



**MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION**

**GUIDELINES FOR DISPUTE RESOLUTION**

**JULY 2003**

**Malaysian Communications and Multimedia Commission**

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# **GUIDELINES FOR DISPUTE RESOLUTION**

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# MALAYSIAN COMMUNICATIONS AND MULTIMEDIA COMMISSION

## GUIDELINES FOR DISPUTE RESOLUTION

### Objective

- 1 The Malaysian Communications and Multimedia Commission (“the Commission”) has prepared the following guidelines (“these Guidelines”) in exercise of its powers conferred by section 85 of the Communications and Multimedia Act 1998 (“the Act”) to set out the principles and procedures for the resolution of disputes or a class of disputes by the Commission in relation to any matter under the Act or its subsidiary legislation.

### Introduction

- 2 It is important to note that a dispute between two or more persons (“the parties”) regarding any matter under the Act or its subsidiary legislation shall first be attempted to be resolved by the parties. If an undertaking provided by any one of the parties has been registered by the Commission, the parties may then adopt the conditions of the undertaking in resolving the dispute.
- 3 The parties may seek resolution of the dispute by the Commission if :
  - (a) they cannot or have otherwise failed to reach an agreement to the dispute, and no relevant undertaking has been registered OR if one of the parties to the dispute does not wish to adopt the conditions of the undertaking; and
  - (b) if the Act or its subsidiary legislation expressly provides for such resolution.

## Scope of Chapter 7 Part V of the Act

- 4 Chapter 7 Part V of the Act lays down the processes to be followed when disputes are to be referred to the Commission for resolution and the Commission's powers in resolving the disputes. This includes the following provisions relating to :
  - (a) when the parties may seek resolution of the dispute from the Commission (Section 82);
  - (b) how the process is to be commenced and when the Commission may act (Section 83 and 84);
  - (c) the publication of guidelines by the Commission setting out the principles and procedures in resolving disputes (Section 85);
  - (d) matters relating to the decision by the Commission (Sections 86-88); and
  - (e) the enforcement of the decision (Section 89).
- 5 The scope of Chapter 7 Part V of the Act is limited in that the parties may only seek resolution of the dispute from the Commission if the Act or its subsidiary legislation expressly provide for such resolution.
- 6 In seeking resolution of a dispute from the Commission, parties shall first ensure that the dispute comes under -
  - (a) any of the following sections of the Act, namely :
    - (i) Section 82(3) read together with Sections 43(1), 110 and 155 - Disputes on compliance with undertakings;
    - (ii) Section 151 - Disputes on compliance with the standard access obligations;
    - (iii) Section 175 - Disputes on interference; or

- (iv) Section 229(1) - Disputes on matters on access to any post, network facilities or right-of-way

OR

- (b) any of the provisions of the subsidiary legislation made pursuant to the Act

which expressly provide for the resolution of such a dispute by the Commission.

- 7 The dispute resolution process outlined in these Guidelines are in addition to and not in derogation of the Commission's existing powers and functions under the Act.

## **The Dispute Resolution Process**

### **A. Commencement of the Dispute Resolution**

- 8 The party seeking recourse from the Commission for the resolution of the dispute ("the Claimant") shall submit to the Commission and serve on the other party in the dispute ("the Respondent") a notification of dispute as prescribed in Form 1 annexed hereto ("the Notification of Dispute").
- 9 The Notification of Dispute shall include the following:
  - (a) a demand that the dispute be referred to the Commission for resolution;
  - (b) the names and addresses of the parties;
  - (c) a reference to the specific provision of the Act or its subsidiary legislation which expressly provides for the resolution of the dispute in question by the Commission;
  - (d) the general nature of the claim and an indication of the amount involved, if any;
  - (e) the relief or remedy sought; and
  - (f) proof of previous attempts to resolve the dispute by negotiation between the parties.

- 10 The Claimant may choose to include the following documents together with the Notification of Dispute :
- (a) the Statement of Case referred to in paragraph 15 below; and
  - (b) the certified true copies of any agreement, undertaking or document out of or in relation to which the dispute arose, if any.
- 11 The fee for filing a dispute with the Commission is RM1,000.00 (Ringgit Malaysia One Thousand only) (“the Fee”) and shall be paid upon the submission of the Notification of Dispute to the Commission. Payment shall be by way of bank draft or money order and be made in favour of “SURUHANJAYA KOMUNIKASI DAN MULTIMEDIA MALAYSIA”. The Fee paid is non-refundable.

**B. Preliminary Inquiry**

- 12 The Commission shall, within thirty (30) days from the date of receipt of the Notification of Dispute, hold a preliminary inquiry to determine as to whether the resolution of the dispute in question by the Commission is expressly provided under the Act or its subsidiary legislation and as to whether the Commission will convene to decide the dispute (“Preliminary Inquiry”).
- 13 The Commission shall be bound to convene to decide the dispute if the Commission is satisfied that :
- (a) the resolution of the dispute in question by the Commission is expressly provided under the Act or its subsidiary legislation;
  - (b) that an agreement will not be reached between the parties or will not be reached within a reasonable time;
  - (c) that the dispute is not trivial, frivolous or vexatious; and

- (d) that the resolution of the dispute would promote the objects of the Act.

**C. Written Submissions**

- 14 Upon the conclusion of the Preliminary Inquiry, the Commission shall then inform the parties in writing of its decision as to whether it will convene to resolve the dispute or not. If the Commission decides that it will convene to resolve the dispute, the Commission shall notify the Claimant to submit a Statement of Case (as prescribed in Form 2 annexed hereto) to the Commission. The Statement of Case must be submitted to the Commission within Fourteen (14) days from the date as notified by the Commission.
  
- 15 The Statement of Case shall include the following particulars:
  - (a) the names and addresses of the parties;
  - (b) a statement of the facts supporting the claim;
  - (c) the point(s) at issue;
  - (d) the relief or remedy sought;
  - (e) certified true copies of the agreement, undertaking or document out of or in relation to which the dispute arose, if any (if the Claimant had not forwarded the same together with the Notification of Dispute earlier); and
  - (f) the supporting written statements by relevant persons, if any.
  
- 16 The Respondent shall submit a Statement of Reply (as prescribed in Form 3 annexed hereto) to the Commission within fourteen (14) days from the date as notified by the Commission.
  
- 17 The Respondent shall, in the Statement of Reply, reply to the Statement of Case in particular to items (b), (c) and (d) of the Statement of Case as stated in Paragraph 15 above.
  
- 18 The Respondent may annex the following documents to his Statement of Reply :



- (a) certified true copies of the agreement, undertaking or document out of or in relation to which the dispute arose or on which he relies his defence, if any; and
  - (b) the supporting written statements of relevant persons made by way of a statutory declaration, if any.
- 19 The Respondent may, in his Statement of Reply, make a counterclaim arising out of the same matter or rely on a claim arising out of the same matter for the purpose of a set-off.
- 20 The Claimant shall submit his reply to the Counterclaim (as prescribed in Form 4 annexed hereto), if any, to the Commission within fourteen (14) days from the date as notified by the Commission.
- 21 The parties shall have the burden of proving the facts relied on to support their respective claim or reply. The parties shall present evidence by relevant persons in the form of a written statement made by way of a statutory declaration.
- 22 The Commission may, at any time before deciding on the dispute, require relevant individuals to attend before the Commission to respond to queries and/or to give clarifications that the Commission may require. The admissibility, relevance, materiality and weight of any of the information gathered shall be determined by the Commission.
- 23 The Commission may decide on the dispute based only on the written submissions and evidence presented to it by the parties. In such an instance, the Commission shall where practicable, come to a decision within 30 days from the date of its receipt of the last written submission by the parties.

**D. Enforcement of Decision**

- 24 Pursuant to Section 89(1) of the Act, the Commission may direct a party to a dispute to abide by the decision of the Commission in that dispute.

- 25 The decision made by the Commission in resolving the dispute may also be enforced by the High Court as if the decision was a judgement of such Court provided that a certificate has been issued by the Commission to the Complainant for leave to proceed to the Court for the enforcement of the decision except in the case of an injunction.

## **General Provisions**

- 26 The terms and conditions of any resolution of a dispute by the Commission shall be accompanied with reasons and be in writing. The Commission shall provide the parties with a copy of its decision as soon as practicable.
- 27 The Commission's decision shall be binding on the parties. The decision will be registered in accordance with Section 88 and Part V Chapter 6 of the Act.
- 28 For the purpose of calculating a period of time under these Guidelines, such period shall begin to run, on the day following the day when a notice, notification, communication or document is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business (as the case may be) of the addressee, the period shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 29 A provisional timetable for the conduct of the dispute resolution shall be communicated to the parties in writing at the earliest possible moment and whenever possible, at the very start of the proceedings. Unless otherwise agreed by the parties, this provisional timetable should result in the issuance of the final decision within the period of 150 days from the date of submission of the Statement of Case. However, the period of time as stated in the provisional timetable may be extended by the Commission if circumstances so warrant and/or if the Commission deems it fit to do so.
- 30 The Commission shall conduct the dispute resolution proceedings with a view to expedite the resolution of the dispute. The Commission may instruct parties to attend a preliminary conference to organise and schedule

subsequent steps in the proceedings. The Commission may state in advance what evidence would be needed to establish proof of complex facts, exclude or limit irrelevant evidence, and proceed by successive determination of issues, in order to expedite the proceedings.

- 31 The Commission may take measures to protect trade secrets and confidential information.
- 32 The Dispute Resolution Proceeding shall be held in Kuala Lumpur, Malaysia.
- 33 For avoidance of doubt :
  - (a) references to the singular includes the plural and vice versa;
  - (b) headings in these Guidelines are for ease of reference only;
  - (c) words denoting natural persons include any body corporate or incorporate and vice versa; and
  - (d) references to "Section", "Part" and "Chapter" in these Guidelines are, unless otherwise stated, references to the Sections, Parts and Chapters in the Act.

### **Effective Date**

- 34 These Guidelines shall come into effect on 1 July 2003.

TAN SRI NURAIZAH ABDUL HAMID

Chairman

Malaysian Communications and Multimedia Commission