



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Response to Consultation and Final Determination regarding the Emergency Call Answering Service Call Handling Fee Review 2018

Decision D01/18

Response to Consultation and Determination

Reference: ComReg 18/01

Version: Final

Date: 12/01/2018

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

1 Lárcheantar na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01 E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

Content

Section	Page
1 Introduction	3
2 Executive Summary	5
3 Consultation responses	8
3.1 Matters arising in the consultation – Question 1.....	8
3.2 Draft Determination – Question 2.....	9
4 Determination	10

1 Introduction

1. The Communications Regulation Act, 2002 as amended ("the Act") sets out ComReg's statutory role in respect of the Emergency Call Answering Service ("ECAS") and, in particular, its functions relating to the review of the maximum permitted call handling fee ("CHF") that the ECAS operator is allowed to charge for handling emergency calls.¹
2. This Response to Consultation and Determination is published to make the review process appropriately transparent and to summarise ComReg's consideration of stakeholder responses to the Consultation and draft Determination² ("the Consultation"). In addition, this Response to Consultation and Determination contains ComReg's determination on the maximum CHF that the ECAS operator is allowed to charge for handling emergency calls for the period from 12 February 2018 to 11 February 2019.
3. ComReg received one response to the Consultation from:
 - Eir Group ("Eir").
4. ComReg has reviewed this submission and has given it due consideration in the conduct of its statutory review of the CHF.
5. It is important to note that in discharging its functions under the Act, ComReg is also acting in the context of a contract (known as the Concession Agreement ("the CA")) which was entered into by the Department for Communications, Climate Action and the Environment ("DCCA") and the ECAS operator, BT Communications (Ireland) Limited ("BT"). ComReg is not a party to the CA and the terms of same are not within ComReg's remit. Therefore, in most instances, ComReg has no discretion in relation to the treatment of certain cost categories. Nor is it appropriate for ComReg to comment on the specifications or the requirements of the ECAS detailed in the CA.
6. ComReg has reviewed the costs incurred by the ECAS operator in providing the service. As noted in the Consultation, ComReg considered the costs incurred by the ECAS operator to be reasonable.
7. The draft Determination contained in the Consultation proposed a maximum permitted CHF of €3.24 based on an annualised forecast decline of 6%.

¹ See section 58D of the Act, as inserted by section 16 of the Communications Regulation (Amendment) Act 2007.

² ComReg Document No 17/92.

- 8. Having considered further information, ComReg now concludes that a maximum permitted CHF of €3.07 should apply for the period 12 February 2018 to 11 February 2019, or when the new CA comes into effect, whichever is earlier.**
9. The CHF, as determined by ComReg, has regard to the reasonable costs that the ECAS operator has incurred and can be expected to incur in delivering the contracted service, and in handling the expected emergency call volume.
10. ComReg, as in previous reviews, has redacted commercially sensitive and confidential information from the review in order to respect the legitimate interests of the ECAS operator and its third-party suppliers. ComReg is satisfied that these redactions are appropriate, but that, notwithstanding the redactions, sufficient detail is provided for stakeholders to properly understand the basis for the Determination on the CHF. The redactions are also made in accordance with ComReg's Guidelines on the treatment of confidential information (ComReg Document No. 05/24).

2 Executive Summary

11. The ECAS receives emergency calls made to 112 or 999 through dedicated Public Safety Answering Points ("PSAP") and forwards these calls, as appropriate, to the relevant Emergency Service on the basis of the service required and the location of the incident.
12. BT provides the ECAS on a 24-hour, 365-day basis, using three PSAPs located in Ballyshannon, County Donegal; Navan, County Meath; and Eastpoint, Dublin 3. The three PSAPs act as one virtual centre, with emergency calls being handled on a "next available agent" basis.
13. Under section 58D of the Act, ComReg must conduct a review of the maximum permitted CHF that the ECAS operator can charge for handling emergency calls, and as soon as practicable after conducting that review, ComReg has to determine the maximum CHF that the ECAS operator can charge for handling emergency calls on an annual basis. This Determination is made under section 58D of the Act and pursuant to the Consultation on this matter held during November/December 2017.
14. In making this Determination, ComReg has fully taken into account the response to the Consultation and the recommendations made by its consultants, Analysys Mason.
15. ComReg concluded that the costs incurred by the ECAS operator were reasonable and that no adjustments were necessary to its operating procedures.
16. It was identified during previous reviews that there were some differences between costs actually incurred by BT and costs reflected in the CHF Model, i.e. there are potentially reasonable costs that have been excluded from the model. These differences have been dealt with in the setting of the current CHF.
17. In the Consultation, ComReg asked the views of respondents to two questions. These related to:
 1. Forecast rate of decline in call volumes;
 2. The draft Determination.
18. The main points/comments raised by eir related to:
 - Fixed and variable costs;
 - Call volumes;

- Encouragement of efficiency;
- Sinking Fund;
- Sunset clause.

19. In this Response to Consultation document, ComReg has detailed its final conclusions in respect of the specific questions asked in the Consultation. Any general points that were made by the respondents that are not covered under the responses to these questions are discussed in Annex 1.

20. As the cost base of the ECAS has remained relatively stable the main factor in determining the CHF for 2018/2019 is the estimation of call volumes. In recent years there have been two notable movements in the calculation of the CHF:

- The two year extension to the CA by the DCCAIE which reduced the annual depreciation charge; and
- The clearance of historic under-recovery of costs, through the CHF, previously caused by the ever-reducing level of call volumes.

21. In the Consultation ComReg was of the preliminary view that an annual rate of decline in call volumes of 6% would be appropriate. Following a review of the submission to the consultation and recent call volume information, ComReg now considers that a rate of decline of 4% would be more appropriate to be expected. This reflects the unpredictability and variance of call volumes, examples of which are listed below:

- In the 12 month period to December 2017 call volumes have varied from minus 12.9% (the minimum) in December 2016 to plus 16.7% in October 2017 (the maximum) with the overall annual increase being 2.6%.
- October and November 2017 saw weather patterns that are not always evident in Ireland at this time of year³. If these two months are excluded, in the 12 month period to September 2017 the average rate of decline was c. 3%.
- For the six months from January 2017 to June 2017 the average rate of decline was c. 3% whereas for the 6 months from July 2017 to December 2017 the average rate of increase was c. 8%.

³ Storm Ophelia

- While the annualised average, to December 2017, might be close to a marginal increase in calls it is considered prudent to allow for a possible decline, as the historic experience year-on-year before 2017 was for continued declines in call volumes. As noted previously, any over recovery of costs must be paid by the ECAS operator into the Sinking Fund.
22. Overall, there has been a reduction of c. 60% in call volumes between the DCCAE issuing its invitation to tender for the current CA and current predicted call volumes of c. 1.8m per annum.
23. In ComReg document 17/92, ComReg modelled a CHF based on the assumption that the current CA would expire in July 2018. After this date it understood a new CA and associated CHF would be implemented by DCCAE.
24. Having considered all of these points and the response to the Consultation, ComReg now concludes that a maximum permitted CHF of €3.07 should apply for the period 12 February 2018 to 11 February 2019 or when the next Concession Agreement comes into effect, whichever is earlier.
25. A twelve month review period is in line with ComReg's statutory obligations⁴.
26. The movements in the CHF are documented below:

2017-2018 CHF	€3.95
Increase due to capital investment - operational activities ⁵	✂
End of under-recovery factor ⁶	✂
Sinking Fund adjustment ⁷	✂
Impact of higher call volumes ⁸	✂
2018-2019 CHF payable	€3.07

⁴ Section 58(D) of the Communications Regulation (Amendment) Act 2007

⁵ Noted in ComReg Document 17/92

⁶ Noted in ComReg Document 17/92

⁷ ✂

⁸ As a result of higher than forecast call volumes in Q3 2017

3 Consultation responses

27. As outlined in the Consultation, ComReg identified two principal focus items for its review and invited respondents to address them. These were:

- I. Section 3 – Matters arising in the Consultation.
- II. Section 4 – Draft Determination.

28. Section 2 of the Consultation described the movement in the calculation of the CHF from a rate of €3.95 in 2017/2018 to the proposed rate of €3.24 for 2018/2019.

3.1 Matters arising in the consultation – Question 1

ComReg's preliminary views

29. In Section 3 of the Consultation, ComReg invited comments from respondents on any matters they wished to raise in relation to the Consultation. Section 3 also described how call volumes had evolved and how it expected them to continue evolving. ComReg noted that, in ComReg Document No. 17/92, it had predicted a rate of decline of 6%.

30. To this end, Question 1 asked:

Do you agree or disagree with the proposed forecast of the call volume decline rate of 6% per annum? Please provide detailed reasoning and calculations for your views.

Main issues raised by the respondent in relation to Question 1

31. In answering this question eir stated that its response should be read in conjunction with its entire response to the Consultation⁹.

32. In relation to call volumes eir considered that the proposed CHF was being set too high and that the rate could be set €0.20 lower due to the level of forecasting of calls.

ComReg's conclusions in relation to Question 1

33. In relation to call volumes, ComReg, as noted in paragraph 21, considers that a rate of decline of 4% is now appropriate.

⁹ Many of the points raised by eir are addressed by ComReg in Annex 1 – General comments

3.2 Draft Determination – Question 2

34. Eir provided comments in relation to the draft Determination. It proposed the addition of the following text in red:

The Commission hereby determines that for the period from 12 February 2018 until 11 February 2019 (or until the expiry of the Concession Agreement if prior to 11 February 2019) the maximum permitted call handling fee that the emergency provider may charge to entities who forward emergency calls to it for handling such a call shall be”.

35. Eir further suggested:

This determination is effective from 12 February 2018 until 11 February 2019 (or until the expiry of the Concession Agreement if prior to 11 February 2019)”.

36. It also commented that:

The Determination becomes effective from 12th February 2017 – not from the date of publication.

37. ComReg, having considered eir’s comments in relation to the expiration of the Concession Agreement, has made appropriate amendments to the Determination.

38. ComReg does not agree with eir’s proposal and comments regarding the effective date. The Determination is effective from the date of the publication of this response to Consultation and Determination. The revised CHF is applicable from 12 February 2018.

4 Determination

1 Definitions

1.1 In this determination:

- “*the Act*” means the Communications Regulation Act 2002 (as amended);
- “*the Commission*” means the Commission for Communications Regulation established under section 6 of the Act;
- “*emergency call*” has the same meaning as in section 58A of the Act; and
- “*the emergency provider*” means BT Communications (Ireland) Limited.

2 Determination

2.1 The Commission makes this Determination:

- In exercise of its powers under section 58D (2) of the Act;
- Pursuant to the review conducted by it under section 58D (1) of the Act;
- Having had due regard to section 58D (3) of the Act;
- Pursuant to Commission Document No. 17/92;
- Having duly taken account of the responses received to Commission Document No. 17/92; and
- Having regard to the reasoning and analysis conducted by the Commission and set out in this response to Consultation and Determination.

2.2 The Commission hereby determines that for the period from 12 February 2018 to 11 February 2019 or when the next Concession Agreement comes into effect, if prior to 11 February 2019 the maximum permitted call handling fee that the emergency provider may charge to entities who forward emergency calls to it for handling such a call shall be **€3.07**.

2.3 This Determination is effective from the date of the publication of this response to Consultation and Determination.

Annex: 1 General Comments

39. Eir raised a number of points not addressed by the questions posed in the Consultation. Many of the points raised relate to the CA, which, as previously stated, is an agreement between the DCCAE and BT. ComReg is not a party to the CA.

40. In discussing the various points raised by Eir, ComReg has addressed them under the following headings:

- Fixed and variable costs;
- Call volumes;
- Encouragement of efficiency;
- Sinking Fund;
- Sunset clause.

Fixed and variable costs

41. Eir considered that as the assets of the ECAS operator were to be written off over an initial period of five years it would have expected the CHF to fall significantly after 2015. Following this date it is of the view that only efficiently incurred variable costs would be recovered. As the CHF did not decline as expected, Eir considered that the CHF must therefore be primarily based on the ECAS operator's variable costs.

42. The ECAS was built to handle c. 4.8m calls per annum. Over the initial five year period this would have equated to c. 24m calls. Between July 2010 and July 2015 c. 12.9m calls were handled. Based on the ECAS structure, as set out in the CA, it is necessary to have a minimum number of call centre operators present across the ECAS to handle the varying volumes of calls. ComReg is of the view that the relationship between operators hours and call volumes is not a linear one. With the decline in call volumes the ECAS operator did adjust its variable costs to reflect this. It was not possible, however, to adjust the fixed element of its infrastructure without the possibility of the ECAS being adversely affected. Furthermore as the ECAS had been designed to handle 4.8m calls per annum and these costs deemed reasonable in accordance with Section 58D (3) (a) it would be entitled to recover these costs:

[...] the need for the ECAS operator to cover the reasonable costs likely to be incurred by it in operating the service and, in particular, to recover a guaranteed rate of return for providing the ECAS.

43. However, as predicting call volumes has proven to be problematic, despite consulting with industry, the number of calls over which the cost must be allocated has been far lower than forecast, resulting in the under-recovery by the ECAS operator of its reasonable costs, thereby increasing the CHF in future periods.

Call volumes

44. Eir considered that the forecast call volume decline of 6% would result in an over-recovery of costs of c. €200,000.

45. In the 12 months from December 2016 to November 2017 the following call volume movements were observed:

Period	Average percentage change
January 2017 to March 2017 (3 months)	<8%>
April 2017 to September 2017 (6 months)	2%
October 2017 to December 2017 (3 months)	15%
12 months	3%

46. Given the variances in call volumes month-to-month, year-to-year and the associated unpredictability in forecasting future call volumes ComReg is now of the view that a forecast decline of 4% is appropriate.

47. As noted previously any potential over-recovery must be paid by the ECAS operator into the Sinking Fund. The Sinking Fund is the responsibility of the DCCAE.

Encouragement of efficiency

48. Eir considered that ComReg had been “very lenient” over recent years in its analysis of the ECAS costs underpinning the CHF. It referred, in this context, to the inclusion of the third PSAP. It noted that when BT originally bid for the operation of the ECAS it specified two PSAPS in its proposal when call volumes were c. 4.8m per annum but when it took over the running of the ECAS and calls had fallen to 3.2m per annum a third PSAP was added. Eir stated that it did not understand how ComReg sanctioned this third PSAP.
49. The specification of a third PSAP was a matter contracted between DCCA and BT upon signing the CA. As ComReg is not a party to the CA, it cannot specify the contents of it. However, during ComReg’s review of the capital costs of the ECAS ComReg assessed the reasonableness of the costs incurred by the ECAS operator. This included the cost of the third PSAP. It should be noted that while the third PSAP is fully integrated into the ECAS it does not contain the additional IT and engineering features associated with Navan. It occupies limited space in the specialist call-centre company’s premises. When CSR¹⁰ hours are being rostered those of Navan and Ballyshannon take precedence.

Sinking Fund

50. Eir noted that €2m has been paid into the Sinking Fund and that clarity and transparency was required over its use. It further considered that any excess held in the Sinking Fund be reimbursed to industry.
51. The treatment of the Sinking Fund is provided for under the CA. As ComReg is not a party to the CA, ComReg cannot alter their treatment.
52. ComReg notes that in consideration of this CHF, the DCCA has advised ComReg that it will retain a balance of €100,000 in the Sinking Fund with the remaining balance being credited back to operators through the CHF.

Sunset clause

53. Eir considered that the price control “*should be time-limited and not open-ended*”.

¹⁰ Customer Service Representative

54. Under Section 58D (2) ComReg is required to:

[...] determine the maximum call handling fee that the ECAS operator can charge for handling emergency calls during the period of 12 months beginning with the date of the relevant anniversary of the date on which the ECAS contract was entered into. In determining that fee, the Commission may either confirm the existing maximum call handling fee or, after consulting the ECAS operator, determine a higher or lower maximum fee.

55. As ComReg is required to set the price control for a 12 month period the Determination is written to reflect this. Should the current CA end before the end of the 12 month period then the price control will only be effective for the shorter period. However, ComReg does not have any role in determining when the CA should end.

56. ComReg has, however, amended the Determination to reflect the changes proposed by eir.