



ETHIOPIAN COMMUNICATIONS AUTHORITY

DISPUTE RESOLUTION DIRECTIVE

DRAFT FOR STAKEHOLDER CONSULTATION

April 27, 2020

DISPUTE RESOLUTION DIRECTIVE

Whereas Article 6(2) of the Communications Service Proclamation No. 1148/2019 confers on the Ethiopian Communications Authority (“the Authority”) the power to implement policies for communications services in Ethiopia;

Whereas Article 6(15) of the Proclamation grants the Authority the power to investigate complaints and resolve disputes between communications service operators and between consumers and communications service operators;

Whereas Article 37 of the Proclamation vests the Authority the power to issue decisions on any action or relief requested by any party within the scope of the Authority’s power that may, in the Authority’s judgment, best serve the purposes of the Proclamation;

Whereas Article 48 of the Proclamation grants the Authority the power to initiate a proceeding to observe whether a telecommunications operator has engaged in any conduct that the purpose or effect of substantially lessening competition in any Ethiopian telecommunications market;

Whereas Article 52 of the Proclamation gives the Authority the power to enforce provisions of the Proclamation as well as any Directive, license condition, its Decisions, or other instrument that it may issue;

Whereas Article 54(2) of the Proclamation further confers on the Authority the power to issue directives for implementation of the Proclamation and Regulations issued as per the Proclamation;

Now, therefore, the Authority hereby issues this Dispute Resolution Directive.

PART I

SHORT TITLE, DEFINITIONS, SCOPE OF APPLICATIONS

1. Short Title

This Directive may be cited as the “Dispute Resolution Directive No. 4/2020”.

2. Definitions

Words and phrases used in this Directive shall have the meaning and application given to them in the Proclamation No. 1148/2019. In this Directive, unless the context otherwise requires:

- 1) **“Appeals Tribunal”** means a Tribunal established under Article 39 of the Proclamation.
- 2) **“Authority”** shall mean the Ethiopian Communications Authority established under Article 3 of the Proclamation.
- 3) **“Claimant”** means a person who brings a claim before the Authority.
- 4) **“Consumer”** means any person who receives Communications Services and pays the corresponding fees for a certain period of time by virtue of an agreement that he enters into or accepts the terms set forth by a service provider.

- 5) **“Complaint”** means a formal written or electronically submitted statement of dissatisfaction of services by a Consumer of Communications Services.
- 6) **“Dispute”** means any request for Dispute Resolution that has been accepted by the Authority for formal resolution.
- 7) **“License”** means a License issued by the Authority for the provision of Communications Services.
- 8) **“Licensee”** means a person who has been issued a License by the Authority.
- 9) **“Notification of Resolution”** means a Licensee’s final decision for resolution of a Complaint, or rejection of a Complaint, which must be indicated in writing or by any other verifiable means.
- 10) **“Person”** means any natural or juridical person and any reference to the male gender shall apply equally to the female gender.
- 11) **“Publish”** means the posting of the Authority’s Decision on its website and/or other media as appropriate.
- 12) **“Request for Dispute Resolution”** means a submission made by a complainant requesting the Authority to accept a Complaint for Dispute Resolution.
- 13) **“Respondent”** means a person who has provided a response to the claim of the Claimant.
- 14) **“Response”** means the formal written response submitted to the Authority in response to a claim or to a request by the Authority.

3) Scope of Application

This Directive applies to all Licensees of the Authority, to consumers, and to third parties who advertise or provide a service or product in the Communications Sector.

**PART II
ADJUDICATION OF DISPUTES**

4) The Authority’s Power to Resolve Disputes

- 1) The Authority shall have the power to resolve any disputes that may arise between the following entities:
 - a) Between consumers and Licensees; and,
 - b) Between Licensees.
- 2) The Authority may, on its own motion or pursuant to a Complaint filed by consumers, initiate proceedings against a Licensee on any action or relief requested by any party within the scope of the Authority’s power that may, in the Authority’s judgment, best serve the purposes of the Proclamation.
- 3) The Authority’s Decision may grant or deny in whole or in part, any action or relief requested by any party; or may fashion such other remedy within the scope of the Authority’s power that may, in the Authority’s judgment, best serve the purposes of the Proclamation.

5) The Authority's Power to Combine Disputes

- 1) The Authority may, in its discretion, combine Disputes regarding the same subject matter for determination by a single Decision where it considers that:
 - a) The Disputes involve the same subject matter and can be conveniently considered as one single Dispute; and,
 - b) The parties are likely to have the same interest at all stages of the combined Dispute Resolution proceedings.
- 2) If, at any stage during the course of its consideration of the combined Disputes, the Authority considers the Disputes should no longer be combined, the Authority may continue its consideration of the individual Disputes separately.

PART III

REQUEST FOR DISPUTE RESOLUTION

6) Request for Dispute Resolution

- 1) The party who desires the resolution of a Dispute, referred to as the "Claimant" may initiate proceedings by:
 - a) Filing its claim for resolution with the Authority in written or electronic submission using forms available on the Authority's website and paying any fee applicable; and,
 - b) Serving the other party to the Dispute, referred to as the "Respondent," with a copy of the claim.
- 2) The Claimant's claim shall contain:
 - a) The names, addresses and telephone numbers of the parties to the Dispute;
 - b) A statement of the nature of the Dispute;
 - c) The remedy or relief sought, including any amount claimed; and,
 - d) Any other relevant information.
- 3) The Authority shall, within five (5) days of receipt of the claim, notify both Claimant and Respondent of receipt of the claim.
- 4) In a Dispute involving multiple parties, the Claimant shall provide copies of all documents submitted to the Authority to all the other parties on or before the date of submission of the documents to the Authority.
- 5) A party to a Dispute shall not rely on any grounds other than grounds stated in the claim or adduce additional facts or documents that were not referred to in the statement of claim or copies of the documents that were not annexed to the claim.

7) Rejection of the Claim

- 1) The Authority shall decline to accept a Request for Dispute Resolution where:

- a) The Request for Dispute Resolution raises or involves matters of law that are not within the competence of the Authority or is otherwise not contemplated for resolution by the Authority in the Proclamation;
 - b) The Request for Dispute Resolution arises from a Dispute with a Licensee is not made within thirty (30) days of a “Notification of Resolution” provided by a Licensee as provided for in the Consumer Rights and Protection Directive;
 - c) The Complaint in the Request for Dispute Resolution is the subject of ongoing legal proceedings before a court in the Federal Democratic Republic of Ethiopia unless a reviewing court has requested the Authority to review the matter;
 - d) The Request for Dispute Resolution relates to the content of a Communications Service, including, but not limited to, the editorial, literary, artistic, political, religious or other content expressed or transmitted through a Licensee’s Communications system;
 - e) The Request for Dispute Resolution is incomplete or is not presented in accordance with the procedural requirements of this Directive;
- 2) The Authority shall, before declining to accept the claim, give the Claimant an opportunity to be heard.
 - 3) Notwithstanding the provisions in Article 7(1)(e) of this Directive, the Authority shall not decline to resolve for the claim for the reason of incompleteness without giving an opportunity to the person filing the claim to rectify the irregularities within ten (10) working days.
 - 4) Where the Authority has declined to resolve a Dispute, it shall notify the parties to the Dispute, in writing, stating the reasons for declining the claim.

8) Response to Claim and Counter Claim

- 1) The Respondent shall submit its Response to the Claimant and the Authority within fourteen (14) working days of receipt of the claim.
- 2) The Response by the Respondent shall contain:
 - a) The name, address and other particulars of the Respondent;
 - b) The answer to the claim, a counterclaim, if any, against the Claimant; and,
 - c) Any other relevant information.
- 3) A Respondent who makes a counter claim in the response shall pay a fee determined by the Authority.
- 4) The response of the Respondent shall be sent by the Authority to the Claimant who shall, within fourteen (14) working days of its receipt send to the Authority its response together with any supporting documents.
- 5) The reply made by the Claimant under Sub-Article (4) of this Article must be restricted to points arising from the respondent’s defense or counter claim. No additional new points may be included.

9) Submission of Documents

Any written communication or electronic submission by a party to the Authority is deemed filed with the Authority from the date the document is received by the Authority.

PART IV HEARING

10) Hearing Time and Place

- 1) The Authority may give either party the right to request a hearing but retains the discretion to decide a matter solely based on the written record.
- 2) The Authority shall conduct the hearing in a manner that it considers appropriate except that the parties shall be treated equally and fairly and shall each be given full opportunity to present its case.
- 3) The Authority shall issue to the parties the time and place for the hearing as well as the expected duration of the hearing.
- 4) The Authority in setting out the date and duration of the hearing shall take into consideration the complexity of the issues involved and the likelihood of harm to either party if the Dispute is not promptly resolved.
- 5) The hearing shall commence not later than forty-five (45) days after the filing of the final submissions of the parties to have the Dispute resolved by the Authority.

11) Public Hearing

- 1) The hearing shall be open to all members of the public, except to the extent that the Authority decides that the confidential nature of any specific matter to be addressed during the hearing requires that such confidential matter be withheld from public disclosure.
- 2) The Authority shall make public the reason(s) for limiting public access to information in any of its proceedings and shall seek to ensure to the maximum extent possible that all of its proceedings shall be fully open to the public.

12) Appearance of an Expert in the Hearing

Where in the course of resolving a Dispute, a matter arises that in the opinion of the Authority requires certain expertise or competence, the Authority may call upon any person who possesses the expertise to sit with the Authority as an assessor.

13) Examination of Witness

- 1) The Authority may examine the parties and their witnesses when hearing a Dispute.
- 2) A witness called and examined by the either party may be cross-examined by the other party and after being cross-examined, the witness may be re-examined.

- 3) The Authority may, at any time before making any orders relating to a Dispute, require a party or any other person whom the Authority considers competent, to adduce documentary evidence or produce any material, specimen or product that the Authority may consider necessary for the determination of a Dispute.

14) Extension of Time

- 1) The Authority may adjourn the hearing of a Dispute for the production of further evidence or for other good cause, on such terms as it may determine.
- 2) At the request of a party the Authority may for good and reasonable cause grant an extension of time for the taking of any action by a party.

15) Non-Appearance of the Party

- 1) Where on the date of hearing any of the parties or their authorized representative does not appear when the Dispute is called for hearing, the Authority may dismiss the Dispute for non-appearance or proceed *ex parte*.
- 2) Where a Dispute is dismissed in default or decided *ex parte* an aggrieved party may file an application within fourteen (14) days from the date of such dismissal, for review of the order given, and the Authority may review the order if it is satisfied that there was sufficient cause for the non-appearance.

16) Withdrawal of Dispute

- 1) A Claimant may, at any time before or after the Dispute is heard, withdraw the claim by notifying the Authority in writing.
- 2) The Authority shall, where a Claimant withdraws a claim, make such orders relating to costs and restitutions as it considers fit.

**PART V
DECISION OF THE AUTHORITY**

17) Form of Decision of the Authority

- 1) The Authority shall make its decision in writing, stating reasons for the Decision, within thirty (30) days from the date of conclusion of the hearing.
- 2) The Decision of the Authority shall be dated and signed by the Director General.
- 3) The Authority shall cause to be made a record of the proceedings of the hearing of the Dispute and include that record, together with a copy of the Decision, in a document to be certified and signed by the presiding officer of the Authority as a true and correct record of the proceedings and the Decision.
- 4) The Authority shall forward a certified copy of the document described in Sub-Article (3) of this Article to each party.
- 5) The Authority may, given the urgency of a Dispute or for other justifiable reason(s), issue temporary preservation orders and reliefs pending the hearing and determination of the Dispute.

18) Publication of the Decision

- 1) Records of proceedings, except those parts which for reasons specified by the Authority are confidential or privileged or otherwise should not be disclosed to any person, shall be open to inspection by any person after conclusion of the hearing, subject to such person complying with the terms as the Authority may prescribe from time to time, in regard to time, place and manner of inspection and payment of inspection fees.
- 2) The Authority shall publish on its website and/or other media, its Decision on Disputes it has heard and determined.

19) Effect of the Decision

The Decision of the Authority shall be binding on the parties from the date of communication of the Decision to the parties.

20) Appeal of the Decision

Any party dissatisfied by the Decision of the Authority may appeal to the Appeals Tribunal on issues limited to legal matters within fifteen (15) days of the Decision.

PART VI MEDIATION

21) Mediation by the Authority

- 1) The parties to a Dispute may, at any time following submission of a Request for Dispute Resolution by both Parties, enter into negotiations aimed at settling a Dispute in good faith, in whole or in part, by mutual agreement.
- 2) The Authority may, at its discretion, attempt to resolve a Dispute through mediation, subject to the conditions below:
 - a) If it is specifically requested to do so by both parties to the Dispute; or,
 - b) Where the Authority believes there is a possibility of amicable resolution of the Dispute between the parties, even where its mediation services are not requested.
- 3) If the Authority believes that a settlement is possible, it shall use its discretion to end or suspend any scheduled mediation or formal Dispute Resolution proceedings.
- 4) The parties shall agree that all resolutions through mediation shall be final and binding, and not subject to appeal.

22) Resolution by Settlement

- 1) The parties to a Dispute shall agree on a settlement within fourteen (14) days of the commencement of negotiations, unless the parties to the Dispute mutually agree to extend the period for settlement negotiations based on a timetable approved by the Authority.

- 2) If the parties agree to settle the Dispute through mediation, the parties will submit to the Authority the terms of the settlement of their Dispute that includes the following information at a minimum:
 - a) A clear description of the settlement reached between the parties; and,
 - b) A timetable detailing the performance of the settlement reached between the parties.
- 3) Following submission of the settlement agreement, the Authority shall, within five (5) working days, inform the parties, in writing, if it accepts the terms of the settlement. Upon approving the settlement agreement, the Authority shall dismiss the Dispute.
- 5) The details of any settlement agreed between the parties to the Dispute shall not be made public by the parties unless the parties and the Authority mutually agree to do so.
- 6) Notwithstanding Sub-Article (4) of this Article, where the interest of the public requires it, the Authority may disclose the results of the settlement to the public.
- 7) If the parties fail to reach a settlement on any or all of the issues, the Authority shall commence or recommence the scheduled mediation or Dispute Resolution proceedings.

PART VII
MISCELLANEOUS PROVISIONS

23) Liability of the Authority

The Authority shall not be liable to any party for any act or omission in connection with the decision provided under this Directive

24) Amendment

The Authority may, at any time, when it deems it necessary, and consistent with the Proclamation, amend this Directive.

25) Effective Date

This Directive will come into force on _____, 2020.

DONE AT ADDIS ABABA ON _____ DAY OF _____ 2020

ENGINEER BALCHA REBA
DIRECTOR GENERAL
ETHIOPIAN COMMUNICATIONS AUTHORITY