



Commission for
Communications Regulation

Consultation Paper

Standards for Tariff presentation

Proposals for a Code of Practice governing the presentation of tariff information by providers of publicly available telephone services

| | |
|---------------------|-------------------------|
| Document No: | 04/01 |
| Date: | 8th January 2004 |

All responses to this consultation should be clearly marked:-
“Reference: Submission re ComReg 04/01” as indicated above, and sent by post, facsimile or e-mail, to arrive on or before 5pm on 20th February 2004, to:

FREEPOST
Ms. Carol Donohue
Commission for Communications Regulation
Irish Life Centre
Abbey Street
Dublin 1
Ireland

Ph: +353-1-8049600 Fax: +353-1-804 9680
Email: carol.donohue@comreg.ie

Contents

| | | |
|------|---|----|
| 1 | Foreword..... | 2 |
| 2 | Introduction | 3 |
| 2.1 | BACKGROUND | 3 |
| 2.2 | FORMAT OF THIS PAPER..... | 3 |
| 2.3 | OBJECTIVE OF THE CODE | 4 |
| 2.4 | LEGISLATIVE BASIS | 4 |
| 2.5 | BENEFITS OF THE CODE..... | 5 |
| 2.6 | SCOPE OF THE CODE | 6 |
| 2.7 | CODE DEFINITIONS..... | 7 |
| 3 | Requirements of the Code | 8 |
| 3.1 | TARIFF ACCURACY | 8 |
| 3.2 | MINIMUM SET OF INFORMATION | 9 |
| 3.3 | TARIFF OPTIONS WITH INCLUSIVE TIME OR CREDIT..... | 11 |
| 3.4 | PRESENTATION OF VAT | 11 |
| 3.5 | TARIFF ROUNDING..... | 12 |
| 3.6 | PRESENTING MINIMUM CONTRACT COST | 13 |
| 3.7 | TARIFF COMPLEXITY | 13 |
| 3.8 | COMPETITIVE CLAIMS AND COMPARISONS..... | 14 |
| 3.9 | TESTIMONIALS | 16 |
| 3.10 | SUBSTANTIATION | 16 |
| 3.11 | ACCESS TO TARIFF INFORMATION..... | 17 |
| 4 | Availability and Compliance..... | 19 |
| 4.1 | AVAILABILITY OF THE CODE | 19 |
| 4.2 | COMPLAINTS PROCEDURES | 20 |
| 4.3 | INTRODUCTION OF THE CODE | 20 |
| 4.4 | ENFORCEMENT MEASURES | 20 |
| 5 | Next Steps | 22 |
| | Annex 1 – Legislative Background..... | 23 |
| | RELEVANT LEGISLATION..... | 23 |
| | TEXT OF THE DRAFT DIRECTION | 24 |
| | Annex 2 Proposed Code of Practice | 25 |

1 Foreword

Ensuring that users' rights are protected is one of the key functions exercised by ComReg as the National Regulatory Authority for the electronic communications markets.

As this market becomes increasingly competitive and new entrants focus on customer acquisition, price competition becomes increasingly intense and the range and diversity of tariff options offered to users will increase.

The emergence of new technologies, products and services which in turn can lead to more sophisticated tariff packages can also contribute to users having difficulties distinguishing between the different pricing options available.

In this environment it is important that users can understand the various subscription and usage charges in order to control their communications expenditure or to choose between competing services or service providers. However, it is not always easy to objectively assess and fully understand the information on tariffs that is presented to them.

ComReg places a high degree of emphasis on the promotion of competition and the promotion of users' rights. A Code of Practice which provides for a basic level of tariff transparency will further these objectives.

The measures proposed in the draft Code of Practice in this document are considered by ComReg as necessary to ensure that users can exercise informed choice on the selection of services provided and to control their expenditure on telephone services. ComReg looks forward to receiving views of interested parties before finalising its decision on the provisions of a Code of Practice.

John Doherty
Chairperson
Commission for Communications Regulation

2 Introduction

2.1 Background

ComReg signalled its intention to establish a Code of Practice for presentation of tariff information in its Decision Notice on Users Rights to Communications Services¹. This paper sets out ComReg's position in relation to the provisions of such a Code of Practice and contains the text of a draft decision in relation to the requirements on service providers to comply with the Code.

The Universal Service Regulations² clearly establish the principle of tariff transparency for users and ComReg's role in facilitating this. The legislative basis on which ComReg is developing the Code is set out in detail in Annex 1 to this paper. In summary, ComReg is required to ensure that transparent and up to date information on applicable prices and tariffs is available to end users. This essentially means that users should be provided with tariff information that is:

- accurate
- up to date
- simple and easily understood
- easily accessible

ComReg has already decided that a Code of Practice establishing standards for the presentation of tariff information (hereafter referred to as 'the Code') is the simplest and most efficient means to give effect to this principle of tariff transparency.

The Code relates only to tariffs in connection with the provision of access to and use of publicly available telephone services and is designed to establish a basic level of tariff transparency. ComReg may introduce further tariff transparency initiatives, where appropriate, in relation to telephony services and other electronic communications services.

2.2 Format of this Paper

This consultation paper sets out proposals for principles and requirements that could be contained in the Code which would give effect to users' rights to transparent tariff information. The proposed text for the Code is set out in grey and views are sought on the text. A full copy of the draft Code is contained in Annex 2.

¹ ComReg document number 03/86 (Decision No: D16/03)

² European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003

2.3 Objective of the Code

Section 1 specifies the objective of the Code. In developing this text, ComReg has considered feedback received through consumer complaints and queries to the ComReg consumer line. In the Decision Notice on Users Rights³ ComReg invited comments on issues that should be covered in a Code of Practice. One submission was received and the views expressed therein and those contained in other relevant consultation papers such as ComReg's review of the CPS market (Doc No 03/115) have helped guide the development of the Code.

- 1. Objective of the Code**
- a. The primary objective of the Code is to ensure that users are presented with transparent tariff information relating to the use of publicly available telephone services
- b. In achieving this objective, the Code seeks to ensure that service providers present clear tariff information to users. This will include
- the information that a service provider presents to the users for the services that they supply, and
 - the information that a service provider presents when comparing their services to those of their competitors.
- c. In pursuit of this objective, service providers are committed to the fundamental principles around which this Code operates. Service providers will ensure that:
- their tariff information is clear, simple to understand and informs users
 - tariff comparisons or claims that they make shall be fair and shall be capable of substantiation
 - sufficient tariff information to compute a full bill shall be accessible to all users

Q1) Do you agree with the objectives as they have been set out above?

2.4 Legislative Basis

The introduction of a Code governing presentation of tariff information is designed to ensure sectoral level commitment to the presentation of clear tariff information for users. The legislative basis on which ComReg is developing this Code is the Communications Regulation Act 2002 and the European Communities (Electronic Communications Networks and Services) (Universal

³ ComReg document number 03/86 (Decision No: D16/03)

Service and Users' Rights) Regulations, S.I. 308 of 2003. The legislative background is set out in detail in Annex 1 of this document.

The Code will be supplemental to any other obligations which may exist in relation to presentation of information to users. The onus is on service providers to ensure that they meet any other requirements/obligations in relation to tariff transparency.

The Code builds on general legislative requirements that are set out in the Consumer Information Act of 1978 which prohibits false or misleading indications of prices. The Code is also designed to complement other Codes of Practice which relate to the provision of information. These include Codes developed by the

- Advertising Standards Authority for Ireland (ASAI)
- Irish Direct Marketers Association (IDMA)
- The Regulator of Premium Rate Telecommunications Service (RegTel)

2.5 Benefits of the Code

2.5.1 Benefit for Users

The Codes principal purpose is to benefit and protect users of communications services. Consistency and clarity of information can assist users to make informed purchasing decisions and control their expenditure. Awareness as to the existence of the Code will also increase users confidence that safeguards are in place to ensure that they are presented with simple, accurate, up to date and accessible tariff information.

2.5.2 Benefit for Industry

The industry will also benefit from a general commitment at a sectoral level to the provision of clear tariff information and 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.

Increased user confidence, driven by improved industry practices in the provision of tariff information will also contribute to the further development of effective competition for communications services.

ComReg considers that the measures proposed in this consultation will not place any undue burden on service providers. The desired outcome of this initiative is that users will require less explanation on the particulars of tariff options and will be less likely to dispute tariff information where they have been provided with clear information from the outset. This could overall then lead to cost efficiencies for service providers.

| |
|--|
| <p>Q2) Do you agree that the Code will provide benefits to users and industry as set out above?</p> |
|--|

2.6 Scope of the Code

Section 2 of the draft Code establishes the scope of the Code. Under the Universal Service Regulations⁴ ComReg is required 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 users. The Code will therefore apply to undertakings providing a public telephone network or publicly available telephone services or both. In the Code such undertakings are referred to as service providers.

The Code will apply to any situation where a service provider presents tariffs to users. The proposed text below seeks to account for all instances where a service provider presents their tariff information.

| |
|--|
| <p>2. Scope of the Code</p> <p>a. The Code will apply to undertakings (hereafter referred to as service providers) providing or intending to provide a public telephone network or publicly available telephone services or both such networks and services.</p> <p>b. The Code applies to presentations of tariff information through the range of communication channels, used by the service providers which include inter alia:</p> <ul style="list-style-type: none"> • advertisements and other promotional material • websites • printed material such as bills, mailshots, and other written communications • verbal and printed information provided by customer facing staff including customer service representatives, telemarketing and direct sales representatives and/or agencies which carry out such services on behalf of service providers. |
|--|

Q3) Do you agree that the proposed text in relation to the Scope of the Code of Practice covers the range of channels by which service providers present tariff information to users? Are there any additional types of tariff presentation that should be included?

⁴ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003

2.7 Code Definitions

3. Definitions

- “*public telephone network*” means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications and also other forms of communications such as facsimile and data;
- “*publicly available telephone service*” means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory inquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or special social needs or the provision of non-geographic services or both;
- “*service providers*” means an undertaking engaged or intending to engage in the provision of a public telephone network or publicly available telephone service or both;
- “*tariffs*” are the range of prices, including discounted tariffs, that communications service providers charge, or intend to charge users for the services they provide;
- “*users*” means a legal entity or natural person using or requesting publicly available telephone services. This includes residential consumers and business users of telephony services.

**Q4) Do you agree with the list of definitions to be included in the Code?
Are there any other definitions that you consider should be included?**

3 Requirements of the Code

In this section of the paper ComReg sets out the principles and requirements to be included in the Code.

3.1 Tariff Accuracy

The principle of tariff accuracy is designed to ensure that service providers present their tariff information in such a way that it accurately informs the users' purchasing decision.

Commitment to the principle of tariff accuracy essentially provides an important safeguard for users in that the service provider makes a commitment not to mislead the user, which may happen if they were to present tariff information that is

- out of date
- unclear, confusing or exaggerated
- incomplete in that the user is not made aware of additional costs or other specific conditions of use that apply to a particular tariff option.

4. Tariff Accuracy

- a. In presenting tariff information a service provider shall provide clear and relevant data which should not serve by way of inaccuracy, ambiguity, exaggeration, omission or otherwise to confuse users.
- b. Service providers are responsible for ensuring that the tariff information presented, whether written or verbal, which contains tariff claims or comparisons shall be up to date, factual and clearly outline any issues or caveats.

It is important that service providers ensure that all customer contact staff, including sales agents, receive adequate training and are aware of their responsibility to provide correct information to users.

It is also important that a service provider has procedures in place which ensure that accurate information is presented to users. The procedures for monitoring of tariff information, staff training and compliance with the Code should be documented by the service provider. In line with the principle of substantiation, which is addressed in section 3.10, a service provider's procedures may be reviewed by ComReg if this is deemed necessary.

- c. A service provider shall maintain documented procedures for ensuring the accuracy of tariff information presented to users.
- d. All tariff claims or comparisons which have become obsolete or misleading through the passage of time should not be used.
- e. All tariff presentations shall display the date on which the presentation was prepared and the date from which it is effective.

Q5) Do you agree with the principle of tariff accuracy? Do you consider the proposed text adequately addresses this principle?

3.2 Minimum Set of Information

Users can choose from a variety of tariff structures that exist across different publicly available telephone services. For example,

- line rental/access can be a stand alone charge or may be bundled with other services such as call credit/minutes and value added services
- voice call charges may vary - per minute charges or flat rate charges (€5 for a 30 minute block)

However, in presenting any tariff information it is important that users are provided with all relevant details that apply to that tariff. The proposed Code will specify details that should be presented to the user.

3.2.1 Billing Increment

The increments of time by which the service provider bills can differ. For example, some service providers may bill per second while others may bill every 30 seconds or in 1 minute blocks. This means that the actual rate the user can pay per call can differ significantly depending on the service provider used. This information is relevant to the user, in particular, for higher cost calls and for those users who make short duration calls who may be attracted towards services with shorter billing increments.

3.2.2 Minimum Call/Call set up charges

Service providers tend to quote a per minute rate when presenting voice call charges (however, the billing increment may be per second or in other timed intervals). In addition to this charge, each call may be subject to a minimum call charge or a call set up charge.

- A *minimum call charge* means that the 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 user must be on a call for at least 5 minutes or more before the 1c rate applies.
- A *call set up charge* is a fixed charge applied to each call the user makes i.e. if there is a 5c call set up fee and a 1c per minute charge the user will pay 6c for the first minute of a call and 1c per minute thereafter.

These additional charges clearly have an influence on the actual rate that the user pays. For this reason a clear statement regarding the presence of any minimum charge or call set up charge should accompany any quoted rate.

3.2.3 *Peak/Off Peak and Weekend Times*

In presenting any tariff option or tariffs for individual call types the user should be provided with relevant peak/off peak and weekend times. Users should also be advised whether off peak and/or weekend times are extended to public holidays or whether normal rates apply at these times.

5. Minimum Set of Information that should be provided to users

- a. All tariff presentations whether written or verbal shall clearly state all 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
- b. Where TV and Radio advertisements do not specify these details they shall clearly inform the user that terms and conditions apply and provide advice as to how the users can obtain this more detailed information.

Q6) Do you agree with the proposed text on the minimum set of information that should be provided? Are there any other details that you consider should be included in the minimum set of information?

3.3 Tariff Options with inclusive time or credit

Service providers may offer bundled or packaged tariff options that include a predefined amount of time or credit in the subscription fee. For such options, particular call types, texts, data calls or other charges may not be included. It is important that this information is presented to the user.

6. Tariff Options with inclusive time or credit

- a. Where a service provider offers prepaid or postpaid tariff options with inclusive time or credit, all tariff information whether written or verbal shall clearly set out:
 - exactly the call types that are included or any call types such as premium rate calls that may be excluded from the users' allowance
 - whether unused time or credit is carried forward to the next and subsequent billing periods
 - any expiry time on call credit
- b. Where TV and Radio advertisements do not specify these details they shall clearly inform the user that terms and conditions apply and provide advice as to how the users can obtain this more detailed information.

Q7) Do you agree with the proposed approach to tariff options with inclusive time or credit? Are there any other details relating to this type of tariff option you consider should be included?

3.4 Presentation of VAT

There is no industry standard for presentation of the VAT element of a tariff. It may seem the logical approach that all tariffs are quoted VAT inclusive given this is the tariff that the user pays to the service provider.

However, as many business users can claim VAT back on business calls they may prefer tariffs quoted VAT exclusive. For this reason it may be more appropriate to require that only residential/non-business tariffs are published VAT inclusive.

Regardless of format, service providers should explicitly state whether tariffs are VAT inclusive or exclusive. In addition business users could be confused if certain tariffs are quoted VAT exclusive while others are quoted VAT inclusive therefore the presentation of VAT must be consistent across all charges applicable to a particular tariff option.

7. The VAT element of the tariff

- a. All tariffs presented to residential/non-business users shall include VAT and shall clearly state that tariffs quoted are VAT inclusive.
- b. All tariffs presented to business users shall state whether tariffs quoted are VAT inclusive or exclusive. The method of presentation to business users must be consistent across all charges applicable to a particular tariff option.

Q8) Do you agree with the proposed approach to require that residential tariffs are published on a VAT inclusive basis?

Q9) Do you agree with the proposed approach on VAT presentation to business users?

3.5 Tariff Rounding

There is also no standard across the industry for rounding of tariffs. For information purposes the tariff that is presented to users is very often rounded to exclude decimal points or limited to at most 2 decimal points. The proposed text relating to tariff rounding is set out below.

8. Tariff Rounding

- a. When rounding tariffs a service provider should not manipulate information in such a way that it misleads the user. In particular, quoted tariffs must not be inappropriately rounded.

Q10) Do you agree with the proposed Code text for tariff rounding?

In addition it may be suitable to include a more specific requirement in the Code around what is considered inappropriate rounding. In rounding tariffs service providers may wish to round down in order to promote a better price position. For example a service provider may round a 4.99c tariff down to 4.9c rather than up to 5c. Rounding downwards has the potential to mislead the user as it understates the actual rate the user is paying. For this reason it may be of benefit if the Code includes a requirement that service providers should round the tariff up or present the tariff without rounding.

Q11) What is your view regarding a requirement in the Code that service providers should be required to round tariffs up or present the tariff as is?

3.6 Presenting Minimum Contract Cost

The Universal Service Regulations state that an undertaking that provides to end-users connection and access to the public telephone network shall do so in accordance with a contract⁵. The contract may have either a minimum contract period and/or be subject to usage requirements.

A user may contract with a service provider who subsidises equipment such as a mobile handset. In order to recover the cost of the equipment subsidy the service providers often require the user to connect for a minimum time period and they may also require a minimum call spend/minimum monthly fee.

In such instances it may be useful for users to compare the cost of different contract options if the minimum cost of the contract was published. For example the minimum cost for a twelve month contract where equipment costs €50, subscription costs €25 per month and there is a €50 connection is €400 excluding additional call charges (outside any inclusive time or credit). VAT should also be included so the full cost of the transaction can be seen.

9. Minimum Contract Cost

- a. Where the 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.

Q12) Would the requirement to present the minimum contract cost be a useful comparison tool for users? Do you agree with the proposed text in relation to minimum contract cost?

3.7 Tariff Complexity

This principle relates to the design of tariff options. In a competitive market service providers structure their tariffs in such a way to appeal to different user segments. For many users, their primary concern is how much they pay on line rental/access fee, the per minute rate on any call made and the cost of using any additional service.

Other users choose tariff options that provide special discounts for a minimum call spend or tariff options which offer lower rates if the user commits to a particular level of expenditure. In addition, users may choose to avail of bundled tariff options which could include the access fee with a number of minutes/call credit and possibly additional features such as voicemail and text services etc. The broad range of tariff options on offer can be of benefit to users as by shopping around the user can find a tariff option that best suits their usage requirements and budget.

⁵ In light of the specific requirements placed on undertakings under the Universal Service Regulations with regard to contracts, ComReg has developed guidelines for the inclusion of a minimum set of requirements in contracts with end users (ComReg Document No. 03/129)

On the other hand the diversity and complexity of tariff options means it is increasingly difficult for users to understand exactly which option best suits their usage needs.

The proposed text on tariff complexity seeks to ensure that users are fully informed and able to make the appropriate decisions/choices.

10. Tariff Complexity

- a. A service provider shall not make tariff information unnecessarily complex which may in turn prevent users from being able to make informed choices.
- b. A service provider shall not design new tariffs or manipulate existing tariffs which might serve to
 - confuse users
 - hide tariff increases or changes to the tariff structure, in particular, those which do not work in the users favour
 - prevent or inhibit a user from comparing that tariff with those of a competing service provider
- c. 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 or by using an alternate or additional product or service that they provide.

Q13) Do you agree with the principle that tariffs shall not be designed to be complex? Do you agree with the text with regard to tariff complexity? Are there particular practices that you feel should be addressed in the Code?

3.8 Competitive Claims and Comparisons

Many service providers consider that the development of standards around tariff presentation and, in particular, standards for competitive comparisons will benefit industry as well as users.

It is reasonable to expect that any comparison with a competitor's service should be accurate. In presenting comparative tariff information the service provider should state the basis on which the comparison is being made. This means if a service provider claims a saving over a competitor's tariff, they should clearly inform users which competitor tariff information was used in the comparison, the date on which the comparison was prepared and the date from which it is effective.

Standards around competitive comparisons, in particular, comparisons that are verbally communicated, are required in order to avoid sweeping and unqualified statements to users regarding a competitor's tariff.

11. Competitive Tariff Claims and Comparisons

- a. Service providers shall respect the principle of fair competition generally accepted in business when presenting a competing service provider's tariff information.
- b. In presenting any comparison with competitors' tariffs a service provider is responsible for ensuring that
 - the tariff information they are quoting is accurate and up to date
 - the comparison is based on similar tariff options, products and services and
 - any additional costs are clearly shown
- c. 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 user.
- d. All tariff comparisons which have become obsolete or misleading through the passage of time should not be used.
- e. All presentations of comparative tariff information should clearly state the basis on which the comparison is being made.
- f. All tariff comparisons shall display the date on which the presentation was prepared and the date from which it is effective.

Two other sections of the Code are particularly relevant to competitive comparisons. The principle of substantiation set out in section 3.10 of this paper requires that a service provider should be able to substantiate any competitive claim. There is also a proposed requirement that users should have access, on request, to a printed version of any tariff comparison (which includes competitive tariff comparisons) that is quoted to them. The details around this are set out in section 3.11 of this paper which deals with access to tariff information.

Q14) Do you agree with the proposed text regarding competitive comparisons? Are there any other details/particular practices regarding competitive comparisons that you consider should be addressed?

3.9 Testimonials

A user testimonial may be used in service provider advertisements or printed material in order to provide a level of independent assurance that the service provider will deliver on its promise. This promise often relates to the service provider's tariff. In such instances it is important that the testimonial is genuine.

In addition, where a service provider uses their own staff or agents to present tariff claims in a user testimonial the service provider must outline this in the presentation.

12. Testimonials

- a. In presenting tariff information or potential savings a service provider may use a user testimonial. In such cases the service provider should not refer to any testimonial or endorsement unless it is genuine, relevant and based on the user's personal experience or knowledge.
- b. Where a service provider uses their own staff in a user testimonial this must be stated.
- c. Testimonials which have become obsolete or misleading through passage of time must not be used.

3.10 Substantiation

The effectiveness of the Code is increased if the principle of substantiation is applied. In no circumstances should a service provider put forward a tariff claim if that cannot be substantiated.

A service provider should be able to substantiate claims that it presents whether the tariff claim or comparison is communicated to their existing customer base or the market in general.

As well as substantiating claims/comparisons regarding specific tariffs charged the service provider should be able to substantiate broad tariff claims such as 'we offer the cheapest prices'.

The importance of substantiating competitive claims and comparisons is in line with the principal of fair competition. However, a service provider may also target its own customer base with a tariff claim or comparison promising savings customers can make by switching to a different tariff option or by using an alternate or additional product or service.

Such comparisons arise typically where a service provider reduces its rates or introduces a new service and as a result claims a potential saving is available to users. For example, when a service provider reduces rates across international destinations they may be inclined to use the highest percentage saving when promoting its price reduction however, this destination may not be relevant to the majority of users and therefore has the potential to mislead them.

It may be the case that a service provider analyses its customer base and identifies specific target customers who might be attracted by this claim. In such instances the customer should be informed of the basis on which the service provider has targeted the customer i.e. based on analysis of your bills over the last 6 months you can make savings by switching to an alternate tariff option.

13. Substantiation

- a. A service provider shall ensure that all tariff claims, comparisons and testimonials which relate to matters of objectively ascertainable fact should be capable of substantiation.
- b. Service providers are required to hold documented evidence of such substantiation ready for production on demand by ComReg. Service providers shall maintain records outlining substantiation for the period recommended by the Data Protection Commission.

Q15) Do you agree with the principal of substantiation as set out above?

3.11 Access to Tariff Information

ComReg's decision on user's rights to communications services⁶ set out new requirements on undertakings providing access to and use of publicly available telephone services. There is now a requirement to provide a direct link from the homepage of the service provider's website into the tariff information section on their website. ComReg also requires the provision of printed tariff information in response to a reasonable user request. An example of a reasonable request is a residential users request for up to date tariff information on all residential retail services. Both requirements will be included in the Code of Practice for tariff presentation.

14. Access to quoted Tariff Information

- a. 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.
- b. All service providers shall provide printed tariff information in response to a reasonable request from the user. In addition, all service providers should provide a direct link from the homepage of their website into the tariff information section of their website.

It may also be necessary to further develop the definition of what constitutes a reasonable request for tariff information. Feedback through consumer

⁶ ComReg document number 03/86 (Decision No: D16/03)

complaints and industry consultation indicates a strong view that users should be able to request a printed version of any tariff information they are quoted. This is particularly relevant to the sales process. The inclusion of this provision in a Code of practice may help increase user confidence that they can rely on the service provider's sales promise.

- c. All service providers, shall on request, provide a printed copy of any tariff information, including tariff comparisons, which they verbally quote to the user. The service provider should provide and be able to substantiate appropriate training to ensure accurate information is provided.
- d. A service provider shall not withhold tariff information in order to draw the user into making a pressurised purchasing decision.

This further enhances consumer protection by ensuring access to tariff information which users can evaluate at their convenience, and avoids the need to make pressurised purchasing decisions without fully assessing the conditions of any agreement.

Q16) Do you agree with the requirement that all verbal tariff claims or comparisons should be provided in print format to the user on request?

Tariff transparency is also related to the users' ability to control their expenditure. In its residential survey of 2003, ComReg found that

- 46% of consumers surveyed were not aware that eircom provided a facility for barring calls
- 39% of consumers surveyed were not aware that they could get a minimum level of itemised billing free of charge

To facilitate user awareness on services for controlling expenditure it could be made part of a Code of Practice that service providers are required to inform users about services available for controlling expenditure. This could be done on an annual basis by, for example, including an insert with the customer bill or by printing the information on the customer bill.

- e. Service providers shall inform all new users about services available, such as itemised billing and call barring, that can assist in controlling expenditure. Existing users will be informed of such services on an annual basis or when a new service is introduced.

Q17) Do you agree with the requirement to inform users on services that can assist in controlling expenditure? Should the format of such a notification be included in the Code?

Q18) Do you consider that an annual notification is sufficient?

4 Availability and Compliance

4.1 Availability of the Code

ComReg considers that the primary responsibility for observing the Code of Practice rests with service providers of publicly available telephone services. The view has been expressed that service providers should be free to implement their own Code on tariffs.

Bearing this in mind there are a number of options for publication of the Code:

- Option 1: This could be adopted where all service providers are required to commit to a generic industry Code of Practice which must be published by the service provider on their website.
- Option 2: Service providers could establish their own branded Code of Practice for tariff presentation which would contain ComReg's prescribed minimum set of standards. In this situation service providers could go beyond minimum standards and introduce enhanced standards for tariff presentation. This would again be published by the service provider on their website.

In developing Codes of Practice for complaint handling ComReg has used a similar approach to that outlined in Option 2. The rationale here was that service providers could use their own Code of Practice for complaint handling as a competitive tool.

However, ComReg is of the view that this Code seeks to provide a degree of standardisation in relation to tariff presentation and has proposed fairly specific text for the Code in this regard. In pursuit of standardisation ComReg considers that each service provider should commit to and publish (on their website) a generic Code of Practice for Tariff Presentation which ComReg may review and alter if considered appropriate. Clearly however, service providers who, for marketing/customer relations reasons etc, may wish to exceed these minimum standards will be still free to do so.

15. Availability of the Code

- a. All service providers shall publish a copy of the Code in an easily identifiable and accessible location on their website.
- b. Service Providers shall inform all new and existing customers that the Code of Practice exists and should provide all customers with a copy of the Code on their website

Q19) Do you agree with the approach towards publication of the Code?

4.2 Complaints Procedures

4.2.1 User Complaints

The service providers to which this Code of Practice will apply are currently required to operate a separate Code of Practice for complaint handling. As with these established complaint procedures the users' first point of contact for any complaint relating to tariff presentation will be their service provider.

If the complaint is within ComReg's remit and the user remains dissatisfied having exhausted the service provider's complaint handling procedures, then the user can contact ComReg in relation to the matter.

Q20) Do you agree with the approach towards user complaints?

4.2.2 Industry Complaints

ComReg's current approach to industry issues will apply to industry level investigations into breaches of this Code of Practice. Industry issues are dealt with according to defined dispute resolution procedures or through other ways including: resolution through informal contacts or negotiation; through industry fora such as the CPS industry forum or where issues become the subject of a ComReg own initiative investigation, by way of consultation or alternative dispute mechanisms.

Q21) Do you agree with the approach towards industry complaints?

4.3 Introduction of the Code

ComReg will monitor and enforce operation of the Code. ComReg proposes that each service provider should publish the Code, notify their customers and submit a compliance statement to ComReg within 3 months of the publication of the final Code.

Service providers should provide ComReg with an annual statement of compliance with the Code. In doing so, the service provider is clearly stating that they are committed to the principles that are set out in the Code of Practice.

While general compliance with the Code will be assessed annually by ComReg the Code may be modified at any stage following a period of consultation.

Q22) Do you agree with the approach towards introduction of the Code?

4.4 Enforcement Measures

The following are a range of options which could be employed to address breaches of the Code:

- For individual user complaints ComReg may issue directions to service providers to comply with such measures which ComReg may specify to resolve a user complaint. This may include a request for the removal of advertisements, or printed material which does not adhere to the principles set out in the Code.
- For repeated breaches ComReg may require that the service provider submits details of all tariff presentations in advance of publication for a defined period e.g. 6 months.
- In publishing complaint data relating to the Code ComReg would intend to outline details of reported breaches by the service provider. Details as to investigation and resolution would also be provided. The effectiveness of this method has been demonstrated by the Advertising Standards Authority and other National Regulatory Authorities in the electronic communications sector.

Q23) Have you any views regarding ComReg's proposed enforcement measures?

Q24) Do you agree with the proposed approach to the identification of service providers who breach the Code?

Observance of the Code is required under condition 18 (1) of the General Authorisation to which all providers of telephony services are subject. Under Regulation 8(7) of the Authorisation Regulations⁷ failure to comply with a condition of a General Authorisation is an offence and may be prosecuted by ComReg.

⁷ European Communities (Electronic Communications Networks and Services)(Authorisation) Regulations 2003 - S. I. No. 306 of 2003

5 Next Steps

The consultation period will run for six weeks until 20th February 2004. ComReg will consider responses and aims to publish a final Code of Practice in April 2004. Comments are welcomed on the text of the draft direction set out in Annex 1.

Annex 1 – Legislative Background

Relevant Legislation

Under Section 12 (1) of the Communications Regulation Act 2002 the objectives of the Commission 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”.

In addition 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, that regulation at 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.

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.

Text of the Draft Direction

Direction 1

In accordance with Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. No 308 of 2003, all undertakings providing access to and use of publicly available telephone services shall comply with the Code of Practice governing the presentation of tariff information by providers of publicly available telephone services.

Each service provider shall publish the Code on their website, notify customers and submit a compliance statement to ComReg within 3 months of the publication of the final Code.

Each service provider shall provide ComReg with an annual statement of compliance with the Code.

Observance of this Direction is required under Condition 18.1 of the General Authorisation to which all providers of telephony services are subject.

Annex 2 Proposed Code of Practice

1. Objective of the Code

- a. The primary objective of the Code is to ensure that users are presented with transparent tariff information relating to the use of publicly available telephone services
- b. In achieving this objective, the Code seeks to ensure that service providers present clear tariff information to users. This will include
 - the information that a service provider presents to the users for the services that they supply, and
 - the information that a service provider presents when comparing their services to those of their competitors.
- c. In pursuit of this objective, service providers are committed to the fundamental principles around which this Code operates. Service providers will ensure that:
 - their tariff information is clear, simple to understand and informs users
 - tariff comparisons or claims that they make shall be fair and shall be capable of substantiation
 - sufficient tariff information to compute a full bill shall be accessible to all users

2. Scope of the Code

- a. The Code will apply to undertakings (hereafter referred to as service providers) providing or intending to provide a public telephone network or publicly available telephone services or both such networks and services.
- b. The Code applies to presentations of tariff information through the range of communication channels, used by the service providers which include inter alia:
 - advertisements and other promotional material
 - websites
 - printed material such as bills, mailshots, and other written communications
 - verbal and printed information provided by customer facing staff including customer service representatives, telemarketing and direct sales representatives and/or agencies which carry out such services on behalf of service providers.

3. Definitions

- “*public telephone network*” means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications and also other forms of communications such as facsimile and data;
- “*publicly available telephone service*” means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory inquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or special social needs or the provision of non-geographic services or both;
- “*service providers*” means an undertaking engaged or intending to engage in the provision of a public telephone network or publicly available telephone service or both;
- “*tariffs*” are the range of prices, including discounted tariffs, that communications service providers charge, or intend to charge users for the services they provide;
- “*users*” means a legal entity or natural person using or requesting publicly available telephone services. This includes residential consumers and business users of telephony services.

4. Tariff Accuracy

- a. In presenting tariff information a service provider shall provide clear and relevant data which should not serve by way of inaccuracy, ambiguity, exaggeration, omission or otherwise to confuse users.
- b. Service providers are responsible for ensuring that the tariff information presented, whether written or verbal, which contains tariff claims or comparisons shall be up to date, factual and clearly outline any issues or caveats.
- c. A service provider shall maintain documented procedures for ensuring the accuracy of tariff information presented to users.
- d. All tariff claims or comparisons which have become obsolete or misleading through the passage of time should not be used.
- e. All tariff presentations shall display the date on which the presentation was prepared and the date from which it is effective.

5. Minimum Set of Information that should be provided to users

- a. All tariff presentations whether written or verbal shall clearly state all 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
- b. Where TV and Radio advertisements do not specify these details they shall clearly inform the user that terms and conditions apply and provide advice as to how the users can obtain this more detailed information.

6. Tariff Options with inclusive time or credit

- a. Where a service provider offers prepaid or postpaid tariff options with inclusive time or credit, all tariff information whether written or verbal shall clearly set out:
- exactly the call types that are included or any call types such as premium rate calls that may be excluded from the users' allowance
 - whether unused time or credit is carried forward to the next and subsequent billing periods
 - any expiry time on call credit
- b. Where TV and Radio advertisements do not specify these details they shall clearly inform the user that terms and conditions apply and provide advice as to how the users can obtain this more detailed information.

7. The VAT element of the tariff

- a. All tariffs presented to residential/non-business users shall include VAT and shall clearly state that tariffs quoted are VAT inclusive.
- b. All tariffs presented to business users shall state whether tariffs quoted are VAT inclusive or exclusive. The method of presentation to business users must be consistent across all charges applicable to a particular tariff option.

8. Tariff Rounding

- a. When rounding tariffs a service provider should not manipulate information in such a way that it misleads the user. In particular, quoted tariffs must not be inappropriately rounded.

9. Minimum Contract Cost

- a. Where the 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.

10. Tariff Complexity

- a. A service provider shall not make tariff information unnecessarily complex which may in turn prevent users from being able to make informed choices.
- b. A service provider shall not design new tariffs or manipulate existing tariffs which might serve to
 - confuse users
 - hide tariff increases or changes to the tariff structure, in particular, those which do not work in the users favour
 - prevent or inhibit a user from comparing that tariff with those of a competing service provider
- c. 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 or by using an alternate or additional product or service that they provide.

11. Competitive Tariff Claims and Comparisons

- a. Service providers shall respect the principle of fair competition generally accepted in business when presenting a competing service provider's tariff information.
- b. In presenting any comparison with competitors' tariffs a service provider is responsible for ensuring that
 - the tariff information they are quoting is accurate and up to date
 - the comparison is based on similar tariff options, products and services and
 - any additional costs are clearly shown
- c. 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 user.
- d. All tariff comparisons which have become obsolete or misleading through the passage of time should not be used.

- e. All presentations of comparative tariff information should clearly state the basis on which the comparison is being made.
- f. All tariff comparisons shall display the date on which the presentation was prepared and the date from which it is effective.

12. Testimonials

- a. In presenting tariff information or potential savings a service provider may use a user testimonial. In such cases the service provider should not refer to any testimonial or endorsement unless it is genuine, relevant and based on the user's personal experience or knowledge.
- b. Where a service provider uses their own staff in a user testimonial this must be stated.
- c. Testimonials which have become obsolete or misleading through passage of time must not be used.

13. Substantiation

- a. A service provider shall ensure that all tariff claims, comparisons and testimonials which relate to matters of objectively ascertainable fact should be capable of substantiation.
- b. Service providers are required to hold documented evidence of such substantiation ready for production on demand by ComReg. Service providers shall maintain records outlining substantiation for the period recommended by the Data Protection Commission.

14. Access to quoted Tariff Information

- a. 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.
- b. All service providers shall provide printed tariff information in response to a reasonable request from the user. In addition, all service providers should provide a direct link from the homepage of their website into the tariff information section of their website.
- c. All service providers, shall on request, provide a printed copy of any tariff information, including tariff comparisons, which they verbally quote to the user. The service provider should provide and be able to substantiate appropriate training to ensure accurate information is provided.
- d. A service provider shall not withhold tariff information in order to draw the user into making a pressurised purchasing decision.

- e. Service providers shall inform all new users about services available, such as itemised billing and call barring, that can assist in controlling expenditure. Existing users will be informed of such services on an annual basis or when a new service is introduced.

15. Availability of the Code

- a. All service providers shall publish a copy of the Code in an easily identifiable and accessible location on their website.
- b. Service Providers shall inform all new and existing customers that the Code of Practice exists and should provide all customers with a copy of the Code on their website