



Regulatory Procedures

Ex Post Competition Safeguards

Version 1.1

30 September 2010

Telecommunications Regulatory Authority (TRA)
P O Box 26662, Abu Dhabi, United Arab Emirates (UAE)
www.tra.gov.ae



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Version 1.1 - 30 September 2010**

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1. Legal Reference

- 1.1 Article (12) of Federal Law by Decree No. (3) of 2003, as amended (the “**Telecommunications Law**”) establishes the Telecommunications Regulatory Authority (the “**TRA**”) as the competent body to oversee the telecommunications sector in the UAE.
- 1.2 Additionally, Article (14)4 of Federal Law by Decree No. (5) of 2008 amending the provisions of the Federal Law by Decree No. (3) of 2003 specifically grants to the TRA the power to, issue regulations, instructions, resolutions and procedures, “*Organizing and ensuring competition in the telecommunications sector...*”

2. Purpose and Scope

- 2.1 The purpose of this Regulatory Procedure is to institute a framework for the investigation by the TRA of anti-competitive practices in the relevant telecommunications markets in the UAE, in accordance with the *Competition Safeguards Regulatory Policy, Version 1.1*. This Regulatory Procedure sets out the procedure by which the TRA will investigate potential anti-competitive breaches of the TRA’s Regulatory Framework and deliver its findings.

3. Definitions

- 3.1 The terms, words, and phrases used in this Regulatory Procedure shall have the same meaning as are ascribed to them in the Telecommunications Law unless this Regulatory Procedure expressly provides for otherwise, or the context in which those terms, words and phrases are used in this Regulatory Procedure requires otherwise. For the purposes of this Regulatory Procedure, the following terms and words shall have the meanings ascribed to them below:
 - 3.1.1 **Complainant** shall refer to a natural or juridical person who communicates an allegation or suspicion of anti-competitive behaviour to the TRA.



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- 3.1.2 Entity** shall have the same meaning as defined in the TRA's *Competition Safeguards Regulatory Policy*.
- 3.1.3 Rulings** shall refer to findings of fact, conclusions of law, and interpretations made by the TRA of the meaning of regulatory instruments, in its review of a complaint, or in the course of an investigation commenced on its own initiative of potentially anti-competitive activity. Such Rulings shall be of a final or interim nature (as described herein) and may include the imposition of a financial penalty and behavioural obligations.
- 3.1.4 Respondent** shall refer to a natural or juridical person whose behaviour is alleged to be or suspected of being anti-competitive in nature.
- 3.1.5 Regulatory Framework** shall have the same meaning as defined in the TRA's *Competition Safeguards Regulatory Policy*.

4. Complaints

- 4.1** A Complainant may submit to the TRA a complaint in writing regarding an allegation of anti-competitive behaviour, which shall include, at a minimum:
- 4.1.1** a clear identification of the specific provisions of the Regulatory Framework which are alleged to have been violated;
 - 4.1.2** a statement of the relevant facts alleged in support of the allegation of anti-competitive behaviour; and
 - 4.1.3** any available evidence in support of those allegations of facts or the allegation of anti-competitive behaviour in general.
- 4.2** Subject to any contrary or additional instruction from the TRA, the substance and format of the complaint shall comply with that which is set out in Annex 1.
- 4.3** If the TRA determines that a complaint is improperly submitted or insufficiently substantiated, the TRA may reject the complaint, require that the Complainant make appropriate modifications to the complaint, waive any requirements for the complaint, or take any other action which it deems is appropriate.



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- 4.4** The TRA may keep the identity of the Complainant confidential where the TRA determines that:
 - 4.4.1** there are compelling reasons to do so, and
 - 4.4.2** keeping the identity of the Complainant confidential will not prejudice the Respondent's defence in the case at hand.
- 4.5** The TRA may determine whether or not to initiate an investigation in respect of any complaint in light of its assessment of:
 - 4.5.1** the quality and persuasiveness of the evidence submitted in any complaint and any other available information; and
 - 4.5.2** the relative importance of a complaint in terms of the effect of the alleged behaviour on Entities, consumers or the state of competition in the UAE telecommunications sector.
- 4.6** The TRA shall communicate in writing to the Complainant and any third party its intended course of action with respect to a complaint or suspicion of anti-competitive behaviour, along with its reasons for same, unless the TRA, at its discretion, believes that to communicate this would materially prejudice the intended course of action.
- 4.7** The TRA may, on its own initiative and without the submission of a complaint, commence an investigation of suspected anti-competitive behaviour.
- 4.8** In order to decide whether or not to initiate an investigation into potentially anti-competitive behaviour, either in response to a complaint or on its own initiative, the TRA may request additional information, documentation or oral testimony from the Complainant which the TRA may regard as relevant to its decision.

5. Investigation

- 5.1** If the TRA decides to initiate an investigation pursuant to this Regulatory Procedure, the TRA:
 - 5.1.1** shall promptly advise the Respondent of the TRA's suspicion or the Complainant's complaint of anti-competitive behaviour, unless the TRA, in its discretion, believes that this would materially prejudice the investigation;
 - 5.1.2** may request information, documentation or oral testimony from the Complainant, the Respondent or any third party in order to



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assess the validity of a complaint or the suspicion of anti-competitive behaviour, in accordance with the provisions of Article 6; or

5.1.3 may take any other action which the TRA considers necessary to assess the validity of a complaint or suspicion of anti-competitive behaviour.

5.2 If the TRA considers that the information received in a complaint or the information gathered in its investigation is sufficiently indicative of anti-competitive behaviour, the TRA shall notify the Respondent in writing:

5.2.1 of the alleged behaviour and the relevant provisions of the TRA's Regulatory Framework which are alleged or suspected to have been violated;

5.2.2 of the Respondent's prerogative to refute, defend itself against, or otherwise respond to the allegations by way of written or oral statements; and

5.2.3 of the date by which such Respondent shall make any written or oral submissions to the TRA concerning the matter.

6. Information Requests

6.1 Where the TRA requires a party to submit information pursuant to Article 5.1.2, the TRA shall issue a request for information to that party in writing, which shall include:

6.1.1 the general subject matter of the investigation;

6.1.2 the scope of the information requested; and

6.1.3 the date by which the submission of the requested information is required.

6.2 The information requested by the TRA pursuant to Article 5.1.2 may include but is not limited to any form of documentation, data, images or sounds (including those in digital or electronic format), processes, objects, and oral evidence.

6.3 The TRA, at its discretion, may consider a request in writing from a party for an extension of the date by which it is required to submit information pursuant to a request for information.



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- 6.4** The TRA may, at its discretion, require a party to provide additional information at any time during its investigation by submitting additional requests for information.

7. Ruling

- 7.1** The TRA shall endeavour to make its Ruling on a complaint within ninety (90) working days of receipt of all information and documentation necessary to complete its investigation.
- 7.2** The TRA shall promptly deliver a copy of the Ruling to the Respondent.
- 7.3** The TRA shall promptly deliver a copy of the Ruling to the Complainant and any relevant third party, unless:
- 7.3.1** the Ruling contains confidential or sensitive information; or
- 7.3.2** the TRA determines that delivery of a copy of the Ruling to the Complainant or any third party may cause unreasonable harm to any party.

In such cases, the TRA may, at its discretion, deliver a redacted version of the Ruling to the Complainant or third party as the case may be, in which the confidential, sensitive, or harmful information has been deleted or blacked out.

- 7.4** In making its Ruling, the TRA shall take into account all relevant information of which it is aware, which may include, where applicable:
- 7.4.1** the failure of any party to provide requested information;
- 7.4.2** the failure of any party to cooperate with the TRA's investigation;
- 7.4.3** any financial or other gain made by the Respondent as a result of the alleged anti-competitive behaviour;
- 7.4.4** the degree of harm caused to the Complainant, any third party, or consumers by the alleged anti-competitive behaviour;
- 7.4.5** the duration of the alleged anti-competitive behaviour;
- 7.4.6** any voluntary notice given to the TRA by the Respondent of its alleged anti-competitive behaviour;
- 7.4.7** the extent to which the Respondent cooperated with the TRA during its investigation;



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- 7.4.8** the extent to which the Respondent took steps before or during the investigation to cease the alleged anti-competitive behaviour; and
- 7.4.9** the extent and timeliness of any steps taken by the Respondent to remedy any harmful consequences of the alleged anti-competitive behaviour.
- 7.5** A Ruling rendered by the TRA shall include:
 - 7.5.1** the TRA's findings of fact;
 - 7.5.2** the TRA's determination of whether or not the Respondent has engaged in anti-competitive behaviour;
 - 7.5.3** the facts taken into consideration and relied upon by the TRA in reaching the determination; and
 - 7.5.4** the legal basis for the TRA reaching the determination, including any provisions of the Telecommunications Law or the Regulatory Framework.
- 7.6** Where the TRA has determined pursuant to Article 7.5.2 that the Respondent has engaged in anti-competitive behaviour, the Ruling may also include, where appropriate:
 - 7.6.1** an order that the Respondent cease such behaviour or take whatever action is necessary to avoid or remedy any harm caused or likely to be caused by the anti-competitive behaviour;
 - 7.6.2** a financial penalty to be imposed as a result of the anti-competitive behaviour; and
 - 7.6.3** any other remedy which the TRA considers is appropriate.
- 7.7** Where, despite a determination by the TRA that the Respondent has engaged in anti-competitive behaviour pursuant to Article 7.5.2, the TRA decides that no remedial action or punitive sanction is necessary, the Ruling shall include a statement to that effect.
- 7.8** The Ruling shall also include the facts taken into consideration and relied upon in imposing any order, penalty or remedy pursuant to Article 7.6, or in making a decision not to impose remedial action or punitive sanctions pursuant to Article 7.7.
- 7.9** Unless otherwise stated, the Ruling shall take effect on the day it is communicated in writing to the Respondent.



8. Interim Ruling

- 8.1** In cases of urgency due to the risk of serious or irreversible damage to Entities, third parties, consumers or the state of competition, the TRA may make an Interim Ruling to require whatever immediate relief may be necessary to avoid or correct a potential restriction, prevention, or distortion of competition.
- 8.2** If an Interim Ruling is requested by a Complainant, then the complaint shall clearly identify and set forth the specific grounds supporting the request including an explanatory description and quantification of the potential harm that may result if an Interim Ruling is not issued.
- 8.3** The TRA may issue an Interim Ruling of its own accord or in response to a specific complaint, regardless of whether or not that complaint contains a specific request for an Interim Ruling.
- 8.4** In making an Interim Ruling the TRA may consider less information and require less information from the Complainant, Respondent or third parties, as the case may be, than it would in issuing a Ruling.
- 8.5** Notwithstanding Article 8.4, all of the following points must be proven to the satisfaction of the TRA before an Interim Ruling is granted:
 - 8.5.1** the issue is urgent;
 - 8.5.2** the Complainant, Entities, third parties, consumers or the state of competition is threatened with a disadvantage which would not be possible or feasible to redress if the situation or actions leading to this disadvantage were allowed to continue; and
 - 8.5.3** the damage to the Complainant, Entities, third parties, consumers or the state of competition in the absence of the Interim Ruling is seen to be more serious in nature than the likely burden of such Interim Ruling on the Respondent.
- 8.6** In deciding whether to issue an Interim Ruling, the TRA may choose to consider any other relevant matters.
- 8.7** An Interim Ruling rendered by the TRA shall include:
 - 8.7.1** the TRA's preliminary findings of fact;



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- 8.7.2** the facts taken into consideration and relied upon in reaching the decision to issue an Interim Ruling in accordance with the provisions of Article 8.5;
 - 8.7.3** the TRA's preliminary determination of whether or not the Respondent has engaged in anti-competitive behaviour;
 - 8.7.4** the facts taken into consideration and relied upon in reaching the determination of whether or not the Respondent has engaged in anti-competitive behaviour; and
 - 8.7.5** the legal basis for reaching the determination, including any provisions of the Telecommunications Law or the Regulatory Framework.
- 8.8** Where the TRA has determined that the Respondent has engaged in anti-competitive behaviour pursuant to Article 8.7.3, the Interim Ruling shall also include, where appropriate:
- 8.8.1** an order that the Respondent cease any relevant behaviour or take whatever action is necessary to avoid or remedy any harm caused or likely to be caused by the anti-competitive behaviour;
 - 8.8.2** any other remedy which the TRA considers is appropriate.
- 8.9** The Interim Ruling shall also include the facts taken into consideration and relied upon in imposing any order or remedy pursuant to Article 8.8.
- 8.10** The TRA shall endeavour to issue its Interim Ruling, if appropriate, within twenty (20) working days of receipt of a complaint, and shall promptly thereafter deliver its Interim Ruling to the Respondent.
- 8.11** The TRA shall also deliver a copy of the Interim Ruling to the Complainant or any third party, unless:
- 8.11.1** the Interim Ruling contains confidential or sensitive information or
 - 8.11.2** the TRA determines that the delivery of the Interim Ruling to the Complainant or any third party may cause unreasonable harm to any party.

In such cases, the TRA may, at its sole discretion, deliver a redacted version of the Interim Ruling to the Complainant or any third party, in which the confidential, sensitive, or harmful information has been deleted or blacked out.



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- 8.12** Unless otherwise stated by the TRA, the Interim Ruling shall remain in effect until the TRA issues a Ruling or the TRA notifies the Respondent that the Interim Ruling has been withdrawn.
- 8.13** The issuance or non-issuance of an Interim Ruling shall be without prejudice to the TRA's authority to conduct an investigation and issue a Ruling.

9. Request to Review

- 9.1** Within fourteen (14) calendar days after the issuance of an Interim Ruling or Ruling, a Respondent or Complainant may submit to the TRA a request to review the Interim Ruling or Ruling.
- 9.2** A Respondent's Request to Review must, at a minimum, contain:
 - 9.2.1** new evidence of old facts alleged (where the TRA did not accept those facts), or new allegations of fact, which in each case were not made available to the TRA at the time of issuance of its Interim Ruling or Ruling;
 - 9.2.2** an explanation of why such evidence or facts were not previously made available or known to the TRA; and
 - 9.2.3** an explanation of the relevance of such evidence or facts to the Interim Ruling or Ruling as the case may be.
- 9.3** The TRA may, at its sole discretion, accept the request to review and consider the material submitted or reject the request to review and refrain from further consideration.
- 9.4** Unless otherwise determined by the TRA, the effective date of the TRA's Interim Ruling or Ruling as the case may be, shall not be delayed, suspended, or in any way affected by the submission of a request to review or the TRA's consideration thereof.

10. Continuing Violations

- 10.1** Each occasion on which a Respondent fails to comply with written instructions issued by the TRA requiring it to, comply with an order (including the payment of a financial penalty or the fulfilment of some



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other remedy), which order has been issued by the TRA as part of or pursuant to an Interim Ruling or Ruling, shall be considered a separate violation for which the TRA may impose additional sanctions or penalties.

11. Communications with the TRA

11.1 Save for oral evidence given in the course of an investigation, all complaints, statements, representations, and information submitted to the TRA in relation to an investigation under these Procedures shall be submitted in accordance with the stipulations described in Annex 1 to these Regulatory Procedures.

12. Confidentiality

12.1 When providing any written information to the TRA, the party providing that information shall clearly mark as “confidential” or “commercially sensitive”, any information that it claims is such. Further, where that information is included in a document which also contains other information which is not claimed to be “confidential” or “commercially sensitive”, the party providing that document to the TRA shall:

12.1.1 provide a full version of the document which the relevant information clearly marked as “confidential” or “commercially sensitive”; and

12.1.2 a separate redacted version of the full document, with the relevant information deleted or blacked out.

12.2 A request that particular information be treated as confidential or commercially sensitive, must substantiate, to the satisfaction of the TRA that each such item of information is confidential or commercially sensitive as the case may be, including the details of the nature and extent of the specific harm that would result if the relevant information were disclosed.

12.3 The TRA shall, at its discretion, decide whether the relevant information shall be treated as confidential or commercially sensitive.



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13. Effective Date

These Regulatory Procedures shall take effect on the date of issue.



ANNEX 1 – Format for Complaint

[Note: For the avoidance of doubt, the following requirements with respect to the form, format and substance of a complaint pursuant to the TRA’s Ex Post Competition Safeguards Regulatory Procedures shall also apply, as appropriate, to any other submission by any party to an investigation in this regard]

I. Delivery requirements for a complaint pursuant to the TRA’s Ex Post Competition Safeguards Regulatory Procedures

A complaint submitted pursuant to these Regulatory Procedures shall be submitted to:

Telecommunications Regulatory Authority “TRA”

C/o Director General

PO Box 26662

Abu Dhabi, United Arab Emirates

Tel: +971 2 6212222 Fax: +971 2 6212227

E-mail address to be provided upon request

The complaint shall be submitted to the TRA both electronically and in four paper copies, including annexes or attachments of the full text and if applicable a Redacted text.

II. Required contents of a complaint pursuant to the TRA’s Ex Post Competition Safeguards Regulatory Procedure

A complaint submitted pursuant to these Regulatory Procedures shall contain:



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A. Identifying information regarding the parties to the complaint:

1. Name of Person or Business submitting the complaint (if a business, the name of the person to whom TRA correspondence may be directed);
2. Address, telephone/fax numbers, mailing address;
3. Explanation of the character of the Complainant (if a business, specify the type(s) and volume of products or services rendered as well as the local, national and international range of operations);
4. Explanation of the character of the Respondent (if a business, specify the type(s) and volume of products or services rendered as well as the local, national and international range of operations); and
5. Explanation of the relationship between the Complainant and the Respondent (i.e. if the Respondent is a customer, supplier or competitor of the Complainant).

B. Legal basis for the complaint:

1. Reference to the specific section(s) of the TRA's Competition Safeguards Regulatory Policy which are alleged or suspected of having been violated;
2. Reference to any other relevant portion(s) of the TRA's Regulatory Framework which are alleged or suspected of having been violated; and
3. In either case, a clear summary of the reasons why a violation has been alleged or suspected of having occurred.



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C. Factual basis of the complaint:

1. Specific factual basis of the complaint, including but not limited to, the relevant products/services which are involved;
2. Dates and locations of relevant incidents;
3. Detailed chronological explanation of relevant course of events, including all relevant contacts between the parties to the complaint;
4. Identification of the relevant economic market(s), in which a violation has been alleged or suspected of having occurred;
5. Description (type and extent) of any relevant harm suffered by the Complainant;
6. Explanation and factual justification for any relevant urgency which should be considered by the TRA;
7. Description of any remedy sought by the Complainant;
8. All relevant evidence supporting the suspicion/allegation of anti-competitive activity as well as all relevant evidence supporting any claim of urgency; and
9. Identifying information of any third parties which can corroborate the Complainants' claims as well as an explanation of the evidence and information which may be supplied by such third party (if applicable).



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D. Justifications for request to maintain confidentiality of Complainant and any information supplied with respect to the complaint:

1. Detailed explanation of potential harm which might be caused by the exposure of the identity of the Complainant;
2. Detailed explanation of the potential harm which might be caused by the exposure of any information provided in support of a complaint and the source thereof;
3. The TRA notes that confidentiality requests may prevent the TRA from fully investigating a complaint and, as such, the TRA may determine the appropriateness of a request and require that certain information be revealed to interested parties;
4. Blanket statements covering entire complaints and supporting documentation will not be accepted.

E. Declaration by Complainant or Officer of the Company

1. The following affirmation must accompany any complaint or responsive submission and shall be presumed to extend to any evidence or supporting documentation provided by the relevant entity during the course of the TRA's investigation:

To the best of my knowledge and belief, the information contained herein, any accompanying documentation as well as any information/documentation later submitted in connection with this matter is truthful, complete and accurate.

Signed:

Title/Position in Company:

Date:



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- F. Unless otherwise specified by the TRA, submissions by the Respondent or any other party to the complaint shall, as closely as possible follow the form and format described above and shall, within the scope of the complaint, specifically address the substantive claims and factual/evidentiary basis contained therein.

- G. The TRA may, at its discretion, modify the required form, format and substance of the complaint, supplemental or responsive submissions or any other documentation submitted in the course of an investigation.