



Consultation Paper

**Dispute Resolution Procedures –
Framework Regulations**

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All responses to this consultation should be clearly marked:-
“Reference: Submission re ComReg 09/85” as indicated above,
and sent by post, facsimile, e-mail or on-line at www.comreg.ie
(current consultations), to arrive on or before 5.00pm,
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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
information – ComReg 05/24

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1. Executive Summary

- 1.1 In 2003 ComReg published its dispute resolution procedures Response to Consultation and Decision Dispute Resolution Procedures: D18/03, ComReg document 03/89 dated 25 July 2003 (“the 2003 Decision”), this publication followed a public consultation and was to ensure that ComReg had in place dispute procedures that were in accordance with Article 20 of the Framework Directive¹ and Regulation 31 of the Framework Regulations².
- 1.2 In the event of a dispute arising between undertakings in connection with obligations arising from the legislative framework governing undertakings providing electronic communications networks or services, ComReg can issue a binding decision on the parties. Since the publication of the dispute resolution procedures in 2003, ComReg has received a number of disputes and, based on the experience of these disputes, this consultation paper outlines ComReg’s proposals for revising the existing dispute procedures to ensure legal and practical developments are encompassed to better enable the efficient and timely resolution of disputes.
- 1.3 Section 2 of this paper outlines the current practice and ComReg’s obligations in relation to dispute resolutions under Regulation 31 of the Framework Regulations. This section also covers ComReg’s proposals for improving the current practices based on lessons from past experience, relevant judicial developments and experience from other EU countries.
- 1.4 Section 3 of the paper discusses the proposed requirements for a dispute for the proposed dispute procedures to apply. It also outlines in detail the proposed information required in requests (for dispute resolution) in order for ComReg to accept the request. Full details of the required information are outlined in Appendix C. This section also includes a number of questions aimed at drawing out viewpoints that will guide ComReg in its decisions, going forward.
- 1.5 Section 4 of the paper outlines the steps involved in the proposed new dispute procedures. As required by Regulation 31 of the Framework Regulations, ComReg has a four month timeframe in which to resolve disputes; this section therefore addresses the consequences of this timeframe for ComReg and the parties to a dispute. These steps are designed to ensure that disputes are managed and resolved by ComReg in the most efficient and effective manner. Each step of the proposed dispute procedures is provided for, from the submission of a request for dispute resolution to a final determination by ComReg.
- 1.6 Section 5 provides details on how comments may be provided.

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (2002/21/EC, OJ L 108, 24.4.2002, p.33)

² European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (S.I. No. 271 of 2007)

- 1.7 ComReg looks forward to receiving comments from all industry players, especially those operators who have had experience of ComReg's dispute resolution procedures in the last few years.
- 1.8 Responses to this consultation will be accepted up to 11 December 2009 and a Response to Consultation and final Decision will be issued in due course.

2. Background

Current practice

- 2.1 ComReg's current procedures for resolving disputes were established pursuant to Regulation 31(2) of the Framework Regulations and can be found in the 2003 Decision, which was published following a public consultation.
- 2.2 The dispute resolution procedures provide the framework for undertakings to submit disputes to ComReg for the purpose of investigation and determination of disputes arising in connection with obligations arising under regulatory framework
- 2.3 The existing dispute procedures process includes a timetable outlining the steps that ComReg takes when resolving a dispute and the time allocated for each step. These procedures also include a standard format for submitting a dispute, to be used by the party raising the dispute, referred to as "Appendix C" in the 2003 Decision. "Appendix C" provides a structure for the information required by ComReg to resolve the dispute. In accordance with Regulation 31(3) of the Framework Regulations, ComReg's procedures may also allow for disputes to be resolved by alternative mechanisms, if ComReg deems that there are other means of resolving the dispute in a timely manner.
- 2.4 Finally, the 2003 Decision provides that upon resolution of a dispute, ComReg will publish its determination, and to provide reasons for its determination, subject to commercial confidentiality. The parties to the dispute shall be given the reasons for the decision which shall be binding on the parties.

Going Forward

- 2.5 Since the implementation of the 2003 Decision, ComReg has received a number of disputes from various undertakings on a range of issues. In addition to its own experience, ComReg has engaged with a number of other National Regulatory Authorities (NRAs) across Europe and reviewed their dispute procedures (as published by the NRAs in accordance with the Framework Directive), to ensure that the proposed amendments are in line with best practice and are relevant.
- 2.6 One of the main focuses for ComReg, in updating the dispute procedures, is to review the timescales associated with various steps of the dispute procedures for the purposes of meeting the four month timeline as provided for in Regulation 31(1). This consultation is to ensure that undertakings are aware of these timescales, when initiating a request for dispute resolution and to understand the implications that the timescales will have on parties involved in any dispute.
- 2.7 The outcome of this consultation will therefore replace the 2003 Decision. The amended procedure aims to ensure details provided are precise in defining the

scope of the dispute and providing, where possible, all relevant information in the section of the dispute submission known as Appendix C. This, along with the other changes to the dispute procedures, should provide for a more efficient resolution of a dispute. This consultation will describe what is required from all parties concerned from the submission of a request for dispute resolution to a final determination by ComReg.

3. Scope of dispute resolution

Background

- 3.1 For the purposes of this consultation, a dispute is a conflict of claims or rights between undertakings that arises in connection with the specific regulations or regulatory obligations within ComReg's remit. Before accepting a dispute submitted in accordance with Regulation 31 of the Framework Regulations, ComReg will determine whether there is a legal basis within ComReg's regulatory remit upon which to make a determination on the matter. As such ComReg determines whether there is *prima facie* a potential issue in connection to an operator's regulatory obligations.
- 3.2 Pursuant to Regulation 31(1) of the Framework Regulations, the issue must include the following characteristics:
- (i) There must be a disagreement between the parties which is the basis for the dispute.
 - (ii) A reasonable degree of negotiation has taken place and has failed. ComReg acknowledges that some undertakings may refuse to negotiate. Where this happens, the undertaking submitting the dispute to ComReg should demonstrate that it has taken reasonable steps to engage the other undertaking in negotiations.
 - (iii) The dispute should be between undertakings engaged in the provision of electronic communications networks or services or associated facilities in Ireland.³
 - (iv) The nature of the dispute must be material and the dispute must arise in connection with obligations under the Directives, the Regulations or obligations imposed by ComReg.⁴

Investigating a dispute

- 3.3 Regulation 31(1) provides that the dispute is to be determined within four months of its notification to ComReg, except in circumstances that ComReg considers to be exceptional. In order to meet this strict timeline, in the absence of exceptional circumstances, ComReg proposes that the Complainant party shall ensure that the initial submission form, attached at Annex C in this document, is adequately

³ This is the definition of "undertakings" as provided for at Regulation 2 of the Framework Regulations.

⁴ Please refer to Annex A-Legislation

completed and that adequate information is before ComReg to enable ComReg to determine the scope of the dispute. In addition, it will assist ComReg in confirming that there is a relevant regulatory obligation pertaining to the issue in the dispute. ComReg proposes that the four month period for dispute resolution should commence from when Complainants submit clear information on all details of the dispute to the satisfaction of ComReg.

- 3.4 In order to provide more detailed guidance as to what is required from Complainants on submitting a request, ComReg proposes some changes to the current format of the 2003 Decision, “Appendix C”, which sets out the format to be used by undertakings submitting a dispute.

Q. 1. Do you agree with ComReg’s proposed basis for accepting a dispute submission, as detailed in Annex C? If not, please give a detailed explanation.

Alternative Resolutions

- 3.5 In some instances the procedure provided for by Regulation 31 of the Framework Regulations may not be appropriate. Regulation 31(3) provides that ComReg may decide not to initiate an investigation in relation to a dispute where it is satisfied that there are other means of resolving the dispute in a timely manner or if legal proceedings in relation to the dispute have been initiated by either party.
- 3.6 ComReg would encourage all operators, as commercial entities, to pursue other relevant alternative means, such as mediation or negotiation, prior to submitting a dispute.
- 3.7 ComReg will consider not initiating an investigation into a dispute if it is satisfied that such an alternative dispute resolution mechanism is a more appropriate way of determining the issues between the parties.
- 3.8 In accordance with Regulation 31(4) of the Framework Regulations, ComReg may decline to accept a dispute on this basis and will inform the parties as soon as possible. The cost of the alternative dispute resolution is an issue to be considered and borne by the parties. It should be noted that, pursuant to Regulation 31(5) of the Framework Regulations, if a dispute is not resolved by the other means and legal proceedings have still not been initiated, four months after notification to ComReg, ComReg will, at the request of either party, initiate an investigation for the purposes of making a determination.
- 3.9 In addition to Regulation 31(3), ComReg will also continue to deal with issues referred to it by Complainants in other ways including, but not limited to, resolution through its compliance investigative powers, ComReg own initiation investigations, under sections 10 and 12 of the Communications Regulation Act, 2002 as amended by the Communications Regulation (Amendment) Act 2007 (“the Act”)⁵; discussion and negotiation at industry fora and public consultations. As such, these are also other possible mechanisms available to ComReg for dealing

⁵ No. 22 of 2007

with issues that arise between undertakings and may be more appropriate than initiating the dispute resolution procedure.

Q. 2. What Alternative Dispute Resolution Mechanisms do you consider would be appropriate for consideration by ComReg before ComReg accepts the dispute?

Information Gathering

3.10 Failure to cooperate with a dispute investigation is a criminal offence under the Framework Regulations. Accurate information, provided in a timely manner, is critical to an efficient investigation and subsequent determination. Delays in the provision of information have a significant impact on the overall timescales and can disadvantage one or more of the parties involved. As such, if necessary, ComReg proposes to utilise its formal powers to collect the information required to pursue the dispute resolution investigation⁶. This is to ensure that the information is provided accurately and in an efficient manner. In the event that the information is not provided in accordance with the request ComReg may take enforcement action, where necessary, against undertakings.

Q. 3. Do you agree with ComReg's proposal to use its formal powers to collect the information it requires in pursuing investigations? If not, please give a detailed explanation.

Confidential Information

3.11 ComReg has issued Guidelines on the treatment of confidential information⁷ and will have due regard to these guidelines (as may be amended from time to time) when dealing with disputes⁸.

3.12 To ensure that the dispute procedures are fair, in that adequate information is shared between the parties involved so as to enable the Respondent to make a full response, ComReg proposes to provide to the Respondent, a non-confidential version of the original submission once the scope has been determined at the beginning of a dispute.

3.13 If a non-confidential version of the submission is not included with the original submission, it will be impossible to afford a meaningful right of reply to the Respondent. Therefore, ComReg's view is that Annex C will not be complete until a non-confidential version of the submission is made available. In this instance, ComReg will request that a non-confidential version be supplied within a short timescale, usually seven days. In essence, the four month period for dispute resolution will not start until such a non-confidential version of the submission has been received.

⁶ This includes, but is not limited to, powers under Sections 13D, 38A and 39 of the Act .

⁷ [Document No. 05/24](#) Guidelines on the treatment of confidential information

⁸ Please note that ComReg anticipates reviewing the Confidentiality Guidelines.

- 3.14 As such, if when making submissions, a party wishes to provide ComReg with certain confidential information, it is ComReg's preliminary view that in order to achieve efficiency and fairness and to maintain the four month timeline, a non-confidential version of the submission/information should be provided simultaneously.
- 3.15 ComReg does not regard submissions of legal or regulatory policy argument to be confidential and they may therefore be disclosed publicly.

Q. 4. Do you agree with ComReg's position that a non-confidential version of the original submission must be submitted? If not, please give a detailed explanation.

Meetings with the Parties

- 3.16 If, in the interests of expediency, ComReg believes that a meeting with either, or both, of the parties is required, then ComReg will call such a meeting. The information provided at the meeting may be used by ComReg as an input to the dispute analysis and final determination.

Q. 5. Do you agree with ComReg's use of meetings within the Dispute Resolution procedure, if required? If not, please give a detailed explanation.

4. Resolution Procedures

- 4.1 The following resolution procedures have been developed taking account of Regulation 31 of the Framework Regulations and ComReg's objectives and functions as provided for by sections 10 and 12 of the Act.
- 4.2 As mentioned above, when ComReg has been notified of a dispute in accordance with the requirements in Annex C, Regulation 31(1) provides that it should be resolved within a maximum of four months, except in exceptional circumstances, consideration of which will be at ComReg's discretion. ComReg is also aware that it is in the best interests of the market to resolve disputes as quickly as possible. Therefore, in order to meet the four month timeframe, ComReg proposes to modify the procedures, currently in place, for dealing with a dispute, and to shorten the times associated with some elements of the dispute procedures. The proposed steps for the dispute resolution procedure and the associated timings (specified in working days, unless otherwise stated) are as follows:

Step 1:

ComReg receives written notice of a dispute containing the required information outlined in Annex C, if Annex C is completed to the satisfaction of ComReg this becomes the date of notification. Within 8 working days ComReg determines whether the notice conforms to the definition of a dispute, ComReg will agree the scope of dispute and assess the adequacy of information provided and the legal basis for the dispute.

If sufficient information has not been provided, the dispute will be declined and the Complainant informed and given reasons for the decision. Where sufficient information has been provided ComReg will continue onto Step 2.

Step 2:

ComReg will proceed with one of two options:

- (i) Where ComReg is satisfied that other means of resolving the dispute in a timely manner are available to the parties, or, if legal proceedings in relation to the dispute have been initiated by either party, it will form a view whether to exercise its discretion not to initiate an investigation. If it forms this view it will inform the parties as soon as possible of its decision not to investigate the dispute, giving the reasons for such a decision. If, after four months from the date of a decision not to investigate, the dispute is still not resolved and legal proceedings by either party in relation to the dispute are not in progress, ComReg shall at the request of either party initiate an investigation and make a determination within a further four months.
- (ii) Where ComReg decides to use the dispute resolution procedures, the four month timeframe will start from the date of notification of a dispute which satisfies the requirements outlined in Annex C to the satisfaction of ComReg. ComReg will inform the Complainant that it has accepted the dispute and will confirm that the four month clock began upon receipt of the completed Annex C. In the event that the scope is changed then a revised Annex C will be completed and the four month period will recommence. It should be noted that, pursuant to Regulation 31(8), it is an offence if an undertaking fails to co-operate with an investigation.

Step 3:

Within 10 working days from the date of notification of a dispute which satisfies the requirements outlined in Annex C, ComReg will formally notify the Respondent of the complaint and a copy of the non-confidential dispute submission will be sent to the Respondent. ComReg will inform the Respondent when the 4 month clock began. In addition, ComReg may publish the scope of the dispute on its website.

Step 4:

From the date of ComReg's communication of its decision to initiate the dispute resolution procedures, the Respondent will be required to respond within ten working days. This response should be sufficiently detailed and comprehensive to allow ComReg to carry out an initial assessment of the substance of the dispute without a requirement for further information gathering. It should be noted that, where necessary, a non-confidential version of the response should be provided at the same time.

Step 5:

Following receipt of the Respondent's submission and a detailed analysis of all submissions, ComReg may do all or any of the following:

- (i) Request more information in writing from the Parties;
- (ii) Meet with the Parties; together or individually; or
- (iii) Decide that the issue may be withdrawn from the dispute procedures and would be more effectively dealt with via other mechanisms.

Where ComReg decides on Step 5(i), ComReg will send out information requests to relevant parties within 24 working days from the date of notification of a dispute which satisfies the requirements outlined in Annex C and the responses will be required within ten working days. To ensure accurate and timely responses, ComReg may determine that it is appropriate to rely on its formal information gathering powers at this stage. It is recognised that the timescales will be demanding upon all parties but they must be adhered to in order to efficiently meet the overall timescale.

Depending on the issues arising from ComReg's consideration of the dispute, Step 5 may be repeated a number of times.

Step 6:

Following consideration of the issues and the submissions of the parties ComReg will prepare a draft determination. Depending on the subject of the dispute and its impact on the wider market, this may at ComReg's discretion be published on ComReg's website, or may be sent to the parties to the dispute only. The draft determination will be sent to both parties within 60 days from the date of notification of a dispute which satisfies the requirements outlined in Annex C. Parties to the dispute and/or the wider industry will have 10 working days to submit comments on the draft determination. Material and information in the draft determination which is based on submissions not previously marked as confidential will be considered to be non-confidential.

Step 7:

Following further analysis of all submissions and comments. ComReg will prepare and issue a Final Determination to both parties. Material and information in the Final Determination which is based on submissions not previously marked as confidential will be considered to be non-confidential.

ComReg will publish the Final Determination on its website, having regard to the requirements of confidentiality. The Final Determination will include an explanation of the rationale for ComReg's determination. The Final Determination shall not preclude either party from bringing an action before the courts. The Final Determination will be published within 85 working days from the date of notification of a dispute which satisfies the requirements outlined in Annex C.

With regard to the Final Determination, ComReg ultimately makes its determination having regard to the relevant regulatory framework. Such an outcome may be one other than what was requested by either party.

The dispute resolution procedures pursuant to Regulation 31 will be deemed to have been completed when the Final Determination has been issued to both parties.

It should be noted that, pursuant to Regulation 31(8), if an undertaking fails to comply with a determination made, it commits an offence.

Q. 6. Do you agree with the Dispute Resolution Procedures above? If not, please give a detailed explanation.

- 4.3 Please note that where special circumstances arise ComReg may deviate from the published process; ComReg reserves the right to do so whilst also respecting the rights of the parties concerned.

5. Submitting Comments

- 5.1 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.
- 5.2 The consultation period will run from 4 **November 2009** to 11 **December 2009** during which ComReg welcomes written comments on any of the issues raised in this paper.
- 5.3 Having analysed and considered the comments received, ComReg will review the dispute resolution procedures and publish a report on the consultation which will, inter alia summarise the responses to the consultation.

6. Annex A – Legislation

ComReg's national dispute resolution role is provided for under:

- (i) Article 8, Article 20 and Article 21 of the Framework Directive and Section 12 of the Communications Act 2002 which set out the policy objectives; and
- (ii) Regulation 31 of the Framework Regulations

Framework Directive⁹

Article 8

Policy objectives and regulatory principles

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral.

National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:
 - (a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;
 - (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
 - (c) encouraging efficient investment in infrastructure, and promoting innovation; and
 - (d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

⁹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services

3. The national regulatory authorities shall contribute to the development of the internal market by inter alia:
 - (a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;
 - (b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;
 - (c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
 - (d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.
4. The national regulatory authorities shall promote the interests of the citizens of the European Union by inter alia:
 - (a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);
 - (b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
 - (c) contributing to ensuring a high level of protection of personal data and privacy;
 - (d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
 - (e) addressing the needs of specific social groups, in particular disabled users; and
 - (f) ensuring that the integrity and security of public communications networks are maintained.

Article 20

Dispute resolution between undertakings

1. In the event of a dispute arising in connection with obligations arising under this Directive or the Specific Directives between undertakings providing electronic communications networks or services in a Member State, the national regulatory authority concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months except in exceptional circumstances. The

Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding determination where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding determination to resolve the dispute in the shortest possible time frame and in any case within four months.
3. In resolving a dispute, the national regulatory authority shall take determinations aimed at achieving the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.
4. The determination of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.
5. The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

Article 21

Resolution of cross-border disputes

1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the procedure set out in paragraphs 2, 3 and 4 shall be applicable.
2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.
3. Member States may make provision for national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party seeking redress, and if either party requests it, the national regulatory

authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8.

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

Regulation 31 of Framework Regulations¹⁰

Dispute resolution between undertakings

31.

- (1) In the event of a dispute arising between undertakings in connection with obligations under the Framework Directive, the Specific Directives, these Regulations or the Specific Regulations, the Regulator shall, subject to paragraph (2), at the request of either party, initiate an investigation of the dispute and, as soon as possible but, except in circumstances which the Regulator considers exceptional, within 4 months from the date on which the dispute was notified to it by either party, make a determination, aimed at ensuring compliance with the requirements of these Regulations and the Specific Regulations, to resolve the dispute.
- (2) The Regulator shall publish its dispute resolution procedures and shall ensure that all investigations and determinations are handled in accordance with those procedures.
- (3) (3) The Regulator may decide not to initiate an investigation referred to in paragraph (1) where it is satisfied that other means of resolving the dispute in a timely manner are available to the parties or if legal proceedings in relation to the dispute have been initiated by either party.
- (4) Where the Regulator decides not to initiate an investigation under paragraph (3), it shall inform the parties of such decision as soon as possible thereafter, including the reasons for such a decision.
- (5) If, 4 months from the date of a decision referred to in paragraph (3) the dispute is not resolved and legal proceedings by either party in relation to the dispute are not in progress, the Regulator shall at the request of either party initiate an investigation and make a determination in accordance with paragraph (1).
- (6) In making a determination under this Regulation the Regulator shall have regard to section 12 of the Act of 2002.
- (7) An undertaking to which a determination under this Regulation applies shall comply with the provisions of the determination applicable to it.
- (8) An undertaking that—

¹⁰ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), amended by the European Communities (Electronic Communications Networks and Services) (Framework) (Amendment) Regulations 2007 (S.I. No. 271 of 2007)

- (a) fails to co-operate with an investigation under this Regulation, or
 - (b) fails to comply with a determination made under this Regulation, commits an offence.
- (8A) In proceedings for an offence under paragraph (8), it is a defence to establish that—
- (a) reasonable steps were taken to co-operate with the relevant investigation, or to comply with the relevant determination, or
 - (b) it was not possible to co-operate with that investigation, or to comply with that determination.
- (8B) An undertaking found guilty of an offence under paragraph (8) is liable on conviction to a fine not exceeding €5,000.
- (8C) If, after being convicted of an offence under paragraph (8), an undertaking continues to fail to co-operate with the relevant investigation, or to comply with the relevant determination, the undertaking commits a further offence on each day or part of a day during which the failure continues.
- (8D) An undertaking found guilty of an offence under paragraph (8C) is liable for the offence to a fine not exceeding 500 for each day or part of a day during which the failure continues, subject to a maximum of €5,000.
- (8E) An offence under this Regulation is triable summarily.
- (9) Any obligations imposed on an undertaking by the Regulator in resolving a dispute shall respect the provisions of the Framework Directive and the Specific Directives these Regulations, the Specific Regulations and section 12 of the Act of 2002.
- (10) The Regulator shall publish notice of a determination under this Regulation and the notice shall indicate where copies of or information regarding the determination may be obtained.
- (11) The procedure referred to in this Regulation does not preclude either party from bringing an action before the courts and is without prejudice to Regulation 3.

Communications Regulation Act 2002 as amended¹¹

12.

- (1) The objectives of the Commission in exercising its functions shall be as follows-
- (a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities-
 - (i) to promote competition,
 - (ii) to contribute to the development of the internal market, and
 - (iii) to promote the interests of users within the Community,

¹¹ No 20 of 2002 as amended by No 22 of 2007

- (b) to ensure the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme in the State in accordance with a direction under *section 13*, and
 - (c) to promote the development of the postal sector and in particular the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all users.
- (2) In relation to the objectives referred to in subsection (1) (a), the Commission shall take all reasonable measures which are aimed at achieving those objectives, including-
- (a) in so far as the promotion of competition is concerned-
 - (i) ensuring that users, including disabled users, derive
 - (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,
 - (iii) encouraging efficient investment in infrastructure and promoting innovation, and
 - (iv) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources,
 - (b) in so far as contributing to the development of the internal market is concerned-
 - (i) removing remaining obstacles to the provision of electronic communications networks, electronic communications services and associated facilities at Community level,
 - (ii) encouraging the establishment and development of trans-European networks and the interoperability of transnational services and end-to-end connectivity,
 - (iii) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services and associated facilities, and
 - (iv) co-operating with electronic communications national regulatory authorities in other Member States of the Community and with the Commission of the Community in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of Community law in this field, and
 - (c) in so far as promotion of the interests of users within the Community is concerned-
 - (i) ensuring that all users have access to a universal service,

- (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,
 - (iii) contributing to ensuring a high level of protection of personal data and privacy,
 - (iv) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services,
 - (v) encouraging access to the internet at reasonable cost to users,
 - (vi) addressing the needs of specific social groups, in particular disabled users, and
 - (vii) ensuring that the integrity and security of public communications networks are maintained.
- (3) In carrying out its functions, the Commission shall seek to ensure that measures taken by it are proportionate having regard to the objectives set out in this section.
- (4) In carrying out its functions, the Commission shall, without prejudice to subsections (1), (2) and (3), have regard to policy statements, published by or on behalf of the Government or a Minister of the Government and notified to the Commission, in relation to the economic and social development of the State.
- (5) In carrying out its functions, the Commission shall have regard to international developments with regard to electronic communications Networks and electronic communications services, associated facilities, postal services, the radio frequency spectrum and numbering.
- (6) The Commission shall take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives referred to in subsection (1)(a) does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services.
- (7) In this section, "national numbering scheme" means the scheme administered by the Commission which sets out the sequence of numbers or other characters used to route telephony traffic to specific locations.

Power of Commission to obtain information from undertaking

13D.

- (1) The Commission may at any time, by notice in writing, require an undertaking to provide it with such written information as it considers

necessary to enable it to carry out its functions or to comply with a requirement made to it by the Minister under section 13B.

- (2) An undertaking commits an offence if it—
 - (a) fails to comply with a requirement made under subsection (1) within the period specified in the notice or within such extended period as the Commission allows, or
 - (b) in purporting to comply with such a requirement, provides to the Commission information that the undertaking knows to be false or misleading.
- (3) In proceedings for an offence involving a failure by an undertaking to comply with a requirement made under subsection (1), it is a defence if the undertaking establishes—
 - (a) that it did not know and could not be reasonably expected to know or ascertain the required information, or
 - (b) that the disclosure of the information was prohibited by a law of the State.
- (4) An undertaking that commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding €5,000.
- (5) If, after being convicted of an offence under this section, an undertaking continues to fail to do the relevant act, the undertaking commits a further offence on each day or part of a day during which the failure continues and is liable on summary conviction to a fine not exceeding €1,000 for each such further offence. However, if an undertaking is tried for 6 or more such further offences that are alleged to have been committed on successive days, the maximum fine that can be imposed for those offences at the trial is €5,000.

Commission may require persons to give evidence or produce documents

38A.—

- (1) If the Commission believes on reasonable grounds that a person may be able to give evidence, or to produce a document, that relates to a matter concerning the performance or exercise of any of the Commission's functions or objectives, it may serve on the person a notice requiring the person to appear before it—
 - (a) to give evidence about the matter, or
 - (b) to produce the document for examination.

Authorised officers

39.—

- (1) The Commission may appoint persons to be authorised officers for the purposes of this Act.

- (2) A person appointed under subsection (1) shall, on his or her appointment, be furnished by the Commission with a certificate of his or her appointment and when exercising a power conferred by subsection (3) shall, if requested by any person thereby affected, produce such certificate to that person for inspection.
- (3) For the purposes of the exercise by the Commission of its functions under this Act, a transferred function or any regulations made under the Act of 1972, an authorised officer may—
- (a) enter, at any reasonable time, any premises or place or any vehicle or vessel where any activity connected with the provision of electronic communications services, networks or associated facilities or postal services takes place or, in the opinion of the officer takes place, and search and inspect the premises, place, vehicle or vessel and any books, documents or records found therein,
 - (b) require any such person to produce to him or her any books, documents or records relating to the provision of electronic communications services, networks or associated facilities or postal services which are in the person's power or control and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the officer such information as he or she may reasonably require in relation to any entries in such books, documents or records,
 - (c) secure for later inspection any such premises, place, vehicle or vessel or part thereof in which books, documents or records relating to the provision of electronic communications services, networks or associated facilities or postal services are kept or there are reasonable grounds for believing that such books, documents or records are kept, 2002, No. 20, 20–37, ICLSA R.84: December 2002.
 - (d) inspect and take extracts from or make copies of any such books, documents or records (including, in the case of information in a nonlegible form, a copy of or extract from such information in a permanent legible form),
 - (e) remove and retain such books, documents or records for such period as may be reasonable for further examination,
 - (f) require the person to maintain such books, documents or records for such period of time, as may be reasonable, as the authorised officer directs,
 - (g) require the person to give to the officer any information which he or she may reasonably require with regard to the provision of electronic communications services, networks or associated facilities or postal services,
 - (h) make such inspections, tests and measurements of machinery, apparatus, appliances and other equipment on the premises or vessel or at the place or in the vehicle as he or she considers appropriate,

- (i) require any person on the premises or vessel or at the place or in the vehicle having charge of, or otherwise concerned with the operation of, any machinery, apparatus, appliance or other equipment (including data equipment) or any associated apparatus or material, to afford the officer all reasonable assistance in relation thereto,
 - (j) take photographs or make any record or visual recording of any activity on such premises or vessel, at such place or in such vehicle.
- (4) Where an authorised officer in exercise of his or her powers under this section is prevented from entering any premises or place, an application may be made under section 40 for a warrant to authorise such entry.
- (5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant under section 40 authorising such entry.
- (6) A person to whom this section applies who—
 - (a) obstructs, impedes or assaults an authorised officer in the exercise of a power under this section,
 - (b) fails or refuses to comply with a requirement under this section,
 - (c) alters, suppresses or destroys any books, documents or records which the person concerned has been required to produce, or may reasonably expect to be required to produce,
 - (d) gives to the Commission or to an authorised officer information which is false or misleading in a material respect, or falsely represents himself or herself to be an authorised officer, is guilty of an offence and is liable on summary conviction to a fine not exceeding €3,000.
- (7) An authorised officer appointed under section 12 of the Act of 1996 and holding office immediately before the establishment day continues in office as if appointed under this section.

7. Annex B – Consultation Questions

List of Questions

- Q. 1. Do you agree with ComReg’s proposed basis for accepting a dispute submission, as detailed in Annex C? If not, please give a detailed explanation.
- Q. 2. What Alternative Dispute Resolution Mechanisms do you consider would be appropriate for consideration by ComReg before ComReg accepts the dispute?
- Q. 3. Do you agree with ComReg’s proposal to use its formal powers to collect the information it requires in pursuing investigations? If not, please give a detailed explanation.
- Q. 4. Do you agree with ComReg’s position that a non-confidential version of the original submission must be submitted? If not, please give a detailed explanation.
- Q. 5. Do you agree with ComReg’s use of meetings within the Dispute Resolution procedure, if required? If not, please give a detailed explanation.
- Q. 6. Do you agree with the Dispute Resolution Procedures above? If not, please give a detailed explanation.

8. Annex C – Required Information for submitting a dispute

Contact details of the individual(s) who are the contacts for the purposes of the dispute.

Guidance note – **Mandatory** - This is the person to whom correspondence and contacts in respect of the dispute will be directed. If it is possible for the Complainant to provide details of the Respondents contact individual then these details should also be provided;

A statement of the scope of the dispute.

Guidance note – **Mandatory** -This scope should set out the net issue which the Complainant wishes ComReg to determine. It should be specific enough to properly describe the dispute and should reflect the specific disagreement giving rise to the dispute. As the scope is a summary statement of the dispute it should not include the background to the dispute, the circumstances which gave rise to the dispute or the desired outcome, the requirements for these are described below

A statement of the relevant obligation(s) under the regulatory framework which have given rise to the dispute¹² , including reference to the Specific Regulation(s), market and decisions imposing the obligation as appropriate

Guidance Note – **Mandatory** –If ComReg identifies an alternative obligation that is relevant to the dispute, the dispute may be progressed on this basis.

Background to the Dispute.

Guidance Note – **Mandatory** - Details of the background to the dispute including the circumstances leading up to the disagreement. This should be sufficiently detailed and comprehensive so as to avoid the requirement for ComReg to seek further information which on the face of it was related to the scope of the dispute and could have been supplied at the initial stage. This should also be sufficiently comprehensive and should include where appropriate:

- 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; and
 - full details of the relevant products or services.
- A description of the regulatory conditions to which the dispute relates, including a view on the relevant economic market and whether any communications provider in that market has been designated as having SMP. This includes an explanation as to why, if appropriate, it is considered that the relevant obligation is not being

¹² Pursuant to Regulation 31(1) of the Framework Regulations, a dispute can arise between undertakings in connection with obligations under the Framework Directive, the Specific Directives (as defined in Regulation 2 of the Framework Regulations), the Framework Regulations or the Specific Regulations (as defined in Regulation 2 of the Framework Regulations). As such, this also includes relevant Decisions made by ComReg pursuant to the Framework Regulations and the Specific Regulations.

met, for example, if the dispute involves an allegation that a charge is not cost oriented the reasoning for this should be provided;

Desired outcome – the outcome desired by Complainant.

Guidance Note – **Desirable** - This should include any reasoning as to why the determination should be of the form suggested by the Complainant and the complainant's view as to the legal basis for ComReg to make the intervention sought.

Details of any attempts to resolve the dispute.

Guidance Note – **Mandatory** - This should include comprehensive evidence of any attempts to resolve the issue bilaterally, an explanation of why commercial agreement could not be reached and details of any options or proposed solutions put forward by any party during negotiations, including what, if anything, was accepted or rejected and why. Notice of whether the dispute is or has been before any other body, a list of alternative dispute resolution mechanisms employed e.g. Mediation. If alternative dispute mechanisms have not been employed please state reasons why. If no alternatives to dispute resolution have been attempted this section should set out the Complainant's reasoning as to why such alternatives would not result in a more timely resolution of the dispute.

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

Guidance note – **Mandatory** – Where there are no legal proceedings this should be stated.

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

Guidance note – **Desirable** – Evidence or supporting documentation should be provided for any claims of impact on the Complainant's business.

Documentary Evidence.

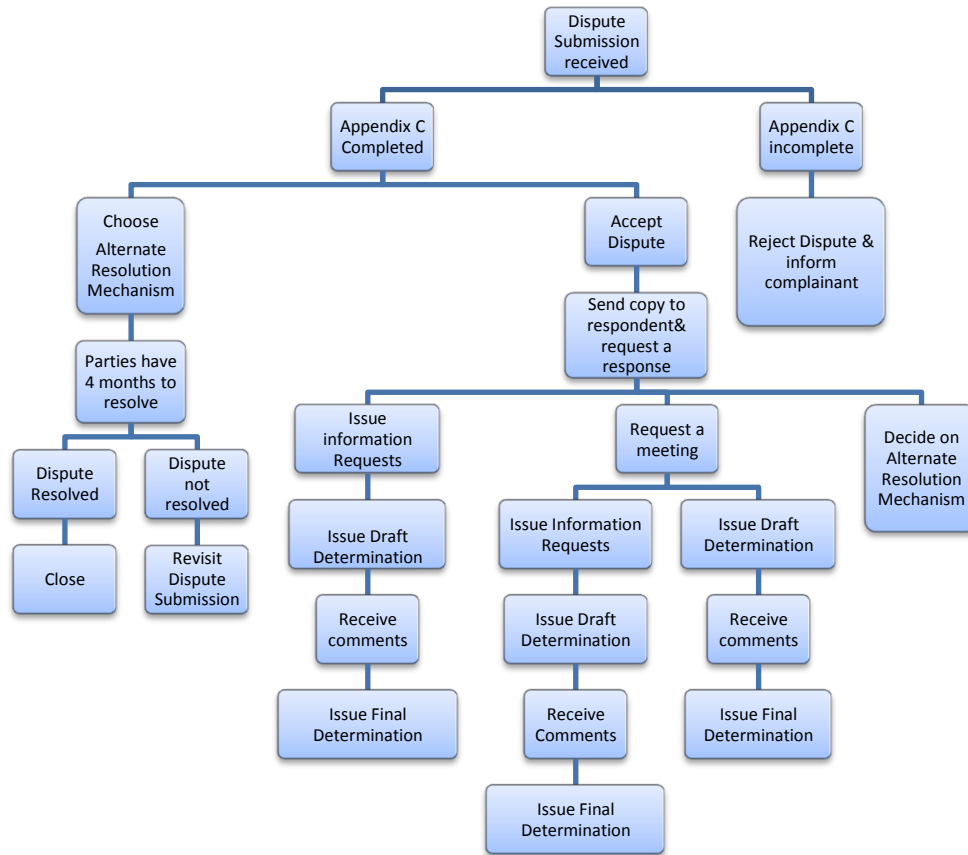
Guidance note – **Mandatory** – all assertions should be supported by documentary evidence, including correspondence, notes of meetings and telephone calls, and a chronological summary of events. In addition, if there is any relevant documentation that provides further background to the dispute this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

8.1 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.

9. Annex D – Dispute Resolution Procedures Flow-Chart



10. Annex E – Dispute Resolution Procedures Timeline

