



Commission for  
**Communications Regulation**

# **Electronics Communication Strategy Statement 2017-2019**

## **Submissions to Consultation 16/116**

Submissions to Consultation

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**An Coimisiún um Rialáil Cumarsáide**  
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# alto

alternative operators in the communications market

**Consultation: Draft ECS Strategy Statement 2017 - 2019 - Ref:  
16/115 & 116**

**Submission By ALTO**

Date: February 17<sup>th</sup> 2017

ALTO is pleased to respond to the Consultation: Draft ECS Strategy Statement 2017 – 2019 - Ref: 16/115 & 116

ALTO welcomes this opportunity to comment on this important consultation.

### **Preliminary Remarks**

ComReg state that as an economic regulator “... *our role is to ensure that communications markets operate in the interests of end-users and society.*” The reality is quite different.

This Consultation paper has been published at a time when the industry has faced the most astounding revelations concerning the incumbent’s regulatory compliance in the Irish communications market ever.

Arguably the revelations notified are unprecedented in the European Union.

The revelations came wrapped and under the guise of Eir’s Regulatory Governance Model – RGM, and two substantive reports were published by Joseph Styles ‘*Styles Reports*’ in 2015 and 2016 under the supervision of the Eir chairman and Board.

The industry still awaits the result of the two consultancy reports commissioned by ComReg concerning operational processes and corporate governance within Eir. ComReg must not underestimate the seriousness and sensitivity that continues to surround the RGM issue. The consultation text in this area (paragraph 5.42 specifically) makes no reference to ComReg’s concerns and positions this work as merely a “review”.

Confidence in the market and in competition is at an all time low.

ComReg currently has 13 compliance notices published and pending at present, in some instances underpinning the revelations in Styles but also dealing with transparency and discriminatory practices in the market. Notably all of the outstanding opinions of non-compliance appear to be against Eir.

ALTO members are concerned that economic regulation in the Electronic Communications Market is not functioning in the manner that it should be. An example of this concerns the use and reliance by ComReg on Margin Squeeze Tests – MSTs, instead of proper economic models being applied in a fashion appropriate to the competitive landscape. This is an area that needs to be reviewed as a matter of urgency.

Eir's wholesale recovery is running at a rate far in excess of what is reasonable and has been mandated by ComReg. 8% is a ComReg determined reasonable rate. Yet 14% is where the return rate currently stands. The inherent inconsistencies arise, as wholesale pricing seems to be permanently on the increase.

ALTO believes that numbering is as relevant to the communications sector as it ever was. In fact, numbering now plays a particular role in the converging worlds of Plain Old Telephony Services – POTS, and Internet, or Next Generation Access – NGA, services and the Internet of Things – IoT. We welcome ComReg's work in this area in recent months.

Finally, ALTO notes that it is quite evident that there is a disjoint between ComReg's strategic thinking set out in the consultation and the day-to-day operations at ComReg. This is a regrettable submission and/or observation.

It is crucial that ComReg takes this time to step back and reflect on the issues that it is faced with today, in order to better prepare itself for achieving the objectives it

has set out in the consultation; otherwise confidence will remain low and this approach will have a detrimental effect on the future of the Irish market.

## **Specific Remarks**

ALTO remarks on the following areas within the wider ComReg Strategy document.

**Section 5** – ComReg discusses the different types of competition (service level competition (i.e., access competition) versus infrastructure competition), and at paragraph 5.11 suggests that access competition is not as good at delivering benefits.

ALTO argues that access competition still brings large benefits and that it is often the only form of competition (e.g., in less economic areas for network rollout).

ALTO also notes that access competition is particularly important for B2B providers who have a smaller number of customers, who need to provide a universal solution but who cannot invest in their own network rollout. ComReg should therefore ensure that it fully considers the benefits of access competition for all types of consumers and all types of providers.

ALTO is deeply dissatisfied with the current state of ComReg's proposals for the Leased Lines market (in particular the core analysis) and conflicts apparent with the Broadband market. Efforts to bring forward a Passive Infrastructure Access – PIA, solution are not even near fit for purpose.

**Section 6** – This section focuses on Consumer protection work. ALTO considers that, in carrying out this work, ComReg should ensure that the focus is limited to where that protection is needed, and should aim to exclude B2B providers from

such regulation. A good example being the recent complaints handling code of practice consultation wherein ALTO notes that the consultation appeared to over-reach and failed to contemplate required carve outs for businesses.

ALTO members remain concerned that ComReg's focus on retail compliance programmes and resource is often viewed as being wholly inconsistent with economic regulatory failings concerning ComReg's wholesale work.

ComReg makes reference to the Universal Service provisions (paragraph 6.15 and others in the consultation). However, there is no mention of the vast value (€50m) of the retrospective claims made by Eir for Universal Service obligation funding going back some considerable years that are still to be determined on by ComReg. This is a sizeable issue which cannot be ignored and as a minimum should be highlighted as a risk which needs addressing by ComReg in a transparent, robust and appropriate manner.

**Section 7** – ComReg says that it will aim to have incentives (including regulatory incentives) in place to ensure there is investment in security reliability and capability (paragraph 7.34). ALTO would argue that commercial incentives are generally sufficient – this is especially true of B2B providers who routinely have extremely robust security requirements as part of their service offering in order to meet the exacting standards of their customers that are often driven by international standards. However, in the context of the Styles revelations, ALTO awaits regulatory incentives to repair confidence, economic regulation and competition in the market.

**Section 8** – ComReg refers to its dispute resolution powers (paragraph 8.13). ALTO would like to highlight the need for ComReg to adequately resource and prioritise dispute resolution so that such disputes are resolved quickly, and thereby prevent further on going harm in the market.

ALTO submits that it has seen examples where ComReg fails to address and resolve disputes in a timely fashion, in contravention of its requirement to do so, without adequate justification. This reflects a significant strategic weakness in ComReg's mode of work and operation and must change. The Towerhouse dispute (ComReg Ref. 16/47 – accepting the dispute, and Ref. 17/08 – determining the dispute) provides a very contemporaneous basis for this submission.

The Strategy Statement at paragraph 8.21, ComReg has stated that: *“Where appropriate, ComReg will utilise engagement and dialogue to help foster the desired behaviours within chosen sectors of industry”*.

It is the experience of ALTO members in more recent times that ComReg has placed a significant reliance on the use of information requirements issued to undertakings pursuant to section 13D(1) of the Communications Regulations Acts 2002 to 2010 as opposed to dialogue with operators. Due to the potential disruptive nature on undertakings of 13D(1) requests, these should all be approved by a ComReg SMT or Commission member.

The difficulties caused by ComReg issuing section 13D(1) requests is that this statutory tool imposes significant and disproportionate operational and management burdens on our members given the civil and criminal enforcement procedures for non-compliance with a section 13D(1) information requirement.

A great deal of the information currently being sought is held, managed and must be gathered by the same employees who are responsible for the delivery of services to consumers. This is particularly the case in relation to the information requests relating to quality of service, which cover similar data. The cumulative burden of responding to these requests and engaging with consultations is substantial and diverts significant resource away from activities and operations that best serve consumers and end-users. Similarly, this burden means that it is difficult for ALTO members to support ComReg as fully as it would like in formative



consultation work. This is not in the best interests of consumers and end-users, ComReg or the broader industry.

It is also now a familiar pattern for ComReg to use the start of the summer or winter holiday periods as a deadline for opening investigations in order to set the clock running. Of course ComReg will be aware that the employees of many of our members are away during such periods, and they are preparing for significant consumer and end-user activity in the autumn and Christmas periods.

ALTO members do appreciate that ComReg has a practice of allowing extra time to respond to consultations during holiday periods or to accede to requests to extend deadlines for requests for information over holiday periods. However, these extensions do not seem to take any account of the cumulative impact of the issuing of numerous consultations and requests for information at the same time.

Our members recognise that requests for information and consultations are crucial tools for ComReg to fulfil its statutory functions and further recognises that responding to them is part of the cost of doing business in a regulated industry. However ComReg is obliged to act in ways that ensure its actions are among other things proportionate and targeted only at cases in which action is needed, and that in pursuing its statutory functions it does not impose an undue burden on stakeholders.

ALTO would therefore request that ComReg considers as part of its strategy how better to manage its consultations, market reviews and other requests for information more evenly across the calendar year in a way that takes full account of the impact on industry of multiple consultations and requests for information without adversely affecting our ability to deliver for consumers or end-users prejudicing our members' ability to respond fully to ComReg's consultations or have an effective dialogue at a pre-consultation/investigation stage.

ComReg sets out its intentions in paragraph 8.30, that it would prefer to have the ability to set itself administrative sanctions on the grounds that:

*“It would greatly facilitate effective regulation of the electronic communications sector if ComReg could directly impose civil financial sanctions (administrative fines) in appropriate circumstances. In contrast to court imposed financial sanctions, administrative fines can be applied immediately and thus act as a greater deterrent against breaking the law. Administrative fines enable the regulator’s expertise, including its knowledge of the relevant facts and particular sectors, to be fully and proportionately utilised.”*

Further ComReg proposes a non-evidence based retrograde step, of increasing fines of up to 10% of turnover or €5 million. With confidence so low in ComReg’s ability to operate as an effective sectoral regulator, moving to such an approach raises significant concerns for ALTO members. It appears that ComReg is caught by the legal and constitutional prohibitions on administrative fines for the time being.

ALTO notes by way of submission that the ComReg has had to bring operators to Court in recent times. This is deeply regrettable and not good use of any operators time or ComReg resource – particularly when a prosecution can in almost every instance be avoided through mediation or intervention.

ALTO would like to see an end to prosecutions where such an end is possible.

ALTO notes that ComReg has adopted a policy of publishing operator and often-ALTO correspondence in the interests of transparency. This development is welcomed.

**Section 9** – ComReg refers to the enhancement of Quarterly Key Data Reports – QKDR, (paragraph 9.11). ALTO considers that ComReg should consider how it can reduce the complexity and increase the clarity of these reports. Any review of such reports should also consider the level of burden placed on operators to complete them. ComReg should also ensure that it is collaborative with industry to ensure that the reports are accurately completed on a consistent basis across industry. These reports change far too frequently, and ComReg should put more effort into resolving critical wholesale market failures rather than constantly tinkering with these returns that do not appear to deliver any obvious benefits to consumers.

It is also evident that ComReg has a rigid approach when an operator seeks an extension to the routine deadline for submitting the Quarterly Key Data Reports. The answer is always normally “No”. Further in the event that ComReg seeks micro detail on Quarterly Key Data Reports submitted, the timeline given is normally extremely short, for example, within a 48-hour period. Instead, ComReg should allow operators a reasonable response timeline, particularly taking due regard of the impact of cross ComReg work streams on operators. ComReg utilises its discretion on other matters, there is no reason why discretion can’t be utilised on a case-by-case basis depending on the reason submitted that gives rise to the extension request.

More generally, greater transparency is required regarding ComReg’s planned meeting schedule with all industry members being invited to attend. This is asymmetric to ComReg’s intentions as set out in paragraph 9.23 of the consultation.

Some ALTO members have a broader European and in some instances international footprint and as a result, do not have full time regulatory sources located in Ireland. Much of the engagement between such operators and ComReg must therefore be undertaken remotely, however ComReg is reluctant to grasp technological advances and use teleconferences or videoconferences to facilitate

engagement during industry wide events. Such members also experience quite different approaches between engaging with ComReg and engaging with other ECS regulators, not only on country specific matters but also cross-border matters. Other European regulators typically achieve a more transparent and collaborative approach of working with operators whilst still meeting the underlying regulatory objectives and obligations.

### **Response to Consultation Questions:**

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

A. 1. ALTO generally agrees that the technological areas considered and linked to the development of the European Commission Electronic Commission Code – ECC. The ECC contains extremely serious proposals that ALTO considers ComReg should be consulting with the industry on to ensure ComReg has a properly informed market view.

ALTO must be critical of ComReg in terms of delayed and required market reviews. This coupled with the RGM revelations has left confidence in the market at an all time low and stymied investment. ComReg has not considered this properly.

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

A. 2. ALTO members will submit responses in relation to the relevant sectors in which they operate.

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

A. 3. ALTO submits that ComReg has not identified anywhere in its draft statement how to ensure that the Styles/Eir RGM disclosures never happen again. Many of ComReg's outputs appear to be academic as opposed to being practical.

ALTO submits that ComReg must resource its Wholesale and Wholesale Compliance area adequately in order to identify and act upon sectoral trends on an *ex ante* basis.

ALTO members believe that call termination rates in Ireland should be set at BU-LRIC and such a control should be applied equally to all calls regardless of the origin of the call (including calls from outside the EEA).

Some other countries are adopting "*differential regulation*" where communications providers are allowed to commercially negotiate non-EEA FTRs and/or where communications providers are allowed to charge non-EEA CPs higher rates so long as they are reciprocal – this is unacceptable, disproportionate and unnecessarily complex.

Such "*differential regulation*" goes against the principles of non-discrimination and cost-orientation as set out in the EU telecoms framework and also in the World Trade Organisation's General Agreement on Trade in Services (WTO GATS) – see for example, Article II of the WTO GATS, Article 5(a) of the Annex on Telecommunications to the WTO GATS, and Section 2.2 of the Telecommunications Services Reference Paper. Furthermore, as all CPs are dominant in the termination of calls onto their own network, charging higher termination rates for calls from non-EEA countries goes against general competition rules too (e.g. abuse of a dominant position, excessive pricing, and/or discriminatory pricing).

"*Differential regulation*" could also have negative impacts for consumers such as:

1. Increased costs from increased rates from arising from unnecessary negotiations and the cost of such individual negotiations
2. Inefficient traffic routing
3. More complex routing that means nuisance callers are harder to trace and enforce against.

As such, ALTO strongly urges ComReg to apply charge controls on termination rates equally to all calls, regardless of origin (including non-EEA calls). This may become an acute issue for Ireland if and when Brexit takes place.

ALTO notes that Wholesale SLA's are not of sufficient standard to support fit-for-purpose SLAs to consumers and customers. As ComReg has recognised in the Markets 3a and 3b consultation attempts to negotiate improvements have been extremely difficult and protracted with only modest progress and the need to raise formal disputes.

ALTO appreciates the improvements that ComReg are proposing; however we have already experienced push back on trying to make this approach work and consider ComReg need an overall strategy to improve wholesale SLAs as its unlikely material progress will be allowed through wholesale industry negotiation.

**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.**

A. 4. ALTO submits that many of ComReg's Strategic Intentions appear to be sensible and reasoned. The difficulty faced by ALTO members, is the confidence that ComReg will in fact deliver on its intentions and do so in a transparent, proportionate and timely manner in order to discharge its respective regulatory obligations. Please see ALTO's Preliminary Remarks above which deal in some detail with Chapters 5 to 9, as requested.

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

A. 5. ALTO submits that ComReg should set out its strategic intentions in terms of separation requirements for Eir in light of Eir's RGM admissions and requirements and subject to the RGM review outputs. This must involve setting out ComReg's views on the interrelationships between Competition, Investment and Enforcement and Compliance and how ComReg intends to monitor compliance within each Strategic Intention.

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

A. 6. ALTO does not think that any of the Strategic Intentions should be omitted.

ALTO requires that ComReg display with precision how it intends to intervene in a timely fashion and ensure that compliance is maintained in order to foster confidence and competition in the market.

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

A. 7. ALTO submits that the Goals associated with the Strategic Intentions appear to be appropriate.

ALTO notes that ComReg appears to have omitted a SWOT analysis targeted at the internal workings of the organisation. There appears to be some need for a review of coordination and organisation within ComReg included in this review.

ALTO's comments in the Preliminary Remarks section should be noted.

**Q. 8 Is there anything else that should be added to, or omitted from, this Strategy Statement?**

A. 8. ALTO has commented above that ComReg appears to fail to consider the current market context. Much is wrong with economic regulation and competition and this is not borne out in ComReg's review. Perhaps ComReg should engage in some further internal critical thinking and stakeholder engagements in advance of publishing the final Strategy Statement.

**ALTO**  
**17<sup>th</sup> February 2017**



# **BT Communications Ireland Limited “BT” Response to the ComReg Consultation:**

## **Draft ECS Strategy Statement: 2017 – 2019**

Issue 1 – 17<sup>th</sup> February 2017

### **1.0 Introduction**

We welcome this opportunity to comment on the ComReg Draft ECS Strategy Statement and that it contains a 5 year view. We also welcome the attempt to address the evolution of different forms for technology and the continuing evolution of the European Regulatory framework. However we believe an opportunity has been missed in the draft to ask the questions; “What is concerning industry?”; “What will stimulate investment?” and “What is hindering investment?” I.e. to stimulate a discussion of how the market should move forward and what is potentially holding it back, rather than a business as usual look at what’s on the horizon. We have thus provided some thoughts on this basis to progress the discussion.

Our view is there are serious failures in the current regulatory system in Ireland which are undermining confidence and hindering investment. We find it most disappointing that the strategy does not appear to address these matters with substance. We have been informed by eir that the issues that are now known as the RGM by eir and Styles by the industry first appeared to ComReg in December 2014 and in February 2017 there is still no finding or strategy as to how this major failure(s) of the regulatory system is to be resolved. We do welcome the project and work that is on-going, but two years to resolve such a major failing is too long.

We are also disappointed that the draft Strategy does not display innovation in the development of modern incentive based regulatory remedies – the strategy in Section 8 whilst clear in describing how compliance operates, does not offer an insight into the strategy. In practice we find many regulatory remedies do their job without issue, however, ComReg continues to offer more of the same where remedies are in-effective such as the non-discrimination obligations. ComReg needs a strategy to modernise its approach in these failing areas and to develop incentive based macro regulatory remedies such as full system separation (or the modern equivalent) and company legal commitments. For example the recent Market 3a and 3b market review, whilst being a comprehensive piece of work continues to include ineffective non-discrimination rules. What’s the point of regulatory remedies if they are ineffective? Styles is continuing to undermine confidence in ComReg and the strategy urgently needs to chart a path to recover from this major failing.

We understand that ComReg has lost a number of key personnel and experience over recent years but this does not explain why it has not diverted some of its more experienced people working on endless market reviews to assist the wholesale compliance team at a time where there is a crisis of confidence in the regulatory system.

We don't blame the Wholesale compliance team for the extraordinary long time it's taking to progress non-compliance issues, complaints and disputes but we do consider it is within the gift of ComReg's management priorities. We welcome the proposal that ComReg will seek permission to increase its head count and trust improving the situation for ComReg's wholesale compliance activities will be top of its Strategic Intentions – it is certainly needed. Although we are not trading in the consumer market we perceive from the grapevine that the Retail compliance team has been given sufficient experience and resource so why not the Wholesale compliance team. To re-affirm we don't blame the people in the Wholesale Compliance team who we know are doing their best, but it has too large and complex a work load. In our view the delays are seriously undermining confidence in the regulatory system.

The regulatory failures are overshadowing the industry and creating a lack of confidence to invest as such could be undermined by the inappropriate behaviours of others and an inability for ComReg to enforce its rules. Taking years to address issues is tantamount to in-effective regulation.

The European Commission visits Ireland every year to understand the state of the market and during this process it normally asks for a rating of the performance of the regulator. As preparation, and for the first time in memory, there was a discussion as to whether to assign a negative rating, although in the end a low positive number was given. Hence it's not just BT that has concerns with the poor performance of ComReg. We find it most surprising that resolving the failings is not within the Strategy.

## **2.0 Response to the Detailed Questions**

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

#### **BT Response**

We believe the strategy misses the opportunity to consider whether the overall market in Ireland is working to its optimum competitiveness and what is hindering progress and potential further investment. For example what is the impact of the ongoing open non-compliance and RGM issues having on the competitiveness of the market and has this damaged trust and confidence in the market to invest – I.e. is this distorting the market?

What are the consequences of the State aided MANs operator going beyond the local MAN remit and actively competing in the market for national leased lines and is the State inadvertently aiding this operator to compete against commercial operators? On the one hand, the government believes themselves to be intervening in the absence of competition while ComReg are proposing the market is competitive. They can't both be right and in fact are both wrong? The MAN MSE, despite operating in a district that lacks competition, is not obliged to provide transparent and cost oriented service pricing. Instead, are they exploiting their preferential access to public assets to leverage advantage in the competitive market for nationally delivered Leased Lines. The lack of transparency around the MANs arrangement is considerable and we note the very different treatment of ECAS being publicly audited to set the call price each year by ComReg and nothing similar for the MANs. Whilst ComReg may not be managing the MANs project, it has a legislative obligation set by the Minister concerning the distortion of competition and it is time the operation of the MANs should be investigated as to the impact on the market. It was particularly surprising that the recent leased lines market

review paid little attention to the MANs organisation and whether it is impacting (distorting) the commercial market. Indeed the approach of ComReg appears to have largely excluded this source of end-customer connectivity.

We observe that ComReg appear to take a stove pipe approach to each market sector (possibly due to the European Commission's mandatory market review process) and this can have the impact of not considering cross market issues. For example the market review for Leased Lines does not appear to understand the consequences of its actions on regulation in the wholesale broadband market 3b and assumptions about a fit for purpose Duct and Pole product being available in market 3a would appear ill founded. Separately the recent market review consultations don't appear to acknowledge that some of the proposed remedies are either ineffective or partially ineffective where wholesale enforcement is weak as in Ireland. For example as part of the strategy we believe ComReg should review the effectiveness of its regulation with a view of resolving weaknesses. In our view non-discrimination remedies would be a good place to start.

### **Other issues**

Brexit has the potential to be disruptive (whether good or bad) to Ireland and such should be on the radar particularly as the indications are the process will commence the 9<sup>th</sup> March 2017.

We generally agree with the technological areas considered and the linkage to the development of the European Commission Electronic Commission Code (ECC). On the matter of the ECC there are very considerable and transformational proposals to change the existing regulatory system and we consider ComReg should be consulting with the industry in this matter to ensure it is properly informed and representing the best interests of the Irish market at BEREC and other inputs it will have to the European process.

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

BT Response

As BT is not trading in the Consumer or the Mobile markets in Ireland we don't have the expertise to comment on these sectors. However for the areas we are engaged we would generally agree with the technology and European regulatory evolution analysis. As discussed in our response to question 3 below we consider there are a number of important sectoral and overall areas that have not been addressed.

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

BT Response

As discussed in the introduction we agree with the sectoral trends for evolving technology however we consider the following need to form part of the Strategy:

1. A strategy to resolve the RGM/Styles regulatory failings and how to prevent such happening again.

2. A strategy to innovate new incentive based regulation where existing remedies are failing – for example non-discrimination failures. More of the same is not working!
3. Wholesale SLA's – In our view many of the wholesale SLAs are not of sufficient standard to support fit-for-purpose SLAs to consumers and customers, As ComReg has recognised in the Market 3a and 3b consultation attempts to negotiate improvements have been extremely difficult and protracted with only modest progress and the need to raise formal disputes. We appreciate the improvements that ComReg are proposing; however we have already experienced push back on trying to make this approach work and consider ComReg need an overall strategy to improve wholesale SLAs as its unlikely material progress will be allowed through wholesale industry negotiation.
4. A strategy to develop more open consulting to address the material changes that are being proposed in the latest draft European Regulatory Framework. It is clear these European proposals will be transformational and have a potentially disruptive impact on the market in Ireland. ComReg should be canvassing a market view whether the proposals are good or bad for Ireland and this should then be supported in the national submissions.
5. A strategy to resolve the resourcing of the Wholesale compliance team to make it fit for purpose. (We consider this a management issue and acknowledge the good work of the people in this team).
6. A strategy to better understand cross market issues to minimise the risk of unintended consequences.
7. A strategy to understand and develop stronger rules to prevent State aided operators from distorting commercial markets. Again why would commercial operators invest if the State is potentially subsidising an operator in the market.
8. The strategy must also focus on the current technologies as these largely fund investment in networks to support the future. For example
  - a. **International Telecommunications and Ireland** - Outside of Europe some operators are now applying extremely high call termination rates which lead to an imbalance of international trading as ComReg and Europe regulate European termination rates, which in Ireland is to the absolute LRIC floor. We are aware that some European operators are now defensively pricing (ad hoc significant increase in termination rates in Europe) to protect their businesses. ComReg needs to urgently consider whether the inflexible regulatory regime it mandates for termination rates is still suitable for international trading as it will become impossible to trade internationally with such imbalances. The advent of Brexit increases this difficulty as the UK, once outside of Europe, could also undermine the regulatory conditions in Ireland. We appreciate ComReg is aware of this in the call termination market review and international trading should not be undermined through national regulation. Regulation should not force a business to trade at a loss.
  - b. **Over the top voice termination** – We welcome that ComReg has acknowledged this area as we are receiving complaints of poor speech quality due to the increasing operation of OTT voice termination. We also note at least one APP is available for use in Ireland. ComReg's last termination market review was very inflexible as once issued it is not possible to add new operators to the list of SMP operators. With this market becoming more fluid a strategy is required to enable the timely addition of new providers, including OTT providers so that there is

equivalence of regulation for all parties terminating calls. If ComReg were to be inconsistent why should only some parties suffer detriment as we know the existing terminations rates would not survive without regulation?

**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.**

Response

Without a full strategic review of the operation of the market and supporting evidence from the operator submissions the best we can say is that the strategic Intentions would appear to be sensible candidates but as in our response to questions two above three above further detail is required to bring substance to the intentions and the goals.

1. The intentions need more detail of what is actually planned to be achieved with these intentions.
2. In a world of what gets measured get done, one would expect that there should also be milestones or tests to measure the success or otherwise of the strategy and intentions, and in some cases the need to alter the strategy is justifiable. Whilst we welcome the five year approach, such a timespan will require the strategy to be reviewed and updated on an annual basis to ensure it is still current.
3. Appropriate resourcing – this appears to be a constant problem within ComReg which in our view has seriously hindered its operation over recent years for example in the area of wholesale compliance. ComReg is well aware of our concerns with wholesale compliance and problems with enforcing non-discrimination regulation, but we find we are even experiencing difficulties with ComReg managing the demand for resolving spectrum interference issues. We acknowledge ComReg's comments to prioritise these issues, but ComReg also needs to appreciate that end-customers are suffering the impact of these spectrum interference issues and they need to be addressed quickly. We are happy to work with ComReg in this matter to see if industry processes can assist improving the process.

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

BT Response

BT is not active in the consumer and mobile markets so we are not commenting to these market sectors however for our wholesale business concern we would offer the following comments:

1. Regulatory Incentives to Invest  
Whilst we support the long established ladder of investment theories the effort to achieve such in Ireland is extremely high, both in cost and the process hurdles that have to be overcome. A major problem within the Irish regulatory system is it takes many years to reach a fit-for-purpose status for material new wholesale products. For example LLU, LLU Migrations and more recently Regional Handover. Hence ComReg need to seek better remedies that incentivise a fit-for-purpose and timely outcome. Sadly we have not yet seen any proposal that will achieve this in Ireland.

Our view is ComReg continues to apply traditional regulatory remedies many of which are valuable and effective; however where they are proven to be ineffective ComReg needs to rethink their general approach from just trying to catch more scenarios to what can be done at a higher level to stimulate self-compliance, for example company legal commitments, system separation to make discrimination very difficult. More intrusive monitoring and transparency is also clearly required given of considerable issues raised by Styles.

Our view is ComReg's current policies appear more designed to drive out wholesale competition rather than stimulating it a. The leased lines market review (which we strongly disagree with) contradicts the broadband market review and assumes a fit-for-purpose duct and pole access service is available (which is not). The consequence of these proposals is to drive out genuine competition to the incumbent.

With the loss of key experts and experienced personnel we are concerned that ComReg has lost some of its sense of the dynamics of the market and the impact of a change in one market sector can cause in another.

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

BT Response

We consider the Strategic Intentions should be enhanced with more substance as to what they will include as we have detailed in our response to question 4.

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

BT Response

The goals are at a high level, some of which are mandated anyway, hence we would like to see more substance of what is actually going to be done. In our world we have to work to specific targets and objectives and the goals look more like business as usual than a Strategy.

**Q.8 Is there anything else that should be added to, or omitted from, this Strategy Statement?**

BT Response

As in our introduction and above responses we consider that the Strategy statements needs to include how the market will address the serious issue of Styles and also the many other issues raised in our response concerning the effective working of regulation so as incentivise rather than hinder investment.

End

**eir**

**Response to ComReg Consultation Paper:**

**Consultation Document on ComReg's Draft Strategy Statement for  
Electronic Communications 2017 - 2019**

**ComReg Document 16/116**



**17<sup>th</sup> February 2017**



## DOCUMENT CONTROL

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## Executive Summary

eir recognises the importance of economic regulation and ComReg's role in safeguarding consumer, citizen and commercial interests and welcomes this opportunity to comment on ComReg's Draft ECS Strategy Statement 2017 – 2019 as set out in ComReg 16/116. In this response eir submits:

- ComReg should redirect internal and external resources at interventions, which have the greatest impact on the development of the sector and that are prioritised towards the efficient delivery of infrastructure investment and encouraging innovation, which ultimately facilitate the best outcome for end-users. In this regard, eir supports ComReg in its aim to expand its resources to ensure that it is adequately staffed with those who are versed in policy and economic analysis driven by the facts.
- In a dynamic and investment driven market, ComReg needs to provide regulatory certainty and consider the requirements of its stakeholders. This includes a clear indication of its future intentions in more granularity than this Strategy Statement document. For example it needs to set out clearly what might trigger cost orientation, what guidelines it will apply when seeking a penalty etc. In this context ComReg should endeavour to comply with its statutory duty to undertake market reviews every three years to determine whether regulation should be revised or updated in light of changing market circumstances.
- ComReg should endeavour in its Market Reviews to take account of the sufficient differences that exist in competitive conditions in urban, semi-urban and rural areas across Ireland, thereby recognising the existence of sub-national markets and imposing regulatory remedies as needed and in an appropriate manner.
- eir considers that ComReg needs to take sufficient account of declining demand, and its implications for regulation. In the face of declining demand and allowing for economically incentivised migration of customers and thus a timely retirement of legacy networks it is important to consider how best to balance short-term allocative and long-term dynamic efficiency goals.
- ComReg's primary objective should be a focus on improving consumer outcomes and overall societal welfare including through the promotion of competition rather than a specific focus on encouraging competition per se.
- There is increasingly dynamic infrastructure competition in Ireland and the increasingly competitive state of the markets at both the retail and wholesale levels reflects this. The market is no longer characterised by a large number of small operators with a single large provider. Rather, it consists of a smaller number of larger players, each with their own network infrastructure and most of whom are extremely well resourced and form part of very large global multi-nationals.
- Whilst eir has no objection per se to ComReg seeking new powers under legislation to provide effective deterrence, both at a civil and criminal level it notes that ComReg has singularly failed to set up guidelines as to the manner it will enforce the rights it already has. ComReg needs to act in a way which promotes regulatory certainty and a lack of consistency in this regard is not of assistance to anyone. ComReg should prepare and consult on guidelines for deciding whether to prioritise enforcement action and also on its ability to agree on appropriate action in relation to breaches, rather than the current apparent case by case basis.



## General Observations

As per paragraph 1.17 ComReg states that *“In the short-term, ComReg has somewhat limited discretion about the activities we undertake and our approach to them. Our functions and powers are set out in national and EU law. We reduced our staff numbers during the financial crisis and, as a result, much of our resources are devoted to activities that we are obliged by law to undertake”*.

There is a prevailing concern that ComReg’s resources are not always directed at interventions which have the greatest impact on the development of the sector and that interventions currently do not seem to be prioritised towards the efficient delivery of infrastructure investment and encouraging innovation, which ultimately facilitate the best outcome for end-users. For example, ComReg has been slow in completing significant projects on spectrum allocation and next generation networks (NGNs) and is also now significantly behind in its programme of market analyses and in breach of its obligations under the Framework.

These delays create uncertainties for industry and thus impact adversely on the industry's ability to invest. Furthermore, they serve to keep in place regulatory rules and obligations that reflect market conditions that may be years out of date, thereby creating market distortion and impinging on competition.

eir also notes that information made available on ComReg’s website allows for a comparison of its staff numbers and consultancy costs between 2010 and 2015 and whilst ComReg’s staff numbers have slightly decreased, its consultancy costs have increased, so at an overall level its cost per staff and paid resources are equivalent. However, if ComReg can reduce the extent of compliance and dispute resolution activities and can also reduce the extent of the activities associated with the implementation of imposed obligations (especially through industry forums), eir is of the view that this would allow ComReg to free up resources internally thus enabling it to carry out its assigned/required duties in a timely manner and meet its strategic objective of being an efficient and relevant regulator. eir does however support ComReg in its aim to be adequately staffed by an agile, skilled and motivated workforce who are expert in their fields i.e. those that are versed in policy and economic analysis driven by the facts.

ComReg’s duties include encouraging investment and innovation. However, ComReg’s focus should be on delivering benefits to the consumer through competition rather than simply promoting competition as an end goal in and of itself. As network infrastructure is expected to be a strong contributor to economic activity and growth, investment in next generation networks and a timely transition from old network technologies to new ones is a key challenge for policy makers. Full migration to NGN is both socially and economically desirable.

ComReg has stated in para 1.18 that it is *“taking a 5 year view”*. However, eir is of the view that the Draft Strategy Statement does not seem to truly incorporate such a forward looking view but rather reflects a shorter term outlook. ComReg does need to look forward and take advantage of its own and other’s research as to what the communications landscape will look like then. ComReg appears to be reluctant to remove regulation, for example, continuing to impose further margin squeeze tests despite increased cost orientation obligations. If its cost modelling is robust it should enable it to apply. It should in this regard also comply with EU Recommendations and concentrate on wholesale markets. Instead of regulating by taking a forward-looking view and making hard decisions shaping competition in the sector, ComReg is retrenching into regulating via compliance investigations and media-friendly consumer protection enforcement. This leads to over-regulation, with regulation lagging market developments and therefore harming competition. ComReg’s delay in the leased lines market is able evidence of this.



## Response to Consultation

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

ComReg considers there are five major trends as follows:

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

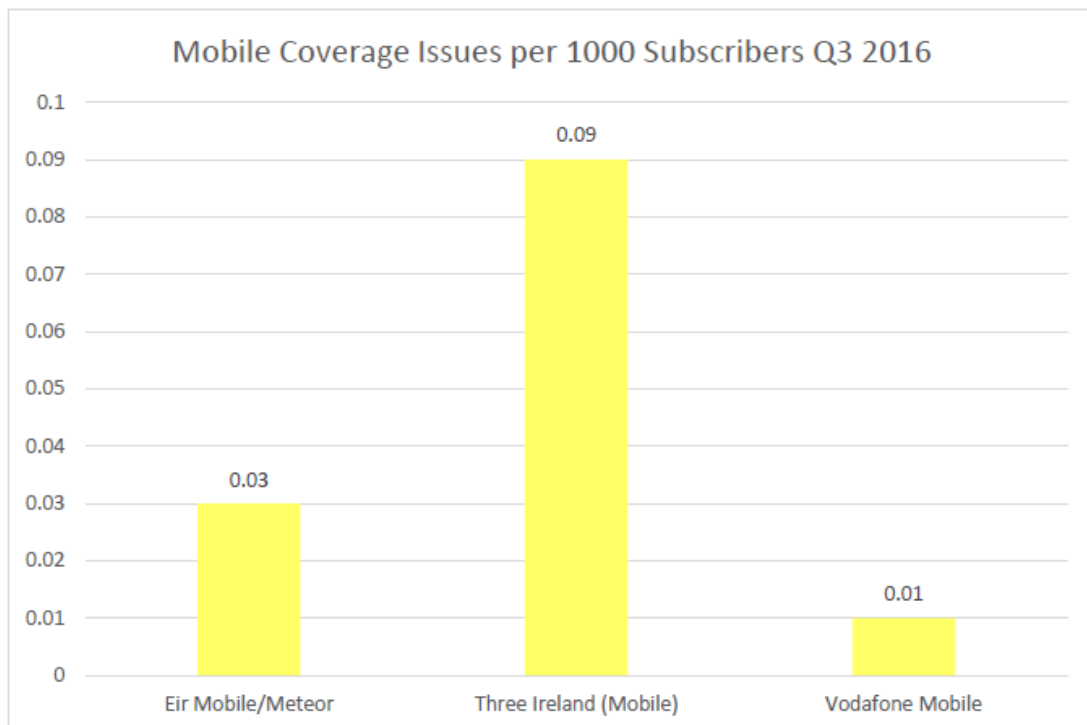
eir agrees that these are the most important overarching trends from a regulatory perspective, however would add to this as follows.

#### Non-uniform end-user experience

With regard to paragraph 3.8 and the non-uniform evolution of accessibility and connectivity, eir agrees that that most investment in NGA infrastructure has continued to focus on urban and semi-urban areas, with NGA networks passing only 24.9% of rural homes, a figure below the EU average of 27.8%. However it does not necessarily agree that the National Broadband Plan (NBP) will be the principal intervention aimed at addressing this. Rural rollout by operators including eir and Imagine would indicate the contrary. ComReg should be encouraging this rural investment. Also, whilst the more rural markets catch up in the interim eir is of the view that ComReg should take account of the sufficient differences that exist in competitive conditions across regions thereby recognising the existence of sub-national markets and imposing regulatory remedies as needed in an appropriate manner. This is addressed further in eir’s response to Question 2.

ComReg states in paragraph 3.9 that *“While mobile coverage in Ireland has exceeded well over 90% of the population (as distinct from geography) for 2G and 3G for many years and the rollout of 4G networks continues, there appears to be a trend of growing dissatisfaction among end-users with the quality of coverage in certain geographic areas.”*

According to GSMA Intelligence 3G network coverage by population in Ireland was 99.00% as of Q4 2016, while 4G coverage had reached 95% of the population. However, although 3G network coverage is rather uniform across all three MNOs (Meteor, Vodafone and Three) 4G network coverage varies by operator. eir reported at the end of January that it has now reached 95% 4G network coverage and the GSMA estimates that Vodafone’s 4G network coverage has also reached 95% of the population presumably based on Vodafone’s reported coverage of 86.7% in February of last year and its 4G rollout plans. On the other hand Three is somewhat further behind in its 4G network rollout and GSMA estimates that as of Q4 2016 Three had reached 82.61% population coverage. This would indicate that dissatisfaction among end-users with the quality of coverage is likely to vary by service provider, which as ComReg has reported in its Q3 2016 Consumer Line Statistics, appears to be the case. The figure below shows the number of mobile coverage issues per 1000 subscribers for each of the three mobile service providers listed.



Source: ComReg 16/111

eir has had a significant 4G rollout campaign under way since June 2016, [ ~~2~~ ]. We would therefore expect to see the already low number of mobile coverage issues per 1000 subscribers on eir's network to decrease further.

eir notes that any end-user education (e.g. recent battery back-up initiative) needs to be evidence based. ComReg shouldn't increase regulation in this area without evidence that consumers need it.

### Expanding set of related markets relevant to the regulation of ECS

In relation to Explanatory Box 3 on Convergence and Bundles, ComReg states that *"We may be starting to see a structural change in the market, driven by the recent trend of mergers and acquisitions by media companies of telecommunications providers, and of telecommunications providers by media companies. Recently we have seen Eircom purchase Setanta Sports. While we have seen consolidation within the telecommunications sector these new types of convergence mergers and acquisitions are likely to continue to have an effect on market structures"*. eir would note that Virgin Media has also acquired two terrestrial television companies in Ireland<sup>1</sup>, as well as its parent company, Liberty Global's acquisition of Formula 1.

ComReg considers that *"convergence raises another concern in relation to competition which is that the practice of bundling may afford operators with market power in one market the opportunity to leverage sales in another market."* This may well be the case but ComReg seems to be ignoring the fact that there is nothing new about this and it has failed to consider the clear examples of market power in TV markets being used to leverage sales in broadband markets. Whilst it would be useful for ComReg to understand these markets and have an informed view it

<sup>1</sup> <http://www.irishtimes.com/business/media-and-marketing/tv3-owner-virgin-media-buys-utv-ireland-for-10m-1.2718283>



has to do a proper competition analysis looking from all sides. eir notes that as an undertaking that has regulatory obligations in a number of wholesale telecoms markets, eir is at a disadvantage against other well-resourced operators, who are able to leverage their experience and existing customer bases in broadcast and mobile markets and especially in the scenario where simultaneous wholesale cost orientation (pricing remedies) and MSTs at the retail level exist.

In the context of retail markets where eir has to date been found not to have SMP, ComReg must ensure that it is not disproportionate in placing undue regulatory restrictions on eir retail based on finding eir to have SMP in the wholesale market. In light of ComReg's regulatory objectives of promoting competition it is important that consideration is given to the effectiveness of competition law in the first instance and in choosing regulatory controls in the second instance which replicate as far as possible the outcomes of competitive markets. As such, ComReg should take into account that eir's competitors include a number of large multinational publically listed operators when determining retail price controls such that it does not create inefficient pricing over and above the competitive level.

### **Increase in connected "things"**

eir agrees that while the current ECS eco-system focuses primarily on how people connect, the next wave of innovation is anticipated to be in relation to connected "things". eir considers it would be of benefit to innovation that ComReg look to see what the obstacles to the advance of IoT in Ireland may be and how these could be potentially addressed from a regulatory perspective.

### **Continued evolution of fixed and mobile networks**

ComReg states in paragraph 3.23 that *"Over the last number of years operators have continued investing in both fixed and mobile networks (see Chapter 7 for more discussion of investment and network rollout). With respect to fixed networks we have seen Eircom upgrading its copper network to allow for the delivery of NGA services, and Virgin Media have upgraded their network to DOCIS 3.0. It is predicted that by the end of 2016, 70% of addresses in Ireland will have access to high speed broadband (30Mbps or greater download). With respect to mobile networks, the rollout of 4G networks continues."*

eir notes that it is likely that Virgin Media's introduction of DOCSIS 3.1 is planned for 2017<sup>2</sup>. In relation to the rollout of 4G networks, eir has already noted previously in this response that the pace of rollout varies by operator and both Meteor and Vodafone are now nearing levels of 4G population coverage in line with those of 3G population coverage.

In relation to paragraph 3.24 ComReg notes that *"operators will begin to look at retiring elements of the legacy network such as some or all of the copper local loop, and the use of PSTN technology to provide voice services. It is probable that the migration to all-IP networks, with voice provided over IP will accelerate over the coming five years, although it may not be complete within that timeframe"*. On the basis that ComReg should take a forward-looking view, eir would urge ComReg to take sufficient account of declining demand, and its implications for regulation. In the face of declining demand and allowing for economically incentivised migration of customers and thus a timely retirement of legacy networks it is important to consider how best to balance short-term allocative and long-term

<sup>2</sup> See for example <http://www.broadbandtvnews.com/2016/09/14/mike-fries-docsis-3-1-will-come-2017/>



dynamic efficiency goals. This is discussed further in our response to Question 2. ComReg could benefit from research on the appropriate time periods for migration from legacy products and networks and consider how to streamline the process for retiring products. A simple reference to its consent being required before regulated products are removed does not provide any players with real certainty.

### **Changing regulatory framework**

ComReg identifies the following concerns that it has in relation to the Draft Electronic Communications Code.

*In particular, ComReg's preliminary opinion, is that certain provisions are not justified and inappropriate, while others have the potential to reduce ComReg's flexibility to adapt to national circumstances and may not contribute to the intended outcomes. These include:*

- *European Commission veto power on proposed remedies*
- *Mandatory peer-review of spectrum management decisions by BEREC, the European Commission and other national regulatory authorities*
- *Setting a licence duration of at least 25 years for harmonised spectrum*
- *The European Commission power to adopt binding implementing acts on specific aspects of spectrum management*
- *Maximum harmonisation for end-user provisions, and*
- *The conversion of BEREC into an EU Agency, where the Executive Director would not be drawn from an NRA*

eir considers that ComReg should consult with industry on its position. eir would welcome for example 25 year licence durations and is of the view that the fact that there is still regulation at the retail level in Ireland would indicate that an EU veto may in such instances be of benefit.

All of the above overarching trends identified by ComReg emphasise the rollout of high-speed broadband, Next Generation Networks (NGNs) and new technologies. There is increasingly dynamic infrastructure competition in Ireland and the increasingly competitive state of the markets at both the retail and wholesale levels does not support the imposition of more detailed and overly burdensome regulatory obligations. ComReg has placed strong emphasis on passive infrastructure remedies, ignoring the Broadband Cost reduction directive which is demonstrably wrong. The major infrastructure entrant in Ireland, SIRO, is using the infrastructure of a utility in another sector and ComReg could well draw conclusions from this and work with other sector regulators to make this easier for all operators, e.g. in the UK all regulators have done this working through the UK Regulatory Network. eir also notes that ComReg's review of retail line rental market (promised in 2014) is long overdue and in our view, it appears shared by the Commission, there is no justification for SMP in fixed retail ECS markets.

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

eir would agree with the challenges identified by ComReg. However, where we may disagree is the nature of those challenges and how such should be addressed. We have discussed some of the issues in our response to Question 1 but those are further expanded upon here.

eir agrees that the majority of investment in NGA infrastructure has continued to focus on urban and semi-urban areas. The National Broadband Plan (NBP) is aimed at addressing this 'market failure' in the sense that under existing market conditions it would be uneconomic to serve certain customers. The NBP has highlighted the importance of minimising this "digital divide", so that



segments of the population would not become marginalised and unable to participate fully in a society and economy increasingly reliant on digital and online services. ComReg has ignored the contribution of alternative operators in some of these areas and initiatives such as eir's current 300k rural rollout.

However, it is currently envisaged that the NBP will not reach completion until 2022 and in the interim, the urban/rural divide and the extent to which competitive conditions differ on a regional basis in Ireland should be reflected in ComReg's analysis of the relevant markets. eir is of the view that a regionalised approach to the application of remedies with regulation being lifted in areas where there is effective competition is the most appropriate manner in which to mitigate any competition problems that ComReg may identify. It welcomes the extent to which ComReg has already done this.

ComReg should recognise that in areas where there are at least two competing networks lighter touch regulation or deregulation would be appropriate, as this presents a scenario where competition is happening at the deepest level of the network i.e. infrastructure-based competition. Given for example Virgin Media's market share in those markets where it is present and both its expansion plans and movement into the business connectivity market, detailed wholesale regulation of eir's prices is no longer justified. Regulatory obligations imposed upon the SMP operator should be based on the nature of the problem identified and proportionate.

In terms of Current Generation Access (CGA) and Next Generation Access (NGA) there is much discourse around the effect of access pricing on investment incentives for new technologies as well as on the pace of migration from old to new technologies. Regulation can affect the adoption of innovation especially in highly regulated industries. In the face of declining demand it is important to consider how best to balance short-term allocative and long-term dynamic efficiency goals and to this end eir would look to ComReg to use appropriate economic analysis.

Demand for certain services, which utilise the fixed telecommunications network appear to be in a permanent state of decline. To date in its Decisions on the various regulated markets, ComReg has treated CGA and NGA products as part of the same product market. In its Consultation on the Wholesale High Quality Access (WHQA) Market, ComReg has proposed that the market is delineated on the basis of high or low bandwidths and delivery over traditional versus modern interfaces. eir is of the view that due to the steady decline in legacy products, it is appropriate to delineate the relevant markets on the basis of legacy and next generation technologies and would urge ComReg to continue with this practice. The demand for these legacy products is likely to decline further over the lifetime of the current market reviews as retail (and consequently) wholesale demand ultimately migrates to next generation access.

Assuming that economic regulation remains appropriate in declining markets then the regulatory approach may need to adapt to take into account that in such a scenario traditional objectives are supplemented by 'transitional' goals and objectives and as such due consideration should be paid to the encouraging of investment in NGNs and ensuring a desirable transition by creating appropriate incentives on the part of operators and consumers to switch. This will include providing appropriate incentives for both incumbents and access-based entrants to switch customers from legacy products to new products to limit the period of inefficiently-duplicated running of two access products. Applying cost orientation to declining legacy products is not appropriate in this regard as the Commission's pricing recommendation makes clear.

The market has seen the consolidation and expansion of a number of operators over the past few years, which has had a significant impact on the competitive landscape. As a result the market is no longer characterised by a large number of small operators with a single large provider. Rather, it consists of a smaller number of larger players, each with their own network infrastructure and most

of whom are extremely well resourced and form part of very large global multi-nationals. Significant market players such as Vodafone/SIRO and Liberty Global (Virgin Media) are well placed in terms of access to capital markets.

eir notes that many agreements between broadband service providers and broadband application providers occur on a global basis and cover numerous countries. For example, Liberty Global, the owner of Virgin Media has agreed a multi-year partnership with Netflix that will see the internet television company's app added to Liberty's set-top boxes. In the context of business services, many procurement decisions by large multi-nationals are made on a global basis and typically contested by global operators including BT, AT&T and Colt. As a substantially national operator eir is excluded from such bids.

This further highlights the extent to which eir competes with well-resourced international competitors and as an undertaking that has regulatory obligations in a number of wholesale markets, eir is at a disadvantage against other unregulated operators. ComReg should have regard to such considerations in its analysis and in devising remedies.

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

eir is of the view that the sectoral trends and challenges posed by such are those that are of most relevance from a regulatory perspective and has nothing further to add in this regard.

### **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.**

ComReg identifies that following Strategic Intentions for the period 2017-2021

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 requirements*
5. *Organisation: We are an effective and relevant regulator*

eir agrees that these are appropriate areas of focus. However, eir is of the view that some of ComReg's strategic intentions should be higher priority items than others and that a reordering of the intentions may therefore be necessary. ComReg's primary objective should be a focus on improving consumer outcomes and overall societal welfare including through the promotion of competition rather than a specific focus on encouraging competition per se.

We would also welcome further information from ComReg on how it intends to focus its resources on each of the areas and clearly identify where there may be trade-offs between the progression of some priorities over others. We believe this information would be extremely helpful for regulated entities in order to manage and prioritise their own resources.





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

In relation to paragraph 5.3 ComReg states that it “*recognises the difference between so called static efficiency and dynamic efficiency*”. eir has in its response to Question 2 detailed its views on regulation in declining markets.

In the face of declining demand it is important to consider how best to balance short-term allocative and long-term dynamic efficiency goals. eir is of the view that to the extent to which ComReg is concerned by the risk of abusive wholesale pricing in particular markets, its goals may be more effectively achieved through wholesale price caps set at current levels. In appropriate circumstances that would provide a better balance between allocative and dynamic efficiencies, which should be of key concern to ComReg at this particular juncture.

Migration incentives for end-users in legacy markets are in line with the European Commission recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment<sup>3</sup>. Full migration to Next Generation Networks (NGNs) is both of benefit to consumers and economically efficient.

In relation to paragraphs 5.9 to 5.14 and competition on fixed networks there is increasingly dynamic infrastructure competition in Ireland and the increasingly competitive state of the markets at both the retail and wholesale levels reflects this. eir notes that the transposition of EU Directive 2014/61/EU is a very important policy measure to accelerate the delivery of high-speed broadband throughout the EU and has a potentially very positive impact on certain Member States including Ireland where rural population density and dispersion patterns are a specific barrier to investment. eir considers that the Directive should be more of a focus for ComReg than it currently is. It is clear that the Directive contemplates utility providers with appropriate infrastructure having reference offers and to make such offers available on request. eir altered its duct and pole products in the light of the Directive, unlike other operators and utility providers which have failed to produce reference offers or even contact points. Fulfilling its role in this regard should be high on ComReg’s priorities as should co-ordination with other sector regulators. Ireland is nowhere close to having a single information point.

In relation to competition on mobile networks, eir notes that Figure 5 showing the level of market concentration in retail fixed broadband, fixed voice and mobile voice markets depicts very little movement in the HHI since the Three/O2 merger 3 years ago. eir considers that it may now be an appropriate time for Comreg to review this market.

In relation to paragraphs 5.20 to 5.30 and monitoring of markets eir supports ComReg in its pursuit of evidence based regulation, but would raise a concern that industry is already heavily burdened with S13D notices and it appears that processing the data is also a heavy burden on ComReg. eir would suggest that streamlining the data requirements and the manner in which the data is used may be necessary in this instance. It welcomes ComReg’s aim to increase its ability to appropriately collect and analyse market data.

In para 5.39 ComReg states: “*However, despite the imposition of regulatory obligations upon Eircom, ComReg has concerns that, given Eircom’s vertically integrated structure (whereby it competes at both the retail and wholesale levels) and its SMP position in certain markets, that it has both the ability and the incentive to engage in behaviours that discriminate against competing operators.*”

<sup>3</sup> [http://ec.europa.eu/smart-regulation/impact/ia\\_carried\\_out/docs/ia\\_2013/c\\_2013\\_5761\\_en.pdf](http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2013/c_2013_5761_en.pdf)

ComReg cannot simply have regard to hypothetical abusive conduct and regulatory obligations imposed should be based on the nature of the problem identified and proportionate. In addition, in a scenario where eir was determined to have SMP in a particular market, it would be subject to the behavioural constraints imposed by ex post competition law. All of eir's main competitors e.g. Sky, BT, Vodafone and Virgin Media, operate as part of large international corporations who take advantage of substantial economies of scale in terms of network deployment, product development at both the wholesale and retail levels, and content purchasing power and would readily make a complaint in the event of an abuse of dominance.

In relation to paragraph 5.40 and the retirement of eir's legacy network, eir notes that it is committed to working in a mutually beneficial manner with ComReg and industry towards network modernisation.

In the section on compliance (Chapter 9) ComReg outlines its strategy as seeking a culture of compliance, where regulated entities comply voluntarily with their obligations and have an internal culture of compliance, together with targeted compliance and enforcement and effective deterrence.

The internal culture of compliance in eir which is known as eir's Regulatory Governance Model (RGM) is currently under review and eir notes that it has already taken steps to enhance this as ComReg is aware.

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

On enforcement ComReg says that it will be seeking new powers under legislation to provide effective deterrence, both at a civil and criminal level. It wants the ability to impose fines, as Ofcom can and higher criminal penalties. Whilst eir has no objection to this per se it notes that ComReg has singularly failed to set up guidelines as to the manner it will enforce the rights it already has. ComReg needs to act in a way which promotes regulatory certainty and a lack of consistency in this regard is not of assistance to anyone.

In wholesale regulation, enforcement is prioritised in cases where an SMP operator's behaviour has greatest potential to harm competition – both directly and by reducing the confidence of other operators in the effectiveness and predictability of the regulatory regime. Breaches which come to light as a result of a SMP operator's own internal control system may be of a lower priority for enforcement if they are transparently reported, proactively and effectively remedied, and the failure of controls which led to the breach is also addressed, in a context of a continually improving control environment. However, ComReg will also take into account the severity of the breach when deciding whether to prioritise enforcement action. [Emphasis added].

ComReg should prepare and consult on guidelines for doing this and also on its ability to agree on appropriate action in relation to breaches, rather than the current apparent case by case basis. Paragraph 8.27 also notes they will take guidance from competition authorities when seeking fines for damage to competition.

In respect of compliance and enforcement, section 3 of the European Communities Act 1972 (as amended) confers a power on Ministers to "*make such provision as that Minister ... considers necessary for the purpose of ensuring that penalties are effective and proportionate, and have a deterrent effect...*" but subject to the crucial proviso that the maximum fine shall not be greater than €500,000. Thus the Oireachtas took the view that the availability of a fine of up to €500,000 would meet the requirements of effectiveness, proportionality and deterrence. ComReg's Draft Strategy appears to ignore this point.



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

eir considers that the Goals associated with the Strategic Intentions are appropriate and relevant however as eir has already addressed ComReg's primary objective should be a focus on improving consumer outcomes and overall societal welfare including through the promotion of competition rather than a specific focus on encouraging competition per se and as such the Goals associated with the objective of improving consumer outcomes and overall societal welfare will be of more relevance.

**Q.8 Is there anything else that should be added to, or omitted from, this Strategy Statement?**

eir considers that Regulatory Impact Assessments (RIAs) should be more rigorously conducted and more meaningful in their contribution to assessments of proportionality. The ultimate aim of a Regulatory Impact Assessment (RIA) is to ensure that all measures are appropriate, proportionate and justified. As such they should include a detailed examination of costs, benefits and impacts on stakeholders as well as consideration of the use of alternatives to regulation and should seek to identify any negative impacts of regulation and thereby minimise unintended consequences, e.g. the promotion of the use of legacy technologies at the expense of penetration of next generation technologies.

eir's experience of RIAs is that they are closer to rationalisations of preferred policy positions than objective assessments of costs and impacts.

# ICBAN Response to COMREG Draft Strategy Statement for Electronic Communications for the period 2017-2019

Thank you for the opportunity to respond to this consultation. We are a local authority led development organisation which works in the cross-border areas of Ireland and Northern Ireland, covering the Council areas of: Cavan, Donegal, Leitrim, Monaghan and Sligo, in what is known as the Central Border Region.

ICBAN has been tasked to support member Council interests in ensuring broadband telecommunications services best meet the needs of these local authority areas. This is an area which the group have been active in for the past number of years and have completed a study on the broadband infrastructure solutions for Northern Ireland. A comparator study is currently being completed for the County Council areas within the partnership.

In this context we make the following comments against the questions set out in the ComReg document 16/115:

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

Rural-urban divide. The rural urban divide is understood. ICBAN would wish to suggest this matter can be helpfully be addressed by training additional resources to work on infrastructure delivery. The qualifications needed are not necessarily high level, as most of the work is civils based.

ICBAN, on behalf of the Border County Councils, would welcome the opportunity to discuss the resource issues and to outline related proposals that would help overcome these challenges at the earliest opportunity.

Convergence – The convergence of fixed and mobile services are not dealt with adequately. The document would benefit from greater clarity of Comreg priorities in this area and how the regulator intends to support the convergence of numbering systems. Comreg must demand transparency of the parameters supporting the underlying data transport infrastructure. This could include a Bi-annual publication on the state of Ireland's data transport infrastructure, with typical measurements including peak-hour bandwidth available to users. This would help users understand what mix of OTT services will work given the resources available.

The internet of things... We would welcome a more thorough proposal on how Comreg's spectrum allocation policy can support the widespread use of IoT based devices. We would welcome discussion on the enforcement and improvement to the coverage obligations that would apply in rural areas.

ICBAN believes some rural test beds are needed. There are several sites in the border area suitable for 5G test bed activity and we would welcome the opportunity to discuss these with Commreg.

Evolving networks. – We agree with the view that fibre networks will need to be pushed further. Given the ambitions of EIR's and SIRO etc., and the National Broadband Plan, Comreg should hold a consultation on a possible 'sunset' date for telephony. This would further assist the NGA business cases for EIR and SIRO.

The issue of resources for upgrading access networks has been made but it is relevant to reference this here also.

Evolving regulation.

Regulating oligopolies is a tough task. This is compounded by the legacies of Eir and ESB and their relationships to Government. There is a danger of over-stating the value of competition, when in fact the regulator can be consumed by refereeing two large companies with strong identities.

Comreg, to be effective and relevant in its role, must focus its objectives for the Irish market, rather than overly referencing the European Framework. How does Comreg assist directly in securing value for money for Irish taxpayers in the forthcoming national broadband delivery? What leadership role is Comreg taking in setting sunset dates for telephony? How does Comreg support convergence of fixed and mobile services in its spectrum policy? How will Comreg hold EIR and SIRO accountable for their broadband commitments? We believe that Comreg should spell these matters out in more detail.

The above are more important to the Irish consumer than adherence to high level but less tangible European directives.

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

The switch to on-demand TV has not been dealt with adequately. Consumers may wish to consumer more on-demand TV services using their broadband connection, and thus divert some of their TV licence costs to paying for a better connection so they can consumer content in this way.

4G coverage obligations have not been discussed adequately. This is worthy of specific proposals from Comreg.

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

The commitments made by EIR and SIRO are significant for a country the size of Ireland. These commitments should be referenced specifically. Comreg should outline its role in both supporting this investment and how it will hold both companies to account

***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.***

These are a reasonable representation of Comreg's strategic intentions. ICBAN believes Comreg should reference some benchmarks for what 'good' typifies for each of these intentions. Quantify competition – 2 or 3 network providers etc.? Perhaps this could be improved by adding a section on benchmarks for quality of broadband and mobile services offered against the best in class worldwide. The document might benefit from describing some strategic outcomes, as well as intentions.

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

The information does not reflect the circumstances of both EIR and SIRO investments in broadband, while the state is simultaneously wishing to let contracts for rural upgrades. This dynamic, the challenges it may create for the Regulator, and what role the Regulator expects to play in securing the best outcome for Irish Customers, are worthy of special comment.

Some specifics need to be presented on comparing the prices paid by Irish customers with their counterparts across Europe. What balance is Comreg seeking? What impact does Comreg expect to have on quality versus prices? Oligopolies will tend to compete on certain strategic points but follow each other's price rises.

Comreg's ambition for mobile coverage is not dealt with sufficiently. More investment is needed to secure minimum signals strengths and quality of service for all users. The sale of spectrum without securing the usage of that spectrum, is at this stage out of date in policy terms. Coverage obligations are now more important than that which auction or licence fees yield.

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

ICBAN believe the strategic intentions are adequate. However each intention should be directly associated with a table of measurable goals.

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

ICBAN believes the goals should be: more clearly stated; measurable; and capable of reporting against regularly.

***Q.8 Is there anything else that should be added to, or omitted from, this Strategy Statement?***

Various benchmarks should be incorporated to help measure Ireland's connectivity levels against those areas we wish to be compared with.

References to the national infrastructure could be strengthened by the publication of a national infrastructure report comprising white papers from CTO's in fixed and mobile companies, along with comments from leading academics.

The significant investments and ambition in NGA by EIR and SIRO are not really dealt with or perhaps fully appreciated. This we think is worthy of a special section. These are transformational investments and should be presented as such. These will require an exceptional level of support from Comreg to help bring to a timely fruition.



*Irish Rural Link*  
*Nasc Tuaithe na hÉireann*

**Submission to ComReg's Draft  
Strategy Statement for Electronic  
Communications 2017-2019**

**February 2017**

**Contact**  
**Seamus Boland/Louise Lennon**



## Overview

Irish Rural Link (IRL) is the national network of rural community groups, representing over 1200 community groups and thousands of individuals committed to socially, environmentally and economically sustainable rural communities.

The lack of good quality broadband and mobile phone infrastructure in rural areas has impacted on development and growth. It continues to be a deterrent for companies to locate to rural areas and prevents small companies from expanding. A study in 2016 for IE Domain Registry found that a quarter of small businesses that do not have a website are being kept offline due to poor broadband<sup>1</sup>. People living in rural areas are frustrated by these issues also. Broadband consumers have limited choice in providers as a result of poor infrastructure, and are therefore often paying higher prices as a result.

Mobile coverage continues to be a major issue for some parts of rural area, to the point that people have to rely on landline, again faced with higher bills.

Irish Rural Link welcomes the Report of the Mobile Phone and Broadband Taskforce and the ComReg's Strategy Statement for Electronic Communication 2017-2019. We welcome that in the Mobile and Broadband report as part of its actions, consumers will have access to ComReg and that this is reiterated in ComReg's Strategy. Goals and actions set out in the strategy must correspond to actions outlined in the Mobile Phone and Broadband Taskforce Report.

## Comments and Recommendations on ComReg's Strategy

The following are some comments and recommendations on ComReg's Strategy

- Within the current challenges IRL welcomes that the lack of or the poor quality of services for rural consumers are highlighted. However, we feel more details on this should be included. Bundle deals for broadband, phone and TV are not available to all consumers in rural areas due to coverage issues or poor broadband infrastructure, therefore limiting their choice of providers. This should be highlighted as a current challenge.
- We welcome there will be improved access to ComReg for all, including vulnerable consumers. We welcome that consumers will be provided with information on which

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<sup>1</sup> RTE News.ie 16/06/16 <http://www.rte.ie/news/2016/0616/795937-businesses-web-presence-iedr/>

handset, service provider and quality of service coverage works best for them in their locality and this will be available to them online and in store. This information needs to be available in plain English and be cognisant of people with literacy problems. There must be an onus on service providers and their salespeople in stores to sell the most suitable device to meet the customer's needs. IRL are aware of incidence where older people are sold smart phones, unable to use the device once purchased and unable to return the device.

- Point 5.10: The high level of entrant costs in less densely populated areas needs to be examined further. These high costs are often passed on to consumers especially in rural areas where there is less choice. Less bundle deals are available in rural areas. More investment is needed to create more competition for rural consumers.
- 5.29: Market Monitoring – IRL welcome that ComReg will monitor competition in the market. We suggest that there are timelines on monitoring and reports are communicated to customers.
- 5.31: Any mobility by consumers from one provider to another must be done as seamlessly as possible with little or no disruption to service.
- 5.40: The withdrawal of copper must be carried out seamlessly. Fibre optic must be fully installed before complete withdrawal of copper wire.
- 5.43: ComReg must ensure Broadband Cost Regulations are adhered to by service providers. Those that do not adhere to these should be identified and made known to the public.
- 5.55 and 5.56: Goal 7: Ensuring there are low barriers to consumers exercising their choice is an important goal. Recognising the barriers and exploring how these can be resolved is a responsibility for all stakeholders. As mentioned above, any switch over from one provider to another must be as seamless as possible and must be carried out by the provider as is the case with electricity and gas. Better recognition of the limited services and bundle deals available in rural areas is needed in the strategy and this needs to be considered in pricing.
- 6.2: Protection of consumer rights of very vulnerable people is welcome. Very often such consumers do not have all the details or are not aware that they have rights or where to get this information. Vulnerable users are protected is outlined in Strategic Intent 2. How will they be protected? All information on consumer rights must be in plain English. Services such as NALA could be used to check readability for vulnerable people. Contact details of ComReg could be provided in mobile phone stores and copy of customers' rights or where these are available given at point of sale by service providers to the customer.

- 6.4: Customers can choose and use communications services with confidence – there must be an onus on service providers and sales assistance in stores to sell a product or service that meets the customer’s needs. Older people are often vulnerable to this, in that they are sold mobile phones beyond what they need them for and unable to use them.
- 6.6 – ComReg’s consumer line must be made available to consumers at point of sale. Assistance must be available for vulnerable customers in phoning ComReg.
- 7.4 – Commercial Investment – ComReg must monitor commercial investment and ensure the necessary investment is being made, especially in rural areas so consumers have same choice of services as people in rural areas.

## **Conclusion**

The new ComReg Strategy Statement on ECS must coincide with actions set out on the Mobile Phone and Broadband Taskforce Report. ComReg must work to ensure the gap between broadband services in urban and rural areas is lessened with an overall aim of closing this gap. Customers in rural areas have less choice in service providers and bundle deals are not always available. This means people living in rural areas are often paying higher prices for broadband. Vulnerable customers must be protected and all information made available and explained clearly to them. Continued investment is necessary to ensure broadband and mobile coverage is fit for purpose for all consumers in all parts of the country.

## **Irish Rural Link the Organisation**

Irish Rural Link (IRL), formed in 1991, is a national network of organisations and individuals campaigning for sustainable rural development in Ireland and Europe. IRL, a non-profit organisation, has grown significantly since its inception and now directly represents over 1200 community groups with a combined membership of 25,000.

The network provides a structure through which rural groups and individuals, representing disadvantaged rural communities, can articulate their common needs and priorities, share their experiences and present their case to policy-makers at local, national and European Level.

Irish Rural Link is the only group represented at the national social partnership talks solely representing rural communities' interests.

***'Our vision is of vibrant, inclusive and sustainable rural communities that contribute to an equitable and just society'***

Irish Rural Link's aims are:

- To articulate and facilitate the voices of rural communities in local, regional, national and European policy arenas, especially those experiencing poverty, social exclusion and the challenge of change in the 21<sup>st</sup> century.
- To promote local and community development in rural communities in order to strengthen and build the capacity of rural community groups to act as primary movers through practical assistance and advice.
- To research, critique and disseminate policies relating to rural communities including issues such as sustainability, social exclusion, equality and poverty
- To facilitate cross-border networking between rural communities

***'Our mission is to influence and inform local, regional, national and European development policies and programmes in favour of rural communities especially those who are marginalised as a result of poverty and social exclusion in rural areas.'***



**From:** [Clifford, Paul](#)  
**To:** [Strategy Statement Consultation](#)  
**Subject:** Submission from Monaghan County Council  
**Date:** 16 February 2017 18:32:50

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**The elected members of Monaghan County wish to highlight the lack of proper broadband infrastructure in County Monaghan and request that ComReg conduct an audit on the benefits achieved through the National Broadband Scheme, the Rural Broadband Scheme and the Kelvin Project.**

Whilst Chapter 3 recognises the existing rural/urban divide as exists in terms of electronic communication technology in Ireland, the extend of that divide cannot be underestimated, in either the demand-side requirement for mobile telephony coverage and fibre broadband throughout rural Ireland or the supply-side challenges facing the successful tenderers of the Rural Broadband Scheme.

ComReg's strategy must incorporate reporting measures whereby service provision in rural Ireland can be measured independently and delivery is prioritised in line with the principles of the Universal Service Directive. At present the Directive is not applied, as services in rural Ireland are not sufficient to permit functional internet access.

Service provision in rural areas is dominated by Eir, the wholesale provider. Monaghan County Council feels that the strategy should contain an objective to measure and expand infrastructure roll-out. The sharing of infrastructure in rural areas must be maximised to improve both the capacity and range of services. An audit of the existing services and infrastructural capacity conducted on a regular basis by an independent body is a prerequisite for impartial reporting.

Broadband services with speeds, that cannot be delivered, are repeatedly advertised. High-cost leased lines are regularly offered to rural businesses as the solution to their needs, who request fibre to the premises. The Strategy needs to address the imbalance between the service provided to urban centres and rural Ireland, containing small towns, villages and rural countryside. The imbalance leads to competitive disadvantage and migration, which cannot be addressed by the limited ambition of the Rural Broadband Plan.

*Note: Motion passed by Monaghan County Council at its monthly meeting on Monday 9 January 2017: - On the proposal of Cllr P. Treanor, seconded by Cllr McKenna, it was agreed that Monaghan County Council makes a submission to the COMREG Draft Strategy 2017/2019, identifying the lack of a proper broadband infrastructure in County Monaghan and seeking an audit on the benefits achieved through the National Broadband Scheme, the Rural Broadband Scheme and the Kelvin Project.*

Regards

Paul Clifford  
Director of Economic & Community Services  
Monaghan County Council



Designated Public Official under the Regulation of Lobbying Act.



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Don fhaighteoir (nó do na faighteoirí) ainmnithe amháin an t-eolas atá sa teachtaireacht seo. D'fhéadfadh eolas rúnda nó faoi phribhléid a bheith istigh inti agus murach tusa an faighteoir beartaithe, níl cead agat an ríomhphost seo a scaipeadh, a dháileadh nó a chóipeáil. Má fuair tú an ríomhphost seo de bharr botúin, cuir in iúl don té a sheol é láithreach, le do thoil, trí ríomhphost a chur, agus scríos é ó do chóras. Ní féidir a dheimhniú go mbeidh seachadadh ríomhphoist slán agus mar sin de ní ghlacann Údarás Áitiúla Mhuineacháin le freagracht dhlíthiúil as ábhar na teachtaireachta seo. Ach gurb é gnáthchomhfhreagras gnó atá i gceist, is leis an údar amháin aon bharúil nó tuairim a chuirtear i láthair agus ní gá gurb ionann iad agus barúil nó tuairim Údarás Áitiúla Mhuineacháin. Tá ríomhchláir frithvíreas i bhfeidhm ag Údarás Áitiúla Mhuineacháin, ach ní ghlacaimid le freagracht as aon díobháil d'aon sórt a mbeidh seachadadh víris mar chúis léi. Déanann Údarás Áitiúla Mhuineacháin monatóireacht ar chumarsáid ríomhphoist ar chúiseanna oibrioctúla, slándála agus gnó..

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# ComReg – ECS Strategy Consultation

## Introduction

The National Disability Authority (NDA) welcomes the opportunity to respond to the ComReg consultation on the Draft Strategy Statement for Electronic Communications for the period 2017-2019.

Electronic Communications are an important part of everyday life be it work, billing or communications generally and can be especially enabling factor for many people with disabilities and older people. Modern communications technology can address some of the historical barriers to communicating and accessing information and services often faced by people with disabilities. This can enable them to participate in commercial, social and leisure activities along with their peers.

Poorly designed and implemented technologies can, however, widen the gap between people with disabilities and older people, by further reducing the facilities and services available.

It is therefore essential that new technology products and services are designed to be used by the widest possible audience from the outset using a Universal Design approach. This approach will give providers a broad commercial benefit by increasing the potential audience for their products and services.

Universal Design of products and services ensures that those products and services:

“may be accessed, understood and used

- i. To the greatest possible extent
- ii. In the most independent and natural manner possible
- iii. In the widest possible range of situations
- iv. Without the need for adaptation, modification, assistive devices or specialised solutions, by any persons of any age or size or having any particular physical, sensory, mental health or intellectual ability or disability”

Source: Disability Act 2005, Section 52

The NDA has done considerable work in the energy utilities sector, which has many customer engagement features in common with the telecoms sector. We produced the SWiFT 9:2012 ‘Universal Design for Energy Suppliers’ standard and



the associated Customer Engagement Toolkit to guide service providers on accommodating needs for of all customers and reaching the widest possible audience.

The NDA provides this input informed by our role and expertise on universal design and access matters, relating to access to products, services and information for everybody.

## Feedback on Section 1: Introduction

The focus on ‘consumers’ may be interpreted more narrowly than intended. There may well be people who are not current consumers of services but who would like to be consumers. They may be, or feel, blocked due to costs or because products or services were not designed with their needs in mind. A narrow focus on consumers would exclude such people from consideration. It would be preferable to refer to ‘people’ rather than ‘consumers’ or ‘citizens’.

We welcome the reference to people with disabilities in explaining the vision in section 1.13.

There are mixed views on the terminology ‘vulnerable users’. Some people with disabilities would not consider themselves to be vulnerable at all; they just have particular needs for products and services. It may be helpful to use another term, or to clarify the intention and definition of this term.

We would suggest that the term ‘people with disabilities’ should be used in preference to ‘the disabled’ in section 1.13 in line with the ‘People First’ approach to communication. A similar approach would be best for references within the strategy to ‘disabled end-users’ and ‘disabled consumers’.

## Feedback on Section 4: Strategic Intent

The draft strategy paper refers to the objective that “consumers can choose and use communications services with confidence”. The recent presentation to the Consumer Panel has a variation on this; that “consumers can access services and exercise their choice with confidence”.

We would suggest that this objective is enhanced to ensure that services are designed to be **usable** by the widest possible audience. This could read “consumers can choose and use communications services with confidence **and ease**” or similar. An explanation of the importance of ensuring that services are

designed to be usable by the widest possible audience referencing Universal Design would ensure this enhanced objective is fully understood.

The NSAI SWiFT 9:2012 'Universal Design for Energy Suppliers' standard would be a useful reference for telecoms suppliers, as it covers many common areas around customer information, billing and dealing with complaints. The Centre for Excellence in Universal Design Customer Engagement Toolkit for Energy Suppliers will provide practical help to suppliers seeking to broaden the reach of their communications and other engagements with customers.

## **Feedback on Section 6: Protecting and Informing Consumers**

The reference in Section 6.3 to “Essential and basic services are available for all as technology changes” should be expanded to cover usability. Availability is not enough. If services are not designed to be usable by the widest audience, they will almost certainly exclude some people, such as people with disabilities or older people.

This could be enhanced to read “Essential and basic services are available for all **and usable by all** as technology changes”. This could be accompanied by an explanation of the value of Universal Design.

Three Ireland (Hutchison) Limited  
Registered office

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Dublin 2

Registered Number: 316982  
Place of Registration: Republic of Ireland



Mr Jeremy Godfrey, Chairperson  
Commission for Communications Regulation  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
BY EMAIL [REDACTED]

17 February 2017

**[CONTAINS CONFIDENTIAL INFORMATION]**

Dear Jeremy

**CONSULTATION RE: COMREG STRATEGY STATEMENT, 2017 – 2019**

I refer to ComReg's proposed Strategy Statement for 2017 – 2019. We welcome the opportunity to contribute to ComReg's general strategy for the next three years.

We are living in a very exciting period from an electronic and mobile communications perspective. The promise of 3G has been realised, demand for data is growing exponentially and people are increasingly accessing data "on the go". Looking forward, 4G rollout will be completed, 5G will come on-line and the products available from electronic communications service providers will continue to amaze and astound in their transformative nature.

Three is leading the way in respect of these changes. As you are aware, we were the first to launch mobile broadband in Ireland, are one of the few operators in Europe offering All You Can Eat Data as a retail offering and carry more data on our network than any other mobile network. In 2014, we acquired O2 in order to have the scale to further invest, innovate and compete. We are currently investing €365 million transforming our network. When this is complete, Three will have the best network in Ireland for voice, text and data, and offer customers an unparalleled level of quality.

In order to maintain this investment, innovation and competition, we believe that the following issues need to be addressed:

1. Coverage

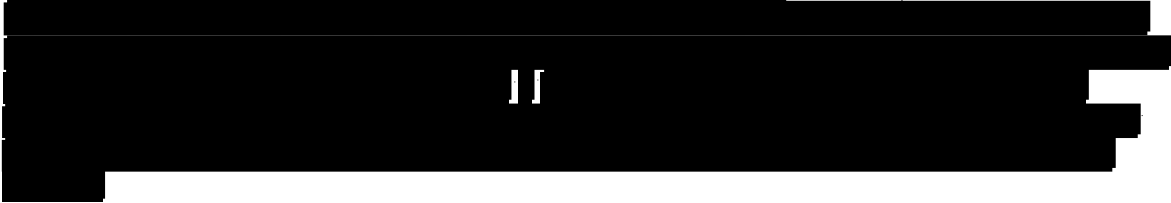
Industry, ComReg and other public stakeholders need to continue to address issues affecting mobile coverage, particularly in rural areas. Three welcomed the establishment of the Government Taskforce on Broadband and Mobile Coverage (the Taskforce). It looks forward to working with the Taskforce to ensure that its recommendations are implemented as soon as possible. The mobile industry acknowledges that there are mobile 'blackspots', however, these are mainly due to planning/road restrictions and the uneconomic cost of supplying coverage in isolated areas. We welcome the statements contained in the Taskforce report and ComReg's draft strategy that: (i) there needs to be



greater public support for mobile infrastructure;<sup>1</sup> and (ii) there are limits to the further rollout of mobile infrastructure in the absence of State intervention.<sup>2</sup>

## 2. 5G and Mobile Backhaul

The implications of 5G need to be understood and its rollout facilitated, particularly in the area of mobile backhaul. We welcome ComReg's express focus on 5G and acknowledgement that "... 5G networks are likely to have differing requirements".<sup>3</sup>



## 3. Spectrum

Sufficient spectrum to meet future demand in the mobile communications market needs to be released. In particular, ComReg needs to: (i) liberalise the 2100 MHz spectrum bands in order to increase access to 4G; and (ii) introduce "rolling licences" in order to provide greater certainty regarding investment. We welcome ComReg's comments in respect of spectrum and look forward to participating in future spectrum awards.

## 4. Roaming and Net Neutrality

There needs to be an appropriate balance between: (i) the public policies served by the new European rules on roaming and net neutrality; (ii) investment; (iii) innovation; and (iv) competition, to the overall benefit of customers.

## 5. Consumer Protection

There needs to be a proportionate approach to consumer protection. In particular, we note the following comment by ComReg: "*While it is important that contracts fairly represent the product or service, it is just as important that consumers have appropriate rights when the product or service does not meet expectations. For example, a mobile service may not meet a consumer's expectations if the consumer did not have accurate information about coverage at the locations where they live, work and travel*".<sup>4</sup> We agree, however, expectations are set by communications and must be reasonable. Three complies with all consumer protection marketing obligations in order to ensure that its communications are fair to customers. We use plain and simple language in our terms and conditions in order to ensure that they are clearly understood. It is a general legal principle that customers should read their contracts before entering into them. If there is a persistent issue regarding consumers' expectations, Three is happy to engage with

<sup>1</sup> Page 19 of the Taskforce report.

<sup>2</sup> Paragraph 1.7 of ComReg's draft strategy.

<sup>3</sup> Page 6 of ComReg's draft strategy.

<sup>4</sup> Paragraph 6.20 of ComReg's draft strategy.

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Three.ie

ComReg regarding greater transparency for customers pre-purchase eg by way of update to ComReg's Code of Practice re: Transparency.

## 6. Enforcement

Finally, there needs to be an appropriate balance between engagement and enforcement. We note that ComReg believes that the current enforcement regime could be improved in three main areas, namely: (i) providing for civil sanctions; (ii) increasing the level of financial penalties; and (iii) standardised powers. In particular, we note the following comment by ComReg: *"ComReg is very active in regulatory enforcement through its engagement with industry and in bringing civil and criminal enforcement actions where engagement has failed or is inappropriate. Where necessary ComReg's enforcement programme targets serious breaches, which are sometimes deliberate and often affect large numbers of customers and end-users. Service providers often profit significantly, and unjustly from breaking the law. Some of ComReg's enforcement activities, as discussed above also concern matters where there is a possible threat to public safety and security".*<sup>5</sup> We believe that ComReg's current enforcement regime is sufficient for the purposes of ensuring compliance. We are not aware of any deliberate breaches, or significant and unjust profiting from breaches on a frequent basis by telecommunications service providers.

Yours sincerely

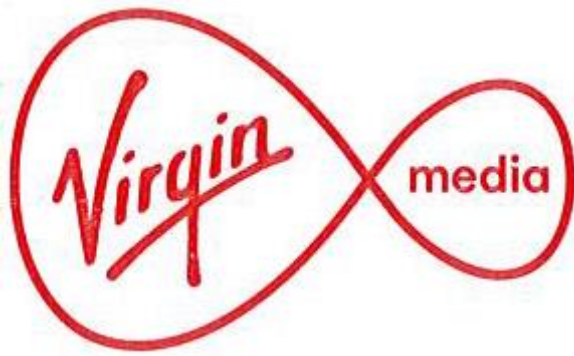
**MARK HUGHES**

Head of Regulatory Affairs

**Copy:** Mr Gerry Fahy, Commissioner, ComReg [REDACTED]  
Mr Kevin O'Brien, Commissioner, ComReg [REDACTED]  
Ms Sinead Kelleher, ComReg ([StrategyStatementConsultation2016@comreg.ie](mailto:StrategyStatementConsultation2016@comreg.ie))

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<sup>5</sup> Paragraph 8.26 of ComReg's draft strategy.



## **Virgin Media response to:**

Consultation: Draft ECS Strategy Statement

ComReg 16/116

17 February 2017



## Summary

Virgin Media Ireland Limited (**‘Virgin Media’**) welcomes the opportunity to respond to ComReg’s Consultation (**‘the Consultation’**) on its Draft Electronic Communications Services (**‘ECS’**) Strategy Statement (**‘ComReg 16/116’**).

Virgin Media has responded to ComReg’s specific questions in the next section. The main themes of this response are as follows:

- 1. There are complex trade-offs that arise in relation to ComReg’s strategic intentions.** ComReg should be more precise about, and prioritise, its objectives. For example, Virgin Media considers that ComReg should prioritise competition from infrastructure-based competition over competition from resellers of Eir’s Next Generation Access (**‘NGA’**) network.
- 2. Regulation is costly** for National Regulatory Authorities, firms and ultimately for consumers. ComReg should recognise these costs, and be looking for opportunities to lift regulation where there is no evidence of a market-failure, or where the cost of additional regulation exceeds the incremental benefits.
- 3. Effective regulation can mean less regulation, rather than more.** Over the last number of years, electronic communications markets have become more competitive as a result of technological developments, over-the-top services, and platform-competition. On that basis, ComReg should look for opportunities to reduce the scope of regulation, rather than focusing disproportionately on introducing new regulatory measures.
- 4. ComReg’s role in addressing availability of access to ECS services is diminishing** because the Universal Service Obligation (**‘USO’**) will be superseded by the National Broadband Plan (**‘NBP’**) over the period of this strategic outlook, and mobile broadband and phone coverage is now widely available. This should be reflected in ComReg’s objectives and focus.

## Response to Consultation Questions

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

Virgin Media agrees broadly with the trends that were identified by ComReg, but notes that ComReg should also capture the following points:

- **Variation in end-user experience.** ComReg should acknowledge that the NBP will specifically address urban/rural variation in end-user experience by providing for universal access to high speed broadband. In any case, Virgin Media notes that variation in the availability and characteristics of services between urban and rural areas is a common feature of many goods and services markets, and does not in itself imply the need for regulatory intervention. ComReg should also not understate the impact of widespread availability of mobile broadband and high levels of smartphone penetration on the availability of ECS.

- **Increasing platform based competition** is an important development that has not been recognised in ComReg’s trends section. Now more than ever before, competition in ECS markets is being driven by independent infrastructure platforms. Virgin Media is planning to expand its broadband network to 200,000 households in a number of towns over the next 4 years. Siro is also at the early stages of rolling out a fibre broadband network to approximately 50 towns<sup>1</sup>. This will have a significant impact on the choice available to consumers in these areas. ComReg should acknowledge these developments up-front in the Consultation and take them into account when developing its regulatory strategy.
- **Migration from legacy copper network to NGA.** Figure 12 in Chapter 7 of the Consultation shows that a migration is occurring from Eir’s legacy copper platform to NGA broadband networks. However, this should be captured in ComReg’s discussion on the evolution of networks, since it is an important trend and has significant implications for ComReg’s regulatory strategy (as explained in Q2 below).
- **The impact of over-the-top service providers.** Competition has evolved across multiple layers in the market. Virgin Media and other networked ECS providers are facing intense competition at the service level from over-the-top service providers like Skype and WhatsApp. It is important that networked ECS providers are not subjected to more extensive and burdensome regulatory requirements than those that apply to non-networked service providers (‘SPs’). Inconsistent treatment of networked and non-networked SPs risks distorting competition at the service-level. Given the intensity of competition that has emerged at the service-level, Virgin Media would support a light-handed regulatory approach across the board.

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

Virgin Media considers that the main challenges facing ComReg are:

- **Identifying instances where existing regulatory interventions are no longer necessary or proportionate.** Over the last number of years, electronic communications markets have become more competitive as a result of technological developments, over-the-top services, and platform-competition. On that basis, ComReg should look for opportunities to reduce the scope of regulation, rather than focusing disproportionately on introducing new regulatory measures.
- **Preserving incentives to invest in NGA.** There is a significant risk that imposing cost-oriented price caps on NGA could dampen incentives to invest in fibre. ComReg recognised this in its 2013 NGA decision<sup>2</sup> by taking a light-handed approach to NGA regulation. As noted in response to Q1, since then a number of ECS providers have commenced large scale deployment of fibre broadband networks throughout Ireland. ComReg should therefore maintain its cautious approach to regulating NGA in order to avoid stymieing or delaying this investment. A departure by ComReg from the

<sup>1</sup> <http://siro.ie/siro-announces-6-new-towns/>

<sup>2</sup> Next Generation Access: Remedies for next generation access markets. D03/13  
<https://www.comreg.ie/publication/next-generation-access-remedies-for-next-generation-access-markets/>



light-handed approach that it has taken to date could threaten the current growth trajectory for fibre deployment. For example, the introduction of cost-oriented price controls by ComReg could undermine the return on investment available on fibre networks and alter the build/buy decision, which could directly impact on the scope and timing, and indeed the commercial viability of these investments.

- **Reflecting competition from OTT.** It is important that networked ECS providers are not subjected to more extensive and burdensome regulatory requirements than those that apply to non-networked SPs. Inconsistent treatment of networked and non-networked SPs risks distorting competition at the service-level. Given the intensity of competition that has emerged at the service-level, Virgin Media would support a light-handed regulatory approach across the board.
- **Tapering back of the USO as it is replaced by the NBP.** It is important that the transition from USO to NBP is managed carefully and coordinated between the DCCA and ComReg. This will avoid overlaps, and gaps between the two interventions.

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

See response to Q1.

**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.**

Virgin Media agrees at a high level with the strategic intentions identified by ComReg for the period 2017 to 2021. In particular:

Strategic Intentions 2017-2021		
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 requirements
5.	Organisation	We are an effective and relevant regulator

Virgin Media notes that, in exercising its powers, ComReg should be mindful and explicit about the fact that regulatory intervention has the potential to both facilitate and hinder competition and investment.

ComReg should recognise in its discussion in Paragraph 4.7- 4.9 that, as a regulator, it faces inevitable trade-offs. This requires ComReg, in some cases, to be more precise about, and

prioritise its objectives. For example, Virgin Media considers that ComReg should prioritise infrastructure-based competition over competition that is dependent on access to Eir’s network.

A trade-off is likely to arise between these forms of competition because the imposition of regulated cost-oriented pricing on the one hand makes it cheaper to use Eir’s network, and on the other hand is likely to reduce the expected return on investment for independent fibre broadband networks. We would therefore expect this intervention to slow down fibre deployment, thereby limiting consumer choice and increase reliance on Eir’s network outside of larger urban centres. ComReg should take care to examine these types of trade-offs across all regulatory decisions. This example also demonstrates the importance of ComReg taking account of unintended consequences within its regulatory impact assessment.

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

### **Chapter 5. Setting the rules for effective competition**

See response to Q2 and Q4 above.

In addition to those points, ComReg has described its monitoring role in Chapter 5 as a tool that will allow it to identify the potential for market failures in ECS markets. Virgin Media notes that, equally, this monitoring activity should enable ComReg to identify opportunities for repealing regulation that is no longer required. For example, in cases where there is no longer evidence of any market failure that would require intervention.

### **Chapter 6. Protecting and informing consumers**

ComReg notes in paragraph 6.7 that PRS “remains a significant issue and increasing concern in terms of the number of issues raised by consumers”. Virgin Media agrees that PRS, along with Directory Enquiry Services, are a frequent cause of customer issues - in particular “bill-shock”. ComReg should consider ways in which customers can be protected from bill-shock in relation to the provision of these services.

For example, ECS providers should, in Virgin Media’s view, be explicitly entitled to withdraw access to PRS or DQ services. This could enable Virgin Media to negotiate with PRS providers and secure more favourable wholesale prices, and thereby offer attractive retail pricing to our customers.

### **Chapter 7. Creating conditions for investment**

See responses to Q1, Q2 and Q4 above.

Virgin Media considers that ComReg’s objective to regulate in such a way that *allows for a reasonable rate of return, including for both wholesale and retail operators* is unworkable in practice. It is evident from the investment strategies employed by ECS providers in Ireland that network investment decisions are being made on a town-by-town basis. This strategy reflects variation in economic conditions between geographic areas. Therefore any attempt by ComReg to impose a uniform cost oriented price cap for wholesale access across large geographic areas implies that a non-uniform rate of return will apply between locations. This

could undermine investment plans in geographic areas that might have been commercially viable if ECS providers had greater pricing flexibility.

## **Chapter 8. Enforcement**

Virgin Media considers that ComReg already has sufficient powers within its enforcement regime to enable it to perform its functions effectively.

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

Virgin Media agrees at a high level with the strategic intentions identified by ComReg for the period 2017 to 2021, subject to the comments set out in Virgin Media’s answers to the questions listed above.

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

Please see Virgin Media’s response to the previous questions.

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

ComReg should be careful not to duplicate the raft of general consumer regulation with which SPs are already required to comply e.g. the Consumer Rights Directive sets out what information should be included in a contract. Overlapping regulations are likely to cause confusion, and increase the regulatory burden on ECS providers. Furthermore, Virgin Media considers that, given the intensity of competition in ECS markets, there is unlikely to be a “special requirement” for ECS-specific consumer regulation in most cases.

ComReg’s regulatory strategy should acknowledge and account for the costs associated with regulatory intervention in ECS markets. For example, the considerable cost involved in responding to ComReg information requests and consultations, as well as the levies payable by ECS providers and the costs incurred by ComReg. Failing to take account of these costs could lead to ComReg imposing regulatory interventions that are disproportionate (where the costs exceed the benefits). ComReg should explain in its Strategy Statement how it proposes to apply cost-benefit analysis in its regulatory decision – this is important for ensuring that regulatory intervention is proportionate.



**Vodafone Response to ComReg Consultation Document 16/115**  
**'ComReg Draft ECS Strategy Statement 2017-2019'**

**17/2/16**

## Introduction

Vodafone welcomes the opportunity to respond to the Commission for Communications Regulation (ComReg)'s consultation on its draft ECS Strategy Statement 2017 to 2019. We have provided detailed answers to the consultation questions below.

Digital connectivity has greatly enhanced the lives of Irish consumers and communities. It has also extended the opportunities available to Irish business. The benefits of access to affordable high quality services at high speeds are clear – but the potential is not yet realised. We are at a pivotal stage for the sector and smart, forward-thinking policy decisions are now required to mobilise the investment needed to enhance the lives of individuals and communities and to grow and sustain our economy.

It is Vodafone's view that **Ireland needs to be part of the Gigabit Society**: one where all citizens, businesses and government benefit from widespread connectivity of 1 Gigabit per second delivered over future-proof fixed and mobile networks. The case for investment in Ireland is dependent on the electronic communications eco-system and the opportunity facing ComReg is to construct a new approach to regulation that will deliver that vision. In order to make this vision a reality, Vodafone calls on ComReg to institute a step change in the regulation of the communications sector in Ireland.

The critical first step is to deliver now on the **immediate requirement for lower prices and higher quality wholesale broadband access products**.

ComReg need to ensure the implementation of a regulatory strategy which encourages sustainable competition. **Infrastructure investment needs to be encouraged** and incumbent network will play a part in this. While regulatory strategy may attempt this we believe it will be difficult if not impossible to achieve unless the retail and wholesale divisions of the incumbent are truly separated. ComReg also need to implement regulatory measures that reduce the costs of rolling out gigabit networks, where the reuse of physical infrastructure that supports digital networks has an important role to play.

Vodafone understands that ComReg believes that without regulation investment would have been slower to occur, consumers and business would have less choice and prices would have been higher. This may well be the case however, the regulatory environment is changing at pace and the challenge for ComReg is it will need to adapt accordingly. What is required now is an ambition for a digital Gigabit Ireland. This regulatory strategy must reflect that ambition.

As Ireland's leading network provider Vodafone, is dedicated to working to deliver the best possible service to consumers. We believe that ComReg shares our commitment to this goal.

## Consultation Questions

**Question 1: Do you agree that Chapter 3 captures the most important sectoral trends over the coming five years?**

Vodafone agree that the document captures sectoral trends at a high level. We agree that the key challenge for ComReg is to ensure timely and effective regulatory intervention – and this is particularly critical in relation to broadband access. The sectoral trends and challenges - in particular end-user experience, rural and urban trends and the ECS eco-system, are intrinsically linked to the state of competition in the wholesale broadband market. It is clear that advances in technology have had a transformative effect however **the potential has been constrained by the availability of cost effective broadband access** and systemic quality issues which constrain innovation. Removing this constraint will ensure we can realise the benefits of many of the technologies and applications which already exist and we can make the case for investing further in the rollout of gigabit speeds.

Costs at the wholesale level have an impact on the prices consumers pay as indicated in the OECD baskets for residential broadband in Q3 2016 <sup>1</sup>where Ireland moved up to second most expensive when compared with five other Western European countries.

We note ComReg's view that the **needs of Ireland's rural population** will be a focus of the forthcoming strategy period. In 2016, Vodafone commissioned a study<sup>2</sup> asking the people of rural Ireland for their views on how they might benefit from a Gigabit Society. As it stands three in four adults (or about 1.8 million people) living in rural Ireland have broadband at home so progress towards digital integration between rural and urban Ireland is already underway. Almost 7 in 10 have a smartphone, two thirds are using tablets and half are using laptops. It is clear the demand for faster access will only grow nationwide.

The report also found that one in four broadband users in rural Ireland found their speed is too slow and most rural users (81%) disagree with the proposition that the people living in rural Ireland should have to pay more for broadband. The progress of the National Broadband Plan is clearly to the advantage of rural Ireland as are the policy initiatives contained with Broadband Taskforce programme. This joined up thinking is necessary to achieve the common goal to ensure Ireland has a state of the art telecommunications infrastructure.

ComReg's role is central to this joined up approach. For example in relation to spectrum, Vodafone believes that ComReg should **release key spectrum bands** which will enhance rural mobile coverage and support capacity requirements. The spectrum bands 2.6 GHz and 700 MHz are both useful in increasing mobile coverage in rural areas and supporting the capacity for increased usage in rural areas. It is essential that reserve prices need to correctly reflect any population coverage obligations.

**Question 2: Do you think that we are capturing the nature of the challenges posed by sectoral trends accurately?**

The nature of the challenges that are posed by sectoral trends have been captured. In reality those challenges have existed for some time and **many gigabit applications already exist** but are constrained due to the high cost of wholesale access. Targeted regulation is a priority to ensure investment in, and the quality of, those wholesale access products.

<sup>1</sup> ComReg Quarterly report Q3 2016

<sup>2</sup> Connected Futures 'Bridging Irelands Rural Urban Divide'

**Question 3: Are there important sectoral trends that have not been identified in this document?**

An important sectoral trend to consider is the trend towards more efficient financing of network rollout. The policy goals should aim to facilitate investment in fibre networks by competing operators. This can be encouraged by reducing the costs of rolling out gigabit networks, where the reuse of physical infrastructure that supports digital networks has an important role to play.

In this context, we also note the importance of ensuring (high quality) passive access to incumbent wholesale infrastructure. Such access not only supports investments by individual operators, but also co-investment agreements entered to by two or more operators. A very good example of this can be found in Portugal where we have entered into network sharing agreements with both NOS and Portugal Telecom/Altice.

**Question 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.**

The Strategic intentions are consistent with the objectives of ComReg established in the Communications Act back in 2002 – to promote competition, to protect the interests of users and to contribute to the development of the market. ComReg needs to re-balance to focus its efforts more on completing market reviews, implementing remedies and monitoring remedies imposed. This will drive effective competition which in turn will demand operators take care of customers – or they will go elsewhere. Consumer protection oversight will be required however an effectively competitive market can deliver many of the safeguards that ComReg require.

Vodafone believe ComReg could expand further on its role to encourage and support innovation in the sector to the benefit of wider society. The Gigabit Society has the potential to accelerate change and assist in delivery of significant benefits across the wider economy and society for example through better healthcare, better education and social inclusion.

**Question 5: Does the information provided in Chapters 5 to 9 accurately reflect the issues underlying the Strategic Intentions?**

We believe Vodafone plays an important role in the marketplace fostering and cultivating competition. In relation to competition on fixed networks - competing operators need to build customer base with a view to achieving critical mass of customers so we can invest deeper to ensure full network competition. Fibre optic connections are, and will remain, the predominant means of delivering 'gigabit' connectivity. The journey towards the Gigabit Society can rapidly advance but the business case on existing Fibre to the Cabinet (FTTC) wholesale products must improve significantly in the short term to ensure effective competition and investment in the sector. We agree with the goals to monitor the market regularly and to ensure effective competition however this needs to move at pace to address clear market issues. Where there are clear examples of ineffective competition, such as with the wholesale price increases on wholesale broadband services in 2015 and 2016 they demand prompt regulatory action and the strategy should reflect this requirement for ComReg to move quickly to address market failure.

ComReg refer to the eir 'Wholesale Reform' Programme and whether this programme could make a difference to the consideration of structural remedies such as functional separation. It is our view that the reform programme has highlighted serious long-standing equivalence issues as highlighted in the industry updates on eirs Regulatory

Governance Model known as the 'Styles Report'. We believe a vision for a Gigabit Society requires a separation of eir's competitive downstream businesses from its dominant upstream access network. Such an approach needs to be supported by full "equivalence of inputs": eir Retail and its competitors must purchase the same products, with the same specification and pricing, and through the same systems.

On essential inputs and in particular Goal 5 around Spectrum ComReg states it will 'significantly progress' the award process for key bands significantly over next 2 years. The spectrum bands 2.6 GHz and 700 MHz are both useful in increasing mobile coverage in rural areas and supporting the capacity for increased usage in rural areas. The 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.

Consumer Protection and in particular the requirement to provide consumers with independent information are a core function of ComReg. Both Vodafone and ComReg play an important role promoting and protecting consumers' interests.

However it should also be recognised that in many cases the market is best placed to provide detail to the consumer. In respect of Goal 9 ComReg are planning to develop a new price comparison tool that they consider will provide transparency in relation to the cost of terminal equipment. While tariff information is relatively stable, the pricing for handsets and the complexity of managing pricing across the full range of handsets is best served by industry. The handset pricing and range updates frequently and by attempting to involve itself in this space ComReg will impose a significant resource demand within its own organisation and within in each operator

Vodafone agree that the goal (13) to create conditions for investment should be central to ComReg's view of regulation. Regulatory predictability and stability are key to avoiding disruptive effects in the market and to enable a solid business case and effective long term strategic planning. ComReg should be cognisant of infrastructure investment cycles and they should ensure that operators have sufficient certainty of regulatory regimes to ensure that they can be appropriately financed. Regulation should support a positive investment climate by applying the right tools and cost accounting standards – this has been demonstrated to be absent to date in the wholesale broadband market in Ireland.

In respect of Goal 15 and the future award of 700MHz spectrum ComReg refer to the inclusion of coverage conditions. This should be reflected in the reserve price for such spectrum.

On the culture of compliance we agree with Goal 20 that regulated entities should be proactive in ensuring their own compliance. In Vodafone compliance is central to the organisation culture and while customer issues can arise there are detailed processes in place to ensure customer experience and compliance standards are maintained.

**Question 6: Do you think that any of the Strategic Intentions should be omitted? Do you think that another Strategic Intention should be included?**

We do not consider any Strategic Intentions should be omitted.

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

The associated Goals appear to be appropriate. In answer to question 5 we have set out our position in relation to a number of initiatives related to the specific Goals.



**Question 8: Is there anything else that should be added to, or omitted from, this Strategy Statement?**

Vodafone consider the pace of change and the need for ComReg to address key issues of fixed wholesale access and spectrum is now critical to achieving the Gigabit Society in Ireland. These issues are critical during this period covered by this Strategy Statement.