
TELECOMMUNICATIONS ORDER, 2001

CODE OF PRACTICE FOR GENERAL DUTIES IN THE TELECOMMUNICATIONS SECTOR (GENERAL DUTIES CODE)

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TELECOMMUNICATIONS ORDER, 2001

CODE OF PRACTICE FOR GENERAL DUTIES IN THE TELECOMMUNICATIONS SECTOR (GENERAL DUTIES 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 to Regulate General Duties in the Telecommunications Sector (“General Duties Code”).

1 PRELIMINARY

1.1 Citation and commencement

The General Duties Code may be cited as the Code of Practice to Regulate General Duties in the Telecommunications Sector. The General Duties Code shall commence on a date to be appointed by the Authority.

1.2 Purpose of the General Duties Code

The purpose of the General Duties Code is to ensure the protection of End Users and Customers in their engagement with Market Players in Brunei Darussalam.

1.3 Definitions

The terms in the General Duties Code shall have the same meaning as defined in the Telecommunications Code.

1.4 Legal effect of the General Duties Code

1.4.1 All Market Players duly licensed in Brunei Darussalam must comply with the applicable provisions of the General Duties Code.

1.4.2 The obligations contained in this General Duties 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 General Duties Code is inconsistent with the provisions of the Telecommunications Order, 2001, the provisions of the Telecommunications Order, 2001 shall prevail.

1.4.4 To the extent that the General Duties 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 General Duties Code shall prevail.

1.4.5 Except for matters relating to competition law involving the telecommunications sector, nothing in this Section is intended to limit any right, including rights of recourse against a Market Player, that an End User may have under any applicable legislation.

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

1.5 **Application of the General Duties Code to Market Players**

Unless otherwise stated, the provisions of the General Duties Code shall apply to all Market Players and such other undertakings or enterprises as the Authority may designate, given the impact in Brunei Darussalam. The Authority will apply the provisions of the General Duties Code according to the regulatory principles specified in Section 1.6 of the Telecommunications Code.

1.6 **Rule of construction**

The Authority will interpret the General Duties 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 General Duties Code in the manner most consistent with the goals and regulatory principles as set out in the Telecommunications Code.

2 **GENERAL DUTIES OF ALL MARKET PLAYERS**

2.1 **Introduction**

All Market Players must comply with the duties as set out in this Section.

2.2 **Duty to comply with the Authority's Quality of Service standards**

Market Players must comply with any regulations, advisory guidelines, codes of practice or standards of performance issued by the Authority in relation to the quality of service standards. However, a Market Player and an End User or a Customer may agree in writing to a different quality of service standard. In such cases, the Market Player must clearly inform the End User and/or Customer of the service level that it will provide and the fact that it does not comply with any regulations, advisory guidelines, codes of practice or standards of performance issued by the Authority in relation to the quality of service standards. Such an arrangement may be captured in the form of service level agreements, operational level agreements or such other agreements. All Market Players must submit to the Authority a sealed copy, to maintain confidentiality, of all agreements entered into with an End User or a Customer pursuant to this Section, which may be reviewed by the Authority. The Authority reserves the right to declare invalid and unenforceable any agreement entered into pursuant to this Section.

3 GENERAL DUTIES OF ALL MARKET PLAYERS TO END USERS

3.1 Introduction

All Market Players must comply with the duties as set out in this Section when engaging with End Users.

3.2 Duty to prevent unauthorised use of EUSI

3.2.1 Market Players must take reasonable measures to prevent the unauthorised use of End User Service Information (EUSI).

3.2.2 A Market Player must adopt appropriate procedures to ensure that, unless the End User has provided prior consent, the Market Player will not use EUSI for any purpose other than:

3.2.2.1 Planning, provisioning and billing for any Infrastructure or services operated or provided by the Market Player;

3.2.2.2 Managing bad debt and preventing fraud related to the operation or provision of Infrastructure or Services;

3.2.2.3 Facilitating interconnection and interoperability between Market Players for the provision of any Infrastructure or Services;

3.2.2.4 Providing assistance to law enforcement, judicial or other government agencies; or

3.2.2.5 Complying with any regulatory requirement imposed by the Authority authorising the use of EUSI (for example, for the provision of directory assistance services, or to prevent the use of such information for activities such as spamming).

3.2.3 The Market Player must further ensure that, unless the End User has provided consent, the Market Player will not provide EUSI to any third party (including its Affiliates) for the purposes of developing and marketing any goods or services.

3.3 Duty to publish tariffs

A Market Player must publish the prices, terms and conditions on which it offers any services (including any offer on a trial basis) in a form available to the public, no later than the date on which the Market Player begins to provide the services.

3.4 Duty to provide services consistent with effective tariffs

A Market Player must provide Services on the prices, terms and conditions in accordance with the Market Player's published tariffs.

3.5 Joint marketing

A Market Player shall only permit other entities to include promotional or other material in any mass mailing that the Market Player makes to all or a selected portion of its End Users if the End Users have given their explicit consent for receiving such mass mailings. However, the Market Player must not disclose the EUSI of any End User that has not provided consent.

3.6 Prohibition on disproportionate early termination charges

A Market Player may enter into agreements under which it provides the End User with a discount or special consideration in return to commit to a minimum service period or a minimum revenue commitment. Any termination liability in the event that the End User ends the agreement prior to the agreed termination date must be reasonably proportionate to the extent of the discount or special consideration that the Market Player has provided and the duration of the period during which the End User took the services.

3.7 Service termination or suspension with prior notice

In any case in which a Market Player seeks to terminate a service agreement, or suspend the provision of services to an End User, on the grounds that the End User has breached any of the terms and conditions in that agreement, such as the consistent failure to pay for services, the Market Player may do so, if:

- 3.7.1 The Market Player has provided the End User with advance notice as provided in Section 3.14.6 and a reasonable opportunity to remedy the breach; and
- 3.7.2 The End User has failed to remedy the breach.

3.8 Service termination or suspension without prior notice

A Market Player may terminate a Service agreement, or suspend the provision of Services to an End User, without providing prior notice, only in the following circumstances:

- 3.8.1 The End User has created, or is likely to create, imminent physical harm (such as interruption, disruption or congestion) to the Market Player's network or has defrauded the Market Player;
- 3.8.2 The Market Player is acting in compliance with a requirement of any relevant regulatory authority or law enforcement body;

3.8.3 Where the End User is an individual, the End User dies or becomes insolvent; or

3.8.4 Where the End User is a corporation, the End User ceases to carry on its business or is insolvent.

3.9 Termination or suspension for illegal or improper activities

Notwithstanding Sections 3.6 and 3.7 of the General Duties Code, a Market Player may not terminate a service agreement, or suspend the provision of services to an End User under the agreement on the ground that the End User is using the services to engage in illegal or improper activities. Instead, the Market Player should in such a situation, inform the Authority or the relevant authority at the soonest and act in conformity with that authority's directions or guidelines.

3.10 Restrictions on termination or suspension due to breach of another service agreement

Notwithstanding Sections 3.7 and 3.8 of the General Duties Code, a Market Player may not terminate a service agreement, or suspend the provision of services to an End User, on grounds that the End User has breached any of the terms and conditions in another service agreement, where:

3.10.1 The service to be terminated or suspended is a Basic Telephone Service (where "Basic Telephone Service" means a fundamentally plain telephony service as may be identified by the Authority, which enables an End User to make and receive voice calls domestically); or

3.10.2 The other service agreement that has been breached is with a different Market Player.

3.11 Service termination due to a Market Player's discontinuance of operations or specific services

3.11.1 A Market Player that intends to discontinue operations or a specific service must give reasonable advance notice to all affected End Users, where such notice must be given no less than sixty (60) Working Days prior to the discontinuation of the operations or the specific service or as otherwise provided in the licence. In such cases, the Market Player must take all reasonable measures to avoid any service interruption to its End Users, including complying with any requirement specified or direction issued by the Authority.

3.11.2 In any case in which an End User has made an advance payment for services provided by a Market Player, and the Market Player subsequently decides to discontinue operations or the specific service, the Market Player must allocate a proportionate share of the advance payment for refund to the End User.

3.12 Prohibition on “slamming”

No Market Player shall switch an End User from one Market Player’s services to another Market Player’s services without the prior consent of the End User. No Market Player shall collect or retain any payment from an End User for any service that the End User did not consent to. In such cases, the Market Player that performed the unauthorised switching must also bear any cost necessary to switch the End User back to the End User’s original service provider.

3.13 Prohibition on charging for services supplied on a free trial basis

If a Market Player has provided an End User with a service on a free trial basis, the Market Player must not charge the End User for such services after the end of the free trial period unless:

- 3.13.1 The Market Player has notified the End User of the date on which the free trial period will end; and
- 3.13.2 The Market Player has obtained the express agreement (subject always to at least five (5) Working Days requirement for cancellation or alteration by the End User pursuant to any prevailing consumer protection regulation) of the End User to continue the service after the expiry of the free trial on the applicable prices, terms and conditions as notified to the End User.

3.14 Mandatory contractual provisions

Market Players must include the provisions specified in the following Sections 3.14.1 to 3.14.6 in their service agreements. An End User may bring a private legal action against a Market Player to enforce these contractual obligations pursuant to its service agreement with that Market Player. In addition, the Authority will treat a Market Player’s wilful, reckless, or repeated failure to fulfil these obligations as a contravention of the General Duties Code.

3.14.1 Billing period

- 3.14.1.1 The service agreement must specify how often the Market Player will send a bill. Such bills must be timely, clear and accurate and shall provide End Users with a prior written notice of at least two (2) billing cycles of any proposed amendments, variations or changes in the Market Player’s billing structure, rates, fees or amounts.
- 3.14.1.2 End Users who utilise a pre-paid card may be notified of any proposed amendments, variations or changes in Market Player’s billing structure, rates, fees or amounts at the time that they re-charge their pre-paid card.

3.14.2 Prices, terms and conditions on which service will be provided

3.14.2.1 The service agreement must clearly and comprehensively specify the prices, terms and conditions on which the Market Player will provide its service. This includes references to any tariffs, price lists, or similar documents that are readily available to the public.

3.14.2.2 The service agreement must further provide that the End User will not be bound by any price, term or condition that varies from those specified in the service agreement, unless:

- (a) The End User provides prior written approval; or
- (b) The service agreement clearly states that the Market Player may revise the prices, terms and conditions by providing reasonable advance notice to the End User.

3.14.3 No charges for unsolicited services

The service agreement must provide that the End User will not be liable to pay for any Services charges that the End User did not consent to receive. For the purposes of this Section 3.14.3, a “charge” refers to any act which conveys the impression to the End User that he is liable to pay for a service such as the issuance of a bill, and “charging” shall be similarly construed.

3.14.4 Procedures to contest charges

3.14.4.1 The service agreement must be registered with the Authority prior to its implementation and clearly indicate the procedures by which an End User can dispute any charge for any Services that the End User reasonably believes to be incorrect or improperly calculated. This includes situations in which the End User reasonably believes that the Market Player has not provided the service that it has agreed to provide;

3.14.4.2 In the event of a dispute, the End User shall not be required to pay any reasonably disputed amounts pending the resolution of the dispute, provided that the End User informs the Market Player of any disputed charge prior to the date on which the payment becomes due. If the End User ultimately is found liable for the disputed amounts, any interest that the Market Player wants to recover, in addition to the disputed amounts, must be commercially reasonable. The Service agreement must specify the exact rate to be charged;

3.14.4.3 An End User that pays a bill and subsequently chooses to contest the bill will have one (1) year (starting from the date of the bill) to do so;

3.14.4.4 An End User that purchases a pre-paid service who chooses to contest any charge will have one (1) year (starting from the date on which the last contested charge was deducted from the End User) to do so; and

3.14.4.5 The Market Player shall conduct a complete and objective review of the End User's complaint, and provide a written response within ten (10) Working Days, which time can be extended up to thirty (30) Working Days at the discretion of the Authority, of receiving notification that the End User is contesting a charge.

3.14.5 Private dispute resolution

The service agreement must provide that, if the parties are unable to resolve any dispute, they may choose to refer the dispute to the relevant authority under the prevailing laws of Brunei Darussalam for resolution.

3.14.6 Termination or suspension of service by a Market Player

The service agreement must specify prominently:

3.14.6.1 Any basis on which the Market Player reserves the right to terminate or suspend the Service agreement; and

3.14.6.2 The procedures by which the Market Player will provide the End User with advance notice of any proposed termination or suspension, the basis for the action and the means by which the End User can avoid such termination or suspension, unless otherwise provided for in the General Duties Code.

Any Market Player who terminates or suspends a service agreement in accordance with Section 3.14.6.1 must give the End User a prior written notice of thirty (30) Working Days before such service agreement is terminated or suspended.

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