



Commission for
Communications Regulation

Response to Consultation & Decision Notice

Users' Rights to Communications Services

Protecting users in a developing communications market

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1 Foreword

On behalf of the Commission for Communications Regulation, I am pleased to present our decision governing the regulatory framework for the protection of users of electronic communications services which follows our consultation 03/26. I would like to thank those who responded to the consultation.

The consultation focused on how the national regulatory framework in this area would evolve in light of changes in the EU framework, in particular, the EU Directive on Universal Service and Users' Rights. It dealt with measures such as transparency of information for users, operator codes of practice for complaint handling, contracts and the publication of quality of service information.

ComReg plays an important role in ensuring that operators provide high quality services to their customers. While competition will ultimately drive improvements in service quality there is often a need to ensure that minimum standards are maintained while competition is developing. This is typically achieved through the development of regulatory regimes around quality of service and by ensuring that users have access to sufficient information to enable them to directly enforce their rights and avail of choice within the market. Addressing consumer protection issues at this level has proven to be an efficient means for this office to bring consumer issues to the forefront of the regulatory process.

ComReg has devoted substantial effort to quality of service improvement, concentrating on focussing operator responsibility on the issue. Significant improvements have already been made, although more still needs to be done. Leased line delivery to OLOs, once one of the poorest in Western Europe is now among the best, with a service level agreement backed up by substantial penalties. Technical audits by ComReg have identified specific problems with broadcasting distribution networks in particular and measures have been implemented by operators eliminating some of the sources of consumer complaints.

The measures set out below have been devised having regard to progress made and the need for further action. The intention is to make any new measure as focussed as possible to deal only with problematic issues and how they can be solved. As such the measures adopted seek to establish minimum standards, which will ensure users rights are protected, many of which will be of more relevance to individual consumers and small to medium sized enterprises as opposed to larger business customers. Telecoms companies tend to offer larger business customers Service Level Agreements (SLAs), which ensure that customer's interests are protected through agreed performance. Recent ComReg research¹ indicates that 46% of Irish business customers surveyed have an SLA with their supplier.

Many of the provisions contained in the previous legislation (S.I. No 71 of 1999) were designed to ensure that operators published (and consumers had access to) information on tariffs and contracts, that consumers had access to quality of service information and that operators developed codes of practice for handling complaints. These provisions have been maintained under the new legislation (S.I. No 308 of 2003) and have been further developed to require more specific consumer

¹ ComReg Broadband and Data communications survey conducted by MRBI- April/ May 2003

protection measures around tariff transparency, quality of service, consumer contracts, complaint handling and dispute resolution.

The main features of the consumer protection framework for the future will be as follows.

Transparency of Information, including Tariffs

In the future, operators will be required to make available a specific set of information regarding the services being offered, including, inter alia, the scope of the service being offered, standard tariffs covering access, usage and maintenance, types of maintenance service offered, standard contact conditions and dispute settlement mechanisms.

In addition to current requirements, ComReg will introduce a number of measures to promote the clear presentation of tariff information within the electronic communications sector. ComReg intends to establish a code of practice regime for operators to establish principles by which the sector operates when providing tariff information to users. The importance of this in respect of operator price comparison was highlighted in a recent ComReg paper on carrier pre-selection². All operators will also be required to provide a direct link from their website's homepage to tariff information.

Quality of Service Performance

The existing fixed operator quality of service measurement programme which is published every six months is to continue with greater focus on ensuring that it meets user needs.

In addition, ComReg also intends to carry out an assessment of mobile operator quality of service performance and based on these results will decide on any future approach in this area.

Contracts

Operators will be required to set out within their subscriber contracts a minimum level of information as prescribed by the Regulations. ComReg intends to issue guidelines in this area. Operators will also be required to give their subscribers 30 days notice when they intend to modify a contract, and to notify the subscriber of their right to withdraw from the contract without penalty if they do not accept the proposed modification.

Directories and Directory Enquiry Services

As is currently the case, operators must ensure that their subscribers have the right, free of charge, to have an entry in a printed or electronic directory i.e. in the printed phone book or directory enquiry service.

Codes of Practice for Handling Complaints

All operators will continue to be required to have in place a code of practice for handling consumer complaints. However, they must now include within their codes a 'customer guarantee scheme' which will provide for specific service quality levels with associated targets and a mechanism for re-imbursing and payments to

² ComReg consultation paper 03/76 – Carrier Pre-selection in Ireland 2003 – ComReg's 2003 Review

subscribers in the event that such targets are not met. While it is up to operators to develop their schemes in the first instance, ComReg intends to keep the position under review and, if necessary, may introduce a specific customer guarantee scheme framework.

Complaint Handling

ComReg has established principles according to which it handles complaints from users whose complaint remains unresolved, after exhausting an operator's own complaint handling procedures. In doing so, ComReg will examine whether an operator has complied with its code of practice for handling complaints or whether there is any area under the Universal Service Regulation which indicates non compliance.

Further work on the above areas will continue over the coming months and I am confident that these measures will encourage operators to strengthen their quality of service in areas of weakness to offer the highest level of consistent service to all their customers.

Etain Doyle
Chairperson
Commission for Communications Regulation

2 Introduction

The Commission for Communications Regulation (“ComReg”) is responsible for the regulation of the Irish telecommunications sector in accordance with national and EU legislation.

This Decision Notice follows the recent consultation document 03/26, “Protecting Users in a Developing Communications Market”.

Eight responses to the consultation were received, which have been helpful to the Commission in forming a view as to how to implement effective consumer protection measures that satisfy new EU and national legislative requirements in this area. The respondents were:

- Competition Authority
- eircom
- European Consumer Centre
- Member of the Public
- Meteor Mobile Communications
- O2
- Telecommunications User Group (TUG)
- Vodafone

The responses are available for inspection at the Office, excluding any confidential material that respondents have specifically asked to be withheld.

2.1 Format of this Document

This report deals with the main issues raised during the consultation, each under the following sub-headings:

- A summary of the consultation topic.
- A summary of the views of respondents.
- Commission’s position.

Where appropriate, Directions follow each of the Commission’s Positions.

The opinions and decisions set out in this document are without prejudice to the legal position or the rights and duties of ComReg to regulate the market generally.

3 Background

The background to the existing consumer protection obligations, along with the legislative developments at EU and national level which necessitate the current review of the framework were set out in the consultation paper. A number of points are worth re-stating below:

3.1 Existing Legislation

The current obligations for telephony providers are set out in the Voice Telephony and Universal Service Regulations³ 1999 which include, inter alia

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

There are also obligations contained within each operators licence.

Cable and MMDS operators also have consumer interest requirements such as the implementation of a code of conduct, compliance with minimum technical conditions, publication of prices, terms and conditions, and the provision of data to allow ComReg to measure performance of specific customer service related parameters under the terms of their licence and agreements which stem from the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999⁴.

Applicants for Fixed Wireless Point to Multi-point licences, GSM licences and Third Generation licences were invited to insert into draft licences the types of customer service measures beyond those contained in the requisite Regulations.

Also of relevance are ComReg's consumer protection functions under the Communications Regulation Act 2002.

³ SI No. 71 of 1999

⁴ SI No. 73 of 1999

3.2 Legislative changes

The consultation on the framework governing the protection of end users was carried out in light of draft legislation proposed by the Department of Communications, Marine and Natural Resources⁵ which transposes the EU Directive on Universal Service and End Users' Rights⁶. The Minister for Communications, Marine and Natural Resources has since made the European Communities (Electronic Communications networks and services)(Universal Service and Users' Rights) Regulations, 2003⁷, (S.I. 308 of 2003) and, although there are some differences to the original draft regulations (as published by the Department), ComReg does not consider that these materially affect the approaches proposed in the consultation or the positions set out herein.

In summary, the regulations provide for the following consumer protection measures:

- to ensure consumers are provided with transparent and up-to-date information on prices and tariffs.
- to ensure the publication of adequate and up-to-date information on quality of service performance,
- to ensure that consumers can receive a service in accordance with a contract which must specify a minimum set of contract terms and conditions, including quality of service, conditions for the termination of the contract, any compensation and refund arrangements which apply along with procedures for resolving disputes,
- to ensure that operators implement a code of practice for handling consumer complaints
- the resolution by ComReg of consumer disputes that remain unresolved after the consumer has exhausted their operator's own complaint procedures.

The approach for dealing with these issues is set out in this Decision Notice.

⁵ Consultation is available at <http://www.dcmnr.gov.ie/files/cmUSO.doc>

⁶ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)

⁷ See http://www.dcmnr.gov.ie/files/CommsReg_USO_final.doc

4 Transparency and Publication of Information

Under the regulations, ComReg shall ensure that transparent and up to date information on applicable prices and tariffs and on standard conditions in relation to access to and use of publicly available telephone services is available to end-users and consumers.

Undertakings providing publicly available telephone services must provide end-users with transparent and up to date information on applicable tariffs and on the standard terms and conditions in respect of access to and the use of publicly available telephone services. ComReg may specify that undertakings provide the following

- the name and the address of their head office⁸
- a description of the publicly available telephone services offered indicating what is included in the subscription charge and the periodic rental charge
- standard tariffs covering access, all types of usage charges, maintenance and including details of standard discounts applied and special and targeted tariff schemes
- compensation and refund policies, including specific details of any compensation or refund schemes offered
- types of maintenance service offered
- standard contract conditions, including any minimum contractual period if relevant
- dispute settlement mechanisms including those developed by the undertaking
- information about rights as regards universal service

The regulations also state that the Commission shall 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.

A core objective for ComReg, under the Communications Regulation Act of 2002 is to promote the interests of users within the community. This includes promoting the provision of clear information, and in particular, requiring transparency of tariffs.

ComReg has set out measures in the latter sections of this paper which are designed to ensure transparency and publication of information on many of the specifications listed above – (quality of service, contracts, dispute resolution etc.) This section of the paper will deal with the specific issue of tariff transparency.

⁸ Operators are required to specify the means by which complaints can be lodged in their code of practice for handling complaints including telephone, letter, email and fax contact details. This code of practice requirement does not substitute the requirements set out above.

4.1 Tariff transparency code of practice and principles

4.1.1 Summary of Consultation Issues

Tariff transparency concerns the ease by which a consumer can obtain and understand tariff information in order to assist them in making informed decisions concerning their choice of electronic communications service and/or provider.

In the consultation, ComReg proposed to establish a set of principles or guidelines (in light of the USO regulations and its wider role as set out in the Communications Regulation Act 2002) for the presentation of tariff information. The following principles were suggested:

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

ComReg further proposed that this set of principles, if established, would then be incorporated in an industry code of practice that would also set out the minimum criteria governing a standard format for the presentation of tariff information for basic products and services. Views were sought on the following questions:

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

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

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

4.1.2 Views of Respondents

Seven respondents expressed views on a code of practice and/or the suggested principles that may be contained in such a code. Four out of the seven respondents agree that a code of practice for presentation of tariff information would be of benefit to consumers. One respondent felt that this could assist in addressing a confusing price culture in the industry. This respondent stated that it is essential that business users are provided with appropriate price formats to make informed purchasing decisions.

Another respondent considers that this code would also benefit the industry. This respondent recommends that a code, if established, should be practical for consumers, that service providers should be capable of implementing the code and that any code should not place an undue cost burden on service providers.

Some respondents are of the view that tariff transparency requirements are already covered by existing consumer legislation. One such respondent, considers that in certain markets such as the mobile market, operators have taken measures to ensure increased transparency and questioned the proposal to set out a standard format for the presentation of tariff information stating that tariff information is developed to suit the specific market and the service offering.

A number of respondents provided feedback or requested further clarity on the suggested principles/guidelines that may be included in a code of practice. One respondent expressed the view that the tariff principles would be better served through the inclusion of the statement that the operator should take due care and attention to ensure where possible that they adhere to the principles. The respondent also noted that in a competitive market there should be reasonable and sufficient recognition of the consumers ability to understand and make choices based on their own requirements and furthermore, a reasonable expectation that the consumer should exercise due consideration before making choices.

4.1.3 ComReg's Position

In order to meet the obligation in the regulations to ensure that transparent and up to date information on applicable prices and tariffs is available to end users ComReg considers it appropriate to require that a code of practice containing principles for the presentation of tariff information be established. It will seek to ensure that this Code is as simple and as straightforward as possible and does not place an undue burden on the operators. A code of practice will provide an appropriate platform to address any concerns regarding the transparency of tariff information as well as meeting the requirement of relevant legislation.

The Code will establish principles which operators apply in the development and presentation of tariff information and will start by establishing minimum standards that operators could apply when presenting tariff information. This could include,

for example, presenting VAT inclusive rates, per minute rates, an indication of the full cost of any contract over the lifetime of the contract etc.

ComReg also agrees that this will provide tangible benefits across the industry as competitors operate under a common set of principles / guidelines that will ensure each service provider presents tariff data in a manner which is accurate and fair. In requiring a code of practice it should also be noted that ComReg does not wish to restrict operator initiatives to differentiate products and services through the development of innovative pricing structures.

ComReg is of the view that these measures will improve consumer protection in relation to tariff transparency and will not duplicate the activities of other consumer protection agencies. A fundamental aim of new EU and national legislation is to increase the level of consumer protection and in most cases the responsibility to introduce sector specific consumer protection measures falls to ComReg. It should be noted that existing consumer protection legislation relates in the broad sense to consumer products and services and this code of practice (and other consumer protection regimes developed by ComReg) will be specific to the electronic communications sector. Furthermore, it is evident that there are concerns in relation to tariff transparency through the complaints and queries that are received from consumers or via alternate consumer protection agencies such as the Office of the Director of Consumer Affairs⁹.

ComReg has a role to promote the provision of clear tariff information within this developing electronic communications sector. While ComReg recognises that consumers have a responsibility to ensure that they make themselves aware of prices the absence of any basic standards for presentation of tariff data has generated confusion among consumers¹⁰. In certain cases this has led to tariff structures that are difficult to breakdown and, in effect, restrict consumer choice by making it difficult to quantify the benefit of being on a particular tariff scheme. This can in effect act as a barrier to competition.

With regard to the points put forward on principles that should be contained within a code of practice, ComReg intend to examine these issues in more detail and expects to issue a further consultation on a tariff transparency code of practice in November 2003.

In the intervening period ComReg would welcome any submissions from interested parties on issues they feel should be included in a code of practice on presentation of tariff information as this will guide the development of the consultation paper. All responses to this call for comments on issues that should be included in a tariff transparency code of practice should be returned to ComReg by post, facsimile or e-mail on or before 5.30pm on 1st September 2003.

‘Reference: Submission re ComReg approach to tariff transparency’

⁹ Since July 2002 58 consumer complaints and queries have been referred to ComReg through the Office of the Director of Consumer Affairs

¹⁰ In the six months from January to June 03 ComReg has received 336 complaints from consumers that related to billing issues, many of which related to clarity around the operators tariff.

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Commissions Position

In order to ensure that transparent and up to date information on applicable prices and tariffs is available to end users ComReg intend to work with the industry/consumers to establish a code of practice containing principles for the presentation of tariff information.

ComReg will issue a public consultation regarding the specific issues that will be covered with the code of practice in November 2003.

In advance of this consultation period, ComReg are inviting submissions on issues that may be covered within a code of practice containing principles for presentation of tariff information. All submissions should be forwarded to ComReg on or before 5.30pm on 1st September 2003.

4.2 Access to tariff information – Short term initiatives

4.2.1 Summary of Consultation Issues

In the consultation, ComReg set out proposals that, if implemented, should provide improved consumer access to tariff information in the shorter term. The proposal was that operators should provide a direct link from the homepage of their website into their tariff information. In addition to this, ComReg suggested that printed tariff information should be made available on receipt of a reasonable request from a consumer. Views were sought on the following questions

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

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

4.2.2 Views of Respondents

Seven respondents expressed views and in general there is support for the proposal to provide a direct link from the homepage of the website direct to the tariff information section. One respondent stated a clear and unambiguous link would add to the transparency of tariffs. Another felt that anything less than this proposal would make it time consuming for the consumer to shop around. However, one respondent suggested that this proposal may not be practical, especially in cases where an operator services a number of different market segments with different offerings. This respondent considered it sufficient that tariff information should be quickly and easily accessible.

On the proposal to require the provision of printed tariff information in response to a reasonable request, the five respondents who expressed a view are in agreement with this proposal. One respondent highlighted the fact that despite the growing use of Internet in Ireland many consumers still rely on printed documentation for important information. Two respondents pointed out that a request for printed information must be relevant to the consumer need as unreasonable requests will lead to increased printing costs which ultimately have to be met by consumers.

4.2.3 Commission's Position

ComReg will require that all operators provide a direct link from the homepage of their website into the tariff information section of their website by the end of October 2003. Operators will be required to provide notification in writing that they have met this requirement. This is a relatively basic measure that ensures a degree of commonality across the industry and will assist consumers by ensuring ease of access to tariff information. ComReg does not accept that it would be sufficient to require that tariff data should be quickly and easily accessible. This would lead to a myriad of different interpretations as to what constitutes ease of access to tariff information.

ComReg agrees that printed information is important, given the number of consumers who do not have access to the internet. ComReg will therefore require the provision of printed tariff information in response to a reasonable consumer request. An example of a reasonable request would be a residential consumer's request for up to date printed tariff information on all residential retail services. This could include tariff information on voice services, narrowband and broadband Internet tariffs and tariffs for value added services such as voicemail, SMS etc.

Direction 1

In accordance with Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003, all undertakings subject to regulation 18 (1) shall provide a direct link from the homepage of their website into the tariff information section of their website by the 31st October 2003.

Each undertaking shall notify ComReg in writing that they have met this requirement.

All operators subject to Regulation 18 shall provide printed tariff information in response to a reasonable consumer request.

4.3 Future Tariff Transparency Initiatives

4.3.1 Summary of Consultation Issues

ComReg also sought views as to the merits of establishing a comparative pricing website which would provide consumers with online access to comparable pricing information. This website could take a number of forms, for example,

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

In developing this website industry participation would be required to develop criteria for comparing tariff data, for deciding on the range of tariffs to be compared and to provide regular updates on tariff information. Views were sought on the following question:

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

4.3.2 Views of Respondents

Eight respondents expressed mixed views as to merits of this proposal.

Five respondents who were not in favour of the proposal put forward a range of reasons as to why they did not consider this a suitable approach to tariff transparency. The leading concerns related to the time and resources that would be required to develop this site and the difficulties associated with the development of comparable criteria for the range of tariff packages, services that are available in the market.

One respondent strongly opposed any ComReg or another 3rd party pre-defining tariff structures or determining comparable statistics and couldn't see the benefit or value of the website. Furthermore, this respondent could not foresee agreement on an industry managed website of comparable tariffs. Another respondent who agrees with the proposal to develop a code of practice on tariff transparency considered a further requirement to develop a comparative website would be excessive. The respondent expressed the view that regulatory forbearance, as set out in the Ministerial Direction, should apply to the website proposal. Another respondent was of the view that consumer demand for this service would be low.

Three respondents were in agreement with the proposal to develop a comparable pricing website. One respondent felt this could increase price transparency, reduce customer inertia and ultimately enhance consumer welfare. This respondent is of the view that overall the industry benefits from consumer inertia and consequently considered that a tariff website should be offered through independent 3rd party/parties. Another respondent who agreed with the proposal to develop a comparative pricing website suggested that ComReg host and maintain a website linking directly into the tariff section of an operator's website. The respondent is of the view that operators should be required as part of a licence condition to publish tariff information in a specific format. Another respondent felt that that a comparative website would make shopping around easier for consumers and added that tariffs should be updated whenever they changed as opposed to a quarterly update.

4.3.3 *Commission's Position*

Regulation 18(3) states that the Commission shall 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.

The development and ongoing maintenance of a comparable pricing website would require a significant resource commitment. ComReg agrees that this needs to be carefully considered in the context of consumer demand for such a service. In view of this, ComReg has adopted a stepped approach to improve tariff transparency across the sector. At this point the focus of efforts will be on developing minimum standards to which all service providers will adhere when presenting tariff options. In this regard, ComReg will establish a code of practice regime for operators which will promote the clear presentation of tariffs within the electronic communications sector. This code of practice will establish a platform on which any further future tariff transparency initiatives can be developed.

ComReg will conduct ongoing assessments of consumer needs for further measures on tariff transparency and does not rule out the establishment of a comparative website to increase tariff transparency in the future.

4.4 **Additional Measures to increase the level of transparency**

4.4.1 *Summary of Consultation Issues*

In addition to the proposals that were outlined in the consultation, ComReg also sought views on additional measures that could be used to increase tariff transparency

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

4.4.2 Views of Respondents

One respondent suggested the development of a Standard Tender Form that ComReg could provide to business consumers on request. The business consumer could then provide the form to any operator that may wish to tender to provide their telecommunications service. The respondent considers that operators should also be required to notify customers of any financial penalties they may incur if they switch service provider. This respondent also recommended the provision of facilities for companies to separate business calls and personal on mobile phone accounts.

4.4.3 ComReg comment

ComReg notes the responses that have been submitted through this consultation process and these contributions will be considered in the future development of tariff transparency measures.

In relation to the suggestion that ComReg could develop a standard form for business users, ComReg is of the view that it would be more suitable for business users to develop their own template specific to their communications requirements when inviting tenders from service providers. ComReg may at a future date host a seminar for business users representatives on this issue.

ComReg may consider developing a consumer guide to evaluation of operator's offerings at a later date.

ComReg agrees with the respondent that operators should notify customers of any financial penalties they may incur if they switch operators. It should be noted that this is a contractual matter and users should ensure they are fully aware of their contractual obligations to any operator when considering an alternative supplier.

The provision of facilities for companies to separate personal mobile calls from business mobile calls is essentially a commercial matter and this type of service is already commercially available in the Irish mobile market.

5 Quality of Service

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

5.1 Existing Quality of Service publication

5.1.1 Summary of Consultation Issues

ComReg currently monitors quality of service performance of the leading fixed line operators in the Irish market through the Measuring Licensed Operator Performance (MLOP) Programme. Under this programme, participating fixed line operators submit quarterly performance data on complaint management, service provision and fault handling. This performance data is then published on a biannual basis. In the consultation, ComReg sought views as to how format, content and delivery of the MLOP publication could be improved. Views on the following question was sought.

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

5.1.2 Views of Respondents

Four respondents expressed views on the fixed MLOP programme. One respondent stated that this publication is an excellent source of independent benchmarking information for business users. Another respondent is of the view that while the provision of information to ComReg is onerous, it has stabilised somewhat and on that basis would recommend that no further information demands are made on fixed operators. One other respondent felt this publication has merit in the fixed market where the operators have in some cases, fallen short of required customer service levels and service delivery obligations.

Another respondent questioned the usefulness of the MLOP publication from a consumer's point of view. The respondent believes that the information is complicated and not relevant to user experience. It was felt that there are substantial differences between operator reporting efforts and that the general scope and format of reporting information in this document provides an opportunity throughout for 'creative reporting' techniques. The respondent was also of the view that the consumer is unable to draw any logical conclusion from the information given that the report is unable to set any clear benchmark to rate performance. The respondent considers that ComReg should not proceed with this publication until benchmarking information is agreed and consistent for all operators.

5.1.3 Commission's Position

ComReg welcomes the feedback provided on the existing Measuring Licensed Operator Performance (MLOP) publication and, in particular, the suggestions put

forward on ways to improve the format, content and delivery of this publication. In relation to comments on data integrity this is not supported by ComReg's experience of the programme to date.

Since this consultation paper issued, ComReg has introduced changes to the MLOP publication which address some of the comments raised by the respondents above. Based on consumer research, the publication size was reduced from a detailed booklet (of around 64 pages) down to a 2 page leaflet. This less complex leaflet contains a snapshot of performance data on those metrics which consumers deem, most important, namely the ability of an operator to meet its promise to manage a consumer's complaint order or fault. If consumers require additional information, this is still available in a detailed report on ComReg's website.

Other suggestions that have arisen in this consultation will be channelled through the MLOP Forum. This working group, comprising representatives from the participating fixed line operators examines ways to develop and improve all aspects of the MLOP programme. While changes to the measurement definitions are not envisaged at this stage work is ongoing to continually improve the way in which consumers can access important quality of service information.

In the coming months, ComReg will review the number of operators who are eligible¹¹ for the MLOP programme. ComReg will continue to examine ways in which the programme can be developed to meet evolving market and consumer needs.

5.2 Mobile Quality of Service

5.2.1 Summary of Consultation Issues

As part of the consultation, ComReg also asked whether comparative mobile quality of service data should be collected.

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

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

5.2.2 Views of Respondents

From the seven respondents who expressed a view, six were in agreement or expressed no objection to the development of a mobile quality of service publication. One respondent believes that such a publication may force mobile operators to improve their customer service standards. One respondent is of the view that quality of service reporting requirements are relevant given the ubiquity of mobile networks,

¹¹ in accordance with eligibility criteria set out in the response to consultation on Measuring Licensed Operator Performance (January 2000) - document number 00/04

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the volume of mobile phone customers and the increasing range of services provided over mobile networks. Another respondent who supported the proposal in principle, recommended that quality of service should be measured on a county by county (or other segmented) basis so as not to skew results in favour of dominant carriers who have achieved full network rollout.

One respondent would have no objection to the implementation of a reliable independent measurement system, provided this could be presented in a useful and meaningful manner for consumers. The respondent recommends that work is conducted to identify meaningful and useful performance information from the consumer's perspective prior to the establishment of this programme. The respondent also recommends that ComReg uses an established external and impartial reporting body to provide a non-biased perspective on operator performance.

A range of parameters were put forward in the consultation

- management of complaints, orders and faults.
- geographic coverage,
- % calls dropped,
- % of text messages sent and received successfully
- network capacity/availability
- uplink quality/ downlink quality,
- sound quality
- customer care/after sales statistics
- billing correctness
- level of non-ionising radiation/ other health parameters.

One respondent, does not see any basis for the establishment of a mobile quality of service programme, and is of the view that the proposal to extend the existing measures to coverage, call success rates, and call drop out would duplicate the mobile operators licence obligations. The respondent believes that the number of mobile complaints compared with those of fixed and cable operators are relatively low. They are also of the view that a relatively low level of mobile operator complaints have been referred to ComReg and this would indicate that the operator's own customer care processes are working.

5.2.3 Commission's Position

ComReg may specify obligations to be complied with by mobile operators to publish comparable adequate and up to date information on quality of its services. In order to assess network quality ComReg also considers it important to ensure that mobile operators adhere to the technical quality of service obligations that are set out in their mobile licences.

Over the coming months, ComReg intends to carry out an assessment of service quality in the mobile market. This will involve ComReg conducting its own tests of mobile operator's network performance to assess performance on some of the technical measures that have been put forward through the consultation such as coverage, call quality, network availability etc. In addition to this, ComReg may survey mobile consumers to assess their needs in relation to quality of service performance data. ComReg expects to complete these studies in the last quarter of this year. In light of this ComReg will decide if any further action is required in relation to mobile quality of service measurement.

Commissions Position

ComReg intends to conduct an assessment of service quality in the mobile market. In addition to this, ComReg may survey mobile consumers to assess their needs in relation to quality of service performance data. ComReg expects to complete these studies in December 2003. Following this ComReg will decide on any next steps in relation to mobile quality of service measurement and this may involve further consultation.

6 Contracts

Users and consumers should enjoy a minimum level of legal certainty in respect of their contractual arrangements with all undertakings providing connection and/or access to the public telephone network. This also applies where a contract is agreed between end users and a provider of electronic communication services, other than one providing connection and/or access to the public telephone network.

6.1 Information included in contracts

Contracts are an important tool in ensuring that end users are provided with a minimum level of transparency regarding information about the services being provided. This enables end users to enforce their rights under the contract if service levels are not being met. In line with the regulations, it is the intention of ComReg to ensure that where a contract is agreed between an end user and a service provider subject to Regulation 17 of the Regulations (S.I. No 308 of 2003) that it includes the specified minimum criteria. Views were sought in the consultation on the particulars of the minimum criteria to be included in contracts.

6.1.1 Summary of Consultation Issues

The regulations oblige providers of electronic communication service to offer a specific minimum level of information in their contracts. ComReg proposed that contracts will be required to detail in full the minimum level of information outlined in the consultation and sought the views of respondents as to whether they believed that the list prescribed was sufficient to ensure the transparency of contracts.

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

6.1.2 Views of Respondents

The majority of respondents supported the position that the specific requirements as outlined in the consultation were sufficient to ensure transparency of contracts for end-users. A number of respondents felt that while the detail was indeed sufficient, care should be taken to avoid lengthening contracts to such an extent that the end-user is deterred from reading the entire thing or that it becomes so detailed that the level of clutter detracts from the transparency of the contract. These respondents advocated the inclusion of references to where certain information can be found. One respondent highlighted that contracts cover an increasing array of services which has necessitated references to service and tariff brochures for detail about these services. Another respondent stated that the contract may not have to detail individual prices, but should refer to the pricing structure and locations where prices can be found.

Two respondents called for further clarification on the detail to be included under the headings proposed. One of these called for further clarification, in particular, in relation to:

- Service Levels provided - it was unclear as to precisely what service levels ComReg was referring to,
- maintenance services offered - what is anticipated by “maintenance services” in this context,

- renewal of contract – what applies in cases of automatic renewal of contracts
- Compensation - how the compensation and refunds for failure would work given further clarification on service levels.

The other questioned the practicality of including the time for initial connection in the contract given that there are factors that can vary this for different customers. They also requested clarity on the compensation and refund arrangements which apply if contracted service quality levels are not met and whether a written contract is specifically required.

6.1.3 ComReg's Position

ComReg welcomes the views of respondents that the detail outlined is sufficient to provide transparency for end users when it comes to their contracts with undertakings. ComReg fully agrees that the level of information should remain such that the contract is not cluttered. It may be necessary to set out certain information in the terms and conditions and reference it in the contract itself. However, this is on the proviso that the reference is clear and the material referred is provided to the subscriber when initially signing the contract. It should also be readily available if the subscriber wishes to obtain up to date information. By including a reference in the contract to these elements, whilst not fully detailed in the contract, they remain contractually binding.

ComReg considers that the regulations are clear regarding the requirements to be included in the contract between an undertaking providing connection or access to the public telephone network, or both, and an end user. The regulations also extend this provision to a contract agreed between an end user and a provider of electronic communications services, other than one providing connection or access or both, to the public telephone network. All undertakings subject to Regulations 17(1) and 17(3) are required to include the following information in their contracts with end users:

- a) the identity and address of the supplier;¹²
- b) services provided, the service quality levels offered, as well as the time for the initial connection;
- c) the types of maintenance service offered;
- d) particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be obtained;
- e) the duration of the contract, conditions for renewal and termination of services and of the contract;

¹² Operators are required to specify the means by which complaints can be lodged in their code of practice for handling complaints including telephone, letter, email and fax contact details. This code of practice requirement does not substitute the requirements set out above.

- f) any compensation and refund arrangements which apply if contracted service quality levels are not met; and
- g) the method of initiating procedures for settlement of disputes

In light of responses received and requests for some further clarification by operators in relation to the level of detail to be included under the specific requirements, ComReg intends to publish a set of guidelines governing the minimum level of information to be contained in contracts. These guidelines will be published in September 2003 and will provide guidance as to the detail to be included in light the specific requirements in the regulations.

ComReg notes the requirement to specify quality levels offered along with any compensation and the refund arrangements which apply if contracted service quality levels are not met and the queries raised by respondents regarding the form this should take. ComReg considers this to be a vital element of a contract and considers that these service quality levels should be set out in full in the contract clearly indicating the level of compensation due to the end user should these levels not be met. This issue has been explored further in Section 8.3 where further clarification is provided on the types of contracted service levels ComReg considers appropriate. It is recognised that service levels will vary according to service provider and the particular service being offered. It is not the intention of ComReg to prescribe particular service levels at this time. However, each operator should be in a position to set out the level of service it seeks to offer to its customers.

The onus is on the undertaking to include the necessary information within the contract. Should it come to ComReg's attention that this requirement is not being fulfilled ComReg will take action to ensure compliance in accordance with Regulation 32 (1). ComReg also considers that a reference to an undertakings code of practice as set out in Regulation 28 (1) (and where this can be located) should also be included in the contract as this represents the method of initiating procedures for settlements of disputes as required under Regulation 17 (2)(g). The detail to be included in the Code of Practice is set out under Section 8.3. of this paper.

Commissions Position

In accordance with Regulation 17 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003, all undertakings subject to Regulation 17 (1) /17 (3) shall specify, *inter alia*, the following information in their contracts with end users:

- the identity and address of the supplier;
- services provided, the service quality levels offered, as well as the time for the initial connection;
- the types of maintenance service offered;
- particulars of prices and tariffs and the means by which up to date information on all applicable tariffs and maintenance charges may be the duration of the contract, conditions for renewal and termination of services and of the contract;
- any compensation and the refund arrangements which apply if contracted service quality levels are not met; and the method of initiating procedures for settlement of disputes in accordance with Regulation 28

Guidelines clarifying the level of detail to be included under the above will be published by ComReg in September 2003.

6.2 Modification of Contracts

6.2.1 Summary of Consultation Issues

The regulations provide for withdrawal by an end user from a contract without penalty if the end user does not accept a proposed modification by a service provider. ComReg sought to identify if there were any instances where the modification to the contract may be to the benefit of the end user and proposed that in this instance the end user may not be able to withdraw without penalty from the contract. Also views were sought on instances, if any, where the one month notification of change in the contract terms and conditions might be waived.

Q. 12. Should the withdrawal without penalty provision apply in instances where a proposed contract modification is clearly of benefit to an operator's customers?

Q. 13. Do you consider it necessary to specifically identify such instances where a customer's right to withdraw without penalty will not apply? If so, please identify the instances where you believe this may apply.

Q. 14. Do you consider it reasonable for ComReg to retain the ability to waive the one month notification period in exceptional circumstances?

6.2.2 Views of Respondents

Whilst one respondent felt there was merit in the proposal not to allow a subscriber to withdraw from a contract without penalty in the case of a modification resulting in a benefit to the subscriber, they proposed that a subscriber's right to withdraw without penalty should only apply where the change in question constitutes a "material change" to the overall service being offered. They felt that where there is a need to adjudicate as to whether the change is of benefit or material in nature, that existing complaint handling procedures should be pursued, i.e. the customer should seek recourse through the operators' own customer care and where necessary the issue should be escalated to the informal complaints handling process and ultimately the judicial system.

A second respondent whilst also supporting this view felt it would be very difficult to implement in practice. They foresaw a number of difficulties, including criteria which would determine whether the modification was an improvement; for example, would it be necessary for all subscribers to benefit and who would determine whether the modification was a benefit. In addition, they felt that operators could also argue that a modification will ultimately improve their operational efficiency and consequently lead to a benefit to all end users though a reduction in process.

A further respondent stated that there are many situations, including some of which are unforeseeable, in which it would be entirely inappropriate for subscribers to withdraw from the contract without penalty or at all. They felt that it should either be left open or to the discretion of the network operator. They stated that, where terms and conditions are modified as a result of a decision of ComReg or any other government agent or authority, then there should be no automatic right of subscribers to withdraw. One respondent felt that these issues, are covered by, and best dealt with, under contract law and that ComReg should outline clearly the legal basis on which it would make a determination in regard to any or all of the situations outlined.

On the issue of waiving the notification period, only one respondent supported the view that it was reasonable for it to retain the ability to waive the one month notification period in exceptional circumstances. One respondent questioned whether the option to reduce the notification period was available to ComReg. Another considered that operators should retain the ability to waive the one month notification period in exceptional circumstances. They felt it was almost impossible to prescribe a notification period for every situation.

6.2.3 ComReg's Position

ComReg recognises the concerns of respondents regarding the difficulties in defining an exhaustive list of situations which would be of benefit to the subscriber

or indeed where a modification represents a material change in the contract. Having considered the views of respondents, ComReg considers that it would not be practical to determine the effect of contract modifications on those subject to that contract. Regulations 17 (4) and 17 (5) do not offer any discretion in this regard.

ComReg notes the concerns of operators regarding the provision allowing subscribers to a service to withdraw without penalty, but the regulations are very clear in this regard. Therefore, an undertaking subject to Regulation 17 (1) or (3) will be required to notify subscribers, not less than one month prior to the date of implementation, of any proposed modification to that service. The notification shall set out the proposed modification in the condition(s) and notify the subscriber of their right to withdraw without penalty from the contract if they do not accept the modification. ComReg considers that the subscriber will be required to notify the operator that it does not accept the modification and of its subsequent intention to withdraw from the contract within the one month notification period. Should the subscriber fail to contact the operator within the operator's one month notice period the subscriber will be deemed to have accepted the modification and their right to withdraw without penalty will cease to apply. This should be stated by the operator in their notification to the subscriber of the intention to modify the contract.

Should any disputes with regard to this process arise they should be dealt with on a case by case basis by the operator concerned through the normal dispute resolution process.

Commission Position

In accordance with Regulation 17(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003, an undertaking subject to Regulation 17(1) and 17(3) shall, not less than one month prior to the date of implementation of any proposed modification, notify its subscribers to that service of the proposed modification in the conditions of the contract for that service.

The notification shall also clearly set out the subscriber's right to withdraw without penalty from such a contract if they do not accept the modification and the manner and timeframe in which they should advise the undertaking of their intention to withdraw.

In accordance with Regulation 32(1) ComReg reserves the right to ensure compliance with the provisions contained in Regulation 17 of the Regulations 2003. Further clarity on these issues shall be provided by means of the Guidelines to be published by ComReg in September 2003.

6.3 Compliance with contract obligations

6.3.1 Summary of Consultation Issues

ComReg considered that all relevant operators should be able to meet the requirements of the regulations within a period of three months but sought views as to whether this was a reasonable timeframe. It was also stated that, in order to increase transparency, each operator should place a copy of their standard contract including relevant terms and conditions on their websites.

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

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

6.3.2 Views of Respondents

Two respondents proposed that three to six months would be necessary to implement any amendments by operators. Another respondent proposed a timeframe of 180 days. It was suggested by one respondent that as they felt that greater detail is required on the issues and a further consultation or industry forum was necessary that it was impossible to propose a realistic timeframe. They felt the proposals set out had far reaching effects, some of which will only come to light during the implementation stage.

Most respondents supported the view that contracts should be published but felt this should be limited to those terms and conditions currently available or published. One respondent stated that for commercially sensitive reasons, it would not be appropriate to publish the details of any specific contract relating to a particular customer or group of customers. A further respondent stated that operators cannot publish a standard contract as one does not exist and echoed the view that to publish individual contracts would not be appropriate as these are commercially sensitive to both the operator and customer.

6.3.3 ComReg's Position

All undertakings subject to Regulation 17 are required to amend, where necessary, their existing contracts to ensure compliance with the regulations, with the amendment of contracts taking place no later than 4 months after the issuing of the guidelines (see Section 6.1.3. This time will allow those who are unclear as to the level of detail to be included under the specific requirements to consult the ComReg guidelines which will be issued in September 2003.

All undertakings will then be required to amend their contracts to, where necessary, no later than 4 months after the guidelines are published. ComReg does not consider this to be an onerous timeframe and does not accept the assertion by one respondent that the proposals set out in the regulations have far reaching effects. S.I. 71 of 1999, (Voice Telephony and Universal Service Regulations), already provides for many of the specific requirements set out in the new regulations.

ComReg recognise the commercially sensitive nature of individual contracts and agrees that it is sufficient to publish easily accessible standard terms and conditions on an operators' website. ComReg will be reviewing the publication of these standard terms and conditions to ensure that they are sufficiently transparent and easily accessible to end users. In addition, ComReg considers that all operators should publish an example of a standard contract on their website to assist end users who may be thinking of availing of a service in understanding their contract terms and ensure that as much information about an operator's contracts are available to prospective subscribers. Furthermore, any subscriber who requests a copy of the standard contract or their own contract should be sent these free of charge. All subscribers should receive a copy of their contract prior to availing of a service from an undertaking. This is of paramount importance in ensuring transparency for all end users.

Commissions Position

All undertakings subject to Regulation 17(1) and 17(3) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003, are required to amend their existing contracts to ensure compliance with Regulation 17 no later than 4 months after ComReg issue a set of guidelines. All undertakings shall notify ComReg of their compliance with Regulation 17 at this time.

All undertakings subject to Regulation 17(1) and 17(3) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003 shall publish easily accessible standard contract terms and conditions on their website along with an example of a standard contract. All subscribers shall be provided with a copy of the standard contract or their own contract, free of charge, prior to availing of the service and upon reasonable request thereafter.

7 Operator Assistance and Directory Enquiry Services

The regulations provide that an undertaking providing publicly available telephone services shall ensure that its subscribers have the right, without charge, to have an entry in a printed or electronic directory i.e. in the printed phone book or directory enquiry service.

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

7.1 Summary of Consultation Issues

ComReg stated that it believed that the arrangements under existing legislation would satisfy the requirements of the new regulations. At this point it was considered that no changes to the framework for operator assistance and directory enquiry services were warranted and that there were no plans at this stage to alter such arrangements.

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

7.2 Views of Respondents

All respondents who expressed an opinion in relation to the questions agreed that the existing regime adequately met the obligations in the regulations in relation to operator assistance and directory enquiry services.

7.3 Commission's Position

ComReg concurs with the views of respondents that the new regulations are being fulfilled by the existing arrangements and will not be proposing any alterations to the existing regulatory regime, as set out by S.I. 71 of 1999, for operator assistance and directory enquiry services at this time. The obligations with regard to directory enquiries as set out in D01/19 The Market for Directory Information Services and Products in Ireland and Information Notice D01/60 will continue.

8 Codes of Practice for Handling Complaints

The regulations provide that undertakings must implement a code of practice for handling complaints relating to areas covered by the regulations. This Code should make provision for the following matters.

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

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

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

8.1 Summary of Consultation Issues

Given that the content requirements for the codes as set out under the existing regimes are broadly the same as those proposed under the draft regulations, ComReg did not propose any major changes to the code of practice framework already established by ComReg. One exception to this related to the impact of the approach to be taken on dispute resolution under Section 9. It was considered that the most likely area to impact the framework in this regard would be the approach to compensation/refund arrangements. All undertakings with obligations under the regulations would be required to publish a Code of Practice for Handling Complaints. Views on the following question was sought

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

8.2 Views of Respondents

All respondents who expressed an opinion concurred with ComReg's position that the current codes of practice encompass the requirements outlined under the regulations. One respondent did express a concern at how compliance with the Codes of Practice would be enforced. Respondent's views with regard to compensation and redress were addressed in response to questions 29 to 30 under Section 9.8

8.3 Commission's Position

ComReg considers that the existing regime governing codes of practice for handling consumer complaints fulfil the main requirements of the regulations. As stated in the consultation, ComReg considered that the only area which may require modification was that pertaining to compensation/refund arrangements. Since the consultation issued, the legislative requirements regarding these elements to be included in a Code have been amended slightly. In the final Regulations, the compensation provision has been changed from 'appropriate cases where reimbursement of payments and compensation for losses incurred' (as in draft regulations) to 'where appropriate, reimbursement of payments and payments in settlements of losses incurred'. ComReg considers that the issue of reimbursement of payments and payments in settlement of losses incurred is intrinsically linked via

- Codes of Practice (Reg 28(1)),
- ComReg's role with regard to the resolution of disputes from end-users and directions which may be issued with regard to payments due in the case of unresolved disputes (Reg 28(4)),
- transparency and publication of information (Reg 18 (2)) and
- consumer contracts (Reg 17(2)).

ComReg's complaint handling role is outlined in detail in Section 9. Broadly speaking, it will involve reviewing whether an operator has met the provisions of its code of practice including the issue of reimbursement and payments in settlement of losses incurred (via a customer guarantee scheme) or other aspects of obligations under the universal service regulations. In arriving at its decision, ComReg has not only noted the revision in the legislation but also the comments received from respondents in response to questions which are explored in greater detail in Section 9.

In light of ComReg's approach to complaint handling, ComReg will require that all operators amend their existing codes of practice for handling complaints from end users to include a specific provision to allow for reimbursement of payments and payments in settlement of losses incurred in the event a complaint, subject to the code of practice, is upheld by the operator. In effect, this will equate to a customer guarantee scheme which will aim to provide safeguards against poor service and encourage improvement in service levels.

The customer guarantee, which will be developed and operated by the service providers, will require operators to detail the minimum service quality standards that consumers can expect and set out the appropriate amount of reimbursement or

payments in settlement of losses incurred that will apply should the operator not meet that service quality standard. ComReg also considers that the levels of service quality to be set out by operators under the terms of their subscriber contract and the associated compensation and refund arrangements which apply should also be reflected in levels of reimbursement and payments set out under the code of practice. It is considered that these two elements are intrinsically linked and to facilitate transparency a commonality of approach should be adopted.

ComReg considers that a Customer Guarantee should cover the full range of services provided the supply of standard fixed and mobile telephone services

The guarantee should set out the service levels for, *inter alia*,

- acknowledgement of complaints and complaint resolution
- provision of services
- acknowledgement of receipt of a fault and fault repair; and
- provision of appointment dates

Operators will be required to introduce a customer guarantee scheme, stating the level of payment/credits which they are committed to pay in the event that service levels specified by the operator are not met. The code of practice must also include a timeframe for complaints relating solely to the application of the customer guarantee scheme with reasonable timeframes allocated to such complaints. The provision to offer more than the set level would be left to the discretion of the service provider and based on the merit of each case. There may also be certain circumstances where the guarantee could be waived, such as where a customer accepts a service provider's offer to supply an interim/alternative service or a customer refuses a reasonable offer of an interim/ alternative service.

The legislation contains a provision whereby ComReg can, under Regulation 28 (3), issue directions to an undertaking, to which Regulation 28 (1) applies, requiring that the undertaking make such alterations or additions to its code of practice as the Commission considers appropriate and specifies in the directions. This provision shall be utilised by ComReg should it be considered that an undertaking has not met its obligations to include a customer guarantee scheme within their code of practice, or were any scheme is not considered to be adequate.

Should a customer consider that the guaranteed level of service has not been met, the customer should contact the service provider's customer care team, following the procedures set out in the code of practice for making the complaint. The process to be adopted for complaints which still remain unresolved after the code of practice procedure has been exhausted is discussed in the next section.

Direction 2

In accordance with Regulation 26 of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 308 of 2003, all undertakings subject to regulation 28 (1) shall amend their code of practice (required by decision notices D13/01 and D06/01) for handling complaints from end users to include a specific provision to allow for reimbursement of payments and payments¹³ in settlement of losses incurred in the event of a complaint, subject to the code of practice is upheld by the operator. A timetable for handling such complaints shall be included in the code.

Operators are to provide ComReg with a copy of their code of practice 21 days in advance of publication and any modifications.

Operators shall publish their amended code of practice by 30th January 2004.

Operators shall notify subscribers of the modification to the Code of Practice, outlining the key provisions of the code of practice, no later than 4 months after publication of the amended Code of Practice.

¹³ As stated in Section 8.3, payments in settlement of losses may take the form of a credit to be applied by the operator. Where the payment is to be made in the form of a credit this should be stated clearly in the code of practice.

9 Dispute Resolution and Complaint Handling

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

Any procedures established by ComReg for the purpose of this dispute resolution process must also be specified and published. Such procedures must be transparent, inexpensive and enable disputes to be settled fairly and promptly. ComReg may also seek to resolve disputes where it involves operators in more than one Member State, by co-ordinating with the relevant authorities of the Member States in question.

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

9.1 Approach to Dispute Resolution and Complaint Handling

9.1.1 Summary of Consultation Issues

ComReg proposed principles according to which it would handle complaints in the future. The main principles proposed were:

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

In essence it was proposed that we continue our existing approach but in a more formalised way in light of new legislative obligations. Overall it was considered that the majority of complaints can be dealt with utilising a procedure similar to that currently employed, namely facilitation and conciliation, with only a small minority of complaints requiring some sort of formal investigative process.

Q. 19. Do you agree with ComReg's overall approach to handling consumer complaints? Are there alternatives? Please explain your answer

9.1.2 Views of Respondents

Most respondents were in favour of the approach outlined, i.e. that ComReg continue the existing approach but in a more formalised manner. It was felt that ComReg had the experience and resources to resolve complaints and ensure compliance with the regulatory framework. While one of these respondents indicated that they were satisfied with the approach, they also believed that resulting procedures should be no more complex, onerous or costly than those currently employed. They expressed a number of concerns about the principles underlying the approach, namely, which operators should fall under the procedure, remedies to complaints and binding decisions. The sentiment with regard to limiting costs was echoed by a second respondent who stated that they would not be in favour of any additional cost burden being placed on operators by the appointment of an independent person to resolve complaints. A third respondent considered the existing approach to be appropriate for handling customer complaints and recommended that this remain in place. They saw no merit in supplementing the current process given its success.

One respondent felt ComReg had no role in the area of complaint handling. They believed that ComReg should limit itself to ensuring that consumers have clear and easy access to the complaint handling and dispute resolution procedures of the Office of the Director of Consumer Affairs. A second respondent felt that at present where a service fails or dispute develops the only recourse available is through the courts which they felt to be inappropriate for the typical situation encountered. They favoured the introduction of a complaint handling system that is properly staffed and with the appropriate legal status and believe that the current proposal is inadequate for the business user.

9.1.3 ComReg's Position

Since the consultation was issued the wording of the legislation has been changed with respect to payments – (see further below), but most of the provisions remain the same. ComReg or another independent person appointed by ComReg continues to have a role with regard to disputes and payments to users. We are also required to put in place procedures for resolving complaints which remain unresolved after due completion of all procedures of an operator's code of practice and may issue directions to operators to comply with such measures which ComReg may specify to resolve the complaint. As such the principles outlined in the consultation continue to be relevant and these along with respondents' views will determine the approach to be taken by the office.

ComReg notes the views of the majority of respondents that this office is best placed to take on the role in light of its expertise in the area, its resources and in ensuring compliance with the regulatory framework. The obligations in the regulations are clear in this regard, as is our role set out under the Communications Act 2002.

ComReg is cognisant that any revision to the current procedures should not be too burdensome on the parties involved. The manner in which ComReg is to enact this role will be discussed in the following sections. ComReg intends to issue an information notice in the area of complaint handling setting out the role of all the parties involved (ComReg, Operators and Complainants).

Following a change in the legislation, ComReg can now specify as a resolution to a complaint, reimbursement of payments and payments in settlement of losses incurred

in accordance with the provisions of an operator's code of practice. ComReg's role is now to ensure that an operator has complied with its Code of Practice including those situations where payments may be due under the code of practice. ComReg, will, as stated in Section 8.3, be requiring operators to develop adequate customer guarantee schemes for inclusion in their Codes of Practice. In the first instance, ComReg is placing the onus on operators to do this with suitable customer guarantee schemes to be developed by operators no later than January 2004. However, if appropriate customer guarantee schemes are not developed by operators ComReg will consider introducing minimum criteria for customer guarantee schemes. This issue and its impact on the proposed role of ComReg in relation to disputes will be discussed in the next sections.

Commissions Position

ComReg will ensure that procedures are in place to resolve complaints which remain unresolved after due completion of all procedures of an operators code of practice.

ComReg's role will be to ensure that an operator has complied with their code of practice and customer guarantee scheme including those situations where payments may be due under the code of practice or customer guarantee scheme. ComReg may specify a resolution to a complaint including reimbursement of payments and payments in settlement of losses incurred in accordance with the provisions of an operator's code of practice.

As stated in Direction 2 all undertakings subject to Regulation 28(1) are required to introduce an appropriate Code of Practice and/or Customer Guarantee Scheme by the 30th January 2004.

An Information Notice will be published outlining ComReg's role in complaint handling, the procedures which shall be adopted and the role of the parties involved i.e. operators and complainants.

9.2 Initial Responsibility for Handling Complaints

9.2.1 Summary of Consultation Issues

In the context of ComReg's complaint handling role, it was stated that we would only accept a complaint once a complainant has exhausted (or is unable to exhaust) the service providers complaint handling process, as it was considered that the primary responsibility for complaint resolution must be retained by the service provider themselves

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

9.2.2 Views of Respondents

Again the majority of respondents) agreed with the principle of involving ComReg only after the operator's complaint handling process has been exhausted. In this way duplication is minimised, it is easier for operators to track complaints and it avoids 'forum shopping' by customers in seeking the most advantageous resolution to their complaint. One respondent suggested that in the interest of transparency and fairness that complainants should be asked by ComReg to demonstrate that they have exhausted, or have been unable to exhaust, the service providers complaint handling process.

One respondent maintained that customers who wish to pursue complaints beyond an operator's escalation path have sufficient access to independent arbitrators in order to ensure that their case is represented and felt that ComReg has no role in this area.

9.2.3 ComReg's Position

ComReg welcomes the broad support for the principle that initial responsibility for complaint handling should remain with the service provider themselves. ComReg considers that operators and service providers have a responsibility to provide an acceptable level of customer service and complaint resolution for their customers. As such the onus is on the operator or service provider to attempt to resolve the complaint in the first instance. Only where this procedure has been exhausted or has demonstrably broken down will ComReg accept a complaint on behalf of a customer. Currently ComReg endeavours to ensure that consumers exhaust an operator's own complaint handling procedures before the office will deal with a complaint. Further procedure will be developed to ensure complaints are only accepted where a consumer has genuinely exhausted the complaints procedures.

Commission's Position

ComReg will accept a complaint, once it has been suitably demonstrated that the operator's complaint handling procedures have been, or have been unable to be, exhausted.

9.3 Role of ComReg in Handling End User Complaints

9.3.1 Summary of Consultation Issues

ComReg proposed to deal with each complaint on a case by case basis, based on its merits and in light of its ability to affect an outcome. It was noted that to date, most of the complaints received by this office have been dealt with informally resulting in a mutually acceptable solution being found in a relatively short timeframe. In light of this, it was stated that a two tiered approach was envisaged. Stage 1 would involve initial informal facilitation and conciliation in order to resolve disputes as expeditiously as possible. Stage 2 would involve a more formal complaint resolution

service utilising ComReg's powers of investigation and enforcement. This would only apply where the first process failed or the nature or seriousness of a complaint warranted it. It was considered that the majority of complaints would be dealt with through Stage 1 avoiding escalation to an investigation.

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

9.3.2 Views of Respondents

Most respondents viewed the two tiered approach as a sensible and efficient way of resolving complaints based on the premise that the majority of complaints would continue to be resolved at stage 1, with stage 2 only being adopted in exceptional circumstances. One respondent felt that there should be no direct escalation to stage 2 as they felt it was impossible to define situations where the nature or seriousness of a complaint warrants intervention by ComReg without exhausting the procedure at stage 1. Two respondents sought clarification on the nature of the powers of investigation proposed by ComReg as part of the stage 2 process. One respondent requested that ComReg clearly outline the legal basis under which it would issue binding decision on service providers and the channels of appeal which would be open to service providers where they believe the decision to be justified, fair or reasonable. Another stated its view that decisions arrived at by ComReg as part of this process should be open to appeal by either of the interested parties.

A third respondent believed that key to the current approach is the resolution of complaints with regard to refunds and credits remains within the remit of the service provider. They believed that the existing structures for handling complaints have served well to date as has the Small Claims Court for the small number of complaints that were escalated to a level higher than ComReg. The respondent felt that service providers were best placed to determine whether refunds or credits were required and that the introduction of a formal process by ComReg will usurp existing bodies.

9.3.3 ComReg's Position

As stated above, ComReg will continue to have a role in resolving complaints that have failed to be resolved under an operator's code of practice for handling complaints. In order to discharge this obligation, it was envisaged in the consultation that a two tiered approach would be necessary. Having reviewed respondent's comments, ComReg intends to proceed with the adoption of a two tiered approach but not in as formalised a manner as proposed in the consultation.

Stage 1 will remain as proposed and will involve ComReg continuing its current procedures based on informal conciliation and facilitation. As acknowledged by at least one respondent this process has proven to be a successful way of dealing with the majority of complaints received by ComReg. While recognising that the majority of complaints should be resolved through this process there will, however, be cases where a complaint may remain unresolved after this stage has been exhausted.

It was stated in the consultation that the second stage of the procedure would involve more formal investigation of those complaints that could not be resolved under the

first stage of the process. At the time, it was envisaged that this would involve ComReg determining on the outcome of the complaint. ComReg will proceed with this second tier to the complaint handling process, although it will now be an extension of the informal conciliation and facilitation of stage 1. It will cover instances where, after the exhaustion of the conciliation and facilitation stage, there is still disagreement between a service provider and an end user. In such cases, and again it is anticipated that this will be the minority of complaints, ComReg may have to determine whether there has been compliance with the operators code of practice, or if there has been non compliance in relation to another obligation under the USO regulations. If this should still fail to yield a resolution to the complaint would ComReg consider issuing a direction to an operator specifying an outcome as envisaged under Regulation 28(4). Any decision by ComReg on a complaint, in accordance with Regulation 28(4) would be without prejudice to any legal rights of action which may apply.

There would be no immediate escalation to the second stage of the complaint handling process as ComReg considers that an attempt should always be made to resolve the complaint through informal conciliation and facilitation first. ComReg may use its discretion to terminate its consideration of a complaint if during the course of an investigation it concludes that no settlement is required or that the operator has no case to answer ComReg intends to issue an information notice on its complaints role setting out procedures to be followed including appeals.

The possible outcomes of such a ComReg direction could be, inter alia:

- Operator to provide a service or product to the complainant
- Operator to provide an apology or explanation to the complainant
- Operator to take some other practical action of direct benefit to the complainant.
- Operator to offer a reimbursement of payments or payment in settlement of losses incurred in line with the levels set out in their customer guarantee under their code of practice for complaint handling

Commission's Position

ComReg will publish an Information Notice outlining in full its role in handling complaints. It is anticipated that this will involve a two staged approach.

Stage 1 will involve ComReg continuing its current procedures based on informal conciliation and facilitation between the operator and the complainant. Some further refinement of these procedures will be necessary.

Stage 2 will cover instances where, after the exhaustion of the conciliation and facilitation stage, there is still disagreement between a service provider and an end user as to whether the Code of Practice/Customer Guaranteed has been applied correctly.

ComReg reserves the right, as part of Stage 2 to determine whether there has been compliance with the operator's code of practice, or if there has been non compliance in relation to another obligation under the USO regulations.

9.4 Stages to the Complaint Handling Process

9.4.1 Summary of Consultation Issues

Within the two staged approach, it was envisaged that there would be four steps to the complaint handling process. These steps were:

- a) Acceptance of the Complaint
- b) Facilitation & Conciliation
- c) Formal Investigation
- d) Decision Making

It was proposed that appropriate procedures would be established around each of the stages and that in certain instances, e.g. repeat breaches or serious complaints that a summary of the particular dispute along with the relevant findings would be published. In addition, it was proposed that along with the current publishing of aggregated information on complaints by sector that the number of complaints received would be published in a disaggregated manner.

- Q. 22. Do you consider that the steps listed in the complaint handling process are sufficient to meet the objectives of settling disputes in a fair, transparent and prompt manner.**
- Q. 23. Are there alternative approaches or other factors which should be considered? What timeframes or procedures might govern each step of the complaint process?**
- Q. 24. Do you agree with the proposal to publish a summary of repeated breaches or serious complaints? What issues might this give rise to?**
- Q. 25. Do you agree with the proposal to publish disaggregated complaints data on the number of complaints received by ComReg? What issues might this give rise to ?**

9.4.2 Views of Respondents

Whilst there was support for the first two stages in the procedure as outlined in the consultation, more clarity surrounding the “formal” investigation stage was requested by respondents as formal investigations would be a new procedure for ComReg and operators alike. The final stage of the process regarding decision making was called into question by respondents. One respondent rejected the proposal that the final decision will be binding on the service provider if accepted by the complainant whilst the complainant retains the ability to reject the decision and seek an alternative remedy through any other procedures that may be available. They felt this proposal does not reflect a sufficient level of impartiality and that ComReg does not have the power to deprive an operator seeking redress in the courts. They proposed that a decision should only be binding once accepted by both the complainant and the operator. A second respondent called on ComReg to outline the legal basis for making decisions binding on operators.

On the issue of timeframes and procedures one respondent felt that the current timeframes for resolving complaints referred to operators by ComReg is entirely sufficient and a more formalised process would require more specific detail before it would be possible to comment on the suitability of timeframes to govern each step of the process. A second respondent felt that any timeframes and procedures that may be implemented in the proposed complaint process should be fair, reasonable and timely.

One respondent believed there was merit in the proposal to publish a summary of repeated breaches or serious complaints in that it will signal any issues that may cause problems for other operators. They called for a clearer definition of repeated or serious breaches, a view that was echoed by other respondents. One stated that whilst having no reason to object to the proposal, they were unclear as to what this

would seek to achieve. They believed it would be helpful for ComReg to justify its proposal and the reasons for such publication. A further respondent stated that they did not support this proposal and viewed this as uncontrolled interference in the market.

On the publication of disaggregated complaint data, by operator for example, one respondent considered that the publication of any statistics on complaints by operators should be dealt with as part of the MLOP programme to avoid duplication and inefficient uses of resources. In addition, they felt that the proposal may give rise to perception issues (quoting absolute numbers of complaints would allow smaller operators to appear to be better performing than larger ones). A second respondent felt that the publication of complaints data could only be beneficial if the complaints are fully defined in terms of scope and outcome. They believed that categorisation of complaints should allow minor complaints to be distinguished from major complaints when reviewing the volumes associated with an individual service provider. They echoed concerns over expressing the volumes of complaints and felt that this should be expressed as a proportion of the number of subscribers served by a particular service provider. One respondent whilst having no objection to ComReg publishing disaggregated complaints data felt it is extremely important for ComReg to agree and match the information regarding complaints to a specific service provider with the databases of service providers themselves.

9.4.3 ComReg's Position

As stated in Section 9.3.3 ComReg will not be introducing a "formal" investigation stage, however, ComReg still retains the ability under the legislation to issue directions to undertakings requiring that undertaking to comply with such measures as ComReg may specify for the resolution of a complaint. Complaints that fail to be resolved after Stage 1 (after ComReg's normal complaints handling procedures have been exhausted) and that may require ComReg's intervention will be dealt with through some form of arbitration with ComReg taking an active role in this process and where appropriate prescribing an outcome to a complaint. Therefore rather than introducing a separate second stage to the complaint handling process it is proposed to include an additional level to our existing procedures, for those complaints that require direct intervention by ComReg. Given the experiences of our current complaint handling procedures it is anticipated that only the minority of complaints will fail to be resolved utilising informal reconciliation and facilitation between an operator and a consumer. Whether a complaint requires intervention by ComReg will be determined on a case by case basis.

Additional timeframes and procedures will have to be developed for those instances where ComReg's arbitration in a complaint is necessary especially in cases where ComReg may be required to specify the outcome of the complaint. These will be fair, reasonable and balance the needs and expectations of all parties involved. These procedures and the role of each party in the procedure will be outlined in the information notice which is to be published on the offices role in handling complaints.

With regard to the publication of serious breaches under the process, ComReg does not intend to do so at this time. ComReg believes that it is more beneficial to publish information regarding operators' overall compliance with their codes of practice or customer guarantee scheme. Should it become apparent through ComReg's role in resolving complaints that a particular operator is repeatedly not adhering to its code

of practice or guarantee scheme or that they fail to meet the requisite standards then ComReg may publish a notice to this effect. Prior to doing so, ComReg will offer the operator an opportunity to resolve the area of non compliance within a reasonable timeframe. If it is resolved to the satisfaction of ComReg then such a notice may not be published.

As for the publishing of disaggregated complaint information, ComReg notes the comment from one respondent that this should be done under the MLOP programme, but this information shall pertain solely to the complaints received by ComReg and an operator's performance in resolving those complaints. The necessary steps will be taken to ensure that the information to be published will reflect an accurate picture of performance. ComReg will fully set out the information to be published in the information notice outlining ComReg's role in Complaint Handling which will include a timetable for introduction of these procedures.

Commissions Position

The stage to the Complaint Handling Process will be :

1. Acceptance of the Complaint

2. Facilitation & Conciliation -

Stage 1 – Agreement between Parties

Stage 2 – Potential ComReg prescribed Outcome

Complaints that fail to be resolved after Facilitation and Conciliation between the parties and that may require ComReg, where appropriate, prescribing an outcome to a complaint, will be dealt with through some form of arbitration with ComReg taking an active role in this process.

ComReg may publish information regarding operators' overall compliance with their codes of practice or customer guarantee scheme

ComReg will publish disaggregated information on the complaints received by the office. ComReg will set out the scope and manner of the information to be published and will set this out in the Information Notice including a timetable for introduction.

9.5 Services and Products to be covered by the complaints procedure

9.5.1 Summary of Consultation Issues

In light of the USO legislation, and its function under the Communications Act 2002, ComReg considered that the certain services should be covered by the complaints procedure:

- Services falling within the scope of USO (undertakings designated with USO)
- Leased Lines (undertakings designated as having SMP)
- Publicly available telephone services
- Publicly available electronic communications services
- Operator assistance and directory enquiry services
- Connection and/or access to the telephone network

The intention was to deal with any complaints about service other than those identified above by utilizing the facilitation and conciliation procedure.

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

9.5.2 Views of Respondents

Two respondents agreed that the services and products listed were appropriate for inclusion within the scope of ComReg's complaint handling process. A third respondent stated that the list of services appeared to be those which fall exclusively on the USO provider. They felt that if the aim of the dispute resolution process is to protect consumer's rights then all services covered by all providers of electronic communications services and products should be covered by the proposed procedure as in their opinion failure to do this would lead to a two-track approach, confusion and ultimately a diminution of the rights of consumers.

9.5.3 ComReg's Position

All services provided by electronic service providers in so far as they may relate to an alleged contravention of the Universal Service Regulations or fall under our function under the Communications Act 2002 will be subject to the code of practice and customer guarantee scheme. These services therefore, will be covered by the proposed procedure for complaint handling by ComReg. ComReg considers that the list of services set out in the consultation remains appropriate. Therefore the following services shall fall within the scope of ComReg's complaint handling role:

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

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

Should it become apparent that other services may fall under the complaints procedure these will be examined on a case by case basis.

Commissions Position

The following services shall fall within the scope of ComReg's complaint handling process:

- Services falling within the scope of the USO (undertakings designated with USO)
- Leased Lines(undertakings designated as having SMP)
- Publicly available telephone services
- Publicly available electronic communication services
- Operator assistance and directory enquiries
- Connection and/or access to the telephone network

9.6 Operators to be covered by the complaints procedure

9.6.1 Summary of Consultation Issues

In line with the legislation, ComReg considered that undertakings providing the services referred to in section 9.5.1 should be bound by the complaint handling procedure.

Q. 27. Do you agree with the proposal on operators to be covered by the complaint handling procedure? Are there any other considerations?

9.6.2 Views of Respondents

In the view of one respondent the complaint handling procedure should include all operators providing connection and/or access to the public telephone network, publicly available telephone services and publicly available electronic communications services. They also felt that the principle of technological neutrality should apply. It was suggested by one respondent that service providers in various

sectors must adopt and develop the necessary customer handling procedures in line with the relevant EU directives and national regulations.

9.6.3 *ComReg's Position*

ComReg agrees with respondents comments that all operators providing connection and/or access to the public telephone network, publicly available telephone services and publicly available electronic communications services. ComReg considers that this will in general include the providers of the services and products listed in section 9.5.3. As such, an undertaking providing such services will be required to adopt the necessary complaint handling functions to support ComReg's role and develop appropriate codes of practice in line with the legislation.

9.7 Who can use ComReg's complaint handling procedure?

9.7.1 *Summary of Consultation Issues*

ComReg proposed to accept complaints from users including businesses and consumers who are using or requesting a relevant service who are not themselves providing public communications services.

Q. 28. Do you agree with ComReg's proposal on users that should be eligible to avail of the complaint handling procedure ? Please explain your answer and offer alternatives if appropriate.

9.7.2 *Views of Respondents*

One respondent believed that all customers should have the same channels open to them as is the case with the current approach. A second respondent agreed with the proposal to accept complaints for the listed users but echoed the view that all users are directed to the service provider in the first instance and have their complaints accepted by ComReg only where such dispute resolution procedures have failed.

One respondent rejected the proposed inclusion in the list of users of a universal service who have sought to obtain a service or product provided by the universal service operator and have been refused access to such a service. They referred to their submission on the USO consultation where they had responded to a proposal by ComReg on the provision of reasonable access by suggesting the implementation of an economic test to determine reasonableness. As such, they would regard it as essential that the determination of a request deemed as being "unreasonable" using the agreed criteria would be binding on the customer. They would thus reject the inclusion of this category in the list of users to be covered by the complaint handling procedure.

9.7.3 *ComReg's Position*

ComReg will continue to accept complaints from all users including businesses and consumers who are using or requesting a relevant service who are not themselves providing public communications services. The issue of the inclusion of users who have sought access to a service or product provided by the universal service operator was dealt with in recent response to the universal service consultation¹⁴. There it was stated that there may be cases where there are disagreements over whether the agreed

¹⁴ D03/68 The Future Framework for the Regulation of Universal Service in the Irish Telecommunications Market

criteria have been properly applied. It was stated that such criteria should be robust enough not to require intervention by ComReg. However, consumers rights to dispute a decision made by the USP is explicitly recognized in Regulation (3)(3). Therefore ComReg's dispute resolution procedures will be available to users, who, after exhausting the USPs complaints process, wish or need to raise any issues regarding the provision of telephone connections.

Commission's Position

The following users will be eligible to use ComReg's complaint handling process:

- Consumers - meaning any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession
- End Users – meaning a user not providing public communications networks or publicly available electronic communications services where "user" means a legal entity or natural person using or requesting a publicly available electronic communications service

9.8 Remedies to Complaints

9.8.1 Summary of Consultation Issues

ComReg considered that the circumstances requiring the payment of “compensation” would be limited as there are many other appropriate remedies to a complaint. Nevertheless, ComReg wished to consider how this aspect might be dealt with in the context of a more formal complaint handling role by ComReg. Two approaches to handling the re-imbusement and/or compensation issue were envisaged.

- operators might offer refunds and compensation schemes in the spirit of self/co-regulation and/or
- ComReg might prescribe refunds and/or compensation as a remedy to a complaint.

Since the consultation issued, there have been changes in the Regulations which affect the proposed approach in the area of remedies. In particular, under Regulation 28(1)(e) “compensation payments” has been removed and replaced with “payments in settlement of losses incurred”. Under Regulation 28(4), as part of its role in the resolution of disputes, ComReg may “specify for the resolution of the dispute including where appropriate, reimbursement of payments and payments in settlement of losses incurred in accordance with the provisions of a code of practice referred to in Regulation 28(1)(e). ComReg considers that these changes are in line with the approach outlined below.

Operator Customer Guarantee Schemes

The consultation proposed that operators would include as one of the criteria in their codes of practice for handling complaints, the “compensation” and/or refund arrangements which apply if the contracted service quality levels are not met. It was stated that if such an approach was deemed appropriate, ComReg may seek to establish a minimum criteria governing compensation payments, which could be suitably adopted by operators, having regard to the nature of the service they are offering and the complaint itself. It was also suggested that one possibility to fulfil this would be for operators to offer a service level agreement or customer guarantee which would suitably compensate them for any failure to meet specified quality levels or terms and conditions of the contract.

It was proposed that if such an approach was adopted by particular operators, the specific issue of compensation might not need to be dealt with by ComReg in the context of its complaint handling procedures.

ComReg Prescribed Remedies

An alternative approach would be for ComReg to operate a compensation policy which would only be applied in certain circumstances and would involve ComReg specifying that reimbursements and/or compensation be paid by the operator to the complainant if it is deemed appropriate in the context of the overall ComReg dispute resolution process. It was considered that in the case of a ComReg compensation scheme that the maximum amount which might apply to any particular case would be €1,269 and views were sought as to the situations where compensation might apply, what it should cover and the form it should take. A list of remedies which ComReg considered appropriate in respect of its complaint handling process where a complaint against an operator is upheld was also proposed including for example, the operator to provide an apology or explanation to the complainant.

Views on the following questions were sought.

- Q. 29. Do you consider that operators should operate compensation schemes as part of their complaint resolution process.**
- Q. 30. Do you consider that an operator own initiative in relation to compensation as set out above might appropriately deal with the matter?**
- Q. 31. How might such schemes operate? Are there alternative suggestions?**
- Q. 32. Do you consider that ComReg's role in relation to compensation might be to (a) review how operators comply with their own compensation schemes or (b) direct that operators pay awards of compensation to users?**

- Q. 33. If you consider that a ComReg compensation scheme is appropriate does the approach above adequately deal with the issue of compensation in the context of ComReg's obligations with respect to dispute resolution under the draft regulations? Are there other alternatives?**
- Q. 34. Do you agree that compensation, where appropriate, should not exceed a set value of €1,269? Do you have any views as to how compensation payments should be made?**
- Q. 35. What issues might the prescription of the above mentioned remedies give rise to? How might these issues be dealt with?**
- Q. 36. Do you have an alternative suggestion for dealing with the issue of compensation/refund arrangements?**
- Q. 37. What categories of complaints might be subject to a compensation scheme (either operator owned or ComReg prescribed)?**
- Q. 38. Depending on the approach adopted in relation to remedies, it will require the development of adequate procedures in the context of the overall ComReg complaint resolution processes discussed earlier. What procedures might be appropriate?**
- Q. 39. Do you agree with the proposals regarding the cost of utilising the complaint resolution service above?**

9.8.2 Views of Respondents

Customer Guarantee Scheme

In the main respondents felt that "compensation" should be the responsibility of the service provider themselves. One respondent strongly agreed with the proposal that individual operators should operate their own compensation schemes in respect of the complaint resolution procedure. They felt that should an operator fail to provide the best possible level of service to its customer that this operator should provide some form of refund/compensation and were in support of the approach to allow operators control their own "compensation" scheme.

A second respondent believed that refunds and credits should continue to be given at the operators' discretion and that they believe that existing escalation routes have proven to be effective. This view was echoed by two other respondents who did not support the introduction of the proposed formalised approach where minimum compensation guidelines are set out and the outcome monitored by ComReg. One respondent was of the view that ComReg should allow current practices to prevail,

were service providers take personal responsibility for compensating inconvenienced customers, rather than prescribing compensation schemes and contracted compensation. The respondent saw no need for regulatory intervention in this area.

ComReg Prescribed Remedies

All respondents who expressed a view rejected the introduction of ComReg prescribed compensation schemes or to have set payments with most respondents believing that ComReg's role should be limited to reviewing how operators comply with their own compensation schemes. One respondent stated that to enable ComReg to direct that operators pay awards of compensation to users is tantamount to ComReg being given a right to impose a penalty and assume a judicial function without any right to appeal. In particular, they rejected the suggestion in the consultation that ComReg could direct payments on the basis of "loss of convenience or amenity" as the current practice in the telecommunications industry and in other industry is the "consequential losses" are not refundable to consumers.

A second respondent, whilst stating that ComReg's role should be confined to reviewing how operators comply with their own compensation schemes, also believed that this should not involve a requirement from operators to specify and publish each possible compensation scenario and associated payment. They felt ComReg's role should be limited to monitoring the number of complaints received against operators in the area of re-imburement or concerning compensation. Only where market forces can be demonstrably shown to have failed should ComReg intervene with a "regulated" compensation scheme. Another respondent referred to the then draft regulations which stated that "where appropriate" undertakings shall make provision for reimbursements of payments. They suggested that no such scheme should be introduced until the performance of the undertaking in question has been reviewed and found to be ineffective in handling complaints.

In relation to the other issues explored, again all respondents felt that matters such as the maximum level of compensation, the form it should take and when it applies should be left up to the discretion of the operator concerned. In addition, it was also proposed that the remedies which should apply and the categories of complaint which might be subject to a compensation scheme should also be left to the discretion and flexibility of the operators.

On the issue of the cost of utilising the complaint resolution procedure two respondents felt that there should be no charge to complainants for availing of the complaint handling procedure. One of these could not see any justification for giving rise to additional costs in order to introduce a framework for dealing with a small number of exceptional cases that can currently be catered for within existing structures. Only one respondent felt that there should be a charge, as allowing complainant recourse to the complaints procedure free of charge would impose a significant cost burden on operators and potentially ComReg. In this context they suggested that a complaint fee structure should be included in the procedures being developed.

9.8.3 ComReg's Position

Having reviewed comments from respondents and considered the issues further, ComReg will ensure that an operator or service provider operates an appropriate compensation scheme through the inclusion of a customer guarantee scheme in their

code of practice and applies it appropriately to each complaint received (as set out in Section 8.3).

Accordingly, and in line with respondents' views, ComReg will not prescribe the levels of compensation to be paid. This will be at the discretion of the operator when drafting their own customer guarantee, which should also include terms outlining what the guarantee triggers are and when payment may be due. Should an operator fail to provide the stated level of service to its customer then, in the opinion of ComReg, this operator should provide some form of reimbursement/payment in settlement of losses incurred. ComReg will retain the right, as set out under the legislation, to require amendments to individual operators' codes of practice.

Where an end user disputes the decision of an operator to provide the payment specified under the scheme and they have exhausted the service providers' own complaint handling procedures then this end user may avail of ComReg's complaint handling procedures. ComReg will attempt to resolve the complaint in the normal manner i.e. through informal facilitation and reconciliation in the first instance. ComReg will not prescribe individual payments outside of the levels set out in the customer guarantee scheme but will check whether the operator has applied its own guarantee scheme correctly. Other possible remedies to a complaint, including for example the operator issuing an apology, have been set out in Section 9.3.3.

Whilst ComReg recognises that many respondents expressed an opinion that the issue of payments in settlement of losses incurred or compensation should be left to the discretion of individual operators, it considers that the reference to "where appropriate" in Regulation 28 (1)(e) refers to the fact that payments may not be justified in every circumstance, rather than the general appropriateness of an overall compensation scheme. ComReg recognizes that in certain sectors, the practice of issuing credits or payments on a case by case basis has proven to be effective. Should an operator fail to provide the best possible level of service to its customer then they are entitled to a minimum level of reimbursements/ payment. ComReg would encourage service providers to use the customer guarantee scheme as a competitive tool which will enable them to differentiate their customer service to the benefit of end users in general.

On the question of the cost of utilising the complaint resolution procedure ComReg considers that it remains appropriate at this time to continue to allow complainants recourse to the complaint handling procedure free of charge as it is considered that the majority of complaints will continue to be dealt with through the existing framework. ComReg reserves the right to introduce a cost in the future should the need arise.

Should it become apparent that after the implementation of the code of practice or the customer guarantee scheme that service providers are failing to comply with them, ComReg reserves its right to introduce more formalised complaint handling procedures to resolve those complaints which remain unresolved after all procedures have been exhausted.

By January 30th 2004 all electronic communication service providers will have to introduce their customer guarantee schemes with a copy being provided to ComReg no later than 3 weeks prior to publication. By this time ComReg intends to have

published an Information Notice clearly outlining its role in handling complaints including the procedures to be followed by all parties involved.

Commissions Position

ComReg's role in relation to the issue of payments of reimbursements/ payments in settlement of losses will be to ensure that an operator or service provider operates an appropriate compensation scheme through their code of practice, as set out in Direction 2, and applies it appropriately to each complaint

Where an end user disputes the decision of an operator to provide the payment specified under the scheme and they have exhausted the service providers own complaint handling procedures then this end user may avail of ComReg's complaint handling procedures

ComReg will attempt to resolve the complaint in the normal manner i.e. through informal facilitation and reconciliation in the first instance. ComReg reserves the right to prescribe the outcome of a complaint that remains unresolved after exhausting all procedures. ComReg will not prescribe individual payment outside the levels set out of the levels set out in the customer guarantee scheme, but will check whether the operator has applied its own guarantee scheme correctly.

10 Next Steps

Many of the measures set out in this Decision Notice, require further work before they are implemented. Other measures are a continuation of existing obligations and therefore their implementation requires little or no work. The table below provides an indicative timetable setting out the next steps leading to the implementation of the measures set out within this paper. Further details will be posted in ComReg's work programme as particular work streams are developed further.

Measure		Date for Implementation	Responsibility
Code of Practice on Tariff Transparency	Direct Link from Website Homepage to Tariff Information	31 st October, 2003	Operators ¹⁵
	Submissions from Interested Parties	1 st September, 2003	Any Respondent
	Consultation	November 2003	ComReg
Quality of Service Performance	Fixed MLOP Programme	Continuation of existing obligation	Operators & via MLOP Forum
	Testing of mobile networks service quality	Q4 2003	ComReg
Contracts	Guidelines on Contract Requirements	September 2003	ComReg
	Implement any changes in contracts	4 months following issue of guidelines	Operators ¹⁶
Directories and Directory Enquiry Services	Subscriber's rights to directory entries and access to Directory Enquiry Services	Continuation of existing obligation	Operators ¹⁷
Codes of Practice for Handling Complaints	Inclusion of Customer Guarantee Scheme within Code of Practice	30 th January, 2004	Operators ¹⁸
Complaint Handling	Information Notice on Complaint Handling Role	December, 2003	ComReg

The obligations on operators are in most cases non-discretionary as to their application. Where there is discretion, ComReg has chosen the simplest and least burdensome option reflecting light-handed regulation. Should these measures not prove effective however, further measures may be adopted.

¹⁵ Undertakings subject to Regulation 18 of the Regulations 2003, S.I. 308 of 2003

¹⁶ Undertakings subject to Regulation 17 of the Regulations 2003, S.I. 308 of 2003

¹⁷ Undertakings subject to Regulation 21 of the Regulations 2003, S.I. 308 of 2003

¹⁸ Undertakings subject to Regulation 28 of the Regulations 2003, S.I. 308 of 2003

Users' Rights to Communications Services
Protecting users in a developing communications market