



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Publication of ComReg's Guidelines on the determination of administrative sanctions

Response to Consultation 25/77

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1 Introduction

- 1.1 ComReg has today published its finalised Guidelines on the determination of administrative sanctions pursuant to section 98 of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“the 2023 Act”). This follows a consultation on draft Guidelines (ComReg 25/77 and 25/77a) which ran from 29 October 2025 to 28 November 2025. Submissions were received from two respondents, namely, Eircom Limited trading as Eir and Open eir (“Eir”) and Virgin Media Ireland Limited (“Virgin Media”). Both Eir and Virgin Media welcomed the opportunity to comment on a draft of the Guidelines and directed the majority of their submissions to the part of the Guidelines concerned with the calculation of a financial penalty.
- 1.2 ComReg’s consideration of the respondents’ submissions is set out below under the following headings: Purpose and scope of the Guidelines; Financial sanction range: threshold and cap; Calculation of the basic amount; Aggravating and mitigating factors; and Adjustments including exceptions.
- 1.3 The Guidelines, which reflect ComReg’s consideration of the Submissions received, have been published separately in ComReg 26/16. This response should be read together with the Guidelines and the respondents’ submissions published in the Appendix.

2 Purpose and scope of the Guidelines

- 2.1 Both Eir and Virgin Media made submissions as regards the purpose and scope of the Guidelines. Virgin Media noted that the Guidelines should “*serve as a framework for how relevant authorities will apply Administrative Sanctions in practice*” and welcomed such Guidelines on the basis that “*this will give stakeholders greater certainty as to the approach that ComReg (or its authorised agents) will apply in practice*”.¹ Virgin Media warned that the Guidelines should “*not (inadvertently or otherwise) award to ComReg or its agents any powers outside of those solely derived from section 98 of the Act*” and emphasised that the methodology adopted by ComReg to determine financial penalties must, above all, “*ensure procedural fairness,*” having regard to the material impact that such penalties may have on those whom they are imposed. Virgin Media noted also that “*Where the Guidelines are amended in future, ComReg should conduct further consultation with industry ahead of making any final amendments.*”²
- 2.2 Eir was concerned that the Guidelines would apply in respect of infringements that had occurred prior to the adoption of the Guidelines. Eir noted that “*in line with the principle against retroactive penalties, any penalties methodology can only apply to*

¹ Virgin Media’s submissions, p. 2, second paragraph.

² Virgin Media’s submissions, p. 3, second paragraph.

*infringements that occur after that new methodology is formally adopted” and suggested that applying a new penalty methodology to conduct which occurred before its adoption “would contravene the principle of legal certainty and clearly infringes on undertakings’ legitimate expectation.”*³

- 2.3 The purpose of the Guidelines is, as provided for under section 98 of the 2023 Act, to provide guidance to adjudicators in respect of the decision which they may adopt under section 91 of the 2023 Act, once they have made a decision under section 90(2) that a person has committed or is committing a regulatory breach. According to section 91(1), this includes among others, the imposition of a financial penalty and the imposition of a requirement to pay refunds and compensation as well as the suspension or withdrawal of a person’s authorisation to provide electronic communications networks or services or rights of use for radio spectrum and of use for numbering resources. In turn, section 98(1) explicitly lists a number of such matters in respect of which ComReg may make guidelines including, under subsections (1)(b), (c), (d) and (e), the imposition of administrative sanctions (including the factors applicable to any financial penalty the method of calculation of financial penalties), the award of compensation, the award of refunds and the suspension or withdrawal of authorisation or rights of use for radio spectrum or numbering resources.
- 2.4 As such section 98 does not grant any powers other than those set out in section 91; rather by allowing the adoption of Guidelines binding adjudicators (unless in accordance with section 98(2), they have a good and substantial reason not to follow them) section 98 supports procedural fairness by a number of means, including by ensuring uniformity of approach in all cases. Transparency as regards applicable Guidelines is an important part of this and ComReg will follow its Consultation Guidelines⁴ in respect of future amendments to the Guidelines and any amended Guidelines will be published on ComReg’s website in accordance with section 98(4). Nothing in the Guidelines affects or limits any person’s statutory right to be heard by, or to appeal to, a court. The Guidelines are intended solely to guide ComReg and adjudicators in the exercise of their functions and do not apply to the courts.
- 2.5 Adjudicators are the principal addressees of the Guidelines. It is noted for the avoidance of doubt that adjudicators are not “*agents of ComReg*” as referred to by Virgin Media but rather are appointed by the Minister on ComReg’s proposition under sections 75 and 76 of the 2023 Act and are independent of ComReg in the exercise of their adjudication function. The Guidelines have been adjusted accordingly to make it clear that they are addressed to the adjudicators. Of course, the Guidelines will be followed by ComReg also when making submissions to an adjudicator under section 91 of the 2023 Act.

³ Eir’s submissions, para 6

⁴ Consultation Procedure Guidelines, Document Number 24/04, 11 January 2024.

- 2.6 As regards the application of the Guidelines to a regulatory breach referred to adjudication on or after 9 June 2023, irrespective of when the regulatory breach in question commenced, ComReg accepts that the application of the Guidelines should not result in the imposition of an administrative sanction that is more severe than that which could have been imposed under the regulatory framework applicable at the time the regulatory breach occurred. The Guidelines have been clarified accordingly.

3 Financial sanction range: threshold and cap

- 3.1 Eir's submissions included a series of comments as regards both applying a minimum "substantial harm"⁵ threshold in deciding to impose a financial sanction and the treatment of "minor/technical" breaches,⁶ and the impact in a financial sanction calculation, of the maximum amount of financial sanction that can be imposed under the 2023 Act.⁷
- 3.2 In particular Eir suggested first that the Guidelines should limit the imposition of financial penalties to infringements involving "*substantial harm*" and explicitly acknowledge that the methodology can result in a zero penalty.⁸ Eir further submitted that minor breaches, which are "*promptly rectified and have negligible impact, should not attract formal sanctions*" and ComReg should instead adopt alternative regulatory measures such as compliance notices or informal resolution. According to Eir, it should be ComReg's policy that infringements which "*would yield a gravity factor of 0%*" are not referred to adjudication. Second, Eir sought reassurance that the statutory cap will not distort penalties for small breaches, submitting that "*The cap should not be treated as a target and financial penalties must remain proportionate to the nature and impact of the breach.*"
- 3.3 In terms of applying a minimum "substantial harm" threshold below which no financial sanctions would be considered appropriate, ComReg notes there is no requirement under section 94 or anywhere else in the 2023 Act that substantial harm be identified as a precondition to the imposition of a financial penalty and ComReg does not believe that such a principle should be introduced under the Guidelines. The effects of a breach is only one of the factors that are relevant to determining the amount of a financial penalty and ComReg fundamentally disagrees with Eir's suggestion that a substantial harm threshold would ensure that "*ensuring that fines [are] used judiciously*" or that it is necessary to avoid "*disproportionately high fines.*" Proportionality is an important principle set out in the Guidelines which does not require a substantial harm threshold for its implementation. Not setting any harm threshold is also consistent with ensuring the objective set out in section 94(1)(a) of the 2023 Act, namely that financial penalties are appropriate, effective, proportionate

⁵ Eir's submissions, para 1.

⁶ Para 13-14.

⁷ Para 15.

⁸ Para 2-3.

to the regulatory breach and dissuasive. ComReg does not see how setting a minimum “substantial harm” threshold would be consistent with the overall objective of ensuring that fines are dissuasive and have a deterrent effect.

- 3.4 It should also be noted, as recalled in section 2 above, that the purpose of the Guidelines is to guide the adjudicators in respect of the imposition of administrative sanctions under the 2023 Act once a finding of regulatory breach has been made. They do not address policy matters that are clearly outside the remit of the adjudication function. This includes in particular whether or not to make a referral to an adjudicator, a matter that is for the Authorised Officer with the consent of the Commission under section 69(b) of the 2023 Act. ComReg accepts the possibility that “*issues of a minor nature that are promptly rectified and have negligible impact*” may be addressed through other regulatory measures, other than a referral for adjudication, as called for by Eir. However, the appropriate regulatory response will depend on the specific facts and circumstances of each case and in any event, this is not a matter that can be properly addressed in guidelines adopted under section 98 regarding administrative sanctions.
- 3.5 Similarly, ComReg does not believe that it is either appropriate or necessary to include guidance as part of the Guidelines, that a potential outcome of the methodology is no financial penalty and/or a zero financial penalty. While a regulatory breach may be of low gravity, characterising a breach as having zero gravity would be inconsistent with a finding of breach. Where conduct has been found to constitute a breach of a regulatory obligation, it involves a departure from compliance and therefore will always carry some degree of gravity.
- 3.6 As regards Eir’s concern that the statutory cap on financial penalties will serve as a target rather than a ceiling, ComReg notes that the statutory cap plays no role in the methodology set out in the Guidelines in the actual calculation of the amount of the financial penalty; it only intervenes ex post calculation, to ensure that the appropriate financial penalty is below the statutory ceiling. ComReg does not see any basis for Eir’s concerns in this regard.

4 Calculation of the basic value

- 4.1 Both Eir and Virgin Media had comments in respect of the calculation of the basic value of the financial penalty including in particular as regards the determination of the gravity factor. Eir disagreed that the basic amount should be determined by applying a gravity factor of between 0 and 30% of the value of relevant sales noting that this amounted to raising the maximum gravity level by a factor of 3 (from 10% to 30% of the relevant turnover) as compared to the approach adopted by ComReg in its Guidance for the calculation of financial penalties for the purpose of ComReg’s submissions to the High Court under Regulation 19(8) of the Access Regulations 2011 (SI 334 of 2011) (repealed and replaced by the ECC Regulations 2022 (SI 444

of 2022)). In absence of any justification on the part of ComReg, Eir was of the view that the maximum gravity level should remain at 10%.⁹

- 4.2 Eir also submitted that ComReg's proposed approach to assessing gravity lacked sufficient detail and suggested that there should be guidance on how the applicable gravity percentage would be selected in different scenarios, ideally supported by hypothetical examples. Eir was concerned that the combination of a maximum gravity percentage of 30% combined with a high legislative cap on financial penalties could lead to the imposition of excessively large fines creating regulatory uncertainty deterring investment.¹⁰ According to Eir, the Guidelines should explicitly require adjudicators to consider the regulatory context and exceptions at the time the breach occurred when assessing gravity and proportionality, as well as the 'duration' aspect of the breach. Virgin Media agreed that there should be additional guidance on how the level of seriousness is to be determined by the Adjudicator(s) and how to select the appropriate percentage. Virgin Media urged ComReg to revisit the proposed guidelines in this respect to provide more detail on the calculations it will use and the weighting/scale to be attached.¹¹
- 4.3 Having considered the respondents' submissions, ComReg remains of the view that a range for gravity extending from 0 to 30% of the value of relevant sales is appropriate. In particular, the range is sufficiently wide that it appropriately reflects differences in the gravity of breaches arising from their nature and to meaningfully reflect those differences in the amount of the financial penalties, so that the most serious breaches will attract meaningfully higher penalties than minor breaches. This is essential so that the methodology allows ComReg to achieve the objectives set out in section 94(1), namely that financial penalties are appropriate, effective, proportionate to the regulatory breaches and dissuasive with a deterrent effect, and is for this reason considered more suited than the 0-10% range provided for in the Access Regulations Guidance. ComReg does not believe that there can be any doubt that the specific percentage within the gravity range should be selected having regard to the seriousness of the breach and therefore the additional wording suggested by Eir for section 2.13 of the Draft Guidelines ("*depending on the seriousness of the breach*")¹² are not necessary.
- 4.4 ComReg also does not believe that it would be appropriate to add to the guidelines a specific requirement that adjudicators "*consider the regulatory context and expectations at the time the breach occurred when assessing gravity and proportionality*" as suggested by Eir.¹³ It is not clear what is meant by "regulatory context and expectations" but in any event, it is sufficient to note that the adjudicators

⁹ Eir's submissions, para. 8; para 12.

¹⁰ Para 10.

¹¹ Virgin Media's submission, p. 2, sixth para.

¹² Eir's submissions, para 12.

¹³ Eir's submissions, para 11.

will have regard to all relevant facts of the case (including submissions made by the parties) before them in making their determination.

- 4.5 Furthermore, ComReg does not agree with Eir that a maximum gravity percentage of 30% combined with the statutory cap of 10% turnover could lead to the imposition of “*excessively large fines*” creating regulatory uncertainty deterring investment.¹⁴ The fact that the methodology may produce large financial penalty amounts for serious regulatory breaches is entirely consistent with the legislator’s intentions reflected in a statutory cap for financial sanctions set at 10% of turnover. Ensuring that regulatory breaches will be subject to financial sanctions commensurate to the gravity and duration of the breach will further regulatory certainty and investors’ confidence, not undermine them.
- 4.6 Finally, ComReg does not believe that detailed explanations, worked examples or other scenarios are either necessary for the adjudicators or appropriate for stakeholders. The purpose of the methodology is to ensure that in all cases, a similar approach is used ensuring fair and transparent treatment. But its implementation will depend on all facts of the cases that are before the adjudicators and there must be discretion as regards the selection of the gravity percentage in order that the calculation of the appropriate amount of the financial penalty cannot be factored in, contrary to the objective of dissuasion and deterrence.

5 Mitigating and aggravating factors

- 5.1 Both Virgin Media and Eir also made comments as regards adjustments to the basic amount of the financial penalty by reference to mitigating and aggravating factors. Virgin Media had a general comment that the reference in the draft Guidelines to mitigating and aggravating factors being ‘*non exhaustive*’ was beyond the scope of section 94 of the 2023 Act, on the basis that section 94 does not confer a power on ComReg to create additional mitigating or aggravating factors beyond those expressly listed in the Act.¹⁵ ComReg does not agree, however, that the factors listed in section 94 are exhaustive and note in any event that one such factor listed in section 94(1)(r) is the guidelines adopted under section 98 of the Act.
- 5.2 Eir had two comments as regards aggravating factors. First, Eir submitted that, ‘*if section 94(1)(n) is intended to encompass prior financial penalties agreed under the Access Regulations, an adjudicator should not have regard to any financial penalty imposed where ComReg has sought to apply the methodology set out in the Guidelines for the calculation of financial penalties under the access regulation*’ on the basis that the Guidance had no statutory basis and that “*to do so otherwise would unfairly penalize undertakings for compliance under a non-binding framework*”.¹⁶

¹⁴ Eir’s submissions, para 10.

¹⁵ Virgin Media’s submissions, p. 2, second-last and last paragraphs.

¹⁶ Eir’s submissions, para 17.

ComReg cannot see how having regard to penalties *agreed* by Eir in respect of conduct found to be non-compliant by ComReg could be considered to “penalize” Eir for compliance. In this regard ComReg does not believe that it is appropriate or necessary to amend the draft Guidelines to reflect any such principle as suggested by Eir. How the factor set out in section 94(1)(n) applies in the scenario outlined by Eir can be considered on the specific circumstances of the case before the adjudicators. In this regard, any considerations of historical enforcement outcomes, whether formal or informal, should be assessed on a case-by-case basis in accordance with fair procedures.

- 5.3 Eir was also concerned that with the listing in section 2.21 of the draft Guidelines of *“the adoption when seeking to identify affected end-users, of an approach and/or methodologies reflecting a narrow interpretation of those affected and/or an attempt to exclude potentially affected end-users from any remediation programme”* as an aggravating factor. Eir submitted that in particular *“it should not be aggravating for an operator to apply reasonable criteria in good faith when identifying affected customers.”*¹⁷
- 5.4 ComReg notes Eir’s submissions and accepts that the use of reasonable, transparent and good-faith methodologies for identifying affected end users should not result in aggravating a financial sanction. Rather, only the deliberate or reckless adoption, in bad faith or without reasonable justification, of an unduly narrow approach to identifying affected end-users or an attempt to exclude clearly affected end-users from a remediation programme, could be considered as an aggravating factor.
- 5.5 More generally, Eir makes the point that *“exercising procedural rights, including contesting allegations, must not be treated as an aggravating”*, and seeks explicit assurance that an operator will not be penalised solely for not admitting a breach.¹⁸ Virgin media noted that *‘an administrative sanction imposed by an adjudicator is only effective upon confirmation by the high court and therefore any mitigating/aggravating factors it sets out in the guidelines should not in any way prejudice a person’s right to appeal or be heard by a court of law.’*
- 5.6 ComReg fully supports the views expressed by Eir and Virgin Media on these matters and for the avoidance of doubt, a clarification has been added to the Guidelines confirming that nothing in the Guidelines is to be construed in a manner which would infringe a person’s right to fair procedures or rights of defence. In this regard, conduct involving a failure to cooperate, the provision of misleading information or other conduct specified in section 94(1)(d) of the 2023 Act should be taken into account as part of an assessment of mitigation or aggravation having regard to circumstances

¹⁷ Eir’s submissions, para 18.

¹⁸ Eir’s submissions, para 19.

of the particular case.

- 5.7 More generally, ComReg notes that the driver for any adjustments to the basic amount to take into account mitigating or aggravating factors, should be the actual circumstances of the regulatory breach being the subject of a financial penalty. Further to Eir and Virgin Media's comments, ComReg has decided that this should be made clearer in the Guidelines and to that purpose, the Guidelines, consistent with the approach set out in section 94(1), now only lists, without categorizing them as mitigating and aggravating factors, a non-exhaustive list of factors that the adjudicators ought to have regard to for the purpose of adjusting the basic amount in light of the specific circumstances of the case. ComReg's submissions on the appropriate financial sanction under section 91 will identify as appropriate the factors that ought to be taken as mitigating or aggravating factors in adjusting the basic amount.

6 Adjustments and exceptions

- 6.1 Both Eir and Virgin Media had a number of comments in respect of the further adjustments to a financial penalty set out in section 2.4.4 of the draft Guidelines. Eir submitted that paragraphs 2.25 and 2.26 of the draft Guidelines providing for adjustments to ensure that the penalty has a sufficiently dissuasive effect including in terms of deterrence, should be deleted in their entirety.¹⁹ This was on the basis that those sections could have the effect to displace the structured methodology and the specific mitigating and aggravating factors which have come before. According to Eir, paragraphs 2.25 and 2.26 are arbitrary and unconnected to the impact or real-world harm of the relevant breach. Eir accepted that deterrence was a legitimate objective but uplifts should be limited only where modest fines would make a serious breach a "cost of doing business" and "deterrence" narrowly defined, supported by clear examples, to ensure predictability and fairness.
- 6.2 ComReg does not agree that paragraphs 2.25 and 2.26 should be deleted and that there is a risk that they are used to displace steps 1 and 2 of the methodology set out in the Guidelines. Their use is limited to the use called for by Eir, namely ensure that serious breaches are properly deterred and not rewarded by modest fines. Under the methodology they only become relevant where, based on the circumstances of the case, an issue arises as regards the proportionality of the financial sanction to the fine and a concern that the objectives of section 94(1)(a), namely that the financial sanction is appropriate, effective, proportionate and dissuasive, are not met. Furthermore ComReg believes that designing a test such that a financial penalty becomes predictable is incompatible with achieving dissuasion and deterrence.
- 6.3 As for Virgin Media, its submissions addressed the exception regarding a person's inability to pay outlined in paragraph 2.27 of the Guidelines, expressing the view that

¹⁹ Eir's submissions, para 20-22.

it was too vague and required greater clarity.²⁰ However, while the Guidelines do not set out the details of how inability to pay can be established, this does not make the test vague. Paragraphs 2.30 and 2.31 make it clear that what must be shown is that the imposition of a financial penalty would result in irreparable harm to the sanctioned person's viability as a going concern and that temporary liquidity issues or commercial pressure will not be sufficient. This in turn is to be established on the basis of appropriate evidence such as audited financial statements and cash flow projections and the wording in paragraph 2.7 of the Guidelines allows some flexibility as regards the manner in which the notified person may seek to establish its inability to pay. ComReg accordingly has not amended the relevant paragraphs.

6.4 Finally, Eir pointed out a number of typographical errors or inconsistencies or inaccuracies, which have been corrected. This includes:

- (a) Deleting the reference in paragraph 2.26 of the Guidelines to a "*person's involvement in regulatory breach or the associated harm*", accepting that this is not relevant to a regulatory breach where there will be only one person involved;
- (b) Deleting the word "*coercion*" in Table 1 in section 2.5 of the Guidelines, on the basis that it does not appear elsewhere in Section 2 of the Guidelines.
- (c) Correcting Heading B in Section 2.4.2 (by adding "of" between "gravity" and "the") and adding "not" in paragraph 2.28 ("*in particular it does not mean... that it is not proportionate*").

²⁰ Virgin Media's submissions, p. 3, third para.