



Regulations Defining Additional Procedures to Be Applied by the LTA in Competition-Related Proceedings under the Telecommunications Act

2016

*LTA-REG-00\_\_*

Republic of Liberia

Liberia Telecommunications Authority

## **PART I: PRELIMINARY**

### **1.1 Preamble**

These Regulations have been developed by the Liberia Telecommunications Authority (the “LTA”) pursuant to the *Telecommunications Act, 2007 of the Republic of Liberia* (the “Act”).

### **1.2 Purpose**

The purpose of these Regulations is to augment the existing Regulations for the Treatment of Confidentiality, Dispute Resolution, Compliance and Enforcement 2009, LTA-REG-0002 (“Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations”) by establishing additional procedures for interactions between and among the LTA, service providers and other stakeholders in the telecommunications sector that will apply to the conduct by the LTA of proceedings under the competition-related provisions of the Act found in Articles 11(1)(m) and 27 through 32 thereof, and as more fully identified and described in the [Draft] Competition Guidelines 2016 published by the LTA.

### **1.3 Scope of Application**

- (a) The Authority will follow the procedures set out in these regulations in its conduct of:
- (1) proceedings under Article 27 of the Act to determine relevant markets and whether a provider (or a group of providers acting jointly) holds a dominant position in a relevant market;
  - (2) proceedings under Article 30 of the Act to investigate and determine whether conduct by a dominant provider has or likely will materially restrict or distort competition under Article 28 or whether conduct by any provider (or providers acting jointly) has or likely will restrict or distort competition in telecommunications services under Article 29;
  - (3) proceedings conducted under Article 31 of the Act to develop remedies for violations of Articles 28 and 29 and otherwise enforce the competition-related provisions of the Act; and
  - (4) proceedings conducted under Article 32 to evaluate and, where necessary, impose conditions on proposed transfers of control by a dominant provider or on any proposed transfer of control the likely result of which will be the establishment of a dominant provider.
- (b) These regulations shall supplement the applicable procedural requirements of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations and may be augmented by such other case-specific procedures as may be identified and set forth in any notice issued by the Authority, provided that such procedures are consistent with the procedural requirements of the Act. In cases of a direct conflict between the provisions of that instrument and these regulations, the provisions of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations shall govern.

(c) The provisions of these Regulations apply to all service providers and parties to transactions for the transfer of control of a service provider.

#### **1.4 Terms and Definitions used in the Regulations**

Terms used herein shall have the same meaning ascribed to them in the definitions provisions of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations and the Act.

### **PART II Proceedings Commenced by Application from an Interested Party**

#### **2.1 Commencement of Proceeding**

(a) An interested party, that is, a complainant that wants the Authority to investigate a competition-related complaint or to take related action against a licensed provider shall:

- (1) submit a written request (a “Request for Investigation”) to the Authority and the Complainant shall deliver a copy of the Request for Investigation to the other party (the “Responding Party”) on the same day that the request is submitted to the Authority ;
- (2) in its Request for Investigation, summarize the nature of the complaint and the desired outcome, including citations to the relevant provisions of the Act and applicable regulations, a summary of all relevant events or circumstances and any related correspondence or other supporting materials.

(b) The Responding Party shall have ten (10) days, from the day on which the Request for Investigation is delivered by the Complainant, to provide its comments if any, on why the Authority should not investigate or otherwise respond to the complaint (“Comments”) and the Responding Party shall deliver a copy of the Comments to the Complainant, on the same day that the comments are submitted to the Authority.

#### **2.2 Contents of a Request for Investigation**

- (a) For the Authority to identify allegations that raise substantive and well-grounded concerns, and therefore to direct its resources appropriately, a complaint must be specific and be supported by sufficient evidence to support allegations of anti-competitive behavior and shall reference the specific article(s) of the Telecommunications Act that are alleged to have been breached.
- (b) Complaints related to anticompetitive pricing behavior shall include specific price and cost data, provided that, where a competitor’s actual cost data cannot be obtained, estimates thereof based on the complainant’s own experience and/or on benchmarking may be submitted.
- (c) These requirements are described in more detail in Appendix I to these regulations.

#### **2.3 Action by the Authority**

(a) The Authority shall :

- (1) consider whether it will undertake an investigation or take any other action in response to the complaint; and,
- (2) within thirty days of submission of the Request for Investigation, issue a written notice to the parties, identifying whether it will take action, the specific action to be taken and the basis for its decision.

## **2.4 Consolidation**

Where the Authority receives more than one Request for Investigation in connection with substantially the same conduct or circumstances, it may consolidate the request into a single proceeding.

## **2.5 Responses, Submission of Evidence, and Time Periods in Investigations**

- (a) Based on the specific details of the Request for Investigation, the Authority will decide whether it is necessary to open an investigation into the complaint. If in the course of its investigation it becomes evident that there may be further potential breaches, the Authority may, at its own discretion, expand the scope of the original investigation.
- (b) Within thirty days of notification by the Authority that it will undertake an investigation:
  - (1) the Complainant shall make its formal written submissions regarding the complaint, which submissions (“Complaint Submissions”) shall set out a full statement of the circumstances and arguments the Complainant relies on in support of its position and the desired outcome, including any specific breaches of the Act, any regulation, rule, direction, license condition or other right or obligation, committed by the responding party and the consequences of those breaches for the Complainant;
  - (2) the Complaint Submissions shall include any documentary or other evidence relied on by the Complainant in support of its position and desired outcome and a copy of the Complaint Submissions shall be delivered to the Responding Party, on the same day that they are submitted to the Authority.
- (c) The Responding Party shall have fifteen (15) days, from the day on which the Complaint Submissions are delivered by the Complainant, to submit a written response to the submissions (“Response”) and a copy of the Response shall be delivered to the Complainant, on the same day that the Response is delivered to the Authority.
- (d) The response shall identify, any circumstances or arguments included in the Complaint Submissions that the Responding Party admits or agrees with and for each circumstance or argument relied on by the Complainant in the Complaint Submissions that the Responding Party rejects or disagrees with, the Responding Party shall, provide a clear statement of how its position differs from that of the Complainant and the circumstances and evidence in support of its position and desired outcome.
- (e) In appropriate cases, the Authority may provide the Complainant an opportunity to reply in writing, to the Response and in such cases, the Authority shall, allow the Responding Party an

opportunity, to submit a final written response, addressing any new submissions or evidence raised in the Complainant's reply.

(f) Each party shall, submit its further submissions or evidence, within the time period specified by the Authority, or if no time period is specified, then within fifteen (15) days of being informed by the Authority, that it may make the further submissions.

(g) While the Authority will review its designation of dominant providers in relevant markets on a periodic basis, a provider that has been designated as a dominant provider, following the expiration of one (1) year from the date upon which the notice containing that designation is issued, may at any time file a petition with the Authority under this Part seeking to have the dominant provider designation reviewed and lifted, provided that:

- (1) the Authority decision containing the dominant provider designation has become final and all proceedings related to the dominant provider designation, including any pending appeals, have ended; and
- (2) the petition is supported by a statement of specific facts and objective evidence showing that changed circumstances in the relevant market to which the prior designation relates no longer support the Authority's decision.

### **PART III Proceedings Commenced by the Authority**

#### **3.1 Commencement of Proceeding**

(a) The Authority may at any time decide to initiate a proceeding under Article 27 of the Act to evaluate proposed measures to promote efficient and sustainable competition in the market for the benefit of consumers, define relevant markets for the purposes of the Act, or determine whether any conduct of a provider, or a group of providers acting jointly, is contrary to the competition provisions enumerated therein, in applicable regulations, or set forth in conditions attached to existing licenses or approvals of a proposed transfer of control (an "Authority Proceeding").

(b) The Authority shall commence an Authority Proceeding by delivering a written notice to the provider or any other person who is the subject of the proceeding (a "Proceeding Notice"), identifying the nature of the proceeding, including a summary of the events, circumstances, conduct and provisions of the Act, license conditions or any regulations, decisions, directions, rules or other actions of the Authority relevant to the proceeding and the potential outcome or practical effects of the proceeding.

(c) The Proceeding Notice shall also specify any additional or other procedures applicable to the proceeding, including the timing for the delivery of submissions, by the person(s) receiving the Proceeding Notice or any other interested persons and the further actions to be taken by the Authority in concluding the proceeding.

(d) The Authority may prioritize complaints and manage investigations in a manner that effectively utilizes its time and resources in light of its assessment of the seriousness of the alleged anti-competitive conduct and the extent of the detriment likely to be caused thereby as well as the public interest.

## **PART IV      Procedures applicable to all Proceedings Commenced under these Regulations**

### **4.1      Extensions of Time**

- (a)      The Authority may, grant an extension of time, for any interested party to make its submissions and any request for an extension of time shall, be made in writing to the Authority, at least five (5) days before the expiration of the otherwise applicable deadline.
- (b)      The Authority will, inform parties of its decision, in response to an extension request within three (3) days of receipt of the request.

### **4.2      Requests for Additional Information**

- (a)      The Authority may, request either or both parties, to submit additional information at any time during the course of a proceeding.
- (b)      Any information provided by a party, shall be provided to the other party, at the time it is submitted to the Authority.

### **4.3      Confidential Information**

- (a)      Where a party wishes to submit confidential information to the Authority in connection with the proceeding that party may, request the Authority for confidential treatment of such information, pursuant to the applicable provisions of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations.
- (b)      Where a party considers that any of the information provided might damage its commercial interests if it were to be disclosed, it should provide a separate “non-confidential” version of its submission.
- (c)      The Authority will evaluate all requests for confidentiality in line with relevant legal provisions of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations.
- (d)      Appeals from an adverse decision of the Authority on a request for the confidential treatment of information submitted to the authority shall likewise be handled pursuant to the relevant provisions of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations.

### **4.4      Outside Referrals**

The Authority may, in the course of completing any proceeding, enlist the services of an appropriately qualified expert to assess any issues or circumstances raised by a party, the evaluation or resolution of which would in the Authority’s judgment benefit from specialist knowledge.

### **4.5      Interim Orders**

Without interfering with a party’s ability, where permitted, to seek interim or emergency relief from a court of competent jurisdiction, the Authority shall be entitled to make interim determinations, including, issuing interim directions, pending completion of a proceeding.

### **4.6      Completion of Proceedings**

(a) The Authority will, generally complete proceedings under these Regulations, and issue either a decision resolving the issues or a notice specifying any other actions to be taken in connection with the proceeding, within ninety (90) days of receiving all necessary information and the Authority may, by written notice to the parties issued at any time during the relevant proceeding, extend the time for the Authority to issue its decision.

(b) On completion of a proceeding under these Regulations, the Authority may:

- (1) impose a remedy defined pursuant to Article 31 of the Act;
- (2) issue a direction, requiring the responding party or any other person, to undertake specific actions or to cease specific actions or to resolve any conduct, contrary to the Act or any regulation, rule, direction) license condition or related right or obligation;
- (3) issue a direction, making specific determinations, regarding specific circumstances or issues relevant to the proceeding, including the payment of any applicable compensation ;
- (4) refer any outstanding matters to the Ministry of Justice, the Public Prosecutor, or other identified authority that is competent to resolve the outstanding matters; or
- (5) where the proceeding raises questions of general interest or application to the telecommunications sector, the Authority may initiate a further public consultation or inquiry that permits submissions from other interested stakeholders and the public for the purposes of promulgating a general rule that will also resolve the earlier proceeding, and may suspend its decision of the proceeding subject to the conclusion of the public consultation or inquiry.

(c) Any decision by the Authority on completion of a proceeding reference in these Regulations shall, be in writing and shall include a statement of reasons for the decision.

#### **4.7 Costs**

Except as specifically directed otherwise by the Authority, as part of any final decision in a proceeding, the parties shall bear their own costs of participating in the proceeding.

#### **4.8 Need to Provide Truthful Information**

(a) A party to a proceeding conducted by the Authority under these regulations, and its officers, directors, employees or agents; lawyers or other experts or subscribers, shall provide accurate and truthful statements in its submissions to or testimony before the Authority

#### **4.9 Sanctions by the Authority**

(a) The Authority may impose a sanction against a party for instances of a material breach of these regulations and other misconduct in the course of a proceeding, which shall include:

- (1) Failure to comply with an applicable rule or order issued by the Authority in the proceeding;

- (2) Advancing a misleading or frivolous argument or request for relief;
  - (3) Failure, without justifiable excuse, to provide truthful information to the Authority under section 4.8.; or
  - (4) The improper use of the proceeding to harass.
- (b) Available sanctions that may be imposed by the Authority for instances of a material breach of these regulations or other misconduct, as defined above, include:
- (1) An order excluding evidence or holding facts to have been established in the proceeding;
  - (2) An order providing for compensatory expenses, including attorney fees; or
  - (3) The imposition of a pecuniary administrative penalty upon the breaching party as the Authority may determine; and
  - (4) The striking of pleading or, in the egregious case, dismissal of a petition.

#### **4.10 Enforcement of Orders and Decision**

- (a) In exceptional circumstances, the Authority may take necessary action under Article 31 of the Act without going through all the steps of the investigations process when it considers that there is a prima facie breach of Articles 27 through 28 of the Telecommunications Act and it is necessary to take urgent action to prevent immediate harm to competition.
- (b) The provisions of Article 78 of the Act shall apply to the enforcement by the Authority of any order or decision issued under these regulations

#### **4.11 Submission of Documents and Other Evidence**

- (a) Where a document is required to be submitted to the Authority under these regulations, the requirement is satisfied if the document is submitted by electronic means.
- (b) Electronic documents submitted in formats used by the applications contained in the Microsoft Office suite or in the .PDF format used by Adobe shall be accepted. Parties seeking to use other electronic formats shall first inquire if the Authority deems the proposed format to be acceptable.

#### **4.12 Investigative Mechanisms**

The Authority may use any or all of the means and methods defined in Article 79 of the Act in the conduct of its investigations and proceedings under these regulations.

#### **4.13 Appeal and Judicial Review**

The provisions of Article 81 of the Act shall define the rights available to parties to a proceeding for the judicial review and appeal of the orders and decisions of the Authority issued pursuant to the regulations.

#### **4.14 Settlement**

- (a) In proceedings related to the abuse of a dominant position under Article 28 of the Act or the approval of proposed transfers of control under Article 32 of the Act, the Authority or the parties may propose a settlement.
- (b) In settlement cases, the party or parties shall make a written submission acknowledging their liability and stating that they accept the Authority's statement of objections.
- (c) The Authority may reject a proposed settlement in its discretion.

### **PART V BUSINESS REVIEW PROCEDURE**

#### **5.1 Definition**

Upon request from a provider, the Authority will review proposed business conduct for its impact on competition under Articles 28 and 29 of the Act and state its present enforcement intentions with respect thereto in a Business Review Letter issued under the rules set forth in this Part.

#### **5.2 Submission of a Request for Business Review**

- (a) A request for a business review letter must be submitted in writing to the Authority at its headquarters office in Monrovia, addressed to the Chairperson and Members of the Board, and clearly state on the cover "Request for Business Review."
- (c) The request shall be signed by an authorized representative of each party seeking coverage under the business review letter.
- (b) The Authority will consider only requests with respect to future proposed business conduct, and may, in its discretion, refuse to consider a request. A business review letter shall have no application to any party which does not join in the request therefor.

#### **5.3 Contents of a Request for Business Review**

- (a) The requesting party is under an affirmative obligation to make full and true disclosure with respect to the business conduct for which review is requested.
- (b) Each request must be accompanied by all relevant data including background information, complete copies of all operative documents and detailed statements of all collateral oral understandings, if any.
- (c) All parties requesting the review letter must provide the Authority with whatever additional information or documents it may thereafter request in order to review the matter. Such additional information, if furnished orally, shall be promptly confirmed in writing. In connection with any request for review the Authority will also conduct whatever independent investigation it believes is appropriate.
- (d) The submission of a request for a business review, or its pendency, shall in no way alter any responsibility of any party to comply with the notification provisions of Article 32 of the Act concerning proposed transfers of control.

#### **5.4 Issuance and Effect of a Business Review Letter**

- (a) After review of a request submitted hereunder the Authority may: state its present enforcement intention with respect to the proposed business conduct; decline to pass on the request; or take such other position or action as it considers appropriate.
- (b) A business review letter states only the enforcement intention of the Authority as of the date of the letter, and the Authority remains completely free to initiate whatever proceeding it subsequently comes to believe is required by the Act in the event of additional or changed circumstances.
- (c) The issuance of a business review letter creates a rebuttable presumption that the future proposed business conduct defined in the request based on the facts and circumstances known to exist at the time of the request will not in the Authority's opinion violate the provisions of Article 28 or Article 29.
- (d) No oral clearance, release or other statement purporting to bind the enforcement discretion of the Authority may be given. The requesting party may rely upon only a written business review letter approved by the Board and signed by the Chairperson of the Authority.

#### **5.5 Disclosure**

Simultaneously upon notifying the requesting party of its action on the business review request, the party's written request and Authority's letter in response shall be indexed and placed in a file available to the public upon request.

#### **5.6 Confidentiality**

The requesting party may ask the Authority not to disclose some or all of the information in the request under the applicable provisions of the Confidentiality, Dispute Resolution, Compliance and Enforcement Regulations. However, nothing contained herein shall limit the Authority's right, in its discretion, to issue a press release describing generally the identity of the requesting party or parties, the substance of the request, and the nature of action taken by the Authority thereupon.

#### **5.7 Withdrawal**

A requesting party may withdraw a request for review at any time.

### **PART VI Review of Proposed Transfers of Control**

#### **6.1 Jurisdiction**

- (a) Under Article 32(2) of the Act, no transfer of control of a service provider shall be effected with prior LTA approval if:
  - (1) a dominant service provider, or an affiliate thereof is the person ultimately acquiring control of the service provider or if a dominant service provider is the person whose control is being transferred; or

- (2) as a result of the transfer of control, a person, alone or with its affiliates, would become a dominant service provider according to criteria, methodology, and processes for the designation of dominant service providers adopted by the Authority.

## **6.2 Review Process**

The LTA will apply a two-step approach in which parties first notify the LTA of their intended transaction and request preliminary review to determine whether it requires prior approval pursuant to Section 32 of the Act.

## **6.3 Notification and Jurisdictional Pre-Review**

- (a) Parties to any transaction in which control of a service provider will be transferred shall submit a notification to the Authority at least one hundred and twenty (120) days prior to the proposed completion date of the intended transaction.
- (b) The notice shall:
  - (1) identify all persons involved in the transaction, including buyers, sellers, their shareholders and affiliated companies, and any persons having a greater than 5% ownership interest in all such persons;
  - (2) describe the nature of the proposed transaction and summary of its commercial terms; and
  - (3) present financial information on the persons involved in the proposed transaction, including their most recent annual financial statements, including information on annual revenues from all telecommunications markets in Liberia and the value of their total assets allocated to telecommunications services and copies of their most recent annual or quarterly financial report.
- (c) The LTA may request additional information regarding a notification at any time.
- (d) Within thirty (30) days of a duly completed notification and request for preliminary review, the LTA will:
  - (1) Issue a notice indicating that the transaction does not require prior approval from the LTA pursuant to Section 32 of the Act; or
  - (2) Issue a notice requiring the parties to request an approval review pursuant to Section 32 of the Act.

## **6.4 Presumption**

- (a) Where the result of a merger, acquisition, or other transaction involving the transfer of control of a service provider will likely result in the surviving entity holding a forty per cent (40%) or greater share in a relevant market, based on gross sales a presumption shall exist that the transaction is subject to full review and approval by the Authority under Article 32 of the Act.

(b) The presumption in subsection (a) is rebuttable and the parties to the proposed transaction may submit arguments and evidence in its notice initiating jurisdictional pre-review under this section demonstrating the pro-competitive effects of the proposed transaction whereupon the Authority in its discretion may issue a notice that full pre-transfer review and approval is required.

## **6.5 Review and Approval Process**

(a) Where the Authority has issued a notice under subsection (d)(2) of section 6.3 that full review and pre-approval of a proposed transaction involving the transfer of control over a service provider is required, the parties shall submit their written request for approval by no later than ninety (90) days prior to the completion date for the intended transaction.

(b) The request shall contain the following information:

- (1) identification of all persons involved in the transaction, including buyers, sellers, their shareholders and affiliated companies, and any persons having a greater than 5% ownership interest in all such persons;
- (2) description of the nature of the proposed transaction and summary of its commercial terms;
- (3) financial information on the persons involved in the proposed transaction, including their annual revenues from all telecommunications markets, identified by specific markets, the value of assets allocated to telecommunications services and copies of any recent annual or quarterly financial reports;
- (4) description of the telecommunications markets in which the persons involved in the proposed transaction operate;
- (5) analysis and arguments, supported by data, of the likely effects of the proposed transaction on competition in the relevant telecommunications market and the sector generally, including a description of any positive, pro-competitive effects of the transaction that the parties may wish to identify or any conditions on the transaction for the mitigation of its possible negative effects on competition that the parties may wish to volunteer.

(c) The LTA may request additional information regarding an application at any time.

(d) The Authority shall issue a preliminary decision on the proposed transfer of control under this subsection within sixty (60) days of its receipt of the request for approval, provided that the Authority may by notice extend the period of time for its review for up to an additional thirty (30) days, whereupon the Authority and the parties shall conduct discussions over the scope and contents of the final decision, including any proposed conditions contained in the preliminary decision.

(e) Final decisions on proposed transfers of control shall be published by the Authority on its website.

## **Appendix I**

### **Requests for Investigation of Competition-Related Matters**

A Request for Investigation should contain the following information:

#### **Section A - Preliminary information**

- 1) Summary of complaint:
  - a) Business name, address, telephone/fax number, and/or e-mail address and, if relevant, the contact details of a person who can discuss the detail of the complaint.
  - b) A brief explanation of the nature of your business and its scale (local, national, international, approximate turnover).
  - c) Details of the target operator(s), including details of any relevant contact within the target of the complaint.
  - d) Details of the relationship between the complainant and the target operator(s) (such as whether the complainant is a customer and/or a competitor of the target operator).
  - e) Names of other industry members who can support the complaint.

#### **Section B - Details of the Request for Investigation and Complaint**

- 1) Legal basis: Provide an indication of whether the breach relates to Article 28 or 29 of the Telecommunications Act and/or of specific license conditions;
- 2) The relevant market(s) in which the breach was committed and other relevant market(s). The products and/or services concerned (including details of supply and demand for the products/services concerned);
- 3) Dominance in the relevant market(s) by the target(s) of the complaint and discussion of the market position of the target operator(s) in the relevant market(s);
- 4) A description of the nature of the alleged breach, citing specific abuses, conducts or breach where possible, e.g. predatory pricing;
- 5) A description of the effect of the alleged breach, including how the complainant's business has been affected by the alleged activity;
- 6) A detailed chronology of events (where appropriate);
- 7) Relief/remedy sought including details of the timing/urgency of the complaint with reasons.

#### **Section C - Factual evidence supporting the allegation and verification by an officer of the company**

- 1) Details of the factual evidence including e.g.:
  - a) cost and price data;
  - b) customer numbers; margin squeeze test;
  - c) copies of any relevant documents, notes of telephone conversations, minutes of meetings, board papers etc., or communications (e.g. emails) involving the target/complainant that provides evidence of the alleged anti-competitive activity available to support the allegation made; and
  - d) other relevant depending on the nature of the complaint.
- 2) A signed and dated Declaration by an officer of the company stating that:

*The information provided in this submission is correct and complete to the best of my knowledge and belief.*

#### **Section D - Other relevant information**

- 1) Copies of any relevant industry reports/consumer surveys, price and marketing brochures showing competing offers;

- 2) Details of any similar complaints/investigations/proceedings concerning the same or similar products/services in other jurisdictions (for example, a competition authority or a regulator).