

## **How Complaints Related to Sections 7K to 7N of the Telecommunications Ordinance are Handled by OFTA**

This guide sets out the procedures for complaints which are related to sections 7K to 7N of the Telecommunications Ordinance (Cap. 106) (“the Ordinance”) or any licence condition relating to these sections. The sections prohibit anti-competitive practices, abuse of dominant position, misleading or deceptive conduct and discriminatory practices. The following explanation aims to give the industry and interested parties an understanding of the process and the relevant time frames involved.

### **Acknowledgement**

2. We will acknowledge receipt of a complaint in writing *within 3 working days*. The acknowledgement of receipt will include the contact information of the case officer handling the complaint to whom enquiries concerning the progress of the case may be made.

### **Preliminary Investigation**

3. We will conduct a preliminary investigation of the complaint upon the receipt of a detailed complaint. The preliminary investigation is intended to establish whether or not there is *prima facie* evidence to indicate that the case merits full investigation. It involves answering the following questions:

- Is the case within the scope of the provisions referred to above?
- Are there reasonable grounds for the Telecommunications Authority (“TA”) to believe that there may be an infringement of the Ordinance and/or the licence conditions?

4. If the complaint is not within the scope of sections 7K to 7N of the Ordinance or the competition-related provisions of the licences, we will consider whether it is still within the jurisdiction of the TA and if it is, the complaint will be dealt with by the appropriate section in Office of the Telecommunications Authority (“OFTA”). The complainant will be informed and given the contact information of the section that will continue to deal with the complaint.

5. To decide whether the case warrants a full investigation, we will examine the information provided by the complainant and/or relevant information currently

possessed by OFTA and/or available in the public domain e.g. published tariffs, media, website etc. During this stage, we may also approach the complainant and/or the subject of the complaint to seek information or clarifications, if necessary.

6. We aim to complete the preliminary investigation *within four weeks* from its initiation.

7. If the complaint is not substantiated in the preliminary investigation stage, we will notify the complainant in writing of the outcome. The case will be closed if the complainant does not lodge further comments or information *within 7 days* from notification.

8. If the TA is satisfied that the case merits full investigation, we will proceed with the case. Proceeding to a full investigation in no way implies that a view has been reached on the merits of the complaint.

### **Full investigation**

9. At this stage, we will advise both the complainant and the subject of the complaint in writing about the commencement of the investigation.

10. In all cases, we will invite the subject of the complaint to comment on the case and to provide any information that is relevant and required for the investigation. The subject of the complaint will be given sufficient time to respond, according to the complexity of the information sought. In addition, we will also consider whether any information or comments are required from third parties, such as other market participants.

11. There may be additional requests for supplementary and more detailed information and/or clarifications if the information obtained is incomplete or insufficient. When responses have been received from the subject of the complaint and/or any third parties, we will conduct a full analysis covering aspects of economic, legal and accounting issues etc. On completion of the investigation, the TA will decide whether there is sufficient evidence to establish a breach of the Ordinance and/or the licence conditions.

12. We will keep the complainant informed of the progress of the investigation. Currently, we strive to complete 80% of investigations *within 4 months* from the

initiation of the full investigation.

## **Outcome**

13. If a *breach is not established* after consideration of all relevant information available, the TA will set out his findings in a draft case summary and invite the subject of the complaint to provide comments *within 7 days*. Subject to any further information or comments received, the TA will finalize the case summary and close the case.

14. If a *breach is concluded* from the investigation, the TA will then set out his preliminary findings (with proposed actions/penalties if appropriate) in a draft case summary and invite the subject of the complaint to make representations, usually within a time limit of *at least 10 working days*. Possible remedies will be considered in parallel (for less complex cases) or at a later stage (for complex cases).

15. If the circumstances so require, there may be further correspondence with the subject of complaint or further opportunities may be given for the subject of the complaint to make representations, for example if the draft case summary is subsequently amended to include new evidence. The TA will then carefully consider all the representations made by the subject of the complaint before reaching a final decision.

16. In complex cases, it may take a two-stage approach to inform the subject of the complaint of the preliminary findings and the proposed actions/penalties. In the first stage, the subject of the complaint is informed of the preliminary findings and requested to make representations. In the second stage, the representations of the subject of the complaint will be taken into account and the penalties considered. We will then inform the subject of the complaint of the finalized findings and the proposed penalties, and request it to make further representations.

17. When the TA is satisfied that no more new information and/or factors justify revision of the findings and/or the proposed penalties, we will provide a copy of the finalised case summary to the subject of the complaint, and proceed to close the case. Before publishing the final decision, the TA will give the subject of the complaint (and other parties, if appropriate) an opportunity to make representations about the deletion of any commercially confidential material contained in the decision. The TA will consider such representations before deciding whether to make any such deletions, in order to balance the parties' commercial interests against the need to disclose the reasons for the decision.

18. When a case is finalized (whether or not a breach is concluded from the investigation), we will proceed to publish the case summary as a “completed case” in Complaint Cases of Consumer Focus and/or the Competition Decisions of Industry Focus on OFTA’s website as appropriate. We will highlight the publication of the case summary and the outcome under the “What’s New” section of OFTA’s website. We will inform the complainant and relevant parties of the outcome of the case when the case summary is published on OFTA’s website.

#### **Urgent or exceptional cases**

19. Where the conduct being complained about is still on-going and is alleged to continue to cause serious damage to consumers or competitors, the TA may consider taking urgent action within such time-scale as the circumstances warrant to deal with the complaint. As such, the TA retains the discretion not to adhere to the time-scales set out above and will determine a time-scale which he deems appropriate in the circumstances. In exceptional cases, the TA may decide not to follow all the procedures set out above, but in those circumstances, reasons will be provided for the departure from the usual practice.

**Office of the Telecommunications Authority**  
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