



Commission for
Communications Regulation

Response to Consultation Section 43(3) Dispute Resolution Procedures

Response to Consultation

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Additional Information

Doc No.	Name	Date
14/87	Consultation Document	21 August 2014
15/07a	Section 43(3) Dispute Resolution Procedures, Application Form, Application Guidelines	29 January 2015
15/07b	Responses to Consultation 14/87	29 January 2015

Responses received to Consultation 14/87

Respondent	
1	An Post
2	DX Network Services Ireland
3	Fedex Express Europe Inc.

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1 Introduction

- 1 The Commission for Communications Regulation (“ComReg”) consulted (Document 14/87¹) on proposed procedures to be established by ComReg under section 43(3) of the Communications Regulation (Postal Services) Act 2011 (the “2011 Act”). Section 43(3) of the 2011 Act gives ComReg, or an appointee of ComReg, a discretionary power to resolve disputes which remain unresolved after due completion of all the procedures of a postal service provider’s code of practice. This type of dispute resolution is referred to in this paper as “Section 43(3) dispute resolution”. Section 43(3) also provides that dispute resolution procedures be established and maintained by ComReg. These section 43(3) dispute resolution procedures apply to disputes between postal services users² and postal service providers³.
- 2 ComReg has considered the three responses to the Consultation and acknowledges the time and effort given by the respondents in considering the draft Section 43(3) dispute resolution procedures.
- 3 ComReg is now publishing its Section 43(3) dispute resolution procedures. In keeping with the provisions of the 2011 Act, ComReg shall maintain these procedures by way of regular review at appropriate intervals, and in the event of any proposed material change ComReg will consult if appropriate.

¹ “Section 43(3) Dispute Resolution Procedures” ComReg Document 14/87, published 21 August 2014, and available on www.comreg.ie

² Postal service user means any person benefiting from postal service provision as a sender or as an addressee.

³ Postal service provider means any person providing one or more than one postal service. A register of Postal Service Providers authorised in accordance with Section 38 (1) of the 2011 Act is available on ComReg’s website.

2 Background

- 4 ComReg published guidelines⁴ to assist all postal service providers in drawing up and implementing a code of practice setting out the procedures, standards and policies with respect to the postal service provider's handling of complaints from postal service users. Each code of practice must also provide for an internal dispute resolution procedure, affording postal service users a further opportunity to have their complaint considered and reviewed by the postal service provider.
- 5 ComReg is required by section 43(3) of the 2011 Act to establish and maintain procedures to be used in cases where a dispute, which remains unresolved after due completion of all the procedures of a postal service provider's code of practice, requires resolution. Dispute resolution, under section 43(3), is fundamentally different to any dispute resolution processes provided by postal service provider's *themselves*, as Section 43(3) disputes are to be resolved by a party *independent* of the postal service provider.
- 6 In establishing the Section 43(3) dispute resolution procedures, ComReg has been cognisant of its statutory functions and objectives under the 2011 Act and in particular section 43(5) which requires that these procedures "*shall be (a) transparent, (b) simple, (c) inexpensive, and (d) enable disputes to be settled fairly and promptly*"

⁴ "Complaints and Redress Procedures: Guidelines for Postal Service Providers" ComReg Document 14/06, published 28 January 2014, and available on www.comreg.ie

3 Respondents' views and ComReg's position

- 7 As noted in ComReg's consultation procedures⁵, the purpose of public consultations is to allow ComReg to consider the views of interested parties in the context of reaching a decision on particular matters. In this response to consultation all views have been considered, however it should be noted that the process is not equivalent to a voting exercise on proposals and ComReg has exercised its judgement having considered the views expressed.
- 8 Three responses were received to Consultation 14/87⁶:
- An Post;
 - DX Network Services Ireland Ltd.; and
 - Fedex Express Europe Inc.
- 9 In this chapter, ComReg sets out the main points made by respondents and its response to each. This document, and in particular this section, should be read in conjunction with Consultation 14/87.

3.1 Section 43(3) dispute resolution procedures

- 10 ComReg asked the following question *"Q.1: Do you agree with ComReg's proposed section 43(3) dispute resolution procedures as set out in Appendix: 1? Please give a detailed explanation for your answer"*.

Views of respondents

- 11 There was one respondent to this question, An Post, the universal service provider. An Post agreed in principle with the proposals but recommended that the timelines be adjusted to take into account the December holiday period. It suggested that *"to recognise the holiday shut down period in December"* postal service providers should at A 1.18 be allowed 21 days to respond (instead of the standard 14 days during January to November).

ComReg's position

- 12 ComReg has noted and accepts An Post's submission that the December holiday period be taken into account and has amended the timelines for postal service providers responding to information requests accordingly.

⁵ 'Information Notice on ComReg Consultation Procedures' ComReg Document 11/34, published 6 May 2011, and available on www.comreg.ie

⁶ 'Responses to Consultation 14/87' ComReg Document 15/07b, published 29 January 2015, and available on www.comreg.ie

- 13 ComReg has clarified that any response by the postal service provider in the context of the dispute resolution procedures must be non-confidential.
- 14 ComReg has also amended the period for determining if an application is in respect of a valid dispute, and will now make this determination as soon as possible after receipt of a complainant's application.

3.2 Informing postal service users of the Section 43(3) dispute resolution procedures

- 15 ComReg asked the following question: *"Q.2: Do you agree with ComReg's proposals in section 3.2 regarding how postal service users should be informed by their service provider of the availability of a Section 43(3) dispute resolution process? Please give a detailed explanation for your answer."*
- 16 ComReg proposed that all postal service providers would be required to inform postal service users of the possibility of applying for Section 43(3) dispute resolution, and make available, in a clear, comprehensible and easily accessible way, information regarding the procedures. In particular ComReg proposed that postal service providers should:
 - ensure that reference to where information regarding the Section 43(3) dispute resolution procedures (including the Application Form as set out in ComReg Document 15/07a) is available is clearly and prominently indicated on relevant customer service materials and on the postal service provider's website, and in the terms and conditions of the postal service provider's service offering; and
 - ensure that information regarding the Section 43(3) dispute resolution procedures is contained in a postal service provider's final written response to a complainant regarding a complaint.

Views of respondents

- 17 **DX Ireland** in its response to Consultation 14/87 noted the following *"In our experience, it is prudent to hold back at providing too much information about dispute resolution early in the complaint procedure in order to avoid premature applications"*.
- 18 **An Post** agreed in principle with ComReg's proposals for informing postal service users of the Section 43(3) dispute resolution procedures, however it noted that *"[t]here are practical implications in terms of updating brochures and websites and An Post would expect that ComReg provide a period of time before these proposals are required to be implemented"*.

ComReg's position

- 19 ComReg acknowledges the practical considerations in relation to postal service providers updating relevant customer service materials, websites, and terms and conditions.
- 20 Accordingly ComReg will allow:
- 3 months from the date of establishment of the dispute resolution procedures for this information to be made available to postal service users on postal service provider's website(s) and public notices, and
 - 6 months from the date of establishment for this information to be provided in printed materials that are provided to postal service users.
- 21 ComReg is of the view that postal service providers can ensure that information regarding the Section 43(3) dispute resolution procedures is provided to postal service users within their written 'final response'.

3.3 Application form for submitting a dispute for Section 43(3) dispute resolution

- 22 In Consultation 14/87, ComReg asked the following question "Q.3 Do you agree that the Application form for submitting a dispute for Section 43(3) dispute resolution (See Appendix: 2) is appropriate? Please give a detailed explanation for your answer."

Views of respondents

- 23 One respondent, An Post, responded directly to this question. One other respondent, DX Ireland made a suggestion in relation to the Application form.
- 24 **An Post** agreed in principle with the proposed Application form but recommended that the postal service provider be provided with feedback on the perceived failure of the standard complaints handling process.
- 25 **DX Ireland** suggested that ComReg should refer explicitly to what it referred to as a "dead-lock letter" indicating that a postal service provider's own dispute procedures have been exhausted. DX Ireland considered that this would prevent applications to ComReg prior to the process being fully exhausted.

ComReg's position

- 26 To address An Post's suggestion, ComReg has amended the Application Form⁷ to request feedback from the postal service user.
- 27 Applications for 43(3) dispute resolution will only be processed following confirmation by the postal service user concerned that they have exhausted the postal service provider's procedures for resolving disputes.
- 28 In order to ascertain if the code of practice procedures of the postal service provider have been exhausted, paragraph A1.30 of the "Complaints and Redress Procedures: Guidelines for Postal Service Providers"⁴ requests that postal service providers are to issue postal service users *"a final response, containing the reasons which support the postal service user advocate's decision, [which] should be provided to the postal service user by the postal service user advocate, who has independently assessed the complaint, no later than thirty (30) calendar days after the first contact"*. This 'final response', which would complete or exhaust the internal dispute resolution process of the postal service provider, is also requested to be provided with the section 43(3) dispute resolution application⁸.
- 29 ComReg considers that these measures should sufficiently safeguard against the possibility of premature applications and address concerns raised by DX Ireland (see paragraph 17).

3.4 Guidance note on completing the Application form

- 30 In Consultation 14/87, ComReg asked *"A.4 Do you agree that the Guidance note on completing the Application form for submitting a dispute for Section 43(3) dispute resolution (See Appendix 3) provides adequate guidance to postal service users submitting a dispute for resolution? Please give a detailed explanation for your answer."*

Views of respondents

- 31 An Post agreed in principle with the proposed Guidance note on completing the Application form. Other respondents made no comment.

⁷ Section 3.1 of Application Form for submitting a dispute for Section 43(3) dispute resolution ComReg Document 15/07a, published 29 January 2015, and available on www.comreg.ie

⁸ Section 5.1 of Application Form for submitting a dispute for Section 43(3) dispute resolution ComReg Document 15/07a, published 29 January 2015, and available on www.comreg.ie

4 Conclusion

- 32 Having considered the views of respondents to Consultation 14/87, ComReg has made some minor amendments to the draft Section 43(3) dispute resolution procedures, the application form and the guidance note presented in Consultation 14/87.
- 33 ComReg will now establish and maintain the Section 43(3) dispute resolution procedures in accordance with the 2011 Act.
- 34 These procedures are now set out in final form at ComReg Document 15/07a which is published alongside this response to consultation document. This publication is in accordance with ComReg's statutory obligation pursuant to section 43(4) of the 2011 Act.

Appendix: 1 Legal Background

A 1.1 Of particular relevance to this Response to Consultation are section 43(3) of the Communications Regulation (Postal Services) Act 2011 (the "2011 Act") and sections 10 and 12 of the Communications Regulation Acts 2002 to 2011 (the "2002 Act"), as set out below.

A 1.2 Section 43(3) of the 2011 Act provides:

"The Commission, or a person appointed by the Commission, possessing, in the opinion of the Commission, the requisite degree of independence from the postal service provider concerned, may, in accordance with procedures established and maintained by the Commission, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice drawn up under subsection (1) and, in this regard, the Commission may issue directions to a postal service provider requiring the postal service provider to comply with such measures as it, or such person as may be appointed by the Commission under this subsection, may specify for the resolution of the dispute including payment of costs in the case where such a person is appointed, and reimbursement of payments or compensation, or both reimbursement of payments and compensation, as appropriate, in accordance with the provisions of the code of practice relating to the matters specified in subsection (1)(e)"

Subsection (1)(e) relates to *"remedies and redress, including reimbursement or compensation, or both, as appropriate"*

A 1.3 Section 10(1)(ba) and (c) of the 2002 Act provides that the functions of ComReg include:

"(ba) to ensure the provision of a universal postal service that meets the reasonable needs of postal service users,"

(c) to monitor and ensure compliance by postal service providers with the obligations imposed on them by or under the Communications Regulation Acts 2002 to 2011 in relation to the provision of postal services,"

A 1.4 Section 12(1)(c) of the 2002 Act provides that the objectives of ComReg in exercising its functions shall include :

"(c) in relation to the provision of postal services—

(i) to promote the development of the postal sector and, in particular, the availability of a universal postal service within, to and from the State at an affordable price for the benefit of all postal service users,

(ii) to promote the interests of postal service users within the Community, and

(iii) subject to subparagraph (i), to facilitate the development of competition and innovation in the market for postal service provision,”

A 1.5 Section 12(2A)(d) of the 2002 Act provides:

“(2A) In relation to the objectives referred to in subsection (1)(c), the Commission shall take all reasonable measures aimed at achieving those objectives, including—

.....

(d) in so far as the promotion of the interests of postal service users within the Community is concerned—

(i) ensuring a high level of protection for postal service users in their dealings with postal service providers, in particular by—

(I) ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved, and

(II) consulting and cooperating with the National Consumer Agency as appropriate,

and

(ii) addressing the needs of specific social groups, in particular, disabled postal service users.”.