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**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Dispute Resolution Procedures

under Regulation 67 of the European Union (Electronic Communications Code) Regulations 2022 (S.I. 444 of 2022)

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# 1 Introduction

1. This document sets out the procedures for dispute resolution by the Commission for Communications Regulation ('**ComReg**') under Regulation 67 of the European Union (Electronic Communications Code) Regulations 2022 (the '**ECC Regulations**'),<sup>1</sup> which transpose Directive (EU) 2018/1972 of the European Parliament and the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (the '**Code**').<sup>2</sup> Except where the context otherwise requires, the meanings of words or phrases in this document are the same as those in the ECC Regulations.
2. These procedures are published pursuant to Regulation 67(3) of the ECC Regulations, which requires that ComReg publish clear and efficient dispute resolution procedures and provides for all investigations and determinations concerning disputes to be handled in accordance with such procedures. ComReg may periodically review and update these procedures at its discretion. Any updated procedures will be published on ComReg's website.
3. These procedures replace those published in "*Dispute Resolution Procedures – Framework Regulations*", Decision D03/10 of 29 March 2010.
4. Under Regulation 67(9) of the ECC Regulations, an undertaking that fails to cooperate with an investigation or fails to comply with a determination concerning a dispute commits an offence and is liable to a class A fine on summary conviction.

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<sup>1</sup> S.I. No. 444/2022

<sup>2</sup> OJEU L321/36

## 2 Disputes for resolution under Regulation 67

5. Disputes that may be referred to ComReg under Regulation 67 of the ECC Regulations are disagreements between two parties with regard to the access or use of electronic communications networks ('**ECN**'), electronic communications services ('**ECS**') or associated facilities,<sup>3</sup> the resolution of which depends on the application of one or more obligations under the ECC Regulations<sup>4</sup> or the Code.
6. Only the following types of dispute may be referred to ComReg for resolution under Regulation 67 of the ECC Regulations:
  - (a) disputes between providers of ECN or ECS in the State (i.e. providers that establish, operate, control or make available such networks or services in the State), in connection with existing obligations under the ECC Regulations;
  - (b) disputes between providers of ECN or ECS in the State and other undertakings benefiting from obligations of access or interconnection arising under the ECC Regulations or the Code; or
  - (c) disputes between providers of ECN or ECS and providers of associated facilities in connection with existing obligations under the ECC Regulations or the Code.
7. Disputes referable under Regulation 67 include, for example, instances where:
  - (a) access to an ECN (including interconnection) is denied;
  - (b) the terms and conditions of such access cannot be agreed; or
  - (c) there is disagreement as to how access is to be performed, including how conditions are to apply, or how prices are to be calculated.

Any dispute referred to ComReg for resolution will require a connection to obligations set out in the ECC Regulations or the Code. Only matters in actual dispute may be referred for resolution; ComReg will not consider hypothetical disputes for resolution.

8. A dispute may only be referred to ComReg for resolution under Regulation 67 by an actual party to the dispute.

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<sup>3</sup> As defined in the ECC Regulations.

<sup>4</sup> This includes obligations imposed by ComReg in the exercise of its functions under the ECC Regulations.

9. In these procedures, the party submitting the dispute is referred to as the '**applicant**', the party with whom the dispute arises is referred to as the '**respondent**', and, together, they are referred to as the '**parties**'.
10. If an applicant wishes to refer a dispute to ComReg for resolution, it must follow the procedure set out in section 3.2, below.
11. These procedures apply to disputes arising between undertakings in the State. Where a dispute arises between undertakings in different Member States, Regulation 68 of the ECC Regulations will apply.

## 3 Dispute resolution procedure

### 3.1 Overview

12. Under Regulation 67(2) of the ECC Regulations, ComReg is required to make a binding determination in resolution of the dispute as soon as possible after deciding that it is appropriate for it to handle such a dispute and except where circumstances arise which ComReg considers to be exceptional, it must be resolved within 4 months of such a determination.
13. Where exceptional circumstances arise such that ComReg does not consider the dispute to be capable of resolution within 4 months, the parties will be informed as soon as practicable that the timeline is to be extended as well as the reasons for same.
14. Parties need to ensure that any deadlines set by ComReg are strictly adhered to, bearing in mind that, in most cases, requests for extensions during the dispute resolution process will not be accommodated due to the 4-month timeframe provided for in Regulation 67(2). Parties will also need to commit to working with ComReg throughout the process, and in this regard they are again reminded of the obligation to cooperate with an investigation under Regulation 67 and of the criminal sanction attaching to the failure to do so (see paragraph 4, above).
15. Regulation 67(9)(a) makes it an offence for an undertaking to “*[fail] to cooperate with an investigation*” under Regulation 67. While it does not set out in detail what might constitute a failure to cooperate, the following is a non-exhaustive list of behaviours that will be considered by ComReg, as a matter of policy, to amount to non-cooperation for the purposes of Regulation 67(9):
  - (a) the provision of false or misleading information or evidence;
  - (b) the unreasonable withholding of relevant information or evidence that is likely to have a material bearing on the outcome of the dispute; and
  - (c) systematic, intentional, or other unjustifiable delay.
16. The dispute resolution process is comprised of the following phases:
  - (a) the Preliminary Phase (typically 15 working days);
  - (b) the Investigation Phase (typically 20 working days);
  - (c) the Draft Determination Phase (typically 40 working days including 10 working days for consultation); and
  - (d) the Determination Phase (typically 20 working days).

17. Where, for whatever reason, ComReg considers it necessary to deviate from the procedure set out below, the parties will be notified accordingly.
18. Where requested and appropriate, ComReg may provide limited guidance to the parties in the preparation of their submissions, or in relation to any other procedural query.

## 3.2 Dispute resolution phases

### 3.2.1 Preliminary Phase

19. The Preliminary Phase is comprised of Steps 1 to 5, below, concluding with ComReg deciding whether it is appropriate for it to handle the dispute. The statutory 4-month period for the resolution of the dispute will commence on the day the decision is made to handle the dispute.
20. ComReg will strive to conclude the Preliminary Phase as swiftly as possible and in any event within 15 working days. Where, for whatever reason, it seems likely to ComReg that further time will be required for the completion of the Preliminary Phase, the parties will be notified.

#### Step 1: Dispute Submission

21. To refer a dispute to ComReg, the applicant is required to send, via email, a completed Dispute Submission (Comreg25/89a). The email should be sent to [wholesaledisputes@comreg.ie](mailto:wholesaledisputes@comreg.ie). The Dispute Submission must, at minimum, clearly set out:
  - (a) the parties to the dispute;
  - (b) an explanation as to how the dispute falls into one of the categories specified at paragraph 6, above;
  - (c) the regulatory obligations relevant to the dispute;
  - (d) all facts relevant to the dispute;
  - (e) evidence supporting every factual claim; and
  - (f) the terms of the resolution sought from ComReg.
22. The applicant is required to notify the respondent as soon as practicable after submitting a dispute to ComReg for resolution. This notice may be given either:
  - (a) by e-mailing a copy of the Dispute Submission to the respondent; or

- (b) where confidential information falling into the category specified at paragraph 46(b) is contained in the Dispute Submission, by redacting such information and e-mailing a non-confidential version to the respondent (see section 4, below).

In either case, ComReg must be copied on the relevant email, and will confirm receipt of same.

- 23. In order to ensure that both parties are in a position to properly engage in the process to resolve the dispute, the email notifying the respondent of the dispute must make clear reference to Regulation 67 of the ECC Regulations and these procedures, and paragraphs 24 and 25, below, must be quoted in full.

### **Step 2: Respondent's Acknowledgement**

- 24. If the respondent wishes to make any submission in relation to whether it is appropriate for ComReg to handle the dispute, it may do so by submitting a Respondent's Acknowledgement (Comreg25/89b). The email should be sent to [wholesaledisputes@comreg.ie](mailto:wholesaledisputes@comreg.ie) within 5 working days of receipt of notice of the dispute. Moreover, it is open to the respondent to make any submission it wishes, including by way of Respondent's Submission (see paragraph 36, below); however, it should be borne in mind that ComReg will not engage with the merits of the dispute unless and until it decides to proceed to the Investigation Phase.
- 25. In circumstances where the respondent opts to make a submission in accordance with paragraph 24 above, it is required to notify the applicant as soon as practicable after submitting same to ComReg. This may be done either:
  - (a) by e-mailing a copy of the submission to the applicant; or
  - (b) where confidential information falling into the category specified at paragraph 46(b) is contained in the submission, by redacting such information and e-mailing a non-confidential version to the applicant (see section 4, below).

In either case, ComReg must be copied on the relevant email, and will confirm receipt of same.

### **Step 3: Information review**

- 26. At the expiry of 5 working days from notification being provided in accordance with paragraph 22, above, ComReg will commence an initial review of the parties' submissions to determine whether it is in possession of sufficient information and evidence to enable it to proceed to a decision on whether it is appropriate for it to handle the dispute. This will be done irrespective of whether a Respondent's Acknowledgement has been submitted.
- 27. If necessary, ComReg may contact the parties to discuss the dispute, or to request further information.



#### Step 4: Appropriateness review

28. In order for ComReg to initiate an investigation under Regulation 67 of the ECC Regulations, it must first decide that it is appropriate for it to handle the dispute in question by reviewing the parties' submissions. The following circumstances are likely to result in a dispute not being deemed appropriate for resolution:
- (a) ComReg has not been provided with sufficient information to enable it to articulate what the dispute is;
  - (b) the dispute is not a dispute within the meaning of the ECC Regulations or the Code;
  - (c) the applicant has not demonstrated that efforts have been made to engage with the respondent in good faith prior to referring the dispute for resolution; or
  - (d) the specific issue or issues that have been referred for resolution will not, in ComReg's opinion, result in the resolution of the underlying dispute.

#### Step 5: Handling of dispute

29. Where ComReg decides that it is not appropriate for it to handle the dispute, the parties will be notified and provided with the reasons for that decision.
30. In accordance with Regulation 67(4), where ComReg decides that it is appropriate for it to handle the dispute, but:
- (a) it is satisfied that other mechanisms, including mediation, are available to the parties that would better contribute to the resolution of the dispute in a timely manner; or
  - (b) legal proceedings have been initiated by either party in relation to the matter under dispute,

ComReg may decide not to initiate an investigation. In such circumstances, the parties will be notified and provided with the reasons for that decision.

31. Where ComReg has made a decision in accordance with paragraph 30, above, if, after the expiry of 4 months from the date of that decision, the dispute remains unresolved or legal proceedings in relation thereto are not in progress, either party may request the initiation of an investigation in accordance with Regulation 67(6) of the ECC Regulations. Any such request must be accompanied by appropriate evidence.
32. Where ComReg decides that it is appropriate for it to handle the dispute, and:
- (a) it has not made a decision in accordance with paragraph 30, above; or

- (b) either party makes a request for the initiation of an investigation in accordance with paragraph 31, above,

ComReg will inform the parties of its decision and/or intention to proceed to the Investigation Phase. It is at this point that the statutory 4-month period for the resolution of the dispute commences.

- 33. If, at any stage prior to ComReg making a decision in accordance with paragraph 32, above, both parties notify ComReg that they do not wish for an investigation to be initiated, the dispute will be deemed withdrawn by consent.
- 34. Once an investigation has been initiated, while it is open to the parties to notify ComReg that they both do not wish or the dispute to proceed to a full determination, it will be for ComReg to decide, at its discretion, how best to proceed within the parameters of the ECC Regulations.
- 35. ComReg may decide in its discretion to publish an information notice on its website indicating that an investigation has been initiated in accordance with these procedures, and such notice may include whatever level of detail ComReg deems appropriate in the circumstances.

### 3.2.2 Investigation Phase

#### Step 6: Respondent's Submission

- 36. Once the parties have been informed of ComReg's intention to proceed to the Investigation Phase, the respondent will be invited by ComReg to submit a Respondent's Submission (Comreg25/89c). The email should be sent to [wholesaledisputes@comreg.ie](mailto:wholesaledisputes@comreg.ie) within 5 working days, or within such other timeframe as ComReg may permit in its discretion. The same requirements of paragraph 25 as apply to a submission made in accordance with paragraph 24 apply to the Respondent's Submission.

#### Step 7: Investigation

- 37. ComReg has discretion to conduct its investigation into the dispute in any manner it deems fit. ComReg will consider the parties' submissions and may take any action it considers necessary to enable it to resolve the dispute; it may, for example:
  - (a) request clarifications or additional submissions from the parties;
  - (b) meet with the parties either together or individually; or
  - (c) consult with relevant bodies, stakeholders or other regulatory authorities, as appropriate.
- 38. Any additional information that may be requested by ComReg at this stage of the process will need to be subject to strict deadlines, given the statutory timeline.

### **3.2.3 Draft Determination Phase**

#### **Step 8: Draft determination**

39. ComReg will review all submissions from the parties and prepare a draft determination to resolve the dispute. Pursuant to Regulation 67(7) of the ECC Regulations, in making a determination ComReg will have regard to its objectives under section 12 of the Communications Regulation Act 2002 and Regulation 4 of the ECC Regulations.

#### **Step 9: Parties' comments**

40. The draft determination will be sent to the parties for their submissions and comments. Any such submissions must be copied to the other party to the dispute. Where a submission contains confidential information falling into the category specified at paragraph 46(b), a non-confidential redacted version is required to be sent to the other party, with ComReg copied on the relevant e-mail. Such submissions will generally be required to be made within 10 working days.
41. ComReg may publish the draft determination for consultation, where appropriate.

### **3.2.4 Determination Phase**

#### **Step 10: Final determination**

42. ComReg will consider all comments/submissions received from the parties and amend, as appropriate, the draft determination, setting out in full its reasons for the final determination.

#### **Step 11: Notification and publication**

43. ComReg will notify the parties of the final determination.
44. ComReg will publish the final determination on its website pursuant to Regulation 67(11) of the ECC Regulations, having regard to the requirements of confidentiality set out in section 4, below.

## 4 Treatment of confidential information<sup>5</sup>

45. In accordance with the principles of natural and constitutional justice, there is a requirement for both parties to be in possession of sufficient information to enable them to engage in the process effectively; there is, however, a competing requirement for confidential information to be protected so as not to give any party a competitive advantage or to otherwise distort competition, as well as to protect personal data. The parties must ensure that any such confidential information is clearly identified in their submissions, particularly in light of the requirement for ComReg to publish the final determination of the dispute on its website pursuant to Regulation 67(11) of the ECC Regulations.
46. For the purpose of these procedures, confidential information falls into either of two categories:
- (a) information that must be withheld from the public but is to be shared with the other party to dispute; or
  - (b) information that must be withheld both from the public and from the other party to the dispute.

No class of information may be withheld from ComReg on confidentiality grounds.

47. Any information which a party considers to fall within either of the above categories must be clearly identified, with the relevant category specified. Redacted and un-redacted versions of all submissions containing confidential information must be prepared by the parties for consideration by ComReg.
48. Any claim of confidentiality must be supported by clear and specific reasons for the redactions and vague or blanket claims of confidentiality will not be accepted. Any non-confidential, redacted version of a submission must be sufficiently detailed and without excessive redaction to ensure that the parties are in a position to engage and respond effectively.
49. ComReg may make interim rulings on claims of confidentiality at any stage up until the final determination is made, and may, in its discretion, refuse to permit any redactions it does not deem to be necessary and appropriate in all the circumstances.
50. ComReg will be the final arbiter of all claims of confidentiality.

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<sup>5</sup> These procedures are without prejudice to any confidentiality guidelines or similar procedures that may be published by ComReg from time to time; however, where, in the context of disputes referred for resolution under Regulation 67 of the ECC Regulations, there is a conflict between any provision of these procedures and any other such guidelines or procedures, these procedures are to take precedence.