



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Electronic Communications Strategy Statement

Submissions to Consultation 21/32

Submissions to Consultation

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Submissions Received from Respondents

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1 2RN



2RN Comments on ComReg Draft ECS Strategy (ComReg Doc. 2132)

2RN welcomes the opportunity to contribute to the development of ComReg's ECS strategy.

Q2. Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy? In providing your view, please also provide supporting evidence.

3.48 – We are pleased to see consideration of Broadcasting in this section. In the context of this overall strategy it is important to highlight the key role that broadcasting plays in delivering news and education (as was particularly apparent during the Covid-19 crisis), and not just entertainment.

3.57 – In relation to the findings of the ComReg/REDC survey referenced (ComReg 2130 – ref. q. 42), data from TAM Ireland showed an increase in live TV viewing during the Covid crisis in 2020 (11% increase from March 2019 to March 2020) before returning to pre-Covid levels¹ in April 2021 – other countries also saw an increase in live TV viewing in 2020 during the Covid crisis. We believe that OTT services are a complementary service to traditional TV (which incidentally is also digital) and should not be interpreted as a direct substitution for traditional TV – in particular Public Service Broadcasting with its vital role in providing trusted news and information from within the State.

Q3. Do you agree with the Strategic Intents discussed in detail in Chapters 4 to 8? In providing your view, please also provide supporting evidence.

4.83 – We look forward to the publication of the ComReg Spectrum Strategy and are hoping that the key role played by terrestrial broadcasting, particularly public service broadcasting, in making efficient and effective use of spectrum is recognised. Furthermore, it is important to recognise the role that terrestrial broadcasting plays in delivering important news, educational, cultural as well as entertainment content to Irish households in a relatively environmentally efficient way – particularly where complementary, but often less environmentally efficient technologies/platforms are considered².

6.16 – It is worth noting that, as with recent extraordinary increases in data traffic during the Covid-19 crisis, linear TV viewing also increased during this period and played an essential role in informing Irish society with trusted information during this critical time.

¹ TAM Ireland (tamireland.ie) – TV Overview March 2019, April 2020, March 2021, April 2021

² "Using Behavioural Data to Assess the Environmental Impact of Electricity Consumption of Alternate Television Service Distribution Platforms", BBC, Sept. 2020. <https://downloads.bbc.co.uk/rd/pubs/whp/whp-pdf-files/WHP372.pdf>

2 Association of Licensed Telecommunications Operators (ALTO) Limited ('ALTO')

alto

alternative operators in the communications market

**Consultation: Public Consultation on ComReg's Five Year ECS
Strategy - Ref: 21/32 & 21/32a**

Submission By ALTO

Date: May 21st 2021

ALTO is pleased to respond to the Consultation: Public Consultation on ComReg's Five Year ECS Strategy – Ref: 21/32 & 21/32a.

ALTO welcomes this opportunity to comment on this important consultation.

Preliminary Remarks

ALTO acknowledges the critical role ComReg plays in the Irish Communications market. We also note the period of legislative change that has been in-being for some years now, together with the forthcoming period of consultation on the transposition of the new European Electronic Communications Code – EECC, Directive (EU) 2018/1972 (“**the Code**”). We also note the various work programmes ComReg is involved in to assist with the smooth transposition of and to facilitate the deployment of particular changes under Title III of the Code.

We provide this short response having considered matters arising under each question set out in ComReg Document 21/32a.

Response to Consultation Questions:

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

A. 1. ALTO supports the stated vision for the sector generally where all stakeholders will have access to affordable, high-quality and secure communications services.

ALTO notes that the Irish market remains seriously overpriced and expensive when considering broadband prices in the rest of the European Union. We also note that

eir remains the most profitable of incumbents globally. In consequence, we call on ComReg to adjust its vision to be more consistent with a regulator that is seen to be more active and indeed proactive in regulating the market in a timely fashion.

ALTO notes that it has written and communicated to ComReg, eir, and the European Commission on the subject of the Weighted Average Cost of Capital (“**WACC**”) being used in Ireland which remains at 8.18% despite being subject to a review and Decision by ComReg in October 2020 directing the reduction of the WACC to 5.61%. The Commission in its letter to ComReg urged that prices be updated “*as soon as possible*”, this has not yet occurred:

“3.2 Ensuring that prices reflect current market conditions

While the Commission welcomes the revisions of the WACC value notified under IE/2014/1649, ComReg must adjust all regulated prices that are significantly affected by the WACC value in line with the considerable decrease of the WACC (from 8.18% (current) to 5.61% (notified) for the fixed-line market). The Commission urges ComReg to update relevant pricing decisions as soon as possible, to ensure that prices to the Irish wholesale markets reflect current market conditions, as the WACC is a significant and central determinant of prices.” (Emphasis Added)

It goes without saying that industry looks on financial quarter after quarter literally agog that no movement has occurred in the face of strong comment from the European Commission literally urging movement in the manner that it has.

ALTO further notes that the Access Network Model (“**ANM**”) review and decision is very significantly late at this stage. ALTO remarks that this review is required quickly to feed ComReg’s vision of ensuring high quality communications services at an affordable level for consumers and end-users. The market has been constipated by staggered regulatory market reviews and the deployment of inconsistent pricing principles that has led to distortionary outcomes.

ALTO notes that ComReg suggests at paragraph 1.9 that it seeks to ensure a well-regulated market. It is quite apparent that the market will continue to be poorly regulated when system delays are a feature of the regulatory policy environment. An example of this lies with Universal Service Obligations (“**USO**”), where the potential reserve amount applied for by eir sits at around €97m up to 2020, with little or no clarity on around €65m of that amount in terms of findings of no burden that have been made by ComReg in a very significantly delayed set of funding applications.

ALTO notes the position with regard to enforcement and the work currently being undertaken by the Department of Communications in relation to new enforcement powers for ComReg. It is obvious that enhanced enforcement powers will assist ComReg in the market, however we note that enforcement has effectively been neutralised in the Irish market since 2018 with the agreement between eir and ComReg in settlement of a composite set of actions which were designed to enforce against eir as a result of the Styles Regulatory Governance Model – RGM, and nine self-confessed findings of non-compliance. The RGM Settlement Agreement arising from the composite legal actions highlighted very significant infirmities in the legislative and enforcement regime for the communications sector in Ireland.

Q. 2 Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy? In providing your view, please also provide supporting evidence.

A. 2. ALTO generally agrees with ComReg’s analysis and conclusions dealing with the important sectoral trends and challenges.

ALTO encourages ComReg to carry out its work in a more effective and timely manner with the resources available to it.

Q. 3 Do you agree with the Strategic Intent discussed in detail in Chapters 4 to 8? In providing your view, please also provide supporting evidence.

A. 3. ALTO broadly welcomes the concepts arising in the Strategic Intent set out in the Consultation paper and Statement. We provide comments under each Intent 1 – 5 below.

Strategic Intent 1:

A competitive sector that delivers efficient investment, innovation and choice

ALTO Comment:

ALTO notes ComReg’s comments at paragraph 4.63 that ComReg does not have any plans to impose cost orientation obligations on eir’s FTTH network. This is a matter of huge concern to the market, particularly when ComReg of its own volition has now commenced work on the impending copper switch-off. We would ask that this principle and concept be revisited. ALTO has studied developments in the UK market to this end, and would urge ComReg to approach price regulation in a similar or broadly aligned manner.

ALTO notes with interest and concern a White paper ‘floated’ by eir to industry, as if to gain passengers aboard the “*Maria Celeste*”. The White paper contains a number of principles and issues that are unacceptable to the industry and appears to fetter ComReg’s role and discretion in the market where SMP regulation is concerned.¹

The White paper presents as a *fait accompli* a fifteen-month switch-off, where in the usual course, industry anticipates at very minimum a full consultation, a proper period of reflection and analysis, and various governance checks to be built into such a development. We also note passages within the White paper ‘signalling’ an

¹ *Copper Switch-Off: Leaving a legacy for the Future – White paper*

increase in prices.² ALTO has already noted that Ireland is out of synchronisation with other European countries when the costs of communications are measured.

The potential future effect of the eir plans, if read in conjunction with the White paper, is to have customers forced away from FTTC services, which are regulated, to unregulated FTTH services without adequate market or consumer protections. We ask ComReg to pay heed to this issue as it arises now.

ALTO will engage with ComReg on this subject through the various forums and formal Calls for Input and Copper Switch-off Consultation planned over the coming months.

ALTO notes that the Code contains more feature rich plans to enable customer switching.³ We would encourage ComReg to take a highly proactive role in this area, and where possible replicate some of the ComReg behaviours of the early 2000s where certain regulatory developments facilitated by ComReg in industry workgroups drove consumer choice and competition to a large extent.⁴

ALTO also notes that in the context of fibre rollout reporting that the market is plagued by reporting of premises passed, rather than actual connection metric data. It is irrelevant what proportion of premises is passed if the wholesale network and asset investment is inefficient or costly to connect to. ALTO notes that there is a strong chance that with the current market dynamics possible inefficient network investment is a real risk for the Irish market to the detriment of the consumer.

The Covid-19 pandemic has served to highlight patchy coverage issues in the State when considering very high speed network access.⁵ ComReg plays a significant role in that messaging and delivery to the extent that choices made now and feeding this

² *Copper Switch-Off: Leaving a legacy for the Future – White paper* pp. 12, 14 & 15.

³ Reference Articles 105 – Contract duration and termination; 106 – Provider switching and number portability; and 107 – Bundled offers set out at Title III – End-User Rights within the Code.

⁴ IDA; CPS; WLR; MNP; GNP; NGNP, etc.

⁵ ComReg 21/42 *The Impact of Covid-19 on Home Broadband and Mobile Service Usage*, April 2021

strategy review will give rise to efficiencies in the future if executed correctly. The ComReg Key Quarterly Data Reports make for interesting reading over the past 14-months where lockdowns and restrictions has means more distributed forms of working. ComReg should embrace its role in this regard.

Finally, ALTO calls on ComReg to be more focussed on enforcement of SMP obligations and monitoring remedies more proactively. The clear lack of incentives to comply with SMP and mandatory regulatory obligations remains an issue in the Irish market that should be dealt with shortly, or within the medium term, by means of legislative intervention. ALTO intends to keep pressing the message that wholesale enforcement by ComReg and we consider that this area remains a key industry strategic priority for industry, even if that enforcement arises as against ALTO members in its application.

Strategic Intent 2:

Consumers can choose and use communications services with confidence

ALTO Comment:

As mentioned above, we encourage ComReg to be as proactive and as flexible as it can be in enabling useful consumer switching legislation, regulation and methodologies with the transposition of the Code.

ALTO members that are in the business of taking or buying services from SMP operators such as eir, suggest that Service Level Agreements – SLAs and Key Performance Indicators – KPIs, are in many cases outdated, or contain latitude that is unacceptable to consumers and end-users in contract with ALTO members. We call on ComReg to review SLAs and KPIs, to bring them in-line with market expectations, particularly consider the impending rollout of FTTH services.

Strategic Intent 3:

End-Users have widespread access to high-quality and secure communications, networks, services and applications

ALTO Comment:

ALTO supports this strategic intent. We would ask ComReg to note our comments above concerning Copper switch-off and the problems that could arise if that is rushed or not thought through properly. ALTO member customers require the provision of high-quality, available and stable services. As a corollary, the SMP operator services are also required to be high-quality, available and stable regardless of what the connection or connectivity type is. Careful management and consultation procedures implemented by ComReg concerning Copper Switch-off should highlight any critical issues with adequate time to implement and deploy acceptable solutions with the consumer and end-user in mind.

Strategic Intent 4:

Regulated entities comply with regulatory requirements

ALTO Comment:

ALTO notes ComReg's position at paragraph 7.22 to the extent that an incumbent acting with full knowledge of its obligations is more likely to comply with them.

ALTO's experience is that the incumbent operator is not good at this. The industry experience with Styles and RGM disclosed a myriad of suspected issues, over a period of years, but to no tangible avail to industry. An ideal outcome would have been a finding made, ruled and approved by the High Court and then permitting industry to pursue follow-on damages claims. Regrettably that was not to be.

ALTO remains concerned that ComReg currently lacks real deterrent power to intervene when egregious breaches of regulation are occurring and have been found

and published by ComReg. This should be at the forefront of ComReg's policy advocacy.

ALTO notes that delays to Market Reviews and other relatively routine regulatory activities appear to the market to breed perceived inefficiency. That is apparent in the compliance operations we perceive ComReg to be engaged in. We note ComReg's position at paragraph 7.14 concerning instances of non-compliance and the collateral impacts those can have, ALTO agrees with ComReg that more action and activity is needed to ensure regulatory compliance from the SMP operator.

Strategic Intent 5:

ComReg is an efficient, agile and relevant regulator

ALTO Comment:

ALTO broadly supports this strategic intent. We remark that our experience with WACC, ANM, market reviews generally, and an exuberant focus on retail versus wholesale enforcement and compliance activity does not paint a positive picture of the market's current experience of ComReg, versus the clear strategic intent.⁶

Regrettably, ALTO does not view the role of the Independent Oversight Board – IOB, as being a valuable addition to the market. This may be symptomatic of its genesis and birth in a settlement agreement connected with the RGM proceedings in 2018, drafted in the small hours of the morning without the benefit of proper expert consideration for what the IOB should really do or be. ALTO remarks that Styles and RGM procedures forcing eir to show compliance, in the same manner as in the electricity regulated sector, had the unintended consequence of highlighting and finally evidencing matters that were long since thought to be issues, but that industry and ComReg could not prove. It remains to be seen whether the IOB will be able to

⁶ See letter from European Commission extract urging action on WACC

find anything by skimming the surface of a stage managed compliance production on a less than part-time arrangement.

ALTO would like to see ComReg being effective, agile and relevant and we remark that it might take fresh or a programme of rotating divisional senior management within ComReg to achieve that end.

Q. 4 Do you believe that the Goals associated with the Strategic Intents are appropriate, and relevant? In providing your view, please also provide supporting evidence.

A. 4. ALTO believes that the goals associated with the Strategic Intents are appropriate and relevant as addressed broadly in response to Question 3 above.

ALTO would welcome more action from ComReg to underpin the perception and reality of a well-regulated market. Presently, the regulatory 'mood music' is not great and consumers will benefit from a more active and proactive ComReg.

Q. 5 In your view, is there anything else that should be added to, or omitted from, this Strategy Statement?

A. 5. ALTO notes that ComReg has commented broadly that it is no longer concerned with pricing when it comes to broadband products and services. ALTO members to an organisation, will state that price remains the number one or top reason for consumers to switch, particularly if reduced price and premium service are on offer.

ALTO calls on ComReg to ensure a maintained and careful focus on appropriate price regulation on the market – with a particular eye and focus on the removal of the availability of FTTC services absent regulation for FTTH. It is simply specious to suggest that consumers do not care about price, when it is the single most important

factor arising in the communications landscape. It would be a serious miscalculation for ComReg to remove focus from price regulation.

ALTO urges ComReg carry out market review work and deployment of Decisions effecting cost (WACC, ANM, USO) in a timely manner even if that creates work for ALTO members and in doing so ComReg will facilitate consumer choice, competition, innovation, and consumer protection through its own processes in conjunction with industry.

ALTO
21st May 2021

3 BT Communications (Ireland) Limited (‘BT’)

BT Communications Ireland Ltd [“BT”] response to ComReg’s Consultation:

Draft ECS Strategy Statement – Public Consultation

Issue 1 - 18 May 2021 (Non-Confidential Version)

1.0 Introduction

BT welcomes the concept of ComReg setting a 5-year strategy particularly given the continuously evolving nature of technology and the telecoms market. There are two areas that BT would like to address as follows:

1. The continuing lack of an appropriate wholesale enforcement regime for ComReg.
2. The need for ComReg to address the lack of access supply to the leased lines market.

2.0 Issues

1. The continuing lack of an appropriate wholesale enforcement regime for ComReg is a problem that needs to be resolved urgently. ComReg and other regulators including the Competition Authority have sought appropriate enforcement powers¹, the Law Reform Commission has concluded updates to the regulatory system are needed and offered sensible recommendations. The same issue is now in the programme for Gov’t and yet little appears to have changed or progressed in this area. We acknowledge the European Commission driven ECN+ (this should have been transposed into Irish Law 4 Feb 2021) should enhance the enforcement of Competition Law, however Competition Law is an after the event (exPost) methodology so market damage can be done before any case could be concluded.

For telecoms regulation where there are clear findings of Significant Market Power (SMP) by an independent regulator such as ComReg, upfront rules i.e. an ex Ante approach is a far more efficient process by which to regulate. The European Commission adopted this approach and recommends markets where an ex Ante approach could be considered. However, without proportionate enforcement rules regulation is undermined to the detriment of competition and the end users.

Our perception from many years closely following regulation in Ireland is the lack of wholesale enforcement powers can lead to situations where ComReg finds itself (not through its fault) having to manage some wholesale enforcement cases

¹ Submission to the Law Reform Commission – Enforcement of Competition and Regulatory Law: The Case for Reform - Dated 18 January 2018. Submissions signed by ComReg, BAI, CCPC, HPRA and the CRU.

through mutually agreed settlements with limited transparency of the arrangement, particularly to those who may have suffered harm as a result of the breach. Whilst settlement may be appropriate in certain circumstances within a transparent framework, no framework appears to exist in Ireland and ultimately this settlement approach is not a deterrent or dissuasive approach and creates distrust and suspicion outside of the arrangement.

Hence as a minimum we consider the following are urgently needed.

- a. ComReg needs to obtain or be given at least the same enforcement powers as the other regulators. The following table was extracted from the ComReg/Oxera Paper Clause 4.6 issued as part of ComReg Penalties consultation and shows that ComReg does not even have the Power to impose civil financial sanctions.

Table 4.5 Summary of Irish regulators' powers to impose financial penalties Regulator	Power to impose civil financial sanctions
Central Bank of Ireland	Yes
ComReg	No
Competition and Consumer Protection Commission	No
Commission for Regulation of Utilities	Yes
Health Product Regulatory Authority	No
Broadcasting Authority of Ireland	Yes
Commission for Aviation Regulation	Yes
Office of the Director of Corporate Enforcement	Yes

- b. The European Electronics Communications Code (EECC) is in the process of being transposed into Irish Law in accordance with EU law. We believe a problem highlighted by the Eircom Regulatory Governance Model (RGM) case was Primary Legislation would be required to establish an enforcement process supporting proportionate fines (which could be substantial) for breaches of the regulations. We would support the EECC being transposed under primary legislation to achieve a fit for purpose and effective wholesale enforcement process and penalties. Retail enforcement and fines have already proved to be effective and these don't need a transformational upgrade.
 - c. Whilst acknowledging ComReg's new penalty framework we are still concerned a clear enforcement framework needs to be established and documented to ensure enforcement cases don't fail in court due to unclear or the poor applications of procedures. We note Ofcom adopted such procedures circa 10 years ago which are updated from time to time with learning and best practice improvements.
2. We note the ComReg leased lines decision of 2020 which de-regulated a significant number of geographic areas based on alternative substitute deployments being available. Whilst we have always accepted a level of de-regulation we find that alternative suppliers of substitute services are not available in the hard to reach and uneconomic locations in Zone A that were deregulated. Hence we consider ComReg should commence a mid-term

assessment of this market as it has done with the Broadband market with a view of testing whether genuine substitute products are available rather than using a formulaic approach that clearly overestimated the true availability of substitutes. i.e. a more realistic test would be for ComReg to see if other providers will provide services where such provision is uneconomic. Ultimately we believe ComReg's approach is just sending customers back to Eircom which is undermining competition and multi-site agreements. We would also like to offer the following additional comments.

a. VEA and GEA - We acknowledge the good work of the ComReg compliance team in addressing the VEA complaint, however by the time it was finally resolved Eircom were fast moving to fibre solutions thus largely undermining the product. As per our Issue 1 above this leads us to believe that the inadequate wholesale enforcement regulations are a serious hinderance to competition and the customer. ✂

b. ✂

End

4 Eircom Limited ('Eircom')

eir

Response to Draft ECS Strategy Statement

ComReg Document 21/32



12 May 2021

DOCUMENT CONTROL

Document name	eir response to ComReg 21/32
Document Owner	eir
Status	Non-confidential

The comments submitted in response to this consultation document are those of Eircom Limited and Meteor Mobile Communications Limited (trading as 'eir' and 'open eir'), collectively referred to as 'eir'.



eir recognises the importance of economic regulation and ComReg's role in safeguarding consumer, citizen and commercial interests and therefore welcomes this opportunity to provide input to ComReg's Draft Electronic Communications Sector Strategy for the period 2021-2026.

RESPONSE TO CONSULTATION

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

1. eir broadly agrees that ComReg's Mission, Vision and Role, as set out in the 2021-2026 ECS Strategy remain largely relevant for the forthcoming period. In particular, the related objectives of ensuring widespread access to communications services and applications and developing a communications sector that attracts investment are now more important than ever.
2. eir considers that ComReg's tacit acknowledgement of "relevant regulation" needs to be expanded to explicitly identify that ComReg's vision for the telecommunications market is also achievable absent regulatory intervention. In that regard, statements such as "*Ensuring a well-regulated market is one of the most important tools in working towards our vision of the communications sector*" is not well placed, founded or consistent with ComReg's statutory objectives.
3. By now it's clear that infrastructure-based competition is established, continues to grow and is working across a large number of markets. Nevertheless, despite the removal of structural barriers and/or markets tending towards competition ComReg continues to regulate eir. This issue is further compounded by market analysis reviews not being undertaken in time by ComReg. ComReg should acknowledge that regulatory remedies can also lead to regulatory failure where not appropriate and where ComReg's perceived balance of "safeguarding"

visions for the sector could also undermine dynamic competitive outcomes and erode investment incentives. It is important that markets subject to ex ante intervention are reviewed regularly. We urge ComReg to publish and maintain a multi-annual market review programme setting out the target milestones for key elements of each review.

4. For example, eir considers that ComReg needs to take sufficient account of declining demand on legacy services such as fixed voice delivered over copper, and its implications for regulation. In the face of declining demand and allowing for economically incentivised migration of customers and thus a timely retirement of legacy networks it is important to consider how best to balance short-term allocative and long-term dynamic efficiency goals.
5. ComReg's duties include encouraging investment and innovation. However, ComReg's focus should be on delivering benefits to the consumer through competition rather than simply promoting competition as an end goal in and of itself. As network infrastructure is expected to be a strong contributor to economic activity and growth, investment in next generation networks and a timely transition from old network technologies to new ones is a key challenge for policy makers. Full migration to very high capacity networks (VHCNs) is both socially and economically desirable as explained in open eir's white paper, Copper switch-off: Leaving a legacy for the Future¹.
6. eir notes that the availability and take-up of VHCNs and connectivity, namely FTTH/B and 5G, have been elevated to core objectives of the new European Electronic Communications Code (EECC), which is should have been transposed in Ireland by the end of last year. Whilst the transposition continues to be delayed we understand the main provisions of the Code have direct effect. In addition, and in the current context of the ongoing COVID-19 pandemic, there has been widespread recognition of the absolutely crucial nature of communication networks and the necessity of digital connectivity at both a national and European level.

¹https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

7. Gigabit connectivity has been further highlighted as a priority of the European Commission for the 2020-2024 legislative cycle, including in the Commission's Communication on 'Shaping Europe's Digital Future'² and the 'Recovery Plan for Europe'³. In particular, the former notes that "*Gigabit connectivity, powered with secure fibre and 5G infrastructures, is vital if we are to tap into Europe's digital growth potential*" and "[t]o this end, adequate investments at EU, national and regional levels are necessary to achieve the EU 2025 connectivity objectives".
8. The renewed focus on connectivity and the heightened sense of urgency in this regard, are evident. As such and given the levels of investment that will be required to ensure ubiquitous gigabit connectivity, eir considers that ComReg's Strategy should explicitly recognise the importance of promoting connectivity and would encourage ComReg to keep this and the underlying principles identified by the Commission at the forefront of its considerations when designing regulatory interventions. In this manner, ComReg can effectively play its part in ensuring that Ireland meets the European connectivity targets.

Question 2: Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy? In providing your view, please also provide supporting evidence.

9. eir considers that ComReg's identification of important sectoral trends should not just be utilised to promote ComReg "Strategy" statements but actually used in its considerations within the context of regulatory obligations for which it has remit. While the Strategy Consultation makes references to expected trends from NBI and the importance of 5G, such specific market characteristics are ignored in other elements of ComReg's work including market analysis. For example, in the FACO market analysis consultation (ComReg 20/46) for which the period of market review is 2021 to 2026, ComReg downplays the roll-out of NBI and the importance of mobile as a relevant substitute yet in the Strategy Consultation for the

² Commission Communication "Shaping Europe's digital future, European Commission", 19 February 2020

³ https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/recovery-plan-europe_en

period 2021-2023, which is smaller than the timeframe consider for market analysis purposes, ComReg stated:

“The State intervention area covers 538,000 premises, 1.1 million people, over 54,000 farms, 44,000 non-farm businesses, and 695 schools. Over the lifetime of this Medium-term Strategy, it is expected that the majority of this network rollout [from NBI] will have been completed” [emphasis added]. eir agrees with ComReg’s view. However, ComReg in applying the Three Criteria Test in ComReg 20/46, ComReg completely ignore this consideration and its impact on removing structural barriers and the market tending towards competition.

10. Similarly, ComReg’s statement in the Strategy Consultation notes that *“using Wi-Fi and native Wi-Fi calling on a fixed broadband connection. The National Broadband Plan and the availability of additional spectrum through future spectrum awards are key enablers to meet this challenge”*. eir agrees with ComReg’s view. However, ComReg completely disregard its own Decision to mandate Wi-Fi Calling and the enablement of future coverage both indoor and outdoor in new licences from the upcoming spectrum auction in ComReg’s FACO Market Analysis Consultation.
11. Market developments cannot be championed by ComReg in Strategy consultations yet ignored for arguably the more important matter of determining whether an operator has significant market power and the extent to which economic markets should be regulated for a period of time.

Question 3: Do you agree with the Strategic Intents discussed in detail in Chapters 4 to 8? In providing your view, please also provide supporting evidence.

12. eir considers that the following issues should shape ComReg’s ECS Strategy;
 - The transition from copper to fibre networks
 - The impact of Covid-19 on the telecommunications sector

- The increasing importance of 5G and the need for respected public authorities such as ComReg to counter 5G misinformation
- Changing consumer behaviour and the power of digital platforms
- The relationship between the digital and green agendas
- ComReg's role as an industry champion
- Developing a clear transparent framework for compliance investigations

The transition from copper to fibre networks

13. The retirement of copper services is an important part of the business case for the roll-out of fibre networks and the faster that customer migration from copper to fibre occurs, the stronger the business case for investment in fibre becomes. Given ComReg's objective to promote competition and investment, and in particular the deployment of VHCNs in line with the EECC, the focus of regulation should now shift from legacy services.

14. Investment in fibre is part of a wider transformation of Ireland's telecommunications infrastructure, comprised of both the migration of voice services to IP technology and the overall withdrawal of copper-based services. ComReg can support each of these objectives in the following ways;

- (i) price controls, or indeed the removal of same, that ensures the correct migration signals for different types of operators and users at different points in the migration process; and
- (ii) a specific workstream aimed at the development of a copper retirement strategy considering the proposed plan of copper-switch off of legacy copper services and infrastructure proposed in open eir's white paper. We understand this should be undertaken within the framework set out in Article 81 of the Code. Encouraging the migration to VHCNs should underpin all other regulatory work items.

Pricing

15. The migration of users from the legacy network is currently customer driven and it is anticipated that this will continue to be the case in the short term. A consumer's assessment of whether to switch to full fibre will therefore depend on the relationship between the ongoing charges for such a connection and the charges they pay for their existing connection. If the prices of copper-based services are low (either through commercial or regulatory intervention) then adoption rates for full fibre broadband will also be low.
16. In addition, low wholesale access prices for legacy networks delay infrastructure investment in NGA by alternative operators, as it increases their opportunity cost of investment. This is also true for resellers. Given, the fact that the more alternative operators invest in their own infrastructure, the more the incumbent is incentivised to invest in response, eir considers that the interaction of these effects necessitates wholesale access prices for copper services that remain stable over the short term and have the flexibility to increase over the medium term, in order to create the correct signals for different types of operators and users at different points in the migration process.
17. In recognition of this, a number of regulators have already started to move away from the classic ladder of investment based pricing remedies of cost plus, even for copper prices, in recognition of the dual role that copper plays in funding NGA deployment including incentivising other operators and migration incentives for legacy networks.

A copper switch off strategy

18. It is anticipated that over the coming years, a move to operator led migration will be required. Although eir has commenced planning for the retirement of legacy services and facilities, and anticipates that over the next number of years there will be a growing number of geographic areas with widespread availability of NGA facilities such that it would be appropriate to retire access to legacy services and facilities, a final plan for the transition as well as an eventual date for decommissioning will need to be approved by ComReg. open eir has recently published a White paper on Copper Switch off. The White paper recognises that at the same

time as modern networks are deployed it is important to encourage an orderly and timely transition from the legacy copper network to the faster and more reliable FTTP networks. We believe the protocol put forward in this paper provides a fair and reasonable basis for the progressive transition from legacy services as the new networks are rolled out. At each stage the pace of change accelerates in areas as the modern network becomes more widely available. In turn this facilitates a quick switch-off of the legacy copper network when rollout is completed in an area. Doing nothing now and waiting until the FTTP network is fully rolled out is not desirable or efficient.

19. From a low base in Ireland an increasing proportion of consumers are living in multi-dwelling units ('MDUs'). Delivering FTTH services to these residences presents a range of challenges and eir is still considering the standard form of deployment. So it is not clear yet which will be standard, and which non-standard, connections for service to residents in MDUs. Currently there is considerable uncertainty for network operators, property developers, MDU residents, and MDU management as to who has control and rights to access these assets. A clear regulatory policy agreed by those stakeholders will support the more efficient and timely delivery of FTTH to these premises including access to newly built housing estates.

20. eir welcomes ComReg's recent publication on the transition from copper and the associated workstream. The policy objective of timely retirement, which is beneficial from a consumer, commercial and efficiency perspective, should also underpin ComReg's other work-streams. ComReg must now publish a defined timetable as to when ComReg will make its final decision and the interim milestones. As eir has completed the necessary notification to ComReg under paragraph 1 of Article 81 of the Code, the next step for ComReg is to have established whether the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure enabling the access seekers to reach the same end-users is met by eir's notification.

The impact of Covid-19 on the telecommunications sector

21. As a result of the quarantine measures taken to combat the COVID-19 outbreak, the use of telecommunications networks as well as digital services experienced unprecedented growth. The telecommunications sector has never been so critical to the global economy.
22. Many countries in Europe introduced social distancing measures to combat the pandemic and it is anticipated that restrictions will continue for the foreseeable future, until at least such a time as a vaccine is developed and widely distributed. However it is also likely that the public health measures have stimulated longer term changes in how we go about our work as a society. Many office based businesses are exploring the concept of hybrid working models and the Government is progressing an initiative to facilitate more home-working. This situation underlines the importance of continued network investment to meet the Commission's Gigabit Society objectives for 2025, in particular through 5G and fibre networks.
23. ComReg should therefore thoroughly analyse the experiences gained from the pandemic in order to inform future policies, particularly those related to VHC connectivity. Quick access to additional and reasonably priced spectrum and more support for broadband investment will of course be key.
24. In addition, the pandemic has coincided with the increasing pervasiveness of disinformation, particularly in relation to 5G and public health. ComReg's Strategy should therefore also consider measures to tackle such disinformation and strategies to disseminate science-based evidence. This is discussed further below.

The increasing importance of 5G and the prevalence of 5G misinformation

25. 5G offers new network management possibilities that could enable a single physical network to support a number of virtual networks with different performance characteristics. It will therefore be important to create a regulatory environment that incentivises fast 5G

deployment over the medium term. This includes defining a proportionate regime of security measures to maintain network integrity.

26. Higher data rates necessarily require smaller cells and densification of the network. However, pivotal site owners may attain a position of market power, which could be detrimental if high site access costs impede roll-out. It would therefore be useful for ComReg to consider engaging with the government with regard to increasing the supply of sites.

27. In addition, delivering extensive coverage at high data speeds and with robust reliability, with each operator running a separate network would require vast levels of investment. Such investment levels would be prohibitive and therefore an increased role for infrastructure sharing is envisaged. This will not only reduce the costs of network deployment where possible but also ensure the best use of limited supporting infrastructure and street furniture. Regulation should seek to be supportive of such sharing, while ensuring competition and fair access are maintained. eir notes that the Commission's recent Recommendation on Connectivity⁴ explicitly highlight this. ComReg should therefore consider a progressive regime that encourages infrastructure and network sharing in order to facilitate densification of small cell deployment for 5G roll-out.

28. Further and in the context of the ongoing COVID-19 pandemic, there has been widespread distribution of misinformation related to 5G and mobile technology across social media platforms and at the grassroots level, including an increase in false claims that telecom antennas have negative health effects and that 5G is linked to the spread of coronavirus. The spread of false information has led to telecom workers across Europe being verbally harassed while performing their duties as well as numerous arson attacks on critical telecoms infrastructure.

⁴ Commission Recommendation on a common Union toolbox for reducing the cost of deploying very high capacity networks and ensuring timely and investment-friendly access to 5G radio spectrum

29. While 5G conspiracy theories are not new, they have spread and evolved through a number of established conspiracy theorists and the interaction of anti-vaccination and anti-5G groups as well as chemtrail believers. Industry, governments and regulators are therefore faced with the challenging but pressing task of educating consumers on the safety of 5G in order to support deployment and uptake of the technology.
30. eir notes in this regard, that a recent study carried out by IPSOS on behalf of ETNO, found that telecom operators are a trusted source of information and along with governments can have a large impact on attitudes towards 5G. eir is therefore of the view that ComReg should consider engaging with both industry and expert bodies on EMF to consider their views and experiences and establish an overarching strategy to combat 5G disinformation.

Changing consumer behaviour and the power of digital platforms

31. The growing diversity and functionality of social networks and online platforms has continued to impact traditional consumer and business behaviours. The increased economic importance of digital services has profoundly changed the structure of telecommunications and media markets globally. Working across traditional operator boundaries has led to much greater network effects for OTT players and formed a strong defence against the reactionary strategies enacted by traditional telecommunications service providers (SPs).
32. Consequently, the competitive environment in the telecommunications and media services markets has experienced considerable change and expanded significantly. With regard to communication services, OTT communication apps are, by far, the most-used communication platform worldwide and major OTT applications such as Facebook Messenger and WhatsApp add tens of millions of users every month.
33. eir notes that Article 2 of the Code provides a broad definition of interpersonal communications services (ICS) and gives NRAs the legal power to collect data from providers of number independent interpersonal communications services (NI-ICS). Article 20 of the Code

provides the legal basis for requesting data from services, which are not electronic communication services or networks, insofar as these requests are substantiated and proportionate. These new data collection powers apply to all National Regulatory Authorities (NRAs) and Other Competent Authorities (OCAs). BEREC has indicated that it will therefore issue a Report in 2021, which will identify the services that NRAs wish to collect data on, specify the particular metrics of interest, and provide definitions for same. This work-stream will lead to the presentation of a set of minimum indicators for which harmonisation is sought, definitions and metrics to be collected by relevant authorities in relation to OTT services.

34. In light of the Code and the BEREC work-stream on this issue, eir considers that ComReg's Mid-Term Strategy should outline its approach to OTT indicators going forward and whether it intends to collect and publish such data on a quarterly basis in line with the existing approach for telecommunications services. In the interim, and prior to the collection of data directly from such services, ComReg should consider the merits of conducting periodic surveys on consumer ownership and usage of OTT applications. eir notes that while the annual Mobile Consumer Experience Survey includes some information on the use of Internet messaging applications, more relevant and in-depth information would be useful to include in conjunction with the Quarterly Key Data Report.

The relationship between the digital and green agendas

35. The telecommunications sector, through the provision of communications technology and connectivity, plays a critical role in transitioning to a more resource-efficient world by addressing the harmful effects of climate change, increasing business resiliency and improving daily lives. As the world becomes increasingly digitalised, the telecommunications sector can be part of the solution. The role of new network technologies in energy saving is as important as the role they can play as enablers in critical vertical sectors, such as smart transportation, cities, industry, energy grids, etc.

36. Fibre rollout will be instrumental not only as an enablement technology but also with regard to its role in reducing the footprint of operators. FTTH is 85% more energy efficient than the copper network. In addition, the deployment of fibre will enable the closure of copper facilities, thus allowing for reuse and recycling of much of the equipment. eir notes that it is committed to working in a mutually beneficial manner with ComReg and industry towards network modernisation and ComReg should consider effective transition as a cornerstone of its regulatory work programme over the coming years.

37. In the interim, the regulatory regime will play a crucial role in creating an environment conducive to the continued rollout of FTTH. We would encourage ComReg to ensure that its regulatory approach provides continuing certainty for investors and maintains the correct investment incentives for both incumbents as well as alternative operators. This includes providing a stable migration path from copper network services and supporting initiatives and timeframes for copper switch-off.

38. Further, 5G will be an important enabling technology. As previously discussed, telecommunications regulation will need to evolve to support the rollout and take-up of 5G through engagement with the government to ensure the optimal supply of sites and street furniture, the implementation of a progressive regime that actively encourages infrastructure and network sharing, auction design that achieves long-term connectivity targets rather than meeting short-term budget considerations and engagement with other regulators and expert bodies to ensure that the benefits, which new connected technologies can provide, are effectively communicated to end-users.

ComReg's role as an industry champion

39. Ensuring benefits to end-users is only but one of ComReg's statutory objectives. ComReg also has a role to play as an advocate of the telecommunications industry in order to encourage competition and investment. ComReg should be mindful of such obligations in its interactions through the media including through publications on its own website.

40. eir is surprised and disappointed to read ComReg's position on eir's Regulatory Governance Model. As the Settlement Agreement is a contractual agreement between eir and ComReg, and in the context where eir has achieved (and this is accepted by ComReg) the implementation and assessment of eir's regulatory governance through the achievement of the various milestones (both financial and non-financial), that ComReg would characterise its position as "continues to have concerns around...the culture of compliance within Eircom in the presence of the enhanced RGM" and "consider if more regulatory action is required" is unfounded. ComReg's position is even more surprising given the fact that these views have never been expressed in writing, or otherwise, to eir and is completely contrary to the information published in ComReg's information notice 21/15R. In particular, ComReg's views are completely disregarding the role it itself has agreed for the IOB.

41. Similarly, ComReg should be mindful that it too can influence customer perceptions of industry players and it should ensure that it champions publicly the good work that the telecommunications industry has done and continues to do to ensure Ireland stays connected. In dealing with the media, ComReg should be mindful of the language used in comparing operators including their relative performance and should not provide speculative commentary as to the circumstances of individual operators.

Developing a clear and transparent framework for compliance investigations

42. ComReg is required by the Communications Act 2000 and Section 16 of the Framework Regulations in carrying out its functions to 'apply objective, transparent, non-discriminatory and proportionate regulatory principles', in particular by '*promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods and ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services...and promoting efficient investment and innovation in new and enhanced infrastructures*'

43. ComReg may take enforcement proceedings "at the end of the period" specified by ComReg under Regulation 19(1), that is the period "*within a reasonable time limit*" given to the operator in receipt of a Notification of Non-Compliance to state its views or to remedy the non-compliance. "At the end of the period" requires that any action on the part of ComReg is taken within a limited, reasonable, period of time, in accordance with the principles of legal certainty and good administration.
44. eir considers that there is an urgent need for ComReg to establish a formal and fit for purpose compliance process within which to apply the penalties methodology and in order to ensure that the manner in which investigations are handled is properly established and allows for full transparency. In ComReg's recent consultation 20/25 a number of interested parties called on ComReg to publish process guidelines on its handling of compliance investigations.
45. As things stand, ComReg has no published process for the handling of the compliance investigations that may lead an Opinion of Non-Compliance and subsequently to the consideration of the imposition of fines. From eir's perspective all investigations appear to be conducted in an ad hoc fashion without any transparent and fair procedure or time-line. There is no consistency in approach and no transparency as to the status of investigations, including when or if findings of non-compliance are likely, or indeed whether a case is still active.
46. There is no information about the criteria upon which ComReg decides whether or not to open or pursue an investigation, nor has ComReg given any indication of the criteria it uses to make a finding of non-compliance, accept a settlement or close an investigation. There are no time-lines for the conduct of investigations, meaning compliance cases can be open without any progress or decision for many years, and with requests for information coming in stages over many years.
47. The complete lack of transparency and absence of published processes or time-lines in current investigations means that operators have no way of knowing if ComReg is complying with its obligations of fairness, objectivity and non-discrimination. It also means operators are

subjected to compliance processes that are completely unpredictable, an approach which directly contravenes the obligation to promote 'regulatory predictability'. This approach also has a chilling effect on investment and innovation, including by leaving compliance cases open and dormant for many years, essentially 'hanging over' operators without being resolved.

48. eir does not consider that the present approach to compliance investigations can be said to be 'fit for purpose' for the assessment, in an objective, transparent, fair and proportionate way, of potentially multi-million euro fines particularly if the lapsed time of the investigation is taken into account in calculations.

49. ComReg should as a priority publish a formal compliance investigation process within which any financial penalty methodology would be deployed. eir notes that Ofcom, for example, has published Guidelines, setting out how it will investigate compliance with and approach enforcement of regulatory requirements relating to electronic communications networks and services, postal services and consumer protection legislation.⁵

50. The guidance includes the rationale as to why and how Ofcom opens cases, how it investigates those cases, the outcomes of investigations and the decision making process as well as the settlement procedure. eir considers that similar guidance is urgently required in the context of the Irish regulatory regime.

51. Finally, eir believes that the calculation of any penalty should be conducted by ComReg personnel that have not been involved in the compliance investigation to ensure that the penalty is considered in an impartial manner.

Question 4: Do you believe that the Goals associated with the Strategic Intentions are appropriate, and relevant? In providing your view, please also provide supporting evidence.

⁵ Ofcom Enforcement Guidelines for regulatory investigations, 2017

52. eir remains concerned that ComReg's work programme continues to be characterised by delays. It is notable that since the review of the Recommended Markets in 2014, ComReg only managed to complete one cycle of reviews for each of the four listed markets between the end of 2018 and early 2020. It is even more stark to note that reviews remain outstanding for two markets de-listed by the 2014 recommendation.
53. eir also remains concerned with regard to the manner in which ComReg is implementing remedies in the Irish market as well as the design and complex nature of such remedies. It would appear that there is a prevailing issue with regard to sequencing and ComReg continues to implement remedies and devote significant resources to work streams based on out of date market reviews. For example, pricing reviews are frequently undertaken on the basis of out-dated market analyses – which are soon due for review or have already lapsed.
54. While ComReg has signalled on numerous occasions that the market review delays were as a result of a lack of resources we note there has been a significant increase in resources available to ComReg in terms of its own staff and budget for external consultants to support its activities. However there is no sign that the pace of market reviews will pick up. eir notes that all recent Market Review Decisions in the last 10 years have been delayed where the pricing remedies have been imposed in perpetuity or where the regulatory price path is beyond the market review period.
55. As markets continue to evolve, including the number of listed markets susceptible to ex ante regulations, the piece-meal and ill-sequenced review of pricing remedies increases the risk of regulatory failure. The Irish market should not have to remain a laggard in terms of adopting regulatory best practice as a result of delays on the part of ComReg. eir therefore considers that ComReg's Strategy "Goals" should clearly set out its proposals for completing the next round of market reviews within the mandated timeframe for review as well as how ComReg intends to move towards a more deregulatory approach in line with technological and market developments. eir also notes that the Code mandates for market reviews to be completed

within 5 years. This is a maximum period and ComReg should consider whether the review cycles should be shorter in more dynamic markets.

Question 5: In your view, is there anything else that should be added to, or omitted from, this Strategy Statement?

56. eir has no further comments at this time.

5 Sky Ireland Limited ('Sky')



ComReg Document 21/32
Public Consultation on ComReg's Five Year ECS Strategy

19 May 2021

Sky welcomes the opportunity to respond to this public consultation and we have set out our views below under each of the questions posed in ComReg Document 21/32a

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

1. Sky fully supports ComReg’s stated vision for a sector where consumers and businesses in Ireland have widespread access to affordable, high-quality and secure communications services. However, we note that, at the same time as having this stated vision, ComReg has also overseen a market where broadband pricing is one of the highest in Europe and where the incumbent SMP operator is the most profitable incumbent in Europe. We would therefore encourage ComReg to be more active (and timely) in regulating the Irish market to ensure that this vision can be achieved.
2. For example, in October 2020, ComReg published a decision setting the allowable rate of return on wholesale broadband products regulated by ComReg. This decision was long overdue and significantly reduced the rate of return from 8.18% to 5.61%. However, despite the European Commission’s recommendation in July 2020 that existing prices be updated “without delay” to reflect this material change - which would in turn mean that broadband prices are substantially reduced - ComReg has still not sought to update those prices. Instead, ComReg has allowed the SMP operator to continue to earn excessive returns to the detriment of competition and Irish consumers.
3. Ensuring that regulated prices reflect efficient practice and that excessive recovery by the SMP operator does not happen is one of ComReg’s core obligations, so it is disappointing that the European Commission’s recommendation has not been followed and we are still paying excessive prices.
4. ComReg’s review of the Access Network Model (ANM) is also three years late at this stage. The ANM is a significant input to ensuring affordable, high-quality services and we would urge ComReg to complete this review as soon as possible. Sky also believes that ComReg should more closely monitor compliance with cost orientation obligations. The market has experienced many years of late and staggered reviews which has led to a situation where the inconsistent application of pricing principles or data is resulting in outcomes that are distortionary. ComReg has an opportunity to bring an end to such anomalies through the current ANM review in a manner that allows consistent and on-going updating of relevant cost models.
5. In respect of ComReg’s role and mission, we agree with the statement at paragraph 1.9 that ensuring a well-regulated market is one of the most important tools in working towards ComReg’s vision for the communications sector. Sky’s concern is that we cannot have a well-regulated market when market reviews are consistently delayed meaning that regulatory obligations are consistently out of date and not reflective of current market conditions.
6. We also agree that regulatory obligations have no effect unless regulated entities comply with them and that an effective compliance and enforcement strategy is key. Therefore, we would encourage ComReg to be more active in ensuring that the SMP operator complies with its regulatory obligations.
7. There appears to us to be an absence of enforcement in the Irish market since ComReg entered into a settlement agreement with Eircom in 2018 where it settled two compliance cases that were before the High Court and where ComReg also agreed to close a further nine ongoing compliance investigations without any apparent consequences or directions to ensure compliance in those matters.

Q2. Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy? In providing your view, please also provide supporting evidence.

8. We agree that Chapter 3 captures the most important sectoral trends. However, we would encourage ComReg to focus the limited resources available to it on the fundamentals of regulating electronic communications networks and services.
9. Existing trends, such as the ever-increasing demand for electronic communications services and data, will no doubt continue over the next five years. In order for ComReg to deliver on its remit, the focus must remain the same - namely to carry out its work in an effective and timely manner.

Q.3 Do you agree with the Strategic Intents discussed in detail in Chapters 4 to 8? In providing your view, please also provide supporting evidence.

Strategic Intent 1:

A competitive sector that delivers efficient investment, innovation and choice

10. Sky is a major driver of investment in the Irish broadband market.¹ Indeed, it is well-established that strong retail competition is a key driver of network and innovative investment. We fully agree with the aim of delivering innovation and choice for consumers however we note that there is a clear bias in the ECS Strategy towards infrastructure competition. In our view, the greatest possible choice of wholesale or network operators should not necessarily be an aim in and of itself, particularly in the area of network investment and in a market the size of Ireland. It is critical that efficient network investment is what is attracted to the market. Where 'build/buy' signals are out of kilter with the promotion of efficient investment, the long-term outcome will be either under-investment or inefficient (wasteful) investment. The latter is much harder to unwind due to the sunk cost nature of telecommunications investment. Multiple overbuild of access networks may ultimately deliver poor outcomes in terms of price, choice and quality of service if what has propagated that investment is excessive build signals.
11. We also note that increased network competition will make switching at the retail level more expensive and cumbersome for consumers in the absence of a cross-network switching process. We would therefore encourage ComReg to play a more active role in establishing a cross-network switching process in accordance with the provisions of the new European Electronic Communications Code (EECC).
12. We would also encourage ComReg to be more active in using the tools at its disposal relating to competition and investment which include enforcing the regulatory obligations placed on the SMP provider, obligations that are designed to facilitate competition and investment. As noted above, there appears to be a lack of enforcement activity since the settlement agreement was entered into with Eircom in 2018 and therefore no incentive to comply.
13. Sky is very concerned with the statement at paragraph 4.63 that ComReg does not have any plans to impose cost-orientation obligations on Eircom's FTTH network. This is particularly concerning in the context of copper switch-off where consumers may be forced from FTTC services, that are regulated, to FTTH services that are not regulated. We look forward to engaging further with ComReg on this.

Strategic Intent 2:

Consumers can choose and use communications services with confidence

¹[...]

14. Consumer protection is very important to Sky; consumers and the customer experience are at the heart of all decision making within Sky. We therefore fully support the strategic intent that consumers can choose and use communications services with confidence. To this end, we provide all relevant information to the consumer in a clear and concise manner before they purchase any products or services from Sky and we are currently making significant and very costly developments to comply with the new requirements under the EECC. We also provide all required contractual information and notifications to our customers in a transparent manner and consumer rights are at all times upheld throughout the customer journey with Sky.
15. We take customer service very seriously at Sky and we invest millions of euros in a first-class customer service operation to ensure our customers get the most out of their broadband and talk products and services. We also have a dedicated accessibility team to ensure that the needs of vulnerable or disabled end users are met and we actively engage in the ComReg forum on accessibility. As ComReg will be aware, we also invest significant time and resources in our complaints handling process and we have engaged proactively with ComReg on process improvements.
16. However, we would note that a critical aspect of delivering good customer service in respect of providing broadband and talk to our customers is the quality of service provided at the service initiation or installation stage and the quality of the service provided when a customer experiences a fault or a degradation in service. Many OAOs like Sky are substantially reliant on the SMP provider to deliver quality of service in these scenarios. As previously submitted to ComReg, Sky is strongly of the view that, in particular in light of the rollout of FTTH networks in urban areas, a fresh suite of Service Level Agreements with appropriate Service Level Guarantees must be put in place to address these important issues. We note that there is currently some resistance to such developments, and we look forward to engaging with ComReg on the current KPI consultation. It is also important that ComReg act in a timely manner to deal with associated disputes or compliance issues in relation to these matters.
17. In relation to ComReg's stated goal of ensuring that there are low barriers to consumers exercising their choice, we would urge ComReg to take a more active role in establishing a cross-network switching process in accordance with the provisions of the EECC.

Strategic Intent 3:

End-Users have widespread access to high-quality and secure communications networks, services and applications

18. Sky supports this strategic intent. We agree that connectivity to high-quality, reliable and resilient ECS and ECN has become essential to ensuring social and digital inclusion. In this regard, we note that Ireland has performed well and that 4 in 5 broadband users agree that their home broadband is adequate to meet the needs of their household at a time when broadband usage is at its highest.²
19. We also welcome the statement at paragraph 6.23 that the connectivity of end users is not about pitting one network technology against another, but rather the widespread, continuous and high-quality connectivity of end users, regardless of how they are connected to electronic communications services. We would encourage ComReg to bear this in mind in considering the matter of copper switch off, particularly in areas where customers have access to more-affordable FTTC to meet their needs.

² ComReg Document 21/42, *The Impact of Covid-19 on Home Broadband and Mobile Service Usage*, April 2021

Strategic Intent 4:
Regulated entities comply with regulatory requirements

20. We agree with the statement at paragraph 7.22 that the optimum situation is where regulated entities are fully cognisant of their obligations, comply with them and have an internal culture of compliance. Sky has a very strong culture of compliance and welcomes any measures taken by ComReg to promote and ensure compliance by all operators within the sector. In particular, Sky would like to see a lot more transparency and legal certainty from ComReg in respect of compliance activity and more public consultations resulting in clear directions from ComReg.
21. We note that ComReg has been very active in relation to regulatory compliance from a retail perspective. However, it is equally notable that, despite well documented and serious issues associated with non-compliance in wholesale markets, no compliance action has been taken by ComReg in recent years since the settlement agreement between ComReg and Eircom was entered into in 2018. The introduction of the 'independent oversight body' does not appear to have made any difference in respect of non-compliance and, if anything, there seems to be even less transparency in respect of compliance with SMP obligations since the body was established. We are pleased that ComReg has, at paragraph 7.28, acknowledged concerns around the state of competition and the culture of compliance within Eircom but we would like to see some action from ComReg.
22. As ComReg states at paragraph 7.6, the effectiveness of the regime depends not only on bringing non-compliant conduct to an end but also on its impact in terms of deterring future non-compliance. There does not appear to be any deterrent in terms of non-compliance as there does not appear to be any consequences for non-compliant conduct in respect of the SMP operator's obligations.
23. ComReg also states at paragraph 7.14 that every instance of non-compliance has the potential to seriously damage competition and that access seekers confidence to continue to invest can be undermined by a lack of compliance. We agree with this and would therefore urge ComReg to take more action to ensure that regulatory obligations are adhered to by the SMP operator.

Strategic Intent 5:
ComReg is an effective, agile and relevant regulator

24. Sky supports this strategic intent and we would strongly encourage ComReg to review markets and regulatory obligations in a timely manner to ensure that this can be achieved. As stated above in our response to Q1, we urge ComReg to apply the new rate of return without delay as recommended by the European Commission and to complete the ANM review (which is almost 3 years late) as soon as possible.
25. We note that one of the stated goals under this strategic intent is for ComReg to be proactive on engagement with a range of stakeholders. Sky supports this and we request that ComReg play a more active role in engaging with industry on the implementation of a cross-network switching process under the provisions of the EECC.
26. We also note ComReg's goal to have efficient and effective policies, processes and systems in line with best practice. In this regard, we would urge ComReg to be more transparent in relation to the processes and procedures it follows for compliance investigations at both the wholesale and retail level. There is currently no information available for industry as to how such investigations are to be conducted, what timelines ComReg will work to and when the parties can expect a decision. Some investigations remain open for years on end with no apparent outcome or clarity as to ComReg's position on the matter. This is certainly not in line with best practice for the performance of functions by a statutory body.

Q.4 Do you believe that the Goals associated with the Strategic Intentions are appropriate, and relevant? In providing your view, please also provide supporting evidence.

27. We believe that the goals are appropriate and relevant. They have been addressed in our responses to the strategic intentions under Q3 above.
28. The main concern for Sky is that we would like to see more action on the part of ComReg to ensure that these goals are achieved, and to ensure that we have a well-regulated market to the benefit of industry and ultimately consumers.

Q.5 In your view, is there anything else that should be added to, or omitted from, this Strategy Statement?

29. Sky has noted recent commentary from ComReg (including in context of the draft ECS Strategy) to the effect that consumers are no longer as concerned with pricing when it comes to broadband products and services. However, Sky conducts a significant amount of consumer research in Ireland every year and the evidence we have gathered demonstrates that this is simply not the case. Price is in fact the number one reason for consumers switching.³ This is particularly important in light of the COVID-19 crisis and the damaging effect that has had on the Irish economy, on employment and ultimately on Irish consumers. Appropriate price regulation is fundamental to ensuring competition, facilitating switching and protecting the Irish consumer.
30. This is also particularly important in the context of Eircom's copper switch off paper and we would ask ComReg to consider this in respect of any proposals to remove the availability of FTTC without appropriate price regulation for FTTH or any suggestion that consumers do not care about pricing. We look forward to discussing this further with ComReg.

³[...]

6 Tesco Mobile (Ireland) Ireland (‘Tesco’)



John Regan
Commission for Communications Regulation
One Dockland Central
1 Guild Street
Dublin 1
BY EMAIL: john.regan@comreg.ie

11 May 2021

Dear John

ComReg's ECS Strategy for 2021 – 2026

I refer to ComReg's public consultation regarding its Electronic Communications Services (ECS) Strategy for the next 5 years, 2021 – 2026 (ComReg Doc. No. 21/32) and welcome the opportunity to respond on behalf of Tesco Mobile Ireland Limited ("Tesco Mobile").

Tesco Mobile believes that ComReg is proposing an appropriate strategy for this period. In our view, the strategy as proposed reflects current trends and challenges pertaining to the electronics communications sector and ecosystem.

At Tesco, we believe every little help makes a big difference. Our integrated sustainability strategy, the Little Helps Plan, sets out how we will make a positive difference in areas such as climate change, the circular economy and diversity and inclusion. We are pleased to note that the ComReg strategy is reflective of these issues.

In particular, we welcome:

1. The beneficial role that ComReg has played in: (i) the Government Mobile Phone and Broadband Taskforce; and (ii) enabling telecoms industry Covid-19 commitments in support of our customers experiencing financial and other difficulties;
2. The study of the Irish mobile market that ComReg has commissioned and expects to conclude in 2021; and
3. ComReg's intention to "... *work to drive service providers to improve the [Customer Care] experience they provide to their customers by improving transparency on Quality of Service and ensuring that they are tackling systemic and root cause issues*".

In relation to the Irish mobile market study, MVNOs bring significant value to the Irish mobile market, namely diversity of operator/incentive and in the case of Tesco Mobile, a long term commitment by Tesco to deliver value, convenience and customer service to our customers. A robust market for MVNOs delivers sustainable benefits to customers in the areas of service and

price. As a result, it is critically important that the regulatory environment enables MVNOs to effectively compete with MNOs and bring significant value to customers.

In relation to ComReg's intention to drive Customer Care improvements, Tesco Mobile is very proud of its customer care track record (it has not appeared in ComReg's Consumer Line Statistics report in over 12 months) and believes that the future success of the telecoms industry depends on looking after its customers as technology, customer experience and expectation evolve and grow.

If you have any questions or would like to discuss, please do not hesitate to contact me.

Yours sincerely.

(bears no signature as sent by email)

CIARAN MELIA
General Manager

7 Three Ireland (Hutchison) Limited (‘Three’)

ComReg's Draft ECS Strategy Statement

Response from Three Ireland

12 May 2021



Three.ie

I. Introduction

Three Ireland welcomes ComReg’s draft ECS Strategy Statement and thanks ComReg for the opportunity to respond to it. This is ComReg’s five-year electronic communication services strategy for the period 2021-2026 and also sets out how ComReg will implement the first two years in particular for the period 2021-2023.

II. Responses to ComReg Consultation Questions

In relation to ComReg’s draft Strategy Statement for Electronic Communications Services for 2021-2023:

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

Three Ireland agrees that Chapter 1 appropriately captures ComReg’s Mission, Vision and Role for the period 2021 to 2026.

Q2. Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy? In providing your view, please also provide supporting evidence.

Three Ireland agrees that chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy. However, the investment required to maintain communications networks needs to be adequately considered, particularly the level of investment required to ensure that they are secure and resilient. With falling revenues because of the substitution of traditional electronic communications services by over-the-top (OTT) services, consideration needs to be given to sustainable return on investment in the sector. Three Ireland notes that investment is considered in Chapter 4.

Q.3 Do you agree with the Strategic Intents discussed in detail in Chapters 4 to 8? In providing your view, please also provide supporting evidence.

Three Ireland has the following points to make in relation to the strategic intents discussed in detail in Chapters 4 to 8.

1. Chapter 4 Competition and Investment

Return on investment to ensure networks are sustainable – paragraphs 4.58-4.60

As noted above, the investment required to maintain communications networks needs to be adequately considered particularly the level of investment required to ensure that networks are secure and resilient. With falling revenues because of the substitution of traditional electronic communications services by OTT services, consideration needs to be given to sustainable return on investment in the sector. ComReg’ needs to ensure that the electronic communications sector remains attractive to investors and regulation does not stifle innovation.

Competition in Mobile Markets 4.21-4.25

In relation to paragraph 4.25, Three Ireland would note that its population coverage of 4G is 99% and its population coverage of 5G is 46.7%.

Competition Paragraphs 4.26-4.28

Three Ireland considers that the retail mobile market in Ireland is competitive, providing high quality services based on secure networks. ComReg has significant market power (SMP) powers available to it to address any issue with competition in the market. Three Ireland notes that retail markets are not recommended as being susceptible to *ex ante* regulation.

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Three Ireland notes that the European Commission has published its Regulation 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 (EECC) of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate. In light of this, Three Ireland sees no need to continue to be designated as having significant market power in relation to wholesale mobile voice call termination on its mobile network and would call for its removal. In relation to paragraph 4.25, Three Ireland would note that its population coverage of 4G is 99% and its population coverage of 5G is 46.7%.

2. Chapter 5 Consumer Protection

Information Gathering, Compliance Monitoring and Investigations Paragraph 5.25 Three Ireland notes that ComReg may in the performance of its functions gather information directly from operators. Three Ireland notes that where the information sought includes customer personal data, Data Protection considerations come into play which may restrict the ability of operators to provide the information sought. Three Ireland notes that ComReg as a data controller requires a legal basis to obtain customer personal data and suggests that when making such requests, ComReg either obtain an explicit consent from the customer, or specify the legislative basis for the request.

Direct Carrier Billing Paragraphs 5.52-5.53

Three Ireland, similar to other mobile operators, allows third-party providers to charge their customers via their mobile phone bills for goods or services. Such charges can apply to:

- Premium Rate Services (PRS) offered by phone call or by text message which are usually charged at higher rates than those normally applied to phone calls and text messages; and
- the purchase of goods and services by Direct Carrier Billing (DCB) - where a mobile phone user is charged for a good or service on their mobile phone bill.

Three Ireland would caution that innovation should not be unduly stifled. Three Ireland has had recent experience of launching content services which are paid for by customers by way of DCB. In Ireland, these content services are treated as PRS. The existing regulatory framework and in particular the Code of Practice for PRS does not neatly fit the DCB services being offered and calls out for a review to modernise it in this regard. The last version of the Code was published in May 2014.

Three Ireland is concerned that over regulation of DCB or trying to ensure that it fits within the existing PRS regulation could lead to innovation being stifled. Many of these new DCB arrangements involve partnerships between the operators and respected digital content providers. It is important that regulatory requirements can be communicated clearly at the outset so that propositions and IT builds can be tailored accordingly and go to market timings can be properly planned.

Three Ireland is of the view that the existing framework, including the Code of Practice may no longer be appropriate for all the types of service that are becoming popular among suppliers and consumers. The existing regime is rooted in the traditional Premium Rate model, in terms of responsibilities and technology. Three Ireland is of the view that ComReg should consider initiating a review of the framework for regulation of Premium Rate and Direct Carrier Billing services, and consider whether a revision to the Code of Practice is required.

The Code of Practice for PRS does not clearly set out the obligations for individual players but instead refers to PRS Providers in a general way, which is defined to include all participants in the supply chain. Such an approach lacks regulatory certainty and makes compliance with the Code of Practice more challenging.

5G coverage Maps paragraph 5.37

Three Ireland would welcome ComReg publishing 5G coverage maps in addition to 3G and 4G coverage maps. This would allow for independent and impartial information for customers.

3. Chapter 6 Connectivity and Network Resilience

Security and Resilience of Networks Paragraphs 6.51-6.60

The importance of security and resilience of networks was highlighted by Covid19. People are dependent on electronic communications networks being secure and resilient. This will continue to be an area of importance throughout the period of the strategy statement 2021-2023 and indeed the broader period 2021-2026. There is growing awareness in relation to this relatively new area. Three Ireland was designated as an operator of essential service under the NIS Directive and transposing regulations. It is also subject to the network and integrity obligations of the Framework Directive and transposing regulations and will be subject to the EECC provisions contained in Article 40 also. The collaborative approach taken by ComReg, the National Cybersecurity Centre (NCSC), the Department of Communications and the relevant operators in relation to the draft Electronic Communications Security Measures (ECSMs) worked well for this new area of focus to implement the 5G security toolbox. It seems a good roadmap for regulation in an area of crucial importance in terms of educating the operators as to what is required, translating the European Commission and ENISA requirements, taking on board stakeholder concerns and engaging in real dialogue. We are all working together to ensure the networks are secure and resilient to all of our benefit and most importantly to the benefit of all users of electronic communications services.

4. Chapter 7 Compliance and Enforcement

Retail Enforcement paragraph 5.40, and paragraphs 7.18-7.26

In relation to retail enforcement, there is often a difference in interpretation of legal obligations rather than any wilful non-compliance on the part of operators. Could a more educative approach be considered? Rather than publishing an information notice on a compliance case which may contain limited information, it may be more beneficial to inform operators across industry that a particular practice would not meet the requirements of regulation in ComReg’s opinion and require industry to be in line with this interpretation. This would give operators the opportunity to commence projects, or change IT systems, if required, based on ComReg’s interpretation of a legal requirement which could be new to operators. Three Ireland fully accepts this may not work in all instances, however, it may be more effective in relation to certain new issues.

While the EECC Guidance document, for example, is useful as a means of understanding ComReg’s policy position, it may not be an appropriate means of imposing regulatory requirements.

We also consider that in the context of PRS compliance greater focus should be placed on the PRS Aggregators in terms of potentially fraudulent practices and the risk of harm to end users.

5. Chapter 8 ComReg’s organisation

Covid 19

Three Ireland thanks ComReg for the positive and practical role it has played in relation to Covid 19. In particular, the award of temporary spectrum facilitated ensuring our customers could stay connected and were able to work remotely during this period – ref paragraph 8.55 and Information Box 12.

Q.4 Do you believe that the Goals associated with the Strategic Intents are appropriate, and relevant? In providing your view, please also provide supporting evidence.

The goals associated with the strategic intents appear to be appropriate and relevant.

Q.5 In your view, is there anything else that should be added to, or omitted from, this Strategy Statement?

The main additional or differing points are contained in the response to question 3 above.

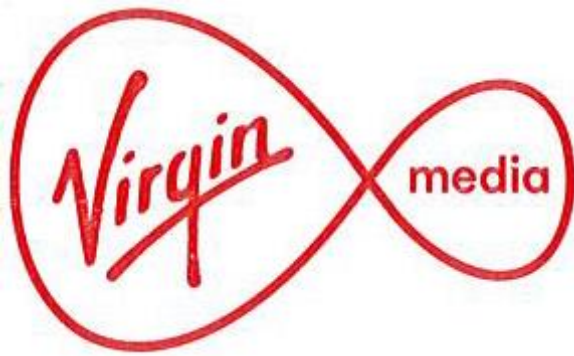
While we understand that ComReg must adopt the appropriate means of engaging with industry and consumers as fits each situation, we observe that the less formal and collaborative approaches would seem to have been most successful recently. By way of example, we would highlight the work leading to the drafting of the new ECSMs together with the NCSC and also the work carried out within the Numbering Forum. Both of these fora allowed for the exchange of opinion and information in a less formal manner than is possible in a written consultation process. We are of the view that in both cases, this has been beneficial and has led to a better outcome, even if a parallel written consultation is required. ComReg could consider adopting this approach more broadly, where appropriate.

Stakeholder Engagement

Three Ireland notes the successful and productive engagement between ComReg and the Data Protection Commission in the context of EECC implementation and suggests that such engagement would be fruitful in future instances where there is an intersection between the two regulators’ areas of concern.

/Ends

8 Virgin Media Ireland Limited ('Virgin Media')



Virgin Media response to:

Consultation: Draft ECS Strategy Statement

ComReg 21/32

12th May 2021

Summary

Virgin Media Ireland Limited (**‘Virgin Media’**) welcomes the opportunity to respond to ComReg’s Consultation (**‘the Consultation’**) on its Draft Electronic Communications Services (**‘ECS’**) Strategy Statement (**‘ComReg 21/32’**) (**‘Statement’**).

We welcome the draft Strategy Statement and acknowledge the updates that have been made to take account of the changing nature of the market. ComReg’s Strategy Statement is very important to provide ECN/ECS providers with necessary information so that they have certainty around ComReg’s regulatory activities. Virgin Media makes a number of suggestions in our response which we believe if taken into account by ComReg will serve to strengthen the statement. The end result being an optimal result for consumers, industry and ultimately ComReg itself.

Summary of main points:

- Encouraging infrastructure based competition and giving regulatory certainty to investors should be a key priority for ComReg. Regulatory certainty is critical for network operators making investment decisions in what is a capital intensive industry.
- Virgin Media would welcome the inclusion of the value ‘proportionality’ in the Statement. This is an important value for any regulator and a key principle of better regulation.
- Any issues identified in the market must be addressed through evidence-based analysis and with reference to clear requirements. Where a requirement is unclear, Virgin Media would welcome more public consultation from ComReg that sets out the evidence of harm and the proposed solution to remedy that harm.
- Regulatory certainty is necessary. ComReg states they will seek additional powers in terms of new protections for consumers and enhanced enforcement powers. The European Electronic Communications Code (EECC) strives for harmonisation in terms of consumer protection across countries in the European Union. However in the draft strategy statement, it is suggested that ComReg will introduce additional regulatory requirements in the consumer protection area, beyond those contained within the EECC. This seems at odds with Article 101 and the harmonisation intent of the EECC.
- Virgin Media suggests ComReg’s Strategy Statement should build on what it has achieved during the COVID pandemic with its ongoing engagement with network operators. Virgin Media believes ComReg has played an important role for network operators during the pandemic. In light of this we believe that ComReg could have an ongoing important role in the provision of information to operators and also assist in the resolution of common issues that affect the development of the sector.

Virgin Media has responded to ComReg’s consultation questions in the next section.

Response to Consultation Questions

Q.1 Do you agree that Chapter 1 appropriately captures ComReg's Mission, Vision and Role for the period 2021 to 2026?

Values

In Chapter 1 ComReg summarises its values as: integrity, impartiality, effectiveness, excellence and transparency. While these are unchanged since the last strategy statement, we propose that the key principle of better regulation of 'proportionality' is added to the list of values. Proportionality is a critical value and regulatory authorities must act in a proportionate manner in how they regulate.

We agree with the listed values and in particular 'transparency'. While 'transparency' is a current value, Virgin Media respectfully suggests through public consultation and more industry guidance more could be done by ComReg to continue to ensure transparency as the market develops. This is particularly in the context of the prospective transposition of the European Electronic Communications Code (Directive 2018/1972) which will revamp the existing regulatory framework. In this response we provide a number of suggestions, in particular in the area of compliance and enforcement.

Role and Mission

ComReg's role and mission is described as:

ComReg's role is to ensure that communications markets operate in the interests of consumers and society.

Through effective and relevant regulation, we facilitate the development of a competitive communications sector in Ireland that attracts investment, encourages innovation and empowers consumers to choose and use communications services with confidence.

Virgin Media fully agrees with this role and mission. The development of a competitive communications sector should be the central focus in every aspect of what ComReg does. A competitive sector will drive innovation and will ensure that consumers receive optimal choice and service. ComReg's functions in the areas of economic regulation and consumer protection should both focus on this objective. In theory once competition develops, consumers should receive an optimal level of service and there should also be less necessity for economic regulation. Virgin Media respectfully suggests that ComReg's role should focus on addressing any remaining distortions and other anomalous issues, and to enhance its level of support for the sector as it continues to develop and evolve.

Strategic Framework

ComReg's Strategic Framework sets out the tools that ComReg uses to deliver its role and mission. Its Strategic Intents are summarised at the end of Chapter 1 and include intents in the areas of: Competition and Investment; Consumer Protection; Connectivity and Network Resilience; Compliance and Enforcement; Organisation. What doesn't appear to be captured in this high-level overview is the inter link between the development of competition and all other intents. We suggest the following changes:

- SI 2: Consumer protection

Consumers can choose and use electronic communications services with confidence. **Customer service is optimised by enabling competitive factors and differentiation between operators.**

- SI 4: Compliance & Enforcement

Regulated entities **are clear on the requirements they are subject to and** comply with **those regulatory requirements to the benefit of consumers and competition.**

We provide more detailed comments on each intent and on the tools that ComReg uses below.

Q.2 Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy?

Virgin Media broadly agrees with the trends and challenges that were identified by ComReg. Virgin Media respectfully suggests that ComReg might consider the following points:

- **ComReg points to differences in use and take-up of ECS across age groups.** While we do not disagree with the facts, we believe that it is inevitable that there will always be a difference in usage across age cohorts with younger cohorts more willing to take-up and use new technologies. These behavioural differences do not point to an issue, just a general fact that will always exist as long as technology continues to develop.
- **Ensuring telecommunications providers are not at a competitive disadvantage in comparison to indirect competitors in adjacent sectors.** While ComReg identifies OTTs in its assessment of trends, ECN/ECS providers are facing intense competition at the service level from over-the-top service providers. The EU Electronic Communications Code, and its foreseen implementation in national law, aims to create a level playing field for ECN/ECS providers and OTT providers ensuring that such providers are not subjected to more extensive and burdensome regulatory requirements than those that apply to OTTs (or other related service providers). Inconsistent treatment of different providers risks distorting competition at the service-level. Given the intensity of competition that has emerged at the service-level, Virgin Media would support a light-handed regulatory approach across the board. See our comments below.
- **Acknowledge industry evolution by identifying instances where existing regulatory interventions are no longer necessary or proportionate.** Over the last number of years, electronic communications markets have become more competitive as a result of technological developments, OTTs, and platform-competition. On that basis, ComReg might consider opportunities to reduce the scope of regulation reflecting the principles of appropriateness and proportionality, rather than focusing disproportionately on introducing new regulatory measures. A more consultative approach to ensuring that consumers continue to be protected and ensuring the development of competition is necessary. We discuss this further under Question 3.
- **Continue to preserve incentives for investment.** We repeat the position we set out in our previous responses to ComReg's consultations on its strategy statement. We have built our network with our own funds and continue to invest in it to ensure it meets the ever more demanding needs of our customers. Virgin Media strongly believe in infrastructure

competition. Imposing wholesale access obligations acts as a disincentive to investment in the infrastructure that Ireland needs to grow as a digital heartland and can hold back innovation. The imposition of wholesale access obligations should only be contemplated where there is a demonstrated absence of effective competition, and credible demand for regulated wholesale access, also taking into account commercial possibilities for the parties concerned. This applies in the traditional asymmetric regulation environment, and even more so with regard to the consideration of symmetric wholesale access regulation. Obligations contemplated, if any, must be reasonable and proportionate to achieving fair competition whilst preserving the investment and innovation dynamic, and should always aim to be in the least intrusive form.

The guidelines and definitions adopted by ComReg in implementing the regulatory framework need to be clear, restrained and consistent to encourage investment and achieve a dynamic Gigabit society. With competition intensifying, including at the network level, there is a clear trend toward the deregulation of SMP operators. This is demonstrated by the dramatic fall of the number of markets in the European Commission's Recommendation on relevant markets susceptible to ex-ante regulation over the years, and by national regulators' practice in most EU Member States.

Certainty is needed by existing providers in order to continually invest and also by new networks looking to make significant investments in Ireland. Virgin Media notes that, in exercising its powers, ComReg should be mindful about the fact that regulatory intervention has the potential to both facilitate and hinder competition and investment. ComReg should take care to take account of this across all regulatory decisions.

Q.3 Do you agree with the Strategic Intents discussed in detail in Chapters 4 to 8?

Virgin Media has provided comments under each heading below as relevant. Please note that due to the interlinked nature of the proposed Goals and Strategic Intents, most of our comments in relation to Question 4 (goals) are also captured in this section.

Chapter 4 Competition and Investment

Goal 1.4 is that competitive incentives facilitate efficient commercial investment in existing and new infrastructure and services to the widest extent possible. Virgin Media welcomes ComReg's commitment to supporting investment and the way in which ComReg formulates its Goal. Virgin Media has been able to significantly roll out its network over the last number of years with a degree of regulatory certainty. However, given the new EECC and the regulatory decisions of other NRAs, it is unclear how the regulatory framework will develop in this area in Ireland. For example, ComReg specifically identifies a symmetric access obligation in a number of parts of its document, yet it is unclear to Virgin Media from the Strategy Statement what ComReg's position on this is or how exactly ComReg intends to go forward. In any event, symmetric regulation cannot be seen as a potential replacement of asymmetric regulation (thereby perpetuating regulation rather than making a finding effective competition), or as a way for the NRA to be subject to lower legal and economic thresholds for imposing intrusive economic regulation on network operators.

Regulatory uncertainty can create a nervousness not only among potential new investors, but also among existing investors that continually reinvest in their networks (expansion, renewals, upgrades, etc.). ComReg's Strategy Statement has an extremely important role in this context. Without a clear commitment by the Regulator to support investment and infrastructure based competition, an uncertain environment for existing network operators in continuing to upgrade their network, and also for any potential new entrants, will ensue. Regulatory intervention is a useful tool to ensure that structural barriers to entry or bottlenecks are addressed. However, it must continue to be used in a proportionate manner. The continuation of ComReg's approach regarding the regulation of wholesale markets (resulting in the progressive deregulation as progress towards effective competition is achieved) and the support for infrastructure based competition will deliver the best results for new and existing network providers and ultimately for end-users. We also refer to our comments under question 2.

Virgin Media has invested significantly in its network in Ireland over the last number of years, through its Project Lightning, and we continue to invest in our network to ensure it meets the ever more demanding needs of end-users. While understanding that market dynamics can only be assessed at a point in time, certainty is needed and we suggest that ComReg could look at how it can enhance certainty and its focus on encouraging competition and investment in all types of networks.

Indeed the EECC identifies that a key goal of access obligations is to 'promote competitive outcomes in the interests of end users' (Code recital 152). The Code recognises that competition 'can be best fostered through an economically efficient level of investment in new and existing infrastructure'. This can be best achieved by infrastructure-based competition. The regulatory approach needs to be more geared towards dynamic efficiency to unlock the innovation potential of the ever-expanding digital economy, which is catalysed by gigabit networks. This was recognised in the recent Ofcom decision with Ofcom shifting from short term pricing strategy to long term investment reward strategy¹.

Under paragraph 4.37 ComReg commits to the monitoring of adjacent markets. Virgin Media welcomes this and suggests that there is acknowledgment of the potential competitive constraints such markets have on the ECN/ECS markets.

Chapter 5 Consumer Protection

Virgin Media respectfully suggests that the office could engage more publicly in this area (by way of increased consultation), ultimately for the benefit of consumers. We share below some points which might assist the office in finalising its strategy in this area.

ComReg states under 5.5 that it is cognisant that more vulnerable consumers may have been disadvantaged because of the move to remote and online interactions rather than in person. This is not Virgin Media's experience. Indeed Virgin Media's experience is quite the reverse. We have seen the significant benefits that remote and online interactions have brought for all consumers

¹ <https://www.ofcom.org.uk/consultations-and-statements/category-1/2021-26-wholesale-fixed-telecoms-market-review>

throughout the pandemic. The pandemic has shown everyone the importance of broadband providers like Virgin Media and highlighted the critical service we provide for our customers. Never before has it been so important for consumers to have access to broadband services in their homes. Many consumers have been able to continue working seamlessly through what are and have been unprecedented times.

In the event that vulnerable consumers have been disadvantaged because of the pandemic Virgin Media suggests that this should be addressed by a coordinated Government effort to ensure a common experience for such consumers in every sector of the economy.

Under 5.6 ComReg states '*bills and transaction history should be accessible for everyone*'. This is unclear as it doesn't appear to reflect any existing requirement. While operators are required to issue a bill that reflects the transactions for the relevant billing period, Virgin Media is unclear what the statement under 5.6 is referring to and requests more clarity in order to be able to respond fully.

Goal 2.1 is that ComReg identifies and understands consumer harm. Virgin Media agrees with this goal and believes that the identification and understanding of consumer harm can only be done through the collation of measurable evidence of harm. Virgin Media supports the adoption by ComReg of evidence-based decisions grounded in real consumer experience.

Under 5.31 ComReg states that where it identifies harms that it cannot address using the tools and powers available to them, they will seek additional powers in terms of new protections for consumers and enhanced enforcement powers. ComReg has a clear role set out in legislation and also defined in the EECC. The EECC strives for harmonisation in terms of consumer protection across countries in the European Union. This statement suggests ComReg will introduce additional consumer regulatory requirements, beyond those contained within the EECC, which appears at odds with Article 101 and the harmonisation intention of the EECC. As previously mentioned operators like Virgin Media need regulatory certainty, not only in the area of competition and investment, but also in terms of what our customer protection obligations are and what they will be. Virgin Media recommends that prior to the introduction of any new regulatory requirements a public consultation be carried out. Virgin Media is more than happy to participate in such consultations. All of ComReg's work in this area Virgin Media respectfully suggests should contain detailed assessments and measurements of the evidence of the customer harm that any new regulatory obligation seeks to address. As stated Virgin Media is happy to participate in any public consultations in this area. Virgin Media also as a general point would welcome more industry guidance from ComReg particularly where something is new, or is unclear.

Under 5.50 ComReg states that through their compliance and enforcement actions, they have sought to ensure that consumers are not disadvantaged by unfair or illegal practices. Virgin Media recognises that this is an important aspect of ComReg's work. Virgin Media would respectfully suggest that such activity be evidence based, proportionate and transparent. This will we believe ensure ComReg meets its values of values of 'objectivity' and 'transparency' (and the proposed value of 'proportionality').

Under 5.95 ComReg again states that *We will seek additional powers where relevant in relation to consumer protections and the enforcement of those protections*. Please see in the previous section comments we make in respect of paragraph 5.31 of the Strategy Statement.

As previously stated Virgin Media would welcome more public consultation with the office in the area of consumer protection.

Chapter 7 Compliance and Enforcement

Virgin Media agrees that one of ComReg's key functions is compliance and enforcement and has already made some comments in relation to how ComReg undertakes compliance and enforcement (see our comments above in respect of paragraph 5.50 of the Strategy Statement).

ComReg identifies 'targeted enforcement' as an element of enforcement strategy. There is no doubt that enforcement must be part of such a strategy for any regulator. However Virgin Media respectfully suggests that what is potentially more beneficial is for more industry guidance to be issued by the office and more consultations to take place particularly where requirements are new and/or unclear. Given changes that may arise to ComReg's remit as a result of the new EECC, Virgin Media believes that a consultative process will be very important.

ComReg states under 7.21 that '*ComReg may also open own initiative investigations to monitor and assess the general conformance to obligations...*'. Consideration Virgin Media believes should always be to the proportionality of such investigations and there should be transparency associated with them. Industry already receives a substantial number of information requests from ComReg which are resource intensive to complete and ComReg we believe might be more mindful of this.

7.25 states: *ComReg considers that having an effective, proportionate and dissuasive regulatory enforcement regime will help foster an awareness of the need for an appropriate culture of compliance within industry. Where appropriate, ComReg offers guidance on its enforcement powers and practices to ensure industry have a comprehensive understanding of their regulatory obligations and adhere accordingly. In addition, ComReg will utilise engagement and dialogue to help foster the desired behaviours within industry, where necessary.*

Virgin Media fully agrees with the final sentence and has found that this method works best to achieve the optimal outcome for ComReg, consumers and providers.

ComReg states under 7.33 that *in anticipation of ComReg getting the necessary enforcement powers (e.g. powers to impose administrative financial sanctions), ComReg will continue to evolve its enforcement practices and methodologies. In addition, ComReg will consider whether it is appropriate to publish further information and guidance on certain aspects of its compliance investigation practices and methodologies, where appropriate.*

Virgin Media would welcome a consultation on ComReg's processes around compliance monitoring and enforcement. ComReg also states that a prioritisation approach needs to be taken and Virgin Media would agree.

Goal 4.2 states that ComReg's compliance and enforcement activities are conducted using fair and objective processes and are targeted and prioritised appropriately. Virgin Media agrees. We do suggest an alteration to this Goal to reflect the necessity for ComReg to ensure transparency and proportionality:

*ComReg's compliance and enforcement activities are conducted using **transparent, proportionate, fair and objective processes and are targeted and prioritised appropriately***

Virgin Media welcomes ComReg's commitment to continue to evolve its enforcement practices and methodologies within the scope of its existing powers (paragraph 7.39). Given the potential new powers being conferred on ComReg as part of EECC transposition, Virgin Media suggests the following to assist with such evolution:

- consultative approach generally as outlined above; and
- consultation on a new regulatory compliance and enforcement framework. This has been done by a number of regulatory authorities and provides transparency around process. Virgin Media believes this will help ensure that ComReg achieves its values of integrity, impartiality, effectiveness, excellence and transparency (and proportionality).

Under 7.40 ComReg states that its enforcement regime could be improved in 3 main areas:

- **Administrative Financial Sanctions:** *ComReg noted that the ability for ComReg itself to impose Administrative Financial Sanctions in appropriate circumstances would greatly facilitate effective regulation of the electronic communications sector.*
- **Criminal Fines:** *ComReg plans to continue to advocate for an increase in the maximum fine that may be imposed for criminal offences, following conviction on indictment. We consider that potential criminal fines that are sufficiently high can act as a strong deterrent.*
- **Standardised Powers:** *Regulatory powers, and in particular certain inspection, investigation and enforcement powers, should be as standardised as possible across all regulatory bodies. This would improve the efficiency and effectiveness of regulation and help promote legal certainty. In particular, all economic regulators should have access to a standard enforcement "toolkit", consisting of a range of investigatory and enforcement powers.*

Virgin Media does not agree, Virgin Media believes that ComReg has all of the powers it needs to be effective in the area of compliance and enforcement. Again we would call on more consultation in the area of consumer protection and we would also call for a more tiered approach as detailed above.

Chapter 8 ComReg's Organisation

Virgin Media agrees with Strategic Intent 5. As highlighted earlier, it is significantly important for the organisation within ComReg to remain flexible to respond to the changing needs of the dynamic industry and also consumers.

Goal 5.1 states: 'ComReg has a deep understanding of the markets ComReg regulates *and related markets*'. This is another significantly important goal. In particular the second piece of this, related markets. ECN/ECS operators are facing more and more competition from sources external to the telecommunication sector. ComReg should ensure that it takes such forces into account when looking at the introduction of new requirements and also in the area of enforcement. Virgin Media would suggest a small change to this goal:

*ComReg has a deep understanding of the markets ComReg regulates and related **regulated and unregulated** markets **both within Ireland and in the EU.***

We believe that there are two areas that ComReg needs to understand as part of its activities:

- Non-regulated competing / complementary sectors – such sectors can impede /facilitate development of ECN/ECS services and as such need to be considered at all times in ComReg's decision making.

- Other regulated sectors – given the dynamic nature of the sector, companies under ComReg’s remit also have other functions/services that may or may not be regulated by other authorities. It is hugely important that ComReg understands the potential for competing requirements.
- Our third change to the Goal is to take account of the increasingly international nature of companies operating in the sector. For various reasons, companies may have functions that are managed in other jurisdictions. ComReg needs to have regard to the regulatory landscape in other jurisdictions to ensure that it acts proportionately in the context of the cross jurisdictional nature of operations. As such it is important that ComReg does not introduce requirements that are not aligned with the goal of greater harmonisation at EU level. While Goal 5.4 relates to international activities and learning from best practice, ComReg’s information on international practice should be used to ensure consistency in approach.

Goal 5.3 relates to Stakeholder Engagement and states ‘*ComReg is proactive on engagement with a range of stakeholders*’. Virgin Media would like to acknowledge ComReg’s very constructive and proactive engagement with network providers since the start of the Covid pandemic. We have found this engagement to be very useful and have welcomed ComReg’s focus and actions to help ensure that network operators continue to provide vital services at this time. We would welcome more constructive and consultative engagement with ComReg similar to this to try help address any common issues faced by operators.

Q.4 Do you believe that the Goals associated with the Strategic Intentions are appropriate, and relevant?

Virgin Media’s comments under Question 3 are relevant here.

Q.5 In your view, is there anything else that should be added to, or omitted from, this Strategy Statement?

We have made a range of suggestions in response to the previous questions.

Virgin Media would also respectfully suggest that in developing its strategy ComReg should be mindful of the associated costs of regulatory intervention in ECN/ECS markets. For example, the considerable cost involved in responding to ComReg information requests (which are very resource intensive), as well as the levies payable by ECN/ECS providers and the costs incurred by ComReg. Failing to take account of these costs could lead to ComReg imposing regulatory interventions that are disproportionate (where the costs exceed the benefits). ComReg should explain in its Strategy Statement how it proposes to apply cost-benefit analysis in its regulatory decision-making processes – this is important for ensuring that regulatory intervention is proportionate.

Virgin Media believes that ComReg could add a new intent or a role that builds on what it has achieved during the COVID pandemic with its weekly interaction with network operators. This role is around consultative engagement with industry to ensure the achievement of common goals. There may be areas outside of ComReg’s remit that have an impact on the development of the sector (e.g. planning) and we believe that ComReg could have an important role in the

provision of information to providers and also assisting providers in the resolution of common issues that affect the development of the sector and ultimately consumers (similar to how ComReg has worked with network operators during the COVID pandemic).

**9 Vodafone Ireland Limited
(‘Vodafone’)**



Vodafone Response to Consultation

Draft ECS Strategy Statement
Public Consultation

Reference: ComReg Doc 21/32

Version: Non-Confidential

Date: 24/5/21

Introduction

Vodafone welcomes the opportunity to respond to the Commission for Communications Regulation (ComReg)'s consultation on its draft ECS Strategy Statement 2021 to 2023. It is a crucial point in time for all sectors and none more so than the communications sector. Irish networks keep family, friends, businesses and public services connected. As Covid-19 has clearly demonstrated – we play a vital role in keeping the economy running and the functioning of critical sectors like education and healthcare.

The telecoms sector has stood up to the sudden challenges of the pandemic the collective efforts of stakeholders in the sector supported the connectivity needed in order to meet the additional demands from sudden and radical changes in digital working, learning, healthcare and education. This includes the initiatives on temporary spectrum, industry commitments to ensure consumers retain access to the services needed during lockdowns, supports for education and other measures. Digital networks have been crucial in helping society and the economy to continue to operate function alongside the virus.

Now is a time of transformation in the sector – to Build back better.

Our responses to the consultation questions are set out below. In summary

- Together industry, ComReg and government can ensure Ireland are in a strong position to accelerate national digitisation. The **EU Recovery and Resilience funding** will allocate 20% for digital transformation enabled by secure connectivity and 37% for green transition. If we wish to build back better, to accelerate digitisation and green objectives with public and private investment – then policy reform is required.
- We agree that the key challenge for ComReg is to ensure timely and effective regulatory intervention – and this is particularly critical in relation to **wholesale broadband access**. The sectoral trends and challenges - in particular end-user experience, rural and urban trends and the ECS eco-system, are intrinsically linked to the state of competition in the wholesale broadband market. Action is required to finally resolve these issues and provide certainty for greater investment by all in fixed services.
- **Spectrum and Coverage**: A collaborative nationally funded approach focused on specific coverage acceleration initiatives could ensure that more of the country can start to take advantage of faster mobile services and launch a much wider range of digital applications and services across the market.
- **On retail regulation** we believe there is an opportunity to for greater collaboration between ComReg and industry to develop clear policy to enhance and simplify consumer experiences and to ensure consumer protection. We would advocate development of clear standards in relation to the new requirements in the EU code.
- To drive **higher investments in security in the long term**, greater emphasis on security must be backed up with economic policies and regulations that put a premium on telco quality and prioritises investments in security

Consultation Questions

Question 1: Do you agree that Chapter 1 appropriately captures ComReg's Mission, Vision and Role for the period 2021 to 2026?

Vodafone agree with the vision for the sector however the recognition that ComReg cannot achieve its vision in isolation is notably important. A collaborative approach across government and industry with targeted regulatory intervention is critical to economic and societal success. All stakeholders, policy makers, ComReg, and industry need to adapt to achieve our ambitions and the question arises as to whether there is a common aim.

The typical rules of engagement require review. Ireland is competing across Europe for public and private investment and a collective ambition will focus efforts.

A report commissioned by Vodafone and conducted by Deloitte, 'Digitalisation an Opportunity for Europe' looks at the five key measures – connectivity, human capital, use of internet services, integration of digital technology and digital public services – that are measured by the European Commission's Digital Economy and Society Index (DESI), and reveals that even modest improvements can have a big impact.

It shows how increased digitalisation of Europe's services and value chains over the next six years could boost Ireland's GDP per capita by 0.98% and increase productivity by 6.30%. Using data from all 27 EU countries and the United Kingdom across 2014-2019, the report reveals that a 10% increase in the overall DESI score for a Member State is associated with a 0.65% higher GDP per capita, assuming other key factors remain constant, such as labour, capital, government consumption and investment in the economy.

For Ireland, increasing our 2019 score by just 5 points, from 58 to 63 would boost GDP per capita by 0.56% and productivity in the long term by 1.70%. However, if investment in Ireland focused in areas that would allow Ireland to aim towards a DESI score of 90 by 2027 (the end of the EU's budget), GDP could increase by as much 0.98%.

Question 2: Do you agree that Chapter 3 captures the most important sectoral trends and challenges over the period covered by the Strategy?

Vodafone agrees with the sectoral trends.

Question 3: Do you agree with the Strategic Intentions discussed in detail in Chapters 4 to 8?

Vodafone agree with high level Strategic Intents and we outline in more detail the views in answer to Question 4.

Question 4: Do you believe that the Goals associated with the Strategic Intents are appropriate, and relevant?

Competition and Investment

Vodafone agree with goals for effective and sustainable competition, with the need to provide investment certainty, to facilitate timely investment decisions and achieve reasonable rates of return.

Fixed markets

In fixed wholesale markets we have been clear that our view is we have not achieved the goal (Goal 1.2) of effective and sustainable competition. There remains a deficit in relation to certainty on pricing of wholesale inputs in particular FTTH. Key decisions on further investment are constricted as the outcomes regarding the regulatory landscape are unclear. Vodafone agree that allowance for a 'reasonable' rate of return is critical. Nonetheless, ComReg must avoid the situation where there are excessive returns and Vodafone refer to ongoing returns in fixed markets over recent years far exceeding the regulated WACC which, in and of itself, has been far too high for far too long. We note the work ongoing on ComReg to align regulatory pricing models and move to more frequent reviews of inputs. Vodafone have an expectation that there will be a decision on ANM incorporating the 2020 WACC decision in the coming months.

The practical reality for a fixed wholesale customer is that investment resource for incremental capex projects for an access seeker to move up the ladder of investment (by for example investing in VUA and backhaul) are allocated in shorter investment cycles. The business cases need to provide some expectation on outcomes if investment is to be allocated in what is an already tight margin business case. If the trajectory on wholesale pricing is not completely clear, then decisions on commitment to fixed wholesale markets are constrained until greater clarity is forthcoming. In providing clear pricing this also needs to be combined with effective regulatory measures to ensure all retailers can achieve a fair rate of return. As ComReg will be aware Vodafone are concerned existing margin squeeze tests are inadequate in this regard. If we can deliver more effective measures in the period of this strategy, then the goal of infrastructure rollout with effective retail competition delivering high quality fair priced services to consumers and business can be realised. This will help us achieve national objectives including digitisation of the public sector in the short term.

Regarding FTTH we are concerned that ComReg states in paragraph 4.63 that ComReg states it does not have any plans to impose cost-oriented pricing obligations on Eircom's FTTH network. This appears a quite definitive statement. The concern arising is that there is consistent uncertainty in fixed and there is no indication that this will change. The experience in the last 5 years for Vodafone was that there was insufficient pricing control on FTTC networks, and the implementation of regulatory controls lagged well beyond acceptable timeframes. The constant question arising is whether this could repeat on FTTH. We refer to the eircom whitepaper on copper switch off which indicates that when an eircom exchange area reaches a milestone of where 75% of premises are capable of ordering fibre from any operator then

wholesale customers of eircom will be notified of a price increase to FTTH prices within six months. In effect, rather than incentivising an access seeker to move its own customer across to fibre, eircom are proposing that an access seeker shall be subject to higher pricing and will also lose regulatory protection on pricing in the absence of any effective price control.

Study of the Irish Mobile Market

We note the 2020 consultancy service engaged by ComReg and are happy to engage further at any stage if ComReg requires further operator input in the study of the mobile market.

Adjacent markets

It is unclear the 'various activities and projects' ComReg refer to in relation to adjacent markets. Companies that dominate key segments of the communications ecosystem (content services, messaging Apps, VoIP services etc) are not regulated in any way approaching the level of regulation facing traditional telcos. This is the case even though there is little difference today between the functionality of OTT communications services, and those provided by traditional providers who must comply with requirements. This creates a competitive imbalance. For example, so-called OTT providers of communications services are not required to ensure consumers know whether they can make emergency calls or provide details on how their services are designed for disabled end users or to provide contract summaries. There are aspects of the Code that are applicable to OTT services and it would be useful to understand in specific detail ComReg plans in this regard.

Essential Inputs - Spectrum

Spectrum is clearly an essential input and we must ensure fair, reasonable and non-discriminatory licensing terms to ensure Ireland is more successful in investors' allocation of capital internationally for digital network expansion. The coming 5-year investment cycle is critical, and our view is a collaborative approach between Irish government policy makers, industry and ComReg is required to ensure Ireland secures its fair share of investment opportunities.

5G will deliver a "step change" in connectivity, that will expand the range of services that can be supported and improve the experience of users. Not only will 5G deliver an increase in the capacity and speed of existing mobile networks - it will also enable new applications in areas such as healthcare, transport, clean energy, manufacturing and the environment, supporting economic renewal in Ireland. 5G rollouts will take time and to a large degree constrained by the free cash of operators and the low return on capital employed currently experienced in the sector amplified by many of the challenges outlined above.

A collaborative national approach focused on specific coverage acceleration initiatives could ensure that more of the country can start to take advantage of faster mobile services and launch a much wider range of digital applications and services across the market.

Essential Inputs – Numbering

An innovative approach is also required on numbering.

Vodafone welcomes advancement of the discussion on Cloud number applications. As our economy has become more digital, the services – and the rules - that support this transformation must also evolve. 'Cloud Numbering' will be integral to supporting a modern, digitised economy. The potential of this market, which includes both voice and text enabled services, is broad, constantly evolving. The need for such innovation has become even more pronounced as economies seek to digitise to ensure resilience in

response to Covid- 19. Corporate customers require innovative solutions. Vodafone agree with the statement made by ComReg in its recent consultation on numbering “ComReg is of the view that policy harmonisation across Europe for Cloud services is in the interests of consumers and providers alike. To this end, ComReg will continue to advocate for greater European policy harmonisation for Cloud services” and would welcome their on-going collaboration with CEPT. We must ensure a fair playing field on numbering. The digital solutions that numbering resources from these types of ranges support are increasingly being used at scale and demand for related commercial propositions is growing 35%+ p.a.

Consumer Protection

In relation to consumer protection the strategy over the next 5 years should include greater industry engagement. Vodafone welcome ComReg moves towards guidance in the development of guidelines for the industry on implementation of the Code.

It is our view that there is greater dialogue needed between industry and ComReg on retail issues moving forward as most of the technical detail of the Code is focused on end user measures. In doing so we can set clear and simple standards that deliver the best outcomes for consumers – taking into account the issues of concern that arise for ComReg and the experience of operators in dealing with consumers. The worst outcome would be we drive a standard in the industry through enforcement and compliance as that damages the reputation of the entire sector. The overall goal for all stakeholders should be to lift the reputation and standards in the sector, to remove issues of concern for consumers that arise and ensure a great experience for customer in their use of what has clearly become an essential service.

Specifically, on the goals

- ComReg indicate aspects of the code may require intervention in the future – consumption monitoring, best plan advice, contract change notifications, cancellation processes. Vodafone welcomes clarity on all aspects through clear policy, informed by dialogue with all stakeholders including industry. The worst outcome is that enforcement drives standards which we would expect all stakeholders would want to avoid as it damages the reputation of the sector and undermines the role played in delivering essential services to Irish consumers and businesses.
- Goal 2.2 states we need to ensure consumers including the vulnerable and disabled are supported by clear accurate and up to date information throughout the customer journey. Vodafone agree and we should also ensure we simplify the detail provided to customers. Each incremental piece of detail that is considered very important for the customer to know in durable format – detracts from what should be a common objective by embedding complexity for customers. Decisions are required here to set the standard, to ensure the experience is simplified while protecting consumer rights.
- In reference to Goal 2.3 ComReg refer to the switching processes and ensuring they work effectively for consumers and ComReg ‘may’ specify requirements. This will be a requirement to set a clear standard for switching across the industry and we would welcome industry and ComReg commence more detailed engagement in this area.

- In relation to PRS and DCB services ComReg need to review the Code of Practice as the current policy is outdated.

Connectivity and Resilience

We refer to the ongoing collaboration project planned over the coming period.

Vodafone Ireland has welcomed the opportunity to participate in the consultation exercise on ECSMs over the past 12 months. We welcome the collaborative approach to the development of measures to improve telecoms network security and are committed to working with the NCSC and ComReg to ensure our networks maintain the highest level of security. Security is a top priority for Vodafone and the ECSMs will build on firm foundations with respect to our mobile network.

The engagement of industry has also been welcomed by the wider Vodafone group and we participate in internal groups discussing the stages of implementation of Articles 40 and 41 and other security requirements across the EU footprint.

- **Investment:** It is our view that to drive higher investments in security in the long term, greater emphasis on security must be backed up with economic policies and regulations that put a premium on telco quality and prioritises investments in security. In general, we believe a holistic approach involving Government, regulators, MNOs, and vendors is needed to ensure security related risks are mitigated. The importance of a high performing, resilient and secure network infrastructure is highlighted by the degree to which Ireland could pivot at speed to ensure the impact of Covid was reduced, and the economy and society has, despite challenges, continued to function remotely. It demonstrates the importance of sound policy that drives and supports investment in our national network infrastructure.
- For any new proposed requirements, it is our view that a proportionate risk-based approach should be adopted. Such an approach helps to protect the most sensitive parts of the network. Markets (and Regulators) also need to value the investments that operators are making, e.g. investments in spectrum. It is our view that Government, operators and vendors all have a responsibility to set a new course and have an open conversation with society about the trade-offs (e.g. price) ahead and the dilemma of industry profitability and return on investment
- **Complexity and Prioritisation:** The implementation of the ECSMs will be a complex programme, that will involve very significant investment in time, money and expertise at a time when there are many other draws on the same pool of operators' resources, over and above 'business as usual activity': providing high levels of connectivity to customers working (and learning) at home during the pandemic, investing in 5G, etc.
- **Timing:** Having adequate lead time for the implementation of requirements, and where possible their phased introduction, will be critical from our perspective. We would therefore ask for a clear indication of the glidepath for implementation for each requirement. The ECSMs should also look to prioritise the most important actions, so that CSPs, rather than implement all elements at once, have the option to phase in over time, again with a view to addressing the most serious concerns first and using resources efficiently.

Compliance and Enforcement

Vodafone has supported ComReg calls for additional powers to act as a deterrent and to facilitate prompt resolution of issues of concern in wholesale markets. It is our view that once a standard is set following an appropriate level of consultation and delivery of clear guidance then if serious issues arise ComReg must have the ability enforce requirements.

Question 5: In your view, is there anything else that should be added to, or omitted from, this Strategy Statement?

No additional comments

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