

Appendix C: Response to Consultation 24/89

- 1.1 This Appendix sets out the ComReg questions, summary of respondents' views and ComReg's associated responses to Consultation 24/89. Specifically, this Appendix details ComReg's consideration of the responses and its final position.
- 1.2 The purpose of public consultations is to allow ComReg to consider the views of interested parties in the context of reaching a decision on particular matters. All views are considered, and account taken of the merits of views expressed. It should, however, be noted that the process is not equivalent to a voting exercise on proposals and ComReg will exercise its judgement having considered the merits of the views expressed. However, it is not practical for ComReg to provide commentary on each individual submission. Non-confidential versions of submissions are published alongside the Response to Consultation and Decision in Appendix D.

1.1 Question 1: Proposed Minimum Quality of Service Standards

- 1.3 In Chapter 3 of Consultation 24/89, ComReg set out the minimum QoS standards including the key elements, associated definitions and conditions under which an appointment is deemed missed or delayed. ComReg then asked the following question:

Do you agree with ComReg's proposed minimum QoS standards for Missed and Delayed Appointments, as outlined above? Please provide detailed reasons and supporting evidence for your view.

1.1.1 Respondents' views

- 1.4 Many respondents generally agreed with the principle that it is appropriate to ensure that any consumer harm arising from MDSIA is minimised, and where appropriate, compensated. However, the submissions were mixed on the nature of the proposed minimum QoS standards. ComReg summarises respondents' views below across aspects of the proposed requirements on providers of IAS and PANBICS:

- Appointment agreement
- Appointment confirmation
- Time Slots and limitations in the duration of Time Slots
- Working Day definition
- Missed and Delayed Appointments
- Adequate notice
- Inability to access premises
- The QoS standards are prescriptive and narrow
- The benchmarks are not appropriate

Appointment agreement

- 1.5 ComReg was of the preliminary view that a scheduled appointment is one where the date and time have been mutually agreed upon between the provider and the end-user.
- 1.6 In general, respondents agreed with the proposed requirement that an appointment date and time should be agreed upon before an appointment is scheduled. However, Virgin Media questioned the need for ComReg to intervene to impose a QoS obligation for a process that is, in their view, already a standard industry practice.
- 1.7 Vodafone submitted that there is a dependence on the wholesale provider for the agreement of an appointment, where consultation between the retail and wholesale provider is required through live data or follow up. Vodafone also submitted a rescheduled appointment involves engagement "directly between the wholesaler

back office and the customer and even the technician and the customer”.

Appointment confirmation

- 1.8 ComReg was of the preliminary view that appointments should be confirmed by the Retail Service Provider (“RSP”) with the customer where a confirmation could serve as a durable record of agreement, while also providing added surety for end-users.
- 1.9 Respondents in general, agreed with the proposed requirement of appointment confirmation. For instance, BT welcomed the requirement for agreed appointments to be confirmed on a durable medium and noted that “it ensures a record of the appointment is kept, which limits disputes”.
- 1.10 Vodafone noted that the provision of an installation date varies by wholesale providers and that confirmed dates may often change due to “factors outside the control of the retail service provider”. Vodafone added that customer engagement responsibilities can often pass to the wholesale provider for better resource management. In such cases, the wholesale provider takes responsibility to contact the customer and confirm the appointment, and where necessary agree any reschedule appointments with the end-user.
- 1.11 While BT noted that this requirement is “widely used by the industry”, Virgin Media and Vodafone questioned the requirement to turn an established practice into a QoS obligation. IFA requested clarification in requiring all communication in a durable medium and defining an acceptable format, to ensure that the process is feasible for providers to avoid administrative burdens.

Time Slots and limitations in the duration of Time Slots

- 1.12 ComReg was of the preliminary view that a Time Slot will be more agreeable for an appointment as opposed to specific times, providing greater certainty for end-users and reasonableness for the RSPs.
- 1.13 In general, no objections were raised with respect to using timeslots for appointments. However, respondents, in general, did not agree with the proposed requirement to limit the interval of time for timeslots to four hours and to schedule an appointment within the prescribed time period (i.e., 8am to 1pm or the time period from 1pm to 6pm). In that context, concerns were also raised on the impact on providers’ scheduling of ‘all-day’ appointments.
- 1.14 The following is a summary of the key issues raised by respondents:
- A maximum of four-hour intervals within an AM/PM window is restrictive
 - Clarification on ‘fulfilling’ an Appointment is required
 - Flexibility to schedule ‘all-day’ appointments is required
 - Limited resources and logistical realities should be considered

- Situation around appointments for fault repair can be different
- Tiered timeslots and information on appointment duration was recommended

A maximum of four-hour intervals within an AM/PM window is restrictive

- 1.15 ComReg proposed that Time Slots be defined as an interval of time no longer than 4 hours that falls within the time period from 8am to 1pm or the time period from 1pm to 6pm. Respondents in general did not agree with the maximum 4-hour interval for Time Slots and the 5-hour time periods (8am to 1pm and 1pm to 6pm) to set them.
- 1.16 Some respondents (SIRO, Eir, Three) expressed concerns about the flexibility required when scheduling appointments. For instance, SIRO requested that ComReg define an appointment to include a “reasonable range of mutually agreeable time windows” where providers can set appointment windows in coordination with customers, be it a 6-hour Time Slot or even a full day Time Slot. Eir submitted that “flexibility is required to manage technician resources whilst also maximising the availability of appointments for end-users” and requested that “1pm not be set as a hard divider” and that the Time Slot interval be increased to a 5-hour interval.
- 1.17 Three raised concerns stating that four-hour Time Slots are not consistent with the five-hour time period set out by ComReg. In their view, a four-hour interval for a Time Slot overlaps with 75% of a five-hour time period and believes that this level of granular intervention would impose additional complexity and costs.
- 1.18 Respondents (Vodafone, Westnet) also raised concerns that inconsistencies in the current process for Time Slots followed by their network providers may lead to non-compliance with the QoS standards. According to Vodafone, “for installation the Open eir process sets the AM appointment window at 5 hours duration from 8.30am to 1.30pm and an afternoon 4.5-hour PM appointment window from 12.30pm to 5pm”. On the other hand, Westnet noted that according to NBI’s Bitstream and VUA Process Manual, NBI offers “three four-hour Time Slots of 8am to noon, noon to 4pm and 4pm to 8pm”.
- 1.19 Virgin Media argued the need for imposing a QoS obligation for a process that is already an industry practice.

Clarification on ‘fulfilling’ an appointment is required

- 1.20 Some respondents (IFA, Westnet, SIRO) sought clarification on the requirement to ‘meet the timeslot’ or ‘fulfil an appointment’. For example, IFA requested guidance on how to address situations where the work exceeds the allotted time due to unforeseen technical challenges. Westnet pointed out that the definition of an appointment does not include a recognition of the time the technician will have to spend at the customer’s premises to carry out the work and rather simply requires the technician to show up during the Time Slot.

- 1.21 According to SIRO, FTTH installations involve significant physical work and often multiple site visits, and “treating an initial appointment as indicative of a guaranteed installation completion misrepresents the complexity of the process”. While IFA suggested to clearly “distinguish between unavoidable delays and provider inefficiency, alongside a fair mechanism to prevent penalisation for genuinely unavoidable overruns”.
- 1.22 These respondents sought clarification on all-day appointments, specifically requesting a distinction between the scheduled appointment time (arrival time) and cases where the appointment requires a full day to complete the necessary works.

Flexibility to schedule ‘All-day’ appointments is required

- 1.23 While limiting the duration of timeslots may cause operational issues for some RPSs, ComReg was of the preliminary view that greater consumer harm arises from being assigned All-day appointment slots.
- 1.24 However, respondents (Westnet, Eir, Vodafone, BT, Imagine, NBI and ALTO) raised concerns regarding constraints on scheduling all-day appointments, highlighting that some appointments are scheduled for complex works where the technician will need to arrive early and use a longer Time Slot to complete the works required, for instance more than half a day. As highlighted by Westnet, “an appointment, particularly for a new connection or for repair of significant damage, may require hours of running cables, climbing ladders, clearing ducts, drilling holes and more”. Eir noted the need for all day appointment slots for certain provisioning orders such as non-in- situ FTTH and non in- situ FTTC and stated that the “delivery of the customer service may take significant time depending on the specific requirement”.
- 1.25 Vodafone noted the current process followed by wholesale providers (Open eir and NBI). According to Vodafone, an order submitted with Open eir is assessed by the wholesale provider and an appointment date is offered to the RSP. In the case of certain provisioning orders (e.g., non-in situ FTTH and non-in situ FTTC), the wholesale provider assigns an all-day appointment when the required time may exceed the duration of a standard AM/PM timeslot. Similarly, Vodafone also mentioned that NBI provides “double slots that are 8 hours in duration for use with certain order types depending on the drop type and work required”. Vodafone was of the view that ComReg’s proposal to not allow ‘all-day’ appointments is “a system impacting change.”
- 1.26 In that context, respondents clarified the intent of scheduling an ‘all day’ appointment for end-users. BT stated that “such timeslots are not designed to force end-users onsite, rather it is to accommodate the operational requirements where the task takes more than a single AM/PM slot”. While NBI added that for such appointments, “the duration of the timeslot is used as an indicator to end-users that the end-users need to be available for the whole day”.

- 1.27 Imagine highlighted the difficulties for providers serving remote rural areas, stating that “by effectively ‘outlawing’ the ‘all day appointment’, ComReg is forcing RSP’s that operate in these areas to incur significant additional cost or moreover take a commercial decision not to offer service which is not in the consumers interest.”

Limited resources and logistical realities should be considered

- 1.28 SIRO, Imagine and IFA, highlighted that a 4-hour Time Slot would limit the flexibility required by smaller providers to match smaller operational capacities and logistical realities, particularly “in remote rural areas where longer travel times on road and not infrequent disruptions due to poor weather occur”, as stated by Imagine.
- 1.29 The adverse impact of use of timeslots on bargaining power for such providers was also highlighted, with Imagine noting that this approach “lends significantly more favourably to RSPs working in urban areas and larger RSPs with large installations crews and or more leverage on installation partners” and “may result in these smaller RSPs withdrawing from the market resulting in less competition within the market”. Furthermore, SIRO acknowledged that while this standard (timeslot limited to four-hour windows between 8am -1pm and 1pm-6pm) aims to minimise inconvenience for end-users, its uniform application may impose an undue scheduling burden on providers, particularly “those relying on third-party field engineers or serving rural areas with fewer resources”.
- 1.30 SIRO recommended that “flexibility in allowing slightly extended Time Slots where operationally necessary (e.g., 5- or 6-hour slots) could alleviate scheduling challenges and avoid increased compensation liabilities stemming from logistical issues, particularly during peak installation periods”. SIRO further noted that this flexibility aligns with industry standards and helps minimise operational disruptions while still maintaining customer-focused appointment Time Slots.

Situation around appointments for fault repair can be different

- 1.31 Concerns were raised about unintended consequences of the proposed QoS standards in respect of repair and assurance appointments at the end-users’ premises, particularly due to their nature involving an urgent need for resolution combined with unknowns in respect of the cause of the fault.
- 1.32 NBI noted that appointments for fault repair are directly arranged by the wholesale provider with a focus on resolving the issue as soon as possible rather than giving a wide range of appointment options. NBI believes that requiring RSPs to offer a range of Time Slots and Working Days, with compensation payable where these appointments are missed, could inadvertently lead to longer repair times. This may occur as RSPs delay scheduling to the most readily achievable dates to mitigate potential penalties.

Tiered timeslots and information on appointment duration was recommended

- 1.33 IFA acknowledged the use of timeslots as a sensible approach but noted that limiting them to a maximum of 4 hours may prove impractical. According to IFA “a more flexible approach, perhaps with tiered Time Slots (e.g., 4-hour, 6-hour, full-day options) accommodating complexity is needed. A matrix outlining appropriate durations based on the complexity of the service/installation as defined by the provider, subject to customer agreement could be adopted”.
- 1.34 Blacknight recommended to offer customers information on appointment duration. In the absence of information on appointment duration, Blacknight provided an example illustrating the issue: ‘An engineer arrives five minutes before the end of the appointment slot, decides to end their workday, and leaves. This benefits neither the provider nor the consumer.’

Working Day definition

- 1.35 ComReg proposed in Consultation 24/89 that a “Working Day” means the duration between 08:00 – 18:00, from Monday - Saturday (and does not include Sunday and public holidays).
- 1.36 In general, respondents raised concerns about a 6-day working week, particularly highlighting its potential adverse impacts, including:

- **Impacts on IAS and Number Porting**

BT pointed out the potential challenges for wholesale central inter-operator systems such as for number porting and IAS which are set up for a normal working week (i.e. 5 days working). BT also highlighted that, if operators were to be permitted to work a shorter week (as legislation permits) and could choose to offer a six-day service on a voluntary basis, problems can emerge where switching and porting could be delayed if “both operators involved are not working the same days/times”. BT was of the view that “it would be better for those that want to work a longer week to do so and manage the consequences appropriately”.

- **Impacts on operational flexibility**

Respondents (BT, ALTO and SIRO) highlighted that the proposed timeslots do not consider the operational flexibility required.

In the context of impacts on IAS and number porting, BT highlighted the potential downstream impact on billing systems, which are aligned with the current system of switching times and working days. BT stated that “if switching times were to be confused”, billing systems may need to be restructured to prevent billing discontinuities, which could also negatively impact customer experience.

ALTO submitted that it may cost industry in terms of time and system changes and updates and may require analysis of wider employment and renegotiation of external contractor terms and conditions of work and time that could be outsourced to third parties.

- **Impacts on providers and end-users**

ALTO highlighted that this proposal will not “suit all undertakings on the market or even be workable for consumers”. In particular, ALTO mentioned that this will not align with the operational realities of large business customers, that require flexible scheduling differing from residential appointment models. Concerns were also raised regarding a potential risk that economies of scope and scale could cause unintended squeeze or pressures on smaller access seekers in particular BT highlighting that the proposed Working Day “could potentially be discriminatory against smaller operators that may not have the resources to accommodate a 6-day work week, and it may increase cost to the customer”.

While Westnet submitted that Saturday appointments are not generally made available by wholesale access providers to RSPs and therefore will not be possible to comply with the requirement, Imagine added that mandating Saturday as a working day is “unnecessary and imposes an additional burden on RSPs”.

- **Impact on Organisation of Working Time Act, 1997**

Some respondents were of the view that the proposal does not consider the Organisation of Working Time Act, 1997 and “appear to be out of synchronisation with other applicable laws” and “may have serious unintended commercial consequences on the wider market” as stated by ALTO. BT pointed out that this proposal should not be used to mandate a six-day working week on operators.

1.37 Eir stated that “while premium agreements allow for appointments outside of these days, Saturday and Sunday are not considered working days” and does not agree with the provision of Saturday appointments as a standard. In that context, respondents (BT and Imagine) recommended that ComReg propose the standard as being Monday to Friday, 9am -5pm, while allowing providers the flexibility to establish longer working days and hours according to their own commercial decisions, on a voluntary basis.

1.38 While SIRO submitted that “ComReg’s exclusion of evening and Sundays limits innovation and customer choice”. SIRO also pointed out that wholesale providers often extend their working hours to meet installation demand and recommended that “extensions into the weekend and into daylight summer months” should be allowed for the “benefit of consumers to avoid impacting on their working hours”.

Missed and delayed appointments

1.39 ComReg proposed that an appointment will be deemed missed if the Technician has

not attended the customer's premises during the agreed Time Slot on the agreed working day. In addition, ComReg proposed that an appointment will be deemed delayed when it is rearranged before the expiration of the initial agreed Time Slot on the agreed working day by agreement between a provider and a customer.

1.40 Respondents in general agreed with standards for missed and delayed appointments, particularly the distinction between missed and delayed appointments. BT and NBI noted that a rearranged appointment within the same day is less of an inconvenience than a missed appointment without prior notice for end-users. According to NBI, "it is common for end-user request that appointments be moved from morning to afternoon/evening". While SIRO noted that the approach to allow a delineation between missed and delayed appointments where delayed appointments are regarded as minimal breach of the rules, "acknowledges operational realities and reduces compensation events tied to minor timing shifts, which do not significantly inconvenience end-users yet contribute to administrative burdens for providers".

1.41 However, some respondents raised concerns on a number of aspects including:

- **More flexibility required when rearranging appointments**

In Consultation 24/89, ComReg proposed that within 24 hours of the start of the agreed Time Slot, or during the agreed Time Slot, it is appropriate that RSPs and end-users have a choice to rearrange the appointment to a later Time Slot on the same date.

Respondents in general (Vodafone, Pure Telecom, IFA and BT) highlighted the in-flexible nature of the proposed standards to accommodate 'local arrangements' and 'fine-tuning' of appointments. Vodafone noted that "in certain cases, technicians may need to resolve install issues via local arrangement with the customer". While Pure Telecom submitted that "the customer may make a local arrangement between the visiting engineer or the wholesale network scheduling team on the day of the appointment or shortly prior to the appointment". Similarly, IFA noted that ComReg's proposed standards curtail the existing flexibility required when communicating with the end-user and for managing 'on-the-day' issues.

In that context, BT submitted that limiting the time for agreeing a rearranged appointment time reduces the current flexibility, "which was designed to allow the customer and provider to fine tune the appointment time". According to BT, "whilst the existing regime may not be perfect it was designed to provide increased appointment flexibility to both the customer and the provider, for example accommodating the school run or customers working around other appointments during the day etc"

Furthermore, Pure Telecom sought clarification regarding the durable format that confirms a rearranged appointment. Similarly, IFA requested clarification in requiring all communication in a durable medium and defining an acceptable format.

- **QoS standards should account for ‘force majeure’**

Respondents, (SIRO, Westnet, Imagine, IFA, Vodafone, BT, Virgin Media and Pure Telecom, Eir) generally highlighted exceptional circumstances and some suggested to incorporate flexibility in the standards for exceptional circumstances or ‘force majeure’ exceptions such as severe weather and public emergencies, which are beyond the control of providers and inherently unpredictable.

In particular, respondents noted the severe weather events in the past, such as Storm Darragh, highlighting the challenges of maintaining service continuity during such exceptional circumstances. According to Westnet, this triggers a ‘storm mode’ with some wholesale providers, “during which time certain SLAs are suspended as the volume of repair work makes it impractical to commit to normal timeframes for appointments”. Vodafone noted that during a storm mode, installation appointments are curtailed “as the focus switches to service restoration”. In that context, respondents requested that the proposed QoS standards should accommodate for a ‘storm mode’, during which period, RSPs are allowed to cancel or reschedule appointments in short notice (i.e., less than the required notice period) without incurring penalty costs.

While Imagine believes that “the range of exceptional circumstances where an event or occurrence could not reasonably have been foreseen and accommodated, needs to be broader than what is typically considered to be Force Majeure and that this should take account of the additional challenges of operating in rural markets. This would include situations such as technician unavailability due to vehicle breakdowns, sickness, or other unexpected circumstances”. In addition, SIRO noted exceptional circumstances beyond force majeure, such as sudden road closures and third-party infrastructure provider difficulties.

Adequate notice

- 1.42 In Consultation 24/89, ComReg proposed a 24 hours’ notice prior to the start of the agreed Time Slot to be the appropriate notice period.
- 1.43 Respondents in general agreed with requirement to provide end-users with advance notice for a cancelled appointment, however, concerns were raised as summarised below:
- A 24 hours’ notice period is restrictive
 - Allowing minimum notice on Saturdays

- Exceptions to adequate notice should be considered

A 24 hours' notice period is restrictive

- 1.44 Some respondents (SIRO, Eir, Pure Telecom, IFA and Vodafone) did not agree with the requirement of a minimum 24 hours' notice period and suggested a shorter notice period.
- 1.45 SIRO proposed modifying the notice period to include 'the working day before, up to 6pm, in the interest of reducing instances of last-minute cancellations and improve customer experience', while providing providers "a realistic timeframe to manage unforeseen delays effectively". SIRO believes that this adjustment could be beneficial "in cases where technician availability fluctuate due to unforeseen issues such as technical problems at prior appointments".
- 1.46 On the other hand, Eir proposed that a missed appointment should not arise where an appointment is rescheduled "up until 3pm the previous working day, and also for any further rescheduling which the customer is agreeable to". In addition, Pure Telecom concurred with this proposal.
- 1.47 Respondents highlighted the potential adverse impacts of the proposed notice period on end-users. Eir believes that a 24 hours' notice period has the "potential for materially reducing the number of appointments that can be completed on a daily basis, which would ultimately impact on overall connection times and efficiency, potentially impacting costs to end-users". SIRO submitted that the proposed notice period would discourage providers from offering customers "next-day or 2nd day appointments, resulting in a worse outcome for the consumer market overall". While Pure Telecom highlighted that "the introduction of a 24-hour notice period will impact customers' flexibility to change their Appointment, assuming equivalence of notice period between customer and service provider for information flow both ways is the intention." BT highlighted that the proposed standards curtail the existing flexibility required for "previous day appointments fine tuning" between the technician and the end-user.
- 1.48 Respondents, particularly Pure Telecom and IFA, noted potential operational challenges, suggesting significant process and software changes may be required to comply with the proposed notice period requirement.

Allowing minimum notice on Saturdays

- 1.49 NBI requested that ComReg reconsider the restriction on the days when rescheduling notice can be validly given. They highlighted that, under current practice, end-users are notified on Saturdays for appointments scheduled on Mondays and no significant end-user concerns have arisen. NBI further noted that end-users are generally receptive to being contacted on Saturdays for rescheduling or carrying out works on a Saturday, particularly those end-users with limited

availability during weekdays due to work commitments. This in NBI's view facilitates end-user choice.

- 1.50 Additionally, NBI acknowledged that this restriction may discourage RSPs from offering Monday appointments.

Exceptions to adequate notice should be considered

- 1.51 Some respondents (BT, Pure Telecom and Virgin Media) suggested that the proposed standards for adequate notice accommodate exceptional circumstances beyond a provider's reasonable control. While BT and Pure Telecom highlighted 'storm mode' to be a genuine reason for providers to cancel or reschedule appointments on short notice without incurring compensation liability, Virgin Media submitted that the proposed notice for cancellation and reschedule is "far too long" and should allow enough flexibility to "enable parties to adjust to real-world situations as they occur", such as a road accident.
- 1.52 However, Imagine believes that "a provision should be included to exclude compensation claims in cases where the RSP can demonstrate that genuine, but unsuccessful, attempts were made to contact the customer to reschedule an appointment within the 24 hours preceding the scheduled time". According to the respondent, "such a provision would support operational efficiency and help prevent unnecessary disruptions or unwarranted compensation claims from Wholesale Service Providers to the RSP caused by unresponsive customers".

Inability to access premises

- 1.53 In Consultation 24/89, where RSPs are able to establish that, having attended at the premises, access to it was prevented and this was not due to any act or omission on the provider's part, ComReg proposed that such appointments will not be deemed missed for the purpose of the standard.
- 1.54 Respondents in general, agreed with this provision for an exception where technicians attending the premises may find end-users unavailable and/or the premises inaccessible. However, Blacknight stated that the proposed standards do not adequately address scenarios where the customer is at fault, leading to unfair penalties for providers.
- 1.55 While Virgin Media confirmed that it has procedures in place to address this scenario where a premises is inaccessible, BT submitted that ComReg did not assess the consequence of this scenario (where an end-user misses the appointment and the work cannot be performed) and how compensation in such situation may have an impact at the wholesale level. BT, noting that the cost of the unsuccessful attempt to perform the work is borne by the RSP while the RSP had no opportunity to manage the situation, proposed that the "access provider's technician should, at a minimum, contact the retail provider to give them the opportunity to address the situation and

support the technician getting access to the premises”.

- 1.56 BT also pointed out that the standards do not address the scenario where the end-user has provided inaccurate location information or data. BT believes that such cases should be regarded as an exception and is not deemed as a missed appointment.
- 1.57 IFA recommended to implement clear exemptions or adjusted thresholds for daylight hours and challenging weather conditions particularly during winter months, considering that the proposed standards do not account for “seasonal variations in daylight hours and weather conditions affecting technician access to customer premises”.
- 1.58 NBI sought further clarification on the appropriate evidential requirements to establish that the end-user was not reachable or available at the premises.

The QoS standards are prescriptive and narrow

- 1.59 While some respondents (Virgin Media, Vodafone, Three), agreed that missed or delayed appointments can cause inconvenience to end-users such that they should be avoided, wherever possible, and supported ComReg’s goal to improve service standards, they raised concerns that the QoS standards are very prescriptive, and in particular, overly rigid which removes the operational flexibility required to effectively engage with customers and wholesale providers.
- 1.60 For instance, BT welcomed ComReg’s approach of introducing minimum QoS standards “as it is a means to ensure consistency across industry” but raised some concerns with respect to all-day appointments. Virgin Media stated that they support the objective of maximising end-user benefits in terms of QoS through effective competition and the importance of minimising occurrences of MDSIA and mitigating the impact where it does occur but questioned the need for narrow QoS obligations. In their view “there is no need to impose blanket QoS standards in a retail market that is aggressively competitive because market forces compel all players in the market to operate according to high QoS standards”.
- 1.61 Respondents expressed particular concerns about ComReg’s prohibition of all-day appointments and the removal of technician’s ability to fine-tune appointments. Vodafone noted that these changes would significantly impact established wholesale and retail business processes. While Three submitted that “ComReg’s approach to specifying minimum QoS standards for Missed and Delayed Appointments is overly prescriptive and granular” and believes that “it will likely force cost into the field operations of Service Providers and potentially restrict retail competitive differentiation”.
- 1.62 In that context, SIRO recommended that “the minimum QoS standards for Missed and Delayed Appointments be tailored to allow operational flexibility, particularly in

Time Slotting, rescheduling requirements, and manageable timelines”. These modifications, in their view, would “not only preserve the protective intent of the regulation but also support a balanced operational framework for network providers, fostering a sustainable rollout of the standards”.

The benchmarks are not appropriate

- 1.63 Some respondents (Alto, Three, SIRO) submitted that the comparators that ComReg has chosen as “benchmarks” do not support ComReg’s proposed approach.
- 1.64 ALTO notes that “none of the benchmarks advanced by ComReg in the Consultation paper and expressly those benchmarks set out at Annex 4 can be relied upon to support a market intervention which seeks to impose constraints on operators concerning working practices and the working day or working week or appointments. The comparators chosen by ComReg do not appear to consider these significant market impacting changes or issues at all”.
- 1.65 Three noted that the “referenced “Benchmarks” are not benchmarks per se they are selected examples of approaches in other sectors and countries. – ComReg does not address the fact that this selected examples has adopted an alternative approach to that which it is proposing or why the approach which is acceptable in one sector of the Irish economy is not appropriate to the communications sector”.
- 1.66 Three added that “none of the “benchmarks” advanced by ComReg can be relied on in support of a market intervention which imposes restrictive operational constraints on the segmentation of the Working Day and indeed the definition of a Working Day. ComReg’s analysis simply omits any consideration of these aspects of the comparators it itself has chosen”.
- 1.67 SIRO highlighted the irrelevance of some comparators, noting that the “comparisons with non-analogous industries or unrelated geographies may not capture the unique challenges of the telecommunications sector, especially in the context of FTTH rollout complexities”.

1.1.2 ComReg response

- 1.68 Having considered the submissions received and views expressed in the submissions, ComReg has summarised its response across the following aspects:
- Agreement
 - Confirmation
 - Timeslots and limitations in the duration of timeslots
 - Working Day
 - Missed and delayed appointments
 - Adequate notice

- Inability to access premises
- The QoS standards are prescriptive and narrow
- The benchmarks are not appropriate

Agreement

- 1.69 Having considered submissions and views expressed, and for the reasons set out in Consultation 24/89, ComReg is of the view that end-users should be offered a range of options to choose from before agreeing to an appointment date and time and all Appointments must be mutually agreed upon between the provider and the end-user.
- 1.70 ComReg acknowledges that RSPs are, in general, responsible for the initial communication and engagement with the end-user, including offering available options, agreeing a date and time and scheduling an appointment. Considering that the appointment agreement is a standard industry practice and that end-users benefit in terms of exercising choice, ComReg believes that it is reasonable, appropriate and proportionate to impose this requirement. ComReg emphasises that such an agreement is necessary to ensure that end-users are offered a choice rather than being compelled to accept an inconvenient appointment date and time, which could increase the likelihood of missed appointments by the customer. ComReg is of the view that an agreement benefits both RSPs and end-users alike by providing surety.
- 1.71 While ComReg notes concerns raised regarding dependence on wholesale providers in appointment agreement and scheduling, the relationship is between the RSP and the end-user, and an end-user is unlikely to have any contractual relationship with a wholesale provider. It is ComReg's view therefore that it is the responsibility of the RSP to manage their end-user relationship and lead in engaging with customers and offering appointment timeslots provided by their wholesale provider or third-party partners. Additionally, ComReg understands that, in general, RSPs have access to facilities offered by wholesale providers, enabling them to view available timeslots and present these options to customers before scheduling and agreeing an appointment.
- 1.72 Furthermore, ComReg set out in Consultation 24/89 that once an Appointment is agreed, RSPs should take into account any relevant wholesale level considerations prior to confirming the Appointment.

Confirmation

- 1.73 Having considered submissions and views expressed, and for the reasons set out in Consultation 24/89, ComReg is of the view that all in scope Appointments are confirmed by the RSPs with the customer where a confirmation will serve as a durable record of agreement, while also providing added surety for end-users and providers alike. Issuing a confirmation is an established industry practice as acknowledged by submissions made. In this context, ComReg concludes that it is

appropriate and proportionate to impose this requirement.

- 1.74 In response to concerns raised by one respondent noting that confirmed dates may change due to “factors outside the control of the RSP”, the provisions in the minimum QoS standards provide sufficient flexibility for providers to cancel appointments with adequate notice or rearrange them for an alternative timeslot on the day of the appointment.
- 1.75 Regardless of which party is responsible for confirming the appointment with the end-user, ComReg emphasises that the purpose of a confirmation is to serve as a durable record of agreement. This ensures that the end-user has a clear record that a technician will arrive at the agreed date and time, while also affording RSPs the flexibility to account for factors, such as, potential changes at the wholesale level, before confirming an agreed appointment. For the avoidance of doubt, this requirement does not extend to any additional contact made with the end-user after the initial confirmation has been sent to the end-user in a durable format.
- 1.76 In this regard, ComReg concludes that for the purposes of any potential disputes that may arise, RSPs are required to establish that an appointment was kept by them.
- 1.77 Regarding the clarification sought on an acceptable format for a durable medium, ComReg provides for a definition of a ‘durable medium’ in the Decision Instrument (Appendix A).

Time Slots and limitations in the duration of Time Slots

- 1.78 Having considered submissions and views expressed, for the reasons set out in Consultation 24/89, ComReg concludes that a Time Slot is more appropriate than a specific time. This strikes a balance between greater certainty for the customer with respect to a time for an appointment and, on the other hand, reasonableness for the RSP in respect of flexibility in a technician’s schedule to attend the appointment at the agreed time on the agreed day.

Limitations in the duration of Time Slots

- 1.79 With respect to the limitations on the duration of Time Slots, as a result of its analysis, ComReg remains of the view that a Time Slot should be limited to a specific number of hours, as a longer Time Slot could be perceived by an end-user as burdensome and inconvenient. ComReg considers that a limitation on the duration of a Time Slot would offer the end-user greater certainty regarding the time of the technician’s arrival.
- 1.80 However, having considered submissions made, and having taken into account the views expressed, for the reasons set out below, ComReg has revised this aspect of its proposal and is deciding that a Time Slot is limited to an interval of time no longer than 5 hours. In ComReg’s view, this aligns with current industry practices, ensuring

flexibility while minimising operational changes, thereby ensuring proportionality of the requirement.

- 1.81 Furthermore, ComReg is of the view that the requirement that Time Slots be delineated into two categories, before 1 PM and after 1PM, can be removed having regard to the submissions. The original intent of this delineation was to avoid Time Slots straddling the morning and afternoon - an arrangement that could be more difficult for end-users to accommodate. ComReg notes that such a delineation exists in practice in the market which may vary based on the providers' business operations/models, working hours and duration of timeslots. For instance, Open eir sets the AM appointment window as a 5-hour slot from 8.30am to 1.30pm and an afternoon slot as a 4.5-hour window from 12.30pm to 5pm, as noted by Vodafone. Similarly, NBI offers three four-hour Time Slots of 8am to noon, noon to 4pm and 4pm to 8pm, as noted by Westnet. Considering this variability, ComReg believes that removing the requirement for Time Slots to strictly fall within the time period from 8am to 1pm or the time period from 1pm to 6pm, enhances flexibility while ensures proportionality of the intervention for providers. At the same time, this adjustment does not impose significant inconvenience on end-users nor compromises the certainty of technician arrival times.

'Fulfilling' an appointment

- 1.82 ComReg is of the view that a provider shall be deemed to have fulfilled an appointment where a technician arrives at the customer's premises within the agreed Time Slot. In this regard, ComReg considers that arriving within the agreed Time Slot is critical, as a failure to do so may result in direct consumer harm, including but not limited to undue frustration, stress, and anxiety.¹ Accordingly, ComReg is of the view that where a technician attends within the specified Time Slot, such appointments shall not be deemed missed and shall be treated as compliant with the minimum QoS standards.
- 1.83 This approach provides end-users with a degree of certainty regarding the technician's arrival and avoids the need for them to significantly alter or defer personal or professional commitments beyond what is reasonably necessary.
- 1.84 Notwithstanding the above, ComReg reiterates that the objective of the standards is also to minimise inconvenience and enhance the predictability regarding the time the end-user should be available for the appointment. In that context, ComReg considers it to be in the interest of both end-users and providers, and the overarching intent of the minimum QoS standards that providers ensure technicians arrive within the agreed Time Slot having allocated sufficient time to carry out the necessary works, noting however the submission received that it may not be possible to complete the work within the Time Slot in every instance (this aspect is discussed below). This will

¹ As set out in Chapter 2 of Consultation 24/89.

reduce the risk of overruns beyond the scheduled Time Slot, providing end-users certainty and minimising inconvenience.

‘All-day’ appointments

- 1.85 While limiting the duration of Time Slots may raise some operational issues for some RSPs, ComReg remains of the view as set out in Consultation 24/89 that on balance greater end-user harm arises from being assigned all-day appointment slots which leave end-users uncertain about the technician’s arrival time, with the potential to cause significant inconvenience.
- 1.86 However, ComReg acknowledges that certain appointments for installations (such as, non-in situ connections as referred to in the submissions) may require more than the maximum interval of a Time Slot (i.e., 5 hours). ComReg notes that NBI currently follows a process, as highlighted by Vodafone, in which "double slots" of eight hours are used for specific order types, depending on the drop type and work required. Considering this, ComReg has made a revision and is now of the view that where a provider determines an installation may require more than one Time Slot due to the complexity of the work, the provider may offer the end-user two adjacent Time Slots on a range of days. The appointment would then be created for the two adjacent Time Slots on the specific day. In the case of an Appointment confirmed for two consecutive Time Slots, ComReg is of the view that a provider will fulfil the Appointment within the first confirmed Time Slot i.e., the technician arrives within the first confirmed Time Slot.
- 1.87 ComReg also acknowledges NBI’s observation that the duration of the timeslot is used as an indicator to end-users that the end-users need to be available for the whole day. In that context, the revised decision strikes a balance by accommodating operational requirements for complex installations while ensuring that end-users have greater certainty regarding technician arrival times. This approach minimises inconvenience and enhances clarity for consumers regarding their expected availability during the installation.

Service appointments for fault repair

- 1.88 ComReg notes that the above point was made in general, however, in the context of fault repairs service appointments in the case of switching and porting processes, it is ComReg’s view that end-users should have the option to choose a date and time that best suits their needs.² ComReg does not agree that requiring a broader range would result in longer repair times. End-users who prioritise immediate repairs can select the earliest available appointment, ensuring that urgent cases are addressed promptly.
- 1.89 At the same time, RSPs should strive to provide high-quality customer service by

² See ComReg’s response to question 3 in relation to scope of the application of MDSIA.

efficiently resolving faults and service disruptions, which also supports a competitive market. Furthermore, ComReg emphasises that RSPs should be mindful of not adversely affecting end-user rights and other consumer protections, noting that in cases of service interruptions, end-users should not be charged for a service they did not receive.³

Limited resources and logistical realities

- 1.90 ComReg notes the resource and logistical concerns raised by respondents arising from the proposed requirements of a time slot. Having considered submissions made and having taken into account the views expressed, as discussed previously, ComReg has revised the definition of Time Slot to allow for “an interval of time no longer than 5 hours”. ComReg believes that the revised definition of a Time Slot adequately addresses the concerns raised with respect to limited resources and logistical realities, ensuring proportionality of the intervention. The Time Slot requirement aligns with current industry practices minimising the need for operational changes. It also gives providers the flexibility to offer Time Slots tailored to their business operations. This is further discussed under ComReg’s response to question 4 below in Appendix C and ComReg’s RIA in Appendix B.

Tiered timeslots and information on appointment duration

- 1.91 ComReg notes the recommendations put forward but does not support defining Time Slot durations through a matrix based on service or installation complexity. ComReg believes that such an approach would undermine consistency in industry practices and the minimum QoS standards necessary to ensure good customer service when scheduling and fulfilling appointments.
- 1.92 However, regarding Blacknight’s recommendation to provide end-users with information on appointment duration, ComReg notes the requirements in Regulation 90 of the ECC Regulations, and in particular the requirement that providers provide the end-user with adequate information before and during the switching process.⁴

Working Day

- 1.93 Having considered submissions made and having taken into account the views expressed, ComReg is removing the definition of a Working Day, and inserting a new definition of a “Week Day” as the duration between 8AM to 8PM from Monday to

³ Section 45 of the Communications Regulation Act 2002 (as amended).

⁴ In addition, as set out in ComReg’s Guidance for Retail Service Provider on Customer Migration from Copper-based ECS, Document number: ComReg 24/76, ComReg expects the RSP leading the migration to coordinate the installation and activation processes and procedures for effectively migrating their customer. This include RSPs should be clear such that customers have accurate understanding of the works required (e.g., clearing underground duct or setting up overhead drop, or sorting issues with connection to the network, civil works, licence approval from local authority, hoist required, tree trimming) and the timeframes for activation of the Modern Connection/service(s). See document link [here](#).

Sunday, excluding public holidays.

- 1.94 ComReg recognises that providers may extend their working hours to accommodate higher installation demand and the revised approach allows flexibility for providers to offer late evening timeslots in line with their business model, ensuring proportionality of the requirement. ComReg emphasises that definition of a 'Week Day' does not mandate providers to offer appointments on a Saturday or a Sunday. The revised definition allows providers to determine the length of their working week based on their business operations. Providers may choose to operate a standard five-day week (Monday to Friday) or to extend their services, including Saturdays or Sundays, as a commercial decision.
- 1.95 ComReg's approach is to ensure that end-users are offered a range of times and days within which a service or installation appointment can take place. ComReg's revised approach strikes a balance providing sufficient convenience and flexibility for providers (including operators and third parties) and end-users alike, without limiting providers' option to establish a shorter range of working days/times to schedule an appointment.
- 1.96 Regarding the concerns raised by respondents, ComReg does not agree for the following reasons, among others:
- ComReg acknowledges that central inter-operator systems, such as those used for number porting and IAS are set up for a 5-day working week (from Monday to Friday). However, ComReg's definition of a Week Day does not require providers to offer appointments beyond this period. Providers have the flexibility to schedule appointments and facilitate a switch beyond this period according to their business operations and working hours and can manage any potential consequences accordingly. Regardless, providers of IAS should have regard, among other things, to their obligations under Regulation 90 of the ECC Regulations and further guidance regarding these obligations are discussed in the IAS Guidance.⁵
 - Since providers can align appointment scheduling with their business operations and working hours, the definition should not restrict their operational flexibility. In that context, ComReg believes that the revised definition of a Week Day does not negatively impact providers serving a smaller customer base or those catering to large business customers.
 - ComReg emphasises that the proposed definition of a Working Day, as set out in Consultation 24/89 and draft Decision Instrument, was specific to the proposed

⁵ ComReg Document No. 21/107R entitled "Information Notice - Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code Inter-operator processes – principles to facilitate end-user rights to switch internet access services."

framework. ComReg further notes that the identified concerns in respect of the Organisation of Working Time Act as referenced by some respondents do not arise.

Missed and Delayed appointments

- 1.97 Having considered submissions made and having taken into account the views expressed, ComReg is of the view that an appointment is deemed missed if the technician has not attended the customer's premises during the agreed Time Slot on the agreed Week Day. ComReg also remains of the view that an appointment will be deemed delayed when it is rearranged and fulfilled before the expiration of the initial agreed Time Slot on the agreed Week Day by agreement between a provider and a customer.

Delayed Appointments

- 1.98 However, concerns were raised regarding a perceived lack of flexibility when re-arranging appointments, with respondents requesting that the proposed standards accommodate "local arrangements" or 'fine tuning' of appointments.
- 1.99 ComReg emphasises that the standards do not preclude providers from re-arranging or making local arrangements, however any attempts to re-arrange appointments must take place prior to the expiry of the initial agreed Time Slot. Allowing to re-arrange appointments accommodates any potential delays that may arise (such as, those caused by earlier appointments running over time, traffic conditions, or other unforeseen factors). Whilst a customer who is affected by a missed appointment is subject to greater harm than one whose appointment has been delayed, it remains the case that a delayed appointment is also harmful to a consumer, who will be at least inconvenienced by such delay, as set out in Consultation 24/89. In these circumstances, ComReg is of the view that compensation should be payable by providers in the case of delayed appointments.
- 1.100 In addition, ComReg notes that a scenario may arise, where a provider, in accordance with the standard, may not be able to offer the end-user a range of Time Slots to choose from before agreeing to a re-arranged appointment. For instance, where a provider requests that an appointment scheduled for a 2-hour Time Slot from 4pm to 6pm be rearranged, the only available Time Slot that a provider may be able to offer could be between 6pm and 8pm. In such cases, ComReg is of the view that a provider may offer the only available Time Slot and this would not be a breach of the standards. However, where the end-user either does not agree to rearrange the Appointment, or agrees but the provider fails to fulfil the rearranged appointment, it will be missed for the purposes of the standard. ComReg emphasises that providers should confirm the re-arranged appointment in durable form in accordance with the standards.
- 1.101 In ComReg's view, this requirement is proportionate and strikes a balance as it

provides adequate flexibility for providers to re-arrange appointments in instances where the technician reasonably anticipates a delay in fulfilling an appointment, without adversely affecting end-users. ComReg reiterates that the minimum QoS standards aim to ensure certainty for end-users and provide redress for any inconvenience experienced when service or installation appointments are missed or delayed. In that context, when appointments are rearranged after the expiration of the initial agreed Time Slot, the end-user would have already experienced direct end-user harm⁶ and the appointment shall be deemed missed.

1.102 As indicated in Consultation 24/89, it is a matter for each provider to prepare and publish a compensation scheme, which sets out the compensation end-users are entitled to in respect of a specified failure. ComReg is not deciding, at this time, to implement an automatic compensation scheme, or to determine the compensation amount that may be payable in respect of a specified failure. ComReg will keep these matters under review.

1.103 Regarding the clarification sought on an acceptable format for a durable medium, ComReg is deciding to define 'durable medium' in the Decision Instrument.

Exceptional circumstances such as 'force majeure'

1.104 ComReg, in Consultation 24/89, acknowledged that exceptional circumstances, such as *force majeure*, may arise, preventing a technician from attending an appointment at the agreed time and date and allowed such factors or events or occurrences that could not reasonably have been foreseen to be factored into an RSP's compensation scheme.

1.105 ComReg has considered the respondents views and, to provide clarity on the approach to such events, has allowed for *force majeure* as an exception to MDSIA (and the requirement to compensate end users).⁷

1.106 ComReg understands that extreme weather events may be unforeseeable and beyond the provider's control. In such circumstances, providers may be unable to fulfil scheduled provisioning appointments. However, ComReg remains of the view as set out in Consultation 24/89 that *force majeure* is a very narrow exception and only applies to an event or occurrence that could not have been reasonably anticipated or effectively managed. For the avoidance of doubt, ComReg does not consider events such as heavy traffic or third-party issues to be *force majeure* events as these can be reasonably anticipated and managed.

1.107 However, in instances where an event or effect can reasonably be anticipated or controlled, ComReg is of the view that providers should take prompt and reasonable

⁶ Direct end-user harm as set out in Consultation 24/89.

⁷ See the Decision Instrument in Appendix A.

actions to either rearrange or cancel the appointment.

Adequate notice

- 1.108 Having considered submissions made and having taken into account the views expressed, for the reasons set out in Consultation 24/89, ComReg remains of the view that an adequate notice requirement is necessary and appropriate, considering that end-users may have made adjustments to accommodate an appointment, allowing them where possible, to amend any accommodations made.
- 1.109 However, ComReg has revised its proposal set out in Consultation 24/89 requiring the provision of 24 hours' notice. Considering submissions made on this issue, ComReg concludes that an appointment will not be considered missed if notice of cancellation of the Appointment is provided, in a durable medium, no later than 3:00 PM on the day before the scheduled Appointment. This approach on balance helps ensure certainty for the end-user when appointments are cancelled and provides RSPs with a reasonable period to anticipate any circumstances that may necessitate a cancellation. The revised notice requirement is proportionate, aligning more closely with the current industry practice and minimising operational changes.
- 1.110 In addition, ComReg has considered views expressed regarding notice requirements for cancelling confirmed Monday appointments. ComReg notes that it is deciding to revise provisions on Time Slots and Week Days to provide further flexibility to providers to offer Appointments from Monday to Sunday. In that context, ComReg considers it appropriate to allow adequate notice of a cancellation of an Appointment to be given on any Week Day provided it is given no later than 3:00 PM. To minimise inconvenience to end-users, providers should make reasonable efforts to reschedule the Appointment at the same time and where possible within the same communication as the notice of cancellation. Where appointments are rescheduled, providers must offer, agree and confirm a new Appointment in accordance with the requirements of this standard. However, in the case where Appointments are repeatedly and unduly cancelled and rescheduled, it is ComReg's view that this would amount to a delay and/or abuse of the switching and/or porting process in accordance with ComReg's Decision D24/01.
- 1.111 ComReg believes that the revised approach to adequate notice is proportionate, as it aligns with the current industry practice and does not impose a significant burden to implement, while providing certainty to end-users and minimising inconvenience.
- 1.112 Considering submissions in relation to exceptional circumstances beyond a provider's reasonable control (such as extreme weather conditions), ComReg acknowledges that certain circumstances may necessitate cancellations. See ComReg's position on this matter as set out in paragraph 1.104.
- 1.113 Regarding Imagine's view that the standards should exclude compensation in the

case where an RSP can demonstrate that genuine, but unsuccessful, attempts were made to contact the customer to reschedule an appointment within the 24 hours preceding the scheduled time, in light of ComReg's final views, set out above, ComReg considers that an appointment will not be deemed missed where a provider has given notice of cancellation of the appointment, in a durable medium, no later than 3:00 PM on the day before the Appointment. However, ComReg expects that where Appointments are rescheduled, providers must offer, agree and confirm a new Appointment in accordance with the requirements of this standard.

Inability to access premises

- 1.114 Having considered submissions made and having taken into account the views expressed, ComReg remains of the view for the reasons set out in Consultation 24/89 that where RSPs are able to establish that, having attended at the premises, access to it was prevented and this was not due to any act or omission on the provider's part, such Appointments will not be deemed missed for the purpose of the standard. It is appropriate to expect that providers are in a position to evidence that, having attended at the customer's premises, the technician made reasonable attempts to reach the customer (including contacting the customer on the provided phone number and/or other contact details where appropriate).
- 1.115 In that context, ComReg disagrees with a respondent's assertion that the minimum QoS standard fails to address scenarios where the customer is at fault. ComReg emphasises that where a provider can establish that access to a customer's premises was prevented due to no fault of the technician and reasonable attempts were made to reach the customer, such appointments will not be deemed missed for the purpose of the standard.
- 1.116 Furthermore, ComReg highlights that providers are responsible for managing customer relationships and delivering good customer service, regardless of concerns or challenges at the wholesale level. It is anticipated that RSPs will obtain all necessary details from their customers to ensure the smooth running of appointments for services and installation, in such circumstances RSPs may encourage end-users to notify them if their premises may not be accessible.
- 1.117 Regarding access issues raised by IFA caused by severe weather, particularly during winter months, see ComReg's position in relation to force majeure.⁸
- 1.118 Regarding clarification on the appropriate evidential requirements to establish that the end-user was not reachable or available at the premises, ComReg remains of the view as expressed in Consultation 89/24 that the provider must be in a position to evidence that reasonable attempts were made to reach the customer (including contacting the customer on the provided phone number and/or other contact details

⁸ See the Decision Instrument in Appendix A.

where appropriate).

The QoS standards are prescriptive and narrow

- 1.119 ComReg remains of the view for the reasons set out in Consultation 24/89 that where Appointments are missed or delayed, end-user harm arises where they experience inconvenience. ComReg acknowledges responses received in support of ComReg's goal to improve service standards.
- 1.120 However, having considered submissions made and having taken into account the views expressed, ComReg is deciding to revise aspects of the QoS standards consulted on in Consultation 24/89. ComReg believes that these revisions provide greater certainty for end-users, whilst allowing for increased operational flexibility to providers, which aligns with current industry practices, and ultimately will provide greater benefit and protections to end-users.

Benchmarks

- 1.121 Regarding views expressed in relation to the benchmarks referenced, ComReg does not consider that the sectoral schemes relating to missed appointments cannot be of relevance to this decision.

1.2 Question 2: Specification of failure and compensation

- 1.122 In Chapter 3 of Consultation 24/89, ComReg set out the specification of failure of a provider of IAS or NB-ICS to comply with minimum QoS standards for MDSIA under Section 37 of the 2023 Act. ComReg then asked the following question:

Do you agree with ComReg's proposals to specify a breach of the minimum QoS standards proposed as failures under Section 39(a) of the 2023 Act? Please provide detailed reasons and supporting evidence for your view.

1.2.1 Respondents' views

- 1.123 With reference to definitions for an appointment and when it is delayed and missed, as set out in Chapter 3 of Consultation 24/89, ComReg proposed that compensation will be payable when any appointment as defined is (a) missed (b) delayed. Furthermore, ComReg proposed that minimum QoS standards on MDSIA will apply to (a) providers of IAS and PANBICS and (b) to end-users.
- 1.124 In addition, ComReg acknowledged that exceptional circumstances such as force majeure, may arise, preventing the technician from attending the appointment at the agreed time and date and allowed that these factors may be factored into an RSP's compensation scheme. ComReg also proposed a provider-led process to determine whether compensation is paid to end-users automatically and to specify the amount of compensation that may be payable in respect of a specified failure.
- 1.125 In that context, the following views were expressed:
- Support for MDSIA as a compensable failure was mixed
 - Compensation should differ for missed and delayed appointments
 - Specification of compensable failures should incorporate tolerances, specific exceptions and tailored obligations such as force majeure
 - Large enterprises should be out of scope
 - No objections to a provider-led process to determine compensation levels

Support for MDSIA as a compensable failure was mixed

- 1.126 Some respondents (BT, Imagine, NBI and ALTO) noted the importance of compensable failures in facilitating service quality improvements and in general agreed that MDSIA can inconvenience end-users, who should be compensated, where appropriate.
- 1.127 For instance, Imagine submitted that they are "supportive of measures aimed at ensuring consumers are treated fairly and that retail service providers provide good levels of service quality, including compensation if things go wrong". NBI agreed that "it is appropriate to ensure that the inconvenience to end users arising from missed

and delayed service and installation appointments (“MDSIA”) is minimised and, where appropriate, compensated”.

- 1.128 However, some respondents (Pure Telecom, Vodafone, SIRO, Virgin Media) did not agree with ComReg’s proposals to specify a breach of the minimum QOS standards proposed as failures under Section 39(a) of the 2023 Act, with some arguing that it unfairly places the responsibility for compensating end-users on RSPs for service issues that occur at the wholesale level, which are beyond their control.
- 1.129 For instance, Pure Telecom submitted that “levying an obligation on the service provider to pay compensation to an affected end-user when a specified failure is committed without the relevant processes in place to in turn receive reimbursement of this financial commitment from the relevant wholesale network providers and their representative contractors imposes significant potential financial burdens on service providers to pay out on events which the service providers have no control over whatsoever in terms of whether appointments are fulfilled or not or in the timeslot previously agreed”.
- 1.130 In that context, SIRO recommended that ComReg refine the specification of "failure" to distinguish between systematic breaches and isolated incidents. SIRO added that “the mitigating actions taken by the service provider also need to be taken into account. For instance, providers who encounter minor or sporadic delays in service should not face the same penalties as those consistently failing to meet standards”. Furthermore, SIRO believes that in cases of routine appointments or maintenance services, where delays may be of minor inconvenience to the consumer, “the cost-to-benefit ratio of applying compensation appears unfavourable”. In summary, SIRO, while noting the importance of compensable failures in supporting service quality improvements, submitted that “a balanced and flexible regulatory framework is essential”.
- 1.131 BT highlighted an operational concern that may arise noting that “some access providers don’t provide a customer reference hence making it difficult for the retailer to know which customer should be paid the missed appointment penalty” which needs to be resolved.
- 1.132 On a further note, Eir sought clarification regarding the treatment of certain circumstances where appointments are rescheduled or rearranged. The scenarios are as follows:
- a) Where an appointment is re-scheduled by open eir for an earlier date with the consent of the customer
 - b) Where an appointment is re-scheduled by open eir for an earlier time on the appointment date with the consent of the customer
 - c) Where prior to the appointment day or on the appointment day, a customer

requests an appointment re-schedule to a later date.

- d) Where, on the appointment day, a customer requests an appointment reschedule to a later time on that day which open eir can accommodate.

Compensation should differ for missed and delayed appointments

1.133 ComReg, in Consultation 24/89, proposed a distinction between missed and delayed appointments. In that context, some respondents (ALTO, SIRO and BT) noted that since the end-user harm arising from a missed and delayed appointment differ, the compensation obligations should reflect this variation in end-user harm. Specifically, they suggested that delayed appointments should warrant a lower level of compensation. NBI submitted that delayed appointments should be considered a relatively minimal breach of the obligations.

1.134 SIRO, noting that uniform penalties are misleading, proposed a “tiered penalty structure reflecting the distinct nature and impact of these failures, ensuring proportionality and fairness in the applications of penalties”.

Specification of compensable failures should incorporate tolerances, specific exceptions and tailored obligations

1.135 Respondents, in general, suggested the incorporation of flexibility for exceptional circumstances or ‘force majeure’ exceptions, which in their view, is essential to prevent unfair penalties.

1.136 Eir highlighted that ComReg does not take account of the Storm Mode notices issued by wholesale providers to RSPs. In their view, RSPs should not be liable for missed appointments where “wholesale providers are unable to meet provisioning appointments as they are busy restoring services to existing customers throughout the country”.

1.137 While SIRO recommended:

- Incorporating flexibility for exceptional circumstances following a policy of documented exceptions, where providers show reasonable efforts to meet obligations. This in their view could enhance transparency and maintain the scheme’s integrity.
- QoS standards account for reasonable thresholds such as “a grace period or tolerance for minor delay before an incident qualifies as a “Specified Failure””. According to SIRO, this approach “would acknowledge operational complexities and avoid penalising providers for isolated, small delays that may not materially impact the customer experience”.

1.138 In that context, SIRO submitted the benefits of incorporating such tolerances, specific exceptions, and tailored obligations. SIRO submitted that:

- By establishing reasonable exemptions, “ComReg can create a fairer regulatory landscape that focuses on genuine service lapses, thus avoiding penalties for isolated or uncontrollable or force majeure events. This approach in their view, ensures that the “focus remains on substantive failures of service providers that directly affect consumer experience, supporting a fair and proportionate enforcement of the rules”.
- To justify compensable failures, ComReg should continue to require evidence that “a breach has resulted in tangible consumer harm”. According to SIRO, this approach would not only provide clarity on when compensations apply but would also ensure that the regulatory intervention is proportionate. SIRO believes that requiring demonstrable consumer impact for compensable claims ensures that the proposed regulation aligns more closely with harm-based principles in regulatory practice.
- ComReg could achieve “a balanced and flexible regulatory framework which ensures effective industry participation and encourages continuous service improvements while keeping compliance feasible for all providers”.

Large enterprises should be out of scope

1.139 ALTO proposed to limit the scope of the proposal to residential customers and small businesses only, where harm is most pronounced, suggesting that it is a more proportionate approach.

1.140 According to ALTO, the proposed definitions do not align with the operational realities of large business customers. The reasons given are summarised as follows:

- Large enterprises are already served by market led approaches where strong SLAs for provisioning and repair for business customers’ services exists. These SLAs tend to be bespoke and will align with the criticality of that service to the business customer in question. Failure to meet those SLAs will usually result in service credits under these arrangements and therefore large enterprise end-users are not subject to harm in the same manner as set out in Consultation 24/89.
- Delivery of service to such end-user premises can depend on several factors, some of which are out of control of either the customer or the service provider. Coordination issues in multi-tenant buildings (e.g., landlord agreements, access to shared spaces) will also add various challenges, notably by making the compensation mechanism complex. Therefore, flexibility to handle such issues on a bespoke basis is necessary.
- Large enterprise end-users often require engineer intervention to be operated outside of standard business hours, requiring flexible scheduling that differs

from residential appointment models. The proposed definitions of missed and delayed appointments may not align with the operational realities of large business customers.

- The compensation in the UK is aimed at consumers, with only transparency requirements for providers serving small and medium businesses.

No objections to a provider-led process to determine compensation levels

- 1.141 In general, no comments were submitted regarding the provider-led process to determine compensation levels. However, Sky stated that they “welcome ComReg’s approach which allows room for a provider-lead process and affords flexibility in terms of the process” noting their experience with the compensation scheme for switching and number porting breaches. According to Sky, such an approach “allows for healthy competition in the market, as retail service providers have the flexibility to adjust the level of compensation provided at a retail level according to the issues that arise”.
- 1.142 However, SIRO requested that ComReg allow providers to offer reasonable compensation options, such as capped service credits or tiered compensation amounts, which in their view, would be more manageable than uniform monetary payments, especially for smaller providers. SIRO stated that “this flexibility would support proportional compensation without burdening the service provider, while maintaining consumer satisfaction”.

1.2.2 ComReg response

MDSIA as a compensable failure

- 1.143 Having considered submissions and views expressed, ComReg is of the view that compensation will be payable when providers (a) fail to arrange and confirm an Appointment, (b) fail to fulfil an Appointment or a rearranged Appointment, and (c) when Appointments are missed or delayed.
- 1.144 ComReg has noted that not all respondents agreed that MDSIA should be considered a compensable failure, however a significant portion of this disagreement related to the minimum QoS standards as specified in Consultation 24/89. Having regard to submissions and taking account of views expressed, revisions to the minimum QoS standards have been made, which in ComReg’s view address concerns expressed by respondents in their submissions (see response to question 1 in Appendix C and Chapter 2 of the Response to Consultation and Decision document).
- 1.145 Separately, a number of respondents did not agree that RSP’s should be made to pay compensation without reciprocal payments made by wholesale providers when they are at fault. This point has been addressed in section 1.4.2 of this document.

1.146 In relation to SIRO's recommendation to "refine the specification of "failure" to distinguish between systematic breaches and isolated incidents", ComReg emphasises that the purpose of this intervention is to establish minimum QoS standards when scheduling and fulfilling appointments, regardless of whether non-compliance is isolated or systematic. ComReg has revised the minimum QoS standards to align with the current industry practices allowing flexibility. Additionally, the minimum QoS standards provide for mitigating actions that providers may take, such as cancellation or re-arranging an appointment with adequate notice. ComReg further notes that under the decision, compensation levels are to be determined by the providers. It is therefore a matter for providers to prepare and publish schemes which adequately reflect the level of end-user harm occasioned in the event of failures of providers to meet the minimum QoS standards as specified according to the Decision Instrument. ComReg is satisfied that this constitutes a proportionate and balanced regulatory approach.

1.147 With regards to specific queries raised in responses, please see below queries answered:

- **Where an appointment is re-scheduled by the provider for an earlier date with the consent of the customer:** In this scenario, provided that adequate notice of the cancellation of the initial Appointment is given to the customer in accordance with the minimum QoS standards, this is not a specified failure. In the case where the Appointment is rescheduled, providers must offer, agree and confirm a new Appointment in accordance with the requirements of the minimum QoS standards.
- **Where an appointment is re-scheduled by the provider for an earlier time on the appointment date with the consent of the customer:** As per paragraph 3.10 part (c) of Consultation 24/89, providers "may rearrange appointments to an earlier Time Slot on the same date. In such instances, ComReg considers this to be appropriate only where the rearranged appointment is mutually beneficial and agreed upon by both the technician and the end-user, and the rearranged appointment is fulfilled". Therefore, if the customer has consented to an earlier time on the appointment date, this appointment will not be deemed a specified failure. The consumers consent should be received in a durable form.
- **Where prior to the appointment day or on the appointment day, a customer requests an appointment re-schedule to a later date:** If the customer requests an amendment to an appointment, this falls outside of the scope of ComReg's minimum QoS standards. Whether a provider accepts a customer request to amend an appointment is a commercial decision for the provider and may be covered by the provider's terms and conditions. However, once the amendment has been accepted by the provider, the minimum QoS standards do apply to this rearranged or rescheduled appointment.
- **Where, on the appointment day, a customer requests an appointment**

reschedule to a later time on that day which the provider can accommodate:

As above, if the customer requests an amendment to an appointment, this falls outside of the scope of ComReg's minimum QoS standards. Whether a provider accepts a customer request to amend an appointment is a commercial decision for the provider and may be covered by the provider's terms and conditions. However, once the amendment has been accepted by the provider, the minimum QoS standards do apply to this rearranged or rescheduled appointment.

Compensation should differ for missed and delayed appointments

- 1.148 ComReg in Consultation 24/89 noted that in the case of delayed appointments, the customer may still be adversely impacted by the delayed fulfilment of the appointment. Having considered submissions made and having taken into account the views expressed, ComReg is of the view that there is a distinction between missed and delayed appointments whereby providers are able to fulfil the appointment later than originally. This distinction is primarily grounded in the level of inconvenience experienced by the customer in relation to the timing of the initial appointment.
- 1.149 In its Decision, ComReg has engaged an obligation on providers to pay compensation when a specified failure is committed and to publish a compensation scheme, however it has not specified any parameters for these schemes. As highlighted in paragraph 5.27 of Consultation 24/89, it is a matter for providers to determine the levels of compensation payable in the event of an appointment being missed, or an appointments being delayed. By imposing different compensation amounts, this may serve as an additional incentive for technicians to endeavour to meet a rearranged appointment, which in ComReg's view, is preferable to a Missed Appointment.
- 1.150 It remains ComReg's view that the compensation schemes will be a provider-led process to determine if compensation is paid to end-users automatically and to specify the amount of compensation that may be payable in respect of a specified failure, however this matter will remain under review.

Specification of compensable failures should incorporate tolerances, specific exceptions and tailored obligations

- 1.151 ComReg, in Consultation 24/89 acknowledged that exceptional circumstances (such as, force majeure) may arise, preventing the technician from attending the appointment at the agreed time and date and allowed such factors to be factored into an RSP's compensation scheme.
- 1.152 A number of respondents suggested that *force majeure*, such as, a Storm Mode⁹

⁹ Storm Mode refers to the Openair status triggered by an increase above a threshold level of faults due to bad weather.

should be considered an allowable exceptional circumstance for a Missed Appointment, noting that these events are outside of the RSP's control and thus compensation should not be payable. Having considered submissions made and views expressed, ComReg has amended the minimum QoS standards to allow for *force majeure* as an exclusion to MDSIA.¹⁰

- 1.153 ComReg has considered the input of respondents in relation to allowing exceptions or tailored obligations and has reflected this in the amended minimum QoS standards (see Section 1.1.2 above). ComReg is of the view that the longer Time Slots and amended adequate notice parameters should enable providers to meet the minimum QoS standards without any further amendments to the obligations. It is ComReg's view that the direct end-user harm associated with, for example, a longer Time Slot or reduced adequate notice should not be allowable.

Large Enterprises should be out of scope

- 1.154 Having considered submissions made and having taken into account the views expressed, ComReg is of the view that the minimum QoS standards on MDSIA should apply to all 'end-users'.
- 1.155 However, ComReg notes the concerns raised by ALTO with regards to the application of the minimum QoS standards to Large Enterprises.
- 1.156 ComReg notes that providers may have bespoke agreements with certain end-users which entitles the end-users to service credits where service levels are not met. Concerns were raised regarding various factors that may impact the providers' service delivery, potentially complicating the compensation mechanism and necessitating flexibility to handle such issues on a bespoke basis. In that context, ComReg highlights that the current approach allows room for a provider-led process and affords providers flexibility to specify the amount of compensation that may be payable in respect of a specified failure.
- 1.157 Regarding concerns that large enterprises require engineer intervention to be operated outside of standard business hours and that ComReg's proposed definitions of missed and delayed appointments may not align with the operational realities of large business customers, ComReg notes that providers may require further flexibility in scheduling appointments particularly where performing works outside of standard working hours for certain business customers.
- 1.158 ComReg has further considered this in light of respondents' views and has amended the Decision Instrument to allow for, in certain circumstances and by agreement between both business customers and providers, that Alternative Appointments may also be offered to business customers outside the hours as provided for within the

¹⁰ This is further discussed under ComReg's response to questions 1 in Appendix C. See Decision Instrument in Appendix A.

definition of a Week Day. Where an Alternative Appointment is agreed, the minimum QoS standards will not apply and compensation will not be payable where an Alternative Appointment is missed or delayed. However, in such scenarios, ComReg anticipates that end-users who agree to an Alternative Appointment will have contractual agreements in place with the providers. The minimum QoS standards permit bespoke agreements to operate so long as minimum QoS standards are met where they apply.

1.159 For clarity, providers must still offer all end-users (residential and non-residential) Appointments on a range of Week Days and Time Slots, in the first instance.

1.160 In addition, ComReg notes that the standards outlined are minimum QoS standards that providers should comply with and where bespoke agreements are in place, ComReg notes that providers have the flexibility to determine the levels of compensation payable.

Provider led process

1.161 Having considered submissions made and having taken into account the views expressed, ComReg remains of the view that a provider-led process to determine if compensation is paid to end-users automatically and to specify the amount of compensation that may be payable in respect of a specified failure, however this matter will remain under review.

1.3 Question 3: Scope of the application of MDSIA

- 1.162 In Chapter 4 of Consultation 24/89, ComReg set out the scope of minimum QoS standards and failures specified under section 39 (a) of the 2023 Act, proposing to broaden the scope to all MDSIA and not just those associated with porting and switching. ComReg then asked the following question:

Do you agree with ComReg’s proposals to specify a breach of the minimum QoS standards proposed as failures under Section 39(a) of the 2023 Act? Please provide detailed reasons and supporting evidence for your view.

1.3.1 Respondents’ views

- 1.163 In Consultation 24/89, ComReg proposed that it is appropriate and necessary to adopt the wider scope i.e., the application of the QoS standards on MDSIA and the specification of failure, beyond the switching and porting process and to MDSIA in general.
- 1.164 While BT stated their agreement with broadening the scope of MDSIAs, in general, respondents did not agree with this proposal for the following reasons including:
- Compensable failures should focus on appointments where there is proven and significant consumer harm
 - The proposals are beyond the scope of the Code which focuses on compensation for missed appointments in the context of switching and porting.
 - This would create a greater operational and financial burden on providers, particularly smaller providers
 - The operational costs could be passed on to the end-users.

Compensable failures should focus on proven and significant consumer harm

- 1.165 Some respondents (SIRO, ALTO and Virgin Media) noted the lack of proper evidential assessment underpinning or supporting ComReg’s proposal to extend the specification of minimum QoS standards and compensable failures to all MDSIA.
- 1.166 Virgin Media was of the view that this approach is logical when viewed through the broader economic principle that competitive markets drive price and quality, and when a clearly defined market failure or consumer harm arises that competition alone cannot effectively address. Virgin Media submitted that “ComReg, at the very least, should be able to produce hard evidence showing consistent behaviour within industry that results in significant ongoing consumer harm.”
- 1.167 Blacknight and SIRO suggested that the proposed standards focus on high impact scenarios. Blacknight was of the view that it would be more manageable and impactful to focus the scope of the compensable failures to critical appointments,

such as first-time installations or fault repairs. While SIRO submitted that the “documented consumer harm remains focused primarily on switching and porting contexts” and there is insufficient evidence to justify an expansion to non-critical service appointments.

- 1.168 SIRO was of the view that the scope of compensable failures should target scenarios where “consumer impact is demonstrably significant such as in the context of switching or initial installation delays” where the end-user is “particularly dependent on timely service completion for continuity”. While for other MDSIA such as a routine maintenance or intra-operator service upgrades, “the criticality of the appointment is often less, and alternative service arrangements can frequently mitigate consumer inconvenience”.
- 1.169 In that context, SIRO recommended that ComReg limit the scope of MDSIA to critical instances, such as missed and delayed appointments specifically related to switching or initial installations, while non-critical appointments such as routine maintenance could be governed by voluntary standards. This approach, in their view, would better align with practical service requirements and reduce operational burdens.
- 1.170 According to SIRO, ComReg should adopt an evidence-based approach which would strike an appropriate balance by ensuring that “consumer protection is prioritised where service disruptions have the most significant impact, while also keeping the regulatory burden manageable for providers”.

Beyond the scope of the Code

- 1.171 Two respondents (Virgin Media and SIRO) raised concerns that the EU legislation (EECC) focused on compensation for missed appointments in the context of switching and porting only.
- 1.172 Virgin Media submitted that the intent of the legislature was “to ensure the smooth and timely completion of ports and switches” and not to set rules for “broadband-related appointments in general”. Virgin Media added that “Section 37(1)(g) of the 2023 Act does appear to grant ComReg wide discretionary power, to include doing what is proposed in the Consultation”, however, in their view, “an NRA should also be very cautious before taking any national measure that goes beyond the scope of the Code, even if the NRA is empowered to take that measure under national legislation”.
- 1.173 Similarly, SIRO asserted that the provisions for end-users in the EECC, including compensation, require full harmonisation.

Operational costs and burden to providers

- 1.174 SIRO highlighted concerns relating to the operational and financial burden on providers for the following reasons:

- Providers would be required to monitor and document an expanded array of appointment types.
- The current standards for porting and switching processes already require extensive compliance adjustments and expanding this requirement to encompass all service and installation appointments would necessitate even more comprehensive scheduling, tracking, and reporting measures.
- The heightened compliance requirement would increase the administrative workload and also raise the likelihood of non-compliance due to the sheer volume of appointments to be managed.

1.175 SIRO also noted the disproportionate impact on smaller providers with less extensive operational infrastructure, making it difficult to adapt.

Risk of increased cost to end-users

1.176 Furthermore, SIRO highlighted the potential increase in operational costs of administering a broad compensation scheme across all appointment types. SIRO submitted that “given the competitive nature of the telecommunications market, such costs would likely be passed on to end-users through higher service fees. This approach could inadvertently harm end-users by increasing their cost burden without delivering a commensurate increase in service quality”.

Other MDSIA

1.177 Sky noted that “there should also be a clear distinction between the appointments that require end-user involvement and those where end-user presence is not required (for example property surveys). While the customer must be informed of the progress of their order throughout the process, retail service providers should not be responsible for paying compensation in the scenario where there is no customer involvement, as the direct consumer harm that is to be addressed by this consultation does not arise.”

1.3.2 ComReg response

1.178 ComReg has considered the respondents views in relation to the application of minimum QoS standards and has determined that further analysis is required before deciding if the broad approach is to be adopted i.e. minimum QoS standards to be applied to all MDSIA. ComReg is continuing to consider other appointments, and this aspect remains under ongoing review by ComReg and it will continue to progress this. In this context, ComReg expects that Providers would not treat appointments outside the scope of this decision differently.

1.179 With regards to the specific queries raised, ComReg has outlined its views below:

Compensable failures should focus on proven and significant consumer harm

- 1.180 ComReg has considered the view that compensation should focus on the areas of more significant consumer harm, such as the switching and porting process which may be more time sensitive and of more critical importance to the end-user.
- 1.181 Referring to Section 2.2 of the Consultation 24/89, the primary purpose of the minimum QoS standards in relation to MDSIA was to address the issue of direct end-user harm i.e. the frustration, inconvenience and time associated with missed and delayed appointments. The direct end-user harm is equivalent across all appointments, irrespective of whether the appointment is relating to porting or switching, and ComReg does not see that there is reasonable cause to adopt the suggested approach.

Beyond the scope of the Code

- 1.182 ComReg notes the submissions referencing the Code Directive and the 2023 Act.
- 1.183 ComReg is satisfied that it has a legal basis and is acting within its remit in setting minimum QoS standards in the context of all missed and delayed service and installation appointments and specifying failures by providers to comply with those standards as compensable.
- 1.184 ComReg will conduct a wider analysis on the issue of the scope of the application of the minimum QoS standards before making any final decision in this regard.

Operational costs and burdens to providers

- 1.185 ComReg notes that respondents have suggested that extending the payment of compensation for MDSIA beyond the switching and porting process will lead to additional costs and an increased burden on providers. ComReg accepts that doing so, would potentially increase costs and the administrative burden on providers, however, ComReg also notes that adopting a narrow scope would necessitate providers to distinguish between installation and service appointments within the context of switching and porting, and those outside of that context, in terms of operational processes, systems, and compliance frameworks.
- 1.186 ComReg has considered these concerns, as opposed to the end-user harm associated with MDSIA, in determining its final decision with regards to the scope of application of the minimum QoS standards.

Other MDSIA

- 1.187 ComReg notes that an appointment scheduled for the purposes of an installation or a service will be in scope of this standard. In addition, ComReg is not addressing the level of compensation that may be payable in respect of a specified failure.

1.4 Question 4: Draft Regulatory impact Assessment

- 1.188 In chapter 5 of Consultation 24/89, ComReg set out in its draft RIA the proposals for ComReg exercising a discretion and the scope of the options open to it regarding ComReg's proposals (i) to specify minimum QoS standards in relation to MDSIA, including defining "Appointments" and "Missed and Delayed Appointments" and failures of providers of IAS or PANBICS to comply with such standards and (ii) on the scope of application of the minimum QoS standards and compensable failures in relation to MDSIA, across each of the policy decisions proposed in the Consultation. The Draft RIA also set out ComReg's preliminary views on the likely effects upon stakeholders and competition. ComReg then asked the following question:

Do you have any comments on ComReg's draft regulatory impact assessment? Please provide detailed reasons and supporting evidence for your view.

1.4.1 Respondents' views

- 1.189 ComReg had identified that the appropriate way to intervene is to create minimum QoS standards in relation to MDSIA under Section 37 of the Act and to subsequently specify a failure to comply with those standards as compensable under Section 39 of the Act.
- 1.190 ComReg, then in its Draft RIA considered the potential impact of specifying a standard for an Appointment and of specifying a standard for a Missed and Delayed Appointment as a compensable failure. Furthermore, the potential impacts of the two options including specifying the proposed minimum quality-of-service standard(s) and the failure to MDSIA only in the context of the switching and porting process and to in the context of all MDSIA were assessed.
- 1.191 ComReg set out its preliminary views of the likely effect upon stakeholders including end-users and providers, and competition. ComReg summarises the respondents' views below across those aspects as follows:
- Impacts on end-users
 - Impacts on providers
 - Impacts on competition

Impacts on end-users

- 1.192 ComReg, in its draft RIA had set out how ComReg's proposal of QoS standards for MDSIA would benefit end-users by providing greater surety and adequate redress in the event of MDSIA.
- 1.193 Some respondents (Virgin Media, Vodafone, Three, Sky, Prepay Power) agreed that missed or delayed appointments can cause inconvenience to end-users such that they should be avoided, wherever possible, and supported ComReg's goal to

improve service standards. BT welcomed ComReg's approach of introducing minimum QoS standards "as it is a means to ensure consistency across industry.

1.194 However, some respondents raised concerns that ComReg has not clearly considered the potential impact on end-users and highlighted the following points:

- There is a lack of evidence of consumer harm
- Cost obligations on RSPs can be passed on to end-users
- Adverse impacts on customer's ability to exercise flexibility

There is a lack of evidence of consumer harm

1.195 ComReg, in Consultation 24/89, outlined the direct and indirect end-user harm associated with MDSIA, emphasising its significance by referencing the harms experienced and volume of cases reported through ComReg's consumer care division.

1.196 However, some respondents (ALTO, Virgin Media, SIRO) highlighted that ComReg's consultation does not have desirable levels of evidence to support its decision within the consultation.

1.197 Particularly, Virgin Media, while noting their support for the objective of maximising end-user benefits in terms of QoS through effective competition, raised concerns that the "consultation seems to take it as read that MDSIA is a significant issue within the industry such that regulatory intervention is justified. However, practically no evidence has been produced to establish that this is the case".

1.198 In that context, Virgin Media highlighted that "regulatory intervention is justified and proportionate only if it seeks to address some clearly identified significant market failure or consumer harm" and that "regulatory intervention in an effectively competitive market should occur only when there is robust evidence of a failure of market competition". Virgin Media believes that the intervention cannot be justified or proportionate if it is based on "mere supposition and repeated reference to legislative provisions, but very few actual facts". Virgin Media, noting that the current approach would be contrary to the principle of market-based efficiency, sought evidence in the case of the Consultation and the Draft Decision, which in its view is notably absent.

1.199 While SIRO cited Ofcom's impact analysis for the intervention of automatic compensation and stated that it "focused on ensuring that compensation rates were proportionate to consumer harm and did not inadvertently drive-up costs across the board". In that context, SIRO submitted that, without clear evidence of consumer harm, implementing a compensation scheme could impose additional costs without necessarily delivering corresponding improvements in service quality or consumer satisfaction.

Cost obligations on RSPs can be passed on to end-users

- 1.200 While ComReg's RIA outlined the potential benefits of the proposed QoS standards and compensation obligations to end-users, some respondents raised concerns that the proposed intervention would create cost and which could be passed on to end-users. Some of the issues raised in the submissions received included:
- Potential of negative impacts on affordability of services to end-users
 - A possible shift in RSP's approach from discretionary to automatic charging for customer missed appointments
 - Higher costs to end-users due to rise in operational costs for RSPs
 - Higher costs to end-users due to implementation of a broader scope
- 1.201 Some respondents (SIRO, Imagine, and Blacknight) submitted that any costs could be passed on to end-users affecting affordability of services and reasons were provided. SIRO and Imagine noted the low bargaining power with wholesale providers who may pass on compensation costs in relation to a MDSIA to retailers leading to downstream effects on retail pricing. While Blacknight stated that the additional costs for compliance will likely translate into higher service fees for end-users, adversely affecting affordability in the long run.
- 1.202 A number of respondents submitted that it is not a widespread practice across industry to charge end-users for missed appointments. Westnet noted that the reference to such charges pertains to providers reserving the right to charge fees for missed appointments and as a way of encouraging end-users not to miss them. However, SIRO and Westnet submitted that, with the introduction of the proposed compensation scheme, there will be a perverse incentive on RSPs to enforce such charges on end-users to counterbalance the costs of the proposed compensation scheme for MDSIA.
- 1.203 Imagine stated that there will be higher operational costs for providers associated with the compensation obligations. Imagine submitted that "an increase in the administration and scheduling of appointments, additional reporting requirements, and the requirement for the development of the systems to support it, will incur additional costs". This, in their view, may lead to increased costs to end-users or reduced service offerings, "which may ultimately contradict ComReg's broader mandate to promote fair competition and protect consumers".
- 1.204 SIRO expressed concerns regarding the cost implications of administering a broad compensation scheme across all appointments, noting the potential increase in operational and compliance costs for providers. This in their view, would be passed on to end-users through higher service fees, given the competitive nature of the telecommunications market. SIRO believes that this approach would ultimately raise the cost of services for end-users and could "inadvertently harm end-users by increasing their cost burden without delivering a commensurate increase in service quality".

Adverse impacts on customer's ability to exercise flexibility

- 1.205 While highlighting the potential adverse impacts on providers such as “fine tuning” of appointments, some respondents submitted there would be potential disadvantages to end-users arising from this proposal.
- 1.206 Three respondents highlighted scenarios where end-users request to reschedule and rearrange appointments. However, with the introduction of QoS standards requiring adequate notice for such changes, providers maybe inadvertently incentivised to impose similar notice requirements on end-users. For instance, Pure Telecom noted that currently, appointment times can be adjusted until circa 3pm on the day prior to the appointment, allowing flexibility for end-users. However, they cautioned that introducing a 24-hour notice period could impact end-users' flexibility to change their appointment, assuming the intention is to maintain equivalence in notice periods between customer and service providers.
- 1.207 SIRO, recommended that ComReg focus on high-impact scenarios for redress, highlighted that “this balanced regulatory strategy will not only ensure that consumers receive fair treatment in critical service scenarios but will also support the viability and competitiveness of a diverse telecommunications sector”.

Impacts on providers

- 1.208 ComReg, in its draft RIA had set out that ComReg's proposal of QoS standards for MDSIA, such as limitation on Time Slots and adequate notice would impose operational changes by providers. This includes operational changes to meet shorter Time Slots (i.e. planning of technicians' daily schedule) and the time implement.
- 1.209 However, some respondents raised concerns that ComReg has not clearly outlined the extent of the operational changes required and highlighted the following points:
- Vodafone, noted the removal of flexibility for local arrangements, highlighted the system development costs that are imposed and which need to be recovered, to implement capture of agreement, durable communications and rescheduling requirements.
 - Three noted that while ComReg acknowledges the need to amend operational processes relating to allocating technicians to appointments, it has not provided an estimate of the effort required to implement and support these changes.
 - SIRO submitted that extensive system upgrades would be required to ensure timely incident detection, reporting, and compensation processes. This includes improving Key Customer Information ('KCI') messaging systems and data accuracy.

- Pure Telecom noted that necessary software information flows and reporting structures will be required to amend existing processes to achieve any type of compensation scheme as proposed, which was concurred at the industry level.
- Imagine highlighted the costs of system updates to support new tracking and reporting requirements, additional administrative resources required to manage the compensation scheme and the operational impracticality of maintaining sufficient unassigned staff to enable same-day rescheduling, especially in rural areas. This in their view, could result in significant operational strain and increased costs.

1.210 SIRO, noted its support for ComReg's goals to enhance service standards for end-users, and recommend that the minimum QoS standards for missed and delayed appointments be tailored to allow operational flexibility, particularly in Time Slotting, rescheduling requirements, and manageable timelines. These modifications, in their view, would "not only preserve the protective intent of the regulation but also support a balanced operational framework for network providers, fostering a sustainable rollout of the standards".

Impacts on competition

1.211 ComReg, in its draft RIA had set out that "a well-functioning, competitive market should ensure wholesale inputs are adequate to underpin any retail obligations concerning the standards and compensation". In terms of the proposed QoS standards including limitations on Time Slots and adequate notice, ComReg noted that where existing SLAs are not adequate to underpin this requirement, providers may be impacted, in terms of, a need to review/revise SLA provisions or, a potential increase in volume of compensation payments. In addition, ComReg highlighted that some providers may have low countervailing bargaining power where existing third-party SLAs may need to be reconsidered and may involve renegotiation of aspects of SLAs.

1.212 In that context, most respondents raised concerns across the following aspects:

- QoS standards do not consider wholesale dependency to facilitate the scheduling and fulfilment of appointments and ComReg's proposals places the responsibility for compensating end-users on the RSPs for service failures occurring at the wholesale level.
- There is a lack of pre-agreed, fully backed off standard industry SLAs for compensating RSPs for network operator failures and renegotiating SLAs are required which could be difficult to achieve.
- ComReg's proposal does not consider the potential for distortion to

competition at the wholesale level and that ComReg's RIA fails to address the competition impacts of a vertically integrated wholesale/retail service provider with a large and embedded customer base.

- There are concerns over the adverse impacts of ComReg's proposal on smaller providers with limited resources including disproportionate compliance and operational burdens, harming competition.

QoS standards do not consider wholesale dependency

- 1.213 Respondents submitted that ComReg's proposed standards have not adequately considered the position of wholesalers.
- 1.214 Respondents (IFA, Sky, Westnet, Blacknight, Pure Telecom, ALTO, Vodafone) submitted that RSPs are dependent on wholesalers for scheduling and fulfilling appointments. For instance, IFA noted RSPs' lack of direct control over appointment scheduling, technician efficiency, and on-the-ground issues. According to Sky, "once the appointment date has been agreed by the retail service provider with the customer, the wholesaler network provider's dedicated team that handles the physical installation of broadband services coordinates directly with the customer on fulfilment of the appointment including any time adjustments (including on the appointment date)." Similarly, Westnet noted that "access providers have a process, at least for installations, whereby control over scheduling of appointments is actively removed from the RSP a day or two in advance of the appointment".
- 1.215 According to Westnet, once an appointment is handed over, the appointment scheduling and customer engagement is carried out by the installation contractor's back office. While Blacknight submitted that these processes are handled by sub-contractors of the wholesale networks, highlighting that "appointments are fed from third parties back into the system and presented to RSP's operators which are then relayed back to the consumer".
- 1.216 However, Sky acknowledged that RSPs make efforts to effectively manage any issues that arise during the process (such as a lack of communication during the process, miscommunication, or delays in passing relevant information from the wholesale provider) but in their view remain dependent on the quality of the information relayed to them. Meanwhile, Pure Telecom noted that it receives feedback from interactions between the wholesale operator and their contracted parties with the customer through automated systems.
- 1.217 Thus, in such an operational model, the scheduling and fulfilment of an appointment depends on the wholesale provider, with Sky noting that "the wholesale network providers are solely responsible for setting their own timelines and ensuring that reasonable efforts are made to avoid unnecessary delays".
- 1.218 In light of the current dependence on wholesale network providers for scheduling and

fulfilling appointments, “any QoS standards must account for this dependency on Network Operators, including clear protocols for communication and responsibilities in case of delays” as pointed out by IFA. This, in their view, should be reflected in fully backed-off industry standard SLAs.

- 1.219 In summary, ALTO urged that these proposal “should not put retail operators at commercial risk if and where access operator processes and procedures do not meet a baseline operating standard for the management of appointments and scheduling”.

Renegotiating SLAs for recovery of compensation paid is required which could be difficult to achieve

- 1.220 Respondents in general did not agree that the current wholesale inputs are adequate to underpin any retail obligations concerning the standards and compensation. According to Imagine, ComReg’s proposal, if adopted, would impose additional obligations on an RSP, which in their view would “in effect mean that the current SLAs in-situ between the RSP and Wholesale provider will no longer meet the RSPs regulatory obligations”. While Vodafone stated that the “current regulated SLA is not fit for purpose”, BT submitted that the QoS obligations on retail providers would be a ‘breaking change’ – i.e., changes that are not backward compatible.

- 1.221 Respondents also noted some other issues with current agreements in place, as summarised below:

- BT submitted that appointment systems are automated and complex, and that modifications must be made by all operators using inter-operator automated systems.
- Vodafone and BT raised concerns over a lack of SLA cover for retailers under Storm Mode conditions. Vodafone submitted that “the wholesaler will advise that installation resource may be reallocated at short notice to repair. New appointments are curtailed as the focus switches to service restoration. Storm Mode can happen year around and we would have seen significant durations in assigned Storm Mode status in January, February, June, July and December this year”.
- BT stated that “there are problems with some access providers not paying penalties and/or not providing customer reference information when an appointment is missed”, noting that it could take considerable effort and time if access providers are not incentivised to resolve this situation.

- 1.222 Respondents also (BT, SIRO, Sky, Vodafone, Pure Telecom, IFA, Blacknight, Prepay Power) highlighted the absence of pre-agreed, standard industry SLAs for compensating RSPs for network operator failures. They mainly sought for SLAs to include a mechanism between the wholesale network provider and retail service provider to facilitate the recovery of compensation paid by the retail providers in the

event that the issue is caused by the wholesale network provider.

1.223 Within this context, respondents highlighted the following concerns:

- Respondents, in general, argued that while many service issues occur at the wholesale level, ComReg's proposals would place the responsibility for compensating end-users on the RSPs. This approach, in their view could create a financial and operational burden on RSPs, particularly on small providers, "who may struggle to implement reconciliation and reporting systems with wholesalers" as noted by SIRO.
- Vodafone and IFA pointed out the impact on the business case for fixed services particularly fibre-based services, highlighting that ComReg's proposal does not consider the margin challenges and commercial impact. Vodafone explained that imposing this cost measure in addition to wholesale charges and other costs borne by the retailer (such as installation charges, CPE cost, agent commission, customer missed appointment charges to name a few), could result in a margin squeeze. According to IFA, this is particularly challenging for smaller RSPs already operating on tighter margins.
- BT submitted that there is a lack of appropriate support of all the upstream access providers and the wholesale layer industry does not have the appropriate agreements in place with all the access providers, making it difficult to recover the penalty payments from the access provider that missed the appointments. Furthermore, BT highlighted that ComReg's proposal would put the RSPs at a commercial disadvantage, as they would be required to bear the costs of missed appointments by customers, while the access provider, in some cases, does not provide reciprocal compensation when its technician misses the appointment"

1.224 According to IFA, the lack of pre-agreed standard industry SLAs for compensating RSPs for network operator failures represents a significant risk". Vodafone submitted that "a poor SLA undermines the customer experience and drives the cost-of-service delivery failures into the retailer in a market where margins are already squeezed. The imposition of proposed obligations will only serve to erode margin with no incentive on a dominant wholesale provider to back off the retail obligation".

1.225 In that context, respondents (BT, IFA, Sky, Imagine, Vodafone, Virgin Media, Blacknight, Pure Telecom, Westnet) highlighted that effective engagement and cooperation at the wholesale level which controls the process is essential to deliver the improvements that are needed. For instance, BT noted that "appropriate support of all the upstream Access Providers is essential and updated wholesale contracts need to be agreed" while Imagine stated that revising such contracts will require cooperation from wholesale providers. Similarly, IFA submitted that "collaboration between ComReg, network operators, and RSPs is crucial to develop a viable

framework that balances end-user protection with the needs and realities of the industry". While Prepay Power sought "ComReg's engagement with the relevant Network Providers who are responsible for setting appointment slots, ensuring that technicians arrive at the pre-agreed appointment time and where necessary directly engage with end users in order to reschedule appointments".

- 1.226 Furthermore, Pure Telecom submitted that significant industry engagement will be required to ensure "necessary software information flows and reporting structures are put in place to amend existing processes to achieve a scheme which may form any type of compensation scheme as proposed".
- 1.227 Similarly, noting the current requirements on retail providers to compensate the wholesale provider for appointments missed by the customer, BT requested that wholesale processes include a notification mechanism from the access provider's technician to the retail provider. This would help address situations where the technician is unable to contact the customer or access their premises- circumstances beyond the retail service providers' control, while ensuring better customer service and minimising unnecessary compensation payments from the retail service provider to the wholesale service provider.
- 1.228 A comprehensive, mutually agreed SLA framework is paramount to ensure fairness and prevent and undue financial burden, particularly for smaller RSPs. However, respondents highlighted that protracted and difficult negotiations maybe required. For instance, Vodafone noted that "sector engagement is often cumbersome and challenging however it is necessary if we want to improve SLAs and therefore the standards of service delivered to end customers". Respondents emphasised the challenges and complexities of negotiations, citing the following reasons:
- Respondents (ALTO, Three, BT and SIRO) highlighted the substantial switching costs and long lead times associated with switching to alternative wholesale networks. They noted that that these factors could give vertically integrated providers with large customer bases a significant advantage, reducing their incentive to offer wholesale compensation, while placing retail service providers at a disadvantage due to their limited bargaining power in negotiating terms unilaterally.
 - From a wholesale perspective, SIRO stated that "for wholesale providers, there is pressure to ensure that SLG¹¹ payments align with automatic compensation amounts to mitigate retailer losses". SIRO argued that this could create an imbalance between vertically integrated providers and other access providers, who have limited countervailing power in their relationship with retailer providers, thereby disproportionately increasing costs for these access providers. SIRO also noted that discrepancies between retail

¹¹ Standard Level Guarantees

compensation obligations and wholesale SLG arrangements could persist, which in their view, could lead to disputes.

- Imagine noted that many agreements cannot be renegotiated until their expiry and therefore revising contracts may not be feasible within the proposed implementation timeline.
- ALTO and BT highlighted past challenges and negative experience in negotiating SLAs, citing examples such as the Switchlink Penalty regime and ComReg document 17/081 which took several years to resolve. According to BT, from past experience, such negotiation is difficult as Access Providers do not have the same regulatory obligations as Retail providers. Vodafone also noted their efforts to negotiate improvements to SLA cover on installation and faults to improve service experience particularly of business customers, but no progress has been made.
- In the context of this intervention, Sky emphasised the lack of support and incentives at the wholesale level to align with this retail obligation. They noted ongoing efforts to engage wholesale providers, but to date, no response has been received. BT, in particular, raised concerns about the non-payment of penalties and the lack of a proper process for providing customer reference information when appointments are missed by certain access providers. They emphasised that, without adequate incentives, resolving such issues could require significant time and effort.

1.229 In this context, respondents requested ComReg's involvement in engaging with wholesale providers as part of this process and policy intervention. Furthermore, Sky sought ComReg's issuance of relevant guidance and obligations where necessary and its role in addressing complex regulatory disputes that may arise. Vodafone and Sky expressed concerns about the lack of ComReg's involvement to date, noting that they have not observed any indication of corresponding engagement at the wholesale level regarding this policy proposal.

Lack of consideration of a vertically integrated model

1.230 Some respondents (SIRO, Three, Sky) expressed their concerns that ComReg's proposal does not consider the potential for distortion to competition, particularly at the wholesale level and submitted that ComReg's RIA fails to address the competition impacts of a vertically integrated wholesale/retail service provider with a large and embedded customer base.

1.231 Respondents submitted that ComReg intends to set regulatory obligations only at the retail level without adequate intervention at the wholesale level. Recognising the fundamental changes required to the access provider's processes, as noted by Westnet, and the asymmetric negotiation power between RSPs and some Access

Providers, some respondents (BT, Vodafone, Sky) emphasised that setting retail only obligation without the appropriate wholesale level obligations or support will result in serious challenges for retail service providers. This, in BT's view, "could limit the RPs competitiveness and in effect distort the market".

1.232 Three illustrated the competitive impacts at both the retail and wholesale levels by providing an example of a market with a vertically integrated provider.

1.233 At the retail level, there are two considerations:

- When no wholesale compensation is offered, both vertically integrated and non-integrated providers are equally impacted by any deficiencies in service performance. However, as discussed above and further noted by SIRO, when service failures occur due to faults at the wholesale level, RSPs may seek to recover these costs from their wholesale providers through negotiated SLAs and SLGs. In their view, if the wholesale agreements do not adequately reflect these new obligations, the financial burden may ultimately fall on retail providers.
- In cases where wholesale compensation is offered, a vertically integrated provider may face a cost and competitive disadvantage. Consequently, unless RSPs have a significant countervailing bargaining power, there is little incentive for the vertically integrated provider to offer wholesale compensation.

1.234 At the wholesale level, similar dynamics apply, with two key considerations:

- Where both wholesale providers offer wholesale compensation, the vertically integrated provider has higher overall outpayments than its retail competitors or its wholesale competitor. As a result, it has little incentive to offer wholesale compensation. In this context, SIRO, referencing Open Eir as a wholesale provider with SMP, submitted that "there is particular lack of pressure to incorporate compensation mechanisms into existing SLAs, as retail providers lack sufficient bargaining power to negotiate terms unilaterally".
- Conversely, if the vertically integrated provider does not offer wholesale compensation while a vertically non-integrated provider does, the vertically integrated provider benefits from lower overall outpayment compared to its wholesale competitor, strengthening its position relative to its retail competitors. According to SIRO, "this will create an imbalance between Open Eir and operators such as SIRO and Virgin, who have little countervailing power in their relationship with retailers, increasing our costs while not necessarily impacting on Open Eir's".

1.235 In that context, SIRO expressed concerns about how these dynamics

disproportionately benefit SMP regulated Open Eir, given its advantages over emerging competitors such as Virgin Media and SIRO in the following areas:

- Open Eir has an extensive infrastructure and customer base that can absorb the financial impact of compensation payments more easily due to larger revenues and economies of scale. They are better positioned to implement automated processes for managing compensation claims and allocate resources to resolve issues quickly, or simply just pay – what for them – may well be immaterial penalties.
- Open Eir has well-established and regulated operational frameworks, including service level agreements and automated systems for tracking and addressing service issues. These existing and already funded systems streamline compliance with compensation requirements.
- As the primary wholesale provider, Open Eir can transfer service quality costs to retail providers through contractually agreed pass-through mechanisms, leveraging their power in the relationship. This arrangement shifts financial and operational risks downstream to retailers, ensuring that the SMP operator's profitability is less affected by the compensation scheme. Smaller operators do not have the same bargaining position.
- Open Eir has long-standing and preferential relationships with subcontractors and vendors, allowing them to prioritise service recovery efforts and maintain compliance with compensation schemes.

Disproportionate impact on small providers

1.236 Respondents, in general, expressed concerns over the negative impacts of ComReg's proposal on smaller providers with limited resources.

1.237 With respect to the QoS standards, the following considerations were raised:

- Respondents, particularly SIRO, Imagine and IFA, highlighted that a 4-hour Time Slot would limit the flexibility required by smaller providers to match smaller operational capacities and logistical realities. SIRO acknowledged that the uniform application of this standard would impose an undue scheduling burden on providers, particularly "those relying on third-party field engineers or serving rural areas with fewer resources".
- Concerns were also raised regarding a potential risk that economies of scope and scale could cause unintended squeeze or pressures on smaller access seekers, in particular, BT highlighting that the proposed Working Day "could potentially be discriminatory against smaller operators that may not have the resources to accommodate a 6-day work week, and it may increase cost to the customer.

- 1.238 Regarding the operational costs and burden on providers, as set out in para 1.174, SIRO highlighted that the proposed standards would require providers to monitor and document an expanded array of appointments, necessitate comprehensive scheduling, tracking, and reporting measures and increased administrative workload to manage the higher compliance requirement. This, in their view, would impose a “disproportionate impact on smaller providers with less extensive operational infrastructure, making it difficult to adapt”.
- 1.239 Respondents (SIRO and BT) also highlighted that the compensation obligations would create a financial burden for retail providers, particularly smaller providers, “who struggle to implement reconciliation and reporting systems with wholesalers”, as noted by SIRO. In that context, BT raised concerns that where RSPs are not able to recover the compensation from their wholesale providers, it may force the RSPs to “raise their price to the customer, with a possible loss of the customer to vertically integrated providers that can manage the pass-through penalty end-to-end”. This in their view is “an unfair and unreasonable distortionary pressure to the market, particular against smaller entrant operators”.
- 1.240 Vodafone and IFA pointed out the impact on the business case for fixed services particularly fibre-based services, highlighting that ComReg’s proposal does not consider the margin challenges and commercial impact. In that context, IFA highlighted that the proposed measures, “in the absence of agreed fully backed off standard industry SLAs, could negatively impact profitability in the highly competitive fibre market, making it particularly challenging for smaller RSPs already operating on tight margins”.
- 1.241 SIRO highlighted the disproportionate impact on smaller providers, stating that “as the primary wholesale provider, Open Eir can transfer service quality costs to retail providers through contractually agreed pass-through mechanisms, leveraging their power in the relationship”. This arrangement shifts financial and operational risks downstream to retailers, minimising the impact of the compensation scheme on the SMP operator's profitability. SIRO believes that smaller operators lack the same bargaining power, leaving them at a disadvantage. In that context, two respondents pointed out the potential consequences of imposing a disproportionate burden on smaller providers including:
- Imagine noted that the disproportionate compliance and operational burdens on smaller Retail Service Providers would harm competition and innovation.
 - Blacknight submitting that this approach would exacerbate disparities between small and large providers, potentially reducing competition and consumer choice.
- 1.242 To address this issue, IFA recommended a mutually agreed SLA framework to ensure fairness and prevent an undue financial burden. While SIRO suggested a

tiered compliance framework for providers of different scales. According to SIRO, “a universal application of minimum QoS standards could disproportionately affect smaller or regional retail service providers, who may face unique logistical constraints”. SIRO submitted that this approach

- recognises operational realities based on provider size, geographic area, and capacity.
- would allow smaller providers to comply with modified standards that reflect their resources, while larger providers with greater operational capacity would adhere to the full scope of obligations.
- supports a competitive and diverse marketplace by minimising the regulatory load on smaller providers, fostering a more inclusive telecommunications landscape without compromising consumer protection.

1.4.2 ComReg response

Impact on end-users

- 1.243 As noted in Consultation 24/89, Article 106(8) of the Code (which relates to switching and porting) obliges Member States to lay down rules on the compensation of end-users by providers where providers fail to comply with the obligations laid down in that Article. There is currently no requirement in Ireland for compensation for MDSIA as required by Article 106(8) of the Code.
- 1.244 In that context, ComReg has considered end-user harm of MDSIA. ComReg, in Consultation 24/89, outlined the direct and indirect end-user harm associated with MDSIA. Recent updates of complaints received through ComReg’s Consumer line continue to highlight recurring issues in end-user experiences in relation to appointments. It is important to note that complaints received through ComReg’s Consumer Care represents only those complaints that remain unresolved by the provider after ten days. The actual volume of complaints regarding MDSIA may be higher, as many could be resolved or addressed directly by the provider before reaching this stage. ComReg notes respondents’ views that MDSIA can cause inconvenience to end-users such that they should be avoided and should be compensated, where appropriate.
- 1.245 Based on its analysis of the complaints received, ComReg also notes the inconvenience and frustration experienced by end-users along with the potential delays and loss of service when appointments are not met, as outlined in Consultation 24/89. ComReg is satisfied that the intervention is necessary, appropriate, proportionate and justified.
- 1.246 ComReg, in its RIA in Consultation 24/89, considered the effects upon end-users, of

ComReg exercising its powers to introduce a standard for MDSIA, with respect to the identified policy options. ComReg believes that the minimum QoS standards would benefit end-users by providing greater certainty and minimise inconvenience. ComReg wants to ensure a consistent level of protection and redress for end-users and to promote their interests in the case of any consumer harm arising from MDSIA particularly by enabling maximum benefits in terms of quality-of-service on the basis of effective competition.

- 1.247 In light of the above analysis, ComReg does not agree with the respondent's comment that the intervention is not justified and is of the view that end-user harm has been clearly identified.
- 1.248 The intervention is designed to establish minimum QoS standards for scheduling and attending appointments, while allowing providers the operational flexibility to align with their individual business operations and determine as appropriate compensation levels. This approach ensures providers are incentivised to improve customer service related to appointments, while minimising customer service failures. In this way, ComReg believes that this intervention would support market-based efficiency. It is also the case that rules are under EU law for compensation for MDSIA in the switching and porting contexts.
- 1.249 ComReg notes concerns raised by respondents regarding potential higher costs (associated with compensation obligations, operational changes and implementation of a broader scope), and which may be passed through to end-users ultimately. However, ComReg expects that the measures should incentivise providers to improve customer service related to appointments, while minimising customer service failures. Regarding the comments made by SIRO and Westnet in relation to providers having a perverse incentive to enforce charges on end-users to counterbalance the cost of compensation schemes, ComReg's expects that RSPs would not act upon any such incentive in the manner suggested.
- 1.250 Furthermore, ComReg notes the suggestion by a respondent that the measure may necessitate the reduction in flexibility in how end-users can cancel or amend appointments. ComReg considers that its revised approach to minimum QoS standards are more consistent with industry practices and allows providers further flexibility to offer and manage appointments tailored to their existing business operations.

Impacts on Providers

- 1.251 ComReg, in its draft RIA in Consultation 24/89 acknowledged that potential operational changes may be required to comply with the minimum QoS standards. Having considered the submissions received and views expressed in the submissions, ComReg acknowledges the potential for operational changes and has revised its requirements regarding Time Slots, Week Days and adequate notice to

be least burdensome on providers in achieving the objective of the minimum QoS standards, whilst *inter alia* ensuring a consistent level of protection and redress for end-users and promoting end-users interests in the case of any consumer harm arising from MDSIA. See Section 1.1.2 of this document for further details.

- 1.252 The refined minimum QoS standards are more aligned with the current industry practices, ensuring flexibility while minimising operational changes, thereby ensuring proportionality of the requirement.

Impacts on Competition

- 1.253 Competition functions most effectively when consumers are protected and end-user interests are safeguarded.
- 1.254 For the reasons set out in Consultation 24/89, MDSIA can cause inconvenience to end-users such that they should be avoided, with appropriate compensation where they occur, as noted by ComReg and acknowledged by respondents. In the switching and porting contexts there are required to be rules on compensation.¹² As set out above, ComReg wants to ensure a consistent level of protection and redress for end-users and to promote their interests in the case of any consumer harm arising from MDSIA particularly by enabling maximum benefits in terms of quality-of-service on the basis of effective competition.
- 1.255 There is a lack of detail regarding what an appointment is and how compensation falls to be measured after such an appointment has been missed or delayed. Absent a specific obligation or standard, ComReg noted that there could be inconsistencies and a lack of clarity regarding common minimum QoS standards that providers are to achieve and should compensate their customers for when the standards are not met. It is ComReg's view that its revised approach to minimum QoS standards will strike a balance between protecting end-users and promoting effective competition by ensuring that providers can compete in terms of quality of service.
- 1.256 ComReg has considered submissions made, and views expressed in relation to RSPs' dependence on wholesale providers when scheduling and managing appointments. In light of the responses received, ComReg is deciding to refine the minimum QoS standards including in relation to Time Slots, Week Day, and adequate notice and allow for factors such as appointments for complex installations, force majeure and alternative appointments.
- 1.257 ComReg notes the submission that wholesale processes are varying with respect to scheduling and managing appointments. ComReg considers that its revised

¹² ComReg is obliged under Article 106(8) of the Code to lay down rules on the compensation of end-users by their providers in an easy and timely manner in the case of the failure of a provider to comply with the obligations laid down in that Article as well as in the case of delays in, or abuses of, porting and switching processes, and missed service and installation appointments.

approach to minimum QoS standards allows providers further flexibility to offer and manage appointments tailored to their existing business operations. In this way, the standards are more consistent with industry practices and any operational changes to existing processes when scheduling and managing appointments may be minimised. This, in ComReg's view, is consistent with the requirement to adopt the least burdensome means of regulatory intervention at this time to achieve the objectives, ensuring proportionality of the intervention.

1.258 Considering the submissions received regarding the recovery of compensation paid by RSPs from wholesale providers and competition impacts of a vertically integrated provider with large customer base may arise:

- ComReg notes that wholesale inputs are used when scheduling and managing appointments and therefore would be involved in the customer's experience. ComReg considers that any further relaxation of the minimum QoS standards would be detrimental to the rights of end-users based on their provider's ability to manage its suppliers. ComReg notes in this regard the minimum QoS standards apply to providers of IAS and PANBICS when providing such services to end-users, in respect of MDSIA in the context of switching and porting as addressed by Article 106(8) of the Code.
- However, ComReg expects wholesale inputs (such as, products, services and facilities) are effective in supporting the scheduling and fulfilling of appointments to avoid a risk of MDSIA harm arising, and a risk of a delay or abuse of the switching and porting processes, and that end-users are protected. As Eircom is subject to non-discrimination obligation in the markets in which it is regulated, wholesale inputs (products, services or facilities) where made available by Eircom (such as, for the scheduling and management of appointments, or payment of service credits with respect to SLAs) must be made available to all access seekers.¹³ Furthermore, the minimum QoS standards for MDSIA apply where an appointment is required and scheduled for the purposes of installation or service in the context of switching and porting. Accordingly, the provisions of Regulation 90 of the ECC Regulations are engaged in the case of such appointments. Regulation 90 (12) provides that "the obligations referred to in this Regulation (concerning switching and porting) apply to all providers, and operators whose access networks or facilities are used by providers with a role in facilitating change of provider, including the provider to which the end-user is porting and any wholesale provider with involvement in the process."
- ComReg's approach allows room for a provider-led process and affords providers flexibility in terms of their processes. Minimum QoS standards on RSPs aligned with facilities at the wholesale level would reduce a risk of not

¹³ In accordance with obligations on Eircom pursuant to [ComReg2405.pdf](#)

meeting the standards and the payout of compensation. At this stage, ComReg is not implementing an automatic compensation scheme or determining the compensation amount.

- Providers may also engage with wholesale operators and negotiate SLAs in relation to appointments including to ensure wholesale inputs meet RSPs' needs with respect to scheduling and managing appointments in relation to installation and service in the context of switching and porting, and in accordance with standards for MDSIA. In instances where negotiations prove challenging, alternative avenues remain available, including as provided under Regulation 67 of the ECC Regulations.

1.5 Question 5: Draft Decision Instrument

- 1.259 In Appendix 1 of Consultation 24/89, ComReg set out its draft Decision Instrument on the proposals for ComReg exercising a discretion in (i) specifying minimum quality-of-service standards in relation to MDSIA and failures of providers of IAS or PANBICS to comply with such standards and (ii) to apply the minimum quality-of-service standards and the specification of the failure to all MDSIA beyond the scope of porting and switching. ComReg then asked the following question:

Do you have any comments on the draft Decision Instrument?

1.5.1 Respondents' views

- 1.260 ComReg, in Consultation 24/89 set out the Draft Decision Instrument. In response the following comments were provided across the various sections of the Draft DI¹⁴.

- The proposed intervention is beyond the scope of ComReg's statutory powers (Section 1 of the Draft Decision Instrument).
- Reporting Obligations should be streamlined (Section 5 of the Draft Decision Instrument)
- Statutory Powers Not Affected should include minor and isolated cases (Section 6 of the Draft Decision Instrument)
- Obligations should be subject to review and adjustments (Section 7 of the Draft Decision Instrument)
- Proposed implementation period is not sufficient (Section 8 of the Draft Decision Instrument)

Beyond the scope of ComReg's statutory powers

- 1.261 Noting that ComReg's Draft DI is grounded on its authority under the Communications Regulation Acts 2002 - 2023, SIRO expressed the following concerns:

- SIRO believes that "ComReg is acting ultra vires in making Technical Regulations that purport to specify obligations on operators without complying with EU law requirements"
- SIRO noted that the provisions concerning end-users in the EECC, including compensation, require full harmonisation, highlighted that "the additional measures provided for in this decision instrument are beyond the simple compensation provisions which plainly encompasses the scope of the anticipated powers in the EECC in this regard".

¹⁴ Comments in relation to Section 2,3,4 and 5 of the Draft DI are covered under question 1, 2 and 3 of this Response to Consultation.

- Acknowledging that “retailers are entitled to agree with the customer the Time Slot between them, and the duration of the change window prior to the Time Slot”, SIRO believes that “mandating Time Slots and Change Windows is not within the scope of ComReg’s powers to specify in the context of end user compensation requirements”.

- 1.262 While Virgin Media submitted that “ComReg’s proposed measure is also contrary to the overarching economic principle of light-touch regulation, meaning that an NRA should intervene in competitive retail markets only when it is necessary to correct some clearly identified, significant market failure or consumer harm, and should avoid imposing unnecessary burdens on businesses”.
- 1.263 In that context, respondents also highlighted that ComReg has not adequately accounted for the practicalities and complexities involved, nor has it engaged with key stakeholders. Westnet suggested that the process should be restarted with a period of active engagement with wholesale access providers, aggregators, retail service providers and installation contractors. Similarly, Virgin Media emphasised the importance of consulting with stakeholders “on the ground”, as they have a comprehensive understanding of the intricacies of scheduling and fulfilling customer appointments.
- 1.264 Imagine indicated that in its view section 39(a) does not align with the legislative intent and furthermore that ComReg’s proposed use of section 39(a) in this consultation is too broad and outside the scope and context of its original design. Furthermore, Imagine submitted that ComReg have failed to provide any insight or indeed context into how their interpretation aligns with section 39(a) and consequently, when viewed from this perspective, it undermines the consultation to such an extent that it must be deemed to be fundamentally flawed.

Reporting Obligations should be streamlined (Section 5 of the Draft DI)

SIRO noting Section 5 of the Draft DI sought ComReg to make compliance practical and minimise unnecessary burdens. In that context, SIRO recommended “to simplify reporting obligations by allowing periodic reporting (e.g., quarterly) instead of requiring real-time or monthly reporting for every incident. For smaller providers, especially, such streamlined requirements could mitigate administrative workload while still meeting transparency goals”.

Statutory Powers Not Affected should include minor and isolated cases (Section 6 of the Draft DI)

With reference to Section 6 of the Draft DI, SIRO recommended that this provision “could benefit from an assurance that enforcement will prioritise material, systemic issues over minor, isolated cases”. In that context, they suggested “including an explicit statement indicating that ComReg will focus enforcement on repeated non-

compliance or severe, material service lapses, thus minimising obligations for providers who may otherwise face regulatory action for isolated incidents”.

Obligations should be subject to review and adjustments (Section 7 of the Draft DI)

SIRO noted that the severability clause under Section 7 of the Draft DI, is appropriate, ensuring that individual invalid provisions do not affect the entire Instrument. However, to further support industry stability, SIRO suggested adding a provision that allows for regular review and adjustment of obligations as market conditions and technologies evolve. This, in their view, “would ensure that the regulatory framework remains relevant and practical, particularly for emerging and evolving service models in telecommunications”.

Proposed implementation period is short (Section 8 of the Draft DI)

- 1.265 ComReg, in consultation 24/89, proposed a three-month implementation period following the publication of a ComReg final decision for providers to comply with the minimum QoS standards for MDSIA in respect of connections under Section 37 of the 2023 Act subject to the consultation.
- 1.266 Respondents, in general, submitted that the proposed implementation period is far too short. The comments in support of this are summarised below:

Process changes and technical developments

- 1.267 Sky, Westnet, BT, Eir and SIRO, noting the dependence on wholesale providers, highlighted that redesign of the current processes will be required. For instance, BT submitted that the proposed implementation time does not acknowledge the complexity of wholesale networks, noting that while SMP Regulation require Eircom to provide three-month’s notice of product changes, the wholesale Eircom data contract provides for a six month’s notification for a “breaking change”¹⁵.
- 1.268 To facilitate such process changes, in respondents’ view, would require significant technical developments within the RSPs and network providers’ systems. Sky noted that this is essential to collate the correct data before processing any compensation. Eir submitted that the processes in relation to product development, customer engagement, planning, development and notification period could take over a year if IT development is required.
- 1.269 Furthermore, Sky submitted that this would also require agreement with the relevant wholesale provider and a third party on the new process which would then have to be scoped, designed, built, and tested.

¹⁵ Changes that are not backward compatible as noted by BT.

Re-negotiate agreements for compensation obligations

- 1.270 ALTO submitted that the proposed timeframe is short, noting the requirement for full consideration of wholesale and commercial reciprocal arrangements in order to ensure that ComReg's proposals function correctly.
- 1.271 In particular, some respondents (Virgin Media, Three, SIRO) noted the longer implementation time that would be required for industry engagement and to renegotiate agreements, especially for compensation payments. In that context, Virgin Media suggested a 12 month's implementation period, while SIRO recommended an 18-to-24-month period.
- 1.272 Imagine, noting that revisions would be required to contracts with wholesale providers, pointed out that agreements cannot be renegotiated until their expiry making the proposed implementation period not feasible.

1.5.2 ComReg response

Beyond the scope of ComReg's statutory powers

- 1.273 ComReg has considered the views expressed by some respondents that ComReg's Decision Instrument has gone beyond the scope of its statutory powers. ComReg is satisfied that it is acting within its remit, and that it has the legal basis to set minimum QoS standards in the context of all MDSIA, and to specify failures by providers to comply with those minimum QoS standards as compensable. ComReg's legal basis is contained in sections 37 and 39 of the 2023 Act and further derives from EU Directive 2018/1972. Indeed, this Directive mandates rules on compensation in the porting and switching contexts for missed service and installation appointments – there is no discretion not to have these rules, or not to provide for compensation in the circumstances covered by Article 106.
- 1.274 However, as noted in Section 1.3.2 above, at this time ComReg has decided to adopt the narrow approach i.e., this Decision specifies requirements in relation to minimum QoS standards and compensable failures for MDSIA in the context of switching and porting processes only. ComReg is continuing to consider other appointments and this aspect remains under ongoing review by ComReg and it will continue to progress this. In this context, ComReg expects that Providers would not treat appointments outside the scope of this decision differently.
- 1.275 ComReg does not agree as suggested by some respondents that the scope of the minimum QoS standards is contrary to the economic principle of light-touch regulation. As explained above, ComReg is obliged to lay down rules for compensation in the case of MDSIA. ComReg has considered the existing operational model as the basis for the minimum QoS standards and, in its RIA, has considered the impact of the measure on industry, end-users and competition. ComReg has outlined that in order to define a missed or delayed appointment, it

must first establish what is an appointment. Therefore, the inclusion of concepts such as Time Slots, Appointment Confirmation etc. are necessary for the effective implementation of the MDSIA obligations. On that basis, ComReg is satisfied that the scope of the standards are adequate, proportionate and necessary.

Reporting Obligations

- 1.276 In response to SIRO's query with regards to simplifying reporting obligations, ComReg notes that no reporting obligations are required in this decision itself. While providers will need to adequately administer appointments with regards to acceptance and confirmation, there is no requirement in this Decision to report on a daily or monthly basis. ComReg may where it considers it necessary, request details of how appointments are administered by Providers in compliance with this Decision.
- 1.277 While this Decision does not include reporting obligations, separately, providers are required under section 39 of the 2023 Act to publish an annual report on their compensation schemes, including relating to MDSIA.

Enforcement

- 1.278 ComReg has considered the view that enforcement should prioritise material, systemic issues over minor isolated cases. ComReg does not consider it necessary, nor appropriate to include this in the Decision Instrument. ComReg will monitor compliance in accordance with its statutory obligations.

Review Process

- 1.279 ComReg has considered the view that a provision should be included in the Decision Instrument to allow for regular review and adjustment of obligations as market conditions and technologies evolve. ComReg's view is that is not appropriate to include such a provision in the Decision Instrument as this may create an obligation which is not required. ComReg will monitor compliance with the standards over time and will consider the response of industry and end-users to the measures and will react accordingly where so required.

Implementation Period

- 1.280 ComReg notes that some respondents have requested a longer implementation period, citing the technical and process changes required as well as time to re-negotiate agreements to include compensation. ComReg has outlined its views on wholesale implications of this Decision in Section 1.4.2 above and explained that amendments made to the minimum QoS standards allow providers flexibility in scheduling and managing appointments. ComReg is of the view that the amended minimum QoS standards have negated any requirement for an extended implementation period.

- 1.281 In line with this approach, ComReg has not amended its position to extend the implementation period and is satisfied that a 3-month lead in period for the Decision to become effective is sufficient. A further three-month period is thereafter available to providers to prepare and publish an appropriate compensation scheme.