

This is an unofficial translation and is provided here for information purposes only. Reliance may only be placed upon the official Arabic version.

Decision No. 59/2020 amending some provisions on Decision No. 70/2013 on Ex-post Regulations (Anti-competitive Behavior)

Pursuant to the Telecommunications Regulatory Act promulgated by the Royal Decree No. 30/2002 and;

The Executive Regulation of the Telecommunications Regulatory Act issued by Decision No. 144/2008 and;

The Ex-post Regulations (Anti-competitive Behavior) issued by Decision No. 70/20130 and;

The approval of the Board of Directors of the Telecommunications Regulatory Authority and;

Based on the exigencies of the public interest;

It is resolved:

Article 1: The text of Article 4 of the Ex-post Regulations (Anti-competitive Behavior) referred to shall be replaced by the following text:

Article (4) Complaints

The Authority may, at its own initiative or based on a complaint by a concerned party, initiate an investigation as to whether any actions or activities of a licensee could prevent or restrict competition including the abuse of a dominant position, entering into agreements or the provision of anti-competitive facilities or violate the Ex-ante obligations in accordance with the Competition Complaints Procedures set out in the Annex attached to these Regulations”.

Article 2: An annex setting out the Competition Complaints Procedures shall be added to the cited Ex-post Regulations (Anti-competitive Behavior) as attached.

Article 3: This Decision shall be published in the Official Gazette and shall come into force from the day following its date of publication.

Issued on: 24/ Zhul Qaaddah/1441 AH
Corresponding to: 16/July/2020

Mohammed bin Hamad Al-Rumhi
Chairman, Board of Directors
Telecommunications Regulatory Authority

Annex on Competition Complaints Procedures

First: Filing of a Complaint

1. The Complaint shall be submitted in accordance with the format prepared by the Authority for this purpose.
2. The Complaint shall be submitted in both the non-confidential and confidential versions. If only one version is submitted, it will be considered as the non-confidential version.
3. Upon submission of the Complaint, the Authority requires that the Complainant shall:
 - (i) provide complete statement of facts and allegation(s) on the Respondent;
 - (ii) provide a legal basis for the Authority to intervene;
 - (iii) determine the relevant market in which the behavior of the Respondent is alleged to be anti-competitive in nature;
 - (iv) clearly state the impact of the alleged behavior or action on the Complainant, other licensees and consumers;
 - (v) submit sufficient factual evidence to support its Complaint;
 - (vi) clearly state the remedies it is seeking from the Authority and;
 - (vii) submit a signed statement by its CEO or a senior officer, who shall not under any circumstances be below the position of Vice President, that due care has been taken to ensure that the Complaint and the evidence submitted are correct and complete.

The Authority may, at its discretion, exempt the Complainant from submitting some of these statements and documents if the public interest so requires.

Second: Review of Complaint

1. Upon receipt of the Complaint, the Authority shall assess whether the submission is in line with the requirements set out in Clause 3 of this Annex. Within ten (10) working days of its receipt of the Complaint, the Authority may:
 - (i) admit a Complaint for further investigation by notifying the Complainant where, prima facie, it is found to be in compliance with these procedures;

- (ii) decide, in particular, not to admit the Complaint for further investigation if it is found to be trivial, incorrect, frivolous, misconceived, incomplete, insufficiently documented or not in compliance with these procedures;
- (iii) admit the Complaint in principle and request additional information from the Complainant within five (5) working days. In such a case, the Complaint shall be admitted from the date of the Authority's receipt of the required information. If the Complainant fails to submit the information requested by the Authority within the specified period, the Complaint shall be deemed rejected.

Third: Investigation

1. The Authority may decide not to initiate any formal investigation where the Respondent has resolved the issue with the Complainant within ten (10) working days of notifying the Respondent's of the Complaint.
2. Where the Authority decides to initiate a formal investigation, the Authority may formally notify the Respondent of the Complaint lodged against it and may, at the request of the Complainant, choose not to disclose its identity.
3. The Respondent shall submit its Reply to the Complaint within seven (7) working days unless another period is determined by the Authority.
4. The Authority may, at any time during the investigation, on its own initiative or based on a request by Parties of the Complaint, decide to:
 - (i) request any additional information, documentation or evidence from the Complainant, the Respondent, or any third parties.
 - (ii) require any party to appear before it, at a specified time and place, to answer questions relating to any matter that the Authority reasonably believes to be relevant to the investigation.
 - (iii) hold oral hearings for the parties.
 - (iv) consider a request made in writing to extend the deadline for submitting Reply, additional information or appearing before it.
 - (v) take any other action it considers necessary to investigate a Complaint.
5. The Authority may investigate a Complaint even where the Complainant no longer wishes to pursue the Complaint.

Fourth: Resolving the Complaint

1. Without prejudice to the Authority's right to issue a final decision on the Complaint, the Authority may, during the course of investigation, issue urgent interim orders or instructions in order to prevent serious, irreparable damage to licensees, third parties, consumers, or competition in the Sultanate.
2. Within ninety (90) working days after admitting a Complaint or initiating an investigation on its own motion, the Authority will take one of the following actions:
 - (i) Discontinue the investigation and inform all the relevant parties accordingly if it transpires that the Respondent's behavior is unlikely to be anti-competitive in nature or in breach of its ex-ante obligations.
 - (ii) Issue a decision against the offending party if it appears from the investigation that there is a behavior from any party that is considered, from the viewpoint of the Authority, to be anti-competitive or in breach of the ex-ante obligations.
 - (iii) Extend the Investigation period if the circumstances and complexity of a Complaint require more time.
3. The Authority shall notify the Complainant of the decision issued on its Complaint and may also notify all the relevant parties with a redacted version of the Decision after removing any confidential information.
4. The Authority may publish the Decision on its website or any other media.

Fifth: Confidentiality

1. Subject to any confidentiality obligations imposed by the law, any party may request in the course of an investigation to consider some information as confidential, and may request the Authority not to disclose such information. The Authority may accept or reject such a request and the Complainant may in case of rejection retract such documentation designated as confidential and in such a case the Complainant cannot invoke it in the Complaint.
2. Any party that considers some of its information as confidential shall provide its documentation in two versions; a redacted version to be shared with other relevant parties and another confidential version, clearly marking the pages or parts for which confidentiality is claimed.

3. The Authority may, at its discretion, allow a party to review confidential information subject to limiting the use of such confidential information for the purpose of investigation only.