



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# End-user Dispute Resolution Procedures

## Submissions to Consultation 23/107

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### Submissions to Consultation 23/107

**Reference:** ComReg 24/22s

**Date:** 02/04/2024

**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Submissions Received from Respondents

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Consultation:	ComReg 23/107
Response to Consultation and Decision:	ComReg 24/22 D07/24
End-user Dispute Resolution Procedures	ComReg 24/22a

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**1 Eircom Limited (trading as ‘eir’ and ‘open eir’) and Meteor Mobile Communications Limited, collectively referred to as ‘eir Group’**

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**eir's Response to ComReg Consultation 23/107 End-user Dispute Resolution  
Procedures Consultation and Draft Procedures**

**ComReg Document: ComReg 23/107**



**12 January 2024**

## DOCUMENT CONTROL

<b>Document name</b>	eir response to ComReg Consultation 23/107
<b>Document Owner</b>	eir
<b>Status</b>	Non-Confidential

The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir Group' or 'eir'.

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Outlined below is eir's response to the questions in ComReg's Consultation 23/107 on End-user Dispute Resolution Procedures Consultation and Draft Procedures.

## Response to consultation

### Response summary

eir is dedicated to providing excellent customer service and take its obligations regarding customer complaints very seriously. eir recognises the importance of customer access to a dispute resolution procedure, and we make sure our customers are aware of this procedure through our complaint code of practice. eir notes very few disputes have been notified through the existing 2018 dispute resolution procedures.

eir has reviewed ComReg's proposed updates to the 2018 dispute resolution procedures and requests clarity on some of its proposals. This is to ensure that the procedures meet the requirements of section 48(1) of the 2023 Act, and are in compliance with adjudication procedures outlined in section 71 of the 2023 Act.

To progress the proposed dispute resolution procedures, eir considers that ComReg must:

- Clarify the legal basis of using oral hearings as part of dispute resolution procedures, the role of adjudicators in dispute resolution, and set out clearly the criteria used to decide if an oral hearing is required.
- Clarify that the right to appeal ComReg decisions (which derives from the Code) is not affected by the deletion of the reference to it in the proposed dispute resolution procedures, once a proposed resolution from ComReg becomes binding.
- Ensure proportionality in the application of the procedures, and exclude business customers from the dispute resolution procedures.
- Clarify if a customer is required to engage in Phase 1 of the proposed procedures.

To meet its requirements under section 48 (1) of the 2023 Act by implementing dispute resolution procedures that shall "*(a) be transparent, non-discriminatory, simple, and inexpensive, (b) enable disputes to be settled fairly and promptly,*" ComReg must ensure:

- a formal dispute process cannot be enacted until 10 **working** days after the complaint has been referred to a provider, and
- a customer has made full use of the process set out in their provider's code of practice before opting for dispute resolution.

eir considers that Phase 1 (the informal phase) of the process is an effective mechanism to resolve disputes, which if used effectively should result in very few, if any, disputes transitioning to the formal dispute resolution phase.

eir welcomes the opportunity to respond to this consultation on dispute resolution procedures and has outlined its response to questions 1-7 below.



**Q. 1 Taking account of the requirements of the 2023 Act and the very limited areas of discretion afforded to ComReg, do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.1? Please explain the basis of your response in full and provide any supporting information.**

ComReg must ensure its dispute resolution procedures comply with section 48(1) of the 2023 Act. A dispute resolution procedure must be “transparent, non-discriminatory, simple and inexpensive,” and enable disputes to be settled fairly and promptly. To ensure ComReg’s dispute resolution procedures meet these criteria, ComReg should:

- Clarify the legal basis of using oral hearings as part of dispute resolution procedures, and set out clearly the criteria used to decide if an oral hearing is required.
- Ensure proportionality in the application of the legislation, and exclude business customers from the dispute resolution procedures.

*Clarify the legal basis of oral hearings and the role of adjudicators*

1. eir is unclear on the legal basis of the proposed oral hearings featured as part of dispute resolution. Part 7 of the 2023 Act on administrative sanctions contains an explicit provision that adjudicators to whom a referral is made under section 68 or 71 may “conduct an oral hearing” (section 85). However, there is no such provision that ComReg “may conduct an oral hearing” in Part 5, which legislates for resolution of end-user complaints. Given that the Act has made express provision for oral hearings for Part 7 disputes, but has not made such a provision in relation to Part 5 complaints, eir requests clarity on the legal basis for now empowering ComReg or the independent person appointed by ComReg, under section 47, to conduct an oral hearing.
2. eir also seeks clarity on the legal basis upon which it is proposed, under Paragraph 17 of the draft procedures, that it is ‘adjudicators’ who will become involved in conducting an oral hearing in relation to Part 5 end-user complaints. Section 76 of the Act defines an “adjudicator” as persons appointed “to make adjudications”. “Adjudications” are then defined as a “decision by an adjudicator under section 90” (i.e. a decision on foot of a referral by an authorised officer under section 68 or section 71). The Act does not define an “adjudicator” as a person empowered to make decisions under section 47. It is not clear that persons appointed as adjudicators to make decisions under section 90, may also make decisions as “adjudicators” under section 47, where there is no reference to “adjudicators” (with all the powers that implies) but rather to an

“independent person”.

3. ComReg will be aware that there are prescribed procedures for the conduct of reviews by adjudicators, in Chapter 3 of Part 7. Consequently by referring to the persons making end-user complaint decisions under Part 5 as “adjudicators” it is unclear whether ComReg is proposing that all the procedures set out in Part 7 (which relate to the separate issue of regulatory non-compliance investigations) are being imported to apply to end-user complaints. This would not appear to have been the legislative intent and would appear to greatly complicate the process of resolving end-user complaints, which eir submits is not helpful to either end-users or providers.
4. eir requests, therefore, that ComReg clarifies whether it is proposing that adjudicators appointed under Part 7, will also be appointed as “independent persons” under Part 5, and whether all the processes and procedures relating to reviews by adjudicators, including those relating to oral hearings, set out in Part 7 are now being imported into the end-user dispute resolution procedures.
5. Further, 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).
6. In particular, eir is unclear how an oral hearing will arise as part of a dispute process that is in line with section 71 of the 2023 Act, if 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,” rather than following the referral process as set out in section 71 of the 2023 Act in the case of a suspected regulatory breach.
7. eir notes the powers of adjudicators and provisions related to oral hearings under section 85 and 86 of the 2023 Act, and requests ComReg clarifies whether it is proposing that ComReg or an independent person appointed by ComReg under section 47<sup>1</sup> is intended to have the powers of an adjudicator during an oral hearing as part of the dispute resolution process in regard to these sections of the 2023 Act, and to follow the procedures set out in Part 7 relating to oral hearings. eir also notes that ComReg has not yet issued guidelines regarding oral hearings as set out under section 98 (1)(a) of the 2023 Act.

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<sup>1</sup> Referred to as an “adjudicator” in paragraph 17 of the draft procedures.

8. eir requests this clarity in the context that both providers and customers are responsible for “any costs incurred by them in preparation of their case” under paragraph 66 and 67 of the dispute resolution procedures. Costs and workload are likely to very significantly escalate for both parties to any dispute, in circumstances where an oral hearing is scheduled. eir considers that if ComReg is now legislating for oral hearings to be part of the dispute resolution process, it should make it clear that it will not unnecessarily mandate such hearings, given the requirement to ensure the process is “simple” and “inexpensive” as required under section 48 of the 2023 Act. It should also not be compulsory for parties to attend if they choose not to. If ComReg opts for an oral hearing, eir expects that ComReg will justify this approach is required and have engaged fully with providers prior to making this decision. This is to avoid unnecessarily burdening providers with the very significant costs and resources required to participate in oral hearings.

#### *Application of procedures - proportionality and business customers*

9. ComReg has not considered the complications of applying the dispute resolution procedures to business customers. eir is of the view that 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. There may be questions of the impact on competition law of compelling providers to publish negotiated terms as part of any dispute resolution procedures, which have been commercially negotiated with our business customers. eir also provides different levels of service to different groups of business customers, tailored to their specific service needs, which means a dispute resolution would be unique to each business customer.
10. eir notes that under Article 25 of the Code the focus of dispute resolution procedures is on consumers, “with a view to resolving disputes **between providers and consumers arising under this Directive and relating to the performance of contracts**” (emphasis added). Therefore, eir requests that business customers are excluded from the scope of the dispute resolution procedures and the focus is on consumer disputes.
11. eir expects the outcome (“resolution”) of any dispute resolved using the proposed procedures will be proportionate towards providers. For instance, 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.

Q. 2 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.1: The type of disputes that can be resolved by ComReg? Please explain the basis of your response in full and provide any supporting information.

12. eir agrees with the proposed two-phased dispute resolution process. However, it is not clear whether Phase 1 (the informal phase) involving the ComReg Consumer Care team is compulsory. eir considers this should be clarified in Annex 2. To ensure that ComReg meets its requirements under section 48 (1) of the 2023 Act to put in place dispute resolution procedures that shall “(a) be transparent, non-discriminatory, simple, and inexpensive, (b) enable disputes to be settled fairly and promptly,” eir considers ComReg must ensure:

- 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; and
- phase 1 of the process is an effective mechanism to resolve disputes which negates the need to transition to the formal dispute resolution phase.

*The formal dispute process should be enacted after 10 working days*

13. eir does not agree with ComReg’s interpretation of the 2023 Act in regard to its validity assessment requirements. eir notes that section 47 of the 2023 Act states that an end-user can engage in dispute resolution if, “(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.” However, under section 42 (2)(e)(ii) of the 2023 Act regarding a providers code of practice, the relevant time period to refer a complaint for dispute resolution is “at least 10 **working days**”. eir considers this 10-working-day period is:

- already established in the dispute resolution procedures;
- is referenced in the 2023 Act; and
- exists under D04/17.

Therefore, ComReg should default to the 10-working-day period before a customer can progress to the formal dispute resolution procedure.

14. eir also notes that ComReg has provided a 10-working-day period for engagement with its Consumer Care team for Phase 1 (the informal phase) and should apply this principle to the period allocated for providers to resolve any complaints before they progress to a dispute changing paragraph 20.3 of the procedures in Annex 2 to reference 10 working days.

*Customers must make full use of a provider's code of practice*

15. ComReg must also clarify how it will ensure that *“the procedures for the resolution of disputes provided for in the provider's code of practice have been completed.”* eir agrees with ComReg's position in its procedures document (Annex 2 paragraph 4) that *“Only complaints that are notified to providers in accordance with their codes of practice for complaints handling will be accepted into the formal dispute resolution process.”* However, ComReg must encourage the customer to fully utilise the process set out in the provider's code of practice until a resolution has been reached with the provider, and not just wait 10 working days to enter the informal or formal dispute resolution. This is to ensure ComReg can meet its requirements under section 48 of the 2023 Act to ensure a fair, transparent and inexpensive dispute resolution procedure.

16. ComReg must also clarify the meaning of the provision that a *“complaint must have been first notified”* to the provider, to ensure it is in line with the definition of a complaint as set out under D04/17,

*“‘Complaint’ means an issue raised by an end-user to an undertaking relating to that undertaking's 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.”*

A customer must be clear that “notifying a complaint” is not the date and time the customer first contacted their provider but instead as set out in D04/17, is the date the customer's issue is unresolved after an initial attempt to resolve it, and established as a complaint. This should be made clear in ComReg's information provided to end-users on the dispute resolution process by ComReg's customer agents during Phase 1. This is particularly important given the proposed reduction in length of the informal phase of the process.

*The Informal Phase (Phase 1) of the procedures should be utilised*

17. eir views Phase 1 as an important step in the dispute resolution process that can ensure customer issues can be resolved effectively without resorting to formal dispute resolution. ComReg must meet its requirements under section 48 of the 2023 Act and ensure the dispute resolution process is transparent, non-discriminatory, simple and inexpensive.
18. However, the draft procedures are not entirely clear that Phase 1 must always be followed. Whilst paragraph 19.8 requires the applicant to consent to close the case with ComReg Consumer Care, paragraph 20.3 appears to suggest that a reference is valid if the complaint has been with the provider for 10 days irrespective of whether phase 1 has been engaged. This suggests an end-user does not have to engage in this informal phase and can complete an application form for formal dispute subject to the requirements under section 47(1) of the 2023 Act.
19. eir notes that ComReg states that, “*Experience has shown that ComReg’s free complaints handling service is very effective in resolving end-user disputes*” (paragraph 55). eir considers this informal phase is an essential part of the process used to ensure that the complaint is valid, and to ensure the dispute resolution procedure is simple and inexpensive.
20. eir notes that many customers by-pass its code of practice process and go straight to ComReg. eir has recently started to query the complaints cases received from ComReg, and complaint figures as they are inaccurate and overstated. For example, in September 2023, [X] cases were received from ComReg which eir queried as we considered [X] of these were not complaints. Following these queries, a third of the complaints ([X] complaints) were removed from ComReg’s statistics. The most common reason for the removal of the complaint data was that the issue was already resolved by eir before it was escalated to ComReg.
21. eir notes that this illustrates the validity of its concerns about the proposal that “*ComReg will not engage with the provider in relation to the validation of any of the minimum requirements*” (paragraph 34). eir 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. This does not appear to comply with the requirement that the process be simple and inexpensive, as well as fair and

prompt. The process needs to be designed to deal with the fact that, as with all dispute resolution procedures, it may be invoked vexatiously or unnecessarily and to ensure that this can be identified early to avoid wasted time and costs.

22. If Phase 1 is conducted effectively, eir considers very few customer complaints should proceed to Phase 2. ComReg has not outlined reasons in its proposed process as to why a customer would need to proceed to Phase 2, other than stating if the issue has not been resolved, and if the 10-working-day period lapses. eir notes this period can be extended on request, although retaining a longer period for Phase 1 will increase the transparency of the process (as required under section 48 of the 2023 Act) by reducing the likelihood of extension requests.
23. eir is unclear why ComReg has reduced the phase from 30 days to 10 working days. ComReg has also not provided evidence of the need to reduce this period. eir considers that sufficient time should be provided to ensure that the customer utilises this informal stage and the provider has enough time to respond to ComReg's customer care agent with a view to resolving any issue informally.
24. eir does not agree with the proposal that, "*ComReg will not engage with the provider in relation to the validation of any of the minimum requirements; ComReg will assess the validity of the minimum requirements on the basis of the information supplied by the end-user in the application*", even if a customer has engaged in Phase 1 of the process. The engagement in Phase 1 including any information given by the provider should be used to assess the validity of the dispute to proceed to the formal dispute process. Therefore, the application form may need to be edited so a customer will be required to provide details of Phase 1 interaction rather than choose to do so as an option.
25. eir notes that ComReg has added "relevant guidance" to the list of factors to be considered when resolving disputes. eir highlights that ComReg's guidance typically includes legal disclaimers, such as in its guidance on the implementation of the Code (20/111R), "*This document (hereafter the "Guidance") is not a binding legal document and also does not contain legal, commercial, financial, technical or other advice.*"<sup>2</sup>

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<sup>2</sup> <https://www.comreg.ie/publication/regulatory-guidance-on-title-iii-end-user-rights-of-the-european-electronic-communications-code-2>



**Q. 3 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.2: Accessing formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information.**

26. eir does not object to ComReg including formal timelines in the procedures. However, ComReg must communicate with providers the outcome of the process stages (such as customer acceptance of a resolution), as soon as possible, and not wait until the allocated time period runs out. This is to ensure process is efficient and avoids unnecessary use of provider resources, as required under section 48 of the 2023 Act.

**Q. 4 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.3: Acceptance of a proposed resolution? Please explain the basis of your response in full and provide any supporting information.**

27. eir has no comment on the proposed 10-working-day timeframe for customers to elect to accept the resolution proposed by ComReg. However, ComReg must communicate the customer decision to providers as soon possible before the end of the five-day time period allocated for this step. This is to ensure a transparent process, and avoid an unnecessary, prolonged use of provider resources that will increase the cost for providers of the procedures.

**Q. 5 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.4: Improving access to the Dispute Resolution procedures? Please explain the basis of your response in full and provide any supporting information.**

28. eir has no comment.

**Q. 6 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.5: Effective Date and Duration? Please explain the basis of your response in full and provide any supporting information.**

29. eir has no comment.

**Q. 7 Do you have any comments on the revisions outlined in Annex: 2? Please document clearly the basis of your response and reference the paragraph number(s) where appropriate. Please explain the basis of your response in full and provide any supporting information.**

30. eir considers that ComReg should include the definition of a “relevant dispute” in the procedures document outlined in Annex 2. This is to ensure the process is fully transparent as required under section 48 of the 2023 Act.

31. eir notes that ComReg proposes deleting the reference to the statutory right of appeal from the 2018 procedures text, “*There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/2011.*” In light of the deletion of this reference to the right of appeal, eir requests ComReg clarifies that this does not affect the legal right to appeal ComReg’s resolutions, given the legally binding effects on providers. eir notes that Article 31 of the Code requires there to be an effective right of appeal from any ComReg decision.

## 2 Sky Ireland Limited

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## End-User Dispute Resolution Procedures

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ComReg Consultation 23/107

12<sup>th</sup> January 2024

## **Q. 1 - Mandatory Revisions.**

Q. 1 - Taking account of the requirements of the 2023 Act and the very limited areas of discretion afforded to ComReg, do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.1? Please explain the basis of your response in full and provide any supporting information.

**Response:** We note that there are five general revisions to the procedures set out in section 3.1 and have responded to same below.

### **1 - Broadening of Dispute Types.**

Sky Ireland Limited (“**Sky**”) notes the expansion of the scope of disputes that can progress into the formal process. The initial scope under Regulation 27 of the User Rights Regulations was clear in identifying that “*unresolved disputes, including complaints*”, were the basis for the existing 2018 dispute resolution procedures. We now note the revisions arising from Section 40 of the 2023 Act and have no comment on this clarification. Sky will continue to endeavour to ensure that ADR should be a last resort for our customer issues.

### **2 - End User Acceptance & Withdrawal.**

Sky believes that the revisions proposed by ComReg to implement Section 47 (2) of the 2023 Act would result in an unfair burden on providers due to the end-user focus in the process for the acceptance of resolutions. While the binding nature of determinations was an existing feature of the old 2018 procedures, the proposed expansion appears imbalanced when giving such a powerful discretion to end-users.

We note that Section 48(1) of the 2023 Act requires that procedures for the resolution of disputes be transparent, non-discriminatory, simple and inexpensive and we believe that this end-user acceptance process does not meet this legal requirement.

It is important to note that any potential appeal against a proposed resolution by a provider would require a litigated appeal to the High Court, which in effect means that there is no appeal in respect of the resolution proposed by ComReg. We respectfully submit that ComReg should introduce a secondary process available for a review of resolutions that are wholly unacceptable to a provider, in accordance with natural justice and fair procedures.

Providers should not have to instigate extensive and costly litigation in circumstances where a resolution is wholly incorrect or unacceptable. It is an accepted part of alternative dispute resolution processes that parties are collaborative and committed to a solution but if one party has more control on the eventual resolution, this certainly does not appear to meet the non-discriminatory threshold.

We are also concerned as to what occurs in the event that an end-user rejects a resolution. We request that ComReg clarifies this in its procedures so that end-users are fully clear on what their options are on this point and to ensure legal certainty for providers.

### **3 - Information Provision.**

In terms of informing the end-user adequately about the formal dispute resolution process, Sky believes that further 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. Sky's experience to date of this process is that often the principal issue can be caused by third parties, particularly in the area of missed appointments or failed installs. It would make sense and benefit the overall ADR process if ComReg highlights this to end-users and ensures that all relevant providers (including wholesale suppliers) can be party to the ADR process.

#### **4 - Compensation. Reimbursement and Settlement.**

Sky notes the implementation of Section 49 of the 2023 Act, which formally lists the various types of redress available and introduces the new €5,000 financial cap.

While Sky is aware that this is a statutory revision, an increased cap of this nature is challenging given some of the other revisions proposed in this consultation. For example, the shortened time of 20 days in total to resolve complaints before they are transferred to the formal dispute resolution process as set out in section 3.2.1 will result in significant increased costs for providers and will tie up substantial resources. In our experience, cases that are open for this length of time tend to be complex and involve other parties such as wholesale suppliers, civil works or licencing matters.

#### **5 - Oral Hearings.**

Sky notes that ComReg will continue to maintain a primarily paper-based process. However, in the event of an oral hearing being required to resolve a conflict of fact, certain additional requirements and enhanced procedures are required to meet the principals of fair process.

All parties should provide the names of witnesses and/or attendees in advance so that there is full transparency. Furthermore, providers should be able to request that other relevant providers be invited to give evidence, particularly technical evidence, for example, in the area of installs or property damage which often can be complex cases and in the case of customers switching between providers which will necessarily involve multiple parties. The provision of evidence by providers on behalf of third parties or contractors in complex installation or property cases could cause issues of fact.

We believe that ComReg should also prepare a written process document for its oral hearings and facilitate remote hearings to reduce unnecessary costs. It is essential that oral hearings meet the basic requirement of fair procedures and natural justice.

#### **Q. 2 - Accessing formal Dispute Resolution.**

**Q. 2 - Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.1: Please explain the basis of your response in full and provide any supporting information.**

**Response:** Sky 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 own customer specialists would now have in which to resolve the dispute.

The existing 30-day period has been in place successfully for several years and our records show that this timeframe is very effective in resolving matters.

If ComReg does introduce its proposal to shorten this initial period, a much larger volume of matters, that may have otherwise been resolved informally, will instead unnecessarily move into a very formal and paper-intensive process. This is not in the best interests of either party. Some consideration must be given to the difficulties that providers can have in obtaining evidence, especially from contracted partners and installers, but also from wholesale providers who have

multiple network providers and varying contracted partners themselves. Sky has found that the greatest challenge in replying to formal disputes has been in collating network provider information from third parties.

20 days to resolve these complex matters is not a reasonable period of time. We also have concerns that this shortened period will prejudice providers in circumstances where the end-user is slow to engage in the initial resolution period and the time to informally resolve matters expires.

Any delay whatsoever by one party involved could result in a premature move to formal resolution, with the outcome being a lengthier formal process and resolutions that will be binding on providers which may not be optimal for either party if a solution could have been reached through the initial informal process.

Therefore, we suggest that instead of shortening the period in which parties can remain informal, that the existing timeframes remain in place.

### **Q. 3 - Timelines for parties to respond.**

Q. 3 - Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.2: Accessing formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information.

**Response:** Sky notes the proposals by ComReg to amend its procedures and its indicative timeframe as per Annex 2 and we respectfully submit that the 5-day timeline in Para 34.1 is very short. We would suggest a more suitable timeframe of 10 working days to reply.

### **Q. 4 - Acceptance of a proposed resolution.**

Q. 4 - Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.3: Acceptance of a proposed resolution? Please explain the basis of your response in full and provide any supporting information.

**Response:** Sky notes the proposals to offer a 10-working day timeframe for end-users to elect to accept the proposed resolution. While we have already commented on the imbalanced nature of this acceptance process above, we have no further comment on this timeframe.

### **Q. 5 - Improving Access for End-users to dispute resolution.**

Q. 5 - Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.4: Improving access to the Dispute Resolution procedures? Please explain the basis of your response in full and provide any supporting information.

**Response:** Sky notes that ComReg has an appointed Access Officer and will ensure that our own Accessibility team are available to engage, if necessary, on any matters that require assistance.

In response to ComReg's commitment to utilising electronic formats throughout the process, Sky is in agreement with this, but would re-iterate our views in terms of the facilitation of remote oral hearings.



## **Q. 6 - Effective Date and Duration.**

Q. 6 - Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.5 : Effective Date and Duration ? Please explain the basis of your response in full and provide any supporting information.

**Response:** Due to the significant changes that could arise following any decision, providers will need more than three months to introduce these new processes and the relevant training and governance.

At a minimum there will need to be recruitment and training of agents and advisors to handle the resulting increase in formal disputes. Formal dispute resolution is a specific skill set and process that agents and advisors would need to be trained in.

Sky is already in the process of preparing for several significant regulatory changes in 2024 following several recent consultations and we believe additional time, on top of the 3-month period, should be provided to providers to ensure a new formal dispute process can be put in place adequately.

## **Q. 7 - Annex 2 Revisions.**

Q. 7 - Do you have any comments on the revisions outlined in Annex: 2 ? Please document clearly the basis of your response and reference the paragraph number(s) where appropriate. Please explain the basis of your response in full and provide any supporting information.

**Response:** Sky notes the revisions to 2018 Procedures as detailed in Annex 2.

We note that ComReg has suggested an indicative timeline for final proposed resolution is 60 days from the Date of Acceptance of a matter into formal resolution. In our experience this is a very short period and we would like to highlight best practice from other regulatory bodies which have indicated 90 days as their estimate and strongly recommend that ComReg takes notice of this.

## **Conclusion**

Alternative dispute resolution processes are a positive and effective tool for parties to resolve complaints that are more complex and detailed. Our experience is that the vast majority of disputes are resolved within the existing informal timeframe allowed. We believe that a shortening of this initial period will have unforeseen consequences and could even unduly extend the timeframe in which cases are resolved for many end-users, by placing disputes into a formal process prematurely and unnecessarily.

### **3 Three Ireland (Hutchison) Limited**

NON-CONFIDENTIAL

**End-User Dispute Resolution:  
Submission to ComReg 23/107**

**Response from Three  
12<sup>th</sup> January 2024**



**Three.ie**

## 1. Introduction

ComReg are revising the 2018 Dispute Resolution Procedures<sup>1</sup> in light of recent legislative changes<sup>2</sup>, namely the European Union (Electronic Communications Code) Regulations (the "ECC Regulations") and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (the "2023 Act").

## 2. Summary

ComReg is seeking submissions from interested parties on the proposed revisions to the 2018 dispute resolution procedures and comments on those revisions with the intention of publishing a response to consultation and decision in March 2024 and three months following that publishing its "End-user Dispute Resolution Procedures".

Three welcomes the opportunity to make a submission to this Consultation and understands that ComReg is required to meet its legal obligations by ensuring a fit for purpose and legally robust dispute resolution process is in place. With this submission, Three seeks the following:

- Clarity from ComReg on the functional separation between Phase 1; informal complaints resolution procedure, and Phase 2: formal dispute resolution procedure.
- ComReg's methodology for how compensation will be calculated under €5,000 and details on how the other resolutions can be implemented, that are listed under Section 49 (2) of the Act.
- How ComReg will ensure that a transparent and fair process for both end-users and providers is in place and what checks and balances it will have.

## 3. Three's Submission

**ComReg:** *Q. 1 Taking account of the requirements of the 2023 Act and the very limited areas of discretion afforded to ComReg, do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.1? Please explain the basis of your response in full and provide any supporting information.*

### Three's Response:

Paragraph 33 of the consultation provides: "There is no definition of a "dispute" in the 2023 Act, however it is clear from section 47(1) that a dispute referred for resolution must relate to a "complaint", and it is the definition of "complaint" in D04/17 that applies in the context of dispute resolution under Part 5 of the 2023 Act."

We do not agree with ComReg's approach in Paragraph 33. The Act does define a 'relevant dispute' in section 40 of the 2023 Act, and it is therefore a reasonable step to say that a complaint is a precursor to a dispute and therefore the substantive issue of a complaint

<sup>1</sup> ComReg Decision D14/18 ("D14/18")<sup>1</sup> (the "2018 Procedures")

<sup>2</sup> <https://www.irishstatutebook.ie/eli/2023/act/4/enacted/en/pdf>

should be the same as a dispute. Therefore, while an end-user is free to complain about an “undertaking’s”/providers products, services or complaints handling services (etc), it is not logical that all complaints, which are “issues raised by end-users”, become disputes. We agree that the dispute must relate to the complaint but that not all complaints can be disputes. The content of a complaint must form the basis of the content for the dispute that follows.

Therefore, given that the consequences of non-compliance have increased under the 2023 Act and while D04/17 has been continued by Section 56, it is important that the detail of the Decision is reviewed to ensure that it is proportionate and consistent with ComReg’s objectives and functions.

At Paragraph 34, ComReg states:

*Part 5 of the 2023 Act (“Interpretation” Section 40) provides that “relevant dispute” means*

*(a) a dispute between an end-user and a provider in relation to compensation payable under section 39,*

*We understand and note that ComReg have said recently: In terms of the interaction between this compensation scheme and dispute resolution, 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 however that may be taken in respect of any such breach as ComReg considers appropriate<sup>3</sup>.*

We believe ComReg must specifically refer to this when publishing its Decision and subsequent Dispute Resolution Procedures and explicitly state that any applications by an end-user to have a dispute heard which refers to compensation already given by a provider must be rejected, which includes any disputes over levels of compensation provided or awarded as this would amount to “double recovery”.

*(b) a dispute between an end-user and a provider, arising under this Act or the Code Regulations, relating to contractual conditions or the performance of contracts (whether entered into or not)*

While we note that ComReg does not have discretion here and must include disputes that relate to *contractual conditions or the performance of contracts (whether entered into or not)*, we believe 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. There must be a balancing exercise performed by ComReg as to what is allowed to enter dispute resolution and where an end-user seeks to enter dispute resolution over a provider’s contract as a standalone dispute or where the end-user has no relationship, potential or actual, with that provider or where they have given no consideration towards entering into a contract with that provider and have chosen to remain an observer of its services and products, then ComReg must exclude these categories from the dispute resolution process on the grounds of uncertainty and unfairness to all parties involved.

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<sup>3</sup> Paragraph 3.19 Switching and Number Portability – End User Compensation Response to Consultation 23/92 and Decision ComReg 24/01

Paragraph 45 of this Consultation provides:

*45 Section 49(2) of the 2023 Act provides that this may require all or any of the following:*

...

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

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.

Paragraph 46 provides:

*Section 49(3) of the 2023 Act provides that: “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.”*

ComReg must set out the process for how compensation will be directed to be paid to an end-user and set out the basis upon which such compensation will be granted. We think that compensation should be limited to economic loss and any refunds or credit already applied should be taken account of. Non-economic loss should not be considered in the compensation process. ComReg must ensure any awards of compensation are proportionate to the value of the contract or service that the end-user has with the provider. Where, for example, the end-user is on a low-cost monthly contract with the provider, it may be disproportionate to award the end-user compensation at the higher end of the scale as this may not encourage an end-user to engage meaningfully with the provider in settling the dispute if they felt they could be awarded a higher level of compensation under ComReg’s dispute resolution process.

*Paragraph 48: 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*

ComReg needs to specify if reference to an adjudicator in this context is the same as an adjudicator in Section 75 of the 2023 Act.

We think it is necessary to know if an adjudicator is appointed at the outset of the dispute being accepted for Dispute Resolution. It is not clear whether that “adjudicator” that is referred to in this Consultation document has the requisite qualifications and how they are fully independent from ComReg. Will there be a panel of adjudicators or a single adjudicator for dispute resolution?

Insofar as an oral hearing is conducted, we consider it necessary for the purposes of transparency for ComReg to set out what grounds the dispute resolution procedure would require an oral hearing and if it is only in circumstances where the paper-based process has not resulted in a resolution within a certain timeframe or for a specific reason.

Providers should be made aware of where an oral hearing would be conducted and what the format of the oral hearing would be. ComReg should provide clarity on the following:

- Are *ex parte* proceedings permitted for oral hearings?
- Whether these proceedings can be conducted fully in person or with an option for attendance online or whether they can be a hybrid of online and in person.
- If legal representation is permitted for parties engaged in the dispute resolution process?
- Can parties have a legal representative at the oral hearing?
- If ComReg decides that a dispute requires an oral hearing, who bears the costs burden of that decision and what would those costs include?
- Would a costs hearing follow an oral hearing to determine the above?

Three supports ComReg's commitment to sustainable work practices. We believe that this commitment should include limiting carbon footprints for unnecessary travel and believe that ComReg should facilitate an offering to have oral hearings online where they are determined necessary during the course of its formal dispute resolution process.

Section 48(2) of the 2023 Act provides that ComReg

*shall, as soon as practicable after an end-user refers a dispute, inform the end-user —*

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

Three does not think it is appropriate that an end-user should be able to seek redress by entering another dispute resolution process with another dispute resolution body with the same issue. We understand and acknowledge, however, that the end-user retains their legal right to pursue their dispute in a court setting. We believe 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," where a litigant, or end-user in this context seeks out the DR body or jurisdiction that that might provide the most favourable outcome to them. We consider that this would go against the principles of fairness, proportionality and natural justice and we would urge ComReg to make an explicit statement to end-users to state that this action is prohibited if they want to apply for formal dispute resolution with ComReg.

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

We agree with this and believe that it is important that the end-user is given a defined period of time within which to accept or reject the proposed solution at the outset of referring a dispute to ComReg. When setting out what the period is, if it is to be 10 days, then whether it is 10 calendar days or 10 working days. It would be unfair to the end-user, and to providers, to leave an extended period of time before the resolution proposed is accepted.

**ComReg Q. 2** *Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.1: The type of disputes that can be resolved by ComReg? Please explain the basis of your response in full and provide any supporting information.*

### **Three's Response to Q.2.:**

Three observes that ComReg has cited the effectiveness of its “free complaints handling service” in resolving end-user disputes. We agree with this assertion and have always ensured that Three's award-winning customer care service has engaged thoroughly and diligently with ComReg's free service in order to ensure that our level of customer complaints remains the lowest at industry level, a fact that has been reflected in ComReg's Consumer Care Q3 2023 Statistics Report<sup>4</sup>

We note at Paragraph 60 it states: *However, Phase 1 can continue beyond this 10-working day period with a view to ComReg Consumer Care facilitating an informal resolution for the end-user.*

We think that ComReg, having informed the end-user after the 10 working day period in Phase 1 that they are eligible to enter into the dispute resolution process and where the end-user declines to avail of that process, then ComReg should retain a record of the end-user's decision to decline to apply for this process and the end-user should not then be provided with repeated opportunities to enter into Phase 2: The Dispute resolution process. We support ComReg's intention to ensure Phase 1 and Phase 2, the informal and formal dispute resolution processes can run concurrently, where the end-user consents to same.

At paragraph 62 of this Consultation, it states:

“Following application for formal dispute resolution, ComReg will carry out an initial assessment to determine whether the dispute is a “relevant dispute” (as defined in section 40 of the 2023 Act).”

We think it would be in the interests of transparency and fairness that providers should be informed immediately of when, after the initial 10 day “Phase 1” period, that the end-user, having been advised by ComReg that they can apply for formal dispute resolution that an initial assessment of that end-user's eligibility for the dispute resolution procedure is being conducted. A record should be kept of the end-user's acceptance or non-acceptance of same.

If providers are not notified about the fact of an assessment being conducted, then any subsequent granting of access to the end-user to the formal dispute resolution process could be objected to at the final resolution stage. Such objections could hinder the entirety of the proposed formal process. We think ComReg should provide certainty to providers and end-users alike from the outset of this proposed dispute resolution process. Lack of certainty could lead to claims by providers that they did not have any real opportunity to resolve the issue as no notice was provided that an assessment for dispute resolution was being conducted by ComReg. Such an omission could result in the whole dispute resolution

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<sup>4</sup> <https://www.comreg.ie/publication/comreg-consumer-care-statistics-report-q3-2023>



process failing and ultimately could lead to unnecessary wasted time and effort for all parties involved.

**ComReg:** Q. 3 *Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.2: Accessing formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information*

**Three's Response to Q.3:**

We think that once an issue is no longer under Phase 1 and with ComReg's Consumer Care team and where it has been accepted into the Dispute Resolution process then the issue should be marked as closed and not included in the ComReg Consumer Care Statistics Report for that quarter, as the issue in question then falls under a new process and will be subject to a new timeline.

It is unclear whether a matter will be closed by ComReg when an end-user has been issued with a reimbursement or compensated by the provider or whether an end-user must confirm receipt of such monies in order for the matter to be closed off.

We believe that where a provider can show ComReg evidence of a credited amount given, or a refund provided to the end-user then ComReg should close the matter immediately following that. It is the case that end-users may not revert in a timely manner to ComReg or to the provider for a wide variety of reasons and a matter may be left open despite the actions of the provider in following through with the proposed resolution. It is for this reason also that ComReg should close off matters as complaints once they leave Phase 1 and enter Phase 2; Dispute Resolution.

**ComReg:** Q. 4 *Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.3: Acceptance of a proposed resolution ? Please explain the basis of your response in full and provide any supporting information*

**Three's Response to Q.4:**

ComReg state at paragraph 79 “ComReg is of the preliminary view that a 10-working day timeframe for end-users to elect to accept the resolution proposed by ComReg is reasonable.”

We accept that 10 working days is a reasonable timeframe for an end-user to accept the resolution proposed, however, it is unreasonable if this 10 working days is in addition to the 10 working days where the issue was live with the ComReg Consumer Care team. We consider that it is more appropriate for the issue to be closed as a complaint and not included in the consumer care statistics report with ComReg consumer care once it enters the dispute resolution process.

**ComReg:** *Q. 5 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.4: Improving access to the Dispute Resolution procedures? Please explain the basis of your response in full and provide any supporting information.*

**Three’s Response to Q.5:**

Three commends and supports ComReg’s commitment to sustainable work practices<sup>5</sup> and its acceptance of submissions in electronic format and by post.

**ComReg:** *Q. 6 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.5: Effective Date and Duration? Please explain the basis of your response in full and provide any supporting information.*

**Three’s Response to Q.6:**

We note that ComReg intends to publish a response to this consultation and decision in March 2024 and that the End-User Dispute Resolution Procedures will be effective three (3) months following that date.

If ComReg is appointing an adjudicator for dispute resolution and that adjudicator is one that is defined under Section 75 then ComReg must wait until such time as the Minister has made Regulations under Section 78 “prescribing requirements to be imposed upon the Commission and adjudicators to implement section 77”. This timeline may affect ComReg’s publication of the End-User Dispute Resolution Procedures in June 2024.

**ComReg:** *Q. 7 Do you have any comments on the revisions outlined in Annex: 2? Please document clearly the basis of your response and reference the paragraph number(s) where appropriate. Please explain the basis of your response in full and provide any supporting information.*

**Three’s Response to Q.7:**

Regarding Annex 1, Paragraph 5: We think end-users need to be expressly told that they cannot enter formal dispute resolution until their complaint has been with the ComReg

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<sup>5</sup> Paragraph 85 ComReg 23/107

Consumer Care team for 10 days and that meaningful engagement must be made within that 10 days to have their complaint resolved in that time.

*Annex 2 Paragraph 6: An end-user will need to complete an application form for formal dispute resolution and indicate on that form of their consent to their case being closed with the ComReg Consumer Care team if their dispute is accepted for resolution.*

It is not clear that Phase 1 and Phase 2 cannot run concurrently from this Consultation. We welcome ComReg's clarity on this.

Three understands from Annex 1 paragraph 7 that this process is end-user led with no input accepted on the minimum requirements from the provider. It is not clear whether ComReg takes into consideration any correspondence that has taken place between the end-user and the provider in the 10-day period that elapsed ahead of the dispute entering the DR process and would seek clarity on whether any reasons from the provider in that correspondence would be taken into account when assessing the minimum requirements.

Given that the consequences of non-compliance with the impending dispute resolution procedures have been significantly increased as a result of the 2023 Act, ComReg must provide more clarity around the separate procedures and the distinction between Phase 1; the informal procedure, and Phase 2: the formal dispute resolution procedure. ComReg needs to be clear if any evidence of the circumstances and chronology of events from Phase 1 will be used in Phase 2 Dispute Resolution and if so, ComReg must explicitly state this to providers and end-users on Day 1 of Phase 1.

Three seeks clarity from ComReg on what levels of compensation will be awarded in the dispute resolution process and how (paragraph 12).

ComReg must state whether an end-user is permitted to have legal representation throughout this formal dispute resolution process? (para 15).

Regarding paragraph 17, 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;* ComReg must provide clarity that the complaint must be a single complaint and not a series of complaints or one that has been accepted for dispute resolution and failed. The end-user must be prohibited by ComReg from reapplying in that situation.

*Paragraph 17 20.6 The dispute is not frivolous or vexatious;* 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?

*Paragraph 17 20.7 The dispute is not being, nor has previously been, considered by another dispute resolution entity or by a court;* ComReg must accept evidence of this from provider and end-user alike.

Three notes that Section 48(2) of the 2023 Act provides that ComReg "shall, as soon as practicable after an end-user refers a dispute, inform the end-user —" (c) that the procedure is without prejudice to any other right to seek redress, including by court proceedings". ComReg should clarify with the end-user that the issue cannot be accepted for dispute resolution where it is or was the subject of a legal case or court proceedings, but that the

end-user may proceed to a court setting after the formal dispute resolution process has been closed off.

Paragraph 17 20.8; ComReg must set out what the “nominal fee” is.

At the new Paragraph reference 32 of Annex 1, it is not clear why 5 days is the time period proposed where “Within 5-working days of the Date of Acceptance, the provider will be provided with an electronic copy of the details submitted in the application by the end-user, including any supporting documentation and will be given 10- working days to provide a written detailed response to ComReg”. ComReg should provide these details to the provider as soon as practicable when they become available.

*At Annex 1: 36.3 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.* 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.

*37.1 If agreement is reached, the provider must notify ComReg within 2- working days of the dispute being resolved, and evidence that the end user has accepted the resolution in writing*

ComReg should not ask the provider alone to provide such evidence of resolution of a dispute where the end-user sought to avail of the dispute resolution procedure. ComReg should follow up with the end-user to seek such evidence. Evidence of a dispute being accepted by an end-user should not be limited to a written acceptance from the end-user. Adequate evidence of resolution should be accepted by either party. 2 working days appears to be an arbitrary timeframe and ComReg should accept evidence as soon it is available that a resolution has been offered and accepted by the end-user

ComReg should accept evidence from a provider that agreement was reached on another medium, i.e. webchat or phone. As ComReg is aware, Three accommodates all its customers with any channel of communication they prefer, and this is especially the case for our customers with accessibility requirements.

ComReg should understand that providers cannot compel its customers to accept a resolution in writing where they may prefer to discuss the matter on the phone.

With regard to the giving of an apology by a provider to an end-user as a procedure that can be specified, Three seeks clarification on this:

- Is the apology an oral or written one?
- What medium must the apology be given?
- Is there a formal way of making an apology?
- Are apologies that have already been made during Phase 1 or before coming before ComReg’s care team taken into account?

We believe that the Dispute Resolution Procedures document, when published, should explain the process for appealing the final resolution proposed by ComReg.

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.

## 4 Virgin Media Ireland Limited

NON-CONFIDENTIAL



## **Virgin Media response to:**

ComReg's Consultation and Draft Procedures on "End User Dispute Resolution Procedures".

12 January 2024

## Introduction

Virgin Media Ireland Limited ('Virgin Media') welcomes the opportunity to respond to ComReg's Consultation and draft Procedures Document 23/107 on "*End User Dispute Resolution Procedures*".

Virgin Media is appreciative of work done by ComReg's Consumer Care Team in resolving customer complaints that are referred to it. Virgin Media meets quarterly with ComReg's Consumer Care Team and finds these meetings to be very constructive and helpful.

It is timely for ComReg to review the existing Formal Dispute Resolution Procedure for ECS/ECN End-Users, Decision D14/18 considering the new legislation, the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023. We welcome some positives updates proposed for example, the appointment of an Access Officer and the ability to make submissions in an electronic format where possible. This obviously is a welcomed proposal given the importance of sustainability.

In general Virgin Media is very supportive of the current measures in place (the Complaint Handling Code of Practice ComReg Decision D04/17, which gives a Provider the opportunity to resolve complaint in 10 working days before the end user may refer the matter to ComReg. The Formal Dispute Resolution Procedure for ECS/ECN End-Users, Decision D14/18, whereby an end user becomes eligible and may elect to formally apply to enter the procedure where a complaint remains open or unresolved for a total 40 days).

Virgin Media is not supportive of the significant reduction from (30 days to 10 days) whereby end users would be advised that they can apply for formal dispute resolution at 10 working days. We believe this is not workable and will undermine the current good practices that are in place.

Please find set out below Virgin Media's response to the specific questions asked in ComReg's consultation paper. Should you wish to discuss any aspect of Virgin Media's response please do not hesitate to contact us.



## Virgin Media Response to The Consultation Questions on Draft Procedures on “End User Dispute Resolution Procedures”.

Q. 1 Taking account of the requirements of the 2023 Act and the very limited areas of discretion afforded to ComReg, do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.1? Please explain the basis of your response in full and provide any supporting information.

Virgin Media Response to Q1. Virgin Media agrees with ComReg’s approach and assessment that a dispute referred for resolution must relate to a “complaint” as set out in D04/17 and that the complaint definition should apply in the context of dispute resolution.

Q 2. Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.1: The type of disputes that can be resolved by ComReg? Please explain the basis of your response in full and provide any supporting information.

Virgin Media Response to Q2. Virgin Media continues to lead on customer service for our customers. We have the lowest number of complaints in the fixed market, as evidenced yet again in ComReg’s Consumer Care Statistics Reports for Q3 in 2023. Virgin Media is absolutely committed to achieving the best possible outcomes and resolutions for customers and always aims and makes best efforts to resolve complaint matters as swiftly as possible.

Virgin Media agrees with the approach on the types of disputes that can be resolved by ComReg and with the proposed two phased approach; Phase 1, an initial informal phase and phase 2, which is followed by a formal dispute resolution procedure.

Virgin Media does not agree with the significant time reduction for entry into formal dispute resolution procedure (phase 2) from 30 days to 10 working days. Complaints may remain open in excess of 10 working days for a variety of reasons such as the end user may not engage or revert promptly with the Provider or ComReg. The complaint may be very complex in nature or involve multifaceted elements and it can also take time to implement a technical solution.

Virgin Media believes that the change that ComReg is proposing will undermine the existing good practices that are in place. This will drive complaints that could have been resolved easily in phase 1. This will delay or impede the resolution time for the customer creating a poor customer experience.

Virgin Media firmly believes that formal dispute resolution should only be considered as a last resort and the current 30 day period ensures that both Providers and ComReg’s Consumer Care team have sufficient and appropriate time to effectively manage/conclude the resolution.

Q 3. Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.2: Accessing formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information.

Virgin Media Response to Q3. Virgin Media agrees with the proposed approach ComReg has set out in respect of revisions in section 3.2.2, Accessing formal Dispute Resolution.

Q. 4 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.3: Acceptance of a proposed resolution? Please explain the basis of your response in full and provide any supporting information.

Virgin Media Response to Q4. Virgin Media agrees with the proposed approach ComReg has set out in respect of revisions in section 3.2.3, Acceptance of the proposed resolution.

Virgin Media also notes that that a proposed resolution will be considered rejected and is not binding on the provider, if an end-user does not elect to accept it within the 10 working day period. Virgin Media would welcome further clarity from ComReg on what happens in circumstances where an end user does not elect to accept the proposed final resolution. For example, it is unclear what happens if the complaint is closed in full by ComReg but the customer rejects the outcome.

Q. 5 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.4: Improving access to the Dispute Resolution procedures? Please explain the basis of your response in full and provide any supporting information.


Virgin Media Response to Q5. Virgin Media agrees and is supportive of ComReg's approach set out in section 3.2.4. We welcome references to the appointment of an Access Officer. We also welcome references to applications and supporting information in electronic format where possible.

Q. 6 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in section 3.2.5: Effective Date and Duration? Please explain the basis of your response in full and provide any supporting information.

Virgin Media Response to Q6. Virgin Media does not agree that 3 months from the date of the publication will be sufficient. We respectfully ask ComReg to consider increasing the Effective Date to 6 months from date of publication of the Decision.

We believe that the proposed timing of 10 working days whereby end users could be advised by ComReg of the resolution procedure is a significant change to the current complaint management procedure and as mentioned in our response to Q2 will adversely impact customer outcomes and the good practices that are in place.

Q. 7 Do you have any comments on the revisions outlined in Annex: 2? Please document clearly the basis of your response and reference the paragraph number(s) where appropriate. Please explain the basis of your response in full and provide any supporting information.



Virgin Media Response to Q7. Yes, Virgin Media believes that the revised text in Annex 2, A2.3 should be reconsidered. Please refer to our response to Q2 and Q6 in this regard.