



Commission for  
**Communications Regulation**

## Information Notice

**Resolution procedures developed taking  
account of Section 57 of the  
Communications Regulation Act 2002.**

**Information Notice**

## Additional Information

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## Information Notice

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# 1 Introduction

1. Section 57 of the Communications Regulation Act 2002 (“the Act”) (as amended) provides a mechanism whereby ComReg can intervene in and resolve disputes involving a network operator and a physical infrastructure provider with regard to requests to share physical infrastructure. Section 57 applies:

*“..to that part of the infrastructure of a physical infrastructure provider which is used to support electronic communications infrastructure and to no other part of the infrastructure.”*

Section 57(2) provides as follows:

*A network operator has the right to negotiate an agreement to share physical infrastructure with other infrastructure providers and may, upon the commencement of any negotiations, serve notice on the Commission of such negotiations.”<sup>1</sup>*

2. This document describes the Commission for Communications Regulation’s (“ComReg”) resolution procedures when a network operator serves written notice on the Commission. It details how ComReg will intervene in and resolve disputes regarding negotiations on physical infrastructure sharing.
3. Please note pursuant to section 57A(1) if, in making a decision under section 57, the Commission has imposed conditions for infrastructure sharing, and it appears to the Commission that a network operator or physical infrastructure provider to whom the decision relates is failing, or has failed, to comply with any of those conditions, the Commission may apply to the High Court seeking an order compelling that party to comply with those conditions.
4. ComReg intends to keep these procedures under review in light of experience and feedback received from operators and physical infrastructure providers.

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<sup>1</sup> Full Legal Basis detailed in Appendix 1

## 2 Current Section 57 dispute resolution procedures

5. The following resolution procedures have been developed taking account of Section 57 of the Act. Section 57 of the Act outlines the Commission's ("ComReg") powers regarding intervening in, and resolving disputes regarding negotiations on physical infrastructure sharing. To ensure ComReg acts in an open and transparent manner the resolution procedures will be published in an information notice. Please note that in making a decision in relation to a dispute, ComReg may impose conditions for physical infrastructure sharing.
6. The steps for the dispute resolution procedures are as follows:
  - Step 1:** A network operator commences negotiations to reach an agreement to share physical infrastructure with an infrastructure provider and may serve written notice on ComReg of such negotiations.
  - Step 2:** ComReg must satisfy itself that one party is a network operator and the other party is an infrastructure provider. Once this has been established ComReg will proceed to step 3.
  - Step 3:** ComReg may request both parties to engage in negotiations and may set a deadline for an agreement between the two parties to be reached. If requested by either party, ComReg will specify the period within which negotiations on physical infrastructure sharing shall be completed.
  - Step 4:** If negotiations are unsuccessful, a party may submit a formal complaint to ComReg setting out details of the dispute and events to date. ComReg may request further information as necessary. The complaint will be transmitted to the infrastructure provider for its response. It should be noted that, where necessary, a non-confidential version of the response, or indeed of any document required to be transmitted to ComReg, should be provided at the same time as any confidential version.

**Step 5** If ComReg is satisfied that the network operator has attempted to gain access and is unable or in the event that negotiations between parties fail to yield agreement, ComReg will take such steps as are necessary to resolve the dispute. At this stage and upon consideration of the complaint and any responses received to the complaint, ComReg will give notice outlining the scope of this physical infrastructure dispute and invite all interested parties to express their views.

**Step 6:** With regard to any intervention by ComReg referred to in the above steps, ComReg may at any time having carried out a preliminary examination of the matter, decide the most appropriate action is not to intervene in those negotiations. Furthermore, ComReg may discontinue the intervention in those negotiations where it considers that the request for intervention is trivial or vexatious or the person making the request has not taken reasonable steps to reach agreement on physical infrastructure sharing.

**Step 7:** On deciding what steps need to be implemented in any particular case, ComReg may do one or all of the following:

- (i) Request more information in writing from the Parties<sup>2</sup>
- (ii) Meet with the Parties either together or individually
- (iii) Request parties to submit formal submissions (and if necessary supplemental submissions). Such submissions may be exchanged as between the parties.

Where ComReg decides to proceed in the manner set out in Step 7(i) above, ComReg will send out information requests to relevant parties. Depending on the issues arising from ComReg's consideration of the dispute, Step 7 may be repeated a number of times.

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<sup>2</sup> Information requests will be on a voluntary basis and not under section 13D for those parties to the dispute that are not operators. A 13D request may be made of an operator in respect of section 57 disputes.

**Step 8:** ComReg will take into account, as appropriate, a number of factors in reaching its decision. These are set out in Section 57 and may include the following:

- the interests of consumers of electronic communications services,
- any requirements imposed by an enactment or instrument made thereunder,
- the public interest, including traffic control and the protection of the environment and of amenities,
- the desirability of encouraging the sharing of electronic communications infrastructure,
- the provision of electronic communications services that are not available at the time of the making of the conditions,
- the availability of alternatives to the physical infrastructure sharing requested,
- the need to provide access to the market for electronic communications services to network operators,
- the need to maintain the security of electronic communications networks and the ability of providers of electronic communications services to use different types of electronic communications infrastructure and physical infrastructure,
- the nature of the request in relation to the resources available to the network operator or physical infrastructure provider concerned to meet that request,
- the promotion of competition between electronic communications services providers, and
- the need to maintain a universal service

**Step 9:** Where ComReg has considered all of the issues and the submissions of the parties and forms the view that it is appropriate to take action, ComReg may prepare a draft decision. In making this draft decision, ComReg may propose to impose conditions for physical infrastructure sharing and such conditions may include, but not necessarily be limited to-

- conditions in respect of conformity with the relevant standards relating to establishment, operation, maintenance and repair of electronic communications infrastructure and physical infrastructure,

-compliance with essential requirements or the maintenance of the quality of electronic communications services or both, or

- rules for the apportionment of the costs of physical infrastructure sharing,

and the Commission shall notify, in writing, the network operator and physical infrastructure provider, as appropriate, of the reasons for such conditions.

**Step 10:** Depending on the subject matter of the dispute and its impact on the wider market, the draft decision may, at ComReg's discretion, be published on ComReg's website, or may be sent to the parties to the dispute only. The draft decision will in all cases be sent to both parties. Parties to the dispute and (where a draft decision is published) the wider industry (including physical infrastructure providers and other stakeholders), will have the opportunity to submit comments on the draft decision. Material and information in the draft decision which is based on submissions not previously marked as confidential will be considered to be non-confidential.

**Step 11:** Following further analysis of all submissions and comments. ComReg will prepare and issue a Final Decision which may include conditions for physical infrastructure sharing (if appropriate) which the operator and physical infrastructure providers must comply with. The Final Decision will be issued to both parties. Material and information in the Final Decision which is based on submissions not previously marked as confidential will be considered to be non-confidential.

7. ComReg will publish the Final Decision on its website, having regard to the requirements of confidentiality. The Final Decision will include an explanation of the rationale for ComReg's decision. Such an outcome may be one other than what was requested by either party.
8. The dispute resolution procedures pursuant to Section 57 will be deemed to have been completed when the Final Decision has been issued to both parties.

9. Please note that ComReg normally expects to follow Steps 1-11 when investigating a dispute referred to it in accordance with Section 57 of the Act. However it is impossible to foresee every eventuality that will arise in the context of a dispute and therefore ComReg may deviate from Steps 1-11 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-11 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.



# Appendix 1: Legal Basis

## Section 52 (1) of the Communications Regulation Act 2002

.... ‘network operator means’ any person who provides or operates an electronic communications network;

‘physical infrastructure’ means infrastructure which is capable of supporting electronic communications infrastructure including buildings, entries to buildings, wiring both inside and outside buildings, masts, antenna, poles, towers and other supporting constructions, ducts, conduits, manholes, cabinets and rights of way over land but does not include electronic communications infrastructure;

‘physical infrastructure provider’ means a network operator or any other person which allows any part of its physical infrastructure to be used by any other network operator for the provision of electronic communications services;

‘physical infrastructure sharing’ means the sharing of the use of all physical infrastructure for the purpose of providing electronic communications services;

## Section 57 of the Communications Regulation Act 2002

### Physical infrastructure sharing by infrastructure providers

**57.**—(1) This section applies to that part of the infrastructure of a physical infrastructure provider which is used to support electronic communications infrastructure and to no other part of the infrastructure.

(2) A network operator has the right to negotiate an agreement to share physical infrastructure with other infrastructure providers and may, upon the commencement of any negotiations, serve notice on the Commission of such negotiations.

(3) The Commission may, on its own initiative, or shall, if so requested by either party, specify the period within which negotiations on physical infrastructure sharing shall be completed.

(4) Where agreement is not reached within the period specified by the Commission under *subsection (3)*, the Commission shall take such steps as are necessary to resolve the dispute in accordance with the procedures referred to in *subsection (6)*.

(5) With regard to any intervention by the Commission referred to in *subsections (3) or (4)*, the Commission may—

(a) having carried out a preliminary examination of the matter, decide not to intervene in those negotiations, or

(b) discontinue the intervention in those negotiations where the Commission considers that—

(i) the request for intervention is trivial or vexatious, or

(ii) the person making the request has not taken reasonable steps to reach an agreement on physical infrastructure sharing.

(6) The Commission shall resolve a dispute referred to in *subsection (4)* in accordance with procedures established and maintained by it and the procedures shall be made available, on a request being made for that purpose, to interested parties free of charge.

(7) In making a decision in relation to a dispute, the Commission may impose conditions for physical infrastructure sharing and such conditions may include, but not necessarily be limited to—

(a) conditions in respect of conformity with the relevant standards relating to establishment, operation, maintenance and repair of electronic communications infrastructure and physical infrastructure,

(b) compliance with essential requirements or the maintenance of the quality of electronic communications services or both, or

(c) rules for the apportionment of the costs of physical infrastructure sharing, and the Commission shall notify, in writing, the network operator and physical infrastructure provider, as appropriate, of the reasons for such conditions.

(8) The procedures referred to in *subsection (6)* shall include provisions for public consultation during which all interested parties shall be given an opportunity to express their views.

(9) The Commission, in reaching a decision pursuant to the procedures referred to in *subsection (6)*, shall take into account, *inter alia*—

(a) the interests of consumers of electronic communications services,

(b) any requirements imposed by an enactment or instrument made thereunder,

(c) the public interest, including traffic control and the protection of the environment and of amenities,

(d) the desirability of encouraging the sharing of electronic communications infrastructure,

(e) the provision of electronic communications services that are not available at the time of the making of the conditions,

(f) the availability of alternatives to the physical infrastructure sharing requested,

(g) the need to provide access to the market for electronic communications services to network operators,

(h) the need to maintain the security of electronic communications networks and the ability of providers of electronic communications services to use different types of electronic communications infrastructure and physical infrastructure,

(i) the nature of the request in relation to the resources available to the network operator or physical infrastructure provider concerned to meet that request,

(j) the promotion of competition between electronic communications services providers, and

(k) the need to maintain a universal service.

(10) In this section, —universal service|| means the services which are made available, in accordance with the European Communities (Voice Telephony and Universal Service) Regulations 1999 (S.I. No.71 of 1999) or any regulations amending or replacing those Regulations, to all consumers of electronic communications services independent of their geographical location.

#### **[Power of High Court to make compliance orders in respect of conditions imposed under section 57**

**57A.**—(1) If, in making a decision under section 57, the Commission has imposed conditions for infrastructure sharing, and it appears to the Commission that a network operator or physical infrastructure provider to whom the decision relates is failing, or has failed, to comply with any of those conditions, the Commission may apply to the High Court to make a compliance order under subsection (5). Such an application is to be by motion.

(2) However, the Commission may make an application under subsection (1) only if—

(a) at least one month previously, it has served on the network operator or physical infrastructure provider concerned a notice in writing requiring the operator or provider to comply with a condition imposed by it under section 57 and has given the operator or

provider an opportunity to make representations to it about the matter and to comply with the requirement, and

(b) the operator or provider has failed to comply with the requirement.

(3) The High Court may hear the application only if it is satisfied that the Commission has complied with subsection (2)(a) and has served a copy of the application on the network operator or physical infrastructure provider concerned. On being served with a copy of the application, that network operator or physical infrastructure provider becomes the respondent to the application.

(4) The High Court may make such interim or interlocutory order as it considers appropriate pending determination of an application made under subsection (1). The Court may not refuse interim or interlocutory relief merely because the Commission may not suffer damage if relief were not granted pending determination of the application.

(5) On the hearing of an application made under subsection (1), the High Court may make an order requiring the respondent to comply with the relevant section or may refuse the application.

(6) An application for a compliance order may include or be accompanied by a further application for an order directing the respondent to pay to the Commission a financial penalty of such amount as is proposed by the Commission having regard to the circumstances of the non-compliance.

(7) On hearing the further application, the High Court may, having previously been satisfied that the respondent has not complied with a condition imposed under section 57 and having regard to the circumstances surrounding the non-compliance, order the respondent to pay to the Commission a financial penalty of such amount as is specified in the order. The amount can be more or less than the amount proposed by the Commission.

(8) The circumstances referred to in subsection (7) include (but are not limited to) the following:

(a) the duration of the non-compliance;

(b) the effect of the non-compliance on other parties to the relevant decision 5 and to end users;

(c) the submission of the Commission with respect to what it considers to be the appropriate amount;

(d) any excuse or explanation for the non-compliance provided by the respondent.

(9) If the High Court makes an order under this section, it may make such ancillary orders as it considers appropriate.]

*[Inserted by the Communications Regulation (Amendment) Act 2007]*