



Commission for  
**Communications Regulation**

# **The European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016 (“Broadband Cost Reduction Regulations”)**

## **Dispute Settlement Process**

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# 1 Background

1. The European Union (Reduction of Cost of Deploying High-Speed Public Communications Networks) Regulations 2016 (“the Broadband Cost Reduction Regulations”)<sup>1</sup> set out the rights and obligations aimed at facilitating and reducing the cost of rolling out high-speed public communications networks.
2. Under Regulation 10(1)(b) of the Broadband Cost Reduction Regulations the Commission for Communications Regulation (“ComReg”) shall carry out the functions of the national dispute settlement body referred to in Regulations 4, 5, 6, 7, 8, 9 and 11 of these Regulations in disputes between a public communications network operator<sup>2</sup> and a network operator or a holder of rights to access an access point or in-building physical infrastructure.
3. Regulations 4, 5, 6, 7, 8 and 9 of the Broadband Cost Reduction Regulations deal with:
  - Regulation 4 – Access to information from network operators;
  - Regulation 5 – Access to networks to survey physical infrastructure;
  - Regulation 6 – Access to networks to install elements of a high-speed public communications network;
  - Regulation 7 – Access to information on current or planned civil works on networks;
  - Regulation 8 – Right to negotiate agreements to co-ordinate civil works;
  - Regulation 9 – Right to access property to install connections to high-speed communications networks;
4. Regulation 11 of the Broadband Cost Reduction Regulations sets out the requirements for ComReg’s dispute settlement process and specifically, Regulation 11(4) requires that ComReg establish, maintain and publish dispute settlement procedures in respect of disputes under Regulations 4, 5, 6, 7, 8 and 9 of the Broadband Cost Reduction Regulations. This document describes ComReg’s dispute settlement process and will be published on the ComReg website. ComReg intends to keep this process under review and it may be revised in the future in light of experience.
5. Regulation 11 provides that public communications network operators can refer an issue as a dispute to ComReg.
6. Pursuant to Regulation 11(10) of the Broadband Cost Reduction Regulations, a network operator or the holder of rights to use an access point or in-building physical infrastructure shall comply with any Decision made by ComReg.

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<sup>1</sup> S.I. No. 391 of 2016

<sup>2</sup> For the purpose of this document, the definitions at Regulation 2(1) of the Broadband Cost Reduction Regulations apply

7. Pursuant to Regulation 11(11) of the Broadband Cost Reduction Regulations if a network operator or the holder of a right to use access points or in-building physical infrastructure fails to co-operate with an investigation of a dispute conducted by ComReg, ComReg may apply to the High Court to make a compliance order requiring the Respondent to cooperate with the investigation.
8. Pursuant to Regulation 12(1) of the Broadband Cost Reduction Regulations if a network operator or the holder of rights to use access points or in-building physical infrastructure fails to comply with a Decision made by ComReg, ComReg may apply to the High Court to make a compliance order requiring the Respondent to comply with the Decision.
9. A public communications network operator shall make a request in writing, under Regulations 4, 5, 6, 7, 8 and 9 of the Broadband Cost Reduction Regulations, containing sufficient information to enable the network operator or the holder of rights to access an access point or in-building physical infrastructure, to make a decision.
10. The network operator or the holder of rights to access an access point or in-building physical infrastructure shall make a decision within:
  - (a) two weeks for Regulation 7,
  - (b) one month for Regulations 5 and 8, and
  - (c) two months for Regulations 4, 6 and 9.
11. The dispute settlement process consists of four phases:
  - a. Pre-study Phase – the purpose of this phase is to define the scope of the dispute and to accept or reject the dispute.
  - b. Investigation Phase – the purpose of this phase is to gather information required for determination of the dispute, from both Parties.
  - c. Draft Decision Phase – the purpose of this phase is to review all information provided by the Parties, for determination of the dispute including the publication of a Draft Decision.
  - d. Decision Phase – the purpose of this phase is for ComReg to make a Decision to settle the dispute.
12. Pursuant to Regulation 11(6) of the Broadband Cost Reduction Regulations, ComReg may charge fees for access to the dispute settlement process to cover its costs of performing its functions under Regulation 11 of the Broadband Cost Reduction Regulations. At this time, ComReg will not charge for access to the dispute settlement process under Regulation 11 of the Broadband Cost Reduction Regulations but may revisit this in the future depending on the volume of disputes and the resources required to carry out dispute resolution.

## 2 Definitions

1. The following terms and definitions are transposed from the Broadband Cost Reduction Regulations.

**access point**

physical point, located inside or outside a building, accessible to undertakings providing or authorised to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available

**civil works**

every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure

**decision of the Regulator****Decision**

any decision of the Regulator under Regulation 11(3), including any obligation, condition, requirement or direction imposed by the Regulator under procedures adopted under Regulation 11(4) for the purpose of investigating or resolving a dispute referred to in Regulation 11(2) in accordance with Regulation 11(3)

**high-speed public communications network**

public communications network which is capable of delivering broadband access services at speeds of at least 30 megabits per second

**high-speed-ready in-building physical infrastructure**

in-building physical infrastructure intended to host elements or enable delivery of high-speed public communications networks

**in-building physical infrastructure**

physical infrastructure or installations at the end-user's location, including elements under joint ownership, intended to host either or both wired and wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point

**minimum information regarding civil works**

information concerning on-going or planned civil works for which a permit has been granted, a permit granting procedure has commenced or the submission of a permit application is envisaged within a period of 6 months following the making of a request for such information under Regulation 7, related to the physical infrastructure of the network concerned, the location and the type of works, the network elements involved, the estimated date for starting the works and their duration and including details of a contact point

**minimum information regarding the physical infrastructure of a network**

information regarding the location, route, type and current use of the physical infrastructure of the network of another network operator and including details of a contact point

**network operator**

provider or operator of a network

**network**

- (a) a public communications network,
- (b) the physical infrastructure of a network intended to produce, transport or distribute -
  - i. gas,
  - ii. electricity, including public lighting,
  - iii. heating,
  - iv. water, including disposal or treatment of waste water and sewage, and drainage systems, excluding elements of networks used for the provision of water intended for human consumption,
- (c) transport services, including railways, roads, ports and airports

**physical infrastructure**

any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles, but does not include cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption

**public communications network**

electronic communication network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points

**public communications network operator**

person who provides or is authorised to provide a public communications network in compliance with Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011)

2. The following are ComReg terms and definitions.

**Complainant**

public communications network operator who submits the dispute

**Respondent**

network operator or holder of rights to access an access point or in-building infrastructure against whom a dispute has been submitted

## 3 Dispute Settlement Process

### Pre-study Phase

#### Step 1.

- 1.1. A public communications network operator shall submit in writing an issue as a dispute to ComReg in accordance with Regulations 4, 5, 6, 7, 8 and 9 of the Broadband Cost Reduction Regulations.
- 1.2. When referring an issue as a dispute, the Complainant shall set out details of the dispute and events to date using the guidance in Appendix: 3. ComReg may request further information, as required.

#### Step 2.

- 2.1. ComReg shall consider if the submission from the Complainant is a dispute within the meaning of the Broadband Cost Reduction Regulations.
- 2.2. An investigation into the dispute may not be opened and the dispute may be rejected if:
  - (a) the public communications network operator has failed to comply with Regulations 4(3), 5(3), 6(3), 7(3), 8(3) and/or 9(3),
  - (b) the submission is not considered to be a dispute within the meaning of the Broadband Cost Reduction Regulations,
  - (c) the dispute falls within an exemption pursuant to Regulation 11(5) of the Broadband Cost Reduction Regulations,
  - (d) legal proceedings are underway.
- 2.3. Where ComReg decides not to initiate an investigation of the dispute, the Complainant shall be notified in accordance with Regulation 13 of the Broadband Cost Reduction Regulations.
- 2.4. Where ComReg decides to accept the dispute, both the Complainant and Respondent shall be notified in accordance with Regulation 13 of the Broadband Cost Reduction Regulations.

**NOTE** The 2/4 month timeline to determine a dispute in accordance with 11(3)(i) and 11(3)(ii), shall not begin until ComReg is in receipt of all information required for determination of the dispute, which includes responses to the Draft Decision.

#### Step 3.

- 3.1. ComReg shall clarify and agree the scope of the dispute with the Complainant.
- 3.2. The Complainant and the Respondent (“the Parties”) shall be notified of the scope of the dispute.

- 3.3. The Respondent shall be provided with a non-confidential copy of the dispute.
- 3.4. The scope of the dispute shall be published on the ComReg website.
- 3.5. The Respondent shall provide a detailed response to the dispute.

**NOTE** With regard to any intervention by ComReg referred to in the above steps, ComReg may at any time, having carried out a preliminary examination of the matter, decide the most appropriate action is not to intervene in those negotiations.

## Investigation Phase

### Step 4.

- 4.1. Following a review of the submissions from the Respondent, ComReg may continue the investigation by carrying out one of more of the following actions including, but not limited to:
  - (a) Requesting more information in writing from the Parties;
  - (b) Meeting with the Parties either together or individually;
  - (c) Requesting parties to submit formal submissions (and if necessary supplemental submissions). Such submissions may be exchanged between the parties;
  - (d) Consulting with relevant bodies/stakeholders/regulatory authorities as deemed appropriate.

**NOTE** Depending on the issues that arise out of ComReg's investigation, STEP 4 may be repeated a number of times.

## Draft Decision Phase

### Step 5.

- 5.1. ComReg shall review the submissions from both Parties and prepare a Draft Decision to settle the dispute.
- 5.2. The Draft Decision shall be sent to the Parties in accordance with Regulation 13 of the Broadband Cost Reduction Regulations.
- 5.3. The Parties shall have the opportunity to provide submissions on the Draft Decision.

**NOTE 1** The 2/4 month timeline to determine a dispute in accordance with 11(3)(i) and 11(3)(ii), shall not begin until ComReg is in receipt of all information required for determination of the dispute, which includes responses to the Draft Decision.



**NOTE 2** In making a Draft Decision ComReg shall take into account, as appropriate, reasons for refusal or limitations as set out in Regulations 4(4), 5(4), 6(4), 7(4), 8(4) and 9(4) of the Broadband Cost Reduction Regulations, see Appendix: 2.

**NOTE 3** In making a Draft Decision, ComReg shall have regard to the terms of any existing access or existing offers in comparison with the matter under dispute and if appropriate may reflect such terms and conditions in the Draft Decision.

**NOTE 4** The Draft Decision may be published on the ComReg website, depending on the nature of the dispute.

## Decision Phase

### Step 6.

- 6.1. On receipt of submissions from the Parties on the Draft Decision, ComReg shall be in receipt of all information required for determination of the dispute.

**NOTE 1** Depending on the responses received, ComReg may need to seek additional information.

**NOTE 2** In making a Decision ComReg shall take into account, as appropriate, reasons for refusal or limitations as set out in Regulations 4(4), 5(4), 6(4), 7(4), 8(4) and 9(4) of the Broadband Cost Reduction Regulations, see 0.

**NOTE 3** In making a Decision, ComReg shall have regard to the terms of any existing access or existing offers in comparison with the matter under dispute and if appropriate may reflect such terms and conditions in the Decision.

- 6.2. ComReg shall consider all submissions received from the Parties and pursuant to Regulations 11(3)(i) and 11(3)(ii) of the Broadband Cost Reduction Regulations shall make a Decision to settle the dispute.

**NOTE** A Decision may include, where appropriate, fair, reasonable and non-discriminatory terms and conditions, including price.

### Step 7.

- 7.1. ComReg shall notify the Parties of the Decision in accordance with Regulation 13 of the Broadband Cost Reduction Regulations.
- 7.2. ComReg shall publish the Decision to resolve the dispute on its website, having regard to the requirements of confidentiality.

**NOTE** The Decision shall include an explanation of the rationale for the Decision.

**Step 8.**

- 8.1. ComReg normally expects to follow Steps 1-8 when investigating a dispute referred to it in accordance with Regulations 4, 5, 6, 7, 8 and 9 of the Broadband Cost Reduction Regulations. However it is impossible to foresee every eventuality that will arise in the context of a dispute and therefore ComReg may deviate from Steps 1-8 where it deems such deviation appropriate. If ComReg chooses to depart from Steps 1-8 in respect of any dispute, ComReg shall notify the parties.

# Appendix: 1 Legal Basis

## Regulation 2 of the Broadband Cost Reduction Regulations

...“access point” means a physical point, located inside or outside a building, accessible to undertakings providing or authorised to provide public communications networks, where connection to the high-speed-ready in-building physical infrastructure is made available;

...“civil works” means every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure;

...“decision of the Regulator” means any decision of the Regulator under Regulation 11(3), including any obligation, condition, requirement or direction imposed by the Regulator under procedures adopted under Regulation 11(4) for the purpose of investigating or resolving a dispute referred to in Regulation 11(2) in accordance with Regulation 11(3);

...“high-speed public communications network” means a public communication network which is capable of delivering broadband access services at speeds of at least 30 megabits per second;

...“high-speed-ready in-building physical infrastructure” means in-building physical infrastructure intended to host elements or enable delivery of high-speed public communications networks;

...“in-building physical infrastructure” means physical infrastructure or installations at the end-user’s location, including elements under joint ownership, intended to host either or both wired and wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;

...“minimum information regarding civil works” means information concerning on-going or planned civil works for which a permit has been granted, a permit granting procedure has commenced or the submission of a permit application is envisaged within a period of 6 months following the making of a request for such information under Regulation 7, related to the physical infrastructure of the network concerned, the location and the type of works, the network elements involved, the estimated date for starting the works and their duration and including details of a contact point;

...“minimum information regarding the physical infrastructure of a network” means information regarding the location, route, type and current use of the physical infrastructure of the network of another network operator and including details of a contact point;

.....“network operator” means the provider or operator of a network;

.... “network” means -

- (a) a public communications network,
- (b) the physical infrastructure of a network intended to produce, transport or distribute -
  - (i) gas,
  - (ii) electricity, including public lighting,
  - (iii) heating,
  - (iv) water, including disposal or treatment of waste water and sewage, and drainage systems, excluding elements of networks used for the provision of

water intended for human consumption, as defined in point 1 of Article 2 of Council Directive 98/83/EC of 3 November 1998 ,

- (c) transport services, including railways, roads, ports and airports;

...“physical infrastructure” means any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles, but does not include cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption, as defined in point 1 of Article 2 of Council Directive 98/83/EC of 3 November 1998;

...“public communications network” means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points;

...“public communications network operator” means a person who provides or is authorised to provide a public communications network in compliance with Regulation 4 of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011);

## **Regulation 4 of the Broadband Cost Reduction Regulations**

### **Access to information from other network operators**

4. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to access minimum information regarding the physical infrastructure of a network from the other network operator.
- (2) Subject to this Regulation, a network operator shall provide access to minimum information regarding the physical infrastructure of the network, if requested by a public communications network operator.
- (3) (a) A network operator may require a public communications network operator who has made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.  
 (b) A public communications network operator requesting minimum information under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).
- (4) A network operator may refuse or limit access to minimum information regarding the physical infrastructure of the network requested by a public communications network operator—
  - (a) where the public communications network operator has not complied with a request made to it under paragraph (3),
  - (b) where the request for access does not specify in sufficient detail an area within the network for which the information is requested,
  - (c) where the request for access does not specify the area envisaged for the deployment of elements of a high-speed public communications network,
  - (d) for reasons of security of the network or its integrity, national security, public health or safety, confidentiality or operating or business secrets,
  - (e) where the information requested is publicly available in electronic format, or

- (f) where the public communications network operator has not complied with any proportionate, non-discriminatory or transparent term imposed by the network operator for access.
- (5) A refusal or limitation of access to information shall be notified to the public communications network operator within—
  - (a) 2 months following the date of receipt of a request, or
  - (b) where other information is requested under paragraph (3), 2 months of receiving the public communications network operator's response to a request, together with reasons for the refusal or limitation of access.
- (6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation and contain sufficient particulars to enable the information requested to be identified by the taking of reasonable steps.

## **Regulation 5 of the Broadband Cost Reduction Regulations**

### **Access to networks to survey physical infrastructure**

- 5. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to conduct on-site surveys of physical infrastructure of any other network.
- (2) Subject to this Regulation, a network operator shall, if requested by a public communications network operator, meet all reasonable requests for onsite surveys of physical infrastructure of the other network.
- (3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.  
(b) A public communications network operator requesting access to conduct a survey under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under paragraph (a).
- (4) A network operator may refuse or limit access to another network to conduct on-site surveys of the physical infrastructure of its network—
  - (a) where the public communications network operator has not complied with a request made to it under paragraph (3),
  - (b) where the request for access does not specify the elements of the network to which access is requested with a view to deploying elements of a high-speed public communications network,
  - (c) for reasons of security of the network or its integrity, national security, public health or safety, confidentiality, or operating and business secrets, or
  - (d) where the public communications network operator has not complied with any proportionate, non-discriminatory or transparent terms or condition imposed by the network operator for access.
- (5) A refusal or limitation of access shall be notified to the public communications network operator within—
  - (a) 1 month following the date of receipt of a request for such access, or

- (b) where other information is requested under paragraph (3), 1 month of receiving the public communications network operator's response to any such request, together with reasons for the refusal or limitation of access.
- (6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation.

## **Regulation 6 of the Broadband Cost Reduction Regulations**

### **Access to other networks to install elements of a high-speed public communications network**

- 6. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to access the physical infrastructure of a network and install elements of a high-speed public communications network on the physical infrastructure of the other network.
- (2) Subject to this Regulation, a network operator shall, if requested by a public communications network operator, meet all reasonable requests for access to the physical infrastructure of the network operated or provided by it with a view to installing elements of a high-speed public communications network on the physical infrastructure of that network.
- (3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.  
  
(b) A public communications network operator requesting access to a network under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).
- (4) A refusal or limitation of access, in whole or in part, to the physical infrastructure of a network shall be based on an objective, transparent or proportionate reason which may include, but is not limited to—
  - (a) the public communications network operator has not complied with a request made to it under paragraph (3),
  - (b) the request for access does not reasonably demonstrate the request relates to the proposed deployment of elements of a high-speed public communications network or does not specify an area within the other network it is proposed to access or does not set a timeframe for the requested access and deployment,
  - (c) the technical unsuitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed public communications networks notified,
  - (d) an absence of space to host the elements of high-speed public communications networks or an absence of space due to the network operator's future reasonable needs for space,
  - (e) for reasons of public health or safety,
  - (f) for reasons of the integrity or security of the other network as a network or as part of critical national infrastructure,

- (g) the availability of viable alternative means of wholesale physical network infrastructure access provided by the other network operator and suitable for the provision of high-speed electronic communications networks provided that such access is offered under fair and reasonable terms and conditions,
  - (h) the right to property of the owner of the physical infrastructure, in cases where the network operator is not the property owner,
    - (i) the right to property of any person other than the network operator,
    - (j) the risk of serious interference by the planned elements of the highspeed public communications network or the planned services to be provided with the provision of other services over the same physical infrastructure, or
  - (k) the request is otherwise not reasonable in all the circumstances.
- (5) A refusal or limitation of access shall be notified to a public communications network operator within—
- (a) 2 months following the date of receipt of a request for such access, or
  - (b) where other information is requested under paragraph (3), 2 months of receiving the public communications network operator's response to any such request, together with reasons for the refusal or limitation of access.
- (6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation.

## **Regulation 7 of the Broadband Cost Reduction Regulations**

### **Access to information on current or planned civil works on other networks**

7. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to access minimum information regarding civil works, current or planned, on any other network from a network operator.
- (2) Subject to this Regulation, a network operator shall, if requested by a public communications operator, provide minimum information regarding civil works, current or planned, to a public communications network operator and a single information point.
- (3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.
- (b) A public communications network operator requesting minimum information under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).
- (4) A network operator may refuse a request for minimum information regarding civil works, current or planned—
- (a) where the public communications network operator has not complied with a request made to it under paragraph (3),
  - (b) where the request for access does not specify an area within the network for which information is requested,



- (c) for reasons of security of the network or its integrity, national security, public health or safety, confidentiality or operating or business secrets,
  - (d) where the information requested is publicly available in electronic format or access to such information is available via a single information point, or
  - (e) where the request is not reasonable in all the circumstances.
- (5) A refusal shall be notified to the public communications network operator within—
- (a) 2 weeks following the date of receipt of the application, or
  - (b) where other information is requested under paragraph (3) 2 weeks of receiving the public communications network operator's response to any such request, together with reasons for the refusal.
- (6) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation and contain sufficient particulars in relation to the information concerned to enable the information requested to be identified by the taking of reasonable steps.

## **Regulation 8 of the Broadband Cost Reduction Regulations**

### **Right to negotiate agreements to co-ordinate civil works**

8. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to coordinate civil works with any other network operator for the purpose of deploying elements of a high-speed public communications network.
- (2) Subject to this Regulation, any network operator performing, directly or indirectly, civil works shall, if requested by a public communications network operator, meet any reasonable request to coordinate civil works with a view to deploying elements of a high-speed public communications network.
- (3) (a) A network operator may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.
- (b) A public communications network operator requesting to co-ordinate civil works under paragraph (1) shall furnish such other information concerning the request as the other network operator may reasonably require under subparagraph (a).
- (4) A network operator may refuse to coordinate civil works where—
- (a) the public communications network operator has not complied with a request made to it under paragraph (3),
  - (b) the civil work is not, or will not be, wholly or partly publicly funded,
  - (c) the request for an agreement is not for the purpose of deploying elements of a high-speed public communications network,
  - (d) the coordination would impose additional costs for the initially envisaged civil works,
  - (e) the coordination could delay the planned commencement or completion of the civil works and such delay would have a cost implication for the network operator,



- (f) the coordination would impede control over the coordination of the civil work,
  - (g) the request to coordinate is filed less than 1 month before the planned or actual (whichever is the latest) submission of an application for any required statutory permit required to undertake the works,
  - (h) the public communications network operator has not complied with any non-discriminatory or transparent term imposed by the network operator for access, or
  - (i) the request is otherwise not reasonable in all the circumstances.
- (5) A refusal shall be notified to a public communications network operator within—
- (a) 1 month following the date of receipt of a request, or
  - (b) where other information is requested under paragraph (3), 1 month of the date of receiving the public communications network operator's response to any such request, together with reasons for the refusal.
- (6) A request under this Regulation shall be made in writing, shall state that the request is made under this Regulation and contain sufficient particulars to enable the information requested to be identified by the taking of reasonable steps.

## **Regulation 9 of the Broadband Cost Reduction Regulations**

### **Right to access property to install connections to high-speed communication networks**

9. (1) Subject to these Regulations, a public communications network operator has, upon request, the right to—
- (a) roll out its network at its own costs, up to an access point and a network termination point, and
  - (b) use an access point or in-building physical infrastructure for the purpose of deploying elements of a high-speed public communications network.
- (2) Subject to this Regulation, any holder of a right to use the access point and in-building physical infrastructure shall meet all reasonable requests for access from public communications network operators under fair and non-discriminatory terms and conditions, including price, where appropriate.
- (3) (a) A holder of a right to use the access point and in-building physical infrastructure may require a public communications network operator who made a request under paragraph (1) to submit such further information as it reasonably requires to enable it to decide on the request.
- (b) A public communications network operator requesting access under paragraph (1) shall furnish such other information concerning the request as the holder of a right to use the access point and in-building physical infrastructure may reasonably require under paragraph (a).
- (4) The right to access under paragraph (1) may be refused where—
- (a) the public communications network operator has not complied with a request made to it under paragraph (3),

- (b) duplication of the access point and in-building physical infrastructure is technically possible and economically efficient,
  - (c) access to an existing network termination point, which is suitable for the provision of high-speed public communications services, is available to the public communications network operator on objective, transparent, proportionate and non-discriminatory terms and conditions, or
  - (d) the required access to an access point or in-building physical infrastructure is contrary to the right to property of any property owner other than the holder of the right to use the access point or the inbuilding physical infrastructure.
- (5) A refusal shall be notified to a public communications network operator within—
- (a) 2 months of the date of receiving a request, or
  - (b) where other information is requested under paragraph (3), 2 months of receiving the public communications network operator's response to such a request, together with reasons for the refusal.
- (6) A property owner may refuse access to any property, which is not an access point or in-building physical infrastructure or physical infrastructure of a network, where the nature of the works and any required reinstatement work is not agreed.
- (7) A request under this Regulation shall be made in writing and shall state that the request is made under this Regulation.

## **Regulation 10 of the Broadband Cost Reduction Regulations**

### **Functions of Regulator**

10. (1) The Regulator shall carry out—
- (a) the functions of ensuring compliance with these Regulations by network operators and the holder of a right to use access points or inbuilding physical infrastructure to which these Regulations apply,
  - (b) the functions of the national dispute settlement body referred to in Articles 3, 4, 5, 6 and 9 of the Directive and in accordance with Regulation 11 in disputes between a public communications network operator and another network operator or a holder of rights to access an access point or in-building physical infrastructure,
  - (c) the functions of the single information point referred to in Articles 6 and 7 of the Directive regarding access to information provided to the single information point by network operators and to facilitate access via a single information point to information regarding statutory permits for civil works required to develop elements of a highspeed electronic communications network including, where appropriate, exempted development provisions and the conditions and procedures applicable to granting a statutory permit.

- (2) The Regulator may impose terms and conditions and may charge fees for access to the single information point to cover its costs of providing and maintaining the single information point established as a requirement of paragraph
- (3) In this Regulation “exempted development” means exempted development (within the meaning of section 2 of the Act of 2000) for the development (within the meaning of section 2 of the Act of 2000) of electronic communications infrastructure and any associated physical infrastructure.

## **Regulation 11 of the Broadband Cost Reduction Regulations**

### **Regulator’s dispute settlement process**

11. (1) The Regulator is appointed as the national disputes settlement body for the purposes of these Regulations and the Directive.
- (2) This Regulation applies to disputes arising between a public communication network operator and another network operator, or a holder of rights to use access points or in-building physical infrastructure regarding—
  - (a) access to minimum information regarding physical infrastructure of a network and access to minimum information regarding civil works, in compliance with Regulations 4 and 7, respectively,
  - (b) access to other networks in compliance with Regulations 5 and 6,
  - (c) agreements to coordinate civil works in compliance with Regulation 8, and
  - (d) access to access points and in-building physical infrastructure in compliance with Regulation 9.
- (3) In the event of a dispute referred to in paragraph (2), the Regulator shall, subject to paragraph (5), at the request of either party submitted after—
  - (a) the period specified in Regulation 4(5)(a), 5(5) (a), 6(5) (a), 7(5) (a), 8(5) (a) or 9(5) (a) has expired, or
  - (b) where additional information has been requested in accordance with Regulation 4(3)(a), 5(3)(a), 6(3)(a), 7(3)(a), 8(3)(a) or 9(3)(a), the period provided for in Regulation 4(5)(b), 5(5)(b), 6(5)(b), 7(5)(b), 8(5)(b) or 9(5)(b), has expired, initiate an investigation of the dispute and shall taking full account of the principle of proportionality make a decision to resolve the dispute, including the setting of fair and reasonable terms and conditions, including price where appropriate, as soon as possible but, except in circumstances which the Regulator considers exceptional—
    - (i) regarding a public communication network operator’s rights under Regulation 4, 5, 7, 8 or 9, within 2 months following the date of receipt of all information required by the Regulator for determination of the dispute, or

- (ii) regarding a public communication network operator's rights under Regulation 6, within 4 months following the date of receipt of all information required by the Regulator for determination of the dispute.
- (4) The Regulator shall establish, maintain and publish its dispute settlement procedures and shall ensure that all investigations and decisions are handled in accordance with those procedures. Such procedures shall include power for the Regulator under a decision to impose obligations, requirements or conditions on network operators and to give to network operators directions regarding such.
- (5) (a) The Regulator may make exemptions, from time to time, which shall be fully reasoned, from the dispute settlement procedures referred to in paragraph (4) for disputes—
  - (i) on access to minimum information regarding physical infrastructure of a network that it considers technically unsuitable for the deployment of elements of a high-speed public communications network or in case of critical national infrastructure,
  - (ii) on the coordination of civil works of insignificant importance, for reasons of value, size or duration, or in the case of critical national infrastructure, and
  - (iii) on access to minimum information regarding civil works of insignificant value or in the case of critical national infrastructure,after publishing the text of the proposed exemptions, specifying the period within which submissions relating to the proposal may be made by interested parties and having considered any submissions received.
- (a) The Regulator shall notify any such exemptions to the Commission of the European Union as soon as practicable.
- (6) The Regulator may charge fees for access to the dispute settlement procedure to cover its costs of performing its functions under this Regulation.
- (7) The Regulator may decide not to initiate an investigation of a dispute referred to in paragraph (3) where the Regulator is satisfied that the dispute falls within an exemption from the dispute settlement procedures provided for in paragraph (5) or if legal proceedings in relation to the dispute have been initiated.
- (8) Where the Regulator makes a decision under paragraph (3), or decides under paragraph (7) not to initiate an investigation, the Regulator shall notify the parties to the dispute in accordance with Regulation 13.
- (9) In making a decision the Regulator shall have regard to the case for refusals or limitations, as the case may be, as provided for in Regulation 4, 5, 6, 7, 8 or 9.
- (10) A network operator and the holder of a right to use access points or inbuilding physical infrastructure to which these Regulations apply shall comply fully with any decision made by the Regulator.

- (11) A network operator or the holder of a right to use access points or inbuilding physical infrastructure to which these Regulations apply that—
- (a) fails to co-operate with an investigation of a dispute conducted by the Regulator under this Regulation, or
  - (b) fails to comply fully with a decision of the Regulator, commits an offence and is liable—
    - (i) on summary conviction, to a class A fine, or
    - (ii) on conviction on indictment, to a fine not exceeding €100,000.
- (12) In proceedings for an offence under paragraph (11) it is a defence to establish that—
- (a) reasonable steps were taken to co-operate with the relevant investigation or to comply with the decision of the Regulator,
  - (b) it was not possible to co-operate with the relevant investigation or to comply with that decision, or
  - (c) legal proceedings have been initiated in relation to the dispute.
- (13) If the Regulator has made an application under Regulation 12 to the High Court to secure a person's compliance with a decision of the Regulator, the Regulator may not bring proceedings against the person for an offence under paragraph (11) or give notice under section 44 of the Act of 2002 in respect of the person's failure to fully comply with the decision.
- (14) Any decision of the Regulator imposed on a public communications network operator by the Regulator in resolving a dispute shall, where appropriate, take into account the objectives set out in Article 8 of Directive 2002/21/EC to promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services, to contribute to the development of the internal market and to promote the interests of the citizens of Member States.

## **Regulation 12 of the Broadband Cost Reduction Regulations**

### **Compliance orders**

12. (1) Subject to paragraph (2), where the Regulator finds that a network operator or a holder of rights to use an access point or in-building physical infrastructure has not complied fully with a decision of the Regulator, the Regulator may apply by motion to the High Court to make a compliance order under paragraph (5).
- (2) The Regulator may make an application under subsection (1) only if—
- (a) not later than 1 month before making the application, the Regulator has served on the network operator or the holder of a right to use an access point or inbuilding physical infrastructure concerned a notice in writing, notified to it in accordance with Regulation 13, requiring the network operator or holder of such right concerned to comply fully with a decision to which paragraph (1)

applies and has given the network operator or holder of such right an opportunity to make representations to the Regulator about the matter and to comply fully with the decision, and

- (b) the network operator or holder of such right has failed to so comply.
- (3) The High Court may hear the application only if it is satisfied that the Regulator has complied with paragraph (2)(a) and has served a copy of the application on the network operator or holder of a right to use access points or in-building infrastructure concerned. On being served with a copy of the application, that network operator or holder of such right becomes the respondent to the application.
- (4) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under paragraph (1). The Court may not refuse interim or interlocutory relief merely because the Regulator may not suffer damage if relief were not granted pending determination of the application.
- (5) On the hearing of an application made under paragraph (1), the High Court may make an order requiring the respondent to comply with the decision of the Regulator or any part of it not complied with or may refuse the application.
- (6) If the High Court makes an order under this Regulation, it may make such ancillary orders as it considers appropriate.
- (7) (a) An application for an order under paragraph (1) may be for, or include an application for, an order to pay to the Regulator such amount, by way of financial penalty, which may include penalties having effect for periods of non-compliance with the decision of the Regulator, as the Regulator may propose, being not more than €250,000, as appropriate in the light of the non-compliance or any continuing non-compliance.
  - (b) Such an application for an order in respect of a financial penalty for a period of non-compliance may be made even if there since has been compliance with the decision.
  - (c) In deciding on such an application, the High Court shall decide the amount, if any, of the financial penalty which should be payable and shall not be bound by the amount proposed by the Regulator.
  - (d) Any financial penalty ordered by the High Court to be paid by an operator or undertaking under this paragraph shall be paid to and retained by the Regulator as income.
  - (e) In deciding what amount, if any, should be payable, the High Court shall consider the circumstances of the non-compliance, including—
    - (i) its duration,
    - (ii) the effect on consumers, users and other operators,
    - (iii) the submissions of the Regulator on the appropriate amount, and
    - (iv) any excuse or explanation for the non-compliance.
- (8) Where the Regulator has brought proceedings for an offence under Regulation 11(11) or given a notice under section 44 of the Act of 2002 in respect of an alleged offence under Regulation 11(11), the Regulator shall not make an application for an order

under this Regulation to the High Court to compel compliance by the undertaking with the decision of the Regulator to which the proceedings or notice relates.

## **Regulation 13 of the Broadband Cost Reduction Regulations**

### **Service of notifications by Regulator**

13. (1) Where the Regulator makes a decision, it shall be in writing, state the reasons on which it is based and be addressed to the parties to the dispute and, as soon as practicable, be sent or given in any of the following ways:
- (a) by delivering it to the parties to the dispute;
  - (b) by leaving it at the addresses at which the parties to the dispute ordinarily carry on business;
  - (c) by sending it by pre-paid registered post addressed to the parties to the dispute at the addresses at which the parties to the dispute ordinarily carry on business;
  - (d) if an address for service has been furnished by a party to the dispute to the Regulator, by leaving it at, or sending it by pre-paid registered post to, that address;
  - (e) in any case where the Regulator considers that the immediate giving of the decision is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which a party to the dispute carries on business or, if an address for the service of notices has been furnished by a party to the dispute, that address, but only if—
    - (i) the sender's facsimile machine generates a message confirming successful delivery of the total number of pages of the decision, or
    - (ii) the recipient's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail, and it is also given in one of the other ways mentioned in subparagraphs (a) to (d).
- (2) In paragraph (1), a party to a dispute which is a company (within the meaning of the Companies Act 2014) is deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

## Appendix: 2 Reasons for refusal or limitations

A 2.1 The following are reasons under which a network operator or the holder of rights to an access point or in-building infrastructure may refuse or limit access under Regulations 4, 5, 6, 7, 8 and 9 and which will be considered by ComReg in making a Decision to determine a dispute.

- access to an existing network termination point, which is suitable for the provision of high-speed public communications services, is available to the public communications network operator on objective, transparent, proportionate and non-discriminatory terms and conditions;
- an absence of space to host the elements of high-speed public communications networks or an absence of space due to the network operator's future reasonable needs for space;
- duplication of the access point and in-building physical infrastructure is technically possible and economically efficient;
- for reasons of public health or safety;
- for reasons of security of the network or its integrity, national security, public health or safety, confidentiality or operating or business secrets;
- for reasons of security of the network or its integrity, national security, public health or safety, confidentiality, or operating and business secrets
- for reasons of the integrity or security of the other network as a network or as part of critical national infrastructure;
- the availability of viable alternative means of wholesale physical network infrastructure access provided by the other network operator;
- suitable for the provision of high-speed electronic communications networks provided that such access is offered under fair and reasonable terms and conditions;
- the civil work is not, or will not be, wholly or partly publicly funded;
- the coordination could delay the planned commencement or completion of the civil works and such delay would have a cost implication for the network operator;
- the coordination would impede control over the coordination of the civil work;



- the coordination would impose additional costs for the initially envisaged civil works;
- the public communications network operator has not complied with a request made to it under paragraph (3);
- the public communications network operator has not complied with any non-discriminatory or transparent term imposed by the network operator for access;
- the request for access does not reasonably demonstrate the request relates to the proposed deployment of elements of a high-speed public communications network or does not specify an area within the other network it is proposed to access or does not set a timeframe for the requested access and deployment;
- the request for an agreement is not for the purpose of deploying elements of a high-speed public communications network;
- the request is otherwise not reasonable in all the circumstances;
- the request to coordinate is filed less than 1 month before the planned or actual (whichever is the latest) submission of an application for any required statutory permit required to undertake the works;
- the required access to an access point or in-building physical infrastructure is contrary to the right to property of any property owner other than the holder of the right to use the access point or the inbuilding physical infrastructure;
- the right to property of any person other than the network operator;
- the right to property of the owner of the physical infrastructure, in cases where the network operator is not the property owner;
- the risk of serious interference by the planned elements of the high-speed public communications network or the planned services to be provided with the provision of other services over the same physical infrastructure;
- the technical unsuitability of the physical infrastructure to which access has been requested to host any of the elements of high-speed public communications networks notified;
- where the information requested is publicly available in electronic format;
- where the public communications network operator has not complied with a request made to it under paragraph (3);

- where the public communications network operator has not complied with any proportionate, non-discriminatory or transparent term imposed by the network operator for access;
- where the public communications network operator has not complied with any proportionate, non-discriminatory or transparent terms or condition imposed by the network operator for access;
- where the public communications network operator has not complied with a request made to it under paragraph (3);
- where the request for access does not specify in sufficient detail an area within the network for which the information is requested;
- where the request for access does not specify the area envisaged for the deployment of elements of a high-speed public communications network;
- where the request for access does not specify the elements of the network to which access is requested with a view to deploying elements of a high-speed public communications network.

# Appendix: 3 Information required to submit a dispute

## 1. Contact details

Contact details shall be provided for the individual/s who should be contacted in relation to this dispute and will be responsible for providing information. This should include the full correspondence address.

Where possible, contact details for the Respondent's contact in relation to the dispute should also be provided.

## 2. Scope of the dispute

A statement detailing the scope of the dispute shall be provided, including the following information:

- the net issue which the Complainant wishes ComReg to determine;
- the specific disagreement giving rise to the dispute.

The scope should not include:

- the background to the dispute
- the circumstances which gave rise to the dispute
- the desired outcome.

## 3. A statement of the relevant obligation(s) under the Broadband Cost Reduction Regulations which have given rise to the dispute.

Where ComReg identifies an alternative/additional obligation that is relevant to the dispute, the dispute may be progressed on this basis.

## 4. Background to the dispute

Statement describing:

- the background to the dispute;
- evidence of previous negotiations to reach agreement;
- evidence of any commercial terms offered;
- the circumstances leading up to the dispute;
- reasons for refusal or limitation given by the Respondent;
- details of the relationship between the Parties to the dispute;
- a full statement of the extent of the dispute, including a list of all issues which are in dispute;
- the regulatory conditions to which the dispute relates.

**NOTE** This should include an explanation as to why, if appropriate, it is considered that the relevant obligation is not being met.

This statement should be sufficiently comprehensive so as to avoid ComReg seeking additional information.

## 5. Details of any attempts to resolve the dispute

This should include comprehensive evidence of:

- any attempts to resolve the issue with the Respondent
- an explanation of why an agreement could not be reached
- reasons for rejection or limitation, as provided by the Respondent
- details of any options or proposed solutions put forward by any Party during negotiations (including what, if anything, was accepted or rejected and why)
- whether the dispute is or has been before any other body
- alternative dispute settlement mechanisms employed e.g. mediation. If alternative dispute settlement mechanisms have not been employed please state reasons why.

## 6. Details of any legal proceedings in relation to the dispute that have been initiated by either party

If there are no legal proceedings this should be stated.

## 7. Details as to the impact of the dispute on the Complainant's business

Evidence or supporting documentation should be provided for any claims of impact on the Complainant's business.

## 8. Outcome

*Outcome desired by the Complainant*

This should include reasoning as to why the Decision should be of the form suggested by the Complainant and the Complainant's view as to the legal basis for ComReg making the Decision sought. The desired outcome must not exceed the scope of ComReg's powers under the Broadband Cost Reduction Regulations

## 9. Documentary evidence

All assertions should be supported by documentary evidence where possible, including correspondence, notes of meetings and telephone calls, and a chronological summary of events. In addition, if there is any relevant documentation that provides further background to the dispute this should also be submitted, in particular:

- If the dispute relates to a request for new network access products business plans of the relevant product or service including forecasts, demonstrating how and when it is intended to make use of the products or services requested.
- In cases of disputes involving contracts, copies of the relevant version of the contract, clearly identifying the clauses that are subject to the dispute.

## 10. A Non-confidential version of the dispute submission

In the event that the dispute submission contains no confidential information, it should be clearly marked “non-confidential”.

If parties to the dispute wish to provide ComReg with confidential information, **a non-confidential version of the submission should be provided simultaneously**. The non-confidential version should contain all the facts material to the case so that the Respondent has all the facts when responding.