



## COMMERCE COMMISSION

**JULY 2008**

COMPLAINTS (OPERATIONAL SEPARATION) HANDLING  
UNDER PART 4A OF THE TELECOMMUNICATIONS ACT 2001

### **GUIDELINES**

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#### **PURPOSE AND SCOPE OF THESE GUIDELINES**

1. The Commission has a duty to consider written complaints alleging a breach of an enforceable matter that falls within the scope of Section 156N of the Telecommunications Act 2001 (the Act). The enforceable matter relevant to these guidelines is Telecom's Separation Undertakings under Part 2A of the Act.
2. The main requirements for a robust operational separation plan include undertakings given by Telecom to the Crown<sup>1</sup>. From the separation day of Telecom on 31 March 2008, the undertakings became enforceable in stages by the Commission.
3. These guidelines set out the Commission's processes and requirements for complaints about any alleged breach of Telecom's separation undertakings. It is intended to assist parties to present a complaint in a manner that will enable the Commission to deal with it in a timely manner.
4. Complaints alleging breach of Telecom's separation undertakings<sup>2</sup> may be made by an Access Seeker or an Access Provider.
5. The complaints channel represents one component of the enforcement role of the Commission in relation to the operational separation undertakings. The Commission also has the power to act in its own right by way of an application made to the High Court<sup>3</sup> if it appears that Telecom intends to engage, or is engaging, or has engaged, in conduct that constitutes, or would constitute, a breach of the terms of a separation undertaking.

#### **WHAT THESE GUIDELINES DO NOT COVER**

6. These guidelines do not cover complaints in regard to breaches of any other enforceable matter e.g. Standard Telecommunications Determinations, Codes etc. The requirements for lodging such complaints are prescribed in the Commission's Enforcement Guidelines.

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<sup>1</sup> Section 69D of the Act sets out the main requirements for the operational separation plan of Telecom

<sup>2</sup> Section 156(O) of the Act provides that a complaint may be made to the Commission alleging breach of an enforceable matter.

<sup>3</sup> Section 69R of the Act which empowers the Court to make any orders on any terms and conditions it thinks appropriate to grant relief in respect of separation undertakings.

## **SUBMISSION REQUIREMENTS**

7. All complaints must be made in accordance with the format prescribed in the Appendix of this document (Notification of Complaint). All sections of the Notification must be completed.
8. Before making a complaint to the Commission, the Complainant should have attempted to resolve the issue with an appropriate Telecom manager, in the line of the relevant Telecom Business Units and if that was not successful, have referred the complaint to the Independent Oversight Group (IOG). Evidence of such efforts should accompany the complaint, such as correspondence between the parties in regard to the complaint. The Complainant should also explain why the resolution efforts were not satisfactory.
9. In the event that no prior attempts have been made to resolve the issue, the Complainant should explain why and provide any evidence in support (e.g. why immediate intervention is required). If not satisfied, the Commission will refer the complaint to the IOG.
10. The complaint must be about compliance with the undertakings. Wherever possible, allegations of breach of an undertaking or undertakings should specify the relevant clause/s of the undertaking alleged to have been breached and provide supporting evidence. Wherever possible, the Complainant should attach copies of all relevant documents necessary to demonstrate a breach. Where this is not possible, the Complainant must provide a statement explaining why it cannot provide the supporting documents.
11. Wherever appropriate, the Complainant should describe the manner in which the Complainant has suffered losses or is likely to be affected as a direct result of the alleged breach. The Commission acknowledges that this is not a requirement to make a complaint.
12. The Complainant must submit a statement by a senior officer of the company that due care has been taken to ensure that the evidence submitted is correct and complete.
13. Wherever necessary, the Commission will offer advice and guidance on the submission requirements, particularly to smaller stakeholders and new entrants.

## **HANDLING OF COMPLAINTS BY THE COMMISSION**

14. The Commission will consider each complaint on a case by case basis.

## **ACKNOWLEDGEMENT OF COMPLAINT**

15. The Commission will acknowledge all Notifications in writing within 2 working days of receipt of complaint.

16. Within 7 working days from the date the Commission receives the complaint, the Complainant will be notified in writing whether the Commission intends to initiate or decline an investigation. A written explanation will be provided to the Complainant in cases where the Commission declines to investigate the complaint.
17. This timeframe may be extended if the Commission believes that the complaint raises complex factual, legal or policy issues. Notification of the extended review period will be made in writing to the Complainant.

#### **INVESTIGATION PHASE**

18. Where the Commission initiates investigations, a written notification will be issued to the relevant Telecom Business Unit along with a copy of the complaint and all supporting documents, subject to confidentiality treatment where necessary. The Commission will also notify Telecom Group and IOG and Counsel.
19. The relevant Telecom Business Unit will be provided 7 working days to respond in writing to the Commission's notification. The response must provide the basis on which the allegation or allegations are disputed.
20. They will be provided 7 working days from the date on which the Commission provides the relevant Telecom Business Unit's response, to submit a written reply to the response.
21. The relevant Telecom Business Unit will be provided a further 7 working days to submit a written reply based on the response to the Commission.
22. The Commission will provide a copy of each party's response to the other party in all stages where the opportunity to respond is given, subject to confidentiality treatment where necessary.
23. Where a party demonstrates good cause, the Commission may grant a further extension for making its submission. An application for extension must be made at least 3 working days prior to the due date of the submission deadline. The Commission will notify the parties of its decision within 2 working days of receipt of the request for extension.
24. During the investigation phase, the Commission may seek further information from the relevant Telecom Business Unit or under Section 98 of the Commerce Act.
25. The Commission may decline to initiate an investigation into a complaint if the submission requirements are not met and no exceptions have been provided on the matter.

#### **WITHDRAWAL OF COMPLAINT**

26. The Complainant may, at any stage of the complaints handling process, withdraw its complaint against the relevant Telecom Business Unit. The Complainant must notify the Commission in writing of its request for withdrawal and the reasons for doing so. A copy of the notification must also be provided to the relevant Telecom Business Unit.

27. The decision to withdraw the complaint by the Complainant does not preclude the right of the Commission to proceed with investigations into the matter in its own right pursuant to section 69R of the Act.

## **DECISION**

28. The Commission will issue a decision within 30 working days from date of notification of decision to initiate investigations into the complaint. Written notification of the decision and the enforcement measure the Commission will take will be provided to both parties and a copy of the decision will be made available to the IOG<sup>4</sup>. Where necessary, the Commission may by written notice to the parties prior to the expiration of the 30 day period, extend the review period.
29. Where appropriate, the Commission will consult with the parties prior to the issuance of a decision.
30. The Commission may decide to take the following enforcement actions:
- a. no action on the complaint;
  - b. to take, or join another party in taking, enforcement action for the enforceable matter in the High Court under section 156P of the Act.

For avoidance of doubt, the Commission may request the Minister to propose a variation to the separation plan at any time for any reason<sup>5</sup>.

## **CONFIDENTIALITY**

31. The Commission will exercise due care in disclosing information submitted by the parties. Wherever necessary, parties are required to submit non confidential versions of their submission to the Commission to be copied to the other party.
32. Progress of the investigations into the complaint will be made known to the parties whenever deemed reasonable by the Commission.

## **PUBLICATION**

33. The complaint, corresponding replies and Commission's decision will be made available on the Commission's website upon final issuance of a decision.

## **INTERIM ORDER**

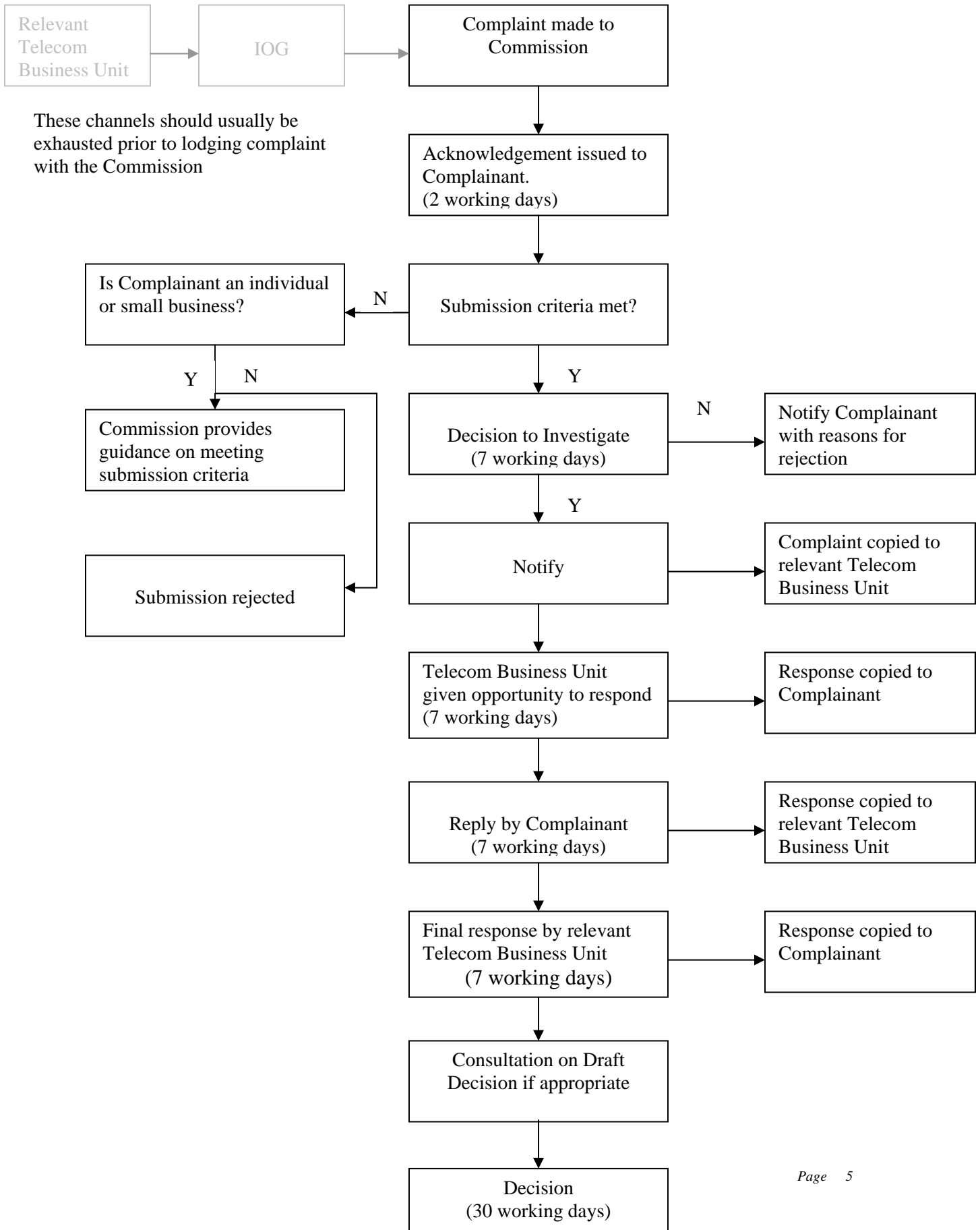
34. At any time during the investigation stage, the Commission may apply to the High Court for an interim order to require Telecom to restrain from engaging in a conduct that constitutes, or would constitute, a breach of the terms of the Separation undertaking.

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<sup>4</sup> Section 156O(6) of the Act requires the Commission to promptly give written notice to the of the Commission's decision of the complaint

<sup>5</sup> Section 69X of the Act.

## OVERVIEW OF COMPLAINTS PROCESS





COMMERCE COMMISSION

### Notification of Complaint (Operational Separation) Form

**Director  
Telecommunications Branch  
Commerce Commission  
44 The Terrace  
P.O. Box 2351  
Wellington 6140  
New Zealand**

Should you need assistance on how to submit a complaint in regard to the operational separation plan of Telecom, please contact the Telecommunications Branch of the Commerce Commission.

Please note that where the Commission decides to investigate a complaint, a non confidential version of the submission will be sent to the parties named in the complaint. If your complaint contains confidential information, you should provide a separate non confidential version which can be copied to the other parties.

<b>Preliminary Information</b>		
<b>Details of Complainant</b>		
Legal name of company		
Business Address		
E-mail	Telephone Number	Fax Number
<b>Details of person able to discuss complaint</b>		
Name		Position in company
Address		
Email	Telephone Number	Fax Number

<b>Details of party against which the complaint is made</b>		
Name of relevant Telecom Business Unit		
Business Address		
E-mail	Telephone Number	Fax Number
Details of relationship with party against which the complaint is made		

<b>Nature of Complaint</b>
<p>To satisfy the Commission that the complaint is about compliance with the Undertakings, an explanation of the scope of the complaint must be provided. These would be expected to include:</p> <ul style="list-style-type: none"> <li>• full details of services relevant to the complaint;</li> <li>• explanation of the circumstances leading up to a potential breach of an undertaking/undertakings, including documentary evidence demonstrating the potential breach;</li> <li>• wherever possible, please identify the specific clause in the undertakings potentially in breach;</li> <li>• where this is not possible, the Complainant must provide a statement explaining why it cannot provide the supporting documents;</li> <li>• details of losses suffered or about to be incurred as a result of the potential breach.</li> </ul>

<b>History of Resolution Efforts</b>
<p>To satisfy the Commission that attempts have been made to resolve the issue, please include the following information:</p> <ul style="list-style-type: none"> <li>• details of steps taken to resolve the issue with the relevant Telecom Business Unit and/or the IOG; or</li> <li>• why this is inappropriate and provide any evidence in support;</li> <li>• in the event that such efforts have been made, please include relevant documentary evidence of these channels being exhausted, covering the whole complaints process period, including correspondences, minutes of meetings and a chronology summary of events; and</li> <li>• an explanation of why a resolution could not be reached or was not satisfactory.</li> </ul> <p>Note: The Commission may waive this requirement in special circumstances.</p>

**Declaration by a Senior Officer of Company**

I hereby confirm that all information provided to the Commission as part of this Notification is true and correct.

Date: ..... Signature:..... Position:.....