission, there is no impediment to a wholesale buffer arising from a possible breach of the bilateral Bahrain USFTA because:

a) The agreement itself refers to "reasonable rates" for interconnection (Article.12.3 1 (a))

b) The side letter understanding on "cost oriented" interconnection rates refers to section 57 (b) of the Telecommunications Law which relates to interconnection products. The definition of interconnection under the Telecommunications Law is narrower and different to the definition of interconnection in the USFTA. Batelco's inbound international product is an access product, not interconnection for the purposes of Bahraini law. The default pricing principle under the Telecommunications Law and the access regulation is "fair and reasonable" pricing. Batelco refers the TRA to page 7 of Batelco's submission in our response to the Draft Reference Offer order dated 6 August 2009 which shows that, using past policy in Bahrain as an example, the TRA, if it is so minded, has the legal power and discretion to decide that fair and reasonable prices do not always have to be set at cost

c) Even if section 57 (b) is applied the TRA has the discretion to interpret what "cost-oriented levels" could mean. There is still room for a buffer.

d) There are also alternative grounds for regulatory forbearance under the USFTA as long as regulation providing the measure is not required to remove unreasonable or discriminatory practices, there is no need to protect consumers (no effect on Bahraini consumers) and it is consistent with the public interest (including promotion of competition).

e) The USFTA is a bilateral agreement in any case and does not apply to termination of the vast majority of traffic not originating from the United States.

Expiry of glidepath

209. **[✂]**
[✂]
[✂]
[✂]

210. The current glidepath expired on 1 July 2010 during the period of the current Reference Offer assessment. Although Batelco believes that circumstances have changed since the glidepath was agreed, in any event the glidepath period is no longer a relevant consideration.

WHOLESALE OUTBOUND SWITCHED MINUTES

Batelco refers the TRA to the discussion at paragraphs 133 – 135 above.