



Fair Trading Commission

DECISION

Interconnection Dispute Resolution Procedures

Document No. FTC 03/04

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Introduction

1. On April 4, 2003, the Fair Trading Commission (Commission) issued a consultation paper Document No. FTC 03/01 on Interconnection Dispute Resolution Procedures. This is the Decision of the Commission following consideration of the responses to the consultation paper that were received.
2. The Commission wishes to thank all those persons who responded to the consultation document.

Background

3. Interconnection, the linking of public telecommunications networks to allow users of one licensed carrier to communicate with users of another licensed carrier, is critical to the development of a competitive telecommunications market.
4. The Fair Trading Commission is charged under the Telecommunications Act 2001-36 with responsibility for approving Reference Interconnection Offers (RIO), interconnection agreements and for resolving interconnection disputes referred to it by the parties.¹
5. As interconnection agreements are to be commercially negotiated between the carriers, the Commission recognises that disputes may arise between the parties. Such disputes can hinder the development of competition or delay the provision of innovative services and reduction in prices. Effective, fair, transparent and timely resolution of disputes is therefore critical.
6. The Commission believes that a mechanism must be put in place to resolve such disputes.

¹ Telecommunications Act 2001-36 Part VI Sections 27 (1), 29 (2), 31 (1)

7. The Telecommunications Act 2001-36 recognises the importance of dispute resolution procedures. Section 31 (1) states that:

“Any disputes that arise between parties in respect of the negotiating of an interconnection agreement may be referred to the Commission in writing for resolution by either party to the negotiations where

*(a) all reasonable efforts have been made by the parties to resolve the dispute;
and*

(b) the parties have negotiated in good faith.”

8. The Commission is guided by Blacks Law Dictionary, seventh edition which defines “good faith” variously as:

‘a state of mind consisting in (1)honesty in belief or purpose,(2) faithfulness to one’s duty or obligation,(3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.’

9. Additionally it is stated in Section 31(5) of the Telecommunications Act 2001-36 that:

“The provisions of this section in respect of dispute resolution apply in respect of

(a) pre-contract interconnection disputes; and

(b) disputes referred to the Commission under the terms of an interconnection agreement.”

General

10. The Commission considers that formal and informal procedures may be used to effect the resolution of disputes between parties. The Commission is mindful that less formal procedures play a role in resolving disputes. The Commission therefore endorses the concept of mediation and encourages parties to use this method of dispute resolution before approaching the Commission.

11. In its Consultation Paper - Interconnection Dispute Resolution Procedures, the Commission proposed establishing a Commission mediation service to facilitate the speedy resolution of a dispute. However, on consideration of the need to optimise the Commission's resources and given the views expressed by respondents, the Commission will not assume the role of mediator in disputes.

12. Within the procedures for a Written Hearing, the Commission has established specific timeframes for submission of information by the parties and to the parties. Although the Commission has the general power to extend timeframes if requested, the extension of any prescribed timeframe would only be granted in accordance with Rule 7 of the Utilities Regulation Act Procedural Rules.

13. During the currency of a dispute, the Commission may make an interim order to facilitate interconnection.

Written Hearing

14. The Commission in the development of this written hearing procedure is mindful of its obligation to provide effective, fair, transparent and timely resolution of disputes.

15. In consideration of the comments received, the following modifications were made to the written hearing process to make it more efficient:

- times have been revised to expedite the process and to take into account the resources of all parties;
- distinct confidentiality criteria was developed obviating the use of Rule 13 of the Utilities Regulation Act 2000-30 Procedural Rules;
- the facility for parties to make oral representation to the Commission has been included.

16. Any Party, while negotiating or under the terms of an interconnection agreement, may refer in writing, such a dispute² to the Commission for determination (“the Referring Party”).

17. The Referring Party must notify the other Party (“Non-referring Party”) of its intention to refer the dispute to the Commission for resolution at least 5 business days prior to its request to the Commission.

18. When making a request to the Commission for its intervention to resolve a dispute, the Referring Party must file a letter of application together with an Official Report.

19. Official Reports should include the following:

- (a) details of the unresolved issues and the efforts taken to resolve those issues;
- (b) evidence to support the issues described including, but not limited to:
 - a summary of events or circumstances that led to the dispute,
 - a clear summary of the areas of agreement and disagreement,
 - correspondence,
 - dispute notices,
 - minutes of meetings,

² Section 31 of the Telecommunications Act 2001-36

- additional facts if available,
 - research where necessary to clarify the issues being disputed,
- (c) relief sought from the Commission; and
- (d) contact information and designated representatives.

20. The Non-referring Party is required to provide its comments, if any, in letter form, within the five day period of having been notified of the Referring Party's intention, as to whether the Commission should intervene to resolve the dispute.

21. The Commission will provide notice to both parties ("Notice of Intention"), within 10 business days of having received the letter of application, as to whether it intends to intervene to resolve the dispute.

22. The Commission may choose not to intervene to resolve the dispute where the Commission considers such intervention to be inappropriate

23. Where the Commission decides to intervene to resolve a dispute the Commission will serve a copy of the Referring Party's Official Report on the Non-referring Party. The Non-referring Party will be required by way of the Notice of Intention to submit to the Commission an Official Report within 15 business days of receipt of the Commission's Notice of Intention.

24. The Non-referring Party's Official Report must include the items set out in paragraph 20.

25. The Non-referring Party shall submit to the Commission a Response to the Referring Party's Official report within 15 business days of the Notice of Intention. This Response should:

- (a) address matters raised by the other party not previously addressed in its own Official Report,

(b) furnish relevant additional information

26. The Commission will serve the Non-referring Party's Official Report on the Referring Party within 2 business days of receipt.

Confidentiality

27. The parties should indicate to the Commission the sections of its Official Reports that it considers to be confidential or commercially sensitive.

28. Parties must also indicate why these sections are confidential or commercially sensitive and should be withheld from the other party. The Commission in consideration of confidentiality will utilise the process outlined at Appendix 1.

29. The Referring Party will be allowed to provide the Commission with a written "Response" on the Non-referring Party's Official Report within 10 business days of receipt of the other party's Official Report.

30. Either party at the time of sending its Response to the Commission, may request the opportunity to make an oral presentation to the Commission. The Commission will convene such a hearing to allow the parties to present their representation. The hearing will be held in camera.

31. In arriving at its decision, the Commission consider to the matters set out in the parties' Official Reports, Responses, oral representation and additional information.

32. Parties are expected to submit information that provides sufficient detail to support their request thereby minimising the need for the Commission to request clarification.

33. The Commission may at any time require the parties to provide additional information it deems necessary.

34. If either party fails at any time to provide the required information to the Commission within the timeframes specified, the Commission may decide the matter on the evidence before it.

35. The Commission will endeavor to issue a Ruling within 30 business days of the conclusion of the Hearing. The Ruling will include the Commission's decision with supporting reasons.

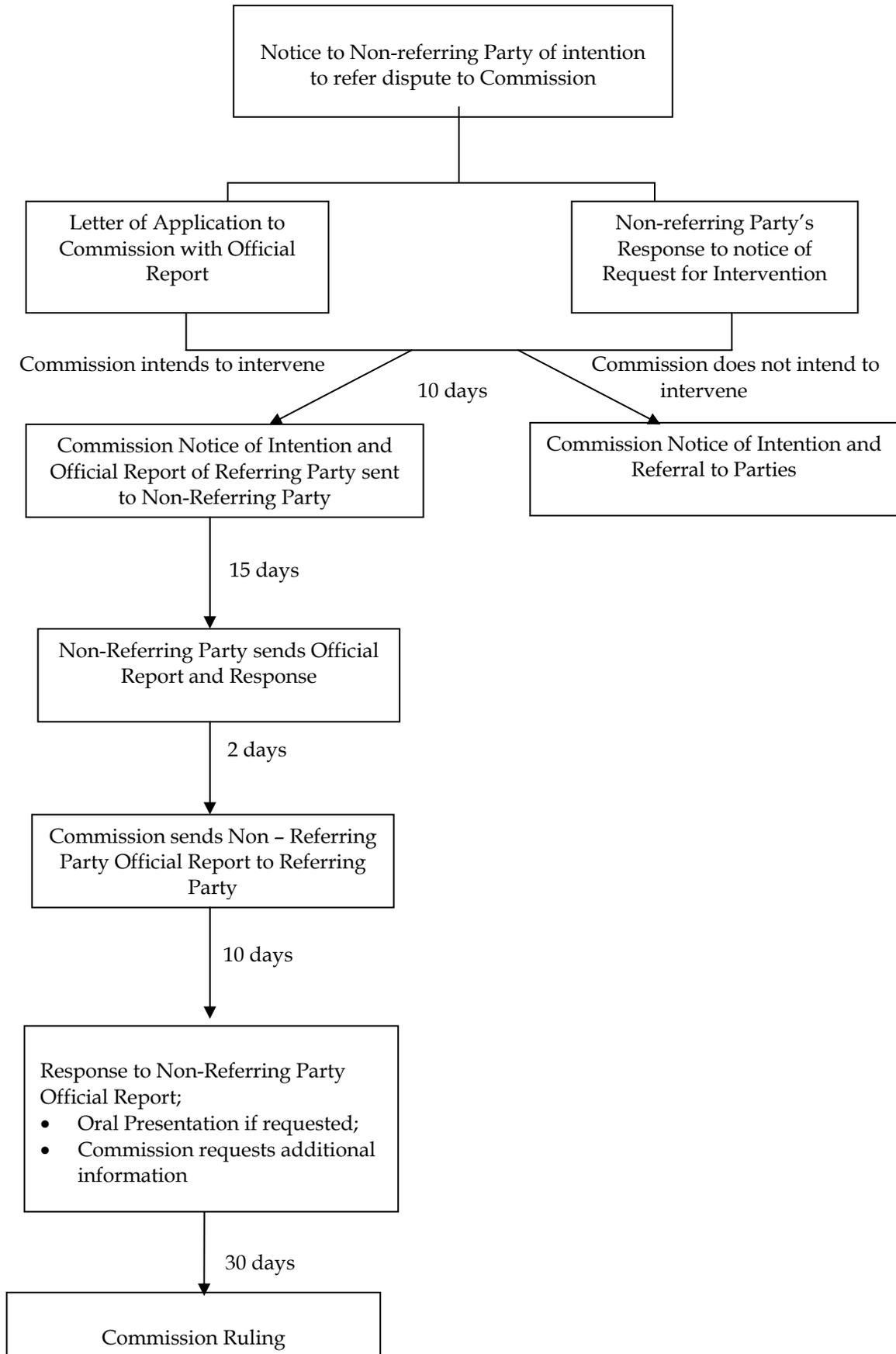
36. The Ruling shall be a matter for public record, and shall be delivered to all parties of record in the dispute. The Ruling shall be fully binding on the parties concerned.

37. A Party may request that the Commission reconsider the Ruling by filing an application for review in accordance with Utilities Regulation Act Procedural Rules.

COSTS

38. The Commission may request that the Commission's projected costs associated with hearing the dispute be paid in advance by the parties. These costs in the first instance will be borne equally by the parties.

Diagram 1 Dispute Resolution - Written Hearing



Appendix 1

Dispute Resolution - Confidential Documents

1. A party may, upon the filing of a document, request that all or any part of the document be held in confidence by the Commission.
2. A Request for confidentiality shall:
 - (a) include a summary of the nature of the information in the document;
 - (b) address:
 - (i) the reasons for the request, including the details of the nature and extent of the specific harm that would result if the document were disclosed, namely either party's information which, if disclosed would likely create a competitive disadvantage for the party;
 - (ii) measures which have been taken by the party and/or the party's customer, to prevent dissemination of the information in the ordinary course of business;
 - (iii) any objection to placing an abridged version of the document on record and the reasons for such an objection;
 - (c) be filed with the Commission and served on the parties.
3. Where a party has made a request for confidentiality, the document, if filed with the Commission, shall be held in confidence unless the

Commission decides, after consideration, that the document should be disclosed.

4. A person may object to a request for confidentiality by filing an objection and serving the objection on the parties at least 2 business days after receipt of the notice served.
5. After giving the party claiming confidentiality three business days to reply to an objection, if any, the Commission may:
 - (a) order that the document be disclosed;
 - (b) order that the document be held in confidence by the Commission;
 - (c) order that an abridged version of the document be disclosed.
6. Issues which may lead the Commission to determine that information is confidential may include, intimate financial matters, commercial matters, documents relating to trade secrets or any such matter as may be determined by the Commission.
7. Information that has been determined by the Commission to be confidential shall be treated as follows:
 - (a) An original and 3 copies of the information shall be provided for use by the Commission and staff; and
 - (b) The copies shall be stamped confidential and held within the Commission offices in secure locations.

8. If any of the information which has been determined to be confidential is thereafter released or made public by unauthorised disclosure by anyone other than the party who sought its protection, the protection shall remain in full force and effect, binding all parties and the Commission.