



Commission for
Communications Regulation

National Broadband Plan

Call for Input on Regulatory Implications

Call for Input

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An Coimisiún um Rialáil Cumarsáide

Commission for Communications Regulation

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email info@comreg.ie Web www.comreg.ie

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1 Call for Input - regulatory implications of the NBP

- 1 The Government's National Broadband Plan was published by the Department of Communications Energy and Natural Resources ('**DCENR**') on 30 August 2012¹ (the '**NBP**'). Further details were announced by the Minister for the DCENR (the '**Minister**') on 25 April 2014 which stated that the focus of the NBP is a "*long term, future proofed infrastructure build with fibre as a key component underpinning whatever technology delivers the service (fixed or wireless)*"².
- 2 On 21 January 2013, the European Commission issued "*EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks*"³ ('**State Aid Guidelines**'). In parallel, the European Commission Vice President in charge of competition policy, Joaquín Almunia, said: "*To achieve the ambitious goals of the Digital Agenda in promoting very fast broadband connections throughout the EU, we need to achieve the right mix between public and private investment while building a pro-competitive environment. These new rules will allow for well-designed public interventions targeted at market failures and ensure open access to state funded infrastructure*".⁴
- 3 As part of the NBP, the DCENR is coordinating State-led intervention to procure the delivery of high speed broadband in areas where service providers are unlikely to provide such services commercially. To date the DCENR has published a paper entitled '*Call for Input on key aspects of the State-Led Intervention*'⁵. The document stated that "*inputs are required prior to finalising the detailed Mapping Exercise and the proposed end-to-end strategy for the State-led intervention ...in the telecommunications market*".
- 4 As highlighted on the DCENR's website⁶, a mapping exercise is being conducted by the DCENR, "*to identify those areas that require a State intervention*" and which would likely form the basis of the tender process. A public consultation in respect of this mapping exercise was launched on 24 November 2014⁷. It is expected that this mapping exercise will be concluded by the DCENR before it proceeds to tender.
- 5 The DCENR's website notes that "*In tandem with the completion of the mapping exercise, intensive design and planning work is ongoing in the Department with a view to producing a detailed implementation strategy for the State led intervention. A full public consultation will be conducted on the outcome of the mapping process and the proposed intervention strategy.*" It also states that EU State aid clearance will be required for the intervention once the strategy is finalised.

¹ <http://www.dcenr.gov.ie/NR/rdonlyres/1EA7B477-741B-4B74-A08E-6350135C32D2/0/NBP.pdf>

- 6 ComReg is not responsible for the NBP, but it does have a role which is described in the Section 2 of this document. In particular the NBP might, over time have implications for regulation, while in a shorter term perspective, regulation and the future of regulation may have implications for the tender process for the NBP. Additional clarity as regards the regulatory framework may be desirable to stakeholders even if it may not be possible to anticipate the outcome of future ComReg consultations. This Call for Input will provide an opportunity for stakeholders to identify areas where they believe regulatory clarity may be desirable. These matters are discussed in Section 2 of this Call for Input.
- 7 A second purpose of this document is to describe how ComReg proposes to deal with correspondence or requests for clarification that it receives generally in the context of the NBP. It is ComReg's wish to be as transparent as possible in how we communicate and to avoid discriminating in favour of any one party over another. This is dealt with in Section 3.

² <http://www.dcenr.gov.ie/Press+Releases/2014/Major+fibres+build-out+to+rural+Ireland+will+be+cornerstone+of+Government+strategy.htm>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:025:0001:0026:EN:PDF>

⁴ http://europa.eu/rapid/press-release_IP-12-1424_en.htm

⁵ http://www.dcenr.gov.ie/NR/rdonlyres/BC54ADE0-E2F4-4760-99A2-E264E7CCECCB/0/CallforInput_Consultation.pdf.

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<http://www.dcenr.gov.ie/Communications/Communications+Development/National+Broadband+Scheme/NBS+Expiry+-+Frequently+Asked+Questions.htm>

⁷ <http://www.dcenr.gov.ie/Communications/National+Broadband+Plan/Broadband/Public+Consultation>

2 ComReg’s role in the implementation of the NBP

- 8 The implementation of the NBP is the responsibility of the Minister and the DCENR. ComReg is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) in Ireland. It is the national regulatory authority for these sectors in accordance with EU law which is subsequently transposed into Irish legislation. More information in relation to the ComReg can be accessed at www.comreg.ie.
- 9 A role for ComReg in the NBP process emerges from European State Aid Guidelines where it is recognised that as national regulatory authority (**‘NRA’**) (i.e. ComReg) has *“gained technical knowledge and expertise due to the crucial role assigned to them by sectoral regulation. They are best placed to support public authorities with regard to the State aid schemes and should be consulted when target areas are being identified. NRAs should also be consulted with regard to determining the wholesale access prices and conditions and solving disputes between access seekers and the subsidised infrastructure operator”*⁸. ComReg may be in a position to provide industry specific technical advice where appropriate. In this regard it has seconded a number of staff members to DCENR in order to provide such assistance.
- 10 The NBP may have implications for regulation over time, ComReg expects to deal with matters of this nature as part of its ongoing work programme over the next few years.
- 11 It may be desirable that ComReg would, insofar as is possible, provide whatever regulatory clarity that it can to all stakeholders in a transparent manner so as to facilitate an efficient and effective NBP tender process. For example, as potential tenderers in the DCENR’s procurement process might possibly depend on regulated access products, it may be desirable that ComReg would, insofar as is possible, provide clarity and regulatory certainty to these tenderers in respect of those products. While ComReg’s ability to provide such clarity may be constrained insofar as it cannot prejudge the outcome of its future regulatory consultation, nevertheless ComReg believes that there is merit in being aware of particular areas which may be of concern to stakeholders in the context of the NBP. ComReg believes that the stakeholders are best placed to identify potential areas which require such clarity and regulatory certainty and we are seeking their views in the Call for Input.

⁸ See paragraph 42.

- 12 In publishing the Call for Input we are mindful of our objectives as set out in Regulation 16 of the Framework Regulations⁹ and in particular Regulation 16(2) which states that:

“In pursuit of its objectives [under paragraph (1) and under section 12 of the Act of 2002], the Regulator shall apply objective, transparent, non-discriminatory and proportionate regulatory principles by, among other things—

(a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods,

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services,

(c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure based competition,”

- 13 We plan to issue a response to this Call for Input in early 2015. We will endeavour to ensure that it can provide as much regulatory certainty to stakeholders as is possible and appropriate. Depending on the issues raised our response may take several forms. If a ComReg decision or regulation is already in place that will address the identified issue we will draw respondents’ attention to this. Where an explanation of the implications of an existing rule or ComReg decision is required we will attempt to provide this.
- 14 If ComReg considers that a new ComReg decision may be appropriate it is likely that this would also require a consultation¹⁰. If we decide to proceed on this basis we will attempt to provide guidance as to the likely timescales together with an assessment of the impact on existing workstreams. If a relevant consultation process on a particular issue is already planned we will provide guidance as to when this is planned to take place.
- 15 The intention is therefore that the Call for Input will provide a means by which stakeholders can identify any regulatory issue that they perceive to be unclear or where there may be a need for additional regulatory certainty.

⁹ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011).

¹⁰ In accordance with Regulation 12 of the Framework Regulations before taking a measure which has a significant impact on a relevant market, the Regulator shall publish the text on the proposed measure, give reasons for it and specify the period within which submissions relating to the proposal may be made to interested parties.

- 16 The scope of the Call for Input is purely regulatory in the context of ComReg’s functions and objectives¹¹. Matters relating to the DCENR’s tender process itself should be directed towards DCENR.

Q. 1 Please submit (in the tabular format specified in Section 4 of the Call for Input) any requests for clarification that you have in relation to the regulatory regime or regulatory implications concerning the NBP.

Please ensure that your response is submitted in line with the guidelines set out in Section 4.

¹¹ Under Section 10 and 12 of the Communications Regulation Act 2002 (as amended) and relevant Regulations.

3 ComReg's processes concerning communications relating to the NBP

- 17 ComReg, in its role as regulator, interacts with stakeholders on an almost daily basis. Insofar as our interactions have any implication for the implementation of the NBP it is important that all of ComReg's dealings are conducted in an open and non-discriminatory manner. Accordingly, in this section of the Call for Input we provide guidance as to how ComReg proposes to deal with any correspondence or requests for clarification that it may receive in response to this Call for Input but also more generally as the NBP process proceeds.
- 18 In order to promote further openness and transparency, we emphasise that :
- subject to ComReg's confidentiality guidelines (*'Guidelines on the treatment of confidential information'* ComReg Document No. 05/24) all material correspondence, queries or submissions in respect of the NBP will be published on our website;
 - where ComReg decides, under its Confidentiality Guidelines, not to publish material received from interested parties it will not be in a position to provide guidance to that party bilaterally. Any guidance or feedback will be provided publicly. It follows that where the material itself is not published, it is unlikely that ComReg will be in a position to provide any feedback or clarity. ComReg will nevertheless consider such material internally.
- 19 Where a stakeholder considers that its queries / clarification requests should be kept confidential, we request that the submission specifies what precise elements it believes should be treated in this way.

4 Submitting a request for clarification in response to the Call for Input

- 20 The table below is a guide as to how requests for clarification to the Call for Input should be submitted. It will make ComReg’s task of analysing and responding to requests for clarification more efficient if such requests are submitted in numerical order to ensure that each request for clarification can be clearly identified and appropriately dealt with in a comprehensive manner.

Reference No	Topic	Request for Clarification
1	Eg Wholesale Access, spectrum etc	
2		
3		
4etc		

- 21 ComReg highlights that, subject to ComReg’s Confidentiality Guidelines, it intends to: a) publish on its website all queries included in the format specified in the table above in an anonymised format; and b) to publish any additional material received in line with its normal practice subject, as usual, to its Confidentiality Guidelines. Such additional material will not be anonymised.
- 22 Where a stakeholder considers that its queries / clarification requests should be kept confidential, we request that the submission specify precisely what elements queries / clarification requests should be treated in this way. As noted above these will be evaluated in the terms of our Confidentiality Guidelines.
- 23 Where ComReg forms the view that certain submissions or parts of submissions cannot be published, while we will review the material, we will not be in a position to respond to it either in public or bilaterally. The reason for this is to ensure that no particular party receives preferential treatment from ComReg.
- 24 All feedback is provided by ComReg in respect of this document will be conveyed in a public manner on our website.
- 25 The closing date for submissions relating to this Call for Input is 30 January 2015.

Question

Section

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