



SETTLEMENT GUIDELINES

25 September 2023

Ref: LAD 0923 028

Purpose: This guidance paper explains the Telecommunications Regulatory Authority's policy for settlement of cases it investigates under the Telecommunications Law. It sets out the procedure by which parties to an investigation can settle a case by admitting that they have breached the provisions of the Telecommunications Law and / or any legal instruments, and accepting a streamlined administrative procedure, in exchange for a reduction in fines.

Contents

1. Purpose and legal basis of the Guidelines	3
1.1 Introduction	3
1.2 What do these Guidelines cover?	4
1.3 Structure and content of the Guidelines	4
2. Definition of settlement.....	5
3. Requirements for settlement	5
4. How does the Authority decide whether a case is suitable for settlement?.....	6
5. Settlement discounts.....	6
6. Process.....	7
6.1. Settlement process prior to the issuance of a draft Decision	8
6.1.1. Investigations under Article 35 or Article 65 of the Law.....	8
6.1.2. Own admission.....	9
6.2. Settlement process following the issuance of a draft Decision	9
6.3. Successful conclusion of the settlement process	10
6.4. What happens if the settlement process is unsuccessful?.....	10
7. External communications during or post settlement	11

1. Purpose and legal basis of the Guidelines

1.1 Introduction

These Guidelines outline the process of settling an investigation that will ordinarily be followed by the Authority.

The Authority's application of these Guidelines is in accordance with Article 3(a) of the Telecommunications Law, intended to promote a transparent and non-discriminatory manner in the settlement process.

In some cases, the Authority may consider it appropriate to settle an investigation. Settlement is a voluntary process for resolving an investigation into a Licensed Operator's conduct which leads to a formal, legally binding infringement decision. It involves the subject of the investigation admitting it has breached the Telecommunications Law (and/or any other legal/regulatory instrument) and accepting that the remainder of the investigation will follow a streamlined investigatory procedure.

These Guidelines therefore aim to provide an understanding of the process that will be followed by the Authority for settling with a Licensed Operator under investigation. The settlement procedure allows the Authority to achieve efficiencies through a streamlined investigatory procedure, resulting in an earlier adoption of any infringement decision and/or resource savings. The Authority considers that an aspect of these resource savings comes from the Authority not being required to defend a possible appeal in arbitration or through the Courts of Bahrain. In such cases, the Authority will apply a discount to the level of the penalty imposed on the subject in light of the resource savings involved in following a streamlined investigatory procedure.

Where the settlement process is successful, the decision will refer to the fact that settlement has been agreed and will reflect the substance of any admissions made by the subject of the investigation for the purposes of the settlement. In the event that the settlement process is unsuccessful, the case will revert to the usual investigatory process.

Licensed Operators being investigated are not under any obligation to enter into a settlement process or to settle. Instead, the Authority retains, at all times, broad discretion to decide whether a case is appropriate for settlement or to agree to settlement.

These Guidelines will help ensure that any settlement brings finality to the investigation. The Guidelines seek to achieve this by setting out that the Authority will only agree to settle if the subject agrees that it will not subsequently appeal against the decision, including any financial penalty imposed.

For the avoidance of doubt, settlement is not a negotiation. The Authority will not negotiate the level of penalty.

1.2 What do these Guidelines cover?

These Guidelines set out the Authority's settlement process where a Licensee under investigation is prepared to admit that it has breached the Telecommunications Law (or any legal instrument) and confirms that it accepts that a streamlined investigatory procedure will cover the remainder of the investigation of that Licensee's conduct.

The Authority has previously issued guidelines in relation to the method in which it will conduct investigations. As such these Guidelines should be read alongside the Authority's following publications:

- Competition Guidelines;
- Adoption of Emergency Orders Guidelines;
- Dispute Resolution Guidelines; and
- Fining Guidelines.

1.3 Structure and content of the Guidelines

The structure of the Guidelines follows the steps that the Authority would need to take in the process of settling a dispute. These are as follows:

- Section 2 defines a settlement.
- Section 3 sets out the requirements for settlement.
- Section 4 sets out how the Authority will determine whether a case is suitable for a settlement.
- Section 5 outlines the settlement discounts.
- Section 6 explains the process which the Authority will follow if any of the parties to the settlement decides to settle.
- Section 7 describes the nature of external communications during and after the process of settlement.

- Annex 1 sets out a flowchart of the settlement process.

The Authority will apply this guidance flexibly. This means that the Authority will have regard to the guidance when approached for a settlement, but when the facts of an individual case reasonably justify it, the Authority may adopt a different approach.

2. Definition of settlement

‘Settlement,’ in a regulatory context, is a voluntary process for resolving a regulatory investigation which, if successful, leads to a formal, legally binding decision. Settlement is therefore not the same as resolving a case by giving assurances to change conduct which could lead to case closure without resulting in a final enforcement decision. It involves the infringing party of the investigation admitting it has breached a relevant regulatory requirement(s) and accepting that the remainder of the investigation will follow a streamlined investigatory procedure. In such cases, the Authority will apply a discount to the level of the penalty imposed on the infringing party in light of the resource savings involved in following a streamlined investigatory procedure.

Settlement is different to leniency, the difference being that settlement is a procedural efficiency instrument while leniency is an instrument to gather evidence. A leniency application is not a pre-condition for a settlement request. A subject, which has not applied for leniency, may also engage in settlement.

3. Requirements for settlement

As a minimum, the Authority will require the subject of the investigation seeking to settle to:

- 3.1. make a clear and unequivocal admission of liability in relation to the nature, scope and duration of the breach. This would need to reflect the Authority’s position on the nature of the breaches it is minded to find;
- 3.2. cease the breaching behaviour immediately from the date it enters into a settlement process with the Authority, and refrain from engaging again in the same or similar breaching behaviour;

- 3.3. confirm that it accepts that there will be a formal and published finding of the breach against it, it will pay a penalty and will take any steps required to comply with the relevant regulatory requirement(s) and/or to remedy the consequences of the breach;
- 3.4. confirm that it will accept a streamlined investigatory process. This will be decided on a case-by-case basis depending on the stage at which the settlement process is commenced but should not include written representations (except in relation to manifest factual inaccuracies); and
- 3.5. confirm that it accepts that it will not subsequently appeal against the decision, including any financial penalty imposed. This confirmation is subject to the final Settlement Decision aligning with the written confirmation of the subject's initial admissions and acceptance of the settlement and the Settlement Notification.

4. How does the Authority decide whether a case is suitable for settlement?

The Authority may consider settlement for any investigation in which the Authority has reached a stage where it believes that it has a sufficient basis for giving notice of the proposed infringement investigation.

In determining whether a case is suitable for settlement, the Authority will have regard to a number of factors such as the likely procedural efficiencies and resource savings that can be achieved through settlement. The Authority may decide that a case is not suitable for settlement in certain circumstances such as, for public policy reasons (for example due to the nature of the harm caused by the infringement), or the previous conduct of the subject during the course of the investigation (for example, where the subject has been obstructive or failed to co-operate). Other than in exceptional circumstances, repeat offences will generally not be considered as cases suitable for settlement.

5. Settlement discounts

Where the settlement process results in a final enforcement decision being issued, that decision will contain the fining amount which will include a settlement discount. The Authority's aim will be to conclude the settlement process as swiftly as possible. In line with this aim, the Authority will provide a higher discount to Licensed Operators who initiate the settlement process at an earlier stage but will, in all cases, determine the level of discount that it considers appropriate based on the relevant facts. This is due to the greater resource

saving that the Authority can achieve when the settlement process is initiated early. As a result, the discount available to Licensed Operators is proportional to the amount of savings achieved by the Authority.

The discount will be considered on a case-by-case basis. This discount is usually expected to be:

- up to 50% where a successful settlement process is commenced before a draft Decision/Determination and/or Order (collectively known as “**Decision**” throughout these Guidelines) is issued; and
- up to 20% where a successful settlement process is commenced after the draft Decision is issued.

Where the Authority is concerned that the process is not progressing as swiftly as possible due to delays or inefficiencies caused by the subject of the investigation, or due to the subject of the investigation not showing its full co-operation with the settlement process, the Authority is likely to bring the settlement process to an end or reduce the available discount on account of the time taken and resources used. The Authority would give the subject notice that it is minded to do so at that point.

The Authority also recognises that in some cases Licensed Operators may proactively contact the Authority to let it know about a potential breach of a regulatory requirement, may voluntarily take significant steps to address compliance following a breach of a regulatory requirement and/or to remedy the harm caused, and may provide the Authority with significant co-operation in advancing its investigation. In such cases, the Licensed Operator could be entitled to benefit from a discount of up to 50%.

6. Process

If the subject of an investigation wishes to discuss the possibility of exploring a settlement, it should formally approach the Authority’s legal department in the first instance. The Authority will engage positively with a subject that indicates an early willingness to settle. The level of discount on the fine as a result of settlement will depend on the stage at which a successful settlement process is commenced:

- prior to the draft Decision being issued; or
- following the draft Decision being issued.

6.1. Settlement process prior to the issuance of a draft Decision

6.1.1. Investigations under Article 35 or Article 65 of the Law

1. The Authority will issue a notification either:
 - a. If it suspects that a Licensee has been or is in material breach of the Law or its Licence, therefore breaching Article 35 of the Law. This notification will serve to notify the party that the Authority is investigating the act of omission which may constitute such breach; or
 - b. Pursuant to Article 65 of the Law, if it suspects an act or omission of the Licensed Operator constitutes anti-competitive conduct. This notification will serve to notify the party that the Authority is investigating a possible breach, providing details of the alleged breach, any relevant information required, and (where appropriate) steps to remedy the breach.
2. If the subject of the investigation is willing to settle, it must inform the Authority that it is willing to pursue the settlement process. The Authority will then proceed with issuing a Settlement Notification. The Settlement Notification will outline TRA's provisional findings, the evidence on which we intend to rely, an indication of the level of the fine it would be minded to impose, the level of the settlement discount if would be likely to grant and the period during which the subject notified has an opportunity to make representations. We will also offer access to any relevant documents that we rely on, where appropriate.
3. If the subject of the investigation is prepared in principle to agree to make admissions on the basis of the Settlement Notification, it must make written representations on manifest factual inaccuracies in the notification only (if needed). If the representations go beyond this (for example into the merits of the Authority's provisional findings), the Authority will assess whether the case is appropriate for settlement at this stage. The subject must provide written confirmation of admissions and its acceptance of the settlement requirements listed under paragraph 3 "*Requirements for settlement*" above.
4. If the subject is not prepared to pursue a settlement on the basis of the position set out in the Settlement Notification, it is unlikely to be appropriate to pursue settlement at this stage, and the Authority will normally proceed to issue a draft Decision in accordance with its usual process.

5. If the subject wishes to enter into a settlement process at a later stage of the investigation, it remains open for it to do so (subject to the Authority also considering this to be appropriate), although a lower settlement discount may then apply.

6.1.2. Own admission

1. A Licensed Operator may approach the Authority for a settlement, where it admits to its infringement of Article 35 or Article 65 of the Law, prior to the Authority issuing any formal communication on the suspected breach including a notification.
2. The Licensed Operator must notify the Authority of its breach, including all relevant details such as the nature, duration, and effect of the breach, as well as any information or documentation that may assist the Authority in determining the facts and evaluating the breach. The Licensed Operator must also indicate its willingness to settle the case.
3. The Authority will investigate the breach and will then proceed with issuing a Settlement Notification outlining its provisional findings, an indication of the level of the fine it would be minded to impose and the level of the settlement discount if would be likely to grant.
4. The Licensed Operator must then follow the steps 3 - 5 under paragraph 6.1.1 above.

6.2. Settlement process following the issuance of a draft Decision

1. If the Licensed Operator, within 5 working days, following the notification of an investigation under Article 35 or Article 65 of the Law (the Settlement Notification), does not approach the Authority to settle, the Authority will issue a draft Decision.
2. The draft Decision will include details of the breach, a legal analysis, the actions a Licensed Operator would need to take and an indication of the provisional level of fine that the Authority would be minded to impose.
3. If the subject of the investigation is prepared to admit to the breaches as set out in the draft Decision, it must inform the Authority in writing that it wishes to enter into a settlement on that basis. The Authority will then proceed with issuing a Settlement Notification outlining its findings, the level of the fine it would be minded to impose and the level of the settlement discount if would be likely to grant.

4. As part of the settlement requirements, the subject must agree not to make written representations on the draft Decision (as standard process dictates otherwise) except in relation to manifest factual inaccuracies. If the representations go beyond this (for example into the merits of the Authority's provisional findings), the Authority will reassess whether the case remains appropriate for settlement at this stage.
5. If the subject of the investigation is prepared in principle to agree to make admissions on the basis of the Settlement Notification, it must make written representations on manifest factual inaccuracies in the Settlement Notification only (if needed). The subject must provide written confirmation of admissions and its acceptance of the settlement requirements listed under paragraph 3 "*Requirements for settlement*" above.
6. If the subject is not prepared to agree to a settlement on the basis of the position set out in the Settlement Notification, it is unlikely to be appropriate to pursue settlement, and the Authority would normally proceed with issuing a Final Decision in accordance with its usual process.

6.3. Successful conclusion of the settlement process

If the settlement process is successful and the subject of the investigation has indicated to the Authority that it is prepared to agree to the settlement requirements and to make admissions on a basis which reflects the Authority's position, a written confirmation of the subject's admissions and acceptance of the settlement requirements will follow.

Following the written confirmation, the Authority will draft a summary Settlement Decision outlining the facts of the case, the admissions of the infringing party and their breach. It will also set out that the parties have agreed to settle through the settlement process. Prior to its publication, the decision will be sent to the infringing party for its signature and then the Authority will sign it. Once both the infringing party and TRA have signed the final Settlement Decision, it will become legally effective.

6.4. What happens if the settlement process is unsuccessful?

The subject of the investigation may withdraw from the settlement process at any time before confirming that it has accepted the requirements for settlement and confirming its admission in writing. The Authority may also withdraw from the settlement process at any stage. Prior to its withdrawal, the Authority will inform the subject of its intent to do so,

providing reasons for its decision. If settlement is unsuccessful, then the case will revert to the normal procedure.

The settlement is akin to “without prejudice” negotiations for the purposes of seeking to resolve litigation. Any additional documentary evidence provided during the settlement process would be placed in the case file but would not be taken into account by the Authority for the purposes of its final infringement.

7. External communications during or post settlement

The Authority will be posting updates on ongoing investigations and will also publish a non-confidential version of the Final Settlement Decision on its website.

Parties must not disclose the content of settlement discussions or the fact that those discussions have taken place to any third parties (including any other parties engaging in settlement discussions) without the prior written authorisation of the Authority. Such disclosure may lead the Authority to withdraw the settlement agreement and may also constitute an aggravating circumstance within the meaning of the Fining Guidelines which may lead to an increase to the amount of fine.

The Authority may announce that a Licensed Operator has settled within a press release, in which case the Authority’s website will be updated. Where possible the Authority will give the settling subject(s) at least one day notice of the press release’s contents before it is published.

Annex 1 - Flowchart of the settlement process

