



Commission for  
**Communications Regulation**

## Consultation Paper

### **Consultation on the Proposed Financial Reporting Obligations on RTÉNL in the Wholesale National Markets for Analogue Terrestrial Broadcasting Transmission.**

<b>Document No:</b>	<b>05/49</b>
<b>Date:</b>	<b>1<sup>st</sup> July 2005.</b>

All responses to this consultation should be clearly marked:-  
“Reference: Submission re ComReg 05/49” as indicated above,  
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(current consultations), to arrive on or before 12<sup>th</sup> August 2005,  
to:

**Regulatory Accounts**  
**Commission for Communications Regulation**  
**Irish Life Centre**  
**Abbey Street**  
**Freepost**  
**Dublin 1**  
**Ireland**

**Ph: +353-1-8049600 Fax: +353-1-804 9680 Email:**  
**[financeconsult@comreg.ie](mailto:financeconsult@comreg.ie)**

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**An Coimisiún um Rialáil Cumarsáide**

**Commission for Communications Regulation**

Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 Ireland

Telephone +353 1 804 9600 Fax +353 1 804 9680 Email [info@comreg.ie](mailto:info@comreg.ie) Web [www.comreg.ie](http://www.comreg.ie)

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## **1 Foreword by the Chairperson**

The need for this consultation has arisen because of the new legal framework governing broadcasting transmission regulation in Ireland which has been in force since July 2003. In essence, this framework requires regulators to impose obligations on dominant operators in telecommunications and broadcasting markets by reference to an economic analysis of the competition problems in those markets. These problems are identified through a process known as market analysis. Remedies must address the problems identified and must be proportionate. One such possible remedy is the obligation to prepare separated accounts.

In Ireland, RTÉNL has been designated as the dominant operator or as having significant market power (SMP) in the wholesale national markets for analogue terrestrial broadcasting transmission and was imposed with an Accounting Separation obligation.

The primary objective of Accounting Separation is to enable the creation of meaningful financial information on relevant products and services to monitor profitability and non-discrimination. ComReg believes that it is now useful to initiate a discussion on some of the general principles governing the Accounting Separation obligation and also to provide an indication of the type of information that might be required. ComReg believes, in principle, that compliance with regulatory obligations of a financial nature should be easily ascertainable by reference to the accounts. The detail and transparency of these accounts are key issues and this paper aims to address them. This paper also addresses other matters such as the audit of the accounts, timelines and frequency of reporting etc.

In summary accounting separation is the process whereby a dominant operator prepares accounts which present information on its constituent parts as if they were separate businesses. Their main regulatory function is to give visibility to any price discrimination that may be occurring i.e. to ensure that wholesale customers of a business are charged for services on an equal basis as the company's affiliate, subsidiary or parent companies. In addition, separated accounts that have been well designed can be used to provide sufficient information on the profitability and costs of a regulated business in order to see if prices appear to be cost oriented, thereby providing information as to the need to impose any additional remedies.

## **2 Executive Summary**

### **2.1 Background**

Four sets of Regulations for electronic communications networks and services entered into force in Ireland, via statutory instruments, on 25 July 2003. The basis for the new regulatory framework are five new EU Communications Directives that are designed to create harmonised regulation across Europe and are aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.

These new Regulations require that ComReg carry out reviews of competition in broadcasting markets, to ensure that regulation is appropriate in the light of market conditions. The market review and remedies designation processes are now finalised and RTÉNL has had imposed on it an Accounting Separation obligation. ComReg considers it necessary to issue this consultation paper to provide visibility to the dominant operator, RTÉNL as to how this obligation can be implemented.

### **2.2 The aim of the Document**

This document outlines the proposed financial obligations for RTÉNL. Appendices are attached which contain the financial schedules that would apply to RTÉNL.

The proposed detail of the obligations is designed to ensure that ComReg obtains relevant transparent, understandable and accurate information on a timely basis. This obligation while consistent with those in the process of being imposed on fixed and mobile telephony operators is proportionate to the size of RTÉNL's operations. Whilst RTÉNL does not have either price control or cost accounting systems obligations, ComReg, as noted in an earlier consultation (ComReg document no 04/112) stated that it may be necessary to reconsider this position at a later date should the output of Accounting Separation show discriminatory treatment of broadcasters or excess profits within RTÉNL's regulated business.

It is beyond the scope of this paper to discuss whether the remedy of Accounting Separation is appropriate to the particular competition problems in this market, which has been found not to be effectively competitive. This assessment has been carried out in Documents 04/112 and 04/122.

### **2.3 Summary of Proposed Obligations**

In addition to the Statutory Accounts, which RTÉNL prepare, it has also developed a tariff model. This model allocates operating and capital expenditure to the sites which it uses to transmit radio and television broadcasts, taking into account the relative use of those sites by both broadcast and non broadcast market operators, (e.g. telecom operators renting space on the RTÉNL masts). In order to place reliance on this system, ComReg proposes the following obligations under the headings below.

### *2.3.1 Maintenance of accounting records and systems*

RTÉNL accounting records and systems should have the capability of producing financial information on an annual basis. The main schedules required are profit and loss accounts and statements of mean capital employed, supported by appropriate notes and subsidiary schedules, including certain operating data, as outlined in the attached annex.

### *2.3.2 Preparation, delivery and publication of Annual Regulatory Statements*

ComReg has proposed the financial statements that it considers should be produced by RTÉNL, and the level to which these financial statements should be audited and whether or not they should be published. These proposals are contained in the attached annex.

### *2.3.3 Accounting Documentation*

ComReg considers that sufficient transparency and disclosure of the basis of preparation of the financial statements is essential. It should be noted that RTÉNL already publishes information on its tariff model on the RTE website. ComReg is also currently working with RTÉNL with regard to producing a more detailed level of documentation. ComReg will continue to work with RTÉNL and may recommend changes to the existing level of documentation. The transparency principle is proposed to help improve the quality of documentation.

### *2.3.4 Audit issues*

ComReg believes that an assurance as to the reliability and relevance of the financial information can only be provided adequately by a rigorous audit. Therefore, ComReg is proposing that the:

- principal statements are audited to a high level and the others to a lower level.
- regulatory auditor should be satisfactory to ComReg at all times.

### *2.3.5 Implementation of proposals*

ComReg proposes that this timetable should be formalised in conjunction with RTÉNL but anticipate that the first set of accounts should be prepared for the financial year ending 2005.

## **2.4 Assessment of impact**

In developing the proposed reporting obligations, ComReg has tried to work within the existing reporting and systems within RTÉNL and has sought to minimise the regulatory burden on RTÉNL, while balancing the requirement to provide sufficient transparency in the market.

ComReg has also taken into account the size of RTÉNL in the setting of the reporting requirements. The total number of reporting schedules (as set out in the attached annex proposed is significantly less than that for fixed and mobile telephony operators. ComReg notes that much of the implementation of the proposals set out in this consultation have already been carried out by RTÉNL. However, for example basic audit, reporting and reconciliation requirements remain the same for all operators, as occurs in the statutory accounting legislation for all companies above the small companies limit, irrespective of their size.

## **2.5 Consultation Process**

All responses to this consultation are welcome. However it would make the task of analysing responses easier if comments were referenced to the relevant question number from this document. The Consultation period will run from 1st July 2005 to 12<sup>th</sup> August 2005 during which time ComReg welcomes comments on any issues raised in this paper.

### 3 Introduction

#### 3.1 A New Regulatory Regime

Four sets of Regulations,<sup>1</sup> which transpose into Irish law four European Community directives on electronic communications and services,<sup>2</sup> entered into force in Ireland on 25 July 2003. The final element of the EU electronic communications regulatory package, the *Privacy and Electronic Communications Directive*, was into Irish law on 31 October 2003. The Minister for Communications, Marine and Natural Resources has consulted on the draft regulations.<sup>3</sup>

The new communications regulatory framework requires that ComReg define relevant markets appropriate to national circumstances, in particular relevant geographic markets within its territory, in accordance with the market definition procedure outlined in the *Framework Regulations*.<sup>4</sup> In addition, ComReg is required to conduct an analysis of the relevant markets to decide whether or not they are effectively competitive.<sup>5</sup> Where it concludes that the relevant market is not effectively competitive (*i.e.*, where there are one or more undertakings with significant market power (“SMP”)), the *Framework Regulations* provide that it must identify the undertakings with SMP on that market and impose on such undertakings such specific regulatory obligations as it considers appropriate.<sup>6</sup> Alternatively, where it concludes that the relevant market is effectively competitive, the *Framework Regulations* oblige ComReg not to impose any new regulatory obligations on any undertaking in that relevant market, and withdraw any such obligations it may have imposed at an earlier stage<sup>7</sup>.

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<sup>1</sup> Namely, the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2003 (S.I. No. 307 of 2003), (“the *Framework Regulations*”); the European Communities (Electronic Communications) (Authorisation) Regulations, 2003 (S.I. No. 306 of 2003), (“the *Authorisation Regulations*”); the European Communities (Electronic Communications) (Access) Regulations 2003 (S.I. No. 305 of 2003), (“the *Access Regulations*”); the European Communities (European Communications) (Universal Service and Users’ Rights) Regulations 2003 (S.I. No. 308 of 2003), (“the *Universal Service Regulations*”).

<sup>2</sup> The new regulatory framework for electronic communications networks and services, comprising of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, (“the *Framework Directive*”), OJ 2002 L 108/33, and four other Directives (collectively referred to as “the *Specific Directives*”), namely: Directive 2002/20/EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services, (“the *Authorisation Directive*”), OJ 2002 L 108/21; Directive 2002/19/EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and services, (“the *Access Directive*”), OJ 2002 L 108/7; Directive 2002/22/EC of the European Parliament and of the Council on universal service and users’ rights relating to electronic communications networks and services, (“the *Universal Service Directive*”), OJ 2002 L 108/51; and the Directive 2002/58/EC of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector, (“the *Privacy and Electronic Communications Directive*”), OJ 2002 L 201/37.

<sup>3</sup> ComReg Document No. 03/99 outlines ComReg’s response to the draft regulations.

<sup>4</sup> Regulation 26.

<sup>5</sup> Regulation 27.

<sup>6</sup> Regulation 27(4).

<sup>7</sup> Regulation 27(3).



### **3.2 Overview of the Consultation Paper**

The remainder of this document comprises the following:

**Chapter 4** discusses the requirements for regulatory financial information in general, the relationship of financial information obligations to other SMP obligations, describes the concepts accounting separation and identifies the important characteristics required of financial information. This chapter explains why financial information is an essential part of regulation.

**Chapter 5** addresses the principles underlying the preparation of financial information for Accounting Separation purposes. This chapter is relatively technical in nature and is directed mainly at accountants.

**Chapter 6** introduces and describes the proposed general obligations how these obligations will be applied.

**Chapter's 7 to 10** discuss the proposed general obligations required in maintaining an Accounting Separation obligation. These chapters also set out the basis of preparation, audit, publication and accounting documentation requirements.

**Chapter 11** sets out the proposed requirements to comply with an Accounting Separation obligation.

**Chapter 12** sets out the proposed implementation and transitional arrangements to comply with the proposed obligations.

## **4 The need for Financial Information.**

### **4.1 Introduction**

Financial reporting is an essential part of regulation in order to support a non discrimination obligation.

### **4.2 How financial information is used**

ComReg requires financial information for a variety of reasons. These include:

- monitoring of non discrimination and excessive pricing at the wholesale level; and
- investigating complaints.

### **4.3 Characteristics of high quality financial information**

Before discussing the regulatory financial reporting that ComReg is proposing, it is worth considering the qualitative characteristics of good quality financial information. These should form a foundation for the sector specific, regulatory obligations which ComReg is proposing. ComReg intends to have regard to the guidance set out by the Accounting Standards Board and detailed in the ERG Opinion on Accounting Separation and Cost Accounting<sup>8</sup> which requires that financial statements possess certain attributes, which are listed below for illustrative purposes:

- Relevance e.g. that the financial statements address particular components or services;
- Reliability e.g. that the financial statements can be audited;
- Comparability e.g. that one year is prepared on the same basis as another
- Understandability; e.g. that the basis of preparation is clear and transparent; and
- Materiality e.g. that the numbers are fairly presented.

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<sup>8</sup> ERG Opinion on proposed changes to the Commission Recommendation of 1998 on Accounting separation and cost accounting.- ERG (04) 15rev1 and the Annex to ERG (04) 15rev1 "ERG opinion on the proposed review of the recommendation on cost accounting and accounting separation"

#### **4.4 Financial reporting required.**

Accounting Separation is necessary where an obligation of non discrimination is imposed and/or there is a concern that a Dominant Provider may make unfair cross-subsidies. Price discrimination can be revealed by making transparent all the wholesale prices and internal transfer prices of a vertically integrated company, and this consultation intends to lay the framework for achieving this.

## **5 Financial Information in a Regulatory Context**

### **5.1 Introduction**

This chapter examines the principles which underlie financial and economic performance measurement for regulatory purposes. In particular it discusses and explains the basis on which financial information for regulatory purposes needs to be prepared.

### **5.2 General Basis on which financial information needs to be prepared**

ComReg believes that RTÉNL should have financial accounting and reporting arrangements which have the integrity and reliability necessary to produce relevant, reliable, comparable and timely financial information in connection with a service or combination of services in the SMP markets in which accounting separation obligations are imposed. These arrangements should:

- be on a historical cost basis; and
- attribute costs to services using an activity based ‘causal’ basis in which a cost is attributed to a service by reference to the underlying cost driver.

The key issue is to move from basic accounting data such as invoices paid, to the costs applicable for services and ultimately customers. In the RTÉNL model this is done via a cascade. Steps in the cascade include:

- Obtaining base information such as invoices, payroll and recharges from other group companies etc;
- Identifying the costs which relate to the SMP activities;
- Allocating costs to regions and other cost centres;
- Allocating costs to transmission sites;
- Gathering information e.g. on whom (which companies) and what (number of antennas); is on each site and the power outputs;
- Allocating costs to the service provided; and
- Calculating the amounts related to each customer using their sites.

The last step is important since the services are provided on a site by site basis and, given the number of possible combinations, it would not be proportionate to cost and report on each of these services individually. The explanation of the process in this

consultation and the issuing of a final decision and audit obligations proposed, should combine to ensure non discrimination and reliable, transparent costing

### **5.3 Other Cost Measurement Approaches**

A number of cost measurement approaches, using a company's own information, such as: incremental cost, stand-alone cost, fully attributed cost, avoidable costs and unavoidable incremental costs could also be used. However, ComReg does not consider that any of the above bases would be proportionate for a relatively small organisation such as RTÉNL and therefore does not propose implementing them.

However, another approach to costing, Discounted Cash Flow (using concepts relating to the time value of money) might possibly be appropriate, since there are current long term contracts in the industry. The arrangements for the collection of information being proposed by ComReg would also be compatible with this costing approach, should it be necessary at a future date, and the RTÉNL system would support such an approach.

### **5.4 Essential Features of Regulatory Financial Information**

In order to calculate the information required for regulatory purposes (and the information which is not necessary), it is necessary to:

- establish the costs, assets, revenues and liabilities associated with all of the activities underlying the supply of the service;
- have rules which, amongst other things, address how the costs associated with shared activities are distributed between these services;
- document the costs and rules e.g. via Financial Statements and accounting methodology documents;
- demonstrate that the resulting costs for a given service have been properly and appropriately derived from the entirety of financial information relating to all services; and
- have appropriate controls and an audit trail.

### **5.5 The need for information in non SMP Markets**

It is also essential that ComReg understands how RTÉNL's own costs are split between the regulated markets and the other business. This means that ComReg will need to be sure that costs which are common to regulated and unregulated services are fairly attributed on a non discriminatory basis. Failure to do this could result in costs which should be allocated to a competitive market being allocated to a regulated market, with an increase in prices and loss in welfare for consumers, or if

the reverse were true, could result in predatory prices or cross subsidies which could have a harmful effect on competition. ComReg needs to be confident that:

- Costs are not overstated in the SMP markets i.e. too many costs are allocated to the SMP regulated areas;
- Accounting judgements used in the preparation of the regulatory accounts are appropriate and consistent;
- The figures from the regulatory accounts reconcile back to the audited statutory accounts;
- The audit had been carried out in a way appropriate to ComReg; and
- Results of the accounting system are directly usable by the regulator.

In conclusion ComReg considers it appropriate to propose the collection of suitable information for non SMP services. Furthermore, ComReg also believes that it is important to reconcile the costs of particular activities back to total costs in the statutory financial statements. If this is not done, there is an increased risk that costs are either double counted or omitted.

A Dominant Provider may provide services in a number of markets and may, for organisational reasons, divide the activities required to supply those services amongst a number of 'business units'. However, the manner in which a Dominant Provider organises itself is, for regulatory purposes, irrelevant and consequently is of no interest to ComReg in setting SMP obligations.

**Q. 1. Do you agree with ComReg's analysis of the need for information with respect to non SMP markets? If not please provide reasoned argument and state how ComReg could achieve its regulatory objectives?**

## **5.6 How Non Discrimination relates to Accounting Separation**

Accounting Separation may be used to ensure non-discrimination in charges, i.e. that a vertically integrated supplier with SMP in a wholesale market charges itself and downstream competitors reliant on equivalent wholesale inputs the same amount for use of equivalent services (or, to the extent it does not, the difference is objectively justifiable). This is achieved by requiring the equivalent services, their transfer charges and their financial performance to be separately identified.

## **5.7 Other aspects of preparing Financial Information**

### *5.7.1 Other Data requirements.*

There is a need for data other than pure cost data for regulatory purposes. For example, allocation may depend on power outputs, or the size of a transmission site. Accurate and transparent data on these areas is therefore very important.

### *5.7.2 Implementing the methods*

There are several ways in which accounting information can be prepared, many of which could be acceptable to ComReg. For this reason ComReg proposes to follow RTÉNL's existing tariff model as much as possible. This method should allow RTÉNL to achieve the requirements in the most efficient manner possible, and reduce levels of intrusiveness and yet allow ComReg to make changes if required later.

**Q. 2. Do you have any other observations on ComReg's analysis of Financial Information in a Regulatory Context? If so please provide a reasoned response.**

## **6 Introduction to the Proposed Directions Imposing Detailed Accounting Separation Obligations.**

### **6.1 Introduction-**

In the following chapters, ComReg sets out proposals for the imposition of the detailed obligation of Accounting Separation

The annex attached to this consultation set out the detailed information requirements and inform the proposals contained in Chapter 7 to 12.

The aim in the following chapters is to implement the principles in earlier chapters. It should be noted that there are several links in the chain of robust financial reporting and a weakness in any one of them e.g. audit, or transparency can render the whole extremely weak or worthless. These directions aim to examine all of the links in this chain.

The aim of these proposals is to require the implementation of an Accounting Separation regime which is objectively justifiable, transparent, proportionate and non discriminatory.

The proposals are structured as follows:

- Maintenance of accounting records and systems (Chapter 7 );
- Preparation, Audit and Delivery of Cost Accounting Financial Statements (Chapter 8 ;
- Accounting Documentation (Chapter 9);
- Auditor, Audit Reports and Audit Opinions (Chapter 10);
- Accounting Separation (Chapter 11).

### **6.2 General Proposals**

Currently for the fixed telecommunication network, when either ComReg or the Dominant Operator proposes to make amendments to the Regulatory Financial Statements, it is necessary to consult with the industry on the proposed change and issue a new or revised direction. ComReg considers that in certain circumstances (e.g. when the amendment does not have a significant impact) it may not always be necessary to enter into a consultation.

ComReg considers the introduction of consents to be an effective method of effecting routine and acceptable changes to the (finalised) Regulatory Financial reporting obligations, which otherwise may be too rigid and may cause delays in implementing minor changes. Examples of situations where a consent could be used



include the removal/withdrawal of products/elements/services, the addition of new products/elements/services, changes to accounting systems to improve accuracy or efficiency, changes to additional financial information, and/or the impracticability (e.g. due to timing) of obtaining an audit opinion.

ComReg proposes that consents would take the form of a document sent by RTÉNL to ComReg indicating its request in writing and justifying its reasoning for a consent. ComReg would then evaluate the consent (which may involve further clarification with the relevant operator. ComReg would then endeavour to form a judgement on the consent and inform the operator of its findings at the earliest point. It is not possible to describe all the circumstances where consents could be used, but the alternative to consents would be for ComReg to consult and issue a Direction on the issue as it arises. Consents granted would be referred to in the Financial Statements or ComReg Statement as appropriate. Equally, ComReg could also initiate changes by way of consents and will seek to ensure that it deals with all consents in a manner which does not unfairly discriminate between different undertakings and in a manner which is transparent.

**Q. 3. Do you agree with ComReg's proposed approach to imposing the relevant obligations, including the use of consents? Please elaborate your response and provide details of any alternatives you consider appropriate.**

## **7 Maintenance of Accounting Records and Systems.**

### **7.1 Introduction**

This chapter includes proposals on the manner in which accounting records shall be maintained by RTÉNL to comply with an Accounting Separation obligation.

ComReg is proposing that, in relation to Accounting Separation, RTÉNL should maintain accounting records and systems that are capable of producing financial statements that are in accordance with the Accounting Documents. This is in order to ensure that its internal Accounting Separation Systems are sufficient to demonstrate at any time compliance with the appropriate obligation, e.g. non discrimination.

### **7.2 Granularity of Accounting Records.**

ComReg is proposing that the accounting records should be sufficient to provide information, where designated, on a Historic Cost Accounting basis (HCA). These records should enable the identification and calculation of the costs, revenues, assets and liabilities of each service or activity for Accounting Separation and accumulate these for each customer.

ComReg considers that it would be disproportionate to calculate price or profitability information or to publish cost information for each service individually, although it can be done for a service at a site at a specific point in time. This is because there may be several other broadcasting organisations present at one site, using different antennas for different purposes at different power outputs. This can give rise to several services at one site and if each site was treated as a separate service, would give rise to many hundreds of services. However, it is possible, by means of the existing model, to cumulate the costs by customer and, if new entrants require price information, to re-run the model specifically for them. The service cost at one site can therefore be influenced by:

- Total Capital Investment by RTÉNL;
- Rate of return on total Capital Investment;
- Total level of actual operating costs;
- Rate of return on operating costs;
- Total usage of the network;
- Proportion of operating costs chargeable to non-broadcasting customers;  
and
- Relative cost of operation of each transmission site within the network;

In addition, the customer total cost can be affected by the:

- Number of sites occupied;
- The size of each site occupied;
- Total number of customers on each site;
- Nature of service, Television, Radio, FM, AM or LW;
- Space occupied on each tower or mast;
- Total space occupied by all broadcast customers on relevant tower or mast;
- Power consumption;
- Power charges as levied by suppliers; and
- Investment required for expansion of service.

#### *7.2.1 Level of Granularity Required*

ComReg proposes to implement Accounting Separation obligations on a by customer basis. ComReg believes it is not sufficient to implement such an obligation at a market level as it is important to discourage possible unfair cross-subsidisation of pricing at a service level. Preparing accounts on a routine basis at a level of detail that supports individual product prices will enhance transparency and help prevent the omission or double recovery of costs.

It is not sufficient for information to be held solely at the market level because the obligation of non-discrimination must be given effect at an individual service level and then cumulated up to give a cost for each customer.

### **7.3 Time period for Retention of Accounting Records**

ComReg proposes that RTÉNL should preserve records sufficient to provide an adequate explanation of each Regulatory Financial Statement for a period of six years from the date on which each Regulatory Financial Statement is delivered to ComReg. This will enable investigations to take place and trend information to be prepared if necessary.

### **7.4 On Request Reporting**

On request reporting would be required for investigating specific cases of potential breaches of obligations and/or dispute resolution. ComReg has only four months to resolve disputes under EU Law.

ComReg considers that these requirements could potentially be quite onerous and is proposing that on request reporting should, where possible, rely on information already produced or that which most companies would produce on a routine basis via their management accounting processes. ComReg therefore proposes that in framing individual requests it will consider their practicality and will also will have regard to the seriousness of the issue at hand and proposes to consider each request for on request information on a case by case basis and is therefore proposing not to set out criteria (i.e. categories and type of information required and basis of preparation) for such dominant operators at this time. ComReg reserves the right to review this position if it considers that more formal arrangements are required.

## **7.5 Overview of ComReg's Proposals**

ComReg proposes that the accounting records and systems, with respect to regulatory financial information of RTÉNL and all associated documentation shall be:

- (a) maintained in accordance with the Accounting Documents;
- (b) sufficient to enable the Regulatory Financial Statements to have expressed upon them an appropriate Audit Opinion;
- (c) sufficient to enable non discrimination to be shown and verified

**Q. 4. Do you agree with the proposed obligations for the Maintenance of Accounting Records and Systems? Please elaborate your response and provide details of any alternatives you consider appropriate.**

## **8 Preparation, Audit and Delivery of Regulatory Financial Statements.**

### **8.1 Introduction**

This chapter contains proposals that will allow ComReg to require RTÉNL to publish Regulatory Financial Statements, and obtain and to publish an audit opinion. The proposed financial schedules are set out in the attached annex to this consultation.

### **8.2 Preparation, Audit and Publication**

This section deals with the preparation, audit, and publication of the financial statements and the obtaining and publication of an audit opinion on these statements. It also ensures that significant changes in methodology are noted.

It is necessary for ComReg to be able to see outputs in order to monitor and enforce RTÉNL's obligations under non-discrimination. These outputs are the Regulatory Financial Statements. It is also necessary for the Regulatory Financial Statements to be prepared and delivered on a proper, appropriate, reliable, consistent and understandable basis. Therefore, ComReg is also proposing that the Regulatory Financial Statements are produced in compliance with the Accounting Documents and an independent audit report and opinion is prepared.

In addition ComReg proposes that RTÉNL will publish a Directors' Statement of Responsibility with the accounts which would serve inter alia to confirm the Directors' responsibility for the accounts.

However, ComReg accepts that at times it will be necessary for RTÉNL to make changes to its systems, processes, methodologies or the form and content of the financial statements. In these cases, ComReg is proposing that RTÉNL has to inform it of these changes where they have a material impact on the financial statements.

ComReg proposes that Regulatory Financial Statements should be prepared on a Historical Cost Accounting basis. ComReg's proposal for Accounting Documentation and Audit will be dealt with in more detail below and in later chapters. Here, ComReg proposes simply that an Audit Opinion be obtained. Additionally, the financial statements themselves and the specified activities for which they must be produced are dealt with in the attached annex. ComReg proposes that RTÉNL should normally publish the Regulatory Financial Statements within four months of its Financial Year end or within 1 week of government approval of their Statutory Accounts.<sup>9</sup>

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<sup>9</sup> Approval from government is required to issue their statutory accounts and this may cause subsequent delays in the publication of Regulatory Financial Statements.

The publication of annual Regulatory Financial Statements provides assurance to other communications providers that the services they are buying from RTÉNL are non discriminatory. This regulatory certainty is important for ensuring efficient and effective competition in electronic communications markets.

### **8.3 General Regulatory Financial Statements to be Prepared and Published.**

ComReg proposes that the following Regulatory Financial Statements be prepared:

- Directors Statement of Responsibility;
- Report of the Regulatory Auditors;
- Profit and Loss statements and Mean Capital Employed Statements, both prepared on a Historical cost basis;
- Reconciliation Statements; (to the statutory accounts and within the various markets;
- Statements of Costs Schedules for Operating and Capital Expenditure;
- Additional information by way of notes;
- Other supporting schedules; and
- Information with respect to Related Party Transactions/Recharge for shared services from RTE.

The above Regulatory Financial Statements are those normally required by generally accepted accounting practices, plus, as appropriate, additional statements. These statements/schedules along with transparency of the documentation allow ComReg to be satisfied with the numerical appropriateness of the cost allocation which is essential for monitoring the compliance of RTÉNL with its obligations.

ComReg considers that a profit and loss statement and a matching statement of mean capital employed are necessary for the monitoring of the regulatory financial performance of wholesale services and markets. ComReg considers that, to provide assurance to it that the information, on which it must base decisions on, is appropriate, reliable and of a high quality, it is essential that its Regulatory Financial Statements be meaningfully reconciled to each other and to RTÉNL's statutory accounts. ComReg considers that, to ensure understandability and transparency, such reconciliations should include intermediate stages or steps as necessary.

### **8.4 Form and content of financial statements**

ComReg considers that RTÉNL should prepare, consistent with normal accounting practice, prior year comparative statements on a consistent basis to the current year

figures and that where there are no specific regulatory principles RTÉNL should follow Accounting Standards and generally accepted accounting practices as applicable to the operator in Ireland. ComReg considers the ability to compare regulatory financial information with previous years' statements is essential. Comparing year on year figures can provide an important understanding of the factors relevant to ComReg for regulatory purposes. Additionally, the consistency of presentation and preparation is important for the same reasons.

### **8.5 Consequential Updating of Financial Statements by Dominant Operator.**

ComReg proposes that RTÉNL should make such amendments to the form and content of the Regulatory Financial Statements as are necessary to give effect fully to the requirements of this proposal and any other relevant legal instruments issued by ComReg. RTÉNL shall provide to ComReg particulars of any such amendment, the reasons for it and its effect, when it delivers the Regulatory Financial Statements to ComReg. This proposal is to ensure that any material amendments as a result of regulatory decisions or other considerations are made by RTÉNL.

### **8.6 Related Party Transactions/Recharge of Shared Services from RTE.**

RTÉNL is a wholly owned subsidiary of RTÉ. RTÉNL has a number of business activities which are not regulated under this regime. It is essential that ComReg is satisfied that costs recharged to RTÉNL from other parts of the RTÉ group, are appropriately calculated.

ComReg considers it appropriate to prevent an undertaking with SMP Accounting Separation obligations, which is part of a group of companies, exploiting the principle of corporate separation. The Dominant Provider should not use other members of the wider group of companies to which it belongs to carry out activities or to fail to comply with its obligations, which would otherwise render the Dominant Provider in breach of its obligations. ComReg is proposing to require that a statement showing the transfers with other companies in the group and the parent company is prepared. A draft of such a statement is set out in the attached annex.

The Related Party Transactions/Recharge of Shared Services from RTE Schedule in the attached annex is necessary in order that the Regulatory Financial Statements contain the disclosures necessary to draw attention to the possibility that the reported financial position and results may have been affected by the existence of related parties and by material transactions with them. In the absence of information to the contrary, it is assumed that a reporting entity has independent discretionary power over its resources and transactions and pursues its activities independently of the interests of its individual owners, managers and others. Transactions are therefore presumed to have been undertaken on an arm's length basis, i.e. on terms such as could have obtained in a transaction with an external party, in which each side bargained knowledgeably and freely, unaffected by an relationship between them. The accounting standard that normally covers these issues is FRS 8.

These proposals are supplementary to FRS8 in that there is an exception in FRS 8 which states that disclosure is not required in the financial statements of subsidiary undertakings.

ComReg proposes that this provision in FRS 8 should not apply and therefore Related Party Transactions would be reported. This is because these accounts are for regulatory purposes and ComReg needs to be sure that the reported financial position and results have not been affected by the existence of related parties and by material transactions with them. If this exemption is not lifted, ComReg would not see these transactions because the undertaking designated as having SMP is not the Main Holding Company.

## **8.7 Overview of ComReg's Proposals**

In summary, ComReg proposes that RTÉNL shall:

- (a) prepare in accordance with the Accounting Documents, the Regulatory Financial Statements;
- (b) secure an expression of an audit opinion upon the Regulatory Financial Statements; and
- (c) deliver to ComReg and publish the Regulatory Financial Statements and Documentation and corresponding audit opinion within 4 months of the financial year end or within 1 week of government approval of their Statutory Accounts;
- (d) deliver to ComReg a report detailing any changes in the Accounting Documents, any Process and any other methodology which caused any figure presented on any one of the Regulatory Financial Statements to change materially.

**Q. 5. Do you agree with the proposed obligations for the Preparation, Audit and Delivery of the Cost Accounting Financial Statements? Please elaborate your response and provide details of any alternatives you consider appropriate.**



## **9 Accounting Documentation**

This chapter covers the requirements for Accounting Documentation and proposes that the Regulatory Financial Statements are prepared in line with the Accounting Documents.

### **9.1 Accounting Documents**

ComReg proposes that the Accounting Documents should inter alia cover the following areas:

- (a) Introduction
- (b) Structures and activities.
- (c) Financial Reporting environment
- (d) Costs & Cost Allocations
- (e) Statement of accounting policies
- (f) Overview of the tariff model.
- (g) Asset Valuations.

ComReg considers that sufficient transparency and disclosure of the basis of preparation of the financial statements is essential. ComReg is currently working with RTÉNL with regard to producing a more detailed level of documentation. ComReg will continue to work with RTÉNL and may recommend changes to the existing level of documentation.

ComReg considers that the Accounting Documents, as produced in a dominant operators Regulatory Accounts should have the following order of priority

- (a) Regulatory Accounting Principles;
- (b) Attribution Methods;
- (c) Transfer Charge System Methodology;
- (d) Wholesale catalogue;
- (e) Accounting Policies including CCA valuations;
- (f) Irish GAAP/IFRS.

### **9.2 Changes where Deficiencies in the Accounting Documents or Financial Statements occur.**

When ComReg has reasonable grounds to believe that any or all of the Regulatory Financial Statements and/or Accounting Documentation are deficient, it proposes that RTÉNL amend and restate the Regulatory Financial Statements and/or Accounting Documents in order to remedy the deficiencies identified, secure the expression of an audit opinion on the restated Regulatory Financial Statements; and publish the restated Regulatory Financial Statements and corresponding audit opinion.

### **9.3 Transparency of Accounting Documentation**

ComReg considers that the documentation is prepared on the basis to ensure that the data, information, descriptions, material or explanatory documents prepared for the cost accounting systems is sufficiently transparent so that a suitably informed reader can easily gain a clear understanding of such documentation. A suitably informed reader should be able to understand the overall structure of RTÉNL's financial and information systems from which regulatory accounting data is derived and that the accounting documents and the supporting documents are prepared in a way that fully discloses the basis of preparation of the accounting information.

As noted in Chapter two, the Accounting Standards Board identified “understandability” as one of the key characteristics of financial information. ComReg considers that transparency of the bases of preparation of regulatory financial information is essential in order for ComReg to have confidence in the financial statements, and for it to make economic regulatory decisions based on that information.

ComReg proposes that the SMP operator includes the following Transparency Principle in the Regulatory Accounting Principles section of the Primary Accounting Documentation:

Any data, information, description, material or explanatory document, prepared in accordance with directions determined by ComReg in respect of accounting and other methods used in the preparation of the accounting records and Regulatory Financial Statements is sufficiently transparent and prepared such that a suitably informed reader can easily gain a clear understanding of such data, information, description, material or explanatory document, and, if necessary, the overall structure of the SMP operator's financial and information systems from which regulatory accounting data is derived and in particular the sequence of the processing and ‘cascade’ effect of the intermediate cost centres; gain a detailed understanding of all the material, methodologies and drivers (e.g. systems, surveys, processes and procedures) applied in the preparation of regulatory accounting data; and make their own judgement as to the reasonableness of these methodologies and driver data and any changes to them.

### **9.4 Publication of Accounting Documentation - Confidentiality**

Broadcasting markets are not static and any financial reporting system, such as a cost accounting system, must be adaptable enough to reflect any changes. Therefore, ComReg considers that RTÉNL should be under an obligation to keep their accounting systems, Accounting Documentation and form and content of the financial statements up to date. ComReg is also aware that there may be issues of commercial confidentiality in the documentation it is requesting to be published. If RTÉNL considers this to be the case, ComReg would propose that the operator submit to ComReg a version for publication that excludes such confidential data. If ComReg agrees with such a request it will issue a consent authorising the publication of versions of the Accounting Documentation which do not contain such

commercially confidential data. Such consents may lead to either public and/or private versions of documents or public versions with deleted items or sections. On all matters, ComReg will have due regard to the issue of confidentiality as set out in Regulation 12 (4) of SI No. 35 of 2003.

ComReg proposes that RTÉNL should normally publish the Accounting Documentation within four months of its Financial Year end.

**Q. 6. Do you agree with the proposed obligations for Accounting Documentation? Please elaborate your response and provide details of any alternatives you consider appropriate.**

## **10 Auditor, Audit Reports and Audit Opinion**

### **10.1 Introduction**

This chapter covers the audit requirements for the Financial Statements and Accounting Documentation.

Regulation 12(3) of the Access Regulations states that “A requirement upon an operator under Regulation 17 of the Framework Regulations may in order to facilitate the verification of compliance by an operator with any obligations of transparency under Regulation 10 and non discrimination under Regulation 11, including a requirement that accounting records, including data on revenues received from third parties are provided by any such operator to the Regulator on request”.

Regulation 17(1) of the Framework Regulations state that “Without prejudice to section 39 of the Act of 2002, the Regulator may, in writing, require any undertaking to provide (within such time as the Regulator shall specify in the document containing the requirement) any information, including financial information, that the Regulator considers necessary for the purpose of ensuring compliance with decisions or determinations made in accordance with these Regulations, the Specific Regulations, the Framework Directive or the Specific Directives.”

While ComReg could ask for the “accounting records, including data on revenues received from third parties”, mentioned in Regulation 12 (3) of the Access Regulations above, however it considers it to be more proportionate to use its powers to obtain an audit opinion of the schedules proposed in the attached annex.

In addition, ComReg will have due regard to the Directors Compliance Statements as required by the Companies (Auditing & Accounting) Act 2003 in the evaluation of RTÉNL’s financial controls. ComReg proposes that the Directors Compliance Statement will be reviewed by the auditors and included in their report of the financial statements a report on, and of the conclusions of their review undertaken.

### **10.2 Appointment of and changes to the Auditor**

#### *10.2.1 Why have an audit?*

As noted in an earlier Chapter, the Accounting Standards Board has identified “reliability” as one of the key characteristics of good quality financial information. ComReg considers that effective and rigorous auditing is necessary to ensure that regulatory financial information is reliable.

Additionally, an adequate audit will provide ComReg with assurance about the quality of the regulatory financial information when making decisions based on that information. Without such audits, ComReg’s confidence in the numbers is limited

and it needs to carry out much additional work itself to attempt to substantiate the figures.

Finally, as noted above, an audit will reduce significantly the level of work that ComReg must do to satisfy itself that the information provided to it is reliable.

#### *10.2.2 Who should do the audit?*

ComReg also considers it essential that it is fully satisfied with the performance of the regulatory auditor. Should it not be, ComReg reserves the right to introduce measures to change such an auditor.

### **10.3 Duty of Care and Cooperation**

#### *10.3.1 Duty of Care*

As ComReg is a significant user of and relies heavily on a dominant operator's Regulatory Financial Statements there is a case that the Regulatory Auditor of such an operator should owe a duty of care to ComReg. This could be achieved by the Dominant Provider's letter of engagement appointing the Regulatory Auditor including an express condition that it owes a duty of care to ComReg.

Currently discussions regarding the duty of care owed to Regulators are taking place within various accountancy bodies<sup>10</sup>. ComReg would therefore welcome informed views of the practicality and enforceability of any such obligation.

Given that the Regulatory Auditor may not offer a duty of care to ComReg, there are a number of means by which ComReg can correct this situation. These include:

- use of bipartite audit arrangements with a side letter;
- use of tripartite audit arrangements; and
- attempting to have privity to the contract under other legislation

ComReg considers that Audit Arrangements occur when a company agrees its audit with its auditors and it enters into a contract via an engagement letter which sets out the terms of the agreement. A bipartite arrangement would, in this case, involve an agreement between RTÉNL and its Regulatory Auditor. The side letter related to this would set out the terms of the Duty of Care owed to ComReg. The Tripartite agreement would involve ComReg being a direct party to the audit contract, becoming the third party in the contract. Having privity to the contract would

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<sup>10</sup> Reporting to Regulators of Regulated Entities- Audit 05/03- Published by the Institute of Chartered Accountants in England & Wales.

attempt to enable ComReg to have rights under the contract if ComReg was affected by the contract as it could be if incorrect audit opinions were issued and ComReg relied upon them.

ComReg considers that having privity to the contract could involve changing primary legislation and therefore is not viable at this point in time. Additionally, the use of a tripartite audit agreement would require ComReg to enter into a contractual relationship with RTÉNL, which is unusual and / or to be party to a contract with possible unforeseen results with respect to its operating the new regulatory framework in other areas. This alternative therefore does not seem to be a viable solution either. Therefore ComReg proposes that the use of a bipartite audit agreement with a side letter would be the best alternative should a duty of care be required.

**Q. 7. What are your views regarding the duty of care Regulatory Auditors to Regulators? Do you consider that ComReg should have a duty of care from the regulatory auditors? Please provide practical and legal justification for your point of view.**

## **10.4 Audit Reports and Opinion.**

### *10.4.1 Audit Opinions*

It is proposed that for each of the Regulatory Financial Statements ComReg should be provided with the necessary assurance that the information with which it is being provided is relevant, reliable and of a high quality. ComReg proposes that the most appropriate manner by which this assurance can be provided is for RTÉNL to secure an audit opinion by the Regulatory Auditor. This would either be:

- Fairly Presents in Accordance with (FPIA) audit opinion; and
- Properly Prepared in Accordance with (PPIA) audit opinion.

By proposing that there are two levels of audit opinion, ComReg is introducing a degree of flexibility to the audit process. Annex set out which financial statements, ComReg is proposing should be covered by the FPIA audit opinion and which by the PPIA audit opinion.

A FPIA audit opinion is an audit opinion which provides a high level of assurance, whereas a PPIA audit opinion provides substantially less assurance. The attached annex identifies the financial statements for each of the markets and the audit opinion required. A FPIA audit opinion provides comfort that the overall impression created by the financial statements 'fairly presents' the underlying performance and financial position, including its presentation. This level of audit opinion is the

general standard for industry and is equivalent to the standard required for statutory accounts.

By contrast, PPIA only provides assurance that the figures contained in the financial statements have been properly prepared in accordance with an agreed process/ methodology without any assurance that the overall impression which they convey represents the underlying performance and financial position in a 'fair' manner. Therefore, it will only be permitted where it would not be possible or it would be disproportionate to gain a standard audit opinion. As a consequence of the lower assurance which a PPIA audit opinion provides, it is less costly to obtain than an FPIA opinion.

The flexibility proposed by the two levels of audit opinion is intended to provide a degree of assurance for all financial statements, with the lesser audit opinion required where the standard audit opinion would be disproportionate.

### **10.5 Overview of ComReg's Proposals**

ComReg is of the view that audited accounts are essential because:

- The data used to prepare them is relatively voluminous and needs manipulation and the risk of error is relatively high;
- The audit opinion in statutory accounts would not be relevant at e.g. the product or product group level;
- The risk of ComReg making poor decisions on incorrect unaudited information is high;
- Audit will give significantly improved levels of confidence in the industry.

In summary ComReg is proposing that RTÉNL would be obliged to ensure that the systems and processes employed are sufficient to ensure that the Regulatory Auditor can in their opinion conclude that the Regulatory Financial Statements complies with the Accounting Documents; and enable the Regulatory Financial Statements to be audited and audit opinion be expressed on them which shall conform to Auditing Standards.

**Q. 8. Do you agree with the proposed obligations for Auditors, Audit Reports and Audit Opinions? Please elaborate your response and provide details of any alternatives you consider appropriate**

## **11 Accounting Separation**

### **11.1 Introduction**

The ERG Opinion<sup>11</sup> on Cost Accounting and Accounting Separation defines an Accounting Separation system as “a comprehensive set of accounting policies, procedures and techniques that can be applied to the preparation of financial information that demonstrates compliance with non-discrimination obligations and the absence of anticompetitive cross-subsidies. The outputs from such a system must be capable of independent verification (auditable) and fairly present the financial position and relationship (transfer charge arrangements) between product and service markets. Using accounting separation, a National Regulatory Authority (NRA) imposes on the notified operator a set of rules on how accounting information should be collected and reported. “

ComReg considers that Accounting Separation provides a systematic division of costs, revenues and capital employed between disaggregated regulatory activities and services. It should also ensure that each single account includes only costs, revenues and capital employed that are relevant to the regulatory entities and services.

### **11.2 Proposed Accounting Separation Obligations.**

These proposals apply to RTÉNL which has an Accounting Separation obligation and consist of obligations related to Transfer Charges and Non Discrimination.

### **11.3 Transfer Charges**

A well-defined, transparent and verifiable transfer charging system is necessary for notified operators to demonstrate non-discrimination and calculate internal costs and revenues for non-discrimination purposes. ComReg is proposing that RTÉNL shall secure and be able to demonstrate that the charges it makes for all services provided, either to other group companies or to other customers in the markets in which it has SMP, are based on an objective and fair incorporation of the costs of the underlying activities used in the course of their supply and that these charges are made in a non discriminatory manner.

In particular, this paragraph proposes that where the same activity is used for a number of differing services, the cost incorporated into the charge for a service or customer for a given activity is identical, irrespective of whether the activity is carried out in the course of providing an internal service and irrespective of which internal or external service is being supplied. That is, it reflects what is actually done regardless of the ultimate destination of the service.

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<sup>11</sup> Annex to ERG (04) 15rev1 – “ERG Opinion on the proposed Review of the Recommendation on cost accounting and accounting separation”



To ensure that the Accounting Separation is relevant and reliable it is necessary that it is consistent and objective. Accordingly, the amount incorporated in the cost of a service (and subsequently into the charge) for given activities carried out in the course of the supply of those services must not differ according to whether the service is internal (to the SMP operator's group companies) or external (to an other national TV or Radio company) or the nature of the service supplied.

## **11.4 Non Discrimination and Reconciliations**

### *11.4.1 Non Discrimination in the Cost Cascade.*

As noted earlier it is essential that ComReg understands the way in which costs are attributed to non SMP areas and that the attribution of these costs is on the same basis as for SMP areas. Additionally the basis of the amounts attributed during the cost cascade should be consistent and non discriminatory.

ComReg therefore proposes that where an Activity or combination of Activities is used by RTÉNL in providing a service the same amount is applied and incorporated in the charge for the wholesale service whether they are in the SMP or non SMP area).

### *11.4.2 Reconciliations*

ComReg considers that it is important that financial statements are reliable and are comparable. In addition to ensuring that cost allocations are the same it is important that the numbers reconcile to the statutory accounts and the tariff model.

Therefore ComReg proposes that the Dominant Provider should secure that sufficient checks, controls and meaningful reconciliations are performed between figures contained in the Regulatory Financial Statements and the accounting records and the tariff model to (a) enable the Regulatory Auditor and ComReg to conclude that, in their opinion, the Accounting Separation System complies with the Accounting Documents; and (b) Enable the Regulatory Financial Statements to be audited and an audit opinion expressed upon them in accordance c) Reconcile to RTÉNL 's Statutory Accounts.

## **11.5 Overview of ComReg's Proposals**

ComReg proposes that RTÉNL shall prepare, secure an appropriate audit opinion in respect of, deliver to ComReg and publish the Regulatory Financial Statement in accordance with the attached annex to this document.

**Q. 9. Do you agree with the proposed detailed obligations for Accounting Separation? Please elaborate your response and provide details of any alternatives you consider appropriate?**

## **12 Implementation Arrangements**

### **12.1 Introduction**

The proposals contained in this document will require some time to implement. ComReg proposes to discuss with RTÉNL a programme for implementation of these proposals. This chapter outlines ComReg's current thinking on the way in which the proposals can be implemented.

### **12.2 Overview of the Attached Annex**

The attached annex sets out the form and content of the financial statements and supporting schedules which need to be prepared to comply with the financial reporting obligations.

These financial statements comprise profit and loss accounts, statement of mean capital employed and other supporting schedules. The annex also sets out the level of Audit Opinion (i.e. FPIA and PPIA as appropriate) required for these statements.

### **12.3 Confidentiality Issues**

ComReg is also aware that there may be issues of commercial confidentiality in the information it is requesting to be published. The publication of annual Regulatory Financial Statements provides assurance to other broadcasters that the services they are buying from Dominant Operators are priced appropriately and that ComReg has sufficient information to monitor RTÉNLs' compliance with relevant obligations. However, constraints imposed by commercial confidentiality will mean that not all the information ComReg needs can be published. In the attached annex, ComReg has set out which information is required for publication and what is required for its purposes only.

**Q. 10. Do you have any comments on the schedules proposed in the attached annex to this consultation? ComReg is particularly interested in your views on the form and content of the proposed financial statements/schedules set out in the attached Annex. Do you consider there to be other formats or forms in which the information could be presented? Please elaborate on your response**

## **12.4 Implementation Issues.**

### *12.4.1 Preparation of Regulatory Financial Statements*

ComReg believes that the full suite of information should be available for the financial year end to 31<sup>st</sup> December 2005. ComReg proposes that this timetable should be formalised in conjunction with RTÉNL.

ComReg does not consider that major system changes should be required by RTÉNL to comply with the new obligations and most of the information and documentation should be available for the new Regulatory Financial Statement and schedules, i.e. it should mostly be a case of extracting information from the existing systems and modifying existing documentation.

### *12.4.2 Accounting Documentation*

ComReg proposes that an initial set of the Accounting Documentation, complying with the transparency principle, should be prepared by the end of 2005.

### *12.4.3 Audit Opinions:*

ComReg proposes that audit opinion for the Financial Statement, Supporting Schedules and additional information will be effective from 2005.

**Q. 11. Do you agree with ComReg's proposals for transitional and implementation arrangements? Are there any other issues which ComReg should taken into consideration? Please elaborate on your response?**

### 13 Regulatory Impact Analysis

The Ministerial Direction (issued by the Minister for Communications, Marine & Natural Resources in accordance with S13 of the Communications Regulation Act, 2002) published in February 2003, directs:

*“The Commission before deciding to impose regulatory obligations on undertakings in the market for electronic Communications or for the purposes of the management and use of the radio frequency spectrum or for the purposes of the regulation of the postal sector, shall conduct a Regulatory Impact Assessment in accordance with European and International best practice and otherwise in accordance with measures that may be adopted under the Government’s Better Regulation programme.”*

ComReg is obliged under Regulation 9(6) of the Access Regulations to impose obligations ‘based on the nature of problem identified, proportionate and justified in the light of the objectives laid down in section 12 of the Act of 2002 and only be imposed following consultation in accordance with Regulations 19 and 20 of the Framework Regulations’. In the various market analysis consultations with the industry, ComReg has stated that it considers the obligation of Accounting Separation is an appropriate remedy to address the potential competition problems in the national analogue terrestrial broadcasting markets. ComReg in this paper consults as to how this remedy can be effectively implemented and furthermore considers the proposed reporting requirements to be proportionate and justified.

ComReg will conduct a Regulatory Impact Assessment which will form part of the decision making process and would invite comments on the proportionality of the means of achieving the Accounting Separation remedy listed in this consultation.

**Q. 12. Respondents are asked to provide views on whether the proposed financial reporting obligations proposed to comply with the Accounting Separation Remedy are proportionate and justified and offer views on what factors ComReg should consider in completing its Regulatory Impact Assessment?**

**Q. 13. Are there any other issues or comments you would like to make on this Consultation Paper? If so please do here and elaborate on your response**

## 14 Submitting Comments

The consultation period will run from 1<sup>st</sup> July 2005 to 12<sup>th</sup> August 2005 during which the Commission welcomes written comments on any of the issues raised in this paper.

Having analysed and considered the comments received, ComReg will review the subject matter of the consultation and publish a report in September on the consultation which will, inter alia summarise the responses to the consultation.

In order to promote further openness and transparency ComReg will publish all respondents' submissions to this consultation, subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

### **Please note**

ComReg appreciates that many of the issues raised in this paper may require respondents to provide confidential information if their comments are to be meaningful.

As it is ComReg's policy to make all responses available on its web-site and for inspection generally, respondents to consultations are requested to clearly identify confidential material and place confidential material in a separate annex to their response

Such Information will be treated subject to the provisions of ComReg's guidelines on the treatment of confidential information – ComReg 05/24

## Appendix A – Consultation Questions

### List of Questions

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- Q. 7. What are your views regarding the duty of care Regulatory Auditors to Regulators? Do you consider that ComReg should have a duty of care from the regulatory auditors? Please provide practical and legal justification for your point of view. 29
- Q. 8. Do you agree with the proposed obligations for Auditors, Audit Reports and Audit Opinions? Please elaborate your response and provide details of any alternatives you consider appropriate ..... 30
- Q. 9. Do you agree with the proposed detailed obligations for Accounting Separation? Please elaborate your response and provide details of any alternatives you consider appropriate? ..... 33
- Q. 10. Do you have any comments on the schedules proposed in the attached annex to this consultation? ComReg is particularly interested in your views on the form and content of the proposed financial statements/schedules set out in the attached Annex. Do you consider there to be other formats or forms in which the information could be presented? Please elaborate on your response ..... 34
- Q. 11. Do you agree with ComReg’s proposals for transitional and implementation arrangements? Are there any other issues which ComReg should taken into consideration? Please elaborate on your response? ..... 35
- Q. 12. Respondents are asked to provide views on whether the proposed financial reporting obligations proposed to comply with the Accounting Separation Remedy are proportionate and justified and offer views on what

factors ComReg should consider in completing its Regulatory Impact Assessment?..... 36

Q. 13. Are there any other issues or comments you would like to make on this Consultation Paper? If so please do here and elaborate on your response..... 36



## Appendix B – Relevant Legal Powers giving rise to consultation.

This consultation document is issued pursuant to the ComReg Decision Notice entitled Wholesale Broadcasting Transmission Services Markets - SMP Obligations Decision No. D16/04, dated 22 December, 2004 ('the Decision Notice'). Section 3.1 of the Decision Notice imposed upon RTÉNL obligations of Transparency, Non discrimination and Accounting Separation as provided for by Regulations 10, 11 and 12 of the Access Regulations 12[1] respectively. In relation to Accounting Separation, section 3.10 of the Decision Notice provided that the details of the Accounting Separation obligation would be contained in a decision(s) and direction(s) to be made by ComReg, following further consultation in relation to the detailed requirements for and the practical implementation thereof.

### Accounting Separation

12. (1) The Regulator may in accordance with Regulation 9 impose on an operator obligations for accounting separation in relation to specified activities related to interconnection, access or both interconnection and access.

(2) Without prejudice to the generality of paragraph (1), the Regulator may require an operator which is vertically integrated to make transparent its wholesale prices and its internal transfer prices, *inter alia*, to ensure compliance with any obligation imposed under Regulation 11 or, where necessary, to prevent unfair cross subsidy and, where it does so, may specify the format and accounting methodology to be used.

(3) A requirement upon an operator under Regulation 17 of the Framework Regulations may, in order to facilitate the verification of compliance by an operator with any obligations of transparency under Regulation 10 and non-discrimination under Regulation 11, include a requirement that accounting records, including data on revenues received from third parties, are provided by any such operator to the Regulator on request.

(4) Subject to the protection of the confidentiality of any information which the Regulator considers confidential, the Regulator may publish any information obtained by it under paragraph (3) to the extent that the Regulator considers that such information would contribute to an open and competitive market.

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<sup>12[1]</sup> S.I. No. 305 of 2003 the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2003 which transposes Directive 2002/19/EC of the European Parliament and the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities.

### Obligation of Non-discrimination

Regulation 11 lays down the requirements with regard to the obligation of Non-discrimination and covers the following;

- a. Regulator's power to impose non-discrimination in relation to interconnection and/or access;
- b. Such non-discrimination shall ensure that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services and shall ensure that the operator provides services and information to others under the same conditions and of the same quality as the operator provides for its own services or those of its subsidiaries or partners.