



## **Statement by John Doherty, Chairperson, ComReg to the Joint Committee on European Scrutiny**

Thank you Chairman for the opportunity to outline ComReg's views on the proposals to revise the regulatory framework.

A vibrant, innovative communications sector is key to the continued success and development of the European Union and its citizens. This is particularly true in Ireland's case as an island nation with an increasingly serviced based economy. The continued development of the €4bn communications sector here is critical for both our continued economic success and the social wellbeing of our citizens. This is why the proposals contained in the current review really matter and getting them right will make a major contribution to how the sector will develop over the next decade.

We have already outlined our views in more detail in the document circulated to the Committee so I will concentrate today on key elements of the package and I will be happy to deal with other aspects during the question and answer session.

Many of the proposals will have positive results. This is particularly the case with the improved consumer focus, enhanced provisions on accessibility, liberalisation of spectrum use and a reinforcement of the principle of subsidiarity through independent and properly resourced National Regulatory Authorities. We believe that these measures, subject to some fine-tuning, will facilitate greater consumer choice, quality of service and the development of competition.

However some aspects of the proposals could benefit from further development as they have the potential to undermine some of the positive elements of the proposals. Specifically proposals to grant the EU Commission's powers to bypass national decisions on remedies, to take powers in respect of spectrum usage and spectrum award procedures from national control as well as the establishment of a new overlay organisation, the European Electronic Communications Market

Authority, would result in a centralised one size fits all approach that cannot take full cognisance of national circumstances.

In terms of the detail of the proposals, ComReg supports the aims in increasing consumers' access to information, to facilitate choice and provide greater protection including contracts, tariff information and quality of service. We support the strengthened measures concerning accessibility and it should be noted that ComReg has set requirements in this regard on Eircom as the Universal Service Provider.

There are also provisions regarding emergency services and access through the single European emergency call number 112 which we strongly support including the proposal that disabled end-users have equivalent access to emergency services.

ComReg supports the Commission's proposals in relation to spectrum liberalisation and spectrum trading, which we feel will enhance competition and will thereby benefit consumers through greater choice, better prices and improved quality of the products on offer.

Having outlined the elements that we see as positive within the review, it is fair to say there are other elements within the proposals that, not just Comreg, but all regulators across Europe and many Governments feel are flawed, not based on robust evidence and which, if deployed, could materially undermine many of the positive features of the proposals that we have already covered. In this context one of our primary concern relates to the proposed increase in the Commission's powers generally but specifically in the area of market reviews and deciding on regulatory obligations. Specifically the Commission proposes that it should have a veto power on remedies proposed by NRAs to address competition problems in national markets. The proposals would result in a centralising of regulatory powers in the Commission's hands enabling the Commission to overrule national decisions reached by reference to national conditions and after a full public consultation.

These concerns around the independence of regulators, their detailed knowledge of the individual markets and that the fact that a one size fits all concept may be imposed, is further highlighted by the proposal to create a new body - the European Electronic Communications Market Authority (EECMA). The

Commission justifies the proposed body on their claim that an inconsistent regulatory approach by 27 NRAs is hampering the development of the internal market for electronic communications. However the Commission has provided no real evidence in support of this assertion. Indeed the Commission in its earlier consultation specifically rejected the motion of centralized regulation. Finally EECMA would create a significant extra layer of bureaucracy to perform functions which today are largely performed by the European Regulators Group (ERG), namely to advise and assist the Commission. This would appear in conflict with the Commission's own "Better Regulation" agenda.

Radio spectrum is considered by Member States to be a valuable national resource. The proposals would give the Commission high level powers over some spectrum management matters. While ComReg supports the concept of harmonisation in the case of pan-European services, we considers that the Commission proposals are too wide ranging, ignore the concept of subsidiarity and are based on a "one size fits all" concept which is inappropriate.

The declared aim of the Commission's proposals in the matters mentioned is the consistent implementation of the regulatory framework with the pursuit of Internal Market as the objective. While ComReg fully supports the aim of pursuing greater consistency in applying the regulatory framework and is fully committed as a member of ERG to promote greater harmonisation, we feel that the Commission has overstated the issue of consistency. Bearing in mind that the proposals are unlikely to be adopted in Member States for at least a further 2 years, we believe that market analyses in the interregnum will demonstrate convincingly that the Commission's current proposals are both disproportionate and unnecessary.

The current proposals represent a substantial shift of powers from the national level to the Commission and undermine a key principle of the regulatory framework, namely regulatory decentralisation and subsidiarity, which recognises the vital role which national knowledge, experience, expertise and resources play in order to define and implement remedies tailored to national markets.

Finally, based on the EU Commission's decision making processes in the past, we have concerns regarding the delicate balance between a centralised approach and devolving tasks to national competencies. In particular, we have concerns that the specific requirements of the Irish market place might be overlooked in a centralised approach. By way of illustration, the EU Commission last December published its recommendation of relevant markets which reduced the number of markets from 18 to 7. These are the product and services markets where the NRAs have the power to regulate. Markets not listed in the Recommendation may be regulated by an NRA but only if the Commission is satisfied that the case made by an NRA passes stringent scrutiny. While the concept of getting Commission approval has existed since 2003 it is perhaps illuminating that to date no such approval has been given.

The European Regulators Group and individual NRAs outlined their views to the Commission prior to the revision taking place. We were disappointed that the EU Commission apparently failed to heed these views and experience of both the ERG and individual NRAs when considering the status of individual markets. For instance in nearly 80% of more than 20 reviews

made of the call transit market the need for continued regulation, the EU Commission did not veto or object to any of these findings. Despite this evidence suggesting significant competition problems in a substantial part of the European Union, the Commission nevertheless removed this market from its recommendation. The absence of evidence to support these changes is of particular concern and creates considerable uncertainty going forward as to the basis on which future decisions will be made.

In conclusion, I do not want to leave the Committee with the impression that ComReg is opposed to the overall package of measures or does not recognise that there are areas where improvements can and should be made. There is in fact much in the current proposals to be welcomed. However in a limited but highly significant range of areas we and the European Regulators Group fundamentally disagree with the means proposed by the Commission to achieve the overall objectives of promoting the sector and the needs of end-users. We believe that those concerns are shared in other Member States and hope that they will be satisfactorily addressed in the consideration of the draft regulatory package. Apart from the above, the



proposals are positive and forward looking. In particular the consumer focused proposals will facilitate greater consumer choice and competition and ComReg supports these proposals as we do in respect of the proposals which reinforce the principle of subsidiarity through a network of independent National Regulatory Authorities.