



Commission for  
**Communications Regulation**

## Consultation Paper

### **Protecting Users in a Developing Communications Market**

Implementing Measures under the National and EU  
Communications Framework

<b>Document No:</b>	<b>03/26</b>
<b>Date:</b>	<b>25<sup>th</sup> February, 2003</b>

All responses to this consultation should be clearly marked:-

“Reference: Submission re ComReg **03/26**” as indicated above, and sent by post, facsimile or e-mail, to arrive on or before **5.30pm on 8<sup>th</sup> April, 2003** to:

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## 1 Foreword

Regulatory bodies such as ComReg play an important role in ensuring that operators provide high quality services to consumers. This is generally achieved by implementing measures or frameworks to protect consumers while competition is developing and by ensuring that operators meet their obligations in these areas. Also of importance is the need to ensure that consumers are provided with sufficient information to enable them to exercise their rights under these frameworks and to take advantage of the choice available in the market. ComReg has introduced a number of initiatives in order to stimulate improvements in operator quality of service and provide consumers with useful information. Such initiatives include the Measuring of Licence Operator Performance (MLOP) Programme, technical audits of cable systems, monitoring of compliance with licence conditions and ComReg's contract with TNS MRBI to monitor An Post's quality of service for next day delivery of single piece mail.

A key element of ComReg's consumer strategy for the coming year will be the speedy implementation of those measures contained in the new package of EU Directives which are aimed at protecting consumers. Of particular relevance are those measures set out in the Directive on Universal Service and Users' Rights which deals with issues such as transparency of information for users, codes of conduct for complaint handling, contract issues and the publication of quality of service information.

ComReg believes that addressing consumer protection issues at the framework level provides an efficient means for this office to bring consumer issues to the forefront of the regulatory process. This also includes making consumers aware of their rights and how they can take action under any measures adopted.

We now wish to consult with consumers, industry and other interested parties so that the Commission can make an informed decision as to how to implement the consumer protection and awareness measures set out in the Directive. Comments from consumers and/or their representative organisations are particularly welcome given that any measures that may be adopted may have a direct impact upon them.

**Etain Doyle**  
**Chairperson**

## 2 Introduction

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish communications sector in accordance with national and EU legislation. One of the Commission’s functions (as set out in the Communications Regulation Act, 2002) is to promote the interests of users. This is generally enabled by

- ensuring that users, including disabled users, have access to a universal service
- addressing the needs of specific social groups, in particular disabled users
- ensuring that consumers are afforded a high level of protection in dealing with their suppliers of communications services, including dispute resolution, where appropriate.
- contributing to a high level of protection of personal data and privacy
- promoting the provision of clear information
- encouraging access to the internet at a reasonable cost

A number of regimes have already been established by ComReg within these areas, namely Service Level Agreements, Codes of Conduct for Handling Consumer Complaints, the Measuring Licensed Operator Performance Programme and various information notes which are issued from time to time in an effort to inform consumers about particular matters.

The recently adopted EU Directive on Universal Service and Users rights places a heavy emphasis on the need to protect and inform consumers while competition is developing. In light of the adoption of the EU regulatory package and the subsequent publication by the Department of Communications, Marine and Natural Resources’ consultation<sup>1</sup> on the draft transposing regulations, it is now timely to address the updating of the Irish regulatory regime. This may involve updating existing regimes or even the creation of new ones.

A separate consultation paper dealing with the scope and provision of Universal Service in the Irish telecommunications market has already been issued<sup>2</sup>. That paper dealt with the provision of such services to disabled users. This consultation is designed to deal with those elements of the Directive dealing with User Rights, in particular,

- Consumer contracts and the minimum terms and conditions which must be set out within them
- Transparency of information for users, including tariff transparency
- Publication of quality of service information

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<sup>1</sup> Consultation is available at <http://www.dcmnr.gov.ie/files/cmUSO.doc>

<sup>2</sup> ComReg Consultation 116/02 - The Future Framework for the Regulation of Universal Service in the Irish Market.

- Consumer rights with respect to operator assistance and directory enquiry services
- Operators' requirements to publish codes of practice for complaint handling including measures covering the non-payment of bills
- The resolution of complaints by ComReg following the exhaust of procedures outlined in an operator's code of practice.

ComReg is also responsible for the regulation of the Universal Postal Service in Ireland in accordance with EU and National legislation. ComReg issued a separate consultation paper, 'Regulation of Postal Services – Universal Service Obligation, Tariff Principles and Miscellaneous Issues', Doc No ODTR 02/95 on 6 November 2002. This paper addressed a wide number of issues including access to the postal service, guarantee of daily delivery, tariff principles, information to be provided by An Post, complaints and redress procedures and many more. The consultation phase closed on 31 January 2002 and ComReg is currently analysing the responses received. Postal issues are not therefore dealt with in this paper.

This current consultation now seeks to raise issues concerning those measures set out in the Universal Service Directive designed to protect users and solicit views which will influence ComReg's future approach in this area. ComReg intends to utilise this consultation to focus the issues and to publish a report which will make decisions in key areas and set out a future timetable for dealing with individual regulatory measures, as appropriate. Such next steps are set out in section 10.

Any positions arising from ComReg's consultation will need to take into account possible changes in the regulations which may arise as a result of the Department's consultation process on the draft regulations.

In essence, this paper proposes how the end user protection measures set out under the draft universal service regulations will apply to the following categories of organisations. These include, *inter alia*

- Undertakings providing connection and or access to the public telephone network
- Undertakings providing publicly available telephone services
- Undertakings providing publicly available electronic communications services

For ease of reference purposes only, a list of definitions relevant to this paper and used throughout the draft regulations is set out in Section 12 of this paper.

ComReg has broader powers under the Communications Act 2002 in relation to some of the matters dealt with in this consultation. In an effort to minimise any potential burden on the industry, ComReg will, where possible, seek to harmonise its approach when giving effect to obligations or measures set out in both the draft USO regulations and the Communications Act.

## Protection Users in a Developing Communications Market

The Commission invites comments from interested parties on this consultation paper by 4<sup>th</sup> April, 2003. The procedure for responding is set out in Section 10 of this paper.

This consultative document does not constitute legal, commercial or technical advice. The Commission is not bound by it. The consultation is without prejudice to the legal position of the Commission or its rights and duties to regulate the market generally

## 3 Background

### 3.1 Existing Legislation

ComReg recognises the steps taken by operators and service providers throughout the years to improve customer service. Some of the obligations currently placed on operators have been volunteered by those operators themselves. The opening of the market and the increase in competition has in turn been an important catalyst in encouraging operators to voluntarily make licence commitments in relation to customer service.

As way of example in the competitions for Fixed Wireless Point to Multi-point licences, GSM licences and Third Generation licences applicants for those licences were invited to insert into draft licences the types of customer service measures beyond those contained in the requisite Regulations, which they were prepared to be bound by. Many of these voluntary commitments in turn were evaluated and analysed in the subsequent competitions.

In some instances the voluntary commitments and licence obligations made by the operators went further than those minimum measures contained within the governing legislation.

In the area of telephone communications the minimum obligations on the operators are contained within the Voice Telephony and Universal Service Regulations 1999<sup>3</sup>. These include, *inter alia*, obligations in the following areas:

- Subscribers having the right to an entry in the printed telephone directory at no charge.
- Public payphone providers having the obligation to provide access to the emergency call number “112” free of charge, to ensure that users have access to a directory enquiry service, including the display of public notices regarding call charges and other details.
- The provision of services in accordance a written contract which must contain minimum terms and conditions
- Publication of information concerning tariffs, contract periods, quality of service performance
- Measures concerning the provision of itemised billing, selective call barring
- Measures relating to the non-payment of bills and disconnection
- Implementation of Codes of Practice for complaint handling

Cable and MMDS operators also have consumer interest requirements such as the implementation of a code of conduct, compliance with minimum technical conditions, publication of prices, terms and conditions, and the provision of data to allow ComReg to measure performance of specific customer service related parameters under the terms of their licence and agreements which stem

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<sup>3</sup> SI No. 71 of 1999

Protection Users in a Developing Communications Market from the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999<sup>4</sup>.

Also of relevance are ComReg's functions under the Communication's Act 2002, which include, *inter alia*

- to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks,
- to investigate complaints from undertakings and consumers regarding the supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks,
- to ensure a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,
- to promote the provision of clear information, in particular requiring transparency of tariffs for consumers of publicly available electronic communications services.

### 3.2 EU Legislative Developments

A new EU regulatory framework was adopted by the Council of the European Union on February 14<sup>th</sup> 2002 for the provision of electronic communications throughout the internal market. The new framework consists of a package of Directives which reflect technological and economic changes and which attempt to further harmonise the regulation of electronic communications:

- universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);
- a common regulatory framework for electronic communications networks and services (Framework Directive);
- authorisation of electronic communications networks and services (Authorisation Directive);
- access to, and interconnection of, electronic communications networks and associated facilities (Access Directive);
- processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive).

All Member States are now obliged to adapt national legislation which must be adopted by 24 July 2003 except for the Data Protection Directive which has to be implemented before 31 October 2003<sup>5</sup>.

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<sup>4</sup> SI No. 73 of 1999

<sup>5</sup> The Data Protection Directive 2002/58/EC was published in the Official Journal on 31 July 2002 after the publication of the other directives.



### 3.3 Future National Legislative Framework

The Department of Communications, Marine and Natural Resources has issued a consultation<sup>6</sup> on draft legislation which transposes the Universal Service Directive, entitled the “European Communities (Electronic Communications) (Universal Service and Users’ Rights) Regulations, 2002”.

Within these regulations are a number of measures dealing with the protection of users, which are the subject of this consultation, namely

- to ensure consumers are provided with transparent and up-to-date information on prices and tariffs.
- to ensure the publication of adequate and up-to-date information on quality of service performance,
- to ensure that consumers can receive a service in accordance with a written contract which must specify a minimum set of contract terms and conditions, including quality of service, conditions for the termination of the contract, compensation and refund measures that apply along with procedures for resolving disputes,
- to ensure that operators implement a code of practice for handling consumer complaints
- to ensure that consumers are protected from immediate disconnection from the network for the non-payment of a bill (except in persistent cases of late payment), and have measures available to allow them to control their telephony expenditure.
- the resolution by ComReg of consumer disputes that remain unresolved after they have exhausted their operator’s own complaint procedures.

Several of the measures set out in the draft regulations also deal with numbering issues which have been the subject of an Information Notice<sup>7</sup> issued by ComReg. Consequently numbering issues are not dealt with in this paper.

Currently, eircom as the SMP operator in the fixed telecommunications market, is required to provide ComReg with notification when it introduces, changes or withdraws retail tariff options. It is also required to provide notification to consumers, typically through the national press. In the coming months, ComReg will also consult further regarding the principles that should be applied to the presentation of retail tariffs by an SMP operator.

Each of the above matters are discussed in this consultation document. ComReg intends to utilise this consultation to set out proposals how to approach the issue of end user protection and to publish a report which will make decisions in key areas and set out a future timetable for dealing with individual regulatory measures, as appropriate.

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<sup>6</sup> Consultation is available at <http://www.comreg.ie/docs/USORegulations.doc>

<sup>7</sup> ComReg Document 03/05 - Future Regulation of Electronic Communications Networks and Services - Numbering Issues

## 4 Transparency and Publication of Information

Under the draft legislation undertakings providing publicly available telephone services<sup>8</sup> must provide end-users with transparent and up to date information on applicable tariffs and on the standard terms and conditions in respect of access and the use of those services. ComReg can make rules specifying the form and manner in which information is made available, in particular,

- operator name(s), address(es) and head office of the operator;
- description of the service including what is included in the subscription charge and rental charge (e.g. operator services, access to directories etc.);
- information on standard tariffs covering access, usage and maintenance charges;
- details of special discounts and special /targeted tariff schemes;
- policies around compensation including specific details of any compensation/ refund schemes offered;
- types of maintenance service offered;
- standard contract conditions, including any minimum contractual period;
- dispute settlement mechanisms including those developed by the operator;
- information on quality of service;
- information about rights as regards universal service.

This section of the consultation paper deals with the specific issues of tariff transparency. Issues concerning dispute settlement mechanisms, policies around compensation and refund schemes, and contract conditions are dealt with later in this consultation.

The draft legislation states there is a requirement for operators to provide tariff information outlining

- the range of services covered under the operator's subscription fee
- standard tariffs covering access, call usage and maintenance charges
- the range of standard discounts available and special / targeted tariff schemes

In addition to the draft legislation, an existing function of ComReg under the Communication's Act 2002 is to promote the provision of clear information, in particular requiring transparency of tariffs for consumers of publicly available electronic communications services.

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<sup>8</sup> a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services;

#### 4.1 Consideration of the Issues

Tariff transparency concerns the ease by which a consumer can obtain and understand tariff information in order to assist them in making informed decisions on their choice of electronic communications service and/or provider. Under the existing Voice Telephony and Universal Service Regulations (SI No. 71 of 1999) and Wireless Telegraphy (Programme Services Distribution) Regulations, 1999 (SI No. 73 of 1999) all licensed operators are required to publish their tariffs for end-users. The measures set out in the draft legislation are more prescriptive in that they seek to provide increased transparency around operator pricing.

Currently, eircom as the SMP operator in the fixed telecommunications market, is required to provide ComReg with notification when they introduce, change or withdraw retail tariff options. It is also required to provide notification to consumers, typically through the national press. In the coming months, ComReg will consult further regarding the principles that should be applied to the presentation of retail tariffs by an SMP operator.

As the electronic communications market becomes increasingly competitive and new entrants focus on customer acquisition, price competition becomes increasingly intense. Price is arguably one of the most effective competitive tools as it allows operators to differentiate their offering from those of their competitors. In the Irish market, telecommunications consumers are now targeted with a wide variety of tariff options from a range of telecommunications providers.

A further characteristic of the competitive market is the increasing number of headline price claims made by operators in order to attract subscribers. This is evidenced through

- the range of offers claiming a specific percentage saving over the consumers existing tariff option or over another operators tariffs;
- increased marketing activity focusing on one particular product/service;
- the introduction of short term special offers introducing reduced rates for a fixed period of time.

The range of tariff options will further increase as more operators enter the market and as each operator seeks to enhance their range of tariff options so as to appeal to specific target markets. While ultimately this increases consumer choice it will only be of benefit to the consumer if they

- can fully understand the tariff option
- can easily compare that offer with others in the marketplace.
- can breakdown each element of the tariff package
- can match their usage pattern with the options available

In developing an approach to tariff transparency it should be borne in mind that an operator's tariffs are but one differentiator of an operator's service

offering. The perception as to what constitutes value from a specific operator's service offering will vary significantly across consumers. For example, some consumers are prepared to pay a premium for increased service levels whereas others may forego higher service levels in favour of low prices. A price quality trade off is acceptable provided the service fulfils the service quality levels committed to the customer when they signed up to the service.

ComReg recognise that pricing is a key product/service differentiator for operators in the market and does not wish to restrict competitive initiatives. However, as consumers are targeted with an increasingly complex range of tariff options it is essential that consumers can understand each tariffing option in the marketplace. ComReg wishes to utilise this consultation to seek views on appropriate future tariff transparency initiatives.

## 4.2 Proposed Approach

In developing, changing or withdrawing tariff options a minimum set of standards should apply concerning the information provided to consumers about the tariff option, the terms and conditions that apply to that option and the range of products and services included within it. ComReg is proposing to establish a set of tariff transparency principles/guidelines which will apply across the industry (in light of the draft USO regulations and its wider role as set out under the Communications Act, 2002). Suggested principles are as follows:

- The tariff option/package should seek to clearly inform the consumer without misleading or confusing them
- Tariff information should be accessible to all consumers
- Consumers should be able to clearly understand each element of the tariff option/package
- The consumer should be able to compare this package/option with their existing usage profile (e.g. through provision of a per minute rate and any applicable call connection fee that applies)
- The consumer should be made aware of their entitlements e.g. discounts or special schemes
- All information should be accurate and up to date
- Existing customers should be notified of changes to their existing tariff option
- Any comparative advertising should be accurate and fair
- Tariffs should accurately reflect the choice available to the consumer

A set of principles, if established, would be incorporated in a code of practice for presentation of tariff information which is discussed in section 4.2.2.1. These principles would help to ensure that consumer confusion in the market is minimised and provide a fair and effective basis for competitive pricing activity to take place. It could stimulate competition in the market as consumer

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confidence around the range of offers increases and facilitates their ability to move operators/services.

**Q. 1. Do you consider that tariff transparency can be addressed through the establishment of a code of practice in this area ? Are there other means of achieving this ?**

**Q. 2. Do you agree with the tariff transparency principles that have been set out? Can you suggest any additional principles which may apply?**

In order to fulfil the objective to develop principles that improve consumer access to information ComReg is proposing a number of initiatives.

#### *4.2.1 Short term Initiatives*

ComReg considers that all operators should provide consumers with easy access to understandable tariff information. One method currently used by operators for providing tariff information is through the company website which allows more effective real time control over tariff information. It also allows consumers to gain access to that information relatively easily. There is also a need to provide those consumers without access to the internet with tariff information relevant to their communications needs.

To ensure ease of access to tariff information ComReg is proposing that all operators should provide a direct link from the homepage of their website into the tariff information section of their website. In addition, printed tariff information should be made available to consumers on receipt of a reasonable request for tariff information. This may simply be a case of printing the web page in question and forwarding it to the consumer. It is important that a consumer's request for tariff information does not place an unreasonable burden on the operator concerned and requests for printed pricing information should be restricted to those services relevant to the needs of the consumer requesting the information. An alternative is that consumers could be advised of locations such as retail outlets in their area where they can access this information either online or in printed format.

**Q. 3. Do you agree with the proposal that all operators should provide a direct link from the homepage of their website into the tariff information section of their website? Please explain why.**

**Q. 4. Do you agree with the proposal for operators to provide printed tariff information in response to a reasonable request from a consumer for tariff information ? Please explain why.**

#### 4.2.2 Future tariff transparency initiatives

ComReg would welcome views from respondents on appropriate measures that could be adopted to increase transparency in the longer term. To this end, ComReg wishes to obtain comments from interested parties on the merits of the following measures

- the establishment of an industry agreed code of practice (to be approved by ComReg) for presentation of tariff information and associated terms and conditions
- the establishment by industry of a comparative website of operator tariff information

##### 4.2.2.1 Code of Practice for tariff presentation

A code of practice governing the presentation of tariff information by undertakings providing publicly available telephone services would set out minimum criteria governing a standard format for the presentation of tariff information for basic products and services, as well as encompassing the principles identified earlier.

**Q. 5. If you believe there is merit in the establishment of an industry code of practice for presentation of tariff information what principles should be included ?**

##### 4.2.2.2 Comparative Pricing Website

Across Europe regulators are examining other methods that could provide consumers with comparative pricing information in order to ensure tariff transparency. One solution has been the development of an interactive comparative pricing guide on the web where consumers can insert their usage profile and are then provided with a range of solutions on which packages best suit that usage profile. For example, such options are available in Denmark and the UK. Such a site may also contain links to other relevant information such as operator quality of service performance data thereby ensuring the consumer is more informed when making their choices. The website could take a number of forms for example

- an industry managed website where all operators submit tariff data on a quarterly basis
- an independent third party is provided with tariff data by operators and is subject to accreditation by ComReg or another independent authority.

In developing this website participation of the industry would be required to establish comparative criteria for tariff data, in deciding the range of tariffs to be compared, in identifying the range of products and services to be included and in providing regular updates on tariff information.

**Q. 6. Do you believe there is merit in the establishment of a comparative website for operator tariff data?**

In addition to the proposals outlined above, ComReg would welcome views from respondents on other possible measures that could increase the level of tariff transparency for consumers.

**Q. 7. Have you any additional views on measures that could be used to increase tariff transparency?**

## 5 Quality of Service

Under the draft regulations ComReg may specify obligations requiring undertakings providing publicly available electronic communications services to publish comparable, adequate and up to date information for end-users on the quality of their services. ComReg can specify, inter alia, the quality of service parameters to be measured, and the content, form and manner of information to be published. This is to ensure that end-user have access to comprehensive comparable and user friendly information.

### 5.1 Consideration of the Issues

ComReg currently monitors the quality of service performance of the leading fixed line telecommunications operators in the Irish market through the Measuring Licensed Operator Performance (MLOP) telecommunications programme. Under this programme, participating fixed line operators submit quarterly performance data on their complaints management, service provision and fault handling. This performance data is then published on a biannual basis, the most recent edition of which is Document 103/02 published in November 2002.

The objective behind the Measuring Licensed Operator Performance (MLOP) programme is to provide consumers with independently audited, comparable information on an operator's quality of service performance. This information can assist the consumer when making informed choices regarding their telecommunication service provider. Publication of performance data also focuses an operator's quality of service efforts and ensures that operators are committed to performance improvements over time. Under the current MLOP telecommunications programme, eight fixed line operators submit quarterly performance data to ComReg.

Following agreement with the operators, the MLOP TV Programme was introduced in January 2002 and resulted in a number of operator driven developments to improve the customer service but. To date ComReg, has decided not to publish the data due to difficulties with its accuracy and comparability. Therefore, it is ComReg's intention to replace the MLOP TV programme as it currently stands with a biannual Review of Pay TV Service Providers Customer Service Performance. This review will consist of a combination of attitudinal data from consumer surveys and data directly from the operators. It is proposed to publish a report in late May 2003 that provides consumers with useful and relevant information Furthermore, the data collected will be used to encourage best practice among Pay TV service providers and to monitor licence compliance among the cable/MMDS operators.

ComReg conducts regular audits of cable/MMDS networks for licence compliance purposes and as required in the investigation of end-user complaints. ComReg is also considering extending these technical audits to the fixed and mobile markets. However, the question arises as to whether comparable information on the quality of service provided by mobile operators should be provided to Irish consumers and, if so, how and in what form.



## 5.2 Proposed Approach

ComReg does not envisage any major changes to the current telecoms MLOP programme under the new legislation.

ComReg will continue to work with consumers and operators to achieve the core objective of the initiatives set out earlier which is to ensure the programmes provides consumers with relevant user friendly information in a form they can understand. ComReg is also working with the operators to maintain stability within the MLOP programmes and to minimise the burden on participating operators. This includes, amongst other things, proposals to minimise audit burden and improvements to publication format and frequency. The question of including additional operators and the proposed inclusion of specific parameters for the USO operator are also being progressed (in particular for services provided to disabled users).

ComReg has also met with consumer organisations on the format and content of the current MLOP telecommunications publication<sup>9</sup> and would welcome feedback from any other interested parties in this regard.

**Q. 8. Have you comments on the existing MLOP telecommunications publication? Have you any suggestions on ways of improving the format, content and delivery of this publication?**

Under the draft legislation ComReg may also specify obligations on other operators providing publicly available electronic communications services to provide quality of service performance information.

Given that market penetration for mobile phones has grown to 78%, ComReg now considers it timely to examine the possibility of developing comparable mobile quality of service performance parameters. ComReg is aware that mobile quality of service parameters are published by regulators in a number of other EU countries (e.g. Portugal and UK).

In an Irish context, it may be appropriate to measure the mobile operator's performance on handling complaints, orders and faults however, a mobile programme may also measure other parameters relevant to users such as coverage, call success rates, call drop out and call quality. ComReg would welcome views from respondents as to the merits of such a programme and on what measures could be included in it. ComReg would also propose to engage with the mobile operators to seek input as to whether and how a mobile quality of service programme should be developed.

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<sup>9</sup> The Measuring Licensed Operator Performance publication is available on the ComReg website at <http://www.comreg.ie/docs/odtr02103.pdf>

**Q. 9. Do you agree with the proposal to develop a mobile quality of service programme comparing the performance of mobile operators? What issues would the introduction of such a service give rise to?**

**Q. 10. What measures do you believe should go into a mobile quality of service performance programme?**

## 6 Consumer Contracts

The draft regulations state that end users should enjoy a minimum level of legal certainty in respect of their contractual arrangements with all undertakings providing them with connection and/or access to the public telephone network. The contract should specify, inter alia

- (a) the identity and address of the supplier;
- (b) services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be obtained;
- (e) the duration of the contract, conditions for renewal and termination of services and of the contract;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method of initiating procedures for settlement of disputes

Where a written contract is agreed between an end user and a provider of electronic communications services, other than one providing connection and/or access to the public telephone network, such a contract must also include the criteria specified above.

In addition, the criteria under which modifications to contracts can be made are specified. An operator must, not less than one month prior to the taking of effect of any proposed modification, notify every subscriber to that service

- of the proposed modification in the conditions of his or her contract for that service, and
- his or her right to withdraw without penalty from such contract if he or she does not accept the modification.

The subscriber above may withdraw from his or her contract without penalty if he or she does not accept the proposed modification.

In addition to the provisions of the draft regulations, the requirements of existing Community consumer protection legislation relating to contracts, in particular Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts<sup>10</sup> and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts<sup>11</sup>, apply to consumer transactions relating to electronic networks and services. ComReg does not have any direct power to enforce the above directives as enforcement of these falls to agencies such as the Director of Consumer Affairs.

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<sup>10</sup> OJ L 95, 21.4.1993, p. 29.

<sup>11</sup> OJ L 144, 4.6.1997, p. 19.

Data Protection considerations may also need to be taken into account, in particular, subscriber information can only be used for the purpose for which it has been provided.

## **6.1 Consideration of the Issues**

Contracts are an important tool in ensuring that consumers are provided with a minimum level of transparency regarding information about the services being provided thereby directly enabling consumers to enforce their rights under the contract if service levels are not being met. It also provides a minimum level of legal security. Currently many operators either voluntarily or through statutory obligations have put many of the following minimum requirements in place. However, ComReg wish to ensure that where a written contract is agreed between a consumer and an operator that it includes the specified minimum criteria.

The regulations set out a minimum terms and conditions that should be included by providers of electronic communication services in their contracts with their customers. The requirements on contracts are largely the same as those under the Voice Telephony and Universal Service Regulations 1999 (S.I. 71 of 1999).

As part of the existing telecommunications licensing process ComReg requires applicants to submit a copy of their standard contract terms and conditions. ComReg has also been working with the Office of the Director of Consumer Affairs concerning terms and conditions contained on contracts of Cable/MMDS providers.

The obligations under the draft regulations in relation to contracts apply to both (i) undertakings providing them with connection and/or access to the public telephone network and (ii) a provider of electronic communications services, other than one providing connection and/or access to the public telephone network (where they provide a written contract).

One issue arising from the new framework concerns the issue of modification of contracts, in particular, the requirement to notify existing subscribers of an amendment to a contract one month prior to the taking of effect of any proposed modification and the subscribers right to withdraw without penalty from such contract if he or she does not accept the modification.

As stated above issues relating to the fairness of contract terms and conditions are subject to separate legislation and as such are governed by the Office of the Director of Consumer Affairs. It is up to each service provider to ensure that they comply with existing principles of contract law.

At present all licensees providing access to the fixed public telephone or mobile networks must provide a customer with a written contract for that service which must comply with basic contract law. Under the terms of the general, basic and mobile licenses such contracts must be filed with ComReg.

The draft regulations oblige electronic communication service providers to provide a specific minimum level of information in their contracts and to

notify their customers of any proposed modifications in the terms and conditions. The question arises as to whether the subscriber should be able to withdraw from his or her contract without penalty if he or she does not accept a proposed modification that is of the benefit to the subscriber. In addition, how should the one month notification requirement apply?

## 6.2 Proposed Approach

In future and in order to cement what in many cases in current practice ComReg is proposing that contracts will be required to detail in full and as a minimum the issues identified below.

### 6.2.1 Specific Requirements of the Regulations

In future, ComReg is proposing that contracts will be required to detail in full the issues identified below.

- (a) *identity and address of supplier* – clear contact details for the supplier should be included in the contract
- (b) *services provided & the service levels offered, as well as the time for initial connection* – the contract should set out the service to be provided and give all relevant information on the service. In addition, the contract should include the service levels which are associated with the service including the initial time to connection. Where a service level agreement is offered for the service a reference to this should be made in the contract along with details of where the specifics of the SLA can be found.
- (c) *types of maintenance service offered* – the contract should outline the types of maintenance services offered and how customers can avail of them.
- (d) *particulars of prices and tariffs and where up to date charges can be found* – ComReg considers that these particulars will not necessarily have to detail individual prices but should, amongst other things, inform customers as to the charging structure, the conditions under which price modifications will be notified and reference where up to date prices can be found. Further details on the particulars of price transparency and the publication of up to date pricing information are set out in Section 4 of this paper.
- (e) *duration, conditions for renewal and termination of the services and of the contract* – the contract should clearly state the period for which the contract applies, how and in what circumstances the contract can be renewed should the operator or customer so wish to do so and explicitly set out the actions that must be taken by either party to terminate the contract, including the period of notice that should be given prior to any modification, renewal or termination taking effect.
- (f) *compensation and refund arrangements which apply if contracted service quality levels are not met* – set out the compensation or refund arrangements for subscribers which would apply if the contracted service quality levels are not met. Depending on the approach adopted by ComReg

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in relation to dispute resolution (see section 9 of this paper), in particular,  
compensation, relevant amendments may be required here.

- (g) *method of initiating procedure for settlement of disputes in accordance with Regulation 28* – a contract must set out how the operator’s dispute resolution procedures can be initiated (See also Section 9 concerning operators’ codes of practice for handling complaints).

**Q. 11. Do you consider that the level of information to be included in contracts as proposed by ComReg is sufficient for transparency purposes ? If not please explain and detail any information which you believe should be included.**

### 6.2.2 *Modification of Contracts*

ComReg considers that the withdrawal without penalty provision is designed to ensure that a customer can withdraw from their contract where a provider alters the terms and conditions to the detriment of the customer. In such instances a customer may be left with a service which differs greatly from the one for which they originally entered into a contract. ComReg wishes to raise the issue of a situation where a modification to the terms and conditions of a contract may be clearly of benefit of the consumer whether this should be treated separately.

ComReg is proposing that a consumer should not be able to withdraw from the contract without penalty if the proposed modification is clearly of the benefit to the subscriber. In addition, ComReg considers that the one month notification period in advance of the modification should apply in all but exceptional circumstances which would have to be approved by this office.

ComReg wishes to identify situations where, in light of the above, the right to withdraw from a contract without penalty and the one month notification might not apply. ComReg considers that these should also be specified in a contract although the provision for review by ComReg on a case by case basis must also be retained.

Once the regulations are in force, if an operator is uncertain as to whether or not a proposed modification in one of the minimum contract terms identified in section 6.2.1 (outside of any agreed exceptions) meets their regulatory obligations they should contact this office for advice.

It is suggested that this approach should also apply to the requirement to give a one month notification of modifications to a contract, although ComReg considers that this period should only be waived in exceptional circumstances which will be decided on a case by case basis. One exceptional circumstance might include, for example, where the operator is obliged to comply with an order, instruction or request of Government, ComReg, an emergency service organisation or other competent authority.

- Q. 12. Should the withdrawal without penalty provision apply in instances where a proposed contract modification is clearly of benefit to an operator's customers ?**
- Q. 13. Do you consider it necessary to specifically identify such instances where a customers right to withdraw without penalty will not apply? If so, please identify the instances where you believe this may apply.**
- Q. 14. Do you consider it reasonable for ComReg to retain the ability to waive the one month notification period in exceptional circumstances?**

*6.2.3 Compliance with contract obligations*

Given that the regulations are not likely to come into effect for a number of months, ComReg believes that this provides the opportunity for all providers of electronic communications services to review their current consumer contracts to ensure that they meet as a minimum the obligations and, if necessary, to amend them.

Within a period (to be determined on foot of this consultation) following the enactment of the regulations, ComReg will write to all operators to request them to confirm that their contracts comply with the regulatory obligations in this area and to provide a copy of these contracts to the office. ComReg considers that all relevant operators should be able to meet any obligations arising within a period of three months but would welcome views.

In an effort to increase transparency for consumers, ComReg also considers that each operator should place a copy of their contract, including relevant terms and conditions on their websites.

In addition, in line with its consumer awareness role ComReg intends to publish information for consumers outlining its policy in relation to its responsibility regarding contracts. Consumers who wish to raise issues or make complaints regarding contracts which are within ComReg's remit will be able to do so in line with ComReg's dispute resolution procedures. These procedures are discussed in detail in Section 9 of this paper.

- Q. 15. What might be reasonable timeframe after the coming into effect of the regulations for operators to amend their contracts, if necessary ?**

**Q. 16. Do you agree with the proposal that all operators should be required to publish their contracts, including any associate terms and conditions on their website ? Does this give rise to any difficulties ?**



## 7 Operator Assistance and Directory Enquiry Services

The draft regulations provide that an undertaking providing publicly available telephone services must ensure that its subscribers have the right, free of charge, to have an entry in a printed or electronic directory i.e. in the printed phone book or directory enquiry service.

All service providers which assign telephone numbers to their subscribers are obliged to make relevant information available in a fair, cost oriented and non discriminatory manner for the purposes of facilitating the provision of the above.

### 7.1 Consideration of the Issues

The provisions of the draft regulations are already regulatory requirements in Ireland under existing arrangements. At present all service providers assigning telephone numbers to their subscribers pass this information, unless the subscriber has indicated otherwise, to the National Directory Database (NDD) from which the information for the universal telephone directory and all directory enquiry services, is obtained. The NDD is a complete listing of all fixed, mobile and personal numbers in the state. Information is submitted by all relevant operators to the NDD who then make it available for the purpose of the phone book and directory enquiry services. To date this process has worked well and any operational issues have been dealt with in the Directory Information Services Forum.

### 7.2 Proposed Approach

ComReg believes that the present arrangements under existing legislation as outlined above satisfy the new regulations. The Commission does not, at this point believe that any change to the framework for operator assistance and directory inquiry services (other than those which may arise from ComReg document 03/05) is warranted and has no plans at this stage to alter such arrangements.

**Q. 17. Do you agree that the existing regulatory regime adequately meets the obligations under the draft regulations in relation to operator assistance and directory inquiry services? Please state your reasons.**

## 8 Codes of Practice for Handling Complaints

The draft regulations provide that undertakings must implement a code of practice for handling complaints in respect of an alleged contravention of the draft regulations. This Code should make provision for the following matters.

- (a) first point of contact for complainants,
- (b) a means of recording complaints,
- (c) a time frame within which the undertaking concerned shall respond to complaints,
- (d) procedures for resolving complaints,
- (e) where appropriate, reimbursement of payments and compensation for losses incurred, and
- (f) retention of records of complaints (including copies of the complaint, any response thereto, any determination in respect of the complaint and any documentation considered in the course of such determination) for a period of not less than one year following the resolution of the complaint

ComReg can specify requirements to be met for the purpose of ensuring compliance with the above, along with the manner of publication of the code of practice. ComReg can also issue directions requiring that an operator makes alterations or additions to its code of practice.

Also of relevance is regulation 25(6) which refers to measures covering the non-payment of bills and the resulting disconnection of customers.

### 8.1 Consideration of the Issues

In August 2001, ComReg (then ODTR) issued Decision Notice D13/01 which dealt with the matter of Codes of Practice for the Handling of Consumer Complaints by Telecommunications Operators (Document 01/67). This Decision Notice established a framework which required fixed and mobile telecommunications operators to establish the above Codes of Practice and specified certain criteria which must be set out in it. These criteria governed

- Accessibility to the Code of Practice
- How to lodge complaints with the operator
- Stages of the Complaint Handling Process
- Categorisation of Complaints
- Timely Treatment of Complaints
- Customer Guarantees
- Disconnection Policy
- Premium rate services
- Escalation and Contact Details
- Traceability and retention of records

A similar regime governing Codes of Conduct for complaint handling by Cable and MMDS operators was introduced in Decision Notice D06/01 (Document 01/22). This framework also introduced similar criteria to those identified above.

Following the publication of the respective Decision Notices, ComReg required each operator to submit its draft Code to the office for approval. Once approved, operators were required to both publish their code on their websites and to notify their existing customers as to its existence. New customers were to be provided with a copy of the Code when they signed up for the service.

In addition, as part of the code of practice regime, each operator is required to publish its disconnection policy which governs measures which will be taken in the event of the non-payment of bills<sup>12</sup>.

Under many existing licences, for example, GSM, 3G and FWPMA operators also had to as a minimum requirement for the grant of the licence agree to the implementation of a code of practice for handling complaints. Therefore, ComReg envisages that points under the new regulatory framework may already be covered by those obligations and would act as an additional to current Codes.

## 8.2 Proposed Approach

Given that the content requirements for the Codes as set out under the existing regimes are broadly the same as those proposed under the draft regulations, the Commission does not, at this point in time propose to introduce any major changes to the code of practice framework already established. All undertakings with obligations under the draft regulations will be required to publish a Code of Practice for Handling complaints.

Currently operators are required to publish their disconnection policy within their Codes of Practice and ComReg will continue this obligation under the new framework.

With the exception of any impact that ComReg's approach to dispute resolution set out in Section 9 may have, the Commission do not envisage any major changes to the code of practice framework. The most likely area to impact the framework in this regard is the how the question of compensation/refund arrangements is dealt with under the dispute resolution process.

**Q. 18. Do you agree with the proposed approach ? Do you consider that any aspect of the current code of practice regime requires amendment at this stage. If so, please explain why and cite specific examples, where appropriate.**

<sup>12</sup> In consultation document 02/116 – the Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market - the Commission proposed that the universal service operator should publish a more detailed disconnection policy.

## 9 Dispute Resolution and Complaint Handling

Under the draft regulations, ComReg or an independent person appointed by it, can resolve disputes which remain unresolved after the completion of all of the procedures set out in an undertaking's code of practice for handling consumer complaints. ComReg can also require an operator to comply with such measures as it or the independent person may specify for the resolution of the dispute including, where appropriate, reimbursement of payments and compensation schemes.

Any procedures established by ComReg for the purpose of the above dispute resolution process must also be specified and published. Such procedures must be transparent, inexpensive and enable disputes to be settled fairly and promptly.

ComReg can also seek to resolve disputes where it involves operators in more than one Member State, by co-ordinating with the relevant authorities of the Member State in question.

Unless alternative arrangements are made for the payment of remuneration and expenses of an independent person (that may be appointed by ComReg), the amount of such expenses can be included in the expenses of ComReg.

### 9.1 Consideration of the Issues

#### 9.1.1 *Other relevant legislation*

Also of relevance to dispute resolution are ComReg's functions under the Communication's Act 2002, in particular

- to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks,
- to investigate complaints from undertakings and consumers regarding the supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks,
- to ensure a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved,

ComReg wishes to use this consultation to explore the possibilities as to how it might fulfil its legislative mandate concerning the operation of a dispute resolution process. ComReg would, on foot of this consultation, propose to establish a set of principles under which its complaint handling role will operate. It is likely that further consultation will be necessary as to how to give effect to these principles, for example, procedures established by ComReg and

operators for handling complaints dealt with by this office (including systems development where necessary, publication of dispute resolution procedures).

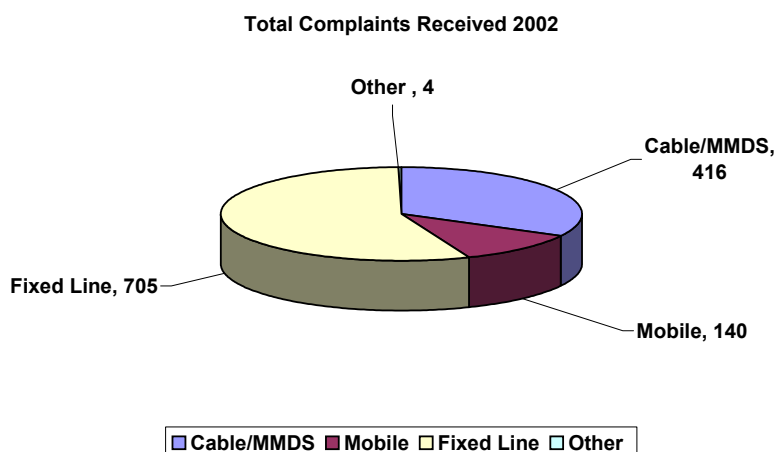
### 9.1.2 Current Approach to Handling Complaints

ComReg’s current approach to dealing with consumer complaints is set out in Information Notice 03/21 – ComReg’s Approach to Consumer Issues in the Irish Communications Market. In summary, once contacted by a consumer, ComReg will advise the consumer if the issue can be appropriately dealt with by this office. ComReg will then contact the operator on the consumer’s behalf in order to get the operator to directly resolve the issue. Throughout this time the onus is on the operator to liaise directly with its customer as it is in the best position to deliver a mutually acceptable outcome. ComReg will be notified by the operator when a satisfactory outcome has been reached with its customer and at that stage ComReg will contact the consumer to ensure that the complaint has been resolved.

ComReg’s ability to act upon a complaint depends on the particulars of the issue raised and our relevant legal powers. Some complaints may have a direct regulatory bearing, for example, breach of licence or regulatory obligations. In this situation ComReg can intervene to address the issue. This is generally effected by acting as an arbitrator between the complainant and the service provider with the complaint being referred back to the operator in light of the obligations established under the prevailing regulatory framework. Operators, on foot of ComReg’s intervention, seek to resolve the issue and reach a mutually acceptable outcome with the consumer. Once notified by the operator that the complaint has been resolved (and that the resolution has been notified by the operator to its customer), ComReg will contact the consumer to confirm the resolution and closure of the complaint.

The Figure below sets out the number of complaints handled by ComReg in this manner during 2002.

**Figure 1: Total Complaints Received by ComReg in 2002**



ComReg acknowledges and welcomes the co-operative and proactive approach currently been taken by operators in dealing with complaints. Indeed, ComReg has informally agreed inter ComReg-operator procedures for

complaint referral in order to improve the efficiency of their handling and speed of resolution for the consumer. However, given the proposed legislative changes, ComReg considers it necessary to re-examine its complaint handling role. At this early stage it is intended to consult on the principles according to which a more formalised approach to complaint handling would work.

## 9.2 Proposed Approach

Every end user is entitled to receive a minimum quality of service standard from their communications provider. Some end users may choose a service based on a price/quality trade off and they may therefore be willing to accept a lower quality service at a cheaper price. Where customer's expectations (in light of the service chosen and the operator's commitments) are not being met they may wish to contact their operator to express their dissatisfaction and to have any problems either remedied or explained to them. If customers' concerns are not being adequately addressed by their service provider they may feel the need to contact ComReg to assist them in reaching a resolution.

Broadly speaking, ComReg is proposing to continue its existing approach to handling complaints, but in a more formalised and structured way. This will inevitably involve the adoption of tighter procedures that a more formalised approach requires. It is considered that, any changes to our approach to handling complaints will need to balance the need for formality against flexibility if the legislative aims of resolving disputes in a prompt and fair manner is to be met.

A number of proposed principles to govern ComReg's future approach to complaint handling are proposed.

- Initial Responsibility for handling complaints
- Role of ComReg in handling end user complaints
- Stages to the complaint handling process
- Services and Products to be covered by the complaints procedure
- Which operators will fall under the procedure
- Who can use the complaints procedure
- Remedies to complaints
- Cost of using the complaints procedure

In accordance with the draft legislation, Comreg will have the ability to investigate complaints, make binding decisions and, where appropriate, direct operators to reimburse and/or make compensation payments.

ComReg wishes to obtain views as to how it might deal with the above issues, in particular, in relation to compensation. Given that ComReg has experience in the areas of complaint resolution and that it is responsible for ensuring compliance with the regulatory framework, ComReg is not currently considering the appointment of an independent person to resolve complaints.

However, this may require re-examination in the longer term, particularly in light of experience gained under any changed complaint handling role.

The principles identified above are discussed below in light of existing legislation and that proposed in the draft Universal Service regulations. Overall, it is considered that the majority of complaints can be dealt with utilising a procedure similar to that currently employed, namely facilitation and conciliation, with only a small minority of complaints requiring some sort of formal investigative process.

**Q. 19. Do you agree with the approach outlined above ? Are their alternatives ? Please explain your answer**

#### 9.2.1 *Initial Responsibility for Handling Complaints*

ComReg considers that the primary responsibility for complaint resolution must be retained by the service provider themselves, as they have the direct relationship with the customer and are in the best position to address the complaint. To upset this balance would only serve to both undermine a customer's right to seek redress from an operator and encourage operators themselves to abdicate their responsibility for dealing with their customers by shifting the focus for handling their service quality problems to a third party.

In the context of ComReg's complaint handling role, we will only accept a complaint once a complainant has exhausted (or is unable to exhaust) the service provider's complaint handling process.

**Q. 20. Do you agree with the principle above. Are there any other issues which should be taken into consideration ?**

#### 9.2.2 *Role of ComReg in Handling End User Complaints*

ComReg considers that the aims of its complaint handling role should be

- to ensure that end users have access to and make use of an operator's own complaint handling process
- in the event of disputes remaining unresolved (after exhausting an operator's complaint handling procedures) to have an accessible ComReg complaints procedure,
- to consider and, where appropriate, to investigate such complaints in order to encourage and/or facilitate their resolution.

ComReg is proposing to deal with each complaint on a case-by-case basis based on its merits and in light of its ability to effect an outcome. ComReg will retain the discretion to decide whether a complaint can be appropriately handled within its remit or whether the complainant should be referred to another organisation.

It is worth noting that to date, most of the complaints received by this office have been dealt with informally, typically involving facilitation, which results in a mutually acceptable solution being found in a relatively short timeframe, typically within two weeks. For issues involving an operators network roll-out or build it may take longer.

In light of the above, a two tiered complaint handling approach is envisaged.

**Stage 1:** Firstly, initial informal facilitation and conciliation in order to resolve disputes as expeditiously as possible. It is expected that, as is current practice, the majority complaints can be dealt with in this way and will not involve the need to proceed to formal investigation and/or decision making by ComReg.

**Stage 2:** Secondly, either where the first process fails or the nature or seriousness of a complaint warrants it, to offer a more formal complaint resolution service utilising ComReg's powers of investigation and enforcement of decisions.

ComReg considers that such a two tiered approach allows disputes to be resolved at an early stage, avoiding escalation to an investigation. The stages to the complaint handling process itself are discussed below.

**Q. 21. Do you consider that a two stage approach as outlined adequately meets ComReg's obligations with respect to complaint handling ? Are there other factors or alternative approaches which should be considered ?**

### 9.2.3 *Stages to the complaint handling process*

Within this two staged approach, ComReg envisages that there would be four steps to the complaint handling process.

#### 9.2.3.1 Acceptance of the Complaint

ComReg, having identified that the complainant has exhausted the operator's complaint handling process (or has been unable to do so), and considers that the issue falls within the remit of this Office, will accept the complaint. At this point the complainant will be asked to supply any documents or information which is considered necessary for the office's consideration of the complaint. ComReg will also inform the relevant operator that the complaint has been accepted and may require them to supply the office with any documentation or information necessary to allow an examination of the complaint.

#### 9.2.3.2 Facilitation & Conciliation

ComReg will seek to achieve a mutually acceptable settlement of a complaint where it is appropriate and practical to do so. Resolution would not require the need for formal investigation. Such complaints, although resolved in an informal manner, will nevertheless be recorded as complaints for statistical purposes.



#### 9.2.3.3 Formal Investigation

If the complaint is not resolved through facilitation and conciliation, ComReg may conduct a formal investigation of the complaint. In order to have a complaint dealt with in this manner the complainant must provide evidence that:

- There is a breach of the draft regulations by the relevant operator
- There is a failure to resolve the dispute using the operator's code of practice
- It is appropriate that ComReg prescribe a remedy to the complaint

ComReg will inform the parties when it is treating a complaint in a formal investigative manner and both parties will be required to co-operate and provide further information or carry out any actions necessary for the investigation.

While a general procedure for doing so will be established, ComReg retains the discretion to conduct an investigation as may be appropriate having regard to the particular circumstances of the case. This may involve further submissions from the parties or requests to the service provider to (re)examine particular aspects of the complaint.

ComReg may use its discretion to terminate its consideration of a complaint if during the course of an investigation it concludes that no settlement is required or that the operator has no case to answer.

#### 9.2.3.4 Decision Making

Where a formal investigation has been concluded, ComReg will inform the parties of its draft decision along with the proposed remedies (see section 9.2.7). Reasons will be provided for the decision and the parties will be able to make comments within a defined specified period.

Any decision taken will be justified, fair and reasonable in light of good practice and shall have regard to any applicable regulatory obligations on the service provider.

Subject to the above, ComReg's decision will then become final. The final decision will be binding on the relevant service provider if it is accepted by the complainant, within a specified period of time, as a full and final settlement. If the complainant does not accept the final decision, it is not binding on the service provider and is without prejudice to a complainant's right to seek an alternative remedy through any other procedures that may be available to them.

Appropriate procedures will be established around each of the aforementioned stages to the complaint handling process.

ComReg is also considering that in certain instances, say in the case of repeat breaches or serious complaints that it would (subject to commercial

confidentiality considerations) publish a summary of the particular dispute in question along with the relevant finding.

In addition, ComReg currently publishes aggregated information on complaints by sector, for example, X number of complaints received for the fixed, mobile or broadcasting sectors. In future, it is proposed that the number of complaints received will be published in a disaggregated manner (by operator). This will increase the level of transparency for consumers by allowing them to see which operators are effectively handling complaints as part of their own complaint process. It will also encourage operators to improve their performance in this area.

**Q. 22. Do you consider that the above stages are sufficient to meet the objectives of a settling disputes in a fair, transparent and prompt manner.**

**Q. 23. Are there alternative approaches or other factors which should be considered ? What timeframes or procedures might govern each step of the complaint process?**

**Q. 24. Do you agree with the proposal to publish a summary of repeated breaches or serious complaints ? What issues might this give rise to ?**

**Q. 25. Do you agree with the proposal to publish disaggregated complaints data on the number of complaints received by ComReg ? What issues might this give rise to ?**

#### *9.2.4 Services and Products to be covered by the complaints procedure*

An undertaking must implement a Code of Practice for handling complaints in respect of an alleged contravention of the regulations. ComReg must resolve disputes that remain unresolved after the completion of an operator's code of practice. In addition, ComReg has a wider complaint resolution role in light of its functions under the Communications Act 2002.

In light of the above, ComReg considers that the following services should be covered by the complaints procedure (in light of the relevant obligations set out in the regulations):

- Services falling within the scope of the USO (undertakings designated with USO)
- Leased Lines (undertakings designated as having SMP)
- Publicly available telephone services

- Publicly available electronic communications services
- Operator assistance and directory enquiry services
- Connection and/or access to the telephone network

As identified in section 9.1.1, ComReg's has a wider complaint resolution role that extends beyond the issues dealt with in the draft universal service regulations<sup>13</sup>. ComReg would propose to deal with any complaints about services other than those identified above but utilising the facilitation and conciliation procedure. ComReg may also, from time to time, consider additions to the services to be included within the scope of the complaint handling process.

**Q. 26. Do you consider that the above services/products should fall within the scope of ComReg's complaint handling procedure? Are their additional services which should be included?**

#### 9.2.5 *Operators to be covered by the complaint handling procedure*

In line with current and draft legislation, ComReg considers that undertakings providing the services referred to in section 9.2.4 should be bound by the complaint handling procedure.

**Q. 27. Do you agree with the above? Are their any other considerations?**

#### 9.2.6 *Who can use ComReg's complaint handling procedure*

The question arises as to which users should be eligible to avail of the complaint handling procedure. The services listed in section 9.2.4 are mainly used by residential and small business users, with larger businesses typically utilising different services for their telecommunications needs. Larger businesses also tend to be account managed with the need to seek redress through means other than the operator's own complaint procedure being less likely. Recital 49 to the USO Directive places a particular emphasis on consumers and small and medium sized enterprises.

ComReg is proposing to accept complaints from users including businesses and consumers who are using or requesting a relevant service who are not themselves providing public communications networks or publicly available electronic communications services. Such users include, *inter alia*

- a residential, non-business consumer, who has a contract with an operator for the provision of a service which falls under the jurisdiction of ComReg's regulatory powers.

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<sup>13</sup> The draft legislation does not replace other functions of ComReg under the Wireless Telegraphy Acts and Broadcasting legislation as detailed in the ComReg Act.

- a business consumer who has a contract with an operator for the provision of a service which falls under the jurisdiction of ComReg's regulatory powers.
- a residential, or business consumer, who is a user (or prospective user) of a service or product provided by an operator.
- a prospective user of a universal service who has sought to obtain a service or product provided by the universal service operator and has been refused access to such a service

The utilisation of ComReg's complaint handling process by the above consumers would not affect their statutory rights or prevent them from employing alternative means of redress, where available, e.g. initiate own legal proceedings etc.

**Q. 28. Do you agree with ComReg's proposal to accept complaints from the above users ? Please explain your answer and offer alternatives if appropriate.**

#### 9.2.7 Remedies to complaints

A series of remedies are possible (if appropriate) in relation to the resolution of a complaint. The draft regulations provide for the specification by ComReg of re-imbursement and/or compensation payments as a resolution to a complaint. ComReg considers that the circumstances requiring the payment of compensation would be limited as there are many other appropriate remedies to a complaint. Nevertheless, ComReg wishes to consider how this aspect might be dealt with in the context of ComReg's more formal complaint handling role.

Two approaches to handling the re-imbursement and/or compensation issue are possible. Firstly, operators offer refunds and compensation schemes in the spirit of self/co-regulation and, secondly, ComReg can prescribe refunds and/or compensation as a remedy to a complaint. Either approach (or a combination of both) could operate.

##### 9.2.7.1 Operator Customer Guarantee Schemes

Operators could include as one of the criteria in their codes of practice for handling complaints the compensation and/or refund arrangements which apply if the contracted service quality levels are not met. The draft regulations allow the Commission to require an amendment to operators' codes of practice to facilitate such an approach. Provision is also made in the regulations for operators themselves to include specific compensation arrangements in their contract terms and conditions (see section 6). If such an approach was appropriate, ComReg may seek to establish minimum criteria governing compensation payments, which could then be suitably adopted by operators, having regard to the nature of the service they are offering and the complaint itself. Such a scheme, could, for example, set out a range of instances where compensation may be appropriate along with an associated specific compensation payment.

A further possibility would be for operators to offer some sort of a service level agreement or customer guarantee to their customers which would suitably compensate them for any failure to meet specified quality levels or terms and conditions of the contract. Again, ComReg would have a role in ensuring that it was satisfied with any arrangements established.

Such an approach by operators would be positively viewed by consumers and ComReg. Indeed, if adopted by particular operators, the specific issue of compensation might not need to be dealt with by ComReg in the context of its complaint handling procedures (other than an operator's fulfilment of its obligations under any scheme it may adopt).

**Q. 29. Do you consider that operators should operate compensation schemes as part of their complaint resolution process.**

**Q. 30. Do you consider that an operator own initiative in relation to compensation as set out above might appropriately deal with the matter ?**

**Q. 31. How might such schemes operate ? Are there alternative suggestions ?**

#### 9.2.7.2 ComReg Prescribed Remedies

Depending on the approach adopted under section 9.2.7.1, a further approach to the compensation issue would be for ComReg to operate a compensation policy which would only be applied in particular circumstances. This could operate either in tandem with or independently of an operator compensation scheme and would involve ComReg specifying that reimbursements and/or compensation be paid by the operator to the complainant if it is deemed appropriate in the context of the overall ComReg dispute resolution process. If a ComReg scheme were not required, our role might be limited to ensuring that operators comply with any compensation scheme they establish in conjunction with this office.

ComReg considers that there are many potential remedies to a complaint. These can include, a requirement on an operator to provide a service, an apology to a complainant, a refund or indeed compensation.

Taking the case where a ComReg compensation scheme is deemed appropriate the following considerations arise. Currently, claims of up to a maximum of €1,269 can be dealt with under the Small Claims court procedures. It is considered that in any approach involving ComReg specifying compensation to be paid by an operator, that this could be the maximum amount which might apply to any particular case.

Apart from re-imburements, a ComReg compensation scheme could seek make awards for loss of convenience or amenity as well as reasonable out of pocket expenses (excluding loss of earnings). To this end, ComReg would like to seek views as to what situations compensation may be appropriate and what it should cover.

The question arises as to how an operator may wish to pay compensation to a complainant. One approach is for it to be provided by way of a credit or benefit in kind to the complainant's account. An alternative is a direct payment to the complainant. ComReg considers that it should be at the discretion of the complainant as to how they wish to receive any compensation payment. The operator could be free to discuss payment options with the complainant but the ultimately the complainant should have the final say.

On the separate issue of reimbursement, this typically involves a return of money which was paid to a party (say an operator) but which it turns out was never owing or never should have been taken/paid in the first place. The obvious example is where a user is overcharged incorrectly. Reimbursement might also include where a service is paid for but never delivered. In such instances a user may be entitled to a return of such payments. ComReg also considers that reimbursement may also be one remedy to be specified by ComReg as an outcome to a complaint.

Having regard to the above, ComReg considers that the following list of remedies may be appropriate in respect of its complaint handling process where a complaint against an operator is upheld.

- Operator to provide a service or product to the complainant
- Operator to provide an apology or explanation to the complainant
- Operator to take some other practical action of direct benefit to the complainant.
- Operator to refund a complainant.
- ComReg prescribes award to the complainant of compensation not exceeding €1,269 (inclusive of VAT, if any) per complaint, to be paid by the operator.
- Provide any combination of the above up to a set value of €1,269.74
- In addition, ComReg may, as a result of considering a complaint, recommend changes of policy or procedure to the operator concerned.

Furthermore, ComReg considers that each complaint would be treated on its individual merits. ComReg would not be bound by past decisions or past remedies or compensation awards imposed by the office. In other words, a particular remedy in one case would not automatically mean that the same remedy would apply in similar cases.

- Q. 32. Do you consider that ComReg's role in relation to compensation might be to (a) review how operators comply with their own compensation schemes or (b) direct that operators pay awards of compensation to users?**
- Q. 33. If you consider that a ComReg compensation scheme is appropriate does the approach above adequately deal with the issue of compensation in the context of ComReg's obligations with respect to dispute resolution under the draft regulations ? Are there other alternatives ?**
- Q. 34. Do you agree that compensation, where appropriate, should not exceed a set value of €1,269 ? Do you have any views as to how compensation payments should be made ?**
- Q. 35. What issues might the prescription of the above mentioned remedies give rise to? How might these issues be dealt with ?**
- Q. 36. Do you have an alternative suggestion for dealing with the issue of compensation/refund arrangements ?**
- Q. 37. What categories of complaints might be subject to a compensation scheme (either operator owned or ComReg prescribed)?**
- Q. 38. Depending on the approach adopted in relation to remedies, it will require the development of adequate procedures in the context of the overall ComReg complaint resolution processes discussed earlier. What procedures might be appropriate ?**

#### *9.2.8 Cost of using the complaints procedure*

The draft regulations require that the dispute resolution procedures be inexpensive. While this matter would have to be considered in the context of the specific approach that may be adopted by ComReg for fulfilling its overall complaint handling role, at this point in time, the Commission does not propose that complainants be charged for availing of the complaint handling procedure. Furthermore, each party to the dispute is also responsible for their own costs or expenses in pursuing the dispute with ComReg.

The above proposals regarding charging will be kept under review having regard to the volumes, in particular, those complaints which may require formal investigation.

**Q. 39. Do you agree with the proposals regarding the cost of utilising the complaint resolution service above ?**

ComReg considers that the approach to handling complaints as set out in Section 9 above offers benefits to both consumers and the industry.

- It is relatively informal and free or of low cost, thereby potentially offering access to a large number of consumers
- ComReg has expertise in this area and can make decisions based on what the office deems to be fair and reasonable
- It allows complaints to be resolved at relatively low cost and without the need for recourse for legal action
- It ensures that industry remains the primary point of resolution for complaints
- It encourages the resolution of complaints at an early and informal stage
- the existence of a more formalised approach to complaint handling would give operators a greater incentive to avoid disputes arising and to improve complaints handling

It is intended that ComReg, in light of the approach to complaint resolution that may be adopted, would publish clear guidelines about the complaint process, including the terms and conditions around compensation schemes.

ComReg recognises that the move to a more formalised complaint handling role will require the development of robust processes and systems in order to ensure its effective and efficient management.

ComReg will work with the industry and consumer groups to ensure timely and comprehensive implementation.



## 10 Next Steps

Following this consultation, ComReg intends to issue a report which will, in some instances, make decisions regarding the overall approach to be adopted in implementing the measures set out in this paper. In some cases this will involve individual measures being addressed through further specific consultations, as appropriate.

ComReg is conscious of the need to minimise any potential burden that may be placed on the industry as a consequence of this process. It is envisaged that any future consultation process or implementation of measures can be carried out in such a way that achieves this aim. ComReg proposes to produce an implementation timetable as part of the response to this consultation which could cater for the implementation of the majority of measures by the end of 2003.

To assist with the development of a timetable ComReg would like to receive views from respondents, in particular consumer representatives, as to their implementation priorities and would request that each response to this consultation is accompanied by a completion of the following 'implementation preference list'. ComReg will take this into consideration in preparing an implementation plan.

Please list the priority within which you would like to see each of the following measures addressed (1 being the highest and 6 being the lowest).

<b>Implementation Priority</b>	
<b>Measures in the following Areas</b>	<b>Priority</b>
Transparency and Publication of Information	
Quality of Service	
Consumer Contracts	
Operator Assistance and Directory Enquiry Service	
Codes of Practice for Handling Complaints	
Dispute Resolution	

In formulating a future timetable for the implementation of any user protection measures, ComReg will endeavour to take on board respondents priorities.

## 11 Submitting Comments

All comments are welcome, however it would make the task of analysing responses easier if comments were referenced to the relevant question numbers from this document.

The consultation period will run from 25<sup>th</sup> February, 2003 to 8<sup>th</sup> April, 2003 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the implementation of those end user protection measures set out in the draft regulations and publish a report in May, 2003 on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish the names of all respondents and make available for inspection responses to the consultation at its Offices.

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful. Respondents are requested to clearly identify confidential material and if possible to include it in a separate annex to the response. Such information will be treated as strictly confidential.

**Commission for Communications Regulation**  
**25<sup>th</sup> February, 2003**

## 12 Annex - Relevant Definitions

The following provides a list of definitions (as set out in the draft Universal Service and Framework regulations) relevant to this paper for reference purposes only.

*“conditional access system”* means any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

*“consumer”* means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;

*“electronic communications network”* means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

*“electronic communications service”* means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude(s) services providing, or exercising editorial control over, content transmitted using electronic communications networks and services and excludes information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

*“end-user”* means a user not providing public communications networks or publicly available electronic communications services;

*“national numbering scheme”* means the scheme administered by ComReg and which sets out the sequence of numbers which must be used to route communications to specific locations, terminals, persons or functions on public electronic communications networks;

*“publicly available telephone service”* means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory inquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or special social needs and/or the provision of non-geographic services;

*“public communications network”* means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;

*“public pay telephone”* means a telephone available to the general public for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

*“public telephone network”* means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms for communication, such as facsimile and data;

*“subscriber”* means any natural person or legal entity who or which is party to a contract with a provider of publicly available electronic communications services for the supply of such services;

*“undertaking”* means an individual, a body corporate or an unincorporated body of persons engaged in the provision of electronic communications networks or services or associated facilities;

*“user”* means a legal entity or natural person using or requesting a publicly available electronic communications service.