



Commission for
Communications Regulation

Response to Consultation and Final Determination regarding the Emergency Call Answering Service Call Handling Fee Review 2016/2017

Response to Consultation

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1 Introduction

1. The Communications Regulation Act, 2002 as amended ("the Act") sets out ComReg's statutory role in respect of the Emergency Call Answering Service ("ECAS") and, in particular, its functions relating to the review of the maximum permitted call handling fee ("CHF") that the ECAS provider is allowed to charge for handling emergency calls.¹
2. This Response to Consultation and Determination is published to make the review process appropriately transparent and to summarise ComReg's consideration of stakeholder responses to the Consultation and draft Determination² ("the Consultation"). In addition, this Response to Consultation and Determination contains ComReg's determination on the maximum CHF that the ECAS provider is allowed to charge for handling emergency calls for the period 12 February 2016 to 11 February 2017.
3. ComReg received two responses to the Consultation from:
 - Eir Group ("Eir"); and
 - Hutchinson 3G Ireland ("H3GI").
4. ComReg has reviewed these submissions and given them due consideration in the conduct of its statutory review of the CHF.
5. It is important to note that in discharging its functions under the Act, ComReg is also acting in the context of a contract (known as the Concession Agreement ("the CA")) which was entered into by the Department for Communications, Energy and Natural Resources ("DCENR") and the ECAS provider, BT Communications (Ireland) Limited ("BT"). ComReg is not a party to the CA and the terms of same are not within ComReg's remit. Therefore, in most instances, ComReg has no discretion in relation to the treatment of certain cost categories. Nor is it appropriate for ComReg to comment on the specifications or the requirements of the ECAS detailed in the CA. This context was acknowledged by respondents to the Consultation.

¹ See section 58D of the Act, as inserted by section 16 of the Communications Regulation (Amendment) Act 2007.

² ComReg Document No 15/113.

6. ComReg has reviewed the costs incurred by the ECAS provider in its implementation of the CA, including commercial arrangements between the ECAS provider and third party suppliers. As noted in the Consultation, ComReg did not propose to disallow any costs of the ECAS provider or to require any amendments to its operational procedures. ComReg has, when appropriate, disallowed costs and required operational recommendations in previous reasonable costs reviews. ComReg is satisfied that the ECAS provider has made these previously recommended changes, and continues to implement them, in the period of the current review. ComReg remains of the view, as proposed in the Consultation, that the costs incurred by the ECAS provider are reasonable and that its operational procedures are appropriate.
7. The draft Determination contained in the Consultation proposed a maximum permitted CHF of €3.82 based on a forecast decline of 3.5% to the end of the CA in July 2017. In the present Determination, ComReg considers a forecast annualised rate of decline of 3.5% remains appropriate.
- 8. Having considered this information, ComReg now concludes that a maximum permitted CHF of €3.82 should apply for the period 12 February 2016 to 11 February 2017.**
9. If actual call volumes for the period to February 2017 are significantly less than those forecast in this document, a further under-recovery will arise that would have to be recovered over the remaining life of the CA (five months to July 2017) and would likely cause an increase to the CHF. In this context, amongst others, ComReg is mindful of Section 58D(3)(a) of the Act.
10. The CHF, as determined by ComReg, has regard to the reasonable costs that the ECAS provider has incurred and can be expected to incur in delivering the contracted service, and in handling the expected emergency call volume.
11. Some respondents to the Consultation wished to see the precise value of the reasonable costs incurred by BT in providing the ECAS service. However, ComReg, as in previous reviews, has redacted commercially sensitive and confidential information from the review in order to respect the legitimate interests of the ECAS provider and its third-party suppliers. ComReg is satisfied that these redactions are appropriate, but that, notwithstanding the redactions, sufficient detail is provided for stakeholders to properly understand the basis for the Determination on the CHF. The redactions are also made in accordance with ComReg's Guidelines on the treatment of confidential information (ComReg Document No. 05/24).

2 Executive Summary

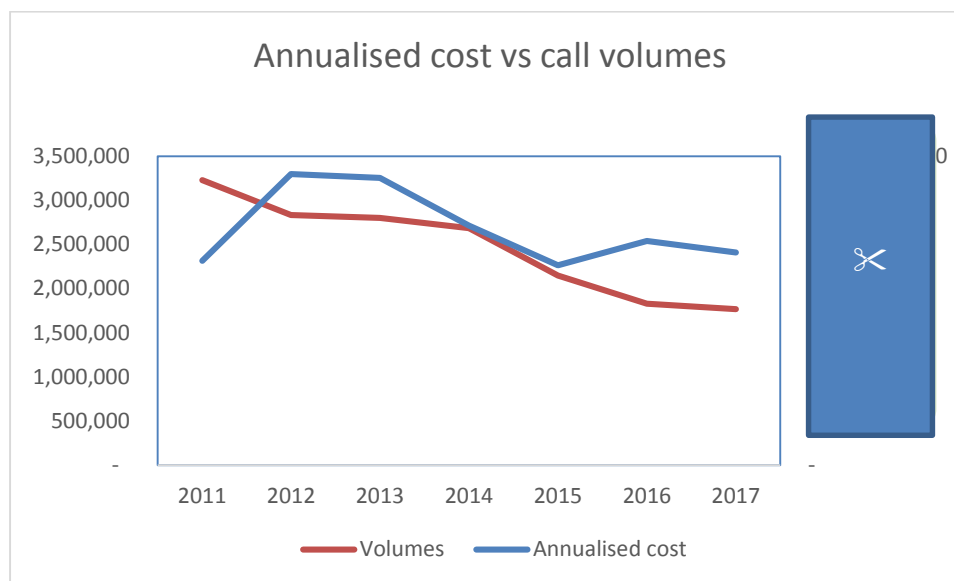
12. The ECAS receives emergency calls made to 112 or 999 through dedicated Public Safety Answering Points ("PSAP") and forwards these calls, as appropriate, to the relevant Emergency Service on the basis of the service required and the location of the incident.
13. BT provides the ECAS on a 24-hour, 365-day basis, using three PSAPs located in Ballyshannon, County Donegal, Navan, County Meath, and Eastpoint, Dublin 3. The three PSAPs act as one "virtual" centre, with emergency calls being handled on a "next available agent" basis.
14. Under section 58D of the Act, ComReg must conduct a review of the maximum permitted CHF that the ECAS operator can charge for handling emergency calls, and as soon as practicable after conducting that review, ComReg has to determine the maximum CHF that the ECAS operator can charge for handling emergency calls on an annual basis. This Determination is made under section 58D of the Act and pursuant to the Consultation on this matter held during October/November 2015.
15. In making this Determination, ComReg has fully taken into account the responses to the Consultation and the recommendations made by its consultants, Analysys Mason.
16. ComReg concluded that the costs incurred by the ECAS provider were reasonable and that no adjustments were necessary to its operating procedures.
17. In the Consultation, ComReg asked the views of respondents to four questions. These related to:
 1. Possible remediation works;
 2. Forecast rate of decline in call volumes;
 3. The draft determination; and
 4. Any other matters respondents wished to raise.
18. The main points raised by respondents related to:
 - The treatment of fixed costs; and
 - The forecast rate of decline in call volumes.

19. In this Response to Consultation document, ComReg has detailed its final conclusions in respect of the specific questions asked in the Consultation. Other points that were made by the respondents that are not directly related to the Consultation questions are discussed in Annex 1.
20. ComReg notes that many of these related issues concern operational, engineering or performance matters; or relate to more fundamental policy issues. ComReg considers however that these are outside of the scope of this review (which is focused on the reasonable costs associated with the CHF).
21. Given that ComReg considers that the cost base is now relatively stable, the main factor in determining the CHF for 2016/2017 is the estimation of call volumes. In recent years there have been two notable movements in costs:
- The two year extension to the CA by the DCENR which reduced the annual depreciation charge; and
 - The ongoing under-recovery of costs caused by the ever reducing level of call volumes.
22. The day-to-day operational costs have remained largely unchanged, even though a steady decline in call volumes implies that the number of CSR hours requested by the ECAS from the specialist call-centre operator has been decreasing. However, from a health and safety perspective it is imperative to maintain a certain minimum level of staff, the rate of decline in hours requested is not in direct proportion to the decline in call volumes.
23. There have been a number of significant movements in call volumes since the system went live in 2010:
- After an initial period of significant decline from July 2010 (when the ECAS provider commenced live operations) call volumes declined at a gentler rate.³
 - There was a further accelerated decline in 2013/2014 brought about by changes in consumer handsets⁴;
 - Call volumes appear to have stabilised and this is expected to continue to the end of the CA.

³ See ComReg Document No. 14/17 - "Emergency Call Answering Service ('ECAS'): Volume of emergency calls January 2013 -December 2013."

⁴ See ComReg Document No. 14/98 – "Emergency Call Answering Service ('ECAS'): Volume of emergency calls January 2014 –June 2014."

24. The following chart compares the annual cost of the ECAS (including prior period under-recoveries) vis-à-vis the annual call volumes:



25. In the Consultation ComReg was of the preliminary view that an annual rate of decline in call volumes of 3.5% would be appropriate. Following a review of the responses to the consultation, ComReg remains of the view that a rate of decline of 3.5% remains appropriate. This reflects:

- A rate of decline for the last twelve months of 13.1% which is greater than the 11.7% forecast in the 2015/2016 review; and
- The analysis of call types that indicates that call volumes should stabilise from 2016 onwards and decline at a rate less than 11.7% as previously forecast.

26. The percentage movement in half yearly call volumes for the last three years has been as follows:

Period	2012/2013	2013/2014	2014/2015
January to June	<3.3%>	<16.4%>	<17.1%>
July to December	<5.1%>	<23.3%>	<9.2%>
Total	<4.2%>	<19.9%>	<13.1%>

⁵ ComReg Information Notice 14/17 – Volumes January to December 2013

⁶ ComReg Information Notice 15/05 – Volumes January to December 2014

27. Overall, there has been a reduction of c. 60% in call volumes between the DCENR issuing its invitation to tender for the current CA and current predicted call volumes of c. 1.8m per annum.
28. ComReg considers that the ECAS has a high element of fixed costs (it was specified to handle 4.8m calls per annum) a point further described in Annex 1. Because of this, a decline in call volumes may not lead to a corresponding fall in costs. For the current review, the level of fixed costs has remained relatively constant, while call volumes have declined at a greater rate than predicted.
29. Having considered all of these points and the responses to the Consultation, ComReg now concludes that a maximum permitted CHF of €3.82 should apply for the period 12 February 2016 to the end of the CA.

3 Consultation responses

30. As outlined in the Consultation, ComReg identified three principal focus items for its review and invited respondents to address them. These were:

- I. Section 3 - Reasonable costs.
- II. Section 4 – Volumes.
- III. Section 5 – Draft determination.

31. Section 2 provided further background information and context with respect to this year's Consultation.

32. In addition to this material, a further series annexes were dedicated to the following:

- I. Annex 1 – a list of the ECAS quality of service parameters.
- II. Annex 2 – How ComReg intended to conduct its Reasonable Cost review.
- III. Annex 3 – The Relevant cost standard used to determine Reasonable Costs.
- IV. Annex 4 – A detailed analysis of the underlying cost categories.

3.1 Reasonable costs

ComReg's preliminary views

33. In Section 3 of the Consultation, ComReg described, at a high level, the various costs which are charged by the ECAS provider in running the ECAS operation.⁷ Within each category, ComReg provided an overview of how the cost is derived and whether or not ComReg considered the cost to be reasonable. Due to the commercial sensitivity and confidential nature of the data relating to the ECAS provider and its suppliers, specific monetary values were redacted in the Consultation, where appropriate.

⁷ A more detailed description was contained in Annex 4.

34. In the Consultation, ComReg noted that while there had been some variation in the level of costs incurred (both up and down) there had not been a significant change in the nature/classification of the costs incurred when compared to previous CHF reviews. ComReg further noted that it considered the costs to be reasonable. In Section 3 ComReg noted the following movements:

- Changes in the estimated call volume resulting in a decrease of €X in the CHF;
- An increase in the hourly rate payable to the specialist call-centre company resulting in an increase of €X in the CHF; and
- Some variation in pay and non-pay costs resulting in an increase of €X in the CHF.

3.2 Call Volumes

ComReg's preliminary views

35. In Section 4 of the Consultation, ComReg described how call volumes had evolved and how it expected them to continue evolving to the end of the CA. ComReg noted that, while for the previous period, in ComReg Document No. 15/02, it had predicted a rate of decline of 11.7%, it was of the preliminary view that a rate of decline of 3.5% to the end of the CA was appropriate for the current period.

36. ComReg requested respondents to provide details on any network remediation programme or other relevant initiatives being undertaken by them in the short to medium term (1 to 2 years) which might materially impact the volume of emergency calls presented to the ECAS. Section 4 incorporated Question 1 which stated:

Please outline if you are aware of any network remediation programme or any such initiatives in the short to medium term (1 to 2 years) which may affect the forecasted volume of emergency calls.

37. Also in Section 4 of the Consultation, ComReg requested inputs from respondents on the forecast rate of decline of 3.5%. Respondents were also requested to provide comments on any other matters they considered to be relevant to the CHF review.

38. To this end, Question 2 asked:

Do you agree or disagree with the proposed forecast of the call volume decline rate of 3.5% per annum? Please provide detailed reasoning and calculations for your views.

while Question 3 asked:

Are there any other matters which you wish to raise as part of this review? Please provide detailed reasoning and calculations (where appropriate) for your views.

Main issues raised by respondents in relation to Question 1

39. In relation to Question 1, Eir commented that it did not have specific programmes which might affect the forecasted volumes of emergency calls.

40. H3GI did not comment on any specific remediation programmes.

Main issues raised by respondents in relation to Question 2

41. In relation to Question 2 Eir and H3GI both agreed with ComReg's view that a 3.5% rate of decline was appropriate.

Main issues raised by respondents in relation to Question 3

42. Eir responded to question 3 and considered that with the significant decline in call volumes there should be a reduction in the CHF.

43. H3GI did not respond to question 3.

ComReg's conclusions in relation to Question 1

44. Based on the views of the respondents, ComReg considers that no specific remediation programmes will be undertaken within the short to medium term that will materially affect the forecasted volumes of emergency calls.

ComReg's conclusions in relation to Question 2

45. Based on the views of respondents ComReg considers that the annualised rate of decline will be 3.5%.

ComReg's conclusions in relation to Question 3

46. ComReg notes Eir's comments in relation to its request to reduce the CHF. However, ComReg considers that Eir overestimates ComReg's discretion in relation to the conduct of the annual review and with respect to the setting of the CHF, both of which are carried out pursuant to Regulation 58D of the Act.

3.3 Draft determination

ComReg's preliminary views

47. In Section 5 of the Consultation, ComReg issued its draft determination and requested views on its proposed wording.

48. This section incorporated Question 4 which asked:

Do you agree or disagree with the wording of ComReg's Draft Determination? If not, please state your detailed reasoning.

Main issues raised by respondents in relation to Question 4

49. Neither Eir nor H3GI disagreed with the wording of the draft determination.

ComReg's conclusions in relation to Question 4

50. ComReg considers that no amendments are required to the wording in the determination.

4 Determination

1 Definitions

1.1 In this determination:

- "*the Act*" means the Communications Regulation Act 2002;
- "*the Commission*" means the Commission for Communications Regulation established under Section 6 of the Act;
- "*emergency call*" has the same meaning as in Section 58A of the Act; and
- "*the emergency provider*" means BT Communications Ireland Limited.

2 Determination

2.1 The Commission hereby makes this determination:

- In exercise of its powers under section 58D (2) of the Act;
- Pursuant to its functions at section 10(1)(ca) of the Act;
- Pursuant to the review conducted by it under section 58D (1) of the Act;
- Having had due regard to section 58D (3) of the Act;
- Pursuant to Commission Document No. 15/113;
- Having duly taken account of the responses received to Commission Document No. 15/113; and
- Having regard to the reasoning and analysis conducted by the Commission and set out in this response to consultation and determination.

2.2 The Commission hereby determines that for the period 12 February 2016 to 11 February 2017, the maximum permitted call handling fee (CHF) that the emergency provider may charge to entities who forward emergency calls to it for handling such a call shall be €3.82.

2.3 This determination is effective from the date of the publication of this response to consultation and determination.

Annex 1: General comments

51. H3GI did not raise any other matters in relation to the Consultation.

52. Eir raised a number of points not addressed by the questions posed in the Consultation. Many of the points raised relate to the CA, which, as previously stated, is an agreement between the DCENR and BT. ComReg is not a party to the CA.

53. In discussing the various points raised by respondents, ComReg has addressed them under the following headings:

- Approach.
- Transparency.
- Report of the Comptroller and Auditor General.
- Matters contained in the Concession Agreement.
- Fixed cost base.
- Regulatory Impact Assessment.
- Sinking Fund.
- Hourly Rate.

Approach

54. Eir considered that ComReg was less rigorous in its analysis than in previous years with the number of questions being reduced.

55. ComReg has adopted the same approach in this review as in previous years. It contracted Analysys Mason to assist it with its review. While a separate consultant's report was not considered necessary, ComReg with Analysys Mason reviewed all aspects of the cost structure of the ECAS operation as well as the call volumes. No operational changes were noted in the period under review.

Transparency

56. Eir considered that a comprehensive response to the Consultation was impossible as all pertinent data had been redacted. Nevertheless, Eir was also of the view that ComReg should safeguard *“all data that is genuinely commercially sensitive.”* It also noted that the hourly rate payable to the specialist call-centre company has been redacted in this review when it had been present in previous reviews.
57. ComReg has redacted data where it considers that data to be confidential or commercially sensitive.
58. ComReg considers that it has provided as much information and detail as possible, without disclosing any commercially sensitive information. ComReg’s approach in this regard accords with its general approach, which is not to disclose commercially sensitive information.
59. In relation to the hourly rate payable to the specialist call-centre company in the Consultation ComReg noted that *“[...] with the pending conclusion of the current CA and the forthcoming invitation to tender by the DCENR for the next CA ComReg on the grounds of the commercially sensitive nature of the information has redacted all values.”*

Report of the Comptroller and Auditor General

60. Eir considered that ComReg should have referred to the report of the Comptroller and Auditor General in relation to the operation of the ECAS.
61. ComReg has read the report of the Comptroller and Auditor General. While the report makes observations regarding the ECAS, ComReg, has reviewed the report and considers that these observations are not relevant to the calculation of the CHF.

Matters contained in Concession Agreement

62. Eir stated that it was concerned at what it termed the “apparent leniency” that ComReg showed during its review of the CHF. It referred, in this context, to the inclusion of the third PSAP. It noted that when BT originally bid for the operation of the ECAS it specified two PSAPS in its proposal when call volumes were c. 4.8m per annum but when it took over the running of the ECAS and calls had fallen to 3.8m per annum a third PSAP was added. Eir stated that it did not understand how ComReg sanctioned this third PSAP.

63. Eir also considered that the treatment of costs as fixed discouraged efficiencies amongst operators and that the elimination of invalid emergency calls results in an increase in the CHF.
64. Eir also commented that BT, through its wider operations, should be able to benefit from economies of scale and scope but as it was fully compensated for its costs it had no incentive to pursue these economies.
65. The specification of a third PSAP was a matter contracted between DCENR and BT upon signing the CA. As ComReg is not a party to the CA, it cannot specify the contents of it. However, during ComReg's review of the capital costs of the ECAS ComReg assessed the reasonableness of the costs incurred by the ECAS operator. This included the cost of the third PSAP. It should be noted that while the third PSAP is fully integrated into the ECAS it does not contain the additional IT and engineering features associated with Navan. It occupies limited space in the specialist call-centre company's premises. When CSR hours are being rostered those of Navan and Ballyshannon take precedence.
66. In the Consultation, ComReg noted the relatively stable nature of the fixed cost base of the ECAS. Based on the ECAS structure, as set out in the CA, it is necessary to have a minimum number of CSRs present across the ECAS to handle varying volumes of calls as they are presented during the course of any day. In this context, despite the fact that volumes have fallen by over 50% since the awarding of the CA, it is not possible to reduce CSR hours by a linearly proportionate amount. However, it should be noted that CSR hours have fallen by c. 25% in the same period. The "average speed of answer" is a standard set by the DCENR as part of the CA and the ECAS provider is required to resource to a level which meets this standard. ComReg is not a party to the CA and therefore it cannot amend this standard. Furthermore, ComReg is also of the view that an average speed of answer which is more efficient than that as set out in the CA cannot necessarily be viewed as resulting in over-staffing. Instead the efficient answering of calls provides reassurance to the public that their calls will be answered promptly.
67. BT provides various support staff to the ECAS. These include those dedicated to the ECAS and those who are required to provide support on a regular basis. The number of dedicated staff has been reduced over the life of the CA generating increased efficiencies. The requirement for other support staff has also reduced. However, there remains an annual requirement for both dedicated and other support staff that cannot be reduced below a certain threshold.

68. Many of the costs associated with running the ECAS are also fixed. These include fixed support contracts with suppliers (I.T. and backhaul), rental agreements for premises, and the general day-to-day costs of running a service. They cannot be reduced without having a detrimental effect on the integrity of the ECAS operations. The ECAS provider has also, where possible, used resources available within the wider BT network rather than third party providers thereby making use of economies of scale and scope. For example, it provides part of its own backhaul. During the review the cost of this backhaul was found to be reasonable when compared to prevailing market rates.
69. The treatment of depreciation and amortisation of the capital investment, the Guaranteed Rate of Return and the Sinking Fund are all provided for under the CA. ComReg is not a party to the CA and cannot alter their treatment.

Fixed cost base

70. Eir considers that ComReg's conclusion that costs are essentially fixed in the face of plummeting call volumes to be "unsustainable" and "incomprehensible".
71. Eir considers that the ECAS provider could downscale considerably. It considers that with the greatly depreciated cost base and reducing volumes (call volumes have declined by c. 60% over the course of the CA) that the level of CSR staffing could be reduced.
72. ComReg considers it has addressed the issue of the stable fixed cost base elsewhere in the document⁸.
73. In relation to the capital base, ComReg is of the view that it is not possible to separate this into fixed and variable elements without undermining the integrity of the ECAS solution. ComReg is also of the view that this would cause an unacceptable and unjustifiable level of risk which it likely could not support. Furthermore, the highly integrated capital element was designed on the basis of 4.8m calls. ComReg does not consider that, in the context of the CA, the ECAS provider can be penalised and not compensated for its investment because actual volumes are substantially less than those forecast.
74. The ECAS provider has reduced its CSR requirements as call volumes have declined.

Regulatory Impact Assessment

75. Eir considered that a regulatory impact assessment was necessary.

⁸ Paragrph 65

76. As noted in the Consultation, ComReg is not imposing a regulatory obligation upon any stakeholder. The obligation to pay the CHF is imposed by the Act. The Act also obliges ComReg to conduct the review and to determine the CHF annually. ComReg has no discretion to refuse to do so.

Sinking Fund

77. Eir requested clarity on the fate of any balance held in the Sinking Fund.

78. As noted in the Consultation the use of the sinking fund is the responsibility of the DCENR. Under the CA the purpose of the sinking fund is to address:

- Any exit costs which BT may incur, should it be required to provide a parallel service along the lines of that provided by Eir when it was exiting from the provision of the ECAS service during September and October 2010.
- Any under-recovery which remains outstanding at the end of the CA.

79. As ComReg is not a party to the CA it cannot determine the ultimate use of the Sinking Fund. However, as stated in ComReg Document No. 15/029, ComReg understands from DCENR that the Sinking Fund will be used solely in the context of the ECAS as appropriate; and that the DCENR intends to commence the process to select the next ECAS operator in Q1, 2015.

Hourly Rate

80. Eir commented on the hourly rate payable to the specialist call-centre company and was of the view that as labour rates are stable a rate increase is not justified. On the contrary, Eir considered that downward pressure could be applied to labour rates.

81. In recent months, the ECAS operator has seen a significant change in CSR staffing across all three PSAPs. Many CSRs have left to take up alternative employment. Many of these CSRs had been with the ECAS for many years. With these departures and the introduction of new staff, a greater level of disruption has been experienced which must be managed. ComReg reviewed the increase in the hourly rate and found it to be reasonable.

⁹ Emergency Call Answering Service Call Handling Fee Review 2015/2016 – paragraph 107