



## Submissions to Consultation

### Quarterly Key Data Report: Process for collecting quarterly statistical data

#### Submissions received from respondents

<b>Document No:</b>	08/91s
<b>Date:</b>	01/12/2008

<b>Consultation:</b>	08/77
<b>Response to Consultation:</b>	08/91

## Contents

1	.....	Bitbuzz
2	.....	BT Ireland
3	.....	Cable & Wireless
4	.....	Colt
5	.....	Complete
6	.....	eircom
7	.....	Fastcom
8	.....	Interfusion
9	.....	Magnet
10	.....	Network.ie
11	.....	Perlico
12	.....	Strencom
13	.....	3 Ireland
14	.....	Tesco Mobile

## **1 Bitbuzz**

We strongly disagree with this proposal. This would perpetuate the impression that Ireland relies on a small number of large operators for telecommunications services and would exclude the contribution of smaller operators. While each small operator may only have a nonmaterial contribution to Ireland's telecommunications usage, the aggregate across all smaller operators may be a significant contribution. In addition, we would question whether this change would be in line with EU reporting obligations. We are already concerned that a majority of ISPs in Ireland have completely avoided regulatory oversight by failing to register with ComReg; this move would send a further message to the market that ComReg is only concerned with large operators.

## **2 BT Ireland**

BT welcomes the opportunity to comment on the quarterly report process and offers the following comments. BT does find the Market findings helpful for understanding the dynamics in the market and agrees with ComReg that a proportional approach is required to gain such information. As an operator that is mandated to provide quarterly reports BT fully appreciates the considerable work involved for operators and therefore agrees that it is not proportionate for such a task to be applied to operators below a reasonable threshold. BT is also of the view that if an operator is operating communication service in one market segment then it should report in all market segments as such will not be onerous and will ensure full transparency of market activity. In conclusion BT supports the proposal.

### 3 Cable & Wireless

We welcome the opportunity to respond to ComReg's Consultation on the "Revision to Processes for collection of Quarterly Report statistical data".

In the first instance Cable&Wireless ("C&W") would like to take this opportunity to point out that the Quarterly Report Questionnaire (the "Questionnaire") requires in excess of 550 different fields to be researched and inputted. In our view this is enormously cumbersome. The Questionnaire, which is divided into 5 different sections, is then subdivided into various sub-headings which again is further de-categorised and so forth. We believe that such detailed information gathering is placing an undue burden on operators especially when considering the fact that the report is to be submitted every three months. As such therefore we are of the view that the gathering of information should be limited to at least the sub-headings (A1 through to A3; B1 to B4; C1 to C11; D1 to D4; and E1 to E4) without further dissecting these.

In its consultation document ComReg states that it is proposing to apply the threshold "to capture data from the most significant operators in the Irish market." In our opinion, the proposed threshold of €800,000 annual revenues is too low and should be revised upwards. The Quarterly Report published by ComReg in September 2008 sets out that the "Overall electronic communications network and services revenues as at end of June 2008 were over €1.1bn for the quarter. Based on this, annualised revenue would be €4.46bn". We strongly urge ComReg to increase the threshold to at least 1% of the total annual revenues in the telecommunications sector in Ireland. This threshold could then be revised annually to take into account any inflationary adjustments. At this stage reference could be made to Italy where AGCOM has adopted a 1% threshold for operators to qualify as universal service contributors.

Whilst ComReg is not only entitled but indeed required to gather statistical data from market players, requests for information should be proportionate and not impose an undue burden on undertakings. In our view, the frequency and the level of detail required from the Questionnaire fails to satisfy the criteria of proportionality and justification as set out in Article 5(1), Article 8(1) of the Framework Directive and Article 11(1) of the Authorisation Directive. The proportionality principle is centred on an application meeting three tests: the measure must be useful, it must be necessary and it may not be excessive. We believe that there is a lack of transparency as to why the Questionnaire requires such detailed information and therefore this in itself puts doubt as to its necessity. We would also contend that the measure is excessive due to the fact that the Questionnaire requires the dedication of too many internal and external resources to gather all the information especially where the return is so minimal. Indeed, ComReg impliedly recognise this as it states that the proposal is made to ensure that the administrative burden and costs are reduced. It is consequently essential that only the most significant operators in the Irish market are burdened with this obligation.

It is equally crucial to ensure that the revenues that are taken into account by ComReg are exclusively those revenues generated from regulated activities so that any other revenues (for example web hosting) are discarded for the purposes of the proposed threshold.

C&W in essence welcomes ComReg's decision to revisit the reporting obligations, because the present set-up is arguably not proportionate. C&W agrees with the proposal to capture data from the most significant players in the market but that the proposed materiality threshold is too low and does not encapsulate only those players that have a most significant presence in Ireland. C&W believes that in order to reduce the administrative burden and costs incurred by the smaller operators it is more realistic to adopt a materiality threshold equating to 1% of the overall electronic communications network and services revenues. The scope of the information gathering should also be limited to more generic headlines. Finally we are of the view that when considering financial information on operators, turnover that is not attributable to regulated services should not be taken into account for the purposes of this exercise.

#### **4 Colt**

I agree in principle with the approach unless the small companies specialise in an area that doesn't have a great deal of penetration yet their figures would count for substantial revenue/ minutes within that area.

#### **5 Complete**

I agree that ComReg should introduce a minimum threshold.

## **6 eircom**

**eircom Ltd.**

**Response to ComReg e:Consultation  
15<sup>th</sup> September 2008:**

***Consultation on Revision to Processes for collection of  
Quarterly Report statistical data***



**22 October 2008**

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	4
RESPONSES TO CONSULTATION QUESTION .....	5



## EXECUTIVE SUMMARY

- Industry operators and observers use the ComReg Quarterly Report to monitor developments in the telecommunications markets in Ireland. The ComReg Quarterly Report will influence the decisions and policies of ComReg, Government, operators and investors in telecommunications in Ireland.
- The collection of accurate data is an essential pre-requisite for a report that has credibility in the market place. Therefore, eircom supports measures that will help to maximise the accuracy of the data underpinning the Quarterly Report.
- ComReg is proposing to introduce an annual revenue threshold of €800,000 below which operators would not be required to submit data to ComReg in relation to the Quarterly Report. The use of such a threshold could result in the distortion of overall market information, such as market shares.
- It is imperative therefore that the likely consequences of using a threshold are clearly understood before it is implemented. In this regard, eircom recommends that ComReg provide a quantitative assessment of the impacts of applying a threshold. It is important for users of the Quarterly Report, to understand the statistical significance and implications of the threshold and the margins of error that may arise.
- The administrative burden of complying with the quarterly data requests should not be significant for smaller operators as such information should be readily available in order to manage their businesses. Compliance with the ComReg data directions should not be a difficulty for such operators.
- If a revenue threshold were introduced, it would be helpful if ComReg included in the report the total annual revenue of operators below the €800,000 threshold on a consolidated basis. This could be noted as “not further broken down” and will ensure that the revenues of these operators are included in the total revenue for the Irish telecommunications market.
- The ongoing monitoring of whether individual operators’ revenues remain below the revenue threshold is essential to ensure the accuracy of the Quarterly Report. This assessment should occur at least annually, but more frequent checking may be warranted. The method of monitoring operators’ revenues should be publicised in the interests of transparency.

## RESPONSE TO CONSULTATION QUESTION

**Q.1 Do you agree or disagree with ComReg's proposed approach to data collection? Please detail your response and, where possible, support your response with evidence.**

### 1. General Comments

eircom has engaged with ComReg for some time in relation to the accuracy of the ComReg Quarterly Report. The accuracy and credibility of the Quarterly Report is vital to operators in the telecommunications market. ComReg, Government, industry observers and investors rely on accurate market information on which to base their assessments. It is essential therefore that the Quarterly Report contains reliable data and accurately illustrates trends in the market.

The ComReg Quarterly report dated 10 September 2008 (ComReg 08/75) notes that there are 428 Authorisations. The e:Consultation preamble notes that data directions, to collect data for the Quarterly Report, are sent to approximately 90 operators. This represents just 21% of the total Authorisations. The e:Consultation states that ComReg issues data directions to operators that are considered to be "*actively offering electronic communications services to consumers*". The selection of the 90 operators is based on the "*monitoring of ComReg's Electronic Register of Authorised Undertakings (ERAU) and monitoring of operator websites.*" It is not clear, to eircom, how accurate this process is in identifying all active operators. Does "*actively offering*" mean the existence or size of the customer base, the level of annual revenue or indeed some other form of measuring the presence and impact of an operator in the market? Can ComReg confirm that all operators that are active in the market operate websites? If ComReg relies on monitoring of operator websites as suggested to identify relevant operators, that process may fail to identify any operators that do not have websites.

eircom therefore acknowledges ComReg's desire for the application of a revenue threshold as a basis to select operators that should receive a data direction, in order to submit data in relation to the ComReg Quarterly Report. The use of a threshold will give a clear indication to the readers of the Quarterly Report as to the size of the operators included in the aggregated data. eircom does however have a number of concerns in relation to the application of a threshold and the consequences for the ComReg Quarterly Report.

## **2. Materiality of the proposed €800,000 Revenue Threshold**

ComReg is proposing to use an €800,000 annual revenue threshold above which operators will receive a data direction. It is not clear to eircom precisely what is the relevance of €800,000 and the basis for its selection. Could a threshold of €1,000,000 or €500,000 be as relevant? ComReg needs to explain how it has chosen the proposed threshold.

In order to appreciate the selection of any appropriate threshold, a profile of the operators in the Irish telecommunications market and their annual revenues would assist. It would be valuable, when the Quarterly Reports are published, to have a table, such as that illustrated below, presenting the relative annual revenues of the authorised operators in the market, using the suggested parameters for each of the fixed, mobile and broadcasting markets:

<b>Annual Revenue</b>	<b>Number of Operators</b>
Below €100,000	xx
€100,00 to €500,000	xx
€500,000 to €1m	xx
€1m to €50m	xx
€50m to €100m	xx
€100m to €500m	xx
Greater than €500m	xx

Having selected the annual revenue threshold and presented a table as described, ComReg can give a measure of the material effect on the Quarterly Report of the threshold. It is possible for ComReg to then state that operators with annual revenues in excess of the chosen threshold represent a certain percentage of the total revenues in the telecommunications markets. This can be further distilled for each of the three market categories, Fixed Markets, Mobile Markets and Broadcasting Markets.

ComReg should include the total annual revenue (even if this is a relatively small amount) of operators below the threshold on a consolidated basis. This could be noted as “not-further-broken-down” and will ensure that the revenue of these operators is included in the total revenue for the Irish telecommunications market.

A further consideration in relation to the application of an annual revenue threshold is that it may not recognise the significance of niche players in the market or in certain market segments. There are operators that concentrate on niches such as Carrier Pre-Select, Broadband or indeed in limited geographical areas. While their annual revenues may fall below the proposed threshold, they may still be significant players in their respective niches or geographical areas. The exclusion of such operators would potentially distort the statistics for particular market segments or product/service categories.

With respect to particular revenue categories, such as Retail Narrowband, Interconnect and Leased Lines, a breakdown of the impact by revenue category is necessary to ascertain whether the exclusion of certain operators' revenues will impact on one or more of these revenue categories more significantly than others.

Addressing these issues is important so that users of the Quarterly Report understand the statistical significance of the impact of introducing a revenue threshold and the likely margins of error.

### **3. Administrative Burden**

The volume of information required of small operators should not be significant and it is difficult to see how it could represent a disproportionate or unreasonable burden. It is information that any operator should have, in order to manage their business. It should include revenue, number of customers and traffic volumes. The burden of collection of data that operators with annual revenues of less than €800,000 would be required to submit to ComReg, would be only a small proportion of the volume of data that larger operators are required to provide.

Any burden on ComReg or operators should not be the deciding factor in determining whether a revenue threshold should be introduced or the level of the annual revenue threshold if one is applied.

### **4. Identifying and Monitoring the Revenue of Operators**

The initial selection of the operators to receive the data direction will be based on their annual revenues at a particular point in time. In the e:Consultation ComReg states that annual revenue information is available from data received in relation to the Telecommunications Levy and the General Authorisation applications. ComReg can also access information from the Companies Registration Office (CRO).

The use of these sources of information in isolation may not be sufficient to gain an accurate profile of an operator's annual revenue in respect of their presence in the Irish telecommunications market. Furthermore, compliance with the procedures to lodge accounts with the CRO may not be sufficient to give comfort that it will give reliable information. The CRO filings contain specific information for the requirements in the Companies Acts 1963-2006 rather than information presented for the purposes of appraising an industry regulator of how a company operates in the particular industry market. eircom would propose that all of these sources be taken together, by ComReg, to obtain a more accurate profile of the operators.

The telecommunications markets are dynamic and operators may grow their revenues over a relatively short period of time. Consequently, ongoing monitoring of the threshold needs to be conducted on a periodic basis. This should be annually at a minimum, but bi-annually may be warranted given the pace of change and scale of the telecommunications market in Ireland.

The method of monitoring operators' annual revenues should be publicised in the interests of transparency, both for the operators and the users of the Quarterly Report.

## **5. Compliance with ComReg Data Directions**

ComReg currently uses data directions to collect data. Of the approximately 90 operators that received the data direction, just 63 responded for the Quarterly Report dated 10 September 2008 (ComReg 08/75 page 6). This represents a 70% response rate. The remaining 30% of the operators therefore appear to be in breach of ComReg data directions.

In footnote number 1, of the recent Quarterly Report (ComReg 08/75 page 6), ComReg names four operators for whom old data is used. Whilst the use of the threshold may reduce the scale of non-compliance, it does leave the question of how the accuracy of the Quarterly Report can be maintained if there is ongoing non-compliance. The Quarterly Report can only be truly accurate if full information is received from all operators that are directed to submit data.

The absence of data from operators, who have an impact in the Irish telecommunications market, will affect the accuracy of the Quarterly Report and may serve to undermine the usefulness of the Quarterly Report itself. Certain measures, for example market shares, will be flawed and distorted. ComReg's own perspective of the markets will be distorted with consequent impacts on regulatory decisions. Industry market analysis may be based on erroneous data.

In the e:Consultation ComReg does not state how it proposes to deal with issues of non-compliance. Continued non-compliance by operators will call into question the accuracy and credibility of the Quarterly Report. ComReg needs to state how it will address issues of non-compliance.

-- END --

## **7 Fastcom**

Fastcom don't have any issue with this approach to data collection.

## **8 Interfusion**

I agree with ComRegs proposed approach to data collection.

## **9 Magnet**

I agree with Comreg's proposed approach to data collection. The setting of a threshold will reduce the data collection burden on smaller companies.

## **10 Network.ie**

The burden of data collection on the smaller operators should be reduced, this will assist the smaller operators and also reduce the administrative burden and costs to the operator and reduce the cost incurred by ComReg. Network-ie Ltd agree fully with ComReg's proposed approach to data collection.

## **11 Perlico**

Perlico would agree with ComReg's proposed approach to limit collection of data to the proposed minimum threshold only to facilitate the reasons as outlined in the proposal regarding the burden this places on the smaller operator. However, we believe that all data that is currently requested each quarter and presented by ComReg is significant to all operators who currently compete for market share against the SMP.

## **12 Strencom**

I agree with your limit of 800,000 turn-over. I suggest you link it with the Telecoms Levy as you suggest.

### 13 3 Ireland

3 believes that: ComReg should apply a materiality threshold based on both revenue and subscriber numbers i.e. operators with revenue in excess of X or subscriber numbers in excess of Y should be obliged to submit information to ComReg for the purposes of ComRegs quarterly reports. A different threshold should apply in respect of each relevant market. A lower threshold should apply in respect of emerging markets eg mobile broadband. In its quarterly reports, ComReg should specify what percentage of the market has been excluded by virtue of the materiality threshold. ComReg should specify how it proposes to ensure compliance with this materiality threshold(s). There should not be any discrimination as between operators eg if an operator does not have the requisite revenue or subscriber numbers in a given market, it should not be obliged to provide information in respect of that market by virtue of revenue or subscriber numbers in a separate market. ComReg should confirm that it can ensure compliance with the revenue materiality threshold by virtue of information published by the Companies Registration Office. Small companies (Possibly defined by means of a different threshold) enjoy the benefit of certain filing exemptions.

### 14 Tesco Mobile

Tesco Mobile Ireland (TMI) supports ComRegs proposal to apply a minimum threshold to capture data from the most significant operators in the Irish market. We agree that it is useful to have market share and other information available from the larger operators. Providing this information from a small operator does though constitute a large and disproportionate burden. Our estimate of the time taken to prepare the information is given in our confidential annex below. We are also of the view that a small operator providing details of its growth at the earliest stages provides competitors with information when the new operator is at its most vulnerable to competitive action. We welcome competition but not to the extent that competitors are able to target campaigns to weaken on a long term basis the new operators entrance into the market or at the worse to cause the entry to fail. TMI is not aware that this has happened or is occurring but it is a general concern. We note that ComReg proposes a threshold of â,–800,000 in gross revenues per annum. TMI agrees that the threshold should be placed at around this level but would ask that the threshold be stated in terms of customer numbers instead or as an alternative. A threshold set at the lower of either â,–800,000 or 20,000 customers would work for telecoms operators in different circumstances. The revenue which a small operator is actually earning is a sensitive commercial secret. To flag to ones competitors that a certain milestone in revenue terms has been reached could have an undesirable signalling effect. Couching the threshold in terms of customer base would highlight less confidential information. Hence, our proposal that the threshold be set at the level of a customer base of 20,000. Below this level the number of customers will not have a material effect on other operators market shares. The threshold will need to be based on past activity. We suggest that the threshold be exceeded for two consecutive quarters before the requirement applies to a specific operator. This will cover the situation where the operator's customer base might oscillate around the threshold.