



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Response to Consultation and Final Determination regarding the Emergency Call Answering Service Call Handling Fee Review 2019

Decision D01/20

Response to Consultation & Final Decision

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1 Executive Summary

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 operator 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 operator is allowed to charge for handling emergency calls for the period from 12 February 2020 to 11 February 2021.
3. ComReg received two responses to the Consultation from:
 - Eircom Limited ("Eircom"); and
 - Three Ireland (Hutchison) Limited ("Three").
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 this statutory review of the CHF.
5. It is important to note that in discharging its functions under the Act, ComReg is also mindful of the agreement between the Department for Communications, Climate Action and the Environment ("DCCA") and the ECAS operator, BT Communications (Ireland) Limited ("BT").
6. As noted in the Consultation³, the first such agreement, hereinafter referred to as "Agreement 1", was agreed between the then Minister at DCCA ("the Minister") and BT to design, build, and implement ECAS⁴. On 12 February 2018, the Minister awarded a new contract, hereinafter referred to as "Agreement 2", to BT with respect to ECAS⁵.

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

² ComReg Document No 19/96.

³ See Paragraphs 3 to 5 of the Consultation

⁴ ECAS1 was the implementation, operation and management of Agreement 1

⁵ ECAS2 is the implementation, operation and management of Agreement 2

7. As with Agreement 1, ComReg is not a party to Agreement 2 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 Agreement 2.
8. ComReg has reviewed the costs incurred by the ECAS operator in providing the service. As noted in the Consultation, ComReg considered the costs incurred by the ECAS operator to be reasonable.
9. The draft Determination contained in the Consultation proposed a maximum permitted CHF of €1.77 based on a forecast annualised rate of 2.3 million calls. In the present Determination, ComReg considers a forecast annualised rate of 2.3 million calls remains appropriate.

As identified in the Consultation the following are the significant movements in the CHF:

CHF determined by DCCAE to 11 February 2020	€3.93
Reduction based on higher than predicted call volumes (historical)	<€ [REDACTED] >
Reduction due to repayment from the Agreement 1 Sinking Fund	<€ [REDACTED] >
Reduction based on higher than predicted call volumes (forward looking)	<€ [REDACTED] >
2020-2021 CHF payable	€1.77

10. The “Reduction based on higher than predicted call volumes” and the “Reduction due to repayment from the Agreement 1 Sinking Fund” are considered to be once off items for this year and are not standard reductions that can be relied on by undertakings.

Reduction based on higher than predicted call volumes

11. When Agreement 2 for ECAS2 was awarded annual call volumes were expected to be c. [REDACTED]. Actual call volumes for 2019 are expected to be 2.3m calls or c. [REDACTED] more than anticipated, which were charged to operators at €3.93.

Reduction due to repayment from the Agreement 1 Sinking Fund

12. ComReg has been informed by DCCAЕ that € [REDACTED] can be transferred against the costs of ECAS2. DCCAЕ will arrange this transaction directly with BT.
- 13. ComReg therefore concludes that a maximum permitted CHF of €1.77 should apply for the period 12 February 2020 to 11 February 2021.**
14. If actual call volumes for the forthcoming period vary significantly from those forecast in this document, an under-recovery or over-recovery could arise. During the course of Agreement 2 under or over recoveries may be addressed in subsequent review periods by appropriate adjustment of the CHF. This ensures that BT only recovers its reasonable costs.
15. 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 operator and its third-party suppliers. ComReg is satisfied that these redactions are appropriate, but that, notwithstanding the redactions, sufficient detail is always provided for stakeholders to properly understand the basis for the Determination of the CHF. The redactions are also made in accordance with Section 24 of the Act and in accordance with ComReg's Guidelines on the treatment of confidential information (ComReg Document No. 05/24).

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2 Background

16. 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.
17. BT provides the ECAS on a 24-hour, 365-day basis, using two PSAPs located in Ballyshannon, County Donegal and Navan, County Meath. The two PSAPs act as one "virtual" centre, with emergency calls being handled on a "next available agent" basis. As noted in the Consultation, a third PSAP, previously provided under the auspices of Agreement 1 at Eastpoint, Dublin 3, has been closed.
18. 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 2019.
19. In making this Determination, ComReg has fully taken into account the responses to the Consultation and the recommendations made by its consultants, TERA Consultants.
20. ComReg concluded that the costs incurred by the ECAS operator were reasonable and that no adjustments were necessary to its operating procedures.

3 Consultation responses

21. In the Consultation, ComReg asked the views of respondents to three questions. These related to:
1. Forecast call volumes;
 2. Any matters arising; and
 3. The draft determination.
22. Three, in its response, addressed each of these questions and stated that it agreed with ComReg's proposals as contained in the Consultation. Specifically on call volumes Three observed "that it is reasonable and prudent to use a forecast volume of 2.3m calls for 2020."
23. Eircom did not agree with ComReg's preliminary views.
24. On call volumes Eircom submitted a number of predictions based upon, what Eircom calls a "conservative" 15.1% to 16.8% annual growth in volumes. Eircom's analysis is an extrapolation in the growth in volumes based on an assumed continuation of the growth "trend" experienced in recent quarters and this prediction does not consider demand factors.
25. Eircom made observations in its submission about "over-recovery of costs by the ECAS Operator"⁶ and amounts being "paid to the ECAS operator as 'super normal profits'"⁷. As noted above any excess revenue gathered by the ECAS operator is returned to operators at the earliest opportunity through a reduction in the CHF. Such an adjustment, for example, is a major factor in the much reduced CHF determined by ComReg for 2020/21.
26. Due to the unpredictable nature of call volumes and despite the benefit of consultation with industry it has historically been difficult to forecast trends in call volumes. ComReg considers that, informed by prior experience in predicting call volumes, on the basis of the analysis conducted in the Consultation and in light of the responses received from Industry, it remains prudent to forecast future call volumes at 2.3m calls.

⁶ Paragraph 30 of Eircom's response

⁷ Paragraph 39 of Eircom's response

27. As noted above, any over-recovery of costs is returned to operators at the earliest opportunity through a lower CHF. Any under recovery of costs is reflected in future periods through a higher CHF. As ComReg does not control the Sinking Fund, it cannot place an over reliance on the Sinking Fund to address potential under recoveries.
28. With respect to Question 2 on matters arising, Eircom states that “as Agreement 1 has now fully run its course and we are embarking on Agreement 2, virtually all fixed costs have been fully recovered by the ECAS Operator”. While all of the assets in Agreement 1 were fully depreciated, it is not the case that all fixed assets could be brought across to Agreement 2. For example, much of the IT infrastructure was more than 10 years old and clearly required replacement.
29. The operating costs included in the current CHF reflect those as submitted by BT to DCCAIE as part of its tender submission. ComReg notes that as only four months data (March 2019 to June 2019) was available for this review ComReg was required to compare this cost data against similar costs incurred in Agreement 1. ComReg deemed the costs reasonable. These costs will, of course, continue to be monitored for reasonableness as part of subsequent CHF reviews.
30. Eircom further states that “the annual contribution of €250K to the [Sinking] Fund is excessive and should be reduced considerably or eliminated completely.” The amount of the contribution to the Sinking Fund is not a matter for ComReg as these arrangements are contained in Agreement 2 to which ComReg is not a party.
31. With respect to the text of the draft determination, Eircom disagrees with the amount of the CHF that is necessarily included in the draft determination. It had no other comment on the draft determination.
32. Having considered all of these points and the response to the Consultation, ComReg now concludes that a maximum permitted CHF of €1.77 should apply for the period 12 February 2020 to 11 February 2021. A twelve month review period is in line with ComReg’s statutory obligations.⁸

⁸ Section 58 (D) of the Communications Regulation (Amendment) Act 2007

4 Determination

Definitions

1.1 In this determination:

- “*the Act*” means the Communications Regulation Act 2002 (as amended);
- “*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 makes this determination:

- In exercise of its powers under section 58D (2) 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. 19/96;
- Having duly taken account of the responses received to Commission Document No. 19/96; 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 from 12 February 2020 to 11 February 2021 the maximum permitted call handling fee that the emergency provider may charge to entities who forward emergency calls to it for handling such a call shall be **€1.77**.

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