



Commission for
Communications Regulation

Submissions to Consultation on ComReg Document 12/37

(Draft Strategy Statement 2012 – 2014)

Submissions to Consultation

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An Coimisiún um Rialáil Cumarsáide
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Submissions Received from Respondents

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ALTO is pleased to respond to the Consultation on ComReg's Draft Strategy Statement 2012 - 2014. While the Consultation is primarily related to the whole Irish communications market, we confine our observations to the fixed market.

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

ALTO notes that the fixed market has been subject, and remains subject, to what can be characterised as aggressive *block and hold* behaviours by the incumbent over the past two to three years (some may suggest longer). 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 2012 EU Commission and ECTA Scorecards and remark that Ireland's ranking on the OCED table of information societies has yet again, slipped into third world rankings.

The period covered by the Draft Strategy Statement (2012 – 2014) should be a period in which further fundamental change takes effect in the Irish communications market, with particular emphasis on the fixed market. ALTO is committed to contributing to the evolution of the Next Generation Network, - NGN, and Next Generation Network Access, - NGA, debates in Ireland. We remark however, that the incumbent behaviour noted in the transition period to NGN seems to indicate a situation where the existing bottlenecks are being exploited and covered up in new technological parlance and pricing models, with the net effect of obfuscation and very real risk of asset stranding.

ALTO members have exhaustively invested in network in Ireland, which for the most part has resulted in derisory or limited returns. We call on ComReg to strive to replace the current scenario with a set of relevant, measured and achievable outputs to the benefit of the consumer, competition and innovation in the Irish market. It is ALTO's view that competition in Ireland has been severely hampered by the elements mentioned above, in addition to an incumbent operator whose owners have engaged in very little or intangible investment to the benefit of their (wholesale) customers and consumers in general. ALTO calls on ComReg to give serious consideration to the question of whether there is a case for Eircom to Functionally Separate. ALTO considers that the requisite preparatory work to inform for such an outcome

should be undertaken at this time. Functional Separation would provide true Equivalence of Input - EOI, this should also provide adequate returns and outputs for Eircom's retail division and result in a more competitive and dynamic telecoms environment.

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

Response to Consultation Questions:

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

ALTO agrees with the trends identified. We do feel though, and as we have commented in previous iterations of this Strategy Statement consultation, that ComReg must seek the separation of the incumbent monopoly over the next two to four years. This task must be completed in an environment of heightened technological and policy change. We are concerned that without proper controls, Eircom will be able to impose its dominant position on new NGN and NGA products, services and offerings which will inevitably be to the detriment of both consumers and competition.

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

ALTO believes that the transposition of the new European regulatory reforms package and the remedies provided for within that package, including Functional Separation; provide a unique opportunity for ComReg to act and foster real change in the Irish communications marketplace. In recent months it has become apparent that ComReg has adopted a deregulatory stance on certain key markets. This of course may be inadvertent on ComReg's part, though the effect of this is to create massive pressure on already declining revenues and margins at the wholesale level.

ALTO calls on ComReg to carefully evaluate its own work programmes to maintain currently regulated product sets and regulatory remedies to maintain existing markets and levels of return to new entrant operators. ALTO remarks that the New Regulatory Framework – NRF, requires greater transparency in work undertaken by ComReg. ALTO will be seeking to review the various economic, pricing and regulatory models on an equal footing to other operators when such models are presented.

Governance and the Environment

ALTO remarks that while Eircom has recently voluntarily offered a Governance Programme to the industry, in which the industry has engaged, the following points must be noted:

1. The industry in Ireland is too small for a UK-style office of the telecommunications adjudicator model to work. ALTO members are already paying enough for one regulatory function – ComReg, and ALTO considers that having a further quasi-regulatory body at the industry's expense is complete overkill and may hamper efficient decision-making and dispute resolution.
2. ComReg's powers and modification of approaches to regulation, as mentioned in Chapter 3, must in no way be fettered by any collaborative or coercive method of intervention such as was proposed by Eircom earlier this year.
3. ALTO favours a model where Equivalence of Access – EOA, can be assessed amongst a number of independent and government/regulatory stakeholders. A board model may work on a voluntary basis.
4. Any appointments to roles such as the one mentioned by Eircom, whether agreed or facilitated by ComReg, must be truly independent. Bias is a huge concern to the new entrant industry at this time.
5. Attending industry workgroups and meetings already takes significant resource and time away from ALTO member companies. Any governance models must not detract from the day-to-day business that we must undertake in order to remain viable, foster growth and remain competitive. ComReg and the Department of Communications, Energy and Natural Resources – DCENR, should consider consulting on the now voluntary proposals that are in place, as tabled by Eircom.

Q. 2. Are the concerns and challenges related to these trends in Chapter 3 the correct and most important ones?

ALTO refers ComReg to answer 1, above. We remark further that while the Concerns and Challenges that ComReg notes for example, that falling revenues and tighter margins appear to be symptomatic of the global recession. ALTO acknowledges that there are certainly elements of recessionary forces at play, but that the Irish market remains dominated by a powerful incumbent operator. Line Rental remains the highest in the EU 27 Member States, consumers and business customers are still switching to what some believe are anti competitive bundled offerings. The concentration of the broadband market which is wireless is not a very positive trend, as it highlights a want or lack of investment in infrastructure in Ireland. While this is certainly true that there are some new entrants striving to make viable investments in infrastructure, they are stymied at almost every turn, whether through: lacking of facilities access, unviable backhaul, outdated planning regulations or inconsistent interpretations of same planning regulations.

ALTO remarks that it is unfair to suggest at this time that any one operator has made adequate inroads in the market to effectively reduce the burdens levied on the incumbent. While Next Generation Network and Access products may be the panacea of the few, the current product

sets are the 'bread and butter' or staple of the industry. This must not be lost in the noise that is the Next Generation story.

ComReg must pay as much attention to ensuring that existing products and services are fit for purpose and have adequate remedies, as is paid to NGA. One such example where remedies are not truly fit for purpose is cost orientation obligations that Eircom has in relation to leased lines. There is no way for industry to determine whether the prices charged by Eircom are truly reflective of costs, and ComReg has not done enough to ensure transparency in this area. It is unacceptable that industry is fully reliant on ComReg to scrutinise Eircom in this respect and has no ability to check the figures itself in a meaningful way. In the UK, providers have had the opportunity to look at BT's costs in relation to prices for regulated access products, have been able to bring disputes to the regulator and have succeeded in securing huge repayments following the discovery of widespread overcharging in various products. None of this would realistically have happened without industry taking the initiative. How are we able to have confidence that the same thing has not or is not occurring in Ireland?

ALTO states that while ComReg cannot be held to account for the fiscal traumas experienced at Eircom, we believe that the difficulties and the various incarnations and transfers of ownership have left Ireland so far behind in the Next Generation and high-speed story that it is almost embarrassing for Ireland Plc.

Q. 3. Are there additional challenges for the industry and for regulation over the next two years?

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

Maintenance by ComReg of lead times on certain strategic initiatives is now of critical import to the market. ALTO uses for example: Slippage in the issuing of the NGA Consultation from Q.4 2011 to Q.1 2012. Further, delays with mobile spectrum allocation and auctions are not assisting market confidence to the extent that the industry requires. ALTO encourages ComReg to continue to focus on Service Level Agreements, - SLAs, Key Performance Indicators – KPIs, and minimum standards for the provision of products and offerings in order to maintain pressure on the delivery of meaningful and robust wholesale, and retail products in the market. ComReg must continue to endeavour to break the enduring sequence of bottlenecks, which are extant in the Irish market. This will be for the good of all its stakeholders. This might be best achieved through the functional separation remedy.

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

ALTO agrees that while ComReg has identified the various areas in which its strategy statement must focus. Each priority provides a set of unique challenges within the context of the Irish communications market place. Any actions thereunder must be proportionate, reasonable and in contemplation of one of ComReg's remit. We provide a set of remarks below but comment that if the ComReg 'Regulatory Approach' is to be effective in each strand then the organisation may require some training to that extent.

1. Protecting the Consumer Interest

High Level Goal #1: To safeguard the interests of consumers of communication services by protecting and empowering them

PRIORITY: Protect consumers by implementing policy and undertaking regulatory intervention, where necessary

ACTIONS:

- 4.1.1 Implement appropriate policies in relation to Universal Service, including scope, designation, quality of service and fund aspects.*
- 4.1.2 Implement appropriate policies in relation to users rights that are within ComReg's mandate including access to Emergency Services, Data Privacy, Internet Domain Names, equivalent access and choice for consumers with disabilities, roaming and a PRS code of practice.*
- 4.1.3 Consult with key stakeholders (e.g. advisory panels, consumer interest groups) on consumer policy issues to inform the decision making process.*
- 4.1.4 Identify consumer detriment through proactive monitoring of market developments, consumer issues and trends and research and implement measures necessary to protect consumers.*
- 4.1.5 Continue to influence and adopt national and European legal and regulatory developments in relation to consumer policy.*

PRIORITY: Protect consumers by ensuring Service Providers respect and uphold their obligations

ACTIONS:

- 4.2.1 Monitor service providers' compliance with their consumer related obligations through monitoring programmes, review of consumer issues and complaints, research and other methods and take necessary action.*
- 4.2.2 Investigate and take compliance action where necessary to address interference and unlicensed use of spectrum and provide technical support and surveys to ensure terminal*

equipment and devices meet standards and requirements set out in national and EU legislation.

PRIORITY: Empower consumers by ensuring the availability of clear and transparent information

ACTIONS:

4.3.1 Provide clear and transparent information to consumers in relation to electronic communications services using our consumer line contact centre, consumer guides, outreach programs, websites and other electronic media so that they are more informed in their dealings with service providers and more confident in making decisions about communications services.

4.3.2 Identify information gaps and put appropriate measures in place to address them.

PRIORITY: Empower consumers through an effective complaints-handling process that ensures consumer redress and the timely resolution of complaints

ACTIONS:

4.4.1 Drive improvements in service providers' handling of customer complaints.

4.4.2 Continue to develop and improve our complaints handling mechanism to offer consumers an effective facility to put right consumer issues for which service providers' complaints handling fails.

ALTO Comment: This should be a business as usual area for ComReg. Nothing stated in the Consultation document is particularly controversial. ComReg should ensure not to overburden industry¹ with intrusive reviews in relation to this area, unless analysis highlights specific problem areas². ALTO members are very aware of their own compliance obligations in the USO and service areas of regulation. Of course while ALTO does not recommend a migration back to the Measured Licensed Operator Performance – MLOP, regime, transparency and correct use of wholesale to retails fault, repair and maintenance codes would greatly assist the consumer and ALTO members.

Protection of the interests of Consumers in a mature market is often viewed academically as an area in which regulators focus when the job of competition and enforcement has become static, or come to an end. ComReg will most definitely be limited in terms of what change it can logically drive based on the levels of investment and intervention it can seek from market players.

ALTO warns that over-focus on the Consumer strand of regulation may send the wrong signals to the market. That is not to say that ComReg should not fulfil its remit as it currently does.

¹ E.g., sending consumer requests to operators who are not consumer providers etc.

² Reported issues with services, contracts, rate notices.

2. Promoting Competition

High Level Goal #2: To apply effective and proportionate regulation to facilitate dynamic and sustainable competition

PRIORITY: Facilitate and promote the roll out of competitive access networks

ACTIONS:

- 5.1.1 Continue to develop and implement an effective regulatory framework for NGA.*
- 5.1.2 Provide balanced and effective investment incentives for market players by means of the adoption and/or maintenance of appropriate regulatory remedies, where appropriate.*
- 5.1.3 Facilitate the development of wholesale services which have characteristics, capabilities and functionality which provide a platform for the delivery of high quality and innovative retail services.*
- 5.1.4 Continue to support unbundling, including LLU where appropriate.*
- 5.1.5 Support and contribute to BEREC and European Commission work streams in relation to competition matters.*

PRIORITY: Ensure economic regulation remains focused and responsive to the needs of a changing environment

ACTIONS:

- 5.2.1 Carry out ongoing review of quarterly key report data and other relevant data gathering processes to ensure that data obtained is relevant, reliable and targeted to understanding key competition bottlenecks.*
- 5.2.2 Ensure the review of relevant markets continues to reflect the competitive realities of those markets and that consumers continue to benefit from well functioning markets.*

PRIORITY: Promote innovation in the electronic communications sector through infrastructure and service-based competition

ACTIONS:

- 5.3.1 Ensure wholesale prices set the right incentives for efficient investment and innovation in access technologies, including wholesale broadband access prices, NGA prices, LLU prices and line share prices.*
- 5.3.2 Provide appropriate spectrum for broadband services as detailed in the Spectrum Management Strategy Statement (document 11/89).*
- 5.3.3 Apply appropriate competitive mechanisms when making spectrum available.*

PRIORITY: Contribute to the development of a competitive single European market for electronic communications services

ACTIONS:

- 5.4.1 *Promote regulatory consistency across review periods.*
- 5.4.2 *Take account of European directives, decisions, recommendations and comments as well as specified EU targets such as the European Digital Agenda 2020.*
- 5.4.3 *Review and take account of relevant work of other NRAs as appropriate.*

PRIORITY: Ensure that providers of ECNs/ECSs comply with their regulatory obligations through enforcement actions.

ACTIONS:

- 5.5.1 *Publish bi-annual compliance report.*
- 5.5.2 *Investigate, either in response to complaints or on our own initiative, operators' compliance with their regulatory obligations, and take appropriate and timely enforcement action.*
- 5.5.3 *Ensure compliance with international agreements on frequency usage and technical standards.*
- 5.5.4 *Take appropriate enforcement action as required to maintain the integrity of the radio spectrum, prevent unauthorised use of spectrum and ensure compliance with licence conditions.*

PRIORITY: Ensure efficient management and use of the radio frequency spectrum in the State.

ACTIONS:

- 5.6.1 *Finalise the process around the proposed release, on a fully-liberalised basis, of the 800 MHz digital dividend, the 900 MHz and 1800 MHz bands.*
- 5.6.2 *Facilitate the rollout of Digital Terrestrial Television (DTT) in Ultra-High-Frequency (UHF) bands IV and V below 790 MHz and the switch-off of analogue television transmissions in 2012.*
- 5.6.3 *Consider the release of new frequency bands for fixed links to meet market demand.*
- 5.6.4 *Carry out a review of the Fixed Wireless Access Local Area (FWALA) licensing scheme in the 3.6GHz, 10.5 GHz and 26 GHz frequency bands.*
- 5.6.5 *Consider the future use of the 2.6 GHz band taking into account the rights of current licensees, as well as considering inputs received to date.*
- 5.6.6 *Carry out a consultation on further technical and spectrum release options relating to the 2.3 GHz band.*

PRIORITY: Ensure the efficient management and use of numbers from the National Numbering Scheme

ACTIONS:

- 5.7.1 *Review and set numbering policy, as necessary, including conditions for rights to use national numbering resources that serve to enable market entry while providing an appropriate level of transparency and associated consumer protection. This will involve a revision of the National Numbering Conventions during the period 2012-2014.*
- 5.7.2 *Carefully manage allocations from the National Numbering Plan and monitor operator utilisation to ensure efficient use of numbers, so as to avoid unnecessary number changes.*
- 5.7.3 *Following research and consultation, decide whether dedicated numbering resources are required for Machine-to-Machine applications. If so, draw conclusions on which ranges, number lengths and applicable conditions of use are relevant.*

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

We would also reiterate the remark above that ComReg is simply not doing enough to ensure transparency regarding Eircom's cost orientation obligations. We have no way of knowing whether we as an industry are truly paying prices for regulated access products that are reflective of cost. It is not possible to use Eircom accounts to do this, as freely admitted by ComReg- and further ComReg appears to show remarkable leniency to Eircom in setting and extending deadlines for producing its accounts. In simple terms there should be a means of mapping a cost incurred by Eircom in delivering a product or service to the price that it charges for it. ComReg needs to address this as a matter of urgency.

ComReg's perceived deregulatory agenda at present will not assist the achievement of this goal or objective. That is on the existing non-Next Generation products or current product set. ALTO notes that some of the modelling and pricing decisions in the past two years, may have the medium to long-term effect of jettisoning entire lines of business for certain operators, e.g., WLR, LLU, Leased Lines and CPS. ComReg would be well advised to consider operational and capital costs allowances for ALTO members in advance of making decisions that may not be borne or felt in the market for a significant period of time.

Timely dispute management is critical to this overall goal. Disputes, whether interim or fully litigated actions do not assist investment decisions, market certainty or product lifecycles. ALTO remarks that in recent times ComReg has become more focused on this as an issue, however incumbent abuse of process has become a problem, as highlighted above. Please see our remarks at the top of this response in relation to voluntary governance offerings by Eircom. Enforcement actions by ComReg and any regulator should be proportionate and carefully measured by way of response to a 'cause' and 'effect'. It is not ideal for ComReg to be subject to protracted commercial litigation or indeed statutory appeals when a mediated settlement of an enforceable or enforcement action could have been achieved without costs to the industry. These instances are obviously most acutely felt when a decision, with positive results for the industry, is either Judicially Reviewed or appealed for some reason, based on an error of judgment on ComReg's part.

Numbering Management is becoming an issue for both national and internationally located ALTO members. In particular, aspects of the numbering conventions may require liberalisation in order to facilitate VoIP services, over and above those already being run, or enabled over the 076 range of numbers. There are also issues with the pricing models in relation to the conventions versus operator costs related to 189X, 185X and 11XXYY numbers that must be addressed as a matter of priority.

3. Facilitating Innovation and Investment

High Level Goal #3: *To provide regulatory certainty that facilitates innovation and supports investment in communications infrastructure and services*

PRIORITY: Promote Ireland as a centre of excellence for research and innovation in spectrum that facilitates the development of new radiocommunications techniques, spectrum-based services and applications

ACTIONS:

- 6.1.1 Promote Test & Trial Ireland to existing and potential spectrum users, technology innovators, entrepreneurs and researchers.*
- 6.1.2 Promote Test & Trial Ireland by engaging with relevant national and international development and inward investment agencies.*
- 6.1.3 Raise awareness of innovative uses of spectrum through workshops, seminars and other events.*

PRIORITY: Contribute to Ireland's Digital Dividend by facilitating the earliest availability of this valuable radio spectrum band following Digital Switch Over

ACTIONS:

- 6.2.1 Release of 800 MHz band in line with EC requirements.*
- 6.2.2 Engage with broadcasters as to their spectrum requirements and facilitate migration to Digital Terrestrial Television (DTT) and analogue switch off (ASO) by 24 October 2012.*
- 6.2.3 Engage with DCENR and contribute to Intergovernmental groups on DTT/ASO and other relevant fora to facilitate ASO by 24 October 2012.*
- 6.2.4 Explore the long-term future use of the UHF spectrum in light of the WRC - 12 Decision.*

PRIORITY: Facilitate innovation and knowledge transfer by sharing relevant national and international regulatory best practice

ACTIONS:

- 6.3.1 *Actively participate in fora to inform and influence the development and implementation of national and international regulatory policies that could have an impact on the electronic communications sector.*
- 6.3.2 *Research emerging sector trends, as part of ComReg's Forward Looking Programme, and develop insights as to how the electronic communications sector may evolve, to inform effective regulatory policy-making.*
- 6.3.3 *Inform ComReg policy development and procedural efficiency through research and liaison with industry and peer NRAs.*

PRIORITY: Enable product innovation and sustainable competition by facilitating and responding to sectoral convergence

ACTIONS:

- 6.4.1 *Provide clear and appropriate conditions for the regulation of bundles provided by Eircom.*
- 6.4.2 *Support and contribute to BEREC work on "Net Neutrality".*
- 6.4.3 *Facilitate industry product and service developments through initiatives such as industry fora and briefings.*

PRIORITY: Provide regulatory certainty to market players regarding investment decisions by contributing to the development of a single European market for ECS

ACTIONS:

- 6.5.1 *Support and contribute to BEREC and European Commission work streams in support of innovation objectives and regulatory consistency.*
- 6.5.2 *Take account of European Commission directives, decisions, recommendations and comments as well as specified EU targets such as the European Digital Agenda 2020.*
- 6.5.3 *Contribute, as appropriate, to the ongoing formulation of EU regulatory initiatives and guidance instruments, such as the periodic review of the overall EU framework for regulating ECS.*
- 6.5.4 *Continue to develop a consistent regulatory framework that is conducive to investment by operators thereby encouraging increased roll out of access networks.*

ALTO Remark: ALTO welcomes this goal/priority. This priority would be greatly assisted by ComReg publishing a thorough annual work programme in a granular and timely fashion, to include technology trials, consultations and pan-EU requirements. This is not something complex, yet ComReg has an inconsistent policy in relation to publication and management of these issues.

ALTO members, to include smaller new entrant operators, struggle with the burdens placed on them via poorly managed scheduling, industry meetings, inconsistent, overlapping or replicated data requests (often issued under ComReg's statutory powers) and slow wholesale product development lifecycles. ComReg should consider retaining outside expertise (where more

efficient) to execute specific work programmes on time, without obfuscation and delay levied by the incumbent.

Stakeholder engagement:

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

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

ALTO again calls on ComReg to publish online a **full** organisational chart, in order that the industry can reference the precise organisation and structure of ComReg subject matter experts, all in one place.

4. Striving for Organisational Excellence

High Level Goal #4: *To be a highly effective and innovative organisation which is a centre of excellence that supports and enables its people to achieve the organisation's objectives.*

PRIORITY: Be an effective, independent and innovative organisation with the appropriate systems, structures and skills

ACTIONS:

7.1.1 *Focus on employee engagement and ensure that we develop skills appropriately and deploy them effectively, supporting the contribution of all of our people in achieving their professional objectives.*

7.1.2 *Comply with corporate governance obligations including, as appropriate, the Code of Practice for Governance of State Bodies.*

7.1.3 *Continue system and process improvement initiatives including ongoing investment in IT as a valuable business enabler and communications tool.*

7.1.4 *Drive policies and initiatives which complement, for example, e-services and simplify doing business with ComReg.*

PRIORITY: Continue to be a centre of excellence providing effective & relevant regulation

ACTIONS:

- 7.2.1 Ensure effective, evidence-based and transparent regulation by conducting Regulatory Impact Assessments (RIAs) as appropriate, engaging with stakeholders on an equal and non-discriminatory basis and consulting on policy decisions, where necessary.*
- 7.2.2 Gather reliable and relevant data from Industry and conduct research that focuses on the long-term evolution of the sector and that also informs ComReg and our stakeholders.*
- 7.2.3 Utilise resources to achieve economies and efficiencies while continuing to deliver high quality outputs.*
- 7.2.4 Provide continuous professional development to enable our people to fulfil their goals.*

PRIORITY: Engage with other regulatory agencies and key stakeholders, nationally and internationally, to enable ComReg to achieve its goals

ACTIONS:

- 7.3.1 Optimise ComReg's stakeholder relationships for the benefit of consumers, for example through outreach programmes.*
- 7.3.2 Actively participate in fora to inform and influence the development and implementation of national and international regulatory policies.*
- 7.3.3 In compliance with the Government Statement on Economic Regulation continue to publish an Annual Output Statement.*
- 7.3.4 Ensure transparent planning through the publication of a work plan on an annual basis derived from the Strategy Statement.*
- 7.3.5 Continue to represent Ireland's position and to influence European legal and regulatory developments.*

PRIORITY: Ensure that ComReg's regulatory decisions are based on reliable market data and its performance is benchmarked against international standards

ACTIONS:

- 7.4.1 Benchmark ComReg against international standards to measure performance, identify gaps and pursue best practice.*
- 7.4.2 Ensure our data collection and analysis and our internal decision making processes result in effective, robust and transparent decisions.*
- 7.4.3 Ensure that our decisions are robust and informed by progressive thinking by commissioning relevant economic research analysis.*

ALTO Remark: This is clearly an admirable goal and aspiration and an area in which ComReg has shown notable improvements on since the publication and approval of the last Strategy Statement 2010 – 2012.

Regrettably, ALTO has stated and valid concerns over scheduling, meeting management, execution and delivery of tangible results. This of course may be symptomatic of resourcing constraints however, we note that of late if certain ComReg resources are focused on a specific problem or area, the results are robust and more tangible than if for some reason the same

resources are not targeted or allocated correctly in a given instance. Examples: Bundles Disputes, Lines Share, NGA, USO, WPNIA and LLU Pricing.

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

ALTO notes that of late, Executive Summary sections and remarks from the Commissioners in consultation, decision documents and information notices, fail to adequately summarise the issues in question in a given consultation, decision document or Information Notice, this should be addressed as a matter of immediate priority³. ComReg documents tend to be lengthy and complex, and this needs to be reflected in an adequate summary given the time and resource that is not always available to digest the whole document.

ALTO would also like to see more input, coordinated reviews of competition and policy by ComReg's legal exponents, many of whom have the skills to manage industry meetings, yet are rarely visible to industry for the most part.

This may mean re-aligning some resources. We commend ComReg for the 'working smarter' aspiration and are available to assist with information circulation and gathering should the need arise.

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

ALTO members are committed to assisting ComReg with this goal and sets of priorities, where they can.

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

ALTO considers ComReg's inputs to work on the NGA, Net Neutrality and BEREC recommendations to be of critical importance to the market over the next two years.

³ The current NGA Consultation paper is case in point. The Executive Summary fails to disclose the critical nature of the decisions contained in the paper.

The New Regulatory Framework and NGA:

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

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

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

Net Neutrality:

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

- Protection of consumer Internet access and closely track the existing U.S. "connectivity principles," recognising the legitimacy of network management tools.
- Recognise that competitive markets ordinarily protect against problems associated with degradation, blocking, or slowing of traffic.
- Allow for regulatory scrutiny of network management solely to ensure that it does not restrict competition; an allegation of discriminatory behaviour would need to be addressed in this anti-competitive context.
- Allow that regulators be "empowered" to "address" service degradation when or if it occurs.
- This adds up to a case-by-case, factual analysis of alleged problems, rather than an anticipatory rule.

Governmental Policy Directions and BEREC:

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

ALTO notes that ComReg is heavily involved in the forthcoming BEREC work programmes relating to Economic and Competition implications; Draft guidelines on Quality of Service (QoS); IP interconnection issues and Fraud. We seek input from ComReg where necessary on BEREC related consultation and likewise are willing to offer support to ComReg as and when necessary, particularly on areas where internal competence may not be available on a given consultation. Further, if offshoot or BEREC linked consultations are planned then same should be properly scheduled and timed in-line with national priorities.

Q. 6. Do you consider that ComReg provides sufficient opportunities for all stakeholders to express their views and provide relevant information to inform the decision-making process? If not, then how could we improve?

ALTO commends ComReg for the ways in which it carries out its obligation to consult with the industry as and when the need arises. We have some concerns though in relation to the use of certain new powers, for example, Fraud Management pursuant to Article 23(2) of the Universal Services Regulations. We feel that a consultation on the process and notification aspects of this power might have informed the industry and indeed wider stakeholders in a more concise manner.

ALTO recommends, as we have already, that ComReg should allow ample time for stakeholders to submit meaningful comments on consultations, rather than having multiple consultations running in tandem and concurrent with Section 13D statutory information requests.

ALTO will work to review on a case-by-case basis ComReg's own compliance with transparency obligations enshrined in the NRF, and highlight then to ComReg when an aspect of transparency has been fettered or obscured by some action on the part of a stakeholder⁴.

ComReg should consider online questionnaire formats for preliminary consultations, thus reducing the overhead in relation to formally drafted responses.

ALTO
25th May 2012

⁴ e.g., WBA Consultation and Decision ComReg 12/32, margin squeeze model was shared with Eircom at clause 4.7 page 58 of the document, but not shared with industry.

2: BAI

The BAI welcomes the opportunity to comment on Comreg's consultation on its Draft Strategy Statement 2012 – 2014. In common with most stakeholders, sections of the strategy are of particular interest and relevance to the work of the BAI. While our main areas of interest include broadcasting, spectrum and economic regulation, we are acutely aware of the importance of Next Generation Access and Networks in meeting the consumer and content provider requirements for on demand services. The draft statement provides a welcome opportunity for all stakeholders to contribute to ComReg's consideration of its strategic priorities over the next two years.

We broadly support the draft strategy statement and concur with the analysis of the strategic context and environment, the high-level goals, priorities and actions. We recognise the common points of interest and intersection with some of the BAI strategic objectives and work priorities. We will continue to work with ComReg and other stakeholders in the delivery of the relevant actions points that relate to common areas of interest including Analogue Switch Off, Digital Dividend 2, Economic Regulation, Premium Rate Services, Spectrum Managements, and other matters including Next Generation Access and networks.

As we generally concur with the draft document and in particular the areas that are of relevance to the role and objectives of the BAI, we are not replying to each of the questions individually.

3: BT

We have reviewed the consultation and would like to make the following comments.

1. Competition' as the driving force / guiding principle around how the market should be regulated.

We agree competition should drive and underpin how the market is regulated and have welcomed many ComReg initiatives over the years. However, prior to competition becoming fully established in the wholesale market, ComReg appears to have embarked on a de-regulation agenda having the impact of undermining competition through tightening the economic space to compete. We are therefore seeking for this trend to be reversed until such a time competition in the wholesale market is fully established.

2. Eircom Service Performance

We welcomed ComReg's initiative in 2009 to regulate Eircom's Service Performance, however once the regulation had been put in place we observed the agreement of a Performance Improvement Plan (PIP) with Eircom to relax the targets; this did not create the correct incentive on Eircom.

We believe the recent extremely poor performance on WLR repair is a result of a lack of capital investment in the copper access network by Eircom in the preceding number of years. We are concerned the reported 1,000 redundancies, coupled with a stated intention to accelerate investment in NGA (from a fixed capex pool) will result in a repeat of the problems encountered recently (which caused significant distress and cost to BT and its customers) - unless adequate penalties for non-performance are in place and enforced by ComReg.

3. Functional Separation

We note Eircom has embarked on a process of reform; however we are continuing to experience non-equivalence issues (well documented to ComReg), such as in the proposed NGA service. It is our view that any wholesale reform to date has entirely

been geared towards the wholesale 'sell-to' market, and has ignored or been detrimental to 'sell-through' operators such as BT.

The standard for the European Commission including regulatory remedies in Directives is high and it's non-unreasonable for ComReg to use the new functional separation remedy to resolve access issues we have suffered for a decade.

4: Eircom

The biennial Strategy Statement comes out of a statutory duty on ComReg to set out its stall and approach to regulation of the sector, and the methodology employed in the draft Statement sets out to achieve this by focussing on key policy outcomes – Safeguarding consumer interest, Promoting competition, Facilitating Innovation and Investment and striving for Organisational Excellence.

The strategy set out in the Draft Statement is positive in many aspects

The current Strategy Statement is positive in many aspects and we would agree with many of the positions set out in it, particularly on market evolution (i.e., it is contracting); the challenges arising for us all from declining revenues and the imperative of higher bandwidth and investment; the need to maintain balance and create the right incentives for investment; the imperative of relationships within industry moving to a new level of credibility and confidence; and the differences between urban and rural markets and the emergence of sub-geographic markets.

However, the strategy needs to be grounded more in terms of national recovery objectives at a time of unprecedented national economic and social challenges

The Irish environment has changed dramatically in recent years and the economy is enduring a prolonged period of low or negative growth. We believe that economic regulation in general and regulation of the telecommunications sector in particular, if applied correctly, is a critical enabler of national economic recovery. This draft Strategy Statement is a lost opportunity for ComReg to ground its strategy in the key national objectives of economic expansion, job creation and specifically investment in critical infrastructure. The draft Statement reads as a business-as-usual template advocating incremental development on an existing regulatory model as if the economic challenges that face Ireland are no different today to what they were when the model was previously updated in 2005. The Government's programme for economic recovery needs radical and innovative solutions customised for Ireland within the broad parameters of the EU regulatory Framework that will lead to a step change in investment and will place Ireland at a national competitive advantage to its peer economies. Now is the time for Ireland to lead not lag.

All stakeholders recognise the need for ComReg's independence in its decision making, but we believe the overall direction of its strategy should be informed by the national interest. We believe that the Government Task Force on NGB has presented this

important national policy perspective and ComReg needs to align with its objectives. This requires ComReg to take a longer term view of market developments and competitive conditions when imposing its regulatory rules. Specifically, ComReg should avoid placing disproportionate weight on short-term consumer benefits which may not be sustainable in the long term if key national infrastructure investment is not delivered.

It also needs to encourage investment while enabling competition.....

The draft strategy states that the key challenge for the regulatory model in Ireland is to encourage competition. While we are concerned that the promotion of investment seems to be only a subsidiary objective, we recognise that the promotion of competition is in itself a difficult task. To achieve this, we believe the regulator needs to recognise a number of important factors. In the first instance, ComReg must recognise the extent to which the telecommunications landscape and its market dynamics have changed dramatically in recent years with increased platform competition from global scale players such as UPC, Vodafone and O2 having a significant effect. Strategies and policies need to adapt from seeking to foster the emergence of small scale competitors to one of ensuring the survival of viable operators in the face of global competitors who have much greater scale and scope. This adaptation must happen in a timely manner if regulation is to have a meaningful forward-looking impact.

Second, recognising ComReg's objective of encouraging investment, and given the increasing uptake of cable based broadband in urban areas and the popularity of mobile broadband, we believe that it is imperative for ComReg to reconsider its market definition of the broadband market and its conclusions regarding market power so that it can apply fair and proportionate regulation.

Third, we believe that ComReg must maximise the scope for industry solutions on wholesale platforms. Specifically, we consider that industry players should be encouraged to develop industry led solutions to wholesale platforms thereby ensuring the future viability of communication platforms in Ireland.

Fourth, we believe that ComReg will need to embrace the industry move toward scale plays and consolidation. It is becoming increasingly prevalent internationally for telecommunications players to consolidate to build scale – principally in the area of network infrastructure – and the Irish market is already following this example. It is crucial that the industry avoid duplicating investment at a time when resources are limited and consumer demands for innovation are increasing. Regulation must facilitate the transition to a new model of industry behaviour which will in turn promote competition.

Lastly, if ComReg is to succeed in promoting investment and competition it should review the philosophies which underpin its existing regulatory framework to ensure that they remain relevant. Specifically, we believe that it is necessary and appropriate to review the ladder of investment principle which ComReg has previously adhered to. This approach may have had validity in the early stages of market liberalisation but an increasing body of academic literature is challenging its relevance to the achievement of high-speed broadband networks. In any event, the impact of the ladder of investment principle has never been reviewed in the past decade and its accuracy, relevance or effectiveness in the Irish market has never been tested. We believe that the peculiarities of the Irish telecommunications market – with its rural topology and low population density - mean that the ladder of investment theory does not necessarily apply. Moreover, given the role and presence of global operators with multinational locations, investment decisions tend to be driven by the allocation of scarce capital resources between competing operators in different national markets more than by the attractiveness of the sub-scale market conditions which exist in Ireland. In this context, we believe it is crucial that ComReg review its commitment to this principle and ensure that it adopts a more objective lens through which to develop the future regulation of NGA networks.

Strategy should more strongly address the Urban Rural divide

ComReg's strategy statement makes reference to the need to deliver high speed broadband on a national basis, e.g.

“ComReg is mindful of the challenges in delivering universal higher-speed broadband throughout Ireland and will work with Government and industry to promote solutions that overcome these difficulties”.

“The NGA rollout is likely to occur predominantly in densely populated areas, at least initially, while demand for higher speed broadband outside the main areas will continue to be served by legacy copper broadband services (including LLU), and by higher capacity wireless networks in the future.”

However, the strategy statement appears to lack strong actions to address this challenge. We believe that the Government Task Force on NGB has also presented this challenge in a national policy context and ComReg needs to align its strategy more strongly with the achievement of these objectives.

...and it must recognise the new market reality and reassess the benefits of fixed network incumbency

In this context, it is important that ComReg does not underestimate the challenges facing the industry or overestimate the resilience of the communications industry. While consumer demand for communications services may be relatively inelastic when measured across all platforms, the scale of market attrition in the national fixed network, exacerbated by an asymmetric regulatory model could rapidly reach a tipping point beyond which consumer demand will decline significantly with corresponding negative effects on Eircom's ability to invest. It is worth noting that while overall revenues for the communications industry have declined marginally or remained flat in recent years, Eircom has experienced significant decline in the use of its fixed line network and associated EBITDA figures. According to the Statement, the CSO has found that 70% of households had a fixed telephone line in 2010, compared with 86% in 2005. This strong downward trend is unlikely to change in the short to medium term.

For our part, Eircom is responding to the critical challenges in the economic, financial, and competitive environment in Ireland through ongoing transformation of our business including radical changes of our operating models, changes to how we approach the market including launch of new products and services, changes to sales and marketing to meet current market needs, and ongoing cost reduction programmes that have dramatically reduced our staff numbers. The current Balance Sheet transformation process is another example of Eircom's pro-active approach. Our current focus in responding to competition and market dynamics is to competitively price broadband, in particular, in urban areas and to launch aggressively priced fixed and mobile bundles, to develop a sustainable wholesale business and to optimise investment in an NGA platform. Uniquely for Eircom, as distinct from all our competitors in these areas, the one critical factor that will determine success or failure in this regard is the regulatory regime.

In light of the challenges which Eircom faces, we would urge ComReg to accurately reassess the perceived value of incumbency and the real power that it confers in the market. In Eircom's view, the benefits of incumbency have decreased significantly in recent years. In the first instance, the company faces increasing pressure from global players such as UPC, Vodafone and O2 which benefit from economies of scale, synergies and the availability of central resources. The value of incumbency is further offset by the regulatory obligations which Eircom must satisfy – most notably its obligation to open its networks to all on regulated terms that are more punitive than what would be negotiated by any commercial investor and by the outdated and unreasonable assumption that Eircom uniquely can continue to deliver without remuneration on national social agendas including the provision of Universal Service.

Crucially, it is in the challenge of providing the national fibre NGA network that Eircom's incumbency in legacy services is relatively meaningless. Firstly, Eircom is the only

operator that intends to invest in Next Generation infrastructure. While the entire industry has had an opportunity to co-invest in this area, the essentials of the regulatory framework dictate that the “build or buy” decision of other platform owners is predetermined: why invest scarce capital in risk investments when the benefits of Eircom’s investment are appropriated to all operators? Secondly, by any standards, Eircom has no incumbency in Next Generation services as the key advantages of incumbency - Price Setting and First Mover Advantage - are already borne by UPC in all key urban areas including Dublin, Cork, Limerick, Galway, Sligo, Athlone and Waterford. In this regard, it is worth noting that, by the end of 2012, UPC expects to make high speed broadband available to approximately 610,000 homes (one third of all homes in the country) in urban areas.

The draft Statement is unclear but seems to equivocate on any requirement to encourage the customer uptake of NGA networks

Investment in fibre in Ireland is a high risk venture. Commercial realities dictate that this investment will be focussed primarily on urban areas and, based on experience in other EU member States to date, will require incentives to encourage existing broadband users to migrate to the new networks. Failure to achieve this migration will compromise the investment case with damaging impacts on the Government’s ability to achieve its Digital Agenda targets. ComReg seems to acknowledge this in its reference to – “the urgent need to encourage continued and accelerated transition to higher speed networks”.

However it also states that “it may be appropriate at sometime in the future to more actively encourage users to migrate to next-generation-based services”. This unhelpful uncertainty seems to be a function of two key themes that seem to inform the draft strategy. Firstly, it is disproportionately sympathetic to out-of-date technology solutions including Local Loop Unbundling and in particular on safeguarding investments in these technologies at the expense of ensuring that the potential investment – of geometrically greater scale – is encouraged in new future-proof fibre solutions. Secondly, it seems to regard direct regulatory intervention to promote inter-platform competition on Eircom’s network as essential because of a suggested lack of infrastructural alternatives. Such management of market outcomes is high risk and rarely delivers the expected outcomes.

In an extraordinary perspective on current competitive realities, the draft Statement commits, with regard to “Responding to the changing environment”, to initiating market reviews that **will** include an assessment of emerging changes to competition” and “ **to the extent that competing infrastructures emerge in certain geographic areas, ComReg will** assess whether this change might lead to changes to the dynamics of

competition ----“ We would strongly suggest that the draft Strategy needs to reflect the competitive realities which already exist in the market and should ensure that regulation, at a minimum, keeps pace with the day-to-day realities rather than loosely assuming that it may have to do so at some stage in the future.

An important related factor mentioned in the Statement is the need for timely review of markets. While the EU recommended time-lag for market review is 3 years, we suggest that the strategy commits to a shorter period between reviews. Some critical markets (including Market 1 –Fixed Narrowband Access) have not been reviewed for 5 years. Reasonably assuming that a market review determines remedies on Eircom for a further 3 years, this means that we are operating under a regulatory regime predicated on market conditions eight years out-of-date. This is of particular importance in a sector where technology change, customer behaviour and market entry are evolving at an unprecedented pace.

In the past two years the overall ComReg relationship with industry has evolved positively

We acknowledge a strong improvement in the quality of the engagement that ComReg is now having with the industry. For example the “industry fora” approach is working well in the context of new investment challenges e.g. in NGA.

However, there are areas where we feel further progress could be made

The regulatory landscape has become increasingly complex in recent years with the emergence of new fixed line products and services and a host of new operators. The initial early phases of regulation were relatively simpler and tended to focus on addressing the historical dominance of one operator. Now, as we move to a quad play market, and as convergence fully unfolds, the regulatory challenges are increasingly complex. In this context, it is crucial that industry fully understands the regulatory rules that are imposed and that ComReg fully assess the consequences of its regulatory intervention. We believe that there are a number of steps that the ComReg strategy could take to address these issues. First, keep regulation as simple as possible. Economic regulation of telecommunications has now become so complex that it is simply not possible for either regulatory practitioners or, more importantly, public policy makers to understand fully how it works or what its long-term impact will be. For regulated companies these complexities have more stark consequences; a poor regulatory decision imposed without proper understanding of long-term consequences is irrecoverable. This is particularly problematic when the bulk of regulation is imposed on just one market player. In terms of long-term public policy outcomes, the relative role of the regulatory regime in achieving high level objectives e.g. promoting effective competition and ensuring consumer protection are difficult to measure separately from

what is achieved in any event through technology change and market forces. Only in time will the long-term impact of prolonging the highly intrusive ex-ante model in the sector be measured and understood. The current benchmarking of the EU in terms of innovation and investment in ultra-speed bandwidth against other global players is not encouraging.

Secondly, and related to the above, regulatory impact assessments should form a central component of the regulatory process. To be effective, the process of carrying out an Impact Assessment should begin at the start of a policy making process and form a core part of the policy making process. It should not be viewed as an incidental add-on once policy decisions have been made.

Thirdly, despite regulation seeking to be forward looking, in practice this is very challenging to deliver. This reality has posed great challenges to Eircom over recent years and currently. It is our view that regulation lags market development by several years and this has resulted in maintenance of regulatory remedies that restrict Eircom's competitiveness and responsiveness to the detriment of investment and sustainable competition in the Irish market for the longer term.

ComReg's strategy statement should include approaches to this challenge for example by committing to more frequent market reviews, by relying on emerging market dynamics even before they have developed to verifiable impacts, i.e. to shift the emphasis from analysis of historical fact much more towards prospective assessment. We believe that the time lag between market reviews needs to be shortened given the scale of change in service delivery, platform competition and consumer behaviour. We are particularly concerned about the delays in the review of the Retail Access market and the Broadcasting Transmission market which had a derailing impact on our DDTV plans.

Fourthly, we believe that the industry needs more time to respond to the individual consultations. In depth analysis is compromised by unreasonable time constraints and this does not serve anyone's interests in particular in terms of achieving a robust future-proof regulatory outcome. Similarly, we believe that ComReg should make greater efforts to inform and educate its wider stakeholders of its proposals – including Government, consumer groups and other interested parties. This could be achieved through stakeholder briefings at the launch of critical consultation processes. We also believe that ComReg should actively seek input from these groups and independent advisors such as the ESRI in order to place their policies within a wider economic context.

Finally we feel that ComReg could be more muscular in its response to the EU Commission given the instances where what we regard as a fair and reasonable

outcome may not be acceptable to the EU Commission. In the particular circumstances of the Irish market, we do not agree that “harmonisation” means “uniformity” in the application of regulatory remedies.

To conclude, we believe the Strategy Statement should be more ambitious in terms of achieving a breakthrough outcome, and more grounded in Ireland’s operating environment and economic realities.

The process should seek to discuss and establish a forward-looking environment and framework that promotes competition, efficient investment and innovation, and the mechanisms for achieving these objectives in more concrete form.

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

Eircom broadly agrees with ComReg’s analysis of the strategic context and environment of the telecommunications industry. However, we believe that ComReg misrepresents the demand for communications services in this chapter. Specifically, ComReg notes that “the demand for communications products and services has been remarkably resilient and this demonstrates the essential nature of these services to consumers and business”.

Figure 2: Weekly Household Communications Spend, 2005-2010 shows a dramatic reduction of about 10% for Mobile, Fixed voice, and Internet. This strong reduction has occurred during a period of increasing investment required to build out mobile networks as well as to investment in the deployment of infrastructure to support the growing demand for Internet services.

In Eircom’s experience, this is not the case. Demand for communications products has declined significantly in so far as usage has decreased with a corresponding effect on ARPUs and EBITDA. Indeed, the overall telecommunications industry has shrunk in recent years as revenues decline in line with the recession. Moreover, this statement seems to contradict ComReg’s later assertions that the market has suffered decline. We therefore strongly argue that demand for communications product is not inelastic as ComReg initially suggests in this chapter.

We would also like to point out that ComReg has relied on 2009-2010 CSO data – the Household Budget Survey to determine weekly household spends. We believe that ComReg should, where possible, rely on more recent data when drawing conclusions on the shape of the market.

Q.2 Are the concerns and challenges related to these trends in Chapter 3 the correct and most important ones?

We broadly agree with ComReg's assessment of the challenges facing industry. However, we do not agree with what has been set out in section 3.4 with regards ComReg's organisational challenges. ComReg states that it now has an increased regulatory mandate due to the transposition of the EU's new regulatory framework. However, ComReg now regulates fewer markets than it did previously so it is not the case that its workload and costs should necessarily increase.

Q. 3 Are there additional challenges for the industry and for regulation over the next two years?

As set out in our larger response, we believe that there are a number of key considerations which industry and regulation need to consider over the next two years. These include the need to develop strategies to ensure the survival of viable operators in the face of global competitors who have much greater scale and scope; focus more strongly on strategies to minimise the emergence of the urban/rural divide; catch up with the evolution of the industry and take a much more forward-looking view, greater recognition of the reductions of revenues and earnings in our industry,

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

While we agree with the priorities identified by ComReg, we do not believe that this list is comprehensive and consider that there are additional priority areas which require attention. Please see our fuller response for further details.

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

We believe that there are additional priorities for ComReg in its role as regulator which it has not yet considered.

Specifically, we argue that ComReg has not given due consideration to the need for cost reduction within the organisation: there is no demonstrable commitment in the strategy document to reduce costs. While ComReg has a high level goal "to strive for organisational excellence", neither its priorities nor its actions under this goal include a specific reference to the need for cost efficiencies or cost reductions within the regulator. We believe that ComReg has overlooked the need to become more cost efficient. It is worth noting that, in the UK, Ofcom has committed in its annual report to reduce costs of regulation by 28% in the next four years. Given the effect of the

recession in Ireland and in the context of stagnant telecommunications revenues, we believe that ComReg should similarly commit to reducing its spend.

Second, we believe that ComReg has not identified the specific need for increased co-ordination with the BAI in relation to the roll out of Commercial DTT and the need to consider spectrum policy implications under its priorities. While ComReg has identified as a priority the need to engage with other regulatory agencies and key stakeholders, both nationally and internationally, no specific reference is made to the BAI. We believe that this is an oversight as the roll out of commercial DTT is one of the BAI's key objectives and it has set out that it will work more closely with ComReg to deliver this.

More generally, we would refer to our larger submission which contains a detailed analysis of additional priorities that need to be considered and the requirement for a focus on different areas.

Q.5 Do you consider that ComReg provides sufficient opportunities for all stakeholders to express their views and provide relevant information to inform the decision making process? If not, then how could we improve?

Please see our earlier summary for our answer to this question.

5: Hutchison 3G Ireland Ltd

I refer to ComReg Doc. No. 12/37, "Draft Strategy Statement 2012 - 2014" (the Consultation").

At pages 4 and 5 of the Consultation, you state as follows:

"The Communications Regulation Act 2002 requires ComReg to publish a Strategy Statement every two years. The existing Strategy Statement expires on 30 June 2012 and it is therefore now timely for ComReg to put forward its proposed regulatory strategy for the period 2012-2014, and to provide an opportunity for stakeholders to comment." [Emphasis added]

"Yet, against this positive background, it must be recognised that financial stress is evident among some industry players including Eircom. Overall revenues, profitability and investment levels have fallen, albeit not so heavily in Ireland as in some other countries. This is a source of concern, because a healthy market environment is needed to justify the substantial levels of investment that will be required over the next few years to roll-out the next generation of fixed and wireless services and networks. These services are important for consumer lifestyles but also for business productivity and competitiveness, and thus for Ireland's economic recovery and growth. In regulating the market we will therefore be concerned with providing a stable, competitive and proportionate framework within which telecoms businesses can invest and thrive." [Emphasis added]

"In addition to this, the ever-increasing demands for ubiquitous higher speed mobile services mean that operators require additional spectrum to allow them to continue to meet consumer consumption. Our project to liberalise the GSM spectrum bands and re-farm spectrum from the Digital Dividend for mobile broadband services is an ongoing priority so that we can ensure that valuable spectrum is available to those who need it. This is central to our spectrum management strategy." (Emphasis added)

“Achieving the appropriate level of regulation that ensures sustainable competition, while providing consumers with choice and quality and also driving innovation will be a challenging task. Doing so during the current period of national economic stress and with the necessarily limited resources available to us will not be without its challenges. In such an environment the need for good communications with stakeholders is paramount. It is in that context that I strongly encourage all interested parties to read our draft Strategy Statement and provide us with their considered feedback by Friday 25 May 2012.” [Emphasis added]

Hutchison 3G Ireland Limited ("H3GI") believes that ComReg needs to listen to the views expressed by interested parties and amend its position in light of those views. H3GI believes that ComReg currently proposes a position, formally consults, hears the views of interested parties (as opposed to listening to the views of interested parties) and for the most part, responds to consultations by confirming its previously held position.

H3GI further believes that ComReg needs to give a proportionate amount of time for the submission of *"considered feedback"*. In relation to the principal strategy document of the body responsible for regulating electronic communications in Ireland (a sector that employs approximately 25,000 people and invested €2.5 billion on capital expenditure over the last five years), approximately four weeks is not sufficient for this purpose (and probably in contrast with the considerably longer period taken by ComReg to prepare the draft version of this document). As previously stated, H3GI would welcome a dialogue with interested parties in relation to documents of such strategic importance i.e. more than one consultation in respect of its proposed position.

You state: *"it must be recognised that financial stress is evident among some industry players including Eircom."* H3GI submits that the Irish economy is suffering an unprecedented downturn and that this affects all industry players (not *"some ... including Eircom"*). In addition, it is not sufficient to simply recognise the financial stress that industry players are experiencing. As the body responsible for regulating electronic communications in Ireland, ComReg must take specific and timely steps to contribute to domestic recovery. For example, H3GI and the other mobile network operators have advocated the introduction by ComReg of indefinite licences in respect of mobile spectrum. This would provide industry with greater certainty regarding this critical input, permit greater investment, create jobs and reduce the role for public expenditure to reduce any future Next Generation Broadband (NGB) Digital Divide. Whilst ComReg has rejected this proposal, H3GI submits that it has failed to demonstrate that it has

properly examined this issue and is disproportionately concerned about matters within its own control i.e. property rights.

You further state: *"Our project to liberalise the GSM spectrum bands and re-farm spectrum from the Digital Dividend for mobile broadband services is an ongoing priority so that we can ensure that valuable spectrum is available to those who need it. This is central to our spectrum management strategy."* H3GI is concerned about the time it is taking ComReg to publish its Information Memorandum in respect of the upcoming 800, 900 and 1800 MHz spectrum auction. By virtue of ComReg's delay to date, H3GI is at a competitive disadvantage. H3GI urges ComReg to publish its Information Memorandum, auction the available spectrum and finalise transitional activities without delay in order to avoid compounding this disadvantage. H3GI reserves all rights in respect of this matter.

Finally, you state: *"Achieving the appropriate level of regulation that ensures sustainable competition, while providing consumers with choice and quality and also driving innovation will be a challenging task. Doing so during the current period of national economic stress and with the necessarily limited resources available to us will not be without its challenges. In such an environment the need for good communications with stakeholders is paramount. It is in that context that I strongly encourage all interested parties to read our draft Strategy Statement and provide us with their considered feedback by Friday 25 May 2012."*

H3GI urges ComReg to get on and achieve the job at hand i.e. contributing to the re-building of the domestic Irish economy. If achieving the appropriate level of regulation were not challenging, there would be no need for a regulator. H3GI does not believe that ComReg is inadequately resourced to perform its duties. H3GI believes that ComReg devotes too much time to easily achieved and unnecessary projects which give the impression of progress e.g. voluntary consumer standards.

H3GI responds to ComReg's specific questions in an annex to this letter.

ANNEX

1. Do you agree with ComReg's analysis of the Strategic Context and Environment in Chapter 3? Are there other developments that ComReg needs to consider?

Please see H3GI's general comments above. H3GI is not aware of any other developments that ComReg needs to consider.

2. Are the concerns and challenges related to these trends in Chapter 3 the correct and most important ones?

Please see H3GI's general comments above.

3. Are there additional challenges for the industry and for regulation over the next two years?

Please see H3GI's general comments above.

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

Please see the answer to question 5.

5. Are there additional priority areas that need attention over the period of this Strategy Statement?

A key priority should be the introduction by ComReg of indefinite licences in respect of mobile spectrum. This would provide industry with greater certainty regarding this critical input, permit greater investment, create jobs and reduce the role for public expenditure to reduce any future NGB Digital Divide. Whilst ComReg has previously rejected this proposal, H3GI submits that it has failed to demonstrate that it has properly examined this issue and is disproportionately concerned about matters within its own control i.e. property rights. ComReg should devote more resources to monitoring and remedying illegal and harmful interference.

6. Do you consider that ComReg provides sufficient opportunities for all stakeholders to express their views and provide relevant information to inform the decision-making process? If not, then how could we improve?

As set out in the Next Generation Broadband Taskforce Report, H3GI believes that

ComReg should establish some form of open session or multilateral engagement between ComReg and interested parties to facilitate deeper understanding of issues arising. ComReg needs to be more transparent and clearly demonstrate why regulation is required.

6: RTÉ

RTÉ welcomes the ComReg Draft Strategy Statement 2012-2014 and wishes to state its support for the ongoing work in optimising spectrum management for Ireland. As always, RTÉ (and RTÉNL) are committed to working with ComReg and our colleagues in DCENR and BAI in the process of exploring the future use of the UHF spectrum, ensuring the long-term sustainability and development of digital broadcasting services. In RTÉ's previous submissions to ComReg regarding this topic, potential interference and migration issues in Irish DTT (SAORVIEW) services, as well as additional cost to consumers, have already been submitted.

RTÉ fully supports ComReg's strategy of supporting innovation and investment and is glad to participate in ComReg's priorities, and notes especially the goal of promoting Ireland as a centre of excellence for research and innovation in spectrum management (section 6, high level goal 3). Regarding Action 6.2.4, specifically, we suggest that this be re-phrased as follows:

- Explore the long-term future use of the UHF spectrum in light of the WRC-12 Decision, and *engaging with DCENR spectrum management policy-makers and with Irish broadcasting organisations.*

RTÉ are happy to continue to assist in any national and international planning work related to broadcasting, and RTÉ fully recognises the significant impact the WRC-12 Decision could have on existing and future public service broadcasting in Ireland.

7: Telefonica - O2

Telefonica welcomes the opportunity to respond to ComReg's draft strategy statement. ComReg's competitive outlook highlights the challenges the industry has to face particularly at a time when the industry is facing difficult investment decisions.

Telefonica would make the following points:

- The strategy statement would benefit from a review of the objectives set out in the previous strategy statement for 2010-2012. Although the strategy statement is forward looking it is written in the context of a continuously changing regulatory framework and an evolving competitive market. ComReg should be able to assess and learn from the policies/interventions which were effective in recent years which will help inform its future strategy;
- The periodic review of the electronic communications markets using the market analysis process detailed in the revised regulatory framework is a key strategic tool and key to ensuring remedies and interventions in the market are up to date. This is particularly important to highlight in section 5 of the draft strategy statement on promoting competition. Telefonica would note that ComReg have obligations under Regulation 27(6) of the revised framework regulations to conduct market reviews within specific time periods. Telefonica would ask ComReg to ensure under action 6.5.2 that obligations in relation to market reviews are observed. Telefonica would note that under Regulation 27(7) ComReg can request resourcing from BEREC to support it in conducting market reviews.
- Telefonica believe a key challenge in the roll out of next generation broadband is the acquisition of sites and infrastructure to support new technologies. Telefonica believes ComReg has an advocacy role in supporting the department and operators in ensuring broadband is rolled out effectively across the country. Telefonica would recommend that such an advocacy action item should be included under actions in section 5.6.
- Telefonica believe it is right that ComReg continue to benchmark their activities to best practice regulation in relation to effectiveness but also efficiency.

Telefonica believe ComReg should take the opportunity of the publication of the final strategy statement and subsequently with the publication of the annual action plan to publish the benchmark information referred to in section 7.4

In relation to the questions posed in the consultation document Telefonica would respond as follows:

Q1: Yes, agree with ComReg's approach

Q2: Yes

Q3: Yes, see comment above particularly in relation to broadband rollout

Q4: Yes, with additional issues highlighted above

Q5: Yes, additional items highlighted above in relation to market reviews and broadband

Q6: Yes, however ComReg need to consider when requesting data and contributions from operators that the data or comments received are used as part of regulatory decisions. There have been a number of occasions when data is collected for a specific purpose, for example a market review, and no consultation or market review is forthcoming.

8: Vodafone

Introduction

Vodafone welcomes the opportunity to respond to the consultation paper on ComReg's draft Strategy Statement for the period 2012-2014 and considers the proposed goals, priorities and actions set out by ComReg are appropriate. Vodafone is also in general agreement with the regulatory priorities identified. Vodafone's views in relation to the detail of ComReg's proposed strategy for the period 2012-2014 are set out fully in response to the consultation questions below.

Response to Consultation Questions

Q1. Do you agree with ComReg's analysis of the Strategic Context and Environment in Chapter 3? Are there other developments that ComReg needs to consider?

The Economic Environment and Competition

Vodafone considers that the trends identified by ComReg are the key factors that will influence the ICT sector over the period to 2014 and beyond. The rapid growth observed in take-up of broadband (particularly broadband over mobile devices), the increasingly diverse range of wireless enabled devices, and the dramatic ongoing change in the pattern of consumer and business use of the internet - with highly bandwidth intensive video and user generated content becoming ever more important, are creating a clear and immediate requirement for substantial investment in the development of next generation broadband networks (NGNs) – both fixed and mobile.

At the same time as technology and usage trends are increasingly testing the capabilities of existing communications networks, necessitating major infrastructure investment if end user expectations of the communications services they use are to be satisfied in the short to medium term, economic trends for the ICT industry and the wider economy are very challenging. As ComReg has acknowledged, the Irish economy

has in the last four years experienced a serious economic downturn and is only now tentatively stabilising. The telecoms sector has not been immune to the effects of these adverse economic conditions. Macroeconomic pressures and the intense competitive dynamic between communications service providers have led to declining revenues and constrained profitability for virtually all operators. European and wider global economic conditions remain fragile, and the outlook is subject to exceptional uncertainty. In this context the need for regulatory certainty and a policy environment conducive to large scale efficient and sustainable investments in electronic communications infrastructure has never been more important.

In addition to the broader economic trends, developments in the underlying economics of service provision pose considerable challenges for investment in next generation broadband networks. It is important to recognise that the recent explosive growth in fixed and mobile data volumes arising from user generated content, file sharing, and video content, while placing major demands (and therefore costs) on network operators has not to date generated the revenues sufficient to offset the decline in established revenue streams, particularly voice services . This trend of a major disconnect between the very large growth in demands on communications networks from use of more bandwidth intensive applications and declining overall revenues represents a fundamental issue for the feasibility of next generation broadband (NGB) investment that industry players and key policy makers such as ComReg will have to take into account.

The requirement for continuing innovation and major investment in communications networks and services to meet the expectations of end users in a highly competitive and economically challenging environment is driving the key industry trends toward convergence. This reflects the move by communications operators to seek to obtain economies of scale, scope and density that will realise benefits for both the operators themselves in terms of improved cost efficiencies, and through competition, for their customers in the form of lower prices and greater service choice and quality.

Changes in Patterns of Consumer Demand

The trend toward convergence across platforms and industries offers the prospect of significant economies of scope, the provision of a wide range of communications services under the umbrella of individual operators (with reduced transaction costs, among other benefits, for customers), and a seamless customer experience. This is exemplified by Vodafone's evolution from a mobile only, to a total telecommunications provider.

Convergence provides the scope for operators to provide more innovative service offerings, not only in terms of greater bundling of communications services, but also potentially in terms of services that are designed and priced to reflect potential two sided markets for these products or services (as there is not only the relationship between retail network service providers and their customers on one side, but also the connection between content and application providers and service providers on the other). Vodafone considers that a flexible regulatory approach that seeks to sustain effective competition for the benefit of consumers but does not circumscribe approaches to pricing and competition in a manner that would preclude innovative new pricing and service models from emerging is essential to fostering NGB investment.

With regard to bundling in particular, Vodafone considers that there have been significant regulatory advances in Ireland in recent years that have allowed innovative new service bundles to be offered to consumers, while simultaneously addressing competitive concerns around leveraging of a SMP position. Vodafone hopes that these advances can be sustained into the future.

The communications sector must now be assessed more broadly to include content providers and application providers (software, operating systems, and devices) among others. Indeed Vodafone considers it is important that it is recognised that providers of voice and broadband access services over their own networks, such as Vodafone, that have been the traditional focus of communications regulation, are only one element of a complex and diverse electronic communications value chain. This value chain embraces players as diverse as Google in online search and advertising services, and Apple and Microsoft in communications applications, operating system, and device

provision. Vodafone considers that it will be important for communications regulators at both the national and European level to take full account of the overall communications value chain in the future.

Ongoing changes in patterns of use of communications services have the clear potential to change market structures, and to change service and market definitions for regulatory purposes over time, for example as different players may expand their activities into different areas of the communications value chain. The current EU regulatory framework is primarily concerned with the regulation of those firms operating physical networks rather than those engaged in other elements of the value chain such as providers of search, operating systems and devices. However the potential for market power and competition concerns may well arise at points in the value chain other than network operators and there is therefore the prospect of asymmetry in the regulatory treatment of players (with one set of players being subject to ex-ante regulation and another to ex-post regulation only) who may otherwise compete directly in downstream markets.

As ComReg has recognised, the issue of content regulation is currently the concern of other regulatory bodies. However over the medium to longer term, it will need to be considered whether the existing regulatory framework can effectively address the future challenges of an evolving communications environment.

Consolidation and Co-operation

The increasingly global nature of the operations of communications operators such as Vodafone and device manufacturers such as Ericsson provides economies of scale from access to a large customer base covering many different jurisdictions that are not readily available to regional or national players. At the European level, consolidation and the presence of communications operators with global reach should progressively reduce the current highly fragmented nature of the European communications market relative to other world regions such as North America, allowing for the ultimate emergence of a genuine European single market for the provision of electronic communications services.

Another important element of globalisation and consolidation is the increasing international interoperability of communications services, applications and devices and the expectation of such interoperability on the part of populations that are increasingly internationally mobile. Seamless provision of communications services at competitive

prices across borders necessitates regional and international harmonisation of both spectrum and technology/equipment standards and Vodafone therefore strongly supports ComReg's objective of engaging at international level through BEREC, the RSPG, CEPT and other relevant international bodies to ensure that such harmonisation is achieved to the maximum extent possible in the interests of consumers.

Vodafone considers that the trend toward consolidation and increasing co-operation between operators in terms of various forms of network sharing and collaborative risk sharing approaches to major investments in NGB infrastructure is of central importance and offers the prospect of major benefits to consumers and the wider economy and society.

Subject to maintaining sustainable and effective competition in the market, this trend should not be opposed by regulatory and public policy as it reflects the logical requirement for communications operators to acquire the necessary economies of scale, scope, and density essential so that investment by them in next generation broadband networks – both fixed and mobile – can be viable. Such investment may not arise in a highly fragmented communications market where few or no operators would have sufficient size and financial capability on their own to undertake the substantial up-front NGN investments. Vodafone accepts the validity of concerns around the potential for increased co-operation (for example through network or spectrum sharing) to affect competition over time. However Vodafone considers that if properly designed, collaborative approaches to investment and innovation in the market can include effective safeguards to ensure that the current robust competitive dynamic between operators in the electronic communications sector is sustained, and even extended, in the future. Vodafone considers that ComReg should adopt a positive and constructive approach to any proposals for such collaborative models of investment and innovation that may emerge during the time period covered by this strategy statement. In this regard Vodafone welcomes the additional clarity provided by ComReg on its position on potential collaborative arrangements as set out in its Spectrum Strategy and its NGA Remedies consultation document.

Technology Trends

Vodafone agrees that the migration to all-IP networks and the development of the high capacity networks required to support very high speed next generation broadband services will be a major feature of the electronic communications environment. These trends offer the potential for enormous benefits for consumers, society and the economy, for example in terms of the provision of new and innovative services such as IP-TV, improvements in productivity and reductions in transport and energy costs by

facilitating remote working, and fostering social inclusion, among others. However the extent to which these trends develop in the medium term are critically dependent on the presence of a favourable regulatory and public policy environment.

The dramatic growth of data volumes over mobile networks combined with challenges of ensuring timely and sufficient investment in NGNs necessary to accommodate this growth will increasingly require operators to seek to manage traffic on their networks to ensure that finite network resources and capacity are efficiently allocated among the available users, excessive network congestion is avoided, and a reasonable minimum quality of service is provided to all customers. Measures to manage traffic on communications networks will take the form both of technical measures and use of market mechanisms in terms of new product and tariff offerings that provide consumers with transparency and choice in relation to their use of the full range of communications services.

Vodafone strongly agrees with ComReg that consumers should have transparency in relation to the features, price and non-price, of the communications services available in the market so that they can make informed choices. It is also our view that consumers must not be excluded from the opportunity to use the legal services and applications of their choice (e.g. VoIP, peer to peer video downloads, gaming). However in the context of finite network resources, and the need to recover costs of network investment, the use of services that are highly bandwidth intensive or increase risks around investment cost recovery, will likely have to be on a basis that reflects the underlying costs of use of these services to network providers.

Protecting the Consumer Interest

Vodafone supports ComReg's goal of safeguarding the interests of consumers of electronic communications services and recognises the need for ComReg to monitor and ensure compliance by service providers with their regulatory obligations. However we would observe, in the first instance, that in a highly competitive communications market service providers already have powerful commercial incentives to promote consumer welfare and provide effective, transparent communication service offerings that allow end users to meet their requirements. Other things equal, less complex service solutions will always be preferred by end users to more complex offerings as complexity imposes costs and can create uncertainty for consumers. Service providers

offering unnecessarily complex or opaque communications services products will almost certainly be penalised for this over time through loss of revenues and market share. This market dynamic in large measure already acts to align the interests of communications operators with those of their customers.

Vodafone is fully cognisant of this issue and already provides a wide range of mobile and fixed communications services that have been intentionally structured to have simple and easily understood tariff structures that provide certainty, flexibility, and expenditure control, among other elements, to our customers. Customer care technology is also evolving through the use of social media, and this is occurring not only via Vodafone's interaction with its customers through this medium but through online customer forums where customers help each other to address any problems.

Vodafone recognises that ComReg has a role in advancing consumer protection objectives. However in light of existing compelling market incentives for operators to meet their customer's needs in order to retain them, the current challenging economic environment, and the duplication of state agencies with consumer protection responsibilities, we consider that it is important that regulation in the interests of consumer protection is proportionate and not unduly prescriptive. In particular the regulatory approach to consumer protection should seek to achieve its objectives in a way that maximises the scope for innovation and competitive differentiation.

It is essential that the implementation of regulatory requirements based on national and/or European legislation is no more burdensome than is strictly necessary to achieve its intended consumer interest objectives and that regulatory penalties are proportionate to the nature and extent of any consumer detriment caused by instances of non-compliance.

Vodafone believes that it is also important that ComReg engage pro-actively with regulated entities to set out ComReg's definitive position and detailed understanding of the implications of any new regulatory requirements for the services provided by operators prior to their coming into effect. This approach would maximise regulatory certainty and minimise the extent of consumer detriment, and number of consumers affected. This pro-active approach would avoid circumstances where lack of clarity on regulatory obligations, and resulting non-compliance, persists for a significant period of time before being identified and addressed.

Q2. Are the concerns and challenges related to these trends in Chapter 3 the correct and most important ones?

Yes. Vodafone would note in particular the importance of ComReg ensuring a proportionate regulatory approach that fosters efficient investment in an economic environment that is likely to remain difficult over the medium term. The challenge of seeking to maintain and grow revenues to sustain investment amid weak macroeconomic conditions should inform ComReg's approach to price regulation in the key areas of both mobile termination rates, and roaming rates (wholesale and retail). In Vodafone's view the setting of regulated prices in these areas should therefore be such as to facilitate the full recovery of operator's efficiently incurred fixed and common costs, in addition to the incremental costs, of providing these services.

In relation to national radio spectrum management, Vodafone supports ComReg's priorities of releasing the key Digital Dividend spectrum to enable the provision of advanced mobile broadband services on a wide coverage basis, and of reviewing the future allocation of spectrum in the 2.6 GHz and 2.3 GHz bands. As stated in previous Vodafone submissions to consultations on spectrum issues, it is vital that these objectives are achieved as early as practically possible within the period to be covered by the Strategy Statement so that regulatory certainty is maximised.

With regard to the regulation and management of the national numbering scheme, Vodafone particularly welcomes ComReg's proposals to review the issue of introducing new number ranges specifically for machine-to-machine purposes. Machine-to-machine applications do not just represent a major commercial opportunity for the electronic communications sector but also offer the potential for substantial wider social and economic benefits in terms of more effective emergency service response times, more efficient energy use, and enhanced productivity, among other benefits. The introduction of dedicated number ranges for machine to machine applications would be a useful step in allowing this potential to be fully realised.

Q3. Are there additional challenges for the industry and for regulation over the next two years?

Vodafone considers that ComReg has identified all the main challenges for the electronic communications sector and for regulation in the period to 2014.

Q4. Given the trends, market conditions and consumer needs, is ComReg's strategic focus broadly on the correct priorities?

As set out in the response to previous questions, Vodafone is in broad agreement with the regulatory priorities that ComReg has identified and believes that they are appropriate for the period 2012-2014.

Q5. Are there additional priority areas that need attention over the period of this Strategy Statement?

Vodafone considers that ComReg's Draft Strategy Statement has had regard to all the key issues that will need to be addressed over the period 2012-2014.

Q6. Do you consider that ComReg provides sufficient opportunities for all stakeholders to express their views and provide relevant information to inform the decision-making process? If not, then how could we improve?

Vodafone considers that, in general, ComReg provides adequate opportunities for stakeholders to express their views on regulatory developments. However we have had significant concerns in the past regarding a number of instances where multiple consultation processes in relation to separate significant regulatory proposal and/or significant ComReg data requests, each requiring extensive input from stakeholders, have been run in parallel and with end dates very close to each other in time. In these situations Vodafone's capacity to provide comprehensive and effective responses to these consultation processes has been strained, and in a few cases Vodafone's responses have consequently been less detailed than we would have considered optimal.

We appreciate that where our concerns about the regulatory burden imposed by these instances of heavy regulation related workload has been raised by us in the past, ComReg has in most instances addressed the issue through extension of the time period allowed for interested parties to provide submissions. However Vodafone would appreciate if, from the period covered by the Strategy Statement, ComReg could seek

to take full account of this issue and schedule its consultation processes and data requests at the outset so as to be of sufficient duration to allow effective responses by stakeholders, and to avoid separate consultation processes/data gathering response periods from overlapping.

Vodafone also considers that it would be beneficial for ComReg to enhance its engagement with stakeholders on key regulatory issues (particularly spectrum strategy related matters) in an innovative manner prior to the issuing of a consultation document or a call for inputs. This could be achieved through ComReg hosted workshops and presentations, or through bi-lateral meetings as appropriate.

In relation to the provision of sufficient relevant information to inform the decision-making process, Vodafone has had concerns in relation to the insufficient extent and granularity of information provided by ComReg in previous consultation documents relating in particular to the basis for setting prices for regulated wholesale access products over the network of the fixed incumbent SMP operator. While Vodafone acknowledges the constraints imposed on full transparency by the commercial sensitivity of much cost-related data that is obtained from operators, we believe that it is important that the maximum possible transparency is provided in relation to the information and evidence underlying ComReg's regulatory pricing decisions, to enable stakeholders to provide effective feedback.