



Commission for
Communications Regulation

Formal Dispute Resolution Procedures for ECS/ECN End-Users

Response to Consultation 18/34 and Further Consultation

Response to Consultation and Further
Consultation

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1 Introduction

- 1 The Commission for Communications Regulation (ComReg) is responsible for the regulation of Electronic Communications Networks and Services (ECN and ECS) in accordance with EU and national legislation.
- 2 On 26th April 2018, ComReg issued a public consultation document (18/34)¹ which outlined ComReg's proposal for the introduction of Formal Dispute Resolution Procedures for ECS/ECN end-users. These are procedures that an end-user can access once their complaint has been notified to the Service Provider, in accordance with their code of practice for complaints handling, and remains unresolved for at least 40 working days. The Formal Dispute Resolution Procedures apply to ECS/ECN complaints relating to universal service and users' rights², roaming³ and, as envisaged, net neutrality⁴ issues and any other issue that ComReg may resolve in accordance with Regulation 27 of the Users' Rights Regulations⁵.
- 3 The consultation document 18/34 ('The Consultation') set out the 4 Steps of the proposed Formal Dispute Resolution Procedures and put forward 18 Questions to which responses were sought.
- 4 This Response to Consultation and Further Consultation presents ComReg's preliminary view on the Formal Dispute Resolution Procedures. It summarises and responds to submissions received in response to the consultation. Following further analysis, ComReg has revised some of the procedures and now seeks final comments on these.

¹ <https://www.comreg.ie/publication/consultation-on-formal-dispute-resolution-procedures-for-ecs-ecn-end-users/>

² S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

³ Regulation 6 of S.I. No.228/2013 Communications (Mobile Telephone Roaming) Regulations 2013 provides in the event of an unresolved dispute arising between a consumer or end-user and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation, the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Universal Service and Users' Rights Regulations applies and those Regulations are to be read accordingly.

⁴ Article 4(2) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on Universal Service and Users' Rights relating to electronic communications networks and services ("the European Net Neutrality Regulations"). Providers of internet access services shall put in place transparent, simple and efficient procedures to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

Article 4(3) of the European Net Neutrality Regulation provides the requirements laid down in paragraphs 1 and 2 are in addition to those provided for in Directive 2002/22/EC and shall not prevent Member States from maintaining or introducing additional monitoring, information and transparency requirements, including those concerning the content, form and manner of the information to be published. Those requirements shall comply with this Regulation and the relevant provisions of Directives 2002/21/EC and 2002/22/EC.

⁵ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

- 5 As with the consultation Document 18/34, for the purposes of this Response to Consultation and Further Consultation document, terms that are used shall have the same meaning as when they are used in the Communications Regulation Act, 2002⁶ (as amended) (“the Act”), the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011⁷ (“the Users’ Rights Regulations”) and the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011⁸ (“the Framework Regulations”), unless the context otherwise states or requires.
- 6 As with the consultation document 18/34, for the purposes of this Response to Consultation and Further Consultation document, Electronic Communications Providers⁹ are referred to as “Service Providers”.
- 7 As with the consultation document 18/34, in the interests of clarity, it is important to note that ComReg’s use of the term “ECS/ECN end-users” includes consumers, end-users and persons. ComReg notes the various references used in the different legislative provisions which provide for end-users to refer disputes to ComReg for dispute resolution in accordance with the dispute resolution procedures set out in Regulation 27 of the Users’ Rights Regulations¹⁰. ComReg notes in particular the references to end-users in Regulation 27 of the Users’ Rights Regulations, references to end-users or consumers in Regulation 6 of the Roaming Regulations¹¹ and reference to person in Regulation 3 of the Users’ Rights Regulations¹². ComReg further notes that Article 4 of Regulation (EU) 2015/2120 (“the European Net Neutrality Regulation”) refers to procedures to be put in place to address complaints for end-users¹³.

⁶ Communications Regulation Act 2002 (as amended).

⁷ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

⁸ S.I. No. 333/2011 - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

⁹ Electronic Communications Provider means an undertaking providing Electronic Communications Networks (ECN) or Electronic Communications Service (ECS). Undertaking has the same meaning as it does in Regulation 2 of the Framework Regulations.

¹⁰ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011.

¹¹ Regulation 6 of S.I. No.228/2013 Communications (Mobile Telephone Roaming) Regulations 2013 provides in the event of an unresolved dispute arising between a consumer or end-user and concerning an issue falling within the scope of the Mobile Phone Roaming Regulation, the out-of-court procedures for settling unresolved disputes referred to in Regulation 27 of the Universal Service and Users’ Rights Regulations applies and those Regulations are to be read accordingly.

¹² Regulation 3(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2011 provides where a designated undertaking denies any reasonable request made under paragraph (1) or (2) it shall inform the person making the request of his or her right to pursue the dispute resolution procedures referred to in Regulation 27.

¹³ Article 4(2) of Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on Universal Service and Users’ Rights relating to electronic communications networks and services (“the European Net Neutrality Regulations”). Providers of internet access services shall put in place transparent, simple and efficient procedures

- 8 Throughout the paper the use of examples shall not be construed to limit, expressly or by implication, the matters they illustrate.
- 9 ComReg invites stakeholders to submit their views and having considered the responses, ComReg will issue its Formal Dispute Resolution procedures.

to address complaints of end-users relating to the rights and obligations laid down in Article 3 and paragraph 1 of this Article.

2 Executive Summary

- 10 It is the responsibility of Service Providers to resolve complaints from their consumers and they are required to have in place a code of practice for the handling of consumer complaints. In its Decision Document ComReg D04/17¹⁴, ComReg set out the minimum requirements for the complaints handling processes provided by Service Providers.
- 11 Regulation 27(4) of the Universal Service Regulations refers to dispute resolution, more specifically, that ComReg may specify the procedures it considers most appropriate for resolving disputes that remain unresolved after an end-user has been through the Service Provider's code of practice for complaints handling:
- 'the Regulator, or an independent person appointed by the Regulator may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1)'.*
- 12 The code of practice referred to in paragraph 1 is the Service Provider's code of practice for complaints handling.
- 13 ComReg has been providing a very effective complaints handling service since 2003. An end-user can access the ComReg Consumer Line and request information with respect to any communications issue that they are experiencing as a customer of a Service Provider. For those end-users who want ComReg to escalate a complaint on their behalf to their Service Provider, this service is available on the condition that it has been 10 working days since the end-user first notified the complaint to their Service Provider, in accordance with the complaints handling code of practice. ComReg then contacts the Service Provider with that complaint to re-establish contact between the Service Provider and its customer until, where possible, a resolution is reached.
- 14 With the ComReg complaints handling process, currently 88% of complaints are resolved within 30 working days. In conducting a review of the complaints handled by the complaints handling team, it is ComReg's view that many of the complaints open for more than 30 working days could have been resolved much earlier by the Service Providers.

¹⁴ For further information please refer to ComReg document 17/62; Electronic Communications Complaints Handling Code of Practice – Response to Consultation and Decision.

- 15 The decision to consult on the Formal Dispute Resolution Procedures was influenced by the volume of complaints open for more than 30 working days with the ComReg complaints handling process and the fact that some complaints can remain unresolved for a very long time. It was ComReg's preliminary view that, when a complaint is open at 30 working days with the ComReg complaints handling process, the Service Provider would have had by then ample time - 40 working days, to resolve the complaint - 10 working days with their own code of practice for complaints handling and a further 30 working days with the ComReg complaints handling process.
- 16 It was ComReg's preliminary view that a Formal Dispute Resolution process, in the form of adjudication with the determination binding on the Service Provider, would be available when an end-user's complaint is open for more than 40 working days, and would ensure that complaints could be brought to a definitive resolution within a specified time frame.
- 17 The Consultation Document 18/34 outlined that ComReg will continue to offer its complaints handling service in parallel to the Formal Dispute Resolution process and will continue to escalate complaints on behalf of end-users, provided the complaint has been notified to the Service Provider and has been open 10 working days.
- 18 On 11 June 2017, ComReg received 6 responses to its consultation document. These were from the following organisations:
- Consumers' Association of Ireland (CAI)
 - eircom Limited (trading as 'eir' and 'open eir') and Meteor Mobile Communications Limited (MMC), collectively referred to as 'eir Group' (eir)
 - Sky Ireland (Sky)
 - Tesco Mobile Ireland (Tesco Mobile)
 - Three Ireland / Hutchison (Three)
 - Vodafone Ireland (Vodafone)
- 19 ComReg thanks the respondents for their submissions and copies are now published in ComReg document 18/77s, which is available on www.ComReg.ie.
- 20 In their response to the consultation, Three proposed an alternative formal escalation process for the resolution of complaints open over 30 working days. Their responses throughout this document were expressed notwithstanding that view.

- 21 ComReg has considered all submissions and responses to the consultation document 18/34.
- 22 This document sets out the responses and the updated proposed Formal Dispute Resolution Procedures, as set out in Annex 3. It includes clarification on questions raised by respondents in their submissions. It also asks further questions and seeks final comments on those questions and on the proposed Formal Dispute Resolution Procedures.

3 Consultation Responses – Formal Dispute Resolution Procedures for ECS/ECN end-users

3.1 Introduction

- 23 In exercising its powers under Regulation 27 of the Users Rights' Regulations and functions under the Act, some of ComReg's objectives are to promote competition and the interest of users within the community. Section 12(2)(c)(ii) of the Act requires ComReg to take all reasonable measures which are aimed at achieving its objectives under the Act. This includes '*ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved to protect consumers in their dealings with Service Providers*'.
- 24 ComReg proposed to introduce Formal Dispute Resolution Procedures for ECS/ECN end-users with complaints that relate to a universal service and users' rights, roaming or, as envisaged, a net neutrality issue, or any other issue that ComReg has, or may be given, the power to resolve in accordance with Regulation 27.
- 25 In ComReg's view, the Formal Dispute Resolution function will be a separate function in addition to the current existing free complaints handling service provided by the ComReg consumer care team.

3.2 Timeframe to access Formal Procedures

Description of the issue

- 26 During the period 1 Jan 2017 – 31 Dec 2017, the complaints handling team escalated 4,167 ECS complaints to Service Providers. Of the total number of complaints, only 12% remained open after 30 working days.
- 27 It was ComReg's view that a significant number of those complaints could have been resolved much quicker by Service Providers. It was ComReg's preliminary view that when a complaint is open 30 working days with the ComReg complaints handling service, the Service Provider has had, in total, 40 working days to resolve that complaint – 10 working days with its own complaints handling process and a further 30 working days with ComReg. It was ComReg's preliminary view that this is an ample amount of time for a Service Provider to bring about a resolution to a complaint.
- 28 ComReg proposed that the Formal Dispute Resolution Procedures for ECS/ECN end-users should be available when an end-user complaint is unresolved at least 40 working days since it was first notified to the Service Provider. In accordance with Regulation 27, the complaint must relate to a universal service and users' rights, roaming or, as envisaged, a net neutrality issue, or any other issue that ComReg has, or may be given, the power to resolve in accordance with that Regulation. It was ComReg's preliminary view that when a complaint is open 30 working days with the ComReg complaints handling team, a member of that team will advise the end-user that they have the option of accessing Formal Dispute Resolution. The end-user can then choose to submit an application to the Formal Dispute Resolution process and their complaint with the consumer care team will be closed. Should the end-user choose not to access Formal Dispute Resolution, their complaint will remain open with the ComReg complaints handling process and the consumer care team will continue to liaise with the Service Provider until such time as the complaint can be closed.
- 29 The 40 working day (8 weeks) timeframe proposed in the consultation is reflective of timeframes set out in other established dispute resolution mechanisms¹⁵.

¹⁵ In the UK, both the Communications & Internet Services Adjudication Scheme (CISAS) and the Ombudsman Services for Communications have an 8 week timeframe.

30 ComReg therefore asked the following question in the consultation.

Q.1 Do you agree with ComReg's preliminary view regarding the timeframe to allow an end-user access to ComReg's Formal Dispute Resolution Procedures for ECS/ECN end-users after 40 working days from when the complaint was first notified to the Service Provider and that ComReg's complaints handling team will inform end-users if the ComReg complaint is open for 30 days? Please explain the basis of your response in full and provide any supporting information.

Question 1

Respondents' views

31 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

32 All of the respondents agreed with the proposed timeframe.

33 However, the CAI questioned the added value of the new system in conjunction with the ComReg consumer care system already in place, especially when consumers can bring their complaints to the small claims court.

34 Three expressed concerns about how ComReg intends to validate the 40 working day time period and stated that '*ComReg may not be in a position to fully verify the date of complaint notification particularly when handled over the phone, without engagement with the Service Provider*'.

- 35 Vodafone sought clarification on dealing with complaints which were closed by the Service Provider but where the end-user remain dissatisfied. They also stated that complaints *'should only remain unresolved past 40 working days if the matter is extremely complex or it relates to factors beyond a Service Provider's direct control e.g. a wholesale provider, a local authority, or a landlord'* Additionally, they stated that *'it is Vodafone's understanding that the intention is for ComReg to provide an update in 30 working days. We would question the value of advising of the formal process during the operator complaint handling timeframe. A possible alternative approach is that an operator could set out the details on the Formal Dispute Resolution Procedures timelines within their Code of Practice for Complaint handling'*.

ComReg's position

- 36 ComReg notes that the majority of respondents support the 40 working day timeframe. ComReg also notes that, in responding to this question, a number of respondents addressed issues not specifically relating to the 40 working day timeframe and these matters are addressed elsewhere in the relevant sections of this document.
- 37 The 40 working day timeframe begins when the complaint is first notified to the service provider, in accordance with the code of practice for complaints handling, as specified in the ComReg Decision D04/17 (ComReg Document 17/62). In accordance with that Decision, a Service Provider's code of practice should provide a defined complaints handling process which makes the resolution process simple for the complainant to follow. ComReg also specified that the timeframe for the response or resolution of the complaint should be no more than 10 working days from the date the complaint is received and a communication in the form of a Complaint Response should be issued to the end-user.
- 38 Service Providers should therefore be quite clear on the definition of a complaint, on the minimum requirements specified around the acknowledgement and recording of complaints and on the issuing of complaint reference numbers, in accordance with Decision 17/62.

- 39 In relation to the concern around how ComReg intends to validate the complaint and when it had been notified to the Service Provider, it is ComReg's view that the onus is on the end-user to provide the relevant information in the application. ComReg may require that the end-user provides copies of correspondence or email acknowledgements or a complaint reference number. If the end-user has not provided this information in their application, they will be asked to furnish it, before the application can be fully assessed. If the Service Provider receives notification of a dispute and then subsequently disagrees with the end-user's claim of the notification, the Service Provider can include this in their correspondence with ComReg. It is anticipated by ComReg that it will take into account the issues put forward and make a determination which will allow the matter to be dealt with.

3.3 Cost to access Formal Procedures

Description of the issue

- 40 ComReg proposed a nominal fee of €25 to access Formal Dispute Resolution which involves ComReg adjudication. It was ComReg's preliminary view that as the complaints handling process is free and available to all end-users and the vast majority of complaints (88%) get resolved through this process, a fee of €25 is inexpensive. The Formal Dispute Resolution process can be quite resource intensive as complaints that are not resolved before 40 working days tend to be complex and lengthy. It was also ComReg's preliminary view that the end-user should get the €25 fee refunded if the final determination finds in their favour.
- 41 ComReg therefore asked two questions on this issue in its consultation:

Q. 2 Do you agree with ComReg's preliminary view that a nominal fee of €25 is reasonable? Please explain the basis of your response in full and provide any supporting information.

Q. 3 Do you agree with ComReg's preliminary view that the €25 fee should be refunded to the end-user if the final determination is in their favour? Please explain the basis of your response in full and provide any supporting information.

Question 2

Respondents' views

42 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

43 All of the respondents, except the CAI, agreed that the nominal fee of €25 is reasonable.

44 The CAI stated that it has concerns regarding both the necessity of a fee and of the proposed Formal Dispute Resolution Procedures proposed by ComReg, given that the small claims court already offers consumers a dispute resolution service. They stated that *'the benefit of the ComReg structure seems to either challenge the authority of the small claims Court or seeks to in some way operate in parallel to it'*. The CAI questioned the need for the fee in the case where an organisation is receiving *'state subvention through exchequer funding'*.

ComReg's position

- 45 In relation to the small claims court and their fee of €25, it is not ComReg's intention to operate in parallel with or to compete with that organisation – ComReg is merely deciding to introduce Formal Dispute Resolution for certain specific types of telecommunications complaints and to exercise its powers in that regard in relation to Regulation 27. Consumers still have the option of bringing any of their telecommunications complaints to the small claims court, provided the complaint falls within that remit. There are however important distinctions between the two processes such as the scope of the matters that the small claims court will consider¹⁶, the initial role of the small claims registrar (who attempts to achieve a settlement between the parties), the ability for a respondent to counterclaim in the small claims procedure, local jurisdictional issues in the small claims procedure¹⁷ and the means of enforcement. In ComReg's view, having Formal Dispute Resolution Procedures offered by ComReg along with the excellent service provided by the small claims court, only enhances consumer choice, protection and welfare.
- 46 ComReg is funded by a levy on industry and does not receive any funding from the exchequer. It is ComReg's view that asking Service Providers to pay the fee is not the best course of action as it would be akin to a double levy on industry. After careful consideration of the responses, ComReg has decided to reduce the fee from €25 to €15. It is ComReg's view that a nominal fee is necessary and end-users will have the fee refunded by ComReg if the dispute is found to be in their favour. ComReg also commits to reviewing the fee amount over time and changing it if necessary.

¹⁶ For the types of claim that may be pursued before the small claims court see: <http://www.courts.ie/Courts.ie/Library3.nsf/PageCurrent/A9C6E93D70127EF38025810D0034EAD6>

¹⁷ For example, a contract-based claim against a Service Provider may have to be brought in the District where the respondent carries on business or where the contract was made.

Question 3

Respondent's views

47 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky
- Tesco Mobile Ireland
- Three
- Vodafone

48 All of the respondents agreed that the fee should be refunded to the end-user if the final determination is in their favour should be refunded is reasonable.

49 The CAI stated that any fee should be returned but re-stated their disagreement with the concept of a fee in the first place.

50 Vodafone stated that they *'would welcome clarification on how the payment administration process should work'*.

ComReg's position

51 It is ComReg's view that the fee should be refunded to the end-user if the final determination is in their favour.

52 The fee will be payable to ComReg by bank transfer, cheque, postal order, debit or credit card and will be refunded by cheque or by card if the consumer has paid by card.

53 Once the application from the end-user is accepted, the Formal Dispute Resolution process has begun and from that point on, the fee will not be refunded, unless the final determination is deemed to be in favour of the end-user. The end-user can withdraw from the process at any time by notifying ComReg in writing. However, once an end-user withdraws from a dispute and the dispute is closed, their fee will be forfeited.

3.4 Step 1 – Submission of an Application

Description of the issue

54 It was ComReg's preliminary view that the application form should include the following minimum requirements:

- Contact details, including a telephone number, postal address and email address if available;
- The Service Provider(s) and the name and account number on the account (if applicable);
- Details of the complaint, including the complaint reference number from the Service Provider, if applicable;
- Details of interactions with the Service Provider outlining the date of first notification of the complaint and/or with the ComReg complaints handling process, if applicable;
- Written confirmation of the nominated representative or third party, if applicable;
- A brief outline of what outcome (including details of any claimed refunds, credits or waivers due or of any redress sought) the end-user is seeking through the resolution of the complaint; and
- The nominal fee of €25 (This can be paid by cheque, online or over the phone).

55 ComReg posed the following question in its Consultation:

Step 1 – Submission of an Application

Q.4 Do you agree/disagree with ComReg's preliminary view of the details that should be included in the application for access to Formal Dispute Resolution? Please explain the basis of your response in full and provide any supporting information.

Question 4

Respondents' views

56 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

57 Respondents generally agreed with the details that should be included in the application for access to Formal Dispute Resolution.

58 eir stated that ComReg should publish a template application form to assist end-users in availing of the service and *'to ensure that all relevant information is collected'*. eir also stated that end-users should be able to have the information from the ComReg consumer complaints handling process provided to them prior to them submitting their application as this would assist them in providing more comprehensive information about the case. eir queried the reference to the *"(if applicable)"* contained in the list of the minimum requirements: *The Service Provider(s) and the name and account number on the account (if applicable)*; as the stated that they cannot deal with the matter if the name and account number are not there.

59 Three proposed that end-users should *'include the details of offers or resolutions already extended by the Service Provider at full completion of the Service Providers internal escalation process'*.

60 Vodafone queried how ComReg intends to validate third party representatives acting on behalf of end-users and asked for clarification on this. Vodafone also stated that end-users should be asked to provide a clear outline of their expected outcome and that their expectations are managed prior to them submitting payment.

ComReg's position

- 61 ComReg is of the view that the details to be filled in on the application form by the end-user are comprehensive and sufficient. ComReg will provide a template application form for end-users and this can be submitted online or by post.
- 62 ComReg will ensure that its Formal Dispute Resolution Procedures for ECS/ECN end-users are accessible for disabled users.
- 63 The complaint details are available to the end-user and if they require any details to complete the template application form, they can contact ComReg.
- 64 ComReg wanted to ensure that end-users, who are not currently customers of a Service Provider, but who nonetheless had a valid complaint, could access the Formal Dispute Resolution process. In this regard, the reference to the details 'if applicable' is specifically for those type of complaints, for example, an end-user who is looking for a service but the provision of that service has been delayed or denied. If the complaint is from an end-user who is currently a customer of a Service Provider, the name and the account number will be required information.
- 65 ComReg agrees with the proposal from Three that end-users should also provide the details of offers or resolutions already extended by the Service Provider and this question will be included on the application form.
- 66 ComReg agrees with the proposal from Vodafone on the management of consumer expectations and will have a question on the application form on their expected outcome.
- 67 ComReg does and will continue to seek permission from the account holder, should a third party representative be nominated on their behalf. ComReg is fully aware of its obligations regarding data protection and data privacy legislation and will continue to comply with them to full affect.

3.5 Step 2 – Acceptance of an Application

Description of the issue

68 It was ComReg’s preliminary view that when an application form is received from an end-user, along with any supporting documentation, the application will be reviewed by ComReg. Once all relevant information has been received from the end-user, ComReg has 15 working days to assess the application and to notify the end-user of the acceptance or non-acceptance of the application.

69 It was ComReg’s preliminary view that in order for the application to be accepted as valid, the following criteria must first be fulfilled:

- The complaint must relate to an issue arising in relation to the Users’ Rights Regulations or the Roaming Regulations¹⁸ and any other regulations which give ComReg the power to resolve disputes using the procedures in accordance with Regulation 27 of the Users’ Rights Regulations;
- The complaint relates to a single end-user who has been impacted by the subject matter of the complaint;
- The complaint must be unresolved and it must be at least 40 working days since it was first notified to the Service Provider in accordance with the code of practice for complaints handling, regardless of whether it has been with the Service Provider or has been raised by ComReg’s complaints handling team and the end-user remains dissatisfied thereafter (ComReg may decide to accept complaints that are unresolved for less than the 40 working day timeframe, where in ComReg’s view, the particular circumstances of the complaint justify its acceptance before 40 working days have elapsed. In this case, ComReg will explain the reasons for doing so);
- The complaint must have been first notified to the Service Provider in accordance with the code of practice for complaints handling within the previous 12 months. This limitation may be waived in exceptional circumstances at ComReg’s discretion;
- The scope of the complaint must be confined to the issues contained in the complaint when it was notified to the Service Provider’s code of practice for complaints handling;
- The complaint is not frivolous or vexatious;
- The complaint is not being, nor has previously been, considered by another dispute resolution entity or by a court;

¹⁸ S.I. No. 228/2013 - Communications (Mobile Telephone Roaming) Regulations 2013.

- The nominal fee has been paid; and
- Dealing with the dispute does not impact or impair the effective operation of ComReg.

70 ComReg posed the following two questions on this topic in its consultation:

Step 2 – Acceptance of an Application

Q.5 Do you agree/disagree with ComReg’s preliminary view of the timeframe of 15 working days for ComReg to assess the application (once all the necessary information has been received from the end-user) and to notify the end-user of the acceptance or non-acceptance? Please explain the basis of your response in full and provide any supporting information.

Q.6 Do you agree/disagree with the criteria to be used for an application to be accepted? Please explain the basis of your response in full and provide any supporting information.

Question 5

Respondents’ views

71 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

- 72 The CAI, Tesco Mobile, Three and Vodafone agree with the proposed 15 working day timeframe.
- 73 eir stated that for a lot of cases, assessing the full application could be done much quicker.
- 74 Sky stated that it considers 15 working days for ComReg to assess an application to be too long, especially *'given that Service Providers are expected to resolve complaints within 10 working days under the existing complaints handling process before it can be escalated to ComReg'*. They also stated that *'any delay in ComReg investigating matters may lead to the advisors who handled the original complaint having to re-familiarise themselves with the complaint on each occasion. This is not an efficient use of resources. We would consider that 5 working days should be more than adequate'*.

ComReg's position

- 75 With the ComReg consumer care process, Service Providers are given 10 working days to resolve the complaint; however, at that stage, as the complaint will already have been through the Service Provider's own code of practice for complaints handling, it is ComReg's view that the Service Provider should already be very familiar with the complaint details. In comparison, with the Formal Dispute Resolution process, the ComReg decision maker will be completely unfamiliar with the complaint details and will be reviewing the complaint for the first time. By the time a complaint gets to the Formal Dispute Resolution stage, the Service Provider should be very familiar with the complaint as it will have been open for 40 working days and, in most cases, will have been escalated to the Service Provider by the ComReg consumer care team. Service Providers should therefore not need to re-familiarise themselves with the majority of the complaints that reach the Formal Dispute Resolution stage.
- 76 However, having considered the views of the respondents, it is ComReg's view that the 15 working day timeframe can, in most cases, be shortened to up to 5 working days, once all relevant information has been received from the end-user. It is ComReg's view that, in so far as is practicable, most cases will be assessed by ComReg within 5 working days.
- 77 However, if there are extenuating circumstances, such as an exceptionally large volume of applications, it may take ComReg up to 15 working days to make a decision on the application. Therefore, in most cases, an application will be assessed within 5 working days, but this can extend to up to 15 working days.

78 It is ComReg's view that when it has accepted the end-user's application as valid, both the Service Provider and the end-user will be informed on the same date (the 'Date of Acceptance'). The 5-15 working timeframe therefore includes the Date of Acceptance.

Question 6

Respondents' views

79 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

80 All respondents agreed on the need to have a minimum set of requirements in place for an application to be accepted.

81 Both Vodafone and eir stated that ComReg should be more transparent and provide more clarity on the types of complaints that would qualify for dispute resolution under Regulation 27. eir stated that end-users will not understand which complaints qualify and they ask that ComReg provide guidance to consumers on this matter. eir also requested from ComReg more information on the circumstances in which a complaint will be accepted into the Dispute Resolution process before the 40 working days have elapsed.

82 Sky made the point that as ComReg has left open the possibility of accepting complaints that are more than 12 months old, it is concerned as *'in these circumstances, all evidence may no longer be available (for example vCaf). It is Sky's view that the 12 month deadline should be absolute'*.

- 83 Tesco Mobile stated that it agrees with all of the criteria except the 12 month timeframe. They believe that this timeframe should be reduced to 3 months ‘as with improvements in Service Providers complaint management and ComReg’s Decision D04/17 there should not be any cases outstanding for 12 months’. They also suggested that a 3 month restriction period would ‘ensure that end-users will have the required supporting material available as opposed to having to request same of the Service Provider and/or possibly having to source other supporting materials such as bank statements etc.’
- 84 Three recommended that ‘for cases that have already been managed by ComReg’s complaint handling team, the original ComReg complaint case reference number is maintained for continuity of the complaint history record. For cases that have not yet been through ComReg’s complaints process, the Three-generated complaint reference number should be used. The existing case reference number that has been issued to the end-user then simply transfers into the proposed Formal Dispute Resolution Procedures’.
- 85 Vodafone questioned why an end-user whose complaint is rejected by the Formal Dispute Resolution process can have that same complaint re-opened by the ComReg consumer care complaint handling process as this seems ‘counter-intuitive’. Vodafone also requested further clarification on ‘how rejected requests for dispute resolution will be reported and whether notifications will include the basis rejection of the request’.

ComReg’s position

- 86 Regulation 27 of the Users’ Rights Regulations¹⁹ states that ComReg may resolve disputes that remain unresolved after an end-user has been through the Service Provider’s code of practice for complaints handling:

‘the Regulator, or an independent person appointed by the Regulator may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1)’.

- 87 The Formal Dispute Resolution Procedures, as proposed in the consultation, only apply to disputes that ComReg has the power to resolve in accordance with Regulation 27.

¹⁹ S.I. 337 of 2011

- 88 Currently, ComReg has the power to resolve universal service and users' rights and roaming²⁰ disputes under Regulation 27. ComReg expects to receive the power shortly to also resolve net neutrality²¹ disputes under Regulation 27. In addition, ComReg may also be granted the power to resolve other types of disputes in the future in accordance with that same Regulation.
- 89 Regarding the types of disputes that currently come within the scope of Regulation 27, examples include:
- Roaming complaints within the European Economic Area (EEA)²²; and
 - Universal service and users' rights complaints including, but not limited to, complaints regarding billing issues, service issues, contractual matters, switching/number portability issues, installation issues and customer service issues.
- 90 Should ComReg be given the power to resolve net neutrality disputes in accordance with Regulation 27, the types of disputes that this would relate to include complaints about quality of speed issues, blocking or throttling of content and/or traffic management issues.
- 91 For complaints that are open for 30 working days with the ComReg consumer care complaints handling process, only those end-users with complaints that ComReg has the power to resolve in accordance with Regulation 27 will be advised that they can submit their complaint to the Formal Dispute Resolution process.
- 92 In any event, the application form will have information available to applicants in order to assist them in determining whether the Formal Dispute Resolution process can be availed of by them.
- 93 In relation to the point that ComReg may decide to accept complaints that are unresolved for less than the 40 working day timeframe, where in ComReg's view, the particular circumstances of the complaint justify its acceptance before 40 working days have elapsed, it is ComReg's view that it cannot possibly foresee every eventuality and therefore, as some Service Providers have generally outlined in their submissions, some flexibility or contingency needs to be factored into consideration. That was the reasoning behind ComReg's preliminary view. It's not possible to provide exhaustive examples of when this may arise, however ComReg anticipates that there may be times when the circumstances of the case may justify this, for example when an end-user is about to be, or has been, disconnected from the service due to an ongoing dispute. However, as per the

²⁰ See Footnote 3.

²¹ See Footnote 4.

²² Regulation 6 of S.I. No.228/2013 Communications (Mobile Telephone Roaming) Regulations 2013 applies to roaming within the EEA.

Procedures, should this arise, the Service Provider will be given full reasoning behind the decision and afforded ample opportunity to provide a response.

- 94 In considering the view of respondents on the 12 month threshold period for submitting a complaint to the Formal Dispute Resolution process, ComReg notes the concern about records that may no longer exist due to the fact that Service Providers are only required to hold records on complaints for a 12 month period. ComReg notes the concerns of respondents in this regard and therefore will not accept complaints that have been notified to the service provider more than 12 months previously. It is ComReg's view that restricting the time period to 3 months, since the complaint was first notified to Service Providers, for end-users to submit complaints to the Formal Dispute Resolution Process is too short a timeframe and the 12 month period is more in line with other dispute resolution mechanisms²³. ComReg may review this 12 month timeframe in due course.
- 95 As the ComReg consumer care complaints handling function will be completely separate from the Formal Dispute Resolution function, it is ComReg's view that the Dispute Resolution function should use its own reference numbering system. Of course, where a complaint has already been granted a complaint number by the Service Provider and/or ComReg's consumer care team, that number will be referenced in the details provided to the Service Provider once the dispute has been accepted.
- 96 If an end-user's application is accepted, both the end-user and the Service Provider will be informed. However, if an end-user's application is not accepted, only the end-user will be notified, and will be advised of the reason for the rejection. The complaint would be rejected if it fails to meet the minimum requirements as outlined in Step 2 of the Procedures – Acceptance of an Application. It is ComReg's view that if the complaint, having been rejected from the Formal Dispute Resolution process, is still unresolved and has been through the Service Provider's code of practice for complaints handling, the end-user can contact the ComReg consumer care team who will review the complaint details. If the complaint has already been through the ComReg consumer care complaints handling process, and was closed when the end-user decided to apply for the Formal Dispute Resolution process, the complaint may be re-opened, depending on the particulars of the case. If the complaint has never been through the ComReg consumer care complaints handling process, a complaint may be opened with consumer care, again depending on the particulars of the case.

²³ CISAS and the Ombudsman Services: Communications in the UK and Net Neutrals EU have a 12 month timeframe in place.

3.6 Step 3A – Correspondence with the End-User

Description of the issue

- 97 It was ComReg's preliminary view that both the Service Provider and the end-user would be informed at the same time of the acceptance of the dispute (the Date of Acceptance).
- 98 On the Date of Acceptance the end-user will be advised of the acceptance of the dispute. They will be advised of the next steps in the process and that their dispute, including a copy of the details submitted their application, is being sent to the Service Provider for a response.
- 99 Following receipt of the Service Provider's response, more information may be requested from the end-user, if deemed necessary. If this is the case, it was ComReg's preliminary view that the end-user would be notified in writing and would have up to 10 working days to submit further information and comments. The first working day begins the next working day after the day on which the correspondence is sent by ComReg.
- 100 It was ComReg's preliminary view that if the end-user does not respond to ComReg or fails to provide any information requested, it will be assumed that the end-user does not want to proceed with the dispute. ComReg proposed that, in this case, the end-user will be contacted and advised that unless they respond accordingly, the case will be closed. If a response is still not forthcoming, both parties will be notified that the dispute has been closed.
- 101 ComReg posed the following two questions on this issue in its consultation:

Step 3A – Correspondence with the End-User

Q.7 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to 10 working days for the end-user to respond to ComReg should more information be necessary? Please explain the basis of your response in full and provide any supporting information.

Q.8 Do you agree/disagree with ComReg's preliminary view that if the end-user does not respond to ComReg or fails to provide the information requested, that it will be assumed that the end-user does not want to proceed and that, in this case, they will be contacted and advised that unless they respond accordingly, the dispute will be closed and that if a response is still not forthcoming, both parties will be notified that the dispute has been closed? Please explain the basis of your response in full and provide any supporting information.

Question 7

Respondents' views

102 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

103 All respondents agreed that the timeframe of up to 10 working days for the end-user to respond to ComReg, should more information be necessary, is reasonable.

ComReg's position

104 It is ComReg's view that the up to 10 working day timeframe is a reasonable amount of time for the end-user to respond to ComReg should additional information be required.

105 ComReg will ensure that its Formal Dispute Resolution Procedures for ECS/ECN end-users are accessible for disabled users.

Question 8

Respondents' views

106 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

107 All respondents agreed that if the end-user does not respond to ComReg or fails to provide the information requested, that it will be assumed that the end-user does not want to proceed and that, in this case, they will be contacted and advised that unless they respond accordingly, the dispute will be closed and that if a response is still not forthcoming, both parties will be notified that the dispute has been closed.

108 The CAI stated that *'where it is shown that due to illness etc. a response was not possible then lenience must be extended. The issue of refund also arises. As no case is considered or proven shall the fee be refunded?'*

109 Both Vodafone and eir suggested that a timeline should be inserted into this step so that all parties are advised and the case can be closed without undue delay.

ComReg's position

110 It is ComReg's view that if the end-user does not respond to ComReg or fails to provide the information requested within the 10 working day timeframe, it will be assumed that the end-user does not want to proceed. In this case, the end-user will be contacted again and advised that unless they respond within 5 working days, the dispute will be closed. The first working day begins the next working day after the day on which the correspondence is sent by ComReg.

111 If the end-user still fails to respond within 5 working days, the dispute will be closed and both parties will be notified within 2 working days. In this case, the nominal fee will be forfeited.

112 In exceptional cases, such as an illness that precludes an end-user from replying, it is ComReg's view that it will address such events on a case by case basis.

3.7 Step 3B – Correspondence with the Service Provider

Description of the issue

- 113 It was ComReg's preliminary view that all correspondence with the Service Provider should be in writing and should contain full details of what is required from them. It should also indicate clearly the date by which any response is necessary, together with the consequences of non-adherence to this. It should also outline the next step in the Procedures.
- 114 ComReg proposed that, on the Date of Acceptance, the Service Provider will be formally advised of receipt of the dispute, and of the name of the end-user and the dispute reference number.
- 115 It was ComReg's preliminary view that within 5 working days of the Date of Acceptance, the Service Provider will be provided with an electronic copy of the details submitted in the application by the end-user, including any supporting documentation, and will be given 10 working days to provide a written detailed response to ComReg. The first working day begins from the time of receipt of the details from ComReg
- 116 To allow for exceptional circumstances, it was ComReg's preliminary proposal that this 10 working day period may be extended by ComReg for up to 10 working days and that the response should be sufficiently detailed and comprehensive to enable a full assessment by ComReg of the dispute.
- 117 Should more information may be requested from the Service Provider, the Service Provider will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day begins from the time of receipt of the details from ComReg.
- 118 If the Service Provider does not provide a response to ComReg, ComReg can proceed to make a determination based entirely on the information provided by the end-user and any response by the Service Provider to date.
- 119 At any time during the process, the Service Provider is free to contact the end-user to resolve the dispute directly. If agreement is reached, the Service Provider must notify ComReg within 2 working days of the dispute being resolved, and provide all supporting documentation, including proof that the end-user has accepted the resolution in writing.
- 120 The end-user can withdraw from the process at any time by notifying ComReg in writing. Upon receipt of notification of withdrawal of an end-user, ComReg will inform the Service Provider within 2 working days and will close the dispute.
- 121 ComReg posed the following seven questions on this issue in its Consultation:

Step 3B – Correspondence with the Service Provider

Q.9 Do you agree/disagree with the preliminary view that that the Service Provider will be formally advised of receipt of the dispute on the Date of Acceptance? Please explain the basis of your response in full and provide any supporting information.

Q.10 Do you agree/disagree with the preliminary view of the timeframe of 5 working days from the Date of Acceptance for ComReg to provide to the Service Provider an electronic copy of the details submitted in the application by the end-user, including any supporting documentation? Please explain the basis of your response in full and provide any supporting information.

Q.11 Do you agree/disagree with ComReg's preliminary view of the timeframe of 10 working days that the Service Provider is given to provide a written detailed response to ComReg upon receipt of the electronic copy of the details of the dispute from the end-user? Please explain the basis of your response in full and provide any supporting information.

Q.12 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to an additional 10 working days that ComReg can grant to the Service Provider for the provision of a response in exceptional circumstances? Please explain the basis of your response in full and provide any supporting information.

Q.13 Do you agree/disagree with ComReg's preliminary view of the timeframe of up to 10 working days for the Service Provider to respond, should further information or comments be requested by ComReg? Please explain the basis of your response in full and provide any supporting information.

Q.14 Do you agree/disagree with ComReg's preliminary view of the timeframe of 2 working days for the Service Provider to notify ComReg that the dispute has been resolved and to provide all supporting evidence of the resolution, including evidence that the end-user has accepted the resolution in writing? Please explain the basis of your response in full and provide any supporting information.

Q.15 Do you agree/disagree with ComReg's preliminary view of the timeframe of 2 working days for ComReg to notify the Service Provider upon receipt of notification of withdrawal from the end-user? Please explain the basis of your response in full and provide any supporting information.

Question 9

Respondents' views

122 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

123 eir, Sky, Tesco Mobile, Three and Vodafone agreed that the that the Service Provider will be formally advised of receipt of the dispute on the Date of Acceptance

124 The CAI stated that *'No. We would not consider this appropriate or necessary. A robust system must be supported by documentation within a defined dateline for audit and acceptance by all parties'*.

125 All Service Providers requested clarity on the manner in which Service Providers would be notified of the dispute. eir requested for ComReg to confirm *'whether operators will be given an opportunity to nominate a point of contact for this purpose. Given the tight timelines being proposed for some steps in the process it is important that the matter be raised directly with the most appropriate personnel'*. Similarly, Sky requested that correspondence be in electronic format and that *'ComReg directs all operators to set up a centralised email address for the acceptance of all documentation'*. Vodafone proposed an industry workshop to discuss the matter in advance of commencement of the process.

126 Three stated that it is of the view that *'ComReg may require engagement with the Service Provider in order to confirm the date that the end-user first notifies the Service Provider of complaint to ensure that the "Date of Acceptance" is accurate'*.

ComReg's position

- 127 It is ComReg's view that both the Service Provider and the end-user should be informed of the acceptance of the dispute on the same date (Date of Acceptance). It is only fair that the Service Provider is informed and aware of the dispute at the same time as the end-user. For clarification, it is ComReg's view that both parties will be notified of the acceptance of the dispute on the same date - the Date of Acceptance, with the Service Provider receiving the relevant case file with all documentation from ComReg a few days later (see Q.10).
- 128 As per the ComReg response to Question 5 (Acceptance of an Application) in paragraph 76 above, ComReg will, in so far as is practicable, assess the application within 5 working days. However, if there are extenuating circumstances, such as an exceptionally large volume of applications, it may take ComReg up to 15 working days to make a decision on the application. Once a decision is made ComReg will notify both parties if the dispute is accepted but only the end-user if the dispute is not accepted.
- 129 Service Providers will not be contacted about the dispute in advance of the Date of Acceptance. ComReg will not engage with the Service Provider in relation to the validation of any of the minimum requirements; ComReg will assess the validity of the minimum requirements solely on the basis of the information supplied by the end-user in the application.
- 130 In general, all correspondence is required to be in writing, which can be in electronic format, whilst ComReg is mindful of ensuring that all end-users can access the procedure. Should an end-user prefer to have their correspondence by post, ComReg will facilitate this. For correspondence that is sent by post, the first day is the next working day after the date on which the correspondence is posted.
- 131 It is ComReg's view that by the time the Formal Dispute Resolution Procedures come into effect, Service Providers will have been contacted by ComReg for information on the relevant contact persons and email addresses to be used for the Dispute Resolution process. How Service Providers nominate personnel and resources for the Dispute Resolution process is a matter for Service Providers directly.

Question 10

Respondents' views

132 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

133 The CAI, Tesco Mobile, Three and Vodafone agreed with the proposal.

134 eir had no comment to make on this proposal.

135 Vodafone stated that *'the first working date for commencement of the operator response period, should be the next working day after receipt from ComReg of the details submitted by the customer'*.

ComReg's position

136 Both the Service Provider and the end-user are informed of the acceptance of a dispute on the same date – the Date of Acceptance. On this date, it is ComReg's view that the Service Provider will receive a notification from ComReg advising that it has accepted a dispute from an end-user. ComReg then has 5 working days to prepare the full file on the case and to send it to the Service Provider for a response. This case file will include a copy of all of the details submitted in the application by the end-user to ComReg, including any supporting documentation, and may include some questions from ComReg to the Service Provider about the case.

137 Having considered Vodafone's suggestion on the commencement of the first working day, ComReg agrees that the first working day for commencement of the operator response period will be the next working day after the day on which the correspondence is sent by ComReg.

Question 11

Respondents' views

138 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

139 The CAI, Tesco Mobile and Three agreed with the proposal

140 eir stated *'allowing only 10 working days for operators to provide a detailed written response to the entire case seems entirely at odds with ComReg allowing itself 60 working days to provide a draft determination on the same case. eir would suggest that if operators can provide a complete response to the matter within 10 working days, then ComReg can adjudicate on the matter in a much shorter timeframe'*.

141 Sky disagreed with the 10 working day timeframe and stated that *'under the current proposal ComReg is allowed 15 working days to consider if it accepts a complaint whereas Service Providers are expected to provide a detailed response within 10 working days. Sky Ireland believes that this period should be a minimum of 15 working days'*.

142 Vodafone stated that *'the 10 working day timeframe should commence on the next working day after receipt of details from ComReg and that extended periods will be required and it is our view that this period should not be limited to the further 10 working days proposed'*.

ComReg's position

- 143 It is ComReg's view that by the time a dispute is accepted by ComReg for Formal Dispute Resolution, it will already have been notified to the Service Provider more than 40 working days ago. It will have been through the Service Provider's code of practice for complaints handling. Therefore, Service Providers should be very familiar with the details of the case and should have already investigated it thoroughly.
- 144 For this reason, it is ComReg's view that the 10 working day timeframe for Service Providers to furnish ComReg with their response to the dispute is a reasonable amount of time. ComReg agrees that the first working day for commencement of the operator response period will be the next working day after the day on which the correspondence is sent by ComReg.
- 145 The 60 working day timeframe for ComReg to issue a draft determination is an indicative timeframe which encompasses the duration of the entire process. It includes all the timelines from the acceptance of the full application and also must allow for initial and any subsequent responses from each party, and any contingency or flexibility that a case, or a party, may require. ComReg will endeavour to have the process completed as soon as is feasibly possible, given the individual circumstances of each case.

Question 12

Respondents' views

146 There were 6 respondents to this question. These were:

- CAI
- Eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

147 The CAI, Tesco Mobile and Three agree with the proposal of the time-frame of up to an additional 10 working days that ComReg can grant to the Service Provider for the provision of a response in exceptional circumstances.

- 148 eir, Sky and Vodafone disagreed with this time-frame. All three operators stated that this time-frame should not be limited to a 10 working day period.
- 149 eir stated that *'in complex cases there may be a need to extend beyond 10 working days and this must be recognised as part of the process. For example, there may be cases where the issue relates to works orders or licensing issues that are County Council timeframes and are outside the control of the operator'*. Similarly, Sky stated that *'it would be more appropriate to allow the investigation officer to have discretion based on the particular aspects of the case. For instance, Sky may require assistance from a wholesale partner to explain the background to a complaint about speeds. This may require a number of operators to speak with each other and to test networks. It may not be possible to get a full response within 10 working days for perfectly valid reasons and we would therefore suggest that hard stop is not appropriate'*. Vodafone stated that *'extended response periods will be required for a smaller number of nuanced and more complex cases'* and *'it should not be limited to 10 working days. It is also necessary to take into account the dependency on third parties, such as a wholesale operator, who will not be impacted directly by the dispute, but who is required to engage with the operator to provide important details regarding the case'*.

ComReg's position

- 150 Regarding information that must be obtained from wholesale partners in order for the Service Provider to provide ComReg with a response, it is ComReg's view that the onus is on each Service Provider to have service agreements or response timeframes in place with their partners. The additional 10 working days on top of the initial 10 working days gives Service Providers and their partners a full month to gather sufficient information to be in a position to provide a response. In ComReg's view, the 10 working day time-frame is an adequate and reasonable amount of time; however, ComReg may grant an extension where it considers that there are good grounds for doing so.

Question 13

Respondents' views

151 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

152 Tesco Mobile, Three and Vodafone generally agreed with the proposal of the timeframe of up to 10 working days for the Service Provider to respond, should further information or comments be requested by ComReg.

153 The CAI disagreed and stated that *'in a progressing case a very short number of days should be sufficient and we would see a maximum of 2-4 working days being sufficient'*.

154 eir, Sky and Vodafone called for more flexibility and discretion to be built in; eir stated that *'there must be some flexibility to allow for complex cases'* and Sky proffered that *'the particular circumstances will determine whether this is an adequate period of time and we would therefore recommend that the investigating officer is given discretion to extend this period where appropriate'*. Vodafone stated that *'while many cases will be dealt within this timeframe a discretionary exception is required. ComReg may be required to request a large amount of information, there will be dependencies on third parties and their engagement is outside the control of the retail operator'*.

ComReg's position

155 Having considered the responses, ComReg is of the view that the timeframe of 10 working days for the Service Provider to respond to ComReg in the event that more information is requested is sufficient. It is important to note that this 10 working day timeframe would only apply after the Service Provider has already been given a possible 20 working days to provide ComReg with a response (the initial 10 working days plus a possible additional 10 working days in exceptional circumstances). Therefore, it is ComReg's view that 10 working days is, in general, sufficient time for the Service Provider to furnish additional details. However ComReg is mindful that there may be extenuating circumstances that result in an application to ComReg that requires further time by the Service Provider to provide a comprehensive response.

Question 14

Respondents' views

156 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

157 The CAI, Sky, Tesco Mobile, Three and Vodafone all agreed with the proposal of the timeframe of 2 working days for the Service Provider to notify ComReg that the dispute has been resolved and to provide all supporting evidence of the resolution, including evidence that the end-user has accepted the resolution in writing.

158 The CAI suggested that it could be done in 1 working day.

159 eir had no comment on this proposal.

160 Tesco Mobile requested confirmation that this timeframe relates to electronic notifications.

161 Vodafone stated that *'there should also be a provision for parking the dispute while an operator awaits confirmation of acceptance of an agreed resolution'*.

ComReg's position

162 It is ComReg's view that the 2 working day timeframe for the Service Provider to notify ComReg that the dispute has been resolved and to provide all supporting documentation of the resolution, including proof that the end-user has accepted the resolution in writing, is sufficient.

163 ComReg confirms that this 2 working day timeframe, and all timeframes that apply to Service Providers throughout the Formal Dispute Resolution Procedures, refer to electronic communications.

Question 15

Respondents' views

164 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

165 The CAI, Sky, Tesco Mobile, Three and Vodafone all agreed with the proposal of the timeframe of 2 working days for ComReg to notify the Service Provider upon receipt of notification of withdrawal from the end-user.

166 eir had no comment on this proposal.

167 Vodafone requested confirmation that all timeframes begin on the next full working day.

ComReg's position

- 168 Having considered the responses, ComReg is of the view that the timeframe of 2 working days for ComReg to notify the Service Provider upon receipt of notification of withdrawal from the end-user, is sufficient. If ComReg can notify the Service Provider within 1 day, it will do so.
- 169 ComReg confirms that for all timeframes throughout the Formal Dispute Resolution Procedures, the first working day will be the next working day after the day on which the correspondence is sent by ComReg.

3.8 Step 4 – Resolution and Determination

Description of the issue

- 170 ComReg is cognisant of the requirements for it to act proportionately, objectively and non-discriminatorily. ComReg is also required to be justified in the measures it takes and to act transparently. In making its determination, ComReg shall have regard to the submissions from the end-user and the Service Provider and may take into account any emotional upset, disappointment or inconvenience caused to the end-user and as detailed in the end-user's submission. ComReg's general duty is to handle disputes in accordance with fair procedures and the principles of natural justice. ComReg shall have regard, *inter alia*, (i.e. amongst other things) to any applicable rule of law, the terms of any relevant codes of practice and contracts between the end-users and the Service Provider, the relevant regulatory framework and ComReg policy in place when investigating and determining disputes referred to it in accordance with the out-of-court dispute resolution procedures referred to in Regulation 27 of the Users' Rights Regulations.
- 171 It was ComReg's view that it may also be necessary for ComReg to consider relevant and required evidence not presented by the parties, such as technical expertise; however, both the end-user and the Service Provider will be made aware of that evidence as part of the draft determination and be afforded ample opportunity to review and comment upon it.
- 172 In making its draft and final determinations, ComReg shall have regard to the information received from the end-user, the Service Provider and to any contracts, codes of practice, or any ComReg policy or relevant legislation pertaining to the issues. ComReg may have regard to the opinion of third party experts and the draft and final determinations will contain details of all reasoning behind the determination.

- 173 When ComReg deems it has sufficient information, it will review all evidence and submissions in the dispute and will issue a draft determination in writing within 60 working days. The 60 working day timeframe begins on the Date of Acceptance. ComReg may, at its discretion, extend the 60 working day time period. The parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the dispute determination.
- 174 The draft determination of ComReg will be notified to both parties in writing. The parties will have 10 working days from the date of the draft determination to submit comments on the draft determination.
- 175 Following further analysis of all submissions and comments, including consideration of all comments on the draft determination, a final determination will be prepared and issued to the parties in writing.
- 176 The final determination will include written reasons to explain the rationale for ComReg's determination.
- 177 If the final determination finds in favour of the end-user the application nominal fee will be reimbursed to the end-user by ComReg.
- 178 The final determination may specify measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in light of the circumstances of the dispute.
- 179 The issuing of the final determination is the final step of the Formal Dispute Resolution Procedures for ECS/ECN end-users. The final determination will be in the form of a direction of ComReg and as such is binding, unless successfully appealed. There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/2011²⁴. It should be noted that pursuant to Regulation 27(9) of the Users' Rights Regulations, if a Service Provider fails to comply with a direction issued under paragraph 27(4), it commits an offence. ComReg also notes that it can utilise the powers afforded to it under Regulation 31 of the Users' Rights Regulations to ensure compliance with its directions.
- 180 ComReg normally expects to follow Steps 1-4 when investigating a dispute referred to it in accordance with Regulation 27 of the Users' Rights Regulations. However, it is impossible to foresee every eventuality that will arise in the context of a dispute and therefore, ComReg may deviate from Steps 1-4 where it deems such deviation appropriate i.e. in special circumstances. If ComReg chooses to depart from Steps 1-4 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.

²⁴ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011

181 ComReg posed the following two questions on this issue in its consultation:

Q.16 Do you agree/disagree with ComReg's preliminary view of the timeframe of 60 working days from the Date of Acceptance for ComReg to issue a draft determination in writing? Please explain the basis of your response in full and provide any supporting information.

Q.17 Do you agree/disagree with ComReg's preliminary view that the parties will have 10 working days from the date of the draft determination to submit comments on the draft determination? Please explain the basis of your response in full and provide any supporting information.

Question 16

Respondents' views

182 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

183 Sky, Tesco Mobile and Vodafone generally agreed with this proposal.

184 The CAI stated that *'this is quite a lengthy period for this form of contract as it involves an activation or disconnection of service that very much of daily life relies heavily upon. If this term is to apply then penalties in the event of loss must be immediately paid and, Comreg must determine a fair and appropriate additional penalty for personal and other loss'*.

- 185 eir stated that in its view, *'60 working days to provide a draft determination seems entirely disproportionate when operators are only permitted 10 working days to provide a detailed response to the issues in the case. eir would suggest that if operators can provide a complete response to the matter within 10 working days, then ComReg can adjudicate on the matter in a much shorter timeframe, particular when this timing leads to only a "draft" determination'*. eir made reference to the UK Cisas scheme and suggested that *'KPIs should be implemented and published by ComReg to ensure efficiency and transparency of process'*. eir added that *'ComReg has not set any deadline for itself in coming to a final determination. While it has proposed 60 working days to issue a draft determination (and this can apparently be extended indefinitely for any reason whatsoever), there is no time line for the final determination. This is very unsatisfactory and reinforces the lack of legal certainty surrounding the entire process'*
- 186 In response to this question, Three made comments in relation to other general points and these are contained in the Section 3.10 Additional Comments section.
- 187 Vodafone stated that *'there needs to be a mechanism in place for pausing the process and for extended timeframes to deal with more complex and exceptional issues. The provision for a discretionary extension, as outlined by ComReg, is an absolute requirement and extension timeframes may need to be amended on a case by case basis'*.

ComReg's position and preliminary views

- 188 The 60 working day timeframe outlined by ComReg is an indicative timeline which is in line with the timeline set out in the Alternative Dispute Regulations²⁵. The 60 working day timeframe encompasses the entire Dispute Resolution process and includes all the timeframes around the interactions with the end-user and the Service Provider. It has sufficient flexibility built in for the possibility that Service Providers may need to seek an extension (10 working days) to their initial response timeframe (10 working days) and the possibility that ComReg may need to go back to both parties for more information on more than one occasion (10 working days response time on each occasion).
- 189 Having considered the submissions, ComReg is of the view that the 60 working day timeframe begins from the Date of Acceptance; the date on which both the end-user and the Service Provider are informed of the acceptance of the dispute.
- 190 Following receipt of the responses from both parties, ComReg may need to go back to either the end-user or the Service Provider or both for more information. Once ComReg feels that it has all relevant information from both parties, ComReg will endeavour to issue the draft determination within 10 working days. Once the draft determination is issued, both parties then have 10 working days to respond with comments on the draft determination. The first working day will be the next working day after the day on which the correspondence is sent by ComReg.
- 191 If there are no extensions sought throughout the process, and no additional information needed from either party, ComReg may be in a position to issue the draft determination at an earlier date. ComReg will endeavour to have the process completed as soon as is possible, given the individual merits of each case.
- 192 It is ComReg's view that, together with the issuing of the draft determination, ComReg will, at the same time, issue a draft summary of the case. This will be a high level synopsis of the case that will be published on the ComReg website, and elsewhere as ComReg sees fit. Both the Service Provider and the end-user will have 10 working days to respond with comments on both documents.

²⁵ S.I. No. 343 of 2015 European Union (Alternative Dispute Resolution for Consumer Disputes) Regulations, 2015.

193 Having considered the submissions, ComReg is of the view that following receipt of the responses from both parties on the draft determination and the draft summary of the case, ComReg will endeavour to issue the final determination within 10 working days. ComReg may, at its own discretion, extend this 10 working day time period but the parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the final determination.

194 From time to time, with cases of of exceptional complexity, it may not be possible for the final determination to be issued within the 60 working day period (that is, 60 working days from the Date of Acceptance). However, ComReg will endeavour to ensure that both parties are kept informed of the progress of a case at all stages throughout the process.

Q. 1 Do you agree/disagree with ComReg's preliminary view that ComReg will endeavour to issue the draft determination within 10 working days, once it has received all relevant information from both parties? Please explain the basis of your response in full and provide any supporting information.

Q. 2 Do you agree/disagree with ComReg's preliminary view that a draft summary of the case will be issued at the same time as the draft determination? Please explain the basis of your response in full and provide any supporting information.

Q. 3 Do you agree/disagree with ComReg's preliminary view that both the Service Provider and the end-user will have 10 working days to respond with comments on the draft summary of the case? Please explain the basis of your response in full and provide any supporting information.

Q. 4 Do you agree/disagree with ComReg's preliminary view that following receipt of the responses from both parties on the draft determination and the draft summary of the case, ComReg will endeavour to issue the final determination within 10 working days? Please explain the basis of your response in full and provide any supporting information.

Q. 5 Do you agree/disagree with ComReg's preliminary view that ComReg may, at its own discretion, extend this 10 working day time period and that the parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the final determination? Please explain the basis of your response in full and provide any supporting information.

Question 17

Respondents' views

195 There were 6 respondents to this question. These were:

- CAI
- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

196 The CAI, Sky, Tesco Mobile, Three and Vodafone generally agree with the proposal that the parties will have 10 working days from the date of the draft determination to submit comments on the draft determination.

197 The CAI recommended a shorted timeframe of 5 working days.

198 eir stated that it *'eir does not believe that it is appropriate to impose such tight timelines on industry when ComReg has not proposed any similar timelines for itself. There needs to be some flexibility to allow for more complex cases'*. eir had additional comments on Step 4 and these are contained in the Section 3.10 on Additional Comments.

199 Three stated that *'if ComReg proposes to make determinations on issues of fact, potentially leading to orders to pay customers, a right of appeal must be provided. If no right of appeal is provided, there may be potential issues around the constitutionality of the process'*.

ComReg's position

200 It is ComReg's view that the timeframe of 10 working days is sufficient for Service Providers to provide a response including comments on the draft determination.

201 The final determination will be in the form of a direction of ComReg and as such is binding, unless appealed. There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/2011²⁶. It should be noted that pursuant to Regulation 27(9) of the Users' Rights Regulations, if a Service Provider fails to comply with a direction issued under paragraph 27(4), it commits an offence. ComReg also notes that it can utilise the powers afforded to it under Regulation 31 of the Users' Rights Regulations to ensure compliance with its directions.

3.9 Effective Date

Description of the issue

202 It was ComReg's preliminary view that the Formal Dispute Resolution Procedures would be effective six months from the date of the publication of the Response to Consultation and Procedures document (this document) (the Effective Date), and shall remain in full force unless otherwise amended by ComReg.

203 ComReg posed the following question on this issue in its consultation:

Q.18 Do you agree/disagree with the proposed effective date? Please explain the basis of your response in full and provide any supporting information.

Question 18

Respondents' views

204 There were 5 respondents to this question. These were:

- eir
- Sky Ireland
- Tesco Mobile Ireland
- Three
- Vodafone

205 Sky, Tesco Mobile, Three and Vodafone agreed with this proposal.

²⁶ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011

206 eir stated that *'given the seriousness of the issues raised, eir would suggest that a further consultation is required before any such process can be put in place'*.

ComReg's position

207 It is ComReg's view that it is operating in accordance with the provisions of Section 12 of the Act²⁷ and Regulation 27²⁸ of the Users' Rights Regulations. ComReg is obliged to consult on the Procedures and it is ComReg's view that a 9 month lead time is an adequate amount of time prior to the implementation of the Formal Dispute Resolution Procedures.

²⁷ S.12 (1)(c) in so far as promotion of the interests of users within the Community is concerned – (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved.

²⁸ Regulation 27(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 provides The Regulator, or an independent person appointed by the Regulator, may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1) and, in this regard, the Regulator may issue directions to an undertaking 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, payments of compensation and payments in settlement of losses incurred in accordance with the provisions of a code of practice referred to in paragraph (1)(e).

3.10 Additional Comments

208 There were a number of additional comments made in the submissions of respondents that were unrelated to any specific question but were on the proposed Dispute Resolution process in general and on other aspects of it as follows:

Respondents' views

Adjudication process:

209 eir expressed concern with respect to the adjudication procedure and the manner in which determinations are made. They state that there is *'ambiguity in the consultation document as to who will be assessing the case and making the ultimate determination and what criteria will be used as the basis for that determination. These are arguably the most important aspects of the process and ComReg has not provided any legal certainty in this regard. ComReg is required to be clear and transparent in order to ensure that due process is afforded to both operators and end-users'*. They added that *'eir is concerned that ComReg does not appear to be asking respondents to comment on the most important parts of the process, i.e. the assessment of the merits of the case and the basis upon which the determination will be made'*.

ComReg's position

210 In relation to the adjudication, the determination will be a decision of ComReg and therefore ComReg will make its draft and final determinations in the same manner in which it makes all of its regulatory decisions. The determination will be based largely on the information presented to ComReg by the end-user and the Service Provider. ComReg, as an expert body, will also have regard to any applicable rule of law, the terms of any relevant codes of practice and contracts between the end-user and the Service Provider, and the relevant regulatory framework and ComReg policy in place. This is no different to the manner in which ComReg conducts its normal business operations.

Powers of ComReg

211 ComReg is required to act proportionately, objectively and non-discriminatorily and to be justified and transparent in the measures it takes. ComReg must therefore handle all disputes referred to it fairly and in accordance with the principles of natural justice. In accordance with the Procedures, ComReg can do the following:

- Accept or reject an application for a dispute from the end-user;

- Adjust the timelines where appropriate or necessary; this may be in the case of an extension being sought or some other extenuating circumstance applying. Both the end-user and the Service Provider will be kept informed accordingly;
- Seek further information or clarification from either party in accordance with the Procedures as set out in Annex 3;
- Close the dispute in the event of the end-user not responding or withdrawing, or in the event of the end-user and the Service Provider coming to an agreement before a final determination has been issued;
- Make a determination on the basis of the submissions from the end-user and the Service Provider;
- Make a determination even if the Service Provider does not engage in the Dispute Resolution process;
- Issue measures for the resolution of the dispute.

Third party information:

212 eir stated that they are ‘concerned with the suggestion that ComReg can take into account other evidence that has not been provided by either of the parties to the dispute and for which parties will not be given an opportunity to review in advance of the draft determination. The example provided by ComReg is “technical expertise”. However, it is unclear to eir what ComReg means by technical expertise in the context of an individual customer complaint. It is also unclear what “other evidence” ComReg proposes to include. In the interests of due process, ComReg must be clear on how exactly it intends to adjudicate on cases before the Formal Dispute Resolution Procedure can be put in place. eir added that they are ‘concerned with the reference to “third party experts”. We fail to see how due process can be safeguarded when ComReg proposes to engage third party experts to assist in its decision making without notifying the relevant parties in advance that it proposes to engage such experts and affording them the opportunity to counter that evidence before ComReg drafts its determination. This suggests that the adjudication panel will not have the appropriate expertise itself which is a cause for concern’.

213 Three stated that they had similar concerns and that *'the type of "technical expertise" or "third party experts" envisaged by ComReg is not clear. Three does not provide details relating to our proprietary internal technology systems to end-users and provides the end-user with the outcome of technical investigations only. Three has concerns relating to the level of information or level of detail that may be required in terms of providing supporting evidence or the level of evidence that may be required for dealing with cases under ComReg's proposed Formal Dispute Resolution Procedures, especially in cases relating to technical or coverage related issues. In terms of making determinations in technical or coverage related complaints, Three may utilise information from various sources in order to gauge service levels or service limitations such as usage levels from bills, internal coverage maps, internal systems and technology ticket resolutions in order to build a holistic viewpoint of the customer's individual circumstances. Currently, even as part as of Subject Access Requests, we do not provide our internal technology system records, e.g. screen shots or internal coverage maps to end-users. We also believe that, should ComReg require third party experts or "technical expertise" in order to resolve the case, Service Providers must have the opportunity to review such evidence / submissions and provide comments to ComReg, in advance of ComReg making any determination on the case. Timelines should be adjusted to reflect this process as necessary'*.

ComReg's position

214 Should ComReg need to have regard to the opinion or information of third parties (that is a party other than the end-user and the Service Provider), full disclosure of this opinion and information will be outlined in the draft determination. While ComReg is permitted to engage such consultants or advisors as it may consider necessary to assist it in the discharge of its functions²⁹ and may have regard to such opinions or information as may be offered by them, it remains the case that it is ComReg alone that is responsible for the discharge of its functions and the determination made will be made only by it. In this regard, ComReg is cognisant of its statutory obligation to be independent in the exercise of its functions³⁰. Both the end-user and the Service Provider will have 10 working days to review the draft determination and to provide their response to it before any final determination is issued. It is ComReg's view that this is an adequate amount of time for the Service Provider to review the case and to provide their response. ComReg may grant an extension where it considers that there are good grounds for doing so. Given that ComReg is an expert regulatory body, it is not envisaged that recourse should often be required to third party information however, and as stated, in the discharge of its functions and in appropriate circumstances, ComReg may do so.

Alternative Dispute Resolution Regulation:

215 Sky requested clarification from ComReg regarding *'the interaction between the ComReg proposal as set out in the Consultation and the ADR Regulations'* with particular reference to Fairness and Efficiency and stated that *'it must be the case that ComReg should be granted no discretion as to whether or not it applies the rule of law and the terms of any relevant codes of practice in determining the outcome of any complaint'*.

²⁹ Section 22 of the Act.

³⁰ Section 11 of the Act.

ComReg's position

216 ComReg is aware of the Alternative Dispute Resolution Regulations³¹ but is not implementing the Formal Dispute Resolution Procedures in line with or in accordance with those regulations. ComReg is also cognisant of the proposed wording of the new European Electronic Communications Code which makes reference to out of court dispute resolution. The Formal Dispute Resolution Procedures being proposed by ComReg are being introduced in accordance with the power granted to ComReg under the dispute resolution provisions of Regulation 27 of the Users' Rights Regulations.

Wider enforcement action:

217 Sky raised a concern regarding the Dispute Resolution function and wider compliance and enforcement action taken by ComReg. Sky stated that they believe that *'for the dispute resolution process to get buy in from service providers it is integral that the two functions within ComReg are operated separately and that the resolution of particular disputes should not drive wider enforcement activities. It could well be the case that a Service Provider is prepared to make a concession in respect of one particular case and to offer a level of compensation but this should not be taken an indication that (a) they are willing to accept a similar position in the wider context and (b) that they have conceded any arguments they might make in the context of a wider investigation (any comments must be made on a without prejudice basis).'*

ComReg's position

218 ComReg's Formal Dispute Resolution function will be carried out independent of, and separate to, the existing consumer care and compliance functions.

³¹ <http://www.irishstatutebook.ie/eli/2015/si/343/made/en/pdf>

Transparency and consistency of approach:

219 With respect to transparency, Sky stated that they are concerned about *'the issue of an inconsistent approach to similar issues by different Service Providers in their dealings with consumers and ComReg'*. Sky stated that *'where ComReg has policies which can be interpreted in different ways, they should provide guidance on how the policy has been interpreted. It is Sky Ireland's view that the potential for complaints to be referred to the dispute resolution process would be greatly reduced if ComReg was to publish case studies in relation to recurring complaints and complaints that hinged on an interpretation of a point of law by ComReg'*.

ComReg's position

220 In the draft and final determinations, ComReg will provide a reasoning for the determination, including any interpretation of policy that has had an influence on the determination. ComReg will publish a case summary of the final determination arising from a dispute, including the name of the Service Provider involved, on its website and elsewhere as it sees fit. Service Providers should be in a position to ascertain from those summaries the interpretations of policies being taken. ComReg may also decide to publish guidance, but this would most likely only occur once the Dispute Resolution process is up and running and a number of disputes have been through the process. ComReg may also publish a report, at regular intervals, of general activity levels in the Dispute Resolution process, such as the number of disputes accepted and rejected, types of issues raised, the number of determinations issued, aggregated amounts prescribed in terms of reimbursement, settlement of losses and compensation.

Scope of Dispute Resolution process:

221 Three proposed an alternative scenario to the proposed Formal Dispute Resolution process whereby complaints open for 30 working days with ComReg's consumer care complaints handling process, or which are open with the Service Provider 40 working days after being notified to the Service Provider, in accordance with their Code of Practice for complaints handling, would firstly be internally reviewed by ComReg. The process is set out in detail in the published responses. Three argue that *'this approach would provide a better overall experience for end-users and may also potentially remove the necessity for end-users completing an application process in order to gain entry to the proposed Formal Dispute Resolution Procedures.'*

222 Vodafone stated that *'the policy objective needs to be clear in relation to the introduction of the Formal Dispute Resolution Process ('FDR Process'). ComReg is proposing from the outset the FDR Process will be made available to the broadest possible number of end-users. This appears ambitious and it is, in our view, more prudent to adopt a graduated approach and limit the scope initially to consumer cases. By its very nature a formal process requires adherence to strict response timelines and KPIs that impact ComReg in its administration of the process. It also requires significant resource commitment from Service Providers who will need to adapt systems and processes that align with the formal reporting timelines. If ComReg prioritise the rollout of FDR processes to consumers on a phased basis it will be better equipped to manage the any unknown challenges or issues arising with this new process. ComReg has in the past adopted a phased approach to the scope of its complaint handling services. It may be appropriate at a later date to extend to smaller business customers, however ultimately this redress scheme may not be sought by certain groups of customers, such as larger business customers who have more direct account management'*.

223 Vodafone added that *'the consultation sets out at a very high level the timelines that ComReg would plan to adopt in the FDR process. As envisaged in the regulations we anticipate that ComReg will make available a more detailed procedures document. This is particularly important in light of the cost to the consumer to avail of the process and the costs to Services Providers and ComReg associated with operation of this process. We would recommend that clear detailed procedures are put in place well in advance of the commencement date of the process'. If ComReg decide to exercise its discretion and proceed with the formal process, it is our view that further detail is required on a number of aspects of the process.*

Full details are published as part of the responses to consultation document ComReg 18/77s.

ComReg's position

- 224 It is ComReg's view that the consumer care complaints handling process currently in place is already an escalation process by which a consumer complaint is escalated by ComReg to nominated dedicated personnel within the Service Provider. Therefore, ComReg sees no added value in offering a further layer of a similar type of escalation process in addition to that. It is ComReg's view that the proposed Dispute Resolution process being proposed by ComReg under Regulation 27 is the most effective way to ensure the resolution and determination of disputes that fail to get resolved through other channels.
- 225 The 60 working day timeline for the entire duration of the process is in line with other dispute resolution mechanisms including the Alternative Dispute Resolution Regulations. This timeline includes all of the response times for all parties involved and has to allow for sufficient flexibility for the extension of the timelines, should there be good grounds for doing so. As is evident from the submissions of respondents, there may be cases of complexity that warrant the extension of response timelines, and in such cases, where flexibility is granted, the 60 working day timeline may not be met. The imposition of Key Performance indicators (KPIs) would, in ComReg's view, restrict the ability of ComReg to grant extensions solely on the grounds for which they were submitted. ComReg will endeavour, to the best of its ability, to adhere to the timelines specified in the procedures. It is worth noting that the duration and efficiency of the process is also heavily dependent on both the end-user and the Service Provider providing full, timely and comprehensive responses so that ComReg will have less need to seek further rounds of responses on points of clarification. Both the end-user and the Service Provider can, if in a position to do so, also respond before the last day of the allocated response timeframe, thus shortening the duration of the process.
- 226 Regarding the phasing in of the Dispute Resolution process by introducing it in stages, ComReg is of the view that this is not necessary. By looking at the number of complaints that are open at any one time for more than 30 working days with the ComReg consumer care complaints handling process, ComReg has an idea of the potential number of complaints that would be eligible to access the Formal Dispute Resolution process. It is ComReg's view that the Dispute Resolution function will be sufficiently resourced to accommodate such volumes.
- 227 ComReg, in considering the submissions of the respondents, has added more detail to the procedures, as attached in Annex 3.

- 228 In accordance with the provisions of Section 12 of the Act³² and Regulation 27³³ of the Users' Rights Regulations, ComReg may specify procedures for the resolution of disputes that remain unresolved after due completion of the Service Provider's code of practice for complaints handling. ComReg is of the view that the Formal Dispute Resolution Procedures, as specified and consulted on in preliminary consultation document 18/34, and outlined in this Response document, are those procedures.
- 229 A response in writing to the draft determination must be signed, dated and either emailed, posted or hand delivered to ComReg on or within that 10 working day period. A Certificate of Postage, which is freely available from post offices at the time of posting, will be required in the event that the post date is unclear on the envelope in order to prove that the appeal was posted in time.
- 230 If correspondence is by post, An Post's Track and Trace service will be used to determine the date the draft report and final determination has been delivered to parties.
- 231 Although participation in these procedures by Service Providers is not mandatory, and if Service providers do not participate or interact, ComReg may proceed to determine the dispute considering the case details submitted by the end-user and issue a direction to the undertaking. ComReg expects that Service Providers will fully engage in the process.
- 232 The final determination will be in the form of a direction of ComReg and as such is binding, unless appealed. There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/2011³⁴. It should be noted that pursuant to Regulation 27(9) of the Users' Rights Regulations, if a Service Provider fails to comply with a direction issued under paragraph 27(4), it commits an offence. ComReg also notes that it can utilise the powers afforded to it under Regulation 31 of the Users' Rights Regulations to ensure compliance with its directions.

³² S.12 (1)(c) in so far as promotion of the interests of users within the Community is concerned – (ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved.

³³ Regulation 27(4) of the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011 provides The Regulator, or an independent person appointed by the Regulator, may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1) and, in this regard, the Regulator may issue directions to an undertaking 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, payments of compensation and payments in settlement of losses incurred in accordance with the provisions of a code of practice referred to in paragraph (1)(e).

³⁴ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011

4 Further consultation issues

ComReg is seeking submissions on its preliminary views on the 5 Questions asked in relation to Step 4 – Resolution and Determination.

233 Please refer to pages 46-47 for these preliminary views and subsequent questions.

Further Revised Measures for the resolution of the dispute:

234 Under Regulation 27, ComReg may specify measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in light of the circumstances of the dispute:

The Regulator, or an independent person appointed by the Regulator, may, in accordance with such procedures as may be specified by the Regulator, resolve disputes which remain unresolved after due completion of all the procedures of a code of practice referred to in paragraph (1) and, in this regard, the Regulator may issue directions to an undertaking requiring that undertaking 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, payments of compensation and payments in settlement of losses incurred in accordance with the provisions of a code of practice referred to in paragraph (1)

235 In the consultation, it was ComReg's preliminary view that, for the Formal Dispute Resolution process, there would not be a threshold or cap imposed on any of the payments specified as part of the measures in the draft or final determination of ComReg. There were a number of comments on this matter in the submissions received from the respondents as follows:

- 236 Three stated that they are *'very concerned that introducing Formal Dispute Resolution Procedures creates a channel and means available for end-users in order to seek "...measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in light of the circumstances of the dispute" could potentially drive end-users into taking the decision not to accept appropriate outcomes and resolutions with their Service Providers at all, if they consider that they could potentially gain a much better result from entering the proposed Dispute Resolution Procedures. This could also potentially create a serious issue in terms of driving higher complaint volumes, creating a bottle neck and back log of end-users with unresolved or open cases both for Service Providers and for ComReg'*.
- 237 Three also expressed concerns about the proposal in paragraph 86 of the consultation document, that *"[T]he final determination may specify measures for the resolution of the dispute, including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate..."* In our view, ComReg should separately provide details (e.g. in terms of scale/limitation) and consult on any compensatory/punitive measures it envisages applying in these cases. It is difficult to comment further without knowing the nature of these measures envisaged in paragraph 86. For example, in the Small Claim process the claimant pays a fee of €25 to enter a judicial process for which they can only pursue or claim to the maximum value of €2000 in out of pocket sums, amounts paid for the faulty goods purchased, or costs for repair. The respondent or Service Provider in this instance would be aware of the purchase cost of devices supplied and afforded the opportunity to negotiate settlement with the Small Claims Registrar prior to court hearing. In this scenario the Service Provider has advance knowledge of the amount being claimed for the cost of device or repair of a device and can take a view in terms of a business decision to negotiate, settle the claim or proceed to court hearing. The boundaries and limitations of the procedure are transparently established in the full knowledge of all parties. If ComReg proposes to be able to make determinations that Service Providers must make payments to customers, careful consideration should be given to the boundaries of such powers in terms of the constitutionality of the process. Appropriate financial limitations and procedural steps (including appeals – see below) must be built into the Formal Dispute Resolution Procedures to protect the interests of all parties and make the process legally robust'.
- 238 Vodafone added that *'the consultation paper has not specified any award thresholds or any details on compensatory claims that are in and out of scope. It is important that clear information on the scope of claims are provided up front and that the maximum thresholds are clear'*.

ComReg's preliminary position

- 239 The final determination may specify measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in the context of the circumstances of each dispute. These measures may not be monetary in nature but may instead be prescriptive in terms of remedial action to be taken, for example, allowing a contract to be terminated. In relation to the reimbursement of payments, it is ComReg's view that these will be strictly limited and directly correlate to monies owed to the end-user in terms of amounts over-paid or overcharged and will therefore be restitutive in nature.
- 240 Having considered the submissions, it is ComReg's revised preliminary position that there should be a cap of €5,000 on the measures that ComReg may impose for the resolution of a dispute. This €5,000 threshold will include all monetary awards for the reimbursement of payments, payments of compensation and payments in settlement of losses.
- 241 Within the €5,000 threshold amount, ComReg is also proposing to place a financial limit of €2,000 on the amount of payment in settlement of losses and compensation that can be stipulated; for clarity that is up to €2,000 in total for both. Personal injury³⁵ claims are not covered by this process and are outside of ComReg's remit; however ComReg considers that claims for disappointment, inconvenience and/or emotional upset caused by a Service Provider's breach of obligation are within its remit. The small claims court accepts claims to a maximum value of €2,000. In the UK, both the Ombudsman Services: Communications and the Communications and Internet Services Adjudication Scheme (CISAS) have a maximum cap on claims to the total value of £10,000. It is therefore ComReg's view that a cap of €2,000 for the amount that can be determined in the settlement of losses or compensation is reasonable.

³⁵ Section 2 of the Civil Liability Act, 1961 (as amended) defines "personal injury" as including any disease and any impairment of a person's physical or mental condition.

- 242 Furthermore, in relation to the cap of €2,000 for payments of compensation and payments in settlement of losses, it is ComReg's view that these will directly relate to the losses or negative impact that an end-user has experienced as a direct result of some action or inaction on the part of the Service Provider. The end-user will need to provide sufficient information about any losses suffered or endured. ComReg will address the specific issues of the case, and will possibly take into account the time spent and effort made by the end-user in seeking to have the complaint resolved. Any inconvenience experienced by the end-user directly resulting from action or inaction on the part of the Service Provider may also be taken into account and factored into the monetary measures specified, if any. For compensation, CISAS takes into account inconvenience and distress, but most awards of this kind are relatively low, and do not often exceed £200³⁶. ComReg would not expect the amounts awarded for compensation in its Formal Dispute Resolution process to be vastly different from those awarded by other bodies. Any measures specified by ComReg in the draft and final determinations will not be punitive or penal in nature but will directly relate to the particulars of the case at hand.
- 243 So, by way of example, if ComReg determines that an end-user is entitled to an amount of €2,000 in payment for compensation and settlement of losses, the maximum amount that can be awarded to that end-user for the reimbursement of payments is €3,000. Similarly, if a determination prescribes an award of €4,500 for the reimbursement of payments, the maximum amount that can be awarded to that end-user for payments of compensation and in settlement of losses is €500.
- 244 According to data from the Ireland Communicates Survey 2017³⁷, the median amount spent on bundled services was €65 per month, but the monthly spend on some bundled packages can be €90+. For mobile services, given that the maximum contract period is 24 months, and some mobile plans can cost up to €80 per month, plus a potential cost of hundreds of euro for a handset, the upper limits of the amounts of reimbursement sought could tend to be up to €2,500. It is ComReg's preliminary view then that the €5,000 threshold figure would sufficiently cover those cases in which the measures determined would include the maximum payments of compensation and in settlement of losses (€2,000) and amounts paid over the full duration of a 24 month contract (up to €3,000).

³⁶ For more information please refer to <https://www.cedr.com/cisas/docslib/51-cisas-guide-compensation-for-inconvenience-and-distress.pdf?v=1519832772>

³⁷ For more information please refer to <https://www.comreg.ie/publication/ireland-communicates-survey-sme-consumer/>

245 Any determinations that are made by ComReg for payment of compensation, refunds or other payments are binding on the Service Provider. Similarly, any instructions for remedial actions included in a final determination are also binding on Service Providers.

Q. 6 Do you agree/disagree with ComReg's preliminary view of a threshold of €5,000 on the measures that ComReg may impose for the resolution of a dispute? Please explain the basis of your response in full and provide any supporting information.

Q. 7 Do you agree/disagree with ComReg's preliminary view of a threshold of €2,000 for payments made in settlement of losses and compensation? Please explain the basis of your response in full and provide any supporting information.

Q. 8 Do you agree with the updates to the Formal Dispute Resolution Procedures, as outlined in Annex 3? Please explain the basis of your response in full and provide any supporting information.

Revised Timeline for the implementation of the Dispute Resolution Procedures process:

246 It is now ComReg's preliminary view that the Formal Dispute Resolution Procedures would be effective 9 months from the date of the publication of the Response to Consultation and Procedures document (this document) (the Effective Date), and shall remain in full force unless otherwise amended by ComReg. This has been revised from 6 months, taking into consideration the level of preparation required by all parties, including ComReg.

Q. 9 Do you agree/disagree with the proposed effective date being 9 months from the date of publication of the Response to Consultation and Procedures document? Please explain the basis of your response in full and provide any supporting information.

5 Submitting Comments

- 247 ComReg welcomes all written responses from stakeholders by 5pm on Monday 17th September 2018. It will make the task of analysing responses easier if comments are referenced to the relevant question numbers from this document. In all cases, please provide reasons in support of your views.
- 248 In the interests of openness and transparency, ComReg will publish all non-confidential inputs received and would therefore request that electronic submissions be made in an unprotected format so that they can be published electronically. Submissions will be published, subject to the provisions of ComReg's *Guidelines on the Treatment of Confidential Information*³⁸. Any confidential material should be clearly identified and placed in a separate Annex to the stakeholder's response.
- 249 Responses must be submitted in written form (post or email) to the following recipient clearly marked "**Submissions to ComReg 18/77**":

Louise Power

Commission for Communications Regulation

One Dockland Central, Guild Street, Dublin 1, Ireland, D01 E4X0

Phone: +353-1-8049654

Email: retailconsult@comreg.ie

³⁸ See ComReg Document No. 05/24.

Annex: 1 Legal Basis

Origin of Legal Powers and Obligations

A 1.1 This consultation document is issued to outline and clarify the ComReg Formal Dispute Resolution Procedures for ECS/ECN end-users, thereby ensuring the functioning of effective, robust, fair and transparent Formal Dispute Resolution Procedures providing recourse for end-users in the event of unresolved disputes, having regard to:

- ComReg's functions as set out in Section 10 of the Act;
 - S.10(1)(a) to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks;
 - Section 10 (1) (aa) to ensure compliance with obligations under Regulations (EU) No. 531/2012 of the European Parliament and of the Council of 13 June 2012; and
 - Section 10(3) The Commission shall have all such powers as are necessary for or incidental to the performance of its functions under this or any other Act.
- ComReg's functions as set out in Section 12 of the Act.
- ComReg's powers as outlined in Regulation 27(4) of the *European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations*, No. S.I. 337 of 2011 (the Universal Service Regulations).
- ComReg's powers in accordance with Regulation 6 of S.I. No.228/2013 *Communications (Mobile Telephone Roaming) Regulations 2013*.
- The provisions of Article 4(2) Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services.

A 1.2 Nothing outlined in this consultation document shall limit ComReg whatsoever from the full enforcement of its remit of powers with regard to Service Providers, in accordance with the provisions of the Universal Service Regulations.

A 1.3 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise admits or requires.

Annex: 2 Questions

- Q. 1 Do you agree/disagree with ComReg's preliminary view that ComReg will endeavour to issue the draft determination within 10 working days, once it has received all relevant information from both parties? Please explain the basis of your response in full and provide any supporting information. 47
- Q. 2 Do you agree/disagree with ComReg's preliminary view that a draft summary of the case will be issued at the same time as the draft determination? Please explain the basis of your response in full and provide any supporting information. 47
- Q. 3 Do you agree/disagree with ComReg's preliminary view that both the Service Provider and the end-user will have 10 working days to respond with comments on the draft summary of the case? Please explain the basis of your response in full and provide any supporting information. 47
- Q. 4 Do you agree/disagree with ComReg's preliminary view that following receipt of the responses from both parties on the draft determination and the draft summary of the case, ComReg will endeavour to issue the final determination within 10 working days? Please explain the basis of your response in full and provide any supporting information. 47
- Q. 5 Do you agree/disagree with ComReg's preliminary view that ComReg may, at its own discretion, extend this 10 working day time period and that the parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the final determination? Please explain the basis of your response in full and provide any supporting information. 47
- Q. 6 Do you agree/disagree with ComReg's preliminary view of a threshold of €5,000 on the measures that ComReg may impose for the resolution of a dispute? Please explain the basis of your response in full and provide any supporting information. 64
- Q. 7 Do you agree/disagree with ComReg's preliminary view of a threshold of €2,000 for payments made in settlement of losses and compensation? Please explain the basis of your response in full and provide any supporting information. 64
- Q. 8 Do you agree with the updates to the Formal Dispute Resolution Procedures, as outlined in Annex 3? Please explain the basis of your response in full and provide any supporting information. 64

Q. 9 Do you agree/disagree with the proposed effective date being 9 months from the date of publication of the Response to Consultation and Procedures document? Please explain the basis of your response in full and provide any supporting information. 64

Annex: 3 Formal Dispute Resolution Procedures for ECS/ECN End-Users

Step 1 – Submission of an Application

- 1 The application form will include the following minimum requirements:
 - Contact details, including a telephone number, postal address and email address if available;
 - The Service Provider(s) and the name and account number on the account, if applicable;
 - Details of the complaint, including the complaint reference number from the Service Provider, if applicable;
 - Details of interactions with the Service Provider outlining the date of first notification of the complaint and/or with the ComReg complaints handling process, if applicable;
 - Details of offers, gestures or resolutions, if any, already extended or offered by the Service Provider;
 - Written confirmation of the nominated representative or third party, if applicable;
 - An outline of what outcome (including an apology, action to be taken with respect to a bill (including refunds, credits or waivers due or of any redress sought) the end-user is expecting or seeking through the resolution of the complaint; and
 - The nominal fee of €15.

Step 2 – Acceptance of an Application

- 1 In order for the application to be accepted as valid, a number of criteria must first be fulfilled:
 - The complaint must relate to an issue arising in relation to the Users' Rights Regulations or the Roaming Regulations³⁹ and any other regulations which give ComReg the power to resolve disputes using the procedures in accordance with Regulation 27 of the Users' Rights Regulations;

³⁹ S.I. No. 228/2013 - Communications (Mobile Telephone Roaming) Regulations 2013.

- The complaint relates to a single end-user who has been impacted by the subject matter of the complaint;
 - The complaint must be unresolved and it must be at least 40 working days since it was first notified to the Service Provider in accordance with the code of practice for complaints handling, regardless of whether it has been with the Service Provider or has been raised by ComReg's complaints handling team and the end-user remains dissatisfied thereafter (ComReg may decide to accept complaints that are unresolved for less than the 40 working day timeframe, where in ComReg's view, the particular circumstances of the complaint justify its acceptance before 40 working days has elapsed. In this case, ComReg will explain the reasons for doing so);
 - The complaint must have been first notified to the Service Provider in accordance with the code of practice for complaints handling within the previous 12 months;
 - The scope of the complaint must be confined to the issues contained in the complaint when it was notified to the Service Provider's code of practice for complaints handling;
 - The complaint is not frivolous or vexatious;
 - The complaint is not being, nor has previously been, considered by another dispute resolution entity or by a court;
 - The nominal fee has been paid; and
 - Dealing with the dispute does not impact or impair the effective operation of ComReg.
- 2 ComReg has absolute discretion to refuse to accept, or to terminate consideration of, a dispute if it considers that the complaint has no reasonable prospect of success, recovery or redress in relation either to such complaint and/or the Service Provider to which the complaint relates.
 - 3 ComReg has absolute discretion to refuse to accept or to terminate or to delay acceptance and/or consideration of a dispute if it considers that the dispute is currently, or may become associated with, legal proceedings in which ComReg is party to.
 - 4 If the application is incomplete, or more details are required, the end-user will be contacted and the relevant information will be requested.
 - 5 If it is determined that the application is not valid, the application will be declined. The determination of whether an application is valid will be completed as soon as possible following receipt of the completed application. If the application is declined, the end-user will be contacted and will be provided with a reasoned explanation of the grounds for the non-acceptance of the application.

- 6 Once all the relevant information has been received from the end-user and the nominal fee has been paid, ComReg will, in so far as is practicable, assess the application within 5 working days. However ComReg is mindful that there may be a limited set of circumstances that necessitate ComReg taking up to 15 working days to make a decision on the application. If the application is deemed to be valid, a reference number will be allocated to the dispute and this must be quoted on all correspondence with the parties involved.
- 7 Both the end-user and the Service Provider will be formally advised at the same time that the dispute has been accepted. This date will be known as the 'Date of Acceptance'.

Step 3A – Correspondence with the End-User

- 1 On the Date of Acceptance, the end-user will be advised of the acceptance of the dispute. They will be advised of the next steps in the process and that their dispute, including a copy of the details submitted their application, is being sent to the Service Provider for a response.
- 2 Following receipt of the Service Provider's response, more information may be requested from the end-user, if deemed necessary. If this is the case, the end-user will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day will be the next working day after the day on which the correspondence is sent by ComReg.
- 3 If the end-user does not respond to ComReg or fails to provide any information requested, it will be assumed that the end-user does not want to proceed with the dispute. In this event, the end-user will be contacted and advised that unless they respond within 5 working days, the case will be closed. The first working day will be the next working day after the day on which the correspondence is sent by ComReg. If the end-user does not respond within 5 working days, the dispute will be closed and both parties will be notified within 2 working days.
- 4 The end-user can withdraw from the process at any time by notifying ComReg in writing. Upon receipt of notification of withdrawal of an end-user, ComReg will inform the Service Provider within 2 working days and will close the dispute. Once an end-user withdraws from a dispute and the dispute is closed, their fee will be forfeited and they will not be able to re-open the dispute. However, this does not preclude an end-user from submitting a fresh application for the same complaint or from submitting an application for another complaint at any time.
- 5 The end-user is responsible for and must pay any costs incurred by them in the preparation of their case. End-users cannot take any legal action against ComReg to recover these costs.

Step 3B – Correspondence with the Service Provider

- 1 On the Date of Acceptance, the Service Provider will be formally advised of receipt of the dispute, and of the name of the end-user and the dispute reference number.
- 2 Within 5 working days of the Date of Acceptance, the Service Provider will be provided with an electronic copy of the details submitted in the application by the end-user, including any supporting documentation, and will be given 10 working days to provide a written detailed response to ComReg. The first working day will be the next working day after the day on which the correspondence is sent by ComReg.
- 3 In exceptional circumstances, this 10 working day period may be extended by ComReg for up to 10 working days. This response should be sufficiently detailed and comprehensive to enable a full assessment by ComReg of the dispute.
- 4 ComReg is mindful that there may be good grounds that result in an application to ComReg that requests further time by the Service Provider to provide a comprehensive response. If, in the opinion of ComReg, that good grounds exist, ComReg may accept an application for the extension of time and make a decision on the individual case. This would be a matter for ComReg to do so on a case by case basis.
- 5 Should more information may be requested from the Service Provider, the Service Provider will be notified in writing and will have up to 10 working days to submit further information and comments. The first working day will be the next working day after the day on which the correspondence is sent by ComReg.
- 6 If the Service Provider does not provide a response to ComReg, ComReg can proceed to make a determination based entirely on the information provided by the end-user and any response by the Service Provider to date.
- 7 At any time during the process, the Service Provider is free to contact the end-user to resolve the dispute directly. If agreement is reached, the Service Provider must notify ComReg within 2 working days of the dispute being resolved, and provide all supporting documentation of the resolution, including proof that the end-user has accepted the resolution in writing.
- 8 The end-user can withdraw from the process at any time by notifying ComReg in writing. Upon receipt of notification of withdrawal of an end-user, ComReg will inform the Service Provider within 2 working days and will close the dispute.
- 9 The Service Provider is responsible for and must pay any costs incurred in the preparation of their case. Service Providers cannot take any legal action against ComReg to recover these costs.

Step 4 – Resolution and Determination

- 1 ComReg is cognisant of the requirements for it to act proportionately, objectively and non-discriminatorily. ComReg is also required to be justified in the measures it takes and to act transparently. In making its determination ComReg shall have regard to the submissions from the end-user and the Service Provider. ComReg's general duty is to handle disputes in accordance with fair procedures and the principles of natural justice. ComReg shall, inter alia, have regard to any applicable rule of law, the terms of any relevant codes of practice and contracts between the end-users and the Service Provider, the relevant regulatory framework and ComReg policy in place when investigating and determining disputes referred to it in accordance with the out-of-court dispute resolution procedures referred to in Regulation 27 of the Users' Rights Regulations.
- 2 It is ComReg's view that it may also be necessary for ComReg to consider information not presented by the parties, such as technical information and opinion; however, both the end-user and the Service Provider should be made aware of that information as part of the draft determination.
- 3 When ComReg deems it has sufficient information, it will undertake its review and will endeavour to issue a draft determination and draft summary of the case within 10 working days.
- 4 The draft determination and the draft summary of the case will be notified to both parties in writing. The draft determination will contain details of the reasons for the determination. The draft summary will contain a high level synopsis of the dispute and outcome. The parties will have 10 working days from the date of the draft determination and draft summary to submit comments. The first working day will be the next working day after the day on which the correspondence is sent by ComReg.
- 5 Following further analysis of all submissions and comments, including consideration of all comments on the draft determination and draft summary, a final determination will be prepared and issued to the parties in writing that will set out the reasons having regard to the relevant regulatory and legislative framework. ComReg will endeavour to issue the final determination within 10 working days after receipt of all submissions and comments on the draft determination. ComReg may, at its own discretion, extend this 10 working day time period but the parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the final determination.
- 6 ComReg will endeavour to issue the final determination within 60 working days of the Date of Acceptance. Achieving this timeframe is dependent on all other timeframes being met. ComReg may, at its discretion, extend the 60 working day time period. The parties will be informed of any extension of that period and of the expected length of time that will be needed to conclude the dispute determination.

- 7 The final determination will include written reasons to explain the rationale for ComReg's determination. If the final determination finds in favour of the end-user, the application nominal fee will be reimbursed to the end-user by ComReg.
- 8 The final determination may specify measures for the resolution of the dispute including reimbursement of payments, payments of compensation and payments in settlement of losses, as appropriate in light of the circumstances of the dispute.
- 9 The issuing of the final determination is the final step of the Formal Dispute Resolution Procedures for ECS/ECN end-users. The final determination will be in the form of a direction of ComReg and as such is binding, unless appealed. The draft and final determinations will include the date by which any measures specified are to be carried out and completed.
- 10 There is a right of appeal against a decision of the Regulator provided for in Regulation 4 of S.I. No. 333/201140. It should be noted that pursuant to Regulation 27(9) of the Users' Rights Regulations, if a Service Provider fails to comply with a direction issued under paragraph 27(4), it commits an offence. ComReg also notes that it can utilise the powers afforded to it under Regulation 31 of the Users' Rights Regulations to ensure compliance with its directions.
- 11 ComReg normally expects to follow Steps 1-4 when investigating a dispute referred to it in accordance with Regulation 27 of the Users' Rights Regulations. However, it is impossible to foresee every eventuality that will arise in the context of a dispute and therefore ComReg may deviate from Steps 1-4 where, in ComReg's opinion, it is justified to do so on the basis that good grounds exist. If ComReg chooses to depart from Steps 1-4 in respect of any dispute it will set out its reasons for so doing and communicate them to the parties.