



Commission for
Communications Regulation

Response to Consultation and Final Determination regarding the Emergency Call Answering Service Call Handling Fee Review 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 from 12 February 2017 to 11 February 2018.
3. ComReg received two responses to the Consultation from:
 - Eir Group ("Eir"); and
 - Hutchinson 3G Ireland ("H3GI").
4. ComReg wishes to acknowledge the valuable contribution of these respondents to the review process. 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, Climate Action and the Environment ("DCCA") 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.

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

² ComReg Document No 16/95.

6. ComReg has reviewed the costs incurred by the ECAS provider in providing the service. 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. There were a number of items identified during the review as requiring further scrutiny and so were excluded from the CHF Model pending clarifications. ComReg remains of the view, as proposed in the Consultation, that the vast majority of 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 €3.95 based on a forecast decline of 6% to the end of the CA in July 2017. In the present Determination, ComReg considers a forecast annualised rate of decline of 6% remains appropriate.
- 8. Having considered this information, ComReg now concludes that a maximum permitted CHF of €3.95 should apply for the period 12 February 2017 to 11 February 2018.**
9. If actual call volumes for the period to July 2017 are significantly less than those forecast in this document, a further under-recovery will arise that would have to be recovered either from the Sinking Fund or possibly, in the event that the current CA is extended pending selection of the next ECAS operator, from continuation of the current CHF post 12 July 2017. 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 commented on the level of redaction included in the document. 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 November/December 2016.
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 vast majority of costs incurred by the ECAS provider were reasonable and that no adjustments were necessary to its operating procedures.
17. It was identified during the current review that there were some differences between costs actually incurred by BT and costs reflected in the CHF Model, ie. there are potentially reasonable costs that have been excluded from the model. This raises the possibility of a level of historical under-recovery which has not been factored into the current CHF and so will need to be revisited on expiry of the CA.
18. As mentioned above we would also note that while the vast majority of costs incurred by the ECAS Operator were considered reasonable there were a number of costs that were identified as requiring further scrutiny and so were excluded from the CHF model at this time. If these costs are later deemed to be reasonable BT will require compensation. This is a matter for future consideration.
19. In the Consultation, ComReg asked the views of respondents to four questions. These related to:

1. Details of any planned programmes/market developments affecting the forecasted call volumes;
2. Forecast rate of decline in call volumes;
3. Any other matters respondents wished to raise;
4. The draft determination.

20. The main points/comments highlighted by respondents related to:

- Proposed length of price control period
- Assessment of costs; and
- Purpose/Use of Sinking Fund
- The level of redaction within the document
- Expiry of ECAS Contract in July 2017
- The forecast rate of decline in call volumes.

21. In this Response to Consultation document, ComReg has detailed its final conclusions in respect of the specific questions asked in the Consultation. Any general points that were made by the respondents that are not covered under the responses to these questions are discussed in Annex 1.

22. The main factor in determining the CHF for 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 DCCAE which reduced the annual depreciation charge; and
- The ongoing under-recovery of costs caused by the ever reducing level of call volumes.

23. In the Consultation ComReg was of the preliminary view that an annual rate of decline in call volumes of 6% would be appropriate. Following a review of the responses to the consultation, ComReg remains of the view that a rate of decline of 6% remains appropriate. This reflects:

- A rate of decline for the last twelve months greater than the 3.5% forecast in the 2016/2017 review; and
- Information from the ECAS Operator on call volumes up to November 2016.

24. While it was commented in the Consultation that some call categories appear to have largely stabilised, ComReg viewed this in the context of historic year on year declines of up to c20%. Overall a decline is still expected.
25. Overall, there has been a reduction of c. 60% in call volumes between the DCCAIE issuing its invitation to tender for the current CA and current predicted call volumes of c. 1.8m per annum.
26. Having considered all of these points and the responses to the Consultation, ComReg now concludes that a maximum permitted CHF of €3.95 should apply for the period 12 February 2017 to 11 February 2018 or the date on which the next ECAS operator becomes fully operational, whichever is the earlier. A twelve month review period is in line with ComReg's statutory obligations³.

³ Section 58 (D) of the Communications Regulation (Amendment) Act 2007

3 Consultation responses

27. 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.

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

29. In addition to this material, further information was provided in an annex:

- I. Annex 1 – Analysis of cost categories.

3.1 Reasonable costs

ComReg's preliminary views

30. 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.⁴ 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.

31. 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 vast majority of the costs to be reasonable. In Section 3 ComReg noted the following movements:

- Changes in the estimated call volume resulting in an increase of ₤ in the CHF;
- Some variation in pay and non-pay costs resulting in a decrease of ₤ in the CHF.

⁴ A more detailed description was contained in Annex 1.

3.2 Call Volumes

ComReg's preliminary views

32. 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. 16/03, it had predicted a rate of decline of 3.5%, it was of the preliminary view that a rate of decline of 6% to the end of the CA was appropriate for the current period.

33. ComReg requested respondents to provide details of any planned programme or 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:

a. Please outline any programme or initiatives, planned for the short to medium term (1 to 2 years), or any relevant market developments, in particular changes in the handset population profile, which may significantly affect the forecasted volume of emergency calls.

34. Also in Section 4 of the Consultation, ComReg requested inputs from respondents on the forecast rate of decline of 6%. Respondents were also requested to provide comments on any other matters they considered to be relevant to the CHF review.

35. To this end, Question 2 asked:

Do you agree or disagree with the proposed forecast of the call volume decline rate of 6% 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

36. Eir commented that it did not have specific programmes which might affect the forecasted volumes of emergency calls ahead of expiry of the CA in July 2017.

37. Three did not comment on Question 1.

Main issues raised by respondents in relation to Question 2

38. Three agreed with ComReg's view that a 6% rate of decline was appropriate.
39. Eir did not agree with ComReg's view that a 6% rate of decline was appropriate citing ComReg's comments within the Consultation that all categories of calls appeared to have stabilised.

Main issues raised by respondents in relation to Question 3

40. Eir highlighted that they believe that there should be more clarity and transparency around the fate of funds held in the Sinking Fund. Please see Annex 1 for other issues highlighted.
41. Three did not comment specifically on Question 3. Please see Annex 1 for other general issues highlighted.

ComReg's conclusions in relation to Question 1

42. Based on the views of the respondents, ComReg considers that there are no programmes or initiatives planned for the short to medium term by either of the respondent operators which may significantly affect the forecast volume of emergency calls.

ComReg's conclusions in relation to Question 2

43. Based on the views of respondents ComReg remains of the view that the proposed annualised rate of decline of 6% remains appropriate.
44. Eir's comments in relation to stabilisation were noted but as described in paragraph 24 ComReg is of the view that the even a rate of 6% provides a degree of stabilisation when compared to actual declines in prior years.

ComReg's conclusions in relation to Question 3

45. ComReg notes Eir's comments in relation to the Sinking Fund. ComReg would highlight that the maintenance and operation of the sinking fund is not within ComReg's remit.

3.3 Draft determination

ComReg's preliminary views

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

47. 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

48. Three did not comment specifically on the the wording of ComReg's Draft Determination.

49. Eir recommended some amendments to the wording of the Draft Determination. They commented on the open ended nature of the dates proposed and queried the date from which the Determination becomes effective. They recommended amendments to the wording used.

ComReg's conclusions in relation to Question 4

50. ComReg considers that no amendment is required in relation to determining the *effective date* of the Determination. ComReg is of the view that the Determination is effective from the date of publication. This in no way impacts upon the date of 12 February 2017 as being the date on which the new CHF will apply.

51. ComReg is of the view that the relevant period for this CHF review will be 12 February 2017 to 11 February 2018 or the date on which the next ECAS operator becomes fully operational, whichever is the earlier. A twelve month review period is in line with ComReg's statutory obligations⁵.

52. ComReg understands from DCCAIE that, in order to minimise the risk of any effect on the service during the transition from the current CA to the next, the current arrangement may continue beyond 14 July 2017 and ComReg has been mindful of this in its assessment.

⁵ Section 58 (D) of the Communications Regulation (Amendment) Act 2007

53. Any over/under recovery of costs by the current ECAS operator will be captured as part of final review due by ComReg on conclusion of the current contract.
54. ComReg understands from DCCAE as previously confirmed that the Sinking Fund will be used solely in the context of ECAS as appropriate.

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. 16/95;
- Having duly taken account of the responses received to Commission Document No. 16/95; 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 2017 to 11 February 2018, 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 €3.95.

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

Annex 1: General comments

55. 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 DCCAE and BT. ComReg is not a party to the CA.

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

- Approach.
- Transparency.
- Matters contained in the Concession Agreement.
- Fixed cost base.
- Sinking Fund.

Approach

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

58. 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

59. Three commented that it was difficult to provide meaningful commentary given the level of redaction within the consultation document

60. ComReg has redacted data where it considers that data to be confidential or commercially sensitive.

61. ComReg considers that it has provided as much information and detail as possible, without disclosing any commercially sensitive information.

Matters contained in Concession Agreement

62. Eir stated that it was concerned at what it termed ComReg being “somewhat lenient” over recent years in its analysis of the ECAS costs underpinning 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 3.2m per annum a third PSAP was added. Eir stated that it did not understand how ComReg sanctioned this third PSAP..

63. Eir highlighted that the consultation provides no indication as to the current state of the sinking fund and/or the fate of any balance that may remain in the fund on expiry of the CA.

64. The specification of a third PSAP was a matter contracted between DCCAE 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.

65. 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. As ComReg is not a party to the CA, ComReg cannot alter their treatment.

Fixed cost base

66. Eir also considered that the treatment of costs as fixed discouraged efficiencies amongst operators given that the elimination by operators of invalid emergency calls due to improved procedures typically results in an increase in the CHF thereby penalising operators for making improvements.

67. Based on the ECAS structure, as set out in the CA, it is necessary to have a minimum number of call centre operators present across the ECAS to handle the varying volumes of calls. ComReg is of the view that the relationship between operators hours and call volumes is not a linear one.

Sinking Fund

68. Eir highlighted that the consultation offers no clarity on the fate of any balance held in the Sinking Fund.

69. As noted in the Consultation the use of the sinking fund is the responsibility of the DCCAE.

70. 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. 15/02⁶, ComReg understands from DCCAE that the Sinking Fund will be used solely in the context of the ECAS and that the nature of the Sinking Fund may be re-examined in any future tendering process to select the next provider of the ECAS.

⁶ Emergency Call Answering Service Call Handling Fee Review 2015/2016 – paragraph 107