



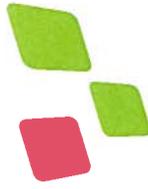
هيئة تنظيم الاتصالات
Telecommunications Regulatory Authority
Kingdom of Bahrain - مملكة البحرين

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

Consultation Report

25 August 2014

Ref: LAD 0814 126



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Telecommunications Regulatory Authority
Kingdom of Bahrain - مملكة البحرين

1 INTRODUCTION

- 1.1 On 16 March, 2014, the Telecommunications Regulatory Authority (the "Authority") launched a Public Consultation (the "Consultation Document") on draft Dispute Resolution Guidelines in relation to (i) disputes between licensees and (ii) complaints against licensees pursuant to Chapter 17 of the Telecommunications Law of the Kingdom of Bahrain (the "Draft Guidelines"). The purpose of the Public Consultation was to invite comments from interested parties on the Authority's intended form and manner by which dispute and complaint referrals should be made, how the Authority proposes to handle such disputes and complaints and the approach that the Authority is likely to take in resolving the same.
- 1.2 The Authority received responses from Batelco, Viva, Zain and Mena Telecom. The non-confidential versions of these submissions will be made available on the Authority's website simultaneous to the publication of this Consultation Report and final and final version of the Draft Guidelines (the "Dispute Resolution Guidelines").
- 1.3 The Authority wishes to thank all respondents for their comments.
- 1.4 The comments received from Batelco, Viva, Zain and Mena Telecom are summarised in Annex 1 to this Consultation Report, as are the Authority's responses to each comment. The amendments that the Authority has made to the Draft Guidelines in response to the comments received from the stakeholders are also set out and explained under Annex 1.
- 1.5 The Dispute Resolution Guidelines are appended as Annex 2 to this Consultation Report.
- 1.6 This Consultation Report reflects the views of the Authority on comments received in response to the Consultation Document. The Authority's views as expressed in this Consultation Report are intended to provide an explanation of the Authority's position on the comments received from the respondents. To the extent that any statement contained in this Consultation Report is inconsistent with the principles or provisions established under the Dispute Resolution Guidelines, the Dispute Resolution Guidelines shall prevail.



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List of acronyms and definitions

Art.	Article
Authority	Telecommunications Regulatory Authority of the Kingdom of Bahrain and any successors thereof
Batelco	Bahrain Telecommunications Company B.S.C.
Consultation Document	The document published on 16 March, 2014 which included the Draft Guidelines and which solicited responses to a number of questions set out in the Consultation Document
Consultation Report	This document: (1) summarising the responses received from the Respondents; (2) setting out the Authority's responses to such responses; (3) identifying and explaining the amendments made unilaterally by the Authority to the Draft Guidelines; and (4) including the Dispute Resolution Guidelines
Dispute Resolution Guidelines	The final and amended version of the Draft Guidelines appended as Annex 2 to this Consultation Report
Draft Guidelines	The draft version of the Dispute Resolution Guidelines in relation to (i) disputes between licensees and (ii) complaints against licensees pursuant to Chapter 17 of the Telecommunications Law of the Kingdom of Bahrain
Licence	Has the same meaning as granted to this term under Art. 1 of the Telecommunications Law
Mena Telecom or Mena	MENA Telecom W.L.L.
Par.	Paragraph
Telecommunications Law	The Telecommunications Law of the Kingdom of Bahrain, which was promulgated by Legislative Decree No. 48 in October 2002
Viva	Viva Bahrain B.S.C.
Zain	Zain Bahrain B.S.C.



Annex 1: Summary of responses received on the Consultation questions and the Authority's conclusions

Summary of comment received	The Authority's view and conclusion
<p>Question 1: 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.</p>	
<p>Batelco</p>	



<p>Batelco does not have any major comments on the proposed scope of what defines a dispute or complaint under Articles 57(g) and 72 respectively. Batelco does however suggest that complaints can be made by any person and not therefore restricted to licensees.</p> <p>In relation to Article 57(g) disputes, Batelco makes the point that its unified reference offer includes terms that are subject to <i>ex ante</i> regulation and terms which are not and that as such, it would not expect that the "wholesale" parts of the reference offer covering commercial wholesale products which are neither interconnection or access products to be subject to the scope of Article 57(g).</p> <p>Batelco states that the TRA has not substantiated paragraph 28 (bullet 1) and recommends that a clear reference to the factors mentioned therein be incorporated, although it acknowledges that paragraphs 48-50 of the Draft guidelines do give a more detailed explanation.</p> <p>In relation to the requirement under paragraph 28 (bullet 2) that the scope of the dispute or complaint is clear and specific, Batelco argues that the parties may have a different idea of the list of matters in dispute and that therefore the process should have a check with the other</p>	<p>The Authority agrees with Batelco that a complaint may be raised by any person however, experience shows that the vast majority of complaints referred to by non-licensees are related to consumer complaints. The TRA has made it very clear throughout the consultation paper that the Guidelines do not cover such complaints.</p> <p>Whilst Article 57(g) does indeed entitle a public telecommunications operator to refer to the TRA any dispute with respect to interconnection or access, the TRA does not agree that its powers to determine disputes are limited to those two instances. Indeed Article 3(17) refers to the examination of complaints and the resolution of disputes without any qualification. Article 57(g) complements, rather than limits, the scope of Article 3(17).</p> <p>As Batelco itself rightly points out, the factors are outlined in the Draft Guidelines themselves for example in paragraphs 33, 48 to 50 and in Section 4. Paragraph 28 is not meant to be an exhaustive list seeing that it is included in the section entitled Executive Summary.</p> <p>The TRA disagrees with this suggestion. It is for the party submitting the dispute to refer that</p>
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<p>party as to which issues are considered to be in dispute and that the TRA should not introduce other issues itself into the process.</p> <p>In relation to paragraph 31 of the Draft Guidelines, Batelco argues that the timescales for settling cases brought before the Courts of Bahrain would be expected to be significantly longer and that consequently there may be cases where tactically a licensee might file proceedings in court in order to improve its cash flow. Batelco advocates for the need of the parties to a dispute to be obliged to inform both the Courts and the TRA what is taking place so that the TRA or the courts may decide what to do in those circumstances, taking into account the stage the case or dispute has reached. Batelco disagrees that a default stay of the TRA process should be adopted particularly where the TRA is about to issue an order or decision.</p> <p>Finally Batelco confirms that it fully supports the value and emphasis upon commercial negotiations to resolve matters and suggests that the process be modified to incorporate a reference back to the parties for further commercial negotiations within a set time period.</p>	<p>which, in its view, is the subject-matter of the dispute. If the other party disagrees, then that party will have the opportunity to say so in its cross-submissions. Alternatively, it may file a counter claim.</p> <p>The TRA sympathises with Batelco's argument but TRA cannot limit an entity's right to judicial recourse. In order to avoid two fora having concurrent jurisdiction, the most prudent option would be to refrain from determining the dispute until such time as the courts determine otherwise.</p>
	<p>The TRA has made it clear in paragraph 33 of the Draft Guidelines that a dispute should only be referred to the TRA after negotiations between the parties have failed. It therefore follows that the TRA expects that all attempts at seeking to resolve the dispute via commercial negotiations have been exhausted and that as such there is hardly any point in referring back the matter. The TRA believes that this will only serve to lengthen the resolution period.</p>



Mena Telecom	<p>Mena asserts that the TRA has a prima facie obligation to promote effective and fair competition among new and existing licensees and that accordingly whilst the TRA may examine complaints and resolve disputes, it <i>must</i> exercise its powers to ensure and promote fair competition and that this obligation need not be initiated by a complaint or dispute.</p>	<p>While the TRA does not disagree with Mena's view, it does not believe however, that the Dispute Resolution Guidelines are inconsistent or impinge upon that obligation.</p>
Viva	<p>Viva states that it is in broad agreement with the TRA's proposed basis for accepting a dispute submission and/or complaint but would suggest that the third row of paragraph 26 of the Draft Guidelines would be amended to incorporate obligations arising out of the law, a licence, a regulation, decision or order.</p>	<p>The TRA agrees with this point and the Dispute Resolution Guidelines will reflect this proposal.</p>



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Viva opines that the requirement to provide evidence that the parties are in dispute constitutes very high standard criteria and that the submission of a breach justification should be sufficient for the TRA to initiate the investigation. There may be cases where one of the parties would avoid negotiations through silence and/or avoidance of escalation.

The TRA disagrees with Viva on this point. If the second party avoids negotiation then that in itself could be easily demonstrated and the TRA would consider such conduct as fulfilling the requirements set out in paragraph 33 of the Draft Guidelines.

The TRA believes that Article 3(c)(2) of the Telecoms Law refers to complaints (rather than to disputes) and as such has no bearing on the requirement that parties should provide evidence that they are in dispute.

In relation to complaints however, the TRA would like to point out that it would not normally engage in an investigation on the basis of a mere rumour or unfounded allegation.

Viva argues that there may be cases where the complainant might not be in a position to give all the required documentary evidence because that evidence is not in that party's possession but in the hands of the other party.

Naturally, the TRA would not expect that the party submitting the complaint or dispute to submit that which is not in its possession.



<p>Zain</p>	<p>Zain considers the proposed guidelines as a very proper procedure of filing cases, subsequent progress steps and timeframes for reaching a conclusion whilst on the other hand; the Competition Guidelines lack such visibility. Accordingly, Zain recommends that the TRA should publish a master guidelines document which would include under its scope all types of complaints and disputes including complaints dealing those complaints falling under the scope of the Competition Guidelines.</p>	<p>The Authority notes the points raised by Zain and will endeavour to amend the Competition Guidelines in due course in order to streamline the same with these Dispute Resolution Guidelines.</p>
<p>Question 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.</p>		
<p>Batelco</p>	<p>Batelco believes that the 5 months' timeframe for dispute resolution is too long and proposes instead a three month timeframe. Batelco suggests that the proposed timeframe should give the TRA ample time to carry out the "type of analysis it would normally carry out in exercising its ex ante regulatory powers or its powers under the Telecoms Law".</p>	<p>The Authority disagrees with Batelco that a 5 month turnaround is too long. Indeed, OFCOM has committed to a maximum timeframe of 4 months within which to determine disputes. TRA believes that considering its limited resources, a 5 month maximum timeframe is reasonable. Naturally the TRA will endeavour to resolve each</p>



<p>Batelco considers the TRA's proposal not to grant "in general" any time extensions to a party's submission as unreasonable and that the proposed timeframes for responses are too short being between 2 to 10 working days. Batelco therefore proposes a timeframe of 10 working days for general responses and 30 working days for more complex matters.</p>	<p>dispute in the shortest time possible.</p> <p>The use of the words "in general" betrays TRA's intention to grant extensions when, in its sole opinion, the need for an extension is absolutely required. However, the default position should be (and will remain) that no extensions will be granted unless in exceptional circumstances. The TRA does accept that a 2 working day turnaround might represent a challenge and will therefore amend the wording in paragraph 41 of the Draft Guidelines to 5 and 15 working days respectively in the Dispute Resolution Guidelines.</p>
<p>Mena Telecom</p> <p>Mena states that in relation to paragraph 35 of the Draft Guidelines, it does not agree that a complaint should not be modified once submitted citing that cases at court are generally subject to change, addition and modification as and when new information comes to light.</p> <p>The TRA would like to emphasise that paragraph 35 of the Draft Guidelines is limited to the scope of the dispute. This requirement is premised by the fact that the dispute should only be referred to the TRA once all attempts at negotiating a settlement have failed. Therefore, the TRA does not see how the scope should change at the very last stage. Moreover, if the TRA were to allow for changes in scope, this would only lead to a never ending process. Finally it is also not equitable on the other party against whom the dispute is filed. In order to help that operator properly defend his</p>	



<p>Mena comments that the 5 month dispute resolution period is far too long. Mena argues that in a five month period of anti-competitive conduct dispute, an anti-competitive licensee could completely reverse the dynamics of a market and bring about irreparable damage to the industry and economy.</p>	<p>position, it is reasonable to expect that he is faced with a fixed accusation. Naturally if the defendant, subsequent to the filing of the dispute engages in other conduct which could lead to the submission of a separate dispute, the TRA would consider that other dispute.</p> <p>It is pertinent to point out that this requirement does not subsist in relation to a complaint, because in any case it can be easily surpassed by the complainant submitting a fresh complaint should new information emerge.</p> <p>The TRA does not agree that a maximum 5 month term is excessive. Moreover, it is worthwhile to point out that the concern raised by Mena does not arise since the Dispute Resolution Guidelines do not apply to cases covered by the Competition Guidelines.</p>
<p>Viva</p>	
<p>Viva disagrees that the scope of the dispute should not change unless with all the parties to a dispute agree.</p> <p>Viva criticises the proposed resolution time of 5 months and suggests that the TRA should resolve disputes within a period of three months, whilst crucial disputes/complaints should be resolved within a period not</p>	<p>The TRA has already addressed this point in its response to Mena's same comment above.</p> <p>The TRA has also addressed this point previously. While it sympathises with the points raised by all operators, the TRA wishes to point out that it would always seek to settle any complaint or</p>



<p>exceeding 6 weeks in line with the practice adopted in Germany and Austria. Viva quotes from the EC's seventh implementation report of 2001 which states that "lengthy appeal procedures in virtually all Member States lead to regulatory uncertainty and can be exploited by incumbents."</p> <p>Viva contends that the TRA should undertake the same type of analysis it would normally conduct in carrying out its <i>ex ante</i> regulatory powers and within the dispute resolution time period.</p> <p>Viva disagrees with the wording adopted in paragraph 43 of the Draft Guidelines because it argues that the guidelines cannot be the legal basis for issuing a binding decision and that consequently the hierarchy of legal instruments requires a binding decision to be issued by virtue of the telecoms law, licence or a regulation and this is derived from the title of the instrument and its legal power. Viva also refers to Article 1.8 of OFCOM's Dispute Resolution Guidelines of 7th June 2011.</p>	<p>dispute in the shortest timeframe possible and that the 5 month term is the maximum that it would allow itself. Given the limited resources available and the number of licensees, the TRA wishes to ensure that it can work within these set parameters without comprising on the quality of the investigation and the considerations leading to a final decision.</p> <p>The TRA refers to the use of the word "may" in paragraph 38 of the Draft Guidelines. This implies that it would not undertake the type of analysis only where time exigencies do not permit it to do so.</p> <p>The TRA disagrees with Viva. The Dispute Resolution Guidelines are not the basis for issuing a binding decision. They merely set out how the process will work. It is the decision which will be binding – independently of the Dispute Resolution Guidelines. The wording of the law is very clear that the TRA should take any "necessary and proportionate measures in relation to" disputes and complaints (Art. 3(17)). Moreover, the reference made by Viva to Article 1.8 of OFCOM's Dispute Resolution Guidelines is mistaken because what has no binding legal effect is not the decision <i>per se</i> but the guidelines seeing that these were issued as guidelines as opposed to a regulation or a decision which would constitute a</p>
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	binding legal instrument. Incidentally, broadly the same wording is also adopted in paragraph 19 of the Draft Guidelines.
Zain	
<p>Zain agrees with the proposed conditions including the 5 months' timeframe and would like to have the same timeframe adopted for complaints raised pursuant to the Competition Guidelines.</p> <p>In relation to paragraph 37 of the Draft Guidelines, Zain argues that TRA should have some flexibility to grant an extension where this is genuinely required such as in cases where data is not readily available for example in the case of Call Data Records which are typically archived after a year.</p> <p>Zain further refers to paragraph 40 of the Draft Guidelines and states that it would be willing to provide all third parties' related information as long as it does not breach any non-disclosure agreements or any applicable national law.</p>	<p>The TRA has already addressed this issue in its earlier response.</p> <p>The TRA has already addressed this issue in its response to Batelco's similar comment. TRA will consider all requests on their merit and where it genuinely believes that the request is justified, an extension will be granted.</p> <p>Naturally TRA would expect that all licensees would at all time act in accordance with the provisions of the law.</p>



Question 3: Do you agree with the proposal to introduce alternative dispute resolution mechanisms (only for disputes) as stated in section 2.4?	
Batelco	
Batelco states that it is always willing to consider other forms of dispute resolution mechanisms where appropriate.	
Viva	
Viva agrees with the TRA proposal.	
Zain	
Zain agrees with the TRA proposal.	



Question 4: In particular do you think that mediation may be another means of effectively resolving disputes?	
Batelco	Batelco agrees as long as the level of evidence is not overly complex.
Viva	Viva agrees with the TRA proposal.
Zain	Zain agrees that mediation is the best method for effectively resolving disputes and comments that it believes that TRA as the ideal mediator for disputes between licencees.



Question 5: Are there any specific circumstances where you consider that the use of mediation would be effective?	
Batelco	
	Batelco agrees that mediation could be effective as long as the parties are willing to try other methodologies and as long as the level of evidence or nature of issues is not overly complex.
Viva	
	Viva believes that the chances are there to reach a resolution by mediation which could lead to shorter timeframes. Viva however contends that should informal negotiations lead to a resolution, then any penalties for licence breach should not be waived.
	TRA agrees that in the event of a severe breach of a telecoms licence or the telecoms law, then the provisions of Article 35 of the telecoms law would apply, independently of the outcome of any dispute. No change to the Draft Guidelines is required.
Zain	
	Zain states that mediation would be best applicable where regulations, laws or commercial agreements cannot be referred to solidly.



Question 6: Are there other dispute resolution mechanisms that would be useful as a means of resolving disputes?	
Batelco	
Batelco remarks that the parties to a dispute could agree in advance to resolve the dispute using alternative methods (without describing what these methods could be).	TRA agrees and will therefore not propose anything other than that which was included in the consultation document.
Viva	
N/A	
Zain	
Zain states that nothing is as useful as mediation.	



Question 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?	
Batelco	<p>Batelco agrees in principle that an informal approach would be preferable to prolonged and resource intensive proceedings. Batelco however, expresses concern that although "without prejudice" discussions may work in respect of TRA's operations under the guidelines, there is a risk that these can still be disclosed in the event of subsequent or parallel court proceedings.</p> <p>TRA is appreciative of Batelco's concerns but however reminds Batelco that all parties to a dispute would have to first agree, on a case by case basis, to the mediation process. In the event that a party feel uneasy, then that party may reject the opportunity to seek such a compromise.</p>
Viva	<p>Viva agrees with TRA's proposal.</p>
Zain	<p>Zain disagrees and recommends that the informal stage could be omitted overall from the process.</p> <p>TRA does not agree with Zain's recommendation. This notwithstanding, TRA will not force the</p>



	<p>parties to a dispute to adopt the informal stage and that as such any party will be free to reject this option.</p>
<p>Question 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?</p>	
<p>Batelco</p>	
<p>Batelco suggests that more time be allowed for informal discussions to continue if progress has been registered and that the parties each receive a copy of dispute raised during the informal stage in order to respond to any allegations.</p>	<p>TRA believes that the 10 working day period should be adequate but it will take on board Batelco's suggestion and factor in a 5 working day extension where it feels that real progress has been registered and that there is a realistic chance of obtaining a settlement. Provided that such an extension will only be granted where all the parties to the dispute have agreed to the same. TRA will only share a copy of the dispute received once the Formal Stage has commenced. Prior to that, the TRA will only provide a summary of the issue and the proposed remedy. The party to a dispute will have the opportunity to respond</p>



	formally to any allegation at that stage of the process.
Viva	
	Viva agrees with TRA's proposal.
Question 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.	
Batelco	
	<p>Batelco suggests that TRA should request the undertaking raising the dispute to disclose all correspondence and minutes of any meetings between the parties.</p> <p>In relation to paragraphs 53 and 54 of the Draft Guidelines, Batelco queries whether in the event that a submission is rejected for lack of adequate information, the TRA would accept the same case if the party includes the additional information in a resubmission.</p> <p>Batelco questions why the parties will not be allowed to present written submissions during the informal stage.</p> <p>TRA disagrees and will leave it to the individual parties to determine what evidence they should submit. Clearly TRA will only consider the evidence that has been submitted in the proceedings and accordingly it is in the parties' best interest to submit all necessary documents.</p> <p>The TRA confirms that it would accept the resubmission of the case. To be clear, the TRA would not review any case in respect of which a decision or award has been made. The Dispute Resolution Guidelines will be amended to clarify this point.</p>



<p>Batelco states that it disagrees with the proposal that TRA's 5 month timeframe should start only "when the TRA is satisfied that the required information has been provided" because this may be interpreted quite broadly. Batelco argues that TRA's 5 month timeframe should commence after the dispute has passed the initial filter when TRA has confirmed receipt of the dispute.</p> <p>Batelco has asked for clarity as to when the TRA will request a confidential version of the dispute submission.</p> <p>Batelco referred to paragraph 10.65 of the FLAG arbitration award and asked TRA to consider having competing functions of the TRA to be handled by "different and discrete personnel or units".</p> <p>Batelco also seeks clarity as to how a draft determination</p>	<p>TRA considers that the lack of written submissions should eliminate the risk of such written submissions being used against the parties at a later stage. TRA is hopeful that this would consequently lead to the parties being more open about their respective positions which would in turn be more conducive towards facilitating a resolution at Step 3.</p> <p>Whilst the TRA does not agree with Batelco's proposal it does agree that the wording may be interpreted broadly. Accordingly it will give itself 2 working days to ask for additional information (if necessary). The party submitting the complaint must submit the information as soon as possible but the 5 month timeframe will only commence once the information requested is received. It is therefore in that party's best interest to provide the information sooner rather than later. The Dispute Resolution Guidelines are amended to reflect this change.</p> <p>TRA agrees with Batelco that clarity is required and the Dispute Resolution Guidelines will be amended. TRA requires that the non-confidential version be submitted at the same time as the confidential version.</p> <p>TRA notes that in that paragraph, the tribunal also</p>
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<p>would be presented for comment and remarks that there does not appear to be a "committee" evaluation stage comprising of member of the TRA and where appropriate, an outside expert. Batelco also asks for the inclusion of a Step 6 which would allow for the submission of written and oral representations and counter-representations from both parties.</p>	<p>stated "... or at least for TRA personnel not to engage in collaborative with one party in a potentially contentious manner, in a form which they would not unhesitatingly disclose to the other party." TRA acknowledges that this requirement is in line with the <i>audi alteram partem</i> principle – one of the principles of natural justice – and as such will strictly align its conduct with this requirement.</p> <p>TRA does not agree that an additional step is required. Indeed, Step 4 already allows for the possibility of a further round of cross-submissions (see paragraph 64 of the Draft Guidelines). Moreover the parties will have the opportunity to comment on the draft determination of a dispute. As stated in the Draft Guidelines, the parties will have 14 calendar days to submit the same. The draft determination will be forwarded to all parties simultaneously and the parties will be required to submit their comments to the TRA. No cross-submissions at that stage will be made but the TRA will consider the submissions it has received.</p>
<p>Viva</p>	
<p>Viva disagrees that the informal stage would not be documented. Viva suggests that the informal stage</p>	<p>TRA has already addressed this point earlier in its response to Batelco's comment. While TRA will</p>



<p>should be led by TRA to ensure that each party's inputs are matching with the verbal conversation to avoid any type of misunderstanding and miscommunication.</p> <p>Viva agrees with the wording adopted in paragraph 58 of the Draft Guidelines.</p> <p>Viva states that if upon completion of the process outlined in the Dispute Resolution Guidelines, TRA established that a licensee is in breach, then "the formal jurisdictions shall be flowed in the sequenced order Law/License/Decision/Order.</p>	<p>be leading the informal stage, it does not agree that its role should be to ensure such conduct because ultimately the settlement would have to be agreed to by all parties to the dispute and not forced upon any one party.</p> <p>TRA wishes to point out that if a breach of a licence or the law is established, then notwithstanding the outcome of the dispute, TRA would take action according to the telecoms law and specifically in relation to a severe breach it shall proceed with an Article 35 order.</p>
<p>Zain</p>	
<p>Zain agrees with the proposed procedure except for the adoption of the informal stage.</p>	<p>TRA has already commented on this point in its comments to the answers for Question 7.</p>
<p>Question 10: Do you agree with the TRA's proposals regarding transparency? If not please give your reasons.</p>	
<p>Batelco</p>	
<p>Batelco states that it has no specific objection to the</p>	



transparency proposals.	
Viva	
Viva agrees with TRA's proposals.	
Zain	
Zain agrees with TRA's proposal but that mediation cases should not be made available to the public.	The Draft Guidelines make it clear that the publication of disputes, their resolution, together with the reasons for the decision will be made at Step 5. Where the dispute does not proceed to Step 5 (but is curtailed at Step 3) TRA will not publish the outcome of the settlement.



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Annex 2: DISPUTE RESOLUTION GUIDELINES IN RELATION TO:

- (i) **DISPUTES BETWEEN LICENSEES AND**
- (ii) **COMPLAINTS AGAINST LICENSEES PURSUANT TO CHAPTER 17 OF THE LAW**



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25 August 2014

LAD 0814 127



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SECTION 1 Executive Summary – Purpose of the Guidelines

- 1 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.
- 2 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 2010.¹ Accordingly, issues such as consumer protection, harmful interference, abuse of dominance, or unfair end-user terms and conditions are not covered by these Guidelines.
- 3 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.
- 4 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.
- 5 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.
- 6 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

¹ <https://www.tra.org.bh/EN/pdf/CompetitionGuidelines.pdf>



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- The remedies available to the TRA in any given case.
- 7 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 Document, the TRA lists the information required for the purposes of submitting a dispute and for submitting a complaint.
- 8 The procedures have as their objective the aim 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.
- 9 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.
- 10 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.
- 11 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.



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- 12 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.
- 13 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?

- 14 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 industry². 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.
- 15 With this in mind, the TRA has introduced 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 Directive³.
- 16 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.

² Emphasis added.

³ 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.



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- 17 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.
- 18 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.

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, a licence, a regulation, or order which TRA is entitled to enforce.	Obligation must arise under an identified law, decision, a licence, a regulation, or order 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,	Examples: discounts in breach of cost orientation



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breaches of Reference Offer obligations.	obligation.
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- 19 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



2.2 Investigating a dispute or complaint

- 20 In order to ensure that the dispute or complaint is resolved in a timely manner, the TRA believes 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.
- 21 The TRA requires 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.
- 22 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



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- In the case of a complaint, issue a decision on the conduct of the licensee who is the subject of the complaint.
- 23 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.
- 24 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.
- 25 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.
- 26 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.
- 27 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.⁴

2.3 Implications of the new procedure

- 28 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.

⁴ 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.



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- 29 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.⁵
- 30 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 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.
- 31 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.
- 32 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.
- 33 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.
- 34 The TRA believes that information sought under a formal information request should be provided within 5-15 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.

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



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- 35 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.
- 36 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

- 37 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.
- 38 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, unless extended by the TRA, will not exceed the period of 10 working days. TRA will only extend the period by a further 5 working days where it feels that real progress has been registered and that there is a realistic chance of obtaining a settlement. Provided that such an extension will only be granted where the two parties have agreed to the same.



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SECTION 3

RESOLUTION PROCEDURES

3.1 The various steps in the dispute resolution process

39 The steps in the dispute resolution procedure and associated timeframes are as follows:

Step 1 – Submission Requirements

40 Stakeholders are expected to make adequate, well-reasoned submissions supported by evidence.

41 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.

42 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.

43 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.

44 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.⁶

Step 2 – TRA Confirmation

45 Upon receipt of the hard copy of the dispute/complaint submissions, the TRA will confirm receipt of the submission within one working day.

⁶ Naturally a dispute cannot be anonymous.



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- 46 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, will assess the adequacy of the information provided, and the legal basis for the dispute or complaint.
- 47 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. The Party may however, resubmit the case and include the requisite documentation as part of that resubmission. The TRA will accept such resubmission for consideration but in so doing this will be considered as a new case and the process will recommence, starting from Step 1.

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

- 48 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 commence from the working day following the date of issuance by the TRA of the confirmation set out in paragraph 47 above. The TRA may decide to extend the timeframe by a further period of 5 working days where it feels that real progress has been registered and that there is a realistic chance of obtaining a settlement. Such an extension will only be granted where the two parties have agreed to the same.
- 49 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.
- 50 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



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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.

- 51 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.
- 52 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.
- 53 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

- 54 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, within two working days, inform the party concerned. The submitting party must submit the lacking information as soon as possible. The timeframe of five months will only commence once that information has been received by the TRA.
- 55 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. The non-confidential version should be submitted simultaneously with the confidential version. If only one version is submitted, the TRA will consider that version to be the non-confidential version, irrespective of what is included by the text of the submission by the submitting party.



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- 56 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.
- 57 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.
- 58 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.
- 59 In general, parties to the dispute will have **fourteen calendar days** to submit their comments to the draft determination of the dispute.
- 60 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

- 61 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.
- 62 The determination will not preclude any of the parties to the dispute from making an appeal in accordance with any applicable legislation.



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- 63 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

- 64 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.



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SECTION 4

FORMAT FOR SUBMITTING A DISPUTE AND/OR A COMPLAINT

65 Submissions should be made to:

The General Director

LAD@tra.org.bh

Telecommunications Regulatory Authority

P.O. Box 10353

Manama

Kingdom of Bahrain

- 66 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"
- 67 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.
- 68 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,



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	<p>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.</p>
Scope of dispute	<p>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.</p>
Legal basis for the dispute	<p>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.</p>
Attempts to resolve the dispute	<p>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.</p>
Impact of the dispute	<p>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.</p>
Proposed remedy	<p>The outcome desired by the complaining Party</p>



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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.



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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 Telecommunications 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



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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.



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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:



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(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.



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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.



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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

