Commission for
Communications Regulation

# Response to "Regulatory Enforcement and Corporate Offences" Issues Paper from the Law Reform Commission

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# 1 Introduction

1.1 The Commission for Communications Regulation ("ComReg") is the National Regulatory Authority for the electronic communications and postal sectors. ComReg was established in 2002[1] having taken over the functions of the Office of the Director of Telecommunications Regulation which was set up in 1997.

1.2 As well as regulating these sectors, ComReg is also responsible for managing Ireland's radio frequency spectrum and telephone numbering resources. In recent years, ComReg's mandate has been broadened with additional statutory responsibilities including:

1.2.1 Acting as a competition authority with co-competition powers in the electronic communications sector;

1.2.2 Monitoring the quality of the Emergency Call Answering Service (ECAS) and carrying out an annual review of the call handling fee (CHF);

1.2.3 Regulating Premium Rate Services (PRS); and

1.2.4 Certain functions in relation to the European Communities (Consumer Information, Cancellation and Other Rights) Regulations[2] and the European Communities (Unfair Terms in Consumer Contracts) Regulations (S.I. No.27 of 1995), as amended by inter alia the European Communities (Unfair Terms In Consumer Contracts) (Amendment) Regulations 2014[3] insofar as they relate to the provision of electronic communications networks, electronic communications services, associated facilities and PRS.

1.3 ComReg's overall responsibility is to promote competition in respect of electronic communications, to facilitate competition in respect of postal services and in all respects to protect consumers and encourage innovation. ComReg's statutory functions and objectives are provided

[1] Under Part 2 of the Communications Regulation Act 2002.
[2] S.I. No. 484 of 2013.
[3] S.I. No. 336 of 2014.

for in the Communications Regulation Acts 2002 to 2015[4] ("the Acts"), and the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 which, amongst other things, transpose EU law into Irish legislation.

1.4 In December 2012, ComReg, together with the Competition Authority, the Commission for Energy Regulation and the Irish Medicines Board, made a joint submission entitled "Enforcement of Competition and Regulatory Law: the case for reform"[5] to the Law Reform Commission for its 2012 proposed new programme of law reform ("the Joint Submission"). ComReg is pleased to note that the Joint Submission is referenced in the "Issues Paper – Regulatory Enforcement and Corporate Offences" ("the Issues Paper"). This response should be considered in conjunction with the Joint Submission.

# 2. Executive Summary

2.1 Regulatory breaches harm consumers, firms and industry. Strong regulation is thus critical to the economy in general. The availability of robust enforcement powers is, in turn, crucial to the efficacy of regulation. Effective powers of enforcement and sanction ensure that regulatory action acts as a genuine deterrent, both to the party being punished and to other regulated parties.

2.2 ComReg is very active in regulatory enforcement through its engagement with industry and in bringing civil and criminal enforcement actions, where necessary ComReg's enforcement programme targets serious breaches, which are sometimes deliberate and often affect large numbers of customers and end-users. Service providers often profit significantly, and unjustly, from breaking the law. Some of ComReg's enforcement activities also concern matters where there is a possible threat to public safety and security. However, ComReg is often hampered by the limits of the regime within which it operates. Improvements to its enforcement powers (both criminal and civil) would facilitate ComReg in maximising its limited resources. Therefore, ComReg welcomes this opportunity to make submissions as to how the regulatory regime (in general for financial and economic regulators and in particular, for ComReg) could be improved.

[4] The Communications Regulation Act, 2002 as amended by *inter alia* the Communications Regulation (Amendment) Act 2007, the Broadcasting Act 2009, the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, the Communications Regulation (Postal Services) Act 2011 and the Communications Regulation (Postal Services) (Amendment) Act 2015.
[5] See http://www.comreg.ie/publications/joint_submission_to_the_law_reform_commission.583.104356.p.html

2.3 ComReg considers that the current enforcement regimes could be improved in three main areas. These are explained in detail in the body of this submission and are, in summary, as follows:

2.3.1 **Provide for civil sanctions:** It would greatly facilitate effective regulation if regulators could directly impose civil financial sanctions (administrative fines) in appropriate circumstances (as the Issues Paper states this power already exists for several Regulators in Ireland). In contrast to court imposed financial sanctions, administrative fines can be applied immediately and thus act as a greater deterrent against breaking the law. Administrative fines enable the regulator's expertise, including its knowledge of the relevant facts and particular sectors, to be fully and proportionately utilised. Proportionality is a keystone of good regulation. The ability to index fines to profits achieved as a result of a breach, enables regulation which is not only proportionate to the breach, but also provides a strong economic deterrent. - Criminal prosecutions are often the most effective and efficient approach to ensuring regulatory compliance (for example breaches of consumer law). However, in some regulatory cases, criminal prosecution may be either not practical or appropriate because of the evidentiary requirements, the complex economic analysis which may be required, and the criminal standard of proof. As a result, a market participant may not view criminal prosecution as likely and therefore the risk of prosecution may not act as a realistic deterrent in those cases. In such cases, an administrative fining regime may be more practical and appropriate. The mere possibility of the regulator imposing an administrative fine would encourage better compliance.

2.3.2 **Increase the level of financial penalties:** Potential fines must be sufficiently high to act as a strong deterrent. Under the telecommunications regulatory framework, the penalty that may be imposed, following conviction on indictment, was drastically reduced in 2011. The potential penalty of €5 million or 10% of turnover (whichever was the greater) was reduced to a maximum potential fine of €500,000. ComReg considers that this was a retrograde step. Such potential penalties are extremely low in the context of the scale of many of the operators in the telecommunications sector. ComReg is concerned that these potential penalties may not be sufficiently high to deter businesses from contravening regulatory requirements. In severe cases, the revenues from breaking the law may be several million euros. Therefore, businesses could make a commercial decision to break the law, with any financial penalty being viewed as merely a *de facto* tax or levy, rather

than an actual punishment intended to act as a deterrent. A restoration of the link between potential penalties and turnover would significantly increase the deterrence effect. ComReg notes that an increase in the financial penalties available following a criminal conviction could have a knock-on effect on the financial penalties imposed following civil action as a court could (incorrectly in ComReg's view) decide that that the maximum penalty achievable in a civil context may not exceed that which could be imposed by the criminal courts.

2.3.3 Regulatory powers, and in particular certain inspection, investigation and enforcement powers, should be as standardised as possible across all regulatory bodies. This would improve the efficiency and effectiveness of regulation.

2.4 ComReg considers it crucial that regulators have access to a wide range of enforcement tools and sufficient discretion (with due deference to their specialist expertise, experience, and statutory mandate) to decide which tools to use. This would properly and fully empower a regulator to choose the most effective, efficient and proportionate approach, depending on the facts of the individual case.

# 3. Responses to issues raised

### Issue 1: Standardising Regulatory Powers

3.1 ComReg considers that standardising regulatory powers (in particular, certain inspection, investigation and enforcement powers) to the greatest extent possible, would improve the efficiency and effectiveness of regulation. ComReg does not consider that all regulators should have the same powers, rather; where they do enjoy the same powers in certain areas, those powers should be more or less uniform.

3.2 More standardised regulatory powers would assist in the formation of a robust regulatory framework and would facilitate co-operation between regulators. As noted in the Joint Submission, the lack of standardised enforcement powers has resulted in there being no reliable set of precedents that can be exercised by all agencies. Instead, the courts have applied a case-by-case approach; which is inefficient.

3.3 ComReg welcomes the acknowledgment in the Issues Paper that individual regulated sectors (and regulators) have different requirements and needs and that this would be taken into account in any standardisation. ComReg considers that the Australian model cited appears to adopt a sensible approach in this regard i.e. not standardising all regulatory powers, because some regulators require stand-alone powers that are particular to their responsibilities or sector, and that are not appropriate for other regulators.

3.4 ComReg wishes to strongly state its position that the powers of individual regulators should not be removed or diminished in order to achieve greater consistency. Powers should instead be standardised to the highest standard across the board i.e. levelled up, *not* levelled down.

3.5 ComReg is of the view that different requirements and needs could be accommodated in a standardised regime by replacing the current *ad-hoc* legislative approach to enforcement powers within a single Act. This Act could list the enforcement powers capable of being exercised by regulatory bodies, and a schedule to the Act could indicate which bodies can exercise which powers (clearly, this schedule could be amended, as appropriate). So, for example it would be possible for Agency A to be given summons and search powers and Agency B just summons powers. The "power" is therefore standardised, but the set of powers granted to any given regulatory body would be as appropriate to that body's functions.

3.6 ComReg considers that the following powers are typical of those that could be standardised:

3.6.1 The power to obtain information by written request;

3.6.2 The power to require persons to attend in person before the regulator to give evidence or produce documents;

3.6.3 The power to appoint Authorised Officers and to conduct Authorised Officer inspections to ask persons to produce books, documents or records to allow the Authorised Officers to review documents etc., secure documents etc., and copy documents etc., and to ask persons for information;

3.6.4 The power to obtain search warrants and conduct Authorised Officer searches pursuant to same;

3.6.5 Statutory provision for how disputes in relation to documents seized by Authorised Officers or in response to a request for production of documents are to be resolved (for example in respect of claims of privilege, express provision should be made for the High Court to adjudicate the question of whether certain documents are privileged[6]. Legislation should clarify that when there is a dispute in relation to relevance, it is for a regulator to determine relevance);

3.6.6 The power to prosecute summary offences (indictable, summary or either way), including the power to seek costs[7] and outlining the time limit within which prosecutions must be initiated;

3.6.7 The power to impose administrative penalties in a statutory enforcement action;

3.6.8 The power to propose civil penalties to the High Court in a statutory enforcement action;

3.6.9 The power to resolve disputes regarding regulatory compliance; and

3.6.10 The power to accept binding undertakings.

3.7 In response to question 1(c), ComReg considers that the efficacy and effectiveness of regulation would be greatly improved by ensuring that regulators have access to a wide range of enforcement tools which carry with them a credible threat of significant financial sanction. In particular, ComReg advocates the following improvements:

3.7.1 It would greatly facilitate effective and proportionate regulation if regulators could directly impose civil financial sanctions (administrative fines) in appropriate circumstances.

[6] This would be consistent with the recommendation of the Law Reform Commission in its *"Report on bench warrants and search warrants"* published in December 2015.
[7] For example, Section 20 of the Transport (Tour Operators and Travel Agents) Act, 1982.

Although ComReg's position in relation to administrative fines is set out fully in response to question 2 ComReg's strong views are re-iterated again below.

3.7.2 Potential fines should be sufficiently high to act as a strong deterrent against breaking the law. Under the telecommunications regulatory framework, the penalty that may be imposed, following conviction on indictment, was drastically reduced in 2011. The potential penalty of €5 million or 10% of turnover (whichever was the greater) was reduced to a maximum potential fine of €500,000. ComReg considers that this was a retrograde step. Such penalties are extremely low in the context of the scale of many of the operators in the telecommunications sector. ComReg is concerned that these penalties may not be sufficiently high to deter businesses from breaking the law by contravening regulatory requirements. In severe cases, the revenues from breaking the law may be several million euro. Therefore, businesses could make a commercial decision to break the law, with any financial penalty being viewed as merely a *de facto* tax or levy, rather than an actual punishment intended to act as a deterrent. A restoration of the link between potential penalties and turnover would significantly increase the deterrence effect. ComReg notes that an increase in the financial penalties available following a criminal conviction could have a knock-on effect on the financial penalties imposed following civil action as a court could (incorrectly in ComReg's view) decide that that the maximum penalty achievable in a civil context may not exceed that which could be imposed by the criminal courts.

3.7.3 ComReg notes that issues that are frequently litigated in regulatory appeals are the scope and standard of review and the question of the degree of deference that the court should give to expert regulators. Legislation is for the most part either silent or open to interpretation on these issues. ComReg considers that there would be merit in clarifying these issues by way of legislation.

3.7.4 Aggrieved parties (typically competitors) should be given a means to seek damages for breaches of regulatory obligations where the regulator has made such a finding and where that has been affirmed by the court. Such a "follow-on" damages provision exists in the UK in the Communications Act 2003 and would, in ComReg's submission, provide an additional incentive for operators to comply with their obligations while compensating competitors who have suffered loss as a result of regulatory breaches.

3.7.5 Continuing offences to be provided for. ComReg considers that "continuing offences" are a very useful tool in regulatory enforcement. The existence of such offences and potential ongoing fines can act as a deterrent to regulatory gaming, particularly in industries where there are large profits at stake. ComReg notes that many of the "continuing offences" which applied to regulatory crimes in the telecommunications sector were revoked in 2011. ComReg considers that these offences should be re-introduced in the interests of robust regulation.

3.8 Finally, ComReg submits that consideration needs to be given to regulators having a greater role in prosecutions on indictment. A change to the current system, where indictable regulatory offences are prosecuted solely by the Director of Public Prosecutions ("DPP"), would have many advantages, including: avoiding of replication of functions and delay, more fully utilising a regulator's expertise in their particular sector, and encouraging regulatory compliance.[8]

# 4. Issue 2: Civil Financial Sanctions

4.1 While civil financial sanctions exist for breaches of the law in the electronic communications and postal sectors, they cannot be directly imposed by ComReg. ComReg considers that it would greatly facilitate more effective regulation if it could directly impose civil financial sanctions (administrative fines) in appropriate circumstances. ComReg notes the following advantages of such an administrative fining regime:

4.1.1 **Quick.** In contrast to court imposed financial sanctions, administrative fines could be applied more immediately, though of course still subject to all proper processes being followed.

4.1.2 **Proportionality.** Administrative fines would act as a greater deterrent for breaches of the law; their effectiveness would, allow for the amount of such fines to be proportionate to the breach in question.

4.1.3 **Efficient.** Administrative fines would enable the regulator's expertise, including knowledge of the facts, sectors and national markets, to be fully utilised.

[8] ComReg notes the position put forward in the paper "*Prosecutors, Regulators, Trial by Jury and the Prosecutor's Discretion"* given by Remy Farrell BL to the 11th Annual National Prosecutor's conference. https://www.dppireland.ie/filestore/.../PAPER_-_Remy_Farrell_BL.pdf

4.1.4 **Effective Deterrent.** Criminal prosecutions are often the most effective and efficient approach to ensuring regulatory compliance. However, in some regulatory cases, criminal prosecution may either not be practical or appropriate because of the evidentiary requirements, the complex economic analysis which may be required, and the criminal standard of proof. As a result, a market participant may not view criminal prosecution as likely and therefore the risk of prosecution may not act as a realistic deterrent in those cases. In such cases, an administrative fining regime may be more practical and appropriate. The mere possibility of the regulator imposing an administrative fine would encourage better compliance.

4.2 ComReg notes that other jurisdictions within the European Union provide for "administrative fines" imposed by telecoms regulators, rather than by the courts. For example in Germany, Spain, Finland, Italy, the Netherlands and the UK. This is in addition to those powers to impose administrative fines in other sectors in Ireland which are referred to in the Issues Paper.

4.3 ComReg strongly agrees with the statement at paragraph 2.19 of the Issues Paper that: *"Although concerns have been raised in relation to their adequacy, effectiveness and constitutionality, it would appear possible to design a civil financial sanction regime that is sufficiently strong to deter non-compliance while respecting the constitutional requirements"*

4.4 In conclusion, ComReg considers that legislation should provide regulators with a range of options for pursuing financial sanctions, including fines following criminal prosecution, fines imposed by regulators rather than courts, and fines imposed by a court following a civil action by a regulator. Regulators should have adequate discretion to choose the tools that best achieve their statutory objectives.

# 5. Issue 3: Negotiated Compliance Agreements

5.1 ComReg considers that negotiated compliance agreements are frequently an effective enforcement tool and would welcome steps to enable their more widespread use. In many instances, agreements to settle anticipated litigation, on terms which require the regulated entity to comply with the law, serve the consumer better than the regulator pursuing criminal prosecutions or civil sanctions. Such litigation can take a long time to complete and can be

expensive and may not represent the best use of the regulator's limited resources. Such litigation also may not ultimately result in a remedy which fully addresses the underlying non-compliance.

5.2 For most regulatory breaches, ComReg cannot enter into statutory settlement agreements. For a limited number of cases relating to suspected breaches of competition law, ComReg has a particular statutory mechanism for entering into settlement agreements namely under section 14B of the Competition Acts, 2002 to 2014. However the section 14B provision is of limited value. There is no risk of any sizeable financial sanction, should litigation proceed, and parties therefore have a limited incentive to enter into a settlement agreement under section 14B. In ComReg's view, negotiated compliance agreements work better if there is a real risk of a sizeable financial sanction being imposed, if the litigation proceeds.

5.3 While ComReg already has the implicit power to accept binding undertakings in certain circumstances and has on occasion settled litigation on the basis of voluntary agreements to rectify non-compliance, ComReg is of the view that express statutory provision for negotiated compliance agreements would be a valuable addition to its regulatory enforcement powers. ComReg agrees with the position in the Issues Paper that statutory provisions authorising these arrangements can give binding legal effect to arrangements and can help ensure that the agreement achieves its regulatory objective.

5.4 ComReg would caution that negotiated compliance agreements can be vulnerable to regulatory gaming and delays after they have been entered into. In this regard, ComReg agrees with the position in the Issues Paper that the effectiveness of such agreement: *"depends on a credible threat of escalation to court action. In other words, if there is no real likelihood of enforcement proceedings being commenced, there is little incentive for a person or corporate body to negotiate an agreement."*

5.5 ComReg submits that any express statutory powers to accept undertakings or to enter into negotiated compliance agreements need to be supported in the following ways:

> 5.5.1 They need to be very flexible as regards the actions that the regulator can require the regulated entity to take, the conduct that can be prohibited, and the remedies that can be demanded. This will help to prevent "gaming" and delays; and

5.5.2 If undertakings/negotiated compliance agreements are breached, this needs to be treated very seriously and it should result in very significant financial sanctions. These should be imposed by a court following civil or criminal action or directly by the regulator.

# 6. Issue 4: Deferred Prosecution Agreements

6.1 ComReg is broadly in favour of Deferred Prosecution Agreements ("DPAs") although it considers their potential use in a regulatory context to be limited. ComReg considers that if they were introduced, it would be appropriate for the regulator to have a role (provided for in statute) in negotiating DPAs (even if the regulator was not the prosecuting authority as in the case of indictable offences). ComReg considers that this would be appropriate in the sectors which it regulates because of its specialist expertise in sectors which are technically complex in nature. ComReg agrees with the position in the Issues Paper that the UK's statutory system would appear to be a preferable model for DPAs.

6.2 ComReg does have a power which involves deferred prosecution which has been a useful enforcement tool. This power is pursuant to section 44 of the Communications Regulation Act 2002 (As amended). In essence it allows ComReg to give notice of its intention to prosecute. The notice will indicate that if, within 21 days from its date, the person as far as is practicable, remedies its non-compliance to ComReg's satisfaction and pays to ComReg €1,500, they will not be prosecuted for the offence. ComReg considers the level of this sanction to be low and were it to be increased this power would act as a greater deterrent.

# 7 Issue 5: Coordination of Regulators

7.1 ComReg strongly supports the co-ordination of regulatory functions between regulators. ComReg notes the discussion in the Issues Paper of the interaction between the overlapping powers between it and the Competition and Consumer Protection Commission ("CCPC"). This approach has worked well in the past. ComReg's interaction with the CCPC (and its predecessor organisations the National Consumer Agency and the Competition Authority) has been positive and constructive and the sharing of know-how and expertise has helped achieve positive outcomes. There has at no stage been a need to utilise the mechanism under section 47F of the Competition Acts 2002 to 2014. ComReg does, however, consider it beneficial to have such a mechanism in place.

7.2 ComReg does not consider that the lead agency approach is "preferable" to co-operation agreements *per se*. ComReg thinks that the two approaches can be used together successfully, as they have been by the CCPC and ComReg. A co-operation agreement is, in ComReg's view, a more general statement of intent to co-operate and recourse to a lead agency approach would only be required in the context of specific cases. ComReg considers that where there is considerable overlap between powers of regulators, the choice as to who should act as lead agency would be better left open to individual circumstances. Any legislation in this area should not be overly prescriptive.

7.3 ComReg has co-operation agreements in place with the CCPC relating to competition and consumer powers. Co-operation agreements are statutorily enabled by section 19 of the Competition and Consumer Protection Act 2014.

7.4 ComReg has shared powers with the Office of the Data Protection Commissioner ("ODPC") and again, ComReg's experience of these shared powers has been positive. Regulation 33 of the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011[9] provides that ComReg and the ODPC: "*shall, in the performance of their functions under these Regulations, cooperate with and provide assistance to each other."*

7.5 In general, ComReg considers that regulators and their Authorised Officers should be able to work co-operatively in inspections and/or enforcement.

7.6 ComReg is of the view that the existing arrangements for co-operation agreements have contributed to regulatory efficiency and compliance and that they are an effective mechanism for improving regulatory co-operation and outcomes. ComReg considers that statutorily mandated co-operation agreements are advantageous for regulated entities as they are aware that regulators have a formal duty to work together. ComReg submits that a statutory basis be provided for co-operation agreements between regulators. Having co-operation agreements on a formal statutory footing reduces ambiguity and uncertainty. ComReg considers that it would be helpful for any statutory provision relating to regulatory

[9] S.I. No. 336 of 2011.

co-operation to enable sharing of information and to address any potential confidentiality or data protection issues arising.

# 8. Issue 6: Jurisdiction for Regulatory Appeals

8.1 ComReg is satisfied with the current regime whereby appeals of its decisions are brought directly before the High Court. ComReg is of the view that the hearing of appeals from its decisions by the High Court is working well and is vastly preferable to the pre-2007 regime whereby appeal was to a non-court appeals body (known as the Electronic Communications Appeal Panel[10] ("ECAP"). This unsatisfactory regime resulted in a delay of years for resolution of cases, which was reduced to potentially less than 6 months under the current right of appeal to the High Court. Such a slow moving appeals process was not suitable for the fast moving telecoms industry where appellants may have an incentive to tactically delay.

8.2 In ComReg's experience, the High Court (and in most instances the Commercial List of the High Court, the Commercial Court) has demonstrated sufficient expertise in the context of previous appeals. Any lack of expertise, in particular gaps in technical knowledge, could, in ComReg's view, be addressed by expert witnesses or *amici curiae* on a case by case basis.

8.3 ComReg considers that the Commercial Court or the High Court Competition List could be used to facilitate appeals. ComReg does not consider that a system of appeal to another lower court, such as the Circuit Court, would be an appropriate alternative. ComReg notes in particular the rigorous case management and the expertise available in the Commercial Court, which would not be available in other lower courts.

8.4 ComReg does not consider that provision should be made for a single, uniform appeals body of the type proposed. While such an approach may appear to have merits, in general, ComReg is of the view that one appeals panel operating across diverse regulatory spheres would not be feasible for the following reasons:

8.4.1 A single appeals body would require a standing panel of full time, dedicated, specialist lawyers, economists, financial professionals and other experts in order

[10] Established under Part 2 of the old regulations in this area, namely the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003.

to operate effectively. ComReg notes that a key failing of the ECAP was the delay caused by its *ad hoc* nature i.e. each appeal necessitated the assembly of a new expert panel. Having such a standing panel would likely be prohibitively expensive. Also, it would be difficult, if not impossible, to source a sufficient number of these professionals with expertise across all the very diverse regulatory spheres, without conflicts of interest, and who were available to sit permanently on such a panel.

8.4.2 Given the relatively small volume of regulatory appeals in Ireland ─ compared to the UK, where it is generally acknowledged that the Competition Appeals Tribunal (CAT) hears a high volume of cases─ it would be difficult to justify the high cost of a specialist standing tribunal.

8.4.3 A single appeals panel would not be capable of responding to the various dynamics of the different sectors being regulated. Further, a single appeals body operating different rules for different sectors would be complex and probably not practical. As different sectors' appeals mechanisms operate under different legislative requirements, it would be difficult to streamline the relevant appeals legislation in a way that would make it consistent and coherent. This is for example because some industries' review/appeals processes are constrained by the relevant European Directives.

8.4.5 Even if these practical difficulties were surmountable, ComReg considers that a single appeals body would likely be *slower* than the courts. This is because their decisions would likely be reviewable by a court: this introduces an extra layer and a delay to the process.

8.5 However, ComReg would support the introduction of an industry specific standing appeals mechanism similar to the CAT in the UK if such a mechanism were to be made available within the High Court and with a judge of the High Court chairing the tribunal. Standing tribunals such as the CAT allow for the development of expertise. They also create transparency about procedural rules, ensure consistency in rulings, and are administratively efficient. ComReg notes however that a specific standing tribunal may not be cost-efficient due to the probability of relatively small numbers of regulatory appeals.

## 9. Issue 7: Corporate Criminal Liability

In general, ComReg considers that it would be appropriate and useful to enact a statutory provision to determine how criminal liability is attributed to corporate bodies. ComReg considers that the suggestion that a statutory model would combine elements of the various approaches to determining criminal liability is appropriate.

## 10. Issue 8: Liability of Corporate Officers

In general ComReg considers that there is a role for liability of corporate officers in a regulatory context and in the manner described in the Issues Paper. ComReg considers that the risk of personal liability would be a significant deterrent.

## 11. Issue 9: The defence of Due Diligence

In general, ComReg does not consider that a “due diligence” defence is appropriate. ComReg agrees that any legislation should be drafted in such a way as to make it clear whether and in what circumstances company officer can be protected by seeking and/or relying on legal or other expert advice.

## 12. Issue 12: Appropriate Trial Venue

ComReg agrees that a more flexible approach to transferring criminal cases involving corporate bodies to or from a Circuit Court circuit, to the Central Criminal Court, or to the Dublin Circuit Court would be appropriate. A procedure along the lines of that used in New Zealand as described in the Issues Paper would be an appropriate method of dealing with applications to transfer to other courts.