
TELECOMMUNICATIONS ORDER, 2001

CODE OF PRACTICE FOR THE TELECOMMUNICATIONS SECTOR (TELECOMMUNICATIONS CODE)

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TELECOMMUNICATIONS ORDER, 2001

CODE OF PRACTICE FOR THE TELECOMMUNICATIONS SECTOR (TELECOMMUNICATIONS CODE)

In exercise of the powers conferred by Section 26(1) of the Telecommunications Order 2001, the Authority for Info-communications Technology Industry of Brunei Darussalam (“Authority”) hereby issues the following Code of Practice for the Telecommunications Sector (“Telecommunications Code”):

1 PRELIMINARY

1.1 Citation and commencement

The Telecommunications Code may be cited as the Code of Practice for the Telecommunications Sector (“Telecommunications Code”). The Telecommunications Code shall commence on a date to be appointed by the Authority.

1.2 Purpose of the Telecommunications Code

1.2.1 The Telecommunications Code is intended to promote the long-term interests of End-Users of Telecommunications Services in Brunei Darussalam through:

1.2.1.1 Promoting effective and sustainable competition in the telecommunications sector;

1.2.1.2 Promoting any-to-any connectivity; and

1.2.1.3 Encouraging economically efficient use of, and investment in, the infrastructure by which Telecommunications Services are supplied.

1.2.2 The Authority shall endeavour to achieve these goals by exercising its powers and duties under the Telecommunications Code.

1.3 Definitions

In this Telecommunications Code, unless the context otherwise requires –

1.3.1 “**AITI Order, 2001**” means the Authority for Info-communications Technology Industry of Brunei Darussalam Order, 2001.

1.3.2 “**Aggrieved Party**” or “**Aggrieved Person**” means any Market Player that is aggrieved by the Authority’s decision or direction under the Telecommunications Code, or any party (other than a Market Player) that is aggrieved by the Authority’s decision or direction made under the Telecommunications Code.

1.3.3 “**Authority**” means the Authority for Info-communications Technology Industry of Brunei Darussalam (also known by the acronym AITI) established under Section 3 of the AITI Order, 2001.

- 1.3.4 **“Codes”** refer to the Telecommunications Code, Competition Law Code, General Duties Code and any other codes of practice or standards of performance, advisory guidelines and Directions which are issued by the Authority in relation to the same as outlined in Section 1.6 (a), (b), (c) and (d) of this Telecommunications Code.
- 1.3.5 **“Competing Market Players”** means Market Players that provide, or have the potential to provide, competing Infrastructure or Telecommunications Services in Brunei Darussalam.
- 1.3.6 **“Competition Law Code”** means the Code of Practice for Competition Law in the Telecommunications Sector.
- 1.3.7 **“Customer”** means a Market Player which has purchased or consumed another Market Player’s Telecommunications Services or Infrastructure.
- 1.3.8 **“Direction”** means an order issued by the Authority to a Market Player to act or not act as directed. It has the same meaning, benefits and conditions, as specified in Section 27 of the Telecommunications Order 2001.
- 1.3.9 **“End User”** means a business or residential subscriber or user of any Telecommunications Services in Brunei Darussalam.
- 1.3.10 **“End User Service Information”** or **“EUSI”** consists of all information that a Market Player obtains as a result of an End User’s use of any Telecommunications Services provided by the Market Player. This includes, but is not limited to, information regarding:
- 1.3.10.1 The End User’s usage patterns of any Infrastructure or Telecommunications Services;
 - 1.3.10.2 The End User’s telephone numbers, network configurations, IP addresses or any other data that will reasonably allow a third party to discern the identity of the End User;
 - 1.3.10.3 The End User’s location information; and
 - 1.3.10.4 The End User’s billing name, identification/registration number, address and credit history.
- 1.3.11 **“General Duties Code”** means the Code of Practice for General Duties in the Telecommunications Sector.

- 1.3.12 **“Infrastructure”** means the underlying systems, networks and facilities which enable the provision of telecommunications services, including all buildings, lands, structures, machinery, equipment, cables, ducts, cable raisers, poles and lines.
- 1.3.13 **“Licensee”** means a person to whom a licence has been granted under the Telecommunications Order, 2001;
- 1.3.14 **“Market Player”** means any person, undertaking or enterprise, incorporated or unincorporated and licensed or unlicensed in Brunei Darussalam or otherwise, that is carrying on or is capable of carrying on a business or is engaged in any commercial activity related to products or services within the telecommunications sector, and such other undertakings or enterprises having a measurable effect in Brunei Darussalam. This includes, but is not limited to owners or operators or providers of Infrastructure or Services for the telecommunications sector, as well as any other undertaking or entity whose activities are deemed to have an effect within the telecommunications market in Brunei Darussalam.
- 1.3.15 **“Market Review Guidelines”** means the guidelines on how the Authority will apply the market review process outlined in Section 2.3 of the Telecommunications Code.
- 1.3.16 **“Relevant Market”** means an economic market that has been found susceptible to ex-ante regulation as prescribed in the Market Review Guidelines.
- 1.3.17 **“Request for Enforcement”** means the application to the Authority by any Market Player or End User or Customer to investigate an alleged contravention of the Telecommunications Code, or any other codes of practice or standards of performance, advisory guidelines and Directions which are issued by the Authority in relation to the same by a Market Player.
- 1.3.18 **“Significant Market Power”** (SMP) has the same meaning as Dominance and means a situation in which one undertaking (Single SMP) or two or more undertakings (Joint or Collective SMP) enjoy a position of economic strength which enables it/them to behave to an appreciable extent independently of competitors, customers and ultimately of consumers in a market within Brunei Darussalam or elsewhere.
- 1.3.19 **“Tariff(s)”** means prices, terms and conditions intended to be applied in the provision of Telecommunications Services to a Customer or End-User and to be filed with the Authority.
- 1.3.20 **“Telecommunications”** has the meaning as defined in the Telecommunications Order 2001, and means a transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature by wire, radio, optical or other electro-magnetic systems whether or not such signs, signals, writing,

images, sounds or intelligence have been subjected to rearrangement, computation or other processes by any means in the course of their transmission, emission or reception.

1.3.21 **“Telecommunications Code”** means the Code of Practice for the Telecommunications Sector as set out in Section 1.1 above.

1.3.22 **“Telecommunications Services”** has the meaning as defined in the Telecommunications Order 2001 and means any service for telecommunications but excludes any broadcasting service.

1.3.23 **“Working Day”** are the days between and including Monday through Friday, and do not include public holidays and weekends.

1.4 Legal Effect of the Telecommunications Code

1.4.1 All Market Players duly licenced in Brunei Darussalam or otherwise must comply with the applicable provisions of the Telecommunications Code.

1.4.2 The obligations contained in the Telecommunications Code are in addition to those contained in the Telecommunications Order, 2001, as well as any other regulations, licences, codes of practice or standard of performance, advisory guidelines or Directions issued by the Authority.

1.4.3 To the extent that any provision of the Telecommunications Code is inconsistent with the provisions of the AITI Order, 2001, and/or the Telecommunications Order, 2001, the provisions of the AITI Order, 2001 or the Telecommunications Order, 2001 shall prevail.

1.4.4 To the extent that the Telecommunications Code is inconsistent with the provision of any other codes of practice or standards of performance or licence terms and conditions issued by the Authority in relation to the same, whether currently in force or implemented in the future, the terms of the Telecommunications Code shall prevail.

1.4.5 If any provision of this Telecommunications Code is held to be unlawful, all other provisions will remain in full force and effect.

1.5 Application of the Telecommunications Code to Market Players

Unless otherwise stated, the provisions of the Telecommunications Code shall apply to all Market Players and such other undertakings or enterprises given the impact in Brunei Darussalam. This means application of the code is not limited to licensees but also includes those who can affect the functioning of Telecommunications Services in Brunei Darussalam.

1.6 Regulatory principles

1.6.1 The following regulatory principles provide the foundation for and will guide the Authority's implementation of:

1.6.1.1 the Code of Practice for the Telecommunications Sector (Telecommunications Code);

1.6.1.2 the Code of Practice for Competition Law in the Telecommunications Sector (Competition Law Code);

1.6.1.3 the Code of Practice for General Duties in the Telecommunications Sector (General Duties Code); and

1.6.1.4 any other codes of practice or standards of performance, advisory guidelines and Directions which are issued by the Authority in relation to the same.

1.6.2 Technology neutrality

The Authority will take a technology neutral approach.

1.6.3 Reliance on market forces

Competitive markets typically provide consumers with a wide choice at reasonable prices. Therefore, to the extent that the telecommunications sector structure allows, the Authority will place primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct.

1.6.4 Promotion of effective and sustainable competition

The Authority recognises the effectiveness of market forces in promoting consumer welfare and will take resolute measures, in line with the goals stated in Section 1.2 of the Telecommunications Code, to promote and maintain effective and sustainable competition.

1.6.5 Proportionate regulation

1.6.5.1 To the extent that a given market is not or not yet competitive, ex ante regulatory intervention may be needed. Where this is the case, the Authority will seek to impose regulatory requirements that are the least intrusive required to deal with the competition problem(s) identified, including issuing a Direction to a Market Player or all Market Players, or advisory guidelines, where appropriate, to clarify the procedures and standards that it will use to implement the Telecommunications Code.

1.6.5.2 Regulatory intervention may be necessary because:

- (a) the level of competition in the relevant markets for the provision of Infrastructure or Telecommunications Services is limited or non-existent;
- (b) certain Market Players in those markets have Significant Market Power and may abuse this position; and
- (c) competitive market forces alone may not always achieve all public interest goals.

1.6.5.3 The Authority may intervene in any market within its jurisdiction where necessary to, inter alia:

- (a) ensure that Market Players fulfil their obligations to serve the long term interests of end users as provided in the Telecommunications Code;
- (b) protect Customers and End Users, from improper business practices;
- (c) prevent Market Players and their Affiliates, whether individually or collectively, from abusing their market positions in a manner that unreasonably restricts competition in any market within the Authority's jurisdiction;
- (d) prevent Market Players from entering into agreements that unreasonably restrict competition in any market within the Authority's jurisdiction;
- (e) prevent consolidations involving Market Players that are likely to unreasonably restrict competition in any market under the Authority's jurisdiction;
- (f) promote competition by ensuring that Market Players have non-discriminatory access to support Infrastructure or essential Telecommunications Services; and
- (g) otherwise safeguard the long term interests of end users.

1.6.6 Transparent and reasoned decision making

The Authority will apply the provisions of the Codes in a transparent manner. The Authority will also conduct consultations in connection with material issues, as it deems necessary or appropriate in its sole discretion. Where consultations are called for, then except to the extent that information submitted to the Authority is confidential, proprietary, commercially sensitive or raises law enforcement or

national security concerns as determined by the Authority, the comments may be made available to the public. Where it deems feasible and appropriate, the Authority will endeavour to make its decisions available to the public and clearly explain the basis for its actions, with any confidential information appropriately redacted.

1.6.7 Avoidance of unnecessary delay

1.6.7.1 Recognising the need for Market Players to respond rapidly to changing market forces, the Authority will strive to make all decisions pursuant to the Codes within the timeframes specified herein and, in any case, as soon as reasonably possible.

1.6.7.2 The Authority will not be responsible for any delays in its decision making due to a failure by Market Players to meet any regulatory requirement, direction and/or instructions in a timely manner.

1.6.8 Consultation with other regulatory authorities

The Authority, where feasible and appropriate, will consult with other regulatory authorities whether in Brunei Darussalam or elsewhere in order to facilitate the development of a consistent regulatory policy that promotes fair and effective competition and serves the public interest.

1.7 Modification of provisions

1.7.1 The Authority, where appropriate, will modify the provisions of the Codes to reflect changing market conditions. The Codes may be modified in the following manner:

1.7.1.1 The Authority will review the Codes at regular intervals. If such a review is conducted, the Authority may amend or modify relevant sections of the Codes based on the experience gained through the growth and development of competition among the telecommunications market in Brunei Darussalam. The Authority will also make any other changes it deems fit and necessary to achieve the goals of the Codes; or

1.7.1.2 The Authority may modify the Codes on its own initiative at any time.

1.7.2 In each case, the Authority may conduct consultations prior to adopting the modification.

1.8 Exemptions, waivers and suspensions

The Authority may, in its absolute discretion, grant any exemption or waiver and:

- 1.8.1 Exempt any Market Player or any specific categories of Market Players from, or waive the application of, all or any provisions of the Codes in accordance with the Telecommunications Order, 2001. An exemption or waiver shall be subject to such terms and conditions as the Authority may specify and may, without limitation, be on a one-time basis, temporary, permanent, for a fixed period or effective until the occurrence of a specific event. The Authority may conduct consultations prior to granting such exemption or waiver.
- 1.8.2 Waive or suspend any provision of the Codes that imposes an obligation on the Authority in any situation in which such action is necessary in the public interest.

1.9 Rule of construction

The Authority will interpret the Telecommunications Code in a manner that is consistent with the ordinary meaning of the terms used. In case of any ambiguity, the Authority will interpret the Telecommunications Code in the manner most consistent with the goals and regulatory principles as set out in the Telecommunications Code.

2 MARKET REVIEW

2.1 Introduction

- 2.1.1 The Authority will undertake a market review to determine whether sector specific regulation is required to move a telecommunications market or markets towards effective competition or to constrain the behaviour of a Market Player with Significant Market Power in any Relevant Market so as to act in the long-term interests of end users.
- 2.1.2 Different obligations may be imposed on Market Players where a Market Player is determined to have Significant Market Power in a Relevant Market. The Authority will determine whether a Market Player has Significant Market Power in a Relevant Market by conducting a market review.

2.2 Initiating a market review

- 2.2.1 The Authority will initiate a review of a market:
 - 2.2.1.1 either on its own or in conjunction with the review of other markets, within five years of the previous market review of that market; or
 - 2.2.1.2 when it determines there have been material changes in the market that warrant a review.

2.2.2 The Authority may initiate a review of a market:

2.2.2.1 in response to a request for a market review; or

2.2.2.2 at any time at its sole discretion.

2.3 The market review process

2.3.1 The market review process will be conducted according to the Market Review Guidelines.

2.3.2 The Authority will have the power to classify any Market Players as having Significant Market Power in a Relevant Market regardless of whether they hold a licence or whether they are incorporated in Brunei Darussalam or otherwise.

2.3.3 The Authority will issue a Direction to Market Player(s) with Significant Market Power in Relevant Market(s) specifying the remedies with which they must comply.

3 GENERAL DUTY OF MARKET PLAYERS TO THEIR END USERS AND CUSTOMERS

Market Players must comply with the general duties as set out in the General Duties Code, in addition to those contained in the Telecommunications Order, 2001, the Telecommunications Code and in any related regulations, advisory guidelines, codes of practice or standards of performance issued by the Authority.

4 APPLICATION OF COMPETITION LAW

4.1 Specification and administration of competition law

The Authority will both specify and administer competition law in the telecommunications sector.

4.2 Competition Law Code

Competition law in the telecommunication sector is specified in the Authority's Competition Law Code. All market players must comply with the Competition Law Code.

4.3 Application of competition law

The Authority will determine, using the regulatory principles set out in Section 1.6 of the Telecommunications Code, when to apply remedies which result from conducting a market review as specified in Section 2 of the Telecommunications Code and when to apply the Competition Law Code.

5 ADMINISTRATIVE AND ENFORCEMENT PROCEDURES

5.1 Introduction

- 5.1.1 All provisions in this Section apply to all Market Players.
- 5.1.2 This Section describes the procedures and processes the Authority will use in administering the Codes.

5.2 Conciliation

- 5.2.1 Market Players may jointly request the Authority to provide conciliation to assist them to resolve any dispute arising out of their wish to work together while fulfilling their individual obligations as required of them by law, regulation, or Direction.
- 5.2.2 The Authority will provide conciliation at its discretion. The Authority's role in any conciliation will be to assist the parties to reach a mutually acceptable solution that is consistent with the Telecommunications Code.
- 5.2.3 Market Players requesting conciliation must submit to the Authority a joint statement describing the disputed issues and the position of each party on the disputed issues.
- 5.2.4 Market Players shall pay to the Authority any administrative fee imposed by the Authority in respect of the services rendered in this regard.

5.3 Dispute resolution

- 5.3.1 Market Players are required to resolve their disputes in accordance with the dispute resolution provisions of their respective agreements, or, in the absence of any agreement, through good-faith commercial negotiations.
- 5.3.2 Market Players may request the Authority to resolve disputes arising from one or other of the Market Player's obligations to fulfil requirements placed upon it.
- 5.3.3 The Authority may, at its discretion, resolve disputes between Market Players brought to its notice. The procedures for requesting the Authority to resolve disputes, the process for submitting petitions and responses to the Authority by the parties in dispute and the standards that the Authority will apply to resolve disputes, will be specified in such guidelines as the Authority may issue from time to time.
- 5.3.4 Market Players shall pay to the Authority any administrative fee imposed by the Authority in respect of the services rendered in this regard.

5.4 Review for compliance or enforcement actions for contravention

5.4.1 For the purposes of conducting a review for compliance or enforcement action, Section 18 of the AITI Order, 2001 and Section 62 of the Telecommunications Order, 2001 confers upon the Authority the powers to investigate and to request for information.

5.4.2 Right of investigation

The Authority's officers will be given the right where it conducts reviews for compliance or commences an enforcement action:

5.4.2.1 To require the production of any document or information as it deems necessary to aid in its review or enforcement action;

5.4.2.2 To have full and free access, at all reasonable times in the day, to all buildings, places, books, document and other papers and take possession of any equipment, books, documents or papers which may be interfered with or destroyed or which may be required as evidence in proceedings;

5.4.2.3 To require attendance of persons acquainted with the investigation or case; and

5.4.2.4 To interview persons acquainted with the investigation or case.

5.4.3 Power to require information

5.4.3.1 In carrying out its duties and functions, the Authority may, by notice in writing, require a Market Player or other party to produce specified documents or to provide specified information by a specified timeframe whether under the provisions of the Codes or such other prevailing relevant legislation or regulation.

5.4.3.2 The Authority may also request a party to participate in an interview or require a party to allow the Authority to physically inspect its accounts, documents, records, facilities and operations.

5.4.3.3 All information submitted to the Authority by any Market Player or other party must, to the best of that Market Player's or party's ability and knowledge, be accurate, complete and responsive. At the time it submits the information, the Market Player or party must submit a statement in a form acceptable to the Authority, certifying that it has satisfied this obligation.

5.4.4 Any failure by a Market Player to comply with the Authority's requests for information, or any destruction, disposal, falsification or concealment of requested documents, constitutes a contravention under Section 62(6) of the Telecommunications Order, 2001.

5.4.5 Review for compliance by the Authority

5.4.5.1 The Authority may commence a review for compliance if it wishes to ascertain if the Market Player is in compliance with all the requirements of the Codes, or where the Authority believes that the Market Player may have contravened the Codes but does not have sufficient grounds to immediately commence an enforcement action.

5.4.5.2 The Authority may issue requests for information under a review for compliance to gather more information before deciding whether or not there are grounds to commence an enforcement action.

5.4.5.3 At the end of its review for compliance, the Authority may decide to initiate enforcement action on its own motion.

5.4.5.4 Alternatively, the Authority may decide not to take any enforcement action at the end of its review for compliance. In such case, the Authority could either decide to publish its findings or to close the review for compliance without taking any further action.

5.4.6 Requests for enforcement by an interested party

5.4.6.1 Any Market Player or End User or Customer that has been injured or who has suffered damages and/or loss, or is likely to be injured or suffer damages and/or loss, as a direct result of the contravention of any provision of the Codes by a Market Player, may submit a written request asking the Authority to take enforcement action against that Market Player.

5.4.6.2 A request for enforcement must contain:

- (a) the alleged facts
- (b) the names and addresses of all parties and the general nature of the alleged contravention including a description of the type of injury, loss and/or damage and of the amount, if any, that the requesting party has suffered or stands to suffer should the contravention persist;
- (c) a description of the contravening conduct, including, specific reference to the breach of any terms and conditions of the licence(s), provisions of the relevant codes of practice, standards

of performance, and/or provisions of the relevant legislation including regulations, by the contravening conduct that the requesting party is alleging; and

- (d) any other documents containing information that may be necessary to prove the allegations of fact contained in the request.

5.4.6.3 Where it is not possible for the Market Player to provide supporting documents or information as required above, that party must provide a statement explaining why it cannot provide the supporting documentation. The Market Player must then explain the basis for its request if no evidence is available.

5.4.6.4 Any request for enforcement must include a declaration that:

- (a) the requesting party is of legal age, or if the requesting party is not of legal age, his or her guardian will be accountable for the request;
- (b) a statement confirming that the requesting party has the required authorisations to submit the request;
- (c) the requesting party has used his or her best efforts in collecting the facts;
- (d) the facts alleged are true to the best of the requesting party's knowledge; and
- (e) the requesting party believes, in good faith, that the facts alleged, if proven, would constitute a contravention of the terms and conditions of the licence(s), provisions of the relevant codes of practice, standards of performance, and/or provisions of the relevant legislation including regulations as cited in the request.

5.4.6.5 Where the Authority receives two (2) or more requests for enforcement against the same Market Player which arise out of the same action or course of action by that Market Player, the Authority may consider the requests to take enforcement action in a single consolidated proceeding.

5.4.6.6 Without prejudice to the generality of Section 5.4.6.5 above, the Authority reserves the sole right to determine whether it should proceed with enforcement action or undertake a review for compliance, without in effect commencing an enforcement action.

5.4.7 Enforcement action initiated by the Authority

The Authority may commence enforcement action on its own initiative against a Market Player that it believes has contravened any provision of the Codes.

5.4.8 Notification to Market Players

The Authority will provide a written notification to the Market Player that the Authority is initiating a review for compliance or an enforcement action against that Market Player. In each instance of whether a review for compliance or an enforcement action is being taken, the notification will clearly indicate the specific provisions of the Codes or that the Authority is reviewing or believes the Market Player has contravened. In the case of an enforcement action, the notifications will describe in reasonable detail the basis for the Authority's belief, which may include the results of its investigations.

5.4.9 Opportunity to respond

The Market Player will have fifteen (15) Working Days to respond in writing to the Authority's notification. The Authority may extend this period in appropriate cases. For each query or allegation which the Market Player disputes, the Market Player's response must provide a clear statement, supported by documents, affidavits, or other relevant materials, providing the basis on which the Market Player disputes the allegation.

5.4.10 Request for additional information

After reviewing the response submitted by the Market Player, the Authority may request the Market Player to provide additional information in regards to the review for compliance or enforcement action.

5.4.11 Effect of failure to submit required information

5.4.11.1 In any proceeding under the Codes, if a party fails or refuses to submit information required by the Telecommunications Code or under such other prevailing relevant legislation or regulation, or requested by the Authority, within the timeframe specified, the Authority will base its decision on the information provided by any other party to the proceeding (if any) and on the best information available to the Authority from whatever source derived.

5.4.11.2 Where a party requesting the Authority to take a particular action fails to respond accurately and completely to the Authority's information request within the timeframe specified, the Authority may refuse to take the action requested.

5.4.12 Issuance of the Authority's decision

5.4.12.1 The Authority will carefully consider the matters set out in the responses submitted by the Market Player before issuing its decision, whether in relation to a review for compliance or an enforcement action.

5.4.12.2 In the case of an enforcement action, the Authority will seek to issue its decision within sixty (60) Working Days of receiving all necessary information required by the Authority. Where appropriate, the Authority may, by written notice to the Market Player before the expiry of the sixty (60) Working Day period, extend the time by which the Authority will issue its decision.

5.4.12.3 In all other cases, the Authority has the discretion to respond or to issue a decision or make public any of its findings.

5.5 Issuance of interim directions to cease and desist

5.5.1 Where the Authority considers it necessary to act urgently to prevent damage from being caused to a particular industry or to Customers or End-Users as a result of the alleged contravention, the Authority may issue an Interim Direction to a Market Player.

5.5.2 In determining whether to issue an Interim Direction, the Authority will consider whether:

5.5.2.1 there is prima facie evidence that the Market Player has contravened any terms and conditions of the licence, provisions of the relevant codes of practice, standards of performance, and/or provisions of the relevant legislations including regulations;

5.5.2.2 continuation of the Market Player's conduct is likely to cause serious harm to other Market Players, End Users or the general public;

5.5.2.3 the potential harm from allowing the Market Player to continue its conduct outweighs the burden on the Market Player of ceasing the conduct; or issuance of the Interim Direction is in the public interest.

5.6 Enforcement measures

5.6.1 In the event that the Authority concludes that the Market Player has not complied with or has contravened any provision of the Codes, the Authority may take such enforcement measures as it considers appropriate.

5.6.2 In the case of a review for compliance, no penalties can be imposed on the Market Player unless the review for compliance has been converted to an enforcement action.

5.6.3 All errant Market Players must comply with the Authority's directions and/or instructions in the following enforcement measures:

5.6.3.1 Warnings

- (a) The Authority may issue a warning to errant Market Players and may also choose to publicise such warnings.
- (b) The Authority need not provide reasons for choosing to publicise its warning. The warning will contain a statement of the Authority's basis for concluding that the Market Player has not complied with or has acted in contravention of any provision of the Codes, but will impose no further sanction.
- (c) Errant Market Players shall heed any instructions in the warnings issued by the Authority.

5.6.3.2 Directions to cease and desist

- (a) In issuing a direction to cease and desist, the Authority shall consider the factors stated in Section 5.5.2. above.
- (b) Directions may require the Market Player concerned to modify or cease its conduct. Directions may also require positive action, including reporting periodically to the Authority on certain matters.
- (c) Errant Market Players shall comply with any of the Authority's directions to cease engaging in conduct that is, or if continued will constitute, a contravention of any provision of the Telecommunications Order, 2001 or any code issued by the Authority.

5.6.3.3 Remedial actions

- (a) On directing Market Players to take specific remedial actions, the Authority may require the Market Player to make specific commitments, which should be in written form. This will make it easier for the Authority to monitor and review the progress of the remedial actions, particularly where the remedial actions may be implemented in phases.
- (b) The Authority retains full discretion whether to require or accept any commitments given.

- (c) Where the commitments are likely to affect parties other than the Market Player performing them, the Authority would give such parties an opportunity to present their views to the Authority within fifteen (15) Working Days. If necessary, after the receipt of the responses, the Authority may hold a meeting with the Market Player performing such commitments to inform it of the general nature of responses received and to indicate whether the Authority considers that changes are required to the commitments before the Authority would consider approving them.
- (d) Where the Market Player performing the commitments in question offers revised commitments including significant changes, the Authority would allow another opportunity for any interested third parties (including complainants, if any) to express their views within a time limit of at least seven (7) Working Days.
- (e) Errant Market Players shall comply with the Authority's directions to take specific remedial action or actions, which may include:
 - (i) Mandating the sharing of Infrastructure or Telecommunications Services as applicable;
 - (ii) Mandating that a Market Player shares or supplies its Infrastructure or Telecommunications Services;
 - (iii) Mandating that a Market Player grants access to its Infrastructure or Telecommunications Services;
 - (iv) Mandating that the Market Player interconnects;
 - (v) Issuing injunctions to stop Market Players from carrying out any activity;
 - (vi) To recommend that a Market Player reviews its prices, terms and conditions, including its tariffs, and to make changes, as may be necessary;
 - (vii) Carrying out decisions related to the admissible changes in ownership structure; or
 - (viii) Mandating that a Market Player keep separate accounts for all or part of its business activities associated with the provision of Infrastructure or Telecommunications Services as applicable or otherwise.

5.6.3.4 **Compounds**

- (a) Section 67 of the Telecommunications Order, 2001 provides that certain offences may be compounded by the Authority.
- (b) In the case of a compoundable offence, the Authority may impose a fine of up to BND 1,000.00 to an errant Market Player.

5.6.3.5 **Financial penalties**

- (a) In imposing any financial penalty, the Authority has the following two objectives:
 - (i) To reflect the seriousness of the contravention; and
 - (ii) To deter Market Players from engaging in anti-competitive practices.
- (b) In relation to financial penalties, the Authority may require the payment, within a specified period, of a financial penalty of such amount not exceeding BND 1,000,000.00, as it thinks fit. This is set out in Section 8 of the Telecommunications Order, 2001.
- (c) Generally, in determining the quantum of the financial penalty to be imposed, the Authority will consider any aggravating factors. These factors include:
 - (i) Whether the contravention was serious;
 - (ii) Whether the contravention continued for an extended period;
 - (iii) Whether the contravention resulted in harm to third parties;
 - (iv) Whether the Market Player acted wilfully, recklessly or in a grossly negligent manner;
 - (v) Whether the Market Player has a previous history of contraventions or warnings; and
 - (vi) Whether the Market Player made any effort to conceal the contravention.
- (d) The Authority will also consider any mitigating factors when determining the quantum of the financial penalty to be imposed. These factors include:

- (i) Whether the contravention was minor;
- (ii) Whether the adverse consequences to third parties from the contravention were minor;
- (iii) Whether the Market Player took prompt action to correct the contravention;
- (iv) Whether the contravention was accidental; and
- (v) Whether the Market Player voluntarily disclosed the contravention to the Authority and co-operated with the Authority in its investigation.

Unless specific financial penalties are otherwise provided in the Telecommunications Code, the Authority may impose financial penalties according to Section 8(1) of the Telecommunications Order, 2001 on a Market Player that infringes any of the codes or standard of performance, licence conditions or directions issued by the Authority.

5.6.3.6 Suspension or cancellation of a licence under the Telecommunications Order, 2001

- (a) In serious cases where the Authority is satisfied that a Market Player has contravened, and is likely to again contravene, any provision of the Codes, the Authority may, instead of taking any of the enforcement actions specified in Section 5.6.3.1. to 5.6.3.5, cancel or suspend the relevant licence under Section 8(1) of the Telecommunications Order 2001, or reduce the period for which the licence is to be in force.
- (b) In the event of a cancellation or suspension by the Authority, the Market Player shall, within five (5) Working Days of the date of cancellation, suspension, revocation or termination, deliver the licence and any duplicate or replacement licence to the Authority.
- (c) The Authority may issue directions to the Market Player regarding the takeover of the licensed infrastructure and/or licensed service of the Market Player, and for action to be taken to migrate the Customers and End Users of the Market Player to another licensee.
- (d) The Market Player shall not have the right to seek a refund of the licence fee or any other fee paid in advance, whether in whole or in part.

5.6.3.7 Penalties against individuals

- (a) Penalties may be imposed according to Section 62(6) of the Telecommunications Order, 2001, on individuals who:
 - (i) Refuse to give access to, or assault, obstruct, hinder, or delay, an officer or employee of the Authority in the discharge of his lawful duties;
 - (ii) Wilfully misstate or without lawful excuse refuse to cooperate or give any information during an investigation;
 - (iii) Intentionally alters, suppresses, or destroys any document or information which he has been required by any order under Section 5 of this Telecommunications Code to furnish or submit to; or
 - (iv) Fail to comply with a lawful demand of an officer or employee of the Authority in the discharge of his duties.
- (b) Such individuals shall be liable on conviction to a fine not exceeding BND 5,000.00, or imprisonment for a term not exceeding twelve (12) months, or both, and in the case of a continuing offence, to a further fine not exceeding BND 50.00 every day or part thereof during which the offence continues after conviction.

5.7 Treatment of information

5.7.1 Confidential treatment of information

A party submitting information to the Authority, whether voluntarily, or pursuant to the requirements of the Telecommunications Code or a request from the Authority, may request that the information submitted be treated as confidential. Where feasible, all information for which a party is seeking confidential treatment must be provided in a separate annex. Alternatively, the requesting party must identify the specific document, or portion thereof, or other information for which confidential treatment is sought.

5.7.2 Standards governing grant of confidential treatment of information

5.7.2.1 The Authority will generally not accept requests to treat all information submitted as confidential. The Authority will grant a request for confidential treatment of information if the requesting party demonstrates, with reasonable specificity, that the information for which it requests confidential treatment contains commercially sensitive information (including information that is subject to a pre-

existing nondisclosure agreement with a third party), or that the disclosure of the information would have a material adverse impact.

5.7.2.2 The Authority considers information to be commercially sensitive if:

- (a) It is not otherwise available to the public; or
- (b) There is a reasonable possibility that its disclosure would cause harm to the party or otherwise provide a commercial benefit to the party's Competing Market Players.

5.7.2.3 For example, information that describes the disclosing party's business procedures, practices, plans or its assessment of market conditions or similar matters may be commercially sensitive.

5.7.3 **Notification of denial of confidential treatment of information**

5.7.3.1 If the Authority rejects a request for confidential treatment of information, the Authority will provide the party that submitted the information with the reason for its decision. Within seven (7) Working Days from the date of the Authority's rejection of the request for confidential treatment of information, the requesting party may either:

- (a) Request the Authority in writing to return the information, unless the information is otherwise generally available to the public, in which case the Authority will not have to consider such a request; or
- (b) Withdraw in writing its request for confidential treatment of information, in which case the Authority may consider, and where appropriate, disclose the information provided.

5.7.3.2 If the requesting party fails to respond to the Authority within the specified period, the Authority will deem the requesting party to have withdrawn its request for confidential treatment of information, in which case the Authority may consider, and where appropriate, disclose the information provided.

5.7.3.3 The Authority's decision not to grant confidential treatment does not excuse a party from complying fully with any obligation that it may have to provide complete and accurate information to the Authority.

5.7.4 **Claiming legal privilege over information**

5.7.4.1 A party submitting information to the Authority, whether voluntarily, or pursuant to the requirements of the Telecommunications Code or a request from the Authority, may claim legal privilege over the information. Parties may claim legal privilege over such information by

marking the documents as privileged or creating a special folder for such emails or electronic documents.

5.7.4.2 The effect of claiming legal privilege is to exclude such legally privileged materials and information from being seized or used during investigation.

5.7.5 **Standards governing grant of legal privilege**

5.7.5.1 The Authority will grant a request for claiming legal privilege if the requesting party demonstrates, with reasonable specificity, that the information for which it claims legal privilege was communication made between the requesting party and his professional legal adviser, in connection with, or in contemplation of, legal proceedings relating to any contravention.

5.7.5.2 Such professional legal advisers include:

- (a) Lawyers in private practice;
- (b) Foreign lawyers; or
- (c) In-house lawyers.

5.7.6 **Notification of denial of legal privilege**

5.7.6.1 If the Authority rejects a request for claiming legal privilege over information, the Authority will provide the party that submitted the information with the reason for its decision. Within seven (7) Working Days from the date of the Authority's rejection of the request for claiming legal privilege over information, the requesting party may either:

- (a) Request the Authority in writing to return the information, in which case unless the information is otherwise generally available to the public, the Authority will not consider this information in relation to the proceeding; or
- (b) Withdraw in writing its request for claiming legal privilege over information, in which case the Authority may consider, and where appropriate, disclose the information provided.

5.7.6.2 If the requesting party fails to respond within the specified period, the Authority will deem the requesting party to have withdrawn its request for claiming legal privilege over information, in which case the Authority may consider, and where appropriate disclose, the information provided.

- 5.7.6.3 The Authority's decision not to grant a request to claim legal privilege over information does not excuse a party from complying fully with any obligation that it may have to provide complete and accurate information to the Authority.

5.8 Application for decision

Market Players may apply to the Authority for a decision as to whether their agreement and/or conduct will be prohibited under the Competition Law Code. The seeking of a decision is not compulsory.

5.8.1 Notification for decision

- 5.8.1.1 A Market Player who is party to an agreement or to a conduct which the Market Player is of the view that it may infringe Sections 3 or 4 of the Competition Law Code, may notify the Authority of the agreement or conduct, or both, and apply to it for a decision.
- 5.8.1.2 On an application under this Section of the Telecommunications Code, the Authority may make a decision as to whether or not, in its view, the agreement or conduct has, or both the agreement and conduct have, infringed Sections 3 or 4 of the Competition Law Code.
- 5.8.1.3 If an agreement or conduct, or both to which the prohibition under Sections 3 or 4 of the Competition Law Code applies has been notified to the Authority under this Section, no penalty shall be imposed under Sections 3 or 4 of the Competition Law Code in respect of any infringement of the prohibition by the agreement or conduct, or both, which occurs during the period:
 - (a) Beginning with the date on which the notification was given; and
 - (b) Ending with such date as may be specified in a notice in writing given to the applicant by the Authority when the application has been determined.
- 5.8.1.4 The date specified in a notice under Section 5.8.1.3 (b) shall not be earlier than the date on which the notice is given.

5.8.2 Effect of decision

- 5.8.2.1 This section shall apply to an agreement or conduct, or both, if the Authority has determined an application under Section 5.8.1 of the Telecommunications Code by making a decision that the agreement or conduct has not, or both the agreement and conduct have not, infringed the prohibitions under Sections 3 or 4 of the Competition Law Code,

regardless of whether or not such agreement or conduct is, or both the agreement and conduct are, exempted by the Authority under the Telecommunications Order 2001, or any other regulations, licences or codes of practice issued by the Authority, or any generic competition laws.

5.8.2.2 The Authority shall take no further action in relation to the prohibitions under Sections 3 or 4 of the Competition Law Code with respect to an agreement or conduct, or both, to which this Section applies, unless:

- (a) It has reasonable grounds for believing that there has been a material change of circumstance since it gave its decision; or
- (b) It has reasonable grounds for suspecting that the information on which it based its decision was incomplete, false or misleading in a material particular.

5.8.2.3 No penalty may be imposed under Sections 3 or 4 of the Competition Law Code in respect of any infringement of the prohibitions under Sections 3 or 4 of the Competition Law Code by an agreement or conduct, or both, to which this Section applies.

5.8.2.4 The Authority may remove the immunity given by Section 5.8.2.3 if:

- (a) It takes action under this Section with respect to the agreement or conduct, or both, in one of the circumstances mentioned in Section 5.8.2.2; or
- (b) It considers that it is likely that the agreement or conduct, or both, will infringe the prohibitions under Sections 3 or 4 of the Competition Law Code.

If the Authority intends to remove the immunity, the Authority will give notice in writing to the party on whose application the decision was made that it is removing the immunity as from the date on which the notice is given.

5.8.2.5 If the Authority has reasonable grounds for suspecting that information:

- (a) on which it based its decision; or
- (b) which was provided to it by the applicant,

was incomplete, false or misleading in a material particular, the date specified in a notice under Section 5.8.2.4 may be earlier than the date on which the notice is given.

5.9 Application for leniency

- 5.9.1 Market Players will be able to apply to the Authority for leniency if they are a party to an agreement which is prohibited under Section 4 of the Competition Law Code.
- 5.9.2 The Authority may grant a reduction of up to a maximum of one hundred per cent (100%) of any penalties which would otherwise have been imposed, to a Market Player which has:
 - 5.9.2.1 Admitted its involvement in an infringement of Section 4 of the Competition Law Code; and
 - 5.9.2.2 Provided information or other form of co-operation to the Authority which significantly assisted, or is likely to significantly assist, in the identification or investigation of an infringement of Section 4 of the Competition Law Code by any other Market Players.
- 5.9.3 The Authority may grant different percentages of reductions to Market Players applying for leniency depending on:
 - 5.9.3.1 Whether the Market Player was the first to bring the suspected infringement to the attention of the Authority;
 - 5.9.3.2 The stage in the investigation at which an involvement in the infringement was admitted or information or other co-operation was provided; or
 - 5.9.3.3 Any other circumstances which the Authority considers appropriate to have regard to.

5.10 Consultation with other interested parties

In addition to obtaining information directly from the parties to a proceeding under the Telecommunications Code, the Authority may, where appropriate, conduct a public consultation to provide interested parties with an opportunity to comment on any proceeding. In those cases, in which the Authority does not conduct a public consultation, the Authority may nonetheless request comments from individuals or entities where appropriate. The Authority does not assume any obligation to consider any unsolicited comments.

5.11 Review of the Authority's decisions

The following procedures govern the review of the Authority's decisions under the Telecommunications Code:

5.11.1 **Reconsideration request**

5.11.1.1 Any Aggrieved Person, or any Aggrieved Party, may, within fourteen (14) days of the day on which the Authority renders its decision or issues a direction, request the Authority to reconsider its decision or direction.

5.11.1.2 Upon the expiry of the fourteen (14) day period specified in Section 5.11.1.1, the Authority will notify all relevant parties in the event it receives a reconsideration request.

5.11.2 **Procedures governing reconsideration request**

5.11.2.1 Aggrieved Market Players must present all relevant facts, and all relevant arguments, before the Authority renders a decision or issues a direction. An Aggrieved Market Player may not present new facts, or raise new arguments, for the first time in a Reconsideration Request if that Aggrieved Market Player:

- (a) could have presented the fact, or raised the argument before the Authority rendered its decision or issued its direction; and
- (b) cannot demonstrate that it had good cause for failing to do so.

5.11.2.2 The Authority generally will seek to issue its decision on the Reconsideration Request within thirty (30) Working Days of the receipt of the Reconsideration Request. In appropriate cases, the Authority may provide any interested party with an opportunity to file comments on the Reconsideration Request. In such cases, the Authority will similarly provide the Aggrieved Party that filed the Reconsideration Request with an opportunity to submit a final written response to the Authority. In such cases, the Authority will seek to issue a decision within thirty (30) Working Days of receiving all comments.

5.11.3 **Appeals**

Should the Aggrieved Market Player remain unsatisfied with the outcome of the Reconsideration Request, the Aggrieved Party may lodge an appeal under Section 72 of the Telecommunications Order, 2001, in writing to the Minister within fourteen (14) days of the Authority's reconsideration decision. The Minister will consider the appeal on a case-by-case basis and make his decision, which is final and cannot be further appealed.

5.11.4 **Reconsideration vs appeal**

5.11.4.1 Under the Telecommunications Order, 2001, an Aggrieved Market Player may proceed directly to appeal to the Minister at the first

instance without first submitting a Reconsideration Request to the Authority.

5.11.4.2 However, an Aggrieved Market Player may not make both a Reconsideration Request to the Authority and an appeal to the Minister in respect of the same enforcement decision or direction of the Authority. Where both a Reconsideration Request and an appeal have been made at the same time, the appeal to the Minister shall be deemed to be withdrawn.

5.11.5 Compliance pending review

5.11.5.1 Unless the Authority or Minister provides otherwise, where a reconsideration request is made to the Authority or an appeal is made to the Minister, the decision or direction which requires reconsideration by the Authority or which is appealed against shall be complied with until such time, if ever, as the Authority or the Minister reverses or modifies the decision or direction.

5.11.5.2 In considering whether to stay the effectiveness of a decision or direction pending review, the Authority will generally consider factors including the merits of the Reconsideration Request or Appeal, whether the potential harm to any person outweighs the benefits of allowing the decision or direction to go into effect and public interest.

5.12 The Authority's enforcement actions and decisions cannot be subject to suits

5.12.1 Save for the processes relating to appealing a decision by the Authority, no suit or other legal proceedings shall lie against the Authority for anything which is in good faith done or omitted to be done in the execution or purported execution of the Telecommunications Code.

5.12.2 No suit or other legal proceedings shall lie personally against any member, officer or employee of the Authority or other person acting under the direction of the Authority for anything which is in good faith done or intended to be done in the execution or purported execution of the Telecommunications Code.

6 REVOCATION, SAVINGS AND TRANSITIONAL

6.1 Introduction

6.1.1 Application

All provisions in this Section apply to all Market Players.

6.1.2 **Overview**

This Section sets out the savings provisions governing the implementation of the provisions of the Telecommunications Code.

6.2 **Savings provision**

Except as otherwise provided, and so far as it is not inconsistent with the provisions of the Telecommunications Code, any action, approval, decision, designation, direction, exemption and notification taken, granted, issued, made, published or approved by the Authority in relation to any matter under the prevailing licences and/or interconnection arrangements, will continue in effect and will be deemed to have been taken, granted, issued, made, published or approved by the Authority under the corresponding provisions of the Telecommunications Code.

6.3 **General transitional rules**

6.3.1 **Contraventions before the commencement date of the Telecommunications Code**

6.3.1.1 Subject to Section 6.3.2 of the Telecommunications Code, a person will not be found to be in contravention of any provision of the Telecommunications Code in respect of any agreement entered into, or act or conduct that occurred, before the commencement date of the Telecommunications Code. Rather, the person shall remain liable for any contravention under the prevailing licences and/or or interconnection arrangements in respect of such agreement, act or conduct, as if the prevailing licences and/or interconnection arrangements had not been revoked.

6.3.1.2 In this respect, any enforcement proceeding commenced before the commencement date of the Telecommunications Code may be continued and completed under the provisions of the prevailing licences and/or interconnection arrangements (as the case may be), as if the prevailing licences and/ or interconnection arrangements (as the case may be) had not been revoked. However, any right of reconsideration and appeal in relation to that proceeding shall be exercised, heard and determined under Section 5.11 of the Telecommunications Code.

6.3.1.3 Where the enforcement action is commenced after the commencement date of the Telecommunications Code, the procedures set out in Sections 5.4 through 5.12 of the Telecommunications Code shall apply to the enforcement action.

6.3.2 **Application of the Telecommunications Code to continuing agreements, act and conduct**

6.3.2.1 Subject to Section 6.3.1 of the Telecommunications Code, any agreement entered into or act or conduct that occurred prior to the commencement date of the Telecommunications Code, but which continues after the commencement date of the Telecommunications Code, will be governed by the terms of the Telecommunications Code from the commencement date of the Telecommunications Code. The Authority will not take enforcement action against a person under the prevailing licences and/or interconnection arrangements (as the case may be), as well as the Telecommunications Code for the same contravening agreement, act or conduct.

6.3.3 Existing proceedings at the commencement date of the Telecommunications Code

6.3.3.1 Without prejudice to Section 6.3.1 of the Telecommunications Code, any proceeding commenced before the commencement date of the Telecommunications Code, but which remains uncompleted after the commencement date of the Telecommunications Code, will be deemed to have been made under the corresponding provision of the relevant laws existing at the time, provided that the Authority is able to determine the proceeding in a manner that is consistent with the provisions of the Telecommunications Code.

6.3.3.2 Where the Authority is unable to determine a proceeding in a manner that is consistent with the provisions of the Telecommunications Code, the Authority will notify the parties within thirty (30) Working Days from the commencement date of the Telecommunications Code or such other further extended time and the proceeding shall be deemed withdrawn by the parties. In such an event, the parties may initiate a new proceeding under the relevant equivalent provision of the Telecommunications Code. Where necessary, the Authority may issue directions to the parties of any uncompleted proceeding to specify additional transitional rules for the purpose of determining such proceeding under the corresponding provision of the Telecommunications Code.

6.3.3.3 Where a proceeding commenced under the prevailing licences and/or interconnection arrangements (as the case may be) has been completed before the commencement date of the Telecommunications Code but any right of reconsideration and appeal is exercised after the commencement date of the Telecommunications Code, such right of reconsideration and appeal in relation to that proceeding shall be exercised, heard and determined under Section 5.11 of the Telecommunications Code.

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