



**Conciliation Procedure in relation to disputes between European
Electronic Toll Service Providers and Toll Chargers**

March 2014

NATIONAL TRANSPORT AUTHORITY/CONCILIATION PROCEDURE

PREAMBLE

The European Directive 2004/52/EC (the Directive) on the interoperability of electronic road toll systems provides the definition scope and framework for the establishment of the European Electronic Toll Service (EETS) and for the technological solutions for carrying out electronic tolling.

The European Commission Decision 2009/750/EC (The Decision) sets out the general requirements necessary to achieve the desired interoperability between EETS Providers and Toll Chargers' equipment and procedures.

The Decision states that a Conciliation Body must be set up to resolve disputes between EETS Providers and Toll Chargers during contract negotiations and in their contractual relationships.

The National Transport Authority has been appointed as the National Conciliation Body for Ireland and is therefore in charge of facilitating the resolution of disputes arising during contractual negotiations between toll chargers and EETS providers. It is in this context that a Conciliation Procedure is set out below.

Part A. General Principles

Rule 1. General Principles

- 1.1 This Procedure shall apply whenever a Toll Charger or an EETS Provider requests the National Transport Authority (the Conciliation Body) to intervene in any dispute relating to their contractual relations or negotiations.
- 1.2 This procedure shall be interpreted and applied in the manner most conducive to the efficient conduct of the proceedings with the primary objective of achieving a settlement of the dispute by agreement between the Parties as quickly as possible.
- 1.3 The Conciliator shall observe and maintain the confidentiality of all information, which he is given by any Party privately, and may only disclose it with the express permission of that Party. He will try to assist the Parties to resolve the dispute in any way which is acceptable to them. The Parties and the Conciliator shall at all times maintain the confidentiality of the conciliation and shall endeavour to ensure that anyone acting on their behalf or through them will do likewise.
- 1.4 The parties undertake that
 - (a) Except where disclosure is required by law or a court, all documents prepared for the conciliation shall be confidential and shall not be admissible in evidence in any subsequent adjudication, arbitration or litigation
 - (b) Except where disclosure is required by law or a court, everything stated during the conciliation meeting shall be confidential and shall not be mentioned or referred to in any subsequent proceedings
 - (c) The entire conciliation shall be without prejudice to all rights of the

Parties, whether under the contract or otherwise.

**Rule 2.
The Notice of
Conciliation**

Part B. Notice of Conciliation

- 2.1 Under Article 11 of the Commission Decision of 6 October 2009 on the definition of the European Electronic Toll Service (EETS) and its technical elements, a Toll Charger or an EETS provider can request the relevant Conciliation Body to intervene in any dispute relating to their contractual relations or negotiations. Such a request shall be accompanied by a brief statement of the matter or matters to be referred and the redress sought.
- 2.2 The Conciliation Body shall endeavour to ensure that all documents necessary for the conciliation are in its possession within one month following the receipt of the request to conciliate.

**Rule 3.
The Appointment of
the Conciliator**

Part C. Appointment of the Conciliator

- 3.1 If the other party agrees to participate in the Conciliation Process the National Transport Authority shall appoint a Conciliator within 28 days of the receipt of the request to conciliate in the dispute.
- 3.2 If, for any reason whatsoever, the Conciliator is unable or fails to complete the conciliation in accordance with this Procedure then any Party may within 28 days of the Conciliator's notification request the National Transport Authority to appoint a replacement Conciliator.
- 3.3 All parties to the Conciliation shall sign the Conciliator's Agreement which will set out, inter alia, the Conciliator's terms and conditions in relation to the conduct of the conciliation.

**Rule 4.
The Conduct of the
Conciliation agreed by
the parties or in
default of agreement
any time limit set
down by the National
Transport Authority**

Part D. Conduct and Conclusion of the Conciliation

- 4.1 The Conciliator shall start the conciliation as soon as possible after his appointment and shall use his best endeavours to conclude the conciliation as soon as possible and in any event within any time limit or, if no time limit is so stated, within two months from the date of his appointment, unless the Parties, the Conciliator and the National Transport Authority otherwise agree.
- 4.2 Any Party may, immediately after the Conciliator's appointment or within such period as the Conciliator may direct, send to the Conciliator and to the other Party a statement of its views on the dispute and any issues that it considers to be of relevance to the dispute, and any financial consequence.
- 4.3 As soon as possible after his appointment, the Conciliator shall, after consultation with the Parties notify them of the date and location of the conciliation meeting with the Parties. Each Party shall, in advance of the meeting, inform the Conciliator and the other Party in writing of the name of its representative for the conciliation, who shall have full authority to act on behalf of that Party, together with the names of any other persons who will attend the conciliation meeting.
- 4.4 The Conciliator shall conduct the conciliation in any way that he considers appropriate and may with the agreement of all Parties:
 - (a) Meet and question the Parties and their representatives, together or separately

- (b) Investigate the facts and circumstances of the dispute
 - (c) Visit the site
 - (d) Request the production of documents or the attendance of people whom he considers could assist in any way
 - (e) Issue such other requests as he considers appropriate
 - (f) Consider and discuss such solutions to the dispute as are suggested by either Party
- 4.5 Any Party may, at any time, ask that additional claims or disputes, or additional Parties, shall be joined in the conciliation. Such requests shall be accompanied by details of the relevant contractual facts, notices and decisions. Such joinder shall be subject to the agreement of the Conciliator and all Parties. Any additional Party shall, unless otherwise agreed by the Parties, have the same rights and obligations as the other Parties to the conciliation. All additional Parties shall sign the Conciliator's agreement.
- 4.6 If, in the opinion of the Conciliator, the resolution of the dispute would be assisted by further investigation by either Party or by the Conciliator, or by an interim agreement, including some action by any Party, then the Conciliator may, with the agreement of the Parties, give particulars thereof and/or adjourn the proceedings as may be appropriate.
- 4.7 When a settlement has been achieved of the whole or any part of the matters in dispute, the Parties shall enter into an agreement incorporating the terms of the settlement. The Conciliator shall, if so requested by all the Parties, assist in the preparation of this Agreement. The Conciliator shall not sign this agreement as a party thereto, but may sign as a witness.

**Rule 5.
The Conclusion of
Conciliation**

- 5.1 The conciliation is deemed to have been concluded
- (a) If a settlement is reached
 - (b) If a settlement of the whole of the matters in dispute has not been achieved by the conclusion of each day of the conciliation meeting and the Parties and the Conciliator do not agree a date on which to continue the conciliation meeting in a further attempt at settlement
 - (c) If the Conciliator informs the Parties that, in his opinion, any further attempts at settlement seem unlikely to be successful
 - (d) If a Party informs the Conciliator that it withdraws from the conciliation.

Part E. Conciliator's Recommendation

**Rule 6.
Conciliator's
recommendation**

- 6.1 The Conciliator shall issue a recommendation where requested to do so by either party. The recommendation will be issued within 28 days of the request.
- 6.2 The Conciliator's recommendation shall state his solution to the dispute which has been referred for conciliation. The recommendation shall not disclose any information which any Party has provided privately to the Conciliator. It shall be based on his opinion as to how the Parties can best dispose of the dispute between them.

- 6.3 The Conciliator shall not be required to give reasons for his recommendation unless requested to do so by either Party.
- 6.4 The Conciliator may be recalled, by written agreement of the Parties and upon agreement of an additional fee, to clarify, amplify or give further consideration to any provision of the recommendation.
- 6.5 In accordance with Article 11(3) of the Commission Decision the National Transport Authority shall issue its opinion on the dispute no later than 6 months after the receipt of the request for it to intervene.

**Rule 7.
Miscellaneous
Provisions**

Part F. Miscellaneous Provisions

- 7.1 No Party shall be entitled to call the Conciliator as a witness in any subsequent proceedings concerning the subject matter of the conciliation.
- 7.2 The Conciliator shall not be appointed adjudicator, arbitrator, expert or as other form of tribunal in any subsequent proceedings between the Parties, whether arising out of the contractual negotiations/dispute, difference or other matter or otherwise arising out of the same contract unless all the Parties and the Conciliator otherwise agree in writing.
- 7.3 Each Party shall meet its own costs and expenses. Each Party shall, within fourteen days of the date of the Conciliator's invoice, pay an equal share of the Conciliator's fees and expenses. The Parties shall be jointly and severally liable to the Conciliator for the whole of his fees and expenses.
- 7.4 The Conciliator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Conciliator unless the act or omission is in bad faith, and any employee or agent of the Conciliator is similarly protected from liability. The Parties shall save harmless and indemnify the Conciliator and any employee or agent of the Conciliator against all claims by third parties and in respect of this shall be jointly and severally liable.
- 7.5 Any notice or other document under this Procedure may be served on a person by any effective means.

If a notice or other document is addressed, pre-paid and delivered by post

- (a) To the addressee's last known principal residence or, if he is or has been carrying on trade, profession or business, his last known principal business address
- (b) Where the addressee is a body corporate, to the body's registered or principal office
- it shall be effectively served.

- 7.6 In this Procedure where the context so requires 'Party' shall include 'Parties'