



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Procedures for Oral Hearings

For use in ECS 'End-user Dispute Resolution'

Submissions to Consultation 24/80

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An Post Submission to ComReg's Postal Dispute Resolution Procedures

25 October 2024

Introduction

ComReg published its Draft Postal Dispute Resolution Procedures (the "Draft Procedures") on 27 September 2024 and is calling for responses from relevant stakeholders.

An Post welcomes a revision of the Section 43(3) Dispute Resolution Procedures¹ which were published in 2015 and agrees with ComReg that developments in the last 10 years warrant a review of the procedures with the intention of ensuring a fair and timely resolution of disputes for all parties.

An Post welcomes the opportunity to contribute and wishes to provide a number of comments for ComReg to consider when shaping the draft procedures.

Q1. Do you have any comments on the approach ComReg has set out in respect of the revisions outlined in Chapter 3. Please explain the basis of your response in full, referring to the appropriate paragraph number and provide any relevant information to support your response.

An Post Response

Please see our comments below in relation to Chapter 3 Proposed Revisions.

Interpretation (paragraphs 1-3):

Paragraphs 1 - 3 set out interpretive provisions for the use of the procedures. However, An Post would welcome the scope and applicability of these procedures being made clearer, specifically whether these procedures are intended to apply to all authorised postal service providers in accordance with section 39 of the 2011 Act.

Compensation (paragraph 12):

Paragraph 12 of the draft procedures outlines a maximum compensation limit of €5,000:

"The maximum amount of compensation that a provider may be required to pay to any user in resolution of a dispute is €5,000."

¹ ComReg 15/07a Section 43(3) Dispute Resolution Procedures - The Procedures, Application Form, and Application Guidelines

An Post wishes to highlight that An Post's Terms & Conditions clearly set out when compensation for loss or damage may be available for both ordinary post (Condition 15) and registered postal packets (Condition 21). These Terms & Conditions set out maximum compensation amounts payable in cases where one of those postal items is lost, damaged or delayed. ComReg have not clarified whether the proposed €5,000 maximum amount of compensation will be applicable to ordinary and registered postal items and An Post asks for clarity in this regard in the revised procedures.

According to recent Cullen International benchmarking research only 8 out of the 21 countries surveyed regulate the level of compensation to be paid by the USP for late, damaged and lost postal items.

Further, ComReg's proposal in relation to compensation ignores the differentiated nature of the universal postal service and its current obligation to provide a "standard" and untracked service; this does not arise in relation to any other registered postal service provider and it is discriminatory to ignore this.

ComReg have also not specified if this proposed maximum amount is to be applicable to international post and An Post requests clarity on this. As ComReg is aware, Ireland is a signatory of the Universal Postal Union and has designated An Post as the designated operator to fulfil Ireland's obligations under the UPU Convention. An Post is therefore bound by the UPU Regulations accompanying the Convention which set out the indemnities available for the loss of, total theft from or total damage to a registered item. An Post notes that ComReg's proposed €5,000 maximum amount of compensation is in excess of the amount of compensation payable for letters and most parcels under these international Regulations. ComReg's proposal on compensation ignores UPU norms and standards, which the Consumer Rights Act 2022 clearly recognises should be taken into account in the provision of services (see section 77, CRA 2022).

Furthermore, ComReg has stated that most cases taken by users do not exceed €500 in monetary terms but a small number of cases have exceeded this amount.² This would appear to be the exception rather than the norm and An Post is curious as to why the maximum compensation amount would be 10 times the average. An Post appreciates that ComReg may wish to align with the upper limit it applies for compensation in ECS disputes but An Post would argue that they are not comparable services and that in light of the specificities of postal regulation, this is not a good enough justification for setting this limit.

² ComReg document 24/81 Postal Dispute Resolution Procedures - Consultation and draft procedures, pg. 11

An Post would also be concerned that despite ComReg stating that *“the proposed upper limit should not be taken as indicating a trend or likely outcome”* it could set inadvertently set an expectation from the consumer.³

Q2 Do you have any comments on the approach ComReg has set out in respect of revisions outlined in Chapter 4. Please explain the basis of your response in full, referring to the appropriate paragraph number and provide any relevant information to support your response.

An Post Response

Please see our comments below in relation to Chapter 4 Proposed Revisions.

Summary of the Resolution (paragraph 43):

Paragraph 43 of the draft procedures includes the introduction of a short summary of the dispute:

“The draft summary will contain a high level synopsis of the dispute and outcome such as the name of the provider, the nature and type of the dispute, whether the resolution was in favour of the provider or the user and the resolution (excluding any financial amounts prescribed).”

ComReg intends to publish the final summary of the dispute *“on the ComReg website, and elsewhere as ComReg sees fit”*⁴

An Post sees no legal basis for publishing summaries of dispute outcomes, other than the number of disputes settled on a purely statistical basis. As already stated, An Post as the universal service postal provider is obliged to offer and provide services on a basis and in a manner which is much broader than other service providers and which must be distinguished from other postal service providers. As such, it would be discriminatory, disproportionate and prejudicial to An Post’s interests as the universal postal service provider to publish such matters.

Q3 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.

³ ComReg document 24/81 Postal Dispute Resolution Procedures - Consultation and draft procedures, pg. 11

⁴ ComReg document 24/81 Postal Dispute Resolution Procedures - Consultation and draft procedures, pg. 18, paragraph 82

An Post Response

Please see our comments below in relation to Proposed Revisions outlined in Annex 2.

Additional technical information and opinion (paragraph 38):

An Post wishes to seek further clarification in relation to the wording used in paragraph 38:

“It is ComReg’s view that it may also be necessary for ComReg to consider information not presented by the parties, such as technical information and opinion.”

An Post wishes to ensure a fair and transparent process throughout, and is concerned with the use of technical information or the formulation of opinion not based on information presented by either party.

Clarity is required regarding under what circumstances ComReg will infer “*opinions*” and based on what criteria. Clarity is also required regarding where ComReg will source “*technical information*” that has not been supplied by either party. The wording of the paragraph is vague and too unspecific and, An Post is concerned that it leaves unlimited discretion to ComReg and in a manner in which it would not be obliged to provide reasons. An Post should not be prejudiced by the reliance on unknown assumptions or opinions or by the use of external technical information.

Direct contact with user (paragraph 52):

Paragraph 52 sets out that An Post can contact the user directly to attempt to resolve the dispute:

“At any time, up to the issuance of the final resolution, the provider is free to contact the user to resolve the dispute directly.

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

An Post wishes to seek clarification regarding how this would work in practice and what obligations it may impose on An Post.

While it is clear that An Post must inform ComReg in the event the dispute is resolved, it is unclear whether An Post would be required to inform ComReg in the event that An Post has made direct contact with the user, and is unsuccessful in resolving the dispute. Additionally, it is unclear whether there would be an obligation on An Post to inform ComReg of its intention to make direct contact with the user, prior to doing so.