



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Electronic Communications Strategy Statement

Response to Consultation 21/32

Response to Consultation

Reference: ComReg 21/70b

Version: FINAL

Date: 30/06/2021

Additional Information

Draft ECS Strategy Statement – Public Consultation	ComReg 21/32
Consultation Document – Public Consultation on ComReg’s Five Year ECS Strategy	ComReg 21/32a
Electronic Communications Strategy Statement 2021 to 2023	ComReg 21/70

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Chapter 1

1 Introduction

- 1.1 ComReg is the statutory body responsible for the regulation of the Irish electronic communications and postal sectors. ComReg's mission is that, through effective and relevant regulation, ComReg facilitates the development of a competitive electronic communications sector in Ireland that attracts investment, encourages innovation and empowers consumers to choose and use communications services with confidence.
- 1.2 The electronic communications market is fast moving, with rapid changes occurring in, amongst other things, services, technologies, stakeholders and consumer expectations. As such, a challenge for ComReg is to anticipate and react appropriately to the changing environment, and to ensure that regulatory responses are timely and effective.
- 1.3 As has been ComReg's approach in recent years, ComReg has decided to adopt a five-year perspective when developing this strategy for the period 2021- 2026. This five-year time horizon allows us to focus on medium-term developments and innovations that will shape the role of regulation in the future.
- 1.4 In March 2021, ComReg published its Draft ECS Strategy Statement for public consultation.¹ This document set out ComReg's proposed Five-Year Strategy and also acted as our proposed ECS Strategy Statement for 2021-2023, setting out how we will implement the first two years of our Five-Year Strategy.
- 1.5 As part of this process, ComReg sought the views of interested parties.² Nine ('Submission(s)') to the Consultation on the draft Strategy Statement were received; eight responses from industry operators and one from an operator representative body (together referred to as the 'Respondent(s)').³ The list of Respondents is as follows:
- 2RN;
 - Association of Licensed Telecommunications Operators ('ALTO');
 - BT Communications (Ireland) Limited ('BT');

¹ ComReg Document 21/32

² ComReg Document 21/32a

³ Respondents' submissions have been published as ComReg Document 21/70c. In addition, a letter from Eircom is published in Annex 1 of this document.

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.

- Eircom Limited ('Eircom');
- Sky Ireland Limited ('Sky');
- Tesco Mobile (Ireland) Ireland ('Tesco');
- Three Ireland (Hutchison) Limited ('Three');
- Virgin Media Ireland Limited ('Virgin Media'); and
- Vodafone Ireland Limited ('Vodafone')

- 1.6 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 Intents and associated Goals are appropriate. However, respondents also raised a number of observations and issues. This Response to Consultation presents a summary of submissions received, and ComReg's responses to them, using the questions posed in the Consultation to guide the document. Chapter 2 considers ComReg's Mission, Vision and Role. Chapter 3 considers the identification of sectoral trends and Chapter 4 considers ComReg's Strategic Intents. Chapter 5 considers Additional Comments.
- 1.7 In addition, as part of its public consultation, ComReg engaged with its Consumer Advisory Panel and bilaterally with representatives from a number of relevant public bodies regarding its draft Strategy Statement.
- 1.8 In concluding the consultation and finalising its response set out in this document and in the Electronic Communications Strategy Statement 2021 to 2023, ComReg has had regard to its statutory functions, objectives and duties. ComReg is grateful for all submissions received in response to Document 21/32a and the consultation process more generally.
- 1.9 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 2021 to 2023 to reflect the feedback received during the public consultation. These changes include shortening the length of the document, reducing the amount of repetition and reorganising the layout of the document to aid clarity. A shorter 'context' chapter has been added to the document, with a more detailed Appendix document setting out the detail previously provided in the 'Economic & Legal Context' and 'Trends and Challenges' chapters from the Consultation document. In addition, where appropriate, clarifications and amendments have been made to the text, to reflect issues raised in the public consultation and where external factors (such as legislative developments) have evolved.

- 1.10 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 March 2021 set out ComReg's vision for the electronic communications sector, while recognising that delivering on 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 set out ComReg's Role and Mission, which outline the contribution that ComReg makes toward achieving the vision for the sector.
- 2.3 The following question was asked in the Consultation:

Q.1 Do you agree that Chapter 1 appropriately captures ComReg's Mission, Vision and Role for the period 2021 to 2026? In providing your view, please also provide supporting evidence.

- 2.4 Six 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.

ComReg's Vision and Role

- 2.5 Eircom considers that ComReg's tacit acknowledgement of "relevant regulation" needs to be expanded to explicitly identify that ComReg's vision for the telecommunications market is also achievable in the absence of regulatory intervention.
- 2.6 Sky thinks ComReg could be more active (and timely) to achieve its vision. Similarly, ALTO calls on ComReg to adjust its vision to be more consistent with a regulator that is seen to be more active and proactive in regulating the market in a timely fashion.

⁴ ALTO, Eircom, Sky, Three, Virgin Media and Vodafone

- 2.7 Vodafone considers that ComReg's vision cannot be achieved in isolation. A collaborative approach across government and industry with targeted regulatory intervention is required. Vodafone suggests that all stakeholders need to adapt to achieve our ambitions and raises the question of whether there is a common aim. Ireland is competing across Europe for investment and a collective ambition will focus efforts.
- 2.8 Virgin Media agrees with ComReg's role and mission but suggests that ComReg's role should focus on addressing any remaining distortions and other anomalous issues and to enhance its level of support for the sector as it evolves.

ComReg's Response - ComReg's Vision and Role

- 2.9 ComReg disagrees with Eircom's statement. The role of regulation is rapidly evolving in the market and ComReg's strategy over the five-year period and the programme of work set out in the Strategy reflects that change. Achieving ComReg's Mission and Vision over the period of the Five-Year Strategy will necessitate the use of our regulatory tools to address identified market failures (e.g. market power).
- 2.10 Regarding comments from Sky and ALTO regarding ComReg's vision for the sector, ComReg agrees that its vision cannot be achieved in isolation. ComReg considers that a combination of Government policy interventions, regulatory interventions, and industry actions will be required to deliver on its vision.
- 2.11 Regarding Vodafone's comment, ComReg agrees that its vision for the sector cannot be achieved in isolation. Over the period of the Five-Year Strategy we will continue to engage with industry and government on various issues relevant to the development of the sector, including participating in the Mobile and Broadband Taskforce. ComReg's ECS Strategy Statement and annual Action Plan set out its contributions to achieving this vision.
- 2.12 With regard to Virgin Media's comment on remaining distortions and anomalous issues, ComReg will continue to regulate where justified and necessary and remove regulation where it is no longer required. The European Electronic Communications Code ('**EECC**') provides a new regulatory framework for the telecommunications sector and includes a number of new regulatory powers and tools for ComReg. The EECC also includes a new principal Objective – to foster investments in Very High Capacity Networks ('**VHCN**'). ComReg's ECS Strategy sets out the range of work that will be covered over the coming period, including our work implementing the EECC.

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 March 2021 included a set of trends which ComReg anticipates will shape the sector and pose regulatory challenges over the next five years. 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 Chapter 3 captures the most important sectoral trends over the period 2019 to 2021? In providing your view, please also provide supporting evidence

3.3 Seven 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

Sectoral trends

3.4 Sky agrees with the identified sectoral trends but encourages ComReg to focus its limited resources on the fundamentals of regulating ECN and ECS.

3.5 Eircom considers that ComReg's identification of important sectoral trends should not just be used to promote ComReg "Strategy", but also considered within the context of regulatory obligations for which it has remit.

⁵ 2RN, ALTO, Eircom, Sky, Three, Virgin Media and Vodafone

ComReg Response – Sectoral trends

- 3.6 ComReg's Strategy Statement examines the longer-term context, sets out our strategic intent for the next five years, and serves as a framework for planning ComReg's activities for the next two years. In this manner, the identification of sectoral trends provide context which helps to inform ComReg's Five-Year Strategy and annual work planning process. In addition, ComReg considers various trends, developments and challenges relevant to key regulatory decisions as part of its decision-making processes (e.g. Market Reviews).
- 3.7 On an annual basis, ComReg publishes an Action Plan. These Action Plans provide a detailed outline of the projects and activities planned for a given year, to the extent appropriate, which is an indication of the associated level of priority. In this context however, it is worth 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.

Demographic differences

- 3.8 Virgin Media highlights that differences in use and take-up of services across age groups is inevitable and does not suggest a problem.

ComReg Response – Demographic differences

- 3.9 ComReg considers that this is a trend which is worthy of monitoring. This does not imply that ComReg considers demographic differences to be a problem requiring regulatory intervention. The take-up and use of such services by different groups of consumers can have important implications for network demand, take-up of newer services and the transition from legacy services towards VHCN.

Broadcasting

- 3.10 2RN highlights the key role that broadcasting plays in delivering news and education, not just entertainment and notes that data from TAM Ireland showed a temporary increase in live TV viewing during the COVID-19 crisis. 2RN considers Over the Top ('OTT') services as complementary rather than a substitute to traditional TV, in particular Public Service Broadcasting, which is a trusted source of information.

ComReg Response – Broadcasting

- 3.11 ComReg has noted the temporary increase in live TV viewing arising during Covid-19 in the Strategy Statement. ComReg will continue to research consumer usage and take-up of OTT TV services over the period of this Strategy.

Climate Change

- 3.12 Eircom notes that the telecommunications sector can play an important role in the fight against climate change, enabling energy saving and a range of new developments such as smart cities, smart grids and smart transportation. The rollout of fibre will also play a crucial role in reducing the footprint of operators and allowing the reuse and recycling of old equipment.

ComReg Response – Climate Change

- 3.13 ComReg agrees with Eircom that the telecommunications sector can play an important role in enabling decarbonisation across a range of sectors, including electricity, transport, and agriculture. At the same time, 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 is currently exploring these (and related) issues further through work with BEREC. ComReg is an active member of BEREC's Ad-Hoc Sustainability working group. ComReg also notes that national legislation is in progress regarding Climate Action and Low Carbon Development. It is envisaged by the Irish State that this legislation will establish a legally binding framework with clear targets and commitments set in law, and ensure the necessary structures and processes are embedded on a statutory basis to ensure Ireland achieves national, EU and international climate goals and obligations in the near and long term. This framework, when established, will require ComReg and other public bodies to perform our functions in a way that is consistent with approved national climate plans, strategies and objectives – as far as is practicable.

Chapter 4

4 Proposed Strategic Intentions

- 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 Chapters 4 to 8? 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 All nine respondents provided submissions of relevance to these questions.⁶ Specific comments relating to each strategic intent are considered in turn, below.

Competition and Investment

- 4.4 The Draft ECS Strategy Statement noted that our guiding principle is that effectively competitive markets deliver optimal outcomes in terms of investment and price, quality, choice and innovation, ultimately to the benefit of consumers. Over the past five years, end-users in Ireland have benefited from access to new networks offering high-speed data communications both at fixed locations and on the move. Regulation has been a critical factor in enabling this investment to occur. The strategic intention associated with this role is that the electronic communications sector in Ireland is a competitive sector that delivers efficient investment, innovation and choice.

⁶ 2RN, ALTO, BT, Eircom, Sky, Tesco, Three, Virgin Media and Vodafone

Market reviews

- 4.5 ALTO, Eircom and Sky refer to delayed market reviews. Eircom notes delays in ComReg's work programme and that reviews for two markets de-listed in 2014 remain outstanding. Eircom considers that there has been an increase in resources available to ComReg and proposes that ComReg should publish a multi-annual market analysis review programme setting out key elements and milestones for each review.
- 4.6 Sky considers that delayed market reviews mean that regulatory obligations are not aligned with the state of competition in the market. ALTO and Sky urge ComReg to carry out market reviews and decisions affecting costs (WACC, ANM, USO) in a timely manner. ALTO and Sky consider that late and staggered market reviews have led to inconsistent deployment of pricing principles and distortionary outcomes.
- 4.7 Eircom considers that ComReg often imposes remedies based on out of date market reviews, such as pricing reviews. Eircom states that the piece-meal and ill-sequenced approach to pricing remedies increases risk of regulatory failure.
- 4.8 Three notes that the European Commission has set a single maximum Union-wide mobile voice call termination rate. As such, Three suggests that it no longer needs to be designated as holding SMP and calls for its removal.
- 4.9 Eircom considers that while the Draft ECS Strategy Statement acknowledges trends regarding the roll out by National Broadband Ireland (NBI) and the importance of 5G, the FACO market consultation downplays these developments as well as Wi-Fi Calling and new spectrum licences. Eircom considers that ComReg cannot champion some market developments in its Strategy and ignore them in determining Significant Market Power (SMP).
- 4.10 BT raises a concern with the 2020 Wholesale High Quality Access at a Fixed Location ('**WHQA**') decision and considers that ComReg should commence a mid-term assessment. BT considers that the formulaic approach overestimated the true availability of substitutes and encourages a more realistic test of whether genuine substitute products are available.

ComReg response – Market review

- 4.11 ComReg is required to undertake a review of various regulated markets every five years. With regard to the Retail Access to the Public Telephone Network at a Fixed Location and Wholesale Fixed Access and Call Origination (**'FACO'**) market, ComReg consulted on a proposal to fully de-regulate the retail access market and partially de-regulate the wholesale market in June 2020. As noted in the Strategy Statement, ComReg intends to complete this market review in 2021.
- 4.12 Once this market review has been completed, it will be the case that all markets will have been reviewed since 2018. ComReg remains on course to review each of these markets within their five-year timelines. ComReg's Strategy Statement outlines timelines for its upcoming market reviews.
- 4.13 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 publish the Decisions simultaneously. For example, with regard to Wholesale Local Access (**'WLA'**) and Wholesale Central Access (**'WCA'**) markets, the market review and pricing decisions were published in November 2018.⁷ Similarly, market review and pricing decisions in Fixed and Mobile Voice Call Termination markets were published in May 2019.⁸ In other cases, pricing impacts have been included in the market review decision, as was the case in WHQA market in January 2020.⁹
- 4.14 ComReg expects to review Fixed and Mobile Voice Call Termination markets in line with the normal five-year cycle. ComReg notes that 'euro rates' will come into effect in 2021 and that Fixed and Mobile Voice Call Termination markets have been removed from the European Commission's list of recommended markets. However, ComReg also notes that the delegated act deals with pricing related competition issues. As noted by the European Commission¹⁰, concerns may continue to exist in relation to non-pricing issues such as in relation to access (interconnection) and non-discrimination. ComReg will, as part of the future examination of these markets, consider these questions, including any continued regulation of termination markets, while having regard to other tools available under the EECC.
- 4.15 ComReg takes account of NBI (and all competing operators) as appropriate in our market reviews. Over the period of the Five-Year Strategy, the impact of the NBI rollout will evolve.

⁷ ComReg Decision D10/18, ComReg Decision D11/18 and ComReg Decision D12/18

⁸ ComReg Decision D10/19 and ComReg Decision D11/19

⁹ ComReg Decision D03/20

¹⁰ Staff working Document accompanying the 2020 Recommendation (document SWD(2020) 337, page 79/80)

- 4.16 With regard to WHQA markets, ComReg does not currently have plans to conduct a mid-term assessment of its most recent Decision. However, as noted in the Decision, ComReg is monitoring developments in the WHQA markets and has engaged with operators to collect information, at an appropriate level of granularity, in order to do this.
- 4.17 ComReg also notes that it keeps markets under constant review through its market monitoring, Quarterly Key Data Report ('**QKDR**'), research and compliance monitoring functions.
- 4.18 Moreover, where 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, 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.

Competition

- 4.19 Eircom considers that ComReg's focus should be on delivering benefits to the consumer through competition rather than simply promoting competition as an end goal in and of itself.

ComReg Response – Competition

- 4.20 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.

Migration to VHCN

- 4.21 Eircom considers that low copper wholesale and retail prices discourage migration from copper to fibre. Similarly, Virgin Media considers that imposing access obligations acts as a disincentive to invest in infrastructure. Eircom considers that wholesale access prices for copper services should remain stable over the short term and have the flexibility to increase over the medium term to create the correct investment signals.
- 4.22 Eircom notes that ComReg should develop a copper retirement strategy, along with timetable and interim milestones. Eircom consider that it has completed the necessary notification to ComReg under Article 81 of the EECC, and that ComReg needs to establish if the appropriate conditions for migration are met by this notification.

- 4.23 ALTO and Vodafone raise concern about Eircom's copper switch-off white paper, which signals price increases. They consider this would result in access seekers being subject to higher pricing and lose regulatory protection on pricing. ALTO emphasise the need for a full consultation, a period of reflection and governance checks in the process. ALTO requests ComReg to revisit this issue to maintain appropriate pricing regulation and would encourage an approach that is similar to that taken in the UK.
- 4.24 ALTO and Sky consider that ComReg has commented broadly that consumers are no longer concerned with pricing for broadband products and services, but note that price is the number one reason for consumer switching, justifying appropriate price regulation, particularly in the context of Eircom's copper switch-off.

ComReg Response – Migration to VHCN

- 4.25 Wholesale prices imposed by ComReg in regulated markets seek to enable deeper infrastructure competition and act as pricing signals to the SMP operator and other operators seeking to invest in ECS/ECN. Effective pricing signals should encourage an operator to invest efficiently and migrate away from legacy infrastructure.
- 4.26 The EECC's new Connectivity objective aims to foster investments in VHCN across the EU. ComReg recognises that to deliver widespread VHCN, it may be necessary for a service provider to migrate away from its legacy network over time. Recognising the benefits of VHCN over non-VHCN or legacy network technologies, including faster download speeds, network reliability and lower energy consumption, ComReg is supportive of VHCN network rollout and the transition from legacy networks.
- 4.27 In March 2021, Eircom published a white paper on transitioning away from its legacy copper services to a predominantly fibre based VHCN environment (based on Eircom's FTTP network). ComReg consider that such a transition has the potential to deliver high-quality and reliable connectivity to end-users across the country who are currently using Eircom's copper and FTTC networks. ComReg would note that while the migration from legacy networks is ultimately the responsibility of the Industry, this will require extensive consultation and planning in order to ensure an efficiently managed transition and that competition and end-users (including vulnerable end-users) are protected at all stages of the process.

- 4.28 In May 2021, ComReg published an information notice¹¹ setting out its view on its role overseeing the transition of regulated services to new VHCN and the related impact on regulated services and competition generally. ComReg set out that its approach to these issues will also be guided by the relevant regulations including the provisions of the EECC regarding the decommissioning or replacement process for legacy networks (Article 81). This includes that the transition must happen in a predictable and transparent manner for all stakeholders, with adequate notice periods. 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. ComReg set out its intention to engage with relevant stakeholders, including holding bi-lateral stakeholder meetings and publishing a 'Call for Inputs' to gather written views. In addition, a public consultation, to include detailed proposals on how the transition process should be conducted, will be published in due course.
- 4.29 In the meantime, existing regulatory obligations imposed on Eircom (e.g. USO and obligations not with withdraw services) remain in place. ComReg expects the transition from the copper network will begin in the next five years.
- 4.30 ComReg notes that while pricing is an important factor in retail consumer switching decisions, other factors such as network quality, speed, quality of service are also relevant to purchasing decisions. This is increasingly true as more consumers rely on home broadband services to work remotely. ComReg continually monitors developments in these areas over time through data collection and market research, among others.

Infrastructure-based competition

- 4.31 Eircom considers that infrastructure competition is established and growing across a range of markets, yet ComReg still regulates Eircom.
- 4.32 Sky consider that there is a bias in the Draft ECS Strategy Statement towards infrastructure-based competition, while the focus should be on efficient network investment. Excessive build signals may lead to inefficient investment that delivers poor outcomes.

¹¹ ComReg Document 21/43

ComReg Response – Infrastructure-based competition

- 4.33 Where an operator holds SMP, in the absence of regulation, this can lead to high prices, poor quality of service, delayed or loss of investment/innovation or the slower entry or expansion of competitors in ECS markets. In these cases, ComReg may impose regulatory obligations aimed at addressing persistent bottlenecks and barriers to entry to ensure markets deliver innovation and choice to consumers.
- 4.34 ComReg will also exit regulation of wholesale markets where effective competition develops. In some cases, ComReg has deregulated some sub-national wholesale markets¹², where sustainable and effective competition can be found. ComReg has a goal to ensure that sustainable and effective competition can allow for the timely withdrawal of regulation
- 4.35 Where SMP regulation is necessary, ComReg will focus on the imposition of obligations that encourage both infrastructure and service-based competition. However, ComReg's regulatory approach will seek to facilitate opportunities that enable greater infrastructure-based competition, as this ultimately enables the development of more effective and sustainable competition and greater levels of investment in ECS/ECN.

Investment and Pricing

- 4.36 Three considers that greater consideration should be given to a sustainable return on investment in the sector, given the investments required to maintain secure and resilient networks and falling revenues associated with substitution to OTT services.
- 4.37 ALTO, Sky and Vodafone suggest that the incumbent is earning excessive returns and urge for a decision on the Access Network Model ('ANM') incorporating the 2020 Weighted Average Cost of Capital ('WACC') decision as soon as possible.
- 4.38 Vodafone considers that a lack of certainty on pricing of wholesale inputs, in particular Fibre to the Home ('FTTH'), is inhibiting investment decisions and infrastructure roll out. ALTO, Sky and Vodafone expressed concern that ComReg does not have any plans to impose cost orientation pricing obligations on Eircom's FTTH network.

¹² ComReg deregulated the Urban WCA Market in 2018 (D10/18) and the Zone B MI WHQA Market in 2020 (D03/20)

- 4.39 Vodafone is concerned that existing Margin Squeeze Tests (**MST**) are inadequate to ensure all retailers can earn a reasonable return.

ComReg Response – Investment and Pricing

- 4.40 Due consideration is given to ensuring the ECS sector in Ireland remains attractive to investors and that efficient investment occurs.
- 4.41 Setting the most appropriate investment signals – especially the appropriate build or buy signals, will continue to be a critical part of ComReg’s regulatory pricing policy.
- 4.42 While ComReg will monitor accounting (historic) cost recovery by Eircom, this will be only one part of the assessment of the appropriateness of wholesale prices.
- 4.43 ComReg updated the WACC applicable to Fixed & Mobile Telecommunications and Broadcasting in October 2020.¹³ Following this decision, ComReg will recalculate the WACC on an annual basis using updated parameters. The recalculated WACC values will then be used when price controls are amended or updated as part of any subsequent ComReg decision. Accordingly, the latest WACC will be used in the upcoming Civil Engineering Infrastructure (**CEI**) and ANM Pricing Decisions. Where prices have been previously set by ComReg (including in the form of maximum prices), for a defined future period, a subsequent change in the WACC will not automatically lead to any change in those prices.
- 4.44 ComReg seeks to send appropriate build or buy signals. Effective pricing signals should encourage an operator to invest efficiently and migrate away from legacy infrastructure.
- 4.45 At this time, ComReg does not have any plans to impose cost-orientated pricing obligations on Eircom’s FTTH network. Over the coming period, ComReg will continue to analyse the relevant competitive conditions and monitor the costs associated with Eircom’s FTTH network. ComReg notes that a review of the wholesale pricing of Eircom’s FTTH network will be well flagged in advance with industry and the imposition of cost-orientated pricing is not inevitable over the lifetime of this Strategy.

¹³ ComReg Decision D10/20

- 4.46 ComReg reviews bundles and portfolios to ensure compliance with the MST in advance of implementation of any promotion and subsequently monitors the MST on a quarterly basis after implementation to ensure continued compliance at the bundle and portfolio levels. If there is a specific issue that Vodafone has identified, a formal complaint can be raised through the normal compliance channels.

Spectrum Access

- 4.47 Eircom emphasises that Covid-19 experiences underscore the importance of quick access to additional and reasonably priced spectrum and that more support for broadband investment will be key. Eircom considers that the regulatory environment should incentivise fast 5G deployment, including a proportionate regime of security measures to protect network integrity.
- 4.48 On 5G, Vodafone considers that a collaborative national approach (between government, Industry and ComReg) focused on specific coverage acceleration initiatives could enable greater use of 5G across the country to improve connectivity and enable new applications and services.
- 4.49 Eircom encourages engagement with government to ensure supply of sites and street furniture, a progressive regime that encourages infrastructure and network sharing, auction design that achieves long-term connectivity targets rather than short-term budget considerations and engagement with other regulators and bodies to ensure the benefits of 5G are effectively communicated to end-users.

ComReg's Response – Spectrum Access

- 4.50 ComReg recognises the important role that the sector has played during the Covid-19 crisis. ComReg has issued temporary ECS licences to mobile network operators ('**MNOs**') to provide extra capacity for mobile phone voice and broadband provision in support of the Irish Government's measures to tackle Covid-19.
- 4.51 ComReg is currently running a second multi-band spectrum award¹⁴ (MBSA2) which is offering 470 MHz of spectrum to the market in an award format that lets the market define the price that will be paid. As in all its spectrum awards and in line with its primary objectives ComReg focuses on the efficient management and use of the radio frequency and for the avoidance of doubt there is no objective on ComReg related to the maximisation of revenue from managing the spectrum resource.

¹⁴ See <https://www.comreg.ie/industry/radio-spectrum/spectrum-awards/proposed-multi-band-spectrum-award/>

- 4.52 As noted in the Strategy Statement, ComReg will continue to work with other sectors and agencies of State where matters of network resilience and security have an impact. ComReg will continue its collaboration with the National Cybersecurity Centre ('**NCSC**') on matters related to network resilience and security where appropriate, in addition to assisting with the implementation of measures of the NCSC's National Cyber Security Strategy 2019-2024 where ComReg were asked to assist.
- 4.53 Regarding the issue of improving network coverage and connectivity, these matters are not solely for ComReg and are best addressed through the Mobile and Broadband Taskforce.

OTTs

- 4.54 Eircom, Three, Virgin Media and Vodafone refer to the impact of OTTs on competition. Vodafone and Virgin Media note that different regulatory requirements between OTTs and traditional providers can create a competitive imbalance. Virgin Media suggests a light-handed approach given the intensity of competition that has emerged.
- 4.55 Eircom notes that BEREC will issue a report in 2021 on data collection related to OTTs and suggests that ComReg's Mid-Term Strategy should set out ComReg's approach to OTT indicators and data collection. In the interim, ComReg should consider the merits of conducting periodic surveys on consumer usage of OTT services. With aspects of the EECC applicable to OTTs, Vodafone would consider it useful to understand in specific detail ComReg's plans in this regard.

ComReg Response – OTTs

- 4.56 ComReg notes that the growth in OTT is considered in the Strategy Statement. ComReg actively monitors markets through data collection and research functions (e.g. surveys) both internally and through BEREC. ComReg's knowledge and research findings on topics, including OTTs, feed into various projects and decisions.
- 4.57 Within its assessment of markets, ComReg takes full account of all relevant actual and potential competitive constraints, including OTTs where appropriate. To date, ComReg has not found OTTs to provide effective competitive constraints on more traditional services although the potential for this in the future is recognised. ComReg will continue to assess this in the course of market reviews.

- 4.58 ComReg notes that while does not currently collect data directly from OTTs at present, consumer surveys undertaken by ComReg regularly ask questions about the usage and perception of OTT services. Over the coming period will we continue to collect insights on OTTs in this manner and collect data directly from OTTs but notes that the latter will be examined in due course, subject to EECC transposition.

SLA's, KPI's and SLG's

- 4.59 ALTO suggests that Service Level Agreement's ('**SLA**') and Key Performance Indicators' ('**KPI**') for SMP operators are outdated in many cases or have unacceptable latitudes. ALTO urges ComReg to review SLA's and KPI's and bring them in line with market expectations. Sky similarly considers that a review of SLA's and Service Level Guarantees ('**SLG**') is warranted.

ComReg Response - SLA's, KPI's and SLG's

- 4.60 ComReg D10/18 and D03/20 provide the mechanisms by which SLAs can be requested by operators and Eircom's obligations in responding to such requests. ComReg's 2020 Consultation on the FACO market has also proposed such mechanisms for that market.

Symmetric Access Obligations

- 4.61 Virgin Media seeks clarity on ComReg's plans for symmetric access obligations. Symmetric regulation should not be a replacement for asymmetric regulation or a means for an NRA to impose obligations subject to lower legal and economic thresholds.

ComReg Response- Symmetric Access Obligations

- 4.62 ComReg will be considering the impact of the EECC code when it is transposed into Irish legislation and any impacts the code in general, and Article 61(3) in particular, has on symmetric access. ComReg will assess the Physical Infrastructure Access market and WLA/WCA markets over the next two years and any arising access remedies will be considered in the context of these upcoming market reviews.

Cross-Network Switching Process

- 4.63 Sky encourages ComReg to play a more active role in establishing a cross-network switching process in accordance with the EECC.

Cross-Network Switching Process

- 4.64 ComReg recognises the role of inter and intra operator/network switching as an indicator of competition and also of consumer confidence and ability to choose communications services. ComReg recognises that it is vital, for competition and consumers, that consumers who wish to exercise choice to switch to their preferred service offering and/or network can do so without disincentives and impediments being put in their way.
- 4.65 Under the EECC service providers will be subject to a number of new regulatory obligations relating to switching and the porting process. ComReg looks forward to engagement with industry on the implementation by industry of the requirements of the Code relating to Internet Access Switching. ComReg believes that such engagement is best facilitated through a forum established by industry. ComReg will provide additional guidance to industry as appropriate with respect to the requirements of the Code, including guidance with respect to ensuring that end-users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent.

MVNO competition

- 4.66 Tesco considers that a robust market for MVNOs delivers benefits for consumers and encourages a regulatory environment that enables MVNOs to effectively compete with MNOs.

ComReg Response - MVNO competition

- 4.67 ComReg has engaged WIK Consult to conduct a Review of the Mobile Market in Ireland. This study is currently ongoing, and a final report is due for publication in 2021.

Consumer Protection

- 4.68 Protecting and informing consumers involves setting rules to ensure that consumers can access basic services and that they are equipped with the information they need to engage with the market with confidence. The strategic intention associated with this role is that consumers can choose and use electronic communications services with confidence.

Consumer Protection Strategic Intent

4.69 Virgin Media proposes that "Customer service is optimised by enabling competitive factors and differentiation between operators" is added to the wording of this Strategic Intent.

ComReg Response – Consumer Protection Strategic Intent

4.70 ComReg acknowledges Virgin Media's proposal. ComReg considers the issues raised by Virgin Media are adequately addressed in the ECS Strategy.

Engagement with Industry

4.71 Virgin Media and Vodafone suggest that greater engagement with industry would be beneficial. Vodafone considers that there is a need for greater engagement with industry as most of the technical detail of the EECC is focused on end-user measures. On areas where ComReg indicates intervention may be required in future (monitoring, best tariff advice, contract change notifications, cancellation processes), Vodafone would welcome clarity through clear policy informed by engagement with all stakeholders.

ComReg Response – Engagement with Industry

4.72 ComReg engages with stakeholders through a number of channels on an ongoing basis, including:

- Formal consultation;
- Industry and stakeholder forums and panels;
- Our Industry Websites; and
- Oireachtas Committees.

4.73 In relation to the EECC, ComReg has had extensive engagement with industry and stakeholders.

4.74 To assist Service Providers to understand the range of end-user rights set out in the EECC, in 2020 we published Regulatory Guidance on the End-User Rights of the EECC¹⁵. Over the coming period we will consider whether updated or further guidance on end-user rights is required.

¹⁵ ComReg document 20/111R

- 4.75 ComReg considers that Service Providers' regulatory obligations are clear. Where necessary, a Service Provider should seek legal and technical advice regarding its legal and regulatory obligations. ComReg will continue to enforce such regulatory obligations in accordance with its legal remit and statutory functions.

Goal 2.3

- 4.76 Vodafone agrees with Goal 2.3¹⁶ and notes that the level of detail to be provided to customers in durable format should be simplified to avoid complexity. Vodafone states that decisions are required to set the standard, to ensure experience is simplified while protecting consumer rights.
- 4.77 Virgin Media notes that its experience does not show that more vulnerable consumers have been disadvantaged by the move to remote and online interactions (rather than in person) arising from the pandemic and it considers that where vulnerable consumers have been disadvantaged, a co-ordinated Government effort to ensure a common experience for such consumers would be useful.

¹⁶ Goal 2.3: Consumers, including vulnerable and disabled end-users, are supported by clear, accurate and up to date information throughout the Consumer Journey.

ComReg Response – Goal 2.3

- 4.78 In view of the requirements to help ensure equivalence of access for disabled end-users that is envisaged by the Article 111 of the Code, ComReg considers it would be appropriate to provide accessible services and relevant information in an alternative accessible format or an option for end users to request this. ComReg understands that, in practice, providers already offer accessible or alternative formats to certain customers who have registered to receive bills in an alternative format. ComReg suggests a similar approach could be taken to information which is required to be provided by service providers, including the contract summary and best tariff advice, subject to customer preferences. ComReg will monitor to ensure that information is provided at the appropriate stage to consumers and is accessible for disabled end-users. As part of the periodic disability workshops, ComReg may examine with relevant stakeholders whether it is necessary and appropriate to introduce a standard in relation to accessible information. ComReg may consult on issues to be addressed as part of its wider review of existing obligations on Service Providers in relation to equivalence of access provisions and in light of provisions in the EECC relating to accessible information.

4.79 ComReg notes the increase in online activity since the start of the pandemic with consumers increasingly using broadband and connected devices; mobile phone, laptop/desktop and connected TV/streaming services. ComReg furthermore notes Virgin Media's comment that vulnerable end-users have not particularly been disadvantaged in light of this trend. ComReg is cognisant that some vulnerable consumers may have experienced difficulty in light of the move to remote and online interactions rather than in person. It is an essential cornerstone that consumers, as appropriate, are supported so that they can choose and use communications services with confidence. All consumers, including disabled end-users, must have accessible and easy to understand information at all stages of their Consumer Journey and any issues that arise are managed and quickly resolved by service providers. Stakeholders will be aware that ComReg has, under the existing legal framework, specified that providers must supply accessibility statements for end-users with disabilities in ComReg Decision D06/15¹⁷ and other measures to ensure equivalence of access under ComReg Decision D14/52.¹⁸ ComReg welcomed the announcement by Telecommunications Industry Ireland ("TII"), the IBEC group for the sector, that the main electronic communications providers signed up to a minimum set of Commitments to assist and help vulnerable customers in the use of electronic communications during the COVID-19 Pandemic. The commitments were available to consumers until 31 August 2020. It is noted that Virgin Media considers that a coordinated approach within Government would be needed across every sector to address any disadvantages arising for vulnerable end-users in relation to online activity, however such matters are outside of ComReg's remit.

Premium Rate Services and Direct Carrier Billing

4.80 Vodafone and Three suggest that the current Code of Practice for Premium Rate Services (PRS) and Direct Carrier Billing (DCB) services should be reviewed to ensure innovation is not unduly stifled.

¹⁷ ComReg Decision D06/15, ComReg document 15/98, 'Measures for disabled end-users: Requirement for an Accessibility Statement', dated 1 August 2015. Accessible at: <https://www.comreg.ie/publication/measures-for-disabled-end-users-requirement-for-an-accessibilitystatement>. Imposed pursuant to ComReg's powers under Regulation 17 (1) and Regulation 15 (6) (f) of the Universal Services Regulations.

¹⁸ ComReg Decision 14/52 in relation to Electronic Communications Measures to Ensure Equivalence of Access, specified pursuant to ComReg's powers under Regulation 15 of the Universal Service Regulations 2011.

ComReg Response – Premium Rate Services and Direct Carrier Billing

- 4.81 ComReg notes that DCB services are growing in prevalence. The current PRS Code of Practice (“the PRS Code”) provides that where service providers wish to seek permission to comply with the PRS Code by alternative means, they may do so. DCB (where a mobile phone user is charged for a good or service on their mobile phone bill) is an example of where this may be appropriate and ComReg has granted permissions as appropriate. ComReg will consider whether, in light of permissions granted and other market developments, it is appropriate to revisit aspects of the PRS Code and PRS Levy.

Universal Service Obligations

- 4.82 ALTO notes that the potential reserved amount applied for by Eircom sits around €97m up to 2020, with little clarity on around €65m of this amount in terms of findings of no unfair burden that have been made by ComReg in a very significantly delayed set of funding applications.

ComReg Response – USO

- 4.83 ComReg has issued a number of information notices on Universal Service Funding that set out ComReg’s position.^{19,20}

Switching Process

- 4.84 ALTO encourages ComReg to be highly proactive on customer switching given the provisions of the Code (Article 105-107). Vodafone would welcome industry engagement on a clear standard for switching across industry.

¹⁹ Information Notice No. 21/50, published on 21 May 2021

²⁰ Information Notice No. 21/44, published on 4 May 2021.

ComReg Response – Switching Processes

4.85 On 21 January 2021 ComReg convened and hosted the initial meeting to facilitate the coming together of the wider industry of IAS providers with a view to a dialogue as regards internet access switching under the Code. An industry working group was formulated.²¹ ComReg notes that the industry IAS switching working group has met with a view to discussing and reaching an agreement on how industry will implement an appropriate IAS switching process and to develop a process to resolve potential open inter-operator issues on IAS switching. ComReg will continue to engage with stakeholders on switching and will attend an IAS Industry forum (if so decided on and set up by industry), as relevant. In addition to the current ComReg industry guidance²², ComReg plans to provide guidance in Q3 2021 covering key principle steps relating to the end-user requirements of the IAS switching process as set out under Article 106 (and other associated Articles) of the Code.

Bills and Transaction History

4.86 Virgin Media requests clarity on the statement that 'Bills and transaction history should be accessible for everyone' as this does not reflect the current requirement upon operators.

ComReg Response – Bills and Transaction History

4.87 ComReg notes decisions related to usage and billing apply –ComReg Decision D08/13²³, ComReg Decision 03/18²⁴, ComReg Decision D04/14²⁵ and ComReg D06/15²⁶. These Decisions mean that consumers have access to adequate and accessible²⁷ billing information and access, free of charge, to premium rate SMS and MMS barring facilities (applies to providers who are Mobile Network Operators (MNOs)) and information on those facilities.

²¹ Some IAS providers volunteered to participate in an IAS industry working group.

²² <https://www.comreg.ie/publication/regulatory-guidance-on-title-iii-end-user-rights-of-the-european-electronic-communications-code-2>

²³ ComReg Decision D08/13. This decision defined the ways in which all providers authorised to provide electronic communications networks and services must issue bills to consumers. The measures standardised the rules relating to billing applicable to providers to ensure they were consistent and transparent across the industry.

²⁴ ComReg Decision D03/18. The objective of this decision was to allow consumers prevent access to premium rate SMS or MMS and to reduce the possibility of bill shock.

²⁵ Electronic Communications: Measures to ensure equivalence in Access and Choice for Disabled End-Users

²⁶ Measures for Disabled End-Users: Requirement for an Accessibility Statement

²⁷ Any and all bills (including transaction detail requests) issued to a disabled subscriber by an Undertaking shall be provided free of charge in a medium properly accessible to that disabled subscriber (including Braille), if requested.

4.88 As a result of Decision D08/13:

- Every service provider must provide post-paid consumers with a bill, which the customer can access, free of charge;
- The level of itemisation of a bill a customer receives cannot be changed unless the customer's explicit consent has been obtained;
- Post-paid consumers can be provided with alternative billing mediums (such as e-billing); and
- Pre-paid customers are entitled to request their transaction details in a medium that is accessible to them, free of charge.

4.89 In addition, Decision 08/13 included a requirement not to identify calls which are free of charge; the provision of a minimum set of information regarding alternative billing mediums; the provision of alerts to inform the customer that the bill is available online and conditions which service providers must fulfil in order to ensure customers can access and use alternative billing mediums.

4.90 ComReg understands that, in practice, providers already offer accessible or alternative formats to certain customers who have registered to receive bills in an alternative format.

4.91 Ensuring adequate bill transparency and providing additional facilities relating to cost control are ways of assisting consumers to monitor their consumption and spending and to mitigate consumers propensity to incur bill shock.

4.92 The Code sets out further requirements in respect of monitoring and control of usage.

Evidence-based decisions

4.93 Virgin Media supports evidence-based decisions and considers that the identification and understanding of consumer harm can only arise through the collection of evidence.

ComReg Response – Evidence-based decisions

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

- 4.95 With respect to the needs of different users, ComReg is aware of and appropriately applies the distinction drawn in law in respect of obligations relating to consumers, subscribers and end-users (including SME's, businesses etc.). ComReg does not apply blanket regulation, but rather it gathers appropriate evidence and, after consultation, determines appropriate interventions in relation to certain user groups, where necessary. We collect information and data from a variety of sources to inform our understanding of consumer harms.

Additional Powers

- 4.96 Virgin Media raises concern that ComReg may seek additional powers to address identified harms that cannot be addressed using the tools and powers available to it. It considers that introducing additional regulatory requirements would be at odds with the harmonisation approach proposed under the EECC. Given the need for regulatory certainty, Virgin Media recommends that public consultations should be carried out before the introduction of any new requirements and suggests that ComReg should include detailed assessments and measurements of the evidence of consumer harm.

ComReg Response – Additional Powers

- 4.97 ComReg is fully cognisant of the harmonisation required by the EECC.
- 4.98 ComReg would also note that it only seeks additional regulatory powers where its current legal powers are insufficient to address consumer harm and enforce regulatory obligations.

Connectivity & Network Resilience

- 4.99 As we become increasingly reliant on digital platforms, online media and remote working, the importance of widespread, continuous and high-quality connectivity increases. By 'connectivity' we mean having access to the necessary ECN to allow for the use of the various services and applications required. As our reliance on ECS has grown, we have also become more dependent and reliant on the proper functioning of ECS and ECN. However, such networks and services are vulnerable to equipment malfunction, human error, malicious attack, weather events and incidents in other sectors (e.g. electricity outages). The strategic intention associated with this role is that end-users have widespread access to high-quality and secure communications networks, services and applications.

5G Coverage Map

- 4.100 Three would welcome the publication of a 5G coverage map.

ComReg Response – 5G Coverage Map

- 4.101 ComReg is moving to publish the 5G outdoor mobile coverage maps and will be consulting with industry on the proposed methodology to take account of 5G technology (e.g., 5G coverage thresholds which define adequate coverage). ComReg expects to be in a position to publish the maps pending industry engagement during Q4 of 2021. ComReg notes Three's updated 5G population coverage statistic.

Connectivity

- 4.102 Eircom notes that the availability and take-up of VHCNs and connectivity are a core objective of the EECC. Relatedly, gigabit connectivity has become a priority for the European Commission. ComReg's strategy should explicitly recognise the importance of promoting connectivity and keep this at forefront of considerations when designing regulation.

ComReg Response – Connectivity

- 4.103 ComReg acknowledges the emphasis on connectivity in the EECC and notes that the Strategy Statement recognises the importance of connectivity through its inclusion as a strategic intent and associated goals. ComReg has the strategic intent that end-users have widespread access to high-quality and secure communications networks, services and applications. This strategic intent is supported by the goal that utilising the regulatory toolkit, ComReg's activities promote connectivity and/or incentivise infrastructure rollout.

Network Security

- 4.104 Vodafone considers that economic policies and regulation that put a premium on quality and prioritise investments in network security can drive investments in security in the long term. A holistic and proportionate risk-based approach should be adopted to any further proposed requirements to help protect the most sensitive parts of the network.

ComReg Response – Network Security

- 4.105 As noted in the Strategy Statement, ComReg will continue to work with relevant stakeholders where matters of network resilience and security have an impact. ComReg will continue its collaboration with the NCSC, in addition to assisting with the implementation of measures of the NCSC's National Cyber Security Strategy 2019 – 2024 where ComReg were asked to assist.

Cloud Number Applications

4.106 Vodafone considers that an innovative approach to numbering is required. It welcomes advancement on Cloud Number applications, agrees on the need for policy harmonisation across Europe on cloud services and welcomes ComReg's collaboration with CEPT. Vodafone notes the growing demand for related commercial propositions and the need to ensure fairness on numbering.

ComReg Response - Cloud Number Applications

4.107 ComReg notes that Vodafone welcomes ComReg's advancement of the discussion on Cloud number applications and supports ComReg's ongoing collaboration with CEPT for greater policy harmonisation across Europe for Cloud services. Vodafone has also provided a more detailed submission on these matters in its response to ComReg's Numbering Conditions consultation (ComReg 21/28), which ComReg will factor into its response to that consultation, due in July 2021.

Compliance and Enforcement

4.108 Regulatory obligations have no effect unless regulated entities comply with them. An effective compliance and enforcement strategy underpin the previous three strategic intentions. The strategic intention associated with this role is that regulated entities comply with regulatory requirements.

RGM

4.109 Eircom stated it was disappointed at ComReg's position on its Regulatory Governance Model (RGM). Given that Eircom has achieved various milestones, Eircom considers that ComReg's continued concerns around Eircom's culture of compliance is unfounded. Eircom considers that this view has not been expressed by ComReg to Eircom and is contrary to the information published in Information notice 21/15R.

4.110 On the 15th April 2021, Eircom wrote to ComReg raising the same issue. This letter and ComReg's response are published in Annex 1 of this document.

4.111 Rather than a settlement agreement, ALTO considers that an ideal outcome would have been a finding approved by the High Court permitting Industry to pursue follow-on damage claims.

4.112 ALTO and Sky raise reservations about the effectiveness of the Independent Oversight Board ('IOB'), and Sky considers that this may have reduced transparency in respect of compliance with SMP obligations. ALTO and Sky consider that enforcement has effectively been neutralised since the 2018 settlement agreement between Eircom and ComReg and that there has been too much focus on retail versus wholesale enforcement.

ComReg's Response – RGM

4.113 ComReg notes that the Performance Agreement ('PA'), which is an annex to the RGM Settlement Agreement, sets out a number of Milestones, related to key RGM Undertakings, which Eircom must complete by certain dates. ComReg and Eircom had agreed, by way of an amendment to the SA, that the delivery date for Milestone 4 ('M4'), the final Milestone that Eircom is required to complete, would be pushed back from 30th September 2020 to 31st March 2021 after ComReg raised concerns with Eircom's 30th September 2020 M4 submission. ComReg has recently completed its review of Eircom's 31st March 2021 M4 submission and will communicate further in this regard.

4.114 The IOB was established in May 2019 to oversee Eircom's governance arrangements and measures and its implementation of the RGM Undertakings. The IOB is due to report on Eir's RGM in 2021. ComReg notes that the IOB should be updated by Eircom on the status of ComReg's compliance investigations, as required by the SA.

4.115 ComReg further responded to Eircom's comments on the RGM and Settlement Agreement in a letter dated 6th May 2021. This letter can be found in Annex 1.

4.116 ComReg disagrees with ALTO and Sky regarding the 'focus' of its compliance activities. 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. Consumer harms information indicate that issues continue to arise.

Compliance Process

4.117 BT, Eircom, Sky and Virgin Media comment on ComReg's compliance processes and procedures and call for greater transparency. Eircom consider there is a need for ComReg to "*establish a formal and fit for purpose compliance process*" and BT similarly consider that a "*clear enforcement framework needs to be established and documented to ensure cases don't fail in court due to unclear or poor application of procedures*".

- 4.118 Virgin Media notes the importance of proportionality and transparency and emphasises that industry already receives substantial number of burdensome information requests. Virgin Media considers that the inclusion of transparency and proportionality should also be included in the wording of Goal 4.2.
- 4.119 Eircom also considers that the calculation of any penalty should be conducted by ComReg personnel who have not been involved in the compliance investigation to ensure impartiality.

ComReg Response – Compliance Process

- 4.120 As noted in the Strategy Statement, ComReg continues to evolve its enforcement practices and methodologies. In that context ComReg will consider whether it is appropriate to publish further information and guidance on certain aspects of its compliance investigation practices and methodologies after the EECC has been transposed into Irish Law. In February 2021, ComReg published guidance on its approach to the calculation of financial penalties for the purpose of enforcement of breaches of the Access Regulations²⁸, including the publication of a Penalties Methodology.²⁹
- 4.121 ComReg considers the principles of reasonableness and proportionality when requesting information from stakeholders and the impact of such requests on stakeholders. Where possible, we have sought to streamline our data collection processes to reduce the burden on industry.
- 4.122 Under current legislation it is the High Court that decides on the penalty to be imposed. To make this decision, the High Court may consider submissions from ComReg on the appropriate amount of penalty. It is the Commission that determines the penalty amount to submit to the High Court.

Enforcement Powers

- 4.123 ALTO, BT and Vodafone support additional powers for ComReg to resolve issues in wholesale markets. BT and Sky raise concerns about a lack of deterrence through the current approach and BT considers that ComReg should obtain the same enforcement powers as other regulators, including imposing civil financial sanctions. BT would support the transposition of the EECC under primary legislation to achieve an effective wholesale enforcement process and penalties.

²⁸ ComReg Document 21/10

²⁹ ComReg Document 21/10a

- 4.124 ALTO calls for more proactive monitoring of remedies and enforcement of SMP obligations and Sky similarly calls for closer monitoring of cost orientation pricing obligations.
- 4.125 By contrast, Virgin Media considers that ComReg has the powers it needs to be effective in the areas of compliance and enforcement and calls for a more consultative approach.

ComReg Response – Enforcement Powers

- 4.126 For ComReg to be an effective regulator, it must have proper and sufficient enforcement powers that have the necessary deterrent effect. Improvements to ComReg’s enforcement powers (both criminal and civil) would facilitate more effective deterrence and, where appropriate, allow ComReg to take more effective action. In this regard, ComReg agrees with BT that enhanced powers are required and disagrees with Virgin Media that ComReg has the powers it needs. As the sector evolves, ComReg continues to seek enhanced powers to meet current and future challenges in delivering on its statutory and regulatory remit.
- 4.127 ComReg also notes that the Department of the Environment, Climate and Communications (**DECC**) has announced that the transposition of the enforcement provisions of the EECC should be given effect to through primary legislation³⁰.
- 4.128 As set out in the ECS Strategy Statement, ComReg 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.

Compliance and Enforcement Strategic Intent

- 4.129 Virgin Media proposes to reword this Strategic Intent to capture the link with competition. Virgin Media’s proposed text is: “Regulated entities are clear on the requirements they are subject to and comply with those regulatory requirements to the benefit of consumers and competition”. Virgin Media also suggests that industry guidance may be more beneficial than targeted enforcement and a more consultative approach generally. Three similarly encourage ComReg to apply guidance in the context of retail enforcement to inform operators of ComReg’s interpretation of requirements

³⁰ <https://www.gov.ie/en/publication/339a9-european-electronic-communications-code-eecc/>

ComReg Response - Compliance and Enforcement Strategic Intent

- 4.130 ComReg considers that having an effective, proportionate, and dissuasive regulatory enforcement regime will help foster an awareness of the need for an appropriate culture of compliance within industry. A consequence of a poor culture of compliance may be that undertakings adopt internal interpretations of regulatory obligations that diverge from the intended meaning and purpose. Such interpretations may enhance an undertaking's commercial interest to the detriment of other stakeholders or competition and may put the undertaking at risk of non-compliance.
- 4.131 ComReg offers detailed information on applicable regulations (e.g. through public Consultation, Response to Consultation, Decision Instrument or guidance documents and in publication of enforcement decisions). An important purpose of providing guidance on the meaning and effect of regulatory obligations is to facilitate the identification of practices that are likely to be non-compliant. In this context, ComReg will monitor the practices and behaviours of undertakings and take enforcement action, where appropriate.
- 4.132 In addition, where appropriate, ComReg offers guidance on its enforcement powers and practices to ensure industry have a comprehensive understanding of their regulatory obligations and adhere accordingly. ComReg will consider whether it is appropriate to publish further information and guidance on certain aspects of its compliance investigation practices and methodologies, after the EECC has been transposed into Irish law. In addition, ComReg will utilise engagement and dialogue to help foster the desired behaviours within industry, where necessary.
- 4.133 However, regulated entities have a responsibility to ensure they are aware of their legal and regulatory obligations. Regulated entities should seek their own legal advice on any legal and regulatory obligations.
- 4.134 With this in mind, ComReg disagrees that the wording of this Strategic Intent should be amended.

Premium Rate Services

- 4.135 Three considers that in the context of PRS compliance, greater focus should be placed on PRS aggregators in terms of potentially fraudulent practices and end-user harm.

ComReg Response – Premium Rate Services

- 4.136 ComReg notes that all Premium Rate Service Providers have obligations in respect of PRS and ComReg will continue to take appropriate enforcement action.

ComReg’s Organisation

Strategic Intention 5: Organisation

We are an effective, agile and relevant regulator

- 4.137 The electronic communications sector is fast moving, complex and increasingly fundamental to the functioning of Irish society and business. We recognise that we need to continually reflect on our activities and change as necessary in order to best fulfil our mission. To enable us to undertake our role and adapt to the changing expectations, we believe we will need to continue to focus on ensuring that we are an effective, agile and relevant regulator.

Goal 5.1

- 4.138 Virgin Media proposes an amendment to Goal 5.1: “*ComReg has a deep understanding of the markets ComReg regulates and related regulated and unregulated markets both within Ireland and in the EU*”. Virgin Media considers that ComReg should account for the other functions/services offered by operators which may be subject to regulation from other authorities or their international nature to account for harmonisation at EU level.

ComReg Response – Goal 5.1

- 4.139 ComReg disagrees that it should amend the wording of goal 5.1. ComReg already considers developments in regulated and unregulated markets both within Ireland and the EU and this is implied by the wording of goal 5.1. As noted in the Context of our Strategy chapter of the Strategy Statement and in the associated Appendix, ComReg considers developments across a range of adjacent markets in Ireland, across the EU and globally, including input markets, complementary markets and downstream markets. ComReg also considers developments in related and adjacent markets in association with BEREC, for example, in relation to issues of sustainability or the regulation of digital platforms.

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.

Multi-dwelling units

- 5.3 Eircom notes that increasing numbers are living in multi-dwelling units (MDU) and that this presents challenges when delivering FTTH. This creates uncertainty for network operators, developers, MDU residents, MDU management about who has control and rights to access these assets. A clear regulatory policy agreed by those stakeholders will support efficient and timely delivery of FTTH.

ComReg Response - Multi-dwelling units

- 5.4 ComReg concurs with Eircom that MDUs present a specific challenge in the transition from legacy infrastructure. In ComReg Information Notice 21/43, ComReg laid out its intention to conduct a call for inputs and subsequent consultation on Copper Transition. Additionally, the EECC contains stipulations relating to access to wiring, cables and associated facilities which may inform the delivery of services to Multi Dwelling Units.

5G misinformation

- 5.5 Eircom notes the spread of misinformation related to 5G and potential negative health effects. Eircom considers that ComReg should consider engaging with industry and expert bodies and establish a strategy to combat 5G misinformation.

ComReg Response - 5G misinformation

- 5.6 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
- 5.7 The EPA provide information on their website to counter disinformation. Furthermore, the EPA also note that “As part of our monitoring role, we will carry out measurements of public exposure to electromagnetic fields (EMF), including 5G frequencies, in everyday environments and situations. As 5G is deployed, this will enable us to assess if the total EMF exposure levels have increased, as well as their comparison with existing everyday values and exposure limit recommendations.”
- 5.8 The EPA have established a high-level scientific advisory body to give advice to the Agency on specific topics as set out by the Agency, to assist it in carrying out its statutory functions (Non-Ionising Radiation Protection Advisory Committee (NIRPAC)) and ComReg has been invited to and attends this Committee as an observer.
- 5.9 ComReg does not have any role in relation to the health effects of Non-Ionising Radiation (NIR), occupational exposure to NIR, or planning matters, and does not make decisions in relation to the location or installation of telecommunications masts. In managing the national radio frequency resource ComReg monitors compliance with conditions attached to licences and to the general authorisation, including in those related to non-ionising radiation (NIR). Further details can be found at <https://www.comreg.ie/industry/radio-spectrum/about-5g/>

Terrestrial Broadcasting

- 5.10 2RN hopes that the key role played by terrestrial broadcasting, particularly public service broadcasting, in making efficient and effective use of spectrum is recognised in the upcoming Spectrum Strategy. 2RN also notes the role that terrestrial broadcasting plays in delivering news, educational, cultural and entertainment content to Irish households in a relatively environmentally efficient way.

ComReg response – Terrestrial Broadcasting

- 5.11 These matters will be addressed by ComReg in its forthcoming Radio Spectrum Management Strategy, due for publication later in 2021.

ComReg's role as industry champion

5.12 Eircom considers that ComReg should be mindful that ensuring benefits for end-users is only one statutory objective. ComReg also has a role to advocate for industry to encourage competition and investment. ComReg should be mindful of this – and its ability to impact customer perceptions - when communicating through its website and the media. It should publicly champion the good work done by the industry to ensure Ireland stays connected. ComReg should be mindful of the language used when comparing operators in dealing with the media and it should not use speculative commentary about individual operators.

ComReg response - ComReg's role as industry champion

5.13 ComReg disagrees with Eircom's suggestion that ComReg should act as a champion or advocate for industry. ComReg's role, as set down in legislation, is to be the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio communications, broadcasting transmission and premium rate services) and the postal sector in Ireland.

5.14 Under the Communications Regulation Acts 2002 to 2011 (as amended) ComReg has a range of functions and objectives in relation to the provision of electronic communications networks, electronic communications services and post. These include:

- Ensuring compliance by operators with obligations,
- Promoting competition,
- Contributing to the development of the internal market,
- Promoting the interests of users within the European Community,
- Ensuring the efficient management and use of the radio frequency spectrum and numbers from the national numbering scheme,
- Promoting the development of the postal sector and, in particular, the availability of a universal service,
- Protecting the interests of end users of premium rate services.

5.15 In order to be effective as an economic regulator, it is important that all stakeholders have confidence that ComReg discharges its functions independently, based on high-quality evidence and analysis, that ComReg is not biased towards any market participant and does not suffer from so-called "regulatory capture".

ComReg's work on Adjacent Markets Issue

- 5.16 Vodafone considers that ComReg's reference to "Various activities and projects" on adjacent markets is unclear.

ComReg response - ComReg's work on Adjacent Markets Issue

- 5.17 ComReg regularly examines issues in related and adjacent markets to better understand how these markets interact with the markets we regulate. To this end, ComReg has undertaken market research and engaged with stakeholders in these markets to deepen our knowledge and insights. These insights help inform ongoing work streams across the organisation, as set out in our annual Action Plan. Over the coming period, we will continue to gather information and examine issues in these adjacent and related markets.

ComReg's resources

- 5.18 ALTO urges ComReg to carry out work in a more effective and timely manner with its available resources. ALTO remarks that it might take a programme of rotating divisional senior management to achieve that end.

ComReg response – ComReg's resources

- 5.19 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.
- 5.20 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.

Premises Passed Information

- 5.21 ALTO considers that there is an overemphasis on premises passed information in the context of fibre rollout, as this may be irrelevant if the wholesale network and asset investment is inefficient or costly to connect to.

ComReg response - Premises Passed Information

5.22 ComReg's ECS Strategy Statement uses 'premises passed' information as a useful indicator of the size and scale of investments being made in the ECS sector. ComReg also recognises that the take-up of such services is a useful metric and regularly monitors the take-up and switching behaviours of end-users.

Engagement

5.23 Virgin Media suggests that more engagement is necessary to ensure the 'transparency' value as the market develops. Virgin Media suggests that a role could be developed to build on the engagement with industry ComReg has achieved during Covid-19, through consultative engagement to achieve common goals. Areas outside of ComReg's remit may impact the development of the sector (e.g., planning) and ComReg could play an important role in the provision of information or in the resolution of common issues.

5.24 Three considers that recent experience of informal and collaborative engagement has been successful – citing work on the new ECSMs and the Numbering Forum – and would encourage the adoption of this approach more broadly, where appropriate.

ComReg response - Engagement

5.25 ComReg engages regularly with all stakeholders. Specifically,

- Issuing a range of public consultations and 'calls for input' on regulatory decisions being considered by ComReg,
- Organising and attending various Forums; ECAS, Disability workshops etc.,
- Through participation in the Mobile and Broadband Taskforce,
- Regular meetings with industry stakeholders and representative groups,
- Organising and attending various stakeholder events.

5.26 ComReg will continue to engage with stakeholders using a variety of channels. ComReg supported the engagement with Government and stakeholders on responding to the Covid-19 pandemic and the commitments made by industry to assist and help vulnerable customers in the electronic communications markets. Where such opportunities and structures exist (e.g. the Taskforce or Forums), ComReg would welcome engagement with stakeholders on issues relevant to the development of the sector.

Proportionality

- 5.27 Virgin Media considers that ComReg should be mindful of the associated costs of regulatory intervention to ensure proportionality, including responding to data requests and levies imposed. Virgin Media would welcome the value 'proportionality' in the Strategy Statement. Virgin Media also suggests that ComReg should state how it proposes to apply cost-benefit analysis in its regulatory decisions.

ComReg Response – Proportionality

- 5.28 ComReg considers the principles of reasonableness and proportionality when making regulatory decisions and the impact of those decisions on stakeholders. As set out in ComReg Doc 07/56a, before imposing any regulatory obligations on an operator, ComReg first conducts a Regulatory Impact Assessment ('**RIA**') to examine the impact of any proposed regulatory measures that may impose a burden or cost on stakeholders.
- 5.29 ComReg is an evidence-based regulator and data from operators is necessary for our effective operation. However, we recognise the administrative burden that data requests may place on operators. ComReg has taken steps over the last number of years to streamline periodic data gathering processes (e.g. the QKDR) to maximise the regularity and certainty of data requests and continues to engage with industry on streamlining other data collected in the QKDR. However, ComReg recognises that the rapidly evolving nature of the sector means that ad-hoc requests for information, or requests requiring additional explanation, are unavoidable.

Annex: 1 Correspondence

A 1.1 This annex contains two letters:

- Letter, dated April 15th 2021, from Carolan Lennon, CEO of Eircom to ComReg Commissioner Jeremy Godfrey.
- Letter, dated 6th May 2021, from ComReg Commissioner Jeremy Godfrey to Carolan Lennon, CEO of Eircom



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15 April 2021

Re: Draft ECS Strategy Statement

Dear Jeremy,

I am surprised and disappointed to read ComReg's position on eir's Regulatory Governance Model as published in ComReg's Draft ECS Strategy Statement.

As the Settlement Agreement is a contractual agreement between eir and ComReg, and in the context where eir has achieved (and accepted by ComReg) the implementation and assessment of eir's regulatory governance through the achievement of the various milestones (both financial and non-financial), that ComReg would characterise its position as *"continues to have concerns around...the culture of compliance within Eircom in the presence of the enhanced RGM"* and *"consider if more regulatory action is required"* is unfounded.

ComReg's position is even more surprising given the fact that these views have never been expressed in writing, or otherwise, to me and is completely contrary to the information published in ComReg's information notice 21/15R. In particular, ComReg's views are completely disregarding the role it itself has agreed for the IOB.

I am concerned that ComReg's views on eir's governance model has undermined eir's progress, the reputation of eir and the IOB — including its members — and their ability to independently complete their mandate.

I propose a meeting with ComReg's Commissioners to discuss this matter.



I look forward to hearing from you.

Regards

A handwritten signature in black ink that reads 'Carolan Lennon'.

Carolan Lennon
CEO



6 May 2021

Ms. Carolan
Lennon CEO
Eircom Limited
2022 Bianconi Avenue
Citywest Business
Campus Dublin 24
D24 HX03

By email: carolan.lennon@eir.ie

Dear Carolan,

I write in response to your letter of 15th April 2021.

The views expressed in the Draft ECS Strategy Statement are not directly concerned with the Settlement Agreement. Rather they underline ComReg's long-held position that effective regulatory governance within Eir can only be achieved if it is underpinned by a strong culture of compliance.

It is to be hoped that Eir's implementation of the Settlement Agreement will prove sufficient to assuage these concerns in full. However, you are well aware of concerns we have about the way Eir is implementing the Settlement Agreement and it should be no surprise to you that we are unable at this stage to assume that it will prove effective.

In this regard, you will be aware of serious concerns that ComReg holds about whether the IOB will be able to prepare the comprehensive opinion contemplated by the Settlement Agreement: this is exacerbated by Eir's refusal to share the Terms of Reference for the EQA review with the IOB members. You will also be well aware of the importance attached to Milestone 4 in terms of Eircom's overall implementation of the Settlement Agreement and the operation of its RGM, and of the significant differences of view that have emerged about Eir's approach to the assessment of regulatory risks and their mitigation. Finally, you will be aware that ComReg has continued to need to take up a number of compliance issues that Eir's regulatory governance arrangements have failed to prevent.

The views expressed in the draft strategy statement thus reflect concerns and issues that Eir is well aware of. We are entitled to express these views in our strategy statement without giving notice to Eir. It is important that all stakeholders are aware of our continuing concerns about Eir's compliance culture and governance, and that our



strategy contemplates that we may not be able to rely solely on the Settlement Agreement to create a culture of compliance within Eir.

Nothing in the views expressed in the draft strategy statement disregards the role of the IOB under the Settlement Agreement or in any way undermines Eir's progress, the reputation of the IOB (which has yet to report on its assessment of Eircom's RGM) or its members' ability to complete their mandate independently. For ComReg, the Settlement Agreement is only one way to address ComReg's longstanding concerns and the fact that to date Eir has met the agreed milestones (save for Milestone 4 the review of which is ongoing) does not mean that ComReg may no longer have concerns, or that ComReg may not consider appropriate regulatory action over the next five years.

Finally, I see nothing in the Draft ECS Strategy Statement that is in any way inconsistent with ComReg Information Notice 21/15R. This Information Notice makes it clear that Milestone 4 has been postponed twice, last to allow ComReg and Eir to resolve their disagreement as to what needs to be completed, and that for ComReg, the output of Milestone 4 has particular significance in terms of Eircom's overall implementation of the Settlement Agreement and the operation of its RGM.

I trust that this clarifies the position. I and my fellow Commissioners are happy to meet you to discuss further if helpful.

ComReg reserves the right to treat your letter as a response to the draft strategy statement and to publish it and this reply. If you wish to make a claim of confidentiality on any of the information included in your letter in accordance with the ComReg confidentiality guidelines, please let me know.

Yours sincerely



Jeremy Godfrey
Commissioner