



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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#### Submissions to Consultation 24/80

**Reference:** ComReg 24/101s

**Date:** 16/12/2024

## Submissions Received from Respondents

Document No:	ComReg 24/101s
Date:	16 December 2024

Related Documents:	Document Number:
'Procedures for Oral Hearings' Consultation:	ComReg 24/80
Response to Consultation and Decision:	ComReg 24/101 D25/24
'End-user Dispute Resolution Procedures'	ComReg 24/22aR1

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# 1 Alternative operators in the communications market ("ALTO")

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# alto

alternative operators in the communications market

**Consultation: Procedures for Oral Hearings - for use in ECS  
'End-user Dispute Resolution' Ref: 24/80**

**Submission By ALTO**

Date: October 29<sup>th</sup> 2024 (Submission date +1 day due to bank holiday)

ALTO is pleased to respond in brief terms to the ComReg Consultation: Procedures for Oral Hearings - for use in ECS 'End-user Dispute Resolution' ComReg Ref. 24/80

ALTO acknowledges that the procedures set out in the Consultation ComReg Ref. 24/80 appear to meet the various administrative law requirements of fair procedures mandated for such exercises.

### **Proportionality**

ALTO submits that given the logistical and costs burden that oral hearings present for both complainants and respondents we expect that some form of assessment of whether or not to convene an oral hearing will include a proportionality component which takes account of the nature and value of the specific dispute. Such a proportionality exercise should not fetter ComReg's discretion in any way, however we observe that many regulatory bodies and quasi-judicial decision makers now almost exclusively rely on paper or written submissions in order to adjudicate disputes, an example is the small claims court or simply the District Court exercising civil jurisdiction. It is obvious that if a minor End-User Dispute, e.g., concerning billing, results in an oral hearing, that the costs of such a process would be wholly disproportionate and far outweigh the benefits to either the End-User and the respondent. We trust ComReg will reconsider this particular issue and build in the required proportionality guardrails to adequately dispose of such disputes in a mutually beneficial and mutually costs effective manner.

**ALTO**  
**29 October 2024**

## 2 Sky Ireland Limited

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Procedures for Oral Hearings for use in ECS “End-User  
Dispute Resolution”

ComReg Consultation 24/80

29<sup>th</sup> October 2024

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**Q. 1 – Do you have any comments on the proposed “End-user Dispute Resolution Procedures for Oral Hearings.**

**Response:**

Sky Ireland Limited (“**Sky**”) welcomes the proposed requirement threshold in Paragraph 4.1 that oral hearings may be convened when the Decision Maker considers one necessary to “*resolve a genuine conflict of material fact arising from the papers that cannot otherwise be resolved*”. We also note that ComReg has indicated that oral hearings should be the exception rather than the norm.

Our position is that the vast majority of consumer complaints are best resolved in direct one-to-one communication between the service provider and the end-user, and this will always remain the focus of our complaint’s handling teams. Limiting the use of oral hearings to only those circumstances where a genuine division has arisen on *material facts* is the most practical process. It would be excessive and costly for all involved to have oral hearings used to expound or arbitrate all matters that enter the formal dispute stage.

All parties must be able to submit to ComReg or the decision maker any concerns when a view is held that the convening of a particular oral hearing has expanded beyond this “*conflict of material fact*” remit envisaged in the procedures.

We believe that the recently revised paper-based process for end-user disputes should continue to be the secondary route to resolution for parties, as Sky will always try to resolve dispute directly where possible with our customers. Oral hearings should be a last resort used only sparingly to unlock complex matters that require clarification on essential and material matters of fact that go to the heart of the end-user’s complaint.

Sky will continue to endeavour to ensure that ADR should be a last resort for our customer issues. We would also request that ComReg monitors the volume of matters that proceed to oral hearing and consults with Industry in the future to ensure that oral hearings are not excessively utilised.

**The Hearing.**

Sky recommends that if a Decision Maker has decided to conduct an oral hearing that they should briefly identify the nature of the conflict of material fact to the parties in writing so that the rationale for convening the oral hearing is clear to all involved. We believe that sharing the rationale for the oral hearing in advance will serve to narrow the issues in disputes and will lead to earlier resolutions in matters.

In response to ComReg’s intention of primarily utilising electronic video link formats throughout the process, Sky would further suggest that on the occasion of one party seeking an in-person hearing that other parties are allowed reserve the right to continue to attend remotely when giving evidence. This form of hybrid hearing is common already in both the Courts and other regulatory fora.

Sky also recommends that ComReg makes it clear in the procedures how certain reasonable travel expenses of witnesses are to be assigned among parties or indeed ComReg.

Sky would encourage that the number of witnesses allowed are kept to only those that are truly related to the factual issues in dispute, so as not to have oral hearings straying into a full review of the complaint which would have already have been outlined in written submissions.

In the context of a convened oral hearing, Sky suggests that consideration could be given to the difficulties that some providers may have in obtaining in-person or online witness evidence from contracted partners, installers or wholesale providers. Some parties may not be able or willing to wish to attend in person to confirm facts that they might easily clarify in formal correspondence to the decision maker. Sky has found that the greatest challenge in replying to formal disputes has been in collating network provider information from third parties, due to the nature of the network in Ireland.

Sky would request that the draft procedures be amended to include a reference that all parties, if seeking to rely on novel written submissions at the oral hearing, must provide the Decision Maker and other parties with copies at least 5 days in advance of the hearing. Any such submissions for the oral hearing should again be focused to the material facts in dispute.

Sky would view that the proposed 15 working days' notice period for hearings is very short and will cause difficulty for operators. If a matter is proving hard to resolve and is complex enough to warrant an oral hearing and several hours of various party's time, then we would suggest a 30 days' notice period would enable operators to ensure their attendance better. This would furthermore reduce unnecessary postponements. It is important again to note that any potential appeal against a resolution would require a litigated appeal to the High Court, so an oral hearing if convened could be a vital moment in the dispute process for the either party.

Sky would respectfully suggest that ComReg makes available any information on the intended software for remote access to oral hearings, to ensure a safe, secure and reliable interface for all parties and to enable preparation for the interface by operators' various IT departments.

## **Conclusion.**

Sky has always believed that alternative dispute resolution processes can be a positive and effective tool for parties to resolve complaints, but usually only in circumstances where the issues are more complex and detailed.

We believe that the introduction of a standardised and simple process for oral hearings is prudent and we welcome ComReg's consultation, however we strongly recommend that oral hearings are reserved for use only in exceptional circumstances.

Following the reduction of the complaint resolution period down to 10 days as part of the revised end-user dispute resolution process, operators can expect to have more resources and staff administering disputes. Sky accordingly may need to recruit and train further staff to engage in any eventual oral hearings or retain the support of additional legal resources from their legal departments. Oral hearings will certainly extend the timeframe in which cases are resolved for many end-users, by placing end-user disputes into an ever more formal, adversarial and contentious process unnecessarily. We would recommend that their use be limited to ensure that the principles of a "simple and inexpensive" dispute resolution process remain the focus.

Sky is already in the process of preparing for several significant regulatory changes in 2024 following many Industry consultations and we believe a limited and prudent utilisation of the oral hearing element of the procedures would be most suitable.

### **3 Virgin Media Ireland Limited**

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## **Virgin Media response to:**

ComReg's Consultation on "Procedures for Oral Hearings"  
For use in ECS 'End-user Dispute Resolution.

30 October 2024

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## Introduction

Virgin Media Ireland Limited ('Virgin Media') welcomes the opportunity to respond to ComReg's Consultation Document 24/80 on the draft "*Procedures for Oral Hearings*" in respect of the End User Dispute Resolution Procedure ('the Consultation')

## Virgin Media response

Virgin Media has the following comments in relation to the Annex 3 question from the Consultation *‘Do you have any comments on the proposed ‘Procedures for Oral Hearings’ that ComReg has set out in Annex: 1? Please explain the basis of your response in full referring to the appropriate paragraph number of the procedures and provide any relevant information to support your response’*

- Section 3.1 of the Consultation outlines that the Commission or “an independent person appointed by the Commission” shall carry out the dispute resolution process.

In order to ensure a proportionate and fair process, can ComReg please clarify the selection and appointment process for how this independent person will be chosen (and the required skillset(s) for this person) particularly given the strict rules and procedures around the appointment of adjudicators under the Part 7 of the 2023 Act.

- Virgin Media welcomes ComReg’s statements at paragraph 20 of the Consultation in that ‘it is expected that oral hearings will be the exception rather than the norm’ and that these procedures will only be used where there is a conflict of fact and the “conflict must be material to the resolution of the dispute”.
- In order to better understand how this decision-making process may take place and ensure a fair and proportionate approach, can ComReg provide some detail as to the threshold and what factors will be taken into account by a decision maker when making this decision as outlined in Section 4.1 of the Consultation.

We would also be grateful for confirmation that a decision maker will be required to provide written reasons for their decision that an oral hearing is / is not necessary (and any detail on envisaged time limits) as well as detail on the process for parties to appeal this decision.

- To ensure disputes are resolved in as straightforward manner as possible, can ComReg confirm that parties to a dispute can make written submissions to the decision maker (in relation to the perceived ‘conflict of fact’ and its materiality) for consideration as part of this decision. Virgin Media believes a formal process around this will have the positive effect of reducing the burden on ComReg, consumers and operators where these issues can be dealt with in writing and avoid such oral hearing except where necessary.
- Section 6.1 allows for a request for an in-person oral hearing to be made up to 10 working days in advance of the hearing date, coupled with the requirement that any party objecting to this request submits their objection no later than 5 working days before the hearing. In order to ensure a fair hearing, Virgin Media submits that 5 working day turnaround period for an objecting party, is too short to allow an objecting party to properly formulate a response. It is submitted that the 10 day time limit for submitting the initial request should be increased to allow a larger gap between these deadlines.

- Section 6.2 outlines that it will be at the discretion of the decision maker whether to accede to a request for an in person oral hearing. Can ComReg please provide details as to the factors which the decision maker will be required to consider in making this decision (and that reasons will be required from the decision maker).
- Section 6.8 outlines that the decision maker will proceed with an oral hearing if a party doesn't attend "except in very exceptional circumstances" – in order to ensure a fair and proportionate hearing, can ComReg provide details as to what is meant by this.

## Conclusion

Virgin Media welcomes clarity on the points raised above to ensure an effective process for all stakeholders in relation to Procedures for Oral Hearings.