



Commission for  
**Communications Regulation**

## Submissions to Consultations

### **Response to Consultation on Draft Strategy Statement 2010 – 2012 – 10/49**

**Submissions received from respondents to consultation on  
ComReg Documents 10/31, 10/31a, 10/31b, 10/31c**

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**An Coimisiún um Rialáil Cumarsáide**

**Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email [info@comreg.ie](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

## **Submissions**

### Submissions to ComReg Consultation D 10/49

- A1. 3
- A2. Eircom Group & Meteor
- A3. ALTO
- A4. BT
- A5. Chambers Ireland
- A6. Ericsson
- A7. IDA Ireland
- A8. IE Domain Registry Ltd
- A9. NDA
- A10. O2
- A11. The Consumers Association of Ireland
- A12. TIF

A1. 3



Ms Niamh Fitzgerald  
Commission for Communications Regulation  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
**BY REGISTERED POST AND EMAIL:** [strategystatement@comreg.ie](mailto:strategystatement@comreg.ie)

14 May 2010

Dear Niamh

### **STRATEGY STATEMENT COMREG 10/31**

Hutchison 3G Ireland Limited ("3") welcomes the opportunity to respond to ComReg's consultation in respect of its strategy statement for 2010 – 2012. Over the next couple of years, a number of issues will significantly affect the electronic communications sector in Ireland: (i) Next Generation Access ("NGA") and the provision by ComReg to eircom of a 'risk premium'; (ii) the definition of the universal service obligation; (iii) bundling; (iv) switching; and (v) anti-competitive behaviour in the retail mobile communications market in Ireland. ComReg needs to be pro-active, responsive and balanced in its approach to these issues. It must create a truly competitive electronic communications sector in Ireland in which there is cross-platform competition and innovation flourishes. With the acquisition of Perlico by Vodafone, the acquisition of O2 by Telefoncia S.A. and the acquisition of Meteor by eircom, 3 is now the only truly mobile network operator in Ireland. It is also a leader in respect of innovation. 3 was the first mobile network operator (MNO) to launch mobile broadband (2007), pre-pay mobile broadband (2008) and a symbian product to protect child users of mobile phones ie 'KidSafe' (2009). It is the only MNO to have a hybrid pre-pay and post-pay product ie 'Best of Both', and provide access to Skype. 3 is the official National Broadband Service provider. As a result, its views carry particular weight in respect of these issues. 3 looks forward to the publication of a robust strategy statement for 2010 – 2012 and decisive action on the part of ComReg.

#### **Next Generation Access**

In the absence of market failure, 3 does not believe that ComReg should provide eircom with a risk premium. Section 12 (6) of the Communications Regulation Act, 2002, as amended provides that ComReg must take the utmost account of the desirability that the exercise of its functions aimed at achieving the objectives of: (i) promoting competition; (ii) contributing to the development of the internal market; and (iii) promoting the interests of users within the European Union, does not result in discrimination in favour of or against particular types of technology for the transmission of electronic communications services. 3 is currently upgrading its network to 14.4 MB/s and will continue do so. UPC is also upgrading its network and will continue to do so. For ComReg to provide eircom with a risk premium in the absence of market failure would be unfair and contrary to ComReg's statutory functions and objectives.

**Directors**  
Robert Finnegan  
Canning Fok, British  
Susan Chow, British  
Frank Sixt, Canadian  
Edith Shih, British  
Kevin Russell, British

1

**Hutchison 3G Ireland Limited**  
Registered Office:  
3<sup>rd</sup> Floor  
One Clarendon Row  
Dublin 2  
Ireland  
Registered Number:  
316982



## Universal Service Obligation

The European Commission is currently consulting in respect of the definition of the universal service obligation (USO) and its extension to broadband. 3 believes that the best policy to achieve universal broadband is competition and Member State initiatives such as the National Broadband Scheme. In particular, we believe that the USO should not be re-defined in such a way that it confers an advantage on one technology over another. 3 would like to highlight the contribution made by mobile technology to the universality of electronic communications. Mobile technology provides telephony and broadband access to people living in rural areas, rented accommodation, on low incomes and with poor credit histories.

## Bundling

Bundling of products is increasingly a feature of competition in the Irish retail communications market. 3 believes that ComReg needs to be vigilant of the competition issues relating to bundling. For example: (i) customers of fixed broadband are less likely to switch than telephony customers; (ii) long contracts act as a deterrent to switching; and (iii) customers may not necessarily always be aware that they are renewing a contract eg by accepting an upgrade. ComReg needs to: (i) advertise, explain and promote switching; (ii) determine the competitive balance between bundles and contract duration; and (iii) ensure transparency in respect of contract renewal.

## Switching

As discussed above, ComReg needs to advertise, explain and promote switching. Whilst Ireland has an excellent mobile number porting facility and an independent price comparison website: [www.callcosts.ie](http://www.callcosts.ie), 92 % of consumers recently surveyed by ComReg had not switched mobile provider in the last 12 months and 69% had been with the same mobile provider for in excess of three years.<sup>1</sup> Whilst 80% of consumers surveyed stated that the main reason for not switching mobile phone provider was that they were satisfied with their current supplier, 52 % indicated that they would switch their current mobile provider if their monthly mobile phone spend was reduced by 6 – 10% by switching to another provider. There is price competition in the market. The problem is that there is not a culture of switching. ComReg needs to address and overcome this problem.

## Anti-Competitive Behaviour in the Retail Mobile Communications Market in Ireland

Finally, ComReg needs to be aware of the commercial pressures that the current economic crisis is placing on incumbent operators to maintain market share and use its concurrent competition law powers under the Communications Regulation Act, 2002, as amended to investigate any allegations of anti-competitive behaviour.

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<sup>1</sup> <http://www.comreg.ie/fileupload/publications/ComReg1022.pdf>.



Yours sincerely

  
**MARK HUGHES**  
Head of Regulatory

**Directors**  
Robert Finnegan  
Canning Fok, British  
Susan Chow, British  
Frank Sixt, Canadian  
Edith Shih, British  
Kevin Russell, British

A Hutchison Whampoa company

**Hutchison 3G Ireland Limited**

Registered Office:  
3<sup>rd</sup> Floor  
One Clarendon Row  
Dublin 2  
Ireland

Registered Number:  
316982

Place of Registration: Republic of Ireland

## A2. Eircom Group & Meteor

**eircom Group**

**Response to ComReg  
Consultation Paper 10/31**

**of**

**16<sup>th</sup> April 2010**

**Draft Strategy Statement**

**2010-2012**





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## A. Executive Summary

1. This response is submitted on behalf of eircom Group representing the combined views of eircom Ltd and Meteor Mobile Communications Ltd. We welcome the opportunity to comment on ComReg's Draft Strategy Statement 2010-2012 (ComReg 10/31) which we hope will facilitate fruitful discussions to take place in advance of the finalization of the Strategy Statement by ComReg. In order to inform its strategic thinking, in December 2009, ComReg issued a "*Call for input on Industry trends*" (09/90). In this Call for Input interested parties were invited to put forward opinions on environmental, technological and market trends affecting the communications industry and regulation over the next three years. Such inputs were intended to inform the development of ComReg's strategy for this period. eircom and Meteor responded separately to this Call for Input in December 2009 and this Group response to Document 10/31 should be read in conjunction with both these responses, which are appended to this document. For the avoidance of doubt, all three documents form an intrinsic part of our response to ComReg Document 10/31.
2. The responses from eircom Ltd. and Meteor of December 2009 offered an overview of market developments and specific future plans, focusing on the evolution of markets and competition, investment strategies (e.g. in the context of NGA) and on the roll-out and growth of mobile broadband, coverage and network priorities (both in-building and geographic). Based on this long term commercial strategy, a number of regulatory reforms required to ensure delivery of the same were highlighted. It is important to note that focus was given to action that would support and enhance market evolution decisions and indeed we argued that any strategy articulated by ComReg should be backed up with proportionate, targeted and sound regulatory engagement.
3. On reading the Draft Strategy we believe that ComReg has failed to grasp the opportunity to deliver the much needed regulatory dynamism so required by the industry. The ComReg Strategy should be grounded in the wider context of the emerging EU Digital Agenda and its associated strategic challenges, all of which have a direct impact on Ireland's economic performance and on ComReg's key role in supporting national economic objectives. Specifically, the Digital Agenda requires all stakeholders to maximise the potential of Information and Communication Technologies (ICT) to advance job creation, sustainability and social inclusion. It requires focus, not just on the incremental evolution of a regulatory process, but on progressive solutions for the achievement of ultra-fast broadband, the promotion of innovation and of e-commerce, fair solutions to content and intellectual property issues and the guarantee of network security in a world of rapidly changing technology.
4. The Draft Strategy Statement 10/31 provides little in the way of concrete action based on positive forward looking proposals. Rather than choosing to provide industry with a strategic vision for the future, ComReg has opted instead to identify four priorities, based on ComReg's organisational structure, with corresponding actions, those being: Consumer; Competition; Innovation; and, ComReg as a Centre of Excellence. Whilst the spirit of these priority areas, in themselves, cannot be questioned, on examination of respective actions outlined, we believe that ComReg has either failed to date to live up to commitments made or omitted to include key activities.
5. ComReg's Draft Strategy Statement uses language that appears supportive of innovation, access and reform. Yet, without the necessary framework for delivery, the Strategy will ultimately fail to meet the market demands. Without an overarching framework encompassing investment, NGN, convergence, spectrum access reform, etc. ComReg's Draft Strategy Statement fails to deliver a composite and strategic plan for the telecomms sector as a whole. These themes are expanded upon further in the remainder of this document, although we note that we have already raised many of these issues with ComReg in the context of individual workstreams.

6. The **Macro Economic Environment** has changed radically since the last ComReg Strategic Review in 2007, which was predicated on an environment of strong economic growth. We are now in the middle of a global economic recession which the OECD has described as “*the deepest recession of the post-war era for the OECD area*”<sup>1</sup>. Ireland has been hit worse than most countries by this recession. We are entering a time when a step function change is taking place in telecommunications technology worldwide, with NGN/NGA infrastructure taking over from legacy equipment. The regulatory environment in Ireland needs to embrace and keep pace with this change. The business case for NGA investment is tenuous at best, and in the context of the current recession, investment funds are extremely scarce. Against this backdrop, it is imperative that ComReg’s stated intention of “*facilitating investment and innovation*”<sup>2</sup> is backed up by the implementation of a far more fit-for-purpose and proportionate regulatory regime, which caters for the economic realities facing network investors, and particularly our legacy costs and debt levels.
7. The urgent need to facilitate the telecommunications industry to invest and the need to ensure that this objective is the pre-eminent goal of regulatory strategy cannot be overstated. In terms of the fixed network platform, achieving a goal of a mainly fibre-based national access network will be a critical building block for long-term growth of ICT-based enterprise. National economic recovery and sustained long-term growth in Ireland, as set out in the Government’s road-map<sup>3</sup> to a Smart Economy depends on achieving a step-change in investment levels in Next Generation Access Networks.
8. In order to facilitate **investment** it is essential that a climate of confidence and trust, allowing for reasonable regulatory discretion, is established between all stakeholders, and ComReg should use its Strategy Statement as a means of improving this confidence. In this context, ComReg’s past disproportionate emphasis on incumbent compliance relying on legacy regulatory constructs (including an over reliance on the unproven “ladder of investment” concept as a facilitator of investment and a spectrum management regime established in 1926 in dire need of updating), needs to be replaced by a direct focus on investment and on an improvement in the overall operating environment.
9. **The competitive landscape** has changed hugely in recent years, as evidenced by the following:
  - UPC, Vodafone and O2 have entered the fixed line market, UPC with the advantage of a monopolistic platform in urban areas, and the mobile operators with the backing of global scale players. In contrast to these huge competitive advantages enjoyed by our chief competitors, we continue to be constrained by outdated regulations from ComReg which have thus far taken no account of the current reality of market convergence and platform competition. On the contrary, eircom is forced to compete in the competitive urban areas on the basis of nationally averaged prices, which act to directly damage eircom’s competitive position and, by extension, the overall market;
  - Related to this issue is ComReg’s approach to regulation of **pricing**. In this context, there is an urgent need for regulatory flexibility to allow our fixed division to immediately avail of the benefits of costs reductions and lower wholesale price inputs in its retail bundled offerings, to replace the current restrictions on our ability, including removing the shackles on our mobile division, to offer competitive bundles to meet competition from UPC, Vodafone, O2 and others;
  - Direct regulation of prices and regulatory constraints on our ability to directly compete across the retail markets have resulted in ongoing significant decline in our revenues, access lines and traffic, resulting in heavy losses of market share, particularly in urban areas;

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<sup>1</sup> <http://www.oecd.org/dataoecd/19/7/43668195.pdf>

<sup>2</sup> ComReg Document 10/31, page 4

<sup>3</sup> Ireland – The Smart Economy Report of the Innovation Task Force March 2010 at <http://www.taoiseach.gov.ie/eng/InnovationTaskforce/ReportoftheInnovationTaskforce.pdf>

- Markets continually evolving and converging into a single market for fixed / mobile / cable / broadband. In this context, the pace of change of regulation in Ireland is very much out of sync with market evolution, e.g. there has been no review of the rapidly changing Broadband Market by ComReg since early 2005.
10. Another major challenge facing ComReg, eircom and the industry going forward is the issue of **USO**. In this area the following issues need to be prioritised by ComReg:
    - Cost to eircom of meeting performance targets;
    - Long standing requests by eircom for appropriate funding;
    - Implications of proposed rollover of USO Designation by ComReg;
    - The urban market is competitive while the rural market is not commercially viable for investment, with the consequent challenge and cost of maintaining and upgrading to a quality rural network;
    - Restrictions of geographically averaged pricing obligations
  11. Access to **Spectrum** will be the single most important factor driving the development and expansion of mobile broadband products and services over the coming years, playing a key role in the development of Ireland's smart economy. It is vitally important, therefore, that action taken by ComReg in this regard both encourages investment and, at the same time, secures sufficient spectrum at a reasonable cost. To this end, we call on ComReg to deliver a "spectrum access strategy", which provides a blueprint to industry on future access, licence duration, and trading. It is clear that industry requires certainty to invest and clarity on long-term access. Delivery on these fronts should help realise long-term investment in networks, products and services, and deliver a mobile market that can rival the best in Europe.
  12. In summary, therefore, eircom Group calls upon ComReg to move quickly from identifying the objectives and strategies in this statement and to formulate concrete regulatory policy actions that stimulates infrastructure investment and competition in services.

## B. General Remarks

13. The Strategy Statement comes out of a statutory duty on ComReg to set out its stall and approach to industry, and the structure of the document reflects the allocation of responsibilities within ComReg for Consumer; Competition; and Innovation. The draft Strategy Statement is positive in some aspects and we would agree with some of the positions set out in it, particularly on market evolution (i.e. it is contracting); the challenges arising for us all from declining revenues and the imperative of higher bandwidth and investment; the need to maintain balance and create the right incentives for investment; the imperative of relationships within industry moving to a new level of credibility and confidence; and the differences between urban and rural markets and the emergence of sub-geographic markets.
14. However, while the investment challenges are well articulated, the Strategy needs more grounding in the overall objective for Ireland and the specific challenges that this country faces including scale and rural topology. It also needs a greater sense of urgency in its execution. We need to lead, not lag, and we need to help enable economic growth through the Smart Economy which, in turn, attracts Foreign Direct Investment and jobs. It also needs to recognise that many of the conditions for relaxing regulation are here and now (e.g. in the case of bundling) and must be delivered to secure an NGA future.
15. Linear extrapolations of existing business and regulatory models will not achieve this objective. We are in the middle of a step function transformation of every aspect of our business and we believe that ComReg needs a similar forward looking model for the industry. The challenge for the model is to encourage investment which, in turn, enables competition. This involves recognising platform competition from global scale players; maximising the scope for industry solutions on wholesale platforms (e.g. not pre-emptively regulating to a predetermined solution); and embracing the move to scale plays/consolidation (e.g. regulate spectrum in big chunks, releasing the Digital Dividend as early as possible, co-ordinated with release in other bands to ensure sufficient bandwidth to drive LTE).
16. eircom Group is moving at speed to address all aspects of its business following detailed reviews about what needs to be done to turn it around. What is clear from those reviews is ComReg's short and mid-term decisions will play a critical role in the business' future and a successful, balanced relationship is essential to Ireland's success in the Digital Economy. The Strategy Statement is very important in providing the right signals to underpin our transformation.
17. What is also clear is that the Irish environment has changed dramatically. Any perception that eircom enjoys a cosy incumbency position misunderstands both the changes in the market and the huge challenges facing this business. It is essential that ComReg takes its decisions from an informed position and the Strategy Statement is a positive development in that regard, although it could go further and achieve much more.
18. eircom is critically challenged by its economic, financial, competitive and regulatory environment:
  - eircom' has a very high level of debt
  - Total market value is expected to continue to fall over the next 2 to 3 years
  - eircom faces major challenges to restructure the costs of its business.
  - Another imperative is to find growth. That is most likely to come from the unregulated areas of broadband, including mobile, and developing attractive wholesale offerings for OAOs;
  - eircom group's competitors are well run international brands that enjoy the cost benefits of regional, sometimes global scale and have made large inroads into the fixed markets with aggressively priced bundled products. Their regional scale advantage is compounded by local mobile leadership. In cable, UPC also enjoys significant global scale and technological advantage, with the expected launch of 60Mbits this summer. Traditional DSL is also increasingly challenged by Mobile Broadband.

- Finally, eircom needs to invest in a platform that allows it to compete in the long term against cable and new generation mobile networks.
19. When we look at the impact of the environment on these objectives we see that:
- Our competitors keep under-cutting our bundle prices by some 20%, yet we are not allowed to respond because of outdated imputation methods that will not let eircom reflect its new, hard fought for lower cost base until well into the future;
  - Competition is focusing in urban areas, meaning the cross-subsidies upon which the rural network is enabled, are being eroded, raising deep questions about not just the rural position but the impact on eircom's finances;
  - We are being forced to invest in an "old tech" rural network for which there is no viable re-investment case. That diverts scarce funds away from "leapfrogging" into NGA. The financial cost of meeting ComReg's quality of service targets is huge.
  - At the same time, the costs of meeting USO obligations is being ignored or delayed by ComReg, in terms of arranging a proper funding mechanism;
  - The approach to spectrum appears to be driven more by the needs of raising funds for the Exchequer than the need for large blocks of spectrum to be parcelled together to enable the Smart Economy; and
  - Recent regulatory decisions have shown that, when in doubt, ComReg applies a "belt and braces" approach to regulation rather than the minimum necessary (proportionate) approach to deliver its objective.
20. The future cannot look like the past – particularly in the area of regulation. There is no question that ComReg needs to pursue its regulatory agenda and that is captured in the Draft Strategy Statement. But it is important that ComReg start applying its discretion more positively and deliver more proportionate solutions to its regulatory objectives. We also urgently need to engage on unlocking USO funds. eircom's urban profits are being eaten away; rural volumes are dwindling and our cost base is fixed. This is simply not sustainable. The Strategy Statement does not reflect the immediacy of these developments or the urgency of the tools to address them.
21. There is the imperative of Digital Ireland and our NGA future. At the moment, the business case for large scale NGA investment is tenuous at best. We need a new, cooperative approach, bringing together government, industry, local authorities and funding partners. This requires a new regulatory model and it needs to be the centrepiece of our debates going forward. Essentially rolling over the existing regime, even allowing for greater risk will not cut it.
22. What is very clear is the regulatory challenge of NGA is not to create competition (which appears to be ComReg's primary statutory focus), like it was with copper. The challenge is to create **investment**. In that regard eircom was disappointed to see NGA appearing under the Competition heading as opposed to Innovation. It suggests to eircom that the same regulatory model will simply roll over on to NGA. The old recipes, based on riding on the back of existing (and inherited) infrastructure, will not work, because there is little to ride on to start with. We are dealing with a much more level playing field (based on platform competition amongst global scale players), and cooperation incentives are strong. It is clear that we must all work together to create a new regulatory paradigm for this market. This means further developments in the way ComReg, eircom and industry work together. The Strategy Statement can be an important tool to focus industry on the criticality of investment and inevitable industry consolidation.

23. With the right outcome and constructive co-operation between the industry and the regulator, it is possible that an advanced and competitive telecoms industry, fit for the Smart Economy in 21<sup>st</sup> century Ireland, could be realised. In fact, with the right outcome we could envisage a stretched investment scenario whereby the development of NGB through collective efforts of the industry would significantly exceed the rather cautious forecasts of today. With a sub-optimal outcome and a failure by the parties to effectively engage, a stalemate could develop and eircom Group could be significantly damaged financially, potentially setting back the further development of Ireland's telecoms infrastructure many years.
24. Overall, the Strategy Statement should be more ambitious in terms of achieving a breakthrough outcome, and more grounded in Ireland's operating environment and economic realities. The process should seek to discuss and establish a forward-looking environment and framework that promotes competition, efficient investment and innovation, and the mechanisms for achieving these objectives in more concrete form.

## **C. EIRCOM GROUP RESPONSES TO COMREG QUESTIONS**

### **1. Are the trends identified in Annex 2 accurate and complete?**

25. eircom Group broadly agrees with the trends articulated that influence the dynamically evolving electronic communications market. However it should not be forgotten that the macro-economic environment will have a significant influence on the sector's evolution.

#### **Economic Environment**

26. ComReg refers in its Draft Strategy Statement to the current economic recession being experienced across the globe, but most particularly in Ireland. In spite of this, eircom Group's experience is that ComReg's approach to regulation has not altered as a result of the onset of the recession and there is nothing in Document 10/31 to indicate that, going forward, ComReg intends to change its approach on the basis of the prevailing economic conditions.
27. One obvious example of this is the example of USO targets, which were set a number of years ago, on the basis of which may have been considered by ComReg to have been reasonable network infrastructure investment levels to attain these targets. In the current economic environment, investment by all operators is being curtailed. ComReg needs to acknowledge these changes, some of which are well beyond eircom Group's control, by seeking to align the targets more closely with current economic realities.

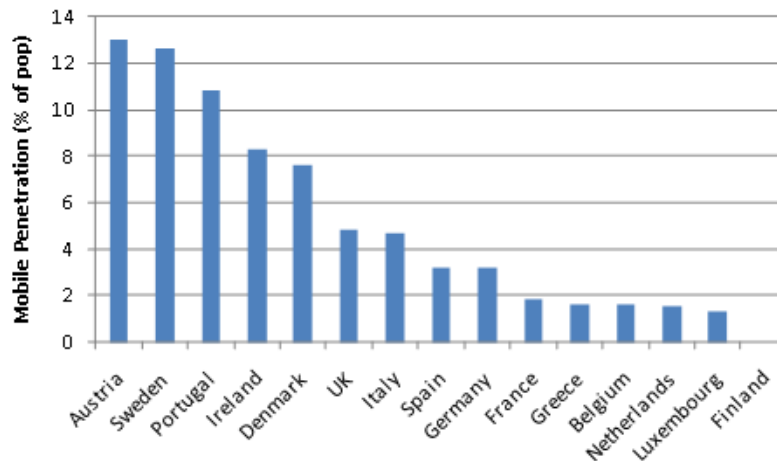
### **2. Are the implications of these trends correctly identified?**

28. Again we would broadly agree that the implications of the trends appear on paper to be identified. However questions remain as to whether ComReg's regulatory philosophy is sufficiently evolved to effectively support market evolution.

#### **Competitive Landscape - Market Evolution and Convergence**

29. The Irish telecoms market and the associated competitive landscape are undergoing a period of rapid and fundamental change. Cable broadband and voice is rapidly gaining market share, with UPC now being a very effective competitor in urban areas. Cable broadband will continue to grow and reach penetration levels comparable to other European countries.
30. Mobile Broadband, in Ireland, has shown dramatic growth in recent years, reaching 30% of the market in little more than two years. Indeed, international benchmarks indicate the high penetration of mobile broadband in Ireland, as illustrated on the graph below from the EU Commission for the EU15 countries showing Retail Mobile Broadband Lines as on 1<sup>st</sup> July 2009.





31. In addition, the entry of Vodafone and O2 into the fixed line consumer market is increasing migration of voice traffic to mobile networks and is also resulting in the rapid take-up of mobile Broadband, which continues to grow at a previously unexpected rate. In tandem with this, DSL growth has plateaued and may go into decline. This is, to some extent, accounted for by the degree of fixed/mobile broadband substitution. eircom Group believes that there is a substitution rate between fixed and mobile broadband of approximately 35%. Clearly, platform competition has become a reality, and we would encourage ComReg to prioritise the provision of regulatory relief to the industry as a result of this intensified platform competition, especially in the urban market. In the rural market, competition is less intense, but migration of lines and traffic between fixed and mobile operators continues apace.
32. There is consolidation among the OAOs, as evidenced by the strategic alliance between BT and Vodafone. There is the rapid decline of fixed traffic and a steady decline in access lines. It is expected that the consolidation of the wholesale market, taken with other developments, such as the recent dramatic price reductions, will result in a substantial uptake of Line Share in urban areas.
33. Against this background, and that of declining mobile ARPUs, mobile operators are active in the fixed segment, leveraging brand strength and global sales/marketing synergies. Bundles are becoming an increasingly important feature of the market, with consumers looking for value and ceasing to draw the distinction between access and traffic prices. Bundle prices are, to a large extent, driven by the cable operator, on the back of favourable broadband economics and marginal sales/marketing costs.
34. The commercial reality of a single broadband market involving DSL, cable, FWA and mobile broadband is here already and this reality ought to be reflected in the Market Definition and Analysis to be conducted by ComReg over the lifetime of the Strategy Statement.

### **Spectrum Reform**

35. Access to spectrum will be the key driver for the eircom Group in the months and years to come. Spectrum is the life blood of the mobile industry and with technological developments resulting in the delivery of enhanced products and services, the requirement for operators to both better utilise current assignments and access more bandwidth will only increase.
36. Like many other countries, Ireland has seen dramatic growth in mobile broadband, as mobile technologies finally begin to deliver on their promised capabilities. This growth has culminated in mobile broadband reaching 30% of the market in little more than two years. Evolving technologies, such as Evolved High Speed Packet Access (HSPA+) and Long Term Evolution (LTE) can only help feed this broadband growth. In addition, the opening up of lower frequencies, to support mobile broadband, enables better indoor coverage in urban areas, and will be a key component in successfully addressing the Digital Divide. With the projected growth of 3G, the predicted migration to LTE and the

potential migration to wireless as a means of fulfilling a part of eircom's USO, the availability of sufficient spectrum at reasonable cost is essential and ComReg should ensure that this is the case.

37. As access to spectrum to meet the above need will be the key influencer of mobile growth, and a fundament for the development of the "Smart Economy", a framework for spectrum access is the key strategic deliverable that eircom Group requires of the regulator. eircom Group would argue that the current strategy falls somewhat short in its delivery.
38. In the previous Call for Input, Meteor (answering as part of the eircom Group) called on the regulator to ensure that access to spectrum is optimised. It was argued that reform of the regulatory framework for spectrum management in Ireland to be undertaken in a strategic and coherent manner. Specifically a holistic approach to the following was highlighted:
  - Access to the Digital Dividend;
  - 900 MHz and 1800 MHz liberalisation and future access;
  - Access to 2300 MHz and 2600 MHz bands;
  - Licensing reform;
  - Spectrum trading
39. The context for reform on such a basis, and for the need for a "vision for access", needs to be placed in the context of the challenges that the industry will face in the short to medium term.
40. As outlined above the continuous investment required, coupled with the delivery of enhanced products and services to consumers, is fundamental to the continuation of a highly competitive national mobile market. Operating in a regulatory environment, therefore, that fosters development and allows for competing network to deliver, in a timely fashion, the types of products and services now so demanded by consumers is key.
41. This is why we would maintain that dealing with the above in a composite form, providing a vision for future access thereby enabling operators, within a stable regulatory framework, to better plan network and service development, is vital. This will not be achieved without an overarching framework for spectrum management and access reform. It is simply not good enough, nor will it have enough impact, for the regulator to deal with spectrum access issues and long-term licensing in the manner outlined to date.
42. Without re-stating all of the points made in Meteor's previous response to the Call for Input as these still stand (see Appendix 2), we would look to the example of other jurisdictions where a more holistic approach was adopted, specifically with respect to spectrum, with a spectrum modernisation programme underpinning delivery of the same. To this end, we would draw the regulator's attention to the approach adopted in the UK, through the Digital Britain report and strategy, and equally the recent approach by the German regulator to deal with spectrum access in a holistic and open manner.
43. The programme of modernisation adopted in Ireland should result in the delivery of a framework to manage access to the Digital Dividend, liberalisation of the 900 and 1800 MHz bands in the hands of the current licensees (as well as ensuring new access to the bands), proposals for licensing the 2300 and 2600 MHz bands, the replacement of finite licences with rolling licences and provision made for the introduction of a spectrum trading regime.

#### **Pricing and Bundling**

44. The issue of appropriate price controls for retail and wholesale services is of major strategic importance to the industry, as it impacts the ability of operators to compete with each other and recover their legitimate costs.
45. Bundling has become a feature of the telecommunications market in recent years, with the result that the key pricing challenge for ComReg over the next couple of years is on the retail pricing side. Almost all operators are now choosing to offer services primarily in bundles. Simple bundles include line rental and calls, but bundles including

line and calls, TV, Broadband and even mobile calls are becoming more common. The regulation of such bundles must be considered very carefully, as controls which prevent certain players from taking part in the market could damage competition rather than enhancing it.

46. Providers such as UPC, who may have a near monopoly in the cable TV market, bundle their TV services with Broadband and telephony in a way other operators cannot replicate. If consumers demand such bundles, the focus of regulation should not be on preventing the consumers' needs from being met, but on facilitating competing offers. ComReg should consider rationalising the various controls in the market with the aim of reflecting market reality (i.e. that operators offer certain types of bundles, and not stand-alone products; and operators sell a portfolio of products) in a new consistent set of rules. These rules should be transparent to all players, and regularly reviewed.
47. If ComReg's actions are to have the effect of enhancing competition in the market place eircom Group believes that ComReg should introduce a more proportionate retail regulation environment allowing eircom Group be in a position to compete against UPC/Vodafone/O2's bundled offerings. This would involve fairly reflecting the cost base ComReg would require eircom Group to recover when marketing its bundles; so for example, it would be based on the new, lower LLU or Line Share monthly rental prices, and would capture current or forward looking channel efficiencies.

### **3. What are the main challenges for the industry and for regulation over the next two years?**

#### **Promotion of investment is key**

48. The industry is, at present, on the cusp of major technology change with consumers demanding broadband products of greater than 25Mb per second. Cable operators across the world are upgrading their platforms to DOCSIS 3, mobile operators are developing plans for LTE, even before 3G has been fully rolled-out, while telecoms companies are developing business plans for roll-out of fibre based access networks. Only last week, UPC announced that it plans to roll out a 100MB broadband service across its network in August 2010. All of this is happening when the industry is going ex-growth and ARPUs are stagnating or falling. The ability to generate funds to meet these CAPEX demands is a major challenge for the industry. The challenge is most acute in a sub-scale market such as Ireland. ComReg (and other policy makers) need to take a realistic view of the costs and challenges of investing in telecoms infrastructure. ComReg needs to particularly take account of the specific circumstances that pertain in Ireland, i.e. economic, demographic factors, etc.
49. A key policy objective for ComReg for the immediate future should be to create the regulatory environment which encourages investment and collaboration between all stakeholders in the industry. In spite of the ongoing rapid technological development in relation to next-generation core and access networks, and the fact that this investment would have wide social and economic benefits to Ireland, the business case is extremely challenging, even under the most optimistic assumptions of uptake and price. Blanket reapplication by ComReg of current generation access remedies would be sure to discourage investment in NGN. eircom Group therefore calls for regulatory forbearance from ComReg in relation to NGN and NGA, in order to encourage such investment, and thereby encourage Ireland's migration to advanced technologies.
50. In relations to the telecommunications market in Ireland, ComReg also states in Document 10/31 that it will "*continue to shape the development of this market by promoting competition*". In order for such competition to flourish, a necessary pre-requisite is ongoing investment by the various industry stakeholders. It is therefore imperative that ComReg lives up to its commitment and uses its regulatory powers to foster an economic environment which promotes telecommunications investment, to the ultimate benefit of the wider Irish economy.

51. We also note, in this context, that the European Commission published its communication on ‘*A Digital Agenda for Europe*’, setting out the main policies for the ICT sector between 2010 and 2015, on 19<sup>th</sup> May 2010. The communication identifies the conditions, goals and measures for the optimal exploitation of ICT to the benefit of the European economy. The first of the main priorities listed in this publication includes the fostering of NGA deployment, and, in this context, the Commission proposes “*due account to be taken of investment risk when establishing cost-oriented access prices*” and “*“openness” to innovative business models*”. eircom would fully support such an approach, and we believe that ComReg should do likewise in its Strategy Statement.

## **NGA**

52. A major issue currently facing industry and regulators is NGA. On one hand, the industry is grappling with the potentially extremely large capital expenditure associated with consumer demands for increased bandwidth, in the context of economic recession and very uncertain business cases. On the other hand, regulators are concerned that NGA investments may lead to new economic bottlenecks and the establishment of new monopolies.
53. eircom Group, like others in the industry, is carefully considering the issues associated with NGA. For its part, eircom Group is committed to doing everything in its power to advance the NGA agenda, and, in this regard, would welcome a collaborative approach from industry, both fixed and radio access networks operators, based on open access principles. Rolling over the existing regulations which were developed around Legacy Networks are not appropriate for NGA, where operators should be encouraged to invest in new technology within a framework that gives certainty.
54. As eircom Group considers potential investment in NGA, combining fixed and mobile technologies, it is imperative that ComReg create the regulatory conditions to facilitate that investment, both by eircom Group and by other industry players. NGA investment is a major strategic issue for the industry and eircom Group has recently undertaken a detailed study of its implications. Clearly, an appropriate regulatory framework for NGA is an essential pre-requisite if the industry is going to invest in NGA.
55. eircom Group welcomes the discussions initiated by ComReg and Government and will continue to participate in these discussions. Encouragement of investment, which protects and supports sustainable competition at the retail level, should be the key objective of ComReg and policy makers with respect to NGA.
56. eircom Group notes that innovation should be fostered by ComReg in a technology-neutral manner. However, it is clear from Document 10/31 that ComReg is concentrating on mobile- and wireless-based innovation. Section 7.3 identifies the “Priorities and Actions” under innovation. The absence of any recognition of innovation in the fixed line space is a big omission and of obvious concern. We believe that ComReg needs, as a priority, to reconsider its approach to innovation by pursuing strategies which will foster innovation in the fixed line space as well as mobile-and wireless-based innovation and should correctly categorise the strategic issues of NGA within innovation.

## **Social Obligation / Universal Service Obligation (USO)**

57. If investment in the future is to be promoted the old regulatory constructs must be reformed. eircom Group has to date has been fully supportive of the principle of universal service, and is proud of its long history in delivering universal services to consumers in Ireland as the universal service provider (USP). However is disproportionate under the EU Universal Service Directive for the USP to have the obligation to meet binding USO targets which are prohibitive to meet in the absence of proper industry funding. In this regard eircom Group believes that ComReg needs to establish a proper USO funding mechanism without further delay.

58. eircom Ltd is designated by ComReg as the USP with associated obligations. The high proportion of overhead network in the USO regions, with the attendant high fault rates that characterizes such a network, exacerbates the challenges for eircom Ltd to meet its USOs economically.
59. eircom Group notes that ComReg is consulting on eircom Ltd's USO designation for the period 2010-2012, which is the same timeframe that the Strategy Statement covers. In addition to USO funding, there is a clear need for review of:
- **USO Performance Targets** - Excessive investment in the legacy copper network may be of limited strategic value over the medium term and potentially diverts scarce resources from NGA investment.
  - **USO – Legacy Services** – the continued provision of certain designated services, such as facsimile and dial up internet, will become increasingly challenging in a next generation environment while the relevance of those services to end users declines. ComReg currently mandates eircom Ltd to support these services, even where broadband is available to customers, and the current ComReg Consultation does not appear to envisage any change in this position over the next two years which is unfotunatley myopic.
  - **USO - Payphones** – the continued mandated USO provision of Payphones must also be questioned in light of changing usage patterns, particularly given the changes in the levels of mobile penetration.
60. eircom will be responding to this Consultation Paper (ComReg document 10/35) highlighting the need for a fresh regulatory approach in line with the overall principles argued in this response.

**4. Given the trends, market conditions and consumer needs, is ComReg's strategy focus on the correct priorities?**

61. As will be clear from eircom Group's overall response, eircom Group believes that certain issues which ComReg should prioritise over the period 2010-2012 have not been given the requisite prominence in ComReg's Draft Strategy Statement 10/31.

**5. Are there any additional priority areas that need attention over the period of this strategy statement?**

62. The Regulatory Framework under which the industry operates is slow-moving, in contrast to the ever changing dynamic industry environment. Trends such as converging markets, fixed mobile substitution, mobile broadband, etc. are likely to continue to accelerate over the duration of the Strategy Statement. ComReg must not, as it has done in the past, allow significant delays to take place in the Market Analysis process with consequential imposition of regulatory remedies in the face of rapidly changing circumstances. Otherwise this will stifle innovation by allowing for the retention of regulatory controls on eircom Group which have been rendered superfluous by the intervening developments.
63. eircom Group calls upon ComReg to formulate concrete regulatory policy proposals that stimulate competition in services. Regarding ComReg's overall approach to the retail and wholesale access market within the European Union (EU) Regulatory Framework, eircom Group would welcome a holistic approach to the formulation of regulatory policy and strategy for the development of access competition in the electronic communications markets in Ireland. In this context, there should be a proper analysis of all possible alternatives to PSTN access, including cable, mobile broadband, fixed wireless access (FWA) and other access technologies. The European Union Regulatory Framework recognises that, while mandating access to network infrastructure may promote competition, NRAs "need to balance the rights of an infrastructure owner to exploit its infrastructure for its own benefit and the rights of other service providers to access facilities that are essential for the provision of competing services"<sup>4</sup>.

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<sup>4</sup> 'Access Directive,' Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108.

# **Appendix 1**

**eircom Ltd. Response to 09/90**

**eircom Ltd.**

**Response to ComReg Doc. 09/90**

***Information Notice – Call for input on Industry trends  
for ComReg Strategy Statement***

**22 December 2009**



## DOCUMENT CONTROL

<b>Document name</b>	eircom Ltd. Response to Information Notice – Call for input on Industry trends for ComReg Strategy Statement
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## **SUMMARY**

eircom welcomes this opportunity to respond to ComReg’s Information Notice 09/90, “Call for input on Industry trends for ComReg Strategy Statement”, of 1 December 2009.

eircom would welcome the development of a genuinely forward-looking regulatory policy strategy that supports Government policy objectives in the ICT area. eircom thus calls upon ComReg to formulate a policy strategy and a regulatory environment, which are truly forward-looking, supporting innovation in technology and services and rewarding infrastructure investment.

If regulation is poorly formulated, not only will it fail to achieve its objectives, but it may also lead to a worse situation than if there had been no regulation. For example, where regulated wholesale prices are set too low, consumption of the service concerned will be above the economically desirable level and future investment will be deterred. Conversely, if wholesale prices are too high, optimum utilisation of network facilities will not be achieved with consequential adverse impacts on retail prices and consumer welfare.

eircom calls upon ComReg to formulate concrete regulatory policy proposals that stimulate infrastructure investment and competition in services.

Regarding ComReg's overall approach to the retail and wholesale access market within the European Union (EU) Regulatory Framework, eircom would welcome a holistic approach to the formulation of regulatory policy and strategy for the development of access competition in the electronic communications markets in Ireland. In this context, there should be a proper analysis of all possible alternatives to PSTN access, including cable, mobile broadband, fixed wireless access (FWA) and other access technologies.

The European Union Regulatory Framework recognises that, while mandating access to network infrastructure may promote competition, NRAs “need to balance the rights of an infrastructure owner to exploit its infrastructure for its own benefit and the rights of other service providers to access facilities that are essential for the provision of competing services”<sup>5</sup>. In addition, we would ask ComReg to specifically address the following:

- Next Generation Access: eircom calls for regulatory forbearance in relation to next-generation core and access networks, in order to encourage investment in a technology which will have wide social and economic benefits to Ireland, but the business case for which is extremely challenging, even under the most optimistic assumptions of uptake and price.
- Competitive markets are emerging, where many players offer bundles of services. ComReg should consider rationalising the various controls in the market with the aim of reflecting market reality (i.e. that operators offer certain types of bundles, and not standalone products; and operators sell a portfolio of products) in a new consistent set of rules. The focus of these rules should be to facilitate replication of bundles, to allow all players to compete fairly. Measures which prevent certain operators from participating fully in the market may damage competition.

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<sup>5</sup> ‘Access Directive,’ Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108.

## **RESPONSE**

### **Environmental**

#### **Statutory basis**

From a statutory perspective, the transposition of the new EU Telecoms Framework into Irish law will be the most significant event in the coming year. eircom is of the view that the current NGA dialogue, which eircom fully supports, should continue and should inform policy decisions with respect to NGA. In particular, we look forward to the outcome of discussions on price adjustments for investment risk, co-operative arrangements and infrastructure competition. The issue of geographic sub-markets is becoming increasingly important and this, we believe, should be addressed as a matter of priority.

Furthermore, the provisions with regard to Functional Separation should be viewed as being intended as a remedy of last resort and other remedies, more appropriate to the Irish context, should be fully considered.

#### **Market evolution**

The Irish telecoms market is undergoing a period of rapid and fundamental change. Cable broadband and voice is rapidly gaining market share. Cable broadband will continue to grow and reach penetration levels comparable to other European countries.

Mobile broadband continues to grow at a previously unexpected rate and DSL growth has plateaued and may go into decline. This is, to some extent, accounted for by the degree of fixed/mobile broadband substitution. eircom believes that there is a substitution rate between fixed and mobile broadband of approximately 35%.

Furthermore, there is consolidation among the OAOs, with the strategic alliance between BT and Vodafone. There is the rapid decline of fixed traffic and a steady decline in access lines. It is expected that the consolidation of the wholesale market, taken with other developments, will result in a substantial uptake of LLU in urban areas.

Against this background, and that of declining mobile ARPUs, mobile operators are active in the fixed segment, leveraging brand strength and global sales/marketing synergies.

Bundles are becoming an increasingly important feature of the market, with consumers looking for value and ceasing to draw the distinction between access and traffic prices. Bundle prices are, to a large extent, driven by the cable operator, on the back of favourable broadband economics and marginal sales/marketing costs.

The commercial reality of a single broadband market involving DSL, cable, FWA and mobile broadband is here already and this reality should be reflected in the Consultations and Decisions of ComReg over the next few years.

#### **Investment**

The industry is, at present, on the cusp of major technology change with consumers demanding broadband products of greater than 25Mb per second. Cable operators across the world are upgrading their platforms to DOCSIS 3, mobile operators are

developing plans for LTE, even before 3G has been fully rolled-out, while telecoms companies are developing business plans for roll-out of fibre based access networks. All of this is happening when the industry is going ex-growth and ARPUs are stagnating or falling. The ability to generate funds to meet these CAPEX demands is a major challenge for the industry. The challenge is most acute in a sub-scale market such as Ireland.

A key policy objective for the immediate future should be to create the regulatory environment which encourages investment and collaboration between all stakeholders in the industry.

## **Social Obligation**

### USO

eircom supports the principle of universal service, and accepts its wider responsibilities as the universal service provider (USP). eircom maintains, however, that it is disproportionate under the EU Universal Service Directive for the USP to have the obligation to provide connections at a fixed location where the market is not failing to provide such services.

To the extent that eircom must supply a fixed connection, we believe it is essential that eircom be granted statutory wayleave to private property on a similar basis to the rights of other utilities, such as the ESB. This would benefit consumers who have experienced delays with service due to eircom's inability to gain physical access to necessary infrastructure and facilities in-housing and commercial developments on private property.

eircom continues to be subject to an unfair burden in its capacity as USP. eircom reminds ComReg of its powers to provide compensation to the USP for the net cost of meeting the USO.

eircom calls for the USO on Payphones to be removed (to reduce the unfair burden) or, at a minimum, for payphone requirements to be reviewed annually, so as to maintain a reasonable balance between this USO burden and changing usage patterns, particularly given the changes in the levels of mobile penetration.

eircom is happy to continue provide its range of services for people with disabilities.

eircom looks forward to ComReg's Consultation in 2010 on the USO Designation and hopes that this will be a comprehensive, wide ranging review on the scope of the designation, taking account of the changes in the marketplace and the wider economy since the last review in 2006.

## **TECHNICAL**

### **Spectrum**

Spectrum is a key national resource and is the lifeblood of wireless operators. Like many other countries, Ireland has seen dramatic growth in mobile broadband, as mobile technologies finally begin to deliver on their promised capabilities. Evolving technologies, such as Evolved High Speed Packet Access (HSPA+) and Long Term Evolution (LTE), will only feed this broadband growth. In addition, the opening up of lower frequencies, to support mobile broadband, enables better indoor coverage in urban areas, and will be a key component in successfully addressing the Digital Divide.

ComReg's strategy needs to understand industry trends so that appropriate spectrum can be made available in sufficient time, and with the right conditions, to enable Ireland to leverage economies of scale and to be at the vanguard of wireless broadband

development. eircom appreciates the opportunity to inform ComReg of its view of industry trends in this important arena. Early release of spectrum combined with a holistic view on the predicted availability of all spectrum releases in the next few years is essential for operators to plan investments and strategies.

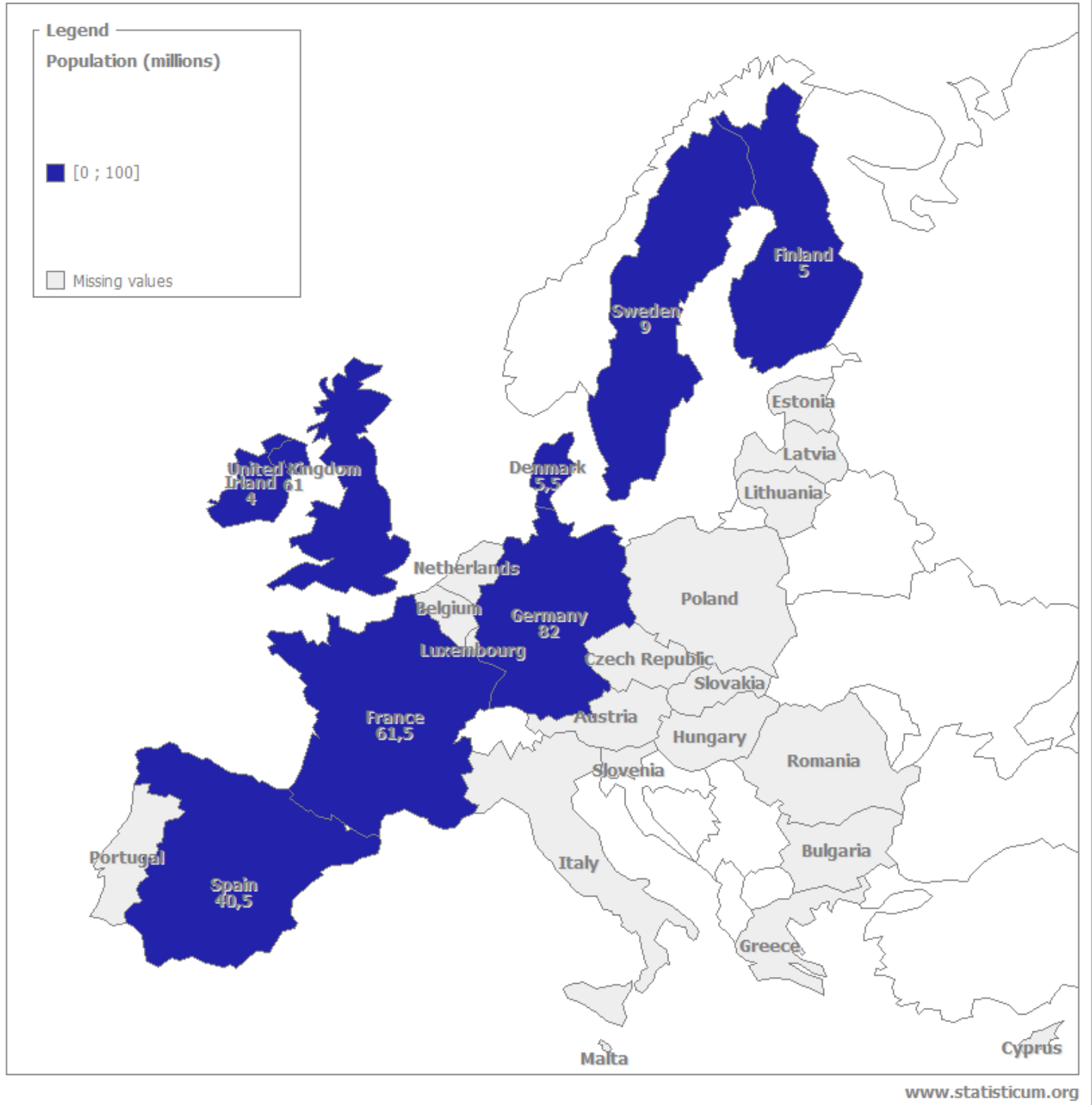
Many European countries are already working towards releasing spectrum to address a "looming spectrum crisis". There is a move to make new spectrum available on a technology and service neutral basis, with appropriate guidelines from CEPT (Spectrum masks etc) to ensure effective use of this spectrum. In addition, existing spectrum is being liberalised e.g. the GSM 900 and 1800 MHz band. Best benefit can be made from spectrum which is harmonised across Europe. There are a number of key bands where Europe and Industry are actively pursuing this trend and these are shown below. eircom would also encourage ComReg to make these bands available as early as possible.

In recent ComReg consultations, it appears that Ireland is moving close to making the 790 -862 MHz band available as the digital dividend. eircom would encourage ComReg to complete the process of standardising this band as the minimum Digital Dividend and to release this spectrum as soon as possible. The following map shows the EU 27 countries where it has been substantially decided to standardise on 790 - 862 MHz as the digital dividend for broadband communications. As can be seen, the potential market size will greatly drive economies of scale. Due to the sparsely populated nature of Ireland's rural population, Ireland will benefit greatly from the release of this spectrum in terms of bridging the Digital Divide.

The UMTS expansion band (i.e. 2.5 - 2.69 Hz band) is seen as the key expansion band for urban areas across Europe. Its availability is a fundamental requirement to enable scaleable broadband solutions such as LTE, enabling channel sizes of 20 MHz. Norway, Sweden and Finland have already released this spectrum. As a result, Telia Sonera has become the first operator in the world to launch LTE. This spectrum is not currently available in Ireland as it is used for MMDS. However, ComReg has an opportunity to consult on this spectrum in 2010. It is imperative that ComReg ensure that this valuable spectrum is released in the earliest possible manner, as it will maximise the potential benefit to Irish consumers. The main advantages of LTE will not be available to the Irish people unless large spectrum bands are made available.

## 790 - 862 MHz for Dividend

EU 27 Countries that have decided or considering



## **NGA**

The major issue currently facing industry and regulators is Next Generation Access. On one hand, the industry is grappling with the potentially extremely large capital expenditure associated with consumer demands for increased bandwidth, in the context of economic recession and very uncertain business cases. On the other hand, regulators are concerned that NGA investments may lead to new economic bottlenecks and the establishment of new monopolies.

Eircom, like others in the industry, is carefully considering the issues associated with NGA. For its part, eircom is committed to doing everything in its power to advance the NGA agenda, and in this regard would welcome a collaborative approach from industry, based on open access principles.

eircom welcomes the discussions initiated by ComReg and Government and will continue to participate in these discussions. Encouragement of investment should be the key objective of ComReg and policy makers with respect to NGA

## **Innovation**

**Technical Devices:** The recent emergence of powerful multi-functional Smart phones is a significant development, facilitated by increases in processor speed, open Operating systems such as Google-Android, improvements in battery power and touch screen displays. A rich ecosystem of application developers is developing a wide range of new applications for these devices. These applications are demanding increasing levels of bandwidth, not currently available or reliable on wireless access networks. Hence Smart-phones increasingly connect to best available network, using Wi-Fi to access fixed-line capacity within local access zones, while using lower speed 3G/HSPA/EDGE/GPRS networks for wide-area connectivity. This trend is likely to continue, as fixed networks evolve to FTTC/FTTH.

It is likely that Smart-phones will soon outnumber PCs as the device-of-choice by most users connecting to the Internet, and this may re-position the strength of dominant ICT players in the PC and mobile handset industries towards players that embrace the smart phone and open operating systems. The hardware brand of the device, which has been central to consumer choice since the inception of mobile telephony, is likely to become less significant, as happened to the PC industry in the 1980s. Instead, customers will make choices based on brand of Operating System and Application suite.

## **Fixed Mobile Convergence**

Convergence is continuing to be the dominant trend, both between fixed and mobile technologies and between TV and Internet technologies.

The boundaries between these technologies are now blurring, and the market is emerging as a single entity including voice, video and information transmitted over a variety of devices and technologies, but sharing common content and a common architecture. Fixed to Mobile substitution continues to be the dominant trend in voice, while new forms of TV are emerging such as RTE-Player, You-Tube etc, delivered directly over the Internet.

The market demarcations set by Regulatory Authorities in the late 20<sup>th</sup> Century, no longer make any sense in the 21<sup>st</sup> century. Fixed, Mobile & Cable represent a single market.

## **Bundling**

Bundling has become a feature of the telecommunications market in recent years, with almost all operators choosing to offer services primarily in bundles. Simple bundles include line rental and calls, but bundles including line and calls, TV, Broadband and even mobile calls are becoming more common. The regulation of such bundles must be considered very carefully, as controls which prevent certain players from taking part in the market could damage competition rather than enhancing it. Providers such as UPC, who may have a near monopoly in the cable TV market, bundle their TV services with Broadband and telephony in a way other operators cannot replicate. If consumers demand such bundles, the focus of regulation should not be on preventing the consumers' needs from being met, but on facilitating competing offers. ComReg should consider rationalising the various controls in the market with the aim of reflecting market reality (i.e. that operators offer certain types of bundles, and not standalone products; and operators sell a portfolio of products) in a new consistent set of rules. These rules should be transparent to all players, and regularly reviewed.



# Appendix 2

## Meteor Response to 09/90



**Call for Input on Industry Trends for ComReg Strategy Statement**

**ComReg Doc No: 09/90**

**Strictly Private and Confidential**

**18 December 2009**

## Executive Summary

Meteor Mobile Communications Ltd. welcomes the opportunity to respond to ComReg’s Call for Input on Industry Trends. ComReg is looking to assess the major market influences which affect the shape of the industry, end user demands and requirements. To this end, Meteor notes that input is sought on environmental, technological and market trends affecting the communications industry and regulation over the next three years.

This response document highlights not only mobile commercial drivers but also the wider challenges that Meteor will face in delivering the next generation of networks capable of offering much more advanced products and services to Irish consumers. It is important to anchor discussions within this context as it focuses on both what an operator would like to achieve and the role that the regulator can play in helping to realise this potential.

As such, this response provides an overview of market developments to date and discusses key market trends guiding the development of the mobile sector. Particular focus is given to the growth of mobile broadband and the technical evolution that will shape the delivery of the next generation of services. Consideration is then given to key regulatory decisions that will shape and influence the development of the mobile sector, with particular emphasis on the need for a strategic and comprehensive framework for the development of the telecommunications sector in general.

With this in mind, reference is made to the recent report published by the UK government, Digital Britain, which sets out a strategy for the delivery of a modern communications infrastructure, built on new digital technologies. Meteor would look to the Irish authorities (both government and regulator) to reflect on the issues covered and assess whether Ireland could benefit from the adoption of a similar strategic approach.

With respect to market developments, the following key points are discussed:

Network development

Roll-out of high speed 3G services

Technology evolution

Future spectrum requirements

Building on from a discussion on market developments and future plans, key regulatory issues addressed include:

The need for a holistic reform based on adoption of a long-term strategy that encourages investment

Specific regulatory action to ensure access to the digital dividend, 900 and 1800 MHz, 2300 and 2600 MHz, licence reform and spectrum trading

In conclusion, Meteor would stress the need for reform of the regulatory framework for spectrum management in Ireland, to be undertaken in a strategic and coherent manner.

## Introduction

As mobile is emerging as one of the most powerful ways to extend economic opportunities and key services, it will play an ever increasing role in the delivery of a “smart economy” and a “knowledge society”. Key then to ComReg’s strategy must be ensuring a space for a competitive mobile industry to play a dynamic role in the delivery of the same.

In advance of forming the regulator’s strategy statement, it is important that we recognise the many challenges facing the mobile industry today and the role that the regulator can play in shaping the environment to allow for development and investment in the future.

Meteor faces a number of challenges in the near term, these can be summarised as follows:

- Ensuring continued network investment
- Delivery of enhanced services to consumers

The ability to adequately provide each of the above is fundamental to the continuation of a highly competitive national mobile market. Operating in a regulatory environment, therefore, that fosters development and allows for competing networks to deliver, in a timely fashion, the types of products and services now so demanded by consumers is key to continued success.

Meteor is mindful that the Digital Britain<sup>6</sup> Report offers a strategic view of the entire communications sector in the UK backed by a programme of action. Importantly one of the key action programmes is to complement and assist the private sector in delivering an effective modern communications infrastructure built on new digital technologies. Whilst Meteor recognises the many differences that exist between the two jurisdictions, we do believe that the Irish consumer would benefit from the regulator and the government adopting a similar approach to regulation of the communications sector. Digital Britain outlines a series of specific actions that would incentivise progress towards next generation mobile networks. Meteor would argue that many actions identified for the UK could readily be applied to the Irish market and should form part of a forward looking regulatory strategy adopted by ComReg.

To expand on the above, it is best to place the debate within the context of Meteor’s current and future market plans highlighting what will shape direction and the impact that the regulator can have in framing the context for that development.

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<sup>6</sup> Digital Britain, Final Report, June 2009. Department for Business, Innovation and Skills and Department of Culture Media and Sport

## **Overview of Market Developments and Future Plans**

Meteor's strategic direction for the next number of years will be the development of its network with a focus on the roll-out of high speed 3G services. Over time it is anticipated that 3G networks will offer ubiquitous coverage at least equivalent to current 2G coverage.

As outlined in a number of recent responses to consultations and discussions with the regulator, Meteor's main aim is to reposition from an operator which is traditionally about voice and text to an operator offering full 3G services. Whilst it is important that Meteor retains and reaffirms its market position as a "value leader", the challenge remains responding to and delivering enhanced data usage products that meet the requirements of today's and tomorrow's consumers.

Recent market survey data reveals that mobile broadband has secured approx 28% share of the overall broadband market with mobile estimated to be currently securing in excess of a 50% share of broadband net-additions. This is phenomenal product growth, growing by 66% year on year in the Irish market. Currently approximately 23% of Meteor customers are active users of the 3G network. Meteor's strategy is to gain 20% market share in mobile broadband by mid 2011.

As part of this strategy, 2009 saw Meteor commence the roll-out of its mobile broadband offering, and the high speed data network now accessible in four cities and twenty one towns across the country. Enhanced product delivery is a key component of any commercial offering and as a signal of this Meteor recently launched its 14.4 Mbps 3G high speed data network, offering double the speed compared to other devices on the network.

It should be noted, however, that coverage priorities will also remain focused on in-building voice network access and coverage "on the move", ensuring that our voice network provides a ubiquitous national service. This can only be achieved cost effectively through continued access to lower frequency bands such as 900MHz.

Meteor currently operates across the 900 MHz, 1800 MHz and 2100 MHz bands. Coupled with national roaming Meteor provides 97% market coverage. However, with technology evolution driving a migration strategy towards enhanced network capabilities i.e. HSPA + and LTE, the roadmap is clear. Such technological evolution whilst capable of delivering enhanced products and services, will also necessitate a redeployment of spectrum use, access to larger spectrum assignments and a requirement to future proof access.

### ***What Regulatory Influences will Shape Meteor***

Ensuring such delivery, as noted above, requires continued development and investment in the Meteor network. As Meteor has stated, however, investment can only be undertaken if the regulatory regime is supportive.

From the outset Meteor would stress that when developing the Strategy, it is important to recognise that this will require actual provisions that support and enhance investment decisions. It should be noted that to date proposed policy actions in respect to the promotion of private sector investment fall considerably short on substance and indeed have failed to recognise the need for a more predictable regulatory framework and a more considered and holistic approach to regulatory intervention.

As a fundamental requirement, therefore, Meteor would wish to ensure that the Strategy is backed-up with proportionate, targeted and sound Government and regulatory action. We would particularly stress that the Strategy should address future spectrum access requirements and that no decisions are taken, in the short term, that could distort the competitive environment.

### ***Reform on a Holistic Basis***

It is important for Ireland to ensure that access to spectrum is optimised, thereby guaranteeing that operators can utilise radio spectrum in the most technically efficient manner possible and deliver enhanced services to the widest number of people as possible. Therefore, what industry in Ireland requires is certainty on development, certainty of delivery and clarity on rights and access. If this is provided, industry can adequately plan the delivery of services and make solid investment decisions.

Investment in technology required to deliver the types of wireless broadband networks so required for next generation broadband, deserves to be made in an environment that provides industry with as much knowledge as possible as to what will be available, when it will be available, and how it will be available.

Meteor would call on the regulator and the government, therefore, to adopt a Strategy that addresses this in the round and in particular introduces:

Timely release of digital dividend spectrum (at a minimum designation of the band 790-862 MHz for the provision of mobile broadband services);

Liberalisation of the 900MHz and 1800 MHz bands in the hands of the current users, a reconfiguration of spectrum within the 900 MHz band to allow for the deployment of 3G services and an auction for currently unused spectrum;

Provision made to auction access to the 2300 MHz and 2600 MHz bands;

The introduction of indefinite rolling licences in order to provide certainty for investment and an incentive towards greater roll-out;

The introduction of a spectrum trading regime

Action in respect to all of the above, however, needs to flow from a comprehensive review of the future of the telecommunications sector in Ireland and form part of a strategy to ensure that Ireland fulfils its potential as a leading digital knowledge economy.

### ***Digital Dividend Spectrum***

Utilising digital dividend spectrum will allow for an expansion of services which should, if managed correctly, play an important role in improving economic performance and in bridging the digital divide. In addition, the availability of digital dividend spectrum for the delivery of mobile broadband services has the very real potential to enhance both the scope and depth of products and services offered by mobile operators.

As outlined above, the benefits of using digital dividend spectrum for the provision of mobile broadband are enormous, both in societal and economic terms. However, new technology such as LTE (Long Term Evolution<sup>7</sup>) whilst offering improved spectral efficiency, with ensuing improvements in data provision, will require larger bandwidth. Additional bandwidth would also facilitate further HSPA deployments. To ensure, therefore, that technological developments can be accommodated, regulators need to be mindful of the detrimental impact that some forms of regulatory intervention could have. In this regard, limiting spectrum bandwidth or inflating access prices could result in fewer operators, reduced competition, higher consumer prices and a lessening of service differentiation.

### ***Future access to 900 MHz and 1800 MHz Bands***

As it currently stands ComReg's proposals for the future licensing of 900 MHz and 1800 MHz mobile spectrum fall well short of creating a positive climate for network investment particularly in lower density population areas. Regulatory decisions have the potential to significantly distort competition. This is true in general terms and specifically in respect of the provision of competing broadband services.

Meteor would argue that decisions taken here should not be taken in isolation from that of access to spectrum shortly to become available through release of the digital dividend.

### ***2600 MHz Band***

As the 2.6 GHz band is a frequency band available for IMT 2000/UMTS, it is vitally important that future access to this band is incorporated into discussion on the development of wireless broadband in Ireland. Despite a number of recent public consultations, the most recent being on Next Generation Broadband In Ireland<sup>8</sup>, the regulator has made no reference to the 2.6 GHz Band as one of the key areas facilitating the development of wireless based next generation broadband services. Meteor has already questioned this omission, arguing that access here will also shape the development and deployment of wireless services.

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<sup>7</sup> Advanced technology such as LTE will require wider bandwidths to offer mobile broadband data rates (for example 2 x 20 MHz for up to 150 Mbits/sec downlink)

<sup>8</sup> Next Generation Broadband in Ireland, 09/56

The omission of the 2600 MHz band from recent discussions on next generation broadband in Ireland, only serves to emphasize the disparate approach adopted by the regulator to the question of access.

### ***2300 MHz Band***

ComReg recently consulted on future access to this spectrum band, which currently is awaiting the outcome of ongoing international standards development work. In the absence of a System Reference Document there is no certainty on timelines for the availability of vendor equipment for technologies such as 3G, LTE and WiMax for example. This would present major difficulties for operators to develop strategies around the spectrum at this time. Whilst it is anticipated that ETSI will publish a System reference document for this band during 2010, Meteor would urge caution in respect of the timing of the award process for spectrum in the band, and would argue that access should form part of a strategic and holistic approach to future needs and requirements.

### ***2100 Mhz Band***

As outlined in greater detail in the section dealing with licence reform, Meteor would argue that Meteor's current 20 year licence to provide 3G services within the 2100 MHz band should be converted into a rolling indefinite licence.

#### **Licence reform**

In addition to the holistic approach to spectrum access required, Meteor would also argue that a review of the licensing regime should be undertaken. ComReg has, to date, appeared unwilling to debate and discuss licence access reform on any serious level. Meteor would maintain that to ensure the level of long-term investment required to deliver the next generation of networks and services, a reform of the licensing process needs to be undertaken. As such, the current piece-meal approach governing licence duration (with licence durations ranging from 10, 15 and 20 years) should be replaced with indefinite licences, subject to reasonable provisions to ensure ongoing, efficient use of the spectrum.

### ***Spectrum trading***

A recent Government Report on Spectrum Policy identifies spectrum trading rights as a "core principle" to be enshrined in future legislation, and indicates that a policy paper will be issued following consideration of comments received and given effect in legislation that will be prepared and published subsequently.<sup>9</sup>

As the Government appears to be moving forward with steps to adopt legislation that would facilitate secondary trading, Meteor would argue that the regulator should take cognisance of this position in framing a strategy for regulation in the coming years.

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<sup>9</sup> Department of Communications, Energy and Natural Resources, Report of Working Group on Spectrum Policy, p. 36



### A3. ALTO

# alto

alternative operators in the communications market

**Response to Consultation on ComReg Draft Strategy Statement  
2010 - 2012 Ref: 10/31**

**Submission By ALTO**

Date: May 21<sup>st</sup> 2010

ALTO is pleased to respond to the Consultation on ComReg's Draft Strategy Statement 2010 - 2012.

While the Consultation is primarily related to the whole Irish communications market, we confine our observations to the fixed market.

ALTO welcomes the Consultation as a way of ensuring alignment of strategic priorities and transparency. It should also provide a degree of regulatory certainty, which can have the effect of encouraging investment in the communications market.

ALTO notes that the fixed market has been subject to what can be characterised as aggressive *block and hold* behaviours by the incumbent over the past two to three years (some may suggest longer). Examples of these behaviours are available from the ComReg website and indeed have featured as listed cases in the High Court, all of which were settled prior to the formal litigation of any action<sup>1</sup>. The overwhelming dominance of the incumbent in Ireland remains exemplified by low uptake and bottlenecks in services which by now, should be heavily utilised, competitive and readily available in Ireland and are not e.g., Local Loop Unbundling, - LLU, Wholesale Broadband Access, - WBA and Ethernet services.

ComReg's Market Analysis and analysis undertaken by independently by firms such as Millward Brown, consolidate the ALTO view that numerous bottlenecks exist in Ireland and further that new entrants remain exploited as a result of aggressive behaviour and delay tactics engaged in by the incumbent. We await the 2010 ECTA Scorecard and remark that Ireland's ranking on the OCED table of information societies has yet again, slipped into third world rankings.

The period covered by the Draft Strategy Statement (2010 – 2012) should be a period in which fundamental change takes effect in the Irish communications

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<sup>1</sup> Bundles Litigation, Leased Lines and Line Share.

market, with particular emphasis on the fixed market. ALTO is committed to contributing to the evolution of the Next Generation Network, - NGN, and Next Generation Network Access, - NGA, debates in Ireland. We remark however, that the incumbent behaviour noted in the transition period to NGN seems to indicate a situation where the existing bottlenecks are being cleverly exploited and covered up in new technological parlance and pricing models, with the net effect of obfuscation and very high potential for asset stranding.

ALTO members have exhaustively invested in network in Ireland, which for the most part has resulted in derisory or limited returns. We call on ComReg to strive to replace the current scenario with a set of relevant, measured and achievable outputs to the benefit of the consumer, competition and innovation in the Irish market.

It is ALTO's view that competition in Ireland has been severely hampered by the elements mentioned above, in addition to an incumbent operator whose owners have engaged in little or not tangible investment to the benefit of their (wholesale) customers.

ALTO calls on ComReg to focus on its powers to encourage eircom to Functionally Separate. The requisite work for such an outcome should be undertaken at this time. Functional Separation would provide true Equivalence of Input, - EOI, this should also provide adequate returns and outputs for eircom's retail division and result in a more competitive and dynamic telecoms environment.

ALTO is engaged with Government on the subject of transposition of the new telecommunication framework package and we anticipate that the state will have transposition completed by April/May 2011. We believe the option included in the new package in relation to Functional Separation of eircom should be a key focus of ComReg's strategy over the next two years.

## **Response to Consultation Questions:**

Q. 1. Are the trends identified in Annex 2 accurate and complete?

A. 1. ALTO agrees with the trends identified. We do feel though that ComReg must seek to dispatch the incumbent monopoly over the next two to four years. This task must be completed in an environment of heightened technological and policy change. Monopoly power will now be sought through NGN and NGA products, services and offerings.

ComReg will be required to be highly proactive and vigilant in: Industry meeting management (mediation of operational issues and interim disputes); pricing reviews/modelling; service level agreement negotiations; dispute resolution and market analysis.

ALTO believes that the transposition of the new European regulatory reforms package and the remedies provided for within that package, including Functional Separation; provide a unique opportunity for ComReg to act and foster real change in the Irish communications marketplace.

Q. 2. Are the implications of these trends correctly identified?

A. 2. ALTO refers ComReg to answer 1, above. We remark further that while the trends that ComReg notes for example, that falling revenues and tighter margins appear to be symptomatic of the global recession. ALTO acknowledges that there are certainly elements of recessionary forces at play, but that the Irish market remains dominated by a powerful incumbent operator. Line Rental remains the highest in the EU 27, consumers and business customers are switching to what

some believe are anti competitive bundled offerings. The concentration of the broadband market which is wireless is not a positive trend, as it highlights a want or lack of investment in infrastructure in Ireland. While this is certainly true, there are some new entrants striving to make viable investments in infrastructure and are stymied at almost every turn, whether through: lacking of facilities access, unviable backhaul, outdated planning regulations or inconsistent interpretations of same planning regulations.

Q. 3. What are the main challenges for the industry and for regulation over the next two years?

A. 3. ALTO believes that the main challenges for industry will be remaining cost competitive in an ever-changing technological, legal and regulatory environment. Two years is a remarkably short period of time to implement the level of legal, policy and regulatory change that is planned. It has taken over ten years for industry to force the availability of an LLU offering in Ireland, which is price efficient, and supporting the development of competition. NGN Ethernet services are the focus of most operators priorities at this time, and they remain in an unfit for purpose state. Is it highly likely that NGA could be another massive battle for the industry without correct supervision, intervention/facilitation by ComReg.

ALTO encourages ComReg to continue to focus on Service Level Agreements, - SLAs, and minimum standards for the provision of products and offerings in order to maintain pressure on the delivery of meaningful and robust wholesale, and retail products in the market.

ComReg must continue to endeavour to break the enduring sequence of bottlenecks, which are extant in the Irish market. This will be for the good of all its stakeholders. This might be best achieved through the functional separation

remedy.

Q. 4. Given the trends, market conditions and consumers needs, is ComReg's strategy focus on the correct priorities?

A. 4. ALTO agrees that while ComReg has identified the various areas in which its strategy statement must focus. Each area provides a set of unique challenges within the context of the Irish communications market place. We provide a set of remarks below but comment that if the ComReg 'Regulatory Approach' is to be effective in each strand (Necessity, Effectiveness, Proportionality, Transparency, Accountability and Consistency) then the organisation may require some training to that extent.

***High Level Goal A:*** *To inform, empower and protect consumers, both residential and business, and to ensure the availability of a universal telecommunications service.*

**ALTO Remark:** This should be a business as usual area for ComReg. Nothing stated in the Consultation document is particularly controversial. ComReg should ensure not to overburden industry<sup>2</sup> with reviews in this area, unless analysis highlights specific problem areas<sup>3</sup>. ALTO members are very aware of their own compliance obligations in the USO area of regulation.

***High Level Goal B:*** *To drive access and investment in high-speed broadband networks through cross-platform competition and to use effective and appropriate wholesale regulation to create the opportunities for dynamic and sustainable competition.*

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<sup>2</sup> E.g., sending consumer requests to operators who are not consumer providers etc.

**ALTO Remark:** This will require retention and review of existing regulation, as well as the timely employment and facilitation of new regulatory remedies as a priority. This is in order to facilitate migration to the next generation of communications services – Network and Core.

Timely dispute management is critical to this goal. Disputes, whether interim or fully litigated actions do not assist investment decisions, market certainty or product lifecycles. ALTO remarks that in recent times ComReg has become more focused on this as an issue, however incumbent abuse of process has become a problem, as highlighted above.

***High Level Goal C:*** *To promote innovation by providing a predictable regulatory framework to support investment in converged services, for the benefit of the digital economy.*

**ALTO Remark:** This priority would be greatly assisted by ComReg publishing an annual work programme in a granular and timely fashion. This is not something complex, yet ComReg has an inconsistent policy in relation to publication and management of this.

ALTO members, to include smaller new entrant operators, struggle with the burdens placed on them via poorly managed scheduling, industry meetings, inconsistent, overlapping or replicated data requests (often issued under ComReg's statutory powers) and slow wholesale product development lifecycles. ComReg should consider retaining outside expertise (where more efficient) to execute specific work programmes on time, without obfuscation and delay levied

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<sup>3</sup> Reported issues with services, contracts, rate notices.



by the incumbent.

### **Stakeholder engagement:**

Engagement in a planned and results oriented manner must be a priority for all concerned. Ensuring effective time management and resource allocation is critical to any business and in regulation it is key to the delivery of results and robust outputs. ALTO members have been subjected to industry meetings where either the meeting minutes incorrectly reflect the intention of a stakeholder or the incumbent decides to 'agenda bash' to the detriment of time management and planned outcomes. This is both undesirable and unacceptable.

ALTO members recently requested reviews of the industry Leased Line Reference Offer – LLRO, both bilaterally and in the course of a full industry review. There was one specific area of interest for ALTO members. The subject was that of credit vetting criteria and policies imposed on operators in the market. eircom claimed this topic was not open for review, yet industry was in the process of a full and all encompassing LLRO review. The management of this issue by ComReg could have been better, in the sense that the next phase of the issue will be dispute. Industry must be listened to. Particularly where issues such as inconsistency with best EU credit management practice, dispute avoidance/management and barriers to market entry are concerned.

ALTO states firmly that ComReg should publish a full schedule of Market Analysis timetables, in addition to a listing of pricing reviews and consider doing so for a period of up to 24 months in advance. This allows for precise business planning for both ComReg and industry.

ALTO also calls on ComReg to publish online a full organisational chart, in order that the industry can reference the precise organisation and structure of ComReg

subject matter experts, all in one place.

**High Level Goal D:** *To be a highly effective, innovative organisation and recognised centre of excellence.*

**ALTO Remark:** This is clearly an admirable aspiration. ALTO has stated and valid concerns over scheduling, meeting management, execution and delivery of tangible results. This of course may be symptomatic of resourcing constraints however, we note that of late if certain ComReg resources are focused on a specific problem or area, the results are robust and more tangible than if for some reason the same resources are not targeted or allocated correctly in a given instance. Examples: Bundles Disputes, Lines Share, WPNIA and LLU Pricing.

ComReg cites the example of the Regulatory Impact Assessment – RIA, in the consultation document. In almost every consultation or direction, the RIA appears as a *pro forma* or almost boiler plate offering, which does not seem to offer precise conclusions to the reader on market, consumer or competition effect. This is an area on which ComReg should focus and particularise the elements of in future. It might well be the case that time and effort is expended in these RIAs however, to read a RIA one generally notes a list or orderly set of legislative instruments, rather than a plain English guide as to the intention and possible market effect of the regulatory measure(s) proposed.

ALTO would also like to see more input, coordinated reviews of competition and policy by ComReg's legal exponents, many of whom have the skills to manage industry meetings, yet are rarely visible to industry for the most part. This may mean re-aligning some resources. We commend ComReg for the 'working smarter' aspiration and are available to assist with information circulation and gathering should the need arise.

ALTO suggests that lead times for certain consultation processes and Market Analysis data request need to be longer in duration to respond than others. For example: Numbering Consultations might be less important than some other issue. ALTO notes that **four-week** consultation windows often require extensions to facilitate operator needs and also facilitate robust feedback on matters that are often critical to the market, consumer or competition. We would call on ComReg to apply the 'working smarter' or proportionality logic here as a priority (Long data request, long notice, long submission period).

Q. 5. Are there any additional priority areas that need attention over the period of this strategy statement?

A. 5. ALTO considers ComReg's inputs to the timely transposition of the new framework package, work on the NGA and Net Neutrality recommendations to be of critical importance to the market over the next two years. This will also require ComReg's WPNIA (Market 4) outputs to be concluded and implemented in a timely manner.

**Edit – 19<sup>th</sup> May 2010:** ALTO welcomes the WPNIA publication today. We remark that work on this area is critical to the market. We look forward to engaging with ComReg and the timely implementation of this development.

### **The New Regulatory Framework and NGA:**

Under this heading ComReg should be seeking *"[t]o provide a stable legal framework that stimulate investments in an open and competitive high speed Internet infrastructure and in related services"*. The new electronic communications framework that was agreed at the end of last year, permits co-operative arrangements and risk sharing only as far as they are **non-discriminatory** and **do not harm competition**.

In line with the agreed Framework, in cases where such arrangements are permitted, **rigorous conditions** need to be put in place to safeguard competition and to guarantee a non-discriminatory effect. In particular, **it is vital that these rigorous conditions ensure that any volume and term discounts can never have a discriminatory effect, even when applied by the least efficient regulator in Europe**. The Framework's key objective has remained the promotion of effective competition, ultimately leading to an absence of dominance in telecoms markets. Until that is achieved there should be no exemptions from the core principles. Ireland is very far removed from that key Framework aspiration.

Equally, Regulators have to take into account if significant differences in the conditions of competition exist in different geographic areas, but **geographic segmentation should not be encouraged**. Geographically differentiated regulation can be applied only if the conditions of competition are objectively and significantly different on a persistent basis in certain geographic areas. This again, should have no application in the context of Irish market.

### **Net Neutrality:**

While not an immediate priority, the below bullet points are ALTO's preliminary views in relation to the subject:

- Protection of consumer Internet access and closely track the existing U.S. "connectivity principles," recognising the legitimacy of network management tools.
- Recognise that competitive markets ordinarily protect against problems associated with degradation, blocking, or slowing of traffic.
- Allow for regulatory scrutiny of network management solely to ensure that it does

not restrict competition; an allegation of discriminatory behaviour would need to be addressed in this anti-competitive context.

- Allow that regulators be “empowered” to “address” service degradation when or if it occurs.
- This adds up to a case-by-case, factual analysis of alleged problems, rather than an anticipatory rule.

### **Governmental Policy Directions:**

ALTO highlights that the Government has the ability to mandate specified sets of policy directions on ComReg and industry. In certain circumstances, these directions make sense and can facilitate focus on problems. ComReg should consider any planned or industry led pressure to focus on a policy goal within the Accountability area (as identified) as well as in the Competition area of its remit.

**ALTO**

**21<sup>st</sup> May 2010**

A4. BT



**BT Communications Ireland Ltd (“BT”)  
Response to ComReg Consultation:**

**Draft Strategy Statement for 2010-2012  
Document 10/31**

**Issue 1 – 23<sup>rd</sup> April 2010**

**Introduction**

We welcome this consultation on ComReg’s draft Strategy Statement 2010 -2012.

We confine our observations to the fixed market. In the fixed market the presence of bottlenecks, unless appropriately regulated, can have an extreme negative impact on the development of competition and innovation in a market. Negotiation to gain access to these bottlenecks is with eircom wholesale.

ComReg has euphemistically described the past decade of difficulties in gaining appropriate and timely access to the bottlenecks as “*To date, the fixed wholesale market has been characterised by challenges and lack of trust.*” ComReg’s web site is littered with examples of how it has been forced to intervene to ensure that appropriate access is provided to eircom’s competitors and that eircom is prevented from exploiting its dominant position and control of bottlenecks.

Over the period covered by the draft Strategy Statement fundamental changes to the fixed landscape will continue and start to take place with NGN and NGA evolving to take the place of current bottlenecks. However, considerable investment has been made in access to bottlenecks such as LLU, the development of which has been considerably hampered over the years as is well documented on ComReg’s web site.

Is that investment and competitive opportunity to be swept away and to be replaced with another decade of challenges and lack of trust in seeking to obtain NGA bottleneck access?

It is our opinion that competition in Ireland has been severely hampered by the above. We know that this is also the opinion of fixed players. Given the views of ComReg and the industry on this we are surprised that ComReg has not given more prominence in this draft Strategy Review to the real possibility of using the powers

that will become available to it to force eircom to functionally separate. We believe that all the groundwork to prepare for functional separation should be being laid now. Functional separation at the access layer would provide true equivalence of input (eoi) for all players including eircom's downstream arms would we believe is the only sensible way to create a dynamic fixed e-communications market. Historically the argument has been that's it's too difficult to offer the same interfaces and services to all, and thus now is the perfect opportunity at the design stage for NGN and NGAs to design in eoi. As a simple step towards Functional separation ComReg should immediately mandate eoi in all future Decisions (as appropriate) as part of the non discrimination and transparency remedies. To date non discrimination regulation has proved ineffective due to poor and out of date transparency remedies.

The transposition of the European reforms is to take place by May 2011 at the latest. This includes the option for ComReg to functionally separate eircom. We believe that the functional separation of eircom at the access layer should be the prime focus of ComReg's strategy over the next two years.

ComReg's top line competencies provide the rationale for such action; Promotion of competition and innovation and investment.

### **Response to Questions**

**Q.1.** Are the trends identified in Annex 2 accurate and complete?

**A.1. Whilst** we do not disagree with the trends identified we believe that they have missed the fundamental issue addressed in the introduction above.

A monopoly faced with a sea change of technology/product and price will seek to re-enforce their monopoly in the new world and the signs are that eircom are already doing this through their NGN platform. Specifically monopoly power will be sought in NGA and NGN and any previous attempts to open the market through such things as LLU will be closed off.

Due to the increased complexity involved in NGN and NGA increased vigilance will be required by ComReg.

However, we do not believe that increased vigilance alone will be sufficient to address such monopoly aspirations. We believe that the transposition of the European regulatory reforms that is to take place by May 2011 which includes a remedy of functional separation provides the once in a generation opportunity for ComReg to create a truly competitive and innovative market in Ireland.

With next generation services ComReg must take the once in a generation opportunity for change. Not to do so would be a dereliction of its duties.

**Q. 2.** Are the implications of these trends correctly identified?



A.2. Please see A.1. If our prognosis of the likely behaviour of eircom will harden even further than past and current experience suggests in the creation of a new monopoly then the lost opportunity cost to other operators, consumers and Ireland will be enormous.

**Q.3.** What are the main challenges for the industry and for regulation over the next two years?

**A.3.** Two years is a very short period of time. It has taken a decade of effort by ComReg and the industry to force LLU product to be available in functionality and price that supports the development of competition. Great difficulty has been experienced in obtaining a fit for purpose NGN Ethernet service from eircom and we are still not there. NGA is likely to mirror the delays and procrastinations we have experienced with LLU.

The main challenge therefore is to break the monopoly of enduring bottlenecks in the fixed market. The opportunity to do this through functional separation and eoi must be seized by ComReg over the period 2010 to 2012.

**Q.4.** Given the trends, market conditions and consumer needs, is ComReg's strategy focus on the correct priorities?

A.4. No we do not believe that ComReg's strategy focus is on the correct priorities. It misses the most important one as set out above.

**Q.5.** Are there any additional priority areas that need attention over the period of this strategy statement?

A.5. Please see our responses above.

**end**

## A5. Chambers Ireland



**CHAMBERS  
IRELAND**  
IN BUSINESS FOR BUSINESS

Chambers Ireland submission to ComReg in response to their Strategy Statement 2010-2012.

May 2010

Please find our responses to the five questions posed by ComReg.

**1. Are the trends identified in Annex 2 accurate and complete?**

Yes. Increasingly business and consumer trends will converge on the mobile phone handset. The 'virtual world' user experience will be based upon mobility and data upload, download and storage in the cloud.

Key challenges will be how we give both consumer and business users access on a timely and broad basis to these new forms of data storage and transfer. A further challenge will be the ongoing push to provide symmetrical data transmission as Video on demand and other 'data heavy' technologies become the norm. Delivering enhanced upload speeds will become an even greater issue for all consumers not just data transfer heavy early adopters.

**2. Are the implications of these trends correctly identified?**

Yes. Ireland faces significant challenges and opportunities in this environment.

As a small relatively homogenous market of 4.5 million consumers, we present an ideal location for testing and trialling new ways of doing things and exploiting technologies.

The core challenges of early 21<sup>st</sup> Century in terms of reducing carbon intensity, exploiting the digital economy and unlocking the potential of sustainable transport, energy and water systems will for the most part stand or fall on the back of our ability to use and properly exploit telecoms technologies.

This is why we must focus on delivering a system or systems of data delivery that facilitate as much connectivity as possible and as broad a data upload and download 'pipe' as possible over as much of the country as possible.

We possess some excellent building blocks for supporting our transition to this new economy in terms of academic clusters—DERI in Galway and Sensor research

clusters in DCU— as well as a strong engineering capability in telecoms (in particular mobile broadband and ePayment).

The key challenge is how we can facilitate competition amongst operators in tandem with optimising investment spending from these disparate stakeholders, whilst also being mindful of competition law and European state aid rules.

### **3. What are the main challenges for the industry and for regulation over the next two years?**

For industry, it will be maintaining margins while also sustaining investment at levels that can win support from corporate headquarters often overseas. All private sector businesses must gain support in competition with other markets. It follows that the investment rate of return (IRR) must be set at a level that attracts corporate HQ support and buy in.

For Regulation, promotion of competition must remain an imperative as this has led to recent improvements in broadband availability and speed for example UPC's 100Mb service, 4G/WiMax developments and LLU rollout.

It is also important that to maintain as ubiquitous a level as possible of service while also ensuring that core infrastructure such as the copper wire network—does not fail prior to a full migration of voice and data to a new infrastructure designed for an IP based world.

### **4. Given the trends, market conditions and consumer needs, is ComReg's strategy focus on the correct priorities?**

See answer three. The proof will be how investment levels are maintained and Ireland's progress towards ever more users of rich broadband connectivity.

An over reliance on price as a core metric of success for ComReg may be harmful in this context.

Ireland needs to assure adequate levels of investment in telecoms infrastructure embracing wireless, cable and fixed line to assure quality for all consumers especially business. Squeezing margins purely to deliver on one pricing metric may, in retrospect, be construed as a Pyrrhic victory if we face a complete market failure such as a de facto abandonment of rurally based populations that are not within reach of richer wireless/fixed line or cable based connectivity rolled out on a commercially viable basis.

A further challenge will be the copper wire network and when a full migration to a wireless network built upon an IP-focussed core.

The copper wire network may also still be needed in the medium term to meet the needs of populations in sparsely populated areas. Although new compression

technologies may provide more longevity to this network than is currently deemed to be the case, it seems almost inevitable that in the medium term wireless networks built upon an IP focussed core will be the means by which rural connectivity will be facilitated.

This is especially the case as next generation technologies such as Long Term Evolution (LTE) offering enhanced latency and bandwidth will better facilitate advanced applications such as video conference and remote access.

**5. Are there any additional priority areas that need attention over the period of this strategy statement?**

Given our small population size ComReg will need to focus on a judicious mix of competition and collaboration between our telcos/broadcasters and other utility companies with an interest in data transfer if we are to facilitate next generation networks on as broad a geographic basis as possible. In this context, adopting a 'market/competition' fundamentalist approach may not help in delivering on a vision for NGA for a country with the most dispersed population in Europe. Competitive collaboration possibly with seed funding from the state will most likely be needed to deliver rich connectivity across the state.

One other consideration that ComReg may want to take into account is the impact of a functional separation of Eircom, an approach that in the UK has delivered transparency, competition, innovation and improved service levels.

Furthermore, we note that Finland has made rich broadband access a national right of all of its citizens, Ireland needs to move in this direction in the context of a broader Governmental framework focussed on delivering enhanced Broadband for all.

Ireland and ComReg needs to debate now how we can fund rich broadband connectivity at a time of major challenge for Central Government. Given international bond market gyrations, we cannot make promises that are either unfundable or undeliverable... and if we are to assure our position as a 'Smart' highly productive economy, then we will have to pay for this. ComReg needs to step up with support for an insightful debate that informs all stakeholders of the challenges we face in delivering and funding the vision of rich 'broadband access for all.'

Claire Cunningham,  
Chair,  
Digital Policy Council.  
21<sup>st</sup> May 2010

## A6. Ericsson

# Ericsson's Response to ComReg Strategy Statment 10/31

May 2010

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## 1. General comments

LM Ericsson ("Ericsson") welcomes the opportunity to comment and respond to ComReg's excellent draft strategy statement for the period 2010 to 2012.

## 2. Comments on Environmental, Technology & Market trends

Ericsson would suggest that the following are key trends that need to be considered in ComReg's strategy for 2010-2012. While these areas have been for the most part dealt with in ComReg's draft, we have suggested some additional actions for consideration.

### 2.1 *Continuing decline in revenue & increase in costs*

The advent of broadband is a double edged sword. Broadband services are significantly more expensive to deliver yet revenues are still declining as over the top services replace operator delivered services. This is driving operators to implement aggressive cost saving that would have been unthinkable just 4 or 5 years ago such as:

- Offshoring/centralisation of services
- Outsourcing
- Network sharing
- Network consolidation

The broadband market is evolving more quickly than ever while regulation and the legal system typically changes slowly. Therefore when considering spectrum regulations and licensing conditions being developed today, ComReg needs to consider what the landscape may look like in 5, 10 and 20 years time and look to develop a legal and regulatory framework that evolves with as much flexibility built-in in order to best be able to support the development of the Irish market. This will put Ireland in the position of leading other nations with regard to the best value and quality in networks and services.

Suggested Actions:

- 1.) Work with DCENR to create a legal and regulatory framework that is as flexible as possible so that regulation can keep up with the more rapidly changing market.

### 2.2 *Continuing rapid growth of broadband traffic*

While there are some signs of a slowing of growth in broadband subscriptions, the growth of broadband traffic is still exponential with no signs of slowing. Technology is rapidly developing to meet this demand however it is clear that more spectrum is required.

Newer technologies such as LTE and LTE advanced can deliver more than 1 Giga bit per second speeds over the air. However, in order to be able to do this aggregation of up to 100MHz of spectrum is required. While we do not expect to see widespread use of LTE advanced before circa 2013/14 licenses issued today may last for 20 years or more. Therefore it is important to not only issue licenses for today's needs but also as much as possible for tomorrow's.

Not only is more spectrum required but it is also important to consider more flexible use of spectrum, especially outside urban and suburban areas. For example the 900MHz GSM band and the future 800MHz digital dividend band add up to just over 100MHz of FDD bandwidth. Therefore in order to be able to achieve LTE advanced speeds in rural areas an operator would need somehow to access 100MHz of spectrum on some reasonable cost basis. While we may not need to figure out just how this may be accommodated in the future, it is important to consider some options and ensure any licenses issued going forward do not make the achievement of Giga bit speeds impossible outside urban and suburban areas.

Suggested Actions:

- 2.) With regard to spectrum licensing conditions in new licenses, consider how to ensure future license are written and framed with enough flexibility to achieve 100MHz channels while maintaining a healthy level of competition and the widest range of services and coverage for all.

### **2.3 GSM spectrum liberalisation**

Ericsson very much welcomes ComReg's decision to move ahead with the liberalisation of the GSM bands. The 900MHz band offers the opportunity of ubiquitous mobile broadband while the future use of 1800 MHz spectrum is an important issue in the context of 4G Long-Term Evolution (LTE) plans, given the possibility of 10 or even 20 MHz channel allocations that could feasibly be made in this band.

Suggested Actions:

- 3.) Re-consider its position with regard to the liberalisation of the 1800MHz band.

### **2.4 Licensing of spectrum bands below 1GHz**

In Ericsson's view, the bands below 1GHz are some of the most valuable natural resources from a communications point of view. For spectrum license below 1GHz ComReg should make it a pre-condition that this spectrum is utilised for the deployment of nationwide services providing greater than 95% coverage. Experience from the deployment of existing networks shows that maximum take-up of services and, hence, benefits from the use of these services derive to customers, operators and the wider economy only where there is nationwide deployment. Spectrum below 1GHz should also be subject to the tightest conditions around usage and spectral efficiency e.g. use of single frequency networks.

Suggested Actions:

- 4.) Examine how future spectrum below 1GHz should be licensed to ensure maximum benefit for the majority of the population



## **2.5 Licensing of the digital dividend**

Ericsson recognises that spectrum assignments for DTT have already been made (in the case of RTE) and are in the process of being made (with the BCI for the operation of three commercial DTT multiplexes). However, Ericsson strongly believes that cognisance must also be given to the wider issue involved in DTT licensing and the related analogue switch-off (ASO), namely the resultant Digital Dividend.

Suggested Actions:

- 5.) Ensure no allocation of channels for DTT between 790MHz and 868MHz which are harmonized for advanced mobile services across Europe.

## **2.5 Responding to the evolving EU regulatory framework**

ComReg's spectrum strategy needs to take account of the evolving European regulatory framework, one which envisages a more flexible approach to spectrum licensing while, at the same time, ensuring a co-ordinated pan-European approach to spectrum licensing to ensure that optimal use is made of the Digital Dividend and other bands.

Ericsson takes the view that developments at the European level will support the aim of making maximum economic use of spectrum. All regulators, including ComReg, are moving away from burdensome and inefficient "beauty contest" licence award methods and have begun to embrace the more transparent approach of auctioning spectrum. Such a shift should not, however, mean that public policy objectives must be abandoned when assigning spectrum usage rights. By imposing pre-conditions on entities who wish to take part in spectrum auctions and by designing the auctions carefully, ComReg should be able to ensure the most efficient allocation of spectrum, while at the same time meeting its public policy objectives.

The European Commission's plans for co-ordinated spectrum allocations for pan-European services is also a positive development in relation to the assignment of spectrum in this country. GSM would never have been the phenomenal success that it was (ultimately on a global basis) were it not for the fact that it had first been adopted as a pan-European standard. Similarly, the Commission's plans for the clustering of the same kinds of services into common spectrum zones (in order to support, for example, the deployment of advanced mobile broadband services) should help to facilitate the deployment of new pan-European services.

However, the European zone on its own cannot now guarantee the economies of scale needed for the introduction of the most cost effective and beneficial solutions for society. ComReg's move to make available the 2.3GHz band is to be welcomed. ComReg should continue to be cognisant of global spectrum developments and where appropriate continue to influence European thinking for the benefit of all Irish and European citizens.

Some regulators, notably Ofcom in the UK, have also begun to assign spectrum with secondary trading rights and there is no reason why ComReg should not adopt a similar approach here. Secondary trading can be a useful means of resolving inefficiencies in primary allocations, for example a failure to accommodate smaller users or regional demand, and so there are good reasons for allowing such trading in relation to future spectrum assignments made by ComReg.

Suggested Actions:

- 6.) Where appropriate, continue to take account of the evolving European regulatory framework in developing the Irish regulatory framework.
- 7.) Continue to monitor the global spectrum market appropriate continue to influence European thinking for the benefit of all Irish and European citizens.
- 8.) Work with DCENR on legislation and regulatory framework needed to support secondary trading.

## **2.5 Further development of the test & trial licensing scheme**

ComReg has done an excellent job of promoting Ireland as an innovation island when it comes to spectrum. Ericsson would encourage ComReg to not only continue to promote the test and trial scheme but also to look for ways to further develop the scheme as we believe that more opportunities exist for Ireland to develop further radio related R&D. Ericsson would be happy to bi-laterally consult further in this regard.

## **3. Summing up comments**

Ericsson welcomes the opportunity to contribute to ComReg's draft strategy and we hope our contributions and suggestions are both useful and informative. Regulation is always a challenge to get right. Maintaining the delicate balancing act between free market forces, ensuring competition and delivering on policy goals means constant dialogue with the industry both formally and informally is essential. If any of the comments raised by this contribution need clarification, Ericsson would be happy to bi-laterally consult further to clarify.

## A7. IDA Ireland

**Submission to ComReg**  
**29<sup>th</sup> June 2010**

- In March 2010, IDA Ireland published 'Horizon 2020', its strategic blueprint for attracting Foreign Direct Investment (FDI) into Ireland in the coming decade. FDI has been, and will continue to be, a key element in the export led recovery of the economy.
- A modern transport, telecom, energy, waste and water infrastructure are key to the ongoing competitiveness of the Irish economy. High levels of public capital investment in recent years have led to significant improvements in Ireland's infrastructure. IDA recognises that a range of infrastructure offerings including roads, rail, energy and Next Generation Networks (NGN) are extremely important for the ongoing development of the enterprise base. We must ensure the timely delivery of NGN's in an efficient and cost effective way. This is essential for the continued development of the 'Smart Economy'.
- IDA recognises that there has been significant investment made in broadband services in recent years which has resulted in greater availability of broadband country wide. However, IDA would welcome the capability for enterprises and other users to avail of greater speeds, instant access and levels of quality comparable to those in other advanced countries. In this regard we should support and encourage investments which facilitate a degree of speed, symmetry, latency, and geographic coverage sufficient to achieve this goal.
- IDA recognises that in the more recent past much of the state infrastructure investment has included the provision of telecoms duct networks. We would strongly support the mandatory provision of telecoms duct network as part of all future State infrastructure development programmes, such as roads and rail, water network upgrades, sewage and 'smart' electricity metering programmes. In order to ensure that the State, telecoms providers, enterprises, and residential customers benefit from this investment we would suggest that a system is developed which
  - facilitates open access to public ducting and other public infrastructure for fibre deployment;
  - ensure that these assets are efficiently and effectively utilised, provide a return to the State and support the deployment of NGN infrastructure.
- Incentives which support and encourage private sector investment in NGN infrastructure should be facilitated and encouraged. These should be developed on a technology neutral basis. This could encourage existing and or new infrastructure providers to invest in, or further develop, their networks.
- The availability of Spectrum in the Irish market and our geographical location provides us with a unique opportunity to further develop Ireland as a location for mobile services and to design and test-bed advanced services. The rollout of the Spectrum licences should be done in a co-ordinated fashion such that the terms of the various licences are streamlined. In addition, the licences

should be issued in such a format that they encourage and incentivise investment in the network.

- Finally, IDA would strongly welcome telecoms regulation which encourages infrastructure investment while recognising the need to maintain competition in the marketplace.

A8. IE Domain Registry Ltd

**ComReg  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1**

**21 May 2010**

**Re :- IE Domain Registry Limited Response to ComReg document 10/31 :-  
Consultation Paper - Draft Strategy Statement 2010-2012**

Dear Sirs,

We refer to the above Consultation Paper and we are pleased to submit this Response to the Consultation. We have confined our Response to matters relating to the operation and regulation of the .ie namespace.

As you know, the IE Domain Registry has consulted and co-operated closely with ComReg over the three year period since the coming into effect of the Communications Regulation (Amendment) Act 2007 ("the 2007 Act"). We think it important to make this point because, as will be seen from the following, some references in the Consultation Paper may unintentionally infer otherwise.

**1. Priority A1 - clarification of ComReg's objectives**

We would suggest that the terminology in ComReg's Consultation Document 08/48, which stated that ComReg's primary objectives are the "protection of .ie consumers and the protection and development of the .ie namespace as a valuable national resource" more appropriately captures the high-level goal, priority A1, set out in Section 6.1. Effective regulation may facilitate but will hardly "deliver consumer, internet related services".

**2. Priority A1 - clarification of ComReg's mandate**

Paragraph 9 on page 19 is inaccurate in stating that the 2007 Act transferred to ComReg "powers to make regulations affecting **the management and administration** of the .ie country code Top Level Domain (ccTLD)". In fact, the 2007 Act, in amending the Electronic Commerce Act 2000, transferred to ComReg powers to make regulations affecting **the use of**

.ie domain names within the .ie country code Top Level Domain (ccTLD). The legislation does not refer to "management and administration", for which the operator rather than ComReg must surely be held responsible.

### **3. Priority A1 - clarification of industry consultation/due diligence**

Paragraph 9 on page 19 should perhaps be extended to clarify that the outcome of the industry consultation was that that ongoing regulatory intervention in the .ie namespace should be minimised and should refer to ComReg's proposed approach to regulation as set out in ComReg Document 08/48 (12 January 2009), i.e. that "ComReg's aim is to minimise ongoing regulatory intervention once any identified issues are addressed and a suitable monitoring framework has been put in place".

### **4. Priority A1 - clarification of actions already undertaken**

The impression may be given by the wording of the three bullet points on page 20 that ComReg is waiting for the IE Domain Registry to perform these actions. To the contrary:-

1. The IE Domain Registry Ltd signed a formal Escrow Agreement with HEAnet in October 2009. Under the terms of this agreement an encrypted copy of relevant registry data is provided monthly to the respected third-party escrow agent, with provisions which allow the escrow agent to release the data to ComReg or other named third parties, such as a court appointed official or government body, in the event of registry failure, inter alia. The Escrow Agreement covers a range of, albeit unlikely, scenarios, including liquidation, receivership or failure to perform statutory obligations. Indeed, one specific term provides for the release of the data to ComReg "where the escrow agent receives a written notification from ComReg stating that IEDR is materially in breach of specified statutory obligations and that IEDR has failed to adequately remedy such notified breach of the specified statutory obligation within 20 working days of being so notified".

The Board of the IE Domain Registry Limited holds the strong opinion that this Escrow Agreement provides for the "protection of .ie consumers and the protection and development of the .ie namespace" to the maximum extent possible with the constraints of company law. (It should be noted that many European registries do not have any data escrow provisions of this nature). The Board recognises that ComReg has its own views on this matter but does not believe that further legislation, as mooted on page 20 of the Consultation Paper, can alter the position (and is, in the Board's view, unnecessary in any event).

2. The IE Domain Registry Ltd has developed terms of reference (in consultation with ComReg) for a Policy Advisory Committee (PAC) to provide stakeholder input to the Registry's policy development process and is awaiting ComReg's response to a recommendation for a PAC Chairman.



3. A "monitoring framework", referred to in bullet point three, is already in place; the IE Domain Registry Ltd :-
  - a. is currently submitting quarterly reports to ComReg, a process which commenced in quarter 4 of 2009;
  - b. has agreed a notification process with ComReg for certain events; and
  - c. is in regular contact with ComReg management on a range of issues.

#### **5. Priority and Actions A1 - clarification**

Section 7 on page 40 – On the face of it, the action item to "publish regulations" that govern "the operation of the '.ie' domain" does not seem to be consistent with ComReg's previously stated position, referred to above: "to minimise ongoing regulatory intervention once any identified issues are addressed and a suitable monitoring framework has been put in place".

#### **6. Priority and Actions A1 - clarification**

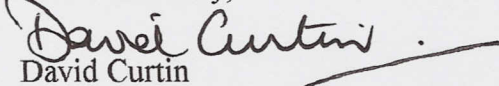
It is not clear to the IEDR that it would be the right approach for the .ie namespace to be "re-delegated" to the Department of Communications, Energy and Natural Resources (DCENR) and the Company will be making submissions on this matter to the Department as appropriate. In the great majority of countries worldwide the delegation rests with the National Registry, i.e. the country manager of the top-level domain. Operationally, it only makes sense for "the State" to hold the delegation where the registry is directly operated by the State. The intrinsic roles and responsibilities of the party holding the delegation, all of which are functions of the domain operator, include:-

1. Operate and maintain in a stable and secure manner the authoritative primary and secondary nameservers for .ie, adequate to resolve domain names under .ie for users throughout the Internet, in compliance with the relevant technological standards and policies;
2. Keep the .ie zone data, (as stored in the authoritative name servers for .ie) up-to-date;
3. Inform ICANN, as the organisation that performs the IANA function, of any changes; in the information on .ie stored in the IANA database.
4. Contribute to the development of relevant Internet technological standards.

One important action item is for the IEDR to sign an Agreement with ICANN, the US-based private not-for-profit entity responsible for the technical operation of the Internet – either an Accountability Framework or an Exchange of Letters and, for this purpose, the IEDR should hold the delegation. (Most European registries have now done so and Ireland remains behind in this regard).

We would appreciate if you could acknowledge safe receipt of this response in due course.

Yours faithfully,

  
David Curtin

**Chief Executive**

**IE Domain Registry Limited**

## A9. NDA

24 August 2010

Niamh Fitzgerald  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Dublin 1

**Subject: Draft Strategy Statement 2010-2012**

Dear Ms Fitzgerald

The National Disability Authority (NDA) welcomes the opportunity to respond to ComReg's consultation "Strategy Statement ComReg 10/31", as the lead statutory advisory body on disability and universal design in Ireland.

Information and communication technologies are fundamental to how people can interact and live within society. For people with disabilities, such technologies hold the potential to enable them participate and engage in society and access such things as services and information that have been formerly difficult or unavailable to them. ComReg has an important and pivotal role as regulator with regards to key services for people with disabilities including postal and telecommunications services, as well as in the area of new and emerging technologies such as digital terrestrial television.

The NDA broadly agrees and supports the priorities and actions specified in the draft Strategic Plan 2010 -2012. The NDA commends ComReg and sees it as important that there are specific commitments to service users and consumers with disabilities which ComReg are committing to over the next three years. The NDA welcomes such commitments as:

- strengthening the rights of consumers with disabilities to access and choose from the range of services available to all consumers (Priority A1)

- ongoing engagement and consultation with people with disabilities through the Forum on Electronic Communications Services for People with Disabilities
- facilitating product innovation to empower and inform the full range of consumers, including people with disabilities, in an increasingly complex market
- Access to the Emergency Call Answering Services by bringing new technologies to bear to assist vulnerable citizens, such as people with disabilities and the elderly
- ensuring the continued availability of Universal Service (Priority A3) which is of importance for users with disabilities and to looking at how such a universal service could be applied in a "Broadband for all" scenario

The NDA would also suggest that consideration be given to the following areas:

- In the transposition of the third Postal Directive by 31 December 2010, that in addition to availability and affordability of postal services, that accessibility of such services would be a key criterion
- In the Priorities C1-C4 dealing with Innovation, that universal design criteria be highlighted to ensure emerging and new information and communication technologies can be accessed, used and understood by people regardless of age, size, ability or disability. The NDA's Centre for Excellence in Universal Design would be happy to advise and support ComReg in any such initiatives
- In the Priorities D1 - D4 dealing with ComReg as an organisation that ComReg's ongoing commitment to disability-related issues and obligations under the Disability Act might be highlighted such as reasonable accommodations for employees with disabilities; ongoing improvements in relation to access such as the award winning consumer websites and to processes such as "disability proofing" policies and practices which considers the impact of any policy, practice or regulation on people with disabilities

The NDA would like to take this opportunity to acknowledge the good work done to date by ComReg and the ongoing commitment to consumers with disabilities. The NDA looks forward to continuing to work with ComReg and being available to advise and support ComReg in its work.

Yours sincerely,

Siobhan Barron

Director

24 August 2010

Niamh Fitzgerald  
Commission for Communications Regulation  
Irish Life Centre  
Abbey Street  
Dublin 1

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Yours sincerely,

Siobhan Barron

Director

A10. O2

The background is a solid blue color. On the right side, there are several overlapping, semi-transparent blue spheres of varying sizes, creating a sense of depth and movement. The largest sphere is at the top right, and smaller ones are positioned below and to the left of it.

O<sub>2</sub>

ComReg Strategy Statement 2010 - 2012

Response to Consultation Document 10/31

21<sup>st</sup> May 2010



## **Introduction**

Telefonica O2 Ireland (O2) welcomes the opportunity to comment on ComReg's draft Strategy Statement for 2010 - 2012. ComReg is required by Section 31 of the Communications Regulation Act to issue its Strategy Statement every two years and to also publish it for comment. The current consultation meets with ComReg's requirements under the Regulation Act, however O2 is of the view that ComReg could have used the event to address a number of issues relating to regulation of the sector at present. This includes setting out a longer term strategy or at least a longer term context for the current two-year strategy, comprehensively addressing spectrum strategy as part of this overall strategy, and also carrying out a review of the effectiveness of regulation during the previous strategy period.

In addition to the above, O2 believes that the current general economic context, and the changes emerging in the industry require that ComReg will need to place more emphasis on the impact regulation can have on investment in the sector.

## **Getting the Context Right**

In Annex b to the consultation, ComReg analyses various trends impacting on the sector at present, and has identified the most relevant issues, however O2 believes ComReg has underestimated the importance of some of these trends when taking them through analysis to form the Strategy Statement. In particular, ComReg seem to have underrated the importance of investment in communications infrastructure as an enabler of renewed economic growth, and also the challenges facing investors at present. All of the main network operators and service providers in Ireland are now part of multi-national corporations and must compete against operating businesses in other countries (maybe in other continents) for a share of investment within their group. Market conditions and the regulatory environment are two key considerations that influence these decisions. ComReg must seek to fully understand the impact of regulatory decisions on an Irish operating business's ability to continue to win investment.

Over the last ten years, commentators have always described the communications sector as being a "rapidly changing" one. If this was ever true, then it certainly is at the present time, and is being driven by a number of technological, economic, and consumer behavioural developments. There are a number of aspects of the communications sector that are currently in rapid transition, and will change the structure of the industry over the coming few years. These include:

- Exponential growth of data traversing communications networks, and a general requirement for increasing speed of transfer across all platforms
- Flat or declining revenues, meaning there is no longer a correlation between traffic carried and revenue
- A move to make more and more services mobile and personal, i.e. a move to wireless
- The communications value-chain is becoming ever more complex and convergence means there are many more players to be considered now
- The move to all-IP is on

- For economic recovery and growth, Ireland needs to develop communications infrastructure that helps us compete and facilitates the development of the Smart Economy

The growth of data traffic and decoupling of traffic from revenue, mean that the business case for Next Generation Access is under some threat. The recent IBEC TIF report “Building a Next Generation Access Network for Ireland” exposed the challenges that the industry and the country as a whole is facing to make the investment in Next Generation Access viable. The recent report “Building Ireland’s Smart Economy”, and the report from the Innovation Taskforce place innovation at the heart of Government’s strategy for economic recovery. A modern, next generation communications access infrastructure is a vital enabler of the Smart Economy. Creating the regulatory environment to support this should be a top priority for ComReg over the coming years.

O2 does not believe that a formal consultation every two years is an adequate means for ComReg to explain its vision and direction to its stakeholders. There should be a much more engaged and on-going interaction at least between ComReg and the industry which could take the form of a number of workshops or other such events. This would give an opportunity for both ComReg and the industry to learn of each other’s priorities as they evolve.

### **General Approach**

Ireland is a relatively small country and it is not necessarily in our interest to be at the vanguard of every policy initiative. In some cases it will be beneficial for Ireland to be a leader in Europe, however this will not always be the case. ComReg should tailor its approach according to the conditions that exist here in Ireland – for some we will be leaders but this should be determined according to the circumstances.

### **Regulate When Necessary**

ComReg has outlined its general commitment to evidence-based regulation and ensuring that there is intervention only where there is a demonstrable need. While there has been some withdrawal of regulation based on the evolution of the “Relevant Markets”, there is little other evidence that ComReg is reducing the regulatory burden by simplifying or reducing regulation. This should become a measure that is tracked by ComReg from one strategy statement to the next.

It seems that while there is a gradual withdrawal of core economic regulation and control, it is being replaced by ever-growing direct intervention in consumer impacting issues. The principal requirement for sector specific regulation is to ensure consumer benefit is delivered by fostering a progressive, innovative and competitive market. ComReg should focus its effort on ensuring that conditions exist that deliver investment and competition to benefit consumers, rather than direct intervention.

## **Network and Service Separation, Net Neutrality**

The move to all IP communications, convergence with broadcasting, and growth of video and other applications, are transforming the traditional communications value chain. This has already caused value to move away from the networks and could serve to undermine the ability of network providers to adequately recover their investments. A fundamental re-shaping of the value-chain is currently occurring, and at a time when operators will need to scale-up their investment rate if they are to deliver next generation access (NGA). Regulators must understand the possibility for this transition to undermine confidence in investment in NGA, and ensure that regulatory decisions do nothing to exacerbate this.

In addition, new applications that can demand ever increasing data transfer can serve to inhibit the successful operation of other applications. Operators must have the freedom to manage the operation of their networks to ensure continued operation of all applications. ComReg should adopt a balanced approach to intervention in relation to these issues so as to avoid undermining ongoing investment.

## **Multi-annual Strategy**

While ComReg's statutory obligation is to produce a strategy statement every two years, O2 believes that a series of discrete two year strategy statements are of limited use. Investment decisions are generally made for much longer time-periods. ComReg need to develop a vision and strategic direction for regulation of the communications sector for several years, albeit within that vision the emphasis should be on the actions for the coming two years.

## **Review of Previous Strategies**

As outlined above, a series of discrete two year reports without a review or link from one to the next and to the overall strategic direction reduces the usefulness of the statements. O2 believes ComReg should use the opportunity of the publication of the Strategy Statement to review and report on the implementation of the previous strategy. This would give an opportunity for ComReg to measure its success and highlight areas for further attention. It would also give an opportunity to link from one report to the next, and show where any change in strategic direction is necessary.

## **Report on Effectiveness and Value**

While the European Commission carry out an annual implementation report that includes a review of regulation, and ECTA produces its Regulatory Scorecard from time to time, there is no detailed evaluation of the effectiveness of ComReg published. The preparation of its biennial Strategy Statement is an event that should be used by ComReg to report to its stakeholders not just on the implementation of the previous strategy, but on its performance and effectiveness across a range of

attributes. These attributes should range from the impact on the market of regulation, to measures of ComReg's decision making (including speed), to value for money.

ComReg is funded by a combination of licence fees and the industry turnover levy. Core economic regulation is slowly being withdrawn from several markets in the sector, which should lead to a reduction in the cost of regulation. ComReg states that it provides value for money, however it would be useful to take the publication of the Strategy Statement to provide some measure or analysis of this.

### **Spectrum Strategy**

O2 notes ComReg's intention to publish its spectrum strategy as a separate document, however in many respects it would have been better to have both documents issued together. Management of the spectrum is probably the one activity where ComReg can do most to influence the cost, capacity, and investment in electronic communications. Getting the spectrum strategy right will be key to facilitating nationwide mobile broadband, creating an environment for investment, and delivering a mobile next generation access network.

O2 has previously responded in detail to ComReg in relation to the overall approach that should be taken to spectrum management, and also in relation to specific bands and services (response to 99/99). It is not proposed to repeat those points in any detail here.

#### **Spectrum – as a Resource**

Radio spectrum is one resource in which Ireland is relatively wealthy. We have a low population density, and because of our geographic location to the west of Europe with just one border we should be relatively well off when it comes to spectrum. Operators must be facilitated in utilising this spectrum by an effective regulatory regime.

#### **Holistic Approach**

Operators need to be able to plan their spectrum holdings for a number of years in advance, taking account of market and technology developments, and the different performance of various bands. Taking individual bands in isolation is not optimal, as operators then need to make decisions on those bands in isolation. ComReg should facilitate operators in taking a holistic approach to spectrum planning – this is ultimately the most efficient approach. Releasing individual bands for assignment has the impact to artificially limit supply and can increase the price paid for spectrum in an auction, however ComReg should be aiming to assign spectrum at the minimum price possible while still maintaining fair and objective assignment processes. Excessive spectrum fees have the effect to limit the funding available for network investment.

#### **Service and Technology Neutrality**

ComReg should move to service and technology neutral licences wherever possible – limited only by the necessity to protect existing services from interference.

#### **Market Based Assignment Mechanisms**

ComReg has embraced market based mechanisms for spectrum assignment, however so far this has only extended to the use of auctions for assignment. O2 believes ComReg has the ability to make assignments transferable or tradable between licensees, and should proceed to develop licenses in

this way – it would lead to more efficient use of spectrum, and would also open the possibility of indefinite term licences. This would allow for continuous investment in networks and eliminate uncertainty regarding the end of term of licences.

#### Flexible Spectrum Use

ComReg has rightly recognised that cooperation between network operators in future might require a greater degree of flexibility including possible spectrum sharing. This should facilitate efficient use of spectrum.

#### Digital Dividend

While ComReg has recognised the importance of the Digital Dividend, there is little to indicate that it will be made available in the short term in Ireland. Given the relative abundance of spectrum in Ireland, that we have a VHF band for broadcasting that some other countries do not use, and also that Digital Terrestrial Television has not been rolled out, there is an opportunity for Ireland to bring forward the release of Digital Dividend spectrum, in particular the band from 790MHz to 862MHz.

O2 notes ComReg's call for input on the 2.6GHz band and will respond.

#### Consultation Process

It is now time for ComReg to review its process for formal consultations, and in particular the amount of time given to interested parties to respond. The general principles to be followed by ComReg are set out in document 03/33, which states that the normal time for responses will be four weeks, however it also sets out the circumstances whereby this time may be varied. The considerations listed include:

- the urgency of the matter
- the complexity of the issues addressed;
- the stakeholders who might be most likely to wish to respond to the paper;
- other papers that might be addressed to the same stakeholders (and therefore the total effort required to respond);
- any statutory timing requirements; and
- the mobilisation of resources to deal with the issues raised.

While O2 does not have a particular difficulty with the above list of considerations, in practice O2's experience has been that ComReg's application of them has been inconsistent but also inflexible. ComReg should give greater consideration to the complexity of the issue under consideration, the effort required to respond, and also the significance or implications arising from any decision that would follow. This should be done at the outset, so that a reasonable time-frame is allowed for research, internal consultation, and preparation of responses. As an example O2 is of the view that the time allowed for response to 09/99 was inadequate.

ComReg should remain open to requests to adjust the time for a response, at least during the first half of the consultation period – it can sometimes require initial consideration or analysis to determine the complexity involved in preparing a response. Where extensions are to be granted, this should be communicated as early as possible in the process. Respondents need to plan and schedule resources, and granting an extension as the closing date approaches can be of only limited use as respondents will have already prioritised tasks and mostly prepared their response already, e.g. the extension that was granted to respond to document 10/31 was notified just two hours

before the latest response time – at this stage O2 had already prepared its response, so the extension was of no benefit.

..

## A11. The Consumers Association of Ireland

## Submission to the 2010-2012 Strategy Document of the Commission for Communications Regulation.

### Introduction:

The Consumers' Association of Ireland (CAI) welcomes the opportunity to contribute to the 2010-2012 Strategy of the Commission for Communications Regulation (ComReg). Our focus in this submission is on the statutory responsibilities and functions of ComReg in the area of consumer protection.

We note that the role of ComReg in this area under the Communications Regulation Act of 2002 is;

### Section 10

*(d) to investigate complaints from undertakings and consumers regarding the supply of and access to electronic communications services, electronic communications networks and associated facilities and transmission of such services on such networks, and*

### Section 12 (c)

*(ii) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved.*

There have been significant areas of progress made in this area, a number of which the CAI is pleased to have contributed toward, in the last number of years including:

- The development of effective information tools such [www.callcosts.ie](http://www.callcosts.ie) and [www.askcomreg.ie](http://www.askcomreg.ie) which enable consumers to compare prices and packages and obtain information on their consumer queries, concerns and complaints;
- The increased availability and rollout of broadband across the country, in particular to rural areas;
- The increased levels of competition in the market;
- The improved, albeit limited, performance of An Post in the last number of years;
- We would also attach significant importance and strongly welcome the Government decision to bring Premium Rate Services, at long last, under the remit of ComReg.

However, from a consumer perspective, there remain a number of areas of concern.

- The CAI operates an Advice and Information service free of charge to consumers on a voluntary basis. Across the years it has been, and remains, the case that the level and quality of customer service and complaints handling from providers is decidedly inadequate. Worse, with frequent regularity, the provisions of the Sale of Goods and Supply of Services Act, 1980 are denied and refused to the consumers who seek to rely upon them. The result is that providers have established a structure through which they persist in refusing to apply



reasoned adjudications, refusing to train staff in customer relations and by doing so frustrate consumers with complaints and problems who are left without choice.

- Many consumers still endure poor broadband services and are unable to attain either the speed or the quality of broadband service which was advertised and advised as available to them and for which they are now contracted and paying for. This is breach of contract and open to the claim of misleading selling techniques.
- Costs in certain market segments are still too high with Ireland ranking 16<sup>th</sup> out of 18 countries on cost of a national residential basket.
- Mobile phone costs remain overly inflated with Ireland holding title to the highest APRU.

### **Recommendations:**

As currently drafted the ComReg strategy in relation to consumer protection needs to move to the next phase, in building on the good work to date. While much has been done to inform and empower consumers, we believe there needs to be more focus on improving the compliance from providers. Empowered and informed consumers have a vital role to play, however that alone is not enough if providers continue to ignore their obligations and treat consumers with contempt. ComReg must continue and act now to determinedly seek to create a culture of compliance by all providers.

- Complaints Handling

We note that ComReg reports on the total number of complaints/queries (approx 12,000 annually) received and the reason for these complaints/queries. However no information is provided in relation to which providers these complaints relate. As with tax defaulters for example we believe that the publication of this information would create an immediate incentive for providers to improve their services and complaints handling procedures. Therefore we recommend;

- A reporting mechanism outlining complaints received by and referred to ComReg detailing the number of complaints received related to each provider, the ratio of complaints customer numbers and the length of time taken to resolve the complaint. This is not an exhaustive list.
- A review of the complaints handling procedures by those regulated entities where significant numbers of complaints to ComReg are seen to be originating through their customer base both domestic and commercial. We site commercial as this is often the cause or reason provided to the CAI for a business being unable to fulfil its duty to its customers.
- The carrying out of a series of audits to ascertain, precisely, the numbers employed in customer aftercare services, their level of training and qualification for complaint handling and resolution under consumer law and a benchmarking of these results against examples of best practice in other jurisdictions.
- The establishment of an Alternative Dispute Resolution (ADR) mechanism for telecom consumers. It is well recognised that even in circumstances where consumers are informed and empowered they are still in a weaker position when dealing with a service provider. This can be amplified when the provider holds a significant or unique market or sectoral share. The 2002 Act (Section 12) requires ComReg to ensure consumers get access to redress from an independent entity. This section confirms that consumers under law have the right to seek an independent third party to adjudicate on their case, including the right to compensation. We believe that this could be achieved by the establishment of an independent ADR mechanism where consumers could bring their case when they are not satisfied with the response/actions of a provider to their complaint.

- Broadband Services

As indicated earlier too many consumers do not receive the speed and quality of broadband service which is advertised and for which they are contractually paying. This is an area where regulatory action would be more effective than individual consumer action. Therefore we recommend;

- As a part of the suggested procedure for listing complaint numbers a number of mystery shopping exercises by ComReg could bring significant improvements in attitudes from providers who would be less likely to advertise and charge for services they could be seen to be unable to provide.
- An advancement of the 'callcosts' format to broadband services would greatly benefit the market and the consumers who rely upon the services and the providers.

- Costs and Competition

While telecommunication costs have come down, Ireland, despite our exceptionally high usage still remains overly expensive for telecommunications services and unrewarding of that high usage and spend. We acknowledge that there is no easy solution and that competition has increased. In the midst of the downturn there is an opportunity for ComReg to send a strong message to consumers about seeking best value in telecommunications services; therefore we recommend;

- ComReg undertake a high profile media campaign promoting [www.callcosts.ie](http://www.callcosts.ie) and also encouraging consumers to drive the best bargain.
- ComReg to set ambitious targets for Q4 2012 to reduce the current mobile phone APRU costs and to improve our position in the OECD national residential basket costs.

- General Regulatory Initiatives

- The existence of the Consumer Consultative Panel could be highlighted as this will heighten the awareness and recognition of ComReg among consumers and encourage them to come forward in increased numbers with detail of their difficulties.
- A programme of liaison with the service providers of subscription services to improve the regulation for provision of increased font sizes together with headline/flashing rate details.

The Consumers' Association of Ireland (CAI) is always available to discuss these and any other initiatives that might be furthered individually, jointly or in partnership to improve the market for the consumers who rely upon its services and providers.

**20<sup>th</sup> May 2010.**

A12. TIF



# BUILDING A NEXT GENERATION ACCESS NETWORK FOR IRELAND

## ISSUES AND OPTIONS

A REPORT BY THE TELECOMMUNICATIONS AND INTERNET FEDERATION



*An affiliate association within IBEC* | the Irish Business and Employers Confederation

[www.tif.ie](http://www.tif.ie)



**NEXT  
GENERATION  
ACCESS**



## CONTENTS

Introduction	3
The Economic/Competitiveness Imperative	4
The Investment Challenge	5
Key Issues	6
Network sharing / collaborative investments:	6
Forward looking regulatory approach:	6
Forward looking and pro-investment public policy:	7
Re-balancing of market returns:	7
Summary of Analysys Mason Report	9
Glossary of Terms	21
About TIF	22
Members of TIF Broadband and Next Generation Networks Industry Group	23
Members of IBEC Telecommunications and Internet Federation	24

Building a Next Generation Access Network for Ireland - Issues and Options  
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IBEC Telecommunications and Internet Federation  
Confederation House  
84/86 Lower Baggot Street  
Dublin 2  
[www.tif.ie](http://www.tif.ie)



# NEXT GENERATION ACCESS

## INTRODUCTION



Next Generation Access - or NGA for short – has become in the space of the past two years a ‘hot’ topic of debate in telecommunications as policy makers recognised that the deployment of high speed broadband capability has the potential to drive economic recovery and the development of knowledge industries.

However, much of the debate about NGA has been poorly informed with no agreed definition even as to what the term means other than that it refers to a new broadband capability, which is much faster than that currently available to most customers, and an understanding that this capability will cost a great deal of money to build.

It is not unusual for new services and technologies to be clouded in uncertainty; after all the pace of technological developments is such that what is considered ‘next generation’ today may be ‘legacy’ within two to three years. Nevertheless, it is important that the debate should be as well informed as possible and in particular that some shape is put on what actually constitutes an NGA, the benefits that it would bring, how much it would cost to deploy, and how it might be realised.

**John McKeon**  
Chair

TIF Broadband and Next Generation  
Networks Industry Group

Towards this end, TIF commissioned the respected international consultancy firm Analysys Mason to undertake a study on its behalf with a view to establishing the broad dimensions of an NGA for Ireland. This document summarises and draws out the main themes from the Analysys Mason study. It is not a definitive study of the position in Ireland, nor does it represent an agreed industry wide view of the way forward. What it was intended to do, and what it does provide, is an input into the debate regarding the roll-out of NGAs in Ireland. It is hoped that the study proves useful to the members of TIF and the wider stakeholder community in their consideration of the policy and commercial issues, which arise in undertaking and organising what could yet be the infrastructure investment to define 21st century Ireland.

**Peter Evans**  
Vice Chair

TIF Broadband and Next Generation  
Networks Industry Group

April 2010



## THE ECONOMIC/COMPETITIVENESS IMPERATIVE

The economic imperative to build and deploy NGA high speed broadband networks is now well accepted around the world and investment in high speed broadband networks that offer consumers innovation and choice is seen as providing an essential impetus to economic recovery<sup>1</sup>.

Given this prize, and notwithstanding that there is a 'gap' between the price which consumers are prepared to pay for network access and the actual cost of building and operating a high speed next generation broadband network, many of the leading world economies across the public and private sectors have announced, and in some cases have commenced, very large scale investments in NGA networks<sup>2</sup>. Such developments have not gone unnoticed in Ireland and with a number of policy papers and reviews produced by Government, ComReg and Forfás all identifying the need to support and incentivise NGA investments if the infrastructure underpinning economic development in Ireland is to provide a basis for national competitive advantage<sup>3</sup>.

While such papers and reviews provide a welcome recognition of the strategic importance for our country of NGA investments they will not of themselves lead to any significant investment. If Ireland, having just 'caught up', in the deployment of the current generation of broadband capabilities is not to be left behind again in the deployment of next generation capabilities, it is essential that we move quickly to make the large scale investments necessary to achieve a step change in capability and build a world leading next generation network.

1. For example see World Bank (2009) "Information and Communications for Development 2009: Extending Reach and Increasing Impact"

2. For example the Australian Government has committed to the build of a nationwide NGA costing A \$43bn; the Italian Government has committed to invest €1.47bn in NGA; the Greek Government has announced a €2.1bn investment in NGA plan, the Portuguese Government has negotiated a €800m credit facility from the European Investment fund to help finance NGA deployment, the UK Government is considering a £6 per line NGA tax to fund a £20bn investment in NGA and the Singaporean Government has provided funding of S\$750m to the build of NGA

3. For example see Forfás (2008), "Response to the DCENR Next Generation Broadband Consultation Paper"



## THE INVESTMENT CHALLENGE

As an economy we made such large scale investments before. We were the first country to move to a fully digitalised telecommunications network in the 1980's – at a cost in current day values of some €10bn. It was this investment which positioned our country to exploit the evolution of the services economy and attract many multi-national and 'off-shore' activities to Ireland. However, market conditions between the 80s and now are entirely different.

Accordingly while the level of investment required to build a Next Generation Network capable of serving 90% of our citizens may, at c €2.5bn (as estimated by Analysys Mason), seem relatively modest, the challenge involved in making this investment is much more complex:

- ▶ First, a Next Generation Access Network will not be just one network but will in fact consist of many networks – including Fibre to the Home/Fibre to the Cabinet, Cable TV, and 4G Wireless networks. A key issue arises, therefore, as to how much of what type of network should be built and in what locations. In particular, how investment resources can be deployed in the most efficient way possible to avoid unnecessary 'overbuild' of multiple networks in the same locations.
- ▶ Second, the investment in these networks will not be made and co-ordinated by one single Government controlled entity (as was the case with the digitalisation investment of the 1980's) but will involve multiple operators all with different business strategies.
- ▶ Third, the investment is required at a time when telecommunications network revenues are under pressure, as value is increasingly absorbed by content and media providers. This is in stark contrast to the 1980's when telecommunications network revenues were rising.
- ▶ Fourth, although the regulatory policy approach to NGA is still developing and further guidance from Europe is expected over the coming year, it remains to be seen how this policy will translate into practical actions to balance the goal of incentivising investment with the goal of supporting sustainable competition
- ▶ Fifth, the pace of technological change is such that early investments in NGA equipment and assets carry higher risk than investments made during the 1980's.
- ▶ Sixth, the role of Government in sponsoring and supporting investments must take account of EU State-Aid rules.

TIF believes, as set out in its statement of "Principles to inform the development of Next Generation Networks and Services" that the members of industry working together are best positioned to resolve these complexities in collaboration with other stakeholders including Government and Regulators.

Towards this end, and in order to inform the dialogue necessary as part of such an approach, TIF commissioned Analysys Mason to undertake high level scenario modelling of NGA network alternatives and prepare a report highlighting some of the key issues that arise and identifying potential options for addressing these issues.

## KEY ISSUES

The Analysys Mason report, which we summarise in this document, does not claim to be a definitive analysis of the position in Ireland nor does it identify a single right answer or recommend a particular approach or mix of approaches, but simply identifies some generic alternatives and provides an order of magnitude in terms of cost. There are, however, some clear conclusions which can be drawn:

### **Network sharing / collaborative investments:**

Given that any large scale NGA is likely to comprise a mix of technologies, and in order to reduce overall cost of building an NGA and maximise the utilisation of existing assets, it is possible, if not probable, that some form of collaboration between the existing fixed and radio access network operators in Ireland may evolve. A number of potential 'collaborative' models including Single Entity/open network access, Joint Venture models, Layered Infrastructure models and Complementary/Geographic investment models can be identified and it remains to be seen which of these models will take shape in the Irish market. Ultimately, no particular model can be mandated and it will be a matter for the key network/platform owners to determine if a collaborative model can be found which supports risk and investment sharing but still enables widespread deployment of NGA, retail competition between operators and service differentiation for consumers.

### **Forward looking regulatory approach:**

Whatever form of NGA is ultimately built, it is clear that the network(s) should be operated in manner which protects and support sustainable competition at the retail level. In particular, regulated Wholesale access may continue to be required where any undertaking is found to have Significant Market Power (SMP). However, given the scale and risks associated with the network investments required for NGA, it is important that the necessary checks and balances established by regulation do not go so far as to sustain inefficient competition at the expense of lowering returns to investors in network assets. In this regard, regulatory policy should strive to find the correct balance between pro-investment and pro-competition regulation and, in particular, if it is to support collaborative investments by operators, it should take account of the convergence in technologies to migrate from market definition/regulation based on technology to market definition/regulation based on consumer markets uses and applications.



### **Forward looking and pro-investment public policy:**

Even in a market characterised by collaborative investments by network operators and a supportive pro-competition regulatory regime, it is clear that the scale of investment is such that it is highly unlikely that a ubiquitous NGA will be built offering 50mbps+ broadband to all people in all areas of the State. In order to make progress towards a vision of widespread NGA, Government needs to support industry by taking what steps it can to reduce network build costs and incentivise investment. In addition, the Government can, through its management of 'public assets' including spectrum, public ducts, and other infrastructure, take steps to help operators maximise what they can achieve, in terms of depth and breadth and coverage, from the investment funds available to them. For example, the approach taken to the allocation of Digital Dividend spectrum will be critical to determining the level of investment in 4G broadband capability. Finally, the Government must be prepared to support the development of NGA by allowing state funding to support NGA in those areas that industry will not reach.

### **Re-balancing of market returns:**

In common with other countries, the market for broadband services in Ireland evolved on the basis of 'incremental' value add. In other words broadband capability was added onto an existing service; be it fixed voice, mobile voice, or Cable TV and the prices set for broadband services tended to reflect the incremental nature of the service. The so called

'legacy' services, for example telephone line rental and call charges, contributed most of the revenues of the industry. However, as demand for 'legacy' services declines, the incremental revenues from broadband provision are not sufficient to cover the cost of building or maintaining the underlying network platform essential to carry this broadband capability. The Analysys Mason study indicates that at current prices, it would take over 12 years for a NGA network operator to recover its investment costs – not to mention earn a return on this investment.

Such returns are unsustainable to the private investor. Simply put, extra funding must be found to deliver widespread NGN roll out as envisaged. Three possible sources of such funding can be identified:

1. From consumers and businesses through higher prices
2. From the state who will derive significant benefit from the more efficient and competitive national economy that NGNs deliver
3. From somehow applying charges to online service providers who undoubtedly derive benefit from better communications infrastructure - the so-called net neutrality debate

Each option has significant merits and demerits – but choices must be made through engagement and partnership.

TIF commends this report to its members, to Government and to ComReg and urges that it be used as an input to the consideration of policy and commercial decisions. For its part, TIF will continue to promote and facilitate intra-industry debate and dialogue in line with the eight core principles for NGN development agreed in April 2008.





TIF NGN Subgroup



# Summary of Analysys Mason Report

February 2010





## CONTENTS

Background - TIF Requirement	12
Technology Options	13
Cost Estimates	14
NGA Rollout Scenarios	16
Customer Demand	17
Potential Collaboration models	18
Key Considerations	19



## BACKGROUND - TIF REQUIREMENT

A subgroup of the TIF NGN Workgroup commissioned Analysys Mason to produce a report into the options for NGA in Ireland, as an input into a TIF paper on its recommendations.

The Terms of Reference requested the output of the report to comprise:

1. the most likely network topography to deliver a high availability of NGA for Ireland
2. whether Ireland can achieve an NGA rollout of this standard in the timeframes set out
3. whether any one operator, or a number of operators individually can make the investment and develop this NGA
4. if not, what other options are there, or how might it be brought about
5. what are the regulatory and competition law issues posed by any such approach; how to establish open and fair downstream competition and innovation
6. what type of support framework needs to be provided by Government / Regulators to facilitate such arrangement
7. whether key regulatory policy decisions (in particular in respect of; promoting platform competition, investment risk mitigation and spectrum allocations) need to be accelerated
8. whether such support should include financial/fiscal subvention from Government (including an assessment of the wider socio-economic benefits of any NGA investment).



## TECHNOLOGY OPTIONS

- ▶ FTTH (GPON/PtP), FTTC (VDSL) and Wireless (LTE with Fibre Backhaul) were the primary technologies considered \*

### FTTC

- ▶ Existing Eircom duct, poles and cabinets re-used, plus new cabinets deployed
- ▶ All copper wiring between premises and cabinet remains in place
- ▶ Interconnect via bitstream in Exchange (no sub-loop unbundling)

### FTTH

- ▶ Both PtP and GPON considered (PtP ~20% more expensive)
- ▶ Legacy services over copper remain in place in parallel with fibre
- ▶ Network passes all homes, but last drop (~40m) connected upon request

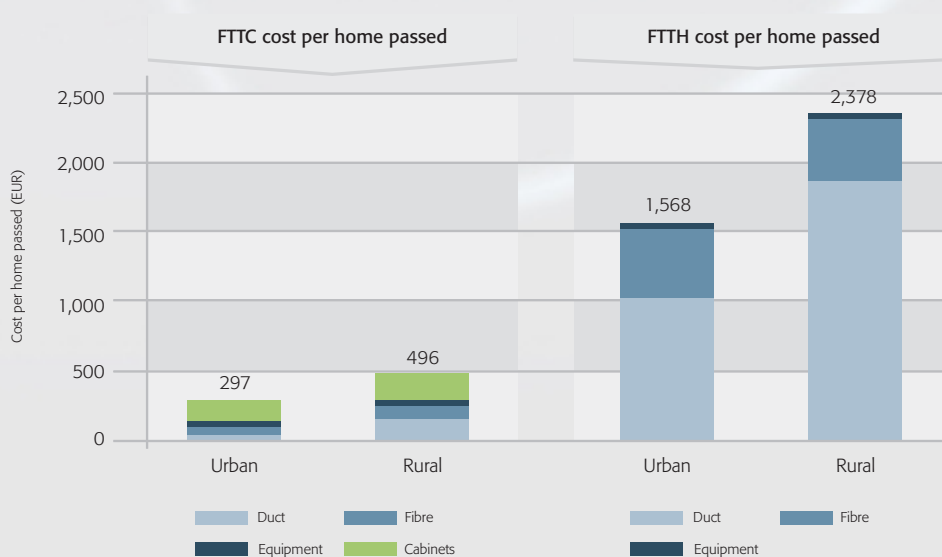
### LTE

- ▶ Coverage is provided via LTE on existing mobile base station sites
- ▶ Fibre deployed to the majority of base stations for backhaul

\* HFC DOCSIS, Wireless DOCSIS and Satellite were noted as potential contributors to NGA, but not costed

## COST ESTIMATES – FTTC/FTTH

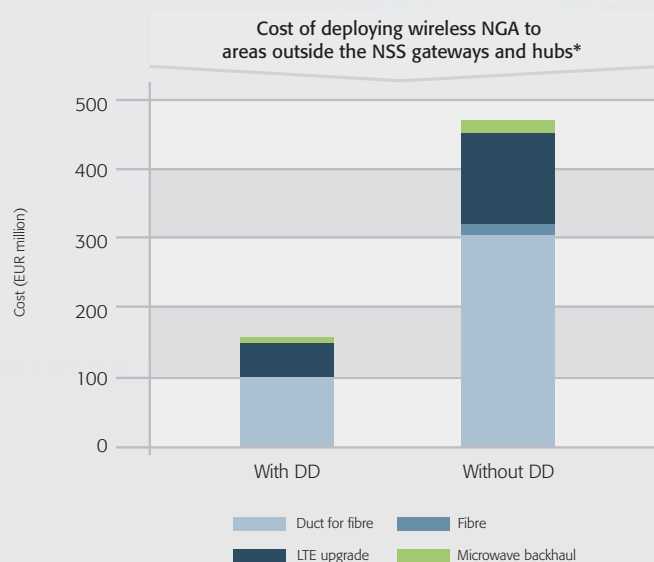
- ▶ Ireland's high proportion of rural and very rural population makes the business case for widespread fixed NGA less attractive
- ▶ Only costs from PoP to end user premises are considered
- ▶ Civil work is the main determinant of cost
- ▶ Cost of FTTC in Ireland is c.50% more expensive than BT's superfast broadband plan in the UK





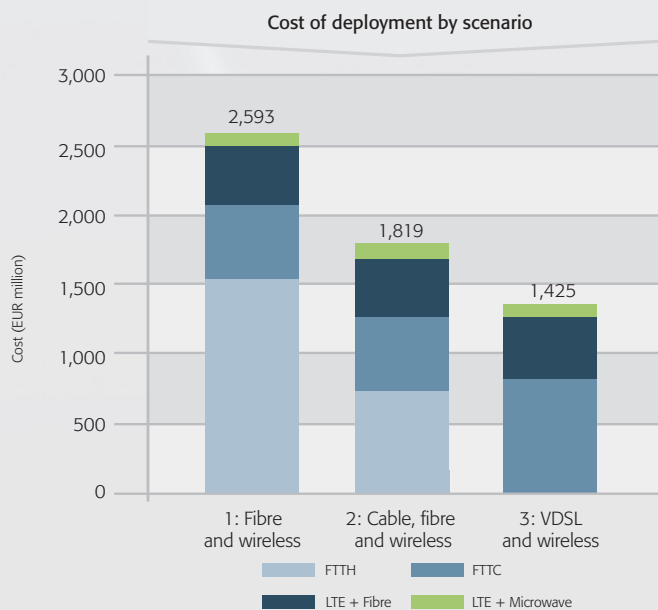
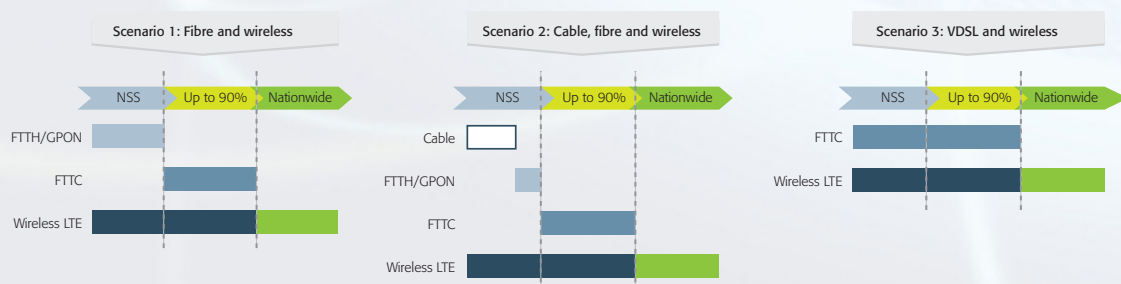
## COST ESTIMATES – WIRELESS LTE IN RURAL AREAS

- ▶ Ireland's population density makes wireless a likely solution for many non - urban regions
- ▶ Costs of fibre backhaul to wireless sites and wireless access costs considered
- ▶ Use of lower - frequency spectrum greatly improves coverage, without Digital Dividend spectrum, coverage costs will increase by a factor of 3
- ▶ LTE would require a significant amount of spectrum to achieve 50Mbit/s throughput
- ▶ NGA performance is only possible if large pieces of spectrum are made available, which may be only feasible through collaboration



\* Based on average backhaul distance of 6km, some aerial fibre and microwave for very long links

# NGA ROLLOUT SCENARIOS

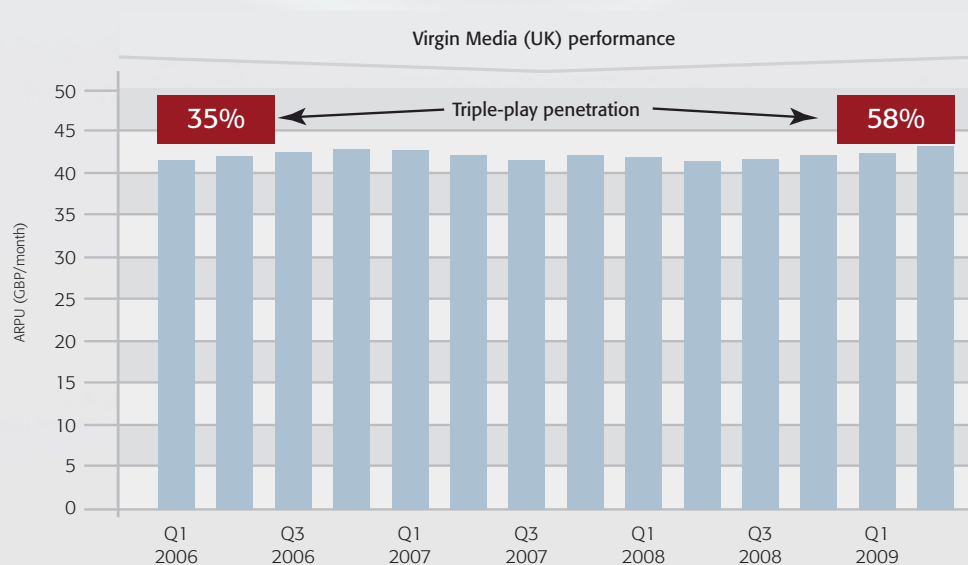


\* Wireless costs above are assumed without Digital Dividend Spectrum



## CUSTOMER DEMAND

- ▶ Set against significant costs, the demand-side business case for NGA is unclear
- ▶ Operators worldwide are facing the challenge of meeting ever-increasing customer demand for bandwidth without a commensurate increase in ARPU, as illustrated by the example shown in the chart
- ▶ This trend of flat ARPU indicates that the major investment needed to provide a step change in broadband capacity may not generate sufficient revenues to justify the expense
- ▶ There is currently no indication that the Irish market will be any different



\* Source: Virgin Media, Analysys Mason

## POTENTIAL COLLABORATION MODELS

Model	Description	Challenge
Network Evolution	as per the UK model, the incumbent would upgrade its network and supply on an open access basis	The incumbent's ability to justify the business case
Layered	incumbent/others own infrastructure, a JV would own fibre/electronics, sold on an open or preferential access basis	Requires agreement from major infrastructure owners
Open joint venture	a joint venture providing wholesale services on an open access basis	Requires strong support from outside the telecoms sector
Preferential joint venture	a joint venture which only sells access to its shareholders, at least one of which must be a wholesale-only operator	Returns from equity invested in the network are minimal
Build and Share	multiple operators with existing assets offering access to one another on a reciprocal basis	May be viewed as a cartel



## KEY CONSIDERATIONS

- ▶ Typical speeds for FTTC (VDSL) will be ~30Mbit/s, with less than 50% of homes receiving a 50Mbit/s service
- ▶ Wireless is particularly suited for Rural areas where interference is lower, where there may be fewer concurrent users per cell, and where fixed antennas can be used
- ▶ The most significant driver of costs is the civil work, with dig costs representing up to 65% of total FTTH costs
- ▶ To deliver NGA, an investment of up to 35% over and above current levels of annual industry investment will be required for up to 10 years
- ▶ The demand-side business case for NGA is unclear, examples from other markets suggest that revenues remain flat as bandwidth increases
- ▶ Adaptation of an existing NGA collaboration model will be required in order to meet Ireland's unique local circumstances
- ▶ A holistic approach to NGA is needed, with government policy and regulation having a significant role to play in its deployment



## PUBLIC POLICY SUPPORT REQUIRED

- ▶ **Spectrum:** to enable high-speed wireless access, central government needs to give clear guidance on plans for spectrum particularly the digital-dividend spectrum
- ▶ **Civil Costs:** to avoid unnecessary costs in fibre deployment, local authorities should be encouraged (possibly with facilitation by government) to streamline works planning processes and avoid imposing disproportionate costs on operators
- ▶ **Infrastructure:** to maximise reuse of existing infrastructure, ducts owned by local authorities, government and state owned companies must be made available through the one-stop-shop
- ▶ **Regulation:** to support the investment case, ComReg needs to offer clarity and consistency in its approach to regulating NGA networks



## GLOSSARY OF TERMS

<b>DD</b>	Digital Dividend
<b>DOCSIS</b>	Data Over Cable Service Interface Specification
<b>FTTC</b>	Fibre To The Cabinet
<b>FTTH</b>	Fibre To The Home
<b>GPON</b>	Gigabit ethernet Passive Optical Network
<b>HFC</b>	Hybrid Fibre Coax
<b>LTE</b>	Long Term Evolution
<b>NGA</b>	Next Generation Access
<b>NGN</b>	Next Generation Network
<b>PoP</b>	Point of Presence
<b>PtP</b>	Point-to-Point
<b>TIF</b>	Telecommunications and Internet Federation
<b>VDSL</b>	Very high bit rate Digital Subscriber Loop

## ABOUT TIF

IBEC's **Telecommunications and Internet Federation (TIF)** is the representative body for leading industry and associated interest groups in the field of electronic communications in Ireland. TIF informs policy makers; namely the Government, the EU and ComReg, of the industry's needs in respect of relevant sectors including next generation broadband, mobile, wireless, cable, outsourcing services and Internet service provision.

### **TIF oversees:**

- The advocacy of the long-term interests of participants in the electronic communications industry in Ireland
- The publication and promotion of policy recommendations reflecting the views of operators and users in relation to telecommunications and internet issues
- The provision of a forum for discussion on relevant issues amongst network operators, telecommunications users, internet service providers, outsourcing service providers and other communities of interest.

TIF has identified seven key segments of the telecommunications industry. Each of these segments has a dedicated industry group made up of specialists from member companies and reporting to the TIF Council.

### **The Telecommunications and Internet Federation has the following industry groups:**

- Broadband and Next Generation Networks industry group
- Telecoms Technology industry group
- Mobile industry group
- Cable and Broadcasting industry group
- Regulatory Affairs industry group
- Outsourcing Services industry group
- Green Technology industry group

### **The Telecommunications and Internet Federation also has the following affiliates:**

- Irish Cellular Industry Association (ICIA)
- Mobile Operators Messaging Forum (MOMF)
- Irish Telecommunications Security and Fraud Forum (ITSFF)

IBEC Telecommunications and Internet Federation  
Confederation House  
84/86 Lower Baggot Street  
Dublin 2  
Tel: 01-6051528  
Fax: 01-6381528  
[www.tif.ie](http://www.tif.ie)



## MEMBERS OF TIF BROADBAND AND NEXT GENERATION NETWORKS INDUSTRY GROUP

<b>Chair:</b>	John McKeon, eircom
<b>Vice Chair:</b>	Peter Evans, BT
Airspeed	Liam O'Kelly, Brendan Martin
Aurora Telecom Limited	Sean O'Donnell
BT Ireland	Chris Clark, Graham Sutherland, Peter Evans
Cable & Wireless Services Ireland Ltd	Sean Mahon
Citadel 100	Noel Meaney, Karl Hennessy
Clearwire	Alex Boothroyd
Colt Telecom Ireland Ltd	Gary Keogh, Una Blake
Complete Network Technology	Kevin Murphy, Neil Wisdom
Data Electronics Group Ltd	Maurice Mortell
Digiweb Smart Telecoms	Colm Piercy
E Net	Conal Henry
Eircom	Paul Donovan, John McKeon, Pat Galvin
ESB Telecoms	Tom Bambury
HEAnet Ltd	John Boland
Hutchison 3G Ireland	Robert Finnegan, David Hennessy
Interfusion Networks	Steve MacNicholas
Intune Networks	Tim Fritzley, John Dunne
O2 (Telefonica O2 Ireland Ltd.)	Danuta Gray, Paul Whelan, Tom Hickey
Satellite Broadband	Kevin Ryan
Solaris Mobile	Matt Child
Surecom NS Ltd	James Sheehan
Texas Instruments	George Young
UPC Ireland	Robert Dunn, Kate O'Sullivan
Vodafone Ireland	Charles Butterworth, Gerry Fahy

<b>TIF Secretariat</b>	Tommy McCabe (Director)
	Emer Condon (Executive)
	Carolyn Doumeni (Personal Assistant)

## MEMBERS OF IBEC TELECOMMUNICATIONS AND INTERNET FEDERATION

**Chair:** Gerry Fahy, Vodafone

**Vice Chair:** John McKeon, eircom

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Afilias Limited  
AirSpeed Telecom  
Alcatel Lucent  
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Citadel100  
Clearwire  
Colt Telecom Ireland Ltd  
Complete Network Technology  
Conduit Plc  
Damovo Ireland Limited  
Danu Technologies  
Data Electronics Group Ltd  
Digiweb Smart Telecoms  
Dublin City University  
Dun Laoghaire IADT  
E Net  
Eircom  
ESB Telecoms  
Enterprise Ireland  
HEAnet Ltd  
Hutchison 3G Ireland Limited  
Huawei  
Icarus  
Integrated Communications Limited

Interfusion Networks  
Interxion Ireland Ltd  
Intune Networks  
LM Ericsson Ltd  
Meteor Mobile Communications  
Nokia Siemens Networks Ireland Ltd  
O2 (Telefonica O2 Ireland Ltd.)  
Oracle Corporation  
Radio Telefis Eireann  
Rigney Dolphin Limited  
Satellite Broadband Ireland  
Setanta Sport  
Sky Television  
Solaris Mobile Ltd  
Supplierforce Ltd  
Surecom NS Ltd  
Texas Instruments  
TG4  
The Carphone Warehouse Ltd  
The Digital Hub Development Agency  
Threefold  
Tyndall National Institute  
Udaras na Gaeltachta  
Ulster Television Plc  
University College Dublin  
UPC Ireland  
Verizon Ireland Limited  
Videnda Distribution Ltd  
Vodafone Ireland

**TIF Secretariat** Tommy McCabe (Director)  
Emer Condon (Executive)  
Carolyn Doumeni (Personal Assistant)





## TELECOMMUNICATIONS & INTERNET FEDERATION

*An affiliate association within IBEC* | the Irish Business and Employers Confederation  
TIF is affiliated to ICT Ireland, the sector representing the voice of technology in IBEC  
Confederation House, 84/86 Lower Baggot Street, Dublin 2  
Tel: + 353 - 1 - 605 1528, Fax: + 353 - 1 - 6381528  
Email: [carolyn.doumeni@ibec.ie](mailto:carolyn.doumeni@ibec.ie)  
Website: [www.tif.ie](http://www.tif.ie)



CORK  
Knockreea House  
Douglas Road  
Cork

TELEPHONE (0214) 295 511  
E-MAIL [cork@ibec.ie](mailto:cork@ibec.ie)

SOUTH EAST  
Confederation House  
Waterford Business Park  
Cork Road Waterford

TELEPHONE (051) 331 260  
E-MAIL [southeast@ibec.ie](mailto:southeast@ibec.ie)

MID WEST  
Gardner House Bank Place  
Charlotte Quay  
Limerick

TELEPHONE (061) 410 411  
E-MAIL [midwest@ibec.ie](mailto:midwest@ibec.ie)

WEST  
Ross House  
Victoria Place  
Galway

TELEPHONE (091) 561 109  
E-MAIL [west@ibec.ie](mailto:west@ibec.ie)

NORTH WEST  
3rd Floor Pier One  
Quay Street  
Co. Donegal

TELEPHONE (074) 972 2474  
E-MAIL [northwest@ibec.ie](mailto:northwest@ibec.ie)

EUROPE  
IBEC Europe  
89 Avenue de Cortenberg  
Boite 2 1000 Bruxelles Belgium

TELEPHONE (00-32-2) 512 333  
E-MAIL [ibb@ibec.ie](mailto:ibb@ibec.ie)  
[www.ibb.ie/ibb](http://www.ibb.ie/ibb)