



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

Guidelines issued by the Telecommunications Regulatory Authority on the adoption of emergency orders

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Purpose: to provide guidance on the circumstances under which the Telecommunications Regulatory Authority of the Kingdom of Bahrain will consider whether it might be appropriate to take urgent action in the form of emergency orders, and to provide guidance on the procedure and process to be followed by complainants when urgent action is sought for.

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1 Purpose and legal basis of the guidelines

1.1 Introduction

1. These “Guidelines on the adoption of emergency orders” (“Guidelines”) are issued to provide complainants with guidance on the circumstances under which the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “Authority”) will consider whether it might be appropriate to take urgent action in the form of emergency orders so as to carry out its duties and exercise its powers under Article 3 of the legislative decree no. 48 of 2002 promulgating the Telecommunications Law (“Telecommunications Law”).
2. In particular, these Guidelines will provide guidance on the formal and substantive requirements that must be met when urgent action is sought for.

1.2 Legal basis

3. Article 3(b) of the Telecommunications Law requires that the Authority undertakes its duties relating to Telecommunications services in the manner best calculated to, *inter alia*:
 - a. protect the interests of Subscribers and Users in respect of:
 - i. the tariffs charged for services;
 - ii. the availability and provision of services;
 - iii. the quality of the services; and
 - iv. the protection of personal particulars and privacy of services; and
 - b. promote effective and fair competition among new and existing Licensed Operators.
4. Article 3(c)(1) of the Telecommunications Law requires the Authority to issue regulations, orders and determinations as may be necessary for the implementation of the provisions of the Telecommunications Law itself.
5. Article 3(c)(2) of the Telecommunications Law requires the Authority to monitor and investigate compliance with the provisions of the same and any regulations, orders and determinations made thereunder, both on its own initiative and at the request of any Person, and making such orders and determinations as are necessary to ensure compliance in accordance with the Telecommunications Law and such any regulations, orders and determinations.
6. Article 3(4) of the Telecommunications Law requires the Authority to monitor and enforce compliance with Licence terms and conditions by Licensees.
7. Article 3(c)(18) of the Telecommunications Law requires the Authority to exercise all powers and take all actions as may be reasonably necessary with respect to any matters deemed necessary to give effect to the provisions of the law.

8. For the avoidance of doubt, the Authority wishes to set out that these Guidelines do not supersede or replace either the “Dispute Resolution Guidelines in Relation to: (i) Disputes between Licensees and (ii) Complaints Against Licensees Pursuant to Chapter 17 of the Law” (the “Dispute Resolution Guidelines”) ⁽¹⁾, or the “Competition Guidelines” ⁽²⁾. Rather, the purpose of these Guidelines is to clarify the process that will be followed and standard of proof that must be met by the complainant that, while submitting a complainant under the Dispute Resolution Guidelines or the Competition Guidelines, requests for an emergency order, or when the Authority acts on its own initiative.
9. In this regard, while the Competition Guidelines explicitly establish that, in exceptional circumstances, the Authority might take urgent action (paragraph 284) to prevent immediate harm to competition during an in-depth investigation into an alleged infringement of Article 65 of the Telecommunications Law, the Dispute Resolution Guidelines do not specifically address this particular aspect. The Authority, however, is entrusted with these powers directly by virtue of the Articles of the Telecommunications Law mentioned above.
10. Finally, the Authority would like to clarify that these Guidelines do not affect the powers granted to the Authority by Article 35 of the Telecommunications Law, which requires the Authority to issue an order by taking the measures it considers necessary to secure compliance by a Licensee, when it is apparent to the Authority that such Licensee has been or is in material breach of any provision of the Telecommunications Law or any condition of the License, or that there are serious indications and evidence that the Licensee is likely to commit such breach.

1.3 Objective

11. These Guidelines explain the form and manner in which a complainant must request for an emergency order while filing with the Authority a complaint under the Dispute Resolution Guidelines or the Competition Guidelines, the standard of proof that is necessary to establish whether urgent action is indeed justified, how the Authority would handle such requests in accordance with the Telecommunications Law, and the approach that the Authority is likely to adopt in assessing whether or not to issue an emergency order, taking into account that each request will be assessed based on the relevant facts and legal basis, case-by-case. With the view to pursuing such objectives, reference has been made to international best practices ⁽³⁾.
12. In sum, this document sets out:
 - a. the requirements for the adoption of emergency orders;

¹ The Authority, “*Dispute Resolution Guidelines in Relation to: (i) Disputes between Licensees and (ii) Complaints Against Licensees Pursuant to Chapter 17 of the Law*”, 25 August 2014 (ref: LAD/0814/127), available at <http://www.tra.bh/en/legal-instruments/position-papers-and-guidelines/>

² The Authority, “*Competition Guidelines*”, 18 February 2010 (ref: MCD/02/10/019), available at <http://www.tra.bh/en/legal-instruments/position-papers-and-guidelines/>

³ European Competition Network, “*ECN recommendation on the power to adopt interim measures*”, December 2013, available at: <http://ec.europa.eu/competition/ecn/documents.html>.

- b. the standard of proof that must be met by the complainants submitting a request for emergency orders;
 - c. the procedure that will be followed by the Authority to assess whether or not the said requirements are met; and
 - d. the relationship between the emergency order and the decision issued by the Authority under the Dispute Resolution Guidelines, the Competition Guidelines, or following an investigation under its own initiative.
13. These Guidelines are without prejudice to the legal position or the rights and duties of the Authority to regulate the provision of telecommunications services. Any views expressed are not binding on the Authority and are without prejudice to the final form and content of any decisions the Authority may take. These Guidelines are not a substitute for any regulation or law and are not legal advice. They 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 Authority's powers and responsibilities.
14. These Guidelines set out the Authority's general approach to emergency orders issued when urgent action is needed to allow the Authority to effectively exercise its powers under Article 3 of the Telecommunications Law. They do not have binding legal effect. In the event that the Authority departs from the approach set out in these Guidelines, the Authority will provide reasons for so doing.

1.4 Application of the Guidelines

15. While emergency orders will only be addressed to Licensees, as defined in the Telecommunications Law, the formal and substantive requirements provided for by these Guidelines must be complied with by any complainants, be it a Licensee or a Person under the Telecommunications Law,
16. Whilst these Guidelines are not binding, complainants are strongly encouraged to comply with these Guidelines when requesting the Authority to take urgent action.

2 Requirements for the adoption of emergency orders

2.1 Substantive requirements

17. The purpose of an emergency order is to provide immediate protection when irreparable damage would occur during the time needed for the Authority to carry out a resolution procedure under the Dispute Resolution Guidelines (“Resolution Procedure”), or an investigation under the Competition Guidelines (“Investigation”), or to pursue an own initiative investigation, as the case may be. The circumstance that the damage is irreparable justifies the urgent action. If the damage was not irreparable, there would be no justification for the Authority to take urgent action and to depart for the Dispute Resolution Guidelines or the Competition Guidelines. The damage is regarded as irreparable in so far as it cannot be remedied by any decision which may be adopted as a result of the Resolution Procedure, the Investigation, or the own initiative investigation.
18. In particular, the Authority considers that it is justified to take urgent action in the form of emergency orders when two conditions are met: (i) a severe breach of the Telecommunications Law, or of any applicable licence condition, or any legal instrument issued by the Authority (“Breach”) has likely occurred; and (ii) the Breach has resulted in, or creates an immediate risk of, a substantial and irreparable damage to:
 - a. interests of Subscribers and Users in respect of:
 - i. the tariffs charged for the services;
 - ii. the availability and provision of service;
 - iii. the quality of the services; and
 - iv. the protection of personal particulars and privacy of services; or
 - b. effective and fair competition among Licensed Operators; or
 - c. the ability of security organs to have access to the network for fulfilling the requirements of national security under Article 78 of the Telecommunications Law (“Damage”).
19. Whereas the Authority has the power to issue emergency orders by virtue of its *ex officio* powers, the Authority would typically (although not necessarily) issue such measures as a result of a specific request from a Licensed Operator, which needs to be presented when submitting a complaint under the Dispute Resolution Guidelines or the Competition Guidelines. Complainants do not need to submit two separate documents. However, complainants must ensure that, when filing a complaint under the Dispute Resolution Guidelines or the Competition Guidelines, the complaint:
 - a. meets all the formal and substantive requirements established for the complaint by the Dispute Resolution Guidelines or by the Competition Guidelines; and
 - b. provides sufficient evidence of:

- i. the likely Breach; and
 - ii. the actual or potential Damage.
20. While the request for emergency order can be submitted in the same document as the complaint, the procedure aimed at adopting an emergency order (“Emergency Procedure”), on the one hand, and the Resolution Procedure/Investigation/*ex officio* investigation, on the other hand, serve separate purposes and will be carried-out separately. Indeed, while the Emergency Procedure aims at offering immediate protection when urgent action is needed (under the mentioned requirements), the Resolution Procedure/Investigation/*ex officio* investigation aim at ascertaining whether an infringement has been committed and, possibly, at levying a penalty pursuant to Article 77 of the Telecommunications Law. As a consequence, the Emergency Procedure does not replace either the Resolution Procedure, the Investigation or an *ex officio* investigation. Each procedure will keep its own timeline and requirements, according to the applicable guidelines.
21. Emergency orders by nature are granted as a result of a summary assessment, as the urgency inherent in the proceeding implies that the conclusions reached cannot be based on a thorough evaluation of the case. This urgency explains why the Authority is only required to establish the *likelihood* of a Breach, rather than the full legal certainty of it. The Authority will need to perform a thorough investigation of the case in order to be able to reach the full legal certainty about whether or not the Breach was indeed committed. For this reason, following the issuance of the emergency order, the Authority will perform an in-depth assessment of the case while carrying-out a Resolution Procedure an Investigation, or an own initiative investigation, and will issue a decision to settle the case which may confirm, amend or discontinue the emergency order and, if appropriate levy a penalty under Article 77 of the Telecommunications Law.
22. Upon receipt of a complaint under the Dispute Resolution Guidelines or the Competition Guidelines requesting for an emergency order, the Authority will first assess the submissions relating to the adoption of an emergency order and reach its conclusions on the matter. Subsequently, the Authority will carry on the Resolution Procedure or the Investigation, as the case may be, to fully assess the case. Not all the infringements warrant an Emergency Procedure, in that only those for which the complainant meets the standard of proof set out in paragraph 18 indeed justify an urgent action. As a consequence:
 - a. if the complainant meets the standard of proof, the Authority will open an Emergency Procedure with the view to issue an emergency order, which will be followed by an in-depth investigation under the Dispute Resolution Guidelines or Competition Guidelines, as the case may be;
 - b. if the complainant does not meet the standard of proof, the Authority will dismiss the request for emergency order and will carry out solely the Resolution Procedure/Investigation, according to the applicable guidelines. In this case, however, nothing prevents the Authority from performing an *ex officio* Emergency Procedure once the request for emergency order has been dismissed, when it considers that the substantive requirements set out in paragraph 18 above are indeed met, irrespective to the submissions of the complainant.

23. While issuing the emergency order, the Authority will make sure that the protection offered by the measures therein are indeed justified and proportionate to the actual Damage, *i.e.*, in particular, they do not go beyond what necessary and they provide for reasonable measures, considering the competing interests of different groups at hand.
24. Emergency orders are also by nature temporary and protective, hence they must be limited to what is necessary given the circumstances of the case. Accordingly, while issuing the emergency order, the Authority will also set a time limit for its validity. Emergency orders will be renewed if necessary, upon request of the complainant or on the Authority's own initiative, in accordance with section 5 below.
25. The urgent nature of any request for an emergency order dictates that the Emergency Procedure is effective and efficient. In order to meet this objective, the Authority may set challenging deadlines and expects the parties involved to provide their full cooperation.

2.2 Formal requirements of the request for an emergency order

26. Complainants are expected to make adequate, well-reasoned requests for emergency orders supported by compelling evidence. Requests must provide sufficient information to allow the Authority to determine promptly whether it is appropriate to handle the issue, *i.e.* whether the complainant has met the standard of proof set out in paragraph 18 of these Guidelines. A list of the minimum requirements, together with the format of submitting a request for interim measures, is included in Annex 1.
27. The Authority cannot emphasize enough that a request for an emergency order must be substantiated as regards both the alleged Breach and the alleged substantial and irreparable Damage stemming therefrom. Unless both these aspects are proved, the Authority will not take urgent action by issuing an emergency order and will assess the case only under the Dispute Resolution Guidelines or the Competition Guidelines. If an emergency order is requested, complainants must provide more cogent proof (particularly as regards the urgency) than would otherwise be the case.
28. It is not sufficient for the complainant to claim the Breach and/or the Damage, as both must be proved. Complainants must provide clear arguments and supporting evidence as regards both the Breach and the urgency of the matter. In other words, the complainant must elaborate clearly:
 - a. in which way the alleged conduct(s) amount(s) to a Breach;
 - b. how the Breach actually or potentially results in a Damage; and
 - c. why the actual or potential Damage is substantial and irreparable (in the meaning already clarified).
29. For example, claims about established conducts or contractual arrangements are, in general, less likely to present grounds for urgent action than allegations about proposed or recent changes in behaviour or agreements.
30. Examples of relevant evidence of the Damage may include:

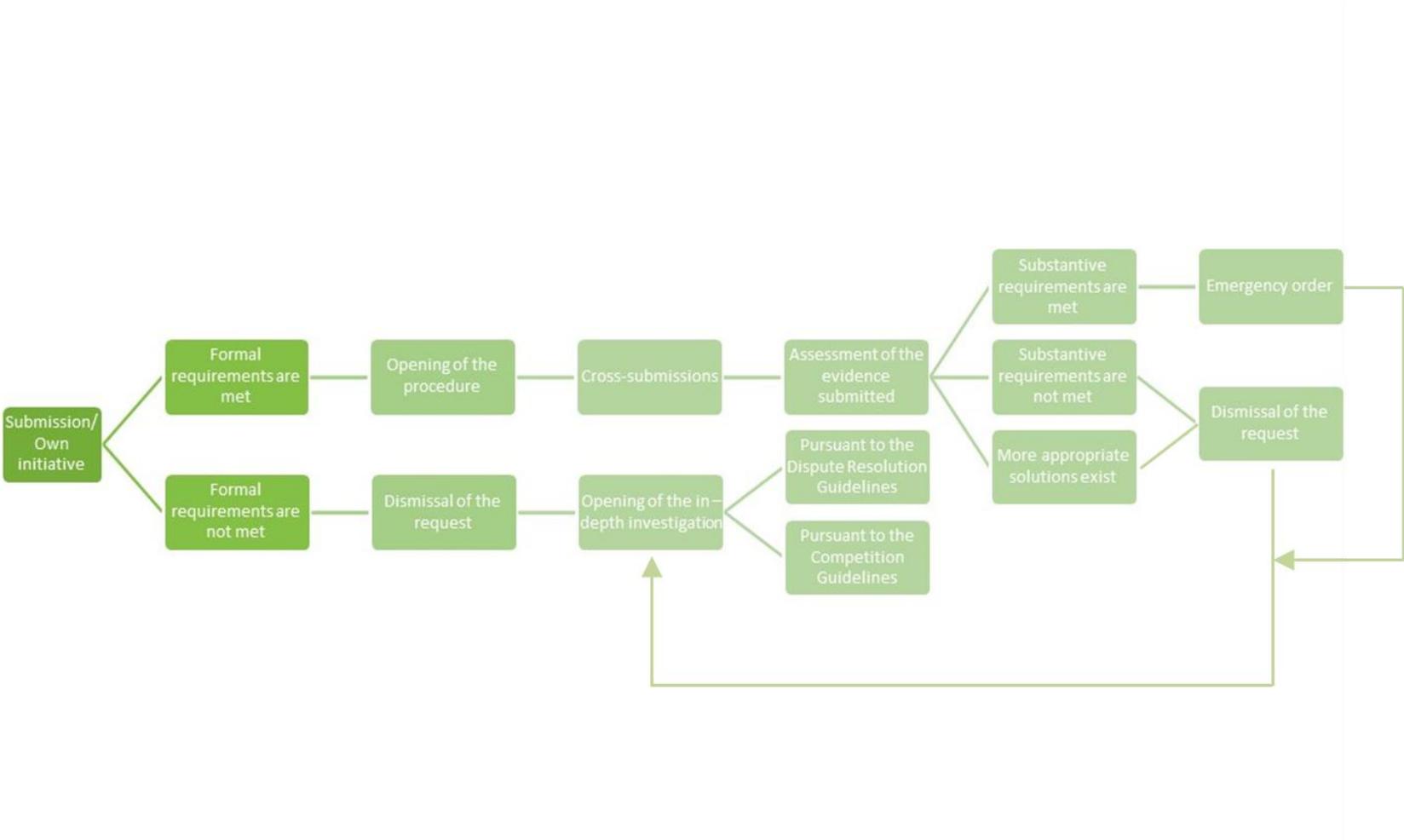
- a. an estimate of the financial losses directly associated with the behaviour referred;
 - b. articulated details of other stakeholders likely to be affected by the alleged Breach; and
 - c. an explanation of why the actual or potential Damage resulting from the Breach referred should be considered as irreparable, *i.e.*, the reasons why the Damage could not be effectively remedied by a decision adopted as a result of a Resolution Procedure, an Investigation, or an own initiative investigation.
31. Evidence must be compelling so as to allow the Authority to appreciate these aspects and reach the conclusions that a commitment of the Authority's resources to pursue the issue as a matter of urgency is justified.
 32. If complainants are providing information to the Authority that they consider to be confidential, they should clearly identify this information and explain why it should be regarded as confidential. A blanket marking of "confidential" on all information supplied is not helpful and will leave it to the Authority to establish what is, and is not, confidential. If complainants submit information that they consider as confidential, they must also provide a non-confidential version of the submission. The redacted version should include suggested non-confidential summaries of the confidential information (for example, "confidential figures regarding costs") and non-confidential ranges of numbers (for example, between squared brackets).
 33. If the Authority ascertains that the formal submission requirements are met, it will proceed with an assessment of the substance of the matter, and will reach its conclusions under paragraph 44 below on whether or not to issue an emergency order by reference to the substantive criteria identified in paragraph 18 above.
 34. The circumstance that the criteria outlined in paragraph 18 above are met is a necessary yet not sufficient condition for issuing an emergency order. The Authority may decide to adopt other initiatives if it regards this solution as more appropriate to address the issue. For example, the Authority may accept a written and detailed assurance from the Licensed Operator under investigation in lieu of issuing an emergency order if it is satisfied that it will effectively address the concerns that might otherwise constitute grounds of urgent action. The Authority however is never bound to accept, or even consider, such an assurance if it finds it more appropriate to exercise the powers granted to it under the Telecommunications Law in a specific case.

3 Emergency Procedure

3.1 Opening of the Emergency Procedure and information gathering

35. The Emergency Procedure is a separate proceeding serving a purpose of its own, *i.e.*, offering immediate protection when urgent action is needed. It does not replace or otherwise interfere with either the Resolution Procedure, the Investigation or an own initiative investigation which, as already noted, still needs to be performed following an Emergency Procedure to allow the Authority to fully ascertain whether a Breach has been committed and, if appropriate, to levy a penalty under Article 77 of the Telecommunications Law.
36. Upon receipt of the request for an emergency order, the Authority will normally acknowledge the receipt of the request within one (1) working day. The urgent nature of the Emergency Procedure dictates tighter deadlines for the Authority, the complainant and the defendant. If the minimum requirements set out in Annex 1 are not met, the Authority will dismiss the request and will inform the complainant normally within two (2) working days from the acknowledgment of receipt.
37. If the minimum requirements set out in Annex 1 are met, the Authority will inform both the complainant and the defendant about the opening of the Emergency Procedure normally within two (2) working days from the acknowledgement of receipt. On this occasion, the Authority will share with the defendant the complainant's submissions presented while requesting for an emergency order.
38. Normally, the Authority will grant the defendant at least five (5) working days to present submissions and provide documents. The Authority will usually acknowledge the receipt of the defendant's submissions within one (1) working day. The emergency order will normally be issued within 9 working days from the opening of the Emergency Procedure.
39. Both the claimant and the defendant, while filing their submissions, should take into considerations the indications regarding confidentiality set out in paragraph 32 above.
40. The claimant and/or the defendant, as the case may be, will provide the Authority, upon its request, with the information needed to enable the Authority to assess the case. While requesting for such information, the Authority will also specify the time frame within which the addressee of the request is required to provide its response. This term will typically be of four (4) working days.
41. It is in the interest of the complainants to submit articulated evidence when filing the complaint, without waiting for the Authority to request for information, because this will speed the process up and affectively allow the Authority to offer, where appropriate, urgent protection.
42. Please find below an illustrative process flow chart of the Emergency Procedure.

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3.2 Procedure in case of exceptionally urgent and serious circumstances

43. In cases of exceptional urgency and seriousness, the Authority may issue immediately, either upon request of the claimant or on its own initiative, an emergency order under paragraph 44 below and notify it to both the claimant and the respondent normally within four (4) working days from the acknowledgement of receipt of the request from the complainant. The complainant must provide evidence of the exceptional urgency of the matter. This means that not only must complainants meet the standard of proof set out in paragraph 18, but they also must prove that the urgency is such as to require immediate action. This would be the case when the circumstances do not even allow time for the Emergency Procedure to be carried-out. The Authority emphasized that this can be the case only in exceptional circumstances.
44. While notifying the order, the Authority will also grant a term, typically not exceeding three (3) working days, for both the complainant and the defendant to comment in writing on the measures adopted and to provide supporting evidence. The Authority will acknowledge the receipt of the parties' submissions normally within one (1) working day.
45. After having assessed the arguments set forth by the parties, the Authority will determine whether or not to confirm the temporary measures ordered and will establish the relevant duration under paragraph 44 below.

3.3 Conclusions

46. Following the Emergency Procedure, the Authority will reach its conclusions on whether or not to issue an emergency order. In particular, the Authority will issue an emergency order if it considers that: (i) the substantive conditions set out in paragraph 18 above are met; and (ii) no alternative and more appropriate measure has been envisaged capable of addressing the issue.
47. The emergency order will: provide for both a factual and legal analysis of the reasons underlying the Authority's conclusions.
48. While issuing an emergency order, the Authority will typically clarify the duration of the measures provided for therein. If no such duration is indicated, the emergency order will be deemed to be effective until the Authority reaches a decision as a result of the Resolution Procedure, Investigation, or own initiative investigation into the alleged Breach. Such decision will in any event supersede the emergency order.
49. If the Authority does not consider that the substantive conditions set forth in paragraph 18 above are met and/or that a more appropriate measure has been in the meantime envisaged capable of addressing the issue, it will clarify to both the complainant and the defendant the specific reasons underlying its conclusions.
50. Against the conclusions reached by the Authority an appeal under Article 66 of the Telecommunications Law can be proposed.

4 Resolution Procedure and Investigation into the alleged Breach

51. After having reached its conclusions as regards the Emergency Procedure, the Authority will perform an in-depth assessment of the case by carrying-out a Resolution Procedure, an Investigation or an own initiative investigation pursuant to the applicable guidelines. The in-depth assessment will result in a decision whereby the Authority will ascertain whether or not the alleged Breach was committed.
52. If it is ascertained that the Breach was committed, the decision will confirm the measures ordered as a result of the Emergency Procedure, or amend them according to the actual findings. Whereas the emergency order will not impose any sanctions, if appropriate, the Authority may levy a fine under Article 73 of the Telecommunications Law as a result of the in depth assessment. Else, the decision will discontinue the measures provided for in the emergency order.
53. While the performing the in-depth assessment, the Authority will monitor compliance with its own emergency order. To ensure effective monitoring the Authority will resort to the mechanisms that, based on the circumstances of the case, it will consider more appropriate, including for example: (i) *ex officio* monitoring; (ii) monitoring based on complaints or information from stakeholders; and (iii) regular reporting by the parties that are the addressees of the emergency order.

5 Renewal of an emergency order

54. As mentioned in paragraph 24 above, emergency orders are temporary and the Authority will set a time limit for their validity. Emergency orders are however renewable if necessary, upon request of the complainants or on the Authority's own initiative.
55. The complainants wishing to request for the renewal on an emergency order are expected to file adequate and well-reasoned submissions with the Authority, supported by compelling evidence regarding the ongoing risk of a Damage as a result of the Breach. While it is not necessary for the complainants to provide evidence of the Breach when asking for a renewal of an emergency orders they are still expected to prove that the substantial and irreparable damage resulting or likely to result from the Breach could not be effectively remedied by the decision which will be issued at the end of the Resolution Procedure or of the Investigation.
56. The Authority will acknowledge the receipt of the request for renewal normally within one (1) working day. In so doing, the Authority will inform the defendant of the submissions filed by the complainants and will grant the former two (2) working days to present submissions and provide documents.
57. The Authority will issue a decision on whether or not to renew the emergency order and will notify it to both parties.
58. The Authority may also renew an emergency order on its own initiative. In this case, both the complainants and the defendant will be notified of the renewal and will be granted normally two (2) days to comment on it. After receiving the parties' submissions, the Authority will decide whether or not to confirm the renewal of the emergency order by issuing a decision which will clarify the reasons underlying its conclusions and will set a new time limit for its validity.

ANNEX 1 - Minimum requirements of a request for an emergency order and format of the submission

59. The request for an emergency order must be submitted by the complainant in the same document as the complaint under the Dispute Resolution Guidelines or the Competition Guidelines. The requirements listed below constitute a set of minimum formal conditions that must be met by a request for an emergency order, without prejudice to what is established by the Dispute Resolution Guidelines or by the Competition Guidelines. In other words, complainants requesting for an emergency order when submitting a complaint, must ensure that, in addition to the minimum requirements set out by these Guidelines, also the minimum requirements established by the Dispute Resolution Guidelines or the Competition Guidelines are met. It is not necessary to repeat information that is the same for both the request for an emergency order and the complaint request (e.g., contact details of the complainant, contact details concerning the entity allegedly responsible for the Breach, etc.).
60. Complainants are responsible for making sure that the information provided is specific, comprehensive and relevant, and does not go beyond what is needed to address the concerns raised in it.
61. Relevant information includes – but is not limited to – the following:
 - a. contact details concerning the complainant;
 - b. contact details concerning the entity allegedly responsible for the Breach resulting in an actual or potential Damage, including the contact details;
 - c. details allowing the Authority to verify that the requirements set out in paragraph 18 of these Guidelines are met, including but not limited to:
 - i. a detailed and comprehensive description of the factual background of the request, including the conducts of the parties involved, supported by relevant available documents (correspondence, agreements, technical information, etc.);
 - ii. a reasoned explanation as to how the factual background, including the alleged conducts, described amounts to a Breach and a clear indication of the provision that, according to the complainant, has been infringed;
 - iii. a reasoned and substantiated explanation as to how the alleged Breach has resulted in, or creates an immediate risk of, a Damage, *i.e.* a substantial and irreparable damage that could not be remedied by a decision issued at the end of a Resolution Procedure or an Investigation; and
 - d. the kind of action(s) sought from the Authority, *i.e.* the content of the emergency order that, if issued by the Authority, would be regarded by the complainant as suitable to address the issue brought to the Authority's attention, and the relevant proposed duration;

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- e. a declaration by the complainant or by an officer of the company if the request is submitted by a company clarifying that the submissions and information contained in the request are to the best of his/her knowledge and belief;
 - f. date of the submission.
62. Submissions should be made to:
- The General Director**
- LAD@tra.org.bh
- P.O. Box 10353
Manama
Kingdom of Bahrain
63. Requests are to be sent by email and also delivered by hand, or by courier or by registered mail to the Authority's offices. Requests must be signed by an officer of the Licensed Operator and it should indicate the position that he/she covers in the organization. Any request must be clearly marked with the following caption "*Subject – Submission of a Complaint including a Request for an Emergency Order*".