



GIBRALTAR REGULATORY
AUTHORITY

Authorised Provider Complaints and Disputes

Procedures for handling
complaints and disputes

21st January 2020

Notice No. C01/2020

FOREWORD

These procedures refer to the submission of complaints and disputes by authorised providers to the Gibraltar Regulatory Authority (GRA). They also explain the GRA's role in resolving such complaints and disputes.

These procedures are designed to be simple, inexpensive and should enable complaints and disputes to be settled fairly, promptly and in a transparent manner.

Please note the GRA may also use these procedures when it conducts its own initiative investigations.

The GRA has separate processes for dealing with consumer complaints and disputes.

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Notice concerning the procedures for the handling of complaints and disputes referred to the Gibraltar Regulatory Authority by Authorised Providers

Notice No. C01/2020

In exercise of the powers conferred on it by section 92(4) of the Communications Act 2006 and in order to facilitate the submission and handling of complaints, the Gibraltar Regulatory Authority (GRA) hereby issues this Notice pursuant to section 12 of the Communications Act 2006.

1. INTRODUCTION

The general functions of the GRA include regulating, supervising and enforcing compliance with the conditions and the specific obligations subject to which an electronic communications network or an electronic communications service may be provided. In doing so, the GRA may investigate any breach of the Communications Act 2006 and accompanying regulations and any condition or specific obligation imposed on an Authorised Provider¹.

In order to carry out these regulatory functions, the GRA has established procedures for the handling of complaints and the resolution of disputes between Authorised Providers. These procedures set out the GRA's processes and submission requirements for such complaints and disputes. They are intended to help Authorised Providers and their advisers to understand the GRA's processes and how best to present a case so that the GRA can deal with it in an efficient manner. In addition, the GRA can also carry out an own initiative investigation if it considers there are valid grounds for intervention.

These procedures are not binding on the GRA². However, where the GRA departs from these procedures, it expects to give reasons for doing so.

The GRA will keep these procedures under review and amend as appropriate in light of gained experience and developing law and practice.

These procedures do not cover consumer complaints and disputes. The GRA has published Document No. C05/19 which provides guidance on consumer disputes. Consumers may also submit complaints by completing the consumer complaint form available online.

¹ Authorised Provider - a legal person who is authorised to provide electronic communications networks and/or services pursuant to the provisions of the Communications Act 2006.

² Other than those as required by statute.

Context

Section 2 sets out the GRA's powers and duties and discusses the difference between a complaint and a dispute.

Section 3 sets out the procedures for handling complaints.

Section 4 sets out the procedures for resolving disputes.

The required format for submitting complaints is set out in Annex 1.

The required format for submitting a request to resolve a dispute is set out in Annex 2.

2. COMPLAINTS AND DISPUTES

Distinguishing between a complaint and a dispute

It is essential to be able to distinguish between a complaint and a dispute as there are some differences between the process for investigating complaints and resolving disputes. These differences include what is expected from Authorised Providers when submitting information and how each case is handled and determined.

Below are guidelines which help to distinguish between a complaint and a dispute.

Complaints

The Communications Act 2006 (the Act) and accompanying regulations enable the GRA to handle complaints in different ways. When the GRA receives a complaint, it may require information from any party who may have relevant information.

One of the ways in which the GRA can require information is via its notification procedures. The GRA may therefore, for example, issue notices to Authorised Providers requiring them to provide information for the purposes of monitoring and supervising compliance with conditions and specific obligations. The GRA can also issue directions to Authorised Providers, requiring them to do or refrain from doing anything in order to comply with any requirement pursuant to the Act.

The GRA will consider all complaints and will provide advice on any queries it may receive.

Characteristics of a Complaint

- (a) Usually relates to a specific obligation or condition which has been imposed on an Authorised Provider;
- (b) No commercial negotiation involved;
- (c) Authorised Provider submitting the complaint not usually treated as party to the proceedings;
- (d) An Authorised Provider's non-compliance may not affect another Authorised Provider directly.

Disputes

The GRA has a duty to resolve disputes which fall within the scope of Section 92(1) of the Act.

Section 92(1) of the Act provides:

“This section applies in the case of any dispute if:

- (a) it relates to rights, conditions or obligations conferred or imposed by or under this Act;
- (b) it is a dispute between persons authorised to provide electronic communications services, electronic communications networks or to make associated facilities available in Gibraltar; and
- (c) it is not an excluded dispute.”

Section 92(2) of the Act provides that any one or more of the parties to a dispute, as defined in Section 92(1) of the Act, may refer the dispute to the GRA.

Section 92(3) of the Act provides that a reference for dispute resolution made under Section 92 is to be made in such manner as the GRA may require.

Section 92(4) of the Act provides as follows:

“The way in which a requirement under subsection (3):

- (a) is to be imposed; or
- (b) may be withdrawn or modified,

is by a notice issued under section 12 published in such manner as the Authority considers appropriate for bringing the requirement, withdrawal or modification to the attention of the persons who, in its opinion, are likely to be affected by it.”

Characteristics of a Dispute

- (a) A matter which falls within the scope of section 92 of the Act;
- (b) Usually relates to a specific obligation or condition which an Authorised Provider has in relation to another Authorised Provider³;
- (c) Triggered when attempted commercial negotiations have failed;
- (d) Authorised Provider submitting the dispute usually treated as party to the proceedings;
- (e) An Authorised Provider’s non-compliance impacts the Authorised Provider submitting the dispute.

If you are unsure as to which kind of submission you wish to make, please contact the GRA BEFORE filing the submission by sending an email to communications@gra.gi.

³ For example, General Condition 1.1 which stipulates that Undertakings shall negotiate access and/or interconnection agreements with other Undertakings.

Conditions and Specific Obligations

The conditions which are relevant to these procedures are the General, Numbering and Licence conditions which may be set pursuant to Regulation 17 of the Communications (Authorisation and Licensing) Regulations 2006.

The specific obligations which are relevant to these procedures are those obligations, conditions or requirements which may be imposed pursuant to -

- (a) regulations 5(1)(b), (2), (3) or (4), 6(1), (2) or (3), 7(1), 9, 10, 11, 12, 13 or 14 of the Communications (Access) Regulations 2006,
- (b) regulations 3, 4, 5, 6 or 8(2) of the Communications (Universal Service and Users' Rights) Regulations 2006 pursuant to a designation made under regulation 7 of those Regulations, or
- (c) regulations 13, 14, 15 or 16 of the Communications (Universal Service and Users' Rights) Regulations 2006.

Suggestions to Authorised Providers before making a complaint or referring a dispute

Meet with the GRA first

The GRA is always ready to discuss matters prior to the formal submission of a complaint or dispute. The GRA may not be able to give a view on the merits of a complaint or dispute, but it may be able to provide regulatory guidance or refer an Authorised Provider to previous investigations dealing with similar issues.

The GRA recognises the value of interactions which may prevent complaints or disputes, thereby solving issues without a formal investigation.

Seek to resolve matters through commercial negotiation

Insofar as **disputes** are concerned, it is invariably always in the interest of the Authorised Providers concerned to engage in commercial discussions before submitting a dispute. In many instances, issues are resolved following such discussions without the need of any regulatory intervention. Authorised Providers should therefore only approach the GRA if their commercial negotiations fail.

Gather all the relevant information

In some cases, allegations or issues raised cannot be adequately investigated because not enough information is provided to support the claims made, or because some important

material detail is not provided. An Authorised Provider should ensure that it provides the GRA with all available relevant information to support its claims.

The GRA's approach when handling complaints or disputes

The GRA will generally operate on a need only intervention basis, but with a willingness to intervene firmly, promptly and effectively where required. The GRA will strive to ensure that its interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome. The GRA will seek the least intrusive regulatory mechanisms in ensuring compliance with regulatory requirements.

These procedures are intended to help Authorised Providers understand the GRA's processes and how best to present a case so that the GRA can deal with it in a cost-effective, quick and efficient manner.

3. COMPLAINTS HANDLING PROCEDURES

Submission standards

The GRA considers all submissions it receives. However, the GRA expects submissions to contain a certain level of evidence before it will handle a complaint.

This requirement will not be applied in a bureaucratic way. The GRA will consider the circumstances surrounding each submission, but will decline to accept a complaint in response to unsubstantiated allegations or inadequate submissions.

The requirement to provide evidence to back up an allegation will enable the GRA to identify complaints that raise real concerns and to target its resources on the most important issues.

The GRA acknowledges that smaller companies and new entrants may require assistance in formulating their submissions. The GRA will provide guidance to less experienced Authorised Providers. However, large, experienced Authorised Providers are expected to make adequate, well-reasoned submissions and back up allegations with evidence.

The GRA shall reject submissions which are not specific or which appear to be frivolous or unjustified. For example, a generic allegation that a broad set of conditions has been breached is inadequate.

Allegations must be supported by specific, relevant evidence. For example, an allegation of predatory pricing or margin squeeze must be backed up by an analysis of costs and prices. The GRA acknowledges that Authorised Providers have limited access to information on their competitors' costs. Where information about costs is not available, the costs used to support an allegation could be based on a model or on the Authorised Provider's own costs or rate of return before and after, for example, a significant price drop. If, after initial consideration, the factual evidence submitted by the Authorised Provider is incorrect, or based on a misunderstanding, the GRA may close the complaint.

In some circumstances, where a complaint appears to raise serious issues, the GRA may waive any of the submission requirements.

The GRA will only accept a complaint where Authorised Providers submit clear information on all details of the complaint, including:

- A clear statement of the scope of the complaint;
- Details of the relevant specific obligation or condition that forms the basis of the complaint (where relevant);
- Sufficient factual evidence to back its allegations;
- Full details, with reasons of a preferred remedy; and
- A statement by a senior officer that due care has been taken to ensure that the submission and any supporting evidence is correct and complete.

Scope of a complaint

The GRA will not investigate a complaint until the scope of the complaint is clear. Once the scope is established, the GRA does not expect to deviate from this scope.

The GRA will check it understands the complaints it receives and will normally restrict the scope of a complaint to the Authorised Provider's original submission.

Publishing details of complaints

The GRA's complaints will be open and transparent.

Before publication, the GRA may, in some instances, provide a draft decision to all relevant parties concerned for final comments.

The GRA will publish details of complaints on its website after they have been completed.

Assigning a case team

Complainants can expect regular contact with the team working on the complaint and updates on its progress. The GRA will provide the Authorised Provider initiating a complaint with the name of, and contact details for, the complaint adviser considering the matter.

Wherever it considers it necessary or desirable for the proper handling of a complaint, the Chief Executive Officer of the GRA may appoint a duly qualified person from outside the GRA to form part of the GRA team working on the complaint.

Information gathering

The GRA relies on accurate information, provided in a timely manner, to carry out efficient investigations into complaints.

Delays in the provision of information can have a significant impact on overall timescales and may significantly disadvantage one or more of the parties involved. The GRA therefore, expects Authorised Providers to respond to information requests within strict deadlines.

The GRA will use its formal powers to collect the information it needs to handle complaints and will take enforcement action against Authorised Providers that fail to respond to formal requests for information. The GRA intends to depart from this strategy only when the nature of the information required means that a formal request is inappropriate (e.g. where background information is required or information is required before a formal request can be issued or the information required is in answer to a very simple query).

Formal information requests

Where the timetable of the complaint allows and/or the information request is particularly complex, the GRA may issue formal information requests in draft, allowing three working days for representations to be made on the relevance of the information requested and the practicality of providing the information by the specified deadline. After considering any comments, the GRA will then confirm or amend the information request and issue a formal notice. Where an information request is straightforward or the information is required quickly, the GRA may not send a draft information request.

Once a formal notice for information has been issued, the GRA will not usually agree to an extension of the deadline and will be robust in enforcing the requirement to respond including making use of its powers contained in the Act and regulations.

The GRA intends to meet the four-month target for resolving complaints, unless circumstances are exceptional, and will therefore set challenging deadlines for responses to information requests. Authorised Providers should consider the need to develop adequate mechanisms to ensure that they can meet their requirements to supply information.

Authorised Providers should note that, when responding to formal information requests, a blanket marking of "confidential" on all information supplied is unhelpful and time consuming for both the GRA and the Authorised Provider. A statement that all information supplied is "confidential" will oblige the GRA to take a view on what is, and is not, genuinely confidential.

Making a request for the GRA to pursue a case as an urgent case

If an Authorised Provider believes that the GRA should take urgent action to address its concerns, then it must clearly set out its full argument as soon as possible. An Authorised Provider is unlikely to be persuasive in its argument that a matter is a case for urgent action if it demonstrates a failure to act with urgency in bringing the full details of its submission to the GRA's attention.

Representations about recent changes in conduct are more likely to present grounds for urgent action than allegations about established behaviour or agreements. The GRA will assess any request for urgent action in line with its powers as contained in the Act and regulations.

A request for urgent action must demonstrate that the matter deserves urgent attention. Authorised Providers should provide compelling evidence that the alleged contravention or infringement justifies the commitment of significant resources in the GRA pursuing the issue as a matter of urgency. Such evidence may include:

- a financial assessment of the losses directly attributable to the alleged behaviour relevant to total turnover of the Authorised Provider initiating a case;
- details of other companies likely to be affected; and

- information about why the damage caused will be irreparable (for example if the results of the behaviour cannot be reversed because the number of consumers involved renders this impracticable or companies will exit a market with high barriers to entry).

The GRA expects to be able to assess the case for urgent action on the merits of the facts brought to its attention at the outset and expects to provide the Authorised Provider with a decision about urgent action quickly. Authorised Providers should note that repeated requests for the GRA to reconsider a decision on urgent action can be counterproductive, as responding to these requests may divert resources away from the full investigation.

Requests for urgent action

Where the GRA considers that a case is urgent, it may specify that any action to be taken by an Authorised Provider believed to be contravening a condition or specific obligation is taken sooner than would otherwise be the case.

The GRA's discretion to take urgent action applies only to alleged breaches of conditions or specific obligations relating to electronic communications networks and services.

The GRA may consider a case as urgent where contravention of a condition or specific obligation has resulted in, or creates an immediate risk of:

- a serious threat to the security of Gibraltar, to the safety of the public or to public health; or
- serious economic or operational problems for Authorised Providers.

Timeframes for accepting complaints

The GRA aims to acknowledge all submissions made to it within two working days of receiving a submission.

Within fifteen working days of receiving a submission, the GRA aims to inform the Authorised Provider whether it intends to investigate a complaint.

The GRA uses this fifteen-day period to ensure that it fully understands the complaint and to reach a decision about whether it is appropriate to open an investigation.

The fifteen-day enquiry phase begins on the day a complete submission (including a non-confidential version) is received by the Communications Division of the GRA.

In the absence of a non-confidential version of the submission or of a statement that the complaint as submitted can be regarded as non-confidential, the GRA's fifteen-day deadline will not begin until such a statement is made in writing to the GRA or a non-confidential version of the submission is made available to the GRA.

If the GRA finds, during the enquiry phase, that the evidence submitted by the Authorised Provider is incorrect, or based on a misunderstanding, the GRA may decide not to accept a complaint.

If the GRA opens an investigation into a complaint it will notify the Authorised Provider. If the GRA considers that it is not appropriate to investigate a complaint, it will write to the Authorised Provider setting out its reasons.

Where the GRA needs more than fifteen working days to decide whether it is appropriate to handle a complaint, it will be prepared to explain why.

Investigating complaints

In terms of complaints, there is no timescale specified in relevant Communications legislation. However, the GRA will try to conclude its investigation of a complaint within four months unless circumstances which lead to delays arise which are beyond the GRA's control.

Type of investigation	Timeframe
Complaint	Four months (not binding on GRA)

The timeframe above shall commence from the day the GRA notifies the Authorised Provider that it has accepted to handle a complaint.

In order to comply with the four-month timeframe set for the handling of a complaint, it is important that all the Authorised Providers involved fully co-operate with the GRA in order for it to carry out its obligations in resolving the complaint within this timeframe. Hence, the GRA shall not consider any late submissions and will base its final decision on the complaint on the basis of the information available to it. Moreover, where appropriate, the GRA may take regulatory measures against any Authorised Provider, which has in any way impeded the timely conclusion of a complaint.

4. DISPUTES HANDLING PROCEDURES

Submission standards

The GRA considers all submissions it receives. However, the GRA expects submissions to contain a certain level of evidence before it will accept a dispute.

This requirement will not be applied in a bureaucratic way. The GRA will consider the circumstances surrounding each submission, but will decline to accept a dispute in response to unsubstantiated allegations or inadequate submissions.

The requirement to provide evidence to back up an allegation will enable the GRA to identify disputes that raise real concerns and to target its resources on the most important issues.

The GRA acknowledges that smaller companies and new entrants may require assistance in formulating their submissions. The GRA will provide guidance to less experienced Authorised Providers. However, large, experienced Authorised Providers are expected to make adequate, well-reasoned submissions and back up allegations with evidence.

The GRA recognises that companies may refuse to enter into negotiations or introduce unreasonable delays in an attempt to stall negotiations. In such cases, the party asking the GRA to resolve a dispute should demonstrate that it has taken reasonable steps to engage the other party in commercial negotiations. The GRA will usually accept, as an alternative to documentary evidence of commercial negotiations, evidence which suggests that one party has tactically refused to negotiate.

Where a dispute relates to new network access products, the Authorised Provider bringing the dispute to the GRA must also provide a business case for introduction of the requested product, including demand forecasts. This information is required by the GRA to assess whether or not a request for a new network access product is reasonable.

Allegations must be supported by specific, relevant evidence. For example, an allegation of predatory pricing or margin squeeze must be backed up by an analysis of costs and prices. The GRA acknowledges that Authorised Providers have limited access to information on their competitors' costs. Where information about costs is not available, the costs used to support an allegation could be based on a model or on the Authorised Provider's own costs or rate of return before and after, for example, a significant price drop. If, after initial consideration, the factual evidence submitted by the Authorised Provider is incorrect, or based on a misunderstanding, the GRA may close the dispute.

In some circumstances, where a dispute appears to raise serious issues, the GRA may waive any of the submission requirements. The GRA will only accept a dispute where Authorised Providers submit clear information on all details of the dispute including:

- A clear statement of the scope of the dispute;
- Details of the relevant existing rights, specific obligations or conditions that form the basis of the dispute;
- Documentary evidence of commercial negotiations on all issues covered by the scope of the dispute;

- Full details, with reasons of a preferred remedy; and
- A statement by a senior officer that the company has used its best endeavours to resolve the dispute through commercial negotiation and that due care has been taken to ensure that the submission and any supporting evidence is correct and complete.

Scope of a dispute

The GRA will not handle a dispute until the scope of the dispute is clear. Once the scope is established, the GRA does not expect to deviate from this scope.

The GRA will check it understands the disputes it receives and will normally restrict the scope of an investigation to the Authorised Provider's original submission.

Alternative mechanisms of dispute resolution

Section 93 of the Act states that the GRA may decline to handle a dispute where alternative mechanisms exist and represent an appropriate means of resolving the dispute. The GRA will consider on a case-by-case basis whether alternative dispute resolution (ADR) is an option.

The GRA acknowledges that the success of ADR depends on the incentives of the parties involved to reach a solution, and that practical considerations, such as the number of parties involved, must also be taken into account.

The presence of Significant Market Power (SMP) Authorised Providers and the existence of conditions on Authorised Providers, means that failure by Authorised Providers to agree may result in detriment to competition and ultimately to consumers. In such situations, regulatory intervention to resolve the dispute is appropriate.

However, where a dispute arises between parties without SMP, the case for regulatory intervention is not as strong. When the GRA considers whether it is appropriate for it to resolve a dispute, the GRA will therefore consider the market position of the parties. Where market power is unequal, there may be a disincentive on one party to reach a solution and regulatory intervention may be appropriate.

The following table gives an indication of the factors that the GRA will consider before it declines to resolve a dispute on the basis that alternative mechanisms exist.

Factors	Alternative forms of dispute resolution	Resolution by the GRA
A large number of parties are involved.	X	✓
One of the parties is dominant in the relevant market.	X	✓
Both parties are dominant in the same market.	✓	X
None of the parties are dominant in the relevant market.	✓	X
Similar disputes are resolved in other industries without the intervention of the regulator.	✓	X
No welfare loss would result from a failure to agree.	✓	X

Please note that where the GRA decides that it is not appropriate for it to handle the dispute and the dispute is not resolved by other means before the end of the four months after the day of the GRA's decision, the dispute may be referred back to the GRA by one or more of the Authorised Providers involved in the dispute.

Publishing details of investigations

The GRA's disputes will be open and transparent.

Before publication, the GRA may, in some instances, provide a draft decision to all relevant parties concerned for final comments.

The GRA will publish details of disputes on its website after they have been completed.

Assigning a case team

Parties to disputes can expect regular contact with the team working on the dispute and updates on its progress. The GRA will provide the Authorised Provider initiating a dispute with the name of, and contact details for, the dispute adviser considering the matter.

Wherever it considers it necessary or desirable for the proper handling of a dispute, the Chief Executive Officer of the GRA may appoint a duly qualified person from outside the GRA to form part of the GRA team working on the dispute.

Information gathering

The GRA relies on accurate information, provided in a timely manner, to carry out efficient investigations into disputes.

Delays in the provision of information can have a significant impact on overall timescales and may significantly disadvantage one or more of the parties involved. The GRA therefore, expects Authorised Providers to respond to information requests within strict deadlines.

The GRA will use its formal powers to collect the information it needs to pursue disputes and will take enforcement action against companies who fail to respond to formal requests for information. The GRA intends to depart from this strategy only when the nature of the information required means that a formal request is inappropriate (e.g. where background information is required or information is required before a formal request can be issued or the information required is in answer to a very simple query).

Formal information requests

Where the timetable of the dispute allows and/or the information request is particularly complex, the GRA may issue formal information requests in draft, allowing three working days for representations to be made on the relevance of the information requested and the practicality of providing the information by the specified deadline. After considering any comments, the GRA will then confirm or amend the information request and issue a formal notice. Where an information request is straightforward or the information is required quickly, the GRA may not send a draft information request.

Once a formal notice for information has been issued, the GRA will not usually agree to an extension of the deadline and will be robust in enforcing the requirement to respond including making use of its powers contained in the Act and regulations.

The GRA intends to meet the statutory four-month target for resolving disputes, unless circumstances are exceptional, and will therefore set challenging deadlines for responses to information requests. Authorised Providers should consider the need to develop adequate mechanisms to ensure that they can meet their requirements to supply information.

Authorised Providers should note that, when responding to formal information requests, a blanket marking of "confidential" on all information supplied is unhelpful and time consuming for both the GRA and the Authorised Provider. A statement that all information supplied is "confidential" will oblige the GRA to take a view on what is, and is not, genuinely confidential.

Consulting on the outcome of disputes

Where the outcome of a dispute is of interest to a number of Authorised Providers, the GRA may formally consult on its proposals. The GRA will normally allow ten working days for consultations on dispute resolution but in special circumstances it may allow less time. The GRA will publish final determinations and reasons for its decisions in all cases. When the outcome of a dispute is only of interest to the parties involved, consultation will be limited to the parties and may be less formal in nature.

Making a request for the GRA to pursue a case as an urgent case

If an Authorised Provider believes that the GRA should take urgent action to address its concerns, then it must clearly set out its full argument as soon as possible. An Authorised Provider is unlikely to be persuasive in its argument that a matter is a case for urgent action if it demonstrates a failure to act with urgency in bringing the full details of its submission to the GRA's attention.

Representations about recent changes in conduct are more likely to present grounds for urgent action than allegations about established behaviour or agreements. The GRA will assess any request for urgent action in line with its powers as contained in the Act and regulations.

A request for urgent action must demonstrate that the matter deserves urgent attention. Authorised Providers should provide compelling evidence that the alleged contravention or infringement justifies the commitment of significant resources in the GRA pursuing the issue as a matter of urgency. Such evidence may include:

- a financial assessment of the losses directly attributable to the alleged behaviour relevant to total turnover of the Authorised Provider initiating a case;
- details of other companies likely to be affected; and
- information about why the damage caused will be irreparable (for example if the results of the behaviour cannot be reversed because the number of consumers involved renders this impracticable or companies will exit a market with high barriers to entry).

The GRA expects to be able to assess the case for urgent action on the merits of the facts brought to its attention at the outset and expects to provide the Authorised Provider with a decision about urgent action quickly. Authorised Providers should note that repeated requests for the GRA to reconsider a decision on urgent action can be counterproductive, as responding to these requests may divert resources away from the full investigation.

Requests for urgent action

Where the GRA considers that a case is urgent, it may specify that any action to be taken by an Authorised Provider believed to be contravening a condition or specific obligation is taken sooner than would otherwise be the case.

The GRA's discretion to take urgent action applies only to alleged breaches of conditions or specific obligations relating to electronic communications networks and services.

The GRA may consider a case as urgent where contravention of a condition or specific obligation has resulted in, or creates an immediate risk of:

- a serious threat to the security of Gibraltar, to the safety of the public or to public health; or

- serious economic or operational problems for Authorised Providers.

Timeframes for accepting disputes

The GRA aims to acknowledge all submissions made to it within two working days of receiving a submission.

Within fifteen working days of receiving a submission, the GRA aims to inform the Authorised Provider whether it intends to accept a request to resolve a dispute.

The GRA uses this fifteen-day period to ensure that it fully understands the dispute and to reach a decision about whether it is appropriate to open a dispute. The fifteen-day enquiry phase begins on the day a complete submission (including a non-confidential version) which can be sent to the other party in the dispute, is received by the Communications Division of the GRA.

In the absence of a non-confidential version of the submission or of a statement that the dispute as submitted can be regarded as non-confidential, the GRA's fifteen-day deadline will not begin until such a statement is made in writing to the GRA or a non-confidential version of the submission is made available to the GRA.

If the GRA finds, during the enquiry phase, that the evidence submitted by the Authorised Provider is incorrect, or based on a misunderstanding, the GRA may decide not to open a dispute.

If the GRA accepts a dispute for resolution, it will notify the Authorised Provider. If the GRA considers that it is not appropriate to accept a dispute submission, it will write to the Authorised Provider setting out its reasons.

Where the GRA needs more than fifteen working days to decide whether it is appropriate to handle any dispute, it will be prepared to explain why.

Investigating disputes

In accordance with section 95 of the Act, the GRA must make a determination resolving a dispute within four months. The GRA will work to determine the dispute as soon as possible, however, in exceptional circumstances and subject to section 94(3) of the Act, the GRA may take longer to resolve a dispute.

Type of investigation	Timeframe
Dispute	Four months (sec 95 Act)

The timeframes above shall commence from the day the GRA notifies the Authorised Provider that it has accepted to resolve a dispute.

In order to comply with the four-month timeframe set for the determination of a dispute, it is important that all the Authorised Providers involved fully co-operate with the GRA in order for it to carry out its obligations in resolving the dispute within this timeframe. Hence, the GRA shall not consider any late submissions and will base its final determination of the dispute on the basis of the information available to it. Moreover, where appropriate, the GRA may take regulatory measures against any Authorised Provider, which has in any way impeded the timely conclusion of a dispute.

ANNEX 1 - FORMAT FOR SUBMITTING A COMPLAINT

Complaints should be submitted to:

The Gibraltar Regulatory Authority
Communications Division
2nd Floor Eurotowers 4
1 Europort Road
Gibraltar
GX11 1AA

E-mail: communications@gra.gi
Telephone: (+350) 20074636

If you need any further guidance on how to submit a complaint to the GRA, please contact the Communications Division.

If your submission contains confidential information, you should provide a separate non-confidential version which can be copied to the target of the complaint. The GRA will send a non-confidential version of your submission to the parties named in your complaint.

Unless you specifically request the GRA not to do so, the GRA will disclose your business name to the target of the complaint. The GRA recognises that there are some circumstances in which complainants prefer to remain anonymous (for example, where disclosure of the complainant may prejudice ongoing commercial relations with third parties), but that may hinder full explanation of the problem to the target of the complaint, thus limiting the effectiveness of the investigation.

A submission should contain the following information:

Section A: Preliminary information

- summary of complaint (background, undertakings concerned, products/services, key dates, alleged infringement, harm done, relief sought);
- business name, address, telephone, e-mail address and, the contact details of a person who can discuss the detail of a complaint;
- A brief explanation of the nature of your business (e.g. whether network and/or service provider and the main services offered).
- details of the target(s) of the complaint;
- details of the relationship between the complainant and the Authorised Provider complained of, such as whether the complainant is a customer or a competitor.

Section B: Legal basis for the complaint

Specify:

- applicable condition(s)/obligation(s) which you consider is/are being breached by the target and a clear explanation of why you believe the condition(s)/obligation(s) is/are being breached.

Section C: Details of the complaint

- an explanation of the reasons for the complaint;
- the products and/or services concerned;
- details of the structure of supply and demand for the products/services concerned;
- relevant dates and incidents;
- details of any relevant contact with the target of the complaint;
- a chronology of events;
- how the complainant's business has been affected by the alleged activity;
- relief/remedy sought including details of the timing/urgency of the complaint and reasons;
- names of other industry members who can support the complaint.

Section D: Factual evidence supporting the allegation and verification by an officer of the company

This section must contain details of the factual evidence available to support the allegation made.

Section E: Other relevant information

Any supporting information should be provided with the complaint, including, for example:

- copies of any relevant documentation (e.g., notes of telephone conversations, minutes of meetings, board papers) or communications (e.g. emails) involving the target/complainant that provide evidence of the alleged breach;

- copies of any relevant industry reports/consumer surveys;
- details of any similar complaints/investigations/proceedings concerning the same or similar condition or obligation that the complainant may be aware of (e.g. an investigation by the European Commission).

Declaration by a senior officer of the company

The information provided in the submission should be acknowledged as correct and complete to the best of your knowledge and belief.

A signature and position within the company must also be provided together with the date of the complaint.

ANNEX 2 - FORMAT FOR SUBMITTING A REQUEST TO RESOLVE A DISPUTE

A request for resolution of a dispute should be submitted to:

The Gibraltar Regulatory Authority
Communications Division
2nd Floor Eurotowers 4
1 Europort Road
Gibraltar
GX11 1AA

E-mail: communications@gra.gi
Telephone: (+350) 20074636

If you need any further guidance on how to submit a request for dispute resolution to the GRA, please contact the Communications Division.

If your submission contains confidential information, you should provide a separate non confidential version which can be copied to the other parties.

On receipt, the GRA will send a non-confidential version of your submission to the parties named in your dispute submission.

Section A: Preliminary information

- A summary of your dispute.
- Business name, address, telephone, e-mail address and the contact details of a person who can discuss the details of the dispute.
- A brief explanation of the nature of your business (e.g. whether network and/or service provider and the main services offered).
- Details of the other parties involved in the dispute.
- Details of the relationship between the parties to the dispute.

Section B: The issues in dispute

A full statement of the scope of the dispute, including:

- a list of all the issues which are in dispute;

- full details of the relevant products or services.

If the dispute relates to a request for a new access product:

- business plans of relevant product or service including forecasts and details of prospective clients demonstrating how and when you intend to make use of the products or services requested.

In the case of disputes involving contracts:

- a copy of the relevant version of the contract, clearly identifying the clauses that are subject to the dispute.

A description of the condition(s)/obligation(s) to which the dispute relates, including a view on the relevant economic market and whether any Authorised Provider in that market has been designated as having SMP.

You should explain why you consider that the relevant condition(s)/obligation(s) is/are not being met, for example, if you make an allegation that a charge is not cost oriented you must set out your reasoning.

Details of the way in which you wish to see the dispute resolved, including an explanation as to why the GRA should reach this outcome, for example:

- full details, including an accurate technical description, of a requested product or service;
- the setting of a charge at a particular level including your justification of this level.

Section C: History of commercial negotiations

- A description of any negotiations which have taken place between the parties, or, in the event that a party has refused to enter into negotiations, evidence to suggest that you have taken reasonable steps to engage the party in meaningful negotiations.
- Details of the steps taken to resolve all the issues which are in dispute.
- An explanation of why commercial agreement could not be reached.
- Relevant documentary evidence of commercial negotiations, covering the whole period of negotiation, including correspondence, notes of meetings and telephone calls, and a chronological summary of the events.
- Details of any options or proposed solutions put forward by any party during negotiations, including what, if anything, was accepted, what was rejected and why.

Declaration by a senior officer of the company

Before making this submission to the GRA, the Authorised Provider shall confirm that it has used its best endeavours to resolve the dispute through commercial negotiation.

The information provided in the submission should be acknowledged as correct and complete to the best of your knowledge and belief.

A signature and position within the company must also be provided together with the date of the dispute.

CONTACT US

Gibraltar Regulatory Authority
2nd floor, Eurotowers 4, 1 Europort Road, Gibraltar

 (+350) 20074636

 communications@gra.gi

 www.gra.gi

