



Commission for
Communications Regulation

Response to Consultation

ComReg's Approach to Regulatory Impact Assessment Response to Consultation and Guidelines

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1 Foreword

The Commission for Communications Regulation, (ComReg), is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radiocommunications and broadcasting transmission) and the postal sector. We are the national regulatory authority for these sectors in accordance with EU law which is subsequently transposed into Irish legislation

In its Consultation document 06/69, issued on 20th December 2006, ComReg set out its planned approach to conducting Regulatory Impact Assessment ("RIA"). This document contains ComReg's Response to Consultation and provides Guidelines on ComReg's approach to RIA.

RIA is an important part of ComReg's decision making process and these Guidelines set out the approach which ComReg will adopt when conducting RIA. The purpose of RIA is to establish whether regulation is actually necessary and to consider any alternatives. RIA is intended to determine the impact of any new regulatory measure or process, or any proposed changes to (including the withdrawal of) an existing measure or process, on all stakeholders, including consumers. It makes the regulatory process more transparent and by consulting with industry and consumers it ensures that the interests of all stakeholders are considered. RIA should therefore ensure the most effective approach to regulation is adopted. This will ensure that where regulation is necessary, the most effective and least burdensome regulatory option will be chosen.

Following a policy direction issued by the Minister for Communications Marine and Natural Resources issued in 2003 ComReg are required to conduct RIA in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better

Regulation programme. ComReg participated in the Better Regulation Group and in the publication of the RIA Guidelines.

RIA will be undertaken, where necessary, from the beginning of a project and stakeholders will be consulted from an early stage. In order to ensure any obligations which are imposed are enforceable and that compliance can be monitored any RIA will describe precisely how the proposed decisions should be complied with and will set the means by which compliance may be enforced and the range of possible sanctions for proven non-compliance.

Mike Byrne,
Chairperson

2 Introduction

- 2.1 These Guidelines and Response to Consultation follow Consultation document 06/69 "*ComReg's Approach to Regulatory Impact Assessment*" as issued on 20th December 2006. In that document ComReg set out its planned approach to conducting Regulatory Impact Assessment ("RIA") and sought views on this approach. It set out when ComReg will conduct RIA and the steps ComReg believe should be involved in conducting a RIA.
- 2.2 Section 13 (1) of the Communications Regulation Act, 2002 ('the Act') empowers the Minister for Communications Marine and Natural Resources ("the Minister") to issue such policy directions to ComReg as he or she considers appropriate, and ComReg must comply with any such direction. In 2003, the Minister issued such a policy direction to ComReg, Section 6 of which requires ComReg, before deciding to impose regulatory obligations on undertakings, to conduct RIA in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government's Better Regulation programme.¹ One measure adopted under the Government's Better Regulation programme is the RIA Guidelines². The guidelines are not legally binding upon ComReg, though, in conducting RIA ComReg will have regard to the RIA Guidelines, and, indeed, as discussed in the Foreword, ComReg has being involved in the creation and refinement of those Guidelines.
- 2.3 Document 06/69 and this response set out the approach ComReg will adopt to conducting RIA going forward. ComReg has conducted RIA in the past and this approach does not represent a significant or fundamental change to ComReg's approach to RIA, but endeavours to set out a formalised approach which will be used in future ComReg projects where a RIA is required.
- 2.4 ComReg would like to thank the three respondents to the consultation. These responses have been helpful in deciding upon the final approach to conducting RIA. The three respondents were BT Ireland, Eircom and Vodafone. Respondents were in general agreement with the principles as set out in 06/69.
- 2.5 ComReg does not want regulation to be overly burdensome and will, where possible, identify the opportunities to withdraw from or reduce regulatory intervention in the relevant markets in the transition to more effective competition. In each case, ComReg will establish all the options and select the best option of those available.
- 2.6 Appropriate use of RIA should ensure the most effective approach to regulation is adopted. By identifying the full range of regulatory options which are available to deal with a particular issue and assessing the potential effect of each option, RIA should establish whether regulation is in fact necessary, and if it is, it should allow ComReg to identify and impose the most effective measure.

¹ Ministerial Policy Direction made by Dermot Ahern T.D. Minister for Communications, Marine and Natural Resources on 21 February, 2003.

² Published by Department of the Taoiseach, Oct 2005 - www.betterregulation.ie

- 2.7 In the following sections of this consultation document the following issues are considered:
- Section 3 sets when ComReg will conduct RIA.
 - Section 4 sets out a 5 step approach to conducting RIA
 - Section 5 sets out ComReg's conclusions and
 - Appendix A (Document 07/56a) sets out Guidelines on ComReg's approach to RIA

3 When will ComReg conduct RIA?

- 3.1 Although the Government's RIA Guidelines are not legally binding upon ComReg, in conducting any RIA ComReg will take full account of those guidelines. However, the RIA Guidelines are intended to apply principally to regulation as it is carried out by the Government, i.e. by the enactment of primary or secondary legislation. ComReg's regulatory remit differs in that it regulates by issuing decisions e.g. imposing obligations or specifying requirements, and promulgating secondary legislation. Therefore there may be occasions when the RIA Guidelines will have limited application to situations that ComReg is dealing with, having regard to ComReg's statutory functions and objectives.
- 3.2 The purpose of RIA is to establish whether regulation is actually necessary, to identify any possible negative effects which might result from imposing a regulatory obligation, and to consider any alternatives. Under normal circumstances RIA will be conducted in the preparation of any ComReg document which proposes to impose a regulatory obligation, or amend an existing regulatory obligation to a significant degree, or which will otherwise significantly impact on the market or any stakeholder(s) or consumers.
- 3.3 ComReg expects to conduct RIA on the majority of its policy decisions, in accordance with the policy direction. However, in certain cases it may not be appropriate to do so. RIA is only mandatory, or necessary, in advance of a decision which could result in the imposition of an actual regulatory obligation.
- 3.4 In the past, ComReg has conducted RIAs in relation to market reviews and in the Universal Service Designation consultation papers³, and Ovum in a consultative document prepared for ComReg set out the impact of Number Portability in Ireland.⁴
- 3.5 In the future, ComReg will continue to conduct RIAs in respect of any proposed statutory instruments which would impose regulatory obligations, or in respect of any market analyses which propose to impose, amend or withdraw obligations, through the finding of SMP or effective competition (the latter resulting in the removal of obligations). ComReg will also conduct RIAs on consultations which propose significant regulatory action, for example: changes to the use of a frequency band (including limiting access to a band, or providing open access to a band); changes in numbering policy (where the changes would be expected to affect competition and/or would have significant implementation costs for the public and/or for operators); and future policy proposals on next generation networks if such policy proposals entailed significant cost or significant impact on stakeholders, competition or consumers.
- 3.6 Further examples of where ComReg will and will not conduct RIA were set out in document 06/69.⁵

³ ComReg documents 06/16, 06/29, 06/32.

⁴ ComReg document 99/01.

⁵ See Section 5 of ComReg document 06/69

- 3.7 In the following sections the views expressed by respondents to Document 06/69 in relation to the circumstances under which ComReg will undertake RIA are outlined and addressed in turn.

RIA Conducted at ComReg's discretion

Views of Respondents

- 3.8 One respondent believes the Ministerial Policy Direction creates an absolute requirement for ComReg to conduct a RIA in advance of issuing “regulatory obligations on undertakings in the market for electronic communications”. The respondent believes that conducting a RIA is a non-optional part of the policy making process and should inform all ComReg’s policy decisions about whether to engage in regulatory intervention and if so in what way. This respondent contends that ComReg has failed to comply with the Ministerial policy direction.
- 3.9 The respondent accepts ComReg’s view that where a requirement or obligation is imposed by statute, without any decision by ComReg, then ComReg is clearly not itself imposing regulatory obligations on undertakings. The respondent believes that in circumstances where ComReg has any discretion to determine how the statutory requirement or obligation should be implemented, then a RIA should be conducted.
- 3.10 The respondent believes that in addition to the national mandate ComReg has a mandate at the EU level, as the European Regulators Group (ERG) has stipulated in its Common Position on Remedies paper that Member State NRAs should conduct a regulatory options assessment, in which they weigh the net benefits that implementation of the obligation would bring to the national economy against the cost of implementing the measure.
- 3.11 The ERG text suggests RIA usually should result in the least onerous obligation which will deal with the problem identified and which is proportionate to the aims pursued. The respondent argues that ComReg is disregarding this guidance as advised by the ERG.

ComReg's Position

- 3.12 ComReg notes the respondent’s view. However, ComReg remains of the view that it must only conduct RIA where it itself has decided to impose a regulatory obligation. Where ComReg is charged with implementing a statutory obligation then it will assess each case individually and determine whether a RIA is necessary and justified, having regard to its degree of discretion and the principles of reasonableness and proportionality.
- 3.13 ComReg disagrees that ERG guidance has been disregarded. As set out in document 06/69⁶ ComReg does not want regulation to be overly burdensome and will where possible identify the opportunity to withdraw from or reduce regulatory intervention.

⁶ See for example paragraph 4.7

Curtailement of RIA where appropriate

- 3.14 It was proposed in document 06/69 that if it becomes apparent that imposing or withdrawing obligations would not be the optimum way to achieve ComReg's objectives, then the RIA process may be curtailed or ceased.

Views of Respondents

- 3.15 One respondent agrees a RIA may need to be ceased where no undertakings are found to have SMP, but was concerned that ComReg has decided not to conduct RIA in cases where it considers that withdrawing existing regulations would not be the optimum way to achieve its objectives. The respondent believes a RIA must be conducted where it is proposed that existing regulatory measures should be kept in place as it is not appropriate to assume that because regulations is already in place and is proposed to maintain unchanged that the relative costs and benefits have not changed since they obligation was first imposed. Nor is it appropriate to overlook costs of existing regulation on the basis they were considered proportionate in a previous RIA. A RIA must be conducted even where it is proposed that existing regulation not be withdrawn or amended.

ComReg's Position

- 3.16 ComReg remains of the view that where it becomes apparent that imposing obligations would not be optimum then the RIA process may be curtailed. Similarly where ComReg determines that withdrawing obligations would be optimum then RIA process may be curtailed.

Scope of RIA

Views of Respondents

- 3.17 One respondent believes that in the exceptional circumstances where interim regulation is required there should be a mechanism for ComReg to act without the need for lengthy RIA underpinning such regulatory action

ComReg's Position

- 3.18 ComReg agrees with the respondent that in some situations there may be an urgent need to establish regulation and undertaking RIA may not be practical. This is in line with the Government's RIA Guidelines (par 2.4) which state "Although RIA can potentially benefit all policy areas/regulations, it is not compulsory to apply RIA to the Finance Bill and some emergency, criminal or security legislation." ComReg therefore retains the right not to conduct RIA where regulation is required urgently and conducting RIA would significantly delay the introduction of such regulation.

4 Steps Involved in RIA

- 4.1 In conducting RIA, ComReg will take into account the six principles of Better Regulation set out in the Government White Paper *Regulating Better* (2004); these are necessity, effectiveness, proportionality, transparency, accountability and consistency. ComReg's values of integrity, professionalism, impartiality, effectiveness and transparency, as set out in the Strategy Statement 2005-2007⁷, will also be at the forefront when conducting RIA.
- 4.2 It is clear from part 6 of the Ministerial Direction that all RIA should be conducted strictly on an *ex ante* basis. RIA constitutes a central part of the decision-making process, hence it should be carried out from the outset of any review, or as close to the outset as possible. This should allow ComReg to appropriately consider the impacts of a range of regulatory measures, in light of comments received from affected parties. The RIA, where appropriate, will be presented as an addendum to the main consultation document, but will include a summary of the main points of the consultation.
- 4.3 ComReg will take a common sense and proportionate approach towards RIA. As decisions are likely to vary in terms of their impact, if, after initial investigation a decision appears to result in relatively lower impacts then ComReg would expect to carry out a lighter RIA in respect of those decisions.
- 4.4 The starting point for RIA is to set out the issue to be addressed. One then identifies the options which are available to deal with that issue. In doing so, ComReg will have regard to section 5 of the Ministerial policy direction and will impose regulation obligations only where it is necessary and justified; ComReg will also consider whether to forbear from imposing regulations and instead rely on market forces to achieve its objectives.
- 4.5 Document 06/69 set out ComReg's 5 step approach to RIA as follows:
 - Describe the policy issue to be addressed and identify the objectives
 - Identify and describe the regulatory options
 - Determine the impacts on stakeholders
 - Determine the impact on competition
 - Assess the impacts and select the best option
- 4.6 No respondent disagreed with this approach; however comments on the individual steps were put forward and are dealt with under the corresponding step below.

⁷ ComReg Document 05/77.

Step 1 Describe the policy issue & identify the objectives

- 4.7 As a first step in any project which requires RIA, the particular policy issue(s) and the background to the issue(s) need to be defined. The objectives of any proposed action must also be identified, i.e. what ComReg hopes to achieve by addressing the issue.
- 4.8 The objective will be linked to ComReg's statutory obligations and ComReg will impose regulation only where justified.

Views of Respondents

- 4.9 None of the respondents had any comments regarding this step and hence this will remain unchanged as the first step in any RIA conducted by ComReg.

Step 2 Identify and describe the regulatory options

- 4.10 The list of policy options which would achieve the stated objectives will then be determined. The first option would always be to make no change to the current policy, and all other possible policies would then be added to the list. International best practice shows that although the option of making no policy change will not always be practical, its inclusion can serve as a benchmark against which other options can be compared.
- 4.11 Other options include alternative forms of regulation include self-regulation and co-regulation, implementing different options and the option of not imposing any obligation.
- 4.12 Removing existing regulation will also be examined where possible, as will the reduction or increase of existing regulations. A "wait and see" approach may also be considered, where intervention is not made immediately and the situation is monitored and reviewed at a later date. Each option should be clearly described and explained.
- 4.13 In some cases, such as where an operator is found to have SMP, ComReg must impose at least one obligation. In such cases ComReg will set out why not regulating is not a valid option and will endeavour to choose the regulatory option which achieves its stated objectives by the least intrusive means.

Views of Respondents

- 4.14 One respondent believes ComReg should start by considering the option of withdrawing regulation, where existing regulation is in place, especially where no RIA was conducted when the original regulation was imposed, and that ComReg should next consider the option of not changing the existing regulatory regime. The respondent agrees that where appropriate, ComReg should explore more market-lead approaches to regulations and should consider whether there are alternatives to formal regulation, such as co-regulation and self-regulation.
- 4.15 The respondent argues that in identifying alternative options and developing policy proposals, ComReg's aim should be to think widely about the possible impacts of regulatory intervention, taking account of the whole value chain and

knock-on effects across the communications sector, therefore minimising unintended consequences.

- 4.16 Two respondents agree that maintaining the status quo can provide a useful benchmark of the value or otherwise of changing the existing regulation. One of these believes ComReg should give a formal commitment to examine a minimum of three regulatory options in every RIA as this will improve the prospects of the appropriate level of regulation being chosen.

ComReg's Position

- 4.17 ComReg has set out in this paper and in document 06/69 that alternative forms of regulation, including the non-imposition and removal of obligations, will be considered where applicable. ComReg will choose the option which best achieves the objectives as set out in step 1. ComReg does not believe there is a need to commit to examining a minimum of three regulatory options; however ComReg will look at different types of options which would best achieve the objectives.
- 4.18 ComReg's current practice is to apply the "no change to current policy" option as the benchmark option. ComReg will continue to use this policy as its benchmark in future.

Step 3 Determine the impacts on stakeholders

- 4.19 Having set out the options available the next step involves identifying the costs, benefits and impacts of each of these options. The impact on all stakeholders, including consumers, needs to be considered. Some of the costs of regulation are obvious, but others are hidden or unintended. There are a number of techniques which can be used to determine the impacts of the various regulatory options established, including cost-effectiveness analysis, multi-criteria analysis and cost benefit analysis. Often the choice of technique will depend on whether it is possible to place a monetary value on the costs and benefits of a proposal.

Views of Respondents

- 4.20 One respondent supports ComReg's stated position and requests that consideration should equally be applied to other network operator businesses, which may also have complex automated systems that could be impacted by any proposed regulatory change.
- 4.21 Another respondent agrees that the choice between the methods of assessing the impact of various regulatory options will depend on the feasibility of placing a monetary value on the benefits and costs of a proposal.

ComReg's Position

- 4.22 ComReg recognises that the regulatory decisions it makes may impact not only on the operator on which an obligation is imposed but also on other operators in the market and on consumers. ComReg agrees that in considering the impacts of any proposed obligations the impact on all stakeholders needs consideration and will, as set out in Step 5 below, consult with all stakeholders from an early stage.

- 4.23 Any risks which may be associated with any of the options must also be considered as it may not always be possible to determine with certainty all the impacts, costs and benefits associated with a particular policy option. The distribution of the benefits and costs should also be set out.
- 4.24 ComReg expects that at the start of a project it would be able to assess approximately the likely impact of different decisions. However the expected impacts may need to be revised at a later stage should further information become available.
- 4.25 ComReg remain of the view that the scope of the RIA should remain open to revision during the course of the consultation process. For instance, in cases where a lighter RIA was initially considered appropriate as the impacts of the decision on stakeholders were not deemed to be significant, it may be deemed necessary to undertake a detailed RIA should additional information come to light that was not previously available. Similarly, in cases where initially a detailed RIA was considered appropriate but information comes to light which suggests that a lighter RIA is required.

Step 4 Determine the impacts on competition

- 4.26 ComReg will also need to determine the impact each of the options might have on competition in any market. If a policy option would have negative effects on competition, ComReg would only proceed with this option if the benefits would outweigh any negative effects.

Respondents Views

- 4.27 No comments were received regarding this step.

Step 5 Assess the impacts and choose the best option

Impact Analysis

- 4.28 Section 6 of the Ministerial policy direction states that ComReg must impose regulatory obligations only where justified. Therefore, in assessing the impacts of the various options, ComReg will only choose an option to regulate which achieves the objectives where there is a clear advantage to doing so and where the benefits from such an option exceed the costs.
- 4.29 Current best practice appears to recognise that full cost benefit analysis would only be undertaken where it would be proportionate/in substantial cases and where robust, detailed and independently verifiable data is available and where such analysis is considered proportionate. Such comprehensive review will be undertaken when necessary. However, ComReg will always try and implicitly consider costs and benefits before coming to a decision. Where possible the costs and benefits of any proposed regulation will be quantified by assessing in detail to the greatest extent possible the impacts and side effects of regulation on stakeholders and the impacts on competition. ComReg will also, if appropriate, consider the impact on vulnerable or socially excluded users.

- 4.30 As it will not always be possible (or necessary) to quantify the costs and benefits such analysis will inform rather than determine ComReg's decision. As set out above there are other methods such as multi-criteria analysis which can be used to rank the options in order to choose the optimal one. Further, ComReg will consider the promotion of competition, the development of the internal market, the promotion of the interests of users within the community and the competitive impact when assessing which option is optimal.

Views of Respondents

- 4.31 One respondent argues that ComReg does not define criteria for assessing proportionality, and that despite the availability of robust, detailed and independently verifiable data, ComReg has not to date conducted a full cost/benefit analysis. The respondent argues that no standards have been set for assessing burdens costs or benefits. The respondent recognises that in some cases it may be difficult to quantify costs and benefits and suggests that where costs and benefits cannot be quantified it may be necessary to develop criteria by which to rank the options under consideration, and these criteria should be specified and should be linked to ComReg's statutory duties. The respondent believes that at a minimum costs and benefits should be described qualitatively.
- 4.32 This respondent objects to ComReg's dismissal of the cost of existing regulatory obligations in previously conducted RIA and further objects to what it calls facile, subjective qualitative assessment of costs and unsubstantiated assessment of the cost of implementing regulatory obligations in previous RIA.
- 4.33 Another respondent accepts that full cost benefit analysis is not proportionate for regulatory decisions that have minor impacts, however it believes that many of the regulatory interventions ComReg makes are of major significance and warrant a thorough cost benefit analysis. However this respondent does not believe that the cases where cost benefit analysis is viable are in any way exceptional and considers that most of the benefits and costs of any given regulatory proposal can be monetised once sufficient consideration is given to the linkages between the proposed benefits/costs and the conventional markets for goods and services that can yield the necessary prices.
- 4.34 This respondent believes risks and uncertainties in calculating monetised benefits and costs can be dealt with using techniques such as not assuming a "best case scenario" for costs. This respondent also notes that sensitivity analysis and the use of ranges are cited in the Government's RIA Guidelines and considers that these methods can ensure robust findings and should therefore be implemented by ComReg. Therefore they argue that highly accurate and detailed data that can be fully independently verified in all cases is not a necessary condition for obtaining robust conclusions, and obtaining the necessary monetised data is not only possible under exceptional circumstances.

ComReg's Position

- 4.35 ComReg recognises the benefits of conducting impact analysis when conducting RIA, and as stated out above ComReg will always try and implicitly consider costs and benefits before coming to a decision. ComReg further recognise the

benefits brought by full cost benefit analysis and a previous cost benefit analysis conducted by Ovum on behalf of ComReg on the impact of Number Portability in Ireland was of great assistance.

- 4.36 ComReg notes, however, that the quantification of costs is often easier than that of benefits. This is because the benefits of regulation, such as innovation and improved products and services, are spread across the economy as a whole and may be difficult to quantify.
- 4.37 Stakeholders will be consulted from an early stage in the process and any information provided will, where necessary and appropriate be used in determining the impact of regulation on stakeholders and consumers.
- 4.38 ComReg will, where necessary and appropriate, to carry out more detailed impact analysis, such as full cost benefit analysis on regulatory decisions which are of major significance.

Consultation with Stakeholders

- 4.39 ComReg set out in 06/69 that in cases where a comprehensive review is necessary, stakeholders will be consulted in any cost analysis from an early stage in the process. Stakeholders will often have to provide information required to carry out the RIA. Therefore all stakeholders will have the opportunity to input into any cost analysis. ComReg may directly request such input or a stakeholder may volunteer such information as it considers relevant.

Views of Respondents

- 4.40 One respondent, although supporting ComReg's continuing policy to request information through consultations, believes the impacts of regulations should be quantified as far as possible in a proportionate and reasonable timeframe as there is a concern that endless postulating could delay the decision-making process and further input should only be allowed when requested by ComReg to prevent a continuous re-working of the RIA.
- 4.41 One respondent considers that effective input from stakeholders to consultations on proposed regulatory actions can be promoted by ensuring that a range of regulatory options are considered in the RIA. This respondent believes there is a possibility that consultation respondents may provide evidence of impacts that were not initially considered, or were underestimated.

ComReg's Position

- 4.42 ComReg is aware of the important part impact analysis can play in determining the most appropriate form of regulation, and considers it imperative that stakeholders are willing to provide relevant cost data ComReg in a timely manner, as undue delay could delay regulatory implementation.
- 4.43 In such cases where information is required ComReg will stipulate a timeframe in which such information should be provided. Should the required information not be supplied in the given timeframe ComReg would have to come to its own conclusions in the absence of the information or any reasonable explanation.

- 4.44 ComReg will look at qualitative and quantitative data, however account will be taken of the fact that there is an incentive for those (negatively) affected by regulation to over-estimate costs, in particular those of compliance. Any RIA will be demonstrably independent and not solely dependent on information submitted by, or obtained from, any one sector or body. Such possible incentive will be taken into consideration and costs will be verified using independent information where possible. Any cost benefit analysis will take account of the time value of money and an appropriate discount rate will be used.
- 4.45 In answer to the second respondent ComReg will endeavour to consider a wide range of regulatory options when consulting on regulations.

Monitoring and Compliance

- 4.46 For regulation to be effective, ComReg needs to ensure that the obligations it imposes are enforceable and that compliance can be monitored. Hence any RIA will describe precisely how the proposed decisions should be complied with and will set the means by which compliance may be enforced and the range of possible sanctions for proven non-compliance. Therefore, a review mechanism also needs to be considered when choosing the optimal option which would consider enforcement and monitoring of compliance. The review mechanism should be used to evaluate the extent to which the regulation has achieved its objectives, it may also be useful in some cases to include a sun-setting clause whereby if a regulation is not renewed or remade it will expire on a certain date. For example, the market review process envisages that a regular review will be conducted.
- 4.47 The option which best achieves ComReg's functions and objectives should be chosen. RIA also aims to determine that the option which is eventually selected will have the desired impact. If the regulatory obligation or rule is not complied with, then it will not achieve its objective. Therefore, when assessing various regulatory options, during the RIA stage, ComReg will consider how compliance will be monitored and be enforced.

Views of Respondents

- 4.48 One respondent agrees that obligations must be enforceable and compliance and enforcement should be monitored. The respondent believes that this step should include a review of existing regulations and whether they have been effective or not. This should assist the development of effective remedies as there needs to be a real measure as to what is considered a successful implementation of a regulatory remedy.
- 4.49 The respondent further believes that ComReg should consider regulatory remedies within the RIA that in themselves are designed to maintain compliance rather than the traditional approach of setting a regulation where compliance or non-compliance is not demonstrated and it is only through a complaint or subsequent investigation that non-compliance is proven.
- 4.50 The respondent also believes if sun-setting clauses are to be applied, the triggers and expected outcomes need to be very clear and the subject of public

consultation so the community is aware of a future change in the regulatory regime and the impacts that these changes will have.

ComReg's Position

- 4.51 Any RIA will describe precisely how the proposed decisions should be complied with and will set the means by which compliance may be enforced and the range of possible sanctions for proven non-compliance. A review mechanism will be used to evaluate the extent to which the regulation has achieved its objectives. If a sun-setting clause is applies, the triggers will be clearly set out
- 4.52 When assessing various regulatory options, during the RIA stage, ComReg will consider how compliance will be monitored and be enforced. ComReg will also, where necessary, consider how these regulations will be reviewed.

5 Conclusion

- 5.1 ComReg must consider the impact of proposed regulatory decisions as they may impose a significant burden or cost on stakeholders. RIA provides a way of considering a range of possible options in order to choose the most effective form of regulation. RIA should establish whether regulation is in fact necessary, and if it is, it should allow ComReg to determine the best option by considering the impacts on all stakeholders and by assessing the advantages and disadvantages of each option.
- 5.2 ComReg does not want regulation to be overly burdensome and will, where possible, identify the opportunities to withdraw from or reduce regulatory intervention in the relevant markets in the transition to more effective competition.
- 5.3 ComReg expects to conduct RIA on the majority of its policy decisions, in accordance with the policy direction. However, in certain cases it may not be appropriate to do so. RIA is only mandatory, or necessary, in advance of a decision which could result in the imposition of an actual regulatory measure.
- 5.4 RIA will be undertaken from the beginning of such projects and will be developed as the project progresses. RIA, where appropriate, will be presented as an addendum to the main consultation document, but will include a summary of the main points of the consultation.
- 5.5 ComReg expect that at the start of a project it would be able to assess approximately the likely impact of different decisions, however this assumption may need to be revised at a later stage should further information become available. If, after an initial appraisal the decision appears to have relatively lower costs, then ComReg would expect to carry out a less detailed RIA.
- 5.6 ComReg will follow a 5 step approach to conducting RIA. In order to assess the impacts and select the best option the benchmark used will be to maintain the status quo. Impact Analysis will be used to assess the impacts of any proposed regulatory decision.
- 5.7 ComReg will consult with stakeholders from an early stage, as in many cases ComReg will need stakeholders to provide information to carry out the impact assessment. Any RIA will be demonstrably independent and not solely dependent on information submitted by, or obtained from, any one sector or body. Any cost benefit analysis will take account of the time value of money and an appropriate discount rate will be used.
- 5.8 ComReg needs to ensure that the obligations it imposes are enforceable and that compliance can be monitored. Hence any RIA will describe precisely how the proposed decisions should be complied with and will set the means by which compliance may be enforced and the range of possible sanctions for proven non-compliance.

Appendix A Guidelines

**ComReg Guidelines on Regulatory Impact
Assessment
See Document 07/56a**