Best Practices in Decision-Making

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Best Practices in Decision-Making
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Chapter 1: Introduction

1.1. Background

During the 37th meeting of the APEC Telecommunications and Information Working Group (TEL), participants of the Liberalization Steering Group (LSG) agreed to undertake work to examine the linkages between the LSG’s policy/regulatory frameworks, consumer issues, next generation networks, and universal service work. At the following TEL 38 meeting, the LSG held a workshop on “Engaging Stakeholders.” The objective of the workshop was to examine and facilitate the interaction between regulators, policymakers, end users, consumers and industry. Subsequently, participants at the LSG agreed that work be undertaken towards developing a guide to assist economies in establishing a structured framework for stakeholder engagement, which aims to reflect mutual values and be accepted by all stakeholders.

1.2. Objectives of the Guide

This guide aims to help economies establish practical procedures that assist in effective stakeholder consultation, effective review of decisions, and timely and transparent complaint resolution through:

- analysing the associated benefits and risks of current procedures and practices;
- highlighting key success factors that lead to fair, balanced and reasonable arrangements in a competitive marketplace; and
- providing practical examples and presenting economy case studies.

It is intended that this guide assist economies in:

- attracting investment and encouraging industry confidence through the development of transparent procedures and trusted frameworks for decision making;
- promoting consumer rights with open and transparent complaint procedures; and
- ensuring regulators are able to make decisions within a framework of independence and accountability.

1.3. Guide Overview

The guide addresses three key areas of stakeholder engagement, including stakeholder consultation, complaint resolution, and the re-evaluation of decisions. Each chapter also presents relevant economy examples, experiences, and case studies.

Chapter Two focuses on the procedures that policymakers and regulators should follow when consulting with stakeholders. These procedures form an effective means of ensuring that stakeholder clients have an opportunity to express their views and participate in the decision-making process.

The chapter also highlights a number of benefits that may be derived from such consultation and includes examples on the different forms of consultation that can be used and how these are likely to achieve agreement and build trust. A section on outreach and education discusses the
identification of stakeholders, meetings and hearings with stakeholders, the use of discussion papers and consultation documents and the management of confidential material.

Chapter Two also considers the relative merits of open consultation versus limited consultation and the need for timeliness in the decision-making process and concludes with examples from the economies of Japan, Peru, Chinese Taipei and Hong Kong, China.

Chapter Three provides a general introduction to the complaints and disputes process, including a definition of what constitutes a complaint. The chapter discusses complaints handling within the telecommunications industry, acknowledging that it is a particularly challenging industry in which to manage such issues and is poorly reflected in surveys of complaints handling. A number of reasons are offered as to why this is the case.

It is also recognized that most or all economies have a generic means of resolving disputes through legal means and explains a number of such processes. The chapter concludes with the notion that regulatory or government involvement in the resolution of disputes will be very much a decision based on the circumstances of each economy.

Chapter Four focuses on the value of reviewing decisions and the role this process is able to play in ensuring relevance in facilitating the growth of a fast changing telecommunications sector. It is concluded that clear and transparent timeframes and processes help to form the framework for regulations to be reviewed and re-evaluated. Several best practices for achieving this are suggested.

Specific regulatory tools including ‘sunset’ clauses and appeals processes are identified as being useful for imposing discipline on a regulator in reviewing its decisions. An illustration of how to request the reconsideration of a regulatory decision is provided by the Singapore Telecommunications Act and Telecom Competition Code.

The final chapter, Chapter Five, presents a number of conclusions on how economies can establish practical procedures that assist in effective stakeholder consultation, timely and transparent complaint resolution, and effective review of decisions through analyzing the associated benefits and risks of current procedures and practices. The chapter includes a review of the processes which represent the key elements in successfully establishing fair, balanced and reasonable arrangements in a competitive marketplace.
Chapter 2: Consulting Stakeholders

2.1. Consultation Procedures

Effective public consultations enable policymakers and regulators to ensure that users and the telecommunications sector have an opportunity to express their views and be actively involved in the decision-making process. Consulting stakeholders also helps to ensure enhanced relevance, ownership, and the inclusion of multiple voices in shaping plans, policies, regulations and procedures.

Ideally, consultation processes obtain information and feedback from users and stakeholders to aid in developing accurate, relevant decisions. Consultations also promote transparency and participation in decisions, e.g., to ensure that stakeholders can present their views, that they are clear that their views have been considered, and that everyone has access to submissions. This also enhances the predictability of policy and regulatory decisions.

Stakeholder consultations can take on a variety of forms, depending on the nature of the issue, the number of parties potentially affected by a decision, the impact on the marketplace, and the impact on end users. For example, information can be gathered through written submissions, possibly also through online consultations. Other options are surveys and polls, public hearings or conferences, one-on-one meetings and interviews, focus groups, advisory committees, working groups or task forces, and discussions with regulatory institutions in other jurisdictions.

2.2. Outreach and Education

To undertake an effective consultations process, it is important to identify the stakeholders who should be involved. This can be determined by considering who are the people or institutions affected by a given issue – who should be engaged to participate on a given issue, and who may be affected. Stakeholders can be defined as organizations (public sector or private sector) or individuals who have an interest in a given issue or decision. Stakeholders from similar groups may still have a range of different perspectives on a given issue. Individuals and groups can differ in terms of position, authority, confidence to participate, access to consultations, and understanding of the evaluation/decision process.

Discussion or consultation papers are useful to focus the debate. This could include draft regulations or procedures, and requests for comments. A consultation document does not necessarily have to be a fully endorsed opinion of the proposing organization, but can simply present a proposition, idea or concept. Stakeholders would be invited to file submissions based on draft documents.

In a consultation process, it is important to be clear about how the agency intends to engage stakeholders. The consultation should be publicized effectively, making sure all stakeholders are given ample opportunity to participate in the process. When comments are submitted, it is useful to have a “reply comment period,” as it allows stakeholders to see parties’ comments and have the option to reply. Finally, stakeholders will appreciate prompt and comprehensive feedback from the agency leading the consultation.
In some cases, stakeholders may wish to submit material in confidence. It is often useful for decision-making authorities to develop a procedure to manage these cases. This could include identifying what types of information may be kept confidential, and how the issue is likely to be managed. It can also be useful to clarify in advance how cases will be managed where the public interest in disclosure outweighs the request for confidentiality. Some organizations also choose to undertake consultation proceedings on rules relating to confidentiality.

2.3. Open Consultation vs. Limited Consultation

Decision-making authorities are required to balance the relative merits of open vis-à-vis limited consultations. While there are significant benefits for transparency in holding an open consultation, the more inclusive the process, the more difficult it can be to manage, and the longer it can take. Systematic consideration is essential: decision-makers need to consider an approach that reflects the various preferences, interests, and perspectives of different stakeholders. In an open consultation, it is worth considering:

* How much time to allow for the process?
* What form will the consultation take? How will the results be factored into the decision?
* What sorts of information technology applications might facilitate the process?
* In what way, and to what extent, might outcomes be “binding” on the decision-making authority?
* How to engage stakeholders to participate effectively, and how to manage stakeholders that dominate the discussion to the point where the issue may be out of balance?
* What are the cost, and efficiency, trade-offs of doing an open consultation, versus a more limited set of deliberations?

In the case of a limited consultation, considerations can include all of the factors relating to open consultations, as well:

* How to determine that all essential stakeholders have been included?
* What are the advantages and disadvantages of restricting a process (e.g., on a licensing issue in a competitive environment) to those directly affected?

Both approaches can serve to create synergy and trust between players, and allow the decision-making organization to utilize greater expertise. Ideally, the processes will increase stakeholder agreement with the ultimate decision.

2.4. Timelines

Clear timelines set by the decision-maker are crucial to stakeholders who want to participate in a consultation process. When creating a timeline, it is important to give ample time for stakeholders to read and analyze consultation materials. Clear deadlines for comments (and reply comments) are important as well.
Timeliness of decisions is of significant interest to all stakeholders. Decisions should be both made, and made public, as soon as possible. The nature of the issue, approach to consultations, and – if written submissions were accepted – the number of them received, will all affect the length of time required for a decision.

2.5. Economy Examples

2.5.1. Canada

The Canadian Radio-television and Telecommunications Commission (CRTC), as part of its role in regulating and supervising the Canadian broadcasting and telecommunications systems, holds public hearings, round-table discussions and informal forums to gather input on broadcasting and telecommunications. Participation in public proceedings is provided for and encompasses:

- applications for new broadcasting licenses, license renewals and amendments and transfers of ownership and control
- tariff and other applications from telephone companies
- applications from the public, related to telephone services
- the performance of federally regulated broadcasting and telephone companies

Guidelines for participation in a CRTC public process are available on the CRTC Website.

One example of a consultation process relates to the Basic International Telecommunications Services (BITS) licensing regime. In Telecom Public Notice 2008-3, the CRTC initiated a public proceeding in which it invited parties to comment on, among other things, the continued appropriateness of the regulatory requirements relating to the Basic International Telecommunications Services (BITS) licensing regime. The CRTC received submissions from a wide range of Canadian industry stakeholders. The public record of this proceeding is available on the Commission’s Website under “Public Proceedings.”

2.5.2. Japan

Japan’s Ministry of Internal affairs and Communications (MIC) has more than ten advisory councils with experts on specific issues. MIC’s council serves as an advisory board to the Minister on a given issue. Members of the advisory council are appointed by the Minister. They deliberate the issues established by law.

In particular, the following matters related to information and communication technology and broadcasting are discussed by the Telecommunications Council:

- Study and discuss important matters related to policies concerning the usage of radio waves and electro-magnetic distribution of information and offer its advice to the Minister for Internal Affairs and Communications in response to requests from the Minister;
- Study and discuss important matters related to the postal service and offer its advice to every minister concerned; and
- Study and discuss matters regarding laws and regulations, such as the Cable Television Broadcast Law and the Telecommunications Business Law.
The Telecommunication Council has numerous sub-committees and each committee an individual task force. Each task force discusses specific ICT issue such as mobile issues, convergence, and universal service. Information including council reports can be found at on the MIC Website.

After a consultation by the Telecommunications Council, the report is disclosed in public. In addition, public comment procedure is established in the Administrative Procedure Act and the government is required to invite comments from the public regarding important policies. Submitted comments from the public are also disclosed with results following the consideration of the submitted comments from the government.

2.5.3. Mexico

Article 69 of the Federal Procedures Law (Ley Federal de Procedimiento Administrativo) establishes the Regulatory Improvement Process, which is a process that any government agency must follow prior to the creation of any new regulations. The government created the Regulatory Improvement Commission (COFEMER) to monitors the proper implementation of Regulatory Improvement Process.

According to the cited Law, each governmental agency must submit the proposed regulation to COFEMER accompanied with a Regulatory Impact Manifestation. In this document, the governmental agency which proposes the new regulation must demonstrate that the benefits of the new regulation are greater than the costs of implementation.

COFEMER conducts a public consultation process on its Internet site. The proposed regulation and the Regulatory Impact manifestation are published there for 30 working days.

COFEMER issues two opinions; in the first opinion it orders the agency to answer all the opinions received in the consultation process. Once they have been answered, COFEMER issues a second opinion giving or denying authorization to publish the proposed regulation in the Official Daily.

Even though the Federal Telecommunications Law does not establish a consultation process, Cofetel has followed an informal consultation process on its Internet site to follow the Regulatory Improvement Process. Examinations of number portability and the Interconnection Master Plan have had this informal consultation process.

Additionally, the Federal government has begun a pilot program called Focalized Transparency, which makes public all the information about a specific service.

2.5.4. Peru

In Peru, Article 27 of OSIPTEL General Ruling (approved by Supreme Decree N° 008-2001-PCM) determines that as a condition for the approval of regulatory decisions of general scope the proposed rules must be published in a Peruvian newspaper so that interested parties can file comments. An exception is made only in case of emergency situations. OSIPTEL has the
authority to call for a public hearing if necessary. The term to submit comments and the respective public hearing, if any, must be at least 15 days from the date that the proposed ruling was published.

In addition, Article 5 of OSIPTEL Transparency Ruling (approved by the Management Committee N° 018-2007-CD-OSIPTEL), encourages OSIPTEL to use electronic and online resources for consulting purposes.

Likewise, Article 86.B Supreme Decree N° 020-98-MTC (guidelines for the market open) mandates the Ministry of Communications to use prior consultation proceedings with respect to decisions regarding spectrum subject to public bids.

2.5.5. Chinese Taipei

Consultation-related rules are included in the Administrative Procedure Act. Articles 54~66 cover Hearing Proceedings, Articles 102~109 cover Statement of Opinions, and Articles 54~156 Prior Announcement as well as ex officio hearings for the establishment of a legal order.

Articles 54 to 66 of the Administrative Procedure Act stipulate that before holding a hearing, the administrative authority shall serve upon the party and any other known affected person a written notice, giving therein required details, and shall cause the notice to be published if necessary. Where it is required by law or regulation that the hearing must be announced in advance by a public notice before it is held, the administrative authority shall cause the details as mentioned above to be published in a government publication or made known to the public by other appropriate means.

Articles 102 to 109 of the Administrative Procedure Act stipulate that the administrative authority shall, before rendering an administrative disposition to impose restraint on the freedom or rights of a person or to deprive her/him of the same, provide the person subject to the disposition an opportunity to state her/his opinions, unless a notice has been given to the person subject to the disposition under Article 39 hereof to enable her/him to state her/his opinions or it has been decided that a hearing will be held, except where it is otherwise prescribed by law.

Articles 154 to 156 of the Administrative Procedure Act primarily stipulate that when formulating a legal order, the administrative authority shall cause it to be publicly announced in a government publication, unless the situation is so urgent that prior announcement to the public is clearly impossible. In effect, it is also required that any person may give the designated authority his or her opinions within a specified period. In addition to the public announcement as mentioned above, the administrative authority may also make the substance widely known to the general public in an appropriate manner.
Chapter 3: Reviewing Decisions

3.1. Re-evaluating Decisions

The telecommunications industry is characterised by rapid technological changes. Apart from technology, the market also evolves because of changing consumer preferences, corporate business models and other factors. Thus, it is important that regulatory frameworks and decisions are reviewed to ensure that they maintain their relevance in facilitating the growth of a fast changing telecommunications sector.

Clear and transparent timeframes and processes help to form the framework for regulations to be reviewed and re-evaluated. In this respect, several best practices can be considered:

(a) **Prescribe avenues for regulatory reviews.** It is important for regulators/policy makers to recognise that more often than not, operators notice market developments ahead of the regulator. Also, operators who are aggrieved by a regulator’s decision may have good reason to request for a review or reconsideration of the regulatory decision. Therefore, there should be avenues to allow for review of regulatory frameworks and decisions through actions initiated by industry players. On its own accord, a regulator may also put in place thresholds or trigger points by which it would embark of a review of its own regulatory frameworks and decisions.

(b) **Prescribe clear processes for regulatory reviews.** It is important to provide industry with as much clarity on the process for regulatory reviews as possible, so that their views can be obtained in the process of review. Examples of such processes would be public consultations, focus groups and other feedback channels. This will ensure that the eventual decision made by the regulator continues to be relevant to industry’s needs.

(c) **Impose committed timeframes for regulatory reviews.** Clear and committed timeframes are important in a regulatory review. Clear timeframes provide affected parties with greater business certainty as a decision is being reviewed. Without such clarity, there is increased business uncertainty, which may affect industry players’ business and investment decisions in the market.

(d) **Conduct regulatory reviews in clear and transparent manner.** Following a review, to ensure that the regulator has made considerations on the views which are submitted in a fair and transparent manner, a regulator can consider making available the basis of the decision or rulemaking, to the concerned parties.

3.2. Using a “Sunset” Clause

“Sunset” Clauses are one of the tools that a regulator can used to impose self-discipline to review decisions. A “sunset” clause is one where a regulator builds in an expiry into a regulatory decision, which may be tied to the passage of time, or other market triggers. For example, a regulator may indicate in its decision to regulate a particular service that the regulated prices, terms and conditions would only remain in effect for 3 years. Once the 3 years have past, the
regulation will expire. The regulator thus has to assess, at that point, whether regulation is still relevant on that service; and if so, the regulation which is necessary.

3.3. Appeals

The appeals process helps ensure a decision-making process is fair. Thus, the outcome of a formal complaint proceeding or investigation may be appealed. The key to the appeals process is being able to take a case to the next level in the hierarchy, whether within the regulatory body, or to the court system. Again, having clear procedures and a clear timeline is key, and the scope for appeal should not be such as to frustrate the timely resolution of disputes.

The initial decision in an enforcement proceeding can be made by the regulator’s staff (if the staff has delegated authority to make decisions), or by the head regulator. If the initial decision is made by staff, then the decision could be appealed to the head regulator. However, if the initial decision is made by the head regulator, then the losing party could request that the regulator reconsider its decision. In that case, the regulator may deny the request, grant the request and overturn the initial decision, or grant the request in part by modifying the initial decision. Parties would not be able to raise new arguments so parties must explain why the initial decision was wrong. The next step in appeals after the regulatory body should be whomever is next in the hierarchy – in some cases, that is the court system, and in other cases, it is a Ministry.

3.4. Economy Examples

3.4.1. Canada

In Canada, the Telecommunications Act allows for the CRTC to “on application or on its own motion, review and rescind or vary any decision made by it or re-hear a matter before rendering a decision” (Section 62 of Telecom Act). Accordingly, in order for the CRTC to exercise its discretion pursuant to section 62 of the Act, applicants must demonstrate that there is substantial doubt as to the correctness of the original decision, for example due to an error in law or in fact; a fundamental change in circumstances or facts since the decision; a failure to consider a basic principle which had been raised in the original proceeding; or a new principle which has arisen as a result of the decision.

There may still be instances where the CRTC decides to review a decision in the first instance, for example, where it considers there was a procedural error, and then conduct a proceeding to determine whether to vary the decision. Canadian law allows for an appeal to the Federal Court of Appeal – “An appeal from a decision of the Commission on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.” (Sect 64(1))

In the CRTC’s Guidelines for Review and Vary Applications (Telecom Public Notice CRTC 98-6) and further to section 62 of the Telecommunications Act, guidelines are set forth for all review and vary applications. The guidelines provide the following:
• a restatement of the test applied by the Commission in determining whether to exercise its power to review and vary its telecommunications decisions;
• a list of factors that may be taken into consideration in determining whether an application should be considered a new application or a review and vary application; and
• a time limit within which review and vary applications may generally be made.

The CRTC also launched a public notice (2007-6) in which it invited parties to comment on what regulatory measures should be reviewed, what priority should be placed on the review of each measure, and an estimated reasonable time frame for the Commission to complete its review.

In its decision as a result of this public notice (Telecom Decision 2007-51), the CRTC undertook to prioritize which regulatory measures would be reviewed in light of the CRTC Policy Direction. In determining this order, the CRTC considered several factors, including the priority assigned by each party, the degree of market intervention, the breadth of application, and the potential for streamlining associated with each regulatory measure.

3.4.2. Hong Kong, China

Hong Kong, China has followed the world’s best practices in its consultative and decision-making process. Before performing any function or exercising any power under the Telecommunications Ordinance (Chapter 106 of Hong Kong Law), the Telecommunications Authority (TA) is required by law to consult with (a) the persons who may be directly affected by the performance of that function or exercise of that power or (b) members of the public, as the case may be.

While the publication of a consultation paper is the ordinary means used by the TA for public consultation, he/she will also use other means (such as market surveys, interviews and focus group meetings) whenever necessary. When a consultation paper is issued, a reasonable timeframe for making submission is allowed and clearly promulgated through press release and/or published on the official website of the Office of the Telecommunications Authority (OFTA). The views submitted by the respondents in response to a consultation paper will be published in the Website for reference by interested parties. The TA will subsequently make known his/her decisions or final views by publishing a statement spelling out the rationale, considerations and grounds behind his/her decisions or final views.

Under section 6A of the Telecommunications Ordinance, the TA is required to provide written reasons when forming an opinion or making a determination, direction or decision. The TA shall not depart from the guidelines which are applicable to the subject matter of the opinion, determination, direction or decision unless he has provided reasons for the departure. The relevant guidelines are issued by the TA under the Telecommunications Ordinance for the purpose of providing practical guidance in respect of any provisions of the Telecommunications Ordinance.

The Secretary for Commerce and Economic Development, who is the policy secretary for telecommunications, may issue policy directions to the TA pursuant to which the TA is to carry
out his/her functions and exercise his powers. The policy directions issued by the Secretary have to be published in the government gazette as soon as practicable after it is issued.

All decisions made by the TA can be judicially reviewed in the court. On matters related to misleading and anti-competitive conducts, his/her decisions may also be repealed to the Telecommunications (Competition Provisions) Appeal Board, a special tribunal having jurisdiction over competition and related matters in the telecommunications sector. This provides an independent avenue for aggrieved parties to review the decision of the TA related to competition and misleading sales practices. The Board, which comprises of reputable professionals and/or academics with expertise and experience in legal, economics and consumer services matters, is appointed by the Chief Executive of Hong Kong, China under the Telecommunications Ordinance. The Board will hear appeals lodged by any person aggrieved by the TA’s opinion, decision, direction or determination in relation to competition safeguard provisions (including those provisions related to mergers and acquisitions) in the telecommunications sector as set out in the relevant sections of the Telecommunications Ordinance.

OFTA publishes a performance pledge for its services i.e. the standard of service delivery in terms of time in handling the application of licences and investigation of complaints, including the handling of complaints related to competition provisions or misleading sale practice provisions of the Telecommunications Ordinance. OFTA continually reviews and improves the performance pledge with a view to providing better services to its clients and the public.

3.4.3. New Zealand

In July 2009, New Zealand’s Commerce Commission (“the Commission”) released draft guidelines to provide greater clarity for the telecommunications industry on how the Commission exercises its powers and functions under the Telecommunications Act 2001 (“the Act”), including review considerations.

The Act provides that the Commission must consider, at intervals of not more than five years after the regulated service came into force, whether there are reasonable grounds for commencing an investigation on whether particular services should remain regulated. The grounds relate to the promotion of competition for the long-term benefit of end-users in New Zealand. Should the Commission decide to initiate an investigation, this must commence at least one year prior to the expiry of the service. The Commission will conduct an investigation in accordance with processes provided for in the Act.

The Commission states that it will continue to review the appropriateness of legacy models of regulation. It will take into account market developments due to technological progress and their likely impact on competition in the long run. This may involve the removal of legacy regulation if effective competition emerges, or intervention where market failure exists. The Commission will adopt forward-looking perspectives that encourage investment and innovation in the telecommunications sector, giving consideration to dynamic efficiency aspects where competition is to be promoted, and taking into account investment incentives for all operators.
The draft guidelines paper is available on the Commission’s Website. A final version of these guidelines will be released, following the submission process which will close in mid-September 2009.

3.4.4. Singapore

The Telecommunications Act and the Telecom Competition Code in Singapore allow telecommunication licensees to request for regulatory decisions of the Infocomm Development Authority of Singapore (‘IDA’) to be reconsidered. A licensee may, within 14 days of the day on which IDA renders its decision, request IDA to reconsider its decision. The Telecom Competition Code also sets in place clear processes and procedures governing Reconsideration Requests. IDA has also committed that it will generally seek to issue its decision on the Reconsideration Request within 30 days. In appropriate cases, IDA may provide any interested party with an opportunity to file comments on the Reconsideration Request. In such cases, IDA will similarly provide the Licensee or the Aggrieved Person that filed the Reconsideration Request with an opportunity to submit a final written response to IDA. In such cases, IDA will seek to issue a decision within 30 days of receiving all comments.

In terms of the review of regulatory frameworks, IDA has also committed that at least once every 3 years, IDA will review the Telecom Competition Code. The review is conducted to eliminate or modify provisions that it determines unnecessary, based on the growth and development of competition in the market. Since the Telecom Competition Code was issued in 2000, IDA embarked on the first review of the Telecom Competition Code in 2003, which was completed in 2005. IDA has since embarked on the second review of the Telecom Competition Code in 2008. In the reviews of the Telecom Competition Code, IDA conducted several rounds of public consultations to ensure that industry feedback is considered.

Besides the triennial review to which IDA has committed, IDA has provided in the Telecom Competition Code an avenue for licensees to petition IDA to eliminate or modify any provision of the Telecom Competition Code. To do so, the licensee must specify the provisions of the Telecom Competition Code that it seeks to have eliminated or modified, and must provide a clear statement of the reasons why the licensee believes that such action is justified. The licensee may propose alternative approaches that, if adopted, would achieve IDA’s regulatory objectives in a less burdensome manner.
Chapter 4: Resolving Complaints

4.1. Complaints and Disputes in General

A complaint can be thought of as any expression of dissatisfaction by a customer to the provider of a service or product that has been, or should have been, supplied to them. In the complex and rapidly-changing telecommunications industry, there are many aspects of the service that can give rise to dissatisfaction and complaints from customers.

For a complaint to be considered properly, it is important that the service provider have a list of service standards that is up to date, written in clear language, and easily accessible to customers. This is essential so that there is as little doubt or confusion as possible about exactly what the service provider is selling and the customer buying. The list should include the terms and conditions on which services are offered, definitions of each service, and instructions explaining what the customer should do to lodge a complaint if dissatisfied.

4.2. Regulator-Led Consumer Complaint Resolution

Some economies have invoked a form of disputes resolution process that is specific to the telecommunications sector. Such a process can be introduced in several ways. The most common is that the industry regulator becomes a litigator of disputes. A regulator may establish a “consumer office” for such a purpose, perhaps in several cities. One benefit of such a structure is that the nature of complaints becomes very visible to the regulator and this knowledge can be beneficial in regulatory work.

Allowing consumers to file complaints – in a process that is designed for ease and simplicity – is a good tool for consumer protection. A consumer may initiate a complaint by writing a letter to the regulator about a specific carrier stating facts showing that a carrier violated the law/rules, and including the name, address and telephone number of the complaining party. The regulator could then send the letter to the carrier in question, and the carrier could be asked to respond within a certain period of time. To resolve such a complaint, generally no judgment or ruling is rendered. Voluntary “satisfaction” by the carrier is most common – the carrier proposes a remedy to the complainant.

A carrier would not be inclined to ignore a consumer complaint, knowing that the issue has been brought to the attention of the regulator. The advantages of consumer complaint proceedings are that they are relatively simple and inexpensive to file (often using a Web-based form), and they do not require the services of an attorney. The regulator could find it useful to keep statistics on the number of informal complaints it receives. If a pattern is identified, the regulator may want to begin an investigation. And, if a pattern of wrong-doing is established, the regulator may consider action against the carrier ranging from revocation of licenses to fines and consent decrees specifying future permissible conduct by the carrier.

In other cases, governments have moved to establish a specialist disputes arbitrator. Australia’s Telecommunications Industry Ombudsman is one example, where disputes are resolved within the government structure but outside the regulator, and funded by the industry. Such a structure
has the advantage of independence from the industry and the regulator, making it truly impartial. A feature that might be considered a disadvantage is that such a structure may create an incentive to maximize the number of complaints as a means to increase the size of the arbitrator’s establishment or ensure its continued existence.

4.3. Industry-Led Consumer Complaint Resolution

Less common, but gaining in popularity, is the industry-initiated industry disputes process, examples of which can be found in Canada and New Zealand. In these situations, the dispute resolution process is initiated, funded and governed by the industry, with an independent group of specialist arbitrators doing the actual work. In favor of these is cost-effectiveness – as the industry is responsible for governance and funding the risk of costs spiraling out of control is diminished. Against them is the risk that the industry may put undue pressure on the arbitrators if it senses that they are being too generous to consumers or if the costs of the scheme are seen as too high. They could do so either by withholding funding, or by threatening to resign from the scheme if settlements are not reduced.

4.4. Carrier-to-Carrier Complaints

Carrier-to-carrier complaints may take the form of either an “informal” or a “formal” complaint. An informal complaint between carriers could be a process similar to informal consumer complaints. This option could be popular with carriers because it would provide a quick response to allegations and provide sufficient time to discuss settlement. Another option is a formal complaint, which could be like a lawsuit in the information it requires, as well as the fact that it allows a party to pursue individual relief, often in the form of monetary damages. This kind of case could be handled by the courts, but the regulator may be in the best position to adjudicate the matter as the subject matter expert. Generally, it is most efficient for parties to make an election on who will adjudicate.

For carrier-to-carrier complaints, detailed rules and timelines help the case to move forward rapidly. The complaint would fully inform the regulator of the provisions of the law or rules that have been allegedly violated and the facts claimed to constitute such violation. The complainant needs to establish with evidence that the defendant has violated the law or rules. It is up to the complainant to make a convincing argument and present all relevant evidence. The regulator does not gather any information; it is just an adjudicator. While it is possible that in some systems the regulator may intervene in the complaint process to gather information, there is value in the regulator not doing so. As an independent adjudicator, the regulator can “stay above the fray” and make an unbiased judgment for the two parties, as a judge would in court.

Upon receipt of a complaint, the regulator could examine it to determine whether it complies with the filing rules. Then the regulator could prepare an official document to notify the parties that a complaint has been filed and is under review for procedural compliance. This document would set forth the parties’ duties, including the date that the response or answer to the complaint is due, set a date for the first status conference between the parties and the regulator, and outline what can be discussed at the conference, including settlement prospects, factual and legal issues
in dispute, schedules, and the creation of a joint statement of stipulated facts, disputed facts, and key legal issues that is submitted prior to the status conference.

The complaint could include at a minimum certification that the complainant discussed, or attempted to discuss, in good faith, the possibility of settlement prior to the filing of the complaint; full statement of facts and supporting documentation; and proposed finding of fact, conclusions of law, and legal analysis. If the complaint complies with the filing rules, the carrier could be required to file an answer.

The defendant could be permitted to file an answer responding to the allegations in the complaint. The rules for filing an answer could be similar to those for filing a complaint, including certification that the defendant attempted in good faith to settle the dispute. Complainants would then file replies to the defendant’s answer. Staff may then determine if a briefing cycle on a particular matter is necessary, especially if there is to be discovery in the case.

There are disadvantages to these kinds of complaints – they consume resources to pursue the case, and can take a while before the case is finally resolved, especially if a federal agency decision is appealed in court. The advantage, however, is that such a complaint obtains a definitive regulator decision on sometimes highly technical or unclear areas of the law. The decision serves as precedent, and provides guidance for other carriers; therefore, the decision should be detailed enough for other carriers to benefit.

4.5. Economy Examples

4.5.1. Australia

In Australia, the Telecommunications Industry Ombudsman (TIO) is a free dispute resolution forum for residential and small business consumers who have been unable to resolve their concerns directly with their telephone or internet service provider. It is an independent, industry-based alternative dispute resolution body. Alternative dispute resolution is a means of settling a dispute outside a courtroom. It is a more accessible and informal way of resolving a complaint, so the TIO helps consumers and telecommunications companies resolve complaints together.

The TIO aims to settle disputes in a fair and objective way, having regard to the law, good industry practice, and what is fair and reasonable in the circumstances. The TIO is not responsible for enforcing telecommunication regulations, although it will rely on the regulatory framework in its efforts to resolve a dispute.

The TIO investigates complaints by considering the facts provided by both parties, that is, the individual or small business with a complaint, and their telephone or Internet service provider. The TIO stays independent of both parties at all times and does not take on a consumer advocacy role.

The TIO requires that consumers attempt to resolve their complaint directly with their telephone or Internet service provider before seeking assistance from the TIO.
Complaint handling processes: When a consumer first contacts the TIO with a complaint, the TIO will lodge a ‘Level 1’ complaint against the telephone or Internet service provider in question. The Level 1 process involves referring the consumer to a senior level of complaints handling at the service provider, and giving the provider ten working days to informally resolve the complaint. Over 90 percent of customer complaints are resolved at the initial Level 1 process.

If, after the ten-day period, a customer is dissatisfied with their provider’s response to their Level 1 complaint, they can contact the TIO again to discuss their complaint further.

There are four levels of investigation through which a complaint may proceed if unresolved. At each level the provider is given an opportunity to respond, and if a complaint remains unresolved, it may be escalated to the next level. Under the TIO’s Constitution, where a complaint has been investigated and there has not been a conciliated settlement, the TIO has the authority to make decisions that are binding upon telecommunications companies up to the value of AUS$10,000. The TIO can also make recommendations to companies following the investigation of a complaint up to the value of AUS$50,000.

There are timeframes built into each stage of the complaints process. This ensures that both parties have the opportunity to resolve the complaint informally first, and allows the service provider to supply evidence to support its position. It also enables the TIO to assess and investigate the complaint. The amount of time allowed for providers to resolve a complaint and for the TIO to investigate generally increases as the complaint is escalated to higher levels. This recognizes the increased complexity of cases that cannot be resolved at an earlier stage.

Investigation review: If a consumer is not satisfied with the outcome of their complaint, they may request that the TIO review its investigation. A review involves an independent assessment of the investigation along with an evaluation of whether the investigating officer requested and considered all the information before making a decision. It should be noted that no external agency has the authority to review the TIO’s decisions in the event that the consumer is dissatisfied with the outcome.

However, consumers are under no obligation to accept TIO decisions in relation to their complaint. If a consumer is dissatisfied with the outcome of any review of the investigation of their complaint by the TIO, they may wish to pursue the matter through the small claims tribunal or the courts.

4.5.2. Canada

In Canada, the Telecommunications Act (Sec. 48(1)) states that the CRTC may: “on application by any interested person or on its own motion, inquire into and make a determination in respect of anything prohibited, required or permitted …” The CRTC also encourages parties to pursue independent negotiations to resolve any competitive dispute. In instances where the parties can not settle a dispute by mutual agreement, the CRTC has successfully used a number of resolution mechanisms to settle a number of competitive disputes.
The kinds of telecommunications competitive disputes handled through alternative dispute resolution generally fall into the following categories: (1) access to support structures, (2) billing and collection service, (3) access to multi-dwelling unit buildings, (4) access to municipal rights-of-way, and (5) interconnection issues.

In 2007, the CRTC issued a public notice proceeding (PN 2007-15) to consider the delegation of the “Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints.” In this Notice, the CRTC announced its intent to delegate its investigative powers to a third party, other than the National DNCL (Do Not Call List) operator. It noted that this third party may charge rates, pursuant to subsection 41.4(1) of the Act, for exercising delegated powers. The CRTC, however, may, pursuant to section 41.5 of the Act, regulate such rates.

The CRTC also announced a proceeding in 2007 to approve the organization and mandate of the Commissioner for Complaints for Telecommunications Services for the deregulated telecom market. As a result of this, the CRTC approved the structure and mandate of the Commissioner for Complaints for the Telecommunications Services Inc. (the Agency), a telecommunications consumer agency established by telecommunications service providers (TSPs) in Telecom Decision 2007-130. The mandate was for an industry-established consumer agency, independent from the telecommunications industry, to resolve complaints from individual and small business retail customers as an integral component of a deregulated telecommunications market. There are four sub-issues addressed with respect to the mandate of the Agency: the scope of eligible complaints, industry codes of conduct and standards, identification of trends that may warrant further attention, and the annual report. The mandate of the consumer agency also includes identifying issues or trends that may warrant further attention by the Commission or the government.

4.5.3. New Zealand

New Zealand has a free and independent Telecommunications Dispute Resolution (“TDR”) service, which was launched in December 2007 to help work out disputes between consumers and telecommunications companies. The TDR was established by the Telecommunications Carriers’ Forum, which comprises representatives from major telecommunications carriers.

The TDR is designed to encourage participating telecommunications companies to resolve customer complaints effectively amongst themselves and provide prompt, independent resolution of disputes. Anyone whose telecommunications company is a member of the TDR scheme can bring a dispute to the service, subject to a few limits.

The TDR’s first annual report showed a very high satisfaction rating from customers of the service. A survey conducted during the year showed 91% of respondents saying that they would recommend the TDR to a friend who has a similar problem. More and more consumers are using its services and there is evidence of increasing awareness by the public of its existence and the services it provides.

The biggest challenge is getting smaller industry players to support and join the TDR. Complaints about processes or procedural problems brought before the TDR where more than
one company is involved would be difficult to resolve if one party is not a member. The TDR is currently being reviewed by its governing council.
Chapter 5: Conclusions

5.1. Overview

The purpose of this guide was to help economies establish practical procedures that assist in effective stakeholder consultation, timely and transparent complaint resolution, and effective review of decisions through analysing the associated benefits and risks of current procedures and practices; highlighting key success factors that lead to fair, balanced and reasonable arrangements in a competitive marketplace; and providing practical examples and presenting economy case studies.

An effective and transparent decision-making process enables economies to attract investment and encouraging industry confidence through the development of transparent procedures and trusted frameworks for decision making; promote consumer rights with open and transparent complaint procedures; and ensure regulators are able to make decisions within a framework of independence and accountability.

5.2. Consulting Stakeholders

Effective public consultations enable policymakers and regulators to ensure that the telecommunications sector has an opportunity to be actively involved in the decision-making process. Consulting stakeholders also helps to ensure enhanced relevance, ownership, and the inclusion of multiple voices in shaping plans, policies and procedures. Stakeholder consultations can take on a variety of forms, depending on the nature of the issue, the number of parties potentially affected by a decision, the impact on the marketplace, and the impact on end users.

When defining a consultation process, it is important to publicize the consultation effectively, making sure all stakeholders are given ample opportunity to access the consultation processes. Also, it is useful to see other parties’ comments and have the option to reply in the “comment and reply comment” structure. Finally, give prompt and comprehensive feedback and make sure stakeholders have access to a report summarizing responses.

In some cases, stakeholders may wish to submit material in confidence. It is often useful for decision-making authorities to develop a procedure to manage these cases. This could include identifying what types of information may be kept confidential, and how the issue is likely to be managed.

Decision-making authorities will balance the relative merits of open vis-à-vis more limited consultations. While there are significant benefits for transparency in holding an open consultation, the more inclusive the process, the more difficult it can be to manage, and the longer it can take.

Timeliness of decisions is of significant interest to all stakeholders. Decisions should be both made, and made public, as soon as possible. The nature of the issue, approach to consultations, and – if written submissions were accepted – the number of them received, will all affect the length of time required for a decision.
5.3. Resolving Complaints

A complaint can be thought of as any expression of dissatisfaction by a customer to the provider of a service or product that has been, or ought to have been, supplied to them. In the complex and rapidly-changing telecommunications industry, there are many aspects of the service that can give rise to dissatisfaction and become complaints from customers.

Some economies have invoked a form of disputes resolution process that is specific to the telecommunications sector. The most common is that the industry regulator becomes a litigator of disputes, in some cases by decree but in others by default simply because there is nowhere else for the customer to turn. Allowing consumers to file complaints – in a process that is designed for ease and simplicity – is a good tool for consumer protection. In other cases, governments have moved to establish a specialist disputes arbitrator.

Less common, but gaining in popularity, is the industry-initiated industry disputes process, examples of which can be found in Canada and New Zealand. In these situations, the disputes service is initiated, funded and governed by the industry, with an independent group of specialist arbitrators doing the actual work.

Carrier-to-carrier complaints may take the form of “formal” complaints. These complaints would be like a lawsuit in the information it requires, as well as the fact that it allows a party to pursue individual relief, often in the form of monetary damages. This kind of case could be handled by the courts, but the regulator may be in the best position to adjudicate the matter as the subject matter expert. Therefore, it benefits the market when the regulator has a process for adjudicating these disputes.

5.4. Reviewing Decisions

The telecommunications industry is a fast changing one, so it is important that regulatory frameworks and decisions are reviewed to ensure that they maintain their relevance in facilitating the growth of a fast changing telecommunications sector.

Avenues should therefore be put in place to allow regulatory frameworks and decisions to be reviewed through actions initiated by industry players. It is important to provide the industry with as much clarity on the process for regulatory reviews as possible, so that their views can be obtained in the process of review. Clear and committed timeframes are important in a regulatory review. Clear timeframes provide affected parties with greater business certainty as a decision is being reviewed. Following a review, to ensure that the regulator has made considerations on the views which are submitted in a fair and transparent manner, a regulator can consider making available the basis of the decision or rulemaking, to the concerned parties.

The appeals process helps ensure a decision-making process is fair. The key to the appeals process is being able to take a case to the next level in the hierarchy, whether within the regulatory body, or to the court system. Having clear procedures and a clear timeline is key, and the scope for appeal should not be such as to frustrate the timely resolution of disputes.
Best Practices in Decision-Making

Presentation of Final Draft
APEC TEL 40

Drafting Committee: Australia, Canada, INTUG, Singapore, United States

Timeline

- **Oct. 2008, TEL 38**
  - Determine drafting committee

- **Nov. 2008**
  - Finalize paper structure and make drafting assignments

- **Through March 2009**
  - Begin drafting

- **Early April 2009**
  - Circulate draft to POCs

- **April 2009, TEL 39**
  - Take comments on draft

- **Inter-sessionally**
  - Integrate comments and edit paper

- **TEL 40**
  - Present paper for adoption
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