



Commission for
Communications Regulation

Response to Consultation and Decision Notice

Dispute Resolution Procedures - Framework Regulations

(Response to Consultation Document No. 09/85)

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An Coimisiún um Rialáil Cumarsáide
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1 Introduction

On 4 November 2009, the Commission for Communications Regulation (“ComReg”) published a consultation (Document 09/85 “Dispute Resolution Procedures – Framework Regulations” (“the Consultation”)) seeking industry’s views on ComReg’s proposals for revising the existing dispute resolution procedures.

In the Consultation ComReg noted that since the publication of dispute resolution procedures in 2003¹ ComReg has received a number of disputes and, based on the experience of these disputes, the Consultation outlined ComReg’s proposals for revising the existing dispute procedures to ensure legal and practical developments are encompassed to better enable the efficient and timely resolution of disputes.

There were six respondents to the Consultation namely, Vodafone Ireland Limited (“Vodafone”), Hutchison 3G Ireland Ltd (“3”), Eircom Ltd. (“Eircom”), BT Communications Ireland Limited (“BT”), COLT Telecom Ireland Limited (“COLT”) and Alternative operators in the communications market (“ALTO”) (together “the Respondents”). All of the Respondents in general welcomed the proposals for revising the existing dispute resolution procedures.

It should be noted that all views were considered and account taken of the merits of the views expressed. However, it is not practical for ComReg to provide commentary on every comment made and therefore this response to consultation summarises the major elements of comments provided and ComReg’s views in relation to these. ComReg then gives its position in relation to each question posed. Finally ComReg publishes its dispute resolution procedures in Annex B.

Section 2 of this paper sets out the legal background and ComReg’s obligations in relation to dispute resolution under Regulation 31 of the Framework Regulations.

Section 3 of this paper provides a brief summary of the issues raised in the Consultation and the corresponding views of the Respondents on each of these issues followed by ComReg’s position on each matter.

Section 4 of this paper details the general comments raised by the Respondents and ComReg’s position on each of these issues.

Section 5 of this papers states the effective date for the new dispute resolution procedures as set out in Annex B.

¹ Response to Consultation and Decision Notice “Dispute Resolution Procedures”, D18/03, ComReg document 03/89 dated 25 July 2003.

2 Legal Background

Regulation 31(2) of the Framework Regulations² obliges ComReg to publish its dispute resolution procedures and to ensure that all investigations and determinations are handled in accordance with these procedures.

The new dispute resolution procedures are also governed by the requirements of Section 12 of the Communications Regulations Act, 2002³ and Article 8 of the Framework Directive.

ComReg in exercise of its functions under the Communications Regulations Act, 2002 and pursuant to its obligation under Regulation 31(2) of the Framework Regulations at Annex B herein sets out its procedures for the resolution of disputes (“the Dispute Resolution Procedures”).

² European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003, S.I. No 307 of 2003 (“the Framework Regulations”)

³ Communications Regulation Act, 2002 (no. 20 of 2002), amended by the Communications Regulation (Amendment) Act 2007 (no. 22 of 2007)

3 Scope of dispute resolution

Background

3.1 In the Consultation ComReg defined a dispute as a conflict of claims or rights between undertakings that arises in connection with the specific regulations or regulatory obligations within ComReg's remit. ComReg also stated that before accepting a dispute for investigation in accordance with Regulation 31(1) of the Framework Regulations, there must *prima facie* be a potential issue in connection to an operator's regulatory obligations and it must include the following characteristics:

- (i) There must be a disagreement between the parties which is the basis for the dispute.
- (ii) A reasonable degree of negotiation has taken place and has failed. ComReg acknowledges that some undertakings may refuse to negotiate. Where this happens, the undertaking submitting the dispute to ComReg should demonstrate that it has taken reasonable steps to engage the other undertaking in negotiations.
- (iii) The dispute should be between undertakings (i.e. persons engaged in the provision of electronic communications networks or services or associated facilities⁴) in Ireland.
- (iv) The nature of the dispute must be material and the dispute must arise in connection with the obligations under the Directives⁵, the Regulations⁶ or obligations imposed by ComReg.⁷

⁴ This is the definition of "undertakings" as provided for at Regulation 2 of the Framework Regulations.

⁵ Directive 2002/21/EC of the European Parliament and of the council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ("the Framework Directive"), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ("The Authorisation Directive"), Directive 2002/19/EC of the European Council and Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ("the Access Directive"), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating electronic communications networks and services ("the Universal Service Directive") and Directive 2002/58/EC of the European Parliament and the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector together "the Directives".

⁶ The Framework Regulations, European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2002 ("the Authorisation Regulations"), European Communities (Electronic Communications Networks and Services)(Access) Regulations 2002 ("the Access Regulations"), European Communities (Electronic Communications Networks and Services)(Universal Service and Users' Rights) Regulations 2002 ("the Universal Service Regulations") and the European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002 together "the Regulations".

⁷ Please refer to "Annex A- Legislation" of the Consultation

Views of Respondents

- 3.2 Vodafone stated its belief that ComReg has overstated the criteria for what constitutes a dispute. Vodafone believes that ComReg's requirement that a "reasonable degree of negotiation has taken place and has failed" is too high a standard and that whether a reasonable degree of negotiation has taken place should not be determinative. Vodafone believes it is sufficient that a Complainant⁸ can demonstrate that there is an "argument" or "quarrel" as that is the dictionary definition of a dispute.
- 3.3 Two Respondents (Vodafone and 3) disagreed with the inclusion of characteristic (iv) above and submitted that neither the Regulations nor the Directives provide for the introduction of what 3 calls a "materiality threshold". Vodafone was of the view that the resource commitment from a Complainant to properly submit a dispute is sufficient to prevent the submission of frivolous disputes.

ComReg's Position

- 3.4 ComReg notes Vodafone's concern regarding the requirement that "A reasonable degree of negotiation has taken place and has failed". ComReg would like to draw Vodafone's attention to the two last sentences of point (ii) i.e. "ComReg acknowledges that some undertakings may refuse to negotiate. Where this happens, the undertaking submitting the dispute to ComReg should demonstrate that it has taken reasonable steps to engage the other undertaking in negotiations". ComReg believes that this last sentence should address Vodafone's concerns.
- 3.5 ComReg notes the two respondents' concerns in relation to the requirement that "The nature of the dispute must be material". The application of the Dispute Resolution Procedures has significant resource and cost implications for the undertakings involved, as well as for ComReg. In recognition of this, ComReg considers that there may be circumstances when it would be inappropriate to follow the Dispute Resolution Procedures. ComReg reserves the right to be able to refuse to accept a dispute on the basis of lack of materiality i.e. to apply a "de minimis" rule. This approach is also in accordance with ComReg's obligation to act in a proportionate fashion. In determining materiality, ComReg amongst other things will consider the potential value of the dispute to the Complainant and industry in general. ComReg notes that this is a very low threshold and it is only in cases where the issue is clearly of minor importance that a dispute submitted will be excluded on this basis.

ComReg's Position:

Before accepting a dispute for investigation pursuant to Regulation 31(1) of the Framework Regulations, it must include the following characteristics:

- **There must be a disagreement between the parties which is the basis for the dispute.**
- **A reasonable degree of negotiation must have taken place and failed. ComReg acknowledges that some undertakings may refuse**

⁸ i.e. the undertaking that submits the dispute to ComReg. The undertaking about whom the dispute is submitted will hereafter be known as "the Respondent"

to negotiate. Where this happens, the undertaking submitting the dispute to ComReg should demonstrate that it has taken reasonable steps to engage the other undertaking in negotiations.

- **The dispute should be between undertakings (i.e. persons engaged in the provision of electronic communications networks or services or associated facilities) in Ireland.**
- **The nature of the dispute must be material and the dispute must arise in connection with the obligations under the Directives, the Regulations or obligations imposed by ComReg.**

Investigating a dispute

Summary of Consultation Issues

- 3.6 ComReg proposed in the Consultation that in the absence of exceptional circumstances, the Complainant shall ensure that the initial submission form, attached at Annex C to the Consultation is adequately completed and that adequate information is before ComReg to enable ComReg to determine the scope of the dispute. In addition it will assist ComReg in confirming that there is a relevant regulatory obligation pertaining to the issue in the dispute. ComReg also proposed that the four month period for the dispute resolution⁹ should commence from when the Complainant submits clear information on all details of the dispute to the satisfaction of ComReg.
- 3.7 In order to provide more detailed guidance as to what is required from Complainants on submitting a request, ComReg proposed that the information requirements set out in “Annex C” be used by undertakings submitting a dispute and be the basis for ComReg accepting a dispute submission going forward.

Q. 1. Do you agree with ComReg’s proposed basis for accepting a dispute submission, as detailed in Annex C? If not, please give a detailed explanation.

Views of Respondents

- 3.8 All six Respondents were in broad agreement with the proposed basis for accepting a dispute submission (as detailed in Annex C) and the key aspects of their responses are summarised below. A number of Respondents proposed some modifications to Annex C which are specified below.
- 3.9 Eircom agreed that Annex C, “Required Information for submitting a dispute”, clearly sets out the requirements for accepting dispute submissions. Eircom considers that the designation of “mandatory” items and the Guidance Notes set clearer parameters for what is required for a dispute to be accepted.

⁹ Regulation 31(1) of the Framework Regulations provides that a dispute must be determined within four months of being notified of the dispute, except in circumstances which ComReg considers exceptional.

- 3.10 3 generally agreed with ComReg's proposed basis for accepting a dispute submission, as detailed in Annex C.
- 3.11 Vodafone agreed that the information provision requirements as set out in Annex C are reasonable and justified.
- 3.12 BT was of the view that there should be a rapid feedback mechanism to ensure that a Complainant is made aware of ComReg's opinion on its statement of relevant obligations and any alternative obligations that may be identified. BT considered that this would ensure that the time taken for a dispute to be accepted, or handled in a different manner, would be minimised. BT also asked ComReg to note with regards to the requirement of details of any attempts to resolve the dispute that "the incumbent is highly skilled at avoiding negotiations often through silence and/or avoidance of escalation".

ALTO and COLT suggested that ComReg construct a form or online submission portal where disputes could be lodged. Additionally ALTO believed that consideration should be given to the fact that undertakings may not be in a position to fully evidence all elements of a dispute in documentary form.

ComReg's Position

- 3.13 BT requested a rapid feedback mechanism to ensure that the Complainant is made aware of ComReg's opinion on its statement of relevant obligations and any alternative obligations that may be identified. As detailed in the Dispute Resolution Procedures, ComReg has agreed to accept or reject a dispute request within 10 working days. ComReg believes this to be sufficiently expedient. Moreover, previous experience in disputes has shown this timeline is necessary for the analysis. In relation to BT's comments regarding the incumbent's behaviour, ComReg would like to point out that where an OAO experiences difficulties in this area the OAO should clearly detail all actual and/or failed attempts to negotiate and ComReg will take this into account when assessing Annex C.
- 3.14 In relation to ALTO's request to ComReg that consideration should be given to the fact that undertakings may not be in a position to fully evidence all elements of a dispute in documentary form, ComReg notes ALTO's concerns and accepts that in certain circumstances an operator will not be capable of providing full documentary evidence. In such circumstances it will suffice if the operator provides as much evidence as it can and also provides a detailed explanation outlining why it couldn't provide more documentary evidence. In relation to ALTO's and COLT's request for a form or online submission portal, ComReg does not agree there is a requirement for such a system. Currently, requests for ComReg intervention in disputes may take any format (email, letter, etc.) and Annex C sets out the headings to be used to structure the request. ComReg believes this approach to be sufficiently user-friendly.

ComReg's Position:

For a dispute to be accepted by ComReg, the Complainant must submit the information required by the "Guidance Note on information for submitting a dispute" as detailed in Annex C of this paper.

Alternative Resolutions

Summary of Consultation Issues

- 3.15 ComReg stated that it would encourage all operators, as commercial entities, to pursue other relevant alternative means of dispute resolution, such as mediation or negotiation, prior to submitting a dispute. ComReg referred to Regulation 31(3) of the Framework Regulations ("Regulation 31(3)"), which provides that ComReg may decide not to initiate an investigation in relation to a dispute, where it is satisfied that there are other means of resolving the dispute in a timely manner or if legal proceedings in relation to the dispute have been initiated by either party. In accordance with this discretion, ComReg will consider not initiating an investigation into a dispute if it is satisfied that an alternative dispute resolution ("ADR") mechanism is a more appropriate way of determining the issues between the parties to the dispute.

Q. 2. What Alternative Dispute Resolution Mechanisms do you consider would be appropriate for consideration by ComReg before ComReg accepts the dispute?

Views of Respondents

- 3.16 All six Respondents responded to this question in relation to ADR mechanisms.
- 3.17 Eircom stated that Eircom's reference offers all include robust dispute resolution processes which are incorporated in the agreements signed between Eircom and other operators. It further noted that commercial agreements between operators usually contain similar provisions. Eircom stated that it considered these to be ADR mechanisms and that parties should be encouraged to utilise them prior to the escalation of a dispute to ComReg. Eircom also requested confirmation that once ComReg has decided to investigate a dispute under Regulation 31(1) of the Framework Regulations, that it will not during the duration of this investigation instigate parallel own investigation procedures in respect of the same issue.
- 3.18 3 stated that mediation would be an appropriate ADR mechanism for consideration by ComReg in the context of Regulation 31(3). However, 3 disagreed that the cost of the ADR mechanism is an issue to be considered and borne by the parties. 3 stated that, as in litigation, costs should follow the event i.e. the successful party should be entitled to the costs of mediation.
- 3.19 Vodafone did not suggest any specific alternatives to dispute resolution under the Framework Regulations, however it did note that it considered that relevant alternatives will vary according to the circumstances of each case. It stated its belief

that ComReg should only consider ADR mechanisms which will have a realistic prospect of resolving the dispute in a timeframe similar to that provided for dispute resolution, provide regulatory certainty (where appropriate) and take the cost to parties into account. Vodafone expressed the view that the availability of alternatives to dispute resolution cannot be applied as what it termed “a formulaic cut-off as to whether to accept a dispute”. Vodafone also stated that ComReg when deciding whether or not to exercise its discretion should also take account of the relative positions of the Complainant and the Respondent and whether declining to accept the dispute confers an advantage on the Respondent by way of a possible four month delay.

- 3.20 BT suggested that the ComReg process should take into account that disputes can take different forms. BT suggested five proposals for a scheme that it believes would more efficiently deal with the different types of disputes that arise. These were what it termed “Resolution by Adjudication for long running issues”, “Fast Track akin to small claims court approach”, “Standard Dispute” (which is the Regulation 31 of the Framework Regulations dispute), “Other routes to resolve issues” (e.g. ComReg own initiative investigations) and finally “New Regulatory Remedies proposal”. It provided detail in relation to each of its proposals. With regard to the standard dispute, BT made several suggestions including a “meaningful update on a monthly basis” from ComReg.
- 3.21 ALTO stated that it considers mediation by ComReg or some other qualified party as a valid ADR mechanism, once agreed by the parties but cautioned that it should not be held as a condition precedent on any undertaking or a condition precedent in the process. ALTO also highlighted that undertakings can go directly to the High Court depending on the circumstances of the dispute.
- 3.22 COLT submitted that it supported mediation or informal negotiations as possible ADR mechanisms however noted that it “could strenuously object to any move by ComReg to move disputes to arbitration” and asked that ComReg specifically rule out arbitration as a method of ADR. COLT also asked that ComReg set out the expected timescales for an alternative dispute resolution procedure. COLT was concerned that some respondents may use this alternative process as a means of delaying the process.

ComReg's position

- 3.23 ComReg agrees with Eircom that the dispute resolution processes in commercial agreements between operators (including Eircom's reference offers) constitute alternatives to dispute resolution appropriate for consideration by ComReg when deciding whether or not to initiate an investigation. In relation to Eircom's request for confirmation that once ComReg has decided to investigate a dispute under Regulation 31(1) of the Framework Regulations, it will not instigate parallel own initiative investigations in respect of the same issue while the Regulation 31 of the Framework Regulations investigation is being carried out. ComReg's position is that investigations of disputes and own initiative investigations may be conducted in parallel.
- 3.24 ComReg agrees with 3's suggestion that mediation is an alternative to dispute resolution that it should consider in a Regulation 31(3) context. In relation to 3's comments in relation to costs ComReg would like to clarify that by indicating that the costs should be borne by the parties it was simply indicating that ComReg did not propose to pay the costs of any of the alternatives to dispute resolution utilised. The

awarding of costs between parties will depend on the alternative to dispute resolution utilised. Mediation is based on brokering an agreement between parties. Although this agreement could include agreement in relation to costs which may result in one party paying the costs of another, it is not possible for ComReg to prescribe that a “successful” party be entitled to the costs of mediation.

- 3.25 In relation to Vodafone’s comments, ComReg’s discretion not to initiate an investigation is clearly delimited by Regulation 31(3) and ComReg can only refuse to initiate an investigation if it is satisfied that an alternative to dispute resolution can determine the issues in a timely manner between the parties (or if legal proceedings in relation to the dispute have been initiated by either party). In deciding whether to exercise this discretion ComReg will consider whether the alternative mechanism is appropriate in the context of the dispute.
- 3.26 BT suggested a number of alternatives to dispute resolution including adjudication, fast track approaches and new regulatory remedies. ComReg agrees that “resolution by adjudication” and “other routes to resolve issues” are alternatives to dispute resolution that it will consider in a Regulation 31(3) context. In relation to the suggestions that there be a “Fast track” dispute procedure and the introduction of new regulatory remedies as part of the dispute process, these suggestions are beyond the scope of the Consultation and ComReg is not in a position to consider them at this point. Once the current standard dispute procedure is firmly established ComReg may then consider other approaches. ComReg notes BT’s request for monthly updates on the status of the dispute but in order to ensure the four month timeline is achieved ComReg does not consider it feasible to add this administrative step to the procedure.
- 3.27 In relation to ALTO’s comments, ComReg notes that ALTO agrees that mediation is an alternative to dispute resolution that it should consider in a Regulation 31(3) context. ALTO was of the view that agreement to mediation should not be what it termed “some form of condition precedent on any undertaking or a condition precedent in the process”. ComReg notes that the essence of mediation is agreement between parties and therefore it would and could never force an operator to engage in mediation.
- 3.28 COLT’s concerns in relation to arbitration are noted. ComReg does not think it appropriate to specifically rule out arbitration as one of the other means of resolving a dispute in a timely manner to be considered by ComReg, as there may be circumstances where arbitration is appropriate. In relation to COLT’s concerns in relation to timescales when using an alternative dispute resolution procedure, ComReg would like to draw COLT’s attention to Step 2 in Annex B – Dispute Resolution Procedures where ComReg states that if, after four months from the date of a decision not to investigate due to the availability of other means of resolving the dispute, the dispute is still not resolved and legal proceedings by either party in relation to the dispute are not in progress, ComReg shall at the request of either party initiate an investigation and make a determination within a further four months. ComReg believes that this step should address COLT’s concerns.

ComReg's Position:

When considering whether other means of resolving a dispute in a timely manner are available to the parties ComReg will consider *inter alia* mediation, dispute resolution processes in commercial agreements between operators, resolution by adjudication, informal contacts or negotiation; discussion at industry fora, and ComReg own initiative investigations.

Information Gathering

Summary of Consultation Issues

3.29 ComReg stated that that accurate information, provided in a timely manner, is critical to an efficient investigation and subsequent determination. In order to ensure that information is provided accurately and in an efficient manner ComReg proposed if necessary to utilise its formal powers¹⁰ to collect the information required to pursue the dispute resolution investigation. In the event that the information is not provided in accordance with the request ComReg indicated that it may, where necessary, take enforcement action, against undertakings.

Q. 3. Do you agree with ComReg's proposal to use its formal powers to collect the information it requires in pursuing investigations? If not, please give a detailed explanation.

Views of Respondents

3.30 BT, COLT and Vodafone agreed with ComReg's proposal to use its formal powers to collect the information it requires in pursuing investigations. Vodafone considered that this proposal would give certainty to the timelines for information gathering and accuracy of information collected. BT proposed that this method always be used within the dispute process rather than depending on voluntary submissions. ALTO did not respond to this question.

3.31 Eircom expressed the view that formal powers should only be used by ComReg where there is no alternative way of getting the required information. It continued by stating that ComReg should give the new processes outlined a fair chance to work prior to making a decision to exercise its formal powers.

ComReg's position

3.32 ComReg notes that all respondents that responded to this question, with the exception of Eircom, agree that ComReg should use its formal powers

3.33 ComReg will, if it considers it to be necessary, utilise its formal powers to collect the information it requires during a dispute investigation.

¹⁰ Including, but is not limited to, powers under Section 13D, 38A and 39 of the Communications Regulation Act, 2002.

ComReg's Position:

ComReg will if it considers it to be necessary use its formal powers to collect the information it requires to pursue the dispute investigation.

Confidential Information

Summary of Consultation Issues

3.34 ComReg stated that it has issued Guidelines on the treatment of confidential information¹¹ and will have due regard to these guidelines (as may be amended from time to time) when dealing with disputes. To ensure that the dispute procedures are fair, in that adequate information is shared between the parties, ComReg proposed that the Respondent be provided with a non-confidential version of the original submission once the scope of the dispute has been determined at the beginning of the dispute. Furthermore, ComReg stated that Annex C will not be complete until a non-confidential version of the submission is made available. If the Complainant wishes to provide ComReg with confidential information and a non-confidential version of the submission is not included with the original submission, ComReg will request that a non-confidential version be supplied (usually within seven days). The four month period for dispute resolution will not start until such a non-confidential version of the submission has been received and Annex C is complete. ComReg stated that in the event that parties wish to provide ComReg with certain confidential information, a non-confidential version of the submission should be provided simultaneously. ComReg also stated that it does not regard submissions of legal or regulatory policy argument to be confidential and that they may therefore be disclosed publicly.

Q. 4. Do you agree with ComReg's position that a non-confidential version of the original submission must be submitted? If not, please give a detailed explanation.

Views of Respondents

3.35 All the Respondents agreed with ComReg's proposal.

3.36 Eircom added the proviso that the non-confidential version should contain all the facts material to the case so that the Respondent has all the facts when responding.

Eircom stated the view that there are two levels of exchange of information which may be confidential in a dispute:

- Exchange of information between parties. Eircom considers that the requirement to invoke the need for consultation in this situation should be very limited.
- Information that is suitable for publication.

3.37 ALTO agreed broadly with ComReg's position but noted that where a dispute arises which is of a nature that disclosure would cause an injustice to either party to a

¹¹ Response to Consultation "Guidelines on the treatment of confidential information", Document No. 05/24

dispute, the publication should be discretionary and should not delay the procedure. It submitted that redaction can be used to good effect in such circumstances and that in all instances if a dispute is accepted it should be published.

- 3.38 Vodafone suggested that ComReg make a distinction between information that is non-confidential between the parties but is not suitable for general publication and information which is non-confidential in its wider sense.

ComReg's position

- 3.39 ComReg notes that generally the Respondents agree that a non-confidential version of the dispute submission must be submitted. ComReg notes the suggestions by Eircom and Vodafone that a distinction should be made between what they saw as different types of confidential information. It is ComReg's view that segregation of confidential information into different categories is impractical. Therefore information in a dispute submission will have to be designated as confidential or non-confidential.
- 3.40 In relation to Eircom's concern that the non-confidential version contains all the facts material to the case so that the Respondent has all the facts when responding. ComReg notes that in Annex C in the guidance note, mandatory section in relation to the "Background to the dispute" requires that details of the dispute must be detailed and comprehensive. ComReg considers that this requirement will address Eircom's concerns.
- 3.41 ComReg has amended Annex C to include the requirement of "A non-confidential version of the dispute submission". In the event that the Complainant does not wish to provide ComReg with confidential information the entire submission satisfies this requirement.

ComReg's Position:

ComReg requires that a non-confidential version of the submission be submitted when an undertaking is requesting that ComReg initiate a dispute resolution investigation as referred to in Regulation 31 of the Framework Regulations. The four month period for dispute resolution will not start until such a non- confidential version of the submission has been received.

Meetings with the Parties

Summary of Consultation Issues

- 3.42 ComReg proposed in the Consultation that if in the interests of expediency, ComReg believes that a meeting with either, or both, of the parties is required, then ComReg will call such a meeting. ComReg stated its position that the information provided at the meeting may be used by ComReg as an input to the dispute analysis and final determination.

Q. 5. Do you agree with ComReg's use of meetings within the Dispute Resolution procedure, if required? If not, please give a detailed explanation.

Views of Respondents

- 3.43 All the Respondents agreed with ComReg's use of meetings within the Dispute Resolution Procedure, if ComReg believes meetings are required.
- 3.44 Eircom agreed that meetings may be a useful tool in the resolution of disputes. Eircom has a concern with the use of information provided at the meetings as an input to the dispute analysis and final determination. Eircom considers that due process in respect of a party's ability to respond to the allegations and information being used against it is paramount in the resolution of contentious matters. Therefore, to the extent that information is made available in a meeting, Eircom requested that any substantive matters from meetings be identified to the other party in detail in writing and upon receipt of this information, that party should be afforded the opportunity to respond before a determination in the dispute is reached. Eircom believes that the current process may also encourage parties to withhold certain information for meetings to avoid providing the other party with an opportunity to respond.
- 3.45 BT agreed with ComReg's use of meetings within the Dispute Resolution Procedures, if required. BT stated that if such meetings were to be held, they must be within a formal framework including formal minutes being taken and with ComReg facilitating.
- 3.46 Vodafone agreed that if ComReg believes it is required to use meetings within the Dispute Resolution Procedures then it is appropriate to do so.
- 3.47 3 agreed with ComReg's use of meetings within the Dispute Resolution Procedures, if required. However, 3 stated that ComReg needs to ensure that these meetings are fair and transparent in accordance with its statutory obligations.
- 3.48 ALTO agreed with ComReg's use of meetings within the Dispute Resolution Procedures on the basis that the meetings are not a condition in the process of progressing a dispute and that any information available to the meeting is fully transparent and accessible to all parties expected to engage in the process. ALTO stated that natural justice must apply in all instances.
- 3.49 COLT agreed with ComReg's use of meetings within the Dispute Resolution Procedures if required, subject to all parties being treated equally and being made privy to the same information.

ComReg's position

- 3.50 Following consideration of all the Respondents' views, ComReg proposes to use meetings within the Dispute Resolution Procedures if ComReg believes meetings are required.
- 3.51 ComReg has considered Eircom's request that any substantive matters from meetings be identified to the other party in detail in writing and upon receipt of this information, that party should be afforded the opportunity to respond before a determination in the dispute is reached. ComReg believes the proposed timeline does not allow for this explicit additional step. However ComReg considers that this concern is addressed by

the fact that parties present at the meeting can take their own notes and each party will have the further opportunity to respond to anything raised during a meeting when making submissions to the Draft Determination (Step 5 of the Dispute Resolution Procedures).

- 3.52 In relation to BT's suggestion that ComReg should facilitate any meetings and issue subsequent minutes. ComReg will chair and facilitate any meetings but ComReg will not issue minutes. ComReg considers that the timeline does not allow for this as an explicit additional step and that each party present at the meeting is capable of making their own notes.
- 3.53 In relation to COLT's comments, ComReg reiterates that meetings will be conducted in a fair manner and (where appropriate) in accordance with the requirements of natural and constitutional justice. Further in relation to information disclosed at meetings, as noted above, parties present at the meeting can take their own notes and each party will have the further opportunity to respond to anything raised during a meeting when making submissions to the Draft Determination (Step 5 of the Dispute Resolution Procedures).

ComReg's Position:

ComReg will use meetings within the Dispute Resolution Procedures if ComReg believes that meetings are required.

Resolution Procedures

Summary of Consultation Issues

- 3.54 ComReg presented a seven step procedure to resolve disputes. To assist understanding, the procedures were illustrated in a flowchart and a Dispute Resolution Procedures timeline was also included.

Q. 6. Do you agree with the Dispute Resolution Procedures above? If not, please give a detailed explanation.

Views of Respondents

- 3.55 The Respondents are in broad agreement with the Dispute Resolution Procedures outlined in section 4 of the Consultation although a number of Respondents proposed some modifications. These are specified below.
- 3.56 Eircom submitted that the Respondent and Complainant should be notified that ComReg has accepted the complaint at the same time. In relation to Step 2 Eircom submitted that a change to the scope should not be implemented without the agreement of the parties and clarification is required on who can instigate a change in scope and on what basis a change can be made. In relation to Step 3 Eircom notes that the current process states that ComReg will publish the scope and the amended process states ComReg may publish the scope. Eircom states there is a need for transparency in relation to the criteria used by ComReg in its decision to publish or

not to publish. In relation to Step 4 Eircom believes that the Respondent should be given 20 working days to submit its response and suggests that ComReg could reduce Step 5 from 5 weeks to 4 weeks and reduce Step 7 from 3 weeks to 2 weeks to accommodate this. In relation to Step 5 Eircom noted that ComReg only places a time limit on its actions under part 5 (i) and asks whether a time limit should be set in respect of the other two alternatives in Step 5. In relation to Step 6 Eircom seeks clarification on the criteria used to decide whether the draft determination is published or not.

- 3.57 BT suggested that a more innovative approach is required to deal with the different types of dispute that arise. In particular BT suggested that new approaches are required to deal with both long running issues and urgent issues where competition is being immediately damaged. BT raised concerns that the incumbent will manage to frustrate the process through the provision of late and partial information.
- 3.58 3 suggested that five working days are sufficient for Step 1. With regard to Step 2, 3 disagreed with what is stated in the Consultation and suggested that if the scope is changed the four month period should not automatically re-commence. 3 stated that the duration of any extension of the statutory deadline will depend on the circumstances. If the scope of a dispute is not materially changed, the statutory deadline should not be extended. With regard to Step 3, 3 suggested that 7 working days are sufficient.
- 3.59 ALTO agreed with the Dispute Resolution Procedures in the Consultation and what it termed “ComReg’s efforts to shorten and refine the current process”. ALTO suggested that ComReg should consider outsourcing disputes where matters of a complex or technical nature require expert or independent assessment. ALTO wants to ensure that smaller undertakings are not disadvantaged and submitted that ComReg should use its discretion to assess whether or not a valid dispute subsists once raised by an undertaking. ALTO and COLT requested that ComReg detail what conditions precisely constitute exceptional circumstances. ALTO also stated that if evidence is available to the Regulator in order to make a finding of fact and decision, such decisions should be published in short form and their working or background documents can or should follow.
- 3.60 COLT acknowledged that ComReg needs comprehensive and accurate accounts of the nature of any dispute. COLT suggested that where the Complainant makes rudimentary legal or regulatory errors in its submissions or provides ambiguous submissions that ComReg would step in and clear up such errors at the outset and not allow them to become part of the process.
- 3.61 Vodafone agreed with the Dispute Resolution Procedures outlined in Section 4 of the Consultation.

ComReg’s position

- 3.62 Following consideration of Respondents’ views, ComReg has taken on board some of the points raised by the Respondents and modified accordingly the relevant steps in the Dispute Resolution Procedures and its reasons are set out below.
- 3.63 In relation to Eircom’s suggestion that once ComReg has accepted the dispute both the Respondent and the Complainant should be notified at the same time, ComReg agrees with this point and has amended Steps 2 and 3 of the Dispute Resolution Procedures to reflect this (see Annex B). ComReg wishes to clarify that the notification will take

place 10 days from the date of the initial submission (and not 8 days as suggested by Eircom) as ComReg considers that it requires the full 10 days prior to Step 2. In relation to Eircom's proposal that parties must agree prior to a change in scope. ComReg notes that Step 2(ii) provides that a changed scope will require a revised submission (in accordance with Annex C) by the Complainant. As such the dispute is re-submitted and therefore there is no need for both parties to agree upon this. ComReg will not specify the criteria to be used by ComReg in its decision to publish or not to publish the scope of a dispute and will decide on whether to publish the scope or not on a case by case basis. However, it is envisaged that the scope will be published in all but exceptional cases. ComReg notes Eircom's request to extend the response time for the Respondent in Step 4 and to reduce the times allocated in Step 5 and Step 7 to accommodate this. However, while ComReg acknowledges the short timelines imposed on all parties during the dispute procedures, ComReg believes information must be provided for in a timely manner in order to ensure the four month timeline is achieved and as such cannot accommodate Eircom's request to extend the timeline in Step 4 from 10 days to 20 days. ComReg has reviewed the current timelines and in light of its experience in previous disputes believes the times allocated in the Dispute Resolution Procedures are necessary and appropriate. In relation to Step 5 ComReg notes Eircom's comment that ComReg only places a time limit on its actions under Step 5 (i) and has amended the Step 5 to state "ComReg will decide if it will use one of the three options and if it decides to use one, ComReg will communicate its decision within 24 working days from the Date of Notification".

- 3.64 In relation to BT Ireland's comments, ComReg notes that the aim of the Consultation is to introduce one set of Dispute Resolution Procedures to facilitate ComReg and industry to resolve disputes within the required four month timeframe. ComReg will concentrate on getting this amended procedure firmly established before considering introducing different approaches for different types of disputes. BT raised a further concern regarding the ability of the incumbent to frustrate the process through the provision of late and partial information. ComReg believes with any undertaking that this will not be an issue as if difficulties of that nature arise ComReg will use its formal information gathering powers (see ComReg's position in response to Question 3 of the Consultation).
- 3.65 In relation to 3's suggestion to change Step 1 to 5 working days and to reduce Step 3 to 7 working days, it is ComReg's view (based on its experience) that 10 days are required for Step 1 and 10 working days are required for Step 3. ComReg's experience with previous disputes supports this position. ComReg notes 3's suggestion that if the scope is changed the four month period should not automatically re-commence. ComReg believes if the scope has changed then it follows that the focus of the dispute has changed, natural justice would require ComReg to re-consider the dispute as a whole and allow the Respondent the full opportunity to answer the new dispute. In order to ensure fairness and natural justice it would not be possible to complete the dispute procedures in a shorter time than four months and hence ComReg may re-start the clock in such circumstances.
- 3.66 ALTO suggested that ComReg should consider outsourcing some disputes. ComReg agrees and, where appropriate, ComReg will outsource some elements of the dispute e.g. ComReg may seek external legal advice in certain disputes or outsource some of the analysis within a dispute if necessary. This is in keeping with how ComReg has handled previous disputes and investigations. However, ComReg will at all times remain fully responsible for the management and final decisions in relation to any

dispute submitted to ComReg. ALTO also raised concerns regarding smaller undertakings and to ensure they are not disadvantaged suggested that ComReg should use its discretion to assess whether or not a valid dispute subsists once raised by an undertaking. ComReg notes ALTO's concerns, however it must act in a non-discriminatory fashion and therefore will continue to require each operator to complete a dispute submission which contains the information required in Annex C before ComReg will accept a dispute. ALTO and COLT further requested that ComReg define the term "exceptional circumstances". ComReg has not defined "exceptional circumstances" and proposes to determine on a case by case basis whether a dispute is exceptional in nature. ComReg notes that this approach is similar to that utilised in the Directives where this term has not been defined. In circumstances where ComReg decides that "exceptional circumstances" exist it will inform both parties to the dispute of this decision and give reasons for same.

- 3.67 In relation to COLT's suggestion that ComReg intervene and clear up rudimentary legal or regulatory errors at the outset of a dispute ComReg agrees and anticipates that such errors will be identified early in the process, this is provided for at Step 1 of the Dispute Resolution Procedures as described in Annex B of this document.
- 3.68 ComReg notes that it has also made several minor typographical amendments to the Resolution Procedures as published in s.4 of the Consultation in order to ensure that the procedures are clear and easy to follow.

ComReg's Position:

The Dispute Resolution Procedures as described in Annex B shall be published and shall apply to all disputes investigated by ComReg pursuant to Regulation 31 of the Framework Regulations.

4 General Comments

- 4.1 In addition to submitting comments on the specific questions posed by ComReg in the Consultation, all six Respondents made some general comments.

Views of Respondents

- 4.2 3 requested that ComReg provide an indicative plan and timeframe for resolution of the dispute within five working days of receiving a response from the Respondent and that this should regularly be updated. 3 also requested that the Complainant should have an opportunity to respond to the Respondent's response to its claim.
- 4.3 BT requested that ComReg start the preparation to commence a process to functionally split Eircom. BT believes this would both significantly aid the dispute resolution process as such would remove the issues surrounding the protection of Eircom's downstream business and open competition to the Irish market.
- 4.4 Vodafone had concerns that the Consultation does not appear to correctly balance the requirements associated with disputes which arise from obligations where the obligations are, on the face of it, being complied with and disputes which arise more directly about whether the obligations are being complied with. Vodafone further stated that in the second circumstance consideration of the history of interaction between the parties or the availability of ADR mechanisms is of much lower importance.
- 4.5 Eircom seeks clarification around paragraph 4.3 of the Consultation which states that where special circumstances arise ComReg may deviate from the published process. In particular, Eircom requests ComReg to outline the circumstances that could give rise to such a course of action and the reasons for deviating from the process will be made known to the parties in each case.
- 4.6 ALTO puts forward two points that it believes should be considered when devising a robust regulatory policy on dispute resolution processes:
- The appropriate interim measures to allow the competent regulatory authority to investigate a properly placed and valid dispute on time, without draconian and costly measures being applied or unfairly distorting the business of the disputing parties.
 - The appropriate and fully particularised definition of exceptional circumstances in order to minimise uncertainty and the scope for abuse in complex disputes.

ComReg's position

- 4.7 ComReg notes 3's request to ComReg to provide an indicative plan and timeframe for the resolution of the dispute within five working days of receiving a response from the Respondent and that this should be updated regularly. However, in order to ensure the four month timeline is achieved ComReg does not consider it feasible to add this administrative step in the procedure. Similarly, the tight timeline does not allow the Complainant the opportunity to respond to the Respondent's response to its claim. However, ComReg is of the view that 3's concerns are addressed by the Complainant having the opportunity to make comments in their submissions of comments on the draft determination (step 6 of the Dispute Resolution Procedures).

- 4.8 In relation to BT's request, ComReg notes it but considers it to be outside the scope of this consultation.
- 4.9 In relation to Vodafone's comments that the Consultation does not appear to correctly balance the requirements associated with the different types of disputes, ComReg, based on its experience with disputes, considers that the current Dispute Resolution Procedure will be appropriate for investigating the different types of disputes cited by Vodafone. It would like to confirm that currently all disputes are treated in the same manner i.e. all disputes follow the Dispute Resolution Procedure. When the current Dispute Resolution Procedure is firmly established ComReg may consider proposing the introduction of different dispute resolution procedures for different types of disputes.
- 4.10 In relation to ALTO's and Eircom's request for ComReg to define the terms "special circumstances" and "exceptional circumstances". As stated above, ComReg has not defined "exceptional circumstances" (in which a longer timeframe than 4 months is required (Regulation 31(1) of the Framework Regulations)) as it proposes to determine on a case by case basis whether a dispute is exceptional in nature. ComReg notes that this approach is similar to that utilised in the Directives where this term has not been defined. Similarly the special circumstances where ComReg may deviate from the Steps 1-7 will not be specified. As noted in the Dispute Resolution Procedures, ComReg normally expects to follow Steps 1-7 when investigating a dispute referred to it in accordance with Regulation 31 of the Framework Regulations. However it is impossible to foresee every eventuality that will arise in the context of a dispute and therefore ComReg may deviate from Steps 1-7 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-7 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.
- 4.11 As stated in the Consultation, in circumstances where it decides to deviate from the published Dispute Resolution Procedures, ComReg will inform both parties to the dispute of this decision and give reasons for taking this course of action.
- 4.12 In relation to the first point raised by ALTO (i.e. seeking appropriate interim measures to allow the competent regulatory authority to investigate a properly placed and valid dispute on time) ComReg does not believe it is feasible to deal with any of the dispute issues in a faster timeline than the proposed four month limit in the Dispute Resolution Procedure. Once the current procedure has been firmly established ComReg may be in a position to consider a possible introduction of interim measures for certain disputes.

5 Effective Date

The new Dispute Resolution Procedures as set out in Annex B become effective as of the date of this document. It should be noted that, pursuant to Regulation 31(8), it is an offence if an undertaking fails to co-operate with an investigation.

Annex A – List of ComReg’s Positions

For ease of reference, the following sets out a list of ComReg’s Positions set out in this Response to Consultation.

ComReg’s Position:

Before accepting a dispute for investigation pursuant to Regulation 31(1) of the Framework Regulations, it must include the following characteristics:

- **There must be a disagreement between the parties which is the basis for the dispute.**
- **A reasonable degree of negotiation must have taken place and failed. ComReg acknowledges that some undertakings may refuse to negotiate. Where this happens, the undertaking submitting the dispute to ComReg should demonstrate that it has taken reasonable steps to engage the other undertaking in negotiations.**
- **The dispute should be between undertakings (i.e. persons engaged in the provision of electronic communications networks or services or associated facilities¹²) in Ireland.**
- **The nature of the dispute must be material and the dispute must arise in connection with the obligations under the Directives, the Regulations or obligations imposed by ComReg.**

ComReg’s Position:

For a dispute to be accepted by ComReg, the Complainant must Submit the information required by the “Guidance Note on information for submitting a dispute” as detailed in Annex C of this paper.

ComReg’s Position:

When considering whether other means of resolving a dispute in a timely manner are available to the parties ComReg will consider *inter alia* mediation, dispute resolution processes in commercial agreements between operators, resolution by adjudication, informal contacts or negotiation; discussion at industry fora, and ComReg own initiative investigations.

¹² This is the definition of “undertakings” as provided for at Regulation 2 of the Framework Regulations.

ComReg's Position:

ComReg will if it considers it necessary use its formal powers to collect the information it requires to pursue the dispute resolution investigation.

ComReg's Position:

ComReg requires that a non-confidential version of the submission be submitted when an undertaking is requesting that ComReg initiate a dispute resolution investigation as referred to in Regulation 31 of the Framework Regulations. The four month period for dispute resolution will not start until such a non-confidential version of the submission has been received.

ComReg's Position:

ComReg will use meetings within the Dispute Resolution Procedure if ComReg believes that meetings are required.

ComReg's Position:

The Dispute Resolution Procedures as described in Annex B shall be published and shall apply to all disputes investigated by ComReg pursuant to Regulation 31 of the Framework Regulations.

Annex B – Dispute Resolution Procedures

The Commission for Communication Regulation’s (“ComReg”) dispute resolution procedures (as required to be published by Regulation 31(2) of the Framework Regulations¹³) are as set out below;

Step 1:

ComReg receives a written notice of a request for dispute investigation containing the required information outlined in Annex C (“the Dispute Submission”). The date of receipt of the Dispute Submission is the “Date of Notification”. ComReg will determine whether the issue raised constitutes a dispute arising between undertakings in connection with the obligations specified in Regulation 31(1) of the Framework Regulations and if it is not the request for dispute investigation will be declined and the Complainant¹⁴ informed and given reasons for the decision. ComReg will determine the scope of dispute and assess the adequacy of information provided and the legal basis for the dispute. If sufficient information has not been provided, the dispute will be declined and the Complainant informed and given reasons for the decision. Where a dispute exists and sufficient information has been provided ComReg will continue onto Step 2.

Step 2:

ComReg will proceed with one of two options:

- (i) Where ComReg is satisfied that other means of resolving the dispute in a timely manner are available to the parties to the dispute, or, if legal proceedings in relation to the dispute have been initiated by either party, it may form a view to exercise its discretion not to initiate an investigation. If it forms this view it will inform the Complainant and the Respondent (if the Respondent has been advised of the dispute) as soon as possible of its decision not to investigate the dispute, giving the reasons for such a decision. If, after four months from the date of a decision not to investigate, the dispute is still not resolved and legal proceedings by either party in relation to the dispute are not in progress, ComReg shall at the request of either party initiate an investigation and make a determination within a further four months.
- (ii) Where ComReg decides to initiate an investigation into the dispute, the four month timeframe will start from the Date of Notification. In the event that the scope is changed then new Dispute Submission must be sent to ComReg and the four month period will recommence.

¹³ European Communities (Electronic Communications Networks and Services)(Framework) Regulations 2003, S.I. No 307 of 2003 (“the Framework Regulations”)

¹⁴ i.e. the undertaking that submits the dispute to ComReg. The undertaking about whom the dispute is submitted will hereafter be known as “the Respondent”

Step 3:

Within 10 working days from the Date of Notification, ComReg will formally notify the Complainant and the Respondent that it has received and accepted the dispute and will confirm the date that the four month clock began. A copy of the non-confidential dispute submission will be sent to the Respondent. ComReg may publish the scope of the dispute on its website.

Step 4:

From the date of ComReg's communication of its decision to initiate an investigation into a dispute, the Respondent will be required to respond within 10 working days. This response should be sufficiently detailed and comprehensive to allow ComReg to carry out an initial assessment of the substance of the dispute without a requirement for further information gathering. It should be noted that, where necessary, a non-confidential version of the response should be provided at the same time.

Step 5:

Following receipt of the Respondent's submission and a detailed analysis of all submissions, ComReg may do all or any of the following:

- (i) Request more information in writing from the parties to the dispute;
- (ii) Meet with the parties to the dispute; together or individually; or
- (iii) Decide that the issue may be withdrawn from the dispute procedures and would be more effectively dealt with via other mechanisms.

ComReg will decide if it will use one of the three options and if it decides to use one, ComReg will communicate its decision within 24 working days from the Date of Notification. Where ComReg decides on Step 5(i), the responses will be required within ten working days of receiving the request for more information. To ensure accurate and timely responses, ComReg may determine that it is appropriate to rely on its formal information gathering powers at this stage. It is recognised that the timescales will be demanding upon all parties to the dispute but they must be adhered to in order to efficiently meet the overall timescale. Depending on the issues arising from ComReg's consideration of the dispute, Step 5 may be repeated a number of times.

Step 6:

Following consideration of the issues and the submissions of the parties to the dispute ComReg will prepare a draft determination. Depending on the subject of the dispute and its impact on the wider market, this may at ComReg's discretion be published on ComReg's website, or may be sent to the parties to the dispute only. The draft determination will be sent to both parties within 60 days from the Date of Notification. Parties to the dispute and/or the wider industry will have 10 working days to submit comments on the draft determination.

Step 7:

Following further analysis of all submissions and comments, including the comments on the draft determination, ComReg will make a Final Determination¹⁵ to resolve the dispute. ComReg will communicate its Final Determination to the parties. Material and information in the Final Determination which is based on submissions not previously marked as confidential will be considered to be non-confidential. ComReg will publish the Final Determination on its website, having regard to the requirements of confidentiality. The Final Determination will include an explanation of the rationale for ComReg's determination. The Final Determination will be published within 85 working days from the Date of Notification. With regard to the Final Determination, ComReg will make its determination having regard to the relevant regulatory framework. Such an outcome may be one other than what was requested by either party. The Dispute Resolution Procedures pursuant to Regulation 31 of the Framework Regulations will be deemed to have been completed when the Final Determination has been issued to both parties. It should be noted that, pursuant to Regulation 31(8) of the Framework Regulations, if an undertaking fails to comply with a determination made, it commits an offence.

Please note that ComReg normally expects to follow Steps 1-7 when investigating a dispute referred to it in accordance with Regulation 31 of the Framework Regulations. However it is impossible to foresee every eventuality that will arise in the context of a dispute and therefore ComReg may deviate from Steps 1-7 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-7 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.

¹⁵ The Final Determination is the determination referred to in Regulation 31(1) of the Framework Regulations.

Annex C – Guidance note on Information for submitting a dispute

1. Contact details of the individual(s) who are the contacts for the purposes of the dispute.

Guidance note – **Mandatory** - This is the person to whom correspondence and contacts in respect of the dispute will be directed. If it is possible for the Complainant to provide details of the Respondent's contact individual then these details should also be provided.

2. A statement of the scope of the dispute.

Guidance note – **Mandatory** – This scope should set out the net issue which the Complainant wishes ComReg to determine. It should be specific enough to properly describe the dispute and should reflect the specific disagreement giving rise to the dispute. As the scope is a summary statement of the dispute it should not include the background to the dispute, the circumstances which gave rise to the dispute or the desired outcome, the requirements for these are described below

3. A statement of the relevant obligation(s) under the regulatory framework which have given rise to the dispute¹⁶, including reference to the Specific Regulation(s), market and decisions imposing the obligation as appropriate

Guidance Note – **Mandatory** – If ComReg identifies an alternative obligation that is relevant to the dispute, the dispute may be progressed on this basis.

4. Background to the Dispute.

Guidance Note – **Mandatory** – Details of the background to the dispute including the circumstances leading up to the disagreement. This should be sufficiently detailed and comprehensive so as to avoid the requirement for ComReg to seek further information which on the face of it was related to the scope of the dispute and could have been supplied at the initial stage. This should also be sufficiently comprehensive and should include where appropriate:

- Details of the relationship between the parties to the dispute;
- A full statement of the extent of the dispute, including:
 - a list of all issues which are in dispute; and
 - full details of the relevant products or services.
- A description of the regulatory conditions to which the dispute relates, including a view on the relevant economic market and whether any communications provider in that market has been designated as having significant market power. This includes an explanation as to why, if appropriate, it is considered that the relevant

¹⁶ Pursuant to Regulation 31(1) of the Framework Regulations, a dispute can arise between undertakings in connection with obligations under the Framework Directive, the Specific Directives (as defined in Regulation 2 of the Framework Regulations), the Framework Regulations or the Specific Regulations (as defined in Regulation 2 of the Framework Regulations). As such, this also includes relevant decisions made by ComReg pursuant to the Framework Regulations and the Specific Regulations.

obligation is not being met, for example, if the dispute involves an allegation that a charge is not cost oriented the reason for this should be provided;

5. Desired outcome – the outcome desired by Complainant.

Guidance Note–**Desirable**-This should include any reasoning as to why the determination should be of the form suggested by the Complainant and the Complainant’s view as to the legal basis for ComReg making the intervention sought.

6. Details of any attempts to resolve the dispute.

Guidance Note–**Mandatory**-This should include comprehensive evidence of any attempts to resolve the issue bilaterally, an explanation of why commercial agreement could not be reached and details of any options or proposed solutions put forward by any party during negotiations (including what, if anything, was accepted or rejected and why) notice of whether the dispute is or has been before any other body, a list of alternative dispute resolution mechanisms employed e.g. mediation. If alternative dispute resolution mechanisms have not been employed please state reasons why not. If no alternatives to dispute resolution have been attempted this section should set out the Complainant’s reasoning as to why such alternatives would not result in a more timely resolution of the dispute.

7. Details of any legal proceedings in relation to the dispute that have been initiated by either party.

Guidance note–**Mandatory**–Where there are no legal proceedings this should be stated.

8. Details as to the impact of the dispute on the Complainant’s business.

Guidance note – **Desirable** – Evidence or supporting documentation should be provided for any claims of impact on the Complainant’s business.

9. Documentary Evidence.

Guidance note–**Mandatory**–all assertions should be supported by documentary evidence where possible, including correspondence, notes of meetings and telephone calls, and a chronological summary of events. In addition, if there is any relevant documentation that provides further background to the dispute this should also be submitted, in particular:

- If the dispute relates to a request for new network access products business plans of the relevant product or service including forecasts, demonstrating how and when it is intended to make use of the products or services requested.
- In cases of disputes involving contracts, copies of the relevant version of the contract, clearly identifying the clauses that are subject to the dispute.

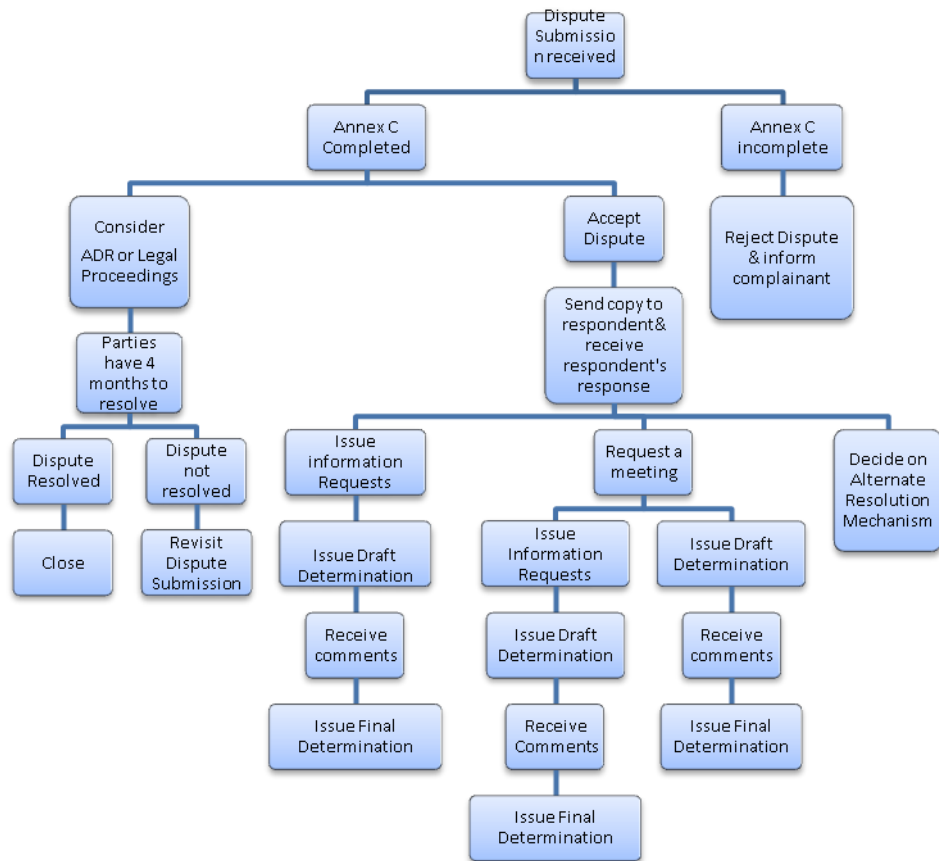
10. A Non-confidential version of the dispute submission

Guidance note–**Mandatory**–in the event that the dispute submission contains no confidential information, it should be clearly marked “non-confidential”. If parties to the dispute wish to provide ComReg with confidential information, a non-confidential

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version of the submission should be provided simultaneously. The non-confidential version should contain all the facts material to the case so that the Respondent has all the facts when responding.

Annex D– Dispute Resolution Procedures Flow-Chart



Annex E– Dispute Resolution Procedures Timeline

