



Commission for
Communications Regulation

Consultation Paper

General Authorisation

Proposal to attach conditions in relation to
telecommunications service disruption minimisation

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All responses to this consultation should be clearly marked:-
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Wholesale Division
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Freepost
Dublin 1
Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680 Email:
wholesaleconsult@comreg.ie

Please note ComReg will publish all respondents submissions
with the Response to this Consultation, subject to the provisions
of ComReg’s guidelines on the treatment of confidential
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1 Forward

Telecommunications services are of key importance for many consumers and any disruption to these services must be treated as a matter of great seriousness. Disruption can potentially be caused by any number of factors, including financial difficulty, operational problems or simply a decision to cease operations. This paper attempts to address what happens when an operator chooses, or is forced, to cease to provide service. While the Commission for Communications Regulation ('ComReg'), as regulator of the sector, cannot have any operational responsibility for service delivery to consumers, it does have certain powers, which are discussed in this paper, which can go some way to mitigating the worst impacts of service disruption or, at least, creating greater certainty as to what happens in the event of service disruption.

Telecommunications is a network industry. That is to say that all operators are connected to each other and all operators are, to some degree, affected by what other operators do. Because of the complexity of these interrelationships it is impossible to eliminate entirely the possibility of disruption to telecommunications services. Nevertheless, it should be possible, indeed it should be normal commercial practice, to plan for such an eventuality.

In summary this paper sets out proposals as to when and in what circumstances ComReg and consumers should be notified of potential service disruption. It proposes that all operators should use reasonable endeavours to minimise service disruption and that all operators should have a disruption minimisation plan. The mechanism that ComReg has chosen to implement these measures is by way of amendment of the General Authorisation. Consequently these proposals, if implemented, would apply to all operators authorised to provide electronic communications networks or services in Ireland.

ComReg envisages that there would be significant benefits to the proposed conditions in terms of benefiting end-users, increasing consumer protection and increasing consumer confidence in operators.

ComReg invites responses to this consultation from operators, consumers and all those affected either directly or indirectly by the conditions of the General Authorisation. In the light of responses to this consultation, ComReg will issue a Response to Consultation and depending on the responses to consultation may amend the General Authorisation to include some or all of the proposed conditions.

Mike Byrne

Chairperson

2 Background

On the 25th July 2003 the legal basis for the provision of electronic communications networks and services changed in Ireland as four sets of Regulations came into operation for the purpose of giving effect to certain European Directives. A significant change to the regulatory framework that resulted was that licences to provide relevant networks and services were replaced by an authorisation regime. Any operator can avail of a 'General Authorisation' to provide a network or service provided they conform to certain general conditions set out in the transposing legislation.

On 25th July 2003 ComReg issued the General Authorisation¹. On 24th August 2004 ComReg initiated a consultation² which proposed to amend the General Authorisation. No response to that consultation was published by ComReg. Given the significant lapse of time since that consultation, ComReg no longer proposes to publish a response to the consultation and considers that consultation closed.

ComReg is consulting on the proposed attachment of conditions to the General Authorisation to deal with the situation where there is a threat that telecommunications services will be disrupted.

¹ General Authorisation, Conditions for the provision of Electronic Communications Networks and Services Document No: 03/81, dated 25 July, 2003

² General Authorisation, Amendment of Certain Terms and Conditions, Document No: 04/88, Date: 24 August 2004

3 Proposed Conditions for attachment to the General Authorisation

3.1 Proposed Condition 14.5 of the General Authorisation

It is proposed that the following condition 14.5 is attached to the General Authorisation, in Part 3 of the General Authorisation ‘Conditions applying to persons obliged to notify the Commission under Regulation 4 of the Authorisation Regulations’, Condition 14 “Interconnection”.

(Note ‘Authorised Person’ means the person who is deemed to be authorised to provide Authorised Services under Regulation 4 of Authorisation Regulations. ‘Commission’ means ComReg)

14.5 The Authorised Person shall notify the Commission immediately if it is of the view that there is a reasonable possibility that it may in the foreseeable future cease (whether voluntarily or involuntarily) to provide on a wholesale basis an electronic communications network or an electronic communications service or that its actions may result in a substantial number of consumers’ access to publicly available electronic communications services being terminated, suspended or restricted.

3.2 Proposed Conditions 18.2-18.10 of the General Authorisation

It is proposed that the following conditions 18.2-18.10 are attached to the General Authorisation, in Part 3 of the General Authorisation ‘Conditions applying to persons obliged to notify the Commission under Regulation 4 of the Authorisation Regulations’, Condition 18 “Consumer Protection Rules”.

18.2 The Authorised Person must at all times use all reasonable endeavours to ensure any disruption to the publicly available electronic communications services provided to consumers is minimised and continuous provision of publicly available electronic communications services to consumers is maintained.

18.3 The Authorised Person shall have in place an effective plan to ensure that, in the event of the Authorised Person ceasing (whether voluntarily or involuntarily) to provide on a retail or wholesale basis an electronic communications network or an electronic communications service, any disruption to the publicly available electronic communications services provided to consumers is minimised (the ‘Disruption Minimisation Plan’). The Authorised Person shall take all appropriate steps to ensure its Disruption Minimisation Plan is viable and shall maintain the Disruption Minimisation Plan to reflect the ongoing portfolio of services offered by the Authorised Person and any retail providers of electronic communications services to which

it supplies wholesale electronic communications networks or electronic communications services. The Authorised Person must lodge an up-to-date copy of the Disruption Minimisation Plan with the Commission.

- 18.4 The Authorised Person must implement its Disruption Minimisation Plan in appropriate circumstances
- 18.5 The Authorised Person shall notify the Commission immediately if it is of the view that there is a reasonable possibility that it may in the foreseeable future cease (whether voluntarily or involuntarily) to provide an electronic communications network or an electronic communications service to consumers or that its actions may result in a substantial number of consumers' access to publicly available electronic communications services being terminated, suspended or restricted.
- 18.6 When the Authorised Person receives a notification that could result in termination of publicly available electronic communications services to consumers (e.g. a notice of termination of a contract related to the provision of an electronic communications network or service), it shall notify the Commission immediately and use all reasonable endeavours to ensure that disruption to consumers is minimised and continuous provision of publicly available electronic communications service to consumers is maintained.
- 18.7 An Authorised Person that takes any action (including issuing a notice of termination of a contract to another provider of an electronic communications service or network) that could result in termination, suspension or restriction of publicly available electronic communications services to consumers shall simultaneously notify the Commission of the action.
- 18.8 An Authorised Person shall notify the Commission no later than 10 days in advance of withdrawing any electronic communications service(s) or access to its electronic communications networks including if this withdrawal is pursuant to contract, except in cases where the action is urgently required in respect of ensuring network integrity or safety of life.
- 18.9 In the event that an Authorised Person decides to withdraw a type of publicly available electronic communications service from consumers it shall notify the Commission immediately and its own consumers as soon as is practicable.
- 18.10 Where the Commission forms the view that there is an imminent possibility that publicly available electronic communications services to consumers may be disrupted, the Authorised Person will, upon request from the Commission, provide the Commission with any information which the Commission considers is required to facilitate the process of minimising disruption of consumers publicly available electronic communications services.

4 Legal Basis

The procedure for attaching conditions to the General Authorisation is established by Regulation 8 of the Authorisation Regulations³. In particular note;

- (i) Any Conditions attached to the General Authorisation may only be of the type set out in Part A of the Schedule to the Authorisation Regulations. Of particular relevance in this instance is;
 - Paragraph 8 of Part A of the Authorisation Regulations, which provides for conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’
 - Paragraph 3 of Part A of the Authorisation Regulations, which provides for conditions providing for ‘Interoperability of services and interconnection of networks in conformity with the Access Regulations’.
- (ii) The attachment of Conditions to the General Authorisation must be objectively justified and must be non-discriminatory, proportionate and transparent (Regulation 8(2) of the Authorisation Regulations)
- (iii) ComReg may not attach as a condition to the General Authorisation any Specific Obligations⁴ that it may impose on an undertaking, nor any conditions which are applicable to undertakings by virtue of other laws (Regulation 8(4) of the Authorisation Regulations).
- (iv) In the specification of conditions in the General Authorisation, ComReg will have regard to the criteria and procedures for imposing Specific Obligations (Regulation 8(5) of the Authorisation Regulations)

The procedure for amending Conditions in the General Authorisation is described in Regulation 15 of the Authorisation Regulations. Regulation 15(1) of the Authorisation Regulations provides that; ‘The Regulator may amend the rights, conditions and procedures concerning the general authorisation, licences and rights of use for numbers provided that any such amendments may only be made in objectively justified cases and in a proportionate manner.’ (The Regulator refers to ComReg).

³ European Communities (Electronic Communications Networks and Services (Authorisation) Regulations S.I. No.306 of 2003

⁴ As defined in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 S.I. No.307 of 2003 as ‘obligations that may be imposed by the Regulator on an undertaking under Regulations 6(1), 6(2), 6(3), 7 and 9 of the Access Regulations and Regulations 13, 14, 15 and 16 of the Universal Service Regulations, and on those designated under Regulation 7 of the Universal Service Regulations to carry out the obligations referred to in that Regulation’.

5 Rationale for proposed conditions

5.1 Rationale for proposed Condition 14.5 of the General Authorisation

Condition 14.5 suggested above is, in ComReg's view, of the type provided for in paragraph 3 of Part A of the Schedule to the Authorisation Regulations which provides for conditions providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'.

The proposed condition is a condition which relates to interconnection of networks. Interconnection is defined in the Access Regulations⁵ as 'the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between the public network operators'.

The requirement to give notice to ComReg of the termination of an interconnection agreement is a condition that is in conformity with the Access Regulations, in particular see Regulation 6 of the Access Regulations which sets out the functions of ComReg with regard to access and interconnection. ComReg needs to have visibility of the status of interconnection agreements which would include notice of any changes to the same in order to carry out its functions under the Access Regulations (i.e. ComReg is required to encourage and where appropriate ensure adequate access and interconnection to promote efficiency, promote sustainable competition and give the maximum benefit to end users).

5.2 Rationale for proposed Conditions 18.2-18.10 of the General Authorisation

Conditions 18.2-18.10 suggested above are, in ComReg's view, of the type provided for in paragraph 8 of Part A of the Schedule to the Authorisation Regulations, which provides for conditions providing for 'Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations', in particular;

- ComReg considers it appropriate, in the interests of consumer protection, to require Authorised Persons to use all reasonable endeavours to minimise disruption of the electronic communications services provided to consumers.

⁵ S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003

This general provision is an effort to protect consumers in the event of threatened disruption of their electronic communications service.

- ComReg considers it appropriate, in the interests of consumer protection, to require Authorised Persons to have in place (and where appropriate implement) a Disruption Minimisation Plan. This will contribute towards ensuring that, in the event of electronic communications services to consumers being threatened and/or discontinued, disruption to consumers is minimised and, where possible, continuity of service to consumers is facilitated. See Appendix B for guidance in relation to Disruption Minimisation Plans at the retail level.
- If ComReg has prior notice of the possibility of cessation of services (as is provided for in proposed conditions 18.5, 18.6, 18.7, 18.8 and 18.9), ComReg can take appropriate steps in advance of any cessation to ensure consumer protection. For example ComReg may feel it is appropriate to take steps to warn consumers of the possibility that service might be disrupted, ensure that consumers retain a publicly available electronic communications service for a period and facilitate as seamless a change over to alternative suppliers as possible. It is essential for consumer protection that ComReg has as much visibility and control of the ceasing of the service as possible to ensure, where possible, some protection to those consumers receiving the service is provided.
- ComReg considers it appropriate, in the interests of consumer protection to require that an Authorised Person notify its own consumers in the event that it decides to withdraw a type of publicly available electronic communications service from consumers (as is provided for in proposed condition 18.9). ComReg has given careful consideration as to when consumers should know that they face the possibility of service disruption. ComReg has balanced the consumer's interest in being fully informed with the reality that once certain operational problems are publicised, a decline in company's customer base could ensue (in a process similar to a "run" on a bank) as the mere threat of difficulty could result in a downward spiral in a company's financial position thereby causing the closure of a business that could otherwise have been saved. ComReg has therefore taken the view that a requirement to provide notice to consumers in advance of service disruption becoming inevitable, would likely cause more disruption than it would solve.
- Proposed condition 18.10 will give ComReg, the ability, in the event that there is an imminent possibility of threatened disruption of electronic communications services, to request from the Authorised Person relevant information in relation to the situation, in particular to allow ComReg to enable systems to facilitate the consumer.

Overall ComReg is of the view that these proposed conditions will protect consumers in the event that a cessation of electronic communications services to consumers is threatened as they will serve to minimise service disruption and also to inform consumers at an appropriate stage of threatened service disruption.

ComReg is also of the view that consumers will also benefit indirectly because the proposed conditions should result in increased consumer confidence in the ability of new entrant operators to ensure continuity of service and minimise disruption to consumers should they experience problems with their wholesale providers. This should ultimately increase the competitiveness of the market and benefit consumers through increased choice.

5.3 General

The proposed conditions are in ComReg's view objectively justified, non-discriminatory, proportionate and transparent (requirements of Regulation 8(2) of the Authorisation Regulations).

The proposed conditions do not constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other law (a requirement of Regulation 8(4) of the Authorisation Regulations).

ComReg is of the view that costs of these amendments are not likely to be high, particularly not when compared to the possible benefits which will result. In particular, the cost is likely to be once-off in nature, and thus exceeded by the potential consumer benefits that should occur over time.

Q.1 Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

Q.2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for 'Interoperability of services and interconnection of networks in conformity with the Access Regulations'?

Q.3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’?

Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

Q. 5 In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

6 Regulatory Impact Assessment

6.1 Description of policy issues and objectives

Where electronic communications services are withdrawn at short notice much disruption and inconvenience can result for consumers. This is evidenced by the incident in late 2006 where over 40,000 consumers lost service when an operator ceased to provide some of its services. This loss of service was due to the operator's wholesale provider terminating its supply contract. Neither the retail nor wholesale operator involved in this incident had structured plans for disruption minimisation and there was no pre-established mechanism in place to deal with the situation or to minimise disruption to consumers. In order to facilitate continuity of service ComReg had to ask operators for certain consumer information, to ensure consumers had the ability to change service providers as seamlessly as possible. ComReg had no explicit power to request such information. ComReg is of the view that the combination of these factors resulted in greater disruption to customer service than was necessary.

The incident clearly illustrated the importance of prior knowledge of potential disruption to service and industry wide pre-planning for such an eventuality. ComReg considers that it is essential for consumer protection that ComReg has full knowledge when continuity of telecommunications services to consumers are threatened in order to enable it to ensure the implementation of action plans to minimise disruption to consumers and to the extent possible to ensure service continuity for consumers.

Furthermore ComReg is of the view that it needs to have visibility of the status of interconnection agreements which would include notice of any changes to the same in order to carry out its functions under the Access Regulations (i.e. ComReg is required to encourage and where appropriate ensure adequate access and interconnection to promote efficiency, promote sustainable competition and give the maximum benefit to end users).

The objective of this work stream is to put mechanisms in place to reduce disruption and inconvenience to consumers and to ensure ComReg has access to appropriate information in the event of a threat that telecommunications services will be disrupted.

6.2 Identification and description of the regulatory options

OPTION 1: No regulatory intervention

OPTION 2: Amend the General Authorisation to attach the proposed conditions in relation (detailed above) to the General Authorisation;

6.3 Impacts on stakeholders

OPTION 1;

IMPACT ON CONSUMERS: This will not provide any additional protection to consumers. In the event of threatened disruption of consumers' electronic communications service there may not be a structured mechanism to deal with the situation and to try to minimise disruption to consumers and ensure the maintenance of electronic communications services to consumers. ComReg may not have advance warning of disruption to services and therefore may be hindered in (1) putting consumer protection measures in place and (2) fulfilling its function to encourage and where appropriate ensure adequate access and interconnection to promote efficiency, promote sustainable competition and give the maximum benefit to end users.

IMPACT ON OPERATORS: This will not have any impact on operators.

OPTION 2:

IMPACT ON CONSUMERS: This will provide additional protection to consumers. In the event of threatened disruption of consumers' electronic communications service there would be a structured mechanism to deal with the situation and to try to minimise disruption to consumers and ensure the maintenance of electronic communications services to consumers to the extent possible. Advance warning of disruption to services should facilitate ComReg in (1) putting consumer protection measures in place and (2) fulfilling its function to encourage and where appropriate ensure adequate access and interconnection to promote efficiency, promote sustainable competition and give the maximum benefit to end users, which include consumers. Consider, for example, if 40,000 customers were put out of service for two weeks – given the average monthly spend on fixed-line services, this would mean that at least €800,000 of consumer benefit would be lost. In fact, given that the monthly amount paid for fixed-line services almost certainly includes a proportion which is implicitly paying for protection against the risk and inconvenience of loss of service, it is probable that the consumer harm would be in excess of this figure. As such, the proposed measures, which should lead to a much diminished-risk of loss of service, should generate considerable consumer benefits. It should be noted that the above example applied to only one case, and the benefits of the proposed measures should be considered for a possibly larger number of cases, should they occur.

IMPACT ON OPERATORS: There may be a cost to the Authorised Provider, however it is not likely to be high, particularly not when compared to the possible benefits sketched out above. In particular, the cost is likely to be once-off in nature, and thus exceeded by the potential consumer benefits that should occur over time. It should also be noted that being seen to have a plan in place is likely to give consumers confidence in providers and make them more likely to use them. If any providers do believe the proposed measures would result in high costs, they should provide substantiated details of such in their responses.

6.4 Determine the impacts on competition

OPTION 1: This may hinder competition as consumers may have limited confidence in new entrant operators, thereby increasing barriers to entry and inherently decreasing the competitiveness of the market. Any such fall in competitiveness is likely to have negative repercussions for consumers over time.

OPTION 2: The attachment of the proposed conditions to the General Authorisation will likely result in increased consumer confidence in new entrant operators, thereby increasing the competitiveness of the market and benefiting consumers through increased choice.

6.5 Assess the Impacts and Choose the Best Option

It is considered that option 2 is the most appropriate option. Although it may result in some inconvenience to Authorised Persons, this slight inconvenience is proportionate and justified given the highly positive impact for consumers.

Q.6 Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

7 Submitting Comments

The consultation period will run from 23rd July 2007 to 3rd September 2007 during which ComReg welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will publish a Response to Consultation in which it will summarise the response to consultation. ComReg may simultaneously publish a decision to make some or all of the proposed amendments to the General Authorisation.

All comments are welcome, however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

Please note

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

Appendix A – Consultation Questions

Q.1 Do you agree with the text of the conditions proposed for attachment to the General Authorisation? If not, please indicate which of the proposed conditions you do not agree with and why.

Q.2. Do you agree that the text of the condition 14.5 proposed for attachment to the General Authorisation can be classified as a condition providing for ‘Interoperability of services and interconnection of networks in conformity with the Access Regulations’?

Q.3. Do you agree that the text of conditions 18.2-18.10 proposed for attachment to the General Authorisation can be classified as conditions providing for ‘Consumer protection rules specific to the electronic communications sector including conditions in conformity with the Universal Service Regulations’?

Q.4 Do you agree that the text of the conditions proposed for attachment to the General Authorisation are objectively justified, non-discriminatory, proportionate and transparent?

Q. 5 In your view do the conditions proposed for attachment to the General Authorisation constitute Specific Obligations, or conditions which are applicable to undertakings by virtue of other laws?

Q.6 Respondents are requested to provide views on whether the proposed specifications are proportionate and justified and offer views on other factors (if any) ComReg should consider in completing its Regulatory Impact Assessment.

Appendix B – Guidance on Disruption Minimisation Plans at the retail level

This section has been provided simply to provide some tangible guidance as to what ComReg has in mind when it refers to a Disruption Minimisation Plan. It is in no way meant to be prescriptive but is merely intended to facilitate and inform the consultation process.

If Condition 18.3 is attached to the General Authorisation, ComReg will upon request work with Authorised Persons to assist them in formulating an effective Disruption Minimisation Plan.

Operators with different service sets and customer bases are likely to have different Disruption Minimisation Plans but ComReg has identified a number of key-elements which may be incorporated in a Disruption Minimisation Plan. They are described below by way of example only;

- Contingency

A Disruption Minimisation Plan may include an agreement with the wholesale provider that addresses the issue of service continuity in the event the operator ceases to provide service or experiences disruption. This may require amendments to both commercial contracts (with the wholesale operator) and retail contracts (with the consumer) as noted below.

Such a plan would not preclude a contingency to sell on the customer base to an alternative operator. Again appropriate retail contracts would need to be in place, as would a contingency plan for the event that the customer base could not be sold.

- Communication

A Disruption Minimisation Plan could provide for the operator advising key stakeholders (e.g. ComReg and the consumer) at the appropriate time when a retail service is likely to be disrupted .

Communication can take many forms and the individual company plans will depend upon their customer base but should be appropriate for communication to the customer base. These plans may include aspects such as:

- written correspondence with customers;
- notices in various media such as national newspapers;
- information on the companies website;
- well briefed customer service agents; and
- specific contact with ComReg

Examples of service specific requirements would be that:

- Carrier Pres-Selection ('CPS') customers should be advised that by using the CPS override code they can continue to avail of outbound service over the eircom network at appropriate eircom terms and conditions.
 - For directly connected customers it may be that calls will not be routed to or from the customers. Customers should be advised of their options in respect of service restoration.
 - Wholesale Line Rental ('WLR') customers may be told that their service will be novated to another company, or that there will be a reduction in service for a period during which time they should move to another operator to avoid the service being withdrawn.
- Customer Contracts

A Disruption Minimisation Plan may include provisions for minimising customer service disruption via changes to retail contracts. Examples could be:

- In the event that service is not available from an operator that operator's wholesale provider has agreed to provide service at a particular tariff and associated terms and conditions. To enable this operator to charge for services in such circumstances it may be appropriate to include conditions in the customer contract;
 - When an operator is going to exit the market it may look to move its customers to another operator at identical terms and conditions by selling on the customer base. This would possibly require the retail contract to allow for novation of contracts in certain circumstances.
- Information Requirements

A Disruption Minimisation Plan may include procedures for making information available as required by ComReg or other bodies to facilitate customer service restoration at the earliest opportunity.