



A public consultation paper issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain

Own Initiative Monitoring and Enforcement Programme

9 October 2018

LAD 1018 259

The address for responses to this document is:

Legal Affairs Department

Telecommunications Regulatory Authority ("The Authority")

PO Box 10353, Manama, Kingdom of Bahrain

Alternatively, e-mail responses may be sent to the Legal Affairs Department's email address at LAD@tra.org.bh

The deadline for responses is **4 PM on 11 November 2018**

Instructions for submitting a response

The Telecommunications Regulatory Authority (“the Authority”) invites comments on this consultation document from all interested parties. Comments should be submitted no later than **4 PM on 11 November 2018**.

Responses to this document should be sent to:

Legal Affairs Department
Telecommunications Regulatory Authority
P.O. Box 10353
Manama, Kingdom of Bahrain
Email address: LAD@tra.org.bh

Responses should include:

- the name of the company/institution/association etc;
- the name of the principal contact person;
- full contact details (physical address, telephone number, fax number and e-mail address);
and
- in the case of responses from individual consumers, name and contact details.

The Authority expects respondents to provide comments in response to each of the questions set out in this document. The Authority invites respondents to substantiate their responses, wherever possible, by providing factual evidence to support their responses.

In the interest of transparency, the Authority will make all submissions received available to the public, subject to the confidentiality of the information received. The Authority will evaluate requests for confidentiality in line with relevant legal provisions and the Authority’s published guidance on the treatment of confidential and non-confidential information.¹

Respondents are required to clearly mark any information included in their submission which considered confidential. Where such confidential information is included respondents are required

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
http://www.tra.org.bh/en/pdf/Confidentiality_Guidelines_Final.pdf

to provide both a confidential and non-confidential version of their submission. If a submission is marked confidential in its entirety, reasons for this should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

SECTION 1

Status of this consultation document

1. This section is intended to provide a brief overview of the background to this consultation.
2. This consultation document is issued pursuant to the Position Paper on “How TRA Consults” issued by the Authority on 17 October 2017².
3. The information contained in this document is intended to provide background on an Own Initiative Monitoring and Enforcement Programme that is currently being considered by the Authority. Interested parties should not take any actions in reliance on the information or proposals contained in this document. Any views set out in this document should be considered as indicative and will be subject to further consideration following the receipt of comments from interested parties.
4. This consultation document does not represent a decision by the Authority. The issues discussed in this document remain open to consideration and should not be construed as indicating that the Authority has formed any final opinion or decision on the Consumer Protection Regulation.

SECTION 2

Background information

5. The Authority is the independent regulator and competition authority for the Kingdom of Bahrain telecommunications industry and is empowered under the Telecommunications Law of the Kingdom of Bahrain Legislative Decree No. 48 of 2002 (the “**Telecommunications Law**” or the “**Law**”). Article 3(c)(2) the Law provides that:

“The Authority shall have the power to....monitor and investigate compliance with the provisions of this Law and any regulations, orders and determinations made hereunder, both on its own initiative and at the request of any Person...”

6. The aim of these Guidelines is to present some key principles and process that the Authority will follow when undertaking compliance monitoring and investigations on its own initiative. The principles and processes have been designed on the basis of best practice with the pursuit of

² <http://www.tra.org.bh/media/document/Position%20Paper%20on%20how%20TRA%20consults1.pdf>

efficient and effective regulatory outcomes for Bahrain's telecommunications sector in mind.

7. Markets usually work well for consumers and the economy without the need for intervention by regulatory bodies. This is because competition should incentivise service providers to deliver what consumers want; to provide value for money; to produce and allocate goods efficiently and to innovate; whilst well-informed, consumers can actively play a major role in driving competition between service providers.
8. Compliance is a crucial element in delivering the desired market and consumer outcomes for Bahrain's telecommunications sector. If there is no oversight and/or sanction for non-compliance, then business and consumers in Bahrain may suffer. The Authority's main compliance objective is to deliver these public interest outcomes by ensuring that Licensees heed their legal obligations to the greatest extent practicable.
9. The degree of compliance and enforcement action that the Authority can undertake is constrained by the level of resources available to it. Therefore, the Authority may have to be selective in undertaking compliance activity and prioritise matters accordingly. These Guidelines set out how the Authority will decide to initiate and carry out compliance monitoring or enforcement activity.
10. As a general rule, the Authority will only intervene where there are clear indications of a potential breach of the Law. This may include intervention necessary to protect competition, or prevent conduct which is unlawful or harms consumer interests. The Authority may take enforcement action against Licensees for non-compliance and will do so in a manner best calculated to deliver the objectives set out under Article 3 of the Law.
11. The Authority seeks to ensure that investigations are conducted in a fair, transparent, efficient and timely manner. It also seeks to ensure that interventions are evidence-based, proportionate, consistent, accountable and transparent.
12. These Guidelines set out the Authority's procedures and explains the way in which the Authority conducts investigations procedures the Authority will normally follow when it opens an investigation on its own initiative pursuant to its powers under Article 3 the Telecommunications Law. The purpose of these own initiative investigations is to:
 - monitor and if necessary, investigate compliance by Licensees with their regulatory obligations, including under the Telecommunications Law, the terms of their Licences

and any Regulation or enforceable regulatory decision issued by the Authority; and

- where a Licensee is found to be in breach of its obligations, take appropriate enforcement action.

13. The Authority has previously issued guidelines in relation to the method in which it will conduct investigations that arise out of disputes between Licensees. In addition Licensees and interested parties are referred to the terms of the other guidelines issued by the Authority relating to the imposition of emergency interim measures and financial penalties. As such these Guidelines should be read alongside the Authority's following publications:

- Competition Guidelines (Ref: MCD/02/10/019);
- Adoption of Emergency Orders Guidelines (Ref: LAD/1015/145);
- Dispute Resolution Guidelines (Ref: LAD/0814/126); and
- Fining Guidelines (Ref: LAD/0314/039).

14. These Guidelines do not cover the Authority's work in:

- Resolving regulatory disputes and complaints from Licensees which are subject to the Authority's Dispute Resolution Guidelines and Competition Guidelines; and
- The investigation of complaints from individual consumers which are subject to the Authority's (draft) Consumer Dispute Regulation.

15. The Authority seeks comments from stakeholders in the telecommunications industry, the business community and the general public on Annex 2 of this document. All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law or Licences that Respondents are relying upon.

16. Respondents are required to mark clearly any information included in their submission that 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 (in soft copies and not scanned copies). If part or all of the submission is marked confidential, reasons should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

17. Capitalized terms used throughout this document shall have the same meaning attributed to them by the Law.

SECTION 3

Consultation Questions

Section 1 – Introduction

1. Do you agree with the policy objectives identified by the Authority and that the measures proposed by the Authority in the Programme would be effective for meeting those objectives? Please explain and substantiate your responses where possible.
2. Are there other factors which you feel should be taken into account when considering the Authority's approach to the use of its investigatory powers?

Section 2 – Why and how the Authority opens own initiative investigations

3. Are there other factors the Authority ought to take into consideration when deciding whether or not to open an own initiative investigation? Please elaborate.
4. Do you agree that the initial steps to be taken by the Authority before commencing with a formal investigation are sufficient? Please elaborate.
5. Do you have any other comments on Section 2?

Section 3 – Investigating

6. Are there other factors the Authority ought to take during the investigation process? Please elaborate.
7. Do you agree with the proposed methods for information gathering and handling of confidential information during the investigation process?
8. Are there any aspects of the investigation process which can be streamlined and / or simplified? Please explain.
9. Do you have any other comments on Section 3?

Section 4 – Outcome of own initiative investigations and the decision-making

10. Do you agree with the steps to be taken during the decision-making process? Are there other considerations which you believe the Authority ought to take? Please elaborate.

11. Are there any aspects of the decision-making process which can be streamlined and / or simplified? Please explain.

12. Do you have any other comments on Section 4?

Section 5 – Settlement procedure

13. Do you agree with the proposed settlement procedure? Please elaborate.

14. Do you have any other comments on Section 5?

Section 6 – Taking urgent action

15. Do you have any comments on Section 6?