



Commission for  
**Communications Regulation**

## Response to Consultation

### **Code of Practice for Tariff Presentation**

|                     |                                 |
|---------------------|---------------------------------|
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## 1 Executive Summary

The Commission for Communications Regulation (ComReg) is responsible for the regulation of the electronic communications sector in Ireland. As part of its regulatory role, ComReg is required to ensure that up to date information on applicable prices and tariffs is available to end-users in respect of access to and use of publicly available electronic communications services<sup>1</sup>.

ComReg published a consultation paper, in January 2004, setting out proposed requirements, to be contained within an industry Code of Practice, the core objective of which is to ensure end-users have access to accurate and comprehensive tariff information in relation to publicly available telephone services.

Having considered comments received regarding the content and structure of the draft Code, ComReg considers it appropriate to refine the text into three concise principles that service providers shall employ in presenting tariff information to consumers. While most of the requirements which had been set out in the consultation remain applicable, ComReg considers it more appropriate to reduce these to broad principles. In doing so, ComReg wishes to emphasise the division of responsibilities in this area. It is not the intention of ComReg that it should provide the level of detail for tariff presentation – this is the responsibility of each service provider. However, should individual service providers fail to adhere to the principles, ComReg will use its powers to issue directions in appropriate cases.

The three principles that service providers shall ensure are that:

- Tariff information is accurate,
- Tariff information is comprehensive, and
- Tariff information is accessible.

In relation to each principle, specific guidance is given as an aid, where required, towards implementation. The guidance is also an indication of how ComReg will assess the degree of compliance by service providers.

The purpose of the tariff information principles is to ensure that end-users have access to transparent and up-to-date information for services relevant to their telephony needs. Observance of the principles by all service providers of publicly available telephone services or of discrete elements of such a service will be a further step towards the development of competition in the telephony market in Ireland.

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<sup>1</sup> Section 12 (1)(a)(iii) and 12(2)(c)(iv) of the Communications Regulation Act, 2002.

## 2 Introduction

### 2.1 Background

In fulfilling the obligation to ensure tariff transparency ComReg considered it appropriate that service providers should operate under a basic set of principles. In January 2004, ComReg launched a public consultation on a proposal for a Code of Practice to govern the presentation of tariff information by providers of publicly available telephone services. The consultation paper set out ComReg's preliminary views on text for such a Code and sought the views of interested parties, including the Office of the Director of Consumer Affairs<sup>2</sup>. The consultation period was from 8th January to 20th February 2004. Thirteen responses were received from:

- alto
- Eason & Son Ltd.
- *eircom* Ltd.
- Energis
- Esat BT
- MCI
- Meteor
- O2
- Office of the Director of Consumer Affairs (ODCA)
- Silvertel
- Swiftcall
- Vodafone
- Telecommunications User Group (TUG)

ComReg wishes to thank all respondents to the consultation. The responses are available for inspection at the ComReg office, excluding confidential material that respondents specifically asked to be withheld. The views have helped ComReg to amend its proposals into a more concise and clear set of principles that service providers will employ in the provision of publicly available telephone services.

### 2.2 Format of this Paper

This paper examines the responses to this consultation with respect to the proposed measures to be included in a Code of Practice. Section 3 examines views on the objectives, benefits and scope of the proposed Code. Section 4 examines views on the requirements of the Code and Section 5 looks at availability and compliance with the Code.

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<sup>2</sup> As required by Regulation 18(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003, S.I. 307 of 2003

The main issues raised in the consultation are dealt with under the following sub-headings

- Summary of ComReg proposal
- Summary of respondents' views
- ComReg's position

In accordance with ComReg's procedures, Appendix B sets out the text of the proposed Direction which ComReg intends to issue. Submissions in relation to this may be made within a period of 4 weeks. All submissions should be clearly marked "Reference: Submission re ComReg 04/57" and sent by post, facsimile, email or online at [www.comreg.ie](http://www.comreg.ie) (current consultations), to arrive no later than 5pm on 30<sup>th</sup> of June 2004 to:

Market Operations Consultations  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Freepost  
Dublin 1.  
Ireland

Fax: 01 804 9680

Email: [consumerline@comreg.ie](mailto:consumerline@comreg.ie)

Please note, ComReg will publish all submissions on its website, excluding any confidential material which should be provided as an annex to the submission. Having taken into account such representations as are received, ComReg will issue the Direction with or without amendment as appropriate.

Appendix C contains the text of the Code as now proposed.

### **3 Objectives, Benefits and Scope of the Code**

#### **3.1 Objectives**

##### *3.1.1 Summary of ComReg proposal*

The primary objective, as set out in the consultation was to ensure that the information presented by service providers in relation to tariffs is clear, accessible and can be substantiated. Respondents' views were sought on the proposed text.

##### *3.1.2 Summary of respondents' views*

Eleven respondents commented on the objectives for the proposed Code and most agreed in principle with the stated objectives. A number of respondents also provided general views on the introduction of the Code which relate to the objectives and purpose of the Code. Comments focused on existing regulatory provisions around presentation of information and the target audience for the Code. There were also requests for clarity with regard to elements of the proposed text.

Some respondents questioned the need, or expressed concern about the introduction of this Code in light of existing regulatory measures in this area. The respondents referred to self regulatory codes in existence, such as those operated by the Advertising Standards Association of Ireland, the IDMA and Regtel. These Codes are in addition to existing legislative provisions under the Consumer Information Act 1978, and other relevant consumer protection legislation. Two respondents considered the Code was not required. Their general view, which they re-iterated in response to most of the questions set out in the consultation, was that ComReg intervention should only be considered where it can demonstrate that specific matters are not adequately addressed by existing measures.

One respondent felt that ComReg should define what is meant by the requirement to provide tariff information that is clear, simple to understand and informative. Their question related to the target audience for tariff information. The point was made that business tariff information may not necessarily be readily understood by a residential consumer. Some respondents felt that it was not necessary to set requirements for business tariffs and these comments have been captured in the section dealing with the scope of the Code.

Another respondent sought clarity with regard to the text relating to accessibility of sufficient tariff information. Another thought this text should be amended to state 'sufficient tariff information should be available to compute usage, fixed fees and line rentals so that full bills can be accessible to end-users.'

One respondent, while not disagreeing with the objectives, considered that they were subjective in nature. Their view is that the objective should be to include the ability for end-users to make informed and clear choices through the ability to compare service providers' tariffs in a uniform format. Another believed the Code was too complex. One respondent who agreed with the objectives, and felt the Code was in the interests of consumer awareness, believes that industry agreement is necessary to ensure the Code is effective.

### 3.1.3 ComReg's Position

ComReg notes that the majority of respondents agreed in principle with the objectives set out in the Code.

ComReg acknowledges that there are general legislative obligations relating to false or misleading statements as to services, indications of prices or charges and misleading advertisements. It is also acknowledged that self regulatory Codes exist in the areas of advertising, sales promotion and practice, direct marketing and the promotion of premium rate services.

Section 12 (2)(c)(iv) of the Communications Regulation Act 2002 along with Regulation 18 of the Universal Service Regulations, require ComReg to ensure that transparent and up to date information on tariffs exists. Therefore it is appropriate that ComReg sets out the considerations and assessment criteria that it will apply in ensuring that transparency exists. In issuing its decision, ComReg is not suggesting that existing obligations are not being met or are not fit for purpose. The development of principles on tariff transparency is not designed to replace or supplant existing obligations. The establishment of a codified set of principles is to make a clear and coherent statement of what consumers should expect.

Additionally, the provision of guidance is designed to give service providers an indication of how ComReg will assess the degree of compliance in discharging its statutory role in ensuring that tariff transparency exists within the communications sector.

With regard to the point raised on target audience, ComReg agrees that the structure and detail contained in business tariffs may not be readily understood by residential end-users, whose communication requirements can differ considerably. For clarity this is reflected in the guidance text which now states that:

*'The principle of accuracy requires service providers to ensure that end-users are presented with accurate, up to date tariff information, on services relevant to their needs.'*

On the question of what is meant by 'sufficient tariff information to compute a full bill' ComReg considers that end-users should have access to information on any tariff that they may incur in their use of service. This includes standard tariffs covering access, all types of usage charges, maintenance charges and including details of standard discounts applied and special and targeted tariff schemes. The availability of such information is required to allow end-users to calculate whether alternative tariff schemes may be more appropriate to their needs.

ComReg has noted the suggestion that tariffs should be required in a standard format and understands why such a measure could be considered worthwhile in comparing competing service providers. It should be borne in mind that tariffs are a core competitive tool and in many cases can be the primary source of competitive advantage. Excessive restrictions on tariff innovation could potentially limit

competition and ultimately consumer choice. Accordingly, ComReg does not consider such a requirement as appropriate for inclusion in the Code.

To address comments regarding complexity of the Code, the requirement has been reduced to three core principles, namely, the provision of

- (1) accurate
- (2) comprehensive
- (3) and accessible tariff information.

ComReg considers that observance of these principles will at this point in time meet the reasonable needs of end-users.

## **3.2 Benefits of the Code**

### *3.2.1 Summary of ComReg's views*

In the consultation paper ComReg set out its view that the communications industry will benefit from a sectoral level commitment to provision of clear information by operating under a common set of principles/guidelines that ensure each service provider presents tariff data in a manner which is accurate and fair. Respondents views were sought as to whether the proposed Code would provide benefits to end-users and industry.

### *3.2.2 Summary of respondents' views*

Ten respondents provided views on the benefits of the Code. For those who did not agree with the suggested benefits, most felt that the Code would place an additional burden on industry to comply with requirements already set out in existing legislation and Codes. One suggested that if there are issues with the manner in which certain operators publish tariffs then these should be addressed with those operators directly. Others agreed that the Code had the potential to provide benefit for end-users and industry. One respondent is of the view that the benefits will be limited until tariffs are made available in a standard format.

Five respondents commented in relation to the cost implications of the Code. They felt that the Code would result in an additional cost burden for service providers through, for example, increased mailings, possible changes to bill formation or call details format and documentation requirements. One respondent proposed that ComReg should prepare a clear, accurate and transparent statement in quantifiable monetary terms of all the incremental benefits of the Code.

### *3.2.3 ComReg's Position*

ComReg does not accept that there should be additional costs of any significance in complying with the proposed Code. The criticism of the Code from some sources was that the Code duplicated an existing requirement. If that is the case, no additional costs could accrue as there would be little additional implementation required. In cases where implementation measures are required, ComReg is not



convinced that costs would place an excessive burden on service providers as the principles are merely good business practice.

ComReg has set out its views as to how the Code will benefit end-users and service providers. It is not possible to quantify in monetary terms the incremental costs or benefits of implementation. However, ComReg notes that many of the consumer complaints and queries that have come to its attention could have been avoided had clear tariff information been available to end-users from the outset.

### **3.3 Scope of the requirements and proposed definitions**

#### *3.3.1 Summary of ComReg's proposal*

The consultation set out the types of service providers and the range of communications channels to be covered by the requirements. Views of respondents were sought on the scope and the proposed definitions that should apply.

#### *3.3.2 Summary of respondents' views*

Twelve respondents commented on the on the proposed scope and definitions. Most of the comments focused on the range of service providers that would be covered by the requirements and the proposed application of requirements with regard to both business and residential end-users.

Two respondents suggested that more explicit detail should be provided on the exact types of service providers that will be covered and that ComReg should write to each service provider to inform them of their obligations. Another respondent considered that data services should be included within the requirements. Three respondents raised the issue of existing legislative requirements.

Five respondents questioned whether the definition of Publicly Available Telephone Services (PATS) includes Carrier Pre-Select (CPS) providers. CPS is a service which allows end-users to select an alternative provider to their line rental provider for making telephone calls. The view expressed was that CPS services allow end-users to make (and not receive) national and international calls using the CPS provider. One respondent proposed an amendment to the definition of PATS to state '*a service available to the public for originating **and/or** receiving national and international calls*', and this would ensure that the requirements would apply to CPS service providers.

Five respondents also considered that the requirements of the Code should only apply to residential end-users as business end-users are generally more informed. One view was that if requirements include business end-users then it should apply only to standard tariff information as it is not proportionate for service providers to have to publish every bespoke tariff that they offer.

A number of additional communications channels were also proposed (e.g. email, SMS etc.). One respondent proposed that bills are excluded as they are very often necessarily complex. They also agreed with the principle that verbal tariff information should be accurate. However, they point out that this would be difficult

to monitor. Another respondent sought clarity as to whether it was mandatory that tariff information should be published on websites. One respondent considers that the definition of tariff should be the one that is set out in Schedule 4 of the Regulations.

Other comments were received in relation to the definitions. Three respondents are of the view that the definitions should explicitly state that mobile service providers will be subject to the requirements. With regard to the definition of ‘users’, a respondent was concerned that the use of this term would mean that the Code would apply to wholesale service provisioning. This respondent considers that the Code should only apply to end-users as defined in the USO and Framework Regulations. Another respondent suggested that definitions of minimum charges and bundled services should also be included.

### 3.3.3 ComReg’s Position

With regard to the range of service providers that will be subject to the requirements, ComReg would point out that it is the responsibility of service providers to make themselves aware of their regulatory obligations. However, on implementation of the Code, ComReg will write to all service providers to inform them of their obligations. For the avoidance of doubt the requirement applies to all providers of publicly available telephone services or of discrete elements of such a service. Accordingly all fixed and mobile service providers including CPS operators and resellers having a direct contractual relationship with end-users of publicly available telephone services come within the scope of the requirement.

As to whether business end-users should not be covered by requirements, neither the Act nor the Regulations differentiate between residential and business end-users. Accordingly the principles apply to both.

With regard to the definition of tariff and on the question as to whether this Code should apply to standard and/or bespoke tariffs Schedule 4 of the USO Regulations refers to ‘*standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes*’ and this is reflected in the amended requirements. The following text is included in the Code:

*The principles that tariffs shall be accurate, comprehensive and accessible are designed to ensure that service providers present transparent and up to date information on standard tariffs covering access, all types of usage charges, maintenance charges and including details of standard discounts applied and special and targeted tariff schemes.*

On communications channels that should be covered there may be instances where it may not be practical to include every detail of all tariff options in the full range of communications used by service providers. Where such information is not provided (e.g. with a bill/invoice), there should be a clear reference to where the full set of tariff information may be acquired.

Regarding verbal communications ComReg does not require service providers to monitor all customer conversations. However it is expected that service providers take adequate steps to ensure that staff communicate accurate and comprehensive information to end-users. ComReg will advise end-users in future awareness programmes that they should ask a service provider for evidence in writing of any sales promise/claim of savings that is made.

In response to suggestions, a description of *minimum call charge* has been added to the definitions section.

## **4 Requirements of the Code**

### **4.1 Tariff Accuracy**

#### *4.1.1 Summary of ComReg's proposal*

This section set out proposed text for the requirement to ensure accuracy of tariff information including verbal tariff presentations. The consultation asked if respondents agreed with the principle of tariff accuracy and whether the proposed text adequately addressed this principle.

#### *4.1.2 Summary of respondents' views*

Nine responses were received in relation to the questions on tariff accuracy. One respondent commented generally that some additional guidance on presentation of accurate information should be included. Other comments focussed mainly on the text.

One respondent was of the view that the text should not seek to interfere with the creativity of advertising content and that consideration should be given to space limitations in advertisements when prescribing details for inclusion. With regard to documented procedures, two respondents felt this was a burdensome requirement considering the service provider will have procedures to ensure accuracy in place anyway.

Another respondent felt the text should recognise the degree of control that a service provider will have over the use of its out of date promotional material by a third party. On the requirement to include dates when presenting tariffs the comment was made that this should only be set where there is a time limit on the offering, as may be the case on special offers. One respondent considered the date of preparation of tariff claims and comparisons to be largely irrelevant to end-users and the date of preparation should only be retained for inspection by ComReg.

#### *4.1.3 ComReg's position*

In respect of the suggestion to provide additional guidance the amended requirement to ensure accuracy includes specific guidance as to how accuracy will be assessed.

The accuracy requirement should not restrict creativity in advertisements. ComReg does not believe that it would be unreasonable that advertisements which present tariff information are capable of substantiation. Neither is it unreasonable to require that advertisements inform end-users as to how full information on terms and conditions can be accessed.

ComReg also believes that it is appropriate that service providers have documented procedures for ensuring accuracy of tariff information. ComReg's view remains that documentary evidence of savings claims and competitive comparisons for the purposes of substantiation is required and this is specifically stated within the Code. The guidance notes emphasise that service providers should have defined procedures for ensuring tariff accuracy.

ComReg can see why a service provider may have a reduced level of control over its promotional material once it enters the public domain. Nonetheless, service providers should endeavour to remove inaccurate information from the public domain and additional guidance has been included in this regard.

In relation to the requirement to include preparation dates/effective dates in tariff presentations additional text has been included to provide further guidance on situations where the need to include dates arises.

## **4.2 Minimum Set of Information**

### *4.2.1 Summary of ComReg's proposal*

The proposed requirement was that all relevant details should be included in a tariff presentation - in particular billing increments, minimum charges and peak/off peak times. Respondents' views were sought as to whether they agreed with the proposed text on the minimum set of information that should be provided and whether any additional details should be included in the minimum set of information requirement.

### *4.2.2 Summary of respondents' views*

Nine responses were received on this section. Two respondents again feel that this is covered by existing legislation. One such respondent considers that the Code strays into the area of accepted standards for advertising and they are of the view that a link to associated terms and conditions is applicable for all presentations not just radio and TV. Another respondent agrees that this detail should be included, however the requirement for the minimum set of information should only be on the website. Their view is that anything else would undermine the aim of the Code to keep tariff information accessible and comprehensible.

Two respondents suggested ComReg should adopt a more prescriptive approach in this area. The suggested approaches were:

- for ComReg to host a centralised website containing tariff information that is provided by service providers in a standard format.
- for ComReg to require service providers to publish an Average Cost Per Minute when presenting tariff information.

### *4.2.3 ComReg's Position*

ComReg does not agree that a reference to terms and conditions is appropriate for all tariff presentations. Service providers should endeavour to provide as much relevant detail as is practical to communicate. Printed material and websites are more suited for detailed tariff presentations as the end-user has the time to evaluate the information presented. It is not appropriate to limit the requirement to provide a minimum set of detail on the website as many end-users may not have internet access. ComReg considers that a hard copy of the information should be given on request to customers. This view is reflected in the amended Code.

On the suggestion that more specific requirements should be prescribed, ComReg does not rule out further initiatives in the area of tariff transparency. ComReg will

continue to monitor developments in relation to tariffs and may develop separate tariff initiatives in the future.

### **4.3 Tariff options with inclusive time or credit**

#### *4.3.1 Summary of ComReg's proposal*

The proposed requirement was that tariff options with inclusive time or credit, detail exactly the calls included/excluded, whether time can be carried over and any expiry time on call credit. Respondents were asked whether they agreed with the proposed approach to tariff options with inclusive time or credit and for any further details they considered should be included in the requirement.

#### *4.3.2 Summary of respondents' views*

Nine respondents commented on the proposed text. The majority of respondents agreed with the proposed text, however, two respondents again re-iterated their view that this is covered by existing legislation. One respondent proposed that text on the conditions under which any inclusive time or credit can be used should be set out as a service provider may only allow use of inclusive time or credit at particular times of the day.

#### *4.3.3 ComReg's Position*

ComReg agrees that the suggestion to include a reference to the conditions of use for inclusive time or credit is worthwhile and this text has been amended accordingly.

### **4.4 Presentation of VAT**

#### *4.4.1 Summary of ComReg's proposal*

Views were sought on the proposal that tariffs to residential end-users should include VAT while those to business end-users should state whether tariffs are VAT inclusive or exclusive and presentations should be consistent across all tariffs offered.

#### *4.4.2 Summary of respondents' views*

Eleven respondents expressed views and eight respondents agreed or expressed no concern with the proposed approach on VAT. One respondent considered that all tariffs including business tariffs should be VAT inclusive as business customers still have to pay the VAT amount.

Three respondents did not agree with this inclusion as they felt that this was adequately covered by existing legislation. One respondent expressed concern that any inclusion in this Code could give rise to issues of potential conflict with existing requirements.

#### 4.4.3 *ComReg's Position*

ComReg agrees that the VAT requirement should align with existing legislative requirements. ComReg considers guidance on VAT is appropriate for inclusion in the Code as cases have been reported where service providers present residential tariffs VAT exclusive. Regarding the suggestion that all tariffs (both business and residential) are presented on a VAT inclusive basis, it is less clear as to whether this would suit all business customers. ComReg considers that a business customer should be provided with VAT inclusive tariffs if requested.

### **4.5 Tariff Rounding**

#### 4.5.1 *Summary of ComReg's proposal*

Respondents were asked for views on the proposed text that a service provider should not manipulate tariffs in a way that misleads end-users and in particular tariffs should not be inappropriately rounded. In addition, respondents were asked whether the appropriateness of tariff rounding should be further refined to require tariffs to be either rounded upwards or presented as is.

#### 4.5.2 *Summary of respondents' views*

Ten responses commented on the proposals for tariff rounding. There was general agreement with the requirement that service providers should not round tariffs in such a way that it misleads the end-user. The responses focussed on the question of 'appropriate rounding'.

A number of respondents considered that ComReg should specify a standard number of decimal places that could be applied across the industry. One respondent's view is that as 1c is the lowest denomination of currency then service providers should be required to present tariffs to the nearest cent.

There was no agreement with the suggestion that service providers should be required to round tariffs up or present tariffs as is. The general view is that standard mathematical rounding should apply (i.e. round up when the tariff is 0.5 and above and round down when less than 0.5)

#### 4.5.3 *ComReg's Position*

The requirement on tariff rounding has been maintained in the Code. Tariff rounding is often applied for ease of presentation. While ComReg does not consider it appropriate to prescribe a set number of decimal points it is appropriate that a common approach should be applied. For the sake of accuracy, ComReg recommends that when prices are portrayed on a per minute basis, the price should be shown in cents to two decimal places. However the actual unit price used to calculate bills should always be accessible. As a rule, service providers should apply standard mathematical rounding when rounding tariffs and guidance is included in the Code to this end.

## **4.6 Minimum Contract Cost**

### *4.6.1 Summary of ComReg's proposal*

The consultation proposed that where an end-user is contracted for a minimum period or minimum level of spend the service provider shall present the total minimum cost of the contract including subscription fees, equipment and installation/activation charges. Respondents were asked whether this requirement would be a useful comparison tool for consumers and whether they agreed with the proposed text.

### *4.6.2 Summary of respondents' views*

Of the nine responses on this proposed requirement, four considered this would add an additional level of complication for end-users. The point was made that this information is already provided in a disaggregated format. One respondent considers that the presentation of the minimum contract cost might lead the end-user to believe that the overall contract cost was immediate in nature. This respondent is also of the view that this requirement goes beyond ensuring tariff transparency.

A number of respondents suggested that clarity on the text is required as to where the minimum contract cost should be displayed. Another respondent considers that the Code should also require that details on penalties, and provisions for a mandatory cool-off period on contracts should also be included as part of the Code.

### *4.6.3 ComReg's Position*

The views were mixed as to whether the minimum contract cost will contribute to the overall level of transparency. This measure was suggested in order to make it easier for end-users to compare and contrast the various contract offers available in the market. It may be the case that a potential downside of this approach is that it does not give any appreciation as to the other ongoing cost considerations for particular tariff options. At this point ComReg does not intend to include this as a requirement in the Code of Practice. However, ComReg may re-examine this issue in the context of its future approach to tariff transparency initiatives.

## **4.7 Tariff Complexity**

### *4.7.1 Summary of ComReg's proposal*

The consultation sought views on the proposed inclusion of requirements that service providers should not design unnecessarily complex tariffs that prevent end-users from making informed choices. Respondents were asked whether they agreed with the proposed text and whether there are particular practices that should be addressed in the Code.

### *4.7.2 Summary of respondents' views*

Ten respondents commented on tariff complexity. Three respondents expressed concern with the proposal that a Code of Practice should seek to intervene in how service providers design their tariffs. The concerns raised included the fact that this could lead to over simplification of tariffs which would limit innovation and ultimately restrict competition. The legal basis for this requirement was also



questioned. One such respondent recommended that the Code should replace all references to “tariff design” with “shall not present”.

Other respondents considered this requirement was subjective, and as a result would be difficult to monitor. With regard to practices that could be addressed under this section of the Code, a suggestion was put forward that service providers, offering bundled text and/or call packages, should be required to breakdown the bundle and quote a unit price.

#### 4.7.3 *ComReg’s Position*

It is not ComReg’s intention to limit tariff innovation and it may be argued that excessive restrictions on tariff design could potentially limit competition and ultimately consumer choice.

Accordingly the Code has been amended and the requirements in relation to tariff complexity are captured in the amended Code under the principle of tariff accuracy which requires service providers to present tariff information that is simple to understand and that can be substantiated.

## **4.8 Competitive tariff claims and comparisons**

### 4.8.1 *Summary of ComReg’s proposal*

This section of the consultation set out requirements when making competitive claims and comparisons. Respondents were asked whether they agreed with the proposed text and whether there are any other details or particular practices in relation to competitive comparisons that should be addressed in the Code.

### 4.8.2 *Summary of respondents’ views*

Ten respondents provided views and the majority of respondents agreed that this section should be included in the Code. One respondent disagreed as they consider that this requirement was covered by existing legislation.

In relation to the requirement that comparisons should be based on similar tariff options one respondent expressed the view that comparisons which do not take into account the discounts offered by the competing service provider are not comparing like with like. On the other hand another respondent was concerned that the requirement to compare ‘similar’ options could make it impossible to compare offerings unless these are based on identical terms and conditions. They consider this requirement should be modified or deleted. Another respondent made the point that tariff options available from competing service providers will always vary slightly. They proposed the text should be amended to *‘the comparison is based on appropriately similar tariff options, products and services including discounts when relevant’*.

On the matter of dates of preparation and presentation of tariff comparisons, one respondent stated that preparation dates are important for checking purposes. Another considered that the only date required is the effective date for the comparison.

### 4.8.3 *ComReg's Position*

ComReg welcomes constructive suggestions to ensure accurate comparisons across the industry, and is currently working at an industry level to develop measures on tariff transparency for Carrier Pre-Select services.

With regard to the requirement that similar tariff options are compared, ComReg agrees that service providers will not have identical terms and conditions on tariff options. However, the guidance in this area is that service providers should target similar end-user segments with equivalent tariff options and the text in the Code reflects this view. Comparisons that use the competing service provider's standard tariffs should reference that discounts may apply and end-users should not be left with the impression that the competitor's standard rate is the only rate available.

ComReg also considers that it is important, when presenting tariff comparisons to include the date on which tariff comparisons were compared, to substantiate the accuracy of the comparison.

## 4.9 Testimonials and Substantiation

### 4.9.1 *Summary of ComReg's proposal*

This section of the consultation set out proposed text for ensuring that testimonials used by service providers are genuine and that any tariff claim or comparison should be capable of substantiation. Respondents were asked whether they agreed with the principle of substantiation.

### 4.9.2 *Summary of respondents' views*

Nine respondents provided comments and the majority agreed that requirements on substantiation are appropriate for this Code. Two respondents did not agree, and consider this is covered by existing legislation and Codes. One such respondent made the point that the entire ASAI Code governs the principle of substantiation and additional measures are only appropriate on issues that it is felt are not adequately covered by existing Codes.

An additional comment was received on the requirement that a service provider should hold documented evidence of such substantiation ready for production on demand by ComReg. The respondent considered the requirement that this information should be retained for an unqualified time period was an unnecessary burden and proposed the requirement to retain this information should be limited to 3 months from date of presentation.

### 4.9.3 *ComReg's position*

The points with regard to existing legislation have already been addressed. ComReg considers the ability to request substantive evidence is appropriate in order to fulfil its role to ensure tariff transparency exists. ComReg agrees that service providers should not be required to retain data indefinitely. However 3 months is considered too short a period – the guidance notes now state that a service provider should retain this information for a period of 6 months.

## **4.10 Access to quoted Tariff Information**

### *4.10.1 Summary of ComReg's proposal*

The consultation sought views on requirements to ensure access to printed tariff information, tariffs on websites and verbal tariff information. Views were sought on the requirement that verbal tariff claims should be provided in a printed format. The consultation also asked whether a requirement to inform end-users about services available for controlling expenditure should be included in the Code and if so, whether annual notification that such services are available is sufficient.

### *4.10.2 Summary of respondents' views*

Ten respondents commented on this section of the Code. There was general support for the accessibility requirements of the Code. In answer to the proposed requirements that all verbal tariff claims should be provided in printed format one respondent agreed that any price comparison included as part of a sales pack should be provided to the end-user. However, the respondent noted the sales practices will often involve discussions of price and a requirement for every piece of conversation to be available in a printed format is not practical.

Three respondents agreed with the requirement to inform end-users about services available for controlling expenditure, such as call barring and itemised billing. Six respondents considered this an unnecessary inclusion. Three respondents felt that this requirement should be limited to eircom as the designated Universal Service Provider. Another who did not feel this should be included in the Code, acknowledged the importance of such information and considers that this information should be made available to end-users when they connect and through all other service provider channels.

### *4.10.3 ComReg's position*

In a previous decision on end-users rights<sup>3</sup> ComReg set basic accessibility requirements to ensure access to printed tariff information. In addition where a service provider has tariff information on their website there should be a direct link from the homepage of the website into the tariff information section. These requirements are included in the amended Code.

With regard to verbal tariff presentations, ComReg accepts that not every part of a sales conversation can be provided to the end-user, however, where the sales person makes a particular claim about potential savings then this should be available to the end-user in printed format. As noted in Section 3.3.3, ComReg intends to inform end-users about their right to request such information in future awareness campaigns.

ComReg considers an appropriate inclusion in the Code is the requirement that tariff information, where requested, should not be withheld prior to an end-user entering into a purchasing commitment. ComReg has received complaints of such behaviour

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<sup>3</sup> ComReg Doc No 03/86 – User's Rights to Communications Services

arising where an end-user is entitled to a cooling off period after signing a contract, but tariff information is not provided until after the contract is signed. ComReg considers such practices unacceptable and can only conclude that the intention is to restrict the end-user from exercising choice.

Regarding comments in relation to measures to control expenditure, ComReg will not make the provision of information mandatory under the Code. However, ComReg considers information on the availability and costs of such services is important to end-users. ComReg will keep this issue under review and if service providers do not create sufficient awareness of such services to their customers, ComReg will implement separate measures to address the situation.

## **5 Availability and Compliance**

### **5.1 Availability and Introduction of the Code**

#### *5.1.1 Summary of ComReg's proposal*

In introducing this Code, ComReg proposed that each service provider would be required to publish the Code on their website, notify customers of the availability of the Code and submit a compliance statement to ComReg within 3 months of the publication of the final Code. Respondents' views were sought on the proposed approach.

#### *5.1.2 Summary of respondents' views*

Ten respondents commented on the text for the availability requirements. The majority of respondents who expressed a view agreed with the approach proposed. One respondent, who considers that the provisions of the Code are adequately covered elsewhere did not agree.

#### *5.1.3 ComReg's position*

ComReg will require each service provider to publish the Code on their website. A statement of compliance will be required within 3 months of the effective date of this Code and this should also be published on operators' websites.

### **5.2 Complaints Procedures**

#### *5.2.1 Summary of ComReg's proposal*

The consultation proposed that end-users should first contact their service provider in relation to any complaint relating to tariff presentation. Each service provider is required to operate a Code of Practice for complaint handling. Under established procedures the service provider remains the end-user's first point of contact for complaints. However, if, having exhausted the service providers complaint procedures, the consumer remains dissatisfied then they can contact ComReg in relation to this matter. The consultation proposed that industry issues in relation to the Code would be managed in accordance with defined dispute resolution procedures.

#### *5.2.2 Summary of Respondents' Views*

Of the nine respondents six considered the existing consumer complaints procedures should apply in relation to the Code. One respondent felt that it was central to the success of the Code that end-users should have an independent body to which they can complain as the end-user would be less likely to contact the operator to accuse them of having ambiguous tariff information. Another respondent's view was that a customer who considers that they have been misled with regard to prices and terms and conditions should be advised to contact the Office of the Director of Consumer Affairs.

Nine respondents commented on the industry complaints procedures. One felt they could not comment on the proposed approach until a more clear definition is provided. Another respondent considered that a more formal grievance procedure should be considered. One respondent suggested that industry complaints should have short and clearly defined timelines as per the newly defined complaints procedure in the CPS Code of Practice, while another respondent felt that the standard industry dispute procedure should apply.

One respondent's view was that industry complaint procedures should bear some resemblance to the end-user complaints procedures in that both the service provider in dispute and ComReg are jointly informed of a complaint by the disputing service provider. This respondent also highlighted the need to consider competing Codes in existence through separate enforcement bodies as this may call into question the legal priority and status of the ComReg Code for Tariff Presentation. Another respondent pointed to existing complaints procedures used by industry such as those established under the Advertising Standards Code of Practice.

### 5.2.3 *ComReg Position*

ComReg considers that the existing complaints/disputes procedures are appropriate for this Code.

For end-user complaints where the end-user feels they have been provided with inaccurate tariff information this should first be raised with the service provider concerned who is in the best position to explain the detail of the tariff to the end-user. However if, after exhausting the service providers complaints procedures the end-user remains dissatisfied, then they can raise the matter with ComReg.

ComReg has established procedures<sup>4</sup> for dispute resolution and all industry complaints will be managed in accordance with these defined procedures.

## 5.3 Enforcement Measures

### 5.3.1 *Summary of ComReg's proposal*

A range of enforcement measures were proposed within the Code which included

- ComReg issued directions to comply with such measures as ComReg may specify to resolve an end-user's complaint which could include removal of an advertisement or printed tariff information that does not adhere to the principles of the Code
- A requirement that service providers who repeatedly breach the Code would be required to submit details of all tariff presentations for a defined period e.g. 6 months
- Publication of complaint data relating to the Code including details of reported breaches and details of investigation and resolution.

<sup>4</sup> ComReg Document 03/89 - (Decision No: D18/03) "Dispute Resolution Procedures"

Views were sought on the proposed enforcement measures and on the proposal to ‘name and shame’ service providers who are in breach of the Code.

### 5.3.2 *Summary of respondents’ Views*

Nine responses related to the proposed enforcement measures. Two respondents considered the proposed measures to be inadequate. One respondent felt that the proposed measures would not place sufficient pressure on service providers to comply with the Code.

Another respondent thought it may be useful to refer to existing legislative obligations and the power of the Director of Consumer Affairs to prosecute for breaches of the Consumer Information Act. The Director may also under the European Communities (Misleading Advertising Regulations) 1988 apply to the High Court for an Order prohibiting misleading advertising (as can individuals and organisations).

With regard to the first proposed measure, for ComReg to issue a compliance direction where an end-user’s complaint has been substantiated, one respondent considers that such compliance directions could also apply for industry complaints. One respondent suggested an accelerated process for breaches that affect a large number of consumers in order to minimise damage.

In relation to the second measure a number of respondents provided views on the requirement for service providers who repeatedly breach the Code to submit tariff presentations in advance of publication (for a defined period). One respondent questioned the legal basis for this proposal. Others considered this a highly interventionist, or an impractical measure as it may restrict the ability of the service provider to react to competitive pressures. One such respondent felt that such measures should be discussed in more detail at an industry level prior to introduction.

A number of respondents questioned whether ComReg intend to publish details of every investigation or only those where it has been determined that a breach has occurred. Clarity was requested on the publication mechanism. The view was that only complaints where a breach has been found should be published, and that commercially sensitive information should not be published. In addition two respondents felt that the service provider, who is the subject of the complaint, should have the right of external appeal prior to publication. Another view was that service providers should be afforded sufficient notice and opportunity to correct the breach.

A response to a previous question regarding tariff accuracy, that relates to enforcement suggested that in a situation, where a service provider has been found distributing out of date tariff information, be that their own tariffs or those of a competitor, then the service provider should be given a short timeframe to remove that material from circulation. This would discourage petty complaints to ComReg from rival service providers.

*5.3.3 ComReg's position*

In ensuring transparency exists ComReg intend to assess compliance on an ongoing basis. In addressing compliance issues ComReg may specify measures to be taken to resolve an end-user's complaint or to address concerns regarding tariff presentation.

ComReg may also publish details of complaints in relation to the Code. General complaint statistics will be published and in addition operator specific notices may be published where serious or continuous breaches of the Code have been found.

Where a suspected breach of the Code may also amount to a breach of other legislative requirements, ComReg will consult the relevant authority before deciding on specific measures to achieve compliance.



## Appendix A – Relevant Legislation

Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003 addresses the issues of transparency and publication of information. In particular, Regulation 18(1) requires ComReg to “ensure that transparent and up to date information on applicable prices and tariffs, and on standard terms and conditions in respect of access to and use of publicly available telephone services is available to end users and consumers”. Regulation 18(2) empowers ComReg to specify particular information which undertakings shall provide to end users and consumers while Regulation 18(3) requires ComReg to encourage the provision of information to enable end-users, as far as appropriate, and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of, for instance, interactive guides.

Under Section 12 (1) of the Communications Regulation Act 2002 the objectives of the Commission for Communications Regulation in exercising its functions in relation to the provision of electronic communications networks, electronic communications services and associated facilities shall be as follows

- (i) to promote competition,
- (ii) to contribute to the development of the internal market,
- (iii) to promote the interests of users within the Community,

In so far as promotion of the interests of users within the Community is concerned, Section 12(2) specifies measures which ComReg shall take as including “promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services”.

Condition 18.1 of the General Authorisation states that “The Authorised Person shall comply with all decisions, determinations, requirements, specifications, notifications and directions issued by the Commission in relation to End-User interests and rights pursuant to the Universal Service Regulations.”

Under Regulation 8 (7) of the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations, it is an offence for an undertaking to fail to comply with any condition attached to its General Authorisation.

## Appendix B – Draft Decision

The decision is taken in furtherance of the duty placed on the Commission for Communications Regulation by Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2003. This is a decision to which condition 18.1 of the General Authorisation<sup>5</sup> applies.

Section 12 of the Communications Regulation Act, 2002 sets out the objectives of the Commission for Communications Regulation to promote the interests of users within the Community and requires the Commission to take all reasonable measures aimed at achieving those objectives including promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services.

This decision relates to the provision of publicly available telephone services or of individual elements of such a service. All providers of publicly available telephone services or of individual elements of such a service are required to observe the requirements of the attached Code of Practice which establishes principles for tariff transparency.

The Code of Practice shall come into effect on 1 July 2004 and all persons required to observe this decision are also required to submit no later than 1 October 2004 a statement signed by a statutory officer certifying that the Code has been implemented.

All persons required to observe this decision are required to publish a copy of the Code along with its compliance statement on its website or if no website is in existence, to display the Code at its places of business to which the public have access.

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<sup>5</sup> General Authorisation Pursuant to Regulation 8 of the European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations, 2003 (S.I. No. 306 of 2003) – Conditions for the provision of Electronic Communications Networks and Services – ComReg Doc 03/81, 25<sup>th</sup> July 2003

Appendix C – Proposed Code of Practice

**Proposed Code of Practice  
for Tariff Presentation**

## **1 Introduction**

### **1.1 The Principles of Tariff Presentation**

In presenting tariff information the service provider will ensure that

- Tariff information is accurate
- Tariff information is comprehensive
- Tariff information is accessible

The principles that tariffs shall be accurate, comprehensive and accessible are designed to ensure that service providers present transparent and up to date information on standard tariffs covering access, all types of usage charges, maintenance charges and including details of standard discounts applied and special and targeted tariff schemes.

## 2 Definitions

|   |   |
|---|---|
| <b>End-user</b>                             | This means a user not providing public communications networks or publicly available electronic communications services; A “user” means a legal entity or natural person using or requesting a publicly available electronic communications service.  |
| <b>Public Telephone Network</b>             | This 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 of communications such as facsimile and data.   |
| <b>Publicly Available Telephone Service</b> | This 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 or the provision of non-geographic services or both. |
| <b>Service Provider</b>                     | This means an undertaking engaged or intending to engage in the provision of a public telephone network or publicly available telephone service or associated facilities.   |
| <b>Tariffs</b>                              | This means the range of prices, that communications service providers charge, or intend to charge end-users for the services they provide and includes standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes.  |
| <b>Minimum Call Charge</b>                  | A minimum call charge means that the end-user must pass a threshold before they are actually availing of the quoted rate i.e. if the per minute rate is 1c and the minimum call charge is 5c then the end-user must be on a call for at least 5 minutes or more before the 1c rate applies.   |
| <b>Call set up charge</b>                   | A call set up charge is a fixed charge applied to each call the end-user makes i.e. if there is a 5c call set up fee and a 1c per minute charge the end-user will pay 6c for the first minute of a call and 1c per minute thereafter.   |
| <b>Associated Facilities</b>                | These means those facilities associated with an electronic communications network, an electronic communications service or both such network and service which enable, support or both enable and support the provision of services via that network or service.  |

### **3 Guidance on Tariff Transparency Principles**

#### **3.1 Accurate Tariff Information**

The principle of accuracy requires service providers to ensure that end-users are presented with accurate, up to date tariff information, on services relevant to their needs. In presenting tariff information service providers should seek to ensure that it is readily understood and does not serve by way of inaccuracy, ambiguity, exaggeration or omission to mislead end-users.

Tariff information, claims and comparisons which have become obsolete or misleading through the passage of time shall not be used. All reasonable efforts should be made to withdraw such information, claim or comparisons from the public domain.

##### *3.1.1 Defined procedures for ensuring accuracy*

Service providers shall have defined procedures to ensure that end-users are provided with accurate information. There should be a process in place to

- notify existing customers of increases in their tariff before they occur
- ensure printed tariff sheets and websites are updated as and when new tariffs and/or tariff changes come into effect
- educate staff and agents about their role in providing accurate and comprehensive tariff information to end-users.

##### *3.1.2 Manipulation of tariffs*

A service provider should not manipulate information in such a way that it makes the tariff inaccurate and misleads end-users. In particular, quoted tariffs must not be inappropriately rounded. Service providers may round their own tariffs for ease of presentation and standard mathematical rounding should be used.

##### *3.1.3 Competitive comparisons*

To ensure competitive comparisons are accurate and fair they should be based on equivalent tariff options for products and services that are targeted at similar types of end-users.

Comparisons that use the competing service provider's standard tariffs should reference that discounts may apply and end-users should not be left with the impression that the competitor's standard rate is the only rate available.

When comparing tariffs a service provider should not manipulate their own tariffs or those of their competitor in such a way that it misleads the end-user.

##### *3.1.4 Substantiation*

A service provider shall be able to substantiate:

- any claims that they put forward regarding savings that their existing customers can make by switching to a different tariff option.
- any competitive claims and comparisons.

Service providers are required to hold documented evidence of such substantiation, ready for production on demand by ComReg, for a period of six months from date of presentation.

When verbally communicating savings claims to end-users the service provider should substantiate that claim by providing printed details of the claim, on request.

Presentations of tariffs that are available for a limited period should display the date from which the offer is effective and the end date for the offer. Any presentations, which include competitive comparisons, shall also display the date on which the presentation was prepared.

### **3.2 Comprehensive Tariff Information**

The purpose of this principle is to ensure that consumers have access to comprehensive tariff information in one location, and that tariff presentations contain sufficient detail to inform end-users about the particulars of different tariff options.

#### *3.2.1 Minimum set of information*

All printed, website or verbal tariff presentations shall state relevant details and additional charges/surcharges applicable to the tariff. This includes

- the increments of time by which the service provider bills
- minimum Call Charges and/or Call Set up Fees
- the Peak/Off Peak and Weekend times

#### *3.2.2 Tariff options with inclusive time or credit*

Where a service provider offers tariff options with inclusive time or credit printed, website and verbal tariff presentations shall clearly set out the conditions under which inclusive time or credit can be used

- exactly the call types that are included or any call types such as premium rate calls that may be excluded from the end-users' allowance
- whether unused time or credit is carried forward to the next and subsequent billing periods
- any expiry time on call credit
- the time of day when inclusive time or credit can be used.

### *3.2.3 Presentation of VAT*

In accordance with the Prices and Charges (Tax Inclusive Statements) Order, 1973 all prices for goods or services either displayed or quoted should be tax inclusive except where an advertisement is directed solely at business customers.

### *3.2.4 References to applicable terms and conditions*

In presenting tariffs with the caveat that terms and conditions apply, the presentation should also reference the location where end-users can acquire the full set of information relevant to the tariff. It is recognised that service providers often use this caveat for presentations where there may be limitations space or time such as TV, Radio and Billboards.

## **3.3 Accessible Tariff Information**

End-users should be able to access tariff information, including details of any terms and conditions which apply, for services relevant to their needs, free of charge including details on standard discounts applied and any special/targeted tariff schemes.

### *3.3.1 Access to printed tariffs and tariffs on the website*

All service providers shall provide:

- printed tariff information in response to an end-user request
- a direct link from the homepage of their website into the tariff information section of their website.

### *3.3.2 Tariff information and the sales process*

Service providers should ensure that all tariff information and associated terms and conditions are communicated clearly to the end-user in advance of their decision to purchase. A service provider shall not withhold tariff information in order to draw the end-user into making a pressurised purchasing decision.



## **4 Compliance with Tariff Transparency Principles**

The tariff transparency principles establish a framework for ComReg in fulfilling its obligation to ensure that transparent and up to date information on applicable prices and conditions is available to end-users on standard tariffs covering access, all types of usage charges, maintenance charges and including details of standard discounts applied and special and targeted tariff schemes.

### **4.1 End-user complaint procedures**

End-user complaints and queries relating to tariff information should first be raised with the service provider concerned. This ensures the service provider has sufficient opportunity to provide a clear explanation of tariffs and correct any misunderstandings regarding tariffs. If, having exhausted a service provider's complaint procedures, the consumer remains dissatisfied the consumer can contact ComReg who may intervene to address issues where tariff information is inaccurate, incomplete or cannot be accessed.

### **4.2 Industry dispute procedures**

ComReg has established procedures<sup>6</sup> for dispute resolution and all industry disputes will be managed in accordance with the defined dispute resolution procedures and via alternative mechanisms where ComReg decides these are the most appropriate way to resolve the dispute. Such mechanisms will include resolution through informal contacts or negotiation, discussion at industry fora, ComReg own initiative investigations and public consultation. The most appropriate approach will be decided on a case by case basis.

### **4.3 ComReg enforcement measures**

Compliance with the principles will be assessed by ComReg on an ongoing basis. Measures to effect compliance will be taken by ComReg in accordance with its statutory powers.

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<sup>6</sup> ComReg Document 03/89 - (Decision No: D18/03) "Dispute Resolution Procedures"