



هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority
مملكة البحرين - Kingdom of Bahrain

A public consultation document issued by the

Telecommunications Regulatory Authority of the Kingdom of Bahrain

**DISPUTE RESOLUTION GUIDELINES IN RELATION TO:
(i) DISPUTES BETWEEN LICENSEES AND
(ii) COMPLAINTS AGAINST LICENSEES PURSUANT TO
CHAPTER 17 OF THE LAW**

CONSULTATIVE PAPER

March 16, 2014 /LAD 0314 040

The address for responses to this document is:

The General Director

Telecommunications Regulatory Authority

PO Box 10353, Manama, Kingdom of Bahrain

LAD@tra.org.bh

The deadline for responses is **4pm** on 10th April 2014

Purpose: to consult on the proposed guidelines for the handling of regulatory disputes pursuant to Article 3(17), Article 57(g) and Article 72 of the Telecommunications Law of the Kingdom of Bahrain

Instructions for Submitting a Response

- 1 The Telecommunications Regulatory Authority (the "TRA") invites comments on this document from all interested parties. Comments should be submitted to the Authority by **4pm on 10th April 2014**.
- 2 Responses should be sent to the TRA preferably by email (either Word or PDF format) or by fax or post to the attention of:

The General Director
lad@tra.org.bh
Telecommunications Regulatory Authority
P.O. Box 10353
Manama
Kingdom of Bahrain
Fax: +973 1753 2125
- 3 Responses should include:
 - a. the name of the company/institution/association etc.;
 - b. the name of the principal contact person;
 - c. full contact details (physical address, telephone number, fax number and e-mail address);
 - d. in the case of responses from individual consumers, name and contact details.
- 4 The TRA expects respondents to provide comments in response to each of the questions set out in this document. The TRA invites respondents to substantiate their responses, wherever possible, by providing factual evidence to support their responses.
- 5 In the interest of transparency, the TRA will make all submissions received available to the public, subject to the confidentiality of the information received. The TRA will evaluate requests for confidentiality in line with relevant legal provisions and the TRA's published guidance on the treatment of confidential and non-confidential information.¹
- 6 Respondents are required to mark clearly any specific information included in their submission which is considered confidential. Where such confidential information is included, respondents are required to provide both a confidential and a non-confidential version of their submission. If a submission is marked confidential in its entirety, reasons for this should be provided. The TRA may publish or refrain from publishing any document or submission at its sole discretion.
- 7 Once the TRA has received and considered the responses to the Draft Dispute Resolution Guidelines, the TRA intends to issue a final set of guidelines, together with the reasoning for the TRA's position.

¹ The Authority, "A Guidance Paper issued by the Telecommunications Regulatory Authority on its treatment of Confidential and Non-confidential Information", Guidance Paper No. 2 of 2007, 10 September 2007.

SECTION 1

Executive Summary – Purpose of the Guidelines

- 8 In the wake of its obligations under Article 3(17), Article 57(g) and Article 72 of the Telecommunications Law of the Kingdom of Bahrain (hereinafter referred to as “the Telecoms Law”) the TRA is outlining its proposals to have in place an effective and clear resolution process on (i) disputes between undertakings providing electronic communications services and, or networks and (ii) complaints submitted to it with respect to breach of the provisions of the Telecoms Law or breach of the regulations or decisions issued for the implementation thereof.
- 9 The TRA makes it clear from the outset that these Guidelines do not cover complaints from individual consumers or complaints covered by the Competition Guidelines published by the TRA on the 18 February 2010.² Accordingly, issues such as consumer protection, harmful interference, abuse of dominance, or unfair end-user terms and conditions are not covered by these Guidelines.
- 10 For the avoidance of doubt, the TRA wishes to set out that these Guidelines do not supersede or replace the Competition Guidelines. Any complaints regarding anti-competitive conduct should be referred to pursuant to the procedure set out in the Competition Guidelines.
- 11 The purpose and scope of these Dispute Resolution Guidelines is therefore to provide guidance, including on the procedure and process to follow, to address all other potential disputes under the legislation and mandate of the TRA.
- 12 These Guidelines explain the form and manner in which dispute and complaint referrals should be made, how the TRA handles disputes and complaints referred to it in accordance with the Telecoms Law, and the approach the TRA is likely to take in resolving any disputes and complaints it accepts, taking into account that each referral will be assessed on its facts, case-by-case.
- 13 Broadly, this document sets out:
- The form and manner in which disputes and complaints should be referred to the TRA;
 - The kind of information/evidence the TRA might expect the parties in dispute and the complainant (“Parties”) to submit to it during the course of proceedings to enable the TRA properly to determine the dispute; and
 - The remedies available to the TRA in any given case.
- 14 The TRA considers the characteristics making up a dispute or complaint to which the dispute resolution procedure would apply, namely that one party claims that another has contravened a legal, contractual or regulatory requirement. The TRA wishes to emphasise the importance that all parties to the dispute or complaint should provide all the necessary information to enable the TRA to investigate and determine all the issues in dispute. In this regard, in Section 4 to this

² <https://www.tra.org.bh/EN/pdf/CompetitionGuidelines.pdf>

Document, the TRA lists the information required for the purposes of submitting a dispute and for submitting a complaint.

- 15 The TRA proposes procedures with the objective of ensuring that disputes and complaints are managed and resolved by the TRA in an effective and efficient manner, with each stage of the process described, commencing from the initial submission of a request for dispute resolution to a final decision. In this context the TRA will endeavour to resolve disputes within a period of five months, unless there are exceptional circumstances. The TRA will make its decision accessible to the public including the reasons for its decision.
- 16 This document is divided into the following sections:
 - Section 2 sets out the grounds for making a dispute or complaint referral to the TRA and the manner and form that Parties' submissions should take in referring a dispute or complaint to the TRA for resolution;
 - Section 3 sets out the approach the TRA will take in resolving the dispute or determining the complaint;
 - Section 4 provides the format for submitting a dispute or complaint;
 - Annex A provides templates for the submission of a complaint and the submission of a dispute; and
 - Annex B consists of the Procedure Overview.
- 17 This paper is without prejudice to the legal position or the rights and duties of the TRA to regulate the provision of telecommunications services. Any views expressed are not binding on the TRA and are without prejudice to the final form and content of any decisions the TRA may take. These Guidelines are not a substitute for any regulation or law and are not legal advice.
- 18 These Guidelines will be kept under review and amended as appropriate in the light of further experience and developing law and practice and any change to the TRA's powers and responsibilities.
- 19 These Guidelines set out the TRA's general approach to dispute resolution and complaint handling in the areas covered by the Guidelines. They do not have binding legal effect. In the event that the TRA departs from the approach set out in these Guidelines, the TRA will provide reasons for so doing.
- 20 Throughout this document, there may be instances where the terms "dispute" and "complaint" are used interchangeably.

SECTION 2

The Scope of Dispute Resolution

2.1 What is a dispute and what is a complaint?

- 21 Article 3(17) of the Telecoms Law does not qualify in great detail the nature of the disputes and complaints that can be referred to the TRA for resolution. Article 3(17) *merely* states that the TRA *may* examine complaints and resolve disputes arising between Licensees, Licensees and Subscribers or any other Person involved in the Telecommunications industry³. On this basis, it is safe to say that the remit of the TRA to determine disputes is therefore quite wide and is left to the TRA to determine which disputes it should have jurisdiction over. Admittedly, Article 57(g) does refer specifically to disputes between Public Telecommunications Operators that arise with respect to Interconnection or Access however, the view of the TRA is that the provisions of this Article do not seek to curtail the jurisdiction of the TRA to hear and determine disputes but rather to ensure that before submitting a dispute, the Parties have actually started negotiating the process for interconnection and/or access and that as such the dispute is not filed prematurely.
- 22 With this in mind, the TRA proposes to introduce a clear definition of the characteristics making up a dispute. In this context, reference has been made to international best practice including the European Union's Framework Directive⁴.
- 23 The TRA is of the view that for an issue to be accepted as a dispute, and for it to be resolved through the application of the dispute resolution procedures, the issue must include at least the following characteristics:
- The dispute must arise between undertakings in connection with rights and obligations conferred or imposed by or under the Telecoms Law as the case may be, so that the party initiating the dispute has a specific grievance based on the failure of the other party to comply with its obligations at law, and
 - The dispute must be between different undertakings engaged in the provision of telecommunications services and, or networks or associated facilities.
 - Any one or more of the Parties to the dispute may refer it to the TRA.
- 24 According to Article 72 of the Telecoms Law a complaint should consist in the alleged breach by a licensee of:
- the provisions of the Telecoms Law; and
 - Regulations or decisions issued by the TRA.

³ Emphasis added.

⁴ Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services as amended by Directive 2009/140/EC and Regulation 544/2009. Article 20 of this Directive specifically deals with dispute resolution between undertakings.

- 25 It is evident therefore that whereas a dispute arises where Licensee A alleges that Licensee B is not complying with a specific obligation towards Licensee A arising out of the Telecoms Law, a complaint relates to a generic obligation on Licensee B which is not necessarily specific to Licensee A. In the case of a dispute, the focus of the submission would usually be for the resolution of a specific issue between the licensees whereas in the case of a complaint, the focus of the submission would be to ensure compliance with Licensee B's general obligations at law.
- 26 This distinction also translates itself into a procedural distinction because a complaint does not usually follow a process of negotiation. Moreover, a complainant would not be treated as a party to the proceedings.

COMPARISON BETWEEN DISPUTES & COMPLAINTS

Disputes	Complaints
Comparable to private dispute where the parties resort to a civil lawsuit in order to resolve issues between them.	Comparable to public proceedings where a person makes a report of illegal behaviour to the public authorities asking them to investigate.
Is in relation to an obligation which the investigated party has towards the party making the dispute .	Is in relation to a general obligation imposed upon the investigated party.
Obligation must arise under an identified law/decision which TRA is entitled to enforce.	Obligation must arise under an identified law/decision which TRA is entitled to enforce.
Only open to a licensee who has negotiated in good faith but failed to reach agreement.	Does not follow negotiation.
The licensee submitting the dispute will be treated as a 'party' to the proceedings.	Licensee submitting the complaint NOT treated as a 'party' to the proceedings.
Examples: provision of network access, breaches of Reference Offer obligations.	Examples: discounts in breach of cost orientation obligation.

2.2 Investigating a dispute or complaint

- 27 In order to ensure that the dispute or complaint is resolved in a timely manner, the TRA proposes that there should be clear boundaries on the subject matter and procedures for dealing with disputes and complaints. This means that both the TRA and undertakings must ensure an adequate and comprehensive preparation of cases where there is dispute or complaint.
- 28 The TRA proposes that, for a dispute/complaint to be accepted, a number of conditions must first be met, namely that:
- In the first instance the TRA must be satisfied that the matter notified is best resolved under the dispute resolution procedures,
 - The scope of the dispute or complaint is clear and specific;
 - There is a statement by the aggrieved undertaking indicating clearly the legal and/or regulatory obligation(s) to which the dispute/complaint relates and the legal basis for the TRA to intervene;
 - The undertaking raising the dispute or complaint should in the clearest possible manner and within the parameters established at law, indicate the remedy or remedies it is seeking from the TRA; and
 - The impact of a failure to resolve the dispute or complaint on the affected party, other licensees and consumers should be described.
- 29 Parties are encouraged to set out the remedies which they consider to be appropriate to resolve the dispute or complaint in their submissions. However the TRA will not be limited to the remedies proposed by the Parties in resolving a case but it will consider on a case-by-case basis what remedy is mostly appropriate to resolve the issue. The TRA will typically do one of the following:
- Make a declaration setting out the rights and obligations of the Parties to the dispute;
 - Give a direction fixing the terms or conditions of transactions between the Parties to the dispute (including determinations on disputed invoices, service credits, SLAs, level of bank guarantee); or
 - Give a direction imposing an obligation, enforceable by the Parties to the dispute, to enter into a transaction between themselves on the terms and conditions fixed by the TRA; and
 - In the case of a complaint, issue a decision on the conduct of the licensee who is the subject of the complaint.
- 30 The TRA will, in reaching its decisions, be guided by principles of natural justice, equity, efficiency, fostering sustainable competition, consumer protection and innovation. Parties are expected to highlight why their proposed remedies would be appropriate for securing these objectives or part thereof.

- 31 For the avoidance of doubt, the Parties remain free to refer any disputes to the Courts of the Kingdom of Bahrain. The TRA will not deem it appropriate to handle any dispute itself where such dispute has already been referred to the Courts. In such a case the TRA will, unless ordered otherwise by the Courts of the Kingdom of Bahrain, refuse to take cognisance of such dispute.
- 32 Where, on the other hand, a dispute is referred to the TRA in the first instance, the reference does not prevent another party to the dispute from bringing any legal proceedings before the Courts with respect to any of the matters under dispute (to the extent that the law of the Kingdom of Bahrain permits such a reference). In such an event, the TRA will stay the handling of the dispute unless the court orders that the dispute be resolved by the TRA.
- 33 By the time a dispute is brought to the TRA, there should have been serious attempts by the party concerned to resolve the issue bilaterally. The dispute resolution process should not be used as a replacement of commercial negotiations between parties. The TRA expects the Parties to a dispute to make reasonable endeavours to enter into good faith negotiations in order to resolve their differences themselves, before referring a dispute to the TRA. In any event, the TRA requires evidence from the Parties that they are in dispute. The TRA will then decide on the basis of the information available to it whether, in its view, the dispute referral fulfils any of the grounds and all the requirements (statutory or as set out in these Guidelines) for a dispute referral.
- 34 The submission of the dispute must include complete documentary evidence (including evidence of attempts by the parties to resolve the issue bilaterally) to enable the TRA to initiate and conclude the process.⁵

Q1: Do you agree with the TRA's proposed scope, conditions and criteria for accepting a dispute submission and /or a complaint and with the requirements for the investigation, as stated in sections 2.1 and 2.2? Give a detailed explanation for your views. Suggest any other criteria and/or requirements you think should be included. In so doing, state why any such other criteria and/or requirements should be considered.

2.3 Implications of the new procedure

- 35 Once a dispute is accepted by the TRA, the scope of the dispute shall not subsequently be modified unless all the parties to the dispute agree. Once submitted, a complaint may not be modified.
- 36 From the date of notification of a dispute or complaint in accordance with the requirements in this Section 2, the TRA shall, unless there are exceptional circumstances, endeavour to resolve the dispute within five months.⁶
- 37 The TRA would like to highlight the implications of the established timeframe of five months for dispute resolution. In order to meet this objective, it is a pre-requisite that all the parties to a dispute/complaint fully co-operate with the TRA in achieving resolution of disputes within this timeframe. In light of the proposed tight deadlines for resolving disputes and complaints, the TRA

⁵ Please refer to Section 4 of this Paper containing a summary of the required information necessary to submit a dispute for the TRA's resolution.

⁶ The 5 months start running from the commencement of Step 4.

may set challenging deadlines for the provision of such further information. Therefore, where a party to a dispute or complaint fails to provide information or a response within the requested timeframe, the TRA will not grant an extension to that party's submission. The TRA will base its final determination of the dispute or complaint on the basis of the information available to the TRA and will not accept or consider late submissions. It is therefore essential that all submissions are detailed, submitted in good time and address all aspects of the issue under consideration. The TRA may at any stage of the process, of its own initiative require or obtain any relevant documentation whether from the parties to the dispute or from other sources.

- 38 In all cases Parties should have realistic expectations of the depth of the investigation that the TRA is able to carry out within the five month deadline. Whilst dispute resolution is a separate regulatory function to be used in parallel to its other regulatory powers, in the time available the TRA may not be able to undertake the type of analysis it would normally carry out in exercising its *ex ante* regulatory powers or its powers under the Telecoms Law.
- 39 Where necessary, the TRA will consider exercising any of its regulatory powers listed in the Telecoms Law, instead of or at the same time as resolving the dispute.
- 40 The TRA has specific information gathering powers under Article 53 of the Telecoms Law. The TRA may require such further information from any Party to the dispute or any third party who it appears to the TRA may have relevant information. Accurate information provided in a timely manner is critical to the efficient resolution of disputes. If Parties do not have all the information sought in the request they should advise the TRA of this in their response to that request.
- 41 The TRA believes that information sought under a formal information request should be provided within 2-10 working days (depending on the complexity of the request). In general, due to the constraints of needing to resolve the dispute/complaint within five months, the TRA will not give extensions for further time to provide the requested information. Where information is confidential, a non-confidential version must be submitted and stakeholders are required to justify any claims of commercial confidentiality. The TRA will not entertain blanket claims that everything is confidential.
- 42 Failure to comply with the TRA's requests for information according to Article 53 of the Telecoms Law may result in action being undertaken by the TRA pursuant to Article 35 of the Telecoms Law.
- 43 Undertakings should note that all decisions made by the TRA under the dispute resolution procedures are binding, and failure to comply with any such decisions may lead to the appropriate regulatory measures including the imposition of sanctions where appropriate.

2.4 Alternative mechanisms – not applicable to complaints

- 44 The TRA recognises that in some instances a flexible and informal approach may be an appropriate method to resolve a dispute. Effective recourse to alternative means of dispute resolution is not contemplated by the Telecoms Law, however, the TRA believes that if the right attitude to such processes is taken and if all the stakeholders are in favour, there could possibly be scope for the TRA to consider alternative means of dispute resolution such as mediation. Recourse to this and other means of dispute resolution will be conditional to all the parties agreeing *a priori* to such alternative processes.

- 45 In addition, the TRA proposes that in all instances, at least in the initial stage, it should deal with issues referred to it by the disputing party in other ways including resolution through informal contacts or negotiation. If the proposal to introduce an informal stage is adopted, then the 5 month timeframe applicable to the formal resolution process will start to be counted as of when the informal stage is concluded which, it is being proposed, should not exceed the period of 10 working days.

Q.2 Do you agree with the proposed conditions for and implications of the new procedure, including the 5 months' timeframe for formal dispute resolution, as stated in section 2.3? Give a detailed explanation for your views.

Q.3 Do you agree with the proposal to introduce alternative dispute resolution mechanisms (only for disputes) as stated in section 2.4?

Q.4 In particular do you think that mediation may be another means of effectively resolving disputes?

Q.5 Are there any specific circumstances where you consider that the use of mediation would be effective?

Q.6 Are there other dispute resolution mechanisms that would be useful as a means of resolving disputes?

Q.7 Do you agree that, after receiving a dispute, the TRA should in all instances first seek to resolve the dispute in an informal manner?

Q.8 If the answer to the last question was in the affirmative, do you agree with the proposed timeframe of 10 working days within which to finalise the informal proceedings and that the proposed 5 months' timeframe for the formal resolution process will commence at the end of the informal stage?

SECTION 3

RESOLUTION PROCEDURES

3.1 The various steps in the dispute resolution process

- 46 The proposed steps in the dispute resolution procedure and associated timeframes are as follows:

Step 1 – Submission Requirements

- 47 Stakeholders are expected to make adequate, well-reasoned submissions supported by evidence.
- 48 The TRA will evaluate whether, on its face, the information provided by the party referring the dispute or complaint is sufficient to enable the TRA to determine whether the dispute or complaint

satisfies the conditions for a referral and therefore whether or not it is appropriate for the TRA to decide to handle it.

- 49 Dispute and complaint submissions must meet minimum requirements before the TRA takes any further action. These include having the facts of the case, details of the issues in dispute or complaint and the remedies sought. Furthermore, in relation to a dispute, the submitting Party must provide evidence of having made genuine efforts to enter into good faith negotiations.
- 50 The TRA will not normally accept to consider disputes or complaints that do not fulfill the submission requirements. A full list of submission requirements, together with contact details for where to send a dispute submission, is at section 4.
- 51 In line with Article 72 of the Telecoms Law, all submissions (disputes and complaints) are to be signed by an officer of the disputant or complainant undertaking and sent by courier, registered post or hand delivered to the TRA's offices together with an electronic mail in a PDF format to the following address: LAD@tra.org.bh. No anonymous complaints will be considered as valid by the TRA.⁷

Step 2 – TRA Confirmation

- 52 Upon receipt of the hard copy of the dispute/complaint submissions, the TRA will confirm receipt of the submission within one working day.
- 53 The TRA will then assess whether the submission contains the requisite documentation and information including the required information outlined in Section 4 of this Paper. The TRA will determine whether the submission conforms to the definition of a dispute or a complaint, assesses the adequacy of the information provided, and the legal basis for the dispute or complaint.
- 54 Where the TRA has confirmed that *prima facie* the requisite documentation and information was contained in the submission and that the dispute or complaint is one which falls within the remit of the TRA, the submission will be accepted for consideration by the TRA. Confirmation of whether or not the submission satisfies these requirements will be provided by the TRA within four working days of receipt of the submission.

Where the TRA has confirmed that a submission did not contain the requisite documentation and information, or that the dispute/complaint does not fall within the remit of the TRA, it will not be accepted for further consideration. In such circumstances, the TRA will advise the Party of the specific reasons.

Step 3 – Informal Stage (only applicable to disputes and not to complaints)

- 55 Following the closure of Step 2, the TRA will approach the Parties individually on an informal basis with a view to exploring the possibility of reaching a conclusion that is acceptable to all parties to the dispute. During the Informal Stage the TRA will have a timeframe of 10 working days within which it will seek to resolve the dispute amicably. The 10 working days timeframe will

⁷ Naturally a dispute cannot be anonymous.

commence from the working day following the date of issuance by the TRA of the confirmation set out in paragraph 54 above.

- 56 The TRA wishes to highlight the fact that this stage is informal, on a purely without prejudice basis and that as such anything said or communicated by any party during this stage will not be recorded or considered by the TRA for the purposes of reaching its decision in relation to the ensuing dispute (to the extent that the Informal Stage is not successful). Moreover, no written submissions will be made and the TRA will not accept any submissions at a later stage by any party which refers to any such discussions or statements made during the Informal Stage. For the avoidance of doubt, such reference will be struck out by the TRA from the submissions.
- 57 Where a proposed resolution has been accepted by both Parties to the dispute (“Informal Resolution”), the TRA shall deem the matter closed and will not issue any formal decision on the dispute. However, in the event that subsequent to the Informal Resolution a further dispute on the same subject matter between the Parties arises, the dispute may be referred back to the TRA by one or more of the Parties to the dispute.
- 58 Any referral back should include details of the steps that the Parties have taken subsequent to the Informal Resolution, information on why the Informal Resolution has failed and a clear statement of the matters that remain in dispute. It should also include confirmation of whether the information included in the original dispute remains relevant.
- 59 In such circumstances, the TRA’s five month timetable for resolving the dispute will begin from the day the dispute is referred back to the TRA, subject to any clarification the TRA may need from the Parties about the nature of the dispute, e.g., where the scope of the dispute has changed.
- 60 For the avoidance of doubt, in the event of a submission of a complaint, Step 3 will not be undertaken and the process will move onto Step 4 immediately.

Step 4 – Formal Stage

- 61 Where the Informal Stage has failed to lead the conclusion of an Informal Resolution, or in the case of the submission of a complaint – upon the conclusion of Step 2, then the five months’ timeframe will commence upon the initiation of Step 4 provided that the submissions include all the requirements set out in Annex A. If the submitting party does not provide all the information the TRA considers essential for the initiation of the formal stage, the TRA will inform the party concerned. The timeframe of five months will commence only when the TRA is satisfied that the required information has been provided.
- 62 The TRA will formally notify the respondents of the complaint/dispute lodged against it and a non-confidential version of the dispute submission is sent to the respondent. In doing so, the TRA will invite that Party to comment on the submission. In the interests of transparency, these comments will be provided to the Party submitting the dispute/complaint referral. Where comments are confidential, we will ask for a non-confidential version that can be shared with the other Party to the dispute. The Parties are required to justify any claims of commercial confidentiality, and blanket claims will not be entertained. In the event of a complaint, that complaint will be passed on to the Party being the subject of the complaint.

- 63 The respondent will normally be required to make his counter submissions within ten working days. A non-confidential version of the counter submissions will be sent to the disputant. In the case of a complaint, the licensee submitting the complaint is not a party to the investigation and as such will not be served with a copy of the counter-submissions.
- 64 Only in the case of disputes, the TRA may decide (in its sole opinion) that a further round of cross-submissions is required or may call for a meeting in which both parties will be asked to make their verbal representations.
- 65 Following a detailed analysis of all submissions, the TRA will present a draft determination of the dispute. Depending on the subject of the dispute and its impact on the wider market, the TRA may decide to publish the determination on its website, or may send it to the parties to the dispute only. An exception to this would be where a Party to the dispute is able to show that publication would seriously prejudice its interests. The TRA will consider whether or not any such claim by a Party or Parties is well founded. In deciding how to proceed, the TRA will consider whether any part of the determination is commercially confidential and the relevance of the dispute to the industry in general. The TRA wishes to make it abundantly clear that this paragraph applies only in relation to disputes and not in relation to complaints.
- 66 In general, parties to the dispute will have **fourteen calendar days** to submit their comments to the draft determination of the dispute.
- 67 In the case of a complaint, the TRA will analyse the counter-submissions received from the party being the subject of the complaint. The TRA may then ask for further information from the complainant, from any other licensee, from consumers or from the affected licensee itself before it issues its decision.

Step 5 – Decision Stage

- 68 In the case of disputes, following further analysis of all submissions, the TRA will communicate its final determination to the dispute, a copy of which will be sent to all the parties to the dispute. The determination will be published on the TRA's website, having regard to any requests for commercial confidentiality which the TRA considers to be justified. For the avoidance of doubt, the TRA will not regard submission on legal or regulatory policy to be confidential and any such submissions will normally be made public. The determination will include a clear statement of the reasons for the TRA's decision. The TRA believes that the publication of disputes, their resolution together with the reasons for its decision will lead to a more transparent process and that it is generally in the public interest.
- 69 The determination will not preclude any of the parties to the dispute from making an appeal in accordance with any applicable legislation.
- 70 In the event of a complaint the TRA will publish its decision, with reasons, on its website whilst formally notifying via email the complainant and the party subject of the complaint.

3.2 Other procedural issues – counterclaims and related disputes

- 71 A dispute determination binds only the Parties to that dispute. Where more than one dispute is brought by separate stakeholders which (a) meet the statutory grounds for referral, and (b) raise

substantially the same issues as one another or are related in terms of scope or subject matter, or (c) where the recipient of the dispute raises a counterclaim, the TRA may (as long as the disputes can be realistically resolved within the 5 month timeframe) determine that these should be considered together.

Q.9: Do you agree with the TRA's proposed procedure as outlined in section 3.1-3.2? If you do not, please give your detailed reasons.

Q.10 Do you agree with the TRA's proposals regarding transparency? If not please give your reasons.

SECTION 4

FORMAT FOR SUBMITTING A DISPUTE AND/OR A COMPLAINT

72 Submissions should be made to:

The General Director

LAD@tra.org.bh

Telecommunications Regulatory Authority

P.O. Box 10353

Manama

Kingdom of Bahrain

73 Submissions are to be sent by email and also delivered by hand, or by courier or by registered mail to the TRA's offices. The hard copy should be signed by an officer of the company filing the dispute. Any evidence must also be provided by virtue of a hard copy. Any dispute/complaint referral must be clearly marked with the following caption: "Subject – Submission of Dispute/Complaint"

74 Subject to TRA confirming that the submission satisfies the requirements for the dispute resolution procedure, the TRA will send a non-confidential version of the dispute/complaint submission to the Parties named in the dispute submission. If the dispute submission contains confidential information, a separate non-confidential version which can be copied to the other Parties must be provided. In line with the TRA's guidelines on confidentiality, the dispute must explain why it believes the information to be confidential.

75 Parties referring a dispute or complaint must ensure that the information provided is specific and relevant and does not go beyond what is needed to resolve the dispute.

Type of information

Contact details

Information required

All parties – business name, address, telephone number, and email address and, if relevant, the contact details of an individual who can discuss the detail of the dispute both in relation to the complaining Party and also of the other Party to the dispute.

Scope of dispute

Detailed and comprehensive description of the dispute including where relevant, product or service descriptions; details of the relationship between the Parties to the dispute and a concise explanation of the commercial context to the dispute.

Legal basis for the dispute

Specific legislative background or legal instrument to the dispute, with reference to the relevant legal and, or contractual provisions where appropriate and full details of any regulatory condition (whether ex ante or otherwise) applying to any Party to the dispute.

Attempts to resolve the dispute

Evidence should be provided of attempts to resolve the dispute. This should include notice of whether the dispute is or has been before any other body whether judicial or otherwise.

Impact of the dispute

This should cover the impact that the issue in dispute has on the complaining Party's business. Where possible this should include quantification and the relevant documentary evidence provided.

Proposed remedy

The outcome desired by the complaining Party

Annex A - TEMPLATES FOR SUBMITTING COMPLAINTS AND DISPUTES

(i) FORMAT FOR SUBMITTING A COMPLAINT

Information to be provided pursuant to the Guidelines for the filing of a Complaint to the Authority

Please note that a complaint arises when an operator alleges that another operator is acting in breach of a statutory requirement, irrespective of whether the alleged breach impacts the operator making the complaint.

CONTENTS OF THE COMPLAINT SUBMISSION DOCUMENT

1. Information concerning the complainant

1. The full name and registered/residential address of the complainant.
2. The name, title, address, telephone, fax number and email address for the individual(s) who will be the main contact point in respect of the complaint.
3. The name, title, address, telephone, fax number and email address for the individual(s) who may be able to provide further information relevant to the complaint.
4. A brief description of the nature and scope of the business activities of the complainant.
5. A copy of any other general information regarding the complainant (for e.g., presentations or marketing brochures).
6. Describe from a business or marketing perspective, the market(s) in which the complainant operates.
7. The relationship between the complainant and the undertaking(s) whose conduct the complaint relates to.

2. Information concerning the undertaking(s) giving rise to the complaint

1. The full name and registered/residential address of the undertaking(s) whose conduct the complaint relates to.

2. The name, title, address, telephone, fax number and email address of the individual(s) with whom the complainant has dealt with in connection with the complaint.
3. A brief description of the nature and scope of the business activities of the undertaking(s) whose conduct the complaint relates to. Where the undertaking is a company, carrying out different activities, please identify the different business divisions or units and explain how the different activities are organised within the company.
4. A copy of any other general information regarding the undertaking(s) whose conduct the complaint relates to.
5. Describe from a business or marketing perspective, the market(s) in which the undertaking(s) the subject of the complaint operates.

3. Information concerning the subject of the complaint

1. A full description of the facts which give rise to the complaint, including a chronological list of key dates and events.
2. An explanation as to how the behaviour described infringes the Telecoms Law, any applicable licence condition, or any legal instrument or guideline issued by the TRA pursuant to its powers under the Telecommunications Law. Specify in particular the applicable *ex ante* condition(s) which you consider is/are being breached by the operator complained of and a clear explanation of why you believe the condition(s) is/are being breached.
3. A description of the product market affected by the alleged infringement.
4. Whether the conduct is continuing; if not, when the conduct ended.
5. A statement indicating when and how you became aware of the alleged infringement.
6. Detailed supporting evidence of the complaint. This may include correspondence, market studies, agreements, records of telephone conversations or sales visits; testimony from disaffected employees or ex-employees; press clippings or any other helpful evidence.

7. Details of any contact made and copies of any correspondence exchanged with the undertaking(s) subject of the dispute.
8. Any other relevant information including relevant dates and incidents; a chronology of events; where the complainant alleges that his business, the market, or consumers have been affected by the alleged activity – evidence to back up such allegations; and names of other industry players or other persons who can support the complaint.

4. Factual Evidence supporting the allegation

1. This section must contain well detailed factual evidence available to support the allegation made.

5. Finding sought from the TRA

1. Explain what finding or action you are seeking as a result of the complaint brought before the TRA – the relief or remedy sought including details of the timing/urgency of the complaint and reasons.

Declaration by an officer of the company:

The submissions and information contained are to the best of my knowledge and belief, [company name] correct.

Signed:

Position in the Company:

Date:

(ii) FORMAT FOR SUBMITTING A DISPUTE

Information to be provided pursuant to the Guidelines for the filing of a Dispute to the TRA

Please note that a dispute is the result of a failure of commercial negotiation between two operators about a matter that falls within the TRA's remit, such as the provision of network access or other regulatory conditions imposed by the TRA, which directly link to the commercial relationship between one operator and another.

CONTENTS OF THE DISPUTE SUBMISSION DOCUMENT

1. Information concerning the dispute

1. The full name and registered/residential address of the organisation filing the dispute.
2. The name, title, address, telephone, fax number and email address for the individual(s) who will be the main contact point in respect of the dispute.
3. The name, title, address, telephone, fax number and email address for the individual(s) who may be able to provide further information relevant to the dispute.
4. A clear and concise description of the dispute.
5. Details of the relationship between the parties to the dispute.

2. Information concerning the undertaking(s) giving rise to the dispute

1. The full name and registered/residential address of the undertaking(s) whose conduct the dispute relates to.
2. The name, title, address, telephone, fax number and email address of the individual(s) with whom the organisation submitting the dispute has dealt with in connection with the dispute.

3. The Issues in Dispute

1. A full description of the facts which give rise to the dispute, including a chronological list of key dates and events.

2. A full statement of the scope of the dispute, including:
 - ✓ A list of all the issues which are in dispute.

 - ✓ Full details of the relevant products or services.

 - ✓ If the dispute relates to a request for a new access product:
 - business plans of relevant product or service including forecasts, demonstrating how and when you intend to make use of the products or services requested.

 - ✓ In the case of disputes involving contracts:
 - a copy of the relevant version of the contract, clearly identifying the clauses that are subject to the dispute.

3. A description of the regulatory conditions to which the dispute relates, including a view on the relevant economic market and whether any communications provider in that market has been designated as having SMP.

4. You should explain why you consider that the relevant obligation is not being met, for example, if you make an allegation that a charge is not in line with a signed agreement, then you must set out your reasoning.

5. Details of the way in which you wish to see the dispute resolved, including an explanation as to why the TRA should reach this outcome.

4. History of Commercial Negotiations

1. A description of any negotiations which have taken place between the parties; or, in the event that a party has refused to enter into negotiations, evidence to suggest that you have taken reasonable steps to engage the party in meaningful negotiations;

2. Details of the steps taken to resolve all of the issues which are in dispute;

3. An explanation of why commercial agreement could not be reached;
4. Relevant documentary evidence of commercial negotiations, covering the whole period of negotiation, including correspondence, notes of meetings and telephone calls, and a chronological summary of the events;
5. Details of any options or proposed solutions put forward by any party during negotiations, including what, if anything, was accepted, what was rejected and why.

Declaration by an officer of the company:

Before making this submission to the TRA, to the best of my knowledge and belief, [company name] has used its best endeavours to resolve this dispute through commercial negotiation, and the information provided in this submission is correct and complete.

Signed:

Position in the Company:

Date:

Annex B – PROCEDURE OVERVIEW FOR DISPUTE RESOLUTION

