



Commission for  
**Communications Regulation**

## Consultation Paper

### Dispute Resolution Procedures

<b>Document No:</b>	<b>03/69</b>
<b>Date:</b>	<b>20 June 2003</b>

All responses to this consultation should be clearly marked:-  
“Reference: Submission re ComReg 03/69” as indicated above,  
and sent by post, facsimile, e-mail or on-line at [www.comreg.ie](http://www.comreg.ie)  
(current consultations), to arrive on or before [5pm, 11 July  
2003], to:

**Ms Carol Donohue**  
**Commission for Communications Regulation**  
**Irish Life Centre**  
**Abbey Street**  
**Freepost**  
**Dublin 1**  
**Ireland**

**Ph: +353-1-8049600 Fax: +353-1-804 9680 Email:**  
**carol.donohue@comreg.ie**

Please note ComReg will publish a summary of all submissions  
with the Response to Consultation, subject to the standard  
confidentiality procedure.

## Contents

1	Executive Summary .....	2
2	Introduction .....	4
3	Background .....	5
3.1	CURRENT PRACTICE.....	5
3.2	NEW FRAMEWORK .....	5
4	Scope of dispute resolution .....	6
4.1	WHAT IS A DISPUTE?.....	6
4.2	INVESTIGATING A DISPUTE .....	6
4.3	SOME IMPLICATIONS OF THE NEW PROCEDURES.....	7
4.4	ALTERNATIVE MECHANISMS .....	7
5	Resolution procedures.....	9
5.1	ENSURING TRANSPARENCY.....	13
6	Submitting Comments.....	14
	Appendix A – Legislation .....	15
	Appendix B – Consultation Questions .....	23
	Appendix C – Required Information for submitting a dispute.....	24
	Appendix D – Links to relevant documents.....	25

## 1 Executive Summary

This consultation paper outlines ComReg's proposals for revising its existing dispute procedures in order to meet the requirements of the EU Framework Directive<sup>1</sup> and the draft regulation<sup>2</sup> which will transpose the Directive into national law, which take effect on 25 July 2003.

Since September 1999 when ComReg's predecessor the ODTR outlined its dispute resolution procedures nearly one hundred issues have been notified to ComReg. Of these, ComReg has issued eighteen Final Determinations, three Decision Notices, one Report on investigation and one Clarification. The remaining issues have been addressed in a number of ways such as: resolving the matter through informal ComReg intervention, negotiation and contact; by referring the issue to industry fora and by addressing issues in ComReg consultations.

In Section 3, reference is made to the existing procedures for dispute resolution which can be viewed on ComReg's website. It is these procedures, which ComReg proposes to amend. ComReg outlines the four main requirements under the new Framework Directive and the draft transposing regulation: the time period for ComReg's resolution of disputes has shortened to four months from six; ComReg to make provision for alternative mechanisms to resolve disputes; undertakings engaged in the provision of electronic communications networks and services or associated facilities can lodge disputes and ComReg must make its decision publicly available, giving the parties to the dispute a full statement of the reasons for its decision.

Section 4 of the Paper discusses the characteristics of a dispute for the proposed dispute procedures to apply, namely that one party claims that the other party has breached its legal obligations. ComReg continues to outline the necessary information that needs to be included in all requests for dispute resolution, in order for ComReg to investigate a dispute request. Full details of the required information is outlined in Appendix C. ComReg also highlights some of the consequences of the four month timeframe to resolve disputes. Finally in this section, ComReg discusses alternative mechanisms for resolving disputes between undertakings.

It should be noted that ComReg has separate procedures in place to manage consumer complaints<sup>3</sup> and ComReg is currently undertaking a separate consultation on its future complaint handling role under the new Framework<sup>4</sup>.

---

<sup>1</sup> 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

<sup>2</sup> Draft of European Communities (Electronic Communications) (Framework) Regulations, 2003 available on the Department of Communications, Marine & National Resources website [www.dcmr.gov.ie](http://www.dcmr.gov.ie)

<sup>3</sup> ComReg Document 03/20 -ComReg's approach to consumer issues in the Irish communications market is available on ComReg's website [www.comreg.ie](http://www.comreg.ie)

The proposed procedures are presented in Section 5 and are designed to ensure that disputes are managed and resolved by ComReg in the most efficient and effective manner. Each stage of the process is described from the submitting of a request for dispute resolution to a final decision by ComReg. To assist understanding ComReg illustrates the process in a diagram. ComReg also outlines how its new procedures will meet the requirements of transparency under the new Framework.

Section 6 provides details on how comments may be provided. 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 four and a half years.

Responses to this consultation will be accepted up to 11 July 2003 and a Response to Consultation will be issued in July 2003.

---

<sup>4</sup> ComReg Document 03/26 – Protecting users in a Developing Communications Market

## 2 Introduction

All providers of networks and services and associated facilities should be aware that the legal basis for the provision of electronic communications networks and services and associated facilities will change throughout the European Union from 25 July 2003. ComReg and its predecessor have published a number of papers which outline the new framework required by the set of Directives adopted by the European Union in April 2002. Appendix D provides a listing of the documents published to date along with other relevant links.

One of the changes is the amendment of the current dispute resolution procedures contained in ODTR Decision 11/99. A new set of procedures is proposed to conform with Articles 20 and 21 of the Framework Directive as well as the relevant draft transposing Regulations. For the avoidance of doubt when making a determination under the draft transposing Regulations ComReg must have regard to section 12 of the Communications Regulation Act 2002<sup>5</sup>.

ComReg notes that the dispute procedures under consideration in this paper constitute only a part of how it deals with issues raised by the industry. Many issues are dealt with in other ways including resolution through informal contacts or negotiation, developed in industry fora, become the subject of a ComReg own initiative investigation, consultations or through alternative dispute mechanisms.

Full and final implementation of regulatory measures needs to be informed by national legislation which will transpose the provisions of the Directives into national law. Regulations for this purpose are in the course of preparation by the Minister for Communications, Marine and Natural Resources. The Minister held a public consultation between December 2002 and February 2003 on the draft text for regulations. Accordingly, the measures indicated in this paper are subject to modification in the light of the final version of the regulations as made by the Minister. This paper outlines ComReg's revised procedures for managing inter-operator disputes. ComReg intends to issue a further guidance on disputes later in the year.

*This document is without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally. Any views expressed are not binding and are without prejudice to the final form and content of any decisions which ComReg may make.*

---

<sup>5</sup> Number 20 of 2002

### **3 Background**

#### **3.1 Current practice**

ComReg's current procedures for resolving disputes were established following public consultation in 1999.<sup>6</sup> Parties may bring disputes in a number of areas to ComReg, and a common procedure is applied to their resolution.

The existing Dispute Procedures document includes a timetable outlining the steps which will be taken to resolve the dispute, and the time allocated for each step. The document also includes a standard format to be used by the party bringing the dispute. The format provides a structure for the types of information which will be required to resolve the dispute. ComReg's procedures also allow for disputes to be resolved by alternative mechanisms, such as mediation.

#### **3.2 New Framework**

The key themes in the new Framework Directive and the draft transposing regulations are:

- Time to resolve a dispute is significantly shorter. Under the old system, ComReg was obliged to take steps to resolve a dispute within 6 months. The new system requires that disputes are resolved within a maximum of 4 months, unless circumstances are exceptional.
- Alternative mechanisms may offer more effective means of resolving disputes, and ComReg should consider alternative means of dispute resolution. This applies to disputes involving organisations in Ireland, and to disputes with undertakings in other member states.
- The Parties who will be entitled to lodge a dispute with ComReg are undertakings engaged in the provision of electronic communication services or networks or associated facilities.
- On the resolution of a dispute, ComReg is obliged to publish its decision, and to explain the decision fully to the parties to the dispute

ComReg must ensure that its procedures for dealing with disputes are in line with the Framework Directive's provisions in each of these four areas.

---

<sup>6</sup> Dispute Resolution Procedures, Decision Notice D11/99, Sept 1999

## **4 Scope of dispute resolution**

### **4.1 What is a dispute?**

The changes to current procedures which are necessary to comply with the Framework Directive and the Draft transposing Regulations require a formal approach to dispute resolution as a means of ensuring that the timescales can be met. ComReg proposes to introduce a clearer definition of the characteristics of a dispute under the terms of the Framework Directive and the Draft transposing Regulations.

ComReg believes that for an issue to be accepted as a dispute, and for it to be resolved under the new Dispute Resolution Procedures, the issue must include the following characteristics:

- The dispute should arise between undertakings in connection with obligations under the Directives and the Regulations, so that the party initiating the dispute has a grievance which is based on the failure of the other party to comply with its obligations.
- The dispute should be between undertakings engaged in the provision of electronic communications networks or services or associated facilities.

### **4.2 Investigating a dispute**

In order to comply with the new targets for length of time to resolve a dispute, ComReg proposes that there should be clearer boundaries on the subject matter and procedures for disputes. This means that ComReg and industry must work to improve the preparation of cases where there is dispute.

ComReg proposes that, for a dispute to be accepted, a number of conditions should be met:

- ComReg is satisfied that the matter notified is best resolved within the dispute resolution procedures;
- The scope of the dispute should be clear;
- There should be a statement indicating the obligation to which the dispute relates and the legal basis for ComReg intervention;
- The party bringing the dispute should indicate its preferred remedy;
- The impact of a failure to resolve the dispute on the affected party should be described;

- By the time a dispute is brought to ComReg, there should have been serious attempts to resolve the issue bilaterally. The Dispute Procedure should not be used as a replacement for commercial negotiation.
- The submission of the dispute should include documentary evidence [including evidence of attempts by the parties to resolve the issue bilaterally];

Please see Appendix C which contains a summary of the required information necessary to submit a dispute for ComReg's resolution.

**Q. 1. Do you agree with ComReg's proposed criteria for accepting a dispute submission? If not, please give a detailed explanation.**

#### **4.3 Some Implications of the New Procedures**

Once a dispute is accepted by ComReg, the scope of the dispute will not subsequently be modified unless all parties agree. From the date of notification of a dispute in accordance with the requirements in Appendix C, ComReg will endeavour to resolve the dispute within the four month maximum timeframe.

ComReg would like to draw operators' attention to the implication of the reduced timeframe of four months for dispute resolution. In order to meet this timeframe, ComReg wishes to highlight the need for the industry's co-operation in achieving resolution of disputes within this timeframe. Therefore where a party to a dispute fails to provide information or a response within the requested timeframe, ComReg will not grant an extension for this party's submission. Furthermore, ComReg will base its determination [Draft/ Final] on the best information available to ComReg and will not accept or consider late submissions. It is therefore essential that all submissions are timely, detailed and address all aspects of the issue under consideration.

Operators should note that decisions made by ComReg under the Dispute Resolution Procedures are binding. This is without prejudice to the parties' rights of appeal.

#### **4.4 Alternative Mechanisms**

ComReg currently offers mediation as an alternative to the dispute process. ComReg recognises that in some circumstances a flexible and informal approach may be a more appropriate method to solve the dispute. Mediation is appropriate only when the parties agree that it is the chosen approach. At present, ComReg



appoints an independent external mediator or a ComReg official within ten days of agreement to mediation by both parties. Terms of reference are agreed by the parties. The cost of mediation would currently be borne by ComReg and would be recouped through the levy.

ComReg proposes to continue to offer this facility as an alternative to the dispute procedure outlined in Section 5. This facility may also be offered in the case of a cross-border dispute, where NRAs jointly decide that alternative mechanisms may better contribute to resolving the dispute in a timely manner.

In addition to mediation ComReg will also continue to deal with issues referred to it by complainants in other ways including resolution through: informal contacts or negotiation; discussion and negotiation at industry fora; ComReg own initiative investigation and public consultations. ComReg will continue to choose the most appropriate method for resolving the issue on a case by case basis.

**Q. 2. Do you agree with ComReg's proposal for alternative dispute resolution? If not please give a detailed reply.**

**Q. 3. Are there other alternative dispute resolution mechanisms which would be useful?**

## 5 Resolution procedures

When ComReg has been notified of a dispute in accordance with the requirements in Appendix C, it should be resolved within a maximum of four months, except in exceptional circumstances. In order to meet this shortened timeframe, ComReg proposes to simplify the procedures for dealing with a dispute, and to shorten the times associated with some elements of the process. ComReg is aware that it is in the best interests of the market to resolve disputes as quickly as possible.

The proposed steps for the dispute resolution procedure and the associated timings are as follows.

### Step 1:

ComReg receives written notice of dispute containing the required information outlined in Appendix C. ComReg will determine whether the notice conforms to the definition of a dispute, will assess the adequacy of information provided, and the legal basis for the dispute.

The four month maximum timeframe will start from the date of notification of a dispute which satisfies the requirements outlined in Appendix C.

### Step 2:

ComReg formally notifies the respondent of the complaint and a copy of the dispute submission will be sent to the respondent. ComReg will inform the respondent when the 4 month clock began. The respondent will be allowed to give submissions within seven calendar days on whether an investigation under the dispute procedures should be undertaken by ComReg.<sup>7</sup>

If necessary, ComReg will meet with the complainant to discuss the dispute submission (and also, where deemed appropriate, ComReg will arrange to meet the respondent to the dispute).

Having regard to information from the parties to the dispute, ComReg may opt for one of two options:

(a) 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 inform the parties of its decision not to investigate the dispute as soon as possible, including the reasons for such a decision.

If, four months from the date of a decision not to investigate the dispute is 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.

---

<sup>7</sup> It should be noted that that this is different to the right to give submissions on the grounds of the complaint. The respondent will have opportunity to do this at Step 3.

(b) Where ComReg decides to use the dispute resolution procedures, it will inform the parties of such a decision as soon as possible and identify the ComReg contact for the dispute. The scope of the dispute will not subsequently be modified, unless all parties agree. In addition, ComReg will publish the scope of the dispute on its website.

**Step 3:**

From the date of ComReg's communication of its decision to use the dispute resolution procedures in Step 2 (b), the respondent will in general be required to respond within fourteen calendar days.

**Step 4:**

Following 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
- (iii) Decide that the issue, in part or in entirety, may be withdrawn from the dispute procedures and would be more effectively dealt with via other mechanisms

**Step 5:**

ComReg presents a draft determination. Depending on the subject of the dispute and its impact on the wider market, this may be published on its website, having regard to the requirements of business confidentiality, or may be sent to the parties to the dispute only.

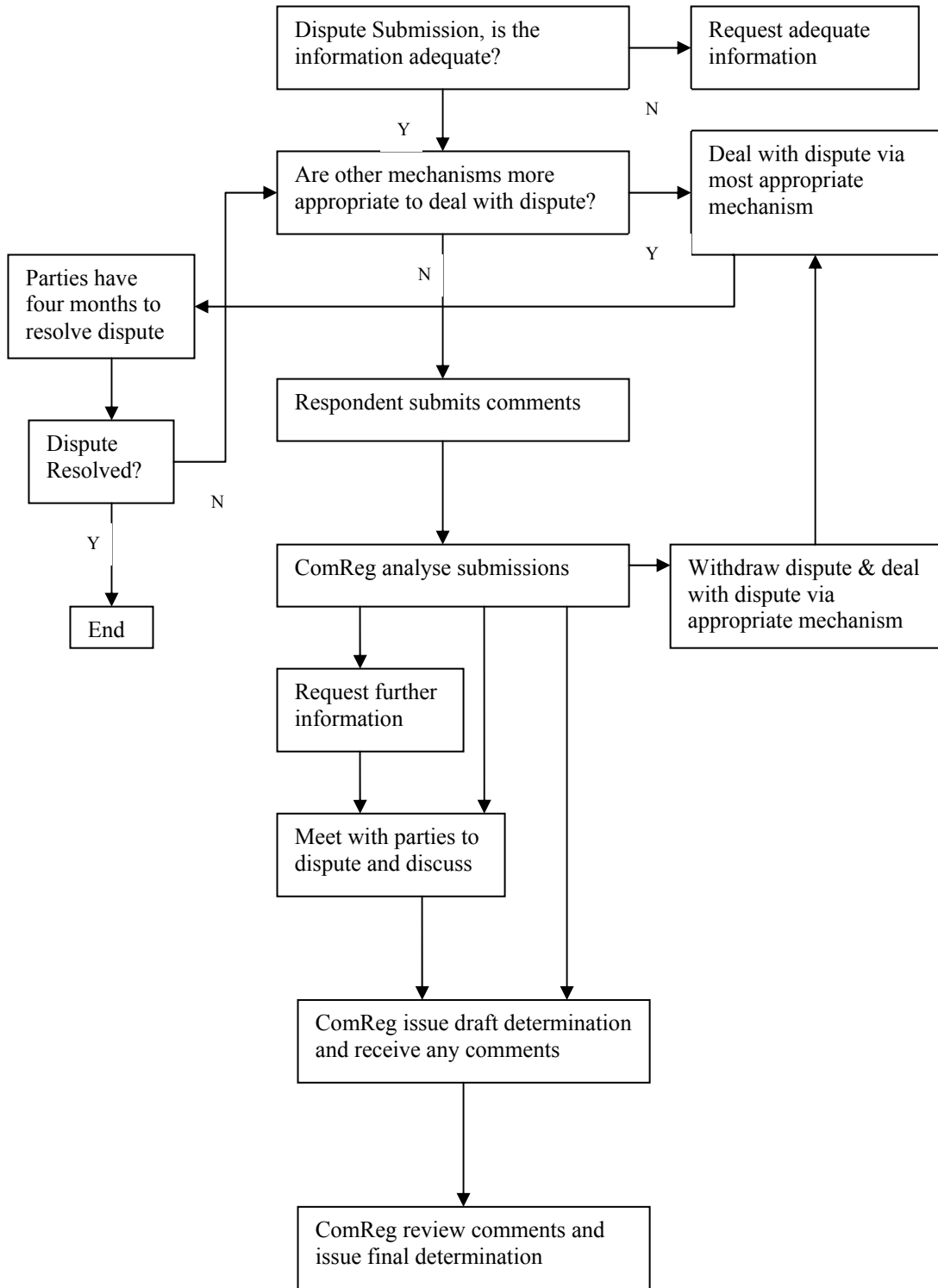
In general, parties to the dispute and/or the wider industry will have fourteen calendar days to submit comments on the draft determination

**Step 6:**

Following further analysis of all submissions and comments ComReg publishes a final determination. ComReg will publish the final determination on its website, having regard to the requirements of business confidentiality. This determination will include an explanation of the rationale for ComReg's decision. A copy of this final determination will also be sent to the parties to the dispute.

The determination shall not preclude either party from bringing an action before the courts.

**Procedure Flowchart**



### **Additional Points on the Procedures**

Where ComReg becomes aware that the information supplied by complainants in accordance with Appendix C is incomplete, the four month clock will be reset and the procedures will begin again once ComReg has been supplied with all the required information.

During the dispute process all ComReg requests for information will have a timeline for response by the parties to the dispute. The timeline (although generally fourteen calendar days as indicated above) will depend on the nature of the dispute and the information requested. This is necessary to ensure that the four month timeframe to resolve the dispute is met.

Where ComReg believes it will assist or accelerate the resolution of the dispute, each party's submissions to the dispute may be sent by ComReg to the other party for comment.

**Q. 4. Do you agree with the procedures proposed? If you do not, please give reasons.**

### **Internal Appeal Provision**

Comreg proposes to do away with the internal appeal provision, which exists in the current procedures. This provision allowed parties to a dispute to request an internal ComReg review of a Final Determination.

ComReg believes that this element of the existing procedures was not as effective as it was envisaged and seeks industry's views on whether a provision for appealing a Final Determination internally in ComReg should be included in the proposed procedures.

**Q. 5. Do you think there should be a provision for requesting an internal ComReg review of a Final Determination? Please give reasons for your answer.**

### **Cross Border Disputes**

In the case of a cross-border dispute, ComReg shall co-ordinate its response with other NRAs involved. The Framework Directive does not propose a timescale for cross-border disputes. However, ComReg would expect to follow the process described above, and would communicate with the complainant within two weeks of receiving the formal notice of dispute. If the dispute has been accepted, this communication will include a proposed timetable for resolving the dispute, taking

into account co-ordination with other NRAs. ComReg will take note of all IRG and ERG developments in this area.

### **5.1 Ensuring transparency**

In order to meet Framework Directive requirements on transparency, ComReg proposes to:

- Publish the scope of any dispute on website having regard to the requirements of business confidentiality.
- Publish the outcome of the resolution of the dispute. ComReg's determination will be published on its website having regard to business confidentiality.
- ComReg's reasoning for its decision will be outlined in this determination.

ComReg expects to go further than the statutory minimum in making the whole process of dealing with disputes more transparent. The publication of disputes and their resolution on the website will allow more timely reporting, and will also allow any interested party to comment on the scope of the dispute at Step 2 (b).

**Q. 6. Do you agree with ComReg's proposals regarding transparency? If not, please give reasons.**

## 6 Submitting Comments

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.

The consultation period will run from 20 June 2003 to 11 July 2003 during which the Commission welcomes written comments on any of the issues raised in this paper. Please note that this three week period is shorter than the standard ComReg timeframe of four weeks. The rationale for a shorter consultation period is to have disputes procedures in place as soon as possible in light of the implementation of the new regulatory framework.

Having analysed and considered the comments received, ComReg will review the dispute resolution procedures and publish a report in July 2003 on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices.

**Please note** ComReg will publish a summary of all submissions in the Response to Consultation, subject to confidentiality.

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

## Appendix A – Legislation

### Framework Directive<sup>8</sup>

#### 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.

3. The national regulatory authorities shall contribute to the development of the internal market by inter alia:

---

<sup>8</sup> 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



- (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 decision 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 decision 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 decisions 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 decision 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.

**Draft of European Communities (Electronic Communications) (Framework) Regulations, 2003**

Regulation 20

Dispute resolution between undertakings

20. (1) In the event of a dispute arising between undertakings in connection with obligations under the Directive, the Specific Directives, these Regulations or the Specific Regulations, ComReg 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 ComReg 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) ComReg 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.
- (3) Where ComReg decides not to initiate an investigation under paragraph (2), it shall inform the parties of such decision as soon as possible thereafter.
- (4) If, four 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, ComReg shall initiate an investigation and make a determination in accordance with paragraph (1).
- (5) In making a determination under this Regulation ComReg shall have regard to the provisions of section 12 of the Act of 2002.
- (6) An undertaking to which a determination under this Regulation applies shall comply with the provisions of the determination applicable to it.
- (7) An undertaking which fails to comply with a determination under this regulation shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding €3000.
- (8) ComReg shall issue a determination, together with a statement of the reasons on which it is based, to the undertakings concerned under this regulation, in writing, in any of the following ways –
  - (a) by delivering it to the undertaking,
  - (b) by leaving it at the address at which the undertaking carries on business,
  - (c) by sending it by prepaid registered post to the address at which the undertaking carries on business, or
  - (d) in any case where ComReg considers that the immediate giving of the determination is required, by sending it, by means of a facsimile

machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of notices has been furnished by the person, that address, provided that the sender's facsimile machine generates a message confirming successful transmission of the total number of pages of the determination or the sender's facility for the reception of electronic mail generates a message confirming receipt of the electronic mail.

- (9) For the purposes of paragraph (8), a company within the meaning of the Companies Acts, 1963 to 2001 shall be deemed to be carrying on business at its registered office and every other body corporate and every unincorporated body shall be deemed to be carrying on business at its principal office or place of business.
- (10) Any obligations imposed on an undertaking by ComReg in resolving a dispute shall respect the provisions of the Directive and the Specific Directives.
- (11) ComReg shall publish in a newspaper circulating in the State notice of a determination under this Regulation and the notice shall indicate where copies of or information regarding the determination may be obtained.
- (12) The procedure referred to in this Regulation shall not preclude either party from bringing an action before the courts.

## Regulation 21

### Resolution of Cross-Border Disputes

21. (1) In the event of a dispute arising under these Regulations, the Specific Regulations, the Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of ComReg and a national regulatory authority from another Member State, the procedure set out in *paragraphs (2), (3) and (4)* shall be applicable.
- (2) Any party may refer such a dispute to ComReg or to the other national regulatory authority concerned. ComReg and the said other national regulatory authority shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8 of the Directive. Where ComReg makes a determination for the purposes of resolving a dispute under this Regulation, the provisions of paragraphs (5) to (11) inclusive of Regulation 20 shall apply
- (3) The C.C.R may enter into arrangements with other national regulatory authorities whereby they may jointly 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 of the Directive. Such arrangements shall include provision for ComReg or the other national regulatory authorities to inform the parties without delay where they agree to jointly decline to resolve the dispute. 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, ComReg and the other national regulatory authority shall

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

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

### **Communications Regulation Act 2002<sup>9</sup>**

**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,
- (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,

---

<sup>9</sup> No 20 of 2002

- (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.

## Appendix B – Consultation Questions

### List of Questions

- Q. 1. Do you agree with ComReg’s proposed criteria for accepting a dispute submission? If not, please give a detailed explanation..... 7
- Q. 2. Do you agree with ComReg’s proposal for alternative dispute resolution? If not please give a detailed reply..... 8
- Q. 3. Are there other alternative dispute resolution mechanisms which would be useful? ..... 8
- Q. 4. Do you agree with the procedures proposed? If you do not, please give reasons..... 12
- Q. 5. Do you think there should be a provision for requesting an internal ComReg review of a Final Determination? Please give reasons for your answer.  
12
- Q. 6. Do you agree with ComReg’s proposals regarding transparency? If not, please give reasons..... 13



## Appendix C – Required Information for submitting a dispute

Type of Information	Information Required
Contact details	Both parties
Scope of the dispute	Detailed description of the dispute. This should include product/service descriptions where relevant.
Basis for the dispute	Specific legislative background to the dispute, with reference to legal/contractual clauses where appropriate
Attempts to resolve the dispute	Evidence should be provided of attempts to resolve the dispute. This should include notice of whether the dispute is or has been before any other body.
Impact of the dispute	This should cover the impact which the disputed issue has on the complainant's business. Where possible, this should include quantification, and it would be helpful to provide documentary evidence.
Proposed remedy	The outcome desired by complainant.

Information should be presented in the knowledge that unless it is clearly marked as confidential, it will be passed to the other party in the dispute.

All requests for dispute resolution should be sent to the following central point within ComReg:

**Head of Market Management**

Market Operations  
 ComReg  
 Irish Life Centre  
 Abbey Court  
 Lower Abbey St  
 Dublin1

Or Via Email to XXXXXXXXXXXXXXXX

Or Via Fax to +353 1 8049680

## Appendix D – Links to relevant documents

### Documents published by ComReg/ODTR

ODTR 02/22 – Future Authorisations - Consultation Paper	<a href="http://www.comreg.ie/_fileupload/publications/odtr0222.pdf">http://www.comreg.ie/_fileupload/publications/odtr0222.pdf</a>
ODTR 02/51 – Future Authorisations – Response to Consultation	<a href="http://www.comreg.ie/_fileupload/publications/odtr0251.pdf">http://www.comreg.ie/_fileupload/publications/odtr0251.pdf</a>
ODTR 02/69R - Access and Interconnection Directive 2002/19/EC - Briefing Note	<a href="http://www.comreg.ie/_fileupload/publications/odtr0269.pdf">http://www.comreg.ie/_fileupload/publications/odtr0269.pdf</a>
ODTR 02/72 – General Authorisation Conditions – Consultation Paper	<a href="http://www.comreg.ie/_fileupload/publications/odtr0272.pdf">http://www.comreg.ie/_fileupload/publications/odtr0272.pdf</a>
ODTR 02/102 – Charging Principles for Authorisations and Rights of Use – Consultation Paper	<a href="http://www.comreg.ie/_fileupload/publications/odtr02102.pdf">http://www.comreg.ie/_fileupload/publications/odtr02102.pdf</a> <a href="http://www.comreg.ie/_fileupload/publications/odtr02102a.pdf">http://www.comreg.ie/_fileupload/publications/odtr02102a.pdf</a>
ComReg 02/114 – General Authorisation Conditions - Response to Consultation	<a href="http://www.comreg.ie/_fileupload/publications/ComReg02114.pdf">http://www.comreg.ie/_fileupload/publications/ComReg02114.pdf</a>
ComReg 02/115 - Rights of Use for Radio Frequencies – Consultation Paper	<a href="http://www.comreg.ie/_fileupload/publications/ComReg02115.pdf">http://www.comreg.ie/_fileupload/publications/ComReg02115.pdf</a>
ComReg 02/116 - The Future Framework for the Regulation of Universal Service in the Irish Market – Consultation Paper	<a href="http://www.comreg.ie/_fileupload/publications/ComReg02116.pdf">http://www.comreg.ie/_fileupload/publications/ComReg02116.pdf</a>
ComReg 02/117 - Market analysis and data collection for market reviews of electronic communications networks – Information Notice	<a href="http://www.comreg.ie/_fileupload/publications/ComReg02117.pdf">http://www.comreg.ie/_fileupload/publications/ComReg02117.pdf</a>
ComReg 03/05 - Numbering Issues – Information Notice	<a href="http://www.comreg.ie/_fileupload/publications/comreg0305.pdf">http://www.comreg.ie/_fileupload/publications/comreg0305.pdf</a>
ComReg 03/12 - ComReg submission in connection with Department of Communications, Marine and Natural Resources consultation on draft legislation – Information Notice	<a href="http://www.comreg.ie/_fileupload/publications/ComReg0312.pdf">http://www.comreg.ie/_fileupload/publications/ComReg0312.pdf</a>
ComReg 03/31 - ComReg Consultation Procedures – Information Notice	<a href="http://www.comreg.ie/_fileupload/publications/ComReg0331.pdf">http://www.comreg.ie/_fileupload/publications/ComReg0331.pdf</a>
ComReg 03/39 – Rights of Use for Radio Frequencies – Response to Consultation	<a href="http://www.comreg.ie/_fileupload/publications/ComReg0339.pdf">http://www.comreg.ie/_fileupload/publications/ComReg0339.pdf</a>

ComReg 03/46 - Fees for Authorisations and Rights of Use – Response to Consultation	<a href="http://www.comreg.ie/_fileupload/publications/ComReg0346.pdf">http://www.comreg.ie/_fileupload/publications/ComReg0346.pdf</a>
ComReg 03/61 -Future Regulation of Electronic Communications networks and Services- Arrangements for General Authorisations	<a href="http://www.comreg.ie/_fileupload/publications/ComReg0361.pdf">http://www.comreg.ie/_fileupload/publications/ComReg0361.pdf</a>
ComReg 03/62 -Future Regulation of Electronic Communications networks and Services- entitlement to interconnection under the Access Directive	<a href="http://www.comreg.ie/_fileupload/publications/ComReg0362.pdf">http://www.comreg.ie/_fileupload/publications/ComReg0362.pdf</a>

**Documents published by European Commission**

Framework Directive	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00330050.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00330050.pdf</a>
Authorisation Directive	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00210032.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00210032.pdf</a>
Universal Service Directive	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00510077.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00510077.pdf</a>
Access Directive	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00070020.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_10820020424en00070020.pdf</a>
Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic communications networks and services	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/c_16520020711en00060031.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/c_16520020711en00060031.pdf</a>
Directive on privacy and electronic communications	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_20120020731en00370047.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/new_rf/documents/l_20120020731en00370047.pdf</a>
Commission Recommendation On Relevant Product and Service Markets within the electronic communications sector	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/publicconsult/documents/relevant_markets/l_11420030508en00450049.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/publicconsult/documents/relevant_markets/l_11420030508en00450049.pdf</a>
Explanatory memorandum on Commission Recommendation	<a href="http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/explanmemoen.pdf">http://europa.eu.int/information_society/topics/telecoms/regulatory/maindocs/documents/explanmemoen.pdf</a>

**Documents published by Department of Communications, Marine and Natural Resources**

Guidance Notes on the Transposition into Irish Law of the European Directives on Electronic Communications	<a href="http://www.dcmnr.gov.ie/files/Comms_Reg_Notes_On_Reg_Pack.doc">http://www.dcmnr.gov.ie/files/Comms_Reg_Notes_On_Reg_Pack.doc</a>
--	---

## Consultation Paper on Dispute Resolution Procedures

SI 80 of 2003 European Communities (Electronic Communications Networks and Services) (Market Definition and Analysis) Regulations 2003	<a href="http://www.dcmnr.gov.ie/files/Comms_Reg_SI_80_2003.doc">http://www.dcmnr.gov.ie/files/Comms_Reg_SI_80_2003.doc</a>
Draft Framework Regulations	<a href="http://www.dcmnr.gov.ie/files/cmFramework.doc">http://www.dcmnr.gov.ie/files/cmFramework.doc</a>
Draft Authorisation Regulations	<a href="http://www.dcmnr.gov.ie/files/cmAuthorisation.doc">http://www.dcmnr.gov.ie/files/cmAuthorisation.doc</a>
Draft Universal Service Regulations	<a href="http://www.dcmnr.gov.ie/files/cmUSO.doc">http://www.dcmnr.gov.ie/files/cmUSO.doc</a>
Draft Access Regulations	<a href="http://www.dcmnr.gov.ie/files/cmAccess.doc">http://www.dcmnr.gov.ie/files/cmAccess.doc</a>