



Commission

Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes, Procedures, 2021

Consultation Document

Consultation

Publication date: 10 June 2021

Closing date for responses: 8 July 2021

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About this document

The Telecommunications Regulatory Commission (the “**Commission**”) is a statutory body with responsibility for development and regulation of the telecommunications services industry in the British Virgin Islands.

Under section 6(m) of the Telecommunications Act, 2006 (the “**Act**”) the Commission is required to “*where it deems appropriate, investigate within a reasonable period complaints by users of their failure to obtain redress from public suppliers or other licensees in respect of rates, billing and services provided, and to facilitate relief where necessary*”. In accordance with this section and other sections of the Act, the Commission has developed a draft Telecommunications Code (Part 4A) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes), Procedures, 2021 (the “**Procedures**”).

In this document, the Commission outlined:

- The legal framework, as applicable, to the development of these Procedures;
- The objectives of the Procedures;
- The consultation questions; and
- The draft Procedures, as an Annex to this consultation document.

The Procedures will provide, subject to consultation, measures for the investigation of consumer complaints and related resolution concerning the telecommunications services industry.

We are publishing this consultation document to provide our stakeholders – operators, the public and other interested parties – with the opportunity to comment on the Procedures that we propose to implement to resolve complaints by telecommunications users in the Territory.

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Instructions for submitting a Response

The Telecommunications Regulatory Commission of the British Virgin Islands (the **Commission**) invites comments on this consultation document from all interested parties. Comments should be submitted by 8 July 2021.

We strongly prefer responses to this document to be sent by email to consultations@trc.vg (indicating the subject: "Consultation on the Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes, Procedures, 2021". Alternatively, responses may be sent to the address (or the P.O Box number) set out below:

Consultation on the Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes, Procedures, 2021 – Telecommunications Regulatory Commission, P.O. Box 4401 or 27 Fish Lock Road, 3rd Floor Road Town, Tortola, British Virgin Islands VG 1110.

Responses from corporate bodies (legal persons) should include:

- the name of the company/institution/association/other organisation;
- the name of a principal contact person; and
- full contact details (physical address, postal address, telephone number, fax number and email address).

Responses from individual (natural) persons, should include name and contact details (including email).

We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of the responses and help to maintain confidentiality where appropriate.

In the interest of transparency, the Commission will make all submissions received available to the public, subject to the confidentiality of the information received. The Commission will evaluate requests for confidentiality according to relevant legal principles.

Respondents are required to clearly mark any information included in their submission which they consider to be confidential and provide reasons why that information should be treated as such. Where information claimed to be confidential is included in a submission, respondents are required to provide both a confidential and a non-confidential version of their submission. The Commission will determine whether information claimed to be confidential is to be treated as such and, if so, will not publish that information. In respect of information that is determined to be non-confidential, the Commission may publish or refrain from publishing such information at its sole discretion.

Once the Commission has received and considered responses to this consultative document, it will deliver the final Telecommunications Code (Part 4A) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes), Procedures, 2021 to the Ministry with responsibility for telecommunications for approval and it will be published in the Gazette.

Cover sheet for response to a Commission consultation

BASIC DETAILS

Consultation title: To
(Commission Contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing Name/contact details/job title

Whole response Organisation

Part of the response Details of Confidential Information

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Introduction

- 1.1 The Commission is the independent regulator for telecommunications in the British Virgin Islands, established in 2007 in accordance with the Act. Our mandate is to implement the Government's policy with respect to telecommunications as set out in the Telecommunications Liberalisation in the British Virgin Islands.¹ Our principal statutory functions are set out in section 6 of the Act.
- 1.2 One of our principal functions include investigating complaints made by telecommunications users where they have failed to obtain redress from licensees and facilitating relief, where necessary (section 6(m) of the Act). In accordance with this statutory obligation, *inter alia*, this document includes a draft Telecommunications Code (Part 4A) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes), Procedures, 2021.
- 1.3 The Commission has considered the complaints received from consumers over the past years in relation to the time taken to resolve their complaints and inflexibility of the complaint process and, accordingly, takes this opportunity to implement improved procedures to enhance the efficiency of the complaint resolution process. The development of the Procedures was steered by this mission.
- 1.4 The Procedures will establish a clear, fair and efficient process for investigation of consumer complaints, facilitation of relief and resolution of related disputes by the Commission and licensees, in the telecommunications services industry.
- 1.5 The Commission has adopted six essential principles of regulation consistent with international standards and best practice, namely, accountability, focus, predictability, adaptability, efficiency and balance. We are confident that the introduction of the Procedures is complementary to these principles.

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http://www.trc.vg/images/attachments/040_G00050_Telecommunications%20Liberalisation%20In%20The%20British%20Virgin%20Islands.pdf

The Legal Framework

The Commission is guided by its statutory remit in developing the Procedures, notably the provisions that are outlined below.

Principal Functions

2.1 The principal functions of the Commission are stipulated at section 6 of the Act. Specifically, section 6(m) outlines that, in the telecommunications services industry, the Commission is to:

“where it deems appropriate, investigate within a reasonable period complaints by users of their failure to obtain redress from public suppliers or other licensees in respect of rates, billing and services provided, and to facilitate relief where necessary.”

2.2 Section 6(n) further states:

“establish procedures, which shall be included in the Telecommunications Code, for investigation and the facilitation of relief under paragraph (m) and for the resolution of disputes between or among any public operators, other licensees, users and other persons in relation to compliance with this Act, the Regulations, the Telecommunications Code, licences or instructions, and in particular in relation to interconnection, access and access facilities, and such procedures may include provision for regulatory adjudication through public hearings or public consultation or through arbitration, negotiation and mediation and other alternative dispute resolution processes.”

Legal Provisions

2.3 The Commission is empowered to implement the Procedures as a part of the Telecommunications Codes, pursuant to section 91(3) of the Act, which states *“the Commission may from time to time issue, supplement or update such guidelines, standards and other requirements relating to telecommunications as the Commission thinks fit, which together shall constitute the Telecommunications Code.”*

2.4 Additionally, it is judicious to consult on the Procedures considering section 4(1) of the Telecommunications Code (Part 1) (Public Consultations and Public Hearings) Guidelines, 2010, which states:

“(1) The Commission shall hold a public consultation on any matter prescribed by the Telecommunications Act, 2006 and may publicly consult on any other matter that could, in the opinion of the Commission, have a significant effect on the telecommunications sector of the Virgin Islands or a significant part thereof including any matter that could have a significant effect on the rights and obligations of users of telecommunications services.”

Consumer Complaints Procedures Objectives

The Commission considers that it is in the interest of the public and in keeping with the Commission's mandate under the Act to regulate the process by which consumer complaints are handled and resolved by licensees. This will ensure efficient and timely resolution of consumer issues within the telecommunications industry.

- 3.1 The draft Procedures are attached to this consultation document and are summarised below.
- 3.2 The Commission strongly encourages respondents to read the Procedures prior to submitting comments or answering the consultation questions in the next section, as this summary is not exhaustive.
- 3.3 The attached Procedures are divided into 6 parts and consist of 35 sections, which address:
 - The legal framework, purpose and scope of the Procedures;
 - The details of licensee's general duties to consumers as well as reporting obligations to the Commission in relation to consumer complaints;
 - The way in which consumer complaints should be resolved by licensees;
 - Steps to be taken by the Commission in relation to investigation of consumer complaints;
 - Provisions regarding the way in which disputes should be resolved by the Commission; and
 - Required compliance with the Procedures.
- 3.4 Part I covers the preliminary provisions of the Procedures, citing its purpose as establishing a clear, fair and efficient process for investigation of consumer complaints and providing for the facilitation of relief and resolution of related disputes by the Commission and licensees. It notes that the Procedures are applicable to consumers and licensees in the telecommunications services industry.
- 3.5 Part II highlights the licensee's duty to establish a complaints handling process that satisfied a number of specific requirements, as contained in the Procedures. The specific information to be provided by the licensee to the Commission in reporting on consumer complaints is also outlined, as well as a provision mandating a licensee to implement processes to identify and address recurring issues as identified by consumer complaints.
- 3.6 Part III details steps to be taken by a licensee in resolving a complaint by a consumer, including circumstances where such complaint may be refused by the licensee. Additionally, where a consumer is dissatisfied with the resolution of their complaint or lack thereof, a complaint may be submitted to the Commission.
- 3.7 Part IV outlines the steps to be taken by the Commission in investigation of a complaint. It specifies the circumstances under which a consumer may be entitled to submit a complaint to the Commission and the specific information that should be included in that complaint for it to be properly considered. Furthermore, in certain circumstances, the Commission may refuse to investigate a complaint. However, where a complaint is accepted, the Commission shall acknowledge that complaint and investigate same within a specified time.
- 3.8 Part V comprises provisions relating to the Commission's duty to resolve complaints. In particular, it specifies the types of decisions that the Commission is empowered to take in relation to a dispute, and the way in which such decision(s) should be communicated to the respective parties.

Additionally, the parties to a complaint may agree to resolve their complaint amicably; following which, the Commission's involvement in the complaint will cease.

- 3.9 Part VI specifies the relationship of the Procedures with licences and applicable compliance requirements.
- 3.10 It is proposed that the Procedures will be implemented as a part of the Telecommunications Code, in exercise of the Commission's powers under sections 6(m), 6(n) and 91(3) of the Act.

Consultation Questions

Based on the above, the Commission invites all interested parties to submit their comments, with supporting evidence, on the following questions.

1. Do you agree with the general duties of a licensee as proposed by the Commission in Part II of the Procedures? If not, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please include the specific section(s) that you take issue with in your explanation.
2. Do you agree with the process for resolution of a complaint by a licensee as proposed by the Commission in Part III of the Procedures? If not, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please include the specific section(s) that you take issue with in your explanation.
3. What are your views on the confidentiality provision, as contained in section 27? Do you find that it provides appropriate safeguards for the protection of information? If not, what alternative measures or amendments do you propose and why?
4. Are there any other concerns, interests or obligations that the Commission should consider including in these Procedures? If so, please explain your reasoning in detail, along with providing supporting evidence, as may be applicable. Please specify the Part and/or section under which you propose to include an additional provision.
5. Please provide your views on any other matters you consider relevant to this consultation.

Annex: The Draft Procedures

Please refer to the next document in this consultation titled ‘Telecommunications Code (Part 4A) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes) Procedures, 2021’ for the draft Procedures.