

**Response of Awasr Oman and Partners S.A.O.C. ("Awasr")**

**to the TRA Consultation on Draft Guidelines for Competition Complaints (the "Draft Guidelines")**

The following is Awasr's response to the TRA Consultation on Draft Guidelines for Competition Complaints:

Point Number	Reference paragraph in the Draft Guidelines	Awasr's Response
1	p. 1 paragraph 1/2	In reality some complaints by a licensee against another can relate to both <i>ex post</i> or <i>ex ante</i> anti-competitive aspects as well as other regulatory aspects. In such cases, can the TRA explain how such a complaint should be referred to the TRA? Awasr considers that it should be possible for licensees to submit complaints concerning anti-competitive behaviour as well as breach of other regulatory aspects in one procedure, without having to divide up the complaints into different procedures.
2	p. 1 paragraphs 1-4 generally and p. 3 point 1 (ii), points 2 and 3	Awasr is concerned that one possible reading of the Guidelines at the points mentioned in the second column opposite is that their effect is that any allegation that another licensee's behaviour is anti-competitive in nature or in breach or its <i>ex ante</i> obligations can only be considered as part of a complaint by one licensee against another pursuant to these Guidelines, and not part of a dispute between licensees that is subject to the separate procedure for such disputes before the TRA. For these purposes, it should be clearly stated in the Guidelines, by a new point after point 3 that "Nothing shall prevent a licensee from alleging that another licensee's behaviour is anti-competitive in nature or in breach of that licensee's <i>ex ante</i> obligations as part of a dispute between those licensees".
3	p.3-4 points 7(i) and (ii)	Awasr considers that it may be difficult in some cases for licensees to identify the exact characterisation of the type of infringement involved (particularly in relation to a breach of the <i>ex post</i> competition obligations), and it may be difficult to correctly identify the precise relevant market involved. Awasr considers that complaints should not be rejected if they fail to precisely and correctly characterise the form of the competition violation alleged or the relevant market, so long as the rough nature of the allegation is clear and the relevant market definition is roughly identified (even though it may not be the correct definition according to the TRA).
3	p.4 point 7(iii) and (iv)	Similarly, it may be difficult for a licensee making a complaint to obtain proof of elements which may be solely within the knowledge of the other licensee complained of, such as, for example, its costs, and it may be difficult to show direct evidence of the ultimate effect on the licensee making the complaint in future of the relevant behaviour complained of (will it be forced out of the market). While Awasr has noted

		that section 4 on pages 8-9 suggests that alternatives to producing evidence of the costs of the other licensee can be submitted such as own costs, it nevertheless considers that a general statement should be included in the Guidelines to the effect that a complaint will not be deemed to be inadmissible by virtue of the fact that evidence is not produced, where that evidence is inherently unavailable to the complainant, either because it is not disclosed to the complainant by the licensee complained of, or because it relates to future events for which there can be no direct evidence.
4	p.4 point 8 and point 9	Awasr considers that there should be a clear obligation on the TRA to notify the complainant of whether the complaint is admitted or not admitted under points 8(i) and 8(ii) within the 10 working day period suggested by those points. Awasr has noted that point 9 refers to “[t]he obligation to notify the Complainant accordingly” but considers that it is ambiguous as to whether this only refers to the matters in point 9. It should be made clearer that the obligation to notify refers to all applications of 8(i) and 8(ii) by the TRA and that the obligation is to notify within the periods specified, i.e. 10 working days.
5	p.4 point 10	The TRA should further explain in the Guidelines when the informal resolution procedure is applicable, and the conditions of its use must be: <ul style="list-style-type: none"> <li>(1) That a formal settlement is signed between the TRA the relevant party.</li> <li>(2) That the Complainant is informed of the terms of the settlement and agrees with those terms.</li> <li>(3) That proceedings automatically start again on the request of any complainant if the party with whom such a settlement is made fails to implement its obligations under the settlement in a full and timely manner.</li> </ul>
6	p.5 point 14 and generally in respect of points 10 to 21 inclusive	Awasr considers that if either party requests an oral hearing, then this should be granted where reasonable in order to allow the hearing of witnesses and practical demonstration of relevant aspects complained of.
7	p. 6 point 27	Where the TRA decides that it will take no further action, Awasr considers that there must be an obligation to do so at least within the 90 day period mentioned in point 31, and that the Complainant and other licensees who have participated in the investigation should be informed in writing within that period of the full reasoning pursuant to which the TRA has decided not to take further action.
8	p. 6 point 31	Awasr notes that the Guidelines suggest that the TRA “will generally issue the Decision within ninety (90) working days after admitting a complaint ...”. However, Awasr considers that there should be an ultimate time limit within which the TRA must issue a Decision, and that maximum should 150 working days.

9	p.7 point 34	Awasm suggest that to be a procedure whereby licensees can review a decision and make submissions as to which parts should be redacted for confidentiality in any published version, such as exists under EU competition law.
10	p.7 point 35	Awasm suggest that to read: "The TRA <del>may</del> <u>shall</u> publish the Decision on its website <del>or</del> <u>and may publish it in any other media ..."</u> In particular, Awasm considers that an important part of a competition regime is the deterrent effect of publication, but also considers that it is important that decisions are published in order to inform market participants and customers of the way in which competition rules are applied by the TRA.
11	p. 7 point 36	Awasm suggest that to read as follows:  "there is serious threat to the network <del>and</del> <u>or</u> operations of licensees, <u>or a significant threat to the ability of a licensee to compete, or to competition in the market"</u> .  In particular, Awasm is concerned that in some cases, the threat to competition may be significant and urgent, and the TRA should be able to modify the procedure in these circumstances.
12	p.9, Section 4 last sentence	Awasm suggest that to the sentence can be modified as follows:  "Where <u>direct evidence</u> <del>information</del> about a target service/product's costs is not available, the costs used to support an allegation could be based on the Complainant's own costs <u>or any other evidence that suggests the level of the service/product's costs."</u>