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Electronic Communications Strategy Statement 2017 - 2019

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Additional Information

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Consultation Document on ComReg's Draft Strategy Statement for Electronic Communications 2017 - 2019	ComReg 16/116
Publication of non-confidential submissions to Draft ECS Strategy Statement 2017-2019, ComReg Document 16/115	ComReg 17/30a
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1 Introduction

- 1 In December 2016, ComReg published its Draft Strategy Statement for the period 2017-2019¹ (the '**Draft Strategy Statement**'), setting out its preliminary strategy for electronic communications in Ireland and seeking views from interested parties. The consultation period closed on 17 February 2017.

- 2 ComReg is the statutory body responsible for the regulation of the Irish electronic communications and postal sectors. ComReg's vision for the sector is one where consumers and businesses in Ireland have affordable, high-quality, and widespread access to communications networks, services and applications that support their social and economic needs. The electronic communications market is fast moving, with rapid changes occurring in, inter alia, services, technologies, stakeholders and consumer expectations. As such, a fundamental challenge for ComReg is to anticipate and react appropriately to the changing environment, and to ensure that our regulatory responses are timely and effective. This strategy statement examines the longer-term context, sets out our strategic intent for the next five years, and establishes more detailed strategies for the near term. The Draft Strategy Statement sets out what ComReg considers to be the principal trends which are likely to shape the sector and pose regulatory challenges over the next five years. These are:
 - Non-uniform end-user experiences;
 - Expanding set of related markets relevant to the regulation of electronic communications;
 - Increase in connected "things";
 - Continued evolution of fixed and mobile networks; and
 - Changing EU regulatory framework.

- 3 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.

¹ ComReg Document 16/115.

4 Five Strategic Intentions were developed in the Draft Strategy Statement to promote this mission. They are:

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

5 Ten responses (**'Submission(s)'**) to the Consultation on the Draft Strategy Statement (the **'Consultation'**) were received from a range of industry stakeholders (together referred to as the **'Respondent(s)'**)²; five responses from industry operators, four from civil society groups, and one from an operator representative body. 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'**)
- Irish Rural Link Ltd (**'Irish Rural Link'**)
- Monaghan County Council
- National Disability Authority (**'NDA'**)
- Three Ireland (Hutchison) Limited (**'Three'**)
- Virgin Media Ireland Limited (**'Virgin Media'**), and

² Respondents' submissions have been published as ComReg Document 17/30a, "Publication of non-confidential submissions to Draft ECS Strategy Statement 2017-2019, ComReg Document 16/115". 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.

- Vodafone Ireland Limited (**Vodafone**).
- 6 Overall, the majority of respondents agreed that the Draft Strategy Statement captured the most significant trends in the electronic communications sector and that the five Strategic Intentions and associated goals identified by ComReg are appropriate. However, respondents also raised a number of concerns and issues. This Response to Consultation (the '**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.
- 7 In concluding the consultation and arriving at its response set out in this document and in the final Electronic Communications Strategy Statement 2017-2019 (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 16/116 and this consultation process more generally. ComReg has given careful consideration to all the material submitted as well as to other relevant information before it. 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

8 A fundamental 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 next five years. The five key trends outlined in the document were:

- Non-uniform end-user experiences;
- Expanding set of related markets relevant to the regulation of electronic communications;
- Increase in connected “things”;
- Continued evolution of fixed and mobile networks; and
- Changing EU regulatory framework.

9 A number of questions were posed in the Consultation:

Q. 1 Do you agree that Chapter 3 captures the most important sectoral trends over the coming five years?

Q. 2 Do you think that we are capturing the nature of the challenges posed by sectoral trends accurately?

Q. 3 Are there important sectoral trends that have not been identified in this document?

Respondents' Views

10 Three respondents indicated that they were satisfied that the trends identified by ComReg accurately captured the electronic communications market.³ However, in addition to the five identified in the Draft Strategy Statement, respondents identified three additional trends. These are outlined below.

³ Eircom, Vodafone and Virgin Media.

Call Termination Rates

11 BT and ALTO noted that call termination rates are an important trend, and that some European operators currently apply extremely high call termination rates to calls originating from outside the EEA. ALTO members suggested that call termination rates should be applied equally to all calls, regardless of the country of origination. BT, however, suggested that ComReg should consider if the currently mandated regulatory regime is still suitable for international trading. BT also made reference to Over-the-Top ('OTT') voice termination, and suggested the need for a strategy to allow for the timely addition of new call termination providers, including OTT providers, to the list of operators designated with SMP in the relevant call termination markets, so that there is equivalence of regulation for all parties terminating calls.

Brexit

12 The decision of the UK to leave the EU was identified as a potential risk to the Irish electronic communications sector by BT. ALTO and BT both indicated that call termination rates could become an increasingly important issue in a post-Brexit scenario.

Infrastructure Investment and Network Rollout

13 Vodafone noted a trend in investment and network rollout, and suggested that investment in fibre networks by competing operators could be encouraged through the reuse of physical infrastructure (e.g. ducts, poles etc.), and by ensuring passive access to the incumbent's network infrastructure. Vodafone indicated that this access could support co-investment agreements by two or more operators.

ComReg's Assessment of Respondents' Views

Call Termination Rates

14 ComReg does not have a remit over call termination rates charged by mobile service providers in markets outside of Ireland, including non-EEA countries. ComReg, notes, however, that in EEA countries call termination rates are subject to regulation under the EU Regulatory Framework. ComReg will consider the application of Irish service providers' call termination rates for calls terminating outside the EEA in the consultation on fixed and mobile call termination rates which is scheduled for issue later this year. Within this consultation ComReg will also consider all relevant forms of call termination and the nature of any regulation which is to be applied.

Brexit

15 ComReg agrees that Brexit, and the uncertainty around the future relationship between the EU and the UK, poses challenges for the Irish communications market and its consumers. A British withdrawal from the EU will have macroeconomic consequences for the Irish economy as a whole, with potential knock-on effects on, inter alia, investment, and demand in the electronic communications market. However, areas of particular concern for electronic communications will include, for example, termination rates and roaming charges. Brexit may raise particular challenges for those living in border regions or who travel frequently to the UK. ComReg are closely monitoring developments in relation to this issue.

Infrastructure Investment and Network Rollout

16 ComReg agrees that the reuse of civil engineering infrastructure could, in principle, lead to more deeply entrenched competition. ComReg has put forward proposals in the current market analyses of Markets 3a and 3b to enhance the effectiveness of these products and this will be an important area of focus.⁴ Without prejudging the outcome of the current consultations in respect of Markets 3a and 3b, ComReg notes it is unlikely that such access products will obviate the need for other forms of access remedies in the short to medium term, including for reasons associated with the economic viability of using civil engineering infrastructure in areas where lower premises density makes the business cases challenging; it is notable that, with some exception, widespread take up of such access products in most EU countries has been relatively limited. ComReg is open to proposals in relation to co-investment but is also of the view that caution would need to be applied before assuming that such models would lead to truly competitive outcomes. Additional text has been added to the Strategy Statement (paragraphs 5.37 and 5.39).

⁴ See ComReg Document 16/96, Section 8, regarding ComReg's proposals for the inclusion of civil engineering infrastructure obligations in the Wholesale Local Access market (Market 3A). ComReg expects to issue its final decision on Markets 3A and 3B in 2017.

3 Proposed Strategic Intentions

17 The Consultation posed four questions relating to the five Strategic Intentions outlined in the Draft Strategy Statement, and repeated in Section 1 above:

Q. 4 Do you agree with the Strategic Intentions outlined in Chapter 4, and discussed in detail in Chapters 5 to 9 of ComReg document 16/115 If not, please elaborate your reasoning.

Q. 5 Does the information provided in Chapters 5 to 9 accurately reflect the issues underlying the Strategic Intentions?

Q. 6 Do you think that any of the Strategic Intentions should be omitted? Do you think that another Strategic Intention should be included?

Q. 7 Are the Goals associated with the Strategic Intentions appropriate, and relevant? Should any of the Goals be removed or additional Goals included?

General Comments

18 Overall, there was broad agreement with the Strategic Intentions outlined in the Draft Strategy Statement, with specific comments to this effect from Eircom, Vodafone, Virgin Media, BT, ALTO and ICBAN. However, it was suggested that the document provide more detail around prioritisation, measurement of success and resourcing of the goals.⁵

19 A number of respondents⁶ made general comments around the development of the new EU Regulatory Framework currently under negotiation. These respondents suggested that ComReg should consult with industry on the development of this Code.

ComReg's Assessment of Respondents' Views

20 ComReg's Strategy Statement examines the longer-term context, sets out our strategic intent for the next five years, and serves as a framework for planning ComReg's activities for the next two years. On an annual basis, ComReg publishes an Action Plan. These Action Plans provide a detailed outline of the projects and activities planned for a given year, to the extent appropriate, which is an indication of the associated level of priority. In this context however, it is worth making a number of additional points:

⁵ Eircom, Virgin Media, BT and ICBAN.

⁶ Eircom, BT and ALTO.

- A number of programmes of work, projects and activities referenced in the draft Strategy Statement are statutory obligations. These obligations form the core of ComReg's annual priorities and annual Action Plans.
 - To the extent that ComReg has discretion, ComReg allocates resources towards those activities having greatest impact.
 - ComReg disagrees strongly with suggestions implying that ComReg should divert resources away from compliance and dispute resolution activities, for example.⁷
 - ComReg does agree, however, that, for example and as suggested in the submissions, more resources could be devoted to wholesale regulation or the release of spectrum⁸. However, ComReg's view is that the deployment of additional resources towards these important activities should not come at the expense of consumer or wholesale compliance and enforcement activities, but instead from the allocation of additional resources.
 - It is ComReg's goal to increase its human resources, subject to the necessary approvals, incrementally over the next five years.
- 21 ComReg provides input regarding legislative progress of the proposed new EU Directive establishing the Electronic Communications Code as a member of the Body of European Regulators of Electronic Communications (BEREC) and through the Department of Communications, Climate Action and Environment (DCCA). Operators and other stakeholders seeking to inform themselves of the progress of the review of the EU Regulatory Framework can monitor developments through the websites of the European Commission and European Parliament. In addition to responding to the Commission's open consultations, industry can have their views heard during Council hearings via the DCCA, as well as through MEPs and the EU Parliament.

Competition

Strategic Intent 1: Competition

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

⁷ Eircom.

⁸ ALTO, BT and Eircom.

22 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 benefiting consumers. 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

The Role of ComReg

23 Vodafone stated that where there are clear examples of ineffective competition, ComReg should move quickly to address any market failure. However, Eircom consider that ComReg should view competition as a means of improving consumer outcomes rather than as an end goal in itself.

SMP Obligations and Market Structure

24 As market incumbent, Eircom is subject to SMP obligations in a number of electronic communications markets. Eircom's submission contained a number of comments on this topic:

- Eircom consider that, increasingly, there is dynamic infrastructure competition in Ireland and that the competitive nature of the markets at both the retail and wholesale levels do not support the imposition of more detailed and burdensome regulatory obligations.
- Eircom consider that the markets at both the retail and wholesale levels are no longer characterised by a large number of small operators with a single large provider, but now comprise a small number of larger, well-resourced players, each with their own network infrastructure.
- Eircom consider that, in the context of retail markets where SMP has not been found, ComReg must not place undue regulatory restrictions on Eircom's retail operations based on findings of SMP in upstream wholesale markets. Eircom also suggest that ComReg should take into account the existence of Eircom's competitors when determining retail price controls to avoid the creation of inefficient pricing over and above the competitive level.

- Finally, Eircom suggest that areas where there are at least two competing networks present, a scenario where competition is happening at the deepest level of the network, i.e. infrastructure-based competition, it considers that lighter touch regulation or deregulation would be appropriate.

MANs Network

25 BT claim that the state-funded Metropolitan Area Network ('**MANs**'), currently managed by enet on behalf of the State, is actively competing in the market for national leased lines and distorting competition. While noting that ComReg does not manage the MANs project, BT encouraged ComReg to fully consider the impact of the MANs on the market.

ComReg's Assessment of Respondents' Views

The Role of ComReg

26 The principle underlying ComReg's primary activities is that effectively competitive markets deliver optimal outcomes in terms of investment, price, quality, choice and innovation, thus maximising benefit to consumers. In addition, pursuant to Section 12 of the Communications Regulation Act 2002, as amended by Regulation 16 of the Framework Regulations, ComReg is required to pursue the following three strategic objectives:

- Promoting Competition
- Contributing to the development of the internal market, and
- Promoting the interest of EU citizens.

SMP Obligations and Market Structure

27 Within its market analysis activities, ComReg fully considers the nature and extent of competition in relevant markets and the extent to which wholesale regulation impacts competition in related downstream markets, including retail markets. ComReg's preference is to seek to address competition problems at the most upstream level possible, thereby enabling downstream markets to potentially be de-regulated (or have lighter touch regulation applied). This is, of course, subject to the sufficiency and effectiveness of upstream regulation in adequately addressing competition issues in the relevant markets and related downstream markets.

MANs Network

28 In its recent consultation on its market analysis relating to wholesale high quality access⁹, ComReg has had regard to the role and impact of MANs. We are currently considering respondents' views and will further consider the role of MANs and its impact on competition in our final decision.

Consumer Protection

Strategic Intention 2: Consumer Protection

Consumers can choose and use communications services with confidence.

29 Electronic communications are increasingly 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

Wording and Terminology

30 In their submissions, the NDA and Irish Rural Link welcomed the specific references to people with disabilities and vulnerable users. The NDA made a number of comments around wording and appropriate terminology.

Users in Rural and Isolated Areas

31 Three respondents¹⁰ noted the importance of recognising the urban/rural divide.

32 Vodafone suggested that ComReg could release key spectrum bands to enhance rural mobile coverage and support capacity requirements, and referenced 2.6 GHz and 700 MHz spectrum bands. It suggested that reserve prices need to correctly reflect any population coverage obligations.

⁹ ComReg Document 16/69, "[Market Review: Wholesale High Quality Access at a Fixed Location](#)"

¹⁰ Irish Rural Link, Monaghan County Council and ICBAN.

- 33 Eircom and ICBAN considered that the Draft Strategy Statement placed insufficient emphasis on private investment in rural areas.
- 34 Irish Rural Link noted the lack of availability of electronic communications bundles outside of urban areas.

Consumer Rights

- 35 Irish Rural Link suggested that consumers should be made more aware of their rights, in particular at point of sale.

ComReg's Assessment of Respondents' Views

Wording and Terminology

- 36 ComReg acknowledges the submission from the NDA and has, where possible and appropriate, incorporated suggestions made, specifically in Paragraphs 1.13, 6.10 and 6.27. However, ComReg must remain mindful of the language used in the legislation, in particular, the use of the term "disabled end-users" in Regulation 17 of the USO Regulations.

Users in Rural and Isolated areas

- 37 In relation to the key spectrum bands that could enhance rural coverage and support capacity requirements ComReg's plans include progressing its proposed process, or processes, for the award of new spectrum rights of use in the 700 MHz band alongside new rights of use in the 1.4 GHz, 2.3 GHz, and 2.6 GHz bands, together with any other substitutable or complementary bands such as the 2.1 GHz band.
- 38 With regard to setting reserve prices for spectrum awards, ComReg observes that its current practice is to determine the spectrum fees for award processes on a case by case basis in light of the relevant circumstances of the spectrum award (such as the particulars of the rights of use/spectrum band, international benchmarks etc.) This approach provides for the consideration of coverage obligations in relation to spectrum fees, should coverage obligations be considered a relevant circumstance of the spectrum award.

- 39 In relation to the use of reserve prices in auctions, ComReg notes that it is the function of the competitive auction process, and not the reserve prices, to determine the final prices to be paid. ComReg's approach to date has been to set reserve price at a conservative level relative to benchmarking estimates such that the risk of choking-off demand is sufficiently low, while at the same time the reserve prices would be set sufficiently high to reduce incentives for distorted bidding behaviour.¹¹
- 40 The Strategy Statement notes the complementary nature of private investment in areas where population densities are low but still sufficient to support a certain amount of private investment (see Paragraph 3.8).
- 41 ComReg notes that evidence shows that bundle ownership rates do vary across regions: only 49% in rural areas compared to 70% in urban areas, and 77% in Dublin.¹² ComReg envisages that the NBP rollout and planned actions arising from the mobile and broadband coverage task force will increase the take up of bundles in rural areas in line with the growing trend nationally for triple and quad play bundles. Such a trend will be facilitated by the availability of the higher speed broadband.

Consumer Rights

- 42 ComReg's statutory objectives are to promote competition whilst promoting the interests of end-users of services.¹³
- 43 The electronic communications market is quickly evolving and consumers increasingly migrate to new advanced networks and services including services sold in a bundle. In relation to the provision of electronic communications, the Regulations¹⁴ specify that undertakings providing services shall do so in accordance with a contract. Importantly, providers are obliged to make available clear contractual information. There are seven specific areas that must be addressed in such a contract.

¹¹ See ComReg Document 16/49, "[Response to Consultation 15/131 on ComReg's Radio Spectrum Management Strategy 2016 – 2018](#)" Section 4.6.

¹² ComReg Document 15/123a, "[ICT Consumer Survey](#)" Slide 9.

¹³ Communications Act 2002, as amended, section 12 1 (a) and (c). Also, the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011.

¹⁴ Regulation 14 of the USO Regulations.

44 ComReg can also specify requirements¹⁵ with respect to the principle of Transparency, inter alia ‘promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services’. ComReg believes that in transition to new advanced networks and services, choice needs to be underpinned by an understanding of what services are on offer so that end-users can make informed choices. Therefore, with a view to ensuring that end-users can make an informed choice, the provision of adequate information on technology differences and service characteristics (including terms and conditions), is necessary.

Investment

Strategic Intent 3: Investment

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

45 As discussed in the Draft Strategy Statement, 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 proposed strategy for the upcoming period focuses on:

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

Respondents’ Views

46 Three respondents¹⁶ agreed with the importance of investment deeper into networks. Virgin Media consider that infrastructure based competition should be prioritised over competition that is dependent on access to Eircom’s network. Eircom commented that ComReg should focus on regulation that ensures efficient delivery of infrastructure and innovation, while Vodafone emphasised the delivery of gigabit connectivity by fixed and mobile means.

¹⁵ Regulation 15 of the USO Regulations.

¹⁶ Eircom, Virgin Media and Vodafone.

Network Rollout

47 In relation to the rollout of high-speed broadband, Virgin Media noted the importance of preserving incentives to invest in NGA, expressing a concern that cost-oriented price caps on NGA could discourage investment. Eircom noted that SIRO uses the infrastructure of a utility in another sector to help rollout its FTTH network. Eircom suggested that ComReg could work with the appropriate utility regulators to make using the infrastructure of a utility in another sector easier, as happens through the UK Regulatory Network. Eircom referenced the EU Broadband Cost Reduction Directive ('**BCRD**' Directive 2014/61/EU¹⁷) and suggested that the implementation of the Directive should be a focus for ComReg as should co-ordination with regulators in other sectors.

Spectrum

48 ICBAN suggested that ComReg's ambition for mobile coverage is not dealt with sufficiently, and requested a more thorough proposal on how ComReg's spectrum allocation policy can support the widespread use of IoT based devices. Three noted that sufficient spectrum to meet future demand in the mobile communications market needs to be released, while Vodafone suggested that ComReg should release key spectrum bands which will enhance rural mobile coverage and support capacity requirements (2.6 GHz and 700 MHz). Vodafone indicated its belief that a Spectrum Strategy needs to look at reducing costs for investors by adopting new models for investment such as joint network build, spectrum sharing and perpetual and long life licensing which provide a longer investment horizon for cost recovery.

IoT

49 Eircom suggested that ComReg should look into how obstacles to the Internet of Things ('**IoT**') could be alleviated from a regulatory perspective. Another operator noted that it was important that the regulatory implications of 5G are understood, especially in relation to mobile backhaul.

¹⁷ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

The Need for Appropriate SLAs

50 ALTO and BT raised concerns regarding the need for fit for purpose wholesale Service Level Agreements ('SLAs'). While acknowledging the work that ComReg has done to date, they consider an overall strategy to improve wholesale SLAs is required, noting that it is unlikely that material progress will be made through wholesale industry negotiation. Note this is currently subject of a high court appeal and mediation and that further regulatory action is proposed through remedies in Markets 3a and 3b.

ComReg's Assessment of Respondents' Views

Network Rollout

51 In relation to Virgin Media's observations on cost orientation, ComReg notes that this is the subject of a current consultation process¹⁸. However, in general, ComReg is of the view that appropriately constructed cost orientation price controls should not discourage investment while at the same time, for example, preventing excessive pricing.

52 As outlined in the Strategy Statement, ComReg has a role in facilitating access to physical infrastructure for the purpose of providing electronic communications under Section 57 of the 2002 Act and also under the Broadband Cost Reduction Regulations (see Paragraph 5.41 – 5.42).

53 ComReg's role under Section 57 of the 2002 Act is to specify the period for completion of negotiations and to act as the dispute settlement body in the event of a dispute arising in relation to the negotiation of physical infrastructure sharing. ComReg has published its process to handle disputes arising in relation to Section 57 of the 2002 Act.¹⁹

¹⁸ ComReg Document 16/96, "[Market Reviews: Wholesale Local Access and Wholesale Central Access](#)".

¹⁹ [ComReg, 2012, Resolution procedures developed taking account of Section 57 of the Communications Regulation Act 2002, 12/108, October.](#)

54 The Broadband Cost Reduction Regulation (S.I. 391 of 2016) has implemented the EU Broadband Cost Reduction Directive as of 20th July 2016. This Regulation gives network operators rights and responsibilities around seeking access to other networks. The Regulation also gives ComReg responsibility for adjudicating disputes. As outlined in the Draft Strategy Statement, ComReg has published its process to handle disputes arising in relation to the Broadband Cost Reduction Regulations.²⁰ On its website, ComReg has also published the published the “Single Information Point” to facilitate access to information regarding statutory permits for civil works required to develop elements of a high-speed public communications networks.²¹

Spectrum

55 In relation to mobile coverage, ComReg has considered this matter in detail in the Draft Strategy Statement and the Radio Spectrum Management Strategy Statement.²² ComReg agrees that coverage and/or rollout obligations are an important tool to ensure the efficient use of radio spectrum, and to promote the interests of users generally.

56 In relation to spectrum for IoT, ComReg observes that this matter is being considered by the relevant European bodies²³, as this is a wider international matter. ComReg will follow this work and adopt harmonised spectrum allocations as appropriate.

57 On releasing spectrum to meet demand, ComReg notes that it is currently holding an award process to release 350 MHz of spectrum in the 3.6 GHz band, and that it plans to progress the process, or processes, to award spectrum rights of use in the 700 MHz, 1.4 GHz, 2.3 GHz, 2.6 GHz and other substitutable or complementary bands such as the 2.1 GHz bands (noting that the licences in this band expire in 2022 and 2027 respectively).

58 For illustrative purposes, Figure 1 below details the total amount of harmonised radio spectrum that could be made available by ComReg should it continue to progress the proposed awards²⁴. This serves to highlight that an additional 740 MHz of spectrum could be made available for ECS/ECN which would almost treble the amount of spectrum from its current total of 405 MHz (i.e. the post-Multi Band Spectrum Award of 2012 (post-MBSA) assignments).

²⁰ [ComReg, 2016, Broadband Cost Reduction Regulations - Dispute Process, 16/77r, September.](#)

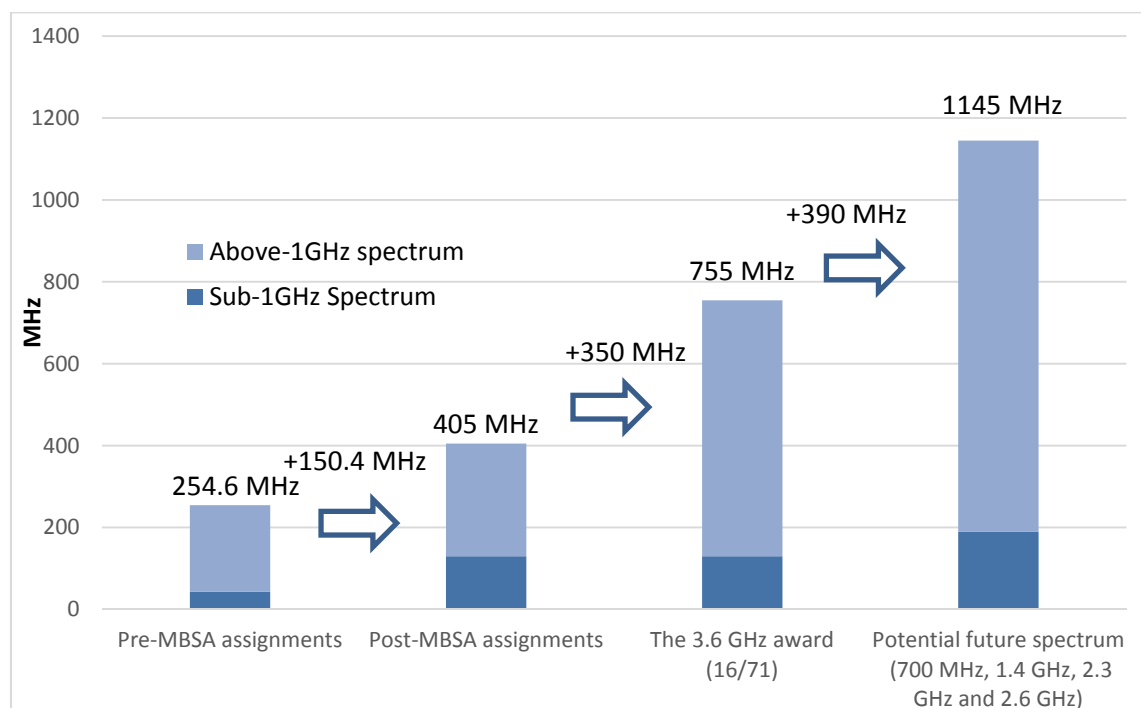
²¹ See <https://www.comreg.ie/industry/electronic-communications/single-information-point-bcrr/single-information-point-sip/>

²² See ComReg Document 16/50, “[Radio Spectrum Management Strategy Statement 2016 – 2018](#)”

²³ Including CEPT and the RSPG.

²⁴ Interested parties may note that there are a great number of facts and considerations to be finalised before any definitive positions are reached in respect of the particulars of such future award(s) and such extensive considerations are likely to be the subject of public consultations as appropriate.

Figure 1: Total harmonised spectrum available for mobile, nomadic and fixed wireless broadband services



59 Finally in relation to Vodafone’s comment suggesting that ComReg’s Radio Spectrum Management Strategy needs to look at reducing costs for investors by adopting new models for investment such as joint network build, spectrum sharing and perpetual and long life licensing, which provide a longer investment horizon for cost recovery. ComReg notes that that these issues were considered in the Radio Spectrum Management Strategy Statement 2016-2018.²⁵

60 In relation to collaborations between Mobile Network Operators, ComReg indicated that:

- As there are many forms of collaboration and, further, that the benefits and drawbacks of each collaboration will depend on the specifics of the proposed collaboration, 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 (e.g. competition law) that could be raised by a proposed collaboration agreement.

²⁵ See ComReg Document 16/49, “[Response to Consultation 15/131 on ComReg's radio spectrum management strategy 2016 – 2018](#)”, Sections 4.3 and 4.4, and ComReg Document 16/50, “[Radio Spectrum Management Strategy Statement 2016 – 2018](#)”, Sections 7.3 and 7.4.

IoT

61 It is difficult to anticipate the regulatory implications of 5G as it is still an unspecified and undefined concept. Considerable work is ongoing at an international level in relation to the spectrum harmonisation²⁶ and ComReg is contributing, developing and promoting Ireland's position in relation to the spectrum management aspects of 5G technology.

The Need for Appropriate SLAs

62 ComReg, as part of its current market reviews, is considering a range of regulatory obligations, including, inter alia, SLAs. We also note that a recent dispute determination in respect of SLA terms and conditions is currently under appeal.

Enforcement and Compliance

Strategic Intent 4: Enforcement and Compliance

Regulated entities comply with regulatory obligations

63 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.

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

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

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

- Provide for civil sanctions,
- Increase the level of financial penalties, and
- Standardised powers.

²⁶ Including by CEPT, the EC, and the RSPG.

Respondents' Views

66 Eircom and Vodafone commented favourably on the concept of the culture of compliance in the Draft Strategy Statement, while Three believes that there should be an appropriate balance between engagement and enforcement.

Efficiency and Timeliness of Compliance Action

67 BT and ALTO expressed concern that some regulatory remedies imposed by ComReg are not always appropriate or fit for purpose, and Eircom suggest that ComReg's resources are not always directed at interventions which have the greatest impact on the development of the sector.

68 Concerns were also raised about the length of time it takes for compliance activities, dispute resolution and market reviews to be carried out. ALTO referred to the Towerhouse/Eircom dispute as a basis for its submission that ComReg is failing in this area, and Eircom noted that the review of retail line rental was due in 2014. Whilst acknowledging the good work done by staff there, BT believe that ComReg needs a Strategy around the resourcing of its Wholesale Compliance function. In addition, ALTO considers that the resources allocated to retail compliance is inconsistent with failures in Wholesale regulation.

Proposals to Improve ComReg's Current Enforcement Regime

69 Three and Virgin Media indicated their belief that ComReg already has sufficient powers to carry out its responsibilities appropriately. Eircom indicated that it has no objection, per se, with ComReg seeking the ability to impose higher fines and criminal penalties. However, it believes that ComReg could do more to improve certainty and consistency around current fines and enforcement priorities. Eircom also suggested that ComReg could provide additional guidance in relation to compliance activities.

The Cost of Compliance

70 Three respondents made comments about the cost to operators of complying with regulation.²⁷ Eircom, ALTO and Virgin Media referenced 13D notices and suggested that ComReg's data requirements be streamlined. In addition, ALTO noted the cumulative burden of receiving numerous consultations around the same time, and suggested that ComReg send out requests for information more evenly across the calendar year.

²⁷ ALTO, Eircom and Virgin Media.

71 Virgin Media suggested that ComReg should explain in the Strategy Statement how it proposes to apply cost-benefit analysis in decision-making to ensure that interventions are appropriate and not overly burdensome. Eircom also emphasised the value of high quality Regulatory Impact Analyses ('RIA's).

Eircom's Regulatory Governance Model

72 Concern was expressed by a number of respondents²⁸ about the lack of emphasis in the Draft Strategy Statement on Eircom's Regulatory Governance Model ('RGM') and ComReg's ongoing review of the RGM²⁹. Vodafone believes that structural separation is required, supported by full Equivalence of Inputs ('EoI'). BT suggest that ComReg needs a strategy to resolve the issues raised through the RGM as the Styles Report undermined confidence in ComReg. ALTO also suggested that ComReg should set out strategy with respect to the vertical structure of Eircom.

ComReg's Assessment of Respondents' Views

Efficiency and Timeliness of Compliance Action

73 ComReg has finite resources and prioritises its efforts to deliver optimal outcomes across a wide range of functions and objectives. Where ComReg has a function to monitor or ensure compliance or to determine disputes, it must exercise this function in a manner that is reasonable, proportionate, justified and in accordance with the rights of all parties, including those under investigation. The time necessary differs according to the specifics of each individual case.

Proposals to Improve ComReg's Current Enforcement Regime

74 ComReg acknowledges the comments made by Respondents. Our Mission is that through effective and relevant regulation, we facilitate the development of a competitive communications sector in Ireland that attracts investment, encourages innovation and empowers consumers to choose and use communications services with confidence. In order to achieve this mission, ComReg requires an effective set of powers to incentivise compliance and effectively monitor and enforce. We believe that effective powers of enforcement and sanction ensure that regulatory action acts as a genuine deterrent.

²⁸ BT and ALTO.

²⁹ ComReg Document 17/17, "[Review of eir's Regulatory Governance Model](#)".

75 In this context, ComReg is often hampered by the limits of the regime within which it operates. Improvements to its enforcement powers (both criminal and civil) would facilitate ComReg in maximising its limited resources. This is why ComReg has advocated for changes to the enforcement regime in which it operates. In particular, we have, in 2012 and 2016, made submissions to the Law Reform Commission noting the necessity that the enforcement regime embody a significant element of deterrence. The proposed changes are based on the following:

- **Enhanced NRA independence** with effective dissuasive penalties and provision for proportionate sanctions through penalties and orders imposed by the NRA directly without having to resort to national courts.
- **More efficient sanctions and penalties** because administrative penalties utilise NRA expertise, knowledge of facts and national markets without having to first resort to the national courts.
- **Harmonised administrative penalty provisions** through the provision of the same set of competencies for the imposition of penalties which allows for a coherent regulatory approach for all NRAs. This is consistent with other recent sectoral EU legislation while also providing for a mechanism to address national constitutional limits (an analogy might be drawn with the transposition of the Gas and Electricity Directives in the Energy Act 2016).
- **Proportionate and dissuasive penalties** because they are linked to annual turnover and again harmonised throughout Member States with a specified upper limit that is sufficiently high to act as a credible deterrent. This is consistent with other sector specific EU legislation (the Gas and Electricity Directives and GDPR).
- **Dissuasive sanctions** by creating express liability and credible enforcement risk from express provision for consumer redress through compensation for end-users. An ability for the NRA to require this directly without having to resort to national courts or to expect consumers to be in a position to effectively bring follow on actions for damages.

The Cost of Compliance

- 76 ComReg is an evidence based regulator and data from operators is necessary for our effective operation and for effective and appropriate regulation. However, we recognise the administrative burden that data requests may place on operators. We are currently looking at ways to streamline data gathering processes to maximise the regularity and certainty of data requests, and to minimise ad hoc requests. However, while we will work to systematise regular data collection in as an efficient and effective manner as is possible, the rapidly evolving nature of the sector also means that ad hoc requests for information, or requests requiring additional explanation are inevitable.
- 77 ComReg is not required to conduct cost benefit analysis; the current requirement on ComReg is to undertake a RIA. When ComReg is charged with implementing a statutory obligation, it assesses each case individually and determines whether a RIA is necessary and justified, having regard to its degree of discretion and the principles of reasonableness and proportionality. The RIA is a structured approach to the development of policy, and analyses the probable impact of a proposed new regulation or regulatory change on different stakeholders, on competition and on consumers and also the key risks associated with each option. It helps identify regulatory options, and indicates whether or not a proposed regulation is likely to have the desired impact, and, in certain cases, suggests whether regulation is or is not appropriate. A RIA enables ComReg to assess the alternatives to regulation—such as no intervention, self-regulation or performance based regulation amongst others. A RIA therefore increases transparency of decision making and ensures the best possible outcome for stakeholders, consumers and competition.
- 78 ComReg’s approach to RIAs is set out in the Guidelines published in August 2007, in ComReg Document No. 07/56 and 07/56a³⁰. In conducting a RIA, ComReg also takes account of the RIA Guidelines, adopted under the Government’s *Better Regulation* programme. We will continue to consider the implications and proportionality of regulatory initiatives, having regard to best practice and any legislative requirements.
- 79 The RIA Guidelines note that cost-benefit analysis may be extremely difficult due to a lack of reliable data, and that, in particular, estimating the effects on consumers, including intangible benefits, can be particularly challenging. In determining the impacts of the various regulatory options, current best practice appears to recognise that full cost benefit analysis would only arise where it would be proportionate or in exceptional cases where robust, detailed and independently verifiable data is available.

³⁰ ComReg Document 07/56 “[ComReg’s Approach to Regulatory Impact Assessment – Response to Consultation and Guidelines](#)” and ComReg Document 07/56a “[Guidelines on ComReg’s Approach to Regulatory Impact Assessment](#)”.

Eircom's Regulatory Governance Model

- 80 In 2016, ComReg engaged KPMG and Cartesian to review Eircom's Regulatory Governance Model (RGM) including an assessment of the scope and quality of Eircom's regulatory governance structures and the operation of the associated processes and procedures. The review also included consideration of Eircom's structure and organisation in the context of their potential impact on the effectiveness of Eircom's governance arrangements in respect of its regulatory obligations.
- 81 On receipt of the consultants' reports, ComReg will consider the findings and recommendations and whether further actions are necessary. Such actions may include a consultation on Eircom's regulatory obligations, or the case for an appropriate form of separation, including potentially functional separation of Eircom.
- 82 ComReg will in parallel decide whether compliance investigations are justified.

Organisation

Strategic Intent 5: Organisation

ComReg is an effective and relevant regulator

- 83 In order to ensure continued effective and relevant regulation, ComReg will strive to be an active and dynamic organisation that is capable of responding to the rapidly changing environment and is 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 Draft Strategy Statement.

Respondents' Views

- 84 Three respondents made reference to ComReg's human resources³¹, and Eircom and BT welcomed ComReg's proposal to increase the organisation's headcount.

³¹ ALTO, BT and Eircom.

Prioritisation of ComReg's Internal Resources

- 85 BT noted the apparent recent increase of resources for consumer enforcement and would welcome the same resources be committed to ComReg's wholesale compliance functions. Virgin Media suggested that market monitoring should be used to identify instances where regulation could be rolled back. ALTO consider that ComReg needs to better resource and prioritise dispute resolution so that such disputes are resolved quickly.
- 86 ALTO suggested that greater transparency around industry meeting schedules and the use of technological advances such as teleconferencing and videoconferencing.

Cross-Market Issues

- 87 BT suggested that ComReg develop a strategy to better understand cross-market issues, and to avoid unintended consequences. BT expressed a concern that ComReg does not appreciate the interdependencies between markets, and that the nature of carrying out market analyses means that ComReg sees the market in a silo-ed manner.

ComReg's Assessment of Respondents' Views

- 88 Additional text around workforce planning has been incorporated into the Strategy Statement (see the Section entitled 'Resources' in Chapter 9). An additional Goal has also been developed;

Goal 29:

We have sufficient resources to fulfil our organisational strategy

This Goal emphasises the value ComReg places on its staff resources and necessity of their contribution to the achievement of this Strategy.

- 89 ComReg notes it reduced its staff numbers from 124 to 115 as a result of the financial crisis. In order to deliver new regulatory functions and improve the timeliness and effectiveness of existing ones, ComReg will look to ensure adequate staffing levels over the coming five years. In this context, ComReg has reviewed its manpower requirements for the next five years. The review takes account of:
- Opportunities to reduce manpower needs through IT-enabled business change,
 - Striking an appropriate balance between in-house resources and outsourcing,

- The benefits of delivering existing functions more quickly and effectively, especially in relation to wholesale regulation and spectrum management activities, and
- New functions that will be added to our mandate as a result of developments in European law, and national policy initiatives.

90 It is ComReg's view that given the importance of communications markets and the scale of the benefits that flow from timely and effective regulation, the downside risk of an under-resourced regulator is considerable. Subject to obtaining the necessary consents, ComReg intends to increase its staff numbers over the next five years.

Prioritisation of ComReg's Internal Resources

91 ComReg has limited human resources but a wide remit. Resources within ComReg are assigned to priority areas. Consumers in electronic communications sectors are vulnerable and detriment is large due to the presence of market failures and the essential nature of electronic communications services in modern Irish life. As such, retail enforcement is a key component of what ComReg does. While ComReg acknowledges that other aspects of its work could be better resourced, evidence was not provided in the submissions to justify the diverting of resources from consumer compliance. ComReg also notes that incomplete, late or inaccurate data submissions from operators leads to staff resources from the wholesale division being diverted to data compliance work. Significant resources are spent on enforcing compliance with data obligations; non-compliance with information requests is time consuming and costly.

92 In relation to radio spectrum, the appropriate prioritisation of spectrum work activities was considered in the RSMS 2016-2018 consultation³² where ComReg noted a number of relevant considerations³³ which it balances so as to establish a prioritised work plan commensurate with its resources. The extent to which any of these considerations may affect ComReg's prioritisation is considered on a case by case basis.

³² See ComReg Document 16/49, "[Response to Consultation 15/131 on ComReg's radio spectrum management strategy 2016 – 2018](#)", Section 3.1 and ComReg Document 16/50, "[Radio Spectrum Management Strategy Statement 2016 – 2018](#)", Section 6.1.1

³³ Relevant considerations include the capacity within the existing radio spectrum bands to meet spectrum demands; the international harmonisation status of various radio spectrum bands; the potential for including multiple spectrum bands in a single award process; the adoption of legislation (both national and European) which requires ComReg to take certain actions within certain timeframes; and the adoption of national priorities supported by legislation or similar instruments.

Cross-market Issues

- 93 As evidenced from various consultations and decisions on its analysis of electronic communications susceptible to *ex ante* regulation, ComReg fully recognises and carefully considers the interdependencies between regulated markets, as well as impacts on downstream markets. For example, recognising the interdependencies between the wholesale local access and wholesale central access markets (and impacted downstream markets), ComReg recently conducted a joint consultation on its analysis of these markets.
- 94 Due regard is also given to these interdependencies throughout numerous other work streams, including compliance activities.

4 Additional Comments

- 95 A 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. 8 Is there anything else that should be added to, or omitted from, this Strategy Statement?

- 96 A wide range of issues and comments were made which do not sit elsewhere in the current draft of the Strategy Statement. They are summarised in the section below.

Respondents' Views

Sub-National Markets

- 97 Eircom expressed the view that ComReg should take the existence of sub-national markets into account and regulate accordingly. Virgin Media also noted that uniform wholesale price caps, combined with local cost and demand conditions, yield non-uniform rates of return. Virgin Media suggest that one consequence of this is that in some areas investment incentives may be undermined.

Migration from Legacy CGA Services to NGA Services

- 98 Concerns were raised by Eircom about the transition from legacy products, with a number of comments querying ComReg's approach to declining markets, investment in NGNs and the creation of appropriate incentives on the part of operators and consumers to switch from legacy products.

Competition from OTT Services

- 99 Virgin Media stated that network operators face intense competition at the service level from OTT service providers. Virgin Media favour light-handed regulation in this context, and submit that networked electronic communications providers should not be subjected to more extensive requirements than non-networked providers.

ComReg's Assessment of Respondents' Views

Sub-National Markets

100 In carrying out its market analysis activities, ComReg will continue to assess whether or not there are sufficient differences in competition across different geographic areas to warrant the delineation of separate markets from a geographic perspective. In this respect, ComReg notes that in its recent consultation regarding its analysis of the wholesale local access and wholesale central access markets, ComReg has proposed defining separate geographic wholesale central access markets.

Migration from Legacy CGA Services to NGA Services

101 The remedies imposed on Eircom include an obligation not to withdraw access to facilities once granted without ComReg's consent. If Eircom wishes to migrate to an all-IP network, this would likely involve withdrawal of, or changes to, certain wholesale (and retail) products and services. ComReg has already published a call for inputs on the potential implications of copper withdrawal³⁴ in which we highlighted the need to ensure that there is no adverse impact on competition and that consumer rights are upheld during the transition.

102 In July 2016, Eircom wrote to ComReg requesting prior approval for the retirement of legacy networks and services. ComReg is of the view that consideration of these issues is timely and necessary and has requested that Eircom undertake an analysis and an impact assessment, including plans and timelines, of the withdrawal of legacy services. When ComReg has a better understanding of Eircom's plans and is in receipt of its analysis, ComReg plans to commence a wide engagement with all relevant stakeholders, including a potential public consultation, in order to develop an approval process that considers all of the issues and the implications of any request for approval. This engagement will include consideration of, inter alia, the criteria which should be applied in assessing any application from Eircom for consent to withdraw wholesale access (see Paragraph 5.40 of the Strategy Statement).

Implications for USO

103 In December 2014, ComReg published its Call for Input to provide an opportunity for stakeholders to identify areas where they believed regulatory clarity may be desirable in the context of the National Broadband Plan. In Eircom's submission to the Call for Input it raised the issue of a potential future transition from its existing copper access network to fibre access network(s) in the NBP intervention area.

³⁴ See ComReg Document 16/01, "[Transition from Eir's copper network. Proposed principles and notification procedures](#)".

104 On 18 June 2015, ComReg published its response to the call for input.³⁵ ComReg made it clear in that document, that it would not want regulation to unnecessarily obstruct the replacement of legacy network elements with new technologies, where this is economically efficient and in the interests of end-users. However, ComReg also made it clear that regulation should ensure that the transition arrangements take due account of the need to minimise the disruption for end-users and OAOs.

105 At this time, ComReg does not know how the winning bid(s) for the tender for NBP services in the NBP intervention area(s) will be constructed; the identities of the eventual winning bidder(s); what technologies will be used; the specific timing of implementation; and to what extent copper will be reused as part of the solution(s). ComReg has therefore assumed that some form of new infrastructure will be deployed in the NBP intervention area as part of the winning bid(s), and that this will be rolled out in parallel to the existing copper access network. ComReg also assumes that in the intervening period, between NBP contract award and completion of the NBP roll-out, there may be a period during which dual running of the existing copper access network and the new infrastructure will be unavoidable.

Competition from OTT Services

106 In conducting its market analysis activities, ComReg will continue to assess all relevant sources of competitive constraints, including from OTT services.

³⁵ ComReg Document 15/57, "[National Broadband Plan: Response to Call for Input](#)".