



Commission for
Communications Regulation

Submissions to Consultation

Tariff presentation Code of Practice consultation

Submissions received from respondents

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Contents

1. Mr. David Campbell.....	2
2. Chorus.....	3
3. Eircom.....	5
4. Ms. Briege Kelly.....	9
5. Mr. Jim Malone.....	10
6. Mr. Sean Silke.....	11
7. Vodafone.....	12

1 Mr. David Campbell

Market Operations Consultations
Commission for Communications Regulation
Irish Life Centre
Abbey St.
Dublin 1

23 June 2004

RE: SUBMISSION RE COMREG 04/57

Dear Sirs.

At the end of Section 3.1.2 of the Proposed Tariff Code, I wish to suggest adding “Where tariffs are given on a cost-per-minute basis, call set up charges and minimum call charges should always be given, on the same side of the sheet, and equally prominent as, the cost-per-minute information”. This would avoid, for example, Eircom claiming as they currently claim in an advert in callboxes, that the cost of a local call per minute is 7 cents if you use a €15 callcard.

Similarly, after Section 3.1.3 of the proposed Code, I wish to suggest the following; “Where comparisons are made on a cost-per-minute basis, call set up charges and minimum call charges should always be given, on the same side of the sheet and equally prominent as, the cost-per-minute information”. This would avoid the kind of situation that happened last year, when Vartec sent out a flier to householders, comparing Vartec with Eircom on a cost-per-minute basis, but the Vartec minimum call charge was given in tiny print and the Eircom minimum call charge was also in tiny print, at the bottom of the page, buried in other information about Eircom.

Yours faithfully,

David Campbell.
(Telephone end-user)

2 Chorus

30 June 2004

Chairman
Commission for Communications Regulation

Reference: Submission re ComReg 04/57

Dear Sir

I refer to the above-mentioned paper concerning the Code of Practice for Tariff Presentation.

In general, Chorus supports the principles behind the proposed Code of Practice. We would add a principle of being comprehensible to those of being accurate, comprehensive and accessible. Where consumers are presented with too much information competition may be hindered. What they require is relevant information and the ‘less is more’ test should be applied in determining regulatory rules in this area. The object should be to avoid regulatory overkill, which would only confuse customers and subject them to additional costs. Rather the emphasis should be on stimulating competition. The Code should be subjected to a Regulatory Impact Analysis with the key criterion being relevance.

Our comments are made in the light of the foregoing. The references are to the paragraph numbers in the Code.

1.1

As stated above, we would add a principle of being comprehensible or understandable.

3.1.2

What constitutes ‘inappropriate rounding’ is not clear. We take it that ‘standard mathematical rounding’ means that any decimal value of .5 or more may be rounded up to the next unit value.

3.1.3

We believe that it is not an appropriate function of any market participant to advertise the fact that its competitors may have better offers. We believe that it should be sufficient to refer to a competitor’s ‘standard rates’. We feel that this requirement should only apply to written advertisements and not to TV, radio and billboard advertising, which can only give minimal information and comparisons.

3.1.4

It is not clear what level of substantiation is required by ComReg or is required for production to customers. We are aware that opinions may vary as to what are appropriate price comparisons and would look to ComReg to provide dispute resolution and guidance in this area.

3.2.1/3.2.2

Does the term ‘verbal tariff presentation ‘ include TV, radio and billboard advertisements, which, as stated above, can only give minimal information and comparisons?

3.2.4

As with previous categories we feel that this is not appropriate to TV, radio and billboard advertisements. This is partially recognised in the text of this provision. It is the case that anyone attracted by such advertising will make contact with the operator and at that stage it would be appropriate to direct the potential customer to the location where the full set of information relevant to the tariff may be found.

3.3.1

We provide a call calculator service (by clicking on ‘telephone’ on the home page) on our website rather than specific call tariffs. This allows a customer to calculate the total cost of a call to any part of the world for any specific duration and time period. We feel that this is the most relevant presentation for consumers.

3.3.2

This may present difficulties in a situation where the sales process occurs on the phone or online. In many cases customers will not want service delivery held up by such a requirement. The best way to overcome this would be to supply the tariff material and associated terms with any written documentation which has to be signed by the customer such as a sales order or contract and to have the attention of the customer drawn to that material.

Presentation of Code on Website

We feel that the purpose and function of this Code will not be immediately obvious to customers or potential customers who visit our website and that a short preamble will, accordingly, be necessary. While we are happy to prepare this ourselves, perhaps ComReg might consider preparing a standard statement for all industry participants.

Yours Sincerely

William Fagan
Chief Legal and Regulatory Officer
Chorus Communication Limited

3 Eircom

Introduction:

In principle, eircom welcomes the initiative by ComReg to introduce standards for Tariff Presentation provided they are practical for users and implementable for operators.

However, eircom has a number of concerns regarding the proposal to direct compliance with these measures by way of an industry Code of Practice, as well as the method of enforcement. These are set out in more detail in the Appendix to this response. Alternative enforcement measures are considered more appropriate. However, for ease of reference eircom will refer to the proposed Code of Practice in this response as the “Code of Practice”

Our entire response is subject to the views as in the Appendix

An essential element in any competitive strategy is for operators to provide consumers with accurate information on the prices, services and quality of service levels it provides so that consumers can make informed decisions. eircom’s own website contains the entire range of information that is relevant for customers when making decisions.

This Code of Practice enforces a transparency requirement that eircom already adheres to in its obligation to publish its pricing in the Telecommunications Scheme. It is a key element for customer choice to have all pricing information available to them prior to making any decision. Consumers will ultimately benefit from accurate, clear and accessible tariff information applied across the industry and therefore this initiative is welcomed by eircom.

It is eircom’s understanding following discussion with ComReg that the measures will only come into effect once all responses have been reviewed and final enforcement measures enacted.

Proposed Code of Practice:

eircom will comment on each heading in the order that they appear in the Proposed Code of Practice as set out in Appendix C of ComReg Document 04/57.

The Principles of Tariff Presentation:

ComReg has defined the principles of Tariff Presentation as follows:

“In presenting tariff information the service provider will ensure that

- Tariff information is accurate
- Tariff information is comprehensive
- Tariff information is accessible

The principles that tariffs shall be accurate, comprehensive and accessible are designed to ensure that service providers present transparent and up to date information on standard tariffs covering access, all types of usage charges, maintenance charges and including details of standard discounts applied and special and targeted tariff schemes.”

eircom agrees with the principles of Tariff Presentation as set out above by ComReg.
Definitions:

eircom believes that the Code of Practice should apply only to “end-users” as defined in both the Universal Service and Framework Regulations 2003¹. eircom also considers that the application should only apply to residential “end-users”.

eircom believe that this Code of Practice should not apply to the business market for the reasons already outlined in its previous submission of 20th February in response to ComReg initial consultation (ComReg Document No. 04/01).

Accurate Tariff Information:

Defined procedures for ensuring accuracy

eircom currently has defined procedures within the organisation to ensure that tariff information is accurate.

Manipulation of tariffs

eircom agrees that tariffs should not be manipulated to mislead end-users. eircom’s tariffs are published and accordingly eircom does not deviate from this pricing. Manipulation of tariffs to mislead a customer will ultimately result in customer dissatisfaction and therefore is of no benefit to any operator.

eircom notes that in the Code of Practice Comreg indicates that an operator may round for ease of presentation and should apply standard mathematical rounding. eircom already adheres to this principle and will continue to do so, making a judgement for each presentation on the appropriate number of decimal places. The appropriate format will depend on the media, the rate and route in question and whether competitor comparisons are also shown.

Competitive Comparisons:

eircom welcomes the principle that equivalent tariffs should be compared and that an end user should not be left with the impression that standard tariffs are the only tariffs that apply. We look forward to seeing this implemented by other operators.

¹ SI 307 European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 and SI 308 European Communities (Electronic Communications Networks and Services) (Universal Service and Users’ Rights) Regulations 2003.

It should be noted that much of the Code of Practice is still open to subjective opinion, which may genuinely vary between operators and Comreg. This makes it difficult to both implement and administer.

What one person considers misleading may be considered good advertising that is fully compliant to another. The purpose of advertising remains to present your own offering in the best possible light in order to persuade customers to purchase. This is common to all industries and to all advertising.

Substantiation:

eircom agrees with the principle of substantiation and feels it makes sound business sense that a service provider shall ensure that all tariff claims, comparisons and testimonials should be capable of substantiation.

Comprehensive Tariff Information

Minimum set of information and Tariff options with inclusive time or credit

eircom agrees that consumers should be presented with relevant tariff information that will assist in their choice of service or package. eircom agrees with the text for Tariff options with inclusive time or credit.

Presentation of VAT

eircom will comply with all existing legislation regarding presentation of VAT.

References to applicable terms and conditions

eircom agree that a reference to terms and conditions would be enhanced by also referencing the location that these can be acquired.

eircom will implement this as follows:

- By listing a website or telephone number on written and visual presentations e.g. 'terms and conditions from www.eircom.ie'

It should be noted that in some instances, most notably radio advertisements, it could be very confusing to customers to list two different contact details for where customers:

Can purchase or enquire

Can obtain full terms and conditions

In these instances, eircom will ensure that the one contact location can be used for both purposes and will continue to use 'terms and conditions apply' at the end of the advertisement.

Accessible Tariff Information

Currently eircom's tariff information is available on our website with applicable terms and conditions. These are available for review by the customer prior to making any purchasing decision.

Conclusion:

In summary eircom welcomes standards for tariff presentation that would be applicable across the industry. The consumer ultimately makes an informed choice and improved clarity will aid the consumer in making that choice.

4 Ms. Briege Kelly

To whom it concerns

In my view ComReg should insist that all phone companies should standardise the format of their tariffs because as it stands I think that companies are trying to pull the wool over the eyes of the consumer. An ordinary Joe Soap cannot understand and compare all of the tariff information on phone companies advertising brochures when they are all presented in a different fashion.

I urge ComReg to reconsider its position with regard to the above.

Thank you.

Briege Kelly, Dundalk, Co. Louth.

5 Mr. Jim Malone

I disagree with your contention that phone tariffs should not available on a standard format in order to allow people to compare tariffs.

I support a basis for price comparisons and suggest that your organisation should reconsider its present stance so as to allow meaningful comparisons.

Mr. Jim Malone.

6 Mr. Sean Silke

Dear Mr. Corcoran,

I totally disagree with ComReg's view that requiring tariffs in a standard format is inappropriate. As a consumer, I believe that ComReg must insist on the industry presenting prices in a standardised manner. This is the only way I as a consumer can have ready access to meaningful price comparisons. I urge ComReg to reconsider its position in this regard.

Yours sincerely,
Sean Silke

7 Vodafone

Introduction

Vodafone welcomes the opportunity to submit comments on ComReg's proposed Code of Practice on Tariff presentation (ComReg 04/47). Vodafone is greatly concerned about the limited time given between the end of the consultation on the Code (30th June) and its implementation (1st July 04). This time constraint on the consultation process is at odds with the Government Action Programme for Better Regulation¹ launched earlier this year.

Whilst Vodafone acknowledges that key issues of concern raised previously have been rectified in the recent draft of the Code, Vodafone seeks more clarity on certain aspects of the wording in the most recent draft.

These concerns are the following:

- Monitoring and enforcement of the Code
- Assessment of potential breaches
- Retention of data for possible substantiation purposes
- Understanding the "tariff transparency framework"
- Ensuring pragmatism in tariff presentations

1. Monitoring and Enforcement of the Code

Through its clear intention of setting an industry standard on what represents clear, accurate and informative tariff information for consumers, the draft Code sometimes replicates current codes of practice and consumer and contractual legislation that deal with this issue in the market. Examples of codes that Vodafone is compliant to are: ASAI, IDMA and RegTel. These existing Codes deal quite specifically with the issue of tariff information and the use of this information by operators.

In addition, the legislative context provides many examples of the necessary safeguards in place for consumers regarding the presentation of tariffs. For example the European Communities (Misleading Advertising) Regulations 1982 and the Consumer Information Act 1978 includes provisions dealing with misleading advertising and misleading pricing currently which enables the Director of Consumer Affairs to regulate and control misleading advertising.

Vodafone is conscious that the adoption of a ComReg Code of Practice would throw into question that Code's vis á vis similar purposed codes of practice and legislation. Vodafone would query whether parts of the proposed Code are superfluous in the current context and questions whether this Code could be considered proportionate where it duplicates existing obligations. Vodafone seeks further reassurance from ComReg that it will be made clear how this Code will interact with existing codes of practice and legislation and the enforcement of these by various the industry and statutory bodies.

Any approach towards industry complaints adopted by ComReg would first need to engage with the problem of the competing similar Codes of Practice in existence. In particular, possible conflicting investigations and remedies by separate enforcing

industry bodies on a tariff presentation breach will call into question the legal priority and status of the ComReg code.

In cases where ComReg issue directions to service providers, the measures specified to rectify the complaint must be reasonable and proportionate to the customer's complaint. In addition, the scale of the tariff presentation itself should be reflected in the measures proposed. Whilst, ComReg acknowledges that it will intervene when breaches occur, it is unclear as to what measures will be adopted by ComReg in cases of intervention. 1 See section 5.1 in the Action Programme for Better Regulation, Department of the Taoiseach

Nonetheless, Vodafone would again raise the issue here of the legal priority of the proposed Code in the industry context of several similarly purposed codes of practice and legislation. In particular Vodafone seeks reassurance regarding the manner in which co-ordination is to be achieved between the various monitoring bodies and ComReg. This is viewed as crucial in order to overcome potential duplicate investigation and discrepancies with regard to recommendations or remedies.

2. Assessment of Potential Breaches

Vodafone believes that the failure to include objectively defined criteria within the draft code for the assessment of tariff presentation is a problem and its absence means that the Code may be inhibited in achieving its aims. The key concepts of the Code requiring tariffing information to be "accurate", "comprehensive" and "transparent" are subjective in nature and have no corresponding definitions. As such, the Code appears to be without sufficient objectivity, which may inhibit straightforward assessment by ComReg in cases of suspected breaches by service providers.

3. Retention of Data for Substantiation Purposes

3.1.4 Substantiation

"A service provider shall be able to substantiate:

Any claims that they put forward regarding savings that their existing customers can make by switching to a different tariff option.

Any competitive claims and comparisons.

Service providers are required to hold documented evidence of such substantiation, ready for production on demand by ComReg, for a period of six months from date of presentation."

As all new tariff presentations made by service providers are by nature competitive claims, this requirement implies that service providers would need to retain all substantiating evidence of all tariff presentations to the market.

It is unclear as to what ComReg considers to be "documented evidence of substantiation". Tariff presentations are generally based on individual customer analysis, which is defined by existing legislation to be traffic data and personal data. As such, this type of data is explicitly covered by the data protection legislation and in particular the regulations on acceptable data retention periods.

In line with agreement with the Data Protection Commissioner's office and under the requirements in SI 535 of 2003 (Regulation 6), Vodafone's data retention policy on commercial use of individual call records (traffic data) is limited to six months retention. This retention period is defined as starting from the time the data is captured on our internal systems. . All data over six months from capture is automatically removed from our systems at six months. As a consequence of this obligation, Vodafone can only submit substantiating data to ComReg if the request is received prior to the end of this six-month retention period from time of capture.

4. Understanding the “tariff transparency framework”

Vodafone is unclear as to what is meant by the proposed concept of “tariff transparency principles” referred to by ComReg in section 4 of the Code which purports to:

“Establish a framework for ComReg in fulfilling its obligation to ensure that transparent and up to date information on applicable prices and conditions is available to end-users on standard tariffs.”

Whilst Regulation 18 (1) clearly defines that ComReg must ensure that information on applicable prices and tariffs be transparent and up to date, it does not refer directly to tariff transparency principles. Vodafone requests that ComReg clearly define their stated tariff transparency framework referenced in the Code and explain how they are to be used operationally by ComReg.

5. Ensuring Pragmatism in Tariff Presentations

Vodafone believes that the requirement to include the defined minimum set of information in all printed tariff presentations is unreasonable and ultimately undermines the stated intention of ensuring that tariff presentations are kept comprehensive and accessible.

Vodafone agrees that customers should be verbally advised of this information and be able to access this information on the service provider's website. However, Vodafone does not believe that it is reasonable to require operators to include this information on all printed tariff presentations. Whilst, Vodafone endeavours to include this relevant information on most of our printed tariff presentations, it is not always feasible to include this information in some printed tariff presentations due to space constraints and in order to avoid confusion. In these cases customers are referred to our website and our care desks for further details.