

Schedule 3 Paragraph 13 (3) Postal Services Act 2011 (the 2011 Act)

format for submitting a dispute referral to Ofcom

1.1 Submissions should be made to:

Investigations Programme Manager, Competition Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
e-mail: competition.complaints@ofcom.org.uk
Telephone: 020 7783 4100

1.2 If you need any further guidance on how to make a submission to Ofcom, please contact the Competition Group's Investigations Programme Manager.

1.3 On receipt, Ofcom will send a non confidential version of the dispute submission to the Parties named in the dispute submission. If the dispute submission contains confidential information, you must provide a separate non-confidential version which can be copied to the other Parties, as well as explaining why you believe the information to be confidential.

1.4 In the event that Ofcom accepts the dispute submission, Ofcom will normally publish details of the dispute, including the business names of the Parties in Ofcom's Competition and Consumer Enforcement Bulletin on its website. Where publishing a final determination, Ofcom may also publish the non-confidential version of the dispute submission.

1.5 Parties referring a dispute must ensure that the information provided is specific and relevant and does not go beyond what is needed to resolve the dispute. The submission of unnecessary or irrelevant information or evidence could delay the opening of the Enquiry Phase. In certain exceptional cases however, in particular with respect to smaller companies or individuals, Ofcom may, taking into account all the circumstances, consider relaxing some of these conditions.

Contents of a submission

1.6 Parties are reminded that if they do not refer disputes in the manner set out in these guidelines (Schedule 3, Paragraph 13(3) of the 2011 Act), Ofcom is not obliged to accept the dispute (Schedule 3, Paragraph 14(1) of the 2011 Act).

1.7 Supporting evidence may be provided in suitable electronic formats (advice on this can be provided by the Investigations Programme Manager). However, we will require a hard copy of the main body of the submission, with a signed declaration by an officer of the company.

1.8 A submission should contain the following information:

Section A: Preliminary information

1.9 Please provide:

- business name, address, telephone number, and email address and, if relevant, the contact details of an individual who can discuss the detail of the dispute;
- a brief explanation of the nature of the Party's business (e.g. postal operator, user of postal services) and its scale (local, national, international - approximate turnover is helpful);
- details of the other Party(s) in dispute (nature of the Party's business; contact details);
- details of the relationship between the Parties to the dispute;
- a summary of the dispute including the legal basis according to which the dispute is being referred (e.g. Schedule 3, Paragraphs 13(1) and (2) of the 2011 Act plus identification of the relevant access condition which you consider applies) and an explanation (with evidence) of how the relevant conditions are fulfilled;
- a concise explanation of the commercial context to the dispute;
- a proposed remedy or remedies for resolution of the dispute, in light of Ofcom's powers under Schedule 3, Paragraph 16(2) of the 2011 Act.

Section B: The issues in dispute

1.10 Please provide a clear and precise delineation of the scope of the dispute, including:

- full details of the relevant products or services;
- a list of all the issues which are in dispute; and
- a clear and comprehensive explanation of the commercial context to the dispute, including all relevant background and evidence.

1.11 Full details of any justification given (including relevant evidence) for the conduct or action leading to the dispute. For example:

- If the dispute relates to a request for a new access product or service: business plans of relevant product or service including forecasts, demonstrating how and when it is intended to make use of the products or services requested.
- If the dispute concerns a variation or amendment to existing agreed terms between the Parties: a copy of the relevant version of the contract or terms, clearly identifying the clauses that are subject to the dispute.

Section C: History of commercial negotiations

- 1.12 Please provide a description of any negotiations which have taken place between the Parties or, in the event that a Party has refused to enter into negotiations, evidence of the submitting Party having taken reasonable endeavours to enter into good faith negotiations.
- 1.13 Ofcom would expect to see:
- details of the steps taken (or the reasonable endeavours to enter into good faith negotiations) to resolve all of the issues which are in dispute;
 - an explanation of why commercial agreement could not be reached;
 - relevant documentary evidence of commercial negotiations covering the whole period of negotiation, including correspondence, notes of meetings and telephone calls, and a chronological summary of the events; and
 - details of any options or proposed solutions put forward by any Party during negotiations, including what, if anything, was accepted, what was rejected and why.
- 1.14 We are aware that in negotiations, Parties may make without prejudice offers in an attempt to settle disputes. We do not wish to dissuade Parties from actively seeking to resolve disputes in this way, and whilst we will wish to see details of such offers where that may be relevant to determining whether meaningful negotiations have taken place, the existence or content of such offers will not be treated as relevant information or determine our resolution of a dispute.

Section D: Ofcom's Statutory and Community Duties

- 1.15 For all submissions, Ofcom expects the following information:
- identification and applicability of any of Ofcom's regulatory principles and statutory duties (as set out in particular in sections 3 and 4 of the Communications Act 2003 and section 29 of the 2011 Act), which the referring party considers is relevant in this case; and
 - where relevant, a clear explanation of how the subject matter of the dispute may relate to broader regulatory issues or policies.

Section E: Proposed Remedy

- 1.16 Please include details, with reasons, of the appropriate remedy for the dispute, for example:
- full details, including an accurate technical description, of a requested product or service; and/or
 - the specific level at which any relevant charge should be set.
- 1.17 For each suggested remedy or outcome, Parties must also give a full justification and explain how that remedy:

- a) falls within Schedule 3, Paragraph 16 of the 2011 Act, and
- b) would be consistent with Ofcom's statutory duties, as set out in sections 3 and 4 of the Communications Act 2003 and section 29 of the 2011 Act, as well as Ofcom's regulatory principles.

Section F: Supporting information and evidence

- 1.18 Where relevant and available, Ofcom expects the Parties to provide the following specific information and evidence:
- copies of the relevant contract or terms which are the subject of the dispute (see Section B);
 - business plans relating to the relevant product or service (see Section B);
 - all relevant documentary evidence of commercial negotiations between the Parties relating to the disputed matter or matters (see Section C);
 - relevant details about the provision of the product or service in question;
 - a full chronology of all the relevant facts;
 - detailed and specific cost/price information for the provision of the relevant product or service, as well as cost/price trends (where available). In all cases, costs/price information and data must be presented in a usable format, including, where relevant, a fully executable model;
 - full and complete benchmarking data. This could be on an international, industry or other basis. In the alternative, explain why no such data is available or relevant; and
 - all relevant previous decisions, determinations, rulings by courts/tribunals, guidance, opinions/recommendations and policy statements at the UK or EC level.
- 1.19 Where you consider that information which falls into one of the above categories is either not relevant, or that information is not available, please explain why this is the case.
- 1.20 In all cases, Ofcom expects the Parties to provide information and evidence that is focused and appropriately tailored to the relevant issues in dispute.
- 1.21 In all cases, Ofcom expects the Parties to provide non-confidential versions of such information and evidence.

Declaration by an officer of the company:

- 1.22 Before making this submission to Ofcom, to the best of my knowledge and belief, [company name] has sought to resolve this dispute through commercial negotiation. All information and evidence provided in referring this dispute to Ofcom is, to the best of my knowledge and belief, true and accurate.
- 1.23 Signed:

1.24 Position in the company:

1.25 Date:

Acknowledgement of submissions

1.26 We will acknowledge receipt of a submission within one working day.

1.27 This does not necessarily mean that we think the submission meets the requirements set out above. As set out in section 3, if a submission does not meet the requirements set out above, we will advise you on what else may be needed before we will consider the submission to be complete.