



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# **Electronic Communications Strategy Statement 2019 - 2021**

## **Response to Consultation 19/09**

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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Additional Information

Draft ECS Strategy Statement 2019-2021	ComReg 19/09
Consultation Document on ComReg's Draft Strategy Statement for Electronic Communications 2019 - 2021	ComReg 19/09a
Publication of non-confidential submissions to Draft ECS Strategy Statement 2019-2021, ComReg Document 19/09	ComReg 19/52b
Electronic Communications Strategy Statement 2019-2021	ComReg 19/52

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# 1 Introduction

- 1 In February 2019, ComReg published its Draft Strategy Statement for the period 2019-2021<sup>1</sup>, setting out its draft strategy for the regulation of the Irish electronic communications sector and seeking views from interested parties. The consultation period closed on 25 March 2019.
- 2 ComReg is the statutory body responsible for the regulation of the Irish electronic communications and postal sectors. ComReg's mission is that, through effective and relevant regulation, ComReg facilitates the development of a competitive electronic communications sector in Ireland that attracts investment, encourages innovation and empowers consumers to choose and use communications services with confidence.
- 3 The electronic communications market is fast moving, with rapid changes occurring in, amongst other things, services, technologies, stakeholders and consumer expectations. As such, a challenge for ComReg is to anticipate and react appropriately to the changing environment, and to ensure that regulatory responses are timely and effective.
- 4 In 2017, ComReg published a Five Year Electronic Communications Sector (ECS) Strategy for the period 2017 to 2021. This document set out a vision for the communications sector, anticipated sectoral trends and challenges, and five Strategic Intents underpinned by 29 Goals. The Strategic Intents and Goals will guide ComReg towards the realisation of its Vision underpinned by its legal mandate. The Strategy Statement under consultation in this current process acts as a mid-term review of the Five Year ECS Strategy and reaffirms the five Strategic Intents identified in 2017.
- 5 The Draft Strategy Statement includes a revised set of trends which ComReg anticipates will shape the sector and pose regulatory challenges over the next two years. These are:
  - end-user experiences;
  - the electronic communications ecosystem and related markets;
  - evolving networks;
  - connectivity and the internet of things (IOT); and
  - the changing regulatory framework – the EECC.

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<sup>1</sup> ComReg Document 19/09.

6 Five Strategic Intents were identified in the five year ECS Strategy Statement; these remain unchanged in the mid-term review. These are:

<b>1.</b>	<b>Competition</b>	<b>The market delivers innovation and the greatest possible choice of wholesale and retail operators</b>
<b>2.</b>	<b>Consumer Protection</b>	<b>Consumers can choose and use communications services with confidence</b>
<b>3.</b>	<b>Investment</b>	<b>Efficient investment has enabled affordable, high-quality and widespread access to communications services and applications</b>
<b>4.</b>	<b>Enforcement and Compliance</b>	<b>Regulated entities comply with regulatory obligations</b>
<b>5.</b>	<b>Organisation</b>	<b>We are an effective and relevant regulator</b>

7 Thirteen responses ('Submission(s)') to the Consultation on the Draft Strategy Statement were received; five responses from industry operators, six responses from individual respondents, one from a civil society group, and one from an operator representative body (together referred to as the 'Respondent(s)'<sup>2</sup>). The list of Respondents is as follows:

- Association of Licensed Telecommunications Operators (ALTO) Limited ('ALTO');
- BT Communications (Ireland) Limited ('BT');
- Eircom Limited ('Eircom');
- Irish Central Border Area Network (ICBAN) Ltd ('ICBAN');
- Sky Ireland Limited ('Sky');
- Tesco Mobile (Ireland) Ireland ('Tesco');
- Three Ireland (Hutchison) Limited ('Three'); and
- 6 Individual Respondents ('Individual Respondents').

<sup>2</sup> Respondents' submissions have been published as ComReg Document 19/52b, "Electronic Communication Strategy Statement 2019-2021. Submissions to Consultation 19/09". Subject to the provisions of ComReg's guidelines on the treatment of confidential information (Document 05/24), confidential information has been removed from these documents – places where text has been redacted is clearly indicated.

- 8 Overall, the majority of respondents agree that the Draft Strategy Statement captured the most significant trends in the electronic communications sector and that the five Strategic Intents and associated Goals are appropriate. However, respondents also raised a number of observations and issues. This Response to Consultation presents a summary of submissions received, and ComReg's responses to them, using the questions posed in the Consultation to guide the document.
  
- 9 In concluding the consultation and arriving at its response set out in this document and in the final Electronic Communications Strategy Statement 2019-2021 (the 'Strategy Statement'), ComReg has had regard to its statutory functions, objectives and duties. ComReg is grateful for all submissions received in response to Document 19/09 and this consultation process more generally, including attendance and participation at the Stakeholder Breakfast held in October 2018. ComReg has given careful consideration to all the material submitted as well as to other relevant information. Please note that this Response to Consultation represents ComReg's overall position on the key issues raised by Respondents during the consultation process, but does not seek to respond to each individual comment.

## 2 Identification of Sectoral Trends

10 A challenge for ComReg is the need to anticipate and react appropriately to the changing electronic communications environment, and to ensure that our regulatory responses are timely, effective, reasonable, proportionate and justified. The Draft Strategy Statement identified a number of trends which are likely to shape the Irish electronic communications sector and pose regulatory challenges over the period 2019-2021. The five key trends outlined in the document were:

- end-user experiences;
- the electronic communications ecosystem and related markets;
- evolving networks;
- connectivity and the internet of things (IOT); and
- the changing regulatory framework – the EECC.

11 The following question was asked in the Consultation:

Q. 1 Do you agree that Chapter 3 captures the most important sectoral trends over the period 2019 to 2021? In providing your view, please also provide supporting evidence

12 Five respondents addressed this question and indicated that they were generally in agreement with the trends identified by ComReg.<sup>3</sup>

13 However, a number of additional comments were also submitted. These are outlined below.

### Connectivity and the Internet of Things

14 IoT devices are referenced by both Eircom and IBCAN. Eircom note that the growth in IoT and Artificial Intelligence have had a significant impact on the proliferation of smart home products. ICBAN's submission includes a number of queries regarding spectrum policy and IoT, in particular in relation to spectrum sharing.

### ComReg Response – Connectivity and the Internet of Things

15 ComReg notes that the increasing prevalence of IoT is referenced in throughout the Strategy Statement, in particular in Sections 4.49 to 4.55.

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<sup>3</sup> ALTO, Eircom, Sky, Tesco and Three

- 16 While certain Machine to Machine (M2M)/IoT technologies, are designed to operate in the spectrum bands assigned to fixed/mobile communication networks, the vast majority of M2M and IoT technologies will operate in the licence exempt frequency bands<sup>4</sup>.
- 17 Spectrum sharing is discussed in the Response to Consultation on ComReg's draft Radio Spectrum Management Strategy Statement for 2019 to 2021<sup>5</sup>. Specifically, ComReg will continue to facilitate the sharing of spectrum between different usages and users in a manner that improves the efficient use of spectrum, subject to the normal spectrum management and competition considerations. In addition, ComReg will continue its practice of issuing all authorisations on a non-exclusive basis (including, of course, where such an approach in respect of specific spectrum bands is required by law).
- 18 ComReg maintains that it cannot have a firm view on spectrum rights sharing (or pooling) and network sharing other than that it would look more favourably on agreements that would not unduly restrict competition and would deliver demonstrable benefits that are shared with end-users. Further, ComReg remains of the view that interested parties should be in a position to identify for themselves the types of potential issues and concerns that could be raised by a proposed collaboration agreement.

## **Net Neutrality**

- 19 Sky considers that there could be additional open and constructive dialogue on the issue of net neutrality. Three submits that Member States have interpreted the same net neutrality rules in different ways, causing uncertainty, and states that ComReg needs to ensure that regulation does not disincentivise innovation in areas such as IoT.

## **ComReg Response – Net Neutrality**

- 20 ComReg disagrees that there is uncertainty in relation to Net Neutrality, and notes that detailed BEREC guidelines are available in this regard. ComReg engages regularly with industry and DCCAIE on many issues and will continue to do so regarding Net Neutrality.

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<sup>4</sup> Recently ComReg has provided details on the availability of spectrum for IoT devices and refers interested parties to ComReg Doc 18/74 and particular Sections 3.6, 4.2.1 and 4.4.1 of that document.

<sup>5</sup> ComReg Document 18/117



## **Evolving Networks**

- 21 Sky submits that ComReg should consider assumptions regarding migration to all-IP networks, noting that Eircom continues to offer POTS based voice services to customers that have taken FTTH broadband services in the 300K footprint.

### **ComReg Response - Evolving Networks**

- 22 ComReg understands that the full migration to all-IP networks will take time and that this is the experience in other European countries. In particular, the movement from POTS based voice services to Voice over Broadband is likely to be underpinned in the future by the rollout of FTTH based broadband services together with the need to decommission the legacy PSTN platforms.

## **Changing Regulatory Framework**

- 23 Eircom encourages ComReg to recognise connectivity as a core objective in the new European Electronic Communications Code (EECC) and to use flexibility in regulatory interventions to promote investment in very high capacity networks (VHCN).

### **ComReg Response – Changing Regulatory Framework**

- 24 ComReg notes that the Strategy Statement includes references to the new objective of connectivity and how it aligns with the existing Investment Intent.<sup>6</sup>
- 25 Along with other European NRAs, ComReg is currently participating in a study being undertaken by the Board of Economic Regulators for Electronic Communications (BEREC) into the determinants of investment in VHCN<sup>7</sup>.

## **Trading Environment of MVNOs**

- 26 Tesco considers that the Strategy Statement should monitor the market for trends in MVNO entry and exit.

### **ComReg Response – Trading Environment of MVNOs**

- 27 ComReg actively monitors the fixed and mobile markets through its various data collection functions and research functions; this is set out in the Strategy Statement.<sup>8</sup> Industry may engage with ComReg in relation to specific concerns.

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<sup>6</sup> See, in particular, Sections 7.16 to 7.17.

<sup>7</sup> Additional details of this study are available on the BEREC website at [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/decisions/8218-decision-of-the-board-of-regulators-for-the-procurement-of-a-study-on-8220the-determinants-of-investment-in-very-high-capacity-networks-8211-a-system-dynamics-approach8221](https://berec.europa.eu/eng/document_register/subject_matter/berec/decisions/8218-decision-of-the-board-of-regulators-for-the-procurement-of-a-study-on-8220the-determinants-of-investment-in-very-high-capacity-networks-8211-a-system-dynamics-approach8221)

<sup>8</sup> See Sections 9.11 to 9.15.

## **Converged Services**

28 ICBAN requests that ComReg provide a stronger lead in setting and articulating the ambition for full fibre services. It submits that there is currently an ambiguity where mobile networks and fixed networks compete at one level, but act against each other in rural areas. ICBAN also asks ComReg to outline its perspective on converged services.

## **National Broadband Plan**

29 BT suggests that DCCAE and ComReg should consider investigating alternatives to the National Broadband Plan.

## **National Broadband Plan – ComReg Response**

30 ComReg notes that it has no decision making role in the design of the National Broadband Plan (NBP) nor in the award of any contracts under the NBP. As such, NBP decision making matters are outside of ComReg's remit, but instead are the responsibility of the DCCAE and the Minister.

## **Converged Services – ComReg Response**

31 ComReg is obliged to consider the regulation of recommended markets as specified by the EC. Insofar as broadband related markets are concerned, ComReg imposes regulatory obligations on those service providers designated as having significant market power and does so in a way that promotes competition and efficient investment to the benefit of end users. In addition, ComReg is technologically neutral.

32 ComReg notes that it has no decision making role in the design of the National Broadband Plan (NBP) nor in the award of any contracts under the NBP. As such, NBP decision making matters are outside of ComReg's remit, but instead are the responsibility of the DCCAE and the Minister.

## 3 Proposed Strategic Intentions

33 The Consultation posed two questions relating to the five Strategic Intents outlined in the Draft Strategy Statement, and repeated in Section 1:

Q. 2 Do you agree with the Strategic Intents discussed in detail in Chapters 4 to 8? In providing your view, please also provide supporting evidence.

Q. 3 Do you believe that the Goals associated with the Strategic Intents are appropriate, and relevant? In providing your view, please also provide supporting evidence.

### General Comments

34 Overall, there is broad agreement with the Strategic Intents outlined in the Draft Strategy Statement, with specific comments to this effect from ALTO, Eircom, Sky, BT and Tesco. Eircom note that ComReg should prioritise its focus on investment led competition, not only on retail competition.

35 There is also broad agreement that the Goals associated with the Strategic Intents are appropriate and relevant (Eircom, ICBAN and Sky). However, ALTO and Three note that ComReg's statutory objectives and functions are more relevant than Goals, and ICBAN and Three suggest that the large number of Goals may risk detracting from the focus of the Strategic Intents.

### ComReg's Response – General Comments

36 ComReg acknowledges that there is general agreement with the Strategic Intents as outlined in the Draft Strategy Statement. ComReg notes that the Goals guide the organisation in achieving its mission and vision as underpinned by its legal mandate.

37 ComReg acknowledges the role that retail competition plays. It recognises that industry players may first start as retail competitors, before making various networks investments and purchasing wholesale services and eventually investing in their own fixed or wireless network.

## Competition

### Strategic Intent 1: Competition

The market delivers innovation and the greatest possible choice of wholesale and retail operators.

38 As outlined in the Draft Strategy Statement, underlying all of ComReg's activities is the principle that effectively competitive markets deliver optimal outcomes in terms of investment and price, quality, choice and innovation. ComReg's role is to undertake targeted intervention to overcome market failures and to facilitate competition. The Draft Strategy Statement outlines three key ways in which ComReg promotes competition and consumer choice. These are:

- Access to markets – promoting competition via the SMP Framework
- Access to inputs – effective management of spectrum and numbering, and
- Access to consumers – active switching by consumers.

## Respondents' Views

### OTT Services

39 A number of respondents reference OTT services. ICBAN submits that ComReg does not identify how the growth of OTT services and connected devices are impacting upon ComReg's work or how these trends will be supported by ComReg. Eircom and Three propose that OTT services should be viewed as substitutes, rather than complementary services. Three notes that through increased data usage, OTTs drive the need for further investment by telecoms network, but that ECN providers are not rewarded with revenue or a return on investment.

40 Eircom expresses concern that OTT services may lead to an increase in end-user stickiness or consumers becoming locked into particular platforms.

### ComReg Response – OTT Services

41 ComReg notes that the growth in OTT is referenced throughout the Strategy Statement.<sup>9</sup>

42 ComReg actively monitors markets through data collection (including the QKDR) and research functions (e.g. surveys). Where required, ComReg supplements this information with external advice and research reports. ComReg's knowledge and research findings on topics, including OTTs and IOT, feed into various projects and decisions.

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<sup>9</sup> See, in particular, Sections 4.22 to 4.27.

- 43 Within its assessment of markets, ComReg takes full account of all relevant actual and potential competitive constraints, including OTTs where appropriate. To date, ComReg has not found OTTs to provide effective competitive constraints on more traditional services although the potential for this in the future is recognised. ComReg will continue to assess this in the course of market reviews.

### **Service Level Competition**

- 44 ALTO notes that service-level competition not only allows a competitor to develop a subscriber base and to develop economies of scale, but is also useful for niche segments such as enterprise customers where the disparate customer base means infrastructure competition is not easily viable.

### **ComReg Response – Service Level Competition**

- 45 ComReg accepts this submission, and has reflected this in the Statement of Strategy.

### **Wholesale Voice Call Termination**

- 46 Three's submission includes a number of comments about wholesale voice call termination on individual mobile networks, including a suggestion that the three criteria test as set out in the EECC may not be met in relation to this market. Three also refers to Article 75 of the EECC whereby the European Commission can set a maximum European wide mobile termination rate.

### **ComReg Response – Wholesale Voice Call Termination**

- 47 Since 2014, the European Commission has determined that fixed and mobile voice call termination markets are recommended markets which are susceptible to ex-ante SMP type regulation. ComReg notes that the EC has commenced a review of its current list of recommended markets, and has sought views on a range of issues<sup>10</sup>.
- 48 The EC notes that the setting of maximum fixed and mobile voice call termination rates (Eurorates) in the EU by 31 December 2020 will avoid excessive wholesale termination prices. In view of this the EC has raised the question of whether continued regulation of termination markets is warranted at an EU level.

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<sup>10</sup> Details of the consultation on the revision of the Recommendation on relevant markets are available on the European Commission website: <https://ec.europa.eu/digital-single-market/en/news/consultation-revision-recommendation-relevant-markets>

49 It would be premature at this stage to comment on whether a future market review would determine that deregulation is necessary. In considering the need for ex-ante regulation ComReg will have due regard to the provisions of the EECC as well as any policy direction and/or guidance provided by the European Commission.

### **Spectrum Allocation**

50 ALTO submits that ComReg should focus resources on spectrum and numbering management, as critical enablers in the telecommunications sector.

51 Three would welcome simple auction processes for spectrum awards and the design of spectrum auctions to avoid the risk of inflated prices. ICBAN would welcome some insight into how ComReg balances coverage obligations with the licence fees generated from spectrum.

### **ComReg Response – Spectrum Allocation**

52 ComReg agrees that spectrum and number management is a critical enabler of industry and prioritises its resources accordingly.

53 In relation to concerns around spectrum fees, ComReg notes that it does not have any revenue raising objectives in relation to the assignment of radio spectrum. Rather, in pursuing its objective to promote competition, ComReg takes all reasonable measures to encourage efficient use and to ensure effective management of radio frequencies. Spectrum fees are not determined by ComReg but rather the interaction of bidders themselves in an award process.<sup>11</sup>

### **Spectrum Leasing Process**

54 Three would welcome if the Spectrum Leasing process consulted on and decided upon in 2017 could be put in place.

### **ComReg Response – Spectrum Leasing Process**

55 The framework for the ex-ante review of spectrum trades, applying only to proposed transfers of spectrum rights of use, was established by ComReg in 2014<sup>12</sup>.

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<sup>11</sup> Interested parties are directed to Chapter 3 of Document 15/140.

<sup>12</sup> SI 34 of 2014 and ComReg14/11r

56 In 2017, ComReg consulted on extending the framework to proposed leases of spectrum rights of use<sup>13</sup> and on foot of that consultation, decided that it would extend the framework to include leasing. Doing so requires new regulations, to be made by ComReg under s.6 of the Wireless Telegraphy Act 1926 with the required consent of the Minister for Communications, Climate Action and Environment. Those regulations have been drafted and ComReg has been actively engaged with DCCAE with regard to having them finalised.

### **Wholesale FTTH Charges**

57 Sky references the growth in the number of Eircom consumers, high connection charges and the relationship between openair and eir retail. Sky submits that ComReg has not acknowledged or addressed the significant price increases in combined wholesale FTTH charges.

### **ComReg Response – Wholesale FTTH Charges**

58 ComReg has determined that FTTH connection and migration charges should be equalised to address this “first mover advantage”.<sup>14</sup>

### **Market Analysis**

59 ALTO requests that a fixed-timeline be applied for each relevant market analysis.

### **ComReg Response – Market Analysis**

60 The timings of ComReg’s work programme with relation to its market analyses is published in ComReg’s publically available action plan<sup>15</sup>. Within the last six months ComReg has published market analysis decisions with respect to four markets<sup>16</sup> with work on completing reviews of other markets ongoing. ComReg engages with Service Providers during the conduct of these market reviews.

61 ComReg has commenced work on its analysis of the Retail Access at a Fixed Location (RAFL) and the wholesale Fixed Access and Call Origination (FACO) markets. In this respect, it has engaged with a number of Service Providers and has also issued requests for information. These inputs will feed into ComReg’s ongoing analysis and ultimately into the publication of a Consultation document on the market analysis assessments for the RAFL and FACO markets. The timing of the publication of this Consultation will be published in ComReg’s action plan.

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<sup>13</sup> ComReg 17/47 and 17/82

<sup>14</sup> Decision D11/18

<sup>15</sup> Available on ComReg’s website: [www.comreg.ie/action-plan/](http://www.comreg.ie/action-plan/)

<sup>16</sup> Wholesale Local Access, Wholesale Central Access, Mobile Voice Call Termination and Fixed Voice Call Termination

## Consulting on Early Removal of Regulations (including PST Regulations)

62 ICBAN suggests that ComReg carry out a consultation on early removal of PST (telephony) regulations, the offer of sunset dates, or incentives on accelerated rollout in exchange for incentives in the cost recovery regimes.

## ComReg Response – Consulting on Early Removal of Regulations (including PST Regulations)

63 ComReg is engaging with Eircom on copper withdrawal. It is only once this has been agreed in principle that the withdrawal of the relevant services can be considered.

64 ComReg only seeks to regulate where necessary, having regard to a lack of effective competition. In doing so, ComReg is cognisant of the need to ensure any remedies it imposes continue to promote efficient investment, including in new technologies/services.

## Consumer Protection

### Strategic Intention 2: Consumer Protection

Consumers can choose and use communications services with confidence.

65 Electronic communications services are integral to how we work, communicate, shop, bank and access information, entertainment, and government services. As such, the ability to access and use electronic communications services with confidence is necessary for full inclusion and participation in an increasingly digital society. ComReg's commitment to supporting end-users of electronic communications was emphasised throughout the Draft Strategy Statement, with a particular focus on those with special accessibility requirements. ComReg aims to be an effective advocate for consumers and to provide expert input on matters affecting how markets work for consumers.



## Respondents' Views

### Actual Harms Identified and Different End Users

66 Three and ALTO consider that ComReg should focus on addressing “actual harms” identified. ALTO is of the opinion that ComReg should not apply “blanket regulation” but should recognise diversity in the needs of different end-users (Consumers, SMEs and enterprise customers). It submits that ComReg should ensure that the language around end-users versus consumers versus customers is accurately applied to ensure its regulation does not burden certain providers unnecessarily.

### ComReg Response - Actual Harms Identified and Different End Users

67 ComReg is mindful of its role as set out in the Communications Regulations Act 2002 as amended in respect of the specific objective to promote the interests of users within the community and of the specific obligation on ComReg to take all reasonable measures aimed at achieving this objective.

68 With respect to the needs of different users, ComReg is aware of and appropriately applies the distinction drawn in law in respect of obligations relating to consumers, subscribers and end-users (including SME's, businesses etc.). ComReg does not apply blanket regulation, but rather it gathers appropriate evidence and, after consultation, determines appropriate interventions in relation to certain user groups where necessary.

### Legacy Services

69 Eircom notes ComReg's recent decisions regarding payphones and printed directories, and expresses concern that legacy services may inhibit operators' ability to focus on future investment.

### ComReg Response – Legacy Services

70 ComReg is obliged to consider the need for legacy universal services and to implement a USO where appropriate. In making the decision to maintain the obligation and usage thresholds for payphones, ComReg took account of submissions received<sup>17</sup>, the information collected on foot of information request(s), and other relevant material.<sup>18</sup>

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<sup>17</sup> Consultation 18/85

<sup>18</sup> Interested parties are directed to ComReg Response to Consultation and Decision D01/19 for further information.

71 In making the decision to provide a printed directory on request for 2019, ComReg took account of the submissions received<sup>19</sup>, the information collected on foot of an information request, consumer research, and other relevant material.<sup>20</sup>

## Switching

72 Sky encourages ComReg to focus on wider regulatory/competition issues rather than narrow consumer issues. Sky propose that switching is generally straightforward for consumers and that ComReg should avoid a goal of “willingness to switch”.

## ComReg Response – Switching

73 ComReg recognises the role of inter and intra operator switching (switching plans while staying with the same operator) as an indicator of competition and also of consumer confidence and ability to choose communications services. ComReg does not have a “willingness to switch” goal per se, but recognises that it is vital, for competition and consumers, that consumers who wish to switch to a more suitable deal can do so without disincentives and impediments being put in their way.

74 ComReg notes that its responsibility for protecting consumers is set out in the Communications Regulations Act 2002 as amended and will continue to retain this role to protect and inform consumers.

## Consumer Rights

75 ALTO is of the view that the goals to ensure consumer rights throughout their journey are upheld by their service provider is “nice to have”. ALTO references the Measuring Licenced Operator Performance (“MLOP”) initiative and suggests that some mechanism of assessment might assist consumer expectations.

## ComReg Response - Consumer Rights

76 ALTO’s comments in respect of ComReg’s Goals relating to transparent information and upholding consumers’ rights are of concern to ComReg. ComReg considers these Goals to be critical components to ensuring that consumers can choose and use communications services with confidence. ComReg does not agree with ALTO that consumers’ rights are about setting customer expectations. ComReg remains of the view that operators should uphold consumer rights as legally required, and ComReg’s goal is aimed at ensuring this.

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<sup>19</sup> Consultation 18/80

<sup>20</sup> Interested parties are directed to ComReg Response to Consultation and Decision D17/18 for further information

## Redress Mechanisms

77 According to ALTO, effective redress mechanisms for consumers should be a matter for individual operators and their respective Codes of Conduct and terms of business.

### ComReg Response – Redress Mechanisms

78 ComReg agrees that consumers should be able to resolve issues with their service provider without intervention from ComReg. However, in practice this is not the case. Therefore, ComReg has set out specific obligations on all operators in respect of a Code of Practice for Complaints Handling<sup>21</sup>. This is in place and part of the ongoing monitoring undertaken by ComReg Retail Compliance is to ensure that all operators have the complaints handling procedures set out in a Code of Practice.

79 In addition, in accordance with the Universal Service Regulations<sup>22</sup>, ComReg may resolve disputes which remain unresolved after due completion of the procedures of the Code of Practice.

## Inadvertent Roaming

80 ICBAN considers that ComReg should take specific steps to protect consumers from inadvertent roaming charges that could arise following Brexit. BT submits that ComReg should address the potential uncertainty arising from Brexit.

### ComReg Response – Inadvertent Roaming

81 ComReg has provided information on its website in respect of roaming in the event of Brexit.<sup>23</sup>

## Handset Performance

82 ICBAN notes ComReg's interest in handset performance and would welcome proposals on any adjustments needed to the licence regime to support this variation in performance.

### ComReg Response – Handset Performance

83 ComReg acknowledges this comment from ICBAN.

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<sup>21</sup> ComReg 17/62 D04/17

<sup>22</sup> Regulation 27 (4) of the Universal Service Regulations

<sup>23</sup> <https://www.comreg.ie/brexit>

## Investment

### Strategic Intent 3: Investment

Efficient investment has enabled affordable, high-quality and widespread access to communications services and applications.

84 Underlying all of ComReg's work is the belief that effectively competitive markets drive commercial incentives which will motivate the investments necessary to bring innovative products and services to the market, and to generally improve service quality. The strategy for the upcoming period focuses on:

- Facilitating commercial investment,
- Creating regulatory incentives to invest where necessary, and
- Assisting policymakers.

## Respondents' Views

### Focus of Activities

85 Eircom submits that ComReg should focus on regulation that ensures efficient delivery of infrastructure and innovation. Three proposes that ComReg should place more emphasis on investment in its goals, particularly in light of the new objective of connectivity in the EECC.

### ComReg Response – Focus of Activities

86 ComReg acknowledges the emphasis on investment in the EECC, and notes that the Strategy Statement indicates how the connectivity goals align with the investment intent.

87 ComReg uses the range of regulatory powers and tools at its disposal to develop and enhance the ECS/ECN markets we regulate. ComReg's decisions send the appropriate investment signals (e.g. build or buy) to market players.

## USO

88 A number of respondents referenced USO. ALTO submits that the USO should not burden or cost the industry disproportionately.

89 ICBAN submits that ComReg should consider examining the incremental costs of extending the USO to include a Broadband service. Three notes that the NBP may assist with the delivery of the USO to rural areas.

## ComReg Response – USO

- 90 The EECC encompasses “access at an affordable price...to an available adequate broadband internet access service and to voice communications services...at a fixed location”<sup>24</sup>. The Directive is effective from December 2018 and is to be transposed into national legislation in each Member State by December 2020. ComReg will shortly be commencing the necessary preparatory work and is engaging with DCCAE.
- 91 ComReg notes that it has no decision making role in the design of the National Broadband Plan or the award of any contracts under the NBP. As such, these NBP decision making matters are outside of ComReg’s remit; the decision making with respect to these matters is the responsibility of the DCCAE and the Minister. ComReg notes the April 2019 announcement by the government that it intends to sign the contract for the NBP later this year.

## Coverage

- 92 ICBAN proposes that ComReg should set high and specific coverage obligations and that ComReg should also expand upon how it intends to measure and enforce these obligations. By contrast, Three suggests caution should be used to ensure that investment is not inhibited by making coverage obligations too onerous.

## ComReg Response – Coverage

- 93 In relation to coverage and roll-out obligations, ComReg notes that each spectrum award, including potential licence conditions such as coverage and/or rollout, is considered on a case-by-case basis, having regard to ComReg’s statutory functions, objectives and duties, relevant information and the specifics of the award under consideration.
- 94 ComReg recently published the results of three studies which provide advice on different aspects of improving connectivity in Ireland<sup>25</sup>. These Connectivity Reports will inform ComReg’s development of award proposals for its forthcoming spectrum awards and, in particular, its consideration of appropriate coverage and/or roll-out obligations. Further, it is hoped that the Connectivity Reports will inform interested parties’ views on the wider connectivity discussion, including the appropriate use of policy or regulatory interventions to secure extensive coverage outcomes. These reports are discussed in the Strategy Statement.<sup>26</sup>

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<sup>24</sup> Article 84(1)

<sup>25</sup> ComReg 18/103, ComReg 18/103b, ComReg 18/103c

<sup>26</sup> See Section 3.33, and footnotes 33, 34 and 35.

## **FTTx Coverage**

95 ICBAN proposes the discussion of investment in the Strategy Statement would benefit from the inclusion of cost data for achieving certain coverage levels of full fibre services, or a mix of FTTC cabinet and full fibre in-fill.

### **ComReg Response – FTTx Coverage**

96 In Decision D10/18, ComReg determined the price control obligations of margin squeeze for FTTH-based VUA and FTTH Bitstream given the cost and demand uncertainties around FTTH.

97 ComReg notes that it is technologically neutral in its decisions.

98 ComReg wishes to clarify that it has no decision making role in the design of the National Broadband Plan or the award of any contracts under the NBP. As such, these NBP decision making matters are outside of ComReg's remit; the decision making with respect to these matters is the responsibility of the DCCAE and the Minister.

## **Spectrum Allocation**

99 Three submits that additional spectrum to meet future demand in the mobile communications market should be released.

### **ComReg Response – Spectrum Allocation**

100 The spectrum bands proposed for award are covered in the Radio Spectrum Management Strategy Statement<sup>27</sup>.

101 While ComReg strives to meet the spectrum demands of all users, challenges can arise as the timing of demand for the same spectrum resource may differ between services/potential users. In addition, at any one time there may be demand for multiple spectrum bands or multiple spectrum management activities (e.g. the amendment of a licence) by a variety of potential users. Given practical considerations, such as resourcing, it may not be possible to carry out all of these activities at the same time.

## **Rate of Return**

102 Sky notes that Eircom's EBITDA is in excess of 50% and submits that this indicates a need for action from ComReg.

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<sup>27</sup> ComReg 18/118

## ComReg Response – Rate of Return

103 ComReg will be reviewing the allowable rate of return (“WACC”) in 2019. ComReg has recently made a number of decisions relating to Wholesale Local Access and Wholesale Central Access, including cost orientation obligations for its FTTC based services<sup>28 29</sup>.

## Policy Directions

104 ALTO cautions ComReg that policy directions can result in EU Framework incompatibilities.

## ComReg Response – Policy Directions

105 ComReg actively engages with DCCAE regarding legislation and the evolving EU framework.

## State Aid

106 With reference to Goal 19, ICBAN notes that ComReg should prevent the abuse of market position in the presence of state aid.

## ComReg Response – State Aid

107 For clarity, ComReg has no decision making role in the design of the National Broadband Plan or the award of any contracts under the NBP. As such, these NBP decision making matters are outside of ComReg’s remit. The decision making with respect to these matters is the responsibility of the DCCAE and the Minister.

## Fibre Rollout

108 ICBAN suggests that the process of NGA rollout should give ComReg and the Government some confidence in assessing steps that would accelerate the ambition of a full fibre access network

## ComReg Response – Fibre Rollout

109 Regarding ICBAN’s comment regarding a full fibre access network, ComReg notes that it is technologically neutral in its decisions. ComReg also notes that it has no decision making role in the design of the National Broadband Plan or the award of any contracts under the NBP. As such, these NBP decision making matters are outside of ComReg’s remit. The decision making with respect to these matters is the responsibility of the DCCAE and the Minister.

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<sup>28</sup> Market Review: ComReg 18/94

<sup>29</sup> Pricing Paper: 17/26

## Presentation of Information

110 ICBAN suggests that a further disaggregation of the data in Figure 17: Investment in ECCS/ECN would be useful.

### ComReg Response – Presentation of Information

111 This data was sourced from Eurostat, and a further breakdown is not available. The definition of this data is total investment including both tangible and intangible investment in telecommunication networks (without license fees) by all telecom operators.

## Enforcement and Compliance

### Strategic Intent 4: Enforcement and Compliance

Regulated entities comply with regulatory obligations.

112 Market regulation is only effective and meaningful if regulated entities comply with obligations. As such, one of ComReg's statutory functions is to ensure compliance by regulated undertakings with regulatory obligations. In relation to this function ComReg monitors compliance with obligations and may carry out investigations and pursue, depending on the circumstances, different enforcement options.

113 The Draft Strategy Statement outlines three elements to ComReg's enforcement strategy:

- Culture of compliance,
- Targeted compliance and enforcement, and
- Effective deterrence.

114 The Draft Strategy Statement sets out three key changes which ComReg believes could improve the current enforcement regime. These changes are:

- Providing for civil sanctions,
- Increasing the level of financial penalties, and
- Standardising powers.



## Respondents' Views

### Administrative Fines

115ALTO and Sky agree that the ability to impose administrative fines in appropriate circumstances would better facilitate effective regulation. By contrast, Three submits that court imposed fines are preferable to administrative sanctions and that it would not favour an increase in the level of financial penalties. BT also comments that ComReg's wholesale enforcement powers are insufficient, and suggests that the absence of effective wholesale enforcement powers should be a priority for ComReg.

### ComReg Response – Administrative Fines

116The Strategy Statement notes that the ability to impose civil financial sanctions in appropriate circumstances in the form of administrative fines would greatly facilitate effective regulation.<sup>30</sup> ComReg remains of the view that administrative fines are an important part of a fit for purpose regulatory toolkit. With regard to increasing the level of financial penalties, this proposal was confined to criminal offences following conviction on indictment.

### Transposition of the EECC and the ECN+

117In Three's view, the Strategy Statement could make stronger statements around ComReg's likely role in regulating the requirements of the EECC. Three notes that some OTTs locate their European headquarters in Ireland, meaning that ComReg may play a central role in ensuring compliance with EECC.

118BT refers to the European Law of Directive (EU) 2019/1 (commonly called the European Competition Network (ECN+)), and enquires about its incorporation into ComReg's powers.

### ComReg Response – Transposition of the EECC and the ECN+

119 ComReg notes that its remit is only to regulate activity in the Irish market; the physical location of companies that act overseas is largely irrelevant.

120ComReg also notes that while ComReg engages with DCCA, the transposition of the EECC and legal powers generally are a matter for the DCCA.

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<sup>30</sup> See, in particular, Sections 8.17 to 8.22.

## **RGM**

121 Sky submits that the implementation of Eircom's RGM is long overdue and notes its serious misgivings with the present situation. ALTO welcomes the RGM process.

122 Sky submits its observation that development requests from Eircom's retail arm are seemingly granted a higher degree of priority than comparable requests from other retail operators. Sky notes the importance that the appointees to the IOB have both the requisite expertise, and the force of personality necessary, to drive real cultural change.

123 BT requests an update regarding the status of the Independent Oversight Board (IOB).

## **ComReg Response – RGM**

124 The implementation of an enhanced RGM, by Eircom, is currently underway. ComReg has established a Regulatory Governance Unit within its Wholesale Division which is tasked with oversight of Eircom's regulatory governance including Eircom's adherence to the settlement agreement.

125 ComReg notes that the IOB was established at the end of May 2019. Eircom is required to implement the provisions of the Settlement agreement by 30 June 2019.

## **Requests for Information**

126 ALTO and Three suggest that ComReg consider appropriate timelines and notice in terms of requests to undertakings, and encourage the use of non-statutory based requests for information, where appropriate.

127 ALTO suggests that tailoring data collection to make it relevant to undertakings may assist ComReg to achieve meaningful and robust data in a timely manner.

## **ComReg Response – Requests for Information**

128 ComReg is an evidence based regulator and data from operators is necessary for our effective operation. However, we recognise the administrative burden that data requests may place on operators. ComReg is currently looking at ways to streamline periodic data gathering processes to maximise the regularity and certainty of data requests, and is engaging with industry on this matter. However, the rapidly evolving nature of the sector means that ad hoc requests for information, or requests requiring additional explanation, are unavoidable.

## Organisation

### Strategic Intent 5: Organisation

ComReg is an effective and relevant regulator.

129 In order to ensure continued effective and relevant regulation, ComReg will strive to be an active and dynamic organisation. We strive to be capable of responding to the rapidly changing environment and to be positioned, in terms of expertise, robust analytics and up-to-date information, to address issues that affect our ability to fulfil our mission. This strategic intent underlies the others in the Strategy Statement.

## Respondents' Views

### Prioritisation of ComReg's Internal Resources

130 Three notes that ComReg's workload has increased and become more complex, but that its headcount has not increased in line with the increased complexity.

131 Eircom proposes that ComReg's focus should be on the promotion of investment led competition and encouraging innovation. Eircom expresses concern that ComReg's resources are not always directed at interventions which have the greatest impact on the development of the sector.

132 ALTO proposes that ComReg should prioritise fundamental parts of regulation (e.g. market reviews and enforcement) and expresses concern that ComReg over-attends to consumer issues.

133 Three submits that additional resources should be allocated to tackling radio interference.

### ComReg Response - Prioritisation of ComReg's Internal Resources

134 To the extent that ComReg has discretion, ComReg considers the impact and importance of activities when allocating resources. ComReg notes, however, that the legal framework does not prioritise, for example, infrastructure and innovation over consumer rights.

135 ComReg has been given approval to recruit additional resources, some of which will be directed toward wholesale regulation and spectrum management. However, ComReg's view is that the deployment of additional resources towards these important activities should not come at the expense of consumer protection or compliance and enforcement matters more generally.

136 ComReg notes and agrees with Three's view as to the importance of its role in terms of interference investigation and proactive compliance activities.<sup>31</sup> In relation to Three's suggestion that ComReg should deploy additional resources to investigate cases of interference, ComReg notes that in 2017 it outsourced Class 3 and 4 interference cases, via competitive tender, to Butler Technologies. This arrangement allows ComReg to concentrate its limited resources on matters of highest priority, and on proactive tasks such as market surveillance and radio spectrum monitoring. These new arrangements have had a significant positive impact on ComReg's ability to respond to interference complaints.

137 ComReg will continue to engage with the DCCAE regarding our current and future staffing requirements.

### **Network Operations Unit**

138 ALTO requests greater clarity on the role of the new Network Operations Unit (NOU).

### **ComReg Response - Network Operations Unit**

139 The Annual Report of the NOU sets out in detail the legal basis for the work of the Unit, a summary of its activities in 2018 and its focus in the coming twelve months.<sup>32</sup>

140 Of particular interest to the NOU is Regulation 23 of the Framework Regulations, and ensuring that a provider of a "public communications network or a publicly available electronic communications service" fulfils the obligations under this regulation. Obligations contained in Regulation 23 include:

- Taking appropriate technical and organisational measures to appropriately manage risks to the security of such network or service, having regard to the state of the art and ensuring a level of security appropriate to the risk; and
- Any provider of a public communications network must also take appropriate steps to guarantee the integrity of that network.

141 The core deliverables and focus of the NOU are to:

- Provide technical support and information to ComReg's divisions;
- Ensure operators fulfil their obligations under regulation 23; and

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<sup>31</sup> Further information on ComReg's role in this regard is detailed in Response to Consultation on ComReg's draft Radio Spectrum Management Strategy Statement for 2019 to 2021 (ComReg 18/117)

<sup>32</sup> ComReg 19/31

- Oversee the reporting on network incidents by providers of public electronic communications networks and services made pursuant to Regulation 23(4) of the Framework Regulations.

### **Engagement with Industry**

142 Eircom, Sky and Three encourage further engagement between ComReg and industry.

143 Three suggests that lack of clarity on regulatory obligations may result in companies having their own interpretations of the law which can then lead to disputes with ComReg.

### **Engagement with Industry – ComReg Response**

144 ComReg engages regularly with operators. Specifically,

- ComReg issued many public consultations between January 2017 and April 2019
- Forums; ECAS, Disability workshops etc
- Meetings with industry stakeholders and representative groups
- Stakeholder events<sup>33</sup>

145 ComReg does not agree that operators' regulatory obligations are unclear. ComReg will continue to enforce regulatory obligations in accordance with its legal remit and statutory functions.

### **Withdrawal of Legacy Services**

146 Sky encourages ComReg to engage the broader industry on Eircom's announced rollout of FTTH to 1.4 million homes and the withdrawal of legacy services that will accompany this rollout.

147 BT submits that it has experienced rejected customer orders due to unavailability of copper access, and suggests that the withdrawal of copper networks has commenced in an unstructured manner.

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<sup>33</sup> In September 2017, ComReg hosted a national conference attended by over 140 stakeholders; a second national conference will be held in September 2019. In October 2018, a Strategy breakfast was held. This event was an opportunity for over 100 stakeholders to input into the Strategy; attendees included public bodies, operators, and civil society and consumer groups.

## **ComReg Response – Withdrawal of Legacy Services**

148 Regarding the withdrawal of legacy services, ComReg has already engaged in preliminary consultations. ComReg issued a call for inputs to industry in January 2016 outlining the proposed principles and notification procedures for withdrawal of the copper network and associated regulated access products<sup>34</sup>.

149 In addition, in July 2016, Eircom communicated to ComReg its intention to begin the process of the retirement of current generation access products<sup>35</sup>. Subsequent developments have included Eircom's planned FTTH rollout to 300,000 premises, and its announcement of plans to pass 1.4 million premises in urban areas with FTTH. ComReg have engaged with Eircom regarding this plan and are actively monitoring developments in this regard.

150 ComReg may consult further with industry on any future withdrawal of the copper access network and the associated regulated access products with the intention of formulating the set of principles, overall framework and conditions for this process.

## **Transposition of the EECC**

151 Three and ALTO would welcome early engagement with ComReg on its approach to EECC implementation. Both enquired if ComReg would conduct consultations or call for inputs.

## **ComReg Response – Transposition of the EECC**

152 ComReg notes that the transposition of the EECC is a matter for DCCAIE.

153 ComReg will engage, as appropriate, in education of, and discussion with, industry and consumers regarding the new legislation to implement the EECC when it is put in place by DCCAIE.

## **Implementation of Decisions**

154 Sky raises concerns that ComReg does not always implement its own decisions faithfully where difficulties or resistance from the SMP operator arise.

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<sup>34</sup> ComReg 16/01

<sup>35</sup> ComReg 17/05

## **ComReg Response – Implementation of Decisions**

155 ComReg completely disagrees with this characterisation of its approach to regulation. ComReg fully justifies its approach and imposes regulatory remedies to address identified competition problems in a transparent, proportionate and non-discriminatory manner. ComReg bases each of its regulatory decisions on the basis of all of the information provided to it at the time of the decision being made.

## 4 Additional Comments

156A general question was posed in the Consultation Document on the Draft Strategy Statement, asking respondents if anything else should be included in, or excluded from, the Strategy Statement.

Q. 4 Is there anything else that should be added to, or omitted from, this Strategy Statement?

157A range of comments were made which are summarised in this section.

### Respondents' Views

#### 5G Health Concerns

158Six individual respondents raise concerns about the potential health implications associated with the roll out of 5G networks in Ireland. The respondents submit that Ireland is being used as a testbed for new technologies, and that Ireland is not regulated as stringently as other countries. They call for a moratorium on the roll out of 5G in Ireland and on further auctions of higher frequency bands.

#### ComReg Response – 5G Health Concerns

159ComReg has no legal remit in respect of health concerns and as a result has no competence to engage with any stakeholders in this area. DCCAE is responsible for policy relating to the health effects of non-ionising radiation including electromagnetic fields<sup>36</sup>. In addition, the Environmental Protection Agency (EPA) has certain functions pertaining to non-ionising radiation.

160ComReg's role in relation to Non-Ionising Radiation is solely to ensure that licensed operators comply with the conditions of the General Authorisation and do not exceed the exposure levels established by the International Commission on Non-Ionizing Radiation Protection (ICNIRP).

161DCCAE has posted a set of frequently asked questions on its website which deals with amongst other issues; the introduction of new technologies and planning laws in respect of masts.<sup>37</sup>

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<sup>36</sup> S.I. No. 190 of 2019 - Radiological Protection Act 1991 (Non-Ionising Radiation) Order 2019.

<sup>37</sup> <https://www.dccae.gov.ie/en-ie/environment/topics/environmental-radiation/electromagnetic-fields/Pages/Frequently-Asked-Questions-on-Electromagnetic-Fields.aspx>



162 In respect of the allegation that regulations in Ireland are not as stringent as in other countries, it is not possible for ComReg to respond without further details of what regulations in particular this allegation applies to and which other countries are being used as comparators.

163 In respect of concerns related to planning permission, unwanted installations, protection of flora and fauna, lobbying actions of companies and advertising practices, these are not within ComReg's legal remit. However, to make these concerns known to the responsible parties, ComReg undertakes to notify the responsible bodies of these concerns once ComReg has published all the non-confidential responses received to the draft Strategy Statement Consultation.

164 ComReg is of the view that no argument has been presented that would prevent the proposed release of spectrum.

### **PESTLE Analysis**

165 Tesco suggest that ComReg should consider including its PESTLE analysis (referred to at page 22 of the Consultation) in an annex to the strategy statement.

### **ComReg Response – PESTLE Analysis**

166 ComReg considers and uses a range of frameworks when arriving at our Framework, Trends and Intents. Further information was set out in the 2017-2019 Statement of Strategy.