



Commission for
Communications Regulation

Formal Dispute Resolution Procedures for ECS/ECN End- Users

Response to Further Consultation and
Decision

Response to Further Consultation
and Decision

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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 ComReg is introducing Formal Dispute Resolution Procedures for end-users. These are procedures that an ECS/ECN end-user can access once their complaint has been notified to the Service Provider (in accordance with the Service Provider's code of practice for complaints handling), and remains unresolved for at least 40 working days thereafter. The Formal Dispute Resolution Procedures apply to ECS/ECN complaints that ComReg may resolve in accordance with Regulation 27 of the Users' Rights Regulations¹.
- 3 The Consultation document 18/34 set out the 4 Steps of the proposed Formal Dispute Resolution Procedures and put forward questions to which responses were sought.
- 4 Having considered those responses, ComReg then issued a Response to Consultation and Further Consultation document 18/77. That document outlined ComReg's responses to the submissions received to document 18/34, and also consulted further on a number of additional issues raised.
- 5 ComReg has considered the responses received to the Further Consultation and herein sets out its response thereto and issues a Decision to introduce Formal Dispute Resolution Procedures.
- 6 As with the Consultation documents 18/34 and 18/77, for the purposes of this Response to Consultation and Decision document, terms that are used shall have the same meaning as when they are used in the Communications Regulation Act, 2002² (as amended) ("the Act"), the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011³ ("the Users' Rights Regulations") and the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011⁴ ("the Framework Regulations"), unless the context otherwise states or requires.

¹ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

² Communications Regulation Act 2002 (as amended).

³ S.I. No. 337/2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

⁴ S.I. No. 333/2011 - European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

- 7 As with the Consultation documents 18/34 and 18/77, for the purposes of this Response to Further Consultation and Decision document, Electronic Communications Providers⁵ are referred to as “Service Providers”.
- 8 As with the Consultation documents 18/34 and 18/77 and 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 (both natural and legal). 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 Regulations. 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 Regulations⁶ and reference to person in Regulation 3 of the Users’ Rights Regulations⁷. 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-users⁸.
- 9 Throughout this document the use of examples shall not be construed to limit, expressly or by implication, the matters they illustrate.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

2 Executive Summary

- 10 In accordance with Regulation 27(4) of the Users' Rights Regulations, 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)'.

- 11 The code of practice referred to in paragraph 1 is the Service Provider's code of practice for complaints handling.
- 12 It is the responsibility of Service Providers to make every effort to try to resolve complaints from their customers and they are required to have in place a code of practice for handling consumer complaints. In its Decision Document ComReg D04/17⁹, ComReg set out the minimum requirements for the complaints handling processes provided by Service Providers.
- 13 For those complaints that fail to get resolved via the Service Provider's complaints handling process, ComReg provides its own complaints handling service to end-users. 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 Service Provider's 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 The decision to consult on the 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. The vast majority of complaints are resolved within 30 working days but it is ComReg's view that many of the complaints open for more than 30 working days (10+%) could have been resolved much earlier by Service Providers.

⁹ For further information please refer to ComReg document 17/62; Electronic Communications Complaints Handling Code of Practice – Response to Consultation and Decision.

- 15 Having consulted on its proposed Formal Dispute Resolution Procedures in documents 18/34 and 18/77 and considered the responses received, ComReg is now setting out its Formal Dispute Resolution Procedures. The resolution of a dispute will take the form of an adjudication and the final determination will be in the form of a direction of ComReg and as such is binding on the Service Provider, unless successfully appealed. It will be available to an end-user when their complaint is open and unresolved for more than 40 working days¹⁰ and relates to an issue that ComReg has the power to resolve under Regulation 27¹¹.
- 16 ComReg will continue to offer its complaints handling service in parallel, but separate, to the Formal Dispute Resolution function and will continue to escalate complaints on behalf of end-users, provided that the complaint has been notified to the Service Provider and has been open 10 working days. Once a complaint has been open for 40 working days, the end-user will have the option of accessing the ComReg Formal Dispute Resolution Procedures, as long as their complaint relates to an issue that ComReg has the power to resolve under Regulation 27.
- 17 In September 2018, ComReg received 3 responses to its Response to Consultation and Further Consultation document 18/77. These were from the following organisations:
- eircom Limited (trading as 'eir' and 'open eir') and Meteor Mobile Communications Limited (MMC), collectively referred to as 'eir Group' (eir);
 - Three Ireland / Hutchison (Three); and
 - Virgin Media Ireland Limited (Virgin Media)
- 18 ComReg thanks the respondents for their submissions and copies are now published in ComReg document 18/104S, which is available on www.comreg.ie.
- 19 This document includes responses to those submissions received and questions raised and sets out the final Formal Dispute Resolution Procedures, as outlined in Annex 2.

¹⁰ This is a total amount, in other words the initial 10 working day period with the Service Provider followed subsequently by the 30 working day period with the ComReg Consumer Care complaints handling process.

¹¹ Currently this applies to ECS/ECN complaints relating to universal service and users' rights, roaming and, as envisaged, net neutrality issues. It will also apply to any other issue that ComReg may be given the power to resolve, in accordance with Regulation 27 of the Users' Rights Regulations.

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

3.1 Introduction

20 In the previous Consultation documents (18/34 and 18/77), ComReg outlined the 4 Steps of the Formal Dispute Resolution Procedures and consulted on a number of details with regard to those steps. The 4 Steps of the Formal Dispute Resolution Procedures are:

Step 1 - Submission of an Application

Step 2 - Acceptance of an Application

Step 3A – Correspondence with the end-user

Step 3B – Correspondence with the Service Provider

Step 4 – Resolution and Determination

21 In the Response to Consultation and Further Consultation document 18/77, having considered the views of respondents, ComReg outlined its position with regard to Steps 1-4 and also sought further consultation on a number of issues, predominantly in relation to Step 4 – Resolution and Determination.

22 This section of this document contains details of the issues further consulted upon in document 18/77 and outlines the views of respondents and ComReg's final position thereon.

3.2 Questions

Question 1 - ComReg's preliminary view on the draft determination timeline

Description of the issue:

- 23 As part of Step 4 of the procedures, following receipt of the responses from both parties to the dispute, ComReg may need to go back to either the end-user or the Service Provider or both for more information. It was ComReg's preliminary view that once ComReg considers that it has all relevant information from both parties, it will endeavour to issue the draft determination within 10 working days.
- 24 ComReg therefore asked the following question in the further consultation:

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.

Respondents' views

- 25 There were 3 respondents to this question. These were:
- eir
 - Three
 - Virgin Media
- 26 All of the respondents agreed with the view that ComReg will endeavour to issue the draft determination within 10 working days, once it has received all relevant information from both parties.

ComReg's position

- 27 Once it has received all relevant information from both parties, ComReg will endeavour to issue the draft determination within 10 working days.

Question 2 - ComReg's preliminary view on the draft summary

Description of the issue:

28 It was ComReg's preliminary 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.

29 ComReg asked the following question in the further consultation:

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.

Respondents' views

30 There were 3 respondents to this question. These were:

- eir
- Three
- Virgin Media

31 eir stated that it '*would be helpful for a draft summary of the case to be provided to the parties at the same time as the draft determination*'. However eir did not agree with the proposal that the draft summary would be published on the ComReg website or "*elsewhere as ComReg sees fit*" as details should only be published when the final determination has been made.

32 Three stated that it agreed with the proposal on the understanding that the draft summary and draft determination will be sent to the parties to the dispute only, and not published by ComReg.

- 33 Virgin Media stated that it did not agree with the proposal. It stated that only the final summary should be published. Virgin Media sought clarity from ComReg regarding the format of the summary publication and the location of where it will be published. Similar to eir, Virgin Media strongly disagreed with the proposal that ComReg may publish the summary on the ComReg website and *'elsewhere as ComReg sees fit'* as *'it must be absolutely clear to each party what will happen to information related to that party'*. It also stated that the final summary *'should only be published on the industry section of the ComReg website as if, as ComReg states, "Service providers should be in a position to ascertain from those summaries the interpretation of policies being taken", Virgin Media does not understand why it would be need to be published elsewhere'*.
- 34 Virgin Media also sought clarification on what exactly will be contained in the summary. Virgin Media is of the view that it should be limited to a summary of the complaint, information on any associated requirement, and ComReg's view on the complaint. It stated that it did not believe the final determination (including details of measures or awards imposed) should be set out in the summary because *'the purpose of the summary should be as a reference for other Service Providers around ComReg's interpretation of certain policies. This means there would be the accumulation of guiding/guidance material that will be useful to all operators. Furthermore, the publication of details of past measures or awards might lead to unrealistic expectations on the part of future complainants'*.

ComReg's position

- 35 It is ComReg's view that the draft summary will be provided at the same time as the draft determination so that both parties will get a chance to review and comment on both documents. In the Response to Consultation and Further Consultation document 18/77, it was ComReg's intention that only the final summary would be published, not the draft summary. To clarify, ComReg is of the view that only the final summary will be published – the draft summary, the draft determination and the final determination will not be published by ComReg.

- 36 Both the draft and final summaries will contain only high level details of the case such as the name of the Service Provider, the nature and type of the complaint, whether the determination was in favour of the Service Provider or the end-user and the measure determined. The latter may include a short commentary on or a description of the measure, for example, that the amount disputed is to be refunded and/or an amount is to be awarded for compensation, reimbursement or in settlement of losses. Having considered the views of respondents, ComReg has decided that the draft and final summaries will not include the specific financial amounts provided. ComReg has decided that it will publish the final summary on its website and elsewhere as ComReg sees fit, which may include the consumer section of the website, as the purpose of the issuing of the final summary is not just to give Service Providers visibility of the types of cases processed by the Formal Dispute Resolution process, but also to provide consumers with transparent information regarding the output of the process. ComReg agrees that the final case summary will not include details of any monetary amounts prescribed in the final determination. ComReg may, in time, issue high level reports on the output of the Formal Dispute Resolution function; these reports may provide aggregated information such as, but not limited to, the number of complaints accepted, rejected, the types of complaints received, the aggregated amounts prescribed in terms of reimbursement and/or compensation and the Service Providers involved.

Question 3 - ComReg's preliminary view on the timeline for comments on the draft summary

Description of the issue

- 37 It was ComReg's preliminary view that, following the issuing of the draft summary of the case, both the Service Provider and the end-user will have 10 working days to respond with comments on the draft summary.
- 38 ComReg asked the following question in the further consultation:

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.

Respondents' views

- 39 There were 3 respondents to this question. These were:

- eir
- Three
- Virgin Media

40 All respondents agreed with the proposed timeline. However, all respondents stated that there should be an ability for parties to request an extension to this, and all timelines throughout, where necessary and appropriate.

ComReg's position

41 It is ComReg's view that following the issuing of the draft summary of the case, both the Service Provider and the end-user will have 10 working days to respond with comments on the draft summary.

42 Having considered the views of the respondents, ComReg agrees that for all timelines specified in the Formal Dispute Resolution Procedures, parties should have the ability to request an extension, where necessary and appropriate. ComReg may grant an extension where it considers that there are good grounds for doing so. This has been inserted into the Procedures, as set out in Annex 2.

Question 4 - ComReg's preliminary view on the timeline of the final determination

Description of the issue:

43 It was 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.

44 ComReg asked the following question in the further consultation:

<p>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.</p>
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Respondents' views

45 There were 3 respondents to this question. These were:

- eir
- Three
- Virgin Media

46 eir stated that *'in the interests of a transparent process ComReg should commit to providing a final determination within 10 working days of receiving responses from both parties on the draft determination and draft summary of the case. It should only be in exceptional cases and on the provision of full reasons to the parties involved in the dispute that this timeline should be extended. This will ensure that the process is fair and that strict timelines apply equally to all parties in the process'*.

47 Both Three and Virgin Media agreed with the proposal.

ComReg's position

48 It is ComReg's view that 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.

49 As per paragraph 35 above, ComReg confirms that only the final summary will be published – the draft summary, the draft determination and the final determination will not be published by ComReg.

50 eir's comment relating to the extension of this 10 day timeframe by ComReg is addressed in the next question.

Question 5 - ComReg's Preliminary view on the final determination timeline extension

Description of the issue:

- 51 It was 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. 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.
- 52 ComReg asked the following question in the further consultation:

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.

Respondents' views

- 53 There were 3 respondents to this question. These were:
- eir
 - Three
 - Virgin Media
- 54 eir agreed for the need for flexibility in relation to the timelines for all parties to the dispute, including ComReg. It added that '*the deadline for providing a final determination should only be extended in exceptional circumstances, rather than for any reason at ComReg's own discretion. When providing the reasons for the extension, ComReg should also commit to an actual timeline, rather than an "expected length of time" which provides no legal certainty to the parties involved in the dispute and could result in cases being left open for substantive periods of time*'.
- 55 Three agreed with the proposal.

- 56 Virgin Media disagreed with the proposal. It stated that it *'did not see why there would be a necessity to extend the period to make a final determination. Ten working days is more than sufficient time for a final determination to be issued. If it is possible for an extension at this point, as per our response to question 3, Virgin Media believes that the operator and the end-user should be afforded the opportunity to request an extension on the time period for a response to the draft determination. We note that while this possibility is suggested in the response to the consultation (page 54), it is not reflected in the procedures document in the Annex'*.

ComReg's position

- 57 It is ComReg's view that there is a necessity to include in the Formal Dispute Resolution Procedures an ability for it to extend the 10 working day time period for the issuing of a final determination, where necessary. As Service Providers have correctly acknowledged and emphasised in their responses throughout of the need for flexibility to be built into the timelines, it is only practical and reasonable for ComReg, as the adjudicator, to have that same flexibility. Given that the final determination is binding on Service Providers, it is imperative that ComReg should be able to extend the timeline or delay issuing the final determination until such time as is fitting and appropriate, depending on the particular circumstances of the case.
- 58 It would not be in any party's interest for cases to be left open for longer than is necessary and it is ComReg's intention to issue the final determination efficiently and as soon as is possible, in accordance with the timelines as set out and without undue delay. It is ComReg's view that this 10 working day timeframe would only be extended in exceptional or unforeseen cases or circumstances and that the parties will be informed of the extension, the reasons for same and of the expected length of time that will be needed to conclude the final determination. In ComReg's view, it is neither practical nor prudent for it to have to issue a final determination within a certain number of days, regardless of the circumstances of the case, especially as this is the last step in the process, where the measures are binding.
- 59 Having considered the submissions, it is ComReg's 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, the reasons for same and of the expected length of time that will be needed to conclude the final determination.

- 60 In relation to the point raised about the ability for parties to request extensions, ComReg agrees that for all timelines specified in the Formal Dispute Resolution Procedures, parties should have the ability to request an extension, where necessary and appropriate. ComReg may grant an extension where it considers that there are good grounds for doing so. This has been inserted into the Procedures, as set out in Annex 2.

Question 6 - ComReg's Preliminary view on measures for the resolution of the dispute; €5,000 threshold¹² limit.

Description of the issue:

- 61 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 was ComReg's preliminary 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 restitutorial and not punitive in nature.
- 62 It was ComReg's preliminary view 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.
- 63 ComReg asked the following question in the further consultation:

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.

Respondents' views

¹² In the interests of providing certainty for Service Providers, the word 'cap' is considered more appropriate than 'threshold'. As 'threshold' was used in the preliminary views, it is maintained whenever a preliminary view is expressed; otherwise 'cap' is used.

64 There were 3 respondents to this question. These were:

- eir
- Three
- Virgin Media

65 eir agreed that there should be a limit on the measures that could potentially be imposed on Service Providers by ComReg. It stated that *'in the interests of transparency and due process ComReg should also publish guidance as to how it will calculate any potential financial payments that it may impose under this process. There appears to be a serious lack of transparency in this regard'*. eir also stated that the €5,000 cap should be included in the Formal Dispute Resolution Procedures.

66 Three generally agreed that a maximum cap of €5,000 is reasonable.

67 On the measures for reimbursement, Three also sought clarification regarding an example used in document 18/77:

"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."

On this point, Three stated that ComReg should take into account the fact that the cost of handsets is generally subsidised, with cost recovery taking place over the duration of the contract. Three put forward a number of proposals with respect to the cost of the handset which should be taken into account in any determination involving reimbursement. Full details of these proposals are published as part of the responses to further consultation document ComReg 18/104S.

68 Three added that the proposed Formal Dispute Resolution Procedures *'must ensure that consumers who have sought redress in terms of the cost of a handset or compensation in settlement of losses through one procedure should not be enabled to seek resolution through another procedure'*.

69 Three also suggested that where there is an amount awarded to the end-user in the final determination, that this should be offset against any balance owed to the Service Provider.

- 70 Three stated that it would welcome a timeline for the discharge of any amount awarded in the final determination. Three proposed a 21 working day timeline from the date of notification of the final determination to the Service Provider and the end-user.
- 71 Virgin Media disagreed with the proposed cap of €5,000. It stated that it is unclear how this amount was calculated by ComReg and that ComReg needs to be more transparent in stating where this figure came from. It added that *'it overlaps with the value of potential claims that are made through the District Court and that ComReg is essentially replicating the work of the District Court and Virgin Media would like to know under what legal basis it can do this'*.
- 72 Virgin Media added that this €5,000 figure *'does not meet the requirements set out in SI 337 of 2011 which stipulates that dispute resolution procedures shall be transparent, non-discriminatory, simple, inexpensive and should enable disputes to be settled fairly and promptly'*.
- 73 Virgin Media argued that the €5,000 figure is unrealistic and is much higher than the maximum amount of a claim with the Small Claims Court which is €2,000. It stated that *'in the UK, the Ombudsman Services state on their website that the most common award for communications related complaints is approximately £50. We have to question how ComReg can justify a threshold of €5,000 when this is what is normally dealt with by the District Court and also when experience in the UK demonstrates that awards are far less than this in practice'*.
- 74 Finally, Virgin Media stated that there must be a clear distinction between the various options (Small Claims Court) for customers seeking redress in order to avoid confusion.

ComReg's position

- 75 In relation to ComReg providing guidance at this time on how financial measures will be imposed, ComReg considers that this submission is primarily directed to the settlement of losses and compensation as the basis for reimbursements will, for the most part, be case and fact-specific. In relation to the settlement of losses and compensation as stated, ComReg will publish case summaries and periodical reports on the outcomes of disputes at an aggregated level. It is ComReg's view that actual data derived from dispute outcomes will provide the best indicator of how financial measures are dealt with across various issues arising. ComReg will update and inform both Service Providers and end-users regarding the operation of the Formal Dispute Resolution Procedures from time to time as appropriate. It is ComReg's view that this will be better done when the Formal Dispute Resolution function is up and running and has been operational for a period of time.
- 76 If ComReg was to set out, at this time, a range or ranges of financial payments that may be awarded for certain types of issues, it would be pre-emptive and premature and would be akin to adjudication before actually reviewing the evidence of a particular case. A balance must be struck between certainty of process and flexibility of procedure so that the procedures can be applied both widely and effectively, and most importantly fairly, in all of the circumstances of a particular case. It is also the case that any determination of ComReg, including a determination that involves a monetary award, will require to be reasoned so that the basis for any particular monetary award should be plain for Service Providers. As stated in the Response to Consultation and Further Consultation document 18/77, the 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 directly correlate to monies owed to the end-user in terms of amounts over-paid or overcharged and will be restitutive and not punitive in nature. Therefore if an end-user is owed or has been over billed a specific amount, the measure could dictate that that amount is refunded to the end-user. Regarding an amount of payment in settlement of losses and compensation, this is addressed under Question 7.

- 77 Regarding general guidance to end-users about the dispute resolution process and any monetary amounts that may be specified in a determination, it is ComReg's view that the application form will be accompanied by some information that will be available to applicants in order to assist them in determining whether the Formal Dispute Resolution Procedures can be availed of by them. This guidance will have a brief overview of what the process entails (what it does and does not do) and will also make clear that claims for punitive amounts will not be made by ComReg. A similar note will be included on a non-exhaustive basis regarding the fact that personal injury¹³ claims are not covered by this process and are outside of ComReg's remit.
- 78 In ComReg's view, once the Formal Dispute Resolution Procedures are operational and ComReg has adjudicated on a number of cases, it will then be in a position to issue guidance on the types of complaints and issues dealt with, the aggregated amounts of reimbursement refunded and the average aggregated amounts of payments stipulated in settlement of losses and compensation.
- 79 ComReg is aware that handsets are generally subsidised by the Service Provider and the cost is recovered over the length of the contract period. ComReg has noted the proposal put forward by Three with regard to any measures imposed involving handsets; however, ComReg will judge each dispute on a case by case basis.
- 80 In relation to the point of needing to ensure that consumers do not seek redress from more than one dispute resolution procedure, in Step 2 of the Formal Dispute Resolution Procedures – Acceptance of an Application, one of the acceptance criteria is that the complaint is not being, nor has previously been, considered by another dispute resolution entity or by a court. Therefore if an end-user has already sought redress through another dispute resolution entity or by a court, their application will be rejected. Where a complaint has not been before another dispute resolution entity or a court and it is accepted into the Formal Dispute Resolution process, the Service Provider will have the opportunity to comment on and/or refute any details provided by an end-user.

¹³ 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.

- 81 ComReg is not in a position to insert into the Formal Dispute Resolution Procedures a statement that any amount awarded to the end-user in the final determination should be offset against any balance owed to the Service Provider as this is a matter that will be decided and adjudicated upon on a case by case basis, depending entirely on the details provided.
- 82 Having considered Three's proposal with regard to a timeline for the discharge of any amount awarded in the final determination, it is ComReg's view that a 30 working day timeline for the discharge of any reimbursement or amounts awarded in the final determination is appropriate.
- 83 In settling unresolved disputes, ComReg is not replicating the work of the District Court but is exercising its right to introduce Formal Dispute Resolution Procedures for certain specific types of electronic complaints and to exercise its powers in that regard pursuant to Regulation 27 of the Users' Rights Regulations. The District Court has a much broader jurisdiction, with the monetary limit of that court being €15,000. As stated in the Response to Consultation and Further Consultation document 18/77, consumers have the option of bringing any of their electronic complaints to the Small Claims Court or indeed to the District Court, provided the complaint falls within that court's remit. In ComReg's view, having Formal Dispute Resolution Procedures offered by ComReg along with other judicial avenues offered by the courts only enhances consumer choice, rights, protection and welfare.
- 84 The €5,000 financial cap specified by ComReg in its preliminary view was based on a number of factors. According to data from the Ireland Communicates Survey 2017¹⁴, 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. For triple play bundles, the average monthly fee can be in the region of €90+. Potentially, a dispute being considered could be in relation to a billing issue with almost 24 months of bills being disputed (12 months with the Service Provider before being notified to the Service Provider's code of practice for complaints handling plus a further potential maximum 12 months before being brought to ComReg's Formal Dispute Resolution function). This means a triple play billing issue being disputed could be in the region of €2,400. It is also

¹⁴ For more information please refer to <https://www.comreg.ie/publication/ireland-communicates-survey-sme-consumer/>

important to note that term “ECS/ECN end-users” includes business consumers, the value of whose billing disputes can be considerably high, potentially in the region of multiples of thousands of euro. Therefore, it was, and remains, ComReg’s view that the €5,000 cap will sufficiently cover those cases in which the measures determined would include those higher amounts owed to consumers in cases of disputed billing issues. As the cap of €5,000 includes a sub cap of €2,000 for payment in settlement of losses and compensation, the €5,000 total cap is considered by ComReg to be conservative in nature.

- 85 ComReg disagrees that the €5,000 cap means that the Formal Dispute Resolution Procedures do not meet the requirements set out in the Users’ Rights Regulations. Any dispute resolution scheme offered by ComReg must be inexpensive in accordance with Regulation 27(6). It is ComReg’s view that the charge of €15 for end-users to access the Formal Dispute Resolution Procedures is reasonable. Under the same regulation, the scheme must also enable disputes to be settled ‘promptly and fairly’. It is ComReg’s view that end-users should be able to have any monies owed to them refunded or reimbursed. The refunding of monies owed by Service Providers to end-users is not putting any cost on to the Service Provider per se, beyond the cost of resources needed to participate in the dispute resolution process. Where an end-user has incurred or experienced a loss or a negative impact as a direct result of an action or inaction on the part of the Service Provider, it is not unreasonable that the end-user should be compensated for that loss or impact. Therefore, and for all of the foregoing reasons, it is ComReg’s view that its Formal Dispute Resolution Procedures are transparent, inexpensive and fair.

Question 7 - ComReg's Preliminary view on measures for the resolution of the dispute; €2,000 limit for payment in settlement of losses and compensation.

Description of the issue:

- 86 It was ComReg's preliminary view that within the €5,000 threshold amount, ComReg also proposed 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 injury¹⁵ 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.
- 87 Furthermore, in relation to the cap of €2,000 for payments of compensation and payments in settlement of losses, it was ComReg's preliminary 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 £200¹⁶. It was ComReg's preliminary view that it 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 and will be reasoned and transparent.

¹⁵ 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.

¹⁶ For more information please refer to <https://www.cedr.com/cisas/docslib/51-cisas-guide-compensation-for-inconvenience-and-distress.pdf?v=1519832772>

- 88 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.
- 89 According to data from the Ireland Communicates Survey 2017¹⁷, 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 was 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).
- 90 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.
- 91 ComReg asked the following question in the further consultation:

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.

Respondents' views

- 92 There were 3 respondents to this question. These were:
- eir
 - Three
 - Virgin Media

¹⁷ For more information please refer to <https://www.comreg.ie/publication/ireland-communicates-survey-sme-consumer/>

- 93 eir stated that if ComReg is to impose up to €2,000 for payment in settlement of losses or compensation, this should be stated in the procedures. It stated that it is unclear what exactly can be taken into account here and that *'ComReg is required to explain how this could be calculated and, in particular, what criteria could be taken into account'*. This should be set out in the procedures or in a separate guidance document.
- 94 Three agreed with the proposal.
- 95 Virgin Media did not agree with this proposal and stated that it has concerns about this cap being imposed. Virgin Media made reference to the UK CISAS¹⁸ scheme, referred to by ComReg in its Response to Consultation and Further Consultation document 18/77. Virgin Media stated that *'ComReg notes that CISAS have a maximum cap on claims to the total value of £10,000 and therefore ComReg views that a cap of €2,000 for the amount that can be determined in the settlement of losses or compensation is reasonable. However, Virgin Media is aware that in relation to compensation CISAS states that the maximum it will award for inconvenience and distress is £200. ComReg does not provide any clarification as to why its proposed figure is so significantly different to that of CISAS. ComReg states "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". However no information on these other comparable bodies has been provided by ComReg. Virgin Media requests more clarity on the reasons why the proposed compensatory value is €2,000 and what exactly this covers. We also would like to know which "other bodies" offer awards of this scale. We believe that this proposed figure for compensatory payments is unreasonable, unrealistic and should be set at a much lower value. We note that the equivalent figure awarded by CISAS is 2% of the total potential award whereas the ComReg compensation figure is 40% of the total potential award. We would also note that while service providers currently offer goodwill gestures to customers as part of their existing dispute resolution processes, these are not to the scale of €2,000 yet customers are happy to accept them and complaints are successfully closed. Further, we are not clear how this value adheres with S.I. 337 of 2011 which requires that a dispute resolution process must be inexpensive'*.
- 96 Virgin Media also suggested that ComReg develops a matrix setting out the ranges of compensation that can be awarded for particular issues, similar to what is provided by schemes in the UK.

¹⁸ Communications and Internet Services Adjudication Scheme

- 97 Virgin Media requested confirmation that ComReg '*will ensure its actions are not in conflict with existing legislation. If a customer is not entitled to compensation due to distress, etc. in civil law, then they are not entitled for such under this process*'.
- 98 Finally, Virgin Media requested clarification on what the remaining €3,000 of the €5,000 would cover.

ComReg's position

- 99 ComReg has considered the responses and it is ComReg's view that, at this time, before the Formal Dispute Resolution Procedures are operational, it is not appropriate for ComReg to pre-emptively set out a matrix of amounts or other more specific guidance, in addition to what ComReg has already stated in the Response to Consultation and Further Consultation document 18/77, with regard to payments in settlement of losses or compensation within the €2,000 cap. ComReg has already stated in document 18/77 that claims for disappointment, inconvenience and/or emotional upset caused by a Service Provider's breach of obligation are within this remit. ComReg also confirmed that personal injury¹⁹ claims are not covered by this process. ComReg stated that any payments specified here 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 and that the end-user will need to provide sufficient information about any losses suffered or endured. It is ComReg's view, that at this time, it would be premature for it to set out such a matrix as this would be akin to adjudicating on matters or cases that have not yet come before it.
- 100 Once the Formal Dispute Resolution function is operational and has had a number of cases before it, it is ComReg's intention to then issue details on the aggregate amounts that have been awarded and the types of issues that attracted those amounts for payments in settlement of losses or compensation.

¹⁹ 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.

- 101 The total amount that can be awarded as a measure for the resolution of a dispute is €5,000. This includes a sub cap of €2,000 for payment in settlement of losses and compensation. This means that a maximum amount of €5,000 may be prescribed in total for the reimbursement of payments and payments in settlement of losses or compensation. So, for clarity, by way of an example, if an end-user is to be reimbursed €4,500 for incorrect billing, there is only a maximum amount of €500 left available to the adjudicator to be awarded for payment in settlement of losses and compensation as no more than a total of €5,000 can be awarded. If an end-user is to be reimbursed €200, the maximum amount that can be awarded for payment in settlement of losses and compensation is €2,000.
- 102 In accordance with the examples specified in paragraph 84, it is estimated that the upper limit of an average individual end-user's case for reimbursement could be in the region of €2,500 (although it also could be far more), but using that figure and example, it was ComReg's view that an amount of €2,000 would be an appropriate maximum figure relative to the approximated €2,500. It is again worth noting that if an end-user is to be awarded an amount of say €4,500 for the reimbursement of monies owed due to over or incorrect billing, ComReg may only award a maximum amount of €500 for payment in terms of payment in settlement of losses or compensation. In that context, the €5,000 figure was also chosen to accommodate those rare cases whereby there is very high figure awarded for re-imburement, for example €4,500, plus a token amount for compensation. In comparison to the £10,000 cap used by both the Ombudsman Services: Communications and the Communications and CISAS in the UK, the €5,000 figure being put forward here is, in ComReg's view, comparatively low.
- 103 In relation to the reference to the CISAS scheme, there is a financial cap of £10,000 with that scheme which includes any claims for compensation, refunds, credits and/or waivers. CISAS have stated that for compensation for inconvenience and distress, '*most awards of this kind are relatively low, and do not often exceed £200*²⁰'. There is not a cap of £200 on awards of this kind, but rather the amounts awarded are generally below that figure. CISAS can and does award amounts higher than this. It is ComReg's view that with its Formal Dispute Resolution Procedures, the amounts awarded for payments in settlement of losses and compensation would be similar to those awarded by CISAS, but in certain cases, it may be higher. ComReg will review each dispute on a case by case basis.

²⁰ For more information please refer to <https://www.cedr.com/cisas/docslib/51-cisas-guide-compensation-for-inconvenience-and-distress.pdf?v=1519832772>

104 The Formal Dispute Resolution Procedures being introduced by ComReg are not in conflict with existing legislation. Under Regulation 27 of the Users' Rights Regulations, 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.

Question 8 - ComReg's Preliminary view on the Formal Dispute Resolution Procedures

Description of the issue:

105 Having considered the views of respondents, ComReg made some amendments to the Formal Dispute Resolution Procedures and sought comments on the Procedures as a whole.

106 ComReg asked the following question in the further consultation:

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.

Respondents' views

107 There were 3 respondents to this question. These were:

- eir
- Three
- Virgin Media

108 eir welcomed a number of clarifications and amendments provided by ComReg in document 18/77. Full details are published as part of the Responses to Further Consultation document ComReg 18/104S.

- 109 eir stated that it had concerns with regard to paragraph 5 in Step 2 of the Procedures - Acceptance of Application. It is eir's view that if an end-user has an application rejected from the Formal Dispute Resolution function, the Service Provider should be informed and given the reason for the rejection. It stated that *'this is particularly the case where the matter may be sent back (or indeed has remained open) with ComReg's customer care team. It is unfair for service providers not to be made aware of the reasons for the rejection where those reasons may impact on the resolution of the dispute through another forum'*.
- 110 eir stated that it noted that ComReg has not confirmed that the customer's case will be closed with the consumer care team once it has been accepted into the Formal Dispute Resolution Procedures. It requested that this be addressed in the final process document. Virgin Media also asked whether ComReg will make a decision on cases qualifying for Formal Dispute Resolution based on the open/closed status of complaints with the ComReg consumer care complaints handling process. Virgin Media stated that it believed *'that ComReg needs to take account of factors such as this to ensure only valid disputes proceed to the dispute resolution process and to ensure that there continues to be an incentive on all parties to close a complaint through the existing mechanism'*.
- 111 In relation to paragraph 6 in Step 2 - Acceptance of Application, eir maintained that, where ComReg has taken more than 5 working days to assess the application, *'it should state this when notifying the parties that the application has been accepted and ComReg should also explain the reasons for the extended assessment as these reasons could potentially have a bearing on the positions of the parties'*.
- 112 It was eir's view that if postal correspondence is to be used by ComReg, extensions should be permitted where the Service Provider or the end-user can demonstrate that there was a delay in receiving the correspondence by post.
- 113 eir stated that the possibility of an extension should apply to all timelines in the process but be subject to exceptional circumstances.
- 114 With regard to ComReg engaging with third party experts, eir argued that fair procedures and due process are not being followed if the parties do not get to see and refute or counter the evidence provided by a third party, in advance of the draft determination stage. It stated that *'the parties to any adjudication process are entitled to know the full case against them and to make submissions in relation to any evidence on which the adjudicator is intending to rely before any views are taken and before any draft determination is published'*.

115 With regard to appealing a final determination, eir stated that although there is an appeal under the Framework Regulations, *'this process is timely and expensive and may be disproportionate in respect of an individual customer's issue'*.

116 In relation to the statement at paragraph 11 of Step 4 - Resolution and Determination:

'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'

eir claimed that *'this is unnecessary and leads to further ambiguity and lack of legal certainty in respect of the entire process. This statement renders the process meaningless. As set out in our previous response, this is very unsatisfactory and is inappropriate for a Formal Dispute Resolution Procedure, the outcome of which is a legally binding determination that is subject to criminal sanction for non-compliance'*.

117 Three agreed with the proposed updates.

118 Virgin Media submitted a number of comments in relation to the Formal Dispute Resolution Procedures. Most of these relate to matters that have already been addressed by ComReg in the Response to Consultation and Further Consultation document 18/77. For example, Virgin Media sought more detail on the internal workings of the adjudication process within ComReg, such as who will be making the adjudication. It also stated that it does not believe that there is justification for the introduction of the Formal Dispute Resolution Procedures due to the fact that the current consumer care complaints handling process works well, the relatively small number of complaints open for more than 40 working days, the potential for customer confusion and the possibility that end-users will be incentivised to not accept reasonable gestures or resolutions offered by Service Providers at earlier stages. As these issues have already been addressed by ComReg in the Response to Consultation and Further Consultation document 18/77, they will not be repeated here.

- 119 It was also Virgin Media's view that Formal Dispute Resolution should be offered by an independent party other than ComReg who has had no involvement with the complaint to date. It also argued that for any determination to be binding, the Service Provider would need to opt in to participate.
- 120 Virgin Media added that there is no opportunity for a Service Provider to engage with the end-user early in the process in an attempt to agree a resolution.
- 121 Virgin Media also suggested that ComReg restrict the Formal Dispute Resolution Procedures to non-business consumers as it maintains that if there are low volumes of complaints for these end-users, it does not *'see the merits of extending this procedure to these end users and thus necessitating ComReg and ECS providers to develop specific processes for this particular cohort of end-users'*.
- 122 They also requested clarity about when the 'clock' starts in the process and the flexibility that will be provided around timelines in unexpected situations faced by all parties.
- 123 Virgin Media stated that in its experience, complaints open for more than 40 working days tend to be related to third party issues, outside of the Service Provider's control and that *'these are not the types of complaints that can be resolved through a dispute resolution process'*.
- 124 Virgin Media also suggested that ComReg does not automatically inform end-users, who have a complaint open for more than 40 working days with the ComReg consumer care complaints handling process, about the Formal Dispute Resolution process. It suggested that ComReg should first review the complaint to see if it would qualify and that ComReg should have *'discretion as to whether to refer the customer to the dispute resolution mechanism'*.
- 125 Virgin Media referenced the ComReg statement 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. In this case, ComReg will explain the reasons for doing so'*. While acknowledging ComReg's response to submissions to the first consultation document 18/34, Virgin Media does not agree with this statement. It argues that *'a dispute resolution procedure must be transparent and all complaints, end-users and service providers must be treated equally and must be completely clear on all processes prior to any engagement with the process. The inclusion of this statement in the procedure document adds a level of uncertainty'*.

- 126 In relation to correspondence, Virgin Media stated that there is no information provided about how ComReg will notify the Service Provider about the dispute and how this interaction will take place (for example via email).
- 127 Virgin Media stated that it has noticed a gap in terms of the potential for the end-user and operator to request an extension on the time period to respond to the draft determination.
- 128 With regard to paragraph 5 of Step 3B - Correspondence with the Service Provider, Virgin Media stated that there should also be a possibility of an extension here.
- 129 Virgin Media also requested that *'all important information about the operation of the process should be reflected in the procedure so that end-users and service providers do not have to refer back to the detailed consultation documents'*.
- 130 Finally, with regard to the Formal Dispute Resolution Procedures as a whole, it was Virgin Media's view that ComReg needs to issue more information, rules and guidance on every aspect of the Formal Dispute Resolution Procedures and consult on these before they can be introduced. It sought more information on the internal processes used by ComReg on the adjudication itself and also for the *'internal audit control processes in place in ComReg to monitor the effectiveness and transparency of the process'*. Virgin Media stated that without these, it has *'grave concerns'* and it requested ComReg to issue a *'follow-up consultation which would clearly set out more detailed information on the defined processes that would underlie the proposed dispute resolution procedure'*.
- 131 Full details are published as part of the responses to further consultation document ComReg 18/104S.

ComReg's position

- 132 There are a number of grounds on which an application for Formal Dispute Resolution may be rejected. These are outlined in Step 2 of the Procedures – Acceptance of an Application. The criteria for the acceptance of an application are administrative in nature and do not relate to the particulars of the case. It is ComReg's view that there is no valid reason as to why a Service Provider should be informed that an end-user has had an application rejected, especially when the reason or reasons for rejection will be on administrative grounds. This holds regardless of whether the end-user has a case open with the ComReg consumer care team or not. It is ComReg's view that when an application is rejected, only the end-user should be informed of the reason for the rejection – as the reason will be on one or more administrative grounds, it is ComReg's view that this is strictly a matter between ComReg and the end-user. It is also ComReg's view that it would be unfair and possibly prejudicial to an end-user for ComReg to be passing on information to a Service Provider about the administrative reason for the rejection of their application, especially when the Formal Dispute Resolution process only begins when the end-user's application is accepted. It is therefore ComReg's position that the Service Provider will not be informed of the reason for rejection of an end-user's application.
- 133 If an end-user has a case open with the ComReg consumer care team for more than 30 working days, and their complaint relates to an issue that ComReg may resolve under Regulation 27 of the Users' Rights Regulations, they will be advised that they can apply for Formal Dispute Resolution. These are the only criteria used by the ComReg consumer care team when informing end-users that they can access the Formal Dispute Resolution Procedures. When an end-user submits an application for Formal Dispute Resolution, their application is then assessed entirely on the basis of the information that they have submitted on the application form. On the application form, there will be a separate page that the end-user will need to sign that consents to their case being closed with the ComReg consumer care team if their complaint is accepted for Formal Dispute Resolution. If their application is accepted, this form will be provided to the ComReg consumer care team and the case will be closed. If their application is rejected, the end-user can continue to have their case open with the ComReg consumer care team until such time as it is closed.

- 134 With regard to Step 2 - Acceptance of Application, it was ComReg's view that once all the relevant information has been received from the end-user, 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. Therefore, in most cases, an application will be assessed within 5 working days, but this can extend to up to 15 working days. Both the end-user and the Service Provider will be formally advised at the same time that the dispute has been accepted - the 'Date of Acceptance' - this will be the first time that the Service Provider will be made aware of the existence of the dispute in the ComReg Formal Dispute Resolution Procedures. Having considered the submissions, it is ComReg's view that there is no valid reason why Service Providers should be advised of the exact nature of the reasons for any extended assessment (an assessment that has taken between 6 and 15 working days). As stated previously, the assessment of applications is based on administrative grounds only and not on the particulars of the case at hand, and so the length of time taken to assess an application will have no bearing on the position of the parties. It is therefore ComReg's position that both the end-user and the Service Provider will be advised of the acceptance of a dispute on the Date of Acceptance.
- 135 It is ComReg's intention to publish high level information on the activities of the Formal Dispute Resolution function, after it has been operational for a period of time. This may include such details as the number of applications received, rejected, average time take to assess applications, average time take to resolve disputes etc.
- 136 If postal correspondence is to be used by ComReg, it is ComReg's view that where the Service Provider or the end-user can demonstrate that there was a delay in receiving the correspondence by post, an extension will be granted to the effect that the first working day begins on the date on which the postal correspondence was received.
- 137 As per what is stated earlier in paragraph 42, ComReg agrees that for all timelines specified in the Formal Dispute Resolution Procedures, parties should have the ability to request an extension, where necessary and appropriate. ComReg may grant an extension where it considers that there are good grounds for doing so. This has been inserted into the Procedures, as set out in Annex 2

- 138 ComReg has considered the views of respondents with regard to ComReg engaging with third party experts and it is ComReg's revised view that as soon as ComReg has received and evaluated any third party evidence or information, both parties will be forwarded a copy and will be afforded the opportunity to comment on that information. This will be before ComReg makes any decision with regard to the draft determination. Parties will be given 10 working days to respond to ComReg with comments on the third party information. As with all timelines specified in the Formal Dispute Resolution Procedures, parties will have the ability to request an extension, where necessary and appropriate. ComReg may grant an extension where it considers that there are good grounds for doing so.
- 139 ComReg notes eir's submission with regard to the appeals process being expensive, timely and possibly disproportionate. However, as the final determination is a decision of ComReg, parties can only appeal in accordance with the appeal process as set out in the Framework Regulations.
- 140 In relation to the statement at paragraph 11 of Step 4 - Resolution and Determination:

'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.'

ComReg disagrees with the statement that this *'is unnecessary and leads to further ambiguity and lack of legal certainty in respect of the entire process'* and *'renders the process meaningless. This is very unsatisfactory and is inappropriate for a Formal Dispute Resolution Procedure, the outcome of which is a legally binding determination that is subject to criminal sanction for non-compliance'*.

- 141 It is ComReg's view that proceeding to issue a final determination, when due to unforeseen or exceptional circumstances for whatever reason ComReg is not in a position to do so, would be perilous and potentially harmful and not in the interest of any of the parties concerned. As stated, ComReg will only deviate from Steps 1-4 in exceptional circumstances, when there are clearly good grounds for doing so and the reasons for same will be communicated to the parties. In ComReg's view, it is both unreasonable and impractical for it to be in a position to steadfastly guarantee absolute strict adherence to Steps 1-4 when it cannot possibly foresee every eventuality before it.
- 142 In response to Virgin Media's submission that that Formal Dispute Resolution should be offered by an independent party other than ComReg, Regulation 27(4) of the Universal Service Regulations provides that ComReg itself may resolve disputes. The Formal Dispute Resolution function provided by ComReg will be a standalone function within ComReg, separate to consumer care and compliance functions.
- 143 Participation in these Formal Dispute Resolution Procedures by Service Providers is not mandatory; however, 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.
- 144 With regard to the submission by Virgin Media that that *'there is no opportunity for a Service Provider to engage with the end-user early in the process in an attempt to agree a resolution'*, ComReg refers to paragraph 7 of Step 3B – Correspondence with the Service Provider which states that:
- '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'.*
- 145 ComReg sees no reason to restrict the Formal Dispute Resolution Procedures to residential consumers only. Even if it is likely that there will be low volumes of business consumers that qualify with complaints open for more than 40 working days, it is ComReg's view that they should have the right to have their dispute adjudicated upon and to seek to have their complaint resolved. ComReg and Service Providers do not need to *'develop specific processes for this particular cohort of end-users'* as the one set of Formal Dispute Resolution Procedures apply for all end-users (both residential and business).

- 146 ComReg does not agree with Virgin Media's view that it is not ever appropriate for ComReg to decide to accept complaints for Formal Dispute Resolution that are unresolved for less than 40 working days. ComReg does not expect that such a situation would arise except for in very rare, exceptional or urgent cases. ComReg cannot possibly foresee every eventuality and it is ComReg's view that should there be a situation or a dispute that requires such intervention, ComReg will be completely transparent, open and fair with all parties involved.
- 147 As is stated in the Formal Dispute Resolution Procedures, the clock for ComReg begins when it receives an application from an end-user for Formal Dispute Resolution. For Service Providers and end-users, the clock begins when they receive notification of the dispute on the Date of Acceptance.
- 148 With regard to the Virgin Media submission regarding complaints that involve third party issues and factors outside of a Service Providers' control, ComReg does not agree that these types of complaints cannot be handled through a dispute resolution mechanism. It is ComReg's view that the resolution of a complaint does not necessarily mean that the complaint is only resolved or closed when a service is provided. For example, where there are wayleave or third party issues, the complaint does not necessarily have to be kept open until such time as the service is provided; in such cases, as long as the consumer has been given a sufficient and reasonable explanation, an indicative timeframe, the reasons for the delay and is given an undertaking that they will be kept updated regarding the provision (or lack thereof) of the service, the complaint could be capable of being closed. In addition, 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 wholesale partners. The timelines for Service Providers to respond in the Formal Dispute Resolution Procedures are sufficient to enable Service Providers to gather enough information to be in a position to provide a response.
- 149 It is ComReg's view that, for end-users who have a complaint open for more than 30 working days with the ComReg consumer care complaints handling process, only those end-users with ECS/ECN complaints that ComReg has the power to resolve in accordance with Regulation 27 will be advised that they have an option of submitting their complaint to the Formal Dispute Resolution process. It is ComReg's view that it is not appropriate for it to have discretion as to whether a customer is referred for Formal Dispute Resolution, especially as the criteria for accessing qualification for Formal Dispute Resolution is clearly set out.

- 150 In relation to the point that Virgin Media raised about correspondence between ComReg and Service Providers, this is clearly set out in paragraph 130 of the Response to Consultation and further consultation document 18/77:

'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.'

- 151 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 (or centralised email address) to be used for the Formal Dispute Resolution process. How Service Providers nominate personnel and resources for the Formal Dispute Resolution process is a matter for Service Providers directly.
- 152 With regard to Virgin Media's comments about there being 'a gap in terms of the potential for the end-user and operator to request an extension on the time period to respond to the draft determination', and in relation to paragraph 5 of Step 3B – Correspondence with the Service Provider, as per paragraph 42 in this document, ComReg agrees that for all timelines specified in the Formal Dispute Resolution Procedures, parties should have the ability to request an extension, where necessary and appropriate. ComReg may grant an extension where it considers that there are good grounds for doing so. This has been inserted into the Procedures, as set out in Annex 2
- 153 Regarding Virgin Media's comments on the need for ComReg to issue another consultation, ComReg disagrees with this view. In relation to the adjudication, the determination will be a decision of ComReg and therefore will be made in the same manner in which ComReg makes all of its regulatory decisions. Internal processes are a matter for ComReg. The determination will be based largely on the information presented to ComReg by the end-user and the Service Provider. ComReg will 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. It is ComReg's view that the Formal Dispute Resolution Procedures, as set out in Annex 2, are clear, fair and transparent.

Question 9 - ComReg's Preliminary view on the effective date.

Description of the issue

154 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.

155 ComReg asked the following question in the further consultation:

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.

Respondents' views

156 There were 3 respondents to this question. These were:

- eir
- Three
- Virgin Media

157 Both eir and Virgin media stated that the timeline for the proposed effective date should begin from the date of the publication of the final decision document.

158 Three agreed with the proposal.

ComReg's position

159 The text in Q.9 of the Response to Consultation and Further Consultation document 18/77 was incorrect. It should have stated that the effective date is 9 months from the date of publication of the Decision document.

160 The effective date for the commencement of the Formal Dispute Resolution Procedures is 9 months from the date of the publication of the Response to Further Consultation and Decision document (this document).

4 Definitions

- 1 For the purposes of this Response to Further Consultation and Decision document, unless the context suggests otherwise:

'Act' means the *Communications Regulation Act 2002* (as amended);

'Complaint' means an issue raised by an end-user to an undertaking relating to that undertaking's product or service or its complaints handling process where the issue remains unresolved following an initial attempt by the undertaking to resolve it or where there has been no attempt by the undertaking to resolve it and the end-user expresses dissatisfaction, through one of the channels set out in the code of practice, that the issue remains unresolved;

'Date of Acceptance' means the date on which the Application from an end-user to the ComReg Dispute Resolution Procedures, is deemed to be valid and accepted and is notified to both the end-user and the Service Provider;

'Direction' includes determination;

'End-User' means a user not providing public communications networks or publicly available electronic communication services as defined in the European Communities (Electronic Communications Networks and Services) (Framework) Regulations, S.I. 333 of 2011);

'Framework Regulations' means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), as may be amended from time to time;

'Service Provider' means an undertaking providing Electronic Communications Networks (ECN) or Electronic Communications Service (ECS)

'The Users' Rights Regulations' means the European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations, S.I. 337 of 2011, as may be amended from time to time;

'Working Day' means a day which is not a Saturday, Sunday or a public holiday;

Other terms that are used in this Response to Further Consultation and Decision document shall have the same meaning as when they are used in the Users' Rights Regulations and the Framework Regulations and the Act unless the context otherwise admits or requires.

Annex: 1 Legal Basis

Origin of Legal Powers and Obligations

A 1.1 This document is issued to set out 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 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 Formal Dispute Resolution Procedures for ECS/ECN End-Users

A 2.1 The effective date for the commencement of the Formal Dispute Resolution Procedures is 9 months from the publication of this Document, the Response to Further Consultation and Decision, ComReg 18/104. The Formal Dispute Resolution Procedures will commence on Monday 2nd September 2019. Only those complaints that are first notified to Service Providers in accordance with their codes of practice for complaints handling²¹ from 2nd September 2019 onwards will be accepted into the Formal Dispute Resolution Procedures, once they are unresolved for more than 40 working days.

A 2.2 ComReg agrees that for all timelines specified in the Formal Dispute Resolution Procedures, parties should have the ability to request an extension, where necessary and appropriate. ComReg may grant an extension where it considers that there are good grounds for doing so. ComReg will respond to requests for extensions within two working days.

A 2.3 If an end-user has a case open with the ComReg consumer care team for more than 30 working days, and their complaint relates to an issue that ComReg may resolve under Regulation 27 of Users' Rights Regulations, they will be advised that they can apply for Formal Dispute Resolution. On the application form, there will be a separate page that the end-user will need to sign that consents to their case being closed with the ComReg consumer care team if their complaint is accepted for Formal Dispute Resolution. If their application is accepted, this form will be provided to the ComReg consumer care team and the case will be closed. If their application is rejected, the end-user can continue to have their case open with the ComReg consumer care team until such time as it is closed.

A 2.4 When ComReg receives an application from an end-user for the Formal Dispute Resolution Procedures, 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 on the basis of the information supplied by the end-user in the application.

²¹ For more detail on the code of practice for complaints handling please refer to the ComReg document 17/62 (D04/17), Electronic Communications Complaints Handling Code of Practice - Response to Consultation and Decision

A 2.5 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 procedures. 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.

A 2.6 If correspondence is by post, a postal tracking service will be used to determine the date on which the draft and final determination has been delivered to parties. If postal correspondence is to be used by ComReg, where the Service Provider or the end-user can demonstrate that there was a delay in receiving the correspondence by post, an extension will be granted to the effect that the first working day begins on the date on which the postal correspondence was received.

A 2.7 The total amount that can be awarded as a measure for the resolution of a dispute is €5,000. This includes a sub cap of €2,000 for payment in settlement of losses and compensation. This means that a maximum amount of €5,000 may be prescribed in total for the reimbursement of payments, payments of compensation and payments in settlement of losses. So, for clarity, by way of an example, if an end-user is to be reimbursed €4,500 for incorrect billing, there is only a maximum amount of €500 left available to the adjudicator to be awarded for payment in settlement of losses and compensation as no more than a total of €5,000 can be awarded. If an end-user is to be reimbursed €200, the maximum amount that can be awarded for payment in settlement of losses and compensation is €2,000.

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;
 - Consumer Care case closure signed consent form; and
 - The 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 Regulations²² 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;

²² S.I. No. 228/2013 - Communications (Mobile Telephone Roaming) Regulations 2013.

- 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 in 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, good grounds exist, ComReg may accept an application for the extension of time. This would be a matter for ComReg to do 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. As soon as ComReg has evaluated any third party information, both the Service Provider and the end-user will be sent a copy 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 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 at the same time. 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 such as the name of the Service Provider, the nature and type of the complaint, whether the determination was in favour of the Service Provider or the end-user and the measure determined (excluding any financial amounts prescribed). 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. A response in writing to the draft determination and draft summary 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 response was posted in time.

- 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. It will set out the reasoning behind the decision, 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, the reasons for same, 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 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. The final determination will set out the timeframe and amount of any payments to be discharged by the Service Provider, within 30 working days, unless otherwise specified.
- 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 successfully 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. 333/201123. 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.

²³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011

- 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.