



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Electronic Communications Strategy Statement

Response to Consultation 22/109

Response to Consultation

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Chapter 1

1 Introduction

- 1.1 ComReg is the statutory body responsible for the regulation of the Irish electronic communications¹ and postal sectors. ComReg's mission is that through effective and relevant regulation, we facilitate the development of a competitive communications sector in Ireland that attracts investment, encourages innovation, and empowers consumers to choose and use communications services with confidence.
- 1.2 In December 2022, ComReg published its Draft ECS Strategy Statement 2023-2025 for public consultation.²
- 1.3 As part of this process, ComReg sought the views of interested parties. 16 ('Submission(s)') to the Consultation on the draft Strategy Statement were received; eight responses from industry operators, three from representative bodies and six from individual respondents (together referred to as the 'Respondent(s)').³ The list of Respondents is as follows:
- Association of Licensed Telecommunications Operators ('**ALTO**');
 - Chambers Ireland ('**Chambers**);
 - Cellnex Telecom Ireland ('**Cellnex**');
 - Eircom Limited ('**Eircom**');
 - Electro Sense Ireland ('**Electro Sense**');
 - Individual Respondents;
 - RTÉ Transmission Network DAC, t/a 2RN ('**2RN**');
 - Siro DAC ('**SIRO**);
 - Sky Ireland Limited ('**Sky**');
 - Three Ireland (Hutchison) Limited ('**Three**');
 - Virgin Media Ireland Limited ('**Virgin Media**'); and
 - Vodafone Ireland Limited ('**Vodafone**')

¹ Including telecommunications, radio communications, broadcasting transmission and Premium Rate Services

² ComReg Document 22/109

³ Subject to the provisions of ComReg's guidelines on the treatment of confidential information (Document 05/24), confidential information has been removed from these documents – places where text has been redacted is clearly indicated.

- 1.4 Overall, the majority of respondents to the public consultation agreed that the Draft ECS Strategy Statement captured the most significant trends relevant to the electronic communications sector and that the five Strategic Intentions and associated Goals are appropriate. However, respondents also raised a number of observations and issues. This Response to Consultation presents a summary of submissions received, and ComReg's responses to them, using the questions posed in the Consultation to guide the document. Chapter 2 considers ComReg's Mission, Vision and Role. Chapter 3 considers the identification of sectoral trends and Chapter 4 considers ComReg's Strategic Intentions. Chapter 5 considers Additional Comments.
- 1.5 In concluding the consultation and finalising its response set out in this document and in the Electronic Communications Strategy Statement 2023 to 2025, ComReg has had regard to its statutory functions, objectives and duties. ComReg is grateful for all submissions received in response to Document 22/109b and the consultation process more generally.
- 1.6 ComReg has given careful consideration to all the material submitted as well as to other relevant information. A number of changes have been made to the final Electronic Communications Strategy Statement 2023 to 2025 to reflect the feedback received during the public consultation. Please note that this Response to Consultation represents ComReg's overall position on the key issues raised by Respondents during the consultation process but does not seek to respond to each individual comment.

Chapter 2

2 ComReg's Mission, Vision and Role

- 2.1 The Draft ECS Strategy Statement published in December 2022 set out ComReg's vision for the electronic communications sector, while recognising that achieving this vision cannot be done in isolation. A combination of Government policy interventions, regulatory interventions, and industry actions will be required.
- 2.2 The Draft ECS Strategy Statement also sets out ComReg's Role and Mission, which outline the contribution that ComReg makes toward achieving its vision for the sector.
- 2.3 The following question was asked in the Consultation:

Q.1 Do you agree that the draft Strategy Statement appropriately captures ComReg's Mission, Vision and Role for the period? In providing your view, please also provide supporting evidence.

- 2.4 Eight respondents addressed this question.⁴ Respondents indicated that they were generally in agreement with ComReg's Mission, Vision and Role. However, a number of additional comments were also submitted. These are outlined below.

Respondents' views on ComReg's Mission, Vision and Role

- 2.5 Eircom considers that ComReg should use its role to facilitate providers, in particular in attracting investment. Eircom, noting changes in regulation, also considers that ComReg should have used this Strategy Statement to reflect on its role and change direction where required. Eircom further considers that ComReg's vision for the telecommunications market is also achievable in the absence of regulatory intervention. Eircom notes that ComReg's strategy discounts the role of innovation and the competitive dynamics that have led to a reduction in regulation over time. Eircom also notes that regulatory remedies can lead to regulatory failure.

⁴ Eircom, Vodafone, Sky, Virgin Media, Three, SIRO, Chambers, RTE/2Rn

- 2.6 Vodafone notes that ComReg continues to adopt the same Mission, Vision and Role as in 2017, despite significant developments such as the increase in people working from home. Vodafone considers that ComReg's vision should include mention of the importance of connectivity to Ireland and its role in delivering high quality services.
- 2.7 Sky considers that ComReg's vision should include Industry engagement as the vision cannot be achieved in isolation.
- 2.8 Virgin Media agrees with ComReg's role, mission and vision and welcomes references in the statement that encourage investment.
- 2.9 Three considers that the link between ComReg's legislative mandate and its stated role, vision and mission should be made clearer to allow stakeholders a better understanding of ComReg's approach. Three notes that by adopting a role, vision or mission that is wider than its legislative mandate, ComReg runs the risk of taking into account issues and factors which are not properly part of its mandate. Three notes that a reformulation of ComReg's vision could help capture ComReg's non-regulatory interventions in the market. Three also notes that ComReg's vision focuses on demand side and does not reference supply side dynamics.
- 2.10 SIRO considers that ComReg's role and mission should focus more on supporting industry investment while ComReg's vision should reflect the importance of rolling out "competitive VHCN" in line with the EECC.
- 2.11 Chambers notes that ComReg's mission could do more to capture the importance of promoting not only investment but also innovation. Chambers also considers that ComReg's role should be expanded and that the draft statement does not completely capture its vision. Chambers considers that ComReg has limited its role to only having an understanding of connectivity risks.
- 2.12 RTE/2Rn notes that they would like to see a more balanced and thorough assessment of broadcast services and networks included in ComReg's responsibilities. Virgin Media suggests that ComReg should include mention of the work it does to support the broadcast sector.

ComReg's Response - ComReg's Mission, Vision and Role

- 2.13 ComReg's role, responsibilities and mission come from its legislative mandate, as prescribed by the Oireachtas. Under the 2002 Communications Act (as amended), ComReg is obliged to publish Strategy Statements covering three separate areas of its remit: a Strategy Statement on the Electronic Communications Sector, a Strategy Statement on Spectrum and a Strategy Statement on Postal Regulation. Matters relating to spectrum and postal regulation are dealt with in these separate Strategy Statements.
- 2.14 ComReg's vision for the ECS sector flows from this legislative mandate, our powers and functions and is prepared while taking the state of the market into account. ComReg considers that its vision cannot be achieved in isolation and that a combination of Government policy interventions, regulatory interventions, and industry actions will be required to deliver on its vision. In addition, the role of regulation is rapidly evolving in the market and ComReg's strategy over the period of this Strategy Statement and the programme of work set out in the Strategy reflects that change.
- 2.15 Achieving ComReg's Mission and Vision over the period will necessitate the use of our regulatory tools to address identified market failures (e.g., significant market power). ComReg's Strategy Statement acknowledges the role of market players, market entrants, commercial and public investment and regulation in delivering on its vision for the sector. ComReg will continue to regulate the ECS sector where justified and necessary and will remove regulation where it is no longer required.

Chapter 3

3 Identification of Sectoral Trends

3.1 A challenge for ComReg is the need to anticipate and react appropriately to the changing electronic communications' environment, and to ensure that our regulatory responses are timely, effective, reasonable, proportionate and justified. The Draft ECS Strategy Statement published in December 2022 included a set of trends which ComReg anticipates will shape the sector and pose regulatory challenges over the period of the strategy. These are:

- Enhanced Connectivity and New Technologies;
- The Consumer Experience;
- The Evolution of Adjacent and Related Markets; and
- The Changing Future of Regulation in the Sector.

3.2 The following question was asked in the Consultation:

Q.2 Do you agree that the draft Strategy Statement captures the most important sectoral trends and challenges over the period covered by the Strategy? In providing your view, please also provide supporting evidence

3.3 Eleven respondents addressed this question.⁵ Respondents indicated that they were generally in agreement with the trends identified by ComReg. However, a number of additional comments were also submitted. These are outlined below.

Respondent's views of the sectoral trends identified in the draft Strategy

3.4 Eircom considers that sectoral trends should also inform regulatory decisions. Eircom notes that geopolitical tensions are a challenge in the ECS sector.

3.5 Chambers considers that the ECS Strategy fails to identify the following trends: the cost-of-living crisis, a changing imperative in trust and security and data analytics. Chambers notes further that data analytics is an area that has thus far seen slow adoption across the telecommunication industry.

⁵ Eircom, Three, Chambers, RTE/2RN, SIRO, ALTO, Virgin Media, Vodafone, Electro Sense, Two individuals

- 3.6 Three notes that ComReg's proposed regulatory response to the trends and changes map to the stages of the ITU's regulatory evolution model. Three considers that some of ComReg activities are on the path to 5th Generation Regulation (G5). Three considers that it would be useful for ComReg to consider mapping its goals and intents to the G5 framework and to incorporate goals which deal with modalities for sectoral collaboration and to develop further the frameworks for transparency and accountability, and ethics in the area of regulatory compliance.

ComReg Response – Sectoral trends identified in the draft Strategy

- 3.7 ComReg's Strategy Statement examines the longer-term context, sets out our strategic intents for the period covered by the Strategy and serves as a framework for planning ComReg's activities for the next two years. In this manner, the identification of sectoral trends provides context which helps to inform ComReg's annual work planning process and provide context to ComReg's Strategic Intents and associated goals. In addition, ComReg considers various sectoral trends, developments and challenges relevant to key regulatory decisions as part of its decision-making processes e.g., Market Reviews and Universal Service Obligation (**USO**) decisions.
- 3.8 On an annual basis, ComReg publishes an Action Plan. These Action Plans provide a detailed outline of the projects and activities planned for a given year. In this context however, it is worth noting that a number of programmes of work, projects and activities referenced in the Strategy Statement are statutory obligations. These obligations form the core of ComReg's annual priorities and annual Action Plans.
- 3.9 In addition, the importance and role of data analytics to ComReg is considered in Strategic Intent 5 (Organisation).

Trends concerning Investment, Network rollout and Demand

- 3.10 Vodafone notes that Ireland will be in the top tier of EU countries for fibre and 5G rollout in the coming years. In this regard, Vodafone considers that regulation and ComReg' ECS Strategy must now adapt to ensure continued support for the ongoing network investment demands to support agility and innovation in the sector. Vodafone notes that consumer experience and the level of access in Ireland is greatly enhanced by the rollout of multiple fibre and high-speed mobile networks.
- 3.11 SIRO considers that amongst the most important trends in the strategy are NBI, FTTH rollout, copper switch off and the likely updating of the Broadband Cost Reduction Directive.

- 3.12 RTE/2Rn notes that the rate of mobile data growth is declining in Ireland and may be approaching a plateau. RTE/2Rn considers that previous projections may have created a false sense of urgency regarding additional future spectrum needs for mobile networks.

Investment Network rollout and Demand – Response

- 3.13 The ECS Strategy notes the role of commercial network rollout, infrastructure deployment and network security in Strategic Intent 3 (Connectivity). Additional text has been added to the ECS Strategy to provide more context, where relevant. Matters relating to the future spectrum needs for mobile networks will be dealt with in the forthcoming Spectrum Strategy Statement.

Trends concerning Broadband Prices

- 3.14 ALTO notes that the Irish retail market remains seriously overpriced and expensive when considering broadband prices in the rest of the EU.

Broadband Prices - Response

- 3.15 ComReg notes ALTO's position regarding retail broadband prices in Ireland. ComReg does not regulate the retail broadband market and states that matters relating to the wholesale broadband market will be addressed in the forthcoming Wholesale Local Access and Wholesale Central Access market reviews.

Trends concerning the Business Environment and Geopolitical tensions

- 3.16 Eircom notes that ComReg should highlight geopolitical tensions that directly impact the sector, noting network security concerns around high-risk vendors, the economic impact of the war in Ukraine and financial and operational impacts from geopolitical developments.
- 3.17 Virgin Media notes that external factors, largely driven by the war in Ukraine, create a challenging economic environment in which to do business at a time when post Covid, businesses had hoped to see a more stable and predictable business environment.
- 3.18 Vodafone notes the increasing investment challenge for the sector and that the appetite for investment is heavily influenced by demands for greater coverage, speeds, capacity, security, and resilience while the sector faces depleting revenue and decreased return on investment and increasing operating costs due to the energy crisis and increases in inflation and interest rates.

Business Environment and Geopolitical tensions – Response

- 3.19 ComReg notes that the appendix to the ECS Strategy Statement identifies the macroeconomic outlook as a key trend, including the war in Ukraine, impact of inflation and energy costs. ComReg recognises the role that commercial investment plays in the sector and the investments currently being made in fixed and mobile networks, network resilience and network security. Additional text has been added to the ECS Strategy to provide more context, where relevant.

Trends concerning Sustainability

- 3.20 Eircom considers that environmental sustainability should be a main trend that informs ComReg's ECS Strategy.
- 3.21 RTE/2Rn notes that "new networks" are not more energy efficient at delivering TV services and that energy efficiency and other environmental impacts should be considered at the forefront of any decisions on future spectrum allocations.
- 3.22 Chambers notes that c.40% of telecommunication companies do not disclose a specific net zero strategy, transition or decarbonisation plans and that while ComReg's draft strategy does include this issue under trends and challenges, ComReg does not mandate telecommunication companies to develop and better manage their sustainability agenda and that the digital and green transitions are closely linked.
- 3.23 Electro Sense and two individual respondents raised concerns about the environmental impact of ECN and ECS services.

Trends concerning Sustainability – Response

- 3.24 ComReg considers that the ECS sector can play an important role in enabling decarbonisation across a range of sectors, including electricity, transport, and agriculture. ComReg notes that the transition to VHCN will deliver efficiency benefits for operators. ComReg has previously considered these issues in a Call for Inputs (ComReg Document 19/126) and contributed to the 2021 BEREC report '*Assessing BEREC's contribution to limiting the impact of the digital sector on the environment*'⁶ and featured as one of three NRA case studies in this report. This report highlighted the lack of common measurement methodologies for the environmental impact of ECS/N.

⁶ BEREC Grf#ErU#55,#58

- 3.25 ComReg is an active member of BEREC's Working Group on Sustainability. ComReg also collaborates with the Department of the Environment, Climate and Communications (**DECC**) to respond to the Climate Change Advisory Council's (**CCAC**) annual adaptation scorecard review for the Communications Sector and coordinates with DECC on the Government's annual Climate Action Plans under the Climate Action and Low Carbon Development (Amendment) Act 2021.

Trends concerning growing dependency of connectivity and changing internet usage

- 3.26 Chambers and Virgin Media both note that connectivity has become critical for retail and businesses users in the wake of Covid-19 as they become more dependent on connectivity as evidenced by the growth in remote working, e-learning and e-business. Chambers and Virgin media consider that connectivity has now become critical as users increasingly rely on it for personal and economic activity.
- 3.27 Chambers further notes that Ireland needs to make full use of the growth in remote working and to understand its importance in increasing economic development and productivity.

Growing dependency of connectivity and changing internet usage - Response

- 3.28 ComReg notes the views of Chambers and Virgin Media regarding the growth of remote working and increasing reliance on ECS/ECN. ComReg consider that this reliance is likely to continue to grow over the next two years as VHCNs get rolled out and patterns of remote and blended working become more permanently embedded in the workplace.

Trends on TV usage

- 3.29 RTE/2RN warns that the increasing penetration of Smart TVs should not be interpreted as viewers choosing OTT TV and streaming over broadcast TV as most new TVs are "smart" by default and that smart TVs are also used to view broadcast TV. RTE/2RN notes further that Irish viewers still watch approximately 2hrs, 30mins of live TV daily. RTE/2RN considers the growth in OTT TV services to be complementary to traditional broadcast TV platforms. RTE/2RN also notes that free to air DTT is well positioned to grow as the effects of the cost-of-living crisis impact paid TV services. Finally, RTE/2RN notes that the Saorview DTT platform continues to improve the quantity and quality of its offering.

Trends on TV usage – Response

- 3.30 ComReg considers the growth and adoption of technologies such as Smart TV and paid or free streaming services to be useful indicators for consumer use, adoption and reliance upon ECS/ECN. ComReg expects the adoption of such technologies to increase in the period covered by the ECS Strategy Statement.

Promotion of digital skills by operators

- 3.31 Sky agrees with ComReg's view that end users can only fully participate in society and the wider economy when their connectivity needs are met. Vodafone notes that there is also an increasing trend, driven by industry, to ensure greater adoption and more efficient use of digital services.

Promotion of digital skills by operators – Response

- 3.32 Although beyond ComReg's remit, ComReg welcomes efforts by industry to upskill people with digital skills.

OTT data traffic and costs

- 3.33 Vodafone considers that an increasingly important trend for the health of the sector is the exponential increase in data traffic on telcos' networks. Vodafone notes that a few large OTT services are responsible for large amounts of data traffic and that (according to a 2022 Frontier Economics' study) OTT traffic generates costs of up to €36-40 billion per year for EU telcos. Vodafone calls for OTT players that benefit from the internet ecosystem to adequately contribute to those costs. Vodafone considers that competition has never been more intense and organisations using OTT services on regulated networks do not face the same regulatory burden.

OTT data traffic and costs – Response

- 3.34 ComReg notes that the European Commission (**EC**) has launched a public consultation on the future of the connectivity sector, including whether digital players should contribute to deploying high-capacity networks like 5G. In addition, in October 2022, BEREC published its preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs, finding no evidence of "free riding" and that the demand from ISP's customers for content, drives demand for broadband access. ComReg, through BEREC, will continue to engage with interested parties on this topic.

National digital strategy

- 3.35 Vodafone points to the National Digital Strategy as a positive step in providing a roadmap for Ireland's digital ambitions noting that all stakeholders, policy makers and ComReg need to adapt their approaches and ways of working to achieve these national ambitions.

National digital strategy - Response

- 3.36 ComReg notes Vodafone's comments on the Government's National Digital Strategy. ComReg, along with other members of the Digital Regulators Group, regularly engages with Government around its commitment to a modern, cohesive, well-resourced network of regulators to effectively oversee and enforce digital regulations.

Retail competition

- 3.37 Sky previously informed ComReg of its intention to launch a mobile service as an MVNO. Sky considers that this launch will bring additional competition to the market which has hovered at the same level of retail concentration since 2013. Sky notes that it is a major driver of investment in the Irish broadband market and that strong retail competition is a key driver of network and innovative investment.
- 3.38 Three considers that ComReg's analysis of the retail mobile and fixed markets does not adequately set out the end-user outcomes from levels of competition in each sector as ComReg's analysis is too concentrated on HHI which gives only a partial assessment of the relative state of competition in the various sectors.
- 3.39 Three also considers that the mobile market operates better than the fixed market, for the benefit of end users. Three notes that the mobile sector has three networks with near ubiquitous population coverage while in the fixed sector, infrastructure-based competition is geographically limited. Three considers that the state of this fixed market failure is illustrated by state aid for NBI.

Retail competition- Response

- 3.40 ComReg notes Sky's planned entry and its intention to bring additional competition to the retail mobile market as an MVNO. As noted in the 2021 study by WIK Consult for ComReg on the role of MVNOs in the Irish mobile market (ComReg Doc 21/101), MVNOs can play a key role in the development of the Irish market, going forward. ComReg continues to monitor the key markets in the ECS sector, including the retail and wholesale mobile markets, to ensure they are effectively competitive.
- 3.41 ComReg notes Three's comments regarding the state of competition in retail fixed and mobile markets. ComReg notes that it does not rely on any one metric (such as the HHI) when considering what ex-ante regulatory interventions may be required. In the ECS Strategy Statement, the HHI is used solely as a commonly understood tool to graphically highlight changes in the state of market concentration over time. In addition, ComReg notes that comparing the state of infrastructure-based competition in one market to another market is not straightforward.

Legal trends

- 3.42 Three notes that ComReg's survey of sectoral legislative changes does not reference the recently enacted Communications (Retention of Data) (Amendment) Act 2022. Three further notes that the implementation of this sector specific legislation is likely to have significant impacts on operators in terms of human and capital resources and should be factored into ComReg's planning.

Legal trends - Response

- 3.43 ComReg notes Three's comments in respect of the Communications (Retention of Data) (Amendment) Act 2022 but also notes that ComReg has no functions under or in respect of this Act or the Communications (Retention of Data) Act 2011 (as amended).

Chapter 4

4 Proposed Strategic Intents

4.1 The Draft ECS Strategy Statement identified that the tools available to us, derived from our regulatory powers, help ComReg deliver our role and mission. These can be summarised into four main categories: promoting effective competition and facilitating investment, protecting consumers, ensuring widespread connectivity, and making sure that regulated entities comply with the rules. Our ability to use these tools depends on the skills and resources of our organisation. For each of these areas, we have developed a statement of strategic intent, and goals that support the strategic intent.

4.2 The Consultation posed two questions relating to the five Strategic Intents outlined in the Draft ECS Strategy Statement:

Q.3 Do you agree with the Strategic Intents discussed in detail in the draft Strategy Statement? In providing your view, please also provide supporting evidence.

Q.4 Do you believe that the Goals associated with the Strategic Intents are appropriate, and relevant? In providing your view, please also provide supporting evidence.

4.3 Twelve respondents provided submissions of relevance to these questions.⁷ Specific comments relating to each strategic intent are considered in turn, below.

Overall responses on ComReg's strategic intents and goals

4.4 ALTO broadly welcomes the concepts arising in the Strategic Intents set out in the draft ECS Strategy Statement and considers that the goals associated with the Strategic Intents are appropriate and relevant.

⁷ ALTO, Chambers, Cellnex, Virgin Media, SIRO, Eircom, Sky, Vodafone, RTE/2RN, Three, two individuals.

- 4.5 Chambers Ireland agrees with the Strategic Intent in the draft ECS Strategy Statement. However, Chambers considers that the Strategic Intent can be expanded in all aspects as the ability to use these tools depends on the skills and resources of ComReg. Chambers notes that there is scope for expanding the actions within these goals. Chambers further notes that the EECC is a useful reference for regulation related Strategic Intent and that the emphasis on connectivity in the EECC is reflected in ComReg's strategic intent. However, Chambers considers that the strategic intent fail to be comprehensive on this matter.

Overall responses on ComReg's strategic intent and goals – Response

- 4.6 Comreg notes Chambers Ireland's comments regarding the Strategic Intent and EECC. The ECS Strategy Statement highlights the main strategic projects ComReg expects to undertake over the next two years. In this regard, the ECS Strategy Statement is not an appropriate place to highlight all of the projects, workstreams and tasks ComReg will undertake in respect of its role. ComReg's Action Plan, updated regularly, also provides an overview of the various projects, reports and workstreams ComReg expects to complete over the next 12 months. ComReg's Action Plan is published on its website.

Competition and Investment

Overall comments

- 4.7 Cellnex supports ComReg's overall goal to enable a competitive ECS sector in Ireland.
- 4.8 Virgin Media considers that ComReg should include the following in strategic intent 1:
- sustainable competition over time, *including infrastructure-based competition*;
 - a specific aim for the successful rollout of FTTH and 5G and
 - a key enabler such as the 'application of balanced ex ante SMP remedies where required, supported by robust compliance framework'.

Overall comments– Response

- 4.9 ComReg notes Virgin Media’s comments regarding the role of infrastructure-based competition and the rollout of fibre and 5G networks. ComReg’s ECS Strategy Statement discusses these issues and ComReg’s role in relation to competition and network deployments in Strategic Intents 1 and 3. In addition, the role of ex-ante regulation and ComReg’s enforcement regime is discussed in Strategic Intent 4.

Retail competition

- 4.10 SIRO notes that while the interests of end-users are important, the retail market should be given freedom to compete for consumers and through competition for the most desired services at a price point that makes further investment attractive.

Retail competition - Response

- 4.11 ComReg notes that it does not impose ex-ante obligations in retail ECS markets in Ireland. Where ComReg regulates wholesale prices and such prices affect downstream competition, ComReg seeks to balance investment incentives. These matters are further discussed in relevant wholesale pricing decisions. ComReg’s focus is set out in its Strategy Statement and is derived from our mandate and mission (as set out in legislation). Ultimately, all of our activities are undertaken to deliver benefits to consumers. Competition is a key tool in delivering benefits to consumers.

Monitoring of markets

- 4.12 Eircom welcomes ComReg’s ongoing market monitoring regime and considers that ComReg should reflect any findings in its regulatory decisions.
- 4.13 Chambers notes that the projects underway or planned such as monitoring retail ECS and relevant OTT Markets, key related/adjacent markets and the evolution of network demand need to have follow up plans that should attempt to understand the reason for market failures in and include strategies to allow market stakeholders to fix any issues.
- 4.14 Chambers further notes that the projects under the goal *effective and sustainable competition in retail ECS markets*, should go beyond the stage of monitoring ECS, ECN and adjacent markets and should be expanded to understand market failures and help rectify or avoid them so making the wider market attractive for investors.

- 4.15 Virgin Media considers that it may be useful for ComReg to explicitly reference the role it has to monitor markets and intervene where required. Virgin notes that it will be important for ComReg to continue to actively monitor the relationship with adjacent markets to enable ComReg to understand the role ECN / ECS plays in adjacent markets and the extent to which adjacent markets affect the competitive conditions.

Monitoring of markets - Response

- 4.16 ComReg notes Eircom's position regarding market monitoring and its role in informing ComReg's regulatory decisions. At all times, ComReg's regulatory decisions are informed by its ongoing review of market trends and developments, as well as regulatory impact analyses and ComReg's market intelligence functions.
- 4.17 ComReg notes that the role of market monitoring is to inform our analyses of markets, identify matters of concern for the ECS sector and to highlight potential market failures in relevant retail, wholesale and adjacent markets relevant to ComReg's role. ComReg's market monitoring extends across its remit, covering competition, consumer protection, connectivity (including network resilience and security) and regulatory compliance.

Market Reviews and SMP regulation

- 4.18 Eircom notes the work programme for Market Reviews over the period of the Strategy Statement and delays in producing market reviews and considers that ComReg is inhibiting its goal to achieve effective and sustainable competition and the timely withdrawal of regulation through the manner in which it conducts market reviews. Eircom considers that ECS providers should be given more time to respond to market review consultations. Eircom further notes that the five-year term for market reviews is the maximum term, but that ComReg could conduct reviews in a shorter term where required.
- 4.19 SIRO notes that NBI should be subject to SMP regulation, despite NBI being a recipient of state aid. SIRO also notes that ComReg should regulate to ensure that market entry by new or growing players is not curtailed by SMP operators in areas such as Physical Infrastructure Access (**PIA**).
- 4.20 SIRO notes that ComReg should implement deregulation through "longer term and graduated approaches" that include sufficient lead times, consultation, and implementation timelines in order to provide the market and industry with stability and certainty.

- 4.21 Chambers notes that ComReg should avoid any operator emerging as a SMP or a monopoly.
- 4.22 Sky and ALTO note that there are issues associated with the quality of the data in Eir's APQ file (Advanced PreQual File). Sky welcomes that ComReg is proposing to introduce DP line testing for the APQ files for Eircom in the market review. Both respondents note that a substantial portion of the homes in the APQ file require expensive and inefficient non-standard installations. Sky notes that they have experienced significant issues with Eircom associated with placing orders, logging faults and with installation priorities and appointments. Sky questions whether Eircom's retail arm experiences equivalent issues. Sky further notes that despite raising these issues in ComReg forums there has been no improvement.
- 4.23 Vodafone considers that certainty on wholesale pricing is critical and that ComReg must provide certainty at a retail level so retail operators can develop business plans in the context of the move from copper to fibre infrastructure.
- 4.24 Vodafone states that the current proposals in recent market reviews have increased the level of uncertainty and that Vodafone will respond to the WLA market review consultation. Vodafone considers that regulatory policy needs to recognise that investment signals are required at a wholesale level to encourage network build and that investment signals (for FTTH) are important to include in the WLA/WCA and PIA market reviews together with appropriate ex-ante remedies and policing where SMP is found in wholesale markets.
- 4.25 ALTO notes that Eircom remains the most profitable incumbent globally and calls for ComReg to be more focussed on enforcement of SMP obligations and to monitor remedies more proactively. ALTO also notes what they refer to as the clear lack of incentives for Eircom to comply with SMP obligations and encourages ComReg to deal with this in a timely manner by means of legislative intervention.
- 4.26 ALTO urges ComReg to carry out market review work and the deployment of decisions on the Access Network Model (**ANM**) in a timely manner and notes that delays appear to the market as inefficiency. ALTO notes that their experience with market reviews generally and ComReg's focus on retail versus wholesale activity does not paint a positive picture of the market's current experience of ComReg, versus this strategic intent.

- 4.27 ALTO states that price is the single most important factor for consumers and considers that instead of making the mistake of removing the focus from price regulation, ComReg should ensure a careful and maintained focus on appropriate price regulation with a focus on the removal of the availability of FTTC services absent regulation for FTTH.
- 4.28 Cellnex asks that the infrastructure required for the provision of fibre connections to cellular base station sites be included in the scope of the review of the market for PIA.

Market Reviews and SMP regulation - Response

- 4.29 ComReg is required to undertake a review of various regulated markets every five years and remains on course to review each regulated market within their five-year timelines. ComReg's Strategy Statement outlines timelines for its upcoming market reviews. ComReg also notes that it keeps markets under constant review through its market monitoring, Quarterly Key Data Report ('**QKDR**'), research and compliance monitoring functions. ComReg also notes that it attempts to co-ordinate the timing of market reviews and the related Pricing Decisions as much as possible and often publishes the Decisions simultaneously.
- 4.30 ComReg notes that additionally, if an event such as an acquisition or merger that has the potential to fundamentally change the nature of competition in the relevant wholesale market or downstream markets occurs, ComReg may bring forward a formal market analysis to re-assess competition and examine the extent of any market failures and competition problems that arise from such an event.
- 4.31 In Q4 2023, ComReg expects to complete its review of the Wholesale Local Access (**WLA**), Wholesale Central Access (**WCA**) and Physical Infrastructure Access (**PIA**) markets, including decisions on wholesale price controls, where appropriate. In addition, ComReg will continue to review the WACC applicable to Fixed & Mobile Telecommunications and Broadcasting markets.
- 4.32 ComReg takes account of NBI (and all competing operators) as appropriate in our market reviews. Over the period of the ECS Strategy Statement, the impact of the NBI rollout will evolve.
- 4.33 Where ComReg proposes to deregulate a wholesale market, a public consultation is held prior to a final decision. Any decision document would also set out a timeline for the withdrawal of regulatory obligations. However, ComReg also notes that it cannot continue to impose ex-ante regulatory obligations on an operator where no SMP has been found to exist.

- 4.34 Regarding comments from Sky and ALTO, if there is a specific issue that has been identified, a formal complaint can be raised through the normal compliance channels.

Wholesale market developments

- 4.35 Virgin Media considers that Ireland is at an important stage in the development of its wholesale markets. Virgin Media considers that the mass market deployment of FTTH by the end of the decade is dependent on continued investment and sustainable competition. Virgin Media notes that setting the right regulatory environment will be necessary for continued investment and the development of competition. Virgin Media also notes that it intends to play an important role in wholesale markets with FTTH deployments, entry into wholesale and expanding into retail markets on other networks.

Wholesale market developments - Response

- 4.36 ComReg agrees with Virgin Media that the market is at an important stage in its development. Over the period covered by this ECS Strategy Statement, ComReg expects that investment in VHCN deployments will continue. ComReg notes that the regulatory regime has recently been updated through the EECC and that ComReg expects to complete its review of the WLA, WCA and PIA markets in Q4 2023.

Wholesale SLAs and KPIs

- 4.37 ALTO calls on ComReg to review wholesale Service Level Agreements (**SLAs**) and Key Performance Indicators (**KPIs**), to bring them into line with market expectations, noting that the existing SLAs and KPIs from SMP operators are in many cases outdated or contain latitude that is unacceptable to consumers and end-users in contract with ALTO members.

Wholesale SLAs and KPIs - Response

- 4.38 ComReg refers to its documents ComReg D10/18 and D03/20 that provide the mechanisms by which SLAs can be requested by operators and Eircom's obligations in responding to such requests. ComReg notes that if there is a specific issue that has been identified, a formal complaint can be raised through the normal compliance channels.

The Future of Legacy Networks

- 4.39 Eircom notes that migration to VHCN is socially and economically desirable.

- 4.40 ALTO considers that ComReg should highlight any critical issues relating to copper switch-off with adequate time to implement solutions with the end-user in mind. ALTO further notes that Eircom's services are required to be high-quality, available, and stable regardless of what technology is used.
- 4.41 Two individuals raised concerns about the resilience of fibre-based telephones due to power outages. Both asked for copper networks to be left in place for consumers to provide them with the choice of using them if desired.

The Future of Legacy Networks - Response

- 4.42 ComReg is supportive of VHCN rollout and the transition from legacy networks. ComReg recognises that VHCN has several benefits over non-VHCN and legacy networks, including faster download speeds, network reliability and lower energy consumption.
- 4.43 In May 2021, ComReg set out its view⁸ on its role overseeing the transition of regulated services to new VHCN and the related impact on regulated services and competition generally. The EECC requires ComReg to ensure that migrations from legacy copper networks subject to SMP obligations carry transparent timetables and conditions, and that end-users can continue to access broadband and telephony products.
- 4.44 ComReg issued a public consultation document⁹ on migration from legacy infrastructure on 25 March 2022. Consideration of the responses received from Industry stakeholders and individual respondents is ongoing with a notification to the European Commission under Article 32 of the EECC planned in Q2 2023 followed by a decision thereafter.
- 4.45 As the market evolves and copper-switch off progresses, end-users will increasingly migrate from the conventional PSTN to non-PSTN connections (due to the rollout of Very High-Capacity Networks). It is envisaged that these developments will increase benefits for end-users in terms of, choice of broadband and voice (VoIP) services (whether sold inside or outside a bundle), increased quality of service, and the potential for savings. In the context of this changing market, ComReg will ensure that the adopted framework for the migration from legacy infrastructure to modern infrastructure will safeguard competition and the rights of end-users.

⁸ ComReg Document 21/43

⁹ <https://www.comreg.ie/publication/framework-for-the-migration-from-legacy-infrastructure-to-modern-infrastructure>

- 4.46 It is noted that the use of a non-PSTN connection and voice over internet protocol technology (“VoIP services”) may be interrupted if there is a power outage at the home, possibly impeding an end-user’s ability to make or receive calls including contact with emergency services. One option available to end-users who are using a non-PSTN connection/VoIP service(s) over that connection, to mitigate against a risk of temporarily losing a telephone or internet access during a power outage, is the use of a mobile phone which is largely universal in Ireland, though ownership of a mobile phone may be relatively less among older age groups. In addition, end-users can use a Battery Back-Up¹⁰ (**BBU**) device when it best meets their circumstances and needs. It is noted that there are currently BBU devices available on the market that end-users can purchase or for a retail service provider to source. The Regulations¹¹ and the ECC Regulations¹² place end-user information obligations directly on providers. Providers should continue to give end-users required information, including, disclosure of risk of interruption to ECS. ComReg will also communicate with end-users and provide information to end-users as regards availability of ECS during a power outage and BBU.

Regulatory certainty to encourage investment

- 4.47 Vodafone considers that ensuring best in class regulation and providing regulatory certainty is critically important to encourage investment in networks and to promote competition. Vodafone considers that it does not have certainty on regulated inputs. Vodafone notes that with declining returns on network investment over the last decade, over-regulation is a real risk to innovation.
- 4.48 Virgin Media echoes Vodafone’s sentiments noting that the correct regulatory environment and investment incentives are essential to ensuring sustainable competition and continued investment. Virgin media notes that the strategic intent to create “A competitive sector that delivers efficient investment, innovation, and choice” is a good and important one since healthy competition and investment are both essential to enable many outcomes that benefit the end user, including but not limited to the deployment of VHCN networks and establishing sustainable infrastructure-based competition.

¹⁰ A BBU is a device that an end-user could use to power customer premises equipment (“CPE”), notably, a router/modem to be able to continue to use, in particular, a home landline telephone service to make and receive calls including to contact emergency services, on a temporary basis, during a power outage.

¹¹ Pursuant to Regulation 14 of S.I. No. 337/2011.

¹² Pursuant to Regulation 87 and 88 of the ECC Regulations.

- 4.49 Sky notes that strong retail competition is a key driver of network investment, while Three considers that certainty and confidence of stability regarding economic regulation is a key input to investment decision making.
- 4.50 ALTO notes that there is a strong chance that with the current market dynamics, possible inefficient network investment is a real risk for the Irish market.
- 4.51 SIRO encourages ComReg to focus on facilitating the entry of new infrastructure-based competition to the wholesale market. In this regard SIRO notes that network competition would bring benefits for end users and society. SIRO also comments that ComReg's goal that "Competitive incentives facilitate efficient commercial investment in existing and new infrastructure and services to the widest extent possible" should be counterbalanced by regulation to prevent market abuse by dominant players. SIRO notes that investment that delivers multiple wholesale networks is better for society than investment in existing infrastructure

Regulatory certainty to encourage investment - Response

- 4.52 ComReg recognises that unregulated ECN / ECS may not provide the right incentives for investment. Over the period covered by this ECS Strategy Statement, ComReg will continue to employ measures aimed at driving and safeguarding the competitive market process.
- 4.53 ComReg also recognises the importance of reasonable certainty about the trajectory of prices for all players, as far as possible. ComReg notes that as far as existing price controls are concerned, where there are prices directed as part of price control (including maximum prices), such prices will remain in place for the duration of the price control period, unless ComReg intervenes where there are material changes or exceptional circumstances.
- 4.54 Creating the conditions for investment is as much about regulatory certainty as it is about shaping operator financial incentives. ComReg still expects that significant amounts of investment will occur in fixed and mobile networks as operators seek to rollout new networks and services to consumers
- 4.55 Over the period covered by this ECS Strategy Statement, ComReg expects to complete its review of the WLA, WCA and PIA markets in late 2023 which will include, where appropriate, decisions on wholesale price controls. ComReg will also continue to review the WACC applicable to Fixed & Mobile Telecommunications and Broadcasting markets.

WACC

- 4.56 ALTO considers that the WACC remains higher than anticipated despite being subject to a review and decision by ComReg in late 2020. ALTO notes that this is a matter that industry requires permanent attention to. ALTO encourages ComReg to deploy its Decisions effecting cost (WACC, ANM, USO) in a timely manner.

WACC – Response

- 4.57 As set out in this ECS Strategy Statement and the Annual Action Plan, ComReg regularly reviews the WACC. ComReg expects to publish the next review of the WACC in the coming months.

Rural ECN coverage

- 4.58 Cellnex applauds the efforts of ComReg and others in facilitating the deployment of new services and sites, noting that the Irish model is agile and flexible. Cellnex would welcome any further initiatives to make the deployment of networks easier but considers that the main obstacle to the development of mobile sites in rural areas is the overall cost of delivery which also includes the provision of high speed (fibre) backhaul. Cellnex agrees with ComReg regarding its assessment of sparsely populated rural areas with poor ECS/ECN coverage. Cellnex notes that it is addressing rural coverage issues and that it has deployed twenty multi-operator mobile sites to blackspots across the country including areas where commercial deployment is not attractive.
- 4.59 Vodafone notes that Industry is putting forward creative solutions to allow operators to extend coverage into non-commercial locations to solve rural coverage issues. Vodafone and Chambers both note that ComReg can adopt a consultative and supportive role in this area. Chambers encourages the establishment of a committee to find economical ways for commercial ECN to deploy high quality, reliable network in underserved rural areas.

Rural ECN coverage - Response

- 4.60 ComReg notes the view of Vodafone regarding ComReg adopting a consultative and supportive role in this area and Chambers' view regarding the establishment of a committee to find economical ways to deploy commercial ECN in underserved rural areas. ComReg considers that the Mobile Phone and Broadband Taskforce is an appropriate forum to discuss such matters.

Broadband Cost Reduction Directive

- 4.61 SIRO considers that the Broadband Cost Reduction Directive (**BCRD**) and its successor, provides a basis for accelerating the roll-out of FTTH and that following the updated BCRD, ComReg should look to review how aspects such as Dispute Resolution and the Single Information Point (**SIP**) are implemented. SIRO recommends that ComReg should engage with stakeholders to ensure that the implementation of Article 8 of the BCRD is implemented.
- 4.62 Chambers notes that the BCRD is a vital measure that will reduce the cost of deploying high-speed public networks. Chambers considers that ComReg should play a more active role in the implementation of the BCRD noting that it is not being used to a great extent by Irish operators. Chambers states that it is imperative that ComReg ensures compliance with the BCRD and lays out its non-compliance measures while playing a stricter and more comprehensive role in ensuring compliance.

Broadband Cost Reduction Directive - Response

- 4.63 ComReg notes that the EC has recently reviewed the BCRD and proposed the Gigabit Infrastructure Act¹³ as part of its February 2023 Connectivity Package to speed up the deployment of 5G and fibre networks. ComReg agrees that to date, the BCRD has not been used to any great extent by Irish operators. The proposed Gigabit Infrastructure Act aims to overcome the challenge of slow and costly deployment of the underlying physical infrastructure sustaining advanced Gigabit networks. It aims to reduce 'red tape', costs and the administrative burden associated with the deployment of Gigabit networks. The proposed regulation will also enhance the coordination of civil works between network operators to deploy the underlying physical infrastructure, such as ducts and masts, and ensure that the relevant actors obtain access to it.

Spectrum policy

- 4.64 Vodafone notes that with the welcome completion of MBSA2, albeit later than desired, there is now clarity on the allocation of spectrum as well as space for broader discussion on spectrum policy to ensure the right investment signals.

¹³ Gigabit Infrastructure Act Proposal and Impact Assessment - <https://digital-strategy.ec.europa.eu/en/library/gigabit-infrastructure-act-proposal-and-impact-assessment>

- 4.65 Vodafone considers that ComReg, in collaboration with Government needs to consider the investment drivers that are needed to support long-term investment in 5G networks which includes longer-term licences with lengths of up to 40-years. Vodafone considers that the maximum value of a spectrum resource is realised when it is put to long-term use and conditions for rollout must also be efficient.
- 4.66 Vodafone also considers that this is the right time to evaluate and reconsider aspects of spectrum policy.
- 4.67 RTE/2Rn notes that further work is needed to continuously review the role that additional spectrum can play in meeting the needs of mobile coverage in light of the additional spectrum made available through MBSA2, refarming of 2G/3G spectrum and slowdown in growth of mobile data use.
- 4.68 Cellnex strongly supports ComReg's plan to devise a framework to allow the use and sharing of the 3.8 – 4.2 GHz frequency band for the licensing of private local networks. Cellnex considers that long-term band allocation, separation from other users of the same spectrum and security of tenure are critical for the use of this band by private local networks.
- 4.69 Cellnex further considers that quick identification and allocation of dedicated spectrum for use by vertical and private networks is key to paving the way to ensure that companies can benefit from private local area networks. Cellnex suggests that any new licencing regime should reflect the high level of investment needed in order enable private networks to succeed.
- 4.70 Cellnex notes that the availability of spectrum is key to driving innovation in a number of areas e.g., AI and edge computing and that a private or dedicated network would address several business use cases by providing reliable low latency and high bandwidth connectivity that commercial networks are not able to deliver.

Spectrum policy - Response

- 4.71 ComReg notes that DECC is responsible for the development of policies relating to the regulation and optimal use of Ireland's radio spectrum.
- 4.72 Spectrum policy is part of the national policy governing the telecommunications sector in Ireland. This includes next generation broadband, ECS and international connectivity. DECC also has the responsibility for spectrum use associated with national broadcasting policy.

- 4.73 To assist in the management of the radio spectrum resource, ComReg regularly sets out and updates its radio spectrum management Strategy Statement (**RSMSS**) which is reflective of ComReg's strategic intents as set out in the ECS Strategy Statement and takes account of DECC's Communications and Digital policy¹⁴ and Department of Tourism, Culture, Arts, Gaeltacht, Sports, and Media's (**DTCAGSM**) Broadcasting and Media policy¹⁵. ComReg will update its current RSMSS, after consultation in 2024 to form its strategy for the period 2025-2027.

Broadcast Spectrum

- 4.74 Virgin media suggests that ComReg include a specific goal on broadcast spectrum and a potential work programme on efficient use of broadcast spectrum.
- 4.75 RTE/2RN commends ComReg's excellent chairing of CEPT/PTD, a difficult group with strongly diverse opinions in relation to the future of UHF spectrum. RTE/2RN welcomes ComReg's role (alongside DECC) in international spectrum management forums and bodies and encourages continued and enhanced co-operation with DTCAGSM in relation to broadcasting spectrum to ensure broadcasting's value is not overlooked.
- 4.76 RTE/2RN notes that there was no public consultation on Ireland's position at WRC-23, limiting the opportunity for industry to contribute. RTE/2RN also notes that ComReg has not undertaken its proposed review of the UHF broadcasting band and that the chance to influence the Irish position on this work item at WRC-23 has now passed.
- 4.77 RTE/2RN encourages ComReg to support a clear no-change outcome on agenda item 1.5 of WRC-23, and to ensure that any future decisions on the use of UHF spectrum are considered following reassessment of market needs and a detailed review of the needs, benefits and costs of the proposed changes closer to the time of the decision being made (e.g. WRC-31). RTE/2RN considers that the medium to long term future of traditional terrestrial broadcasting (TV and Radio) is at risk not from any meaningful changes in user behaviour, but from what European regulators refer to as 'flexibility'.

¹⁴ <https://www.gov.ie/en/policy/435802-communications-and-digital/>

¹⁵ <https://www.gov.ie/en/policy-information/b151e3-broadcast-media/>

- 4.78 RTE/2RN believes that any changes to spectrum allocations that promote flexibility to allocate mobile use alongside broadcast services risk signalling an end to any further development of the terrestrial DTT platform so affecting the Programme Making and Special Events industry as well as FM radio which relies on the same infrastructure as DTT.
- 4.79 RTE/2RN notes that there is a risk that with the current distribution of government departmental responsibilities, broadcast policy could be overshadowed by telecommunications spectrum policy.

Broadcast Spectrum - Response

- 4.80 ComReg notes RTE/2RN's position regarding the UHF broadcast band. At WRC-23 a review of the UHF broadcast band (470-960 MHz) will consider the spectrum requirements of the broadcasting, mobile services and a number of other services that use this band¹⁶. ComReg has taken a leading role in facilitating this discussion in the CEPT and in determining the CEPT position at WRC-23.
- 4.81 In addition, to assist in the management of the radio spectrum resource, ComReg regularly sets out and updates its radio spectrum management Strategy Statement (RSMSS) which is reflective of ComReg's strategic intents as set out in the ECS Strategy Statement and takes account of DECC's Communications and Digital policy¹⁷ and DTCAGSM's Broadcasting and Media policy¹⁸. ComReg will update its current RSMSS, after consultation in 2024 to form its strategy for the period 2025-2027.
- 4.82 ComReg notes that DTCAGSM is responsible for Ireland's national broadcasting policy.

Unlicensed spectrum

- 4.83 SIRO recommends that ComReg review its spectrum allocation plan with a view to ensure the quick availability of unlicensed spectrum as new technologies emerge, including WI-FI 6e and 7 e.g., in the upper 6GHz range and unlicensed 5G spectrum for enterprise and home use.

¹⁶Allocations made in the band 470-960 MHz for Region 1 include fixed, radiolocation, land mobile ancillary to broadcasting and programme-making, radio astronomy, aeronautical radionavigation and mobile-satellite except aeronautical mobile-satellite (R)

¹⁷ <https://www.gov.ie/en/policy/435802-communications-and-digital/>

¹⁸ <https://www.gov.ie/en/policy-information/b151e3-broadcast-media/>

Unlicensed spectrum – Response

- 4.84 ComReg supports the view that the use of spectrum, exempted from the requirement for a licence, plays an important role in providing connectivity. ComReg updates the list of devices and spectrum bands that are licence exempt in response to two triggers:
- Trigger 1 – the EC mandate the exemption of certain devices in specified spectrum bands. For example, recently the EC added the spectrum bands 5150-5250 MHz, 5250-5350 MHz and 5470-5725 MHz for the use of RLANs. Within weeks of this decision being published, ComReg added these three bands to the list of exempted devices and spectrum bands.
 - Trigger 2 – The CEPT update the list of short-range devices and technical conditions under which those devices can operate, if permitted, across Europe. ComReg assesses and where appropriate adds those new devices into the list of exemptions.
- 4.85 ComReg notes that the 6GHz band is heavily used in Ireland by long distance and high-capacity fixed links for backhauling of data. At this time no decision has been made in the EU or within the CEPT in respect of a harmonisation measure to add new services into the 6425 – 7125 MHz band. ComReg intends to monitor and input to the discussions on this matter within Europe and at the ITU World Radiocommunication Conference in late 2023.

OTA Provisioning and eSIM technology

- 4.86 Eircom notes that ComReg will engage with industry on the benefits of OTA provisioning and eSIM technology in 2023. Eircom notes that it expects ComReg to engage with industry regarding concerns around delivery.

OTA Provisioning and eSIM technology – Response

- 4.87 ComReg's OTA strategy¹⁹ calls for fully digital customer sign-up and switching between operators by the end of 2023, with consumers potentially being able to switch between operators in 5 minutes or less. ComReg will engage with operators throughout 2023 to ensure that the full benefits of OTA provisioning and eSIM technology are delivered.

¹⁹ ComReg Doc 22/48A

Consumer Protection

General comments on consumer protection

- 4.88 Sky urges ComReg to focus more on issues that fundamentally impact the functioning of the market, and that have a significant impact on consumers.
- 4.89 Chambers suggests that ComReg expand the scope and goals of its strategic intent concerning consumer protection to include network reliability and assurances of affordability through options such as social tariffs and details on ComReg's actions to ensure affordability.

General comments on consumer protection - Response

- 4.90 With regard to Sky's comment about focussing on issues that have a significant impact on consumers, ComReg notes that this ECS Strategy and its Annual Action Plan, set out a range of issues and workstreams ComReg will be focussing on during the relevant period.
- 4.91 With regard to Chambers' comments around social tariffs, ComReg would note that currently Eircom is designated as the Universal Service provider and provides a voice service at a fixed location that is a safety net ensuring access to basic ECN / ECS. Matters relating to adequate broadband and the associated quality of service and affordability are a matter for the Minister. The Minister may consult with ComReg before defining adequate broadband or specifying the quality standards applicable to it.

Customer Charters

- 4.92 Eircom notes ComReg's intention to introduce customer charters and other measures to mitigate consumer harm and notes that ComReg must be proportionate when applying regulatory measures to reduce consumer harm.
- 4.93 Virgin Media notes that it is important that consumers can choose and use services with confidence and understands that continuous improvement is vital for enhancing the customer experience. Virgin Media expects ComReg to consult on this matter.
- 4.94 Sky and Three both welcome and look forward to engaging with ComReg's proposed consultation on customer charters while Virgin Media expects such a consultation.

Customer Charters – Response

- 4.95 ComReg has published a consultation on proposals for the implementation of customer charters²⁰ and looks forward to engagement from interested stakeholders.

Consumer Care, Consumer Complaints and Redress

- 4.96 Three warns that care must be taken in specifying minimum standards for customer service so that the scope for competitive differentiation is maintained without an erosion of consumer rights as new technologies and customer service models emerge (e.g., online only and AI chat).
- 4.97 Virgin Media encourages ComReg to consult with industry on improving transparency on Quality of Service to drive improvements in services.
- 4.98 Chambers notes that most complaints relate to billing and service issues. Chambers applauds ComReg for its actions in this matter but considers that service providers have not been efficient in addressing consumer complaints. Furthermore, Chambers considers that some consumers may be unaware of their rights and may not be raising complaints while some service providers discourage consumers from persisting with making a complaint (e.g., through long call holding times). Chambers further notes that consumers should be able to understand their bills and to be billed correctly and that ComReg should not hesitate to levy fines for repeated loss of service and excessive or wrongful billing.
- 4.99 Sky and Vodafone both note that retail operators and their customers are reliant on wholesale providers to address issues around fixed services repair and installation (particularly in nonstandard cases). Sky and Vodafone note that these issues stay open with the retail operator until they have been addressed and that this can manifest as poor performance by the retail operator if the wholesale provider is slow at addressing issues. Sky notes ComReg gave no recognition to this fact at the 2022 stakeholder breakfast.

²⁰ ComReg Doc 23/14

Consumer Care, Consumer complaints and redress - Response

- 4.100 ComReg agrees with Chambers that customers should be billed correctly and be able to understand their bills. ComReg will continue to use its regulatory powers to ensure consumers are well informed, billed correctly and have timely redress for adverse issues that occur in the ECS sector.
- 4.101 In response Three and Virgin Media, ComReg notes that the quality of customer service a customer gets from their provider is an important factor contributing to the overall customer experience and level of satisfaction. ComReg proposes to use the Customer Charter to require customer service levels in the ECS sector to be articulated as standards – whether reflected through commitments to a particular level of customer service offered by a provider to their customer, or Minimum Quality of Service Standards that may be specified by ComReg and which providers of Internet Access Service (**IAS**) and ICS would be required to achieve (if so decided). It is important for customers to know what level of customer service they can expect from their own service provider and be able to compare customer service offers between service providers.
- 4.102 In terms of wholesale operators and fixed services repair and installation, ComReg notes that wholesale services providers may not typically carry out pre-surveys and hence installation issues may arise on the day of the installation appointment. ComReg considers that it is the retail operator's responsibility to manage their commercial relationship with their wholesale service providers and to avail or request Wholesale SLAs that enable them to meet their commitments.

Nuisance communications

- 4.103 Three notes that industry has acted over nuisance communications without a formal regulatory intervention, which suggests that regulation is not always needed to protect end users. Three considers that given that ECS is an attack vector for fraud rather than a target, a stronger cross sectoral framework (that may include the financial sector, law enforcement and other ECS providers such as email services) is required for end-to-end consumer protection.
- 4.104 Virgin Media and Three support the Nuisance Communications Industry Taskforce (**NCIT**) and recognise the need to protect consumers from nuisance communications. Virgin Media notes that it has provided the taskforce with expert advice and leadership which resulted in many positive actions that addressed many issues such as spoof text messages and calls.

Nuisance communications - Response

- 4.105 ComReg recognises the risk posed by nuisance communications and the role played by industry in addressing this risk. ComReg notes that this ECS Strategy Statement considers that an overarching long-term national strategy to combat nuisance communications may be needed in the future.
- 4.106 ComReg, in December 2021, announced the formation of the NCIT²¹ which held its first meeting under an independent Chair in February 2022.
- 4.107 NCIT's success requires the support and expertise of the entire telecommunications industry, including international gateway providers, and the strong endorsement of its work by the CEOs²² concerned.
- 4.108 Going forward, further work will be required by the telecommunications industry to address other, more complex vulnerabilities and to help stymie new or evolving types of nuisance communications. Such tasks may include, but are not limited to:
- delivering on agreed members' implementation roadmaps to ensure that the interventions are implemented by the appropriate network and/or service providers as quickly as possible;
 - providing metrics as per agreed technical specifications and in line with the expected timelines of the deliverable of the taskforce;
 - undertaking a gap analysis to identify further measures that may be taken, including more dynamic interventions;
 - proactive monitoring of trends in nuisance communications both in Ireland and abroad;
 - formalising inter-operator and cross-sector cooperation and coordination;
 - identifying actions for industry and ComReg to raise consumer awareness of scams;
 - ultimately, developing an overarching long-term national strategy to combat nuisance communications; and

²¹ ComReg Doc 21/129

²² To that end, CEOs of NCIT member organisations have signed a Code of Conduct that commits members to uphold that and the NCIT Terms of Reference.

- contributing to international regulatory initiatives to promote an international approach, as appropriate.

4.109 The focus for ComReg and the NCIT is to restore trust in telecommunications services by putting in place interventions to reduce the prevalence of nuisance communications and their damaging impact on Irish consumers and society.

4.110 ComReg looks forward to the continuing work of the NCIT in the months ahead, together with the full and active commitment of all its members and other interested parties.

Informing Consumers

4.111 Vodafone notes that it is in the common interest that consumers have confidence and simple access to services that deliver a high-quality experience, clear and simple information and efficient transparent issue resolution. Vodafone considers that enforcing consumer protection by requiring more detail to be provided to consumers is counterproductive and counters ComReg's intent as it often embeds complexity for consumers and makes it a challenge for operators to present the required details to consumers in a simple manner. Vodafone further notes that there is a case for a clear standard to be set for provision of information in a simplified manner while protecting consumer rights.

4.112 Chambers notes that ComReg should aim to provide easy access to services information in a user-friendly manner with minimal confusion to the user. Chambers also suggests that ComReg should include details on promises to provide pre-contractual information in a user-friendly manner in Strategic Intent 2. Chambers also notes that issues arise when Consumers are presented with too much information or in a non-user-friendly manner.

4.113 One individual raised concerns that consumers were not able to avail of their right to a 14-day cooling off period for contracts.

Informing Consumers - Response

4.114 ComReg notes the issues raised by Vodafone and Chambers regarding the provision of information to consumers. ComReg agrees that consumers should have access to transparent, accurate and timely information relevant to their ECS/ECN. In this regard, the ECS Strategy Statement notes a number of workstreams and information tools that ComReg makes available to assist consumers choosing and using ECS/ECN.

- 4.115 Additionally, the Consumer Rights Act 2022 transposes a number of relevant EU Directives and updates various provisions on consumer rights and remedies relevant to ComReg's remit in relation to contracts for the supply of non-digital services relevant to ComReg's remit, unfair contract terms, and information and cancellation rights. This legislation brings about a number of positive changes for consumers, including stronger consumer rights, protections and remedies across a number of key areas.
- 4.116 Providers will also be aware that upon conclusion of the contract with the receiving provider, cooling off rights apply for consumers in the case of distance and off-premises contracts in accordance with the Consumer Rights Act 2022. A consumer may decide to exercise the right to cancel during the cooling off period and, therefore, discontinue service with the receiving provider and, at the same time, engage in a switch, to their previous or a third provider. Providers of IAS and ICS should implement processes and procedures designed to ensure that the consumer's right to cancel a contract in the cooling off period (where applicable) is upheld. IAS providers should facilitate end-users' choice to switch and cancel service during the cooling off period (if applicable).
- 4.117 ComReg provides advice and support to ensure consumers can make informed decisions. ComReg's website contains information and advice on contracts including "Changing your mind– Cooling off"²³.

Compare tool

- 4.118 Virgin Media strongly encourages ComReg to consult more with stakeholders on the development of ComReg's Compare Tool.

Compare tool - Response

- 4.119 ComReg will continue to ensure that its comparison tool provides independent, up to date information in a user friendly and accessible manner for consumers so that they can choose communication services with confidence. ComReg will continue to liaise with service providers regarding their data provision in accordance with regulation.²⁴

²³ <https://www.comreg.ie/advice-information/contracts/#Changing-your-mind---Cooling-off-period>

²⁴ Regulation 88 of SI 444 of 2022.

Switching

- 4.120 Vodafone welcomes the engagement of ComReg in the IAS forum on switching. Vodafone considers that greater engagement on cross industry requirements at an early stage is needed in the development of a switching regime that Vodafone urges be kept simple for consumers and businesses.
- 4.121 Sky welcomes ComReg actions in working towards a broadband switching solution in accordance with the EECC, while ALTO encourages ComReg to be proactive and flexible in this matter and to where possible, replicate ComReg's actions from the early 2000s when ComReg facilitated industry workgroups that drove consumer choice and competition to a large extent.
- 4.122 Sky is of the view that the quicker a switching solution can be implemented, the better the outcome will be for consumers, while ALTO notes that price remains the number one reason for consumers to switch.

Switching - Response

- 4.123 In October 2021, ComReg provided regulatory guidance to industry on principles to facilitate end-user rights to switch internet access services to ensure that the switching process is efficient and simple for end-users (the “**IAS Guidance**”).²⁵ The IAS Guidance sets out for providers of Internet Access Services to the Irish market, ComReg's views on the meaning and effect of the provisions of the Code as they relate to end-user IAS switching under Article 106 (1) and, where they pertain to switching between providers of IAS, Articles 106 (5), 106 (6) and 107 of the Code.
- 4.124 On 1 July 2022, ComReg published an Information Notice²⁶ informing stakeholders of the establishment of an Internet Access Service Switching Forum (“**the Forum**”) and inviting operators to participate in the Forum. The purpose of the Forum is to facilitate operators in developing IAS switching inter-operator processes that will facilitate end-users exercising their right to choose and change IAS provider from the time the ECC Regulations enter into force. Since July 2022, weekly Forum meetings have been taking place.

²⁵ ComReg Doc 21/107R

²⁶ ComReg Doc 22/55.

- 4.125 ComReg welcomes that operators are progressing with establishment of the required inter-operator processes for IAS switching and the implementation of the inter-operator process decided upon by industry at the Forum on Transposition. IAS providers should ensure that the switching process and/or any technical solution supports end-user choice and effective competition. ComReg will, under Regulation 90 of the ECC Regulations, ensure the efficiency and simplicity of the switching process for the end user.

Information Campaigns

- 4.126 Eircom notes ComReg's plan to keep consumers informed on issues relating to the telecoms market and supports ComReg's plan to launch consumer information campaigns on the benefits of new technologies.
- 4.127 SIRO considers that ComReg should put in place an information campaign for the switch off of legacy copper networks that should ensure that end-users aware of the possible networks available to them to replace Eircom copper connections.
- 4.128 Virgin Media notes its participation in the Mobile Phone and Broadband Taskforce and notes the Taskforce's usefulness for engagement between industry and government. Virgin Media also considers that an information campaign to improve awareness of new technologies/enhanced connectivity might be very useful to include in the taskforce's programme.

Information Campaigns - Response

- 4.129 ComReg notes Eircom's views around information campaigns and the need to provide information to consumers on relevant topics.
- 4.130 ComReg notes that as part of the Mobile Phone and Broadband Taskforce, ComReg has committed to a consumer information campaign aiming to improve consumer and public awareness of the basics of new technologies available. This will include information on moving to fibre or alternative technologies and copper switch off.

Provisions for Vulnerable and those end-users with a disability

- 4.131 Eircom notes ComReg's update on provisions for end-users with a disability and calls for a holistic approach to be adopted, noting the role and responsibilities of all stakeholders in ensuring end-users with a disability can access ECS.

- 4.132 Virgin Media agrees with ComReg's consideration for vulnerable and disabled consumers and welcomes further public consultation on provisions for end users with a disability. Virgin Media looks forward to further participation in ComReg's Equivalence of Access and Choice workshops.

Provisions for Vulnerable and those end-users with a disability - Response

- 4.133 ComReg notes Eircom's and Virgin Media's comments regarding the provisions for vulnerable end-users and those with a disability. One of ComReg's objectives is to ensure that end-users with disabilities are protected and can choose and use ECS with confidence. ComReg's role includes consideration of placing obligations on undertakings geared towards ensuring equivalence in access and choice as regards ECS products and services for end-users with disabilities. The general consumer protections in place safeguard consumer interests, supporting all consumers, including end-users with disabilities, when choosing and using ECS with confidence.²⁷
- 4.134 ComReg notes that specific measures or services have been put in place to support end-users with disabilities access and use ECS products, services, and information. Since the implementation of the measures by undertakings, there has been continuous market and technological evolution of the electronic communications sector. ComReg is currently undertaking a review of the effectiveness of the existing measures or services in place in meeting the needs of end-users with disabilities when accessing and using ECS, and in ensuring that end-users with disabilities are protected.^{28,29} ComReg may issue a public consultation addressing specific provisions for end-users with disabilities arising from this Call for Inputs and the provisions under the ECC Regulations relating to accessible information.

²⁷ ComReg. (2014). Electronic Communications- Measures to Ensure Equivalence in Access and Choice for Disabled End-users. Retrieved from <https://www.comreg.ie/publication/electronic-communications-measures-to-ensure-equivalence-in-access-and-choice-for-disabled-end-users-2/>

ComReg. (2015). Measures for Disabled End-users: Requirement for an Accessibility Statement. Retrieved from <https://www.comreg.ie/publication/measures-for-disabled-end-users-requirement-for-an-accessibility-statement/>

ComReg. (2015). Provision of Access to a Text Relay Service. Retrieved from <https://www.comreg.ie/publication/provision-of-access-to-a-text-relay-service/>

²⁸ In accordance with Regulation 94 of the ECC Regulations, transposing Article 111 of the Code.

²⁹ Pursuant to Section 12 of the Act and Regulation 16 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011). It is a requirement of ComReg, in carrying out regulatory tasks to take all reasonable measures which are necessary and proportionate for achieving the objectives.

Affordability, Adequate Broadband and Universal service

- 4.135 Eircom considers that industry must be consulted in regard to designing regulations around Adequate Broadband.
- 4.136 SIRO considers that any Universal Service Fund for broadband should be funded by the exchequer and be made available to all network operators rolling out symmetric gigabit connectivity. In this regard SIRO recommends that ComReg lead a working group within the Mobile Phone and Broadband Taskforce to plan and consult on this.
- 4.137 Virgin Media considers that Universal Service for adequate broadband is only required when the market fails to deliver, and policy interventions have been exhausted. Virgin Media notes that state aid is a more targeted instrument than USO for addressing broadband coverage issues and that state aid has already been applied to the Irish market through the NBP/NBI. Virgin Media therefore questions the requirement to apply a USO while recognising the role of USO in supporting social inclusion and the goal of USO under the EECC.
- 4.138 ALTO urges ComReg to deploy Decisions such as USO in a timely manner and notes that there is little to no clarity on EUR70 million of the EUR120 million potential reserve for Eircom and warns that the market is deeply unimpressed by this, and that ALTO has raised this issue before.
- 4.139 Chambers encourages ComReg to play a bigger role in making ECS/ECN services more affordable, given the current cost of living crisis and anxiety regarding rising costs among consumers who increasingly believe that they overpay for their services. Chambers further notes that operators have not responded appropriately and effectively to the pressures that their customers are facing. Chambers notes that addressing affordability means not simply monitoring providers or publishing data but having follow up plans after this process of gathering information.
- 4.140 Chambers warns that only publishing information on Eircom's USO quality of service performance is not sufficient. Chambers claims that what is needed are benchmarks for acceptable quality of service as well as a follow up plan that includes a team to monitor the provision of this quality of service. Chambers notes that the process of defining "adequate broadband" should be expediated and that ComReg should take the lead and approach Government.

Affordability, Adequate Broadband and Universal service - Response

- 4.141 ComReg notes that the ECS Strategy Statement sets out a number of workstreams relating to USO, including consulting on the need for a USO for fixed voice, publication of information on Eircom's USO Quality of Service performance and funding for USO.
- 4.142 Concerning ALTO's comments on the reserve for Eircom, ComReg will address this matter under the USO workstream.
- 4.143 In addition, ComReg notes that under the EECC, the purpose of Universal Service is to ensure consumers have access at an affordable price to an available adequate broadband internet access service and to voice communications services, including the underlying connection, at a fixed location. This Universal Service is only required when the market fails to deliver, and relevant public policy interventions have been exhausted. Under national legislation, ComReg's role in respect of certain aspects of universal service is contingent on specifications or requirements which will be established by the Minister, as appropriate, including the definition of adequate broadband and the associated quality standards and any requirement for affordability measures. The Minister may consult with ComReg before defining adequate broadband or specifying the quality standards applicable to it.
- 4.144 ComReg notes that it will establish whether the availability of Adequate Broadband and or voice communications cannot be ensured under normal market conditions. ComReg also will continue to monitor the evolution of retail prices and national income in respect of ABB and voice communications services.

Digital divide

- 4.145 RTE/2RN considers that broadcasting public service media should be properly represented for its role in delivering access to trusted information on a robust, reliable, simple, and free to use platform (particularly for vulnerable people) and helping to reduce the digital divide.
- 4.146 Chambers notes that as part of the *European Declaration on Digital Rights and Principles*, Ireland is obliged to empower people to fully enjoy the opportunities that the digital decade brings. Chambers also notes that therefore the proposed set of European Digital Rights and Principles should be reflected in the Strategic Intents surrounding widespread access to high quality and secure communications networks.

Digital divide – Response

- 4.147 ComReg notes RTE/2RN's response and will continue to monitor the emergence of digital divides in ECS and adjacent markets and use these insights to inform future policy.
- 4.148 Regarding Chambers' comments on digital rights, ComReg's ECS Strategy takes account of the EU's digital decade targets and where appropriate has highlighted relevant workstreams and developments in this regard, including the network coverage of fibre networks and the commercial and public investment in VHCN.

Network Incidents

- 4.149 Eircom notes ComReg's ongoing work to study the impact of network incidents and consider that such a study should also consider the impact and costs imposed on industry.

Network Incidents - Response

- 4.150 ComReg expects to publish the findings from its study on the impact of network incidents shortly and may consider further steps at that stage.

Network resilience

- 4.151 Eircom notes that network resilience measures may overburden ECS providers but offer little benefit to consumers.
- 4.152 Sky notes that network resilience is important to Sky, and that they are engaging with ComReg in its information gathering on resilience, security, and risk management practices.
- 4.153 Virgin Media notes that preventative maintenance and ongoing investment in network upgrades, ensures the resilience of their network and mitigates against external factors such as climate change.
- 4.154 RTE/2RN considers that the important role of resilient broadcast networks has been underestimated and that broadcasting was not included in the scope of the Frontier Economics study on Network Resilience and climate change. RTE/2RN considers that resiliency is one of the core strengths of broadcast networks and note that broadcasting was within the scope of the government report on climate change. RTE/2RN also states that it would be happy to assist ComReg in this area.

- 4.155 RTE/2RN further notes that reliable, free access to trustworthy information, particularly in times of crisis is essential and that broadcast TV and radio are highly valued in this regard. RTE/2RN therefore considers that “Trustworthy should be added to the list of key terms when considering ECS/ECN”.
- 4.156 Chambers considers that the Strategic Intent concerning connectivity and network resilience can be expanded to go beyond only working to understand the connectivity risks "and that ComReg should be more active in collaboration with the DECC to identify and address risks”.

Network Resilience – Response

- 4.157 ComReg considers there is a risk of market failure which could cause operators to underinvest in the security and resilience of networks and services. ComReg notes that there is a potential market failure with respect to systemic risks that could affect the whole industry. ComReg considers that investments in mitigating systemic risk would benefit all end-users, not just the customers of the operator making the investment. On the other hand, if all operators are exposed to the same systemic risk, then there will be no competitive disadvantage if the risk crystallises – so there is a reduced commercial incentive to mitigate it.
- 4.158 Providers of publicly available ECN/ECS are required to manage the integrity and security of their networks and services³⁰. They are also required to take appropriate technical and organisational measures to manage risks to the security of such networks and services. Such a risk-based approach should lead operators to prevent, resist, mitigate and recover from threats to the security and resilience of networks and services they provide.
- 4.159 ComReg notes that there are many aspects to network security and resilience which do not fall within its remit. Several other public bodies also have a role in network security and resilience, including DECC, the National Cyber Security Centre, ENISA, the Data Protection Commission, the Gardaí and the Defence Forces. The relevant agencies vary according to the issue at hand and its potential impact. ComReg considers that effective engagement with these stakeholders is necessary to ensure appropriate oversight and consistency and to avoid the duplication of activities.

³⁰ Under Regulation 23 of the Framework Regulations and Articles 40 and 41 of the EEC

- 4.160 ComReg welcomes the comment from RTE/2RN in regard to ComReg's commissioned study on network resilience and climate change. ComReg would also like to state that it does not underestimate the importance of resilient broadcast networks to the impacts of climate change. This particular study on network resilience and climate change focused on operators of telecommunication networks and related infrastructure; it did not include broadcast networks. The scope of this study was set to meet the objectives of Action 63 of CAP 2021³¹, a study to "Understand the effects of climate change on telecom networks". The purpose and scope of the study is further detailed in section 1.3 of the published report. In addition, as also detailed in the report, ComReg engaged with RTE/2RN as part of the study. This engagement was in regard to RTE/2RN's physical infrastructure that is also used by telecommunication networks. ComReg greatly appreciates 2RN's contribution to the study but would also like to note that RTE/2RN made no request at the time of engagement for further involvement in the study.
- 4.161 This is the first such study on network resilience and climate change commissioned by ComReg and it provides a foundation for future and iterative studies in this area. ComReg now notes the willingness on behalf of RTE/2RN to engage with ComReg in this area and on the subject of resilience of broadcast networks.
- 4.162 ComReg also notes RTE/2RN's response regarding free access to trustworthy information, however this matter falls outside of the scope of ComReg's remit.

Network and cybersecurity

- 4.163 Three notes that the Draft ECS Strategy Statement does not reflect the investment in network security by industry or the monitoring activities carried out by ComReg. Three considers that this self-effacement ill serves end-users, service providers and ComReg. Three further considers that the ECS Strategy Statement should set out the baseline on which the ECSMs will build.
- 4.164 Virgin Media recognises that cybersecurity is essential for consumer confidence and references Virgin Media's contribution to the development of the National Cyber Security Centre and the ECSM documents. Virgin Media notes that these contributions show their commitment with the industry to safeguard against cyber threats and also notes that it looks forward to working with ComReg in this area.

³¹ [Climate Action Plan 2021 – Annex of Actions](#)

³² <https://www.comreg.ie/publication/climate-change-and-its-effect-on-network-resilience-a-study-by-frontier-economics>

- 4.165 Chambers notes that ComReg in collaboration with DECC needs to take Cyber Security more seriously and not just treat it as an obligation that needs to be fulfilled. Chambers considers that Ireland needs to be proactive in our approach towards Cyber Security.
- 4.166 Chambers considers that Cyber Security risks need to be analysed and responsibilities need to be divided among the state bodies noting that as of now the stance of the state bodies on cybersecurity is disorganised. Chambers further notes that no one entity has overall responsibility for Cyber Security and that this responsibility is instead distributed as well as centralised with institutional hurdles preventing change.
- 4.167 Chambers notes that telecommunication companies are struggling to stay ahead of cyber threats while businesses and consumers continue to face various Cybersecurity risks. Chambers notes that its members are affected by both the direct effects of disruptive cyberattacks and financially motivated cybercrime. Chambers also notes that Ireland is not too peripheral to be a target for cyberattacks.
- 4.168 Chambers considers that ComReg should address concerns surrounding security in an adequate manner by putting follow-up plans in place after monitoring and data gathering.
- 4.169 Chambers further notes that it is the network provider's job to ensure that there are processes in place to reduce and handle cybersecurity risks towards end users. Chambers notes that contracts with network providers often require cybersecurity insurance coverage that does help vulnerable sectors.

Network and cybersecurity - Response

- 4.170 Regarding ECSMs, over the period of this ECS Strategy Statement, ComReg will develop the framework to enable the proportionate, transparent and non-discriminatory implementation of the ECSMs by providers of ECN or ECS. Furthermore, ComReg will be responsible for the assessment, compliance, audit and enforcement of operator ECSM obligations on an on-going basis. ComReg will maintain the ECSMs' relevance by updating them on a regular basis, as required, and developing additional ECSMs which focus on other areas of security as the networks and technology on which they are based evolve.

4.171 Regarding Chambers Ireland's comments on Cyber Security, while ComReg will continue to use its regulatory powers to address network issues, in some cases, where the appropriate regulatory powers are held by other authorities, a multi-agency approach will be required. ComReg notes that there are many aspects to network security and resilience which do not fall within its remit. Several other public bodies also have a role in network security and resilience, including DECC, the National Cyber Security Centre, ENISA, the Data Protection Commission, the Gardaí and the Defence Forces. ComReg works closely with these bodies and will continue to support other responsible authorities and act as a knowledgeable regulator by making informed contributions to policy discussions and debate.

Compliance and Enforcement

Eircom's Regulatory Governance Model

4.172 ALTO comments that enforcement has effectively been neutralised in the Irish market since 2018 with the agreement between Eircom and ComReg.

Eircom's Regulatory Governance Model - Response

4.173 ComReg disagrees with ALTO regarding ComReg's enforcement of regulatory obligations, noting that a number of opinions of non-compliance have been adopted and enforcement actions have taken place since 2018.

Clarification on Enforcement Powers

4.174 Eircom, Virgin Media, Vodafone, Sky, Three and ALTO encourage ComReg to provide industry with additional clarity and guidance on its enforcement powers, investigative practices, investigative methodologies and compliance activity. These respondents consider that providing clarity is particularly important given the new legislation such as the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 and the EECC which have given ComReg new enforcement and compliance powers. Virgin Media, Vodafone and, Sky, also encourage ComReg to consult with Industry on ComReg's new powers.

4.175 Eircom encourages ComReg to engage with industry on collaborative measures to prevent enforcement actions while also noting that for the market to function efficiently, industry should be informed about how enforcement actions are taken rather than using sanctions or fines as a deterrent.

- 4.176 Sky notes that it is particularly important for ComReg to be a proactive and responsive regulator for industry given the upcoming enactment of the EECC and the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 that will bring unprecedented changes to the regulatory framework and to how ComReg regulates the sector.
- 4.177 Chambers considers that ComReg can do more as a regulator and compliance enforcer and exercise its role in a more rigorous and comprehensive manner. Chambers further notes that the strategy should include specific actions that ComReg is promising to take to ensure compliance and the repercussions of non-compliance.

Clarification on Enforcement Powers - Response

- 4.178 Over the period of the ECS Strategy Statement ComReg will consider whether it is appropriate to publish further information and guidance on certain aspects of its compliance investigation practices and methodologies. In addition, ComReg will utilise engagement and dialogue to help foster the desired behaviours within industry, where necessary.
- 4.179 ComReg also notes that regulated entities have a responsibility to ensure they are aware of their legal and regulatory obligations. In this context, ComReg will continue to monitor the practices and behaviours of undertakings and take enforcement action, where appropriate. Regulated entities should seek their own legal advice on any legal and regulatory obligations.

Enforcement and Investigations

- 4.180 Eircom and Vodafone urge ComReg to observe an 'adjustment/grace period' in applying the new enforcement regime, noting time is required to ensure ECS providers can meet all regulatory requirements.
- 4.181 ALTO is concerned that ComReg lacks real deterrent power to intervene when breaches occur and have been found. Vodafone considers that if serious issues arise ComReg must have the ability to enforce requirements. ALTO further notes that enforcement and compliance is not a ComReg Consumer Division only responsibility.
- 4.182 Sky notes that some investigations by ComReg remain open for years with no apparent outcome or clarity as to ComReg's position on the matter. Sky considers that this is certainly not in line with best practice for the performance of functions by a statutory body. Sky considers this matter important in relation to the new civil enforcement regime.

4.183 Three considers that the strategy should also provide a framework for weighing the benefits to the end- users of upcoming legislative changes against other regulatory and legal imperatives. Three notes that absent this framework there is a risk that decisions could be made in isolation and with a case by case/ad-hoc approach that is likely to lead to longer decision-making timelines and sub-optimal decisions.

Enforcement and investigations - Response

4.184 ComReg also notes that the legislation introducing the new enforcement regime to which Eircom and Vodafone refer contains a significant toolkit of regulatory powers in respect of compliance and enforcement, including administrative financial sanctions.

4.185 ComReg also notes that compliance and enforcement are matters which are dealt with throughout the entire ComReg organisation, with enforcement matters regularly being dealt with by Wholesale Division, Retail and Consumer Services Division and Market Framework Division as appropriate. Regarding ALTO's comments, ComReg notes that the legal framework does not prioritise compliance and enforcement activities of one area over another. ComReg's Retail enforcement relates to end-users rights and aims to ensure that end-users' rights are upheld.

4.186 ComReg progresses all enforcement matters as expeditiously as possible and one of the key aims of its enforcement strategy is to provide certainty to industry. ComReg anticipates that this will continue in relation to any enforcement actions taken under the new legislation.

4.187 ComReg's approach to any enforcement action will involve consideration of all relevant factors, including harms/benefits to end-users though individual factors present in a particular case, may often be relevant and at times even determinative. Therefore, ComReg aims to consider every enforcement case on its individual merits but in the wider context of ComReg's enforcement strategy.

4.188 As set out in the ECS Strategy Statement, ComReg notes that it actively monitors the markets it regulates to ensure that they function in a way that is consistent with the legal and regulatory obligations imposed in those markets.

EECC objectives

- 4.189 RTE/2RN notes that the objective, in the EECC, of “Promoting the interests of EU citizens”, should include access to trusted information from within the EU and each country. RTE/2RN states that national free to air broadcasting must be nurtured in this context.

EECC objectives - Response

- 4.190 ComReg notes that the EECC (EC Directive 2018/1972) does not cover broadcasting content.

ComReg’s Organisation

Market Intelligence

- 4.191 Eircom and SIRO both warn ComReg against overburdening operators with data requests. Eircom warns that ad hoc data requests can be burdensome while SIRO considers that operators can be overloaded by the work involved in responding to data requests in addition to other ComReg requests and consultations. SIRO notes that operators have limited resources to deal with this workload while ComReg is better resourced than ever.
- 4.192 RTE/2RN notes that it would be useful if the QKDR/data portal included historical broadcast data from prior to 2019.

Market Intelligence - Response

- 4.193 As set out in the ECS Strategy Statement, ComReg notes that it actively monitors the markets it regulates to ensure they function in a way that is consistent with the legal and regulatory obligations imposed in those markets.
- 4.194 ComReg considers the principles of reasonableness and proportionality when requesting information from stakeholders and the impact of such requests on stakeholders. Where possible, ComReg has sought to streamline its data collection processes to reduce the burden on industry. As set out in the ECS Strategy Statement, ComReg has made a number of reforms to its data collection processes and Data Portal. Over the period of the ECS Strategy Statement, ComReg’s data portal will continue to grow and will become a significant source of data relating to the ECS sector.

Stakeholder Engagement

- 4.195 Eircom welcomes ComReg’s intention to hold stakeholder engagement events in the future.

- 4.196 SIRO recommends that ComReg review its industry consultation process via a consultation on the matter and then publishes a revised standardised approach to consultation.
- 4.197 RTE/2RN notes that it would be useful if ComReg could publish updates/reports from activities at international regulatory bodies to help inform industry in Ireland.
- 4.198 Vodafone considers that lifting the reputation and standards in the sector and removing issues of concern for users, while ensuring a great experience for users, can only be achieved by setting clear standards in consultation with all stakeholders.
- 4.199 Three considers that ComReg's consumer engagement strategy should include a workstream for messaging that displays strong and visible regulatory support to protect the investment environment necessary to justify 5G investment.
- 4.200 Virgin Media considers that greater information and consultative activity could be undertaken by ComReg and that formulating policy through consultation is a valuable tool.

Stakeholder Engagement - Response

- 4.201 ComReg seeks to engage with a variety of stakeholders using a number of different forms and mediums, with the object of ensuring that our Communications Strategy is flexible and adaptable to meet the changing demands and needs of all stakeholders in the sector.

Organisational Processes

- 4.202 ALTO suggests that to be effective, agile and relevant, ComReg might take on a programme of rotating senior management.

Organisational Processes - Response

- 4.203 To the extent that ComReg has discretion, ComReg considers the impact and importance of activities when allocating resources. ComReg notes, however, that the legal framework does not prioritise the work of one regulatory area or Division over another.

- 4.204 ComReg's success as an organisation depends on the structures within which its staff work, as well as the systems and processes that support them. ComReg recognises the necessity of being responsive and having the flexibility as an organisation to react to unanticipated situations. ComReg must be structured so that decisions are made in a timely, transparent, replicable, and robust manner and that all processes run effectively, efficiently and reliably. ComReg operates as a collegiate body, with regulatory decisions taken collectively by the Commission.

Sustainability

- 4.205 Chambers considers that digital products and services should be designed, produced, and disposed of in a sustainable way and that ComReg should ensure that there is more information regarding environmental impact and energy consumption of such services.
- 4.206 Chambers states that telecommunication companies have consistently failed to disclose and improve their reporting of environmental, social and governance (**ESG**) metrics such as renewable energy consumption and e-waste management.

Sustainability - Response

- 4.207 ComReg notes Chambers' comment regarding sustainability metrics for the sector. ComReg is a member of the BEREC Working Group on Sustainability. ComReg contributed to the 2021 BEREC report '*Assessing BEREC's contribution to limiting the impact of the digital sector on the environment*'³³ and featured as one of three NRA case studies. This report highlighted the lack of common measurement methodologies for the environmental impact of ECS/N.
- 4.208 ComReg has also inputted to a draft BEREC report '*Sustainability Indicators for Electronic Communications Networks and Services*' that is out for public consultation until mid-April 2023³⁴, following a series of workshops and surveys sent to industry and NRAs. This report should be read in the context of the European Commission's ongoing work in this area, which also outlines that there exist environmental impacts of the digital ecosystem other than GHG emission, including critical materials for device production, biodiversity, waste etc.

³³ BEREC Reference #55, #8

³⁴ Public consultation via the BEREC website from March 15th– April 12th, 2023

- 4.209 Under the Climate Action Plan for 2023, ComReg has an action to “Collate and review the various methodologies available to calculate the environmental impact of electronic communications networks and promote the harmonisation of such measurement indicators across the EU”
- 4.210 Comreg also continues to undertake market research regarding consumers’ views on the importance of environmental sustainability in their choice of electronic communications provider. In a survey in 2022, over 3 in 5 (63%) of respondents in Ireland stated that environmental sustainability is an important factor when choosing a mobile phone provider.

Chapter 5

5 Additional Comments

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

Q.5 Is there anything else that should be added to, or omitted from, this Strategy Statement?

- 5.2 A range of additional comments were made which are summarised in this section.

Concerns over EMF

- 5.3 Electro sense Ireland and five individuals raised concerns around the health and environmental effects of EMF radiation from sources such as 5G mobile sites, Wi-Fi routers and satellites.
- 5.4 Three notes that ComReg has a key role to play in ensuring that timely and accurate information is available to end-users as to the benefits and safety of 5G and the phasing out of legacy mobile networks to prevent the spread of misinformation.

Concerns over EMF - response

- 5.5 Engaging with arguments related to health and the environment linked to the use of the radio spectrum are beyond the mandate and competence of ComReg.
- 5.6 ComReg's role in respect of EMF is limited to its function as the spectrum manager for Ireland. Under this function ComReg obliges all spectrum users operating under a Wireless Telegraphy Licence or a General Authorisation, to ensure that emissions from their networks do not exceed the public exposure limits established by The International Commission on Non-Ionising Radiation Protection (**ICNIRP**). The main objective of this is to establish guidelines for limiting EMF exposure that will provide protection against known adverse health effects.

- 5.7 As part of its spectrum management function, every year ComReg measures NIR levels in public areas at a minimum of 80 different sites, located throughout Ireland. These are chosen based on demographic and geographic factors. To date, over 1400 sites have been surveyed and NIR levels at all sites have been found, without exception, to fall well below the international limits for public exposure set by ICNIRP.
- 5.8 All of ComReg's NIR measurement reports are available online on ComReg SiteViewer³⁵ and ComReg's most recent NIR measurement reports can be found on its website³⁶.
- 5.9 Matters related to 5G disinformation and public health are under the competency of the EPA – these functions, set out in SI 190 of 2019 are:
- the provision of advice and information to the Government and the public on public exposure to EMF and to carry out independent monitoring of public exposure to EMF to inform its advice function
 - monitoring scientific, technological or other developments on EMF and to update the Minister
 - to co-operate with relevant authorities in other States and to represent the State at an international level
- 5.10 The EPA provides information on its website to counter disinformation. Furthermore, as part of the EPA's monitoring role, it carries out measurements of public exposure to electromagnetic fields (**EMF**), including 5G frequencies, in everyday environments and situations.

³⁵ [ComReg SiteViewer - https://siteviewer.comreg.ie/](https://siteviewer.comreg.ie/)

³⁶ [NIR Reports | Commission for Communications Regulation \(comreg.ie\) - https://www.comreg.ie/nir-reports-2/](https://www.comreg.ie/nir-reports-2/)