



Commission for
Communications Regulation

Further Consultation on Formal Dispute Resolution Procedures for ECS/ECN End-Users

Responses to ComReg Further Consultation 18/77

Submissions to Further Consultation

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An Coimisiún um Rialáil Cumarsáide

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Eircom Group

**Formal Dispute Resolution
Procedures for ECS/ECN End-Users**

Response to Consultation 18/34 and Further Consultation

ComReg Document 18/77



17 September 2018



DOCUMENT CONTROL

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The comments submitted in response to this consultation are those of Eircom Limited and Meteor Mobile Communications Limited, collectively referred to as 'eir'.



INTRODUCTION

eir welcomes the opportunity to respond to this further consultation and, as set out in our previous response to ComReg 18/34, eir supports the introduction of a Formal Dispute Resolution Procedure for end users.

eir also welcomes the clarifications provided by ComReg in this further consultation to increase transparency for the benefit of both service providers and end users that will avail of the service. However, eir still has some concerns in relation to the procedure and, in particular, due process. These concerns are set out in our responses below.

RESPONSES

Q. 1 Do you agree/disagree with ComReg's preliminary view that ComReg will endeavour to issue the draft determination within 10 working days, once it has received all relevant information from both parties?

In the interests of a transparent process ComReg should commit to providing a draft determination within 10 working days of receiving all relevant information. It should only be in exceptional cases and on the provision of reasons to the parties involved in the dispute that this timeline should be extended. This will ensure that the process is fair and that strict timelines apply equally to all involved in the process.

Q. 2 Do you agree/disagree with ComReg's preliminary view that a draft summary of the case will be issued at the same time as the draft determination?

eir agrees that it would be helpful for a draft summary of the case to be provided to the parties at the same time as the draft determination. However eir does not agree with ComReg's suggestion that this should also be published on the ComReg website or "elsewhere as ComReg sees fit" as proposed in paragraph 192 of ComReg 18/77. Details should only be published when the final determination has been made.

This is particularly important in circumstances where ComReg has had regard to evidence from external third parties or other evidence that has not been provided by the end user or the service provider involved as the parties will not have had any opportunity to review that evidence or provide any response to that evidence. Parties to the dispute should be given an opportunity to respond to the evidence.

Q. 3 Do you agree/disagree with ComReg's preliminary view that both the Service Provider and the end-user will have 10 working days to respond with comments on the draft summary of the case?

eir agrees with this timeline however, as stated in eir's previous responses to ComReg 18/34, there should be an ability to extend the timeline where necessary and appropriate, particularly for the more complex cases. This applies equally for all strict timelines set.

Q. 4 Do you agree/disagree with ComReg's preliminary view that following receipt of the responses from both parties on the draft determination and the draft summary of the case, ComReg will endeavour to issue the final determination within 10 working days?

In the interests of a transparent process ComReg should commit to providing a final determination within 10 working days of receiving responses from both parties on the draft determination and draft summary of the case. It should only be in exceptional cases and on

the provision of full reasons to the parties involved in the dispute that this timeline should be extended. This will ensure that the process is fair and that strict timelines apply equally to all parties in the process.

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

eir agrees that there must be some flexibility in relation to the timelines set out for both ComReg and the parties involved in the dispute. However, this deadline for providing a final determination should only be extended in exceptional circumstances, rather than for any reason at ComReg's own discretion. When providing the reasons for the extension, ComReg should also commit to an actual timeline, rather than an "expected length of time" which provides no legal certainty to the parties involved in the dispute and could result in cases being left open for substantive periods of time.

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

eir agrees that there should be a limit on the measures that could potentially be imposed on service providers by ComReg. In the interests of transparency and due process however ComReg should also publish guidance as to how it will calculate any potential financial payments that it may impose under this process. There appears to be a serious lack of transparency in this regard.

eir also notes that the €5,000 cap has not actually been included in the Formal Dispute Resolution Procedures at Annex 3. For this cap to apply, it must be set out in the process document.

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

This question appears to be implying that ComReg will be empowered to impose a payment of up to €2,000 for compensation and/or payment in settlement of losses, although this is not set out in the Formal Dispute Resolution Procedures at Annex 3.

It is unclear to eir what exactly could be taken into account here. In order to ensure that due process is followed ComReg is required to explain how this could be calculated and, in particular, what criteria could be taken into account. This should either be set out clearly in the process document itself or in separate guidelines in relation to the calculation of the financial payments that may be imposed.

In circumstances where the determination is legally binding and subject to criminal sanctions for non-compliance ComReg must be clear on how this penalty would be calculated. €2,000 is a significant sum of money and could be entirely disproportionate in the context of any individual customer issue.

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

eir notes the reduction of the application fee to €15 and welcomes the clarification by ComReg that a template application form will be provided for customers which will include guidance on the types of complaints that will be covered by the Formal Dispute Resolution Procedure and will also request that end users provide details of any offers, gestures or resolutions that have already been proposed by the service provide to remedy the matter (if any), and details of what outcome the end user is expecting or seeking through the process.

eir also welcomes the confirmation from ComReg that end users will be able to get the full details of their complaint from ComReg for the purposes of completing the application form. In the interests of an efficient process, it is important to ensure that all relevant details are provided upfront.

However, eir takes serious issue with paragraph 5 in Step 2 (Acceptance of Application). In the interests of due process and transparency, the relevant service provider should be entitled to know that a complaint was referred to the Formal Dispute Resolution Process but was rejected and the reasons for that rejection. This is particularly the case where the matter may be sent back (or indeed has remained open) with ComReg's customer care team. It is unfair for service providers not to be made aware of the reasons for the rejection where those reasons may impact on the resolution of the dispute through another forum. In this regard, eir also notes that ComReg has not confirmed that the customer's case will be closed with the customer care team once it has been accepted into the Formal Dispute Resolution Procedure. This is an important clarification and we request that ComReg address this in the final process document.

In accepting the application, paragraph 6 in Step 2 (Acceptance of Application), where ComReg has taken more than 5 working days to assess the application it should state this when notifying the parties that the application has been accepted and ComReg should also explain the reasons for the extended assessment. These reasons could potentially have a bearing on the positions of the parties.

In relation to the timelines set throughout, eir welcomes the clarification that the first working day in the relevant time period will be the next working day after the day on which the correspondence is sent by ComReg. ComReg has stated that, when discussing correspondence in the consultation, it is generally referring to electronic correspondence however it is also noted that postal correspondence may be used. It is eir's view that, if postal correspondence is to be used by ComReg, extensions should be permitted where the service provider or the end user can demonstrate that there was a delay in receiving the correspondence by post.

eir welcomes the acknowledgement by ComReg at paragraph 4 of Step 3B (Correspondence with the Service Provider) that there may be circumstances where an extension to the response times set out is warranted. Such flexibility in the process is important as there will undoubtedly be more complex cases where additional time will be required. This possibility of an extension should apply to all timelines in the process but be subject to exceptional circumstances.

eir also welcomes the acknowledgement by ComReg that it must act proportionately, objectively and non-discriminatorily and in accordance with the principles of fair procedures and natural justice. However, in this regard, eir repeats its serious concerns with regard to the

manner in which ComReg proposes to engage “third party experts”. We fail to see how fair procedures or due process can be safeguarded when ComReg proposes to engage third party experts to assist in its decision making without notifying the relevant parties in advance that it proposes to engage such experts and without affording them the opportunity to counter that evidence or get their own experts before ComReg drafts its determination. The parties to any adjudication process are entitled to know the full case against them and to make submissions in relation to any evidence on which the adjudicator is intending to rely before any views are taken and before any draft determination is published. This is a serious breach of parties’ rights. It is too late in the process for parties to only become aware of the relevant evidence after the adjudicator has already published its draft determination on ComReg’s website and wherever else ComReg sees fit to publish it.

eir would also echo Three’s concerns in relation to the lack of an appeal from the decision of ComReg, particularly in light of the unfairness of the process highlighted above. While, technically there is an appeal under the Framework Regulations to any such decision of ComReg this process is timely and expensive and may be disproportionate in respect of an individual customer’s issue.

Also from a due process perspective, eir welcomes the important clarification from ComReg that it does not have discretion as to whether to take into account the law, codes of practice, the customer’s contract and the relevant regulatory framework.

Finally, eir takes issue with the statement at paragraph 11 of Step 4 (Resolution and Determination). This is unnecessary and leads to further ambiguity and lack of legal certainty in respect of the entire process. ComReg has already given itself discretion throughout the process in terms of the information that it may take into account in making its determination and the timelines it may follow. Outside of this, what other discretion does ComReg need? This statement renders the process meaningless. As set out in our previous response, this is very unsatisfactory and is inappropriate for a Formal Dispute Resolution Procedure, the outcome of which is a legally binding determination that is subject to criminal sanction for non-compliance.

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

The timeline for the proposed effective date of the measures must begin to run from the date of the publication of the final measures. ComReg appears to be suggesting in the document that the effective date is 9 months from the date of publication of ComReg 18/77 (i.e. 9 months from 27/8/2018) but, in eir’s view, this cannot be the case as the consultation is still ongoing.

Please confirm that the proposed effective date will be 9 months from the publication of these further responses and the final measures as determined once all responses have been considered.



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13th September 2018

Re: Further Consultation: Responses to Formal Dispute Resolution for ECS/ECN End-Users (ComReg 18/77)

Dear Louise

Please find below the responses of Three Ireland (Hutchison) Limited and Three Ireland Services (Hutchison) Limited (collectively, "Three") to the above further consultation.

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

Q.1 Three Answer.

Three agrees.

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

Q.2 Three Answer.

Three agrees, on the understanding that the draft summary and draft determination will be sent to the parties to the dispute only, i.e. not published by ComReg.



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

Q.3 Three Answer.

Three agrees. We note that it will be possible for ComReg to grant an extension of time if required under the circumstances.

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

Q.4 Three Answer.

Three agrees.

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

Q.5 Three Answer.

Three agrees.

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

Q.6 Three Answer.

Three generally agrees that a maximum threshold of €5,000 is reasonable, however, we would welcome further clarification in relation to point 244 which contains the inclusion of the cost of the handset in the calculation example provided for final resolution determination. *'For mobile services, given that the maximum contract period is 24 months, and some mobile plans can cost*



up to €80 per month, plus a potential cost of hundreds of euro for a handset, the upper limits of the amounts of reimbursement sought could tend to be up to €2,500.”

Three considers that, although each Service Provider's sales structures are likely to be different and handset-specific, ComReg should take into account the fact that the price of (often high spec) handsets are generally subsidised for customers when they enter into billpay contracts, with cost recovery taking place over the terms of the contract. In the event that consideration for reimbursement towards the cost of a handset is included in the final resolution determination, there should be certain thresholds before which a customer still within the minimum contract term must be expected to either:

- a) Return the handset to the Service Provider if required by the Service Provider, before the sum allocated towards the cost of the handset can be discharged, or,
- b) Have the full SIM free current market value cost of the handset (minus any initial layout already paid by the customer towards the cost of the handset) deducted from the sum total amount awarded by the Dispute Resolution Procedure.

The thresholds could be, for example, two-thirds of the minimum term being completed, e.g. 8 months within a 12 month minimum term contract, 12 months within an 18 month minimum term contract, and 16 months within a 24 month minimum term contract.

Any customer dispute that remains unresolved with the Service Provider regarding report of a faulty handset, the handset not being as described, or not fit for purpose, is a separate matter for redress under the Small Claims procedure. The proposed Dispute Resolution Procedure must ensure that consumers who have sought redress in terms of the cost of a handset or compensation in settlement of losses through one procedure should not be enabled to seek resolution through another procedure.

With regard to the discharge of the sum awarded in the final resolution determination, in the event that a customer has a due, closing balance due or outstanding balance on the account with the Service Provider, the amount awarded must be permitted to be offset against any due, closing balance due or outstanding balance owed with the Service Provider.

A determination by ComReg on the expected timeline in order to discharge any sum awarded by the Dispute Resolution Procedure would also be welcome. Three suggests 21 working days from the date of notification of the final determination to the Service Provider and customer.



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

Q.7 Three Answer.

Three agrees.

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

Q.8 Three Answer.

Three agrees. Three welcomes the proposed requirement that consumers provide in their application “*an outline of what outcome (including an apology, action to be taken with respect to a bill (including refunds, credits or waivers due or of any redress sought) the end-user is expecting or seeking through the resolution of the complaint*”

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

Q.9 Three Answer.

Three agrees.



Virgin Media response to:

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

ComReg 18/77

21st September 2018

Summary

Virgin Media Ireland Limited ('Virgin Media') welcomes the opportunity to respond to ComReg's Consultation ('the Consultation') on its Response to Consultation and Further Consultation: Formal Dispute Resolution for ECS/ECN End-Users ('ComReg 18/77').

Virgin Media has robust customer service processes in place and therefore currently has a low number of complaints being escalated to ComReg. While we do not see the necessity of introducing a dispute resolution procedure, we believe that any dispute resolution mechanism that is put in place is fair, fully transparent and has appropriate lead-in times. In this response we provide some general comments on areas that we believe have not been covered in ComReg's consultation and we have responded to ComReg's questions. The main themes of this response are as follows:

- 1. Maintaining customer satisfaction is in the commercial interests of electronic communications service providers and we do not believe ComReg has demonstrated the necessity for a dispute resolution procedure.** We do not agree with the introduction of a dispute resolution procedure because we are unclear as to the necessity of having a three stage process in the structure proposed by ComReg. There are also existing consumer rights and options to seek redress which could lead to confusion as to the specific purpose of this procedure and how it interlinks with these other options for customers. If it is to be introduced, and to manage expectations, ComReg should consider the potential for a resolution to be made outside of the procedure, other options available to a customer and also the reasonableness of the complainant involved in the dispute prior to informing a customer of the dispute resolution procedure and how to apply.
- 2. ComReg appears to suggest it will introduce an adjudication stage in the complaints process.** This could work in practice but only if the process is run by a third party that has not been involved in the previous stages. The rules would need to be clear, similar to CISAS in the UK, and operators would need to opt in in order for the determination to be binding. ComReg should be aware that any mediation can only be done where both parties opt in. While an adjudication stage would be different to what is currently in place, it is unclear from ComReg's consultation if this is actually what is being proposed because a third party is not being proposed to operate it, there doesn't appear to be an opt-in, and there is a right of appeal.
- 3. Virgin Media does not believe that the proposed procedure set out by ComReg is transparent. Detailed rules and guidance documents will need to be developed.** A host of information has been excluded from the procedure, and the processes to be used by ComReg have not been clearly set out. ComReg does not provide information on how disputes will be managed internally within ComReg, the guidelines and rules that will be in place around the procedure and it also omits details on exactly how a determination will be made, or who in ComReg will make the determination. Details on the controls and processes in place to ensure transparency, independence and fairness are also omitted. Virgin Media requests a further consultation which would deal with the finer details of how the procedure would operate in practice. If this is to be an adjudication process much more information is needed on how it will operate to ensure it adheres to the requirements set out in Regulation 27(4) of the European Communities (Electronic Communications Networks and Services) (Universal Services and Users' Rights) Regulations, No. S.I. 337 of 2011.
- 4. ComReg appears to be substituting the role of the District Court by proposing to impose awards of €5,000.** Awards of €5,000 come within the remit of District Court and are much

higher than the threshold within the small claims court. ComReg needs to provide more information on the basis for this figure and also on how it will be calculated in practice.

5. **The proposed threshold for compensation and settlement of losses (€2,000) is unrealistic and unsubstantiated.** ComReg does not provide any information on the rationale for this figure, how it will calculate the level of compensation in reality, or how any compensatory value will interlink with the overall award threshold of €5,000 in practice. Notwithstanding the fact that this would be the maximum award, the figure proposed is completely unrealistic and is far greater than the equivalent figure in the UK. Further, we are not clear how this value adheres with S.I. 337 of 2011 which requires that a dispute resolution process must be inexpensive.
6. **Virgin Media is confused at the departure from normal process with regards the proposed implementation timeframe.** Virgin Media is of the view that the date for implementation should be measured from the date of publication of the *final* decision because only then will service providers have full details of the final procedure and all associated rules and processes. Virgin Media would require a minimum of 9 months from the date of publication of the final decision to complete any systems or processes changes that would be required to support any new procedures.

Response to Consultation Questions

Electronic communications service (ECS) providers are operating in an intensely competitive market place. It is in our commercial interest to ensure that end-users are happy with our service and that, in the event they have cause to complain, their complaint will be handled expeditiously and will be resolved in a timely manner and closed off to the customer's satisfaction. To do this, we must ensure end-users are well informed of their terms and that we operate in a transparent manner. Failure to do so will have a commercial (e.g. customer churn and reduced revenue) as well as a reputational impact. For this reason, as ComReg is aware, Virgin Media has a robust complaints handling procedure which deals with complaints on a case-by-case basis, and we have a code of practice setting out our procedure for customers.

Virgin Media takes pride in its customer service and has one of the lowest rates of complaints in the market. For example, ComReg's own quarterly data indicates that it receives a higher number of complaints per 1,000 subscribers from other fixed line providers (Virgin Media had 0.07 complaints per 1,000 subscribers in comparison to an industry average of 0.73 in Q1 2018)¹. This level of complaints not only confirms the level of attention Virgin Media places on its customer care but also, importantly, that Virgin Media's complaints handling process works. It is for this reason Virgin Media disagrees with ComReg's proposal to introduce a new dispute resolution process. Notwithstanding this, in the interest of providing ComReg with constructive feedback on the proposed changes, Virgin Media has provided responses to the various points raised in the consultation.

In this regard, as set out in the response below, Virgin Media has grave concerns in relation to gaps in the proposed procedure as well as the proposed timeline for introduction. Given these, Virgin Media requests ComReg to issue a follow-up consultation which would clearly set out more detailed information on the defined processes that would underlie the proposed dispute resolution procedure. While Virgin Media can agree some high level details about the proposed procedure, it is

¹ ComReg Customer Line Statistics Q1 2018.

not possible to agree to a dispute resolution procedure itself without full, transparent information on how it would operate in practice.

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

Virgin Media agrees with this proposal.

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

Virgin Media does not agree with this proposal.

In order to avoid confusion, the only information that should be published is final information so the *draft* summary should not be published on the ComReg website. The draft summary should be provided to both parties at the same time as the draft determination but summary information on the case should only be published at a later stage when the final determination has been made. Both the end-user and the service provider should be afforded the opportunity to comment on this information and to also identify any commercially sensitive information in the draft summary determination prior to publication.

We request ComReg clarifies what format the information will be published and where exactly the summary is proposed to be published. It is stated in the consultation that the Summary '*...will be published on the ComReg website and elsewhere as ComReg sees fit*'. Virgin Media strongly disagrees with this because it must be absolutely clear to each party what will happen to information related to that party. Only with full information can parties respond as necessary to any queries or reaction to what has been published. ComReg should only publish this information on the industry section of its website as ComReg states that '*Service providers should be in a position to ascertain from those summaries the interpretation of policies being taken*'. If this is the purpose of the publication of the summary of a case then Virgin Media does not understand why it would be published elsewhere.

We also ask ComReg to clarify what exactly will be contained in the summary. Virgin Media is of the view that it should be limited to a summary of the complaint, information on any associated requirement, and ComReg's view on the complaint. We do not believe the final determination (i.e. including details of measures or awards imposed) should be set out in the summary because the purpose of the summary should be as a reference for other service providers around ComReg's interpretation of certain policies. This means there would be the accumulation of guiding/ guidance material that will be useful to all operators. Furthermore, the publication of details of past measures or awards might lead to unrealistic expectations on the part of future complainants.

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

Virgin Media does not have a significant issue with this, however we believe that the operator and the end-user should be afforded the opportunity to request an extension on the time period to respond to the draft determination. We note that while this possibility is suggested in the response

to the consultation (page 54), it is not reflected in the procedures document in the Annex. This will need to be updated in the decision/ further consultation document.

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

Virgin Media agrees with this proposal however has made comments in relation to the publication of the draft summary – see response to Question 2. The final summary of the case should be published rather than the draft summary. Both end-user and service provider should be provided with an opportunity to comment on and have sight of the final summary prior to publication.

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

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

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

Virgin Media does not agree with the proposed threshold of €5,000.

Firstly it is not clear where this figure came from. More importantly it overlaps with the value of potential claims that are made through the District Court. ComReg is essentially replicating the work of the District Court and Virgin Media would like to know under what legal basis it can do this.

Secondly we request that ComReg provides industry with a clear rationale for this value and how exactly it would calculate any figure in practice. There is little information in the consultation and therefore the proposal for this figure does not meet the requirements set out in SI 337 of 2011 which stipulates that dispute resolution procedures shall be transparent, non-discriminatory, simple, *inexpensive* and should enable disputes to be settled fairly and promptly².

While we note that in practice Virgin Media fully refunds customer any amounts that we agree that they are owed, this figure is unrealistic and is much higher than the maximum claim that can be pursued through the Small Claims Court, €2,000. Additionally, in the UK, the Ombudsman Services state on their website that the most common award for communications related complaints is approximately £50³.

² Section 27 (6) of S.I. 337 of 2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011

³ Ombudsman Services: <https://www.ombudsman-services.org/sectors/communications/resolutions>

Virgin Media suggests that for full transparency service providers need further information on the breakdown of this value. Please see response to question 7. We have to question how ComReg can justify a threshold of €5,000 when this is what is normally dealt with by the District Court and also when experience in the UK demonstrates that awards are far less than this in practice.

We would also raise some concerns around other options that are open to customers (small claims court). There must be a clear distinction between the various options for customers in order to avoid confusion.

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

Virgin Media does not agree with this proposal.

ComReg has proposed a threshold of €2,000 for payments made in settlement of losses and compensation. ComReg further states that it considers that claims for disappointment, inconvenience and/or emotional upset caused by a Service Provider's breach of obligation are within its remit. However, we have concerns around the threshold that is being proposed.

In its document, ComReg points to the processes undertaken by the Communications and Internet Services Adjudication (CISAS) in the UK. CISAS⁴ provides an alternative dispute resolution process for customers of communications companies. In particular ComReg notes that CISAS have a maximum cap on claims to the total value of £10,000 and therefore ComReg views that a cap of €2,000 for the amount that can be determined in the settlement of losses or compensation is reasonable. However, Virgin Media is aware that in relation to compensation CISAS states that the maximum it will award for inconvenience and distress is £200⁵. ComReg does not provide any clarification as to why it's proposed figure is so significantly different to that of CISAS. ComReg states '*ComReg would not expect the amounts awarded for compensation in its Formal Dispute Resolution process to be vastly different from those awarded by other bodies*'. However no information on these other comparable bodies has been provided by ComReg. Virgin Media requests more clarity on the reasons why the proposed compensatory value is €2,000 and what exactly this covers. We also would like to know which 'other bodies' offer awards of this scale. We believe that this proposed figure for compensatory payments is unreasonable, unrealistic and should be set at a much lower value. We note that the equivalent figure awarded by CISAS is 2% of the total potential award whereas the ComReg compensation figure is 40% of the total potential award. We would also note that while service providers currently offer goodwill gestures to customers as part of their existing dispute resolution processes, these are not to the scale of €2,000 yet customers are happy to accept them and complaints are successfully closed. Further, we are not clear how this value adheres with S.I. 337 of 2011 which requires that a dispute resolution process must be inexpensive.

We also suggest that ComReg develops a matrix setting out the ranges of compensation that can be awarded by an adjudicator for particular issues (e.g. extent of inconvenience, time taken etc). It is our understanding that adjudicators in the UK follow such a matrix. Virgin Media also requests ComReg to confirm that it will ensure its actions are not in conflict with existing legislation. If a customer is not entitled to compensation due to distress, etc. in civil law, then they are not entitled

⁴ There are two companies regulated by Ofcom to provide adjudication services in the UK: CISAS and the Ombudsman Services.

⁵ CISAS Guide to Compensation for Inconvenience and Distress.

for such under this process. A range of more detail and guidance is required on this aspect of the procedure.

We also request clarity on what the remaining €3,000 of the €5,000 would cover. Again this is much higher than any claim that can be pursued through the Small Claims Court.

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

While the updates are in line with ComReg's updated position, Virgin Media believes that there are a number of other significant gaps in the Procedures in Annex 3. We have outlined these gaps here but also raise broader concerns with regards the proposed introduction of a dispute resolution procedure.

General Comments

We question the necessity for a possible 3 stage complaint resolution mechanism in the structure proposed (i.e. first the operator, secondly the escalation to ComReg and thirdly the proposed dispute resolution procedure managed by ComReg). While transparency and independence of the procedure is a primary concern for Virgin Media, another concern is around the potential for customer confusion and also around the possibility that the introduction of a formal dispute resolution procedure may lead to a lack of incentive for complainants to settle at the first or second stage of the process, even if reasonable offers are presented to the end-user. The possible customer confusion will potentially be exasperated because of the current existence of consumer options to seek redress.

We also do not agree with ComReg's rationale for the introduction of a dispute resolution mechanism. While ComReg suggests that some complaints of over 40 days should have been resolved earlier by the service provider, in Virgin Media's view the small volume of such complaints does not provide sufficient justification for the introduction of a dispute resolution mechanism and is not reason enough to change the way complaints are currently managed. A lot of work will need to be undertaken by ComReg and service providers alike to develop the detailed processes underlying the procedure and seems excessive considering the potentially small volumes going through this procedure⁶.

ComReg appears to want to introduce an adjudication stage in the complaints process, however what is currently being proposed would merely serve as an extension of the existing ComReg complaints process. An adjudication phase could work in practice but only if the process is run independently by a third party that has not been involved in the previous stages. The rules would need to be clear, similar to CISAS/ Ombudsman Services in the UK, and operators would need to opt-in in order for the determination to be binding. ComReg should be aware that any mediation can only be done where both parties opt in. While an adjudication stage would be different to what is currently in place, it is unclear from ComReg's consultation if this is actually what is being proposed because a third party is not being proposed to operate it, there doesn't appear to be an opt-in, and there is a right of appeal. Further there is no opportunity for a service provider, should they wish, to engage with the customer early in the process to attempt to agree a resolution. While ComReg points to CISAS in the UK as an example of a dispute resolution mechanism, the process proposed by ComReg is unfortunately not as transparent as the CISAS process and therefore Virgin Media suggests that ComReg develops an adjudication procedure in a similar structure to that offered in

⁶ This is based on ComReg's analysis that 12% of complaints are open longer than 40 days. We note, however, that, the volumes in reality could be artificially higher given the lack of incentive on complainants to settle a case earlier in the process should the dispute process be introduced in its current proposed format.

the UK. We believe that the dispute resolution procedure needs to be separated from existing processes and so there either should be an independent panel of expert adjudicators with one being selected at random to deal with a specific case, or the process would be operated by a third party organisation. This would help ensure full transparency for all parties.

In order to manage end-users expectations, if ComReg proceeds with the development of the dispute settlement procedure (whether in the proposed format of ComReg or our suggestion of a third party run procedure), it will need to develop a range of guidance notes and rules for the operation of the process. Virgin Media notes that CISAS in the UK provides a range of information in relation to the operation of its process for both customers and service providers, and we consider any procedure developed by ComReg will need to at least replicate this level of information provision to ensure full transparency for all stakeholders. Given the concerns raised, any public communications or references about the dispute resolution process will need to be clear, should differentiate against existing options and it should be clear that this serves almost as a last resort.

The Regulations refer to 'end-users' but Virgin Media considers that ComReg has the discretion to define the cohort of customers that will be entitled to use the dispute resolution procedure. We suggest that ComReg reconsiders the appropriateness of including business customers within the scope of this procedure. Virgin Media suggests that ComReg assesses the data it retains on previous complaints that were not resolved in over 40 days to determine the prevalence of business end-users. If there are low volumes, we do not see the merits of extending this procedure to these end users and thus necessitating ComReg and ECS providers to develop specific processes for this particular cohort of end-users.

We also would like clarity about when the 'clock' starts or the flexibility that will be provided around timelines in unexpected situations faced by any stakeholder (end-user, service provider, or ComReg). For example, any party could experience technical issues. Some flexibility will need to be incorporated into the processes to account for unexpected events.

Step 1 – Submission of Application

Virgin Media believes that the current mechanism is effective and in its experience complaints open for longer than 40 days are more often than not related to factors outside its control (e.g. reliance on a third party such as county councils for licences). These are not the types of complaints that can be resolved through a dispute resolution process. While we question the value of introducing a new procedure if these are the types of complaints to be dealt with in it, it is very unclear from the proposed procedure as to how such complaints will be evaluated by ComReg, but most certainly these complaints should not be put forward to a proposed dispute resolution mechanism. An end user might expect an outcome when in fact it is not possible to provide one within a specified timeframe. The procedures should set out the types of complaints from an end user point of view that can proceed to the dispute resolution mechanism. The proposed dispute resolution mechanism should only be offered as a last resort for a customer whose complaint has been open for an extended period of time and has a credible chance of success.

Virgin Media suggests that ComReg does not automatically inform end-users about the dispute resolution procedure if the complaint is open for at least 40 days until it has first had a chance to review the complaint to see if it one that the dispute resolution mechanism could assist with. A customer would not have a positive customer experience if he/she was informed about the possibility of utilising the procedure, submits an application and is then told that their application has not been accepted. While the consultation states that '*only those end-users with complaints that ComReg has the power to resolve in accordance with Regulation 27 will be advised that they can submit their complaint to the Formal Dispute Resolution process*', this should also cover complaints with a low chance of success (e.g. where a customer is dissatisfied with a resolution). ComReg should

set out in its procedure document (or in any other associated documents) that it has discretion as to whether or not to refer the customer to the dispute resolution mechanism. We do not expect ComReg to assess every complaint prior to referral, however we believe that perhaps a short checklist could be developed that would assist ComReg in determining if a referral would be useful. This would also be a transparent method and ensure all complaints are treated in the same manner.

Virgin Media requests clarity on paragraph 96 in the Consultation which states: *'If the complaint has already been through the ComReg consumer care complaints handling process, and was closed when the end-user decided to apply for the Formal Dispute Resolution process, the complaint may be re-opened, depending on the particulars of the case.'* Creating a possibility for a closed case to be reopened or opened in the dispute resolution process undermines the integrity of the existing service provider and ComReg complaints functions. Once a complaint is closed, no matter at which point in the process, the complaint should remain closed. Of course there could be situations where an end-user presents new information in relation to a closed case and in such a situation, the case should be reopened through the existing mechanism, but this should not be extended to situations where both ComReg and the service provider have closed a case but the customer for a particular reason or another remains dissatisfied.

Step 2 – Acceptance of Application

There is some information on how ComReg will evaluate the end-users application in first instance, however we believe that it is incomplete. Will ComReg make a decision based on the open/closed status from ComReg's point of view on existing ComReg complaints? In order to ensure that no-one abuses the procedure, will ComReg make an evaluation of the existing complaint to determine the merits of it proceeding to a more formal mechanism? As an example, it is possible that an existing complaint will remain 'open' for longer than 30 days with ComReg if the end-user does not accept a reasonable and fair settlement by the service provider. Virgin Media believes that ComReg needs to take account of factors such as this to ensure only valid disputes proceed to the dispute resolution process and to ensure that there continues to be an incentive on all parties to close a complaint through the existing mechanism. We are also keen that if a procedure is to be put in place it must be fair so we suggest that ComReg includes 'reasonableness of request' as a factor in its evaluation of applications.

ComReg states: *'ComReg may decide to accept complaints that are unresolved for less than the 40 working day timeframe, where in ComReg's view, the particular circumstances of the complaint justify its acceptance before 40 working days have elapsed. In this case, ComReg will explain the reasons for doing so'*. While acknowledging ComReg's response to submissions to the first consultation, Virgin Media does not agree with this statement. A dispute resolution procedure must be transparent and all complaints, end-users and service providers must be treated equally and must be completely clear on all processes prior to any engagement with the process. The inclusion of this statement in the procedure document adds a level of uncertainty.

Step 3 - Correspondence

There is no information around the process through which ComReg will notify the service provider about the dispute application and how this interaction will take place (for example via email). Information like this needs to be agreed with service providers in advance of final procedures/processes being developed.

Step 4 – Resolution and Determination

The procedures also do not contain any details on how a determination will be made or who within ComReg will make the determination. While there is some information set out in paragraph 210 of the consultation, not everything is addressed and it is a critical piece of information for service

providers and for end users who utilise the procedure. Without specific information, there is no guarantee on the independence, transparency or fairness in the dispute resolution decision-making. While the Consultation alludes to the fact that the ComReg consumer care complaints handling function will be completely separate from the Formal Dispute Resolution function (paragraph 95), we are unclear as to how the dispute will be dealt with in ComReg, i.e. who exactly deals with the claim and determines on the dispute. In the UK the equivalent procedure is fully managed by third parties and claims submitted to CISAS in the UK are considered by an independent accredited and/or legally qualified adjudicator who has no direct contact with the customer or communications provider to ensure full independence⁷. We believe that ComReg should adopt a similar approach and this should be made clear up front to end-users wishing to avail of the service. Aside from being legally qualified, the personnel evaluating cases as part of the dispute resolution process must be different and independent from those who may have been involved in assessing complaints in the existing ComReg process, and therefore we believe the process should either be run by a third party or that independent adjudicators should be selected from a panel.

Similarly Virgin Media wants clarity around how certain types of complex complaints of over 40 days will be evaluated. As stated earlier, sometimes it is outside the control of the service provider (and even ComReg) to close out a complaint within 30 days of being raised with ComReg (e.g. issues where there is a reliance on third parties such as county councils). As above, we do not agree that such complaints should proceed to the dispute resolution process, and additionally it is very unclear from the procedure as to how such complaints will be evaluated by ComReg should they be accepted into the procedure.

The Procedure also makes no reference as to how an award would be calculated. Without information on how an award will be calculated in practice, it is difficult to understand how transparent or fair this process will be. Our responses to questions 6 and 7 are also relevant here.

Other suggestions on the Procedure

We also have a number of other suggestions for the procedure that we believe will make it clearer for all parties involved in the process.

- Step 1. To manage expectations, this should refer to the threshold and it should also be pointed out in the template form.
- Step 2 (1). The first bullet point sets out the Regulations that the complaint must relate to. In any customer targeted literature that might be developed by ComReg, this must identify specific areas rather than just the Regulations.
- Step 4 (10). This refers to the right of appeal, however the processes for appealing a determination are unclear in this context. While we suggest that more information is provided on this in the Procedure, we are unclear why ComReg is proposing to introduce another step with a right of appeal. Following on from our earlier comments, surely an independent, third party operated, opt-in adjudication process should be the final step in the process.
- We have noticed a gap in terms of the potential for the end-user and operator to request an extension on the time period to respond to the draft determination (see earlier response) yet the consultation states that this will be possible.
- Step 3B (5). There should also be a possibility of an extension here. Depending on the nature of the request, service providers will want to ensure that they have sufficient time to provide full and accurate information to ComReg.
- Some information set out in the main body of the Consultation is not reflected in the procedure (for example, paragraphs 229-230). All important information about the

⁷ CISAS website.

operation of the process should be reflected in the procedure so that end-users and service providers do not have to refer back to the detailed consultation documents.

- For accessibility purposes, we suggest that the procedure is also displayed in a flow chart format with timelines for ease of access.
- Finally, there is a range of other information missing from the procedure as highlighted in previous sections and below.

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

Virgin Media does not agree with this proposal. The timeline for implementation should be based from the date of the publication of the final decision, not the draft decision. Virgin Media does not understand ComReg's departure from normal processes in this instance. Service providers cannot commence planning or implementation until the final decision is issued and will need at least 9 months from that date. An appropriate lead-in time is absolutely necessary.

We do not believe that all necessary information has been provided by ComReg in its consultation process. For example, there is an Annex in the document setting out the procedures however no rules or guidance documents have been produced so will need to be developed before go live. We also have not been provided with information on the processes to be used by ComReg in evaluating a dispute.

It is unclear based on the information in the Consultation what the next steps are. No reference has been made to ComReg's next steps and these must be clearly communicated. At the moment all service providers have is a skeleton plan for what a dispute resolution procedure might look like but most of the substance underlying this procedure has not been consulted on or clearly communicated. We believe the procedure should be run by a third party or that a panel of adjudicators is engaged to ensure full independence and transparency. Further, at the very least, guidance notes and processes on the following need to be developed:

- Details on the opt-in processes.
- Types of complaints dealt with by ComReg and relationship with other processes (e.g. small claims procedures).
- Criteria to be used by ComReg in evaluating an application.
- Determination procedure detailing how ComReg will evaluate disputes in a legally robust manner.
- Information on the calculation of an award including compensation.
- Details of how an appeal can be made.
- Template application form for the end-user.
- Information on the internal control or internal audit processes in place in ComReg to monitor the effectiveness and transparency of the process.

From our perspective, adequate information has not been provided to meet the requirements set out in S.I. 337 of 2011 which stipulates that dispute resolution procedures shall be transparent, non-discriminatory, simple, and inexpensive and enable disputes to be settled fairly and promptly⁸. We are strongly of the view that ComReg needs to reconsider the proposed structure of the adjudication process and must consult on the full detail of all the processes, guidance notes and rules proposed

⁸ Section 27 (6) of S.I. 337 of 2011 European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011.

to underlie this procedure in practice. It is impossible to understand how this process will operate in practice without this information. These necessary, full, defined procedures should be consulted on and, in any event, will need to be in place well before the implementation date. Virgin Media cannot agree to a procedure and the suggested timeline for implementation where it only has had sight of a small section of the processes to be used. We request that detailed information is provided on how the final proposed procedure and structure meets each of the principles set out in Regulation 27 (6) of S.I. 337 of 2011 (the Universal Service Regulations).