



Commission for
Communications Regulation

ComReg's Draft Strategy Statement for Electronic Communications 2014 - 2016

Submissions to Consultation 14/34

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1 ALTO

alto

alternative operators in the communications market

Consultation: Draft Strategy Statement - Ref: 14/34

Submission By ALTO

Date: May 22nd 2014

ALTO is pleased to respond to the Consultation: Draft Strategy Statement - Ref: 14/34.

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

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

ALTO very much welcomes the recent appointments of Commissioners Fahy and Godfrey to the Commission. Alongside Commissioner O'Brien and the existing staff at ComReg, we feel that the Commission is now more equipped than ever to deliver on key performance challenges and objectives. ALTO obviously notes with great concern, that the State's perceived lack of appreciation for the importance of the role that ComReg fulfils could lead to certain key personnel seeking to better their careers outside of ComReg. Communications regulation is neither simple nor simply applied and much of the work we engage with ComReg on takes years to bare fruit in terms of robust market offerings or returns to ALTO members. ALTO would offer its assistance to ComReg should the period or opportunity arise from Government to request special consideration for the enormous resource constraints that ComReg continues to face.

ALTO notes that in Chapter 5 of the Draft Strategy Statement that ComReg discusses the issue of appeal decisions to the High and Supreme Courts. ALTO has taken the time to peruse the three decisions handed down by the Honourable Mr Justice John Cooke, S.C., in the *Vodafone Ireland Limited v Commission for Communications Regulation* litigation and we remark that some of the findings in the first decision of the court, handed down on the 14 of August 2013, are highly critical of ComReg's handling of the interpretations of European Law and

regulation. While ALTO does not seek to criticise ComReg in this submission, there are major lessons to be learned by reference to this decision, and indeed the levels of probity and legal checking required by reference to the invocation of certain instruments in the exercise of ComReg's legal remit. ALTO remarks that ComReg should not be shy about applying the law. ALTO takes the view that such a decision is something that should impact the strategic and tactical direction of the organisation for the benefit of the entire industry. ALTO calls on ComReg to build robust internal controls and if required, training, to enable ComReg staff to easily work with what is a complex and long legal framework.

ALTO continues to note that the fixed market has been subject, and remains subject, to what we believe to be aggressive *block and hold* behaviours by the incumbent over the past six years (some may suggest longer). The overwhelming dominance of the incumbent in Ireland remains exemplified by low uptake and bottlenecks in services which by now, should be heavily utilised, competitive and readily available in Ireland and are not e.g., Local Loop Unbundling, - LLU, Wholesale Broadband Access, - WBA and Ethernet services.

ComReg's Market Analysis and analysis undertaken by independently by various firms and the CSO, consolidate the ALTO view that numerous bottlenecks still exist in Ireland and further that new entrants remain exploited as a result of aggressive behaviour and delay tactics engaged in by the incumbent. We await the 2014 EU Commission and ECTA Scorecards and remark that Ireland's ranking on the OCED table of information societies has yet again, slipped the world rankings.

The period covered by the Draft Strategy Statement (2014 – 2016) should be a period in which further fundamental change takes effect in the Irish communications market, with particular emphasis on the fixed market. ALTO remains committed to contributing to the evolution of the Next Generation Network, - NGN, and Next Generation Network Access, - NGA, debates in Ireland. We remark however, that the incumbent behaviour noted in the transition, launch and

early adoption periods to NGN seems to indicate a situation where the existing bottlenecks are being exploited and covered up in new technological parlance and pricing models, with the net effect of obfuscation, service depletion and very real risk of asset stranding.

ALTO also notes with particular reference to Market 4, that certain interpretations given to the Framework regulations do not appear to be appreciated by certain operators who have the ability and now legally mandated responsibility to make access to certain infrastructure a reality for ALTO members.

ALTO members have exhaustively invested in network in Ireland, which for the most part has resulted in derisory or limited returns. We call on ComReg to strive to replace the current scenario with a set of relevant, measured and achievable outputs to the benefit of the consumer, competition and innovation in the Irish market. One such replacement would be a radical movement away from retail minus modelling and movement towards cost orientation in the fixed network Current Generation Access – GCA, offerings currently managed in that manner.

It is ALTO's view that competition in Ireland has been hampered by the elements mentioned above, in addition to an incumbent operator whose owners have engaged in very little or intangible investment to the benefit of their (wholesale) customers and consumers in general. We note that ComReg's recent Cost of Capital Consultation – Ref: 14/28, ComReg in its costs of capital assumptions clearly identifies certain unique characteristics which tend to detract from the normal conditions expected from a healthy incumbent.

Further, we note that as the incumbent moots a potential future Initial Public Offerings – IPO, and call on ComReg to endeavour to monitor engagement at industry level in order that business critical matters continue to be dealt with.

In ALTO's previous response, we called on ComReg to give serious consideration to the question of whether there is a case for Eircom to Functionally Separate. ALTO considered at that time that the requisite preparatory work to inform for such an outcome should be undertaken. Functional Separation remains an option, and would provide true Equivalence of Input - EOI, this should also provide adequate returns and outputs for Eircom's retail division and result in a more competitive and dynamic telecoms environment.

Since ALTO's previous response, little tangible progress has been made on the issue of EOI.

ALTO submits that ComReg should seriously consider EOI on CGA products. This is in order to remove time and resource intense burdens on industry (including ComReg) and shift focus away from GCA products to the Next Generation of offerings.

ALTO has fully engaged with Government on the subject of transposition of the most recent telecommunication framework package and we had anticipated that the various changes the new package has brought about, and might have had the potential to benefit the market. We believe the option included in the new package in relation to Functional Separation of Eircom should remain a key incentive focus of ComReg's strategy over the next two years.

ALTO submits comments on the following discrete areas:

Service and Performance – EOI

ComReg notes in its Draft Strategy Statement that it has noticed a marked increase in the numbers of complaints received from consumers. During the periods of analysis noted at Figures 4 and 5, ALTO queries what work, if any,

ComReg has undertaken to incentivise Wholesale -> Retail service performance on the national network to the benefit of the consumer?

ALTO also notes that many of the network and platform elements relied upon, and giving rise to service performance issues fall directly and in many instances exclusively, into the gift of the incumbent to resolve. Yet, we know, and as has been identified by ComReg, financial returns are not being re-invested in the networks and services, but are paying down large debts.

ALTO submits that there is little or no point in endeavouring empower the consumer (as set out at Chapter 4) or conducting theoretical speed and performance testing, for example, until such time as the providers of services at the Wholesale -> Retail layers are incentivised to perform in a manner consistent that is best in class. ComReg must deliver grass roots reform of behaviours within the service production sphere of the communications market. This type of review is easily achievable by ComReg acting in conjunction with its Retail and Wholesale divisions.

ALTO submits that the introduction of EOI in this area may remove and reduce time and resource intensive aspects of the industry's work.

Transparency and Supervision – EOI

ALTO notes that with some surprise, further and more concerning aspects of operator behaviours have given rise to ComReg publishing various opinions of non-compliance, as against *inter alia* Eircom Limited.

While ALTO notes that ComReg address some of these more consumer oriented issues at Chapter 4 of its Draft Strategy Statement, ALTO remarks that it must be the case that the same behaviours exist upstream. By way of example, Ref: 09/26 White Label mis-selling and Ref: 13/79 – “*Eircom pays a €275,000 penalty to*

ComReg following admission of a breach of its non-discrimination obligations in the Retail Narrowband Access Market.”

ALTO submits that ComReg must carry out a full root and branch review of:

1. Service Delivery – installation and appointment scheduling;
2. Performance determinants – Universal Gateways, systems, etc.;
3. Incentives to act and – Service Level Agreements - SLAs, and penalties.

It is ALTO's experience that incentives are required before any major change to behaviour will be noticed in industry. Again, ALTO submits that the introduction of EOI in this area may remove and reduce time and resource intensive aspects of the industry's work.

Action Planning and Timetabling – ComReg Stakeholder Management

As ALTO writes this response to consultation, some 7 critically important consultations are pending, across 3 discrete areas of ComReg's operations.

The pending submission dates all within 1 month of one another.

This is in addition to a Quarterly Market Review data input request and an, in many instances, continuing obligation for ALTO members to provide Leased Line Market analysis data inputs.

ComReg must begin to plan consultations in a cogent manner that does not create undue burdens on industry resources. ComReg highlights that it is endeavouring to fulfil its role with scarce resources in its Draft Strategy Statement. Precisely the same position pertains to industry members and indeed to ALTO member

companies. Thus making it almost impossible to maintain a presence at industry meetings and address the seemingly relentless sets of consultations that ComReg (to be fair) must undertake.

We would request that as a matter of priority, that the ComReg Senior Management team, in coordination with the Commissioners, ensure that the industry does not become swamped with consultation papers and imperfectly planned response periods at certain times of the year. Whereby disproportionate effort is required to address the complexity and detail of much of what ComReg seeks robust views on, and often on business critical issues to ALTO member companies. It is not ideal to allow this unsustainable situation to continue.

Response to Consultation Questions:

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

A. 1. ALTO generally agrees with ComReg’s analysis of the Strategic Context set out in Chapter 3 of ComReg document 14/33.

ALTO has highlighted some issues above, that we believe are of critical import to the future of the market:

1. Service and Performance – EOI;
2. Transparency and Supervision – EOI;
3. Action Planning and Timetabling.

We refer ComReg to our preliminary comments above.

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

A. 2. ALTO refers ComReg to answer 1, above and ALTO’s preliminary remarks.

Q. 3. Do you agree the strategic priorities highlighted in Chapters 4 to 7 of ComReg document 14/33 are correct and the most appropriate ones? If not, please elaborate your reasoning in relation to the priorities concerned. Do

you think that there is anything that should be added to or omitted from the description of how ComReg expects to address its strategic priorities?

A. 3. ALTO generally agreed with ComReg’s strategic priorities as highlighted and found in Chapters 4 to 7. We have already noted that reforms at the Wholesale service layer will have an impact on consumer and user experience. Chapter 4 needs to be amended to take due regard to ALTO’s remark to that end.

ALTO notes that much emphasis is placed on Universal Service Obligations – USO, and we submit that there may come a time when no single company will be designated or designatable as the Universal Service Provider – USP. ComReg should be considering making preparations for alternative solutions to the current market determinants.

With regard to Chapter 5, ALTO anticipates and calls on ComReg for a movement away from Retail Minus CGA product price modelling and a migration to cost orientated services within a shortened timeframe. This should have the effect of making returns on investment more achievable and further, ensuring that bundling and operators do not experience price squeeze effects.

ALTO notes that at section 5.1 of the Draft Strategy Statement, ComReg aspires to:

“ensure effective implementation of existing wholesale remedies, adjusting approach in line with competitive conditions.”

ComReg stating that:

“the pricing of wholesale NGA products has been regulated through margin squeeze tests rather than using a cost model, in part because of the difficulty of determining the most efficient way of allocating costs to different

services and time periods”.

ALTO calls on ComReg to provide for greater transparency for the industry on margin squeeze testing and compliance by Eircom. ALTO submits that the industry has absolutely no visibility of the checks and balances carried out by ComReg, further and importantly, no statement of compliance is ever issued in this area.

ALTO notes that ComReg seeks to ensure that mobile markets are free of competitive distortions. This worthy aspiration must also be applied to fixed market competition where certain known distortions are extant.

ALTO notes that Chapter 6 deals with the facilitation of innovation, investment and the internal market. ALTO submits that its preliminary comments directed to ComReg also carryover into this area. ALTO members already experience issues with NGN and NGA services, where inadequate wholesale services are leaving retail consumers and users with serious issues.

ComReg’s remit does not diminish owing to a service being classified as CGA, as opposed to Next Generation Access – NGA, and it is ALTO’s experience that the attitudes of certain parties to CGA services are far from desirable when clear upgrade and service expansion requirements are presented either bilaterally or at industry working groups. ALTO calls on ComReg to implement EOI standards as a matter of course.

ALTO notes that Chapter 7 does not seem to adequately address issues with consultation coordination, planning and timing. ComReg must consider publishing full timetables of both Market Analysis processes and Consultation process. This is in order that the industry can plan and properly comprehend its own working and

resource requirements. The current situation is, and remains, unfair and unsustainable both to ComReg and industry.

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

A. 4. ALTO calls ComReg to consider the important issues we raise in this consultation response.

ALTO

22nd May 2014

2 BT

BT Communications Ireland Ltd ["BT"] Response to

ComReg's Consultation:

ComReg's Draft Strategy Statement for Electronic Communications 2014 - 2016

1.0 Introduction

We welcome the opportunity to comment on ComReg's strategy and would generally agree with many of the high level proposals. However there remain serious structural problems particularly competing against incumbent Eircom and we would like to make the following points to assist ComReg's considerations.

1.1 Poor Service Performance and the Consumer

Telecoms in Ireland has come a long way in recent years, however the Achilles' heel in the fixed world remains service performance particularly for access. We believe symptoms of this are characterised by the following issues:

- a. Increasing levels of customer complaints as mentioned in the review.
- b. The extensive time it took Eircom to recover from the recent storms.
- c. ✂
- d. Since 2009 has ComReg found it necessary to impose two consecutive USO Performance Improvement Program on Eircom.

The recovery from the poor weather of recent months has been disappointing. Some disruption of service following the storms would be expected, but in our view the problems lasted far too long and now require a deeper investigation as to the reasons. We believe one aspect could be longer term underinvestment in preventative maintenance in the access platform, particularly in rural networks.

Our view is service performance issues with the Eircom access platform have dogged the fixed industry for very many years and there is a now a need for a strategic solution from ComReg to create the correct incentives for preventative maintenance and appropriate investment for service reliability. The current approach is ultimately not in customers' interest and prevention should prove more cost efficient and predicible than the current approach.

We acknowledge the USO parameters set by ComReg, and whilst fines are important, they are a measure of failure. We therefore need a strategy to minimise the risk of failure.

We suggest the following:

- a. Ensuring Eircom's investment in preventative maintenance and refresh in its access platforms (urban and rural) is in alignment with best international practice and existing benchmarks.
- b. Creating the correct level of incentive to ensure Eircom balance its priorities to become best in practice for service assurance and service provision.

1.2 Macro vs Micro regulation to improve Wholesale competition - correct incentives rather than fixing issues after the event.

We welcome many initiatives from ComReg to improve the competitive situation and appreciate the diligent work of ComReg. However the current approach can be characterised as micro-management of issues and this strategy review provides an opportune time for ComReg to consider macro level solutions to incentivise the correct outcomes. For example over the past year ComReg has found Eircom providing preferential service assurance to its own downstream division, however, now that ComReg have concluded this investigation new concerns have emerged regarding service provision. I.e. the moment one problem is resolved another emerges. We therefore need a macro level incentive that structurally prevents these issues.

It is useful to consider the change from Oftel to Ofcom that took place in 2003. Oftel largely micro managed service issues whereas the new Ofcom sought to deliberately take a strategic and macro approach for stimulating competition and delegated detailed technical issues to the Telecoms Adjudicator. We urgently need a macro approach in Ireland to further stimulate wholesale competition. There remains an important role for the micro approach to facilitate the macro objectives – but a macro approach is long overdue.

As a starter we consider a more sensible macro approach would be to move to Equivalent of Input (EOI) for all services. All operators, including Eircom's downstream divisions should use the same Eircom wholesale gateways and the same features. This change will make it structurally difficult for certain product discriminations to survive.

Why do it now?

- a. Basic types of discrimination are still being detected some 17 years after the commencement of regulation. The current approach does not work.
- b. Cost efficient for Eircom as two development costs become one.
- c. Eircom have adopted EOI for NGA and many of the NGA order handling models can be used for Current Generation Services (CGA). ✕
- d. ✕
- e. Software is increasingly flexible and virtual system separation rather than physical system separation can save huge costs and fulfil regulatory objectives.
- f. The order handling requirements of Eircom Retail would assist services improvements for all and vice versa.
- g. ✕
- h. Eircom claim to be a reforming company – this is reform.

1.3 Sustainable Wholesale Competition

ComReg have a goal to Promote Sustainable competition however we are concerned the EC guidelines for recommended markets have led to a silo approach to competition. Whilst it is correct to review markets in depth according the EC recommendations and laws, we consider ComReg also needs to take a holistic view of the wholesale market and whether it is working correctly. Our view is ComReg's high level goal of sustainable wholesale competition is not being achieved and the proposals will not meet that goal. We discuss this further in our response to question 3

1.4 Spectrum for Broadband

We are in agreement with ComReg's approach to releasing spectrum for broadband and welcome this. However, we would urge ComReg to commence the process in sufficient time for any new party to avail of the band directly from the licences becoming available in 2016.

2.0 Response to the detailed questions

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

A.1. As discussed in the introduction we consider it is imperative ComReg seek a new strategy to incentivise Eircom to provide better service performance, particularly in reducing the fault incident rates in semi-rural and rural areas. Without the correct incentive we believe consumers will continue to experience sub-optimal service assurance and provision.

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

A.2 We agree with the challenges identified by ComReg concerning infrastructure based competition and maximising consumer benefits, however we consider two issues need urgent resolution by ComReg.

- a. A macro approach to facilitate increased competition – i.e. EOI for all service provision and assurance. Equivalence Of Output (EOO) is simply not working as demonstrated by continuing compliance issues some 17 years after the introduction of regulation.
- b. A deeper investigation as to how the broadband backhaul market is changing and a re-assessment of whether the current price floor model remains fit for purpose. Our view is it is not due to changing investment cycles and changing market characteristics.

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

A.3. In Relation to Chapter 5 – ComReg has a goal to “Promote Sustainable Competition” however we are concerned the EC guideline for recommended markets has led to a silo approach to competition. Our view is ComReg’s high level goal of sustainable wholesale competition is not being achieved and the proposals will not meet that goal. We consider the following illustrate some of our concerns.

- a. Mass market VoIP does not appear viable due to margin issues.
- b. There is no viable wholesale BB competition in large parts of the nation. For current generation services a regional approach is urgently needed.
- c. ✕

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

Documentation Control

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3 Eircom

eircom Group

Response to ComReg Consultation Paper:

**ComReg's Draft Strategy Statement for Electronic Communications
2014 - 2016**

ComReg Document 14/34



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The comments submitted to this consultation are those of Meteor Mobile Communications Ltd. (MMC) and eircom Ltd (eircom) collectively referred to as eircom Group.

Introduction

eircom recognises the importance of economic regulation and ComReg's role in safeguarding consumer, citizen and commercial interests and welcomes this opportunity to respond to the draft Strategy Statement 2014-2016.

We begin with some general observations, followed by comments on the specific questions raised in the consultation. eircom would be pleased to expand upon or further explain these comments if so required.

General Observations.

ComReg's strategy for the period 2014-16 has to be considered in the context of the wider national economic and social agenda. The early signs of economic recovery challenges ComReg to ensure that proactive investment in critical ITC infrastructure acts as an enabler of national economic growth leading to innovative services, effective competition and downstream employment creation.

While the draft Strategy Statement is somewhat encouraging in this regard, there is an absence of urgency in re-orientating the ComReg role to ensure that, to the extent that regulation is needed, it will be informed by a forward looking perspective and that interventions based on a legacy view of relative market power of operators will be discontinued.

The need for economic regulation arises in circumstances where competition and competition law remedies are judged to be inadequate to protect consumer welfare and the development of competition. In the Irish communication market, economic regulation was introduced in order that a newly liberalised marketplace was not abused through the unfair exercise of the market power resulting from the preceding monopoly. It was intended that economic regulation would be imposed as a transitional measure and that it would be withdrawn as competition matured.

It is now some 17 years since communications market liberalisation. Over that period, economic regulation has become more pervasive, more demanding, and more costly. The transitional intent had been lost sight of, at both European and national levels. While some deregulation has occurred, it has been at a cost to an intensification of the overall burden.

eircom believes that this Strategy review should re-establish the aim of withdrawing regulation in favour of market led outcomes, and should establish a trajectory and momentum towards liberalisation at national level. The application of the regulatory model to date has served to ensure a plurality of supply, and improved outcomes for consumers. But there are now evident tensions and strains which require attention if Ireland is to develop the infrastructure and services it requires. The main elements of these are summarised below.

Economic regulation of communications was developed primarily as a solution to monopoly power. This is reflected in asymmetric application of rules and obligations, consistent with European definitions of markets, and of European mechanisms for assessing "Significant Market Power".

The problem is that EU rules take some years to develop, represent a view across multiple and different markets, and are further delayed before coming into effect through the necessary timescales for enactment of domestic legislation. ComReg must then follow a consultative process before finally making decisions.

While this lag between initial analysis/diagnosis and practical implementation was tolerable in the early days of communications market liberalisation, it now risks inefficiencies and sub-optimal outcomes for consumers given the pace of technological and market change. In the case of Ireland

the problem is made more acute through ComReg's relatively slow progress through the required series of market reviews.

The reality is that platform based competition is established and flourishing, and an effective constraint exists on eircom's ability to unfairly use any residual market power. Regulation has yet to recognise this and is now at risk of distorting the market, placing obligations on eircom that its large and successful competitors do not incur, and is inhibiting eircom's ability to innovate and respond effectively to competition, based on a level playing field for all.

This problem is compounded by the "ratchet" effect of regulation. When regulation is asymmetrically applied (applied to one party only) there is a strategic and tactical advantage for most operators to express dissatisfaction with outcomes and press for further change and intervention. The result is that when a regulator consults it receives a preponderance of responses calling for further action, intervention and control. An increasingly complex web of interventions, and of forms of competition dependent upon their continuation, results.

The reality of the present communications market is that the services consumers require are voice and text communications, broadband connectivity and applications delivered over broadband networks.

Voice and text services are delivered over mobile networks and over fixed narrowband networks by eircom, by service providers with access to eircom's network, and by rival network platforms. Increasingly they are also provided over broadband networks by competing "over the top" providers. There can be little doubt in the reality of competition. Nonetheless, the focus of regulation remains on eircom.

Broadband connectivity is delivered over Cable TV, by eircom over its own network, by service providers using eircom's network, by rival access providers and, increasingly, over wireless networks. There is common acceptance that the future of broadband lies in high speed connectivity, where currently Cable TV is a strong competitor to eircom including as a price leader in the market. However the focus of regulation is on eircom's infrastructure alone.

Broadband applications are a relatively new market, where establishing and growing services requires innovation, inventive pricing, experimentation and risk taking. eircom is handicapped here by regulation, since it alone among suppliers must justify the uses it makes of its network assets and show full cost recovery of network charges. These are conventional regulatory safeguards to prevent market power in network infrastructure contaminating competition in adjacent markets. But the obligations they represent derive from eircom's historic strength in narrowband markets. They do not relate to or reflect the reality of competition in high speed broadband markets.

These changes to the structure of the market and to the choices available to consumers are inadequately reflected in the present ComReg approach to assessments of market power and the identification of associated remedies. They also call into question the appropriate approach to determination of the nature of universal service and the form of its delivery.

In making these observations eircom fully accepts that much of the critique is relevant to the legal and policy framework within which ComReg must operate. However, there is significant discretion available to ComReg within that legal and policy framework to determine market outcomes which could counter-balance the chilling effect on investment that the current regulatory model imposes. The question that next arises is how the concerns we have expressed might best be resolved. eircom is not suggesting that there should be a sudden withdrawal of regulation – that would be inconsistent with European obligations and would destabilise competitors dependent on the current arrangements. Rather eircom is suggesting a progressive approach by ComReg with four key elements:

Firstly, **Regulatory Impact Assessments (RIAs) should be more rigorously conducted** and more meaningful in their contribution to assessments of proportionality. eircom's experience of RIAs is that they are closer to rationalisations of preferred policy positions than objective assessments of costs and impacts. Genuinely meaningful RIAs would help counter the ratchet effect described earlier.

Secondly, **ComReg must move to a more forward looking view** in conducting competition assessments. Forward looking here has three elements – first recognition of the growth rates and prospects of existing mobile and broadband players; second acknowledgement of the low barriers to entry for “over the top” providers; and third a focus on the infrastructure objectives of Government (for example promotion of high speed broadband).

Thirdly, **ComReg should as a default always consider more symmetric forms of regulation**. If eircom must supply high speed wholesale broadband when it has only entered the market in May 2013 why does UPC not face a similar obligation given that it already has an established infrastructure and substantial customer base? Symmetrically imposed obligations would attract more balanced responses to consultation, would extend the options available to service providers using the network of others, and would improve the options available to consumers. ComReg's focus on strengthening of consumer regulation and promoting the consumer interest is best achieved through symmetrical regulatory models.

Finally, ComReg should comprehensively **review the policy relating to universal service**. eircom is concerned that for the third time since 2010, this review has again been postponed with a proposed interim designation yet again of eircom as the USP. In determining the approach to universal service we suggest ComReg should consider:

- future objectives for the delivery of higher speed broadband connectivity, and the likely plurality of supply resulting from Government support for rural broadband through the National Broadband Plan;
- recognition that for many users universal service may be delivered by either fixed or mobile networks; and
- the capacity of USO delivery organisations to absorb the costs of delivery (including the costs of achieving subsidiary targets and measures). This is an opportunity to showcase a more objective and informed approach to RIAs.

Response to Consultation Questions

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

We note ComReg’s position¹ that “*This strategy statement does not pre-judge any future decisions by ComReg nor does it in any way bind or limit ComReg from exercising its full discretion in making any future decisions, in accordance with the applicable law and based upon what ComReg considers to be the relevant facts.*” We believe this is the correct position for ComReg to adopt as future decisions must be based on a detailed assessment of the relevant facts particularly as the discussion put forward in the draft strategy statement is wide ranging and necessarily high level. In responding to this consultation eircom would similarly highlight that it does not intend to debate the merits of many of the observations made by ComReg, nor should eircom’s silence on a matter mentioned in the consultation paper be taken as an indication of agreement.

eircom generally agrees with the trends observed by ComReg in terms of the market delivering greater benefits for consumers, the intensification of retail competition and growing investment.

We note that ComReg has indicated that limited resources have impacted on ComReg’s ability to undertake market analyses with some market analyses being prioritised over others². The EU framework³ envisages that markets should be analysed every three years recognising, as highlighted by eircom earlier in this response, the rate of market change is accelerating and the regulatory regime must keep pace. We believe that ComReg should apply its significant resources (when external consultancy assistance is factored in) in a more efficient manner to ensure timely and effective market reviews are conducted such that a more forward-looking regulatory regime can be maintained.

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

eircom would agree with the challenges identified by ComReg and listed in figure 12 of the consultation paper. However where we may disagree is how those challenges should be addressed.

For example eircom would agree it is important in “*keeping basic service (including universal service) obligations up to date as technology changes*”. However, we do not believe that ComReg’s proposals in respect of the scope of USO from 1 July 2014 properly take into account the significant impact that mobile telephony has had to meet basic telephony needs thereby rendering large parts of the USO regime redundant.

We would also agree with the challenges of “*Enabling infrastructure-based competition using different generations of technology*” and “*Enabling continued investment in high-speed broadband*”. Whether the complex interaction of price caps and margin squeeze tests between different wholesale products meets the challenges of appropriate pricing based incentives is a matter of ongoing debate.

As such while we would appear to share a common view of the statement of key challenges the devil is very much in the detail and we look forward to continued engagement with ComReg on detailed issues.

¹ Paragraph 4, ComReg 14/33

² Paragraph 40, ComReg 14/33

³ Article 16(6) of the Framework Directive 2009

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

ComReg has identified 20 strategic priorities in respect of four high level goals. We agree that these are appropriate areas of focus. We would welcome further information from ComReg on how it intends to focus its resources on each of the areas and clearly identify where there may be trade-offs between the progression of some priorities over others. We believe this information would be extremely helpful for regulated entities in order to manage and prioritise their own resources.

We offer some high level comments in respect of each priority:

- ***Ensure that the basic electronic communications needs of all consumers, including those with disabilities, are appropriately met.***

ComReg should comprehensively **review the policy relating to universal service**. eircom is concerned that for the third time since 2010, this review has again been postponed with a proposed interim designation yet again of eircom as the USP. In determining the approach to universal service we suggest ComReg should consider:

- future objectives for the delivery of higher speed broadband connectivity, and the likely plurality of supply resulting from Government support for rural broadband through the National Broadband Plan;
- recognition that for many users universal service may be delivered by either fixed or mobile networks; and
- the capacity of USO delivery organisations to absorb the costs of delivery (including the costs of achieving subsidiary targets and measures). This is an opportunity to showcase a more objective and informed approach to RIAs.

We look forward to the conclusion of ComReg's June 2013 consultation on equivalence measures for disabled end-users which should ensure a more symmetric application of obligations.

- ***Continue to ensure that access to 112/999 services is safeguarded as technological and legislative changes continue to emerge.***

The ECAS is an important service. However the current delivery model is less than efficient and the Call Handling Fees are excessive. ComReg should work with the Department to promote a much more efficient operation of ECAS as the term of the concession agreement reaches its end in February 2015 thereby allowing for a more flexible approach. In particular, eircom looks forward to a retendering of the ECAS business to facilitate a more cost-effective provision of the service.

- ***Optimise consumers' experience in respect of contracts and switching.***

We agree that this is an important consideration in competitive markets and believe that ComReg should ensure there is a consistent and symmetrical understanding of the interpretation of the relevant obligations across all industry players. ComReg's focus on strengthening of consumer regulation and promoting the consumer interest is best achieved through symmetrical regulatory models.

- ***Continue to protect consumers' interests in their engagement with PRS.***

eircom believes that ComReg should adopt a more active role in vetting PRS licence applications and monitoring compliance in particular the compliance of those parties that apply for licences. This in light of the fact that the applicant typically is the only entity that will have full visibility of the operation of services.

- ***Drive service providers to uphold consumer rights and deliver customer service.***

eircom recognises the importance of delivering good customer service and has a number of ongoing initiatives in place to drive further improvements.

- ***Maximise the effectiveness of ComReg's consumer information and communication.***

We agree it is important for ComReg's consumer information initiatives to be effective. As such we remain concerned that the methodology ComReg intends to apply to its Broadband Speed 'Test and See' initiative may not provide a proper assessment of broadband speeds. Based on communications to industry to date we are strongly of the view that the proposed methodology will not be representative of the broadband speed to a household as it will measure the broadband speed experienced by a single device in a household, overlooking the fact that there is an increasing predominance of multi-device households with devices such as Tablets, TVs and Games consoles potentially consuming far higher volumes of data. The effect of this would be to a significant understatement of speeds through the proposed methodology as a fraction of the actual speeds delivered. If ComReg seeks to maximize the effectiveness of ComReg's consumer information it must ensure that the information provided is both statistically and technically valid.

- ***Ensure effective implementation of existing wholesale remedies, adjusting approach in line with competitive conditions.***

eircom continues its work programmes to embed wholesale reforms and to demonstrate a robust approach to ensuring a consistent adherence to our non-discrimination obligations. eircom would urge ComReg to be vigilant in recognising where a service or component of a service is economically replicable by eircom's competitors and in that situation, the requirement to take the investment risk should not be imposed on eircom.

- ***Promote fair and vibrant competition in a marketplace where users choose between traditional and new products, and between stand-alone products and bundles.***

We agree that this is an important work package and welcome affirmation⁴ that its "strategy will be to permit pricing flexibility, contingent on there being evidence that other operators have genuine non-discriminatory access to wholesale services".

- ***Ensure that wholesale offers reflect both legacy and next generation network technology, so as to promote competition based on deepest level of infrastructure possible.***

We note ComReg's comments in section 5.3 and suggestion that there is a duopoly in the provision of physical infrastructure in urban areas. **ComReg should as a default always consider more symmetric forms of regulation.** If eircom must supply high speed wholesale broadband when it has only entered the market in May 2013 why does UPC not face a similar obligation given that it already has an established infrastructure and substantial customer base?

⁴ Paragraph 129, ComReg 14/34

Symmetrically imposed obligations would attract more balanced responses to consultation, would extend the options available to service providers using the network of others, and would improve the options available to consumers.

- ***Promote competition and investment and protect the interests of users in less densely-populated areas.***

We welcome ComReg's recognition⁵ that "*In less densely-populated areas, the cost to serve each customer is higher, and so there is not the same commercial incentive for investment in advanced access networks, or in competing networks.*" This calls into question the continued application of the geographic averaging principle. Other providers of services over national networks, for example in the electricity sector, are permitted to price their services by closer reference to the cost of provision in rural areas. Geographical averaging will have a distortionary impact on eircom's ability to compete and requires immediate review.

- ***Work to ensure mobile markets are free of competitive distortions.***

We agree this is an important focus given the proposed Hutchison 3G transaction to acquire O2 Ireland. If the transaction is allowed to proceed it will create a market with three players, two of which will each have a subscriber market share of 40%. It will be important to ensure that this does not result in an effective duopoly to the detriment of consumers.

In terms of international roaming regulation we believe ComReg should adopt a more pro-active role to exercise its influence within BEREC and foster wholesale price (and not structural) regulation as the most effective means of addressing competition in the retail international roaming market.

- ***Encourage commercial NGA roll out to the greatest extent possible.***

eircom fully supports the objective to maximize commercial NGA roll-out as evidenced by our NGA 3 announcement to roll-out NGA services to a further 562 communities across Ireland. eircom will invest where it is economical to do so.

We note ComReg's comments in section 6.1 regarding the market for Wholesale Physical Network Infrastructure and the separate legal provisions / developments regarding the promotion of access to passive infrastructure. The current regulatory construct is applied asymmetrically. We believe there is a strong case for the symmetric application of infrastructure access obligations.

- ***Finalise a strategy for the UHF band (470-790MHz).***
- ***Release additional spectrum for wireless broadband.***

eircom considers that these two priorities are inter-related as both relate to the future availability of spectrum to support high speed wireless broadband services. Consequently we believe that a holistic approach must be taken when making decisions on the scope of potential spectrum awards. This may already be recognised by ComReg with the inclusion of the 700MHz band in the list of candidate bands for inclusion in the proposed 2.6GHz award process at paragraph 158. eircom would welcome assurances from ComReg that this is in fact its intention.

- ***Test & Trial Ireland: Promote Ireland's research & development agenda.***

eircom has availed of the test and trial facility in the past and recognises its utility.

⁵ Paragraph 138, ComReg 14/34

- ***Develop our people through enhancing skills and knowledge.***
- ***Enable timely and robust regulatory processes and decision-making.***
- ***Improve the effectiveness and efficiency of ComReg's business processes.***
- ***Inform the evolution of the national and international regulatory environment.***
- ***Facilitate engagement to ensure stakeholders understand what we do.***

We agree these are important priorities and directly influence ComReg's ability to deliver its goals in particular the number of people ComReg has and their knowledge and skills combined with the quality of the engagement process. Given that industry - and ultimately customers - funds the operation of the ComReg office, it is expected that ComReg should aspire to achieving best-in-class benchmarks among EU peers for efficiency and operational excellence.

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

eircom has drawn attention to the deficiencies of the current RIA. An additional measurement of ComReg's performance could be post implementation review process for significant market interventions which would determine the positive impact of the interventions on competitiveness in the market. This is more than simply a measurement of evolving market share. The telecommunications market is now so dynamic and complex, in particular at the retail end that it is difficult to differentiate between the impacts of regulatory intervention and the impact of technology, commercial and market behavior which in many cases would have happened absent regulatory intervention. This would also contribute to assessing the timing of a regulatory sunset which was a key pillar of this public policy intervention in the market in the 1990s.

4 ESB Networks



Energy for
generations

ESB Networks

**Draft Strategy Statement for Electronic
Communications for the period 2014 - 2016
(ComReg Document No: 14/33)**

ESB Networks Response to consultation

Status: Issued

Date: 21/5/14



ESB Networks Response to ComReg Consultation Paper

ESB Networks (ESBN) welcomes this opportunity to respond to ComReg's consultation paper on the *Draft Strategy Statement for Electronic Communications 2014 – 2016*.

ESBN understands that a new strategy statement on spectrum strategy for the next years will be published by ComReg in the near future. That strategy document is expected to provide more detail of the strategy around future spectrum use. ESBN will likely provide a more detailed response on the forthcoming spectrum strategy document.

Response on the consultancy questions:

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

ESBN welcomes ComReg's goal of facilitating investment and innovation. ESBN encourages ComReg to provide a regulatory environment and certainty which will permit ESBN to make investments in its mission critical telecommunications network including the use of advanced technologies.

ComReg focuses on the Electronic Communications Services (ECS) providers who provide retail communications services or operate in the supply chain of this service industry. This is natural as this is the largest section in the ECS industry in Ireland.

In the discussion on *Innovation, Investment and the Internal Market* it could be useful to consider industries (such as a utility like ESBN) where for strategic and business reasons companies self-provide a large part of their ECS requirements on private networks. As stated in previous submissions to ComReg (on a previous spectrum strategy for instance – ComReg document 11/28) communications services play an increasingly important role in ESBN's operations and it is vital for Ireland's energy industry that ESBN can obtain and develop appropriate communication services into the future.

The regulatory environment, including the timely access to spectrum and the timely introduction of appropriate licencing regimes has a vital influence for ESBN in permitting investment and innovation.

It would be good to recognise in the strategy that for certain industries and vital services in the economy (electricity networks (grids) – transmission and distribution for example) communication services are a vital enabler, but not in themselves the output of the industry. But the communications services required by these industries are no less important for the fact that they are not the end product.

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

No further comment to add to the answer to Q1.

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

On Chapter 5 *Promote Sustainable Competition*: The topic of markets (an essential component when considering competition) includes the definition and attributes of the goods and services that are provided. In the case of ESNB our position is that the available communications service providers currently do not provide much of the ECS that we need, and they would not or could not provide these services in a manner or at a price that would lead ESNB to purchase these services from an external provider.

Ideally these factors would be included in the discussion about markets and competition.

In section 6 on *Innovation, Investment and the Internal Market* ComReg identifies making spectrum available to various needs of society as a key challenge.

Leading on from this a priority to release spectrum for wireless broadband is identified in the document (Figure 16) and a further priority to release spectrum for mobile services is identified in section 6.2. However there does not appear to be a stated recognition of the need for allocation of additional spectrum to other users of wireless ECS such as ESNB.

The European Commission has appointed consultants (early 2014) to study the potential use of commercial mobile networks in “mission-critical sectors”¹. The study is examining 4 critical sectors, utilities being one of these. SCF Associates limited have distributed documentation on their work in progress, which indicates that their investigations point to the fact that commercial networks cannot meet the mission-critical communications requirements of utilities. Included in the interim work is a comment related on utilities communications requirements – “everyday operation involves perfect resilience in communications with time constants (sic, must be “constraint”?) under 10 ms to run national high voltage electricity transmission, load dispatch and distribution ... “

ESNB would like to see recognition by ComReg of ESNB’s communications needs, some of which require a dedicated high-performance communications network (high performance relating in the most part to low delay and low jitter) with very high availability and in particular a high resilience to power network outage.

ESNB needs to be able to plan for wireless access for a number of communications applications that are part of the future enhanced “smart network” which will lead to improvements in the operation of the electricity network. This will depend on suitable spectrum being made available.

ESNB acknowledges that the Test and Trial licences offered by ComReg are helpful in permitting the testing of new technologies and the trial of wireless systems to support upcoming services that ESNB needs to investigate.

¹ The title of the study is “Use of commercial mobile networks and equipment for “mission-critical” high-speed broadband communications in specific sectors”, reference SMART 2013/0016. SCF Associated Ltd has been appointed to carry out this study.

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

Please see the answer on question 3.

5 RTE



**RTÉ RESPONSE TO
COMREG'S CONSULTATION ON
Draft Strategy Statement for Electronic
Communications 2014 - 2016**

ComReg 14/33

13th May 2014

Q1. No comment

Q2. No comment

Q3.

Section 6.2 “Finalise a strategy for the UHF Band (470 - 790 MHz)”. This band is currently used for public service broadcasting (Digital Terrestrial Television), and as such any strategy relating to its future use should be led by government. Therefore ComReg should await the outcome of current DCENR work relating to this band before committing to a revised strategy.

RTÉ recognises the high level of activity concerning the future use of this band internationally, and the ongoing debate about the realistic future needs for mobile broadband spectrum. Given this level of activity we believe that it is too early for ComReg to consider any change in strategy for this band during the proposed period 2014 to 2016, noting in particular that the next World Radio Conference is proposed to take place at the end of 2015.

Notwithstanding any DCENR policy instruction, we believe that ComReg should continue to objectively monitor international developments in this band during the period and promote the important role this band continues to play for the delivery of broadcasting services

This strategic objective 6.2 should be restated as “Continue to monitor international developments in the UHF band and continue to implement government policy regarding Public Service Broadcasting”

Section 6.3 “Release additional spectrum for Wireless Broadband”. In particular in relation to the 700MHz band a detailed Cost Benefit Analysis is needed before awarding further spectrum to Wireless Broadband. This is a significant piece of work that should be referenced in the strategy statement. Among other things the Cost Benefit Analysis will need to include a realistic appraisal of the need for, and benefit that can be derived from, allocating further spectrum to Wireless Broadband services.

Q4.

Given the comments above, RTÉ believes that a further Priority is needed under the Key Challenge “Making spectrum available to meet the various needs of society”. ComReg needs to continue to ensure that the important, and often non-commercial, needs of society such as Public Service Broadcasting, Public Safety, Navigation etc. are provided for. These services often face different sets of challenges to competitive communications services, and spectrum management policy needs to allow for this. It is particularly important to state this priority at this time where spectrum for public services is coming under increasing pressure to be reallocated for other purposes.

6 Sky



SKY IRELAND RESPONSE TO DRAFT STRATEGY STATEMENT FOR ELECTRONIC COMMUNICATIONS 2014 - 2016

1. SUMMARY

- 1.1 This is the response of Sky Ireland ("Sky") to ComReg's consultation entitled: "Consultation Document on ComReg Draft Strategy Statement for Electronic Communications 2014-2016" (ComReg Document No. 14/34) (the "Consultation").
- 1.2 Sky welcomes this opportunity to respond to the Consultation. As a recent entrant to the Irish fixed broadband and telephony ("BB&T") market, Sky has restricted its comments to the key issues arising from the Consultation that are relevant to it in the BB&T sector.
- 1.3 Sky is in broad agreement with ComReg's views on the challenges facing the sector and the goals that ComReg has set itself to address these challenges up to mid-2016. However, there are two key issues Sky considers ComReg needs to address to facilitate improved competition in the market:
- (i) Current Generation Access ("CGA") needs to be given the same priority as Next Generation Access ("NGA") and treated in a way which accords with the principle of technological neutrality, in order to further ComReg's stated goal of promoting sustainable competition, through amongst other things, the effective implementation of wholesale remedies; and
 - (ii) Improved functioning of the industry forums and improved transparency regarding the full suite of SMP¹ obligations that eircom has across regulated markets.

2. COMREG'S GOAL TO PROMOTE SUSTAINABLE COMPETITION²

2(A) CGA needs to be given the same priority as NGA and treated according to the principle of technological neutrality

- 2.1 Presently, Sky (and other operators) offer CGA based BB&T products, in competition with NGA based products. While Sky has plans to offer NGA BB&T services, many of its customers will continue to be served by CGA based products. CGA will remain a vital technology in the coming years and CGA products will continue to be subject to regulatory controls. Therefore, it is essential that CGA should not be given less priority in favour of NGA.
- 2.2 ComReg must ensure effective and proper implementation of wholesale remedies for CGA, as much as NGA. Sky agrees with ComReg's statement that: "...the transition from one

¹ Significant market power.

² See page 38 of the Consultation.

*generation of technology... could also threaten competition that is based on the current generation of technology. ComReg wishes to enable infrastructure-based competition, but also takes a technology-neutral stance.*³ ComReg also notes that a key challenge for it is: *"...enabling infrastructure-based competition using different generations of technology."*⁴ Under the legislative framework for electronic communications networks and services, adherence to the principle of technological neutrality is seen as essential for ensuring effective competition.

(i) Bitstream backhaul pricing: CGA v NGA

2.3 Sky has previously argued that technological neutrality requires that eircom's pricing for CGA bitstream backhaul needs to be substantially reduced, in order to bring it into line with the pricing for the same NGA product. While it is a policy choice by ComReg to promote the transition to higher broadband speeds generally, NGA should not be promoted at the expense of CGA. Therefore, Sky considers that it is not appropriate to give priority to NGA over CGA, through the mechanism of a discriminatory wholesale price structure, not supported by differences in underlying costs, as currently pertains to the pricing differential between CGA and NGA bitstream backhaul. Resolving this anomaly, which places CGA operators at a significant competitive disadvantage, should be a priority for ComReg. The reality is that the provision (through higher SAC⁵) and on-going supply of NGA services (through much higher demand for bandwidth) to customers, is likely to be more costly than CGA services. The current pricing structure ignores this reality and it will lead to competitive distortions in the retail market and likely, economic allocative inefficiencies.

(ii) Deployment of eircom resources

2.4 ComReg also needs to ensure that eircom Wholesale resources are not deployed to NGA (be it in support of eircom Retail or other operators using eircom NGA) to the detriment of CGA. Obligations imposed in relation to CGA and NGA must be applied by ComReg (and complied with by eircom) according to the principle of technological neutrality. eircom should not be able to avoid the application of this principle, because of any changed commercial incentives, as customers migrate from legacy to next generation technology. For example, in relation to provisioning times for its wholesale customers, Sky and other industry participants have previously expressed concerns to ComReg that eircom may be prioritising NGA provisions over CGA. In addition, the capacity shortage of CGA bitstream ports in a large number of exchanges throughout the country over the course of the last year (which did not arise in the NGA context) also raises a potential concern of CGA being de-prioritised in favour of NGA, not only in terms of investment, but also ongoing regulatory compliance.

3. COMREG'S GOAL TO BE AN EFFECTIVE AND AGILE ORGANISATION

3(A) The role and mandate of industry forums should be clarified and strengthened

3.1 In general, the purpose of industry forums is to facilitate operators' development and enhancement of the regulated product set in relevant markets. Its principal activities include the review and revision of the products, the inter-operator processes and associated documentation, and future development of the product set.⁶ While in principle, industry forums are an appropriate means for the implementation of eircom's SMP

³ See page 23 of the Consultation.

⁴ *Ibid.*

⁵ Subscriber acquisition costs.

⁶ See ComReg's website at: http://www.comreg.ie/telecoms/industry_forums.565.html

regulatory obligations to fulfil access requests, Sky considers that ComReg needs to review how well they are achieving this in practice.

3.2 In practice, access requests by individual operators are directed into the relevant industry forum. Once admitted, they are added to a list of items for discussion. Questions about whether the request is reasonable, whether it is supported by a regulatory obligation and whether it can and should be fulfilled, are in practice devolved to industry to be answered largely by them and resolved by consensus. For the most part, ComReg acts as a facilitator and honest broker in this process. At times, the industry forums have worked reasonably well, but in a number of respects they have proved to be unsatisfactory, essentially because:

- (i) Frequently, when an access request to eircom is introduced into an industry forum, ComReg does not make it explicit that the request is one that eircom is obliged to meet because of its SMP obligation to provide access;
- (ii) Deadlines and milestones that are binding for outcomes to be delivered by eircom are often not set by ComReg;
- (iii) The consensus approach often leads to stalemate and 'regulatory gaming'. Where there is no consensus, there is no immediate pressure on eircom to fulfil its obligations. Equally, where there is consensus, eircom may regard itself as under no obligation to fulfil an obligation. Often, once consensus is reached, experience shows that eircom may take the request under consideration and/or explain that it does not currently have the resources or systems capabilities to fulfil it; and
- (iv) It is not apparent that there are consequences for eircom when it frustrates the operation of the industry forums.

3.3 Therefore, as they currently operate, the industry forums are an uncertain and inefficient means for implementing eircom's regulatory obligations. The NGA Service Level Agreements ("SLAs") discussions are a good example of this. These discussions took more than 12 months to complete, but should have been completed in a matter of weeks.⁷

3.4 Sky considers that the working of the industry forums can be improved and that this can be done if the current model of consensus is changed. This means ComReg asserting greater authority, so that it is not only facilitator and honest broker. In this regard, clearer direction/guidance for eircom and industry needs to be provided:

- (i) Once a matter/request concerns eircom's regulatory obligations, this needs to be clearly established by ComReg at the outset;
- (ii) ComReg then needs to set an expeditious timetable for actions by eircom and industry and a deadline for delivering outcomes;
- (iii) If eircom adopts tactics to frustrate progress, ComReg needs to act of its own initiative and ensure a timely solution, pursuant to eircom's SMP obligations⁸; and

⁷ Sky has also consistently argued for improved SLAs for both NGA and CGA. Progress has recently been achieved at the industry forum in relation to NGA SLAs, after much delay on eircom's part. In general, it should be recognised that Sky and other operators do not meet as equals with eircom (who is the SMP operator) in attempting to negotiate SLAs. SLAs are not necessarily amenable to being successfully negotiated; whether bilaterally with eircom, or at the industry forums. That is why the provision by eircom of fit for purpose SLAs constitutes part of its access obligations in relevant wholesale markets. Accordingly, if eircom delays or frustrates negotiation, ComReg should retain the power to intervene and to mandate legally binding SLAs.

⁸ An example of where ComReg's intervention would be appropriate is in mandating SLAs for eircom's universal gateway order handling system (the "UG"). Since Sky's entry into the market in February 2013, we have in the CGA context, consistently experienced problems with the performance and availability of the UG, where it has been non-operational during key trading days/hours. The UG is a wholesale access service that is critical to Sky

- (iv) ComReg also needs to be more explicit that operators have recourse to an expeditious, regulatory dispute resolution procedure, if the operator(s) and eircom are in dispute about the implementation of eircom's obligations. If ComReg allocates sufficient resources, dispute resolution can be an effective and timely remedy.

3 (B) Improved transparency on SMP obligations is desirable

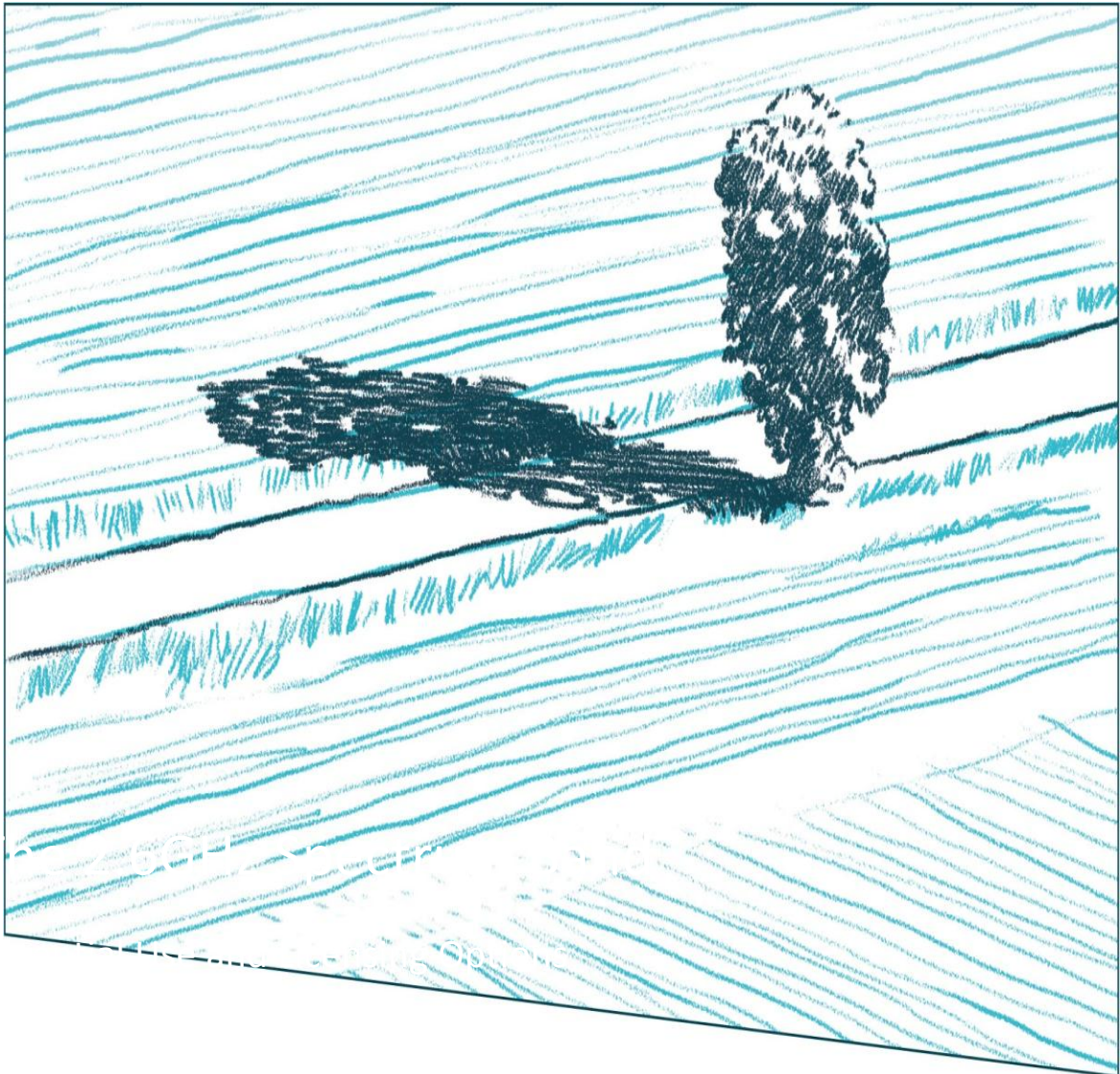
- 3.5 Because of the number of pending market reviews and SMP remedies consultations and the period that has elapsed since some market reviews were last completed, together with the fact that revised market reviews frequently happen *after* the imposition of SMP remedies, it is difficult to ascertain what obligations are in place, or pending in the wholesale markets in which eircom has SMP. To address this, ComReg should consider better aligning the timing of SMP reviews and remedies; consolidating SMP findings and remedies into one document for each market; and publishing a schematic diagram (that is periodically updated) indicating each of the separate markets on which eircom has SMP, exactly what wholesale products and services they contain and what SMP remedies apply.

Sky

22 May 2014

and other operators. Its non-availability results in lost sales to Sky (but not eircom in all cases) and Sky receives no compensation for this. This problem has been raised at the industry forums and can be remedied by ComReg mandating appropriate performance metrics and SLAs on eircom, that incentivise it to have the UG functioning optimally. In addition, it appears that eircom needs greater incentives to invest in its backend systems, because problems have persisted, despite eircom's assurances that they would be solved by various systems releases and hardware updates.

7 Telefonica



**Draft Strategy Statement
Response to Document 14/34**

20th May 2014

Telefonica

General Comments

Telefonica Ireland limited welcomes the opportunity to respond to the strategy statement. The strategy statement is a vital forward looking document which allows operators to understand ComReg priorities and anticipate the content of annual work programmes.

Telefonica would make a number of initial observations at this stage:

- There is no attempt in this strategy statement by ComReg to put the data provided on the performance of the Irish market in context through a benchmarking exercise with other EU member states. A comparative study of market developments would identify areas where in Ireland we are falling behind and may give some credence to a coherent strategy or set of priorities;
- The strategy statement does not do any benchmarking of ComReg's own performance effectiveness and efficiency. Such studies have been prepared in the past in the context of Regulatory reform and ComReg have not compared well, despite this it would be useful for levy payers to get an understanding how the resources available to ComReg are allocated and what measures are taken to assess if this represents value for money for telecommunications consumers;
- There is no discussion in the document of the evolution of regulatory strategy, a review of what regulatory approaches are expected to emerge in the EU, how the regime will evolve and how the Digital Single market initiatives currently being discussed in Brussels will be approached by ComReg;
- There is a lack of reflection on the previous strategy statement. An honest assessment by ComReg on what was achieved and was still to be completed would be useful in terms of continuity and in terms of lessons learned over the previous two years. In fact a cursory review of the strategy statement for 2012-2014 demonstrates that particularly in the consumer area the same problems and issues, with the same proposed solutions, are being put forward in this strategy statement.

Response to Questions

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

A summary of ComReg's strategic analysis is that consumers are well served in the market in terms of choice and price but more consumers are complaining to ComReg. There is a healthy investment climate but only in urban areas. This analysis is the same as the analysis put forward by ComReg two years ago.

Telefonica would argue that the increase in consumer complaints is misleading. ComReg have devoted significant resources and several websites in the past few years with the objective of increasing awareness of its role in the consumer space. There is no analysis from ComReg to what extent the increase reported is due to greater awareness of the role of ComReg. Telefonica have highlighted to ComReg on several occasions in recent years the trend of consumer complaints where consumers have an expectation that a complaint will be more effectively dealt with, from a consumer perspective, if made through ComReg. We have instances of consumers contacting our consumer care to get a complaint number in order to then take the complaint to ComReg, without affording Telefonica the opportunity to address concerns.

Telefonica have invested significantly in consumer care and in developing new channels and processes to allow us to improve how we listen to our customers. There will always be a percentage of customers who feel aggrieved by their experience with their service provider or have a genuine complaint in relation to services received however, at Telefonica we believe we are in the best position to resolve our consumer's issues satisfactorily in the first instance.

Telefonica would have expected ComReg to have conducted further analysis before concluding in the draft strategy statement that the number of consumer complaints received was an 'indication that the performance of some service providers in addressing the needs and rights of their customers is deteriorating'. ComReg's own ICT surveys show a high level of satisfaction with both landline and mobile operators (77% & 76% satisfied respectively). These high levels of satisfaction are consistent with previous years. Telefonica would also point to recent independent tracker research by Permanent TSB who have researched switching experiences of customers for a number of key services including mobile telephony. It is noted in the most recent tracker that mobile phone users feel the least frustrated by the experience with their service provider and this experience compares well with other sectors tracked.

In terms of the limited discussion on investment, it is misleading of ComReg to include the upfront spectrum fees in figure 8 as this is not investment in networks. There have been significant upgrades by all operators in networks despite the economic and regulatory challenges. It should be noted particularly for mobile regulatory interventions such as reductions in mobile termination rates have the effect of lowering revenue and profits which could be devoted to investment in the network. Telefonica would note, however, that investments have been made by operators in rural and semi

urban areas. Telefonica has been upgrading its 3G network across the country in line with increasing use of data in rural areas. ComReg assert that investments only occur in urban areas, not in rural areas but provide no evidence to support this assertion.

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

Telefonica would agree with the trends identified by ComReg in paragraph 43. However, Telefonica would note the limited analysis of trends and limited use of empirical data to establish these trends. Bundling is an important trend and a realignment of competition in the electronic communications markets based around operators who have capabilities across a number of platforms. Further analysis of these trends and their implications for Irish consumers and operators would have been helpful.

8 Zamano



In relation to ComReg document 14/33:

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

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

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

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

Response to Section 3 – 7

Chapter 4 section 4.4

For the consultation on the new code (point 104) we propose that ComReg engage fully with the industry (MNO's & PRS Providers) and look at the differences between traditional PRS and the services that are, and could be offered by DCB.

There needs to be different rules for DCB to encourage it to grow, e.g. paying for Spotify on a 12 month contract using DCB instead of Direct Debit. DCB would then technically be classed as a subscription service under the current code. This would require double opt in, €20 reminders etc., while direct debit would not. This would make this a very difficult sell to potential clients who might want to use DCB in this fashion.

While we acknowledge that exceptions can be applied for under section 3.3 there are no guarantees that alternative measures taken would be approved by ComReg, with the uncertainty making it very difficult to sell to potential clients.

One of the responsibilities listed on the "About Us" section of ComReg's website is to encourage innovation. Restricting DCB to the same rules as traditional PRS prevents it reaching its potential and challenging Credit Card and Direct Debits etc. as a payment mechanism.



In point 99 ComReg claims that there hasn't been a significant reduction in complaints. This does not seem to be the case for the latest stats available on askcomreg.ie for Q4 2013. There was a 57.6% reduction in queries and complaints compared to Q3 2013. This represents 19% of the overall complaints. When the code was introduced in 2012 PRS was at 38% of the total (stats for Q2 2012). So again this has been reduced by 50% since the introduction of the code. We feel that these are very significant reductions in complaints. This indicates that the new code and the industry are having a good impact on the reduction of complaints of PRS.

ComReg states that the PRS complaints are at approximately 10% of the telecoms market. If this is the case and these figures are from Q1 2014 (as PRS are 19% of total in Q4 2013) then we estimate that complaints and queries have fallen to around 600 - 700. This represents close to a 50% reduction on the previous quarter and almost an 80% reduction since the code has come into force.