



Consumer Protection Regulations

ANNEXE 2 COMPLAINTS REGARDING MARKETING AND COMMUNICATIONS PRACTICES

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CONSUMER PROTECTION REGULATIONS

ANNEXE 2

COMPLAINTS REGARDING MARKETING AND COMMUNICATIONS PRACTICES

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1 Introduction

- 1.1 As competition in the telecommunications sector grows, the TRA anticipates a healthy degree of competition between Licensees in their marketing and communications practices. However, the TRA does not anticipate nor condone violations of the provisions of the Consumer Protection Regulations V1.0, dated [dd mmm 2011] and any successors thereto.
- 1.2 Any Licensee which believes that another Licensee's marketing and communications practices are in violation of the Consumer Protection Regulations may submit a complaint to the TRA in accordance with the procedures set out herein.
- 1.3 In the event that the TRA accepts a complaint regarding the marketing and communications practices of a Licensee, the TRA will inform that Licensee immediately and invite that Licensee to make representations in its defence.

2 Complaint Procedure

2.1 Preparation and submission of Complaint

2.1.1 The Complainant shall prepare a fully documented complaint to include, as a minimum:

- (a) The name, address and contact details of the Complainant;
- (b) A description of the complaint;
- (c) A description of the alleged damage caused by the alleged violation;
- (d) Specific references to the provisions of the Consumer Protection Regulation together with a narrative as to why, in the opinion of the complainant, those provisions have been breached;
- (e) All relevant supporting information including photographs, documents, scans, photocopies, videos as appropriate.¹ The complainant may not submit general references or descriptions in the hope that the TRA will know what the complainant is referring to.

Noting the provisions of sub-article 2.2.6, the Complainant may wish to redact certain confidential information in the documented complaint. In which case, it is the responsibility of the Complainant to submit two versions of the complaint:

¹ In circumstances where a complaint is regarding a specific advertisement, it is essential that a legible clear copy of the particular advertisement is provided in support of the complaint.

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- *a confidential version – to be marked “Confidential – for TRA use only”. The confidential version shall highlight, but not render unreadable, any information which the Complainant considers to be confidential; and*
- *a redacted version – to be marked “Redacted –to be shared with xxxxxx”. It is the responsibility of the complainant to ensure that all such confidential information is rendered unreadable.*

2.1.2 The complainant may submit the complaint at any of the TRA’s official points of contact.

2.1.3 The TRA will acknowledge receipt of the complaint.

2.2 Review and acceptance of the Complaint

2.2.1 It is accepted wisdom that a marketing message may mean different things to different people. This is particularly true when considering the context in which the marketing message is viewed. One Licensee reviewing the marketing messages of another Licensee is likely to view the marketing message more narrowly and critically than the average person in the street. Thus, the TRA recognises that this is an imperfect science. Nonetheless, the TRA will at all times strive to be balanced and impartial in its review of complaints submitted under this procedure.

2.2.2 In the first instance, the TRA will assemble committee of at least five members of TRA’s staff, drawn from different disciplines. The object of forming such committee is to view the complaint from various perspectives and to obtain the most balanced view possible.

2.2.3 Any complaint which, in the majority opinion of the committee, is incomplete, frivolous or capricious, or is simply designed to damage the interests, standing and good name of a Licensee will be rejected immediately and the complainant will be notified accordingly.

2.2.4 Having reviewed all of the submitted material, each committee member will be asked his/her opinion on the complaint and whether he/she believe that there is, or may be, a violation of the Consumer Protection Regulations. The Committee will vote, by simple majority, as to whether or not the TRA should accept or reject the complaint. The majority vote will prevail.

2.2.5 In the event that the committee votes to reject the complaint, the complainant will be notified accordingly and the TRA will consider the matter closed.

2.2.6 In the event that the committee votes to accept the complaint, the Licensee being the subject of the complaint will be notified

immediately and a full copy of the complaint (redacted if appropriate) will be provided to that Licensee. The Licensee will be invited to make representations and provide submissions in its defence. The licensee shall be given a period of five [5] working days to provide such submissions.

2.3 Analysis of the Complaint

2.3.1 Having accepted the complaint, the TRA will wait for the stipulated time for the Licensee referenced in 2.2.6 above to make its submissions. If the Licensee fails to make a submission within the stipulated time, the TRA will proceed without further reference to that Licensee.

2.3.2 During the analysis of the complaint, the TRA may provide specific instructions to any Licensee. Such instructions may include an order to temporarily desist in repeating the particular marketing communication or practice or any other initial remedy that the TRA considers to be appropriate under the circumstances.

2.3.3 The TRA committee will analyse the full details of the complaint and any representations submitted by the Licensee who is alleged to be in breach of the Consumer Protection Regulations. The committee will work with open-mind and in an impartial manner and will consider such questions as:

- (a) The standing of the complainant and the likely perspective in which the complainant views the market communication or practice being the subject of the complaint;
- (b) The submissions of the Licensee against whom the complaint is made;
- (c) The perspective(s) in which Consumers are likely to view the particular marketing or communications practice and the message that is likely to be given to consumers;
- (d) The probability that an average consumer would be misled or confused by the marketing or communications practice;
- (e) The truthfulness of the marketing or communications practice;
- (f) The likely effect of the marketing or communications practice on Consumers and/or the likely effect on competition in the relevant market;
- (g) The likely damage caused by the marketing or communications practice on Consumers and/or the complainant.

2.3.4 The committee shall use such tools, systems, procedures and methods, as it feels appropriate in the analysis of the complaint. This may include but is not limited to taking opinion polls, taking external



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advice, or requesting further details from the complainant or any Licensee.

2.3.5 The TRA will use its best endeavours to reach a decision within three [3] working days of receiving all input. It is noted here that the time-scale will be heavily influenced by the nature and complexity of the case and whether the committee required further input from external parties.

2.3.6 During the analysis of the complaint the complainant and the concerned Licensee shall make all reasonable efforts to assist the analysis as instructed and required by the TRA. It may be detrimental to the interests of a party if that party fails to provide such assistance as the TRA might reasonably request.

3 Reporting the outcome

3.1 The TRA will provide a report of its analysis. The said report will be in writing and will record the TRA's decision and the reasons for making that decision. The report will be provided to the complainant and the concerned Licensee and a copy of the decision will be published on the TRA's website.

3.2 The TRA reserves the right to imposes any sanction, or order any remedy that the TRA considers to be appropriate and in accordance with the TRA's Regulatory Framework in the event that the TRA determines that a Licensee has violated the provisions of the Consumer Protection Regulations.