



Commission for
Communications Regulation

Response to Consultation on ComReg Document 14/34

(Draft Strategy Statement 2014 – 2016)

Response to Consultation

Reference: ComReg 14/74

Version: Final

Date: 17/07/2014

**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

Additional Information

Original Consultation document:	ComReg 14/34
Submissions received	ComReg 14/74s
Electronic Communications Strategy Statement 2014-16	ComReg 14/75

Legal Disclaimer

This consultation response document is not a binding legal document and it does not contain legal, commercial, financial, technical or other advice. The Commission for Communications Regulation is not bound by it, nor does it necessarily set out the Commission's final or definitive position on particular matters. To the extent that there might be any inconsistency between the contents of this document and the due exercise by it of its functions and powers, and the carrying out by it of its duties and the achievement of relevant objectives under law, such contents are without prejudice to the legal position of the Commission for Communications Regulation. Inappropriate reliance ought not therefore to be placed on the contents of this document.

Content

Section	Page
1 Introduction.....	4
2 STRATEGIC CONTEXT AND KEY CHALLENGES FOR COMREG	5
2.1.1 Respondents' views.....	5
2.1.2 ComReg's position	6
3 COMREG'S PROPOSED STRATEGIC PRIORITIES	7
3.1 STRATEGIC PRIORITIES – PROTECT AND EMPOWER CONSUMERS.....	7
3.1.1 Respondents' views.....	7
3.1.2 ComReg's Position	10
3.2 STRATEGIC PRIORITIES – PROMOTE SUSTAINABLE COMPETITION.....	15
3.2.1 Respondents' views.....	15
3.2.2 ComReg's position	17
3.3 STRATEGIC PRIORITIES – FACILITATE INNOVATION, INVESTMENT AND THE INTERNAL MARKET	20
3.3.1 Respondents' views.....	20
3.3.2 ComReg's position	22
3.4 STRATEGIC PRIORITIES – BE AN EFFECTIVE & AGILE ORGANISATION.	23
3.4.1 Respondents' views.....	23
3.4.2 ComReg's position	24
4 ADDITIONAL PRIORITIES	26
4.1.1 Respondents' views.....	26
4.1.2 ComReg's position	26
5 OTHER ISSUES RAISED BY RESPONDENTS.....	28
5.1.1 Respondents' views.....	28
5.1.2 ComReg's position	30
6 CONCLUSION	33

1 Introduction

- 1 In April 2014, ComReg published a consultation paper¹ which sought views from interested parties on our draft Electronic Communications Strategy Statement 2014-2016² (Strategy Statement). ComReg received eight responses (see list of respondents below).
- 2 In this document, ComReg presents a summary of respondents' views and responds to matters raised by respondents. Where appropriate, ComReg has also made a number of enhancements to its final Strategy Statement and its Annual Action Plan.
- 3 ComReg's analysis of the strategic context, the challenges it identified and its proposed strategic priorities were broadly supported by stakeholders. Nevertheless, various concerns were brought to ComReg's attention and these are considered in this document. Observations on specific current issues that are the subject of more detailed consultations or industry engagement are covered, to a degree. However, ComReg would refer respondents to the appropriate workstreams within ComReg in which those issues are addressed directly.
- 4 This Response to Consultation outlines ComReg's positions on the main issues raised but does not enumerate on every point raised. It should be read in conjunction with ComReg's Strategy Statement, which is published in parallel with this Response to Consultation.

List of responses

- 5 Eight written responses were received to ComReg's Consultation on the Draft Strategy Statement 2014-2016.

Respondents
Alternative Operators in the Communications markets (Alto)
BT Communications Ireland Ltd (BT)
Eircom Group comprising Eircom and Meteor (Eircom)
ESB Networks (ESBN)
RTE
Sky Ireland (Sky)
Telefónica Ireland Ltd. (Telefónica)
Zamano

- 6 A copy of all non-confidential responses received is available on ComReg's website as ComReg document 14/74s.

¹ ComReg Document 14/34: Consultation Document on ComReg's Draft Strategy Statement for Electronic Communications 2014 – 2016.

² ComReg Document 14/33: Draft Strategy Statement for Electronic Communications 2014 – 2016.

2 STRATEGIC CONTEXT AND KEY CHALLENGES FOR COMREG

- 7 ComReg posed questions on its environmental analysis and the sector challenges it has identified so as to provide all interested parties with an opportunity to express their views on important issues facing the electronic communications sector.

Q. 1 Do you agree with ComReg's analysis of the Strategic Context in Chapter 3 of ComReg document 14/33? Are there other developments that ComReg needs to consider?

Q. 2 Are the challenges related to these trends in Chapter 3 of ComReg document 14/33 the correct and most important ones? Are there additional challenges for the industry and for regulation over the next two years?

2.1.1 Respondents' views

- 8 Respondents generally agreed with ComReg's analysis of the technological and economic trends impacting the economy as a whole and specifically the telecommunications sector. There was also a general consensus that the market is delivering greater benefits for consumers, that retail competition has intensified, and that investment has been growing.
- 9 A number of respondents (ALTO, BT, Eircom and Sky) also agreed with the challenges identified by ComReg.
- 10 Telefónica was of the view that there had been limited analysis of the trends and limited use of empirical data to establish the trends identified by ComReg. Telefónica considered bundling to be an important trend, as is the realignment of competition in the electronic communications markets based around operators who have capabilities across a number of platforms.
- 11 Telefónica also expressed a concern that there had been no attempt to put the data provided on the performance of the Irish market into context against other Member States and considered that this would show that Ireland is lagging behind.
- 12 Respondents also raised concerns in relation to specific issues which they reiterated in their responses to other consultation questions. For simplicity, ComReg's responses to these other issues are set out in the corresponding sections of this document, as identified below.

2.1.2 ComReg's position

- 13 ComReg notes that there is broad agreement that retail competition has intensified, bringing greater benefits to consumers and that this looks set to continue in view of the significant investments that have taken place across the industry.
- 14 ComReg agrees with Telefónica that bundling is an important trend in the sector. ComReg highlighted this trend in Section 3.2 of its draft Strategy Statement, indicating that consumer preference for buying multiple communications services from a single provider has intensified in the last two years, with bundles accounting for more than 50% of all fixed subscriptions in Q1 2014. In addition, ComReg also highlighted that operators with capabilities across a number of platforms are also offering quadruple-play packages and that ComReg expects these trends to continue.
- 15 ComReg notes Telefónica's observation on benchmarking. Benchmarking is already used extensively by ComReg in individual consultations and in market reviews, while international comparisons on some key telecommunications market indicators are recorded in ComReg's quarterly reporting. Ireland is also benchmarked annually as part of the EC Digital Agenda Scorecard. The focus of the analysis in the Strategy Statement is to establish the underlying reasons for Ireland's overall performance and to identify issues at national level that need to be factored into ComReg's strategic planning.
- 16 Specific issues raised by respondents in response to questions 1 and 2 and also reiterated by them in response to other consultation questions are addressed in this document as follows:
 - Universal Service Obligations (Section 3.1.2);
 - Eircom's network quality of service (Sections 3.1.2 and 3.2.2);
 - ComReg's analysis of consumer complaint statistics (Section 3.1.2);
 - The need for wholesale Equivalence of Inputs (EoI) (Section 3.2.2);
 - Complaints about Eircom's wholesale services (Section 3.2.2);
 - Transparency of wholesale obligations (Sections 3.2.2 and 5.1.2);
 - Wholesale pricing issues (Section 3.2.2);
 - Access to radio spectrum (Section 3.3.2);
 - ComReg's action planning and timetabling (see Section 3.4.2);
 - Industry Forums (See Section 5.1.2).

3 COMREG'S PROPOSED STRATEGIC PRIORITIES

17 ComReg asked the following question in relation to its strategic priorities. Responses to the question, and ComReg's position having considered those responses, are covered under four sub-sections herein, which relate, respectively, to (1) consumers, (2) sustainable competition, (3) innovation, investment and the internal market, and (4) organisation.

Q. 3 Do you agree the strategic priorities highlighted in Chapters 4 to 7 of ComReg document 14/33 are correct and the most appropriate ones? If not, please elaborate your reasoning in relation to the priorities concerned. Do you think that there is anything that should be added to or omitted from the description of how ComReg expects to address its strategic priorities?

3.1 STRATEGIC PRIORITIES – PROTECT AND EMPOWER CONSUMERS

3.1.1 Respondents' views

Universal Service Obligations (USO)

- 18 Eircom, as the current Universal Service Provider, considered that ComReg should comprehensively review its policy relating to Universal Service, noting that for the third time since 2010, this review has been postponed, with a proposed further interim designation of Eircom as Universal Service Provider (USP). Eircom suggested that ComReg consider a number of issues - e.g. absorption of costs - in determining its approach to the Universal Service Obligation (USO). Eircom was of the view that ComReg's proposals regarding USO from 1 July 2014 do not properly take account of the impact of mobile telephony in meeting basic telephony needs.
- 19 Another respondent (ALTO) suggested that a time may come when no single company will be designated as USP and it advised ComReg to start preparations for alternative solutions to 'the current market determinants'.

Eircom's network quality of service

- 20 One respondent (BT) acknowledged the parameters set by ComReg in respect of USO but considered that whilst fines are important, they represent a measure of failure. It felt that a strategy should be devised for preventative maintenance and appropriate investment to minimise risk of failure, in particular for fault incident rates in semi-rural and rural areas. Suggestions were made for ComReg to:
- ensure that Eircom's investment in preventative maintenance and in refreshing its access platforms (both urban and rural) is in line with best practice and with international benchmarks; and
 - create the correct level of incentive that encourages Eircom to balance its priorities in a way that conforms to best practice for service assurance and provision.

Disabled End Users

- 21 Eircom indicated that it looked forward to the conclusion of ComReg's June 2013 consultation on equivalence measures for disabled end-users to ensure a more symmetric application of obligations.

Emergency Call Answering System (ECAS)

- 22 On ECAS, Eircom was of the view that the current ECAS is less than efficient and that the Call Handling Fees are excessive. It suggested that ComReg should work with the Department of Communications, Energy and Natural Resources (DCENR) to promote a more efficient ECAS. Eircom also stated that it looked forward to a re-tendering of the ECAS business.

Broadband Speed Tests

- 23 Two respondents commented on ComReg's Broadband Speed Tests. Eircom was concerned that the "Test and See" methodology ComReg plans to apply may not give a proper assessment of broadband speeds, as it will measure the broadband speed experienced by just a single household device, not the speed entering the household.
- 24 ALTO was of the view that there is little or no point in endeavouring to empower the consumer (as per ComReg's plan in Chapter 4 of the Strategy Statement) or to conduct theoretical speed and performance testing until providers of such services at the Wholesale-Retail layer are incentivised to perform in a manner that is best-in-class.

PRS

- 25 On Premium Rate Services, Eircom submitted that ComReg should be more active in vetting PRS licence applications and monitoring compliance, particularly with respect to the parties applying for licences.

- 26 Zamano requested that the PRS regime be extended to take full account of Direct Carrier Billing (DCB), with ComReg engaging with Mobile Network Operators (MNOs) and PRS providers to examine the services that already are and which potentially could be offered by DCB. It considered DCB to be an innovative technology that can only reach its full potential as a payment mechanism that challenges Credit Card and Direct Debits if the rules are adapted to better suit it. It acknowledged that exceptions can be applied for under Section 3.3 of the PRS Code of Practice but felt that since there are no guarantees that alternative measures would be approved by ComReg, the uncertainty would make the sale of DCB to potential clients very difficult.

BEREC and European Developments

- 27 With regard to international roaming, one respondent (Eircom) was of the view that ComReg should adopt a more pro-active role in the exercise of its function within BEREC.
- 28 Another respondent (Telefónica) stated that the draft strategy statement contained no discussion on the evolution of regulatory strategy in relation to how the Digital Single Market Initiatives, currently being discussed in Brussels, will be approached by ComReg.

Contracts and switching

- 29 Regarding contracts and switching, one respondent (Eircom) considered that in order to optimise consumers' experience of contracts and switching, 'there should be a consistent and symmetrical understanding of the interpretation of the relevant obligations across all industry players.' Eircom was also of the view that ComReg's focus on strengthening consumer regulation and promoting the consumer interest is best achieved through symmetrical regulatory models.

Consumer complaints

- 30 One respondent (Telefónica) remarked that the consumer element of the draft Strategy Statement seemed to put forward the same issues and proposed solutions as in the preceding Strategy Statement.

- 31 Telefónica also queried ComReg’s analysis of consumer complaints. It held the view that ComReg’s description of an increase in such complaints is misleading. Telefónica considered that ComReg has not analysed the effect of heightened consumer awareness on the increased number of complaints. Telefónica was concerned that many consumers are turning to ComReg as a first port of call for problem resolution, whereas Telefónica has invested heavily in consumer care and is best placed to resolve such issues. It pointed to ComReg’s ICT survey which ‘showed a high level of satisfaction with both landline and mobile operators’ and suggested that ComReg should have conducted more analysis before concluding that the number of consumer complaints received is an ‘indication that the performance of some service providers in addressing the needs and rights of their customers is deteriorating’.

PRS complaints

- 32 One respondent (Zamano) remarked that there has been a significant reduction in PRS complaints, indicating that the new code and industry’s response are having a good impact on the reduction of complaints in this area. Noting that ComReg estimates that PRS complaints represent approximately 10% of the telecoms market, Zamano believes that this means there has been an almost 80% reduction since the code came into force.

3.1.2 ComReg’s Position

Universal Service Obligations

- 33 ComReg has already examined a number of the issues raised by respondents in ComReg document 14/71 (D10/14), “Response to Consultation and Decision on The Provision of Telephony Services under the Universal Service Obligation – Access at a Fixed Location” (AFL). Please see section 3.2 of that document for a discussion of the Government’s broadband initiatives; and section 4.2 for a discussion of mobile in the context of evolution of access infrastructure and technologies.

34 In respect of the recent consultations regarding USO, ComReg has set out its views and decisions in respect of subscriber directories and payphones which seek to maintain consumer protection while at the same time minimising the related universal service obligations. ComReg has also sought to introduce a more dynamic approach so that the obligation reflects the changing needs of consumers. See ComReg document 14/68 (D07/14) “Provision of Directory of Subscribers: Universal Service Scope and Designation” and ComReg document 14/69 (D08/14) “Provision of Public Pay Telephones: Universal Service: Scope and Designation”. In respect of AFL, ComReg has recognised that the future period 3-5 years from now may differ in respect of the need for a USO for AFL and it has consulted accordingly. ComReg had sought expressions of interest from undertakings in respect of the various aspects of USO.

Eircom’s network quality of service

35 In relation to Eircom’s network quality of service more generally, ComReg is monitoring the situation and has previously raised respondents’ issues with Eircom. ComReg has also recently published “Reporting and Guidance on Incident Reporting & Minimum Security Standards – Regulation 23 and 24 of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations” (ComReg document No 14/02).

36 ComReg has also published a decision (D05/11) requiring the publication of Key Performance Indicators for regulated markets. In that respect it should be noted that Eircom has been obliged to publish Wholesale KPIs since 2011.

37 Eircom’s quality of service in relation to the provision of wholesale services is further considered by ComReg in Section 3.2.2.

Disabled end-users

38 With respect to measures for people with disabilities, ComReg has recently issued a decision (ComReg 14/52, D04/14) which places obligations on all undertakings, rather than just the Universal Service Provider (USP), which was previously the case. These measures aim to ensure equal access and choice for disabled end-users. In ComReg decision 14/70 (D09/14) “Universal Service Obligation – Measures for Disabled End-users”, ComReg has maintained certain special measures on Eircom as the designated undertaking for one year, to allow for these measures to be reviewed.

ECAS

- 39 ComReg discussed various aspects of the ECAS Call Handling Fee in documents 13/96³ and 14/04⁴. As noted in section 1 of document 14/04, ComReg discharges its statutory duties in respect of ECAS under the Communications Regulation Act 2002, as amended, and in doing so ComReg must also have regard to the contract (known as the “Concession Agreement” or “CA”) between the Department for Communications, Energy and Natural Resources (DCENR) and BT Communications (Ireland) Limited (BT), the appointed ECAS operator, though ComReg is not a party to the CA.

Broadband Speed Tests

- 40 ComReg notes the concerns expressed by two respondents in respect of its Broadband speed information initiative. However, ComReg remains of the view that providing consumers with information regarding the speeds being experienced, and factors affecting those speeds, is important and accords with ComReg’s remit. ComReg is therefore committed to providing such information to consumers. ComReg is also committed to continuing to engage with industry, throughout that project.

PRS

- 41 Regarding the vetting of PRS applications, it is important to recognise that certain PRS may constitute an Information Society Service (ISS) as defined in legislation⁵ and, as such, ComReg may not, under the provisions of the eCommerce Directive (Directive 2000/31/EC) impose a “prior approval” or “pre-vetting” regime to licence applications for PRS that are also ISS licence applications.
- 42 In addition, ComReg may refuse a PRS licence application only on the grounds set out in section 6(4) of the PRS Act, 2010. ComReg continuously monitors and carries out investigations into the provision, content and promotion of PRS and as a result of these investigations ComReg has published a number of its findings of non-compliance on its PRS-related website, www.phonesmart.ie, under the “Code of Practice” tab.
- 43 In accordance with the Due Diligence provisions in the PRS Code of Practice, at sections 3.19-3.22, ComReg requires industry to raise any concerns it may have regarding the compliance of PRS with the Code of Practice.

³ ComReg document 13/96 “Emergency Call Answering Services – Call Handling Fee Review 2014 – 2015 – Consultation and Draft Determination”.

⁴ ComReg document 14/04 “Emergency Call Answering Services – Call Handling Fee Review 2014 – 2015 – Response to Consultation”.

⁵ Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC.

- 44 ComReg has taken note of Zamano's points regarding DCB and will seek to clarify its approach to this and other related PRS matters during this strategy period. In this regard, ComReg intends to conduct a further review of the current Code of Practice (ComReg document 14/45) in due course to reflect industry developments and legislative changes.

BEREC and European Developments

- 45 ComReg contributes to BEREC's work programme at various levels, including direct participation in Expert Working Groups. Decisions on the degree of direct participation by ComReg in the BEREC work programme is determined by a prioritisation process. However all of BEREC's output, prepared by Expert Working Groups, is discussed and agreed at Contact Network level and at Plenary meetings of the Board of Regulators. ComReg participates in both of these forums.
- 46 With regard to EU proposals for a Digital Single Market, ComReg will continue to monitor progress. ComReg will contribute to BEREC's analysis and opinions and will provide advice and assistance to DCENR in its role as a Council Member. ComReg will also move to implement measures once any final provisions are enacted by the co-legislators.

Contracts and switching

- 47 ComReg agrees with Eircom on the importance of compliant contracts and ease of switching in competitive markets. ComReg is of the view that consumers should be able to make informed choices and to change providers when it is in their interests. To this end, it is essential to ensure that consumers can change provider without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This requires a symmetrical regulatory model supported by fit-for-purpose inter-operator processes. ComReg is engaging with industry in order to facilitate discussion on the future development of porting services in the context of the likely emergence of new and innovative services.
- 48 ComReg's intention is to ensure that consumers are provided, as standard, with optimally transparent and accessible contracts that maximise consumer welfare across all ECS providers and which are supported by switching terms, processes and behaviours that enable consumers to switch easily when they wish to do so.

Consumer complaints

- 49 ComReg does not agree with Telefónica's view that that the consumer element of the draft Strategy Statement put forward the same issues and proposed solutions as ComReg's preceding Strategy Statement. Additionally, ComReg does not agree with Telefónica's expressed opinion that the number of complaints received by ComReg is merely a reflection of consumer's awareness of ComReg's role.

- 50 ComReg has an established and known procedure for addressing any consumer complaints which it receives. As operators are aware, ComReg does not raise a complaint with an operator unless the complainant has previously been in contact with the operator and has not had the complaint resolved or is unhappy with the resolution.
- 51 ComReg notes that the number of consumer contacts it receives remains relatively static, while the number of complaints that have not been resolved by operators is rising. ComReg also notes that there is an increase in consumer complaints involving specific operators.

PRS complaints

- 52 ComReg notes Zamano's submission that there has been a significant reduction in the number of PRS-related issues raised by consumers since the introduction of the Code of Practice in July 2012. The reasons for this welcome change have yet to be fully established, but ComReg would highlight the following:
- The impact of the introduction of the Code of Practice was not immediately evident, as illustrated by the fact that after its introduction in July 2012 there was no discernable change in the number of issues raised with ComReg for the next five quarters, from Q3 2012 to Q3 2013, inclusive (2,851, 2,750, 3,154, 3,027 and 3,231 respectively);
 - The reduction in the number of PRS issues raised between Q3 and Q4 2013 (3,231 and 1,371 respectively) is welcomed but it must be considered in the context of a declining market size (final figures are not currently available but industry data suggests that there may be a double-digit decline in the size of the PRS industry between y/e June 2013 and June 2014);
 - The large majority of consumers who contact ComReg in relation to PRS matters state that they have no recollection of engaging with a PRS provider. These consumers include those who signed up to a subscription PRS and those who engaged with a "one-off" or single-charge PRS, to which the double opt-in provisions in the Code of Practice do not apply. The imposition of the double opt-in provisions may have reduced consumer complaints for subscription services but there are other PRS which result in continued consumer complaints.
- 53 Having regard to the above, ComReg will consider amending the Code in due course, having cognisance for the number and nature of the issues raised by consumers, legislative and technical developments.

3.2 STRATEGIC PRIORITIES – PROMOTE SUSTAINABLE COMPETITION

3.2.1 Respondents' views

Wholesale Pricing Issues

- 54 ALTO requested more transparency on the margin squeeze testing and on the associated compliance by Eircom and noted that no statement of compliance is ever issued in this area. It also called for a move away from retail minus modelling towards cost orientation within a shortened timeframe for fixed network Current Generation Access.
- 55 Another respondent (BT) suggested deeper investigation into how the broadband backhaul market is changing, with a reassessment being made of whether the current price floor model is still fit for purpose.
- 56 Eircom commented on the importance of enabling infrastructure-based competition using different generations of technology and enabling continued investment in high-speed broadband. It was of the view that it is a matter of ongoing debate 'whether the complex interaction of price caps and margin squeeze tests between different wholesale products meets the challenges of appropriate pricing-based incentives.'
- 57 Eircom welcomed ComReg's recognition that the cost of serving rural users exceeds those for urban areas and the commercial incentive for investing in advanced access networks or competing networks in rural areas is less than in urban areas. It considered that this raises a question on the application of the geographic averaging principle. Eircom noted that other providers of services over national networks (e.g. electricity) are permitted to price their services by 'closer reference to the cost of provision in rural areas' and suggested that geographic averaging would distort Eircom's ability to compete.
- 58 Sky considered that Eircom's pricing for bitstream Current Generation Access (CGA) backhaul should be reduced to bring it into line with the same NGA product.
- 59 Sky further considered that the current wholesale pricing structure between CGA and Next Generation Access (NGA) bitstream backhaul is discriminatory, as it is 'not supported by differences in underlying costs'. Sky expressed the view that NGA is being promoted at the expense of CGA and it asked for resolution of 'this anomaly' to be a priority for ComReg.

Industry Complaints

- 60 ALTO raised a number of concerns on wholesale access provision. It is of the view that new entrants are exploited as a result of aggressive behaviour and delay tactics by Eircom, including its behaviour in the early stages of Next Generation Networks (NGN). ALTO considered that problems arise in respect of NGN and NGA where issues with wholesale services lead to serious issues for retail consumers and users. It considered that wholesale layer reforms will impact on consumer and user experience and Chapter 4 of the Strategy Statement should be amended to reflect this.
- 61 ALTO indicated its surprise and concern about operator behaviours that have led to the publication by ComReg of opinions of non-compliance. ALTO suggested that a root and branch review be carried out of service delivery, performance determinants and incentives to act (e.g. SLAs, penalties). It is of the view that incentives are necessary if major change is to be noticed by industry.
- 62 ALTO asserted there is an inability to access certain infrastructure (in Market 4) due to particular interpretations of the Framework regulations by certain operators. It also asked what work ComReg has done to incentivise Wholesale to Retail service performance on the national network.
- 63 A specific area of concern that was mentioned (BT) was Eircom's service performance in addressing fault incident rates in semi-rural and rural areas.

Equivalence of Inputs on Current Generation Access

- 64 Two respondents (ALTO and BT) were of the view that ComReg should seriously consider the use of Equivalence of Input (Eol) on CGA products so as to remove time and resource burdens on industry. It was suggested that there is a need to drive Eol in respect of Eircom's service and performance levels and in respect of transparency and supervision.
- 65 Sky was concerned that CGA should have the same priority as NGA and said it must be treated in accordance with the principle of technology neutrality, so as to promote competition through (inter alia) the effective implementation of wholesale remedies.

Other competition issues

- 66 BT was of the view that ComReg should take a holistic view of the Wholesale market, as it is concerned that use of the EC guidelines for recommended markets has led to a silo approach to competition. BT doubts that ComReg's high level goal of sustainable wholesale competition is being met and it doubts that ComReg's current proposals can meet that goal.

- 67 Specifically, BT considers that no viable broadband competition exists in large parts of the country and that a regional approach is required for current generation services. BT also considers that VoIP does not appear viable due to margin issues.
- 68 Regarding evolution of existing wholesale remedies in line with competitive conditions, Eircom urged ComReg to be vigilant in recognising where a service or component of a service becomes economically replicable by its competitors. In that situation, 'the requirement to take an investment risk should not be imposed on Eircom.' Eircom asked ComReg to ensure that wholesale offers reflect both legacy and next generation network technology, so as to promote competition that is based on the deepest possible level of infrastructure.

3.2.2 ComReg's position

Transparency and Pricing

- 69 ComReg notes the calls for greater transparency on margin squeeze testing. ComReg continuously monitors Eircom's compliance with its margin squeeze obligations, which are described in some detail in the various decisions underpinning them. This approach is as prescribed in legislation, where it is the regulated entity's duty to comply with obligations and ComReg's duty to monitor such compliance and to act if necessary. ComReg does not believe that it is its duty to certify compliance in the manner proposed by a respondent since this would be to confuse the respective roles and obligations of regulator and regulated entity.
- 70 ComReg takes note of the points made by Eircom. ComReg will continue to monitor the effect of pricing remedies to ensure they provide the appropriate incentives without imposing unnecessary burdens on operators. In making its decisions (e.g. following market evolution), ComReg will also continue to follow the principle of technology neutrality and non-discrimination between undertakings (i.e. per Regulation 16 (1) and (2) of the Framework Regulations). ComReg is satisfied that this policy is consistently adhered to.

- 71 ComReg notes Eircom's arguments about geographic averaging. ComReg would point out that it has differentiated between pricing obligations applicable to Large Exchange Areas (LEA) and non LEAs in its "Bundles Decision" (D04/13)⁶, while in the recent WBA pricing consultation (Doc 13/90)⁷ ComReg also proposed differentiated (current generation) WBA pricing between the LEA and non-LEA. ComReg's upcoming reviews of the copper access model and of markets 4 and 5 will also take account of these issues.
- 72 ComReg notes other comments addressing pricing and intends to consult on pricing obligations in 2014. ComReg shall keep pricing under review, bearing in mind its objective of encouraging investment. ComReg notes that a decision on WBA price floors (D06/12) has been published. ComReg has also recently received submissions from interested parties to a recent Call for Input⁸ which considers, *inter alia*, backhaul and throughput issues. ComReg is currently considering those responses and its position in relation to same.
- 73 Furthermore, ComReg will continue to monitor the effect of pricing remedies to ensure they continue to provide the appropriate incentives and do not impose unnecessary burden on operators.

Industry complaints

- 74 ComReg notes the criticism of Eircom's quality of service (from both BT and ALTO). This is also addressed in Section 3.1.2. In relation to complaints raised about NGA, ComReg reminds respondents that Eircom has a non-discrimination obligation in this market. In general, if operators have specific complaints, ComReg requests that they raise them with our Wholesale Compliance section⁹.
- 75 ComReg monitors Eircom's compliance with its non-discrimination obligations. Where breaches are identified, action is taken. For example, Eircom paid a €275,000 penalty to ComReg in 2013 following admission of a breach of its non-discrimination obligations¹⁰.
- 76 Operators are reminded that they can make specific complaints to ComReg. ComReg has also advised operators recently that it has commenced joint review of the Wholesale Broadband Access (WBA) and Wholesale Physical Network Infrastructure Access (WPNIA) markets, so any issues which concern operators can, if they so wish, be submitted to ComReg as part of that review.

⁶ <http://www.comreg.ie/fileupload/publications/ComReg1314.pdf>

⁷ <http://www.comreg.ie/fileupload/publications/ComReg1390.pdf>

⁸ [ComReg document 14/18: Call for Input Current and future projections on throughput](#)

⁹ <http://www.comreg.ie/telecoms/compliance.561.html>

¹⁰ <http://www.comreg.ie/fileupload/publications/ComReg1379.pdf>

77 ComReg agrees that it would be desirable to reach a position where Eircom was providing high-quality wholesale services - in both rural and urban areas - and there was a high degree of assurance that it was doing so on a genuinely non-discriminatory basis. The Strategy Statement recognises the need for ComReg to take account of the incentive for investment in less densely populated areas (see Sections 5.4 and 6.1). ComReg has also added an explanation of how its regulatory priorities might be affected by progress (or the lack thereof) in assuring non-discriminatory behaviour (see Section 5.2, paragraphs 133-135).

Equivalence of Inputs on Current Generation Access

78 ComReg is conscious that upgrading legacy systems to comply with an Eol standard has the potential to be very costly and costs would ultimately have to be borne by the sector and its users. This is one reason why, thus far, ComReg has confined the mandatory implementation of Eol to aspects of NGA provision¹¹. Nevertheless ComReg will (a) continue to monitor whether an Equivalence of Output (EOO) standard delivers a genuinely non-discriminatory wholesale service provision and (b) consider the opportunities for further expansion of the Eol standard in a cost effective manner. ComReg may also take further action in this regard.

79 ComReg has committed Priorities (see Section 5.3 of the Strategy Statement) for 2014-16, to 'ensure that wholesale offers reflect both legacy and NGN technology, so as to promote competition based on the deepest level of infrastructure possible'. Paragraph 139 of the Strategy Statement also sets out ComReg's commitment to neutrality, as follows: "*At a time of transition from the current generation of broadband services to high-speed broadband, ComReg will need to apply regulation consistently to NGA and legacy services, thereby ensuring predictability for market players while also facilitating consumer choice.*"

Other competition issues

80 ComReg is confident that there can be sustainable competition without succumbing to a silo approach. Where possible, and having regard to its available resources and priorities, ComReg is now seeking to analyse, together, those relevant markets that are inter-related. For example, ComReg has advised operators recently that it has commenced a joint review of the WBA and WPNIA markets (traditionally referred to as Markets 4 and 5).

81 ComReg is considering the impact of VoIP on the competitive dynamic within relevant wholesale and retail markets as part of its market analysis process (ComReg Document 14/26). A decision on this market analysis is expected in Q4 2014.

¹¹ [ComReg Document 13/11 and ComReg Decision D03/13: Next Generation Access \('NGA'\): Remedies for Next Generation Access Markets.](#)

82 Regarding BT's views in relation to competition in non-urban areas, this is an issue which ComReg has highlighted for attention in its Strategy Statement for 2014-16. ComReg's Priority 5.4 is to "Promote competition and investment and protect the interests of users in less densely-populated areas". As described in paragraph 145 of the Strategy Statement, "*ComReg has begun to differentiate the way it discharges its statutory functions in different geographic areas, in recognition of the different competitive conditions. In the less densely-populated areas, ComReg will be particularly mindful of:*

- *The need to protect retail consumers from being overcharged as a result of the physical infrastructure provider extracting monopoly rents;*
- *The need to provide incentives for economically-efficient investment in modernising and upgrading rural networks."*

3.3 STRATEGIC PRIORITIES – FACILITATE INNOVATION, INVESTMENT AND THE INTERNAL MARKET

3.3.1 Respondents' views

Investment and Infrastructure Access Obligations

83 One respondent (ALTO) was of the view that Eircom has made very little investment to benefit wholesale customers and consumers in general.

84 Eircom indicated that it supports the objective of maximising commercial NGA rollout and that it will continue to invest where it is economical to do so. Regarding Section 6.1 of the Strategy Statement - concerning the market for Wholesale Physical Network Infrastructure and the separate legal provisions/developments for the promotion of access to passive infrastructure - Eircom expressed its view that the current regulatory construct is applied asymmetrically. It believes that a strong case exists for symmetric application of infrastructure access obligations.

Spectrum issues

85 ComReg's approach to releasing spectrum for broadband was generally supported by a number of respondents (ALTO, BT, Eircom). BT urged ComReg to commence its latest process in sufficient time for any new party to avail of the 2.6GHz band immediately after the radio spectrum becomes available for licensing, in 2016.

- 86 Eircom considered that priorities to finalise a strategy for the UHF band and to release additional spectrum are closely interrelated and therefore suggested that a holistic approach should be adopted in deciding on the scope of potential spectrum awards. Eircom requested assurance from ComReg regarding the inclusion of the 700 MHz band in the proposed 2.6 GHz award process.
- 87 RTE noted that the UHF band is currently used for public service broadcasting and submitted that any strategy relating to future use of that band should be led by Government. RTE accepted that there is an ongoing debate about the future needs of mobile broadband spectrum but it drew attention to current DCENR work and suggested that ComReg should await its outcome. RTE proposed that ComReg should reword its priority on the UHF strategy to reflect government policy and submitted that a detailed cost-benefit analysis (CBA) is needed before awarding further spectrum to mobile broadband.
- 88 ESN asked ComReg to recognise the need for self-provided private networks and to provide regulatory certainty, particularly in respect of timely access to spectrum and timely introduction of appropriate licensing regimes. It submitted that this would facilitate investments by ESN in mission critical communications - i.e. to support smart grid, etc. ESN also referred to an EC study that is in progress¹², in which an interim view was expressed that commercial (mobile) networks cannot meet the mission-critical requirements of utilities.
- 89 ESN drew attention to the critical importance to certain key industries of large private networks. Regulatory certainty, timeliness and a pro-investment approach are just as important for these private networks as it is for public ECN/ECSs. It was of the view that early access to spectrum and timely introduction of appropriate licensing regimes can be essential ingredients in promoting investment and innovation.

Test and Trial Ireland

- 90 Both Eircom and ESN recognised the benefits offered by Test and Trial Ireland for the testing and trialling of new electronic communications technologies.

¹² Ongoing study by SCF Associates Limited for the EC.

3.3.2 ComReg's position

Investment

- 91 ComReg notes ALTO's assertions on Eircom's levels of investment. ComReg is very mindful of the conditions to stimulate investment and this matter has been covered elsewhere in this document and in ComReg's Strategy Statement. ComReg has no direct powers to require investment but notwithstanding this, ComReg has noted (in paragraph 49 of its Strategy Statement) that Eircom has announced its intention to extend coverage of its next generation access network from 800,000 premises at the end of Q1 2014 to 1.4 million by 2016.
- 92 ComReg has taken note of Eircom's comments on section 6.1 of the draft Strategy Statement, relating to maximising commercial NGA rollout. Separate legal provisions require all providers of electronic communications networks to permit other providers to have access to passive network elements, such as ducts and poles. There is also an EU Directive¹³ that could result in other infrastructure owners (e.g. electricity, gas, water, and sewage) being obliged to give telecom operators access to their infrastructure under certain circumstances. The Directive must be transposed into Irish Law before 1 January 2016 and applied by 1 July 2016. It is unclear what role, if any, ComReg would play in implementing the provisions of the Directive. ComReg will keep under review the extent to which it can use its existing and any new powers to help reduce the cost of deploying high speed electronic communications networks.

Spectrum issues

- 93 ComReg welcomes industry's support for its approach to broadband spectrum. ComReg will, in due course, commence a public consultation in relation to the candidate bands for awarding spectrum rights of use for provision of wireless broadband. ComReg signalled, in document 13/31, that it intends to hold a competitive process for awarding future rights of use of the 2.6 GHz band. ComReg intends to complete this process prior to expiry of the existing MMDS licences, in April 2016.
- 94 ComReg notes that RTE's comments regarding the UHF band are similar to those in its submission to ComReg's preliminary consultation on management and use of the UHF frequency band in Ireland (document 14/13). ComReg will deal with those comments in its consultation on the UHF band, and ComReg aims to issue a response to consultation in the near future, outlining next steps.

¹³ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

- 95 ESBN's call for recognition of the key role of self-provided networks is noted by ComReg. ComReg recognises that circumstances exist which validate the need for such networks. Licensing of such networks will be undertaken in accordance with ComReg's statutory objectives which include, amongst other things, the promotion of competition.¹⁴

Test and Trial Ireland

- 96 ComReg acknowledges the positive feedback from Eircom and ESBN on Test & Trial Ireland and, in view of the general support for that facility, will continue to provide Test and Trial Ireland into the future.

3.4 STRATEGIC PRIORITIES – BE AN EFFECTIVE & AGILE ORGANISATION

3.4.1 Respondents' views

ComReg's resources

- 97 Eircom sought information as to how ComReg plans to focus its resources in each work area and identify its priority workstreams. It expressed the view that ComReg should aspire to achieve best-in-class benchmarks among its EU peers for efficiency and operational excellence.
- 98 Eircom asserted that ComReg's limited resources have impacted on undertaking market analyses. Eircom pointed out that the harmonised EU framework envisages market reviews being conducted every 3 years, in view of rapid market changes, and that the regulatory regime must keep pace. On this basis, Eircom urged ComReg to apply its resources in a way that will ensure timely and effective market reviews, based on a more forward-looking regulatory regime.

Consultation Planning

- 99 ALTO expressed the view that ComReg should strive harder to plan its release of consultations in a manner that minimises the burdens on industry resources. ALTO expressed the view that chapter 7 of the draft Strategy Statement did not adequately address the issues of consultation coordination, planning and timing. ComReg was asked to consider publishing full timetables of both market analysis processes and consultation processes, in order that industry can plan appropriately. However, ALTO also recognised ComReg's obligations to consult and the severe resource constraints under which ComReg operates.

¹⁴ Section 12 (1) (a) (i) of the 2002 Act.

Benchmarking ComReg's Performance

100 Telefónica expressed the view that the draft Strategy Statement contains no benchmarking in respect of ComReg's own performance and suggested that it would be useful for stakeholders to understand how ComReg's resources are allocated and what measures are taken to ensure that this represents value for money.

3.4.2 ComReg's position

ComReg's resources

101 ComReg notes and will bear in mind Eircom's submission that ComReg should focus its resources and identify its priority workstreams. ComReg publishes a number of documents which indicate its future work programme, the Annual Action Plan being an example. In preparing its work plan for each year, ComReg seeks to take into account its available resources in such a way as to maximise the utilisation of those resources, in progressing its priority workstreams.

102 ComReg notes Eircom's observation that ComReg should have the appropriate number of skilled staff in order to meet its regulatory obligations. A number of respondents raised the importance of effectiveness and, for its part, ComReg will continue with its programme of organisational development initiatives in order to improve performance, within its resource constraints.

Consultation Planning

103 As noted by ALTO, ComReg is obliged to consult in order to clearly explain the reasons for its decisions and no significant decisions can be taken without first consulting. ComReg's published consultation procedures (document 11/34) are designed to ensure that all stakeholders have a fair and equal opportunity to input into the open and transparent process which leads to eventual decisions.

104 In order to assist interested parties to plan and manage their regulatory obligations, ComReg publishes a number of documents to indicate the future work in which it will engage. In particular, ComReg endeavours to set out in its Annual Action Plan indicative timetables for forthcoming consultations, though these are subject to change due to unforeseen circumstances. While upholding its statutory obligations, ComReg will also seek to ensure that it does not place an undue burden on operators, through consultation overload.

ComReg's performance

- 105 ComReg notes Telefónica's remarks concerning ComReg's allocation of its resources and the measures taken to ensure that this represents value for money. ComReg published annual output statements during the previous strategy period which detail the work completed by ComReg over that time. ComReg recognises the importance and value of benchmarking as a metric by which to guide it towards greater effectiveness and efficiency in its regulatory role. Benchmarking against other NRAs is of special relevance in that regard. Such benchmarking is carried out independently by both the OECD and the European Commission (as part of the Digital Agenda Scorecard metrics). Relevant published documents are available from both organisations. In addition, BEREC's processes involve benchmarking of various regulatory practices in the EU; the results are mostly published in documents that are available on the BEREC website.
- 106 ComReg's budget will continue to be managed to ensure that the regulatory cost is optimised. ComReg continues to manage its costs by outsourcing various tasks and by ensuring that effective procurement policies are in place. ComReg is also subject to the various staff pay reductions and levies imposed by Government, since 2009, and it is subject to an employment control framework. This, coupled with normal attrition in staff numbers, has resulted in a significant reduction in staff numbers in recent years.
- 107 Section 7.3 of ComReg's Strategy Statement for 2014-16 provides further details of how it intends to continue to improve our business processes over the coming strategy period.

4 ADDITIONAL PRIORITIES

108ComReg asked the following question:

Q. 4 Are there additional priorities that need attention over the period of this Strategy Statement?

4.1.1 Respondents' views

Spectrum issues

109RTE proposed that a further priority should be listed under the key challenge 'Making spectrum available to meet the various needs of society', to cover what it described as being the important and often non-commercial needs of society such as public service broadcasting, public safety, navigation etc.

Review of Regulatory Impact Assessments

110Eircom submitted that ComReg's Regulatory Impact Assessments (RIAs) should be more rigorous and should be more meaningful in assessing proportionality. Eircom added that its experience of RIAs is that they are closer to rationalisations of ComReg's preferred policy positions than objective assessments of costs and impacts.

4.1.2 ComReg's position

Spectrum issues

111With regard to RTE's proposal that there be a new priority in relation to spectrum availability, ComReg's spectrum management activities (such as the assignment of spectrum) take into account a broad range of objectives. These include that "ComReg shall ensure that, in its management of the radio frequency spectrum, it takes account of the interest of all users of the radio frequency spectrum" (required by Policy Direction¹⁵ no.11 on the Management of the Radio Frequency Spectrum). Therefore, ComReg considers that there is no need to establish new priorities as this is already part of the framework in which ComReg operates.

112ComReg's spectrum management strategy discusses in greater detail its strategy to manage the spectrum resource. A separate draft Spectrum Management Strategy Statement will issue later in 2014, for consultation. The Electronic Communications Strategy Statement deals with spectrum management issues only to the extent that they impact electronic communications networks and services and only at a high level.

¹⁵ Policy Directions are published by DCENR here: <http://www.dcenr.gov.ie/Communications/search/search.htm?st=policy%20directions&sec=Communications>.

Review of Regulatory Impact Assessments

- 113 In conducting the RIA, ComReg takes into account the RIA Guidelines¹⁶, issued by the Department of An Taoiseach in June 2009 under the Government's Better Regulation programme. In addition, Section 13(1) of the Communications Regulation Act 2002 requires ComReg to comply with any Ministerial Policy Directions. Policy Direction No. 6, of February 2003¹⁷, requires that ComReg, before deciding to impose regulatory obligations on undertakings, shall conduct a RIA in accordance with European and international best practice and otherwise in accordance with measures that may be adopted under the Government's "Better Regulation" programme.
- 114 ComReg would note that its RIAs are also issued in draft form in order to provide interested parties with the opportunity to input into the RIA process.
- 115 In conclusion, ComReg does not form a decision and then conduct a RIA in a manner which simply lends retrospective weight to that decision. ComReg considers that its process for conducting RIAs, which includes full consultation on draft RIAs, is robust and that it results in final RIAs which identify and weigh the costs and benefits in an objectively justifiable manner. Nevertheless, ComReg will keep its Guidelines on ComReg's approach to RIA under review.

¹⁶ See "Revised RIA Guidelines How to Conduct a Regulatory Impact Analysis", June 2009. [here](#)

¹⁷ Ministerial Policy Direction made by the Minister for Communications, Marine and Natural Resources on 21 February 2003.

5 OTHER ISSUES RAISED BY RESPONDENTS

116 Respondents raised some additional issues in their responses which are presented below and responded to in Section 5.1.2.

5.1.1 Respondents' views

Regulatory sunset and moving towards market-led outcomes

117 Eircom asked ComReg to take this strategic review as an opportunity to reposition its overall strategy within the context of the wider national economic and social agenda. Eircom expressed the view that ComReg should ensure that the ICT infrastructure is an enabler of national growth leading to innovative services, effective competition and downstream employment creation. In that respect, Eircom submitted that a trajectory and momentum should be established towards liberalisation at the national level, as it contends that *“the 17 years since liberalisation have seen economic regulation become steadily more pervasive, demanding and costly”* and that this has had a chilling effect on investment. To that aim, Eircom proposed that there should be a post-implementation review process for significant market interventions that would contribute to setting the timing of a regulatory sunset.

118 Eircom also suggested that ComReg interventions, based on a legacy view of operators' relative market power, should be discontinued, as it considered that economic regulation was only ever intended to be imposed as a transitional measure that would be withdrawn as competition matured. In Eircom's view, market structure changes and the choices now available to consumers are not properly reflected in ComReg's approach to assessments of market power nor in its identification of market remedies. Eircom further argued that this perceived distortion hampers its ability to respond effectively to competition and its ability to innovate, as it has to justify its use of assets and show full recovery of network charges. Eircom therefore suggested that ComReg should move to corresponding market-led outcomes by:

- recognising the growth rates and prospects of existing mobile and broadband players;
- acknowledging the low barriers to entry for OTT providers;
- recognising that platform-based competition is now established and flourishing, and an effective constraint exists on Eircom's ability to unfairly use any residual market power;

- Using the strategy review to re-establish the aim of withdrawing regulation in favour of market led outcomes, while also placing focus on the infrastructure objectives of Government e.g. promotion of high speed broadband;
- Establishing a trajectory and momentum towards liberalisation at national level.

Eircom's Views on Symmetric Regulation

119 Eircom argued that undue obligations are placed on it by current arrangements and that its large and successful competitors do not incur these same obligations. It was of the view that ComReg should always consider symmetric forms of regulation. Specifically, Eircom questioned why it, having only entered the market in May 2013, is required to supply high speed wholesale broadband access to others, compared with UPC which does not face a similar obligation, despite already having an established infrastructure and substantial customer base.

Functional separation

120 ALTO suggested that ComReg should consider whether there is a case for the incumbent to functionally separate on the basis that this would provide true Equivalence of Input (EoI) while also allowing Eircom to derive adequate returns and outputs for its retail division.

Industry complaints – recovery from storms

121 BT was of the view that Eircom's recovery from the impact of recent storms took too long. BT considers that there should be an in-depth investigation of the reasons for these delays, as it believes that one aspect could be longer term under-investment in preventative maintenance in the access platform, particularly in rural networks.

Transparency of SMP obligations

122 Sky reported difficulties in ascertaining what obligations are in place or pending in the wholesale markets in which Eircom has SMP. It suggested that ComReg should consider better aligning the timing of SMP reviews and remedies, consolidating SMP findings and remedies into one document for each market and publishing a schematic diagram indicating each of the separate markets on which Eircom has SMP. It suggested that this should also identify exactly which wholesale products and services they contain and which SMP remedies apply.

Industry Forums

123 Sky submitted that ComReg should review how well industry forums are performing, although it accepts that they are an appropriate means for implementing Eircom's SMP regulatory obligations to fulfil access requests. It made a number of suggestions in terms of how the forums could be improved.

Reflections on the previous strategy statement

124 Telefónica suggested that the draft Strategy Statement document lacked reflection on the previous Strategy Statement, in terms of achievements, what still has to be completed, and lessons learnt.

5.1.2 ComReg's position

Regulatory sunset and moving towards market-led outcomes

125 Concerning Eircom's request for a post-implementation review process, ComReg will, as described in paragraph 127 of the Strategy Statement, focus on ensuring that the implementation of the existing remedies is effective, and that it takes account of changing market conditions. Market reviews also consider the effectiveness of the market interventions.

126 ComReg has and continues to adopt a prospective analysis of relevant markets and, in this context considers, on a forward looking basis, the impact of all relevant current and potential competitive constraints that are likely to impact upon competitive dynamics.

127 In accordance with the SMP Guidelines¹⁸ (which ComReg is required to take the utmost account of) in carrying out a market review, under Regulations 26 and 27 of the Framework Regulations, ComReg must conduct a "forward looking, structural evaluation of the relevant market, based on existing market conditions". ComReg is required to determine whether the market is prospectively competitive, and thus whether any lack of effective competition is durable, by taking into account expected or foreseeable market developments over the course of a reasonable period. It is ComReg's general policy to carry out its competition assessment over the period of at least three years and to consult on this analysis. ComReg is satisfied that this policy is consistently adhered to.

128 Apart from the NGA remedies, ComReg has made findings of significant market power and imposed remedies in a number of other markets. ComReg will monitor implementation of these remedies and conduct further work, especially on costing and pricing, as needed. ComReg will also complete market analyses currently underway and commence new market analyses as required by law.

¹⁸ See paragraph 20 of the SMP Guidelines.: European Commission guidelines on market analysis and the assessment of significant market power under the Community regulatory framework for electronic networks and services, OJ 2002 C 165/3.

Eircom's Views on Symmetric Regulation

129 In response to Eircom's views on symmetric regulation, ComReg notes that wholesale (or retail) obligations arise from a finding of SMP in a particular market. The same legal basis for imposing obligations upon Eircom arising from its SMP position could also apply to UPC – the question is whether it has SMP or not in that particular market. Regulation 25 & 27 of the Framework Regulations provide for undertakings to be designated individually or jointly as having SMP. Any imposition of wholesale (or retail) obligations to address a competitive concern, can only arise through the finding of significant market power (SMP) through the process of market analysis, in a particular defined market.

130 In the context of market analysis, it is necessary to define the relevant product and geographic market and ensure that any consideration of market power is evaluated under the SMP criteria to ensure that there is a competition concern and if so, that appropriate remedies are applied.

Functional Separation

131 ComReg is aware of its powers in this regard and has not ruled out their use, as indicated in paragraph 135 of the Strategy Statement. However, ComReg is prepared to allow Eircom some further time in which to further develop its internal control and governance environment – which ComReg believes is still insufficiently developed as regards non-discrimination at this time - before initiating a review of this nature.

Industry complaints – recovery from storms

132 ComReg's views in relation to Eircom's network quality of service, set out in sections 3.1.2 and 3.2.2 of this document, also apply to BT's comments on recovery by Eircom from recent storm damage. ComReg is additionally investigating related consumer issues, particularly with respect to charges levied on customers for service that was not provided during outages.

133 In relation to the consumer issues, ComReg document 14/42¹⁹ noted that it had requested fixed line service providers, whose customers may have been affected by the outages, to clarify to ComReg how they will ensure that charges are not imposed on customers for an electronic communications service or product that was requested but not supplied during recent months, in accordance with section 45(1) of the Communications Act 2002, as amended. ComReg stated that it is investigating instances where consumers may have been charged for services that were not supplied, contrary to Section 45(1) of the Act.

¹⁹ ComReg Document 14/42, "Electronic Communications Services – Recent Fixed Line Services Outages – Information Notice", 02/05/14.

Transparency of SMP obligations

134 ComReg considers Sky's proposal on SMP transparency to have merit and will consider publishing the suggested suite of SMP obligations that apply across regulated markets. In the interim, a table listing a reference and links to where all current SMP obligations can be found is available on the ComReg website²⁰.

Industry Forums

135 Regarding Sky's other comment on industry forums, it should be noted that while ComReg facilitates such forums, it has a duty to remain independent.

136 The ComReg Wholesale Products team monitors operators' engagement in the process and intervenes when issues arise that are a cause for concern or when matters are brought to ComReg's attention. In facilitating and chairing industry forums ComReg is conscious of relevant obligations and also of the need for reasonableness and proportionality.

137 ComReg advises operators on regulatory aspects of wholesale product development as required both bilaterally and through the forum process. These interventions are intended to assist the process and to ensure that the obligations are met and that the demands made on the SMP operator are commensurate with, and do not go beyond, those obligations.

138 The product development process can, by its nature, be time consuming and it is important that the process is executed such that obligations are met while at the same time operators' rights to a fair and reasonable process are ensured. It is possible that this approach is being mistaken as an attempt to achieve consensus.

139 If issues of particular concern arise then the ComReg Wholesale Products team can refer the issue to the ComReg Wholesale Compliance team for further investigation, a course of action which is also open to operators.

Reflections on the previous strategy statement

140 ComReg's management team conducts an assessment of its performance against its strategy on an on-going basis and an overall assessment of performance against strategy is a part of the strategic planning process. In addition, the focus of Chapter 3 of the Strategy Statement is to assess the extent to which ComReg's goals are currently being met.

²⁰ http://www.comreg.ie/telecoms/table_of_smp_obligations.563.1076.html.

6 CONCLUSION

141 ComReg received responses on a broad range of topics though with certain overall themes being apparent. ComReg appreciates the time that stakeholders took in preparing their submissions. ComReg has considered whether it could do more, based upon the responses received, and whether it should amend or expand any of its priorities having regard to those responses. For many of the issues raised, ComReg's regulatory remit is limited to some degree, while for others work is already underway which will impact upon those issues. But where necessary and appropriate, ComReg has adjusted its Electronic Communications Strategy Statement for 2014-16 and its Annual Action Plan for 2014-15. (published in parallel). The final Strategy Statement therefore contains revisions to the draft version published in April 2014, and these mostly reflect ComReg's consideration of the respondents' submissions.