

2012 END OF YEAR REVIEW

Alex Chisholm, Chairperson ComReg

2012 has been a year of significant progress in communications regulation and the development of communications markets in Ireland. The highlight of the year was the successful conclusion of the multi-band spectrum auction in which 4 mobile network operators paid a total of €855m for rights of use across 3 spectrum bands through to 2030, paving the way for the launch in 2013 of the next generation of advanced mobile services. In addition, over the course of 2012, ComReg has developed and published new regulatory frameworks covering universal service in telephony, the scope of postal regulation, premium rate services, next generation broadband, spectrum trading, termination rates, pricing of bundled offers, fixed retail access and broadcasting transmission services. These frameworks provide considerable certainty for market participants, and provide the basis for taking the sector to a new level of innovation, investment, competition and choice.

ComReg in 2012 has taken a number of successful enforcement actions to promote a higher standard of compliance amongst operators, for instance in relation to roaming regulations; introduced important consumer protections, for example around contract change notifications, and the requirement for 'double opt-in' for purchases of premium rate subscription services; issued nearly 4,000 spectrum licences; dealt effectively with over 220 cases of reported spectrum interference (21 of which related to Air Traffic Control or Emergency Services); and assisted in 33,000 consumer contacts with information requirements or other needs for our help in resolving issues with services. These tasks have been accomplished notwithstanding the continuing reductions in ComReg staff numbers and associated costs.

Developments in the market show increasing evidence of the positive impact of competition between market players within the context of appropriate regulation. The trend has been for market concentration levels, and prices both for wholesale and retail services, to fall – in some cases markedly - while investment and quality levels have risen. This trend is evident across fixed and mobile markets, both for telephony and data services, but is especially noticeable in the enhanced value now on offer to purchasers of 'bundled' services offering some combination of fixed and mobile telephony, broadband and television services, and in the increasing roll-out of fibre networks capable of handling the high and growing data usage.

Eircom's exit from the examinership process in June 2012 was a significant and welcome development as it allowed the company to revise its capital structure and put in place a five-year business plan. UPC, for its part, has continued to roll-out high-speed cable broadband to its customer base. Other fixed operators and the mobile companies also continued to invest in their networks and to offer their customers a variety of new offerings. Recently published research by Amárach further evidences how important digital services provided by communications companies are to the way we live and work in Ireland today.

According to OECD and EC data, Irish broadband consumers have now effectively caught up with their OECD and EU counterparts, with some 65% of households taking broadband subscriptions. ComReg data shows that over the last 2 years the share of residential broadband subscribers with download speeds of 10 Mbps or more has tripled to reach 23%. The most recent Akamai report on high speed broadband services ranks Ireland 15th in the world and 9th in Europe in terms of average measured broadband speed. Announcements by operators in both fixed and mobile sectors suggest that 2013 will see new entry to the market, increasing investment in network upgrades, and the launch of exciting new services. Such developments will provide increasing value and service to hard-pressed households and businesses, and 'digital fuel' for national economic recovery.

Broadband Market

By the end of Q3 this year, there were 1.6 million broadband subscriptions in Ireland, an increase of 0.4% on the last year, while total broadband per capita stood at 36.1%. The most recent Eurostat figures for Household Broadband Penetration show Ireland with a penetration rate of 65% compared to an EU average of 68%.

There have been a number of positive signs of progress over the year with strong competitive forces and consumer emphasis on value putting downward pressure on prices, and upward pressure on quality and coverage levels, particularly for the increasingly popular 'bundles' of telephony, broadband and television services. ComReg's regulatory interventions in relation to wholesale broadband services have helped to stimulate competitive pressures. Expected new entry to the market early next year will intensify these pressures, as will the further build-out of high-speed broadband networks announced by operators in recent months.

The Government's National Broadband Plan, published in August, charts Ireland's overall good progress in achieving the EU Digital Agenda targets to date, and sets out a number of steps to help ensure the country exceeds the targets for 2015 and 2020.

Mobile Market

By the end of the third quarter of this year, there were over 5.5 million mobile subscriptions in the country. Overall mobile subscriptions are still increasing year on year, with mobile penetration standing at 120.6%. There is a 40/60 split between post-paid and pre-paid mobile phones among consumers. Irish mobile phone users are also among the most prolific texters in the EU and in total we send in excess of 3 billion texts each quarter.

Average Revenues Per User in Q3 2012 were €29, compared to €30 this time last year, notwithstanding significant increases in the average data being consumed by users, and other service benefits.

ComReg recently decided on significant reductions to fixed and mobile wholesale termination rates, so as to reduce competitive distortions and enhance consumer welfare.

The recent conclusion of the Multi-Band Spectrum Auction doubles the amount of spectrum available for mobile services operating below 2 GHz, and enables the issue of liberalised licences, thereby paving the way for operators to launch new and advanced services in 2013 and beyond. Consumers should experience much faster and higher capacity data speeds over mobile devices such as smartphones and tablets.

Competition Work

ComReg took a number of initiatives in 2012 to further develop competition in the marketplace. With regard to next generation access, ComReg issued a consultation in April setting out proposals in relation to the regulation of Eircom's Next Generation Access services. Draft final proposals were notified to the European Commission in November.

In relation to termination rates, ComReg issued a consultation in May which proposed to continue to regulate the mobile termination services of Vodafone, O2, Meteor Mobile and Hutchison 3G Ireland and regulate for the first time termination services offered by Tesco Mobile and Lycamobile. A final decision on the matter was issued in November. Separately proposals as to how fixed and mobile termination should be priced were consulted on in June, and a market review consultation in relation to regulation of fixed voice call termination was published in September. A final decision in relation to fixed and voice call termination rates issued in November. On 18 December Vodafone Ireland appealed to the High Court the mobile termination cost orientation obligation and the mobile termination rates decision.

ComReg also consulted upon its proposed approach to the pricing of services sold by Eircom as part of a bundle of services (for example when voice and broadband are sold together) late in 2011. It issued a further consultation on certain aspects of these proposals in July and the European Commission was notified of these proposed measures on 26 October 2012.

ComReg has undertaken a number of wholesale compliance investigations which relate to the competitive functioning of markets. For example, in December ComReg notified eircom of non-compliance with its non-discrimination obligations in relation to the provision of line repair.

Consumer Activities

The provision of information and advice to consumers as well as the protection of their rights are key parts of ComReg's consumer mandate. By providing consumers with information and knowledge about communications services and offerings, consumers will make more informed choices and better decisions.

During the year ComReg took a number of compliance measures to ensure that operators meet their regulatory obligations to consumers. In February, High Court proceedings against Vodafone in relation to compliance with the Roaming regulations

were settled, involving payment to the Commission of €400,000 by way of a Court-ordered financial penalty and a number of other specified actions by Vodafone. In April, following a ComReg investigation during which the company cooperated fully, Vodafone agreed to pay ComReg €951,000 for overcharging some of its prepaid mobile customers. The affected customers received a refund either by cheque or directly through phone credit, together with an additional payment as compensation. In total €800,000 was returned to mobile phone users. Other consumer-related compliance activity this year has included interventions in relation to contract notifications, e-billing and premium rate services.

In June 2012 Eircom was re-designated as the Universal Service Provider (USP) for basic telephony services for a further two-year period. ComReg believes that there are both social and economic grounds for the Universal Service Obligation (USO), as it provides services to assist vulnerable users and those in remote locations that the market might otherwise not choose to serve.

ComReg monitors Eircom's commitments in relation to its USO targets and publishes Eircom's Quality of Service performance on a quarterly and annual basis. Data published in November 2012 shows that there were higher levels of service in relation to an additional 9,000 phone connections and 54,000 fault repairs, and 32,000 fewer line faults, as a result of improvements achieved in 2011/12 when compared to the base level prior to ComReg's intervention to set Quality of Service targets. Eircom as Universal Service Provider met 12 targets, including all targets for connections and fault occurrence, but missed 3 of its targets in relation to fault repairs. Arising from the failure to achieve the fault repair targets, eircom has paid the sum of €525,000 to ComReg, under the terms of the Performance Improvement Programme (PIP) applicable in 2011/12. A new PIP has been put in place for the period 2012-14, again backed by a financial security mechanism of up to €10m per annum. Eircom has estimated that it will invest a further €51m in this area over the period 2012-14.

ComReg also completed significant work in 2012 in relation to the regulation of Premium Rate Services (PRS). In April ComReg launched a new Code of Practice for Premium Rate Services which was to come into full effect on 5 June, but for a stay granted by the High Court on 2 June in relation to certain provisions, following application by some of the parties affected. This stay was then lifted by the High Court on 25 July, from which date the full code has been in force, providing users of PRS services strong regulatory protection. In 2012, ComReg has also made findings of non-compliance in relation to PRS and published them on its website www.phonesmart.ie.

In what is a relatively new area for ComReg, following the introduction of new powers in 2011, we have conducted a number of investigations into fraud and misuse of numbers, dealing with 32 complaints over the last 12 months, relating to call value of around €750,000. In many cases ComReg has been able to intervene successfully to prevent or limit the harm to end users arising from this activity. In addition, ComReg has worked with the EU authorities in this area and is chairing a BEREC Working Group to put in place an EU-wide process for dealing with these issues.

In January 2012, following ComReg's review of the Emergency Call Answering Service (ECAS) call handling Fee (CHF), the CHF was set at €3.35 per call for 2012/2013. ComReg consulted on a CHF for 2013/14 in October this year and will shortly reach and publish its decision. ComReg continued its role in monitoring the Emergency Call Answering Service (ECAS) to which there were 1,384,866 calls between January and June 2012.

During the course of 2012, ComReg dealt with consumers in respect to 33,000 issues raised by them, including PRS queries, and general contract and billing issues. Our consumer websites, www.callcosts.ie, www.askcomreg.ie and www.phonesmart.ie, between them had a quarter of a million visits.

As part of our outreach programme, ComReg took a consumer advice stand at the Over 50s show in October and at the BT Young Scientist of the Year Exhibition in January. We also provided consumer information about new changes to roaming rates at Dublin, Cork and Shannon Airports. ComReg also continued its work with its Disability Forum and its Consumer Advisory Panel.

Spectrum Innovation

ComReg is responsible for the management and efficient use of our radio spectrum. Our function is to ensure efficient access to radio spectrum so that consumers, industry and other stakeholders can benefit from this important national resource.

In November, ComReg announced the results of its auction of spectrum rights of use for the 800, 900 and 1800 MHz bands. The winning bidders have paid €481.7 million for the spectrum rights on offer and from 2013 to 2030 they will pay a further €373 million in usage fees. ComReg expects that the relevant mobile operators will make new and enhanced mobile offerings to their customers using this spectrum from 2013. Use of the 800 MHz spectrum for mobile services has been enabled by the successful completion in October of the Digital Switchover of terrestrial television services by the Department of Communications.

As Ireland's radio spectrum is used for important activities such as broadcasting and mobile telephone communications, among others, there is always a risk of interference. ComReg's radio spectrum compliance unit ensures that all interference cases are investigated and it has resolved over 200 interference cases this year. ComReg also began the roll-out of its Remote Monitoring Network to help manage the radio spectrum and deal with cases of interference more efficiently into the future.

In July of this year, ComReg published a consultation on a framework and guidelines for spectrum transfers in bands designated by the EU for trading. The new regime will allow operators in the relevant bands to transfer spectrum which is surplus to their requirements to alternative operators, subject to ComReg's consent. ComReg also commenced a review of the current MMDS licences in the 2.6GHz band and the potential future uses of that band. It has proposed that the future use of this spectrum should be determined following a competitive procedure and on a technology and service neutral

basis. To allow time for this, ComReg has proposed that existing MMDS licences should be renewed until April 2016.

In relation to numbering, Ireland is leading Europe with the number of 116 harmonised European short codes in service - following the introduction of a 'missing children' hotline on 116000. These short codes are for services of significant social value, with each service having the same short code in each EU country, and are free of charge to callers. As part of this process, the Samaritans launched a support helpline 116123 in September.

Postal Market

In February ComReg initiated legal proceedings against An Post, the designated universal postal service provider in Ireland, in relation to its compliance with a direction in respect of the quality of the universal postal service. In April ComReg consulted on the scope of postal regulation, the role of An Post as universal postal service provider, and the provision of services within the scope of the universal postal service. Settlement of these matters with the decisions published on 26 July has provided the essential groundwork for the universal postal service and related regulatory matters. ComReg has also published its Postal Strategy Statement which sets out our proposed actions, and the timing of these, over the next two years. ComReg briefed the Joint Oireachtas Committee on this Strategy Statement in November. ComReg has established dispute procedures for postal service providers seeking access to the postal network of the universal postal service provider. We are currently reviewing An Post's amended price application and are consulting stakeholders about it.

International Activities

ComReg continued to play an active role within the Body of European Regulators of Electronic Communications (BEREC) through direct participation in a number of workstreams and in leading the BEREC work on measures to mitigate cross-border fraud or misuse of numbers. ComReg also actively contributed to the BEREC opinions on the serious doubts raised by the EU Commission in respect of NRA notifications of SMP findings and proposed remedies. ComReg also participated actively in the various international spectrum groups including RSPG and CEPT, and was part of Ireland's delegation to the ITU World Radiocommunications Conference 2012, at which a number of important decisions were reached in relation to future use of spectrum for mobile and aeronautical services, among others.

Corporate Developments

During the year, following a public consultation, ComReg issued its Strategy Statement for the Electronic Communications sector 2012-2014. The Statement set out ComReg's vision, goals and strategies for the electronic communications sector, and it is closely linked to ComReg's work programme for the next two years.

We published our Annual Action plan at the end of our Financial Year (30 June) which outlines specific work-streams and other initiatives that ComReg will undertake in order to implement our strategy. In conjunction with the Annual Action Plan, we also published an Annual Output Statement which records and measures ComReg work achieved over the year.

ComReg has identified savings of €424,000 obtained during the previous year through initiatives and plans that have been identified in accordance with ComReg's Croke Park Agreement Action Plan. ComReg has maintained its standards as an HR centre of excellence, including being shortlisted again for the Irish Institute of Training and Development's annual awards and winning the public sector category in the NISO National Health and Safety Awards. ComReg's staff continue to contribute very positively and constructively, despite severe reductions in staffing resources under the given Employment Control Framework.

As a public body operating in a difficult environment, an ongoing challenge is to continue to add value while working within resource constraints. In the financial year to 30 June 2012, we reduced our total costs (excluding legal costs) by 6%. We continuously review and amend as necessary policies and procedures in relation to expenditure, procurement and risk management.

ComReg answered 27 Freedom of Information (FOI) queries during the year as well as providing material for the answers to over 50 Parliamentary Questions.

The outgoing year has been particularly busy and productive for ComReg and I would like to thank all ComReg staff for their continuing professionalism and high-quality output. The successful deliveries this year of key regulatory projects such as the Multi-Band Spectrum Auction, Next Generation Broadband, pricing of bundles and termination rates, and the new Code for Premium Rate Services, will bear fruit in 2013 and beyond in an even more competitive and innovative market that better serves Irish consumers and business users. So long as we are granted sufficient resources to undertake our regulatory functions effectively, I am confident that 2013 can be another year of high performance for the organisation, helping to further improve standards in the Irish communications sector.

Alex Chisholm
21 December 2012