



ICTA Fining Guidelines

**Pursuant to section 58 of the ICTA Law
(2011 revision), as amended**

(Ref: ICTA G2)

Statutory background

1. Section 58 of the *Information and Communications Technology Authority Law (2011 Revision)* provides the ICTA with the statutory power to determine administrative fines where a Licensee has “*failed to comply with or contravened any term, condition, specification or requirement of any licence, order, directive, rule of regulation.*”
2. When determining the level of such administrative fines, the ICTA would normally expect to follow these Guidelines. However, the ICTA cannot legally fetter its discretion in advance and therefore retains the ability to depart from these Guidelines where the circumstances warrant it.

How the ICTA will determine the amount of an administrative fine

3. The amount of any administrative fine determined under section 58 must be appropriate and proportionate to the contravention in respect of which it is imposed.
4. When deciding the level of an administrative fine, the ICTA will usually have regard to the need for transparency in applying these principles, particularly as regards the weighting of the factors considered. The ICTA will also have regard to any relevant precedents set by previous cases, but may depart from them depending on the facts and the context of each case.

General criteria

5. In general, the ICTA is likely first to consider the following factors in determining the starting figure of any fine:
 - the seriousness of the contravention;
 - any precedents set by previous cases; and ,
 - the need to ensure that the threat of fines will act as a sufficient incentive to comply.

Specific criteria which may be relevant depending on the contravention

6. Certain specific criteria may be relevant to adjust the starting figure of any fine depending on the type of contravention.

This may include, but would not necessarily be limited to:

- any gain (financial or otherwise) made by the Licensee (or any connected body);
- the degree of harm caused, or increased cost incurred by consumers or other market participants;
- size and turnover of the Licensee;
- the extent to which any contravention was caused by a third party, or any relevant circumstances beyond the control of the Licensee;
- the duration of the contravention; and,
- whether a fine in respect of the same conduct has already been imposed by the ICTA.

Factors tending to lead to an increase in the level of any fine

7. This may include, but would not necessarily be limited to:
- repeated contraventions by the Licensee;
 - continuation of the contravention after either becoming aware of the contravention or being notified of a contravention by the ICTA;
 - the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur; and,
 - the absence, ineffectiveness or repeated failure of internal mechanisms or procedures intended to prevent contravention by the Licensee concerned.

Factors tending to decrease the level of any fine

8. This may include, but would not necessarily be limited to:
- the extent to which the Licensee has taken steps in advance to identify and mitigate external factors that might result in a contravention;
 - the extent and timeliness of any steps taken to end the contravention in question, and any steps taken for remedying the consequences of the contravention; and,
 - co-operation with the ICTA's investigation.

Final amount of fine

9. Having taken regard of any representations the Licensee may wish to make as part of the process set out in section 58 ICTA Law, and having considered the factors listed above (to the extent that they are relevant) and any other circumstances relevant to the particular case under consideration, the ICTA will determine an appropriate and proportionate administrative fine.