



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

End-user Dispute Resolution Procedures

Response to Consultation 23/107 and Decision

Response to Consultation and Decision

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Commission for Communications Regulation

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Additional Information

Related Publications	Document Number
'End-user Dispute Resolution Procedures' Procedures	ComReg 24/22a
'End-user Dispute Resolution Procedures' Submissions to Consultation 23/107	ComReg 24/22s

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Chapter 1

1 Executive Summary

- 1.1 The Commission for Communications Regulation (“ComReg”) has a statutory function to propose resolutions to certain disputes between end-users of electronic communications services and their providers.
- 1.2 ComReg specified procedures for the resolution of end-user disputes (the 2018 Procedures) in ComReg Decision D14/18 (“D14/18”)¹ (the “2018 Procedures”). ComReg has gained experience in the application of these procedures since they were commenced.
- 1.3 In light of legislative changes to the framework governing ComReg’s dispute resolution function, it was necessary to revise the 2018 Procedures and at the same time the procedures were reviewed, to take account of the experience gained in their application and general developments in the area of dispute resolution.
- 1.4 On 16 November 2023 ComReg set out its proposed revisions to the 2018 Procedures and the reasons for them, in its consultation entitled “End-user Dispute Resolution Procedures” (ComReg 23/107)² (“the consultation”).
- 1.5 This Response to Consultation sets out ComReg’s consideration of stakeholder responses to the consultation and ComReg’s position.
- 1.6 Having considered the responses to the consultation, ComReg has decided to publish the procedures as consulted upon, subject to the following changes:
 - 1.6.1 ComReg will include reference to the definition of a “relevant dispute” under the 2023 Act (see paragraph 3.41);
 - 1.6.2 The two references to ‘Adjudicator’ in the procedures have been replaced with the text “*ComReg, or such independent person as may be appointed by ComReg*” (see paragraph 3.61);
 - 1.6.3 ComReg will include reference to statutory appeal provisions in its procedures (see paragraph 3.87); and

¹ Formal Dispute Resolution Procedures for ECS/ECN End-Users (ComReg Document 18/104, D14/18) published 30 November 2018 [ComReg D14/18.pdf](#)

² End-user Dispute Resolution Procedures; Consultation and draft procedures (ComReg Document 23/107) published 16 November 2023 [ComReg 23/107](#)

- 1.6.4 ComReg has decided to delay the commencement of this Decision by one month, thereby granting a total of four months, in which to prepare (see paragraph 3.94).
- 1.7 ComReg has also set out its position on other issues raised by respondents including:
 - 1.7.1 the validity requirements (see paragraphs 3.21 and 3.41)
 - 1.7.2 the provision of information regarding third parties to a dispute (see paragraph 3.46);
 - 1.7.3 the applicability of the procedures to business customers (see paragraph 3.53);
 - 1.7.4 oral hearings (see paragraphs 3.67, 3.72); and
 - 1.7.5 compensation (see paragraphs 3.82 and 3.83).
- 1.8 The final procedures ComReg Document 24/22a are published with this Response to Consultation and Decision. The responses to the consultation are also published in ComReg Document 24/22s.
- 1.9 All references to procedures in this document refer to the final procedures, unless otherwise stated. The final procedures are known as the “End-user Dispute Resolution Procedures” (ComReg Document 24/22a).
- 1.10 These procedures will take effect from 1 August 2024 and will replace the procedures set out in Annex 2 of D14/18, which remain effective up to that date.

Chapter 2

2 Background

- 2.1 Commenced on 9 June 2023, the European Union (Electronic Communications Code) Regulations³ (the "**ECC Regulations**") and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023⁴ (the "**2023 Act**") (referred to together as "**the legislation**"), transpose the European Electronic Communications Code Directive⁵ (the "**Code**") into Irish Law.
- 2.2 The Code provides for "Out-of-court dispute resolution" in Article 25.
- 2.3 ComReg has a statutory function to propose resolutions to certain disputes between end-users of electronic communications services and their providers.
- 2.4 ComReg received submissions to the consultation from four (4) respondents.
- Eircom Limited (trading as 'eir' and 'open eir') and Meteor Mobile Communications Limited, collectively referred to as 'eir Group' ("Eir")
 - Sky Ireland Limited ("Sky")
 - Three Ireland (Hutchison) Limited ("Three")
 - Virgin Media Ireland Limited ("Virgin")
- 2.5 ComReg has reviewed these submissions and given them due consideration. ComReg's responses to the submissions received are set out in Chapter 3.

³ S.I. No. 444 of 2022 commenced 9th June 2023 [Online:] [S.I. No. 444 of 2022](#)

⁴ [Online:] <https://www.irishstatutebook.ie/eli/2023/act/4/enacted/en/pdf>

⁵ Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018, see [Online:] <https://eurlex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

Chapter 3

3 Respondents' views – summary, analysis and ComReg's position

- 3.1 In the consultation, ComReg asked questions regarding the draft revised procedures and sought the views of respondents on them. The questions took account of the following:
- 3.2 Mandatory revisions concerning:
- The type of disputes that can be resolved by ComReg;
 - End-user can elect to accept a proposed resolution or withdraw a dispute for resolution;
 - Information to be provided by ComReg;
 - Compensation, reimbursement of payments and settlement of losses; and
 - Oral Hearings
- 3.3 Other revisions concerning:
- Accessing formal Dispute Resolution;
 - Timelines for parties to respond and to comply with requirements;
 - Acceptance of a proposed resolution;
 - Improving access to the Dispute Resolution procedures; and
 - Effective Date and Duration.
- 3.4 Responses to the consultation focused on several themes some of which overlapped across questions. These themes included:
- 1) Accessing formal dispute resolution – commencing Phase 1 and moving to Phase 2;
 - 2) The validity assessment of a dispute application;
 - 3) Third parties (wholesale) involvement in a dispute;
 - 4) Applicability of procedures to business customers;
 - 5) Oral Hearings;

- 6) Compensation, reimbursement of payments, settlement of losses and Costs.
 - 7) Appeals; and
 - 8) Effective Date/Lead in time.
- 3.5 ComReg has considered the responses and its analysis and final position regarding the issues raised is set out in this chapter of the Response to Consultation.
- 3.6 All legislative references in this chapter are to the 2023 Act unless otherwise stated.

3.1 Commencing Phase 1 and moving to Phase 2

3.7 ComReg proposed in the consultation that there would continue to be two phases to the dispute resolution process:

- an initial informal phase (Phase 1)
- followed by a formal dispute resolution phase (Phase 2).

Respondents' views:

3.8 While there was overall agreement with this approach one respondent sought clarity regarding the mandatory nature of Phase 1. Two respondents questioned the revision in the timeframe as provided for under ComReg D14/18⁶ of when end-users will be advised that they can apply for Formal Dispute Resolution. One respondent sought clarity on whether Phase 1 and Phase 2 can run concurrently.

3.8.1 Eir questioned *“whether Phase 1 (the informal phase) involving the ComReg Consumer Care team is compulsory...”* and stated it wants ComReg to ensure that *“a formal dispute process cannot be enacted until 10 working days after the complaint has been referred to a provider; a customer has made full use of the process set out in their provider’s code of practice before opting for dispute resolution...”*

3.8.2 Virgin Media stated *“...it does not agree with the significant time reduction for entry into formal dispute resolution procedure (phase 2) from 30 days to 10 working days”*.

3.8.3 Sky noted that it has *“...significant concerns about the truncated 10-day period in which the various parties involved, being the end-user, the ComReg Consumer Care agent and a providers [sic] own customer specialists would now have in which to resolve the dispute.”*

3.8.4 Three stated that *“It is not clear that Phase 1 and Phase 2 cannot run concurrently from this Consultation. We welcome ComReg’s clarity on this”*.

⁶ Para A2.3 of D14/18 provided that *“If an end-user has a case open with the ComReg consumer care team for more than 30 working days... they will be advised that they can apply for Formal Dispute Resolution.”*

ComReg's analysis:

- 3.9 There are two statutory bases upon when an end-user can refer a (relevant) dispute to ComReg for dispute resolution. These are provided for in section 47.

The first, under Section 47(1)(a), is when:

*“a period of **at least 10 days** has elapsed since the complaint giving rise to the dispute was made.”*

The second, under Section 47(1)(b), is when:

“the procedures for the resolution of disputes provided for in the provider’s code of practice have been completed.”

- 3.10 Section 47(1)(a) allows end-users to refer a dispute for resolution to ComReg in a shorter timeframe than that provided for under section 47(1)(b). For example, there may be occasions where an end-user is dissatisfied with how their complaint is being progressed by their provider. In these circumstances the end-user has the right to refer a dispute to ComReg under section 47(1)(a) when a period of at least 10 days has elapsed since the complaint giving rise to the dispute was made to the provider.

- 3.11 Section 42(2) specifies the matters to be provided for in a provider’s code of practice, and these include informing that a complainant can refer a dispute to ComReg where - :

“(i) the dispute has been resolved in accordance with the code of practice and the complainant is dissatisfied with the resolution, or

(ii) the dispute has not been resolved and at least 10 working days have passed since the day on which the complaint was first notified to the provider.

- 3.12 The difference in the timeframes referred to in section 42(2)(e)(ii) and in section 47(1) was noted by ComReg in the consultation. It is important to emphasise however, that these statutory provisions address related, but different issues – the former addresses a requirement for a provider’s code of practice, whereas the latter sets out the statutory bases for referring a dispute for resolution.

- 3.13 ComReg also notes, that section 45 (‘Notification to end-user of right to refer dispute to Commission’) provides:

*“Where a provider receives a complaint from an end-user in respect of its services, the provider shall inform the end-user of his or her right to refer a relevant dispute to the Commission for resolution **in accordance with section 47**” (emphasis added).*

- 3.14 Taking account of the interplay between these various provisions, it is ComReg's view that in the case of a conflict, the obligation in section 42(2)(e)(ii) cannot disentitle an end-user from referring a dispute under section 47(1)(a).
- 3.15 Given that providers will have informed an end-user of their right to refer a dispute to ComReg under section 47(1)(a) and (b) in accordance with section 45 when their complaint is received, it is especially important that providers clearly convey the two bases for referral provided for in section 47(1)(a) and (b), in any subsequent communication with end-users.
- 3.16 The submission by Eir that "*ComReg must ensure... a customer has made full use of the process set out in their provider's code of practice before opting for dispute resolution...*" ignores the provisions of section 47(1)(a) which creates a distinct basis (separate to s.47(1)(b)) upon which a referral may be made.
- 3.17 As noted in the consultation, there will be a period of 10-working days in which ComReg Consumer Care will facilitate reaching an informal resolution. After 10 working days in Phase 1 an end-user will be informed of their ability to apply to enter Phase 2. However, and notwithstanding the provision of this information, there is nothing precluding the end-user from continuing in Phase 1 should they wish to do so.
- 3.18 Therefore, ComReg is not mandating a shorter informal phase of dispute resolution, but rather it is permitting end-users to leave Phase 1 at an earlier stage than had been possible to date, if that is what they choose to do.
- 3.19 It is reasonable to surmise that an end-user would only take this course if dissatisfied with the process up to that point. Proactive and meaningful engagement by providers with their customers in the resolution of disputes should lessen the likelihood of end-users moving to Phase 2.
- 3.20 As has been the case to date, and as set out in the procedures, Phases 1 and 2 will not run concurrently (at paragraphs 6 and 19.8).

ComReg's position:

- 3.21 ComReg has had regard to the submissions received from respondents and to the provisions of section 47(1), and based upon the analysis above ComReg is of the view that paragraph 20.3 of the procedures will remain unchanged from that outlined in the consultation.

3.2 Validity assessment

- 3.22 In the consultation ComReg stated its intention to update the existing 'validity requirements' to reflect the requirements of section 47(1); and noted it will only proceed to propose a resolution in accordance with section 47(1) where it has carried out a validity assessment and it is satisfied that the validity requirements have been met.
- 3.23 ComReg stated its intention to maintain the existing practice of not engaging with a provider in relation to the validation of a dispute and that it would assess validity on the basis of the information supplied by the end-user in the application.
- 3.24 The validity requirements were set out in the consultation and were as follows:
- 3.24.1 The complaint must relate to a “relevant dispute”;
 - 3.24.2 The dispute relates to a single end-user who has been impacted by the subject matter of the dispute;
 - 3.24.3 The complaint, which must relate to a “relevant dispute”, must be unresolved and the circumstances must be such that (a) at least 10 days have elapsed since the complaint giving rise to the dispute was first notified to the provider in accordance with the code of practice for complaints handling, or (b) the procedures for the resolution of disputes provided for in the provider’s code of practice have been completed.
 - 3.24.4 The complaint must have been first notified to the provider in accordance with the code of practice for complaints handling within the previous 12 months;
 - 3.24.5 The scope of the dispute must be confined to the issues contained in the complaint when it was notified to the provider;
 - 3.24.6 The dispute is not frivolous or vexatious;
 - 3.24.7 The dispute is not being, nor has previously been, considered by another dispute resolution entity or by a court;
 - 3.24.8 The nominal fee has been paid; and
 - 3.24.9 Dealing with the dispute does not impact or impair the effective operation of ComReg.

Respondents' views:

3.25 Two respondents, Three and Eir, submitted comments related to the 'Validity assessment'.

3.26 Three, in its response, sought clarity on:

3.26.1 *"...whether any reasons from the provider in that correspondence [taken place between the end-user and the provider in the 10-day period that elapsed ahead of the dispute entering the DR process] would be taken into account when assessing the minimum requirements";*

3.27 Three also sought clarity with regard to paragraph 36.3 of the procedures that provides 'However, this does not preclude an end-user from submitting a fresh application for the same dispute or from submitting an application for another dispute at any time'. Three stated:

3.27.1 *"It is not clear whether there must be a novel and previously undiscovered element or some new facts that must be present in order for an end-user to make a fresh application for dispute resolution, Such an allowance for a repeat application and re-engagement with a provider on an issue which had already been subject to dispute resolution and which ended because an end-user withdrew from the process without any clear reasons is vexatious and should not be allowed. Furthermore, such re-engagement may place an unnecessary strain on ComReg's resources and block up its ability to take on new disputes that require resolving."*

3.28 With reference to the validity requirements, Three made the following comments:

<p>20.4 The complaint must have been first notified to the provider in accordance with the code of practice for complaints handling within the previous 12 months'.</p>	<p><i>"...the complaint must be a single complaint and not a series of complaints or one that has been accepted for dispute resolution and failed".</i></p>
<p>20.6 The dispute is not frivolous or vexatious.</p>	<p><i>"ComReg should explain how this will be determined, whether the legal standard will apply, or will this be determined based on the facts before the adjudicator or independent person?"</i></p>

20.7 The dispute is not being, nor has previously been, considered by another dispute resolution entity or by a court’.	<i>“ComReg must accept evidence of this from provider and end-user alike”.</i>
20.8 The nominal fee has been paid.	<i>“ComReg must set out what the “nominal fee” is.”</i>

3.28.1 Three stated it believes *“it is important that any dispute that relate to contracts that have not been contemplated by an end-user and where they have no relationship with that contract, must be excluded”*; and

3.28.2 Three also stated it believes *“that ComReg should not encourage an end-user to use another dispute resolution body where they have submitted to ComReg’s DR process as this is akin to “Forum Shopping”...”*

3.29 Eir stated it:

3.29.1 *“considers that this increases the likelihood that non-valid complaints will be allowed to proceed, thereby compelling providers to engage in the long and complex process of submissions required in paragraphs 28 onward, in circumstances where an early check with the provider in the validation stage, might have allowed the matter to be immediately closed as non-valid e.g. because the dispute had in fact already been resolved”*; and

3.29.2 *“...considers that ComReg should include the definition of a “relevant dispute” in the procedures document”.*

ComReg's analysis:

3.30 If an application is accepted for dispute resolution following the validity assessment, a provider will continue to have opportunities to submit observations and comments – i.e. following its receipt of the notification of acceptance and receipt of the application and supporting documentation paperwork submitted by the complainant, and again after the issuance of the draft Resolution.

- 3.31 ComReg's dispute resolution procedures are required to be simple and to enable disputes to be settled promptly.⁷ These aims would not be achieved if the procedures were to involve exchanges between the parties at the validation stage on the issue of validity even prior to the matter being accepted for resolution. An application form will continue to be used to address questions going to the validity of the dispute. ComReg considers, on balance, that it is preferable for the overall simplicity of procedures that the current application process remains in place.
- 3.32 ComReg notes the submission made by Three that a complaint must be a single complaint and not a series of complaints or one that has been accepted for dispute resolution and failed.
- 3.33 ComReg D04/17 defines a "Complaint" to mean "*...an issue raised by an end-user to an undertaking relating to that undertakings product or service or its complaints handling process where the issue remains unresolved following an initial attempt by the undertaking to resolve it or where there has been no attempt by the undertaking to resolve it and the end-user expresses dissatisfaction, through one of the channels set out in the code of practice, that the issue remains unresolved.*" ComReg will assess the validity of an application having regard to this definition, the particular circumstances presented, and the validity requirements.
- 3.34 ComReg understands the submission by Three (at paragraph 3.27.1 above) to relate to the first part of paragraph 36.3 of the procedures (i.e. submitting a fresh application for the same dispute). It is not the case that the submission of a fresh application for the same dispute would be accepted by ComReg in all cases. ComReg agrees that clear reasons and justification would be required. Regarding any application that is vexatious, this is addressed in the validity requirements.
- 3.35 If there are material facts/further evidence that have not been disclosed or submitted in an application, a provider will have the opportunity to evidence and comment on such matters in its response. Providers may submit such documentary or other evidence as they consider appropriate in a given case, which may include correspondence that predates the referral to dispute resolution by the end-user. It may also include evidence that the dispute has already been considered by another dispute resolution entity or by a court.⁸

⁷ Section 48(1)(a) and (b) of the 2023 Act

⁸ This is an issue that ought to be apparent from the application form in any event and so it is only if the end-user has not disclosed this at the application stage that this should arise.

- 3.36 ComReg assesses each application based on the information provided. In terms of what would be considered frivolous or vexatious, where the continuation of a dispute cannot be justified by the relevant circumstances, including on the basis that it has no reasonable prospect of succeeding, the dispute could be considered frivolous. If it would impose hardship on a provider to have to respond to a dispute that had no reasonable prospect of succeeding, then it could be vexatious. Disputes that are plainly misconceived or that attempt to circumvent a prior resolution could also come within this category.
- 3.37 Regarding the fee payable for dispute resolution it is, and has been to date, €15.00, and as detailed in the procedures (at paragraph 68) will be reimbursed to the end-user if the final proposed resolution finds in favour of the end-user. The fee payable for dispute resolution under Phase 2 is detailed on ComReg's website and on the payment form provided to each applicant.⁹
- 3.38 One of the validity requirements is that *'the dispute is not being, nor has previously been, considered by another dispute resolution entity or by a court'* (at paragraph 20.7).
- 3.39 Regarding Three's submission that ComReg should *"not encourage an end-user to use another dispute resolution body"*, section 48(2)(c) requires ComReg to inform end-users that the dispute resolution procedure *"...is without prejudice to any other right to seek redress, including by court proceedings"*. ComReg will therefore inform end-users of their rights. It may also respond to queries if raised.
- 3.40 ComReg notes the submission made by Three concerning contracts either not contemplated by a respondent, or with which a complainant has no relationship (see paragraph 3.28.1). ComReg will apply the wording of section 40(b) and the validity requirements to the facts of an individual application and consider such issues on a case-by-case basis as they arise.

ComReg's position:

- 3.41 Having regard to the preceding analysis ComReg is of the position that the validity requirements will remain unchanged from that outlined in the consultation. ComReg will however add a reference to the definition of a "relevant dispute" as set out in the 2023 Act.

⁹ ComReg reserves the right to vary the application fee in the future.

3.3 Third parties (wholesale)

Respondents' views:

- 3.42 One respondent, Sky, raised issues concerning 'third parties'. In its response it stated that *"information could be provided to end-users to ensure that they are aware that their complaint may be linked to a third party, such as the wholesale supplier, e.g., in the case of a missed appointment."*

ComReg's analysis:

- 3.43 ComReg is not in a position to make any general response applicable to all cases. However, and as a general position, a 'third party' will not be a party to the contract at issue in a dispute. While ComReg notes that third parties may be involved in the customer's experience at a retail level, any failings by a third party in its delivery of services may be a contractual matter between the third party and the provider.
- 3.44 It is for an end-user to decide against whom they wish to pursue their dispute. ComReg would observe that if an end-user does not have a contractual relationship with a (third party) respondent, there may be difficulties obtaining redress against them.
- 3.45 Ultimately, these issues are more relevant to the substantive aspects of a dispute rather than the procedures.

ComReg's position:

- 3.46 Based on the analysis above ComReg will not provide information to end-users that their complaint may be linked to a third party.

3.4 Applicability of procedures to business customers

Respondents' views:

- 3.47 One respondent, Eir, raised the issue of the applicability of the procedures to business customers, stating:
- 3.47.1 *"...it is not feasible that the same dispute resolution procedures can be used regarding complaints about business customers that are subject to SLAs, and the confidentiality and commercial sensitivities of commercial contracts with business customers";* and
- 3.47.2 that it *"requests that business customers are excluded from the scope of the dispute resolution procedures and the focus is on consumer disputes"*.

ComReg's analysis:

- 3.48 ComReg disagrees with Eir's interpretation of Article 25 of the Code as supporting its position that business customers are outside the scope of the dispute resolution procedures.
- 3.49 While Eir refers to the fact Article 25 of the Code focusses on "consumers", it is important to note that this is not a maximum harmonisation provision of the Code. Part 5 of the 2023 Act extended the application of dispute resolution to *all* end-users.
- 3.50 ComReg is required to resolve "*relevant disputes*" as defined in section 40 (a)-(g). Save for sub-paragraphs (f) (concerning disputes under Part 5 of the Consumer Rights Act 2022) and (g) (which is a forward-looking provision allowing the Minister to add to the list of relevant disputes by Regulation), each of the other categories of relevant disputes are available, under statute, to end-users.
- 3.51 Section 47(1) requires ComReg to carry out a dispute resolution process and propose a resolution to a dispute referred to it by an end-user.
- 3.52 ComReg does not consider the possibility that confidential and/or commercially sensitive information could be published by ComReg, as a basis upon which it may exclude a category of end-users from the scope of dispute resolution under Part 5. In any event, claims of confidentiality will be treated in accordance with ComReg's published Confidentiality Guidelines¹⁰.

ComReg's position:

- 3.53 Based on the analysis above ComReg is of the position that the procedures will remain unchanged from that outlined in the consultation and will not be amended to exclude their application to business customers.

¹⁰ Available [online]'ComReg's Guidelines on the treatment of confidential information' ([ComReg 05/24](#)), published 22 March 2005

3.5 Oral hearings

- 3.54 Eir, Three and Sky submitted comments regarding oral hearings and made submissions related to (i) the ‘adjudicator’, (ii) legal basis and (iii) procedures.

3.5.1 The ‘adjudicator’

Respondents’ views:

- 3.55 Eir and Three sought clarification as to whether an adjudicator appointed for the purposes of resolving end-user disputes is the same as an adjudicator appointed under Section 75.

ComReg’s analysis:

- 3.56 There was a mistaken conflation by both Eir and Three of Parts 5 and 7 of the 2023 Act concerning, respectively, “*Resolution of Complaints and Disputes*” and “*Administrative Sanctions*”.
- 3.57 Section 47(1) states that ComReg, “*or such independent person as may be appointed*” by it shall “*carry out a dispute resolution process and propose a resolution*” to a dispute referred in accordance with such procedures as may be specified by ComReg.
- 3.58 The role and appointment of an adjudicator under Part 7 is separate, distinct and unrelated to the appointment of an ‘independent person’ under Part 5.
- 3.59 The appointment of the independent person who carries out the dispute resolution process and proposes resolutions to disputes is wholly at ComReg’s discretion.
- 3.60 Notwithstanding, ComReg has had regard to the submission to the effect that the two references to ‘Adjudicator’ in the procedures could be confused with Part 7 adjudication.

ComReg’s position:

- 3.61 ComReg has considered the submissions of Eir and Three and has replaced the two references to ‘Adjudicator’ (at paragraphs 17 and 55) with the following “*ComReg, or such independent person as may be appointed by ComReg*”.

3.5.2 Legal Basis for Oral Hearings

Respondents' views:

- 3.62 Eir requested “*clarity on the legal basis for now empowering ComReg or the independent person appointed by ComReg, under section 47, to conduct an oral hearing*”.

ComReg's analysis:

- 3.63 ComReg is satisfied that oral hearings are permitted under Part 5 which provides the legal basis. This is clearly apparent from the following reference in section 47(3) of the 2023 Act (emphasis added):

*“An end-user who has referred a dispute to the Commission for resolution under this section may withdraw the dispute at any stage up to the time at which the Commission, or such independent person as may be appointed by the Commission, proposes a resolution to the dispute, by notifying the Commission, or the person, in writing to that effect, or, where there is an **oral hearing** in relation to the dispute, by notifying the Commission, or the person, at the hearing.”* (emphasis added)

- 3.64 ComReg has had regard to legal developments relating to fairness of procedures particularly in the area of dispute resolution, and while satisfied that in general, a paper-based process remains appropriate, it nonetheless considers that a blanket exclusion of oral hearings in all instances would not be appropriate.

- 3.65 The consultation noted at paragraph 48, that:

*“The formal dispute resolution process will continue to be a paper-based process; however an adjudicator may conduct an oral hearing, where he or she considers it **necessary to ensure fairness of procedures and in particular, in order to resolve a genuine conflict of fact arising from the papers that cannot otherwise be resolved**”.*

- 3.66 ComReg has balanced the requirements for simple, inexpensive and prompt procedures against the additional requirement for fairness of procedures. The procedures confine the cases in which oral hearings will be required to cases of necessity.

ComReg's position:

- 3.67 Based on the analysis above ComReg does not propose to amend the procedures with regard to the legal basis for oral hearings.

3.5.3 Procedures for Oral Hearings

Respondents' views:

3.68 Sky suggested ComReg should

3.68.1 *“prepare a written process document for its oral hearings”* and it suggested matters ComReg should consider prior to any oral hearing.

3.69 Eir submitted that with reference to oral hearings:

3.69.1 *“if ComReg is now legislating for oral hearings to be part of the dispute resolution process, it should not unnecessarily mandate such hearings given the requirements to ensure the process is “simple” and “inexpensive”... It should also not be compulsory for parties to attend if they choose not to”*; and

3.69.2 *“...in the interests of transparency, the procedures themselves need to clearly set out, for both end-users and providers, what process will apply to any oral hearings, and what powers it is proposed the person conducting the oral hearing, will have (e.g. to compel attendance, to treat testimony as being on oath etc).”*

ComReg's analysis:

3.70 Section 47(1) requires ComReg to carry out a dispute resolution process and propose a resolution to the dispute *“in accordance with such procedures **as may be specified by the Commission** under section 48...”* Section 48 affords a wide discretion to ComReg in terms of the procedures that it may specify for the resolution of disputes under section 47, requiring that the procedures:

- (a) are transparent, non-discriminatory, simple and inexpensive,
- (b) enable disputes to be **settled fairly** and promptly, and
- (c) are made publicly available by ComReg together with any amendments to the procedures.

3.71 The procedures for oral hearings are beyond the scope of this Response to Consultation

ComReg's position:

3.72 ComReg confirms its intention to set out its processes and procedures for oral hearings and to make them publicly available. Such procedures will be a matter for ComReg to determine. Such procedures will be published in due course and meet the requirements of transparency, procedural fairness, accessibility, and natural justice.

3.6 Compensation, reimbursement of payments, settlement of losses and implementation costs

Respondents' views:

- 3.73 Eir and Three submitted comments regarding Compensation, reimbursement of payments and settlement of losses. Sky submitted changes to the dispute resolution procedures will cause it to incur additional costs.
- 3.74 Eir stated that *"in the case of a direction to pay compensation, the upper limit of €5,000 under the 2023 Act must not be used as a target"*.
- 3.75 Three in its response:
- 3.75.1 sought clarity on how ComReg would mitigate against 'double recovery' by end-users under the dispute resolution process;
 - 3.75.2 stated it would expect ComReg to 'reject' *"any applications by an end-user to have a dispute heard which refers to compensation already given by a provider"*;
 - 3.75.3 stated that *"Non-economic loss should not be considered in the compensation process"*;
 - 3.75.4 *"ComReg should consider other offers that an end-user can accept from a provider that provides value to them in lieu of monetary compensation, but which provides the same level of value"*; and
 - 3.75.5 sought clarity *"on what levels of compensation will be awarded in the dispute resolution process"*.
- 3.76 Sky noted that changes it will be required to make due to amendments to the dispute resolution procedures, even where required by statutory revision, *"will result in significant increased costs for providers and will tie up substantial resources"*.

ComReg's analysis:

- 3.77 As noted previously, ComReg assesses each dispute on the evidence presented. If it is evidenced that compensation has been already provided to an end-user, ComReg will determine whether such compensation is adequate and whether any further measures are merited. Therefore, ComReg will not reject on an automatic basis a referral for dispute resolution merely because a provider has provided compensation to an end-user.

- 3.78 ComReg is required to act proportionately and measures specified in the resolution of a dispute will always be reasoned, evidence-based and specific to the particular circumstances of each dispute.
- 3.79 While providers may incur costs in meeting their obligations, end-users are entitled to refer disputes for resolution under Part 5 of the 2023 Act and ComReg is required to provide dispute resolution for end-users. ComReg has sought to act proportionately and reasonably in revising the procedures so as to fulfil the various requirements of section 48, including the requirement that the procedures are inexpensive.
- 3.80 Section 49(2) does not exclude non-economic loss from the payment of compensation by a provider to an end-user (if required). Reimbursement of payments, compensation and payments in settlement of losses are all provided for in section 49(2).

ComReg's position:

- 3.81 ComReg has had regard to the submissions.
- 3.82 ComReg's position remains as stated in ComReg D14/18¹, namely that personal injury¹¹ claims are not covered by this dispute resolution process and are outside of ComReg's remit. However, ComReg considers that claims for disappointment, inconvenience and/or emotional upset caused by a provider's breach of obligation are within its remit.
- 3.83 On the issue of 'double recovery', ComReg remains of the view as stated in its *'Switching and Number Portability – End-User Compensation. Response to Consultation 23/92 and Decision 01/24'*¹², that it should not be the case that end-users have 'double recovery' of compensation from a provider in respect of the same breach. This is without prejudice to compliance action that may be taken in respect of any such breach and as ComReg considers appropriate.

¹¹ Section 2 of the Civil Liability Act, 1961 (as amended) defines "personal injury" as including any disease and any impairment of a person's physical or mental condition.

¹² ComReg Decision 01/24 [Online] <https://www.comreg.ie/publication-download/switching-and-number-portability-end-user-compensation-response-to-consultation-23-92-and-decision-01-24>

3.7 Appeals

Respondents' views:

- 3.85 Eir, Three and Sky submitted comments regarding the right of appeal.
- 3.85.1 Eir requested ComReg clarify the *“legal right to appeal ComReg’s resolutions, given the legally binding effects on providers”*;
 - 3.85.2 Three stated that *“the Dispute Resolution Procedures document, when published, should explain the process for appealing the final resolution proposed by ComReg”*; and
 - 3.85.3 Sky stated its view that *“...in effect... there is no appeal in respect of the resolution proposed by ComReg”*.

ComReg’s analysis:

- 3.86 ComReg notes respondents’ submissions regarding appeals.

ComReg’s position:

- 3.87 ComReg will include reference to statutory appeal provisions in its procedures. In this regard attention is drawn to sections 17(1)(a) and section 17(3)(a) of the 2023 Act.

3.8 Effective Date/Lead in time

Respondents' views:

- 3.88 Virgin and Sky requested a longer lead-in time to the effective date for the procedures.
- 3.89 Sky stated that *“providers will need more than three months to introduce these new processes and the relevant training and governance”*. However, it did not seek an extension of any specific duration.
- 3.90 Virgin requested consideration of *“increasing the Effective Date to 6 months from date of publication of the Decision”* noting it envisaged *“...a significant change to the current complaint management procedure and... will adversely impact customer outcomes and the good practices that are in place.”*

ComReg's analysis:

- 3.91 As noted previously, ComReg first specified procedures for the resolution of an end-user disputes that remained unresolved after due completion of a provider's code of practice, in November 2018¹ and has used the 2018 Procedures to resolve disputes since that time.
- 3.92 ComReg does not consider that the amendments to its procedures will create a significant retraining requirement as suggested by Sky. Sky did not particularise the relevant *‘training and governance’* processes it referenced.
- 3.93 ComReg does not agree with Virgin's position and also notes it did not draw a clear connection between the points made on this issue and the longer lead in time sought (6 months).

ComReg's position:

- 3.94 ComReg has considered the responses to the consultation and has taken account the views expressed regarding the three-month lead-time. ComReg has decided to delay the commencement of this Decision by one month, thereby granting a total of four months, in which to prepare.

3.9 Miscellaneous

- 3.95 One respondent (Three) questioned the standard of evidence required to demonstrate the acceptance by an end-user of the resolution of a dispute, and medium/channel of communication it is recorded on. The same respondent questioned the nature and form of any apology.
- 3.95.1 ComReg's position: It would seem to serve the interests of a provider that it can adequately demonstrate acceptance by an end-user of the resolution of a dispute. It is reasonable that this would be done through the channels normally used to communicate with an end-user, however there would be obvious potential complications where the communication channel does not lend itself to keeping a record of the fact of a resolution having been accepted. With regard to the form an apology should take, if the dispute is to be resolved, it should be in a manner acceptable to the end-user and this is the key consideration.
- 3.96 One respondent (Three) noted that *"Where ComReg seeks to publish anything in relation to the dispute, this should be non-confidential, and it is important that providers should have advance notice of any such publications"*.
- 3.96.1 ComReg's position remains that stated in ComReg D14/18¹³ that only a final summary of a dispute resolution will be published by ComReg on its website and elsewhere as ComReg sees fit, and it will contain only high-level details of the case. ComReg also maintains its position that it may issue high level reports on the output of the Formal Dispute Resolution function in time.
- 3.97 One respondent (Eir) stated that *"many customers by-pass its code of practice process and go straight to ComReg"* and that some complaints referred by end-users are considered resolved by it. ComReg again refers to the two bases that upon which a referral may be made under section 47(1). ComReg also notes that the informal phase of dispute resolution (Phase 1) provides ample opportunity for a provider to be proactive in addressing any outstanding matters that may lead an end-user to believe their complaint remains unresolved.
- 3.98 Two respondents (Three and Eir) raised the issue of how the ComReg Consumer Care statistics are calculated. The categorisation of complaints for statistical purposes is not within the scope of this consultation. ComReg notes however, that the fact a dispute may be resolved in Phase 1 does not mean that it was not based upon a valid complaint to begin with.

¹³ Paragraphs 35 and 36 of D14/18

- 3.99 One respondent (Three) sought clarification “*whether an end-user is permitted to have legal representation throughout this formal dispute resolution process*”. The procedures (at paragraph 19.6) include that a minimum requirement of the application form is that written confirmation of a nominated representative/third party (if applicable) is included which may include legal representation.
- 3.100 Two respondents (Sky and Virgin) sought clarification in the event an end-user rejects a proposed resolution. The procedures set out what will occur in this scenario at paragraph 60, which has been amended to confirm that a rejection (deemed or otherwise) will result in ComReg closing the dispute. An attempt to re-submit an application relating to the same dispute, following the rejection of a proposed resolution of that dispute, would be treated as being an application that is frivolous and vexatious and therefore invalid.
- 3.101 One respondent (Sky) stated “*the 5-day timeline in Para 34.1 is very short*”. ComReg disagrees with Sky in this regard. The 5-day timeline set out in paragraph 34.1 is an additional period of time given to a provider, who has failed to answer a further information request made of it by ComReg within the initial 10-working days afforded to so (at paragraph 34). ComReg does not expect a provider to ignore an information request made to it during the formal dispute resolution process and so does not envisage this scenario occurring, however the additional 5 days allows a further period for a provider to explain why it has failed to respond and to submit its response.
- 3.102 One respondent (Sky) referenced the overall time frame provided for the Resolution of disputes stating that the “*indicative timeline for final proposed resolution is 60 days from the Date of Acceptance of a matter into formal resolution....is a very short period*”. ComReg references Section 48(1)(b) of the 2023 Act which specifies that ComReg’s Dispute Resolution Procedures shall “*...enable disputes to be settled fairly and promptly*” (emphasis added); and notes that the 60-working day timeframe has been the length of time provided for the dispute resolution process to date.

Annex: 1 Legal Basis

- 1 It is an objective of ComReg under **section 12(1)(a)(iii) of the Communications Regulation Act 2002 (as amended)** in exercising its functions in relation to the provision of electronic communications networks, electronic communications services, and associated facilities, to promote the interests of users within the Community.

- 2 **Section 47 of the Act of 2023 provides as follows:**

Resolution of relevant disputes by Commission

47. (1) An end-user may refer a dispute with a provider to the Commission and, where the Commission is satisfied that the dispute is a relevant dispute, and—

(a) a period of at least 10 days has elapsed since the complaint giving rise to the dispute was made, or

(b) the procedures for the resolution of disputes provided for in the provider's code of practice have been completed,

the Commission, or such independent person as may be appointed by the Commission, shall, in accordance with such procedures as may be specified by the Commission under section 48, carry out a dispute resolution process and propose a resolution to the dispute referred.

(2) Where the Commission proposes a resolution under subsection (1) the end-user that referred the dispute may elect to accept the resolution proposed and where the end-user so elects the resolution shall be binding on the provider concerned.

(3) An end-user who has referred a dispute to the Commission for resolution under this section may withdraw the dispute at any stage up to the time at which the Commission, or such independent person as may be appointed by the Commission, proposes a resolution to the dispute, by notifying the Commission, or the person, in writing to that effect, or, where there is an oral hearing in relation to the dispute, by notifying the Commission, or the person, at the hearing.

- 3 **Section 48 of the Act of 2023 provides as follows:**

Procedure for resolution of disputes by Commission

48. (1) The Commission may specify procedures for the resolution of disputes under section 47 and such procedures shall—

(a) be transparent, non-discriminatory, simple, and inexpensive,

(b) enable disputes to be settled fairly and promptly, and

(c) be made publicly available by the Commission, together with any amendments to such procedures.

(2) The Commission, or such independent person as may be appointed by the Commission under section 47(1), shall, as soon as practicable after an end-user refers a dispute, inform the end-user—

(a) of his or her right under section 47(2) to elect to accept the resolution proposed,

(b) of his or her right under section 47(3) to withdraw the dispute,

(c) that the procedure is without prejudice to any other right to seek redress, including by court proceedings,

(d) that the resolution proposed may be different from an outcome determined by a court,

(e) of the legal effect of electing to accept the resolution proposed,

(f) that he or she will be given a reasonable period of time to consider whether to elect to accept the proposed solution, and

(g) that if the end-user does not elect to accept the resolution proposed within the period specified for the purposes of paragraph (f), the end-user shall be deemed to have rejected the proposed solution.

4 Section 49 of the Act of 2023 provides as follows:

Direction

49. (1) Where the Commission is satisfied that a provider has failed to comply with a proposed resolution that is binding upon it by virtue of section 47(2), the Commission may serve a direction on the provider requiring the provider to take such measures to ensure compliance with the resolution as are specified in the direction.

(2) Without prejudice to the generality of subsection (1), a direction may require all or any of the following:

(a) the reimbursement of payments by a provider to an end-user;

(b) payment of compensation by a provider to an end-user;

(c) payment by a provider in settlement of losses suffered by an end-user;

(d) where the Commission is satisfied that the conditions, requirements or circumstances permitting such termination have been met, the termination of a

contract between a provider and an end-user without the end-user incurring further costs;

(e) the giving of an apology by a provider to an end-user;

(f) the giving of an explanation by a provider to an end-user for any matter giving rise to a complaint;

(g) compliance with a term or condition of the contract between the provider and the end-user;

(h) compliance with a legal obligation pursuant to the law relevant to the relevant dispute.

(3) The maximum amount of compensation that a provider may be directed to pay to any end-user under this section shall be €5,000 or such other lesser or greater amount as the Minister may prescribe.

5 Section 54 of the Act of 2023 provides as follows:

Procedure under this Part without prejudice to other remedies

54. This Part is without prejudice to an end-user's right to pursue a dispute to which this section applies by other legal means or proceedings.

6 Section 55 of the Act of 2023 provides as follows:

Application of Universal Service Regulations to certain disputes

55. Where on the coming into operation of this section, a dispute is before the Commission, or an independent person, for resolution in accordance with Regulation 27(4) of the Universal Service Regulations then, notwithstanding any repeal of the Universal Service Regulations, those Regulations shall continue to apply in respect of such a dispute.

7 Section 56 of the Act of 2023 provides as follows:

Continuation of measures under Universal Services Regulations

56. (1) Any measure that is in force under Regulation 27 of the Universal Services Regulations on the coming into operation of this section shall continue in force and be deemed to have been made under, and in accordance with, this Part.

(2) Without prejudice to the generality of subsection (1), for the purposes of this section "measure" includes any decision, specification, requirement, direction, notification and notice, and any other act of an equivalent nature.

Appendix: 1 End-user Dispute Resolution Procedures

A 1.1 Published as ComReg Document 24/22a