



Commission for
Communications Regulation

Formal Dispute Resolution Procedures for ECS/ECN End-Users

Consultation

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An Coimisiún um Rialáil Cumarsáide

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Submissions to ComReg 18/34

and should be sent by post or email to arrive on, or before, 5pm on Monday 28th May 2018 to:

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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 The Commission for Communications Regulation (ComReg) is responsible for the regulation of Electronic Communications Networks and Services (ECN and ECS) in accordance with EU and national legislation.
- 2 For the purposes of this consultation, terms that are used shall have the same meaning as when they are used in the Communications Regulation Act, 2002¹ (as amended) (“the Act”), the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011² (“the Users’ Rights Regulations”) and the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011³ (“the Framework Regulations”), unless the context otherwise states or requires.
- 3 For the purpose of this consultation, Electronic Communications Providers⁴ are referred to as “Service Providers”⁵.

¹ Communications Regulation Act 2002.

² S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

³ S.I. No. 333/2011 - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

⁴ Electronic Communications Provider means an undertaking providing Electronic Communications Networks (ECN) or Electronic Communications Service (ECS). Undertaking has the same meaning as it does in Regulation 2 of the Framework Regulations.

⁵ For the purpose of this consultation, Electronic Communications Providers shall be referred to as “Service Providers”.

- 4 In the interests of clarity, it is important to note that ComReg's use of the term "ECS/ECN end-users" includes consumers, end-users and persons. ComReg notes the various references used in the different legislative provisions which provide for end-users to refer disputes to ComReg for dispute resolution in accordance with the dispute resolution procedures set out in Regulation 27 of the Users' Rights Regulations⁶. ComReg notes in particular the references to end-users in Regulation 27 of the Users' Rights Regulations, references to end-users or consumers in Regulation 6 of the Roaming Regulations⁷ and reference to person in Regulation 3 of the Users' Rights Regulations⁸. ComReg further notes that Article 4 of Regulation (EU) 2015/2120 ("the European Net Neutrality Regulation") refers to procedures to be put in place to address complaints for end-users⁹.
- 5 This consultation outlines ComReg's proposed Formal Dispute Resolution Procedures for ECS/ECN end-users. It is proposed to consist of procedures that an end-user, with unresolved ECS/ECN complaints relating to universal service and users' rights, roaming¹⁰ and, as envisaged, net neutrality¹¹ and any other issue that ComReg may resolve in accordance with Regulation 27 of the Users' Rights Regulations, can access once their complaint has been first notified to the Service Provider and remains unresolved for at least 40 working days. Prior to the 40 working days being reached, ComReg will continue to offer its Consumer Line service and will continue to escalate complaints on behalf of end-users, provided the complaint has been notified to the Service Provider and has been open 10 working days.

⁶ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

⁷ Regulation 6 of S.I. No.228/2013 Communications (Mobile Telephone Roaming) Regulations 2013 provides in the event of an unresolved dispute arising between a consumer or end-user and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation, the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Universal Service and Users' Rights Regulations applies and those Regulations are to be read accordingly.

⁸ Regulation 3(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 provides where a designated undertaking denies any reasonable request made under paragraph (1) or (2) it shall inform the person making the request of his or her right to pursue the dispute resolution procedures referred to in Regulation 27.

⁹ Article 4 (2) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on Universal Service and Users' Rights relating to electronic communications networks and services ("the European Net Neutrality Regulations"). Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

Article 4(3) of the European Net Neutrality Regulation provides the requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.

¹⁰ See footnote number 07 for basis to resolve disputes arising under or in relation to Mobile Phone Roaming Regulation. S.I. 228/2013 has been implemented by DCCAE to give full effect to Regulation EU No 531/2012 ("the European Roaming Regulation"). ComReg has been given powers on implementation to resolve disputes under the Mobile Phone Roaming Regulation.

¹¹ See footnote number 09 for basis for ComReg to resolve disputes arising under or in relation to the European Net Neutrality Regulations. The provisions of the European Net Neutrality Regulations are directly applicable and they require internet access service providers to put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this

- 6 The main objectives of ComReg's proposals in this consultation are to ensure that:
- ECS/ECN end-users can access ComReg Formal Dispute Resolution Procedures for resolving disputes that remain unresolved, between the end-user and the Service Provider, from 40 working days after the complaint has been notified to the Service Provider in accordance with the code of practice;
 - ComReg's Formal Dispute Resolution Procedures are efficient, fair, simple, inexpensive, transparent; and
 - End-users and Service Providers are fully informed in respect of the Formal Dispute Resolution Procedures provided by ComReg.
- 7 ComReg's objectives as set out in Section 12 of the Act in this respect have regard to ComReg's functions under Section 10 the Act and Regulation 27 of the Users' Rights Regulations. They also have regard to the obligations placed on Service Providers by that same Regulation.
- 8 This consultation sets out ComReg's proposals with respect to ComReg's Formal Dispute Resolution Procedures for ECS/ECN end-users to settle disputes with Service Providers, in accordance with the provisions of Section 12 of the Act¹² and Regulation 27¹³ of the Users' Rights Regulations relating to the contractual conditions or performance of contracts concerning the supply of Electronic Communications networks or services and any other issues arising under, or covered by, those Regulations.
- 9 ComReg may resolve disputes and is obliged to ensure that complaints and redress procedures for ECS/ECN end-users of Service Providers, as outlined in Regulation 27 of the Users' Rights Regulations, are in place. Although participation in these procedures by Service Providers is not mandatory, and if Service providers do not interact, ComReg may proceed to determine the dispute considering the case details submitted by the end-user and issue a direction to the undertaking which will be binding on the Service Provider unless appealed. ComReg expects that Service Providers will fully engage in the process.

Article. It is anticipated that the DCCAЕ will give full effect to the European Net Neutrality Regulations and provide that ComReg may resolve unresolved disputes using the out-of-court procedures referred to in Regulation 27 of the Users' Rights Regulations to resolve disputes arising in relation to the Regulations.

¹² S.12 (1)(c) in so far as promotion of the interests of users within the Community is concerned – (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.

¹³ Regulation 27(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 provides The Regulator, or an independent person appointed by the Regulator, may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1) and, in this regard, the Regulator may issue directions to an undertaking to comply with such measures as it or the independent person may specify for the resolution of the dispute including, where appropriate, reimbursement of payments, payments of compensation and payments in settlement of losses incurred in accordance with the provisions of a code of practice referred to in paragraph (1)(e).

- 10 In its Decision Document ComReg 17/62¹⁴, ComReg set out the minimum requirements for the complaints handling processes provided by Service Providers. This decision provides for access to and compliance with a minimum standard code of practice for complaints handling with Service Providers which is fair, prompt, transparent, inexpensive and non-discriminatory and requires that end-users are informed with respect to the complaints handling services provided by Service Providers.
- 11 While the Users' Rights Regulations envisage that Service Providers will resolve complaints with their end-users directly, it is acknowledged that some complaints, for a variety of reasons, often remain unresolved having been notified to the Service Provider in accordance with the code of practice for complaints handling. ComReg is required to take all reasonable measures to ensure end-user protection¹⁵. In exercising its functions under the Act and Regulation 27 of the Users Rights' Regulations and other applicable laws, as noted in Annex 1, ComReg is hereby consulting on its proposed Formal Dispute Resolution Procedures for ECS/ECN end-users.
- 12 ComReg currently provides a complaints handling service. This process deals with complaints referred to ComReg by end-users who, having used the Service Provider's own code of practice for complaints handling and whose complaint is still unresolved after 10 working days with that process, can contact ComReg's Consumer Line. ComReg, following a review of the matter, contacts the Service Provider with that complaint to re-establish contact between the Service Provider and its customer until, where possible, a resolution is reached.
- 13 ComReg proposes that it is now timely to introduce and set out, in addition to the existing service, Formal Dispute Resolution Procedures for ECS/ECN end-users, which will be for specific complaints that remain unresolved having been open for at least 40 working days following notification to the Service Provider in accordance with their code of practice for complaints handling.
- 14 It is proposed that the Formal Dispute Resolution Procedures for ECS/ECN end-users offered by ComReg will take the form of adjudication. It is proposed that adjudication will be available for ECS/ECN complaints that relate to universal service and users' rights, roaming and, it is envisaged, net neutrality issues and any other issues that ComReg may resolve in accordance with the out-of-court dispute resolution procedures referred to in Regulation 27 of the Users' Rights Regulations.

¹⁴ For further information please refer to ComReg document 17/62; ComReg Decision D04/17; Electronic Communications Complaints Handling Code of Practice – Response to Consultation and Decision.

¹⁵ Section 12(2)(c)(ii) of the Communications Regulation Act 2002; *in so far as promotion of the interests of users within the Community is concerned – (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.*

- 15 Should the proposals be put in place, the decision to engage with the ComReg Formal Dispute Resolution Procedures for ECS/ECN end-users and apply for adjudication will be optional for end-users and it is proposed, will incur a handling fee. It will be a separate function from the complaints handling service that is currently offered by ComReg.
- 16 The proposed Formal Dispute Resolution Procedures for ECS/ECN end-users involve the ECS/ECN end-user completing an application form and submitting it to the Dispute Resolution function, outlining all the details of the dispute in question. If the ECS/ECN end-user has had the complaint open with the ComReg complaints handling process, they may choose to request a copy of their case records before making their application to the Dispute Resolution function.

1.1 Scope of consultation and submitting comments

17 This consultation extends to:

- The Dispute Resolution Procedures for ECS/ECN end-users that ComReg is proposing to introduce for the resolution of ECS/ECN complaints that ComReg has, or may be given, the power to resolve in accordance with the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the User's Rights Regulations. This pertains to complaints between ECS/ECN end-users and Service Providers arising under these Regulations and relating to the contractual conditions or performance of contracts concerning the supply of electronic communications networks or services and any other issues arising under, or covered by, the Regulations. This consultation also applies to unresolved disputes involving ECS/ECN end-users and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation¹⁶. It is envisaged that Regulation 27 of the Users' Rights Regulations will also apply to net neutrality issues¹⁷ if legislation so provides and any other issues that ComReg has, or may be given, the power to resolve in accordance with Regulation 27 of the Users' Rights Regulations; and

¹⁶ Regulation 6 of S.I. No. 228/2013 - Communications (Mobile Telephone Roaming) Regulations 2013 provides in the event of an unresolved dispute arising between a consumer or end-user and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation, the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Universal Service and Users' Rights Regulations applies and those Regulations are to be read accordingly.

¹⁷ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services is directly applicable and it provides in Article 4(2) that Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

Article 4(3) provides that the requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of

- ECS/ECN complaints that come within the scope of the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Users' Rights Regulations which remain unresolved with the Service Provider at least 40 working days after first notifying the complaint to the Service Provider in accordance with their code of practice for complaints handling.

18 This consultation does not extend to

- Queries. Currently approximately 80% of all issues received and recorded by ComReg's Consumer Line are queries with respect to all sectors that we regulate;
- ECS/ECN complaints that are unresolved with the Service Provider for less than 40 working days after first notifying the complaint to the Service Provider in accordance with their code of practice for complaints handling;
- ECS/ECN complaints that do not fall within the scope of the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Users' Rights Regulations; and
- Postal complaints. This consultation does not propose any amendments to the way we deal with postal matters which is set out in ComReg Document 14/06 'Complaints and Redress Procedures: Guidelines for Postal Service Providers'.

19 ComReg will ensure that its Formal Dispute Resolution Procedures for ECS/ECN end-users are accessible for disabled users.

20 ComReg invites comments from interested parties to this consultation by 5pm on Monday 28th May 2018. The procedure for submitting comments is set out in Section 4 of this document.

Directives 2002/21/EC and 2002/22/EC. It is therefore anticipated that the DCCAE will also provide for ComReg to resolve disputes arising in relation to the net neutrality regulations using the procedures referred to in Regulation 27 of the Users' Rights Regulations.

2 Background

- 21 One of ComReg's objectives is to take all reasonable measures to ensure end-user protection¹⁸. In exercising its functions under the Act and Regulation 27 of the Users' Rights Regulations¹⁹, part of ComReg's role is to engage with and to empower end-users by providing them with information to enable them to make informed choices and decisions.
- 22 Sections 12(1)(a)(i) and 12(1)(a)(iii) of the Act provide that ComReg's objective in exercising its functions is to promote competition and to promote the interest of users within the community. Section 12(2)(c)(ii) of the Act requires ComReg to take all reasonable measures which are aimed at achieving its objectives under the Act. This includes '*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 to protect consumers in their dealings with Service Providers*'.
- 23 Since 2003, ComReg has offered a Consumer Line service to all end-users of Electronic Communications Networks and Services (ECN and ECS) to offer advice and information to empower end-users when dealing with their Service Provider. In addition, ComReg offers a complaints handling process to end-users who have already notified the complaint to the Service Provider and thereby followed that Service Provider's code of practice for complaints handling. ComReg's complaints handling team raise the complaint to Service Providers on an end-user's behalf. This service is offered free to end-users who contact ComReg by phone, email, webchat, online form, SMS, in person, Irish Sign Language and by post.
- 24 Each contact is logged in a contact management system which is also the system that is used when contacting Service Providers with a complaint on an end-user's behalf. A contact is any contact from an end-user to ComReg, including queries. A complaint is where the end-user has notified the complaint to the Service Provider, in accordance with the Service Provider's code of practice for complaints handling, and the complaint remains unresolved 10 working days following that notification. In 2017, the total number of contacts from end-users to the ComReg consumer care team was approximately 69,000. Of these 69,000 contacts, 4,167 ECS complaints were escalated to Service Providers.
- 25 Although the number of contacts from end-users has increased year on year, the number of complaints escalated to Service Providers by ComReg has decreased, as can be seen from the following chart:

¹⁸ Section 12(2)(c)(ii) of the Communications Regulation Act 2002.

¹⁹ S.I. 337 of 2011.

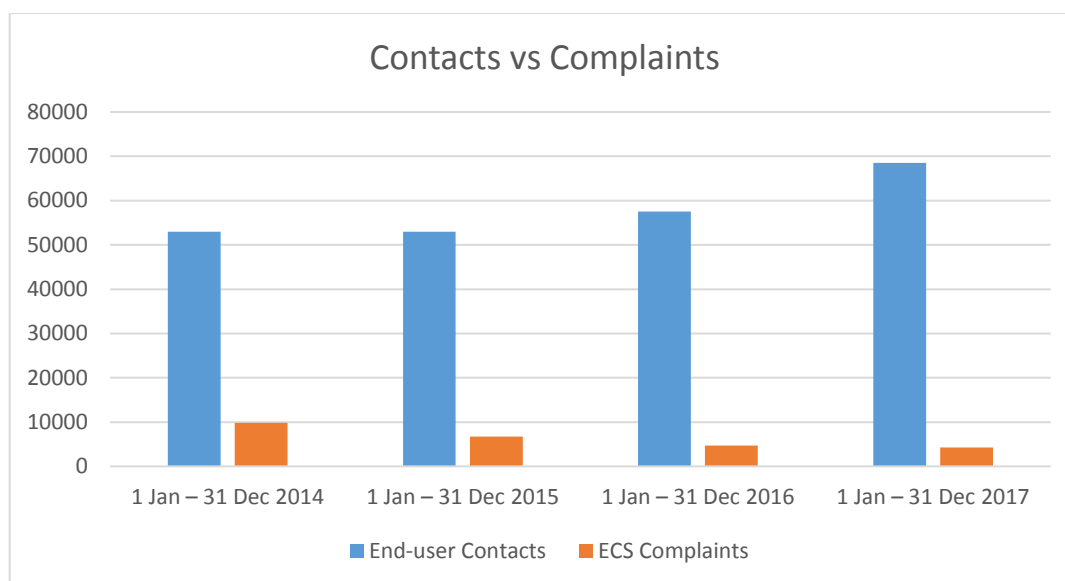


Figure 1: Contacts versus Complaints 2014 – 2017

- 26 This is very positive for end-users and can be attributed to the apparent better management by many Service Providers of their end-user complaints, ComReg's commencement of its quarterly publication of the Consumer Line statistics and the consultation and decision on the minimum requirements for Codes of Practice for complaints handling²⁰.
- 27 Ideally, there should be little or no need for ComReg's Consumer complaints handling team to have to contact Service Providers with complaints on behalf of their end-users.
- 28 In its Decision Document D04/17²¹, ComReg set out the minimum requirements for the complaints handling processes provided by Service Providers. They are therefore required to have a code of practice in place for complaints handling that ensures that end-users can have their complaints resolved in a timely and efficient manner. ComReg acknowledges that a small number of complaints can be complex and more difficult to resolve; nevertheless it remains the responsibility of the Service Provider to bring all complaints to a resolution in line with the requirements set out in D04/17.
- 29 In accordance with Regulation 27 (4) of The Users' Rights Regulations²², ComReg may specify the procedures it considers most appropriate for resolving disputes that remain unresolved after an end-user has been through the Service Provider's code of practice for complaints handling:

²⁰ For further information please refer to ComReg document 17/62; ComReg Decision D04/17; Electronic Communications Complaints Handling Code of Practice – Response to Consultation and Decision.

²¹ For further information please refer to ComReg document 17/62; ComReg Decision D04/17; Electronic Communications Complaints Handling Code of Practice – Response to Consultation and Decision.

²² S.I. 337 of 2011.

'the Regulator, or an independent person appointed by the Regulator may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1)'.

The code of practice referred to in paragraph 1 is the Service Provider's code of practice for settling unresolved disputes, including complaints, between end-users and the Service Provider. This is the code of practice for complaints handling as set out by ComReg in its Decision Document 17/62²³.

- 30 Following on from the implementation of ComReg's Decision D04/17, which came into force on 31 December 2017, ComReg expects that the number of end-user complaints that do not get resolved with the Service Provider directly to further reduce.
- 31 For those complaints that do not get resolved after the end-user has followed the Service Provider's code of practice, the end-user can bring their complaint to ComReg by contacting ComReg's Consumer Line. The consumer care complaints handling process for the handling of ECS and ECN end-user complaints that ComReg sends to Service Providers is as follows:

ComReg's Current Complaints Handling Process:

- 1) The end-user contacts ComReg's Consumer Line using their chosen method, including by phone, email, webchat, online form, SMS, in person, Irish Sign Language or by post, and raises a complaint to the complaints handling team.
- 2) In order for the issue to be classified as a complaint, a number of criteria must first be fulfilled:
 1. The issue must be in respect of an ECS or ECN Service;
 2. It must be more than 10 working days since the end-user first notified the complaint to the Service Provider in accordance with their Code of Practice for complaints handling; and
 3. The complaint must have been notified to the Service Provider within the previous 12 months.
- 3) Once a complaint is validated and accepted as a complaint, the ComReg complaints handling team member will then contact the Service Provider by email (facilitated through the ComReg Issues handling system) on that end-user's behalf.

²³ For further information please refer to ComReg document 17/62; Electronic Communications Complaints Handling Code of Practice – Response to Consultation and Decision.

- 4) The information collected from the end-user that is sent to the Service Provider will generally include the following:
 4. Contact details, including a telephone number;
 5. The Service Provider(s) and the name and account number on the account (if applicable); and
 6. Details of the complaint, including the complaint reference number from the Service Provider, if applicable.
- 5) From the time of receipt of the complaint from ComReg, the Service Provider currently has a further 10 working days to liaise with the end-user directly, resolve the complaint and then issue ComReg with a response outlining the details of that resolution. This should include details of all communication with the end-user, including copies of any correspondence sent by the Service Provider to the end-user.
- 6) If the complaint remains open with the ComReg system, the ComReg complaints handling team member contacts the Service Provider seeking updates.
- 7) When the Service Provider issues ComReg with their final response to the complaint, the complaints handling team member will review the response to make sure that all issues raised have been addressed. If all issues have been addressed and the complaint has been resolved, the complaint is then closed on the ComReg system. If issues remain outstanding or have not been fully addressed, the Service Provider is advised by email and the complaint will remain open until such time as all outstanding issues have been addressed. When the complaint is being closed, the end-user is contacted by ComReg and is advised accordingly.

3 Formal Dispute Resolution Proposed Procedures for ECS/ECN End-Users

- 32 ComReg is now proposing to introduce Formal Dispute Resolution Procedures for ECS/ECN end-users, which will be a separate function in addition to the current existing free query and complaints service provided by ComReg's Consumer Line queries and complaints handling team.

The Current Service offered by ComReg

An end-user can currently access the Consumer Line and request information with respect to any communications issue that they are experiencing as a customer of a Service Provider. In addition, for those end-users who want ComReg to escalate a complaint on their behalf to their Service Provider, this service is available on the condition that it has been 10 working days since the end-user notified the complaint to their Service Provider in accordance with the complaints handling code of practice.

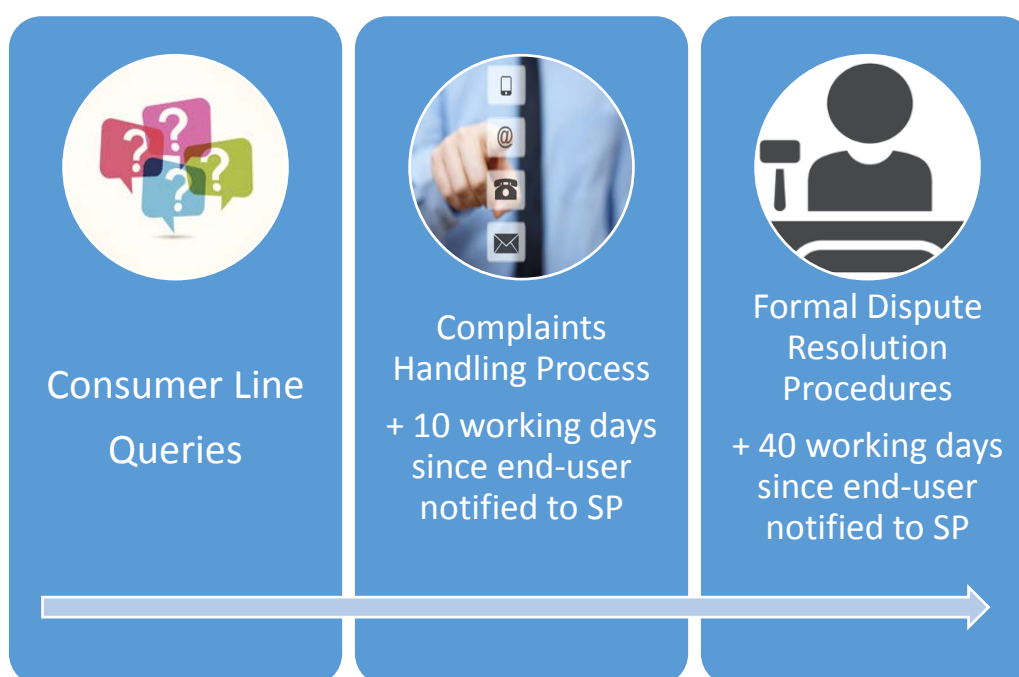


Figure 2: Journey from contact with Consume Line to Formal Dispute Resolution Procedures

- 33 For the avoidance of doubt, the Formal Dispute Resolution Procedures for ECS/ECN end-users are separate to ComReg's compliance and enforcement function.

3.1 Timeframe to access Formal Procedures

- 34 In the proposed Formal Dispute Resolution Procedures for ECS/ECN end-users, ComReg will consider an end-user's complaint that relates to a universal service and users' rights, roaming or, as envisaged, net neutrality issue, or any other issue that ComReg has, or may be given, the power to resolve in accordance with Regulation 27.
- 35 During the period 1 Jan 2017 – 31 Dec 2017, the complaints handling team escalated 4,167 ECS complaints to Service Providers. Of the total number of complaints, only 12% remained open after 30 working days.

No of Working Days to Close	
Up to 10 working days	54%
11 – 20 working days	24%
21 – 30 working days	10%
+ 30 working days	12%

- 36 Where a complaint is raised by ComReg's complaints handling team 88% are closed within 30 working days.
- 37 ComReg is aware that some complaints can be quite complex and can take time to resolve. However, from reviewing the details, it could be observed that many of the complaints open for more than 30 days could have been resolved by the Service Provider much earlier.
- 38 With respect to the number of days at which ComReg's Formal Dispute Resolution Procedures for ECS/ECN end-users will be available, it is worth noting that any complaint sent to a Service Provider by ComReg will already have been through that Service Provider's own code of practice for complaints handling so the Service Provider will already have had the opportunity to resolve the complaint and will have had at least 10 working days to do so prior to the complaint being accepted by ComReg's complaints handling team.
- 39 In carrying out some preliminary work for this consultation, ComReg reviewed other dispute resolution processes. The 40 working day timeframe proposed in this consultation is reflective of timeframes set out in other established dispute resolution mechanisms²⁴.

²⁴ In the UK, both the Communications & Internet Services Adjudication Scheme (CISAS) and the Ombudsman Services for Communications have an 8 week timeframe.

Proposed approach and Preliminary view

- 40 ComReg is of the preliminary view that, as the majority of end-user complaints can be closed within 10 working days, a period of 40 working days for access to the ComReg Dispute Resolution Procedures for ECS/ECN end-users is more than adequate to afford the Service Provider the opportunity to resolve the complaint. After 40 working days, it is ComReg's preliminary view that the end-user should have the option of availing of a dispute resolution process to bring about the resolution of the complaint in accordance with Regulation 27.
- 41 It is ComReg's preliminary view that Formal Dispute Resolution Procedures for ECS/ECN end-users should be available where the complaint was first notified by the end-user to the Service Provider at least 40 working days previously. In addition, where the complaint is raised to ComReg's complaints handling team, who then escalate it to the Service Provider, and the complaint is open with ComReg for at least 30 working days, ComReg's complaints handling team will advise the end-user of the Formal Dispute Resolution facility. Should the end-user choose to access Formal Dispute Resolution, their complaint with the ComReg complaints handling team will be closed.
- 42 It is ComReg's preliminary view that when an ECS/ECN complaint relating to an issue that ComReg has, or may be given, the power to resolve in accordance with Regulation 27, is still unresolved 40 working days after it was notified to the Service Provider's code of practice for complaints handling, it is reasonable for the end-user to be able to pursue the complaint through ComReg's Formal Dispute Resolution Procedures for ECS/ECN end-users. ComReg proposes that it will monitor the minimum 40 working day duration period and may review the timeframe at a future date.
- 43 ComReg is of the view that this timeframe provides adequate time for the Service Provider to resolve the dispute. The Formal Dispute Resolution Procedures for ECS/ECN end-users will only be available for end-users who have unresolved universal service and users' rights, roaming and, as envisaged, net neutrality and any other complaints ComReg has, or may be given, the power to resolve in accordance with the out-of-court dispute settlement procedures referred to in Regulation 27 of the Users' Rights Regulations.

Q. 1 Do you agree with ComReg's preliminary view regarding the timeframe to allow an end-user access to ComReg's Formal Dispute Resolution Procedures for ECS/ECN end-users after 40 working days from when the complaint was first notified to the Service Provider and that ComReg's complaints handling team will inform end-users if the ComReg complaint is open for 30 days? Please explain the basis of your response in full and provide any supporting information.

3.2 Cost to access Formal Procedures

- 44 It is important that dispute resolution schemes are easily accessible and inexpensive to end-users in terms of any respective fees involved. In the UK, the Communications & Internet Services Adjudication Scheme (CISAS) does not charge the applicant but the cost of taking an application is borne by the communications providers. In Ireland there is a fee of €25 to avail of the Small Claims Court procedure and the Advertising Standards Authority for Ireland (ASAI) charge for a review by the complaint committee and the fee is €30, whilst the Commission for Regulation of Utilities (CRU) service is free.

Proposed approach and Preliminary view

- 45 As the ComReg complaints handling process is free to all end-users and the vast majority of complaints (currently 88%) get resolved through this process, it is ComReg's view that a nominal charge of €25 for the end-user to access the Formal Dispute Resolution Procedures for ECS/ECN end-users is inexpensive. The Formal Dispute Resolution Procedures can be quite resource intensive as complaints that are not resolved before 40 working days tend to be complex and lengthy. It is also ComReg's preliminary view that the end-user should get the €25 fee refunded if the final determination finds in their favour.

Q. 2 Do you agree with ComReg's preliminary view that a nominal fee of €25 is reasonable? Please explain the basis of your response in full and provide any supporting information.

Q. 3 Do you agree with ComReg's preliminary view that the €25 fee should be refunded to the end-user if the final determination is in their favour? Please explain the basis of your response in full and provide any supporting information.

- 46 When the end-user chooses to access the Formal Dispute Resolution Procedures, ComReg is proposing to have a four step process in place with the first step being the submission of an application.

3.3 Step 1 – Submission of an Application

- 47 The steps of any Formal Dispute Resolution process should be simple, fair and easily understood. It should be clear to all involved what is required and expected of them and there should be a clear understanding of the timeframes set out.

- 48 The information submitted by the end-user in the first instance is the basis on which the complaint is either accepted into the Formal Dispute Resolution function for ECS/ECN end-users or not and it is therefore very important that the end-user is facilitated with some guidance around the type of information required. The easiest way of doing this, and general good practice, is to lay out a set of questions that the end-user must answer and submit on an application form. This also allows the end-user to see if they have fulfilled all of the necessary criteria that must be completed before their complaint can be accepted into the Formal Dispute Resolution function.

Proposed approach and Preliminary view

- 49 It is ComReg's preliminary view that the end-user must submit an application form directly to the Formal Dispute Resolution function. ComReg will ensure that the application can be filled out online or can be submitted in hard copy or other accessible formats. Information from the ComReg consumer care complaints handling process cannot be directly transferred to the Formal Dispute Resolution function, as they are separate functions independent of each other; therefore the end-user will need to outline all relevant information in their application. To facilitate this, if the end-user has had a complaint open with the ComReg consumer care complaints handling process, the end-user may be able to have the details of their complaint from consumer care sent to them before they submit their application to the Formal Dispute Resolution function.
- 50 It is ComReg's preliminary view that the application form should include the following minimum requirements:
- Contact details, including a telephone number, postal address and email address if available;
 - The Service Provider(s) and the name and account number on the account (if applicable);
 - Details of the complaint, including the complaint reference number from the Service Provider, if applicable;
 - Details of interactions with the Service Provider outlining the date of first notification of the complaint and/or with the ComReg complaints handling process, if applicable;
 - Written confirmation of the nominated representative or third party, if applicable;
 - A brief outline of what outcome (including details of any claimed refunds, credits or waivers due or of any redress sought) the end-user is seeking through the resolution of the complaint; and
 - The nominal fee of €25 (This can be paid by cheque, online or over the phone).

Step 1 – Submission of an Application

Q. 4 Do you agree/disagree with ComReg's preliminary view of the details that should be included in the application for access to Formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information.

3.4 Step 2 – Acceptance of an Application

51 The criteria around the acceptance of an application should be clear and reasonable. End-users and Service Providers should be aware of the conditions that need to be fulfilled before a complaint can be accepted. Having a set of minimum requirements is standard practice in dispute resolution schemes and is necessary as it ensures that only those complaints that have been through due process are accepted. This also affords the Service Provider adequate time and opportunity to address the issues in a complaint and it gives the end-user an opportunity to try to get the complaint resolved first through more informal, less costly services such as the more informal free service offered by the ComReg complaints handling team. It is ComReg's view that formal dispute resolution processes and schemes should only be used as a means of last resort, when every other informal avenue has been exhausted.

Proposed approach and Preliminary view

52 It is ComReg's preliminary view then that, in order for the application to be accepted, the end-user must have notified the complaint to the Service Provider, in accordance with their code of practice for complaints handling and that at least 40 working days must have passed since that point of first notification. This essentially affords the Service Provider 8 weeks to resolve the complaint before the Formal Dispute Resolution Procedures for ECS/ECN end-users can be initiated by the end-user. It is ComReg's preliminary view that this timeframe enables the end-user to also use the ComReg complaints handling process where the vast majority (88%) of complaints get resolved within 30 working days. It is ComReg's view that this minimum 40 working day timeframe effectively means that only those relatively few, complex unresolved complaints should need to be referred to its Formal Dispute Resolution function.

53 It is ComReg's view that when an application form is received from an end-user, along with any supporting documentation, the application will be reviewed by ComReg. Once all relevant information has been received from the end-user, ComReg has 15 working days to assess the application and to notify the end-user of the acceptance or non-acceptance of the application.

54 In order for the application to be accepted as valid, a number of criteria must first be fulfilled:

- The complaint must relate to an issue arising in relation to the Users' Rights Regulations or the Roaming Regulations²⁵ and any other regulations which give ComReg the power to resolve disputes using the procedures in accordance with Regulation 27 of the Users' Rights Regulations;
 - The complaint relates to a single end-user who has been impacted by the subject matter of the complaint;
 - The complaint must be unresolved and it must be at least 40 working days since it was first notified to the Service Provider in accordance with the code of practice for complaints handling, regardless of whether it has been with the Service Provider or has been raised by ComReg's complaints handling team and the end-user remains dissatisfied thereafter (ComReg may decide to accept complaints that are unresolved for less than the 40 working day timeframe, where in ComReg's view, the particular circumstances of the complaint justify its acceptance before 40 working days have elapsed. In this case, ComReg will explain the reasons for doing so);
 - The complaint must have been first notified to the Service Provider in accordance with the code of practice for complaints handling within the previous 12 months. This limitation may be waived in exceptional circumstances at ComReg's discretion;
 - The scope of the complaint must be confined to the issues contained in the complaint when it was notified to the Service Provider's code of practice for complaints handling;
 - The complaint is not frivolous or vexatious;
 - The complaint is not being, nor has previously been, considered by another dispute resolution entity or by a court;
 - The nominal fee has been paid; and
 - Dealing with the dispute does not impact or impair the effective operation of ComReg.
- 55 ComReg has absolute discretion to refuse to accept, or to terminate consideration of, a dispute if it considers that the complaint has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Service Provider to which the complaint relates.

²⁵ S.I. No. 228/2013 - Communications (Mobile Telephone Roaming) Regulations 2013.

- 56 ComReg has absolute discretion to refuse to accept or to terminate or to delay acceptance and/or consideration of a dispute if it considers that the dispute is currently, or may become associated with, legal proceedings in which ComReg is party to.
- 57 If the application is incomplete, or more details are required, the end-user will be contacted and the relevant information will be requested.
- 58 If it is determined that the application is not valid, the application will be declined. The determination of whether an application is valid will be completed as soon as possible following receipt of the completed application. If the application is declined, the end-user will be contacted and will be provided with a reasoned explanation of the grounds for the non-acceptance of the application. The end-user may then have the option of opening or re-opening their complaint with ComReg's complaint handling process where the complaint will be managed until such time as it gets resolved.
- 59 Once all the relevant information has been received from the end-user, and the minimum requirements criteria above have been fulfilled and the nominal fee has been paid, the application may then be deemed to be valid and accepted by ComReg as a dispute subject to the above considerations. For accepted disputes, a reference number will be allocated to the dispute and this must be quoted on all correspondence with the parties involved.
- 60 Both the end-user and the Service Provider will be formally advised at the same time that the dispute has been accepted. This date will be known as the 'Date of Acceptance'.

Step 2 – Acceptance of an Application

- Q. 5 Do you agree/disagree with ComReg's preliminary view of the timeframe of 15 working days for ComReg to assess the application (once all the necessary information has been received from the end-user) and to notify the end-user of the acceptance or non-acceptance? Please explain the basis of your response in full and provide any supporting information.
- Q. 6 Do you agree/disagree with the criteria to be used for an application to be accepted? Please explain the basis of your response in full and provide any supporting information.

3.5 Step 3A – Correspondence with the End-User

61 Participating in a dispute resolution process should not be overly onerous or burdensome on an end-user. Most of the information necessary for facilitating an adjudication should be collected in the application form. All subsequent correspondence with the end-user should be clear and straightforward in terms of what is being requested and the end-user should be aware and informed of the next steps in the process and of the timeframe involved. End-users should be given adequate time to respond to ComReg and to provide any information requested.

Proposed approach and Preliminary view

62 It is ComReg's preliminary view that all pertinent correspondence with the end-user should be in writing (using the end-user's preferred method) and should contain an outline of what is required and should indicate clearly the date by which any response is necessary, together with an explanation of the consequences of non-adherence to this. It should also outline the next step in the Procedures. Should contact by phone arise, it should be clearly documented by ComReg on the dispute file. It is ComReg's view that the following steps should be part of the Procedures:

63 On the Date of Acceptance, the end-user will be advised of the acceptance of the dispute. They will be advised of the next steps in the process and that their dispute, including a copy of the details submitted their application, is being sent to the Service Provider for a response.

64 Following receipt of the Service Provider's response, more information may be requested from the end-user, if deemed necessary. If this is the case, the end-user will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day begins from the time of receipt of each letter of notification from ComReg.

65 If the end-user does not respond to ComReg or fails to provide any information requested, it will be assumed that the end-user does not want to proceed with the dispute. In this event, the end-user will be contacted and advised that unless they respond accordingly, the case will be closed. If a response is still not forthcoming, both parties will be notified that the dispute has been closed.

66 The end-user can withdraw from the process at any time by notifying ComReg in writing. Once an end-user withdraws from a dispute and the dispute is closed, their fee will be forfeited and they will not be able to re-open the dispute. However, this does not preclude an end-user from submitting a fresh application for the same complaint or from submitting an application for another complaint at any time.

<p>Q. 7 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to 10 working days for the end-user to respond to ComReg should more information be necessary? Please explain the basis of your response in full and provide any supporting information</p>

Q. 8 Do you agree/disagree with ComReg's preliminary view that if the end-user does not respond to ComReg or fails to provide the information requested, that it will be assumed that the end-user does not want to proceed and that, in this case, they will be contacted and advised that unless they respond accordingly, the dispute will be closed and that if a response is still not forthcoming, both parties will be notified that the dispute has been closed? Please explain the basis of your response in full and provide any supporting information.

3.6 Step 3B – Correspondence with the Service Provider

67 As with an end-user, participating in a dispute resolution process should not be overly onerous or burdensome on a Service Provider. All correspondence with a Service Provider should be in writing and ComReg should be clear in terms of what information or detail is being requested and by when the response is expected. The Service Provider should be given sufficient time to review and respond to the dispute, including time to provide any supporting documentation. As is standard in any dispute resolution process, the Service Provider has the right to have sight of the content of the dispute submitted, including all supporting documentation and other details contained in the application.

Proposed approach and Preliminary view

68 It is ComReg's preliminary view that all correspondence with the Service Provider should be in writing and should contain full details of what is required and should indicate clearly the date by which any response is necessary together with the consequences of non-adherence to this. It should also outline the next step in the Procedures. It is ComReg's view that the following steps should be part of the Procedures:

69 On the Date of Acceptance, the Service Provider will be formally advised of receipt of the dispute, and of the name of the end-user and the dispute reference number.

70 Within 5 working days of the Date of Acceptance, the Service Provider will be provided with an electronic copy of the details submitted in the application by the end-user, including any supporting documentation, and will be given 10 working days to provide a written detailed response to ComReg. The first working day begins from the time of receipt of the details from ComReg.

71 In exceptional circumstances, this 10 working day period may be extended by ComReg for up to 10 working days. This response should be sufficiently detailed and comprehensive to enable a full assessment by ComReg of the dispute.

- 72 Should more information may be requested from the Service Provider, the Service Provider will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day begins from the time of receipt of each letter of notification from ComReg.
- 73 If the Service Provider does not provide a response to ComReg, ComReg can proceed to make a determination based entirely on the information provided by the end-user and any response by the Service Provider to date.
- 74 At any time during the process, the Service Provider is free to contact the end-user to resolve the dispute directly. If agreement is reached, the Service Provider must notify ComReg within 2 working days of the dispute being resolved, and provide all supporting evidence of the resolution, including evidence that the end-user has accepted the resolution in writing.
- 75 The end-user can withdraw from the process at any time by notifying ComReg in writing. Upon receipt of notification of withdrawal of an end-user, ComReg will inform the Service Provider within 2 working days and will close the dispute.

Step 3 – Correspondence with the Service Provider

- Q. 9 Do you agree/disagree with ComReg's preliminary view that the Service Provider will be formally advised of receipt of the dispute on the Date of Acceptance? Please explain the basis of your response in full and provide any supporting information.
- Q. 10 Do you agree/disagree with ComReg's preliminary view of the timeframe of 5 working days from the Date of Acceptance for ComReg to provide to the Service Provider an electronic copy of the details submitted in the application by the end-user, including any supporting documentation? Please explain the basis of your response in full and provide any supporting information.
- Q. 11 Do you agree/disagree with ComReg's preliminary view of the timeframe of the 10 working days that the Service Provider is given to provide a written detailed response to ComReg upon receipt of the electronic copy of the details of the dispute from the end-user? Please explain the basis of your response in full and provide any supporting information.
- Q. 12 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to an additional up to 10 working days that ComReg can grant to the Service Provider for the provision of a response in exceptional circumstances? Please explain the basis of your response in full and provide any supporting information.
- Q. 13 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to 10 working days for the Service Provider to respond, should further information or comments be requested by ComReg? Please explain the basis of your response in full and provide any supporting information.

Q. 14 Do you agree/disagree with ComReg's preliminary view of the timeframe of 2 working days for the Service Provider to notify ComReg that the dispute has been resolved and to provide all supporting evidence of the resolution, including evidence that the end-user has accepted the resolution in writing? Please explain the basis of your response in full and provide any supporting information.

Q. 15 Do you agree/disagree with ComReg's preliminary view of the timeframe of 2 working days for ComReg to notify the Service Provider upon receipt of notification of withdrawal from the end-user? Please explain the basis of your response in full and provide any supporting information.

3.7 Step 4 – Resolution and Determination

76 In making its determination, ComReg shall have regard to the submissions and evidence received from the end-user and the Service Provider during the process. It is common practice for both parties to be afforded the opportunity to see and comment on the draft determination before a final determination is made.

77 The final determination should be comprehensive, easily understood and should include clear reasoning behind the decision made. Any remedies outlined in the draft and final determinations must be clearly specified with any timeframes included.

Proposed approach and Preliminary view

78 In making its determination ComReg shall have regard to the submissions from the end-user and the Service Provider and can take into account any stress or inconvenience caused to the end-user in accordance with the details of the submission. ComReg's general duty is to handle disputes in accordance with fair procedures and the principles of natural justice. ComReg may, inter alia, (i.e. amongst other things) have regard to any applicable rule of law, the terms of any relevant codes of practice and contracts between the end-users and the Service Provider, the relevant regulatory framework and ComReg policy in place when investigating and determining disputes referred to it in accordance with the out-of-court dispute resolution procedures referred to in Regulation 27 of the Users' Rights Regulations.

79 It is ComReg's view that it may also be necessary for ComReg to consider relevant and required evidence not presented by the parties, such as technical expertise; however, both the end-user and the Service Provider should be made aware of that evidence as part of the draft determination.

- 80 In making its draft and final determinations, ComReg shall have regard to the information received from the end-user, the Service Provider and to any contracts, codes of practice, or any ComReg policy or relevant legislation pertaining to the issue. ComReg may have regard to the opinion of third party experts and the draft and final determinations will contain details of all reasoning behind the determination. With regard to the final determination, ComReg will ultimately make its determination having regard to the relevant regulatory and legislative framework.
- 81 When ComReg deems it has sufficient information, it will review all evidence and submissions in the dispute and will issue a draft determination in writing within 60 working days. The 60 working day timeframe begins on the Date of Acceptance. ComReg may, at its discretion, extend the 60 working day time period. The parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the dispute determination.
- 82 The draft determination of ComReg will be notified to both parties in writing. The parties will have 10 working days from the date of the draft determination to submit comments on the draft determination.
- 83 Following further analysis of all submissions and comments, including consideration of all comments on the draft determination, a final determination will be prepared and issued to the parties in writing.
- 84 The final determination will include written reasons to explain the rationale for ComReg's determination.
- 85 If the final determination finds in favour of the end-user the application nominal fee will be reimbursed to the end-user by ComReg.
- 86 The final determination may specify measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in light of the circumstances of the dispute.
- 87 The issuing of the final determination is the final step of the Formal Dispute Resolution Procedures for ECS/ECN end-users. The final determination will be in the form of a direction of ComReg and as such is binding, unless appealed. There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/2011²⁶. It should be noted that pursuant to Regulation 27(9) of the Users' Rights Regulations, if a Service Provider fails to comply with a direction issued under paragraph 27(4), it commits an offence. ComReg also notes that it can utilise the powers afforded to it under Regulation 31 of the Users' Rights Regulations to ensure compliance with its directions.

²⁶ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011

88 ComReg normally expects to follow Steps 1-4 when investigating a dispute referred to it in accordance with Regulation 27 of the Users' Rights 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 1-4 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-4 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.

Step 4 – Resolution and Determination

- Q. 16 Do you agree/disagree with ComReg's preliminary view of the timeframe of 60 working days from the date of Acceptance for ComReg to issue a draft determination in writing? Please explain the basis of your response in full and provide any supporting information.
- Q. 17 Do you agree/disagree with ComReg's preliminary view that the parties will have 10 working days from the date of the draft determination to submit comments on the draft determination? Please explain the basis of your response in full and provide any supporting information.

4 Submitting Comments

- 89 ComReg welcomes all written responses from stakeholders by 5pm on Monday 28th May 2018. It will make the task of analysing responses easier if comments are referenced to the relevant question numbers from this document. In all cases, please provide reasons in support of your views.
- 90 In the interests of openness and transparency, ComReg will publish all non-confidential inputs received and would therefore request that electronic submissions be made in an unprotected format so that they can be published electronically. Submissions will be published, subject to the provisions of ComReg's *Guidelines on the Treatment of Confidential Information*²⁷. Any confidential material should be clearly identified and placed in a separate Annex to the stakeholder's response.
- 91 Responses must be submitted in written form (post or email) to the following recipient clearly marked "**Submissions to ComReg 18/34**":

Louise Power

Commission for Communications Regulation

One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0

Phone: +353-1-8049654

Email: retailconsult@comreg.ie

Responses must be received by ComReg no later than 5pm on Monday 28th May 2018.

²⁷ See ComReg Document No. 05/24.

5 Regulatory Impact Assessment (RIA)

- 92 ComReg has published RIA Guidelines²⁸ (DOC 07/56a), in accordance with a policy direction to ComReg²⁹, which state that ComReg will conduct a RIA in any Procedures that may result in the imposition of a regulatory obligation, or the amendment of an existing obligation to a significant degree, or which may otherwise significantly impact on any relevant market or any stakeholders or end-users. However, the Guidelines also note that in certain instances it may not be appropriate to conduct a RIA and in particular, that a RIA is only considered mandatory or necessary in advance of a decision that could result in the imposition of an actual regulatory measure or obligation, and that where ComReg is merely charged with implementing a statutory obligation then it will assess each case individually and will determine whether a RIA is necessary and justified.
- 93 In this Consultation, ComReg is not imposing a regulatory obligation but it is acting in accordance with the statutory obligation imposed by Regulation 27 of the Users' Rights Regulations. Therefore a RIA is not being undertaken on this occasion.

²⁸ Which have regard to the RIA Guidelines issued by the Department of An Taoiseach in June 2009.

²⁹ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communication, Marine and Natural Resources on 21 February, 2003

6 EFFECTIVE DATE AND DURATION

- 7.1 ComReg proposes that the Formal Dispute Resolution Procedures will be effective six months from the date of the publication of the Response to Consultation and Procedures document that will be published following the receipt of comments on this consultation (the Effective Date), and shall remain in full force unless otherwise amended by ComReg.

Q. 18 Do you agree/disagree with the proposed effective date? Please explain the basis of your response in full and provide any supporting information

7 Definitions

94 For the purposes of this consultation, unless the context suggests otherwise:

'Act' means the *Communications Regulation Act 2002* (as amended);

'Complaint' means an issue raised by an end-user to an undertaking relating to that undertaking's product or service or its complaints handling process where the issue remains unresolved following an initial attempt by the undertaking to resolve it or where there has been no attempt by the undertaking to resolve it and the end-user expresses dissatisfaction, through one of the channels set out in the code of practice, that the issue remains unresolved;

'Date of Acceptance' means the date on which the Application from an end-user to the ComReg Dispute Resolution Procedures, is deemed to be valid and accepted and is notified to both the end-user and the Service Provider;

'Direction' includes determination;

'End-User' means a user not providing public Communications networks or publicly available Electronic communication services as defined in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations, S.I. 333 of 2011);

Framework Regulations means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), as may be amended from time to time;

'Queries' means all contacts to ComReg's Consumer Line that are not complaints;

'Service Provider' means an undertaking providing Electronic Communications Networks (ECN) or Electronic Communications Service (ECS)

The Users Rights Regulations means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 337 of 2011, as may be amended from time to time;

'Working Day' means a day which is not a Saturday, Sunday or a public holiday;

Other terms that are used in this Consultation shall have the same meaning as when they are used in the Users' Rights Regulations and the Framework Regulations and the Act unless the context otherwise admits or requires.

Annex: 1 Legal Basis

Origin of Legal Powers and Obligations

A 1.1 This consultation document is issued to outline and clarify the ComReg Formal Dispute Resolution Procedures for ECS/ECN end-users, thereby ensuring the functioning of effective, robust, fair and transparent Formal Dispute Resolution Procedures providing recourse for end-users in the event of unresolved disputes, having regard to:

- ComReg's functions as set out in Section 10 of the *Communications Regulation Acts, 2002-2015*;
 - S.10(1)(a) to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks;
 - Section 10 (1) (aa) to ensure compliance with obligations under Regulations (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012; and
 - Section 10(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this or any other Act.
- ComReg's functions as set out in Section 12 of the Communications Regulation Act 2002 (as amended).
- ComReg's obligations as outlined in Regulation 27 (4) of the *European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations*, No. S.I. 337 of 2011 (the Universal Service Regulations).
- ComReg's powers in accordance with Regulation 6 of S.I. No.228/2013 Communications (Mobile Telephone Roaming) Regulations 2013.
- The provisions of Article 4(2) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services.

A 1.2 Nothing outlined in this consultation document shall limit ComReg whatsoever from the full enforcement of its remit of powers with regard to Service Providers, in accordance with the provisions of the Universal Service Regulations.

A 1.3 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.

Annex: 2 Questions

Section	Page
Q. 1 Do you agree with ComReg's preliminary view regarding the timeframe to allow an end-user access to ComReg's Formal Dispute Resolution Procedures for ECS/ECN end-users after 40 working days from when the complaint was first notified to the Service Provider and that ComReg's complaints handling team will inform end-users if the ComReg complaint is open for 30 days? Please explain the basis of your response in full and provide any supporting information.	16
Q. 2 Do you agree with ComReg's preliminary view that a nominal fee of €25 is reasonable? Please explain the basis of your response in full and provide any supporting information.....	17
Q. 3 Do you agree with ComReg's preliminary view that the €25 fee should be refunded to the end-user if the final determination is in their favour? Please explain the basis of your response in full and provide any supporting information.	17
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Q. 4 Do you agree/disagree with ComReg's preliminary view of the details that should be included in the application for access to Formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information.....	19
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Q. 5 Do you agree/disagree with ComReg's preliminary view of the timeframe of 15 working days for ComReg to assess the application (once all the necessary information has been received from the end-user) and to notify the end-user of the acceptance or non-acceptance? Please explain the basis of your response in full and provide any supporting information.	21
Q. 6 Do you agree/disagree with the criteria to be used for an application to be accepted? Please explain the basis of your response in full and provide any supporting information.....	21
Q. 7 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to 10 working days for the end-user to respond to ComReg should more information be necessary? Please explain the basis of your response in full and provide any supporting information.....	22
Q. 8 Do you agree/disagree with ComReg's preliminary view that if the end-user does not respond to ComReg or fails to provide the information requested, that it will be assumed that the end-user does not want to proceed and that, in this case, they will be contacted and advised that unless they respond accordingly, the dispute will be closed and that if a response is still not forthcoming, both parties will be notified that the dispute has been closed? Please explain the basis of your response in full and provide any supporting information.	23
Step 3 – Correspondence with the Service Provider	24
Q. 9 Do you agree/disagree with ComReg's preliminary view that the Service Provider will be formally advised of receipt of the dispute on the Date of Acceptance? Please explain the basis of your response in full and provide any supporting information.....	24
Q. 10 Do you agree/disagree with ComReg's preliminary view of the timeframe of 5 working days from the Date of Acceptance for ComReg to provide to the Service Provider an electronic copy of the details submitted in the application by the end-user, including any supporting documentation? Please explain the basis of your response in full and provide any supporting information.	24
Q. 11 Do you agree/disagree with ComReg's preliminary view of the timeframe of the 10 working days that the Service Provider is given to provide a written detailed response to ComReg upon receipt of the electronic copy of the details of the dispute from the end-user? Please explain the basis of your response in full and provide any supporting information.....	24
Q. 12 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to an additional up to 10 working days that ComReg can grant to the Service Provider	

for the provision of a response in exceptional circumstances? Please explain the basis of your response in full and provide any supporting information. 24

Q. 13 Do you agree/disagree with ComReg’s preliminary view of the timeframe of up to 10 working days for the Service Provider to respond, should further information or comments be requested by ComReg? Please explain the basis of your response in full and provide any supporting information. 24

Q. 14 Do you agree/disagree with ComReg’s preliminary view of the timeframe of 2 working days for the Service Provider to notify ComReg that the dispute has been resolved and to provide all supporting evidence of the resolution, including evidence that the end-user has accepted the resolution in writing? Please explain the basis of your response in full and provide any supporting information. 25

Q. 15 Do you agree/disagree with ComReg’s preliminary view of the timeframe of 2 working days for ComReg to notify the Service Provider upon receipt of notification of withdrawal from the end-user? Please explain the basis of your response in full and provide any supporting information. 25

Step 4 – Resolution and Determination 27

Q. 16 Do you agree/disagree with ComReg’s preliminary view of the timeframe of 60 working days from the date of Acceptance for ComReg to issue a draft determination in writing? Please explain the basis of your response in full and provide any supporting information. 27

Q. 17 Do you agree/disagree with ComReg’s preliminary view that the parties will have 10 working days from the date of the draft determination to submit comments on the draft determination? Please explain the basis of your response in full and provide any supporting information. 27

Q. 18 Do you agree/disagree with the proposed effective date? Please explain the basis of your response in full and provide any supporting information 30

Annex: 3 The Draft Procedures

Step 1 – Submission of an Application

- 1 The application form should include the following minimum requirements:
 - Contact details, including a telephone number, postal address and email address if available;
 - The Service Provider(s) and the name and account number on the account (if applicable);
 - Details of the complaint, including the complaint reference number from the Service Provider, if applicable;
 - Details of interactions with the Service Provider outlining the date of first notification of the complaint and/or with the ComReg complaints handling process, if applicable;
 - Written confirmation of the nominated representative or third party, if applicable;
 - A brief outline of what outcome (including details of any claimed refunds, credits or waivers due or of any redress sought) the end-user is seeking through the resolution of the complaint; and
 - The nominal fee of €25 (This can be paid by cheque, online or over the phone).

Step 2 – Acceptance of an Application

- 1 In order for the application to be accepted as valid, a number of criteria must first be fulfilled:
 - The complaint must relate to an issue arising in relation to the Users' Rights Regulations or the Roaming Regulations³⁰ and any other regulations which give ComReg the power to resolve disputes using the procedures in accordance with Regulation 27 of the Users' Rights Regulations;
 - The complaint relates to a single end-user who has been impacted by the subject matter of the complaint;

³⁰ S.I. No. 228/2013 - Communications (Mobile Telephone Roaming) Regulations 2013.

- The complaint must be unresolved and it must be at least 40 working days since it was first notified to the Service Provider in accordance with the code of practice for complaints handling, regardless of whether it has been with the Service Provider or has been raised by ComReg's complaints handling team and the end-user remains dissatisfied thereafter (ComReg may decide to accept complaints that are unresolved for less than the 40 working day timeframe, where in ComReg's view, the particular circumstances of the complaint justify its acceptance before 40 working days has elapsed. In this case, ComReg will explain the reasons for doing so);
 - The complaint must have been first notified to the Service Provider in accordance with the code of practice for complaints handling within the previous 12 months. This limitation may be waived in exceptional circumstances at ComReg's discretion;
 - The scope of the complaint must be confined to the issues contained in the complaint when it was notified to the Service Provider's code of practice for complaints handling;
 - The complaint is not frivolous or vexatious;
 - The complaint is not being, nor has previously been, considered by another dispute resolution entity or by a court;
 - The nominal fee has been paid; and
 - Dealing with the dispute does not impact or impair the effective operation of ComReg.
- 2 ComReg has absolute discretion to refuse to accept, or to terminate consideration of, a dispute if it considers that the complaint has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Service Provider to which the complaint relates.
 - 3 ComReg has absolute discretion to refuse to accept or to terminate or to delay acceptance and/or consideration of a dispute if it considers that the dispute is currently, or may become associated with, legal proceedings in which ComReg is party to.
 - 4 If the application is incomplete, or more details are required, the end-user will be contacted and the relevant information will be requested.

- 5 If it is determined that the application is not valid, the application will be declined. The determination of whether an application is valid will be completed as soon as possible following receipt of the completed application. If the application is declined, the end-user will be contacted and will be provided with a reasoned explanation of the grounds for the non-acceptance of the application. The end-user may then have the option of opening or re-opening their complaint with ComReg's complaint handling process where the complaint will be managed until such time as it gets resolved.
- 6 Once all the relevant information has been received from the end-user, and the minimum requirements criteria above have been fulfilled and the nominal fee has been paid, the application may then be deemed to be valid and accepted by ComReg as a dispute subject to the above considerations. For accepted disputes, a reference number will be allocated to the dispute and this must be quoted on all correspondence with the parties involved.
- 7 Both the end-user and the Service Provider will be formally advised at the same time that the dispute has been accepted. This date will be known as the 'Date of Acceptance'.

Step 3A – Correspondence with the End-User

- 1 On the Date of Acceptance, the end-user will be advised of the acceptance of the dispute. They will be advised of the next steps in the process and that their dispute, including a copy of the details submitted their application, is being sent to the Service Provider for a response.
- 2 Following receipt of the Service Provider's response, more information may be requested from the end-user, if deemed necessary. If this is the case, the end-user will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day begins from the time of receipt of each letter of notification from ComReg.
- 3 If the end-user does not respond to ComReg or fails to provide any information requested, it will be assumed that the end-user does not want to proceed with the dispute. In this event, the end-user will be contacted and advised that unless they respond accordingly, the case will be closed. If a response is still not forthcoming, both parties will be notified that the dispute has been closed.
- 4 The end-user can withdraw from the process at any time by notifying ComReg in writing. Once an end-user withdraws from a dispute and the dispute is closed, their fee will be forfeited and they will not be able to re-open the dispute. However, this does not preclude an end-user from submitting a fresh application for the same complaint or from submitting an application for another complaint at any time.

Step 3B – Correspondence with the Service Provider

- 1 On the Date of Acceptance, the Service Provider will be formally advised of receipt of the dispute, and of the name of the end-user and the dispute reference number.
- 2 Within 5 working days of the Date of Acceptance, the Service Provider will be provided with an electronic copy of the details submitted in the application by the end-user, including any supporting documentation, and will be given 10 working days to provide a written detailed response to ComReg. The first working day begins from the time of receipt of the details from ComReg.
- 3 In exceptional circumstances, this 10 working day period may be extended by ComReg for up to 10 working days. This response should be sufficiently detailed and comprehensive to enable a full assessment by ComReg of the dispute.
- 4 Should more information may be requested from the Service Provider, the Service Provider will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day begins from the time of receipt of each letter of notification from ComReg.
- 5 If the Service Provider does not provide a response to ComReg, ComReg can proceed to make a determination based entirely on the information provided by the end-user and any response by the Service Provider to date.
- 6 At any time during the process, the Service Provider is free to contact the end-user to resolve the dispute directly. If agreement is reached, the Service Provider must notify ComReg within 2 working days of the dispute being resolved, and provide all supporting evidence of the resolution, including evidence that the end-user has accepted the resolution in writing.
- 7 The end-user can withdraw from the process at any time by notifying ComReg in writing. Upon receipt of notification of withdrawal of an end-user, ComReg will inform the Service Provider within 2 working days and will close the dispute.

Step 4 – Resolution and Determination

- 1 In making its determination ComReg shall regard to the submissions from the end-user and the Service Provider and can take into account any stress or inconvenience caused to the end-user in accordance with the details of the submission. ComReg's general duty is to handle disputes in accordance with fair procedures and the principles of natural justice. ComReg may, inter alia, (i.e. amongst other things) have regard to any applicable rule of law, the terms of any relevant codes of practice and contracts between the end-users and the Service Provider, the relevant regulatory framework and ComReg policy in place when investigating and determining disputes referred to it in accordance with the out-of-court dispute resolution procedures referred to in Regulation 27 of the Users' Rights Regulations.
- 2 It is ComReg's view that it may also be necessary for ComReg to consider relevant and required evidence not presented by the parties, such as technical expertise; however, both the end-user and the Service Provider should be made aware of that evidence as part of the draft determination.
- 3 In making its draft and final determinations, ComReg shall have regard to the information received from the end-user, the Service Provider and to any contracts, codes of practice, or any ComReg policy or relevant legislation pertaining to the issue. ComReg may have regard to the opinion of third party experts and the draft and final determinations will contain details of all reasoning behind the determination. With regard to the final determination, ComReg will ultimately make its determination having regard to the relevant regulatory and legislative framework.
- 4 When ComReg deems it has sufficient information, it will review all evidence and submissions in the dispute and will issue a draft determination in writing within 60 working days. The 60 working day timeframe begins on the Date of Acceptance. ComReg may, at its discretion, extend the 60 working day time period. The parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the dispute determination.
- 5 The draft determination of ComReg will be notified to both parties in writing. The parties will have 10 working days from the date of the draft determination to submit comments on the draft determination.
- 6 Following further analysis of all submissions and comments, including consideration of all comments on the draft determination, a final determination will be prepared and issued to the parties in writing.
- 7 The final determination will include written reasons to explain the rationale for ComReg's determination.
- 8 If the final determination finds in favour of the end-user the application nominal fee will be reimbursed to the end-user by ComReg.

- 9 The final determination may specify measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in light of the circumstances of the dispute.
- 10 The issuing of the final determination is the final step of the Formal Dispute Resolution Procedures for ECS/ECN end-users. The final determination will be in the form of a direction of ComReg and as such is binding, unless appealed. There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/2011³¹. It should be noted that pursuant to Regulation 27(9) of the Users' Rights Regulations, if a Service Provider fails to comply with a direction issued under paragraph 27(4), it commits an offence. ComReg also notes that it can utilise the powers afforded to it under Regulation 31 of the Users' Rights Regulations to ensure compliance with its directions.
- 11 ComReg normally expects to follow Steps 1-4 when investigating a dispute referred to it in accordance with Regulation 27 of the Users' Rights 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 1-4 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-4 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.
- 12 ComReg normally expects to follow Steps 1-4 when investigating a dispute referred to it in accordance with Regulation 27 of the Users' Rights 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 1-4 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-4 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.

³¹ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011