



Commission for
Communications Regulation

Market Review - Fixed Voice Call Termination Markets

Further Review concerning 0818 Numbers and Additional Fixed Service Providers

Response to Consultation and Decision

Reference:	ComReg 20/95
Decision:	D09/20
Date:	15 October 2020

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1 Executive Summary

Overview

- 1.1 Telephone calls made from one network to another are initiated (or ‘originated’) on one Service Provider’s (**‘SP’s’**) network and completed (or ‘terminated’) on another’s. While the person making the call (the ‘calling party’) pays the originating SP for doing so, a separate transaction usually takes place at wholesale level, whereby the terminating SP charges the originating SP for completing the call.
- 1.2 This wholesale interconnection service is known as Wholesale Voice Call Termination (**‘WVCT’**), and can be subdivided into Fixed Voice Call Termination (**‘FVCT’**) in the case of calls delivered to telephones at a fixed location and Mobile Voice Call Termination (**‘MVCT’**) in the case of calls delivered to mobile telephones. WVCT allows retail subscribers of the originating SP the ability to call and be connected to retail customers of the recipient SP. SPs can be subdivided into Fixed Service Providers (**‘FSPs’**) and Mobile Service Providers (**‘MSPs’**), depending on whether they operate fixed or mobile networks¹.
- 1.3 ComReg is required to review certain electronic communications markets in order to decide whether regulation is appropriate and, if so, what form such regulation should take. The EC has recommended that wholesale FVCT markets and wholesale MVCT markets are, in general, susceptible to *ex ante* regulation. This Consultation is concerned only with the analysis of the wholesale markets for the provision of FVCT (the **‘Relevant FVCT Market(s)’**) in the State.
- 1.4 A large number of FSPs are currently active on the retail fixed telephony market, some of which operate their own network infrastructures or switching equipment, and some of which own no infrastructure and operate on a purely resale basis. Only some of these FSPs are involved in the provision of FVCT, having regard to their underlying network infrastructure, including their wholesale network access arrangements.

¹ In the context of facilitating subscribers’ abilities to make calls to subscribers of other networks (‘off-net calls’), the originating SP pays a wholesale charge to the terminating SP, known as a termination rate. Termination rates levied by MSPs are known as Mobile Termination Rates (**‘MTRs’**), or Fixed Termination Rates (**‘FTRs’**) when levied by FSPs. The termination rate allows the terminating Service Provider to recover relevant costs associated with the provision of the WVCT service, which completes the incoming leg of a call to its subscriber.

- 1.5 Pursuant to ComReg’s previous analysis of the Relevant FVCT Markets, set out in its termination markets decision published in May 2019 (**‘2019 Termination Markets Decision’**)², 22 FSPs were designated with Significant Market Power (**‘SMP’**) and made subject to SMP regulation³. The 22 FSPs are referred to collectively in this Decision as the **‘2019 SMP FSPs’**.
- 1.6 In the 2019 Termination Markets Decision ComReg had also considered whether Universal Access Numbers (**‘UAN(s)’**) in the 0818 number range should fall within the definition of the Relevant FVCT Markets and decided that they did not given *inter alia* the called party on the 0818 number range was likely to be more sensitive to the level of the FTR set by its FSP. However, ComReg referred to certain developments that may require that this position be reassessed and therefore undertook to further consult on this matter, if appropriate⁴. Amongst these developments were regulatory changes made outside of SMP regulation such that retail charges for calls to 0818 numbers would, from 1 December 2020, be set such that the cost of calls to 0818 numbers was not to exceed the originating SP’s standard rate for a call of the same duration to a standard landline number (a **‘Geo-Linking Condition’**). Such calls were also to be included within bundled minutes, such that the calling party pays for these calls on a per call basis.
- 1.7 In addition to the question of whether 0818 numbers should be included in the Relevant FVCT Market(s), ComReg had also noted in the 2019 Termination Markets Decision that it intended to issue a Consultation to assess whether any additional FSPs (and any other new entrant FSPs) not covered by the 2019 Termination Markets Decision are operating within a Relevant FVCT Market, whether they have SMP and, if so, whether they should have regulatory obligations imposed upon them. In this regard three additional FSPs (the **‘Additional FSPs’**)⁵, were identified as potentially providing FVCT services. On 2 April 2020 ComReg therefore published a Consultation and Draft Decision (**‘Consultation’**) in order to address these issues⁶.

² Fixed Voice Call and Mobile Voice Call Termination - Response to Consultation and Decision, ComReg Document 19/47, ComReg Decision D10/19, May 2019 <https://www.comreg.ie/publication/market-review-fixed-voice-call-termination-and-mobile-voice-call-termination/>. The 2019 Termination Decision was notified to the European Commission under Case IE/2019/2150 (for FVCT) and Case IE/2019/2151 (for MVCT).

³ Referred to in this Decision as the 2019 SMP FSPs. The 2019 SMP FSPs are also listed in paragraphs 5.62 and 6.59 of this Decision. (See paragraph 2.33 and 5.173 of the 2019 Termination Markets Decision).

⁴ See paragraph 2.12 onwards for more background in this regard.

⁵ Namely Phone Pulse Ltd, Goldfish and TSFY Ltd (trading as Nuacom) as set out in paragraph 2.21 of this Decision.

⁶ Further Review concerning 0818 Numbers and Additional Fixed Service Providers, Reference ComReg 20/19, April 2020 <https://www.comreg.ie/publication/fixed-voice-call-termination-market-further-review>.

- 1.8 The purpose of this Response to Consultation and Decision (**‘Decision’**) is, taking account of the submissions received in response to the Consultation⁷, to address the issues identified in paragraph 1.6 and 1.7 above. In this regard ComReg has decided that:
- (a) The existing definition of the Relevant FVCT Markets should be amended to include FVCT to the 0818 number range;
 - (b) The Additional FSPs and the 2019 SMP FSPs each operate within a Relevant FVCT Market, as amended, and as individually defined as in paragraph 1.13 below;
 - (c) Each Additional FSP should be designated with SMP and the 2019 SMP FSPs SMP designations should remain; and
 - (d) Each Additional FSP should have appropriate regulatory obligations imposed upon it and the 2019 SMP FSPs’ obligations should remain.
- 1.9 With regard to the 2019 SMP FSPs, ComReg notes that the changes to the definition of the Relevant FVCT Markets, as defined in Section 5 of this Decision, effectively amount to an amendment of the Relevant FVCT Markets as defined in the 2019 Termination Markets Decision to now reflect the inclusion of 0818 numbers. ComReg’s position is that the analysis and findings in the 2019 Termination Markets Decision predominantly remain valid for purposes of this Decision, unless identified otherwise. Therefore, the designation of the 2019 SMP FSPs with SMP under the 2019 Termination Markets Decision is maintained. In particular, ComReg is satisfied that it continues to be appropriate that each of the 2019 SMP FSPs is individually (and not collectively) designated as having SMP in relation to the Relevant FVCT Market on which such FSPs operate.
- 1.10 Given that the 2019 SMP FSPs will continue to be designated with SMP it follows that the obligations imposed on the 2019 SMP FSPs in the 2019 Termination Markets Decision are maintained and, therefore, are required to continue to comply with those obligations⁸. Given this, ComReg does not consider it necessary to repeat that detailed assessment for purposes of this Decision, although refers to it as appropriate.
- 1.11 Throughout this Decision ComReg refers to the various categories of FSP in the following terms:

⁷ See paragraph 2.46 and 2.47 for details regarding submissions received in response to the Consultation.

⁸ The only difference is that this Decision amends the Relevant FVCT Market Definition such that it now included FVCT supplied to 0818 numbers.

Table 1: Service Provider Terminology

FVCT Service Providers	
Name	Description
2019 SMP FSPs	The 22 FSPs designated with SMP in the 2019 Termination Markets Decision.
Additional FSPs	The three identified additional FVCT suppliers (Nuacom, Goldfish and Phone Pulse).
Additional SMP FSPs	The 3 Additional FSPs to be designated with SMP which are not currently so designated.
Unregulated FSP(s)	Any FSP offering FVCT which is not currently designated with SMP.

- 1.12 In carrying out a market review, ComReg follows a three stage process. First, the scope of the markets in question is defined (**‘market definition’**). Second, ComReg assesses whether any SP possesses Significant Market Power (**‘SMP’**) on any of those markets (**‘competition assessment’**). Third, ComReg assesses what harm to competition could result from the potential exercise of market power, having regard to Service Providers’ abilities and incentives to engage in anti-competitive behaviour (**‘competition problems’**), and, arising from this, what preventative measures or obligations (**‘remedies’**) must be put in place to prevent harm to competition, competitors and, ultimately, consumers.

Definition of the Relevant FVCT Markets

- 1.13 It is ComReg’s position that the Relevant FVCT Markets each consist of:

“the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point to the End User or level on that terminating FSP’s network at which incoming voice calls can be handed over for termination to Fixed Numbers⁹, and in respect of which that FSP is able to set the FTR.

The geographic scope of the Relevant FVCT Market(s) corresponds to the geographic coverage of each individual FSP’s network.”

- 1.14 For the avoidance of doubt:

- (a) This is a technology neutral market definition and the use of the term ‘FSP’ in the above context is intended to refer to any Service Provider supplying the FVCT services concerned, irrespective of the underlying technology (i.e. wired or wireless);

⁹ Fixed Numbers are defined as including Geographic Numbers as well as numbers in 076, 112/999 and 0818 number ranges.

- (b) Fixed Numbers includes Geographic Numbers¹⁰ as well as numbers in the 0818, 076, 112/999 number range; and
- (c) ‘Other Service Provider’ includes any authorised undertaking,¹¹ whether located in the State or in another jurisdiction.

1.15 ComReg concludes that the description in paragraphs 1.13 and 1.14 above would therefore differ from that set out in the 2019 Termination Markets Decision in one material respect, namely that 0818 numbers are now included in the relevant FVCT product market, along with Geographic, 076 and 112/999 numbers. ComReg’s assessment in this regard and its positions are set out in paragraphs 5.25 to 5.41 of this Decision.

1.16 ComReg considers that all three Additional FSPs which provide FVCT constitute separate individual Relevant FVCT Markets for the purposes of this review. Therefore, it is ComReg’s position that the following separate Relevant FVCT Markets exist in respect of each of the three Additional FSPs:

- (a) Wholesale FVCT supplied by Goldfish Telecom Limited (**‘Goldfish’**);
- (b) Wholesale FVCT supplied by Phone Pulse Ltd (**‘Phone Pulse’**); and
- (c) Wholesale FVCT supplied by TSFY trading as Nuacom (**‘Nuacom’**);

1.17 It is recognised that more FSPs (over and above the Additional FSPs addressed in this Decision) could start supplying FVCT over the lifetime of this market review. ComReg intends to monitor and consider such developments on a case-by-case basis.

Competition and SMP Assessment

1.18 ComReg has assessed whether each of the Additional FSPs operating within the above separate Relevant FVCT Markets has SMP, that is, the ability to behave, to an appreciable extent, independently of its competitors, customers and consumers. Having considered existing competition, the potential for competition to emerge over the next few years, along with other factors (such as the Additional FSPs’ FTR pricing behaviour and the strength of any Service Provider’s buyer power in its FVCT negotiations with FSPs), it is ComReg’s position that each of the Relevant FVCT Markets is not effectively competitive. Consequently, ComReg is designating each of the Additional FSPs as having SMP within the individual Relevant FVCT Markets within which they operate.

¹⁰ ‘Geographic Numbers’ are broadly defined in ComReg’s updated Numbering Conditions of Use and Application Process decision (ComReg Document ComReg 15/136R2, November 2019, ‘Numbering Conditions of Use’) and are broadly defined as telephone numbers linked to a particular geographic location. The current definition of a Geographic Number remains the same (as it was in ComReg Document 15/136R1), being “a number from the National Numbering Scheme where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (‘NTP’)”.

¹¹ Pursuant to Regulation 4 of the Authorisation Regulations (European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011)).

Competition Problems

- 1.19 Competition problems could, absent regulation, arise in the Relevant FVCT Markets and related markets due, inter alia, to the ability and incentives of an Additional SMP FSP, having regard to its market power, to set its FTRs above the competitive level. FTRs ultimately feed into the cost of making calls and thus impact on consumers. Where termination rates are set above efficient cost, financial and competitive imbalances between Service Providers can also result. Such distortions imply that consumers as a group ultimately pay more in terms of reduced competition, lower innovation and higher prices.
- 1.20 A central competition problem arising in each of the Relevant FVCT Markets is the ability and incentive of an SMP FSP, by virtue of its market power, to set its FTRs above the level which would otherwise be expected in a competitive market. Having regard to the definitions of the Relevant FVCT Markets, at the retail level, due to the CPP principle¹², the calling party typically bears the entire cost of the call and the called party incurs no direct cost in doing so. As FTRs feed into the retail costs of making off-net calls, they ultimately feed into the retail prices charged by Service Providers for making off-net calls (or to the entire cost of the service provided).
- 1.21 Because of the CPP principle, the subscriber receiving the call is not typically sensitive to the FTR set by its FSP (as the FTR is paid for by the originating Service Provider and typically fed through into charges to its retail subscriber). This called party indifference to termination rates, coupled with excessively priced termination rates, has the potential to distort competition between Service Providers as excessive termination rates, depending on relative traffic flows, effectively raise the costs (or reduce the profitability) of rival SPs with whom the terminating SP is in competition.

Remedies

- 1.22 To mitigate identified potential competition problems that could arise from the exercise of market power by the Additional SMP FSPs, ComReg has imposed a range of *ex ante* regulatory remedies to ensure effective and efficient access to FVCT to the benefit of competition and, ultimately, consumers. In this regard, ComReg imposes the following regulatory obligations on each of the Additional SMP FSPs, with these being the same as those which were imposed on the 2019 SMP FSPs under the 2019 Termination Markets Decision¹³.
- (a) **Transparency Obligations:** in addition to a general transparency obligation, each Additional SMP FSP shall be required to make publicly available and keep updated on its website a Reference Interconnect Offer ('**RIO**') and to make its FTRs publicly available and publish such FTRs in an easily accessible manner on its website.

¹² CPP refers to the Calling Party Pays principle. See paragraph 2.27.

¹³ Save with respect to Eircom which had additional obligations imposed upon it under the 2019 Termination Markets Decision (such as those requiring it to provide a range of interconnection services).

- (b) **Non-Discrimination Obligations:** which include requirements to ensure that equivalent conditions are applied, including in respect of FTRs or other charges, in equivalent circumstances to other undertakings requesting or being provided with access to FVCT and associated facilities; and requirements to ensure that such access and information are provided to all other undertakings under the same conditions and of the same quality as each Additional FSP designated with SMP provides to itself¹⁴ or to its subsidiaries, affiliates or partners.
- (c) **Access Obligations:** which include a requirement to provide access to FVCT and associated facilities; a requirement to negotiate in good faith; a requirement not to withdraw access to facilities already granted; a requirement to grant open access to technical interfaces, protocols and other key technologies; and requirements governing fairness, reasonableness and timeliness of access.
- (d) **Price Control Obligations:** In Section 7 ComReg sets out its views, similar to the 2019 Termination Markets Decision, that the Additional SMP FSPs have the ability and incentive to set prices for access to FVCT at an excessively high level, thereby impacting on downstream competition to the ultimate detriment of consumers. ComReg therefore considers it justified and proportionate to impose a price control remedy on the Additional SMPs FSPs. In paragraphs 1.23 to 1.28 below ComReg sets out its regarding the imposition of a price control.

Price Control Obligations

- 1.23 In conjunction with the 2019 Termination Markets Decision, ComReg published a decision on fixed termination rates, namely the 2019 Separate Pricing Decision¹⁵. Section 5.3 of that decision deals with FTR Modelling and provides the details of the modelling and updates to the FTR cost model.
- 1.24 ComReg considers it appropriate to continue to use the pricing for maximum regulated FTRs based on the rates as set out in the 2019 Separate Pricing Decision.

¹⁴ This does not in apply to its notional FTRs with respect to its self-supply of FVCT (for on-net calls).

¹⁵ Price Control Obligations for Fixed and Mobile Call Termination Rates: Response to Consultation and Decision, ComReg Document 19/48, ComReg Decision D11/19, May 2019. See <https://www.comreg.ie/publication-download/price-control-obligations-for-fixed-and-mobile-call-termination-rates>. The 2019 Separate Pricing Decision was notified to the European Commission under Case IE/2019/2150 (for FVCT) and Case IE/2019/2151 (for MVCT).

- 1.25 It is ComReg’s position that these rates will remain in effect until replaced by Eurorate FTRs¹⁶.
- 1.26 Therefore, ComReg’s position is that the resulting maximum FTRs to be charged by the Additional SMP FSPs are as shown in Table 2 below, as applicable from 1 January for the years 2020, 2021 and from 2022 respectively:

Table 2: FTR based on Glide Path

FTR – two-part and one-part call charges ¹⁷	2021	From 2022
(A)Two-part charge: call set-up fee	0.062	0.062
(B)Two-part charge: per minute fee	0.030	0.024
One-part charge: per minute fee	0.051	0.045

- 1.27 Having regard to the analysis set out in paragraphs 8.139 to 8.161 in the 2019 Termination Markets Decision, ComReg’s position is that while the Irish Regulated FTRs (as determined by ComReg) will apply to termination of calls originated within the EEA, the Additional SMP FSPs may apply a differentiated approach in respect of the termination of calls originated outside the EEA, subject to the conditions set out in paragraphs 8.169 to 8.193 of the 2019 Termination Markets Decision¹⁸.
- 1.28 The maximum FTRs will, per the requirements set out in this Decision, come into effect on the first working day of the calendar month falling two complete calendar months following the effective date of this Decision – namely 04 January 2021. This will also apply with respect to the FTRs charged by the 2019 SMP FSPs with respect to FVCT to 0818 numbers.

¹⁶ As noted in paragraph 2.33 the Eurorate FTRs will replace the existing maximum regulated FTRs that have been set on a national basis by national regulatory authorities in Member States, including the maximum FTRs established by ComReg via SMP regulation. The EECC Directive provides for the European Commission to adopt a delegated act setting a single maximum European Union-wide FTR by 31 December 2020, with these rates intended to come into effect in 2021. The aim of the project is to set the European-Union wide FTRs that will apply to all Member States pursuant to the EECC. The Eurorate FTRs will replace the existing maximum regulated FTRs that have been set on a national basis by the national regulatory authorities in Member States, including the maximum FTRs set by ComReg in this Decision.

¹⁷ Each operator is free to choose whether to use two-part or one-part charging. Under a two-part charge the operator charges a price for setting up each call and then a separate charge for the duration of the call. Under a one-part charge the price for call set up is included in the duration charge.

¹⁸ See paragraphs 8.48 to 8.53 of this Decision for a further details regarding these conditions.

Other Developments

- 1.29 Article 75 of the European Electronic Communications Code (**EECC**) requires the European Commission (**EC**) to adopt a delegated act setting a single maximum European Union-wide FTRs and MTRs by 31 December 2020, with these rates intended to come into effect in 2021 (the **Delegated Act**). The Eurorate FTRs and MTRs will ultimately replace the maximum regulated FTRs and MTRs that have been set on a national basis by NRAs in Member States, including the maximum FTRs determined by ComReg via SMP regulation (i.e. the FTRs and MTRs determined by ComReg in the 2019 Separate Pricing Decision). ComReg notes that Eurorates apply to all FSPs (and MSPs) through the mechanism of the Delegated Act and not via SMP regulation. This means that any existing or new FSPs supplying FVCT services would have to automatically apply the Eurorates without the need for a finding of SMP by a National Regulatory Authority ('NRA') such as ComReg. The 2019 SMP FSPs (and 2019 SMP MSPs) would be obliged to apply the Eurorates given the requirements under Delegated Act.
- 1.30 ComReg also notes that the EC has commenced a review of its current list of recommended markets as set out in the 2014 Recommendation and has sought views on a range of issues, including the impact of OTTs on traditional services and whether the FVCT (and MVCT) markets should be removed from the future list of recommended markets, in particular, given the potential impact of the setting of Eurorates in the EU by 31 December 2020. The EC notes that the setting of Eurorates will avoid excessive wholesale termination prices. In view of this, the EC has asked whether continued regulation of termination markets is warranted at an EU level. A revised list of recommended markets ('Revised Recommendation') is expected to be published by the EC later this year.
- 1.31 Having regard to the impending implementation of the Delegated Act and the possible impact of the Revised Recommendation on termination markets, ComReg will further consider the implications for existing SMP regulation of termination markets, as appropriate.

- 1.32 A new FSP, The Black Dog, has been identified which may operate within a Relevant FVCT Market. Consistent with the market definition and SMP assessment approach adopted in the Consultation and this Decision ComReg would have to conduct a further consultation in order to determine whether The Blackdog operates within a Relevant FVCT Market and, if so, whether it should be designated with SMP and have any associated obligations imposed upon it in order to address any identified competition problems. Such an approach would also usually apply to any other new FSPs. However, ComReg notes that the introduction under the Delegated Act of Eurorates in the EU by 31 December 2020 would require The Blackdog to apply the associated rates for any FVCT services it supplies. Having regard to the impending implementation of the Delegated Act and the possible impact on termination markets of the Revised Recommendation, ComReg will further consider the implications for of possible SMP regulation of The Blackdog (or any other new FVCT suppliers that may emerge) as appropriate.
- 1.33 As noted above, ComReg will keep this matter under review and will take appropriate action as required.

2 Introduction

Overview

- 2.1 The Commission for Communications Regulation (**‘ComReg’**) is the National Regulatory Authority (**‘NRA’**) responsible for the regulation of the electronic communications sector (telecommunications, radio communications and broadcasting transmission) and the postal sector in the Republic of Ireland.
- 2.2 Subscribers to retail fixed¹⁹ voice call (**‘RFVC’**) services and retail mobile voice call (**‘RMVC’**) services can make and receive calls to and from subscribers on other fixed and mobile telephony networks²⁰. Making and receiving calls across different Service Providers (**‘SP(s)’**) networks is made possible by means of various wholesale interconnection services which include call origination²¹, call transit²² (if necessary), and call termination.
- 2.3 Wholesale voice call termination (**‘WVCT’**) services offered by SP(s) fall into two categories. Firstly, Fixed Voice Call Termination (**‘FVCT’**) is the completion of an incoming call by a Fixed Service Provider (**‘FSP(s)’**) on its network. Secondly, Mobile Voice Call Termination (**‘MVCT’**) is the completion of an incoming call by a Mobile Service Provider (**‘MSP(s)’**) on its network. When a subscriber of a FSP or MSP receives a call, that subscriber’s SP must terminate that call on its network. At a wholesale level a charge is levied by the called party’s SP on the calling party’s SP (either directly or indirectly), in order to cover the costs associated with completing or terminating that incoming call on its network.
- 2.4 The wholesale charges levied by a FSP for the supply of FVCT is known as a Fixed Termination Rate (**‘FTR’**), while the wholesale charge levied by a MSP for the supply of MVCT is known as a Mobile Termination Rate (**‘MTR’**).

¹⁹ Please note that for the purposes of this Decision, the term ‘fixed voice’ refers to voice services provided to end users who make/receive voice calls at a fixed location, i.e. typically within the home or a business premises. While the definition implies that the voice calls service is provided at a fixed location, it does not necessarily imply that the underlying or supporting network is always a wired network.

²⁰ In this Decision, where appropriate, RFVC and RMVC are collectively referred to as ‘Retail Voice Calls’ (**‘RVC(s)’**).

²¹ Fixed Voice Call Origination (**‘FVCO’**) is a wholesale service that involves the supply of the switching, routing, and conveyance of a voice call up to a designated point of handover on a network, which is typically located at a switching point in a telephone exchange (or equivalent point in a network). Wholesale FVCO services are often supplied with an access path (known as Wholesale Line Rental) over which FVCO is supplied.

²² Transit is a wholesale service provided to Service Providers that involves the switching, routing and conveyance of calls between the point of handover of the FVCO stage of a call, up to, but not including, the termination stage of a call. The termination stage is typically from the nearest switching point to the called party onwards. Several Service Providers currently provide transit in Ireland, including Eircom, BT and Virgin Media.

- 2.5 On 23 May 2019 ComReg published its termination market analysis decision (**‘2019 Termination Markets Decision’**)²³ in which it set out its final position regarding its review of competition within the wholesale FVCT markets and MVCT markets. This followed the publication of a consultation in October 2017 (**‘2017 Termination Markets Consultation’**²⁴).
- 2.6 On the same day, ComReg separately issued a termination pricing decision (**‘2019 Separate Pricing Decision’**)²⁵ which further specified the price control obligations that ComReg had imposed in the 2019 Termination Markets Decision. This followed the publication of a separate pricing consultation in March 2018 (**‘2018 Separate Pricing Consultation’**)²⁶.
- 2.7 In the Consultation published on 2 April 2020 ComReg had regard to certain developments which ComReg identified as having a bearing on the regulation of FVCT and which would, in ComReg’s view, require amendments to the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision. This included the identification of additional FSPs not covered by the 2019 Termination Markets Decision and which ComReg now concludes be subject to regulation.
- 2.8 In this Decision, and having regard to the submissions received in response to the Consultation, ComReg sets out its reasoning and final position that:
- (a) the existing definition of the Relevant FVCT Markets is being broadened to now include FVCT to the 0818 number range (discussed further in paragraphs 2.9 to 2.20 below); and
 - (b) certain additional FSPs (the **‘Additional FSPs’**) operating within a Relevant FVCT Market, are each designated as having Significant Market Power (**‘SMP’**) and certain regulatory obligations are being imposed upon them (discussed further in paragraphs 2.21 to 2.25 below).

0818 Numbers

- 2.9 In the 2019 Termination Markets Decision²⁷ ComReg individually defined the relevant FVCT markets (**‘Relevant FVCT Market(s)’**) as:

²³ Fixed Voice Call and Mobile Voice Call Termination - Response to Consultation and Decision, ComReg Document 19/47, ComReg Decision D10/19, May 2019 <https://www.comreg.ie/publication/market-review-fixed-voice-call-termination-and-mobile-voice-call-termination/>. The 2019 Termination Decision was notified to the European Commission under Case IE/2019/2150 (for FVCT) and Case IE/2019/2151 (for MVCT).

²⁴ <https://www.comreg.ie/publication/market-review-fixed-voice-call-termination-mobile-voice-call-termination>

²⁵ Price Control Obligations for Fixed and Mobile Call Termination Rates: Response to Consultation and Decision, ComReg Document 19/48, ComReg Decision D11/19, May 2019. See <https://www.comreg.ie/publication-download/price-control-obligations-for-fixed-and-mobile-call-termination-rates>. The 2019 Separate Pricing Decision was notified to the European Commission under Case IE/2019/2150 (for FVCT) and Case IE/2019/2151 (for MVCT).

²⁶ Price Consultation Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates, ComReg Document 18/19, March 2018. See <https://www.comreg.ie/publication/price-consultation-specification-proposed-price-control-obligations-fixed-mobile-call-termination-rates>.

²⁷ See paragraph 5.171 in Section 5 of the 2019 Termination Markets Decision.

“the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point to the End User or level on that terminating FSP’s network at which incoming voice calls can be handed over for termination to Fixed Numbers, and in respect of which that FSP is able to set the FTR.

The geographic scope of the Relevant FVCT Market(s) corresponds to the geographic coverage of each individual FSP’s network”.

- 2.10 The definition of ‘Fixed Numbers’ is intrinsic to the above definition of the Relevant FVCT Markets and encompasses a range of numbers that are representative of the characteristics associated with a subscribers’ ability to make and receive telephone calls. Such numbers are also used by FSPs to route the final leg of an inbound call to a subscriber’s fixed line telephone (and are associated with a FSP’s ability to supply FVCT and set the FTR, being the wholesale charge levied by the calling parties’ SP for the provision of the FVCT service).
- 2.11 ‘Fixed Numbers’, for the purpose to the 2019 Termination Market Decision, was defined to encompass Geographic Numbers²⁸, Nomadic Numbers (076 numbers), and emergency numbers (112/999 numbers).

²⁸ ‘**Geographic Numbers**’ are defined in ComReg’s [Numbering Conditions of Use and Application Process](#) decision (ComReg Document ComReg 15/136R2, November 2019, ‘**Numbering Conditions of Use**’) as being “a number from the National Numbering Scheme where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (**‘NTP’**)”.

- 2.12 In the 2019 Termination Markets Decision, ComReg had also considered whether Universal Access Numbers in the 0818 number range should fall within the definition of the Relevant FVCT Markets and decided that they did not on the basis that FVCT to 0818 numbers was subject to sufficiently different competitive characteristics to FVCT to Geographic Numbers more generally²⁹. However, ComReg recognised that the introduction of changes arising from the implementation of the 2018 Non-Geographic Numbering (**‘NGN’**) Decision (**‘the 2018 NGN Decision’**)³⁰ could lead to changes in how 0818 numbers are used by Value Added Service Providers (**‘VASPs’**), as well as the competitive characteristics at the wholesale and retail level. ComReg noted that it intended to further consider the question as to whether 0818 numbers fall within the definition of the Relevant FVCT Markets and, if appropriate, further consult on this matter.
- 2.13 The 2018 NGN Decision reduces the number of NGN ranges from 1 January 2022 to two number ranges – 1800 for Freephone and 0818 – with other number ranges (1850, 1890 and 076³¹ number ranges) being ceased after this date (this is referred to in this Decision as **“NGN Consolidation”**)³².
- 2.14 The 2018 NGN Decision also capped the charge for callers to 0818 numbers at the price of a cost of calling a geographic number (this is known as the **“Geo-linking Condition”**)³³.

²⁹ See paragraphs 5.55 to 5.64 of the 2019 Termination Markets Decision. 0818 numbers were mainly being used for the purposes of providing business and information services to consumers; differences in the characteristics associated with 0818 numbers relative to 076 and Geographic Numbers, including allowing the use for value added features; and businesses using 0818 numbers were more likely to be sensitive to the termination charges applied by their terminating FSP, as they use such 0818 phone numbers as a sales or payment or other customer contact opportunity from calling parties (e.g. bank customers wishing to pay a bill, or consumers wishing to buy a ticket to a concert) and given that termination rates feed into the cost faced by calling parties (who are seeking to engage with them). Accordingly, compared to typical Geographic Number called parties, called parties on 0818 numbers are likely to be more incentivised to have greater awareness of the FTRs charged by their FSP, as 0818 numbers provide such called parties with indirect revenue-generating opportunities. This in turn meant the called party on the 0818 number range was likely to be more sensitive to the level of the FTR set by its FSP and place a degree of constraint on such FTRs.

³⁰ Review of Non-Geographic Numbers, Response to Consultation 18/65 and Decision, ComReg Document Number 18/106, Decision D15/18, 3 December 2018 (**‘2018 Non-Geographic Numbering Decision’**). See <https://www.comreg.ie/publication/review-of-non-geographic-numbers-response-to-consultation-18-65-and-decision/>.

³¹ Except 076 numbers used to provide emergency services.

³² NGN Consolidation therefore means that the 1850, 1890 and 076 ranges will be withdrawn.

³³ The Geo-Linking Condition is that from 1 December 2019, a call to an 1850, 1890, 0818 or 076 NGN will cost no more than the cost of calling a landline number. This means that if landline calls are included in a “bundle of call minutes” then NGN calls will also be “in bundle”. No separate charge will apply for any NGN call (unless the caller has used up all bundled call minutes).

- 2.15 In the 2019 Termination Markets Decision, ComReg noted that the implementation of 2018 NGN Decision may change market conditions impacting the usage of 0818 numbers and, consequently, is of relevance to the question whether FVCT to the 0818 number range should also fall within the Relevant FVCT Markets. At the time of the 2019 Termination Markets Decision ComReg noted that it would further consider this question. ComReg has since reconsidered this position (taking account in particular of the implementation of the Geo-Linking Condition in December 2019 and the NGN Consolidation from January 2022) and now considers that 0818 numbers should fall with the Relevant FVCT Market(s). ComReg addresses this question in Section 5 of this Decision and sets out its analysis and conclusions in this regard in paragraphs 5.25 to 5.61 of this Decision.
- 2.16 The intervention reflected in the 2018 NGN Decision was concerned with the end-user-to-service provider aspects of how calls to NGNs are sold³⁴. ComReg found that consumers had difficulty understanding the different charges that applied to the different classes of NGN and so implemented the Geo-Linking Condition and NGN Consolidation in order to address these concerns.
- 2.17 In addition to these retail level developments regarding NGNs, ComReg also had concerns regarding NGNs at the wholesale level. These concerns related to complexities in wholesale charging relationships and harm arising from wholesale charges for calls to NGNs as set by originating operators (the operator of the calling party) holding bottleneck control over call origination by their retail customers.
- 2.18 In May 2019 ComReg published the 2019 Wholesale NGN Consultation³⁵ (the '**2019 Wholesale NGN Consultation**') which examined the NGN number ranges at a more granular level and, among other things, proposed the introduction of a wholesale price control for call origination charges to 0818 numbers. A final decision, the '**2020 Wholesale NGN Decision**'³⁶, was published by ComReg on 16 January 2020.

³⁴ Calls to 1800 NGNs are free for the caller, the called party pays any call charges. For calls to 1850, 1890, 0818 and 076 the caller pays some or all of the call charges.

³⁵ Published on 22 May 2019 with a Draft Decision in ComReg Document 19/46 entitled "Access to Non-Geographic Numbers: Imposition of price control and transparency obligations". <https://www.comreg.ie/publication/response-to-consultation-further-consultation-and-draft-decision-access-to-non-geographic-numbers-imposition-of-price-control-and-transparency-obligations>.

³⁶ Response to Consultation and Decision: Access to Non-Geographic Numbers: Imposition of price control and transparency obligations, ComReg Document Number 20/04R, Decision D02/20. <https://www.comreg.ie/publication-download/access-to-non-geographic-numbers-imposition-of-price-control-and-transparency-obligations>. The 2020 Wholesale NGN Decision was notified to the European Commission under Case IE/2019/2224.

- 2.19 The 2020 Wholesale NGN Decision stipulates a price control on wholesale origination rates (**‘WOR(s)’**) for calls to 0818 NGNs such that, unless otherwise provided for, the originating operator will be prohibited from imposing a WOR for calls to 0818 NGNs. An exception to this condition will apply where the originating operator (**‘OO’**) is subject to a 0818 termination rate that is in excess of the regulated FTR that applies pursuant to the 2018 Separate Pricing Decision. This applies independently of whether or not the FSP providing the 0818 termination operator has been found by ComReg to have SMP and has had associated regulatory obligations imposed upon it. In such a case, the relevant originating operator will be permitted to respond to that particular 0818 terminating operator by charging a 0818 WOR that is no greater than the difference between that 0818 termination rate charged and the regulated FTR.
- 2.20 ComReg’s 2020 Wholesale NGN Decision to impose a price control in relation to call origination to 0818 numbers was informed in part by a concern that as a result of the Geo-linking Condition, requiring that retail pricing for calls to 0818 numbers is treated the same as that which applies to calls to Geographic Numbers, originating operators may seek to offset any associated loss of retail revenues by introducing WORs, payable by terminating operators. Terminating operators, however, would have no means to recover such a charge other than by increasing their wholesale termination rates associated with 0818. ComReg had noted further that in the absence of a Regulated FTR for 0818 NGNs, a price control which requires operators not to impose a WOR or a limited WOR for 0818 (equal to the difference between the 0818 WTR and the Regulated FTR) would be a suitable remedy.³⁷

Additional FSPs

- 2.21 In the 2019 Termination Markets Decision, ComReg noted³⁸ that after the 2017 Termination Markets Consultation was published, three additional FSPs, namely Phone Pulse Ltd³⁹, Goldfish⁴⁰ and TSFY Ltd (trading as Nuacom)⁴¹ (the **‘Additional FSPs’**), were identified as potentially providing FVCT services.
- 2.22 It was also recognised that FSPs other than the Additional FSPs could start supplying FVCT and ComReg would monitor and consider such developments on a case-by-case basis. ComReg indicated that it intended to issue a Consultation to assess whether these Additional FSPs (and any other new entrant FSPs) are operating within a relevant FVCT market, whether they have SMP and, if so, whether they should have regulatory obligations imposed upon them.

³⁷ See paragraphs 4.108 to 4.114 of the 2020 Wholesale NGN Decision.

³⁸ See, for example, paragraph 2.13 of the 2019 Termination Markets Decision.

³⁹ www.phonepulse.ie.

⁴⁰ www.goldfish.ie.

⁴¹ www.nuacom.ie.

- 2.23 In doing so, ComReg indicated⁴² that it would rely on the detailed assessment in the 2019 Termination Markets Decision. This Decision addresses those questions concerning the Additional FSPs.
- 2.24 Having regard to the above developments and consistent with ComReg's regulatory role to review certain electronic communications markets, this Decision sets out ComReg's further review of competition within the Relevant FVCT Market(s). It does not deal with the Relevant MVCT Markets as defined in the 2019 Termination Markets Decision as there have not been material developments in these markets.
- 2.25 In this Decision ComReg has due regard to any relevant additional information pertaining specifically to its consideration of 0818 Numbers and the Additional FSPs where such additional information would not have been included in the assessment in the 2019 Termination Markets Decision. For the purposes of this Decision, ComReg considers that the analysis in the 2019 Termination Markets Decision remains largely valid. Therefore, rather than repeating the detailed assessment in the 2019 Termination Markets Decision, ComReg considers it appropriate to refer back to the analysis, as appropriate.

What is FVCT?

- 2.26 As noted above, FVCT is the completion of an incoming call by a FSP on its network. When a subscriber of a FSP receives a call, that subscriber's FSP terminates that call on its network. At a wholesale level a FTR charge is levied by the called party's FSP on the calling party's SP⁴³ (either directly or indirectly), in order to cover the costs associated with completing or terminating that incoming call on its network. The FTR typically reflects the duration of the call and is charged on a per minute basis, with some FSPs varying their per-minute FTR by time of day or week (peak / off peak/ weekend minutes).
- 2.27 The 'Calling Party Pays' ('**CPP**') principle is a retail principle, that impacts wholesale termination markets and associated wholesale termination charges. FVCT charges are typically not directly visible to retail subscribers of fixed voice services when they make or receive calls. However, calling parties' SPs may pass these FVCT charges onto their retail subscribers, either through the cost of making a call or include the cost in the overall cost of the service.
- 2.28 If a SP originates and terminates a call on its own network (an 'on-net' or 'on-network' call), the SP effectively provides a termination service to itself.

Legal Basis and Regulatory Framework

- 2.29 The positions set out in this Decision adopts the approach recommended by the European Commission ('**EC**') and, in doing so, takes the utmost account of:

⁴² See paragraph 5.160 of the 2019 Termination Markets Decision.

⁴³ The calling party can be calling from a fixed (landline) or mobile telephone.

- (a) The **2014 Recommendation**⁴⁴ and the **Explanatory Note to the 2014 Recommendation**⁴⁵ on relevant product and service markets susceptible to *ex ante* regulation within the electronic communications sector ;
- (b) **SMP Guidelines**⁴⁶ on market analysis and the assessment of SMP;
- (c) The **2009 Termination Rate Recommendation** on the regulatory treatment of Wholesale Termination Rates in the EU⁴⁷; and
- (d) The 2005 Accounting Separation and Cost Accounting Recommendation⁴⁸.

2.30 ComReg also takes account of:

- (a) The EC's **Notice on Market Definition** for the purposes of community competition law⁴⁹; and
- (b) Any relevant common positions adopted by the Body of European Regulators for Electronic Communications ('**BEREC**').
- (c) Where appropriate, the EECC⁵⁰.
- (d) ComReg has also had regard to relevant EC comments made, pursuant to Article 7 of the **Framework Directive**⁵¹, with respect to other EU NRAs' market analyses.

⁴⁴ European Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (C(2014) 7174 final) ('**2014 Recommendation**').

⁴⁵ Explanatory Note accompanying the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation, dated 9.10.2014 (the '**Explanatory Note to the 2014 Recommendation**'). The Explanatory Note to the 2014 Recommendation is available at <https://ec.europa.eu/digital-single-market/en/news/explanatory-note-accompanying-commission-recommendation-relevant-product-and-service-markets>.

⁴⁶ European Commission Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services, C(2018) 2374 {SWD(2018) 124} (the '**SMP Guidelines**').

⁴⁷ European Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (OJ L124/67) ('**2009 Termination Rate Recommendation**').

⁴⁸ European Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications ((2005/698/EC) (OJ L266/64) ('**2005 Accounting Separation and Cost Accounting Recommendation**').

⁴⁹ Commission notice on the definition of relevant market for the purposes of Community competition law, , Official Journal C 372, 09/12/1997 pp.5-13 ('**Notice on Market Definition**').

⁵⁰ DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972&from=EN>.

⁵¹ Article 16 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC (the '**Framework Directive**').

- 2.31 The EECC entered into force on 20 December 2018. The EECC replaces the existing EU Common Regulatory Framework which was adopted in 2002 (and amended in 2009). With some limited exceptions, Member States are required to transpose the EECC into national law by 21 December 2020.
- 2.32 As the EECC has not yet been transposed into Irish law the legal basis for this market review is being undertaken under the current statutory regime. Whilst the publication of this Decision occurs before the EECC has been transposed into Irish law, ComReg is mindful of the EECC in developing its proposals in this Decision. ComReg notes that the current market review process (including the procedure for the identification and definition of markets and market analysis procedure) is broadly consistent with that proposed under the EECC, although there are some differences.
- 2.33 Article 75 of the EECC requires the EC to adopt a delegated act setting a single maximum European Union-wide fixed termination rates (**'FTR(s)'**) and mobile termination rates (**'MTR(s)'**) by 31 December 2020, with these rates intended to come into effect in 2021. The Eurorate FTRs and MTRs will replace the existing maximum regulated FTRs and MTRs that have been set on a national basis by national regulatory authorities in Member States, including the maximum FTRs determined by ComReg via SMP regulation (i.e. the FTRs and MTRs determined by ComReg in the 2019 Separate Pricing Decision).
- 2.34 In the event that there are any other areas where the EECC either materially deviates from the current framework or otherwise requires special emphasis for purposes of the market analysis, ComReg will identify such specific instances and give due consideration to these as they arise in this Decision.
- 2.35 This review is undertaken by ComReg in accordance with the obligation set out in the Framework Directive (transposed into Irish law as the **Framework Regulations**⁵²) that NRAs should analyse relevant markets, taking utmost account of the EC's 2014 Recommendation and the SMP Guidelines.
- 2.36 Regulation 26 of the Framework Regulations requires that ComReg, taking the utmost account of the 2014 Recommendation and of the SMP Guidelines, defines relevant markets appropriate to national circumstances, in accordance with the principles of competition law.
- 2.37 The EC, in the 2014 Recommendation, describes the FVCT market in the following terms:

*“Wholesale call termination on individual public telephone networks provided at a fixed location” (‘Market 1’)*⁵³

⁵² European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) (the **“Framework Regulations”**). The Framework Regulations transpose the Framework Directive.

⁵³ Annex to the 2014 Recommendation.

- 2.38 Regulation 25 of the Framework Regulations requires that, where ComReg determines, as a result of a market analysis and in accordance with Regulation 27, that a given market (defined in accordance with Regulation 26) is not effectively competitive, ComReg is obliged under Regulation 27(4) of the Framework Regulations to designate an undertaking or undertakings with SMP in that market. In addition, ComReg must, as it considers appropriate, impose specific obligations on such undertaking(s), or maintain or amend such obligations where they already exist.
- 2.39 In line with the “Modified Greenfield Approach” set out in the Explanatory Note to the EC’s 2014 Recommendation, ComReg’s market assessment starts from the assumption that SMP regulation is not present in the specific market under consideration. However, regulation present in other related markets or through the general regulatory framework is considered. This approach avoids erroneously drawing conclusions regarding the competitive structure of a particular market which may be influenced by, or indeed premised on, existing regulation on that market. Considering how markets may function absent regulation helps to ensure that SMP-based regulation is only applied (or withdrawn) in circumstances where it is justified and proportionate to do so.
- 2.40 Where an operator is ultimately designated as having SMP in a market, ComReg is obliged, under Regulation 8(1) of the Access Regulations, to impose on such an operator (or maintain where they already exist), the obligations set out in Regulations 9 to 13 of the Access Regulations as it considers appropriate. Obligations imposed must:
- (a) be based on the nature of the problem identified;
 - (b) be proportionate and justified in the light of the objectives laid down in section 12 of the Communications Regulation Act 2002 (as amended)⁵⁴, and Regulation 16 of the Framework Regulations; and
 - (c) only be imposed following consultation in accordance with Regulations 12 and 13 of the Framework Regulations.
- 2.41 Section 12(1)(a) of the Communications Regulation Act 2002 (as amended) sets out ComReg’s objectives in exercising its functions in relation to the provision of electronic communications networks, electronic communications services and associated facilities, namely to:
- (a) Promote competition;
 - (b) Contribute to the development of the internal market; and
 - (c) Promote the interests of users within the European Union.
- 2.42 Apart from conducting a public consultation in accordance with Regulation 12 of the Framework Regulations, ComReg is also obliged to make its draft measures accessible to the EC, BEREC and NRAs in other Member States pursuant to Regulation 13(3) of the Framework Regulations.

⁵⁴ The Communications Regulation Act, 2002, Number 20 of 2002.

Information Sources Relied Upon

2.43 As part of this Decision, ComReg has obtained and draws upon the following information sources:

- (a) Information provided by Goldfish and Phone Pulse Ltd in 2018 in response to non-statutory requests for information from ComReg⁵⁵ (“**the Data Request**”);
- (b) Information provided by Goldfish and Phone Pulse Ltd in 2019 in response to follow-up non-statutory information requests to the Additional FSPs⁵⁶ (“**the 2019 Additional FSPs Request**”);
- (c) Information provided by 0818 Service Providers⁵⁷ in response to non-statutory information request to FSPs in 2019 regarding 0818 numbers (“**the 2019 0818 Information Request**”)
- (d) The experience of NRAs in regulating relevant FVCT markets in other jurisdictions;
- (e) Relevant guidance from the EC, BEREC and other relevant commentators;
- (f) Information set out in the 2019 Termination Markets Decision and 2019 Separate Pricing Decision;
- (g) The 2017 Ireland Communicates Survey of Information and Communication Technology usage by consumers and small and medium enterprises (‘SME’) conducted by ComReg and its survey partner Ipsos MRBI (the ‘**2017 Ireland Communicates Survey**’)⁵⁸.
- (h) Information provided to ComReg by Service Providers for the purpose of ComReg’s Quarterly Key Data Reports (‘**QKDR(s)**’); and
- (i) Other information in the public domain.

⁵⁵ When the Data Request and the 2019 Additional FSP Request were issued - TSFY Limited (trading as Nuacom) were still in the process of entering the FVCT market. Nuacom were therefore sent a narrower set of asked specific questions that were set out in these requests.

⁵⁶ Ibid.

⁵⁷ The **2019 0818 Information Request** was sent to 25 0818 service providers, the following 0818 service providers responded. 1. Access Telecom (Ireland) Ltd trading as Imagine Mobile, 2. Blueface Ltd, 3. BT Ireland, 4. Dialoga servicios Interactivos S.A., 5. Digiweb, 6. Finarea Ltd, 7. I.P Telecom Ltd, 8. In2com Ltd, 9. Intellicom, 10. Magnet Networks, 11. Magrathea Telecommunications Ltd, 12. Verizon Ireland Ltd, 13. Viatel Ireland Ltd, 14. Virgin Media Ireland Ltd, 15. Vodafone Ireland plc, 16. Goldfish.

⁵⁸ The results of the survey are reported in the following published ComReg documents: Ireland Communicates Survey 2017 – Consumer ([ComReg Document 18/23a](#)) and Ireland Communicates Survey 2017 – SME ([ComReg Document 18/23b](#)).

Liaison with other Bodies

2.44 In accordance with Regulation 27(1) of the Framework Regulations, ComReg has consulted with the Competition and Consumer Protection Commission (**CCPC**) on the Relevant Markets set out in this Decision. A copy of correspondence from the CCPC (**the ‘CCPC Response’**) is set out at Annex: 2 The CCPC issued its opinion to ComReg on 13 August 2020 in which it noted that it,

“.....is satisfied with ComReg’s analysis and that there was no compelling grounds to disagree with ComReg’s conclusion that the existing definition of the Relevant FVCT Markets should be amended to include FVCT to the 0818 number range. The Commission also agrees that, on the basis of the facts and analysis presented by ComReg, Goldfish Telecom Limited, Phone Pulse Limited and TSFY Limited, trading as Nuacom each should be designated as having significant market power (“SMP”)...”

2.45 On 27 August 2020 ComReg also made its draft measures accessible to the EC, BEREC and NRAs in other Member States pursuant to Regulation 13(3) of the Framework Regulations (**‘Notified Draft Measures’**). The EC provided a ‘No Comments’ letter to ComReg (**‘European Commission’s Response’**) on 23 September 2020 a copy of which is set out in Annex: 3.

Consultation Process

2.46 In accordance with Regulation 12 of the Framework Regulations, in April 2020 ComReg issued a Consultation which set out ComReg’s then views based on an analysis of the Relevant FVCT Markets.

2.47 This Decision considers the 5 submissions received (referred to as a the **‘Submissions’**) in response to the Consultation. Such Submissions were received from the following respondents (together the **‘Respondents’**)⁵⁹:

- (a) BT Communications Ireland Limited (“BT”);
- (b) Eircom Limited (“Eircom”);
- (c) Goldfish Telecom Limited (“Goldfish”);
- (d) Three Ireland (Hutchison) Limited (“Three”);
- (e) Vodafone Ireland Limited (“Vodafone”);

2.48 In this Decision, and consistent with all previous Decisions, ComReg has carefully considered Respondents’ views before setting out its final position.

⁵⁹ Non-confidential submissions received from respondents (the ‘Respondents’ Submissions’), ComReg Document 20/95s have been published alongside this Decision.

Structure of the Decision

2.49 The assessment of Respondents' views is addressed in the main body of this Decision in each relevant section as appropriate.

2.50 The remainder of this Decision is structured as follows:

- (a) Section 3 gives an overview of trends and developments in the RFVC markets;
- (b) Section 4 provides an assessment of the structural and behavioural characteristics of the RFVC markets, with a view to informing the subsequent definition and SMP analysis of the Relevant FVCT Markets
- (c) Section 5 defines the Relevant FVCT Markets from both a product and a geographic perspective;
- (d) Section 6 assesses competition within each of the defined Relevant FVCT Markets and considers whether any FSP operating within such markets holds a position of SMP;
- (e) Section 7 sets out the main competition problems that could, absent regulation, occur within the Relevant FVCT Markets (and related markets), along with the likely consequential impacts on competition and consumers;
- (f) Section 8 sets out regulatory remedies to address competition problems, in the form of obligations that would be imposed on FSPs designated with SMP;
- (g) Section 9 sets out the approach to the Regulatory Impact Assessment ('**RIA**') of the approaches to regulation in the Relevant FVCT Markets, respectively;
- (h) Section 10 sets out the next steps;
- (i) Annex: 1 sets out the Decision Instrument which specifies, in legal terms, the nature of the regulatory remedies relating to FSPs designated with SMP in the Relevant FVCT Markets, as discussed in Section 6;
- (j) Annex: 2 contains the consultation with the Competition and Consumer Protection Commission;
- (k) Annex: 3 contains the European Commission Response to ComReg's Notified Draft Measures;
- (l) Annex: 4 lists each of the questions set out in the Consultation and on which views from interested parties were received; and
- (m) Annex: 5 contains a glossary of the most frequently used terms used within this Decision.

3 Retail Voice Calls Market Trends

Overview

- 3.1 Section 3 of the 2019 Termination Markets Decision discussed trends in the provision of RMVCs and RFVCs insofar as it was relevant for the analysis of the Relevant Termination Markets⁶⁰.
- 3.2 In the Consultation, ComReg set out its views on the key behavioural characteristics in the provision of RMVCs and RFVCs, insofar as they are relevant to the subsequent analysis of the Relevant FVCT Markets.
- 3.3 Of the 5 Submissions received in response to the Consultation, 2 Respondents (BT and Three) noted that they agreed that ComReg had identified the main retail trends and developments in the Consultation. Three Respondents (Eircom, Vodafone and Goldfish) did not comment in this regard.
- 3.4 In the 2019 Termination Markets Decision, ComReg set out its position, having considered Respondents' views, on the main retail trends and developments insofar as they are relevant to the analysis of the Relevant Termination Markets with reference to:
 - (a) the relationship between Wholesale Termination Markets and Retail Markets (discussed in paragraphs 3.7 to 3.9 in the 2019 Termination Market Decision);
 - (b) the Structure of the Retail Fixed Voice Market (discussed in paragraphs 3.10 to 3.21 in the 2019 Termination Markets Decision); and
 - (c) the Behavioural Trends in the Retail Fixed Voice Market (discussed in paragraphs 3.22 to 3.65 in the 2019 Termination Markets Decision).
- 3.5 ComReg's conclusion is that the position set out in the 2019 Termination Markets Decision with regards to retail voice call market trends continue to apply to the Additional FSPs and continue to remain valid in respect of the 2019 SMP FSPs.

⁶⁰ In the 2019 Termination Markets Decision the relevant FVCT and MVCT markets were also referred to collectively as '**the Relevant Termination Markets**'.

- 3.6 The question of whether or not 0818 numbers should be included in the Relevant FVCT Markets is addressed in Section 5 of this Decision. As set out in Section 5, ComReg's position is that 0818 numbers should be included in the Relevant FVCT Markets. This is informed in large part by the view that the retail charging structures and competitive conditions with regards to 0818 numbers is now effectively the same as Geographic Numbers and 076 numbers such that 0818 numbers should now be included in the Relevant FVCT Markets. For purposes of the retail market assessment, ComReg takes the approach adopted in the 2019 Termination Markets Decision in which the main retail trends and developments relevant to the analysis of the Relevant Termination Markets carried out with reference to calls to Geographic Numbers. It follows that any retail market analysis applicable to Geographic Numbers would also apply to those other numbers that are found to be in the same Relevant FVCT Markets.
- 3.7 Below ComReg sets out its positions for purposes of this Decision with reference to the main positions set out in the 2019 Termination Markets Decision.

Relationship between Wholesale Termination Markets and Retail Markets

- 3.8 ComReg notes that the position set out in the 2019 Termination Markets Decision with regards to the relationship between wholesale termination markets and retail markets remains valid for purposes of this Further Review. In particular:
- (a) The demand for FVCT services is derived from consumer demand for retail voice services and therefore is relevant for assessing the strength of any indirect competitive constraints arising from retail voice services on WVCT services;
 - (b) The provision of WVCT is necessary to support retail customers of FSPs (and MSPs insofar as they make calls to customers of FSPs) in making and receiving calls, since WVCT services enable calls to connect and then terminate on traditional fixed and mobile voice platforms, irrespective of which (fixed or mobile) network they are calling from. A wholesale termination fee is levied by the terminating FSP on the originating Service Provider to terminate a call (in some cases via a transit provider); and
 - (c) The cost of wholesale termination services, if passed on to consumers via an increase in retail call (or other) prices, can impact on demand for traditional fixed and mobile voice services. In the 2019 Termination Markets Decision ComReg assessed whether consumers would seek to avoid the retail charges associated with the FTR pass-through into retail prices by not making a traditional fixed voice call, reducing the length of the call, or making contact with the other party via an alternative means of communication and, if so, whether this is likely to effectively discipline the competitive behaviour of SPs offering WVCT services.

Structure of the Retail Fixed Voice Market

- 3.9 The retail fixed telephony services ('**RFTS**') market in Ireland has several active suppliers who provide voice telephony services at a fixed location. Paragraphs 3.10 to 3.21 of the 2019 Termination Markets Decision outlined these types of SPs which included:
- (a) **Independent FSPs.** These FSPs provide voice call services at a fixed location, predominantly using their own network and infrastructure. They are not typically reliant on wholesale inputs from other FSPs, except when they require a WVCT service on behalf of their retail customers calling a different network. Eircom and Virgin Media are two examples of independent FSPs;
 - (b) **Partially Independent FSPs.** These FSPs operate a physical telephone/data switching platform and potentially other infrastructure, but also rely (to varying degrees) on third-party wholesale network access to originate and/or terminate calls to and from their retail customers' premises. The extent of these providers' networks greatly varies. BT Communications, Vodafone, Viatel, Imagine and Magnet Networks are some examples of partially independent FSPs; and
 - (c) **FSPs with resale activities.** These FSPs operate retail fixed voice activities which, usually, do not involve use of their own physical network. In some instances, these FSPs may also be regarded as partially independent FSPs. When acting in a resale capacity these FSPs purchase wholesale end-to-end voice call services from a third-party network operator and resell/repackage that service in the form of a retail market offer. Sky Ireland and Pure Telecom are two examples of FSPs with resale activities
- 3.10 ComReg's position is that the Additional FSPs also fall within the category of Partially Independent FSPs. They may operate a physical telephone/data switching platform and potentially other infrastructure, but they may also rely (to varying degrees) on third-party wholesale network access to originate and/or terminate calls to and from their retail customers' premises. The extent of these SPs' networks varies.
- 3.11 Further, ComReg's view is that the examples of the different types of FSPs identified in paragraph 3.9 above remain valid for purposes of this Decision.
- 3.12 Finally, ComReg notes that the identification and description of FVCT providers in paragraphs 3.11 to 3.20 of the 2019 Termination Markets Decision remain valid for purposes of this Decision. In this respect ComReg identified that FVCT can be supplied by a range of service providers using a variety of technologies/platforms.

Behavioural Trends in the Retail Fixed Voice Market

3.13 In the 2019 Termination Markets Decision ComReg identified the following main trends in relation to fixed voice⁶¹:

- (a) While the number of SPs providing retail telephony services has increased, a gradual decline in retail voice traffic and subscriptions at a fixed location is evident. However, a majority of households in Ireland continue to avail of retail telephony services at a fixed location⁶²;
- (b) Bundles are an increasingly popular choice for the consumer⁶³;
- (c) Developments in IP technology have enabled existing Services Providers to offer multiple propositions, and move towards convergence, with the barriers between separate markets and a number of separate service providers being slowly eroded⁶⁴; and
- (d) Unmanaged VoIP-to-VoIP calls appear to be supplementing traditional fixed line calls, rather than replacing them⁶⁵.

3.14 ComReg's position, based on a consideration of available data (including QKDR data⁶⁶) and in the absence of any information to the contrary, is that the main trends identified in paragraph 3.13 above remain valid for the purposes of this market review. In particular these trends remain valid in relation the Additional FSPs and continue to hold true for the 2019 SMP FSPs.

⁶¹ See paragraphs 3.61 to 3.65 in the 2019 Termination Markets Decision.

⁶² See paragraphs 3.23 to 3.33 in the 2019 Termination Markets Decision.

⁶³ See paragraphs 3.53 to 3.57 of the 2019 Termination Markets Decision.

⁶⁴ See paragraphs 3.34 to 3.42 of the 2019 Termination Markets Decision.

⁶⁵ See paragraphs 3.43 to 3.50 of the 2019 Termination Markets Decision.

⁶⁶ Updated QKDR data is available at <https://www.comreg.ie/industry/electronic-communications/market-information/quarterly-key-data-report/>.

4 Retail Voice Market Assessment

Overview

- 4.1 In Section 4 of the Consultation ComReg set out the key structural and behavioural characteristics in the provision of RFVCs, to inform ComReg's views on the subsequent definition of the Relevant FVCT Markets, as well as providing an assessment of any indirect constraints arising from the RFVC markets and the subsequent competition assessment of the Relevant Termination Markets.
- 4.2 Of the 5 Submissions received in response to the Consultation, 2 Respondents (BT and Three) noted that they agreed with ComReg's views regarding the key structural and behavioural characteristics in the provision of RFVCs. Three Respondents (Eircom, Vodafone and Goldfish) did not comment in this regard.
- 4.3 In this Decision ComReg's maintains its position, that there are unlikely to be effective retail demand-side or retail supply-side substitutes which would, within the timeframe of the market review, indirectly constrain a SSNIP in FTRs by FSPs supplying FVCT (or such that it would constrain the profitability of a SSNIP⁶⁷ in termination rates). ComReg's position is that this applies to all FSPs supplying FVCT, including the 2019 SMP FSPs and the Additional FSPs.
- 4.4 The retail voice market assessment in this section is primarily carried out with respect to Geographic Numbers. As noted in paragraph 3.6 any retail market analysis applicable to Geographic Numbers would also apply to those non-geographic numbers that are found to be in the same Relevant Termination Market⁶⁸. As set out in Section 5 of this Decision, ComReg's position is that 0818 numbers should be included in the Relevant Termination Markets. It follows that the retail voice market assessment would also apply to those non-geographic numbers (including 0818 numbers) that are found to be in the same Relevant Termination Market.
- 4.5 In assessing retail telephony services, the 2019 Termination Markets Decision and now this Decision considers possible effective substitutes for RFVC which would incur a termination charge, i.e. RFVC to a mobile phone, or to an off-net fixed number, and RMVC to a fixed number, or an off-net mobile number, taking into account:
- (a) Factors affecting the responsiveness of consumers to changes in RFVC prices, including changes in off-net call prices⁶⁹;

⁶⁷ Small but significant non transitory increase in price.

⁶⁸ As noted in paragraph 3.6, ComReg is of the view that the retail charging structures and competitive conditions with regards to 0818 numbers is now effectively the same as Geographic Numbers and 076 numbers such that 0818 numbers should now be included in the Relevant FVCT Markets.

⁶⁹ See paragraphs 4.8 to 4.107 of the 2019 Termination Markets Decision.

- (b) Any potential effective demand-side substitutes for an off-net call to a retail fixed telephony subscriber⁷⁰; and
- (c) Any potential effective supply-side substitutes for an off-net call to a retail fixed telephony subscriber⁷¹.

Factors affecting the responsiveness of consumers to changes in prices

- 4.6 With respect to paragraph 4.5 (a) above concerning the responsiveness of consumers to changes in RFVC prices, in the 2019 Termination Markets Decision ComReg set out its position on a range of issues relating to pricing structures and subscribers' behaviour in the RFVC markets. Such behavioural characteristics were identified as being relevant to the market definition and competition assessment of the Relevant FVCT Markets. Of particular relevance was the degree to which subscribers' behaviour (either the calling party or the called party) and market characteristics may affect the termination rate-setting behaviour of a hypothetical monopolist supplier of FVCT.
- 4.7 Given the CPP principle, the called party does not pay for incoming calls to geographic numbers⁷². Within this CPP environment and having regard to overall RFVC pricing structures and characteristics in the Irish market, ComReg considers both calling party and called party behaviours in relation to network awareness, cost awareness, sensitivity to cost and frequency of any associated behavioural change with consideration of the Additional FSPs.
- 4.8 The 2019 Termination Markets Decision concluded that the called party is likely to have:
- (a) low levels of awareness of the calling party's Service Provider identity;
 - (b) low levels of awareness of the retail costs faced by the calling party; and
 - (c) low sensitivity to/concern for the costs faced by the calling party.
- 4.9 These factors are likely to affect the degree to which the called party would have an incentive to change how it treats incoming calls in response to concerns regarding the costs faced by the calling party.
- 4.10 Similarly, ComReg's position in the 2019 Termination Markets Decision was that the calling party is likely to have:
- (a) low levels of awareness of the called party's Service Provider identity;
 - (b) low levels of awareness of the retail costs of making calls; and

⁷⁰ See paragraphs 4.123 to 4.197 of the 2019 Termination Markets Decision.

⁷¹ See paragraphs 4.271 to 4.273 of the 2019 Termination Markets Decision.

⁷² In Section 5 ComReg assesses whether or not there are other non-geographic numbers whose features are sufficiently similar to Geographic Numbers such that they should be included in the same Relevant Market(s). ComReg is of the view that to the extent that any such NGNs are considered as being effectively equivalent to Geographic Numbers it follows that the analysis in this section regarding the responsiveness of consumers to changes in prices, and other relevant behavioural responses, would also apply to those numbers.

- (c) relatively low levels of concern about the costs of making off-net calls from both mobile and fixed lines to both mobile and fixed lines, with subscribers more likely to be sensitive to overall tariff costs and the cost of making calls when selecting their Service Provider. This behaviour can likely be partly explained by the prevalence of tariff plans offering unlimited (or limited, but large, amounts of) any network, any time minutes.

4.11 These factors were identified as being likely to affect the degree to which the calling party may change its calling behaviour in response to the costs faced when calling a subscriber of a particular Service Provider.

Potential effective substitutes for an off-net call to a retail fixed telephony subscriber

4.12 With respect to paragraph 4.4(b) above, and in paragraphs 4.124 to 4.197 of the 2019 Termination Markets Decision, ComReg has re-examined whether the following are likely to be effective retail demand-side substitutes for an off-net fixed-to-fixed call or a mobile-to-fixed call and whether they would act as an effective indirect constraint on a SSNIP by a hypothetical monopolist supplier of FVCT:

- (a) Making a fixed-to-mobile call instead;
- (b) Making a mobile-to-mobile call instead;
- (c) Making an on-net fixed-to-fixed call instead;
- (d) Making an unmanaged VoIP-to-VoIP call instead;
- (e) Sending an off-net SMS or Instant Message using OTT application;
- (f) Sending an email;
- (g) Shortening calls or requesting a call back; and
- (h) Delaying a call to a time of day when the cost of making calls to fixed line phones is lower.

4.13 Having regard to the CPP principle, and a number of other factors set out in paragraphs 4.8 to 4.101 of the 2019 Termination Markets Decision, ComReg's view remains that retail consumer behaviour is unlikely to act as an effective indirect constraint on the pricing behaviour of a hypothetical monopolist supplier of FVCT services.

Potential effective supply-side substitutes for an off-net call to a retail fixed telephony subscriber

- 4.14 In order for supply side substitution to be effective, the SP would have to have the ability to provide a voice call service to a number which was not reliant on the provision of FVCT by the called party's Service Provider (and to do so in a timely manner, without incurring significant costs). Currently, it is the terminating Additional FSP which control the final routing and termination of calls to RFVC subscribers' numbers and, as a consequence, retail supply-side substitution is neither technically nor contractually feasible.
- 4.15 With respect to paragraph 4.5(c) above, ComReg's position in paragraphs 4.271 to 4.273 of the 2019 Termination Markets Decision, was that retail supply-side substitution is not likely to pose an effective constraint on the termination rate-setting behaviour of a hypothetical monopolist supplier of FVCT services. It is ComReg's position that this position remains valid for purposes of this further review and applies equally to the Additional FSPs as it does to the 2019 SMP FSPs.

Assessment of the Impact of Retail Consumer behaviour for purposes of this Further Review

- 4.16 ComReg's position is that for the reasons set out in this Decision and in Section 3 and 4 of the 2019 Termination Markets Decision there are unlikely to be effective retail demand-side or retail supply-side substitutes which would, within the timeframe of this market review, effectively indirectly constrain a SSNIP in FTRs by the Additional FSPs supplying FVCT (or such that it would constrain the profitability of a SSNIP in termination rates).
- 4.17 In paragraphs 4.10 to 4.25 of the 2019 Termination Markets Decision ComReg noted that subscriber behaviour in retail markets may indirectly impact the ability of a hypothetical monopolist supplier of WVCT to profitably sustain an increase in termination rates above the competitive level⁷³ (via retail demand-side substitution) depending on:
- (a) How much of the termination rate increase by the calling party's Service Provider is passed through by the originating Service Provider to its retail charges for calls made by its subscribers to subscribers of the terminating Service Provider;
 - (b) The strength of any subsequent calling party reactions to the resulting retail price increase; and
 - (c) The strength of any subsequent called party reactions to the resultant retail price increase to the calling party.

⁷³ Indirect constraints coming from the retail market may affect the termination rate-setting behaviour of a Hypothetical Monopolist in the wholesale FVCT Markets.

- 4.18 In assessing the impact of the pass through of termination rate increases ComReg (in the 2019 Termination Markets Decision) evaluated the impact on regulated FSPs retail out-of-bundle call charges for off-net calls of a 10% SSNIP⁷⁴ of FTRs and found that the pass through of termination rates increases above the competitive level⁷⁵ is not likely to lead to significant increases in retail charges. ComReg noted further that consumer reactions to such price changes need to be considered in this context. Such increases would likely be limited in magnitude, relative to per-call prices, given that termination rates account for a small proportion of overall retail prices.
- 4.19 For the purposes of this Decision ComReg notes that a SSNIP along the lines conducted above cannot be definitively applied to the Additional FSPs. Their FTRs have been unregulated to date and, having regard to their current levels, are in excess of current regulated FTR levels.
- 4.20 Consequently, market power (if any) of the Additional FSPs could in principle already be reflected in their existing (unregulated) FTRs. As set out in Table 5 and paragraphs 6.48 to 6.49 of this Decision, the FTRs of the Additional FSPs range from 919% to 1651% higher than the currently prevailing regulated FTRs. This is strongly suggestive of a lack of effective competitive constraint (either indirect or direct) on the part of each of the Additional FSPs.
- 4.21 ComReg notes that many retail fixed price plans now include unlimited or a set amount of minutes for off-net calls. Therefore, a per call assessment may not be determinative, in and of itself, as to the impact of termination rates on overall retail price plans given that SPs may factor in overall costs (including those associated with termination) when setting call prices. Moreover, the evidence available to ComReg suggests that unregulated termination rates higher than regulated termination rates and therefore constitute a greater proportion of call/packages rates.

⁷⁴ SSNIP refers to a **S**mall but **S**ignificant **N**on-transitory **I**ncrease in **P**rice.

⁷⁵ Regulated FTRs serve as a proxy for a competitive level FTRs.

5 Wholesale Relevant FVCT Market Definitions

Overview

- 5.1 In Section 5 of the 2019 Termination Markets Decision ComReg set out its position on the appropriate Relevant FVCT Market Definitions. In Section 5 of the Consultation ComReg reconsidered this position and set out its views with reference to two main considerations:
- (a) whether or not 0818 Numbers should be included in the Relevant FVCT Markets (see paragraph 5.3 to 5.6 below), and
 - (b) the Relevant FVCT Market Definitions applicable to the Additional FSPs and the 2019 SMP FSPs (see paragraph 5.8 to 5.10 below).
- 5.2 ComReg received Submissions from five Respondents (BT, Eircom, Goldfish, Three and Vodafone) on both the issues referred to in 5.1 above. ComReg's position in regard to these, and taking account of the Submissions, is summarised briefly below:

0818 Number Range

- 5.3 With regards to the question of 0818 numbers, four of five Respondents who made Submissions commented on this issue. Eircom, Three and Vodafone agreed with ComReg's proposal to include 0818 numbers in the Relevant FVCT Markets, while BT disagreed. An overview of Respondents' views is set in paragraph's 5.41 to 5.46 and ComReg's consideration of those views is set out in paragraph 5.47 and 5.48.
- 5.4 ComReg notes that the 2019 Termination Markets Decision addressed the question of what range of numbers should be included in the Relevant FVCT Market(s) for calls to end users at a fixed location when defining the scope of the FVCT product market⁷⁶. ComReg's position is that, taking account of recent developments, 0818 numbers should now be included in the Relevant FVCT Market(s).
- 5.5 The 2019 Termination Markets Decision described each Relevant Termination Market as consisting of:

*“the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point to the End User or level on that terminating FSP's network at which incoming voice calls can be handed over for termination to **Fixed Numbers**, and in respect of which that FSP is able to set the FTR.*

⁷⁶ The Candidate FVCT product market refers to the narrowest FVCT product market and the starting point from which the question of the existence of any effective wholesale substitutes is considered. See paragraph 5.13 below.

The geographic scope of the Relevant FMCT Market(s) corresponds to the geographic coverage of each individual FSP’s network.”⁷⁷

(Emphasis added)

- 5.6 Fixed Numbers were defined as being “a number from the Irish national numbering scheme as set out in the Numbering Conditions of Use, which, within the meaning of this Decision Instrument, is terminated at a fixed location and means a Geographic Number, a Nomadic Number, or an emergency access number (112 or 999).”⁷⁸
- 5.7 As discussed further below, ComReg’s position is that for purposes of this Decision this definition should now be amended to include 0818 numbers, with the definition of Fixed Numbers being amended to facilitate this. In particular, Fixed Numbers will now be defined to include 0818 numbers as well as Geographic Numbers and numbers in the 0818, 076, 112/999 number ranges. The amendment of the definition of Fixed Numbers to include 0818 numbers has the effect of bringing 0818 numbers into the definition of Relevant Termination Markets and requires that the definition applicable to the separate Relevant FMCT Markets in which each of the 2019 SMP FSPs operate is amended to reflect this change.

Additional FSPs and 2019 SMP FSPs

- 5.8 Of the five Respondents who made Submissions in response to the Consultation Eircom, Goldfish, Three and Vodafone indicated that they agreed with all of ComReg’s proposals regarding the applicability of the Relevant FMCT Market Definitions to the Additional FSPs and 2019 SMP FSPs, including with regards to the inclusion of the 0818 number range in the Relevant FMCT Markets. BT noted that while it agreed with ComReg’s proposals regarding the applicability of the Relevant FMCT Market Definitions to the Additional FSPs and 2019 SMP FSPs it did not agree (as discussed above) that the 0818 number range should be included in the Relevant FMCT Markets.
- 5.9 ComReg’s position is that much of the analysis in the 2019 Termination Markets Decision applies equally to the Additional FSPs, as it does to the 2019 SMP FSPs. The main change arising from this Decision relates to the potential inclusion of 0818 numbers in the Relevant Termination Markets and the addition of three Additional FSPs to the total number of FSPs to be subject to *ex ante* regulation.
- 5.10 Having regard to the above considerations regarding the 0818 number range and the Additional FSPs, ComReg’s reconsideration of the Relevant FMCT Markets is structured as follows:
- (a) Summary of ComReg’s Position in the 2019 Termination Markets Decision regarding the candidate FMCT product market (discussed below in paragraphs 5.11 to 5.24);

⁷⁷ See paragraph 5.171 of the 2019 Termination Markets Decision.

⁷⁸ Section 2.1 of the FMCT Decision Instrument contained at Annex 16 of the 2019 Termination Markets Decision.

- (b) Implication of recent developments regarding 0818 Numbers for the definition of the relevant FVCT product and geographic market (discussed below in paragraphs 5.25 to 5.53); and
- (c) Overall Positions on the Relevant Termination Markets for purposes of this Decision (discussed below in paragraphs 5.55 to 5.61).

Summary of ComReg’s Position in the 2019 Termination Markets Decision regarding the candidate FVCT product market.

- 5.11 ComReg set out its definition of the relevant FVCT product and geographic markets and supporting analysis in paragraphs 5.8 to 5.170 of the 2019 Termination Markets Decision. In the sections that follow ComReg highlights the salient issues as appropriate for purposes of this Decision, referencing the relevant sections of the 2019 Termination Markets Decision, as necessary.
- 5.12 The EC has established that the wholesale FVCT markets are susceptible to *ex ante* regulation having identified in the 2014 Recommendation a market for:
“Call termination on individual public telephone networks provided at a fixed location.”
- 5.13 As is clear from the 2014 Recommendation, the European regulatory framework aims at identifying potential bottlenecks that may lead to competition problems in one or more related markets. FVCT services can form part of a set of complementary wholesale inputs (collectively referred to as ‘interconnection services’), also including wholesale fixed voice call origination (**‘FVCO’**) and wholesale fixed call transit (**‘Transit’**) services, used to support end-to-end provision of retail voice calls to end users at a fixed location.⁷⁹
- 5.14 A technical and functional description of FVCT was provided by ComReg in paragraphs 5.10 to 5.22 of the 2019 Termination Markets Decision and in paragraphs 5.23 to 5.27 ComReg provided its FVCT service description. This was done with a view to identifying the narrowest candidate FVCT product market (being the starting point from which the question of the existence of any effective wholesale substitutes was considered). In ComReg’s view, the FVCT service description from the 2019 Termination Markets Decision remains valid for purposes of this Decision.

⁷⁹ In addition to the SMP designations for FVCT rendered in the 2007 market review, ComReg designated Eircom with SMP in the markets for Fixed Voice Call Origination (**‘FVCO’**) and Transit services in 2007. In 2015, ComReg concluded that Eircom continues to hold SMP on the FVCO market, and that regulation of the Transit Market is no longer warranted (See 2015 *Wholesale Fixed Voice Call Origination and Transit Markets Response to Consultation and Decision* (Decision D05/15), (the **‘2015 FACO and Transit Decision’**)). Eircom is currently required by regulation to provide access to FVCO.

- 5.15 Consistent with its position in the 2019 Termination Markets Decision ComReg notes its view that FVCT should be defined as being from the nearest point (to the end user) or equivalent level on the terminating network at which calls can be handed over by a FSP for termination. Importantly, ComReg notes its view that on a traditional PSTN network this could be at the primary exchange, whereas on an IP network this may be at a different point.
- 5.16 In paragraph 5.29 of the 2019 Termination Markets Decision ComReg noted its position that the starting point for the FVCT product market definition is such that FVCT has the following characteristics:
- (a) it involves the provision of call completion services in respect of end users who receive calls at a fixed location, which implies control of the subscriber's Geographic Number that has been assigned (or transferred) to an individual FSP;
 - (b) the supplier of FVCT should have the ability to set/control the associated charges (FTRs) for the relevant wholesale service;
 - (c) it involves interconnection between networks; and
 - (d) it is technologically neutral.
- 5.17 ComReg notes that while calls handed over to FSPs are typically destined for termination on the Geographic Numbers for which the call is destined, the 2019 Termination Markets Decision also considered whether termination to certain Non-Geographic Numbers should be included in the scope of FVCT market. In this regard ComReg noted that numbers for use at a fixed location (Geographic Numbers) are broadly defined in the Numbering Conditions of Use. The definition of a Geographic Number in the Numbering Conditions of Use is defined as a number from the National Numbering Scheme where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point ('**NTP**'). A Non-Geographic Number was defined as meaning a number from the National Numbering Scheme that is not a Geographic Number in that its geographic network NTP is not identifiable from its digit structure.

- 5.18 As this Decision addresses the question whether termination to 0818 numbers should be included in the relevant FVCT markets, ComReg considers it appropriate to continue to use the descriptor ‘Fixed Numbers’ (amended as appropriate) to account for the fact that the FVCT service description may include calls to Geographic Numbers and certain NGNs. Note, however, that in the 2019 Termination Markets Decision ComReg had included calls to Geographic Numbers as being within the scope of FVCT as a starting point from which to assess potential wholesale substitutes. As noted in paragraph 5.42 of the 2019 Termination Markets Decision, since the 2014 Recommendation defines the Relevant FVCT Market as “*wholesale call termination on individual public telephone networks provided at a fixed location*”, ComReg took the number range most frequently involved in supplying call termination services to end users at a fixed location (i.e. Geographic Numbers) as its candidate product for the definition of the Relevant FVCT Market(s), and assessed whether calls to other number ranges should form part of this relevant wholesale market.
- 5.19 Having identified the candidate FVCT product market starting point, ComReg proceeded to assess potential substitutes by posing and answering a number of questions:
- (a) Should FVCT be defined at the network or individual subscriber level? (discussed in paragraphs 5.35 to 5.36 of the 2019 Termination Markets Decision);
 - (b) Is FVCT part of a wider fixed services market? (discussed in paragraphs 5.37 to 5.39 of the 2019 Termination Markets Decision);
 - (c) What range of numbers should be included in the Relevant FVCT Market(s) for calls to end users at a fixed location? (discussed in paragraphs 5.40 to 5.81 of the 2019 Termination Markets Decision); and
 - (d) Is the Relevant FVCT Market technology neutral? (discussed in paragraphs 5.82 to 5.106 of the 2019 Termination Markets Decision),
- 5.20 Having regard to the above, ComReg’s position in the 2019 Termination Markets Decision was that the candidate FVCT product market, being the starting point from which the question of the existence of any effective wholesale substitutes is considered, is one which:
- (a) involves the provision of WVCT for the purpose of completing voice calls to subscribers’ Fixed Numbers that have been assigned to an individual FSP;
 - (b) involves interconnection between networks and is provided by a FSP which has the ability to set/control the FTR for calls to Fixed Numbers; and
 - (c) is technology neutral, and includes FVCT for calls to Fixed Numbers irrespective of whether the underlying technology is mobile or fixed, or, in case of VoIP telephony, whether the VoIP service is Managed, Partially-Managed or, in the case of off-net calls to Fixed Numbers, Unmanaged.

5.21 In paragraphs 5.110 to 5.153 of the 2019 Termination Markets Decision ComReg set out its position regarding whether the candidate product market should be expanded in light of the availability of effective wholesale demand-side and supply-side substitutes and concluded as follows:

- (a) there are currently no effective or sufficiently immediate demand-side substitutes for FVCT, and this position is not likely to change within the timeframe of this market analysis;
- (b) no effective or sufficiently immediate supply-side substitutes currently exist, or are expected to exist for FVCT. This position is unlikely to change in the lifetime of this market analysis; and
- (c) the self-supply of WVCT should be excluded from the Relevant FVCT Market (and Relevant MVCT Market) definition from a product perspective.

5.22 ComReg's ultimate position in the 2019 Termination Markets Decision was that the FVCT product market included:

*“the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point (to the End User) or level on that terminating FSP’s network at which incoming voice calls can be handed over for termination to **Fixed Numbers**, and in respect of which that FSP is able to set the FTR”.*⁸⁰ (Emphasis added)

5.23 Importantly ComReg concluded, following its analysis in paragraphs 5.40 to 5.81 of the 2019 Termination Markets Decision that the term ‘Fixed Numbers’ referred to all Geographic Numbers, nomadic 076 numbers, and 112/999 numbers assigned to FSPs.

5.24 ComReg considers the product market as described in paragraph 5.22 and 5.23 above as the candidate product market for purposes of this Decision and then assesses in paragraphs 5.25 to 5.63 below whether 0818 numbers should also be included in the Relevant Termination Markets.

⁸⁰ See paragraph 5.155 of the 2019 Termination Markets Decision.

0818 Numbers and the definition of the Relevant FVCT Markets

Summary of position in the 2019 Termination Markets Decision regarding the 0818 number range

- 5.25 ComReg considers that the product market features detailed in the 2019 Termination Markets Decision remain valid for purposes of this Decision and capture the essential characteristics of the FVCT candidate product market. However, in then considering the range of numbers that should be included in the relevant FVCT product market, ComReg had excluded 0818 numbers. ComReg's position for purposes of this Decision is that, for the reasons elaborated on below, the range of numbers constituting Fixed Numbers and falling within the scope of the FVCT product market should now be expanded to also include 0818 numbers.
- 5.26 In paragraphs 5.43 to 5.79 in the 2019 Termination Markets Decision ComReg reviewed the range of numbers that should be included in the Relevant FVCT Markets for calls to end users at a fixed location. In considering the scope of the FVCT product market, ComReg considered the range of Geographic Numbers associated with the provision of FVCT. Calls to Geographic Numbers typically involve calls to end users and are terminated by the FSP controlling the termination point with which the called Geographic Number is associated.
- 5.27 In the 2019 Termination Markets Decision ComReg noted that 0818 numbers allow calls to be made to a central (typically corporate) number for re-routing to the appropriate response point, and are subject to the CPP principle. ComReg noted further that 0818 numbers were therefore typically used by corporate bodies, and not by individuals.
- 5.28 In the 2019 Termination Markets Decision it was noted that, as with 076 calls, the retail cost of calls to 0818 numbers was not to exceed the originating undertaking's standard rate for a call of the same duration to a Geographic Number. Where the rate for calling Geographic Numbers is distance dependent, the rate for 0818 calls was not to exceed the originating undertaking's standard rate applicable for a national call⁸¹.

⁸¹ See paragraph 5.45(c) and 5.55 of the 2019 Termination Markets Decision which referred to the Numbering Conditions of Use as reflected in "Numbering Conditions of Use and Application Process", ComReg Document 15/136R1. This has since been amended as of 28 November 2019 to ComReg Document 15/136R2 found at <https://www.comreg.ie/publication/numbering-conditions-of-use-and-application-process-document>.

- 5.29 ComReg noted that this created a similarity between 0818 and Geographic Numbers. However, similarities in retail usage and prices for geographic and 0818 numbers respectively are not the solely decisive criteria. Rather, ComReg's view in the 2019 Termination Markets Decision was that, unlike Geographic Numbers and 076 numbers, Geographic Numbers and 0818 numbers appeared to have different competitive characteristics at the wholesale level. These characteristics include differences in end user awareness (including the receiving party) and incentives in respect of the level of the FTRs applied, as well as differences in the revenue opportunities which accrue to terminating FSPs in respect of calls incoming to such 0818 numbers⁸². In this respect, the 2019 Termination Markets Decision noted: 0818 numbers were mainly being used for the purposes of providing business and information services to consumers; differences in the characteristics associated with 0818 numbers relative to 076 and Geographic Numbers, including allowing the use for value added features; and businesses using 0818 numbers were more likely to be sensitive to the termination charges applied by their terminating FSP, as they use such 0818 phone numbers as a sales or payment or other customer contact opportunity from calling parties (e.g. bank customers wishing to pay a bill, or consumers wishing to buy a ticket to a concert) and given that termination rates feed into the cost faced by calling parties (who are seeking to engage with them). Accordingly, compared to typical Geographic Number called parties, called parties on 0818 numbers are likely to be more incentivised to have greater awareness of the FTRs charged by their FSP, as 0818 numbers provide such called parties with indirect revenue-generating opportunities. This in turn meant the called party on the 0818 number range was likely to be more sensitive to the level of the FTR set by its FSP and place a degree of constraint on such FTRs.
- 5.30 ComReg's position in the 2019 Termination Markets Decision was therefore that FVCT to 0818 numbers were subject to sufficiently different competitive characteristics to FVCT to Geographic Numbers more generally, and should therefore be excluded from the Relevant FVCT Markets(s).

⁸² See paragraphs 5.55 to 5.60 in the 2019 Termination Markets Decision regarding ComReg's assessment of the competitive characteristics of 0818 numbers.

5.31 In particular, ComReg had noted in the 2019 Termination Markets Decision that 0818 numbers are mainly used for the purposes of providing business and information services to consumers – for example, telephone banking, customer care helplines etc.⁸³ In most cases, 0818 numbers are used for calls to Value Added Network Providers ('VASPs')⁸⁴. The use of such numbers allow for value added features such as NGN translation services which are delivered using a serving operator's Intelligent Network platform. Depending on the specific operator platforms capabilities, value added features such as Time Origin-Dependent Routing, Time-Dependent Routing, Percentage Routing, Re-route on Busy, Re-Route on No Reply and flexible combinations of these features can then be applied to 0818 numbers⁸⁵. ComReg noted that at the time such features were not normally available for 076 and Geographic Number applications. Further, ComReg's view in the 2019 Termination Markets Decision was that VASPs using 0818 numbers were more likely to be sensitive to the termination charges applied by their terminating FSP, as a VASPs tended to use such 0818 phone numbers as a sales or payment or other customer contact opportunity from calling parties (e.g. bank customers wishing to pay a bill, or consumers wishing to buy a ticket to a concert).

⁸³ See paragraph 5.58 of the 2019 Termination Markets Decision.

⁸⁴ See paragraphs 5.43 to 5.54 in the 2019 Termination Markets Decision for ComReg's detailed assessment and position regarding VASPs. In ComReg's view the positions stated their remain valid for purposes of this Decision except with regards to the competitive characteristics of 0818 numbers used for calls to VASPs and discussed further in paragraphs 5.32 to 5.35 of this Decision. The term 'VASPs' is intended to refer to the fact that the ultimate recipient of the incoming voice call is not an end user but is rather a commercial or public entity such as a business, financial institution, helpline or government agency which uses the numbers to provide information/content/interactive services to enable customers/citizens to receive information and/or to make payments for services. By contrast the term 'Service Provider' is intended as a more generic term referring to all FSPs which may be actively providing voice calls services to end users and/or commercial entities.

⁸⁵ Origin-Dependent Routing: For Example calls to a NGN originating in the Cork area (021) delivered to an 021 answering location and calls to the same NGN originating in the Dublin area (01) sent to an 01 answering location etc. Time dependent Routing: For example calls to a NGN originating weekdays 9-5 sent to an office answering location and calls to the same NGN delivered to an alternative location at weekends and evenings.

Percentage Routing: For example, calls to a NGN 60% delivered to one location and 40% delivered to another location.

Re-route on Busy, Re-Route on No Reply: : For example calls delivered to a NGN at one location but if that location is busy or if there is no reply the call re-routes to and alternative location.

See <https://business.eir.ie/product/national-telemarketing-services/#tab-2>

- 5.32 ComReg noted further in the 2019 Termination Markets Decision that retail charges for calls to 0818 numbers were set such that the cost of calls to 0818 numbers shall not exceed the originating undertaking's standard rate for a call of the same duration to a Geographic Number. However, such calls were typically excluded from bundled minutes where offered by SPs, such that the calling party pays for these calls on a per call basis. Given the above, ComReg's view was that called party VASPs were therefore likely to be more sensitive to the FTRs charged by their host SP (relative to other geographic numbers), given that they fed into the cost faced by calling parties (who were seeking to engage with them). This differs from the markets for FVCT to Geographic Numbers, where the FTRs set by FSPs are not influenced by the behaviour of their own customers (calling parties do not choose their FSP based on its FTR given that the CPP principle means that the calling party does not incur that charge). However, ComReg referred to certain developments that may require that this position be reassessed and therefore undertook to further consult on this matter⁸⁶.
- 5.33 In paragraphs 5.162 to 5.170 of the 2019 Termination Markets Decision ComReg set out its position regarding the definition of the FVCT geographic market and concluded that the Relevant FVCT Markets should be defined according to the scope of a FSP's provision of FVCT services to Fixed Numbers in consideration of the homogeneous conditions of competition and the presence of a common pricing constraint underpinning the delivery of FVCT by each FSP in respect of calls to Fixed Numbers.

Should 0818 Numbers be included in the Relevant FVCT Market?

- 5.34 As noted in paragraph 2.12 of this Decision, the introduction of changes arising from the implementation of the 2018 NGN Decision could lead to changes in how 0818 numbers are used by VASPs, as well as the competitive characteristics at the wholesale and retail level. In particular, from 1 December 2019, the introduction of the Geo-linking Condition⁸⁷ means that a call to an 0818 (or 076) NGN (as well as other certain numbers) will now cost an end user no more than the cost of calling a Geographic Number. Further, if calls to Geographic Numbers are included in a "bundle of call minutes", then NGN calls, including calls to 0818 numbers must also be "in bundle". It follows that no separate charge will apply for any NGN call (including calls to 0818 numbers) unless the caller has used up all inclusive bundled call minutes).

⁸⁶ See paragraph 1.6.

⁸⁷ See paragraph 2.13 of this Decision. The 'Geo-linking Condition' refers to the capping of the charge for 0818 calls at the price of a geographical number.

- 5.35 ComReg notes further that the NGN Consolidation introduced by the 2018 NGN Decision also limits the number of NGN ranges from 1 January 2022 to two number ranges – 1800 for Freephone and 0818 for all others. It follows from this that the 1850, 1890 and 076 ranges will be withdrawn 1 January 2022. ComReg notes that it is likely that from 1 January 2022 those Service Providers that had used 076 numbers will shift to usage of Geographic Numbers and 0818 numbers. In this regard, it is noted that in the 2019 Termination Markets Decision ComReg’s position was that FVCT to 076 numbers is subject to sufficiently similar competitive characteristics as FVCT to Geographic Numbers and was therefore included in the same Relevant FVCT Market(s) as call termination to Geographic Numbers⁸⁸.
- 5.36 ComReg notes that as consequence of the Geo-Linking condition, retail SPs will have to include 0818 numbers in their bundles along with having separate charges for them. This would likely have implications on called parties who will no longer be faced with an identifiable charge for making 0818 calls, where they have bundled minutes within their price plan. Consequently, callers are more likely to be now relatively less sensitive to the impact of changes in FTRs and any pass through into the retail cost of making 0818 calls where calls to these numbers are now part of a bundled minute offer.
- 5.37 This, in turn, would likely reduce the called party sensitivity (in this case VASPs) to the cost faced by calling parties. It follows that the competitive and other features around 0818 NGNs have consequently fallen into greater alignment with those of Geographic Numbers.
- 5.38 In light of the introduction of the Geo-linking condition from 1 December 2019 and NGN Consolidation from 1 January 2022 it is ComReg’s position that on a forward looking basis FVCT to 0818 numbers will now be subject to sufficiently similar competitive characteristics as FVCT to Geographic Numbers such that they should be included in the same Relevant FVCT product market(s). For purposes of this Decision it is therefore ComReg’s position that the relevant FVCT product market is one which:
- (a) involves the provision of FVCT for the purpose of completing voice calls to subscribers’ Fixed Numbers that have been assigned to an individual FSP where the term Fixed Numbers is used to now collectively refer to all Geographic Numbers, 0818 numbers, nomadic 076 numbers, and 112/999 numbers assigned to FSPs over the period of this market review;
 - (b) involves interconnection between networks and is provided by a FSP which has the ability to set/control the FTR for calls to Fixed Numbers; and
 - (c) is technology neutral, and includes FVCT for calls to Fixed Numbers irrespective of whether the underlying technology is mobile or fixed, or, in case of VoIP telephony, whether the VoIP service is Managed, Partially-Managed or, in the case of off-net calls to Fixed Numbers, Unmanaged.

⁸⁸ See paragraph 5.71 of the 2019 Termination Markets Decision.

5.39 It follows that Relevant FVCT product market includes:

“the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point (to the End User) or level on that terminating FSP’s network at which incoming voice calls can be handed over for termination to Fixed Numbers⁸⁹ and in respect of which that FSP is able to set the FTR”.

5.40 In ComReg’s view the description in paragraph 5.39 would therefore differ from that set out in the 2019 Termination Markets Decision in one material respect namely that 0818 numbers should now be included in the relevant FVCT product market along with Geographic, 076 and 112/999 numbers.

5.41 In their Submissions a number of Respondents addressed the question of whether or not 0818 numbers should be included in the Relevant FVCT Market(s). An overview of these is set out below in paragraphs 5.42 to 5.46.

Overview of Respondent’s Views on Inclusion of 0818 Numbers in the Relevant FVCT Market

5.42 Three of five Respondents commented on this issue. Eircom, Three and Vodafone agreed with ComReg’s proposal to include 0818 numbers in the Relevant FVCT Market, while BT disagreed.

5.43 Eircom noted that it agreed with ComReg’s proposal to include 0818 Numbers in the Relevant FVCT Market and were of the view that this is a more efficient approach to regulate the level of 0818 wholesale termination charges than the measures set out in the 2020 Wholesale NGN Decision⁹⁰.

⁸⁹ Fixed Numbers are defined as including Geographic Numbers as well as numbers in 076, 112/999 and 0818 number ranges.

⁹⁰ As noted in paragraph 2.18 the 2020 Wholesale NGN Decision stipulates a price control on WORs for calls to 0818 NGNs such that, unless otherwise provided for, the originating operator will be prohibited from imposing a WOR for calls to 0818 NGNs. An exception to this condition will apply where the OO is subject to a 0818 termination rate that is in excess of the regulated FTR that applies pursuant to the 2018 Separate Pricing Decision. In such a case, the relevant originating operator will be permitted to respond to that particular 0818 terminating operator by charging a 0818 WOR that is no greater than the difference between that 0818 termination rate charged and the regulated FTR.

- 5.44 Vodafone also agreed with the proposal to include 0818 numbers in the Relevant FVCT Market and noted that the price control obligation in the 2020 Wholesale NGN Decision for 0818 calls (referred to herein as the '**0818 NGN Wholesale Price Control Mechanism**')⁹¹ would add considerable complexity and cost to the processes needed to negotiate, administer, and bill for inter-operator charges, including charges for termination. Vodafone elaborated on its concerns regarding the 0818 NGN Wholesale Price Control Mechanism as originally set out in its response to the 2019 NGN Wholesale Consultation, noting that the proposed limit on WORs provides no mechanism for operators to recover the expense of setting up distinct charging for each terminating operator and maintaining different charging tables for each interconnected operator.⁹²
- 5.45 In its Submission Three noted that it considered the 0818 NGN Wholesale Price Control Mechanism to be a 'short-term measure' and welcomed ComReg's proposal to include 0818 numbers in the Relevant FVCT Markets.
- 5.46 BT disagreed with ComReg's proposal to include 0818 numbers in the Relevant FVCT Markets. Its reasons, in summary, are as follows:
- (a) According to BT, ComReg's reasoning in the 2019 Termination Markets Decision remains valid, namely that the commercial environment concerning 0818 is different to that of Geographic Numbers with service providers⁹³ having a motivation to ensure the price of termination does not discourage callers;
 - (b) BT argue that the 0818 number range is more of an intermediate number as it is not the end of routing of the call. In this regard BT noted that 0818 NGNs can function as translation numbers that can be routed (for example) to different locations. BT considered that account must be taken of the facility enabling the entire service to be switched to another provider and, as such, there are numerous choices available for the service providers receiving calls;
 - (c) The NGN Wholesale Price Control Mechanism imposed as a remedy in the 2020 Wholesale NGN Decision has not been allowed sufficient time to work. In this regard, BT noted that operators are aligning with the NGN Wholesale Price Control Mechanism within the published Switched Transit Routing Price List ('**STRPL**'), suggesting a voluntary alignment among FSPs; and

⁹¹The price control mechanism described in footnote 89 above was raised by Vodafone in their Consultation Submission with reference to the "the inter-operator charging process for 0818 calls".

⁹² See paragraph A7.111 of the 2020 Wholesale NGN Decision.

⁹³ Service providers include Value Added Service Providers (VASPs) using 0818 numbers and who may or may not be sensitive to the termination charges applied by their terminating FSP.

- (d) BT referred to future regulation of termination by the European Commission⁹⁴ and expressed concern that that regulatory scope drift could stifle the commercial nature of the services supported through 0818 numbers.

5.47 ComReg now sets out its consideration of Respondents views arising from the Consultation Submissions in paragraphs 5.48 and 5.49 below.

ComReg's Consideration of Respondents' Views

- 5.48 ComReg notes those Respondents' Submissions supporting the inclusion of 0818 NGNs in the Relevant FVCT Market(s) and is broadly in agreement with the views expressed. ComReg notes in particular the concerns raised regarding practical implementation of the 0818 NGN Wholesale Price Control Mechanism and acknowledges the potential efficiency advantages and administrative cost savings from avoiding having to implement such a mechanism. In particular, ComReg notes possible expenses arising from having to set up distinct charging for each terminating operator and maintaining different charging tables for each interconnected operator. However, ComReg does not consider this to be a deciding factor, in and of itself, on whether or not 0818 NGNs should be included in the Relevant FVCT Market.
- 5.49 For the reasons set out below, ComReg does not agree with BT's views (as summarised in paragraph 5.46) that 0818 NGNs should not be included in the Relevant FVCT Markets.

⁹⁴ See paragraph 8.54 in which it is noted that in terms of Article 75 of the EEC, the EC is required, by 31 December 2020, to establish single EU wide maximum FTRs which can be imposed on any SP active on a Relevant FVCT Market.

- (a) With regard to BT's view that the commercial environment concerning 0818 is different to that of Geographic Numbers, ComReg maintains its view as set out in the Consultation that, as consequence of the Geo-Linking condition established in the 2018 NGN Decision⁹⁵ retail SPs will have to allow calls to 0818 numbers to be decremented from retail price plans that have bundled minutes, along with having separate charges for them when the bundled minutes have been consumed. This Geo-Linking condition would likely have implications on calling parties who will no longer be faced with an identifiable retail charge for making 0818 calls, where they have bundled minutes within their price plans. Consequently, callers are more likely to be now relatively less sensitive to the impact of changes in FTRs and any pass through into the retail cost of making 0818 calls where calls to these numbers are now required to be decremented from bundled minute offers. ComReg notes that this in turn would likely reduce the 0818 called party sensitivity (in this case VASPs) to the cost faced by calling parties. It follows that the competitive and other features around 0818 NGNs have consequently fallen into greater alignment with those of Geographic Numbers (with these latter numbers already included in the Relevant FVCT Markets);
- (b) BT's assertion regarding the intermediate nature of 0818 NGNs notwithstanding, it remains the case that calls to 0818 numbers must nevertheless be terminated. In this regard BT's response did not address the relevant criteria for assessing whether or not 0818 NGNs fall within the Relevant FVCT Market. ComReg notes that the three qualifying criteria (as set out in paragraph 5.20 and 5.38 above) for inclusion in the FVCT product market are met in the case of 0818 NGN calls:
- (i) It involves the provision of FVCT for the purpose of completing voice calls to subscribers' 0818 NGNs that have been assigned to an individual FSP. Subscribers need not be individuals but may also include VASPs, corporates or other undertakings;
 - (ii) It involves interconnection between networks and is provided by a FSP which has the ability to set/control the FTR. Calls to 0818 NGNs follow the CPP principle. In terms of charges at the retail level, the originating operator charges the caller, the terminating operator does not charge the service provider. The originating operator charges the caller a retail origination rate no greater than a national call rate. Service providers may make use of enhanced termination services (e.g. intelligent routing). If these services are used, the terminating operator will charge the service provider⁹⁶; and
 - (iii) Is technology neutral.

⁹⁵ The Geo-Linking Condition is that from 1 December 2019, a call to an 1850, 1890, 0818 or 076 NGN will cost no more than the cost of calling a landline number. This means that if landline calls are included in a "bundle of call minutes" then NGN calls will also be "in bundle". No separate charge will apply for any NGN call (unless the caller has used up all bundled call minutes).

⁹⁶ See paragraph 4.85 and figure 9 of the 2020 Wholesale NGN Decision. Figure 9 reflects the payment arrangements before the Geo-linking Condition on 0818 numbers came into effect on 1 December 2019.

- (c) ComReg does not consider that allowing more time for the 0818 Wholesale NGN Pricing Mechanism to work is a sufficiently relevant consideration in determining whether or not 0818 NGNs should be included in the Relevant FVCT Market. The relevant considerations are addressed in this Decision with reference to the established criteria for analysing and defining relevant markets (see paragraphs 5.11 to 5.40 above). ComReg notes that the 2020 Wholesale NGN Decision nevertheless contains implicit acknowledgement that the 0818 NGN Wholesale Pricing Mechanism would be a temporary measure in the event that 0818 NGNs were later (following further consultation) to be included in the Relevant FVCT Market⁹⁷; and
- (d) ComReg does not agree that including 0818 NGNs in the Relevant FVCT Market constitutes regulatory scope creep as its proposal in this regard is based on sound analysis informed by established economic methodology and is constrained only to the specific issue identified. Whilst the publication of this Decision occurs before Article 75 of the EECC becomes effective in Ireland, ComReg is mindful of Article 75 of the EECC in developing its proposals in this Decision. ComReg notes that the current market review process (including the procedure for the identification and definition of markets and market analysis procedure) is broadly consistent with that proposed under the EECC.
- 5.50 As noted in paragraph 2.13 of the 2019 Termination Markets Decision, after the 2017 Termination Markets Consultation was published, three additional FSPs, namely Phone Pulse Ltd, Goldfish Telecom Ltd. and TSFY Ltd (trading as Nuacom) were identified as potentially providing FVCT services.
- 5.51 ComReg considers that the product market features above capture the essential characteristics of the relevant FVCT product market. Further, it is ComReg's position that the FVCT product market features described above apply to both the Additional FSPs identified for purposes of this Decision and to the 2019 SMP FSPs.
- 5.52 With regards to the relevant geographic market ComReg's position is that the position in the 2019 Termination Markets decision remains valid for the purposes of this Further Review, including having regard to the now inclusion of 0818 numbers, and applies equally to the Additional FSPs as it does to the 2019 SMP FSPs.

⁹⁷ See paragraph 4.99 of the 2020 Wholesale NGN Decision which noted that: "In the event that a future consultation concludes that FVCT for calls to 0818 numbers does fall within the definition of the Relevant FVCT Markets, a Regulated FTR may be imposed in respect of these types of calls. As a result the charge flow for 0818 will then resemble that of a Geographic call and be subject to the Regulated FTR. The potential for an excessive termination rate is eliminated as there will be no difference between the 0818 WTR and the Regulated FTR". See also paragraph 3.90 of the 2020 Wholesale NGN Decision.

5.53 Accordingly, it is ComReg’s position that that the FVCT services offered by the FSPs listed below fall within the above description and their supply of FVCT is consequently each considered to form a Relevant FVCT Market for the purposes of this Decision⁹⁸. The Additional FSPs identified in bold italics are thus incremental to those identified in the 2019 Termination Markets Decision as providing FVCT.

Table 3: List of FSPs operating in a relevant FVCT Market

FSPs forming a relevant FVCT Market for purposes of this Decision		
Airspeed Communications ⁹⁹	In2com	Telcom ¹⁰⁰
BT Communications	Intellicom Ireland	Verizon Ireland
BlueFace	Imagine Communications	Virgin Media Ireland
Colt Technology Services	Magnet Networks	Viatel Ireland
Dialoga Servicios Interactivos	Magrathea Telecommunications	Vodafone Ireland
Eircom	Modeva Networks	Voxbone SA
Equant Network Systems ¹⁰¹	PlanNet 21	IP Telecom
Finarea SA	<i>Goldfish</i>	<i>Nuacom</i>
<i>Phone Pulse</i>		

⁹⁸ This list expands on the Group A list in in Table 14 of the 2019 Termination Markets Decision by including the three Additional FSPs Phone Pulse, Goldfish and Nuacom.

⁹⁹ See paragraph 5.57 below.

¹⁰⁰ See paragraph 5.58 below.

¹⁰¹ On 19 March 2020, a Form G1Q – Special Resolution Change the Company Name was lodged at the Companies Registration Office notifying that, subject to the approval of the Registrar of Companies, the name of Equant Network Systems Limited shall be changed to Orange Business Telecommunications Services Limited.

5.54 A new FSP, The Black Dog, has been identified which may operate within a Relevant FVCT Market. Consistent with the market definition and SMP assessment approach adopted in the Consultation and this Decision ComReg would have to conduct a further consultation in order to determine whether The Blackdog operates within a Relevant FVCT Market and, if so, whether it should be designated with SMP and have any associated obligations imposed upon it in order to address any identified competition problems. Such an approach would also usually apply to any other new FSPs. However, ComReg notes that the introduction under the Delegated Act of Eurorates in the EU by 31 December 2020 would require The Blackdog to apply the associated rates for any FVCT services its supplies. Having regard to the impending implementation of the Delegated Act and the possible impact of the Revised Recommendation on termination markets, ComReg will further consider the implications of possible SMP regulation of The Blackdog (or any other new FVCT suppliers that may emerge) as appropriate. ComReg will keep this matter under review and will take appropriate action as required¹⁰².

Magrathea Telecommunications

5.55 In the 2019 Termination Markets Decision ComReg had identified wholesale FVCT provided by Magrathea Telecommunications (Ireland) Limited as a Relevant FVCT Market and designated Magrathea Telecommunications (Ireland) Limited with SMP. The 2019 Separate Pricing Decision also applied to Magrathea Telecommunications (Ireland) Limited. Post the issuance of the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision, ComReg was informed by a director of Magrathea Telecommunications (Ireland) Limited that fixed numbers are allocated Magrathea Telecommunications Limited, a UK registered company. Having considered matters further, ComReg considers that the Relevant FVCT Market is wholesale FVCT provided by Magrathea Telecommunications Limited (rather than Magrathea Telecommunications (Ireland) Limited) and that Magrathea Telecommunications Limited should be the undertaking designated with SMP in that Relevant FVCT Market. ComReg has decided to amend the Decision Instruments in the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision so that they refer to Magrathea Telecommunications Limited and that the changes in this Decision in respect of 0818 numbers would also apply to Magrathea Telecommunications Limited.

¹⁰² See paragraphs 1.32 to 1.33 of this Decision.

Orange Business Telecommunications Services

5.56 In the 2019 Termination Decision ComReg had identified wholesale FVCT provided by Equant Network Service Limited and designated Equant Network Service Limited with SMP in the relevant market. The 2019 Separate Pricing Decision also applied to Equant Network Services. Subsequently on 19 March 2020 Equant Network Services changed its name to Orange Business Telecommunications Services Limited. Therefore Equant Network Service Limited means Orange Business Telecommunications Services, and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns. Therefore any changes made in this Decision equally apply to Orange Business Telecommunication Services.

Airspeed Communications Limited

5.57 Similar, to the detail set out above at paragraph 5.55, in the 2019 Termination Decision Airspeed Communications Unlimited was identified as a wholesale FVCT provider. The 2019 Separate Pricing Decision also applied to Airspeed Communications Unlimited. A subsequent company check confirmed that in February 2019 Airspeed Communications Unlimited changed its name to Airspeed Communications Limited, therefore Airspeed Communications Limited, means Airspeed Communications Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns. The changes made in this Decision equally apply to Airspeed Communications Limited.

Telcom Group Est 1999 Designated Activity Company

5.58 In the 2019 Termination Decision ComReg had identified wholesale FVCT provided by Telcom Limited. The 2019 Separate Pricing Decision also applied to Telcom Limited. On 9 July 2020 ComReg's Electronic Register of the Authorised Undertaking was updated by the authorised undertaking, noting a name change from Telcom Limited to Telcom Group Est 1999 Designated Activity Company. Therefore Telcom Limited means Telcom Group Est 1999 Designated Activity Company and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns, which for the avoidance of doubt includes Agility Communications Limited. The changes made in this Decision equally apply to Telcom Group Est 1999 Designated Activity Company.

Overall conclusion on the Relevant FVCT Markets for purposes of this Decision

5.59 Having regard to the above analysis, it is ComReg's position that the Relevant FVCT Markets each consist of:

“the provision by a FSP of a wholesale FVCT service to other Service Providers from the nearest point to the End User or level on that terminating FSP’s network at which incoming voice calls can be handed over for termination to Fixed Numbers¹⁰³, and in respect of which that FSP is able to set the FTR.

The geographic scope of the Relevant FVCT Market(s) corresponds to the geographic coverage of each individual FSP’s network.”

5.60 For the avoidance of doubt:

- (a) This is a technology neutral market definition and the use of the term ‘FSP’ in the above context is intended to refer to any Service Provider supplying the FVCT services concerned, irrespective of the underlying technology (i.e. wired or wireless);
- (b) Fixed Numbers includes Geographic Numbers as well as numbers in the 0818, 076, 112/999 number range; and
- (c) ‘Other Service Provider’ includes any authorised undertaking,¹⁰⁴ whether located in the State or in another jurisdiction.

5.61 Having regard to the above market definition, it is ComReg’s position that the separate 25 Relevant FVCT Markets below exist for the purposes of this Decision.

Wholesale FVCT provided by the Additional FSPs:

5.62 ComReg has identified three separate Relevant FVCT Markets within which the Additional FSPs operate, namely:

- (a) Wholesale FVCT supplied by Phone Pulse Unlimited;
- (b) Wholesale FVCT supplied by Goldfish Telecom Limited;
- (c) Wholesale FVCT supplied by TSFY Limited trading as Nuacom.

Wholesale FVCT provided by the 2019 SMP FSPs:

5.63 ComReg is satisfied that, notwithstanding the revised definition of Fixed Numbers as set out in paragraph 5.58 and 5.59 above, it continues to be appropriate to continue to identify twenty-two (22) separate Relevant FVCT Markets within which the 2019 SMP FSPs operate, namely:

- (a) Wholesale FVCT supplied by Airspeed Communications Unlimited, now Airspeed Communications Limited¹⁰⁵;
- (b) Wholesale FVCT supplied by BT Communications Ireland Limited;

¹⁰³ Fixed Numbers are defined as including Geographic Numbers as well as numbers in 076, 112/999 and 0818 number ranges.

¹⁰⁴ Pursuant to Regulation 4 of the Authorisation Regulations (European Communities (Electronic Communications Network and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011).

¹⁰⁵ See paragraph 5.57 regarding Airspeed Communications Limited.

- (c) Wholesale FVCT supplied by Colt Technology Services Limited;
- (d) Wholesale FVCT supplied by Dialoga Servicios Interactivos, SA;
- (e) Wholesale FVCT supplied by Eircom Limited;
- (f) Wholesale FVCT supplied by Equant Network Systems Limited, now registered as Orange Business Telecommunications Services Limited;
- (g) Wholesale FVCT supplied by Blueface Limited (“Blueface”);
- (h) Wholesale FVCT supplied by Finarea SA;
- (i) Wholesale FVCT supplied by Imagine Communications Ireland Limited;
- (j) Wholesale FVCT supplied by Intellicom Ireland Limited;
- (k) Wholesale FVCT supplied by Internet Protocol Telecom Limited;
- (l) Wholesale FVCT supplied by In2com Limited;
- (m) Wholesale FVCT supplied by Magnet Networks Limited;
- (n) Wholesale FVCT supplied by Magrathea Telecommunications Limited¹⁰⁶;
- (o) Wholesale FVCT supplied by Modeva Networks Unlimited;
- (p) Wholesale FVCT supplied by PlanNet 21 Communications Limited (or, for the avoidance of doubt, its 100% owned subsidiary, 3Play Plus Limited);
- (q) Wholesale FVCT supplied by Telcom Limited, now Telcom Group Est 1999 Designated Activity Company¹⁰⁷;
- (r) Wholesale FVCT supplied by Verizon Ireland Limited;
- (s) Wholesale FVCT supplied by Viatel Ireland Limited;
- (t) Wholesale FVCT supplied by Virgin Media Ireland Limited;
- (u) Wholesale FVCT supplied by Vodafone Ireland Limited; and
- (v) Wholesale FVCT supplied by Voxbone SA.

¹⁰⁶ See paragraph 5.55 regarding Magrathea Telecommunications Limited

¹⁰⁷ See paragraph 5.58 regarding Telcom Group.

6 Competition Analysis and Assessment of Significant Market Power in Relevant FVCT Markets

Overview

- 6.1 In Section 6 of the Consultation ComReg set out its preliminary views on the competition analysis and assessment of Significant Market Power (**'SMP'**) within each of the Relevant FVCT Markets.
- 6.2 Of the five Respondents who made Submissions in response to the Consultation, Eircom and Three indicated that they agreed with ComReg's SMP assessment with regard to the Additional FSPs and 2019 SMP FSPs. BT noted that while it agreed with ComReg's SMP assessment with regards to Additional FSPs and 2019 SMP FSPs it did not agree that this should include Additional FSPs and 2019 SMP FSPs that offer 0818 NGN related call services¹⁰⁸. Vodafone and Goldfish did not comment.
- 6.3 ComReg's position is that each of the Relevant FVCT Markets on which the Additional FSPs and the 2019 SMP FSPs individually operate (as identified in paragraphs 5.61 to 5.63), is not effectively competitive and each of these FSPs should be individually designated as having SMP.
- 6.4 With regard to the 2019 SMP FSPs, ComReg notes that the changes to the Relevant FVCT Markets as defined in Section 5 of this Decision effectively amount to an amendment of the Relevant FVCT Markets as defined in the 2019 Termination Markets Decision to reflect the inclusion of 0818 numbers.
- 6.5 In arriving at these views, ComReg has applied the framework and approach for assessing SMP as set out in paragraphs 6.4 to 6.15 in the 2019 Termination Markets Decision.
- 6.6 Below, ComReg sets out its positions on the assessment of SMP in the Relevant FVCT Markets (discussed in paragraphs 6.7 to 6.53) and the appropriate SMP Designations (discussed in paragraphs 6.54 to 6.59).

Assessment of SMP in the Relevant FVCT Markets

- 6.7 As in the 2019 Termination Markets Decision ComReg combines the various factors of most relevance to the assessment of SMP under the following three broad headings¹⁰⁹:

¹⁰⁸ See paragraph 6.43 below. BT's views regarding 0818 NGNs and ComReg's consideration of those views is set out in more detail in paragraphs 5.46 to 5.49.

¹⁰⁹ Other factors identified which could be used to indicate the potential market power of an undertaking have been considered but, for the reasons set out in Annex: 4 of the 2019 Termination Markets Decision, are deemed (in the context of this Decision) to be of limited relevance for the purposes of the SMP assessments.

- (a) Existing competition in the Relevant FVCT Markets - factors such as market shares, relative strength of existing competitors and pricing behaviour (discussed below in paragraphs 6.8 to 6.14)¹¹⁰.
- (b) Potential competition in the Relevant Termination Markets - factors such as control of infrastructure not easily duplicated, barriers to entry in the Relevant Termination Markets, and the overall strength of potential competitors (discussed below in paragraphs 6.15 to 6.20)¹¹¹.
- (c) Strength of any countervailing buyer power ('**CBP**') - the constraints (if any) imposed by any strong buyers of WVCT on the competitive behaviour of WVCT suppliers (discussed below in paragraphs 6.21 to 6.53)¹¹²

Existing Competition in the Relevant Termination Markets

6.8 In this subsection ComReg considers such factors as the relative strength of any existing competitors, market shares, and pricing.

Existing Competition

6.9 In Section 5 of this Decision, the Relevant Termination Markets¹¹³ are defined, such that each FSP identified is the sole supplier of FVCT to its subscribers. In ComReg's view this means that, by definition, FSPs do not face existing competition on these markets and barriers to entry (such as those associated with the control of the completion of calls) are high. In Section 5 of this Decision, ComReg also notes its view that the strength of any indirect constraints from the retail markets are not likely to be sufficient to result in the development of effective competition in the Relevant FVCT Markets¹¹⁴. ComReg considers that these conditions are likely to persist over the period covered by this market analysis.

Market Shares

6.10 Given the relevant market definitions set out in Section 5, each of the Service Providers identified in paragraphs 5.62 has a 100% market share in the Relevant Termination Market within which they operate, whether measured by call termination volumes or call termination revenues. These high market shares have been maintained over time. There are currently no effective existing competitors to the FSPs operating in each of the Relevant FVCT Markets, and ComReg's position is that this is likely to persist over at least the medium term.

¹¹⁰ Discussed in paragraphs 6.19 to 6.25 in the 2019 Termination Markets Decision.

¹¹¹ Discussed in paragraphs 6.26 to 6.31 in the 2019 Termination Markets Decision.

¹¹² Discussed in paragraphs 6.32 to 6.211 in the 2019 Termination Markets Decision.

¹¹³ As set out at paragraphs 5.59 to 5.61 to above.

¹¹⁴ As set out at paragraphs 4.16 to 4.21 above.

Pricing Behaviour

- 6.11 In the absence of any existing effective competitors in the Relevant FVCT Markets (as discussed at paragraphs 6.13 below), ComReg sets out its analysis of FVCT pricing behaviour in the discussion on CBP below¹¹⁵. In the absence of any existing or potentially effective demand-side competitive constraints, the purpose of this pricing analysis is to assess whether any strong buyers have been, or are likely to be, in a position to effectively constrain the FTRs set by individual FSPs operating in their Relevant FVCT Markets, absent regulation. In this regard ComReg notes that the analysis in the 2019 Termination Markets Decision showed that FSPs that had previously not been regulated were able to maintain their FTRs above the competitive level. Further, the analysis in this Decision similarly shows that the Additional FSPs have been able to maintain their FTRs at levels significantly higher than the competitive level.
- 6.12 ComReg maintains its view that, absent regulation, FSPs' pricing of FVCT would not be credibly constrained to the extent that it would prevent them from behaving, to an appreciable extent, independently of their competitors, customers and, ultimately, consumers.

Overall conclusion on existing competition

- 6.13 Having regard to the market definition analysis carried out in Section 5 of this Decision and the assessment above, it is ComReg's position that, absent regulation, over the medium term:
- (a) High market shares in the Relevant FVCT Markets are likely to persist;
 - (b) Threats from existing wholesale competition or indirect retail constraints are not likely to pose an effective competitive constraint in the Relevant FVCT Markets; and
 - (c) FSPs supplying FVCT accordingly have, and will likely continue to have, the power to set their termination rates independently of each other and any competitive constraints.
- 6.14 As noted earlier, high and persistent market shares, while a strong indicator of SMP, are not, in themselves, solely determinative as to whether an undertaking has SMP. ComReg's position is that the high market shares and existing levels of competition are strongly suggestive that, individually, each Service Provider has SMP on its Relevant Termination Market. However, ComReg now considers whether other relevant factors might potentially diminish or undermine this presumption of SMP.

¹¹⁵ As set out at paragraphs 6.21 to 6.53 below.

Potential Competition in the Relevant FVCT Markets

- 6.15 ComReg’s assessment of potential competition in the Relevant FVCT Markets considers whether entry is likely over the medium term to such an extent that it would constrain a FSP’s ability to act, to an appreciable extent, independently of its competitors, customers or consumers. The threat of market entry, where it is credible, probable and timely, may be a disciplining factor which impacts the behaviour of Service Providers in the Relevant FVCT Markets.
- 6.16 In considering the potential for entry into the Relevant FVCT Markets, ComReg has assessed the factors related to current and foreseeable market conditions:
- (a) Control of infrastructure not easily duplicated;
 - (b) Barriers to entry in the Relevant FVCT Markets; and
 - (c) Overall strength of potential competitors.
- 6.17 Entry to the Relevant FVCT Markets could hypothetically come from a number of sources, including:
- (a) Existing Service Providers other than the called party’s FSP;
 - (b) New Service Providers; and
 - (c) Entry through other technologies (including, but not limited to, other technologies such as fixed wireless access, WiFi and VoIP).
- 6.18 The market definition assessment carried out in Section 5 considered the possibility of these options emerging as supply-side substitutes in a short timeframe (within a year), and at negligible cost, and noted that such entry was unlikely to impose an effective competitive constraint in this context. Demand-side substitutes and indirect constraints from the retail market were also considered to be insufficient to impact the definition of the Relevant FVCT Markets.
- 6.19 ComReg has revisited the above analysis, having regard to possible developments over the medium term (i.e. over at least the review period) which could materially impact the SMP assessment. ComReg remains of the view that the emergence of effective potential competition within this time horizon by means of current or emerging technologies is unlikely to sufficiently constrain competitive behaviour and, therefore, the exercise of SMP, given the high and non-transitory barriers to entry in each of the Relevant FVCT Markets arising from:
- (a) The control of resources necessary for termination (such as numbering ranges, routing and subscriber access); and
 - (b) The control of infrastructure (such as telecommunications networks) which is not easily replicable, or which requires high levels of capital expenditure prior to market entry.

Overall conclusion on potential competition in the Relevant FVCT Markets

6.20 ComReg's position is that potential competition in each of the Relevant FVCT Markets is unlikely to provide a sufficiently effective competitive constraint on the Service Providers operating within these markets and, consequently, does not undermine the presumption that, individually, each of the FSPs listed in paragraph 5.63 has the power to behave, to an appreciable extent, independently of its competitors, customers and consumers.

Countervailing Buyer Power

6.21 In this section ComReg considers whether bargaining power on the buyer side of the Relevant FVCT Markets is likely to impose a sufficiently effective competitive constraint on the termination rate-setting behaviour of the FVCT suppliers, such that it would credibly restrict their power to behave, to an appreciable extent, independently of their competitors, customers and consumers.

6.22 ComReg examines whether a sufficient level of CBP exists such that FVCT suppliers are unable to sustain termination rates that are above the competitive level (i.e. the effective exercise of CBP results in termination rates being constrained to levels that would be achieved in a competitive market outcome).

6.23 The effectiveness of CBP is likely to be highly dependent on the strength of the bargaining power of the purchaser in termination rate negotiations. In particular, having regard to the Explanatory Note to the 2014 Recommendation¹¹⁶ and the EC's 2009 Enforcement Priorities¹¹⁷, it remains ComReg's position that effective CBP results from customers being of sufficient size or importance to the seller, and having the ability to credibly switch to alternative sources of supply, such that it deters the seller from profitably increasing its prices. It is also of note that effective CBP has a broader market impact and does not only result in a limited segment of customers benefiting from better terms and conditions.

¹¹⁶ Page 32 of Explanatory Note to the 2014 Recommendation.

¹¹⁷ See paragraph 18 of the Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (2009/C 45/02) (the '2009 Enforcement Priorities'). Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:045:0007:0020:EN:PDF>.

- 6.24 ComReg's view is that the CBP analysis and findings set out in paragraphs 6.32 to 6.211 of the 2019 Termination Markets Decision remains valid for purposes of this Decision. In particular, ComReg considers that in respect of each of the 2019 SMP FSPs (as in paragraph 5.62 above) the level of any CBP held by any of the FVCT purchasers identified is unlikely to be sufficiently effective such that it would, absent regulation, prevent the individual abilities of any FVCT supplier to set its FTRs above the level which would occur in a competitive market outcome. Further, ComReg maintains its position as set out in the 2019 Termination Markets Decision that Service Providers generally lack credible outside options to purchasing FVCT from specific FSPs, due to a general end user expectation of end-to-end connectivity with all available networks, and due to the inability of one FSP to terminate a call to the network of another FSP. It is therefore unlikely that a Service Provider would be capable of exercising a material constraint on the ability of FSPs to set their FTRs above efficient cost absent regulation.
- 6.25 ComReg notes that the only change arising from the 2019 Termination Markets Decision relates to ComReg's position that 0818 numbers should now be included in the Relevant FVCT Markets. ComReg's position in this regard is that the level of any CBP held by any of the FVCT purchasers of calls terminating to 0818 numbers specifically is unlikely to be sufficiently effective such that it would, absent regulation, prevent any individual Additional FSP and 2019 SMP FSP FVCT supplier setting its FTRs for calls to 0818 numbers above the level which would occur in a competitive market outcome. Other than noting this distinction with regards to the 0818 number range, ComReg's position, as stated above, is that the analysis and findings in the 2019 Termination Markets Decision remain valid.

Framework for CBP Assessment

- 6.26 In assessing CBP, ComReg takes account of the regulatory context and the economic framework within which a market operates, as well as any other criteria relevant to the CBP assessment. ComReg describes its CBP assessment methodology in greater detail at Annex 10, in the 2019 Termination Market Decision.

Assessment of Effectiveness of CBP in Practice

- 6.27 In this section, ComReg assesses whether, in respect of Relevant FVCT Markets within which FSPs operate there is any evidence that purchasers of FVCT have exercised effective CBP to prevent the Additional FSPs and 2019 SMP FSPs from acting, to an appreciable extent, independently of its wholesale customers. ComReg examines the possibility of the exercise of CBP having regard to the following considerations:

- (a) The Data Request¹¹⁸, and the 2019 Additional FSP Request, in which Phone Pulse and Goldfish were asked whether they had experienced CBP,
- (b) The 2019 0818 Information Request;
- (c) The size of the purchaser of FVCT, and its relative importance to the seller;
- (d) Whether credible alternative sources of FVCT exist for a purchaser who wishes to exert CBP;
- (e) The sensitivity of the purchaser to the price of WVCT, and to changes in that price; and
- (f) Evidence of price-setting behaviour, and negotiations between Service Providers.

6.28 In paragraphs 6.28 to 6.53 below ComReg's CBP assessment will focus on the Relevant FVCT Markets in which the Additional FSPs operate. With regard to the 2019 SMP FSPs, ComReg notes that the CBP assessment below applies to them insofar as the amended definition of the Relevant FVCT Markets as set out in this Decision now includes the 0818 number range (see paragraph 6.41 below).

CBP Assessment in Relevant FVCT Markets

6.29 ComReg assesses whether there is evidence that any purchaser of FVCT has exercised effective CBP on the Additional FSPs and the 2019 SMP FSPs (to the extent any of these are terminating calls to 0818 numbers), having regard to the five factors set out in paragraph 6.27 above. ComReg examines whether Service Providers are in a position to exercise sufficient CBP over FSPs operating within a Relevant FVCT Market to prevent such a FSP from acting, to an appreciable extent, independently of its wholesale customers.

Responses to the Additional FSPs Data Requests

6.30 Two of the Additional FSPs (Phone Pulse and Goldfish) indicated in their responses to the Data Requests that they had not experienced CBP, either as a supplier or as a purchaser of FVCT¹¹⁹. This suggests that any CBP is ineffective in terms of its ability to constrain a FSP in setting its FTRs above the level consistent with a competitive market outcome. This is consistent with responses to the 2019 SMP FSPs in responses to similar questions in statutory information requests issued in the context of the 2017 Termination Markets Consultation.¹²⁰

¹¹⁸ See paragraph 2.43 a and b above.

¹¹⁹ No information has been provided by Nuacom in this regard.

¹²⁰ Market Review, Fixed Voice Call Termination and Mobile Voice Call Termination, Consultation and Draft Decision, ComReg Document 17/90, October 2017 ('**2017 Termination Markets Consultation**') See <https://www.comreg.ie/publication/market-review-fixed-voice-call-termination-mobile-voice-call-termination/>.

Size of the buyer and its relative importance to the seller

- 6.31 ComReg's overall position is that, even where a Service Provider which purchases FVCT from a FSP is relatively important to the FVCT supplier, due to the amount of minutes it terminates (and therefore the amount of FVCT it must purchase), it is unlikely that such a Service Provider could leverage its size and relative importance in seeking to credibly exercise CBP.

Credible alternative sources of FVCT supply for the buyer

- 6.32 In the 2019 Termination Markets Decision ComReg examined whether a buyer of FVCT could exercise its CBP by credibly threatening to switch to alternative sources of FVCT. This threat would be most credible where an alternative source of FVCT supply existed and there would be no (or only minimal) disturbances for the FVCT purchaser and its calling party customers.
- 6.33 Multiple networks coexist, and these networks need to connect to each other facilitate off-net calling. This means that Service Providers cannot provide a full service to their subscribers unless they purchase FVCT from other FSPs. Service Providers would likely face pressure from their own customers, in the form of an increased likelihood of switching to other, better-connected, Service Providers, if such customers discovered that they were unable to make calls to other FSPs' networks. This would be particularly true in respect of the networks of smaller Service Providers given the likelihood of a greater propensity for customer calls to be off-net.
- 6.34 ComReg is of the view that buyers of FVCT have no credible and effective alternative sources of FVCT. In this regard, the size of a Service Providers in itself is not likely to be sufficient to exercise CBP given they cannot credibly switch to an alternative source of FVCT supply. ComReg considers that the assessment in this regard in the 2019 Termination Markets Decision remains valid for purposes of this Decision.

Price sensitivity of the buyer

- 6.35 Purchasers of FVCT may display sensitivity to the level of FTRs charged by suppliers of a FVCT service, which may place a competitive constraint on termination rates in the context of CBP where such sensitivity leads to switching to alternative sources of supply (where such switching then is sufficient to effect the constraint). The degree of price sensitivity may vary in practice depending on, for example, the substitutes (if any) available to the purchaser, the absolute level of the FTR, and the number of calls terminated to a particular FVCT provider's network.
- 6.36 Furthermore, as their retail subscribers would have a general expectation of end-to-end connectivity with all networks, any price sensitivity on the part of the FVCT purchasers is likely to be somewhat constrained by the need to build a fully comprehensive retail offer which meets the general expectation of interoperability and accessibility to other networks.

- 6.37 The extent to which any FVCT price sensitivity has manifested or is likely to manifest in a concrete impact on the price-setting behaviour of the 2019 SMP FSPs and the Additional FSPs is considered further below from the evidence of actual price-setting behaviour to date.
- 6.38 In the absence of SMP regulation in a Relevant FVCT Market, Service Providers' levels of price sensitivity to the FTRs of the Unregulated FSPs may be greater, given the asymmetries between the FTRs charged by SMP FSPs and Unregulated FSPs, and between different Unregulated FSPs.
- 6.39 In their responses to the statutory information requests issued by ComReg, as part of the 2017 Termination Markets Consultation, no Service Provider respondent provided material evidence of having responded to the comparatively higher FTRs set by these Unregulated FSPs. In addition and as noted above in paragraph 6.30, both Phone Pulse and Goldfish responded to the 2019 Additional FSP Request, stating that they had not experienced CBP or any restrictions when setting their termination rates and therefore were in a position to set their own termination rates. This suggests either of two possibilities. In the first instance, Service Providers demonstrate limited price sensitivity, and, accordingly, a limited incentive to exert CBP. In the second instance, Service Providers are price sensitive, but are unable to act on this price sensitivity by means of exerting effective CBP.

Evidence of price-setting behaviour and negotiations between Service Providers

- 6.40 It is ComReg's position that the FTRs set by the 2019 SMP FSPs (insofar as 0818 numbers are concerned) and Additional FSPs (in respect of Fixed Numbers as defined for purposes of the Decision) which are not subject to *ex ante* price controls are indicative of their capacity, from a pricing perspective, to behave, to an appreciable extent, independently of all other FSPs and their relevant wholesale customers when setting their FTRs. This suggests that the pricing behaviour of the 2019 SMP FSPs and the Additional FSPs (to the extent that they have to date been unregulated and thus not subject to any price control) have not been constrained by the exercise of any CBP. Accordingly, ComReg's position is that any CBP exercised on the 2019 SMP FSPs and the Additional FSPs has not been, nor is likely to be, effective, absent regulation.

- 6.41 ComReg's position is that the inclusion of 0818 numbers in the Relevant FVCT Markets does not materially change the assessment of CBP as applicable to both the 2019 SMP FSPs and the Additional FSPs. As noted in paragraph 5.37 of this Decision it is ComReg's position that FVCT to 0818 numbers is subject to sufficiently similar competitive characteristics as FVCT to Geographic Numbers, 076 and 112 numbers such that they should be included in the same FVCT product market(s). It follows from this that any CBP analysis conducted with reference to FTRs for calls to Geographic Numbers will be materially valid for the case of calls to 0818 numbers. In support of this, ComReg notes that the FTR for calls to 0818 numbers has historically been set at a level substantially above the regulated FTR. According to Eircom's Switched Transit Routing and Price List ('**STRPL**') the payment to FSPs for terminating 0818 calls has been set at a peak rate of 4.62 cent per minute since 2010¹²¹ and has remained relatively unchanged over this period. Considering the prevailing regulated maximum FTR for FVCT for calls to other numbers is set at 0.061 cent per minute, the 4.62 FTR for 0818 calls is 75 times higher, thus suggesting that there has been little or no constraint on the FTRs set by FSPs for terminating calls to 0818 numbers.
- 6.42 ComReg notes that the FTR of 0.061 cent per minute applies to calls made to Fixed Numbers as defined in the 2019 Termination Markets Decision. ComReg's position in this Decision is that the definition of Fixed Numbers should be extended to include 0818 numbers. It follows that the rates for terminating calls to 0818 numbers should be the same.
- 6.43 In its Submission, BT expressed the view that a finding of SMP for FVCT to 0818 NGNs would not be appropriate given the facility with which the entire service can be switched to another service provider. ComReg does not agree and notes that even in the event that switching takes place termination would still constitute a bottleneck service on the part of any alternative SP. As set out in paragraphs 5.62 and 5.63 each FSP operates in their own separate Relevant FVCT Market.
- 6.44 ComReg notes that the 2020 Wholesale NGN Decision includes a price control obligation applicable to SPs originating 0818 calls that may have the indirect effect of constraining FTRs to 0818 numbers to no higher than the regulated FTR. In particular, as set out in paragraph 2.19, the price control provides that an originating operator will be permitted to respond to any particular 0818 terminating operator whose FTR exceeds the regulated rate by charging a 0818 WOR that is no greater than the difference between that 0818 termination rate charged and the regulated FTR. Any adjustments taking place as a consequence of the exercise of such an indirect mechanism may thus involve time delays and administrative costs arising from the burden on operators who would be required to monitor and implement changes in response to termination rate increases above the regulated FTR.

¹²¹ Table 109 page 39 of Eir's STRPL https://www.openeir.ie/Reference_Offers/.

- 6.45 As noted above at 2.43 (c) in December 2019, ComReg issued the 2019 0818 Information Request. The 2019 0818 Information Request sought to clarify if suppliers of FVCT to 0818 numbers charge the rates set out in the STRPL¹²². Fifteen of these suppliers responded. Fourteen out of the fifteen respondents stated that they apply the STRPL rates in supplying FVCT to 0818 numbers. One respondent said it no longer offers 0818 calls in Ireland and when it did “that the rates would vary”. The STRPL rates, at peak time for terminating 0818 vary from 7.39 cent per minute to 4.62 cent per minute. This suggest that there is little or no constraint on FTRs for termination of 0818 numbers given that they are significantly above the cost modelled FTRs.
- 6.46 Similarly, according to the STRPL the payment to FSPs (including 2019 SMP FSPs and the Additional FSPs) for terminating 076 calls had been set at a peak rate of 4.92 cent per minute prior to the 2019 Termination Markets Decision, approximately 80 times higher than the regulated maximum FTR for FVCT set at 0.061 cent per minute. This suggests that there has been little or no constraint on the FTRs set by FSPs for terminating calls to 076 numbers.
- 6.47 As noted in paragraph 5.35 of this Decision it is ComReg’s position that FVCT to 0818 numbers is now be subject to sufficiently similar competitive characteristics as FVCT to Geographic Numbers such that they should be included in the same Relevant FVCT product market(s). Similarly, FVCT to 076 numbers and 112/99 numbers also share sufficiently similar characteristics to Geographic Numbers such that they were included in the Relevant FVCT Markets in the 2019 Termination Markets Decision. Given these similarities ComReg had, in the 2019 Termination Markets Decision, considered evidence of price-setting behaviour with reference to Geographic Numbers as a proxy for Fixed Numbers. ComReg adopts the same approach for purposes of this Decision. In particular the assessment in paragraphs 6.48 to 6.49 below, while taking the case of FVCT to a geographic number, is understood to have broad application to the Additional FSPs in each of their respective Relevant FVCT Markets.
- 6.48 Table 4 below shows the current termination rates applied by the Additional FSPs in respect of peak time calls to geographic numbers.

Table 4: Additional FSPs unregulated FTRs

Additional FSP	Additional FSP unregulated FTRs	Regulated FTR	% higher than the Regulated FTR
Phone Pulse	0.70	0.063	1111%
Goldfish	0.579	0.063	919%
Nuacom	1.04	0.063	1651%

¹²² Table 109 page 39 of Eir’s STRPL https://www.openeir.ie/Reference_Offers/.

6.49 The data presented in Table 5 suggests that the FTRs of the historically unregulated Additional FSPs have remained above the level that would be expected to obtain in a competitive market (using regulated FTRs of the SMP FSPs (as regulated at the relevant time) as a proxy for the competitive level). This suggests that CBP does not act as an effective constraint on the pricing behaviour of historically unregulated Additional FSPs.

Table 5: FTRs as a % of regulated FTR (3 minute peak call)

	2017	2018	August 2019
Regulated SMP FSPs	100%	100%	100%
Phone Pulse	1000%	1000%	1111%
Nuacom		1651%	1651%
Goldfish		827%	919%

6.50 In light of this analysis, and having regard to the definition of the Relevant FVCT Markets (which is based on the scope of each individual FSP’s FVCT services), it is ComReg’s position that, absent SMP regulation, any CBP has not been, nor is likely to be, effective.

Conclusion on whether CBP is likely to constrain FSPs’ FTR setting behaviour

6.51 Insofar as the assessment as to whether CBP has been effective in constraining the FTR setting behaviour of the 2019 SMP FSPs and the Additional FSPs is concerned, ComReg is of the position that Service Providers generally lack credible outside options to purchasing FVCT, due to a general end-user expectation of end-to-end connectivity with all available networks, and due to the inability of one FSP to terminate a call to the network of another FSP. It is therefore unlikely that a Service Provider would be capable of exercising a material constraint on the ability of the 2019 SMP FSPs and the Additional FSPs to set their FTRs above efficient cost absent regulation.

6.52 The review of actual FTR-pricing behaviour of the Additional FSPs and the 2019 SMP FSPs in respect of FVCT to 0818 numbers, coupled with the economic assessment of other relevant factors influencing the respective bargaining dynamics and positions of the parties on a forward-looking basis, provides strong evidence for a preliminary finding of ineffective CBP in all of the Relevant FVCT Markets. ComReg notes further that this preliminary finding is also in line with EU experience according to which all NRAs continue to define each individual FSP as a distinct relevant market for FVCT and have also consistently found SMP.¹²³

¹²³ European Commission, Communication on market reviews under the EU Regulatory Framework (3rd report) Further steps towards the consolidation of the internal market for electronic communications (**‘Communication on Market Reviews’**), COM(2010) 271 final, page 7. See also European Commission, Accompanying document to the Communication on Market Reviews, SEC(2010) 659, page 11.

- 6.53 ComReg’s conclusion is that the level of any CBP held by any of the FVCT purchasers identified is unlikely to be sufficiently effective such that it would, absent regulation, prevent any individual FSP FVCT supplier setting its FTRs above the level which would occur in a competitive market outcome.

SMP Designation

- 6.54 ComReg has considered a wide range of factors to identify whether any of the FSPs enjoy a position of SMP in each of the Relevant FVCT Markets identified in paragraphs 5.62 above. These factors include
- (a) existing competition in the Relevant FVCT Markets;
 - (b) potential competition in the Relevant FVCT Markets; and
 - (c) the strength of any CBP in the Relevant FVCT Markets.
- 6.55 Having regard to Regulation 25 of the Framework Regulations, where ComReg determines, as a result of a market analysis carried out by it in accordance with Regulation 27 of the Framework Regulations, that a given market identified in accordance with Regulation 26 of the Framework Regulations is not effectively competitive, ComReg is obliged under Regulation 27(4) of the Framework Regulations to designate an undertaking(s) with SMP in that market.
- 6.56 On the basis of its assessment, ComReg’s position is that each of the Relevant FVCT Markets is not effectively competitive and the FSPs operating in each Relevant FVCT Market, as identified below, should be designated as having SMP.
- 6.57 For purposes of this Decision, ComReg has decided that each Additional FSP be designated with SMP in their respective Relevant FVCT Markets, in particular:
- (a) Wholesale FVCT supplied by Goldfish Telecom Limited;
 - (b) Wholesale FVCT supplied by Phone Pulse Limited;
 - (c) Wholesale FVCT supplied by TSFY Limited, trading as Nuacom.
- 6.58 The above FSPs are collectively referred to as the **Additional SMP FSPs**.
- 6.59 ComReg’s position, as stated above, is that the inclusion of 0818 numbers in the Relevant FVCT markets does not lead ComReg to change its position as to the competitiveness of the Relevant FVCT Markets and as such the analysis and findings in the 2019 Termination Markets Decision remain valid for purposes of this Decision. Therefore, the designation of the 2019 SMP FSPs with SMP in the 2019 Termination Markets Decision is being maintained having regard to the amended definition of the Relevant FVCT Markets. In particular, ComReg is satisfied that it continues to be appropriate that each of the following FSPs is individually (and not collectively) designated as having SMP in relation to the Relevant FVCT Market on which that FSP operates:

- (a) Wholesale FVCT supplied by Airspeed Communications Limited¹²⁴;
- (b) Wholesale FVCT supplied by BT Communications Ireland Limited;
- (c) Wholesale FVCT supplied by Colt Technology Services Limited;
- (d) Wholesale FVCT supplied by Dialoga Servicios Interactivos, SA;
- (e) Wholesale FVCT supplied by Eircom Limited;
- (f) Wholesale FVCT supplied by Orange Business Telecommunications Services Limited (previously Equant Network Systems Limited);
- (g) Wholesale FVCT supplied by Blueface Limited;
- (h) Wholesale FVCT supplied by Finarea SA;
- (i) Wholesale FVCT supplied by Imagine Communications Ireland Limited;
- (j) Wholesale FVCT supplied by Intellicom Ireland Limited;
- (k) Wholesale FVCT supplied by Internet Protocol Telecom Limited;
- (l) Wholesale FVCT supplied by In2com Limited;
- (m) Wholesale FVCT supplied by Magnet Networks Limited;
- (n) Wholesale FVCT supplied by Magrathea Telecommunications Limited¹²⁵;
- (o) Wholesale FVCT supplied by Modeva Networks Unlimited;
- (p) Wholesale FVCT supplied by PlanNet 21 Communications Limited (or, for the avoidance of doubt, its 100% owned subsidiary, 3Play Plus Limited);
- (q) Wholesale FVCT supplied by Telcom Group Est 1999 Designated Activity Company¹²⁶;
- (r) Wholesale FVCT supplied by Verizon Ireland Limited;
- (s) Wholesale FVCT supplied by Viatel Ireland Limited;
- (t) Wholesale FVCT supplied by Virgin Media Ireland Limited;
- (u) Wholesale FVCT supplied by Vodafone Ireland Limited; and
- (v) Wholesale FVCT supplied by Voxbone SA.

¹²⁴ See paragraph 5.57 regarding Airspeed Communications Limited.

¹²⁵ See paragraph 5.55 regarding Magrathea Telecommunications Limited.

¹²⁶ See paragraph 5.58 regarding Telcom Group Est 1999 Designated Activity Company.

7 Assessment of Competition Problems and Impacts on Competition and Consumers

Overview

- 7.1 In Section 7 of the Consultation ComReg identified competition problems which, absent regulation, could potentially arise in the Relevant Termination Markets.
- 7.2 With the exception of BT, who submitted objections in relation to the Relevant FVCT Markets and SMP assessment (as it applies to the question of whether the 0818 number range should be included in the Relevant FVCT Markets), there was either general agreement with the competition problems identified or no objections made.
- 7.3 In Section 6 of this Decision, ComReg set out its position that, in accordance with Regulation 27(4) of the Framework Regulations, none of the Relevant FVCT Markets in which the Additional SMP FSPs operate are effectively competitive and thus each of the Additional FSPs identified should be designated with SMP on each of the termination markets within which they operate. It follows that each of the Designated Additional SMP FSPs has the ability to act independently of its competitors, customers and consumers.
- 7.4 ComReg noted further in Section 6 that the designation with SMP of the 2019 SMP FSPs in terms of the 2019 Termination Markets Decision is being maintained.
- 7.5 As noted in the EC's Explanatory Note to the 2014 Recommendation, the underlying purpose of the *ex-ante* regulatory framework is to address competition problems that have their origin in industry structural factors in a systematic and predictable manner. For example, the finding of an absence of effective competition in the Relevant FVCT Markets indicates the potential for competition problems to arise over the review period in question, thereby justifying the imposition of *ex ante* regulation.
- 7.6 In the absence of regulation in the Relevant FVCT Markets, a Service Provider designated with SMP would have the ability and incentive to influence a range of competition parameters, including prices, innovation, output and the variety or quality of goods and services provided.
- 7.7 ComReg notes that it is necessary neither to catalogue examples of actual abuse, nor to provide exhaustive examples of potential abuses in the Relevant FVCT Markets. Rather, the purpose of *ex ante* regulation is to prevent the possibility of abuses materialising, given that undertakings have been designated with SMP in the Relevant FVCT Markets, and so have both the ability and incentive to engage in exploitative and exclusionary behaviours to the detriment of competition and, ultimately, end users.

Assessment of competition problems and impacts on competition and consumers

- 7.8 ComReg considers that the types of competition problems and the impacts identified in the 2019 Termination Markets Decision similarly arise in respect of the Relevant FVCT Markets as defined for purposes of this Decision. In particular these competition problems arise for all the Additional SMP FSPs and the 2019 SMP FSPs in the Relevant FVCT Markets in which they operate, including in respect of termination of calls to 0818 numbers. Given this, ComReg does not consider it necessary to repeat the analysis contained in the 2019 Termination Markets Decision. In this regard the reader is referred to the relevant sections in the 2019 Termination Markets Decision as indicated in paragraph 7.9 below.
- 7.9 In the 2019 Termination Markets Decision ComReg set out its position on the competition problems which, absent regulation, could potentially arise in the Relevant FVCT Markets:
- (a) Types of Competition Problems (discussed in paragraphs 7.9 to 7.83 of the 2019 Termination Markets Decision); and
 - (b) Impact of Competition Problems on Competition and Consumers (discussed in paragraphs 7.84 to 7.103 of the 2019 Termination Markets Decision).
- 7.10 With regards to types of competition problems ComReg notes that SMP undertaking may engage in a range of conducts, for example:
- (a) Exploiting customers or consumers by virtue of its SMP position in the relevant market (as set out in paragraphs 7.13 to 7.38 of the 2019 Termination Markets Decision), and
 - (b) Leveraging market power into adjacent vertically and/or horizontally related markets by engaging in exclusionary practices (as set out in paragraphs 7.50 to 7.78 of the 2019 Termination Markets Decision).
- 7.11 With regard to the impact on competition and consumers ComReg's position, consistent with the position in the 2019 Termination Markets Decision, is that each FSP in each Relevant Termination Market would be capable of behaving, to an appreciable extent, independently of their competitors and customers, with respect to their FTR pricing behaviour. Therefore, in the absence of regulation, it is ComReg's position that each FSP would have the ability to charge excessive prices for its FVCT services in its own Relevant FVCT Market.
- 7.12 The ability of the FSPs to charge excessive prices for FVCT is derived largely from the high and non-transitory barriers to entry associated with control over infrastructure and resources not easily replicated, little or no scope for potential competition and insufficient CBP over the timeframe of the review.

- 7.13 With regard to the risk of leveraging ComReg notes that while smaller or new-entrant FSPs are more likely to have greater incentives to interconnect with the more established networks, the Additional SMP FSPs may still have incentives to engage in discriminatory tactics as a means of extracting excessive termination rates in the course of negotiations.
- 7.14 It is conceivable that the Additional SMP FSPs might invoke delaying tactics such as protracted negotiations in respect of the provision/renewal of access to FVCT or associated facilities with a view to extracting a FTR which is above what would otherwise arise in a competitive market outcome.
- 7.15 While ComReg recognises that a new entrant or smaller FSP may wish to maximise its returns by offering its subscribers comprehensive end-to-end connectivity with all other established Service Providers, the risk remains that delayed or ineffective access by any FSP could still raise rivals' costs and contribute to increased barriers and/or expansion to entry in downstream retail voice markets for either new entrants or smaller Service Providers with fewer subscribers. Raising rivals' costs and the related distortion of, or restrictions in, competition in these retail markets could result in harm to consumers, potentially in the form of higher prices, lower output/sales, and reduced quality or consumer choice.
- 7.16 As noted in the 2019 Termination Markets Decision, in considering the types of competition problem which could arise, ComReg had also been guided by experience in the markets, where relevant. ComReg does not, for instance, consider exclusionary conduct vis-à-vis its competitors carried out by a Service Provider designated with SMP on its own relevant market. This is because, as set out in Section 5 of the 2019 Termination Markets Decision and Section 5 of this Decision, only one Service Provider is present on the supply side in each Relevant FVCT Market. By definition, it is unnecessary to assess the likelihood of exclusionary conduct on each Relevant FVCT Market given that, as a matter of market definition, only one Service Provider is present on each Relevant FVCT Market.

Overall Conclusion

- 7.17 With regard to the 2019 SMP FSPs, ComReg's position is that the inclusion of 0818 numbers in the Relevant FVCT Markets does not lead ComReg to change its assessment of the competition problems or the impacts on competition and consumers in each of these (and related) markets. Therefore, ComReg's position is that the analysis and findings in the 2019 Termination Markets Decision remain valid for purposes of this Decision. In light of that conclusion, ComReg is of the position that the remedies imposed on the 2019 SMP FSPs remain appropriate to address the competition problems identified in each of the Relevant FVCT Markets in which they operate.

- 7.18 For the avoidance of doubt, this means that the remedies imposed by the 2019 Termination Markets Decision, save that they would apply in respect of the broader market definition (i.e. 0818 numbers would be included in each of the Relevant FVCT Markets) from the date of notification of any final decision to the 2019 SMP FSPs. With regard to the price control specified in the 2019 Separate Pricing Decision, ComReg's position is that there should be an implementation period before 0818 numbers are subject to the maximum FTRs. Consistent with the 2019 Separate Pricing Decision, ComReg has decided that the maximum FTRs would come into effect in respect of 0818 numbers on the first working day of the calendar month following two full calendar months after the effective date of this Decision. In the meantime, the maximum FTRs would continue to apply to the 2019 SMP FSPs in respect of FVCT to Geographic Numbers, Nomadic Numbers and emergency numbers.
- 7.19 With reference to Additional SMP FSPs, ComReg's position is that, absent regulation, the Additional SMP FSPs, like the 2019 SMP FSPs, would have the ability and incentive to engage in exploitative and exclusionary behaviours which would impact on competition and customers in the Relevant FVCT Markets in which they operate, as defined for purposes of this Decision. Therefore, it is ComReg's conclusion that the imposition of appropriate *ex ante* remedies is considered both justified and necessary. These remedies are discussed in Section 8 in this Decision.

8 Approach to Specifying and Implementing Remedies in the Relevant FVCT Markets within which the Additional SMP FSPs Operate

Overview

- 8.1 In Section 8 of the Consultation ComReg set out its proposed approach to specifying and implementing remedies in the Relevant Termination Markets.
- 8.2 Of the five Respondents who made Submissions, Eircom and Three indicated that they agreed with ComReg's proposed approach to specifying and implementing remedies in the Relevant FVCT Markets. BT noted that while it agreed with ComReg's proposed approach regarding remedies in general terms, it did not agree that a price control (arising from an SMP designation) for termination of 0818 NGN calls specifically is justified. Vodafone submitted comments regarding differences between the costs of terminating 0818 NGN calls and the costs informing the regulated FTR. Goldfish did not comment.
- 8.3 In Section 7 of this Decision, ComReg noted that there are a range of competition problems and competition or consumer impacts that, absent regulation, could arise in each of the Relevant FVCT Markets within which the Additional SMP FSPs operate due to their ability and incentives to engage in a range of anti-competitive behaviours.
- 8.4 This Section considers the appropriate remedies to impose on the Additional SMP FSPs in order to address the competition problems identified.¹²⁷
- 8.5 It is worth noting that where a Service Provider has been designated with SMP, Regulation 8(1) of the Access Regulations and Regulation 27(4) of the Framework Regulations require ComReg to impose the appropriate specific regulatory obligations, which requires at least some level of regulation to be imposed. In Section 6, ComReg sets out its view that none of the Relevant FVCT Markets are effectively competitive (or are they likely to become effectively competitive within the timeframe covered by this market review). In Section 7, ComReg identified a range of competition problems that could occur in the Relevant FVCT Markets within which the Additional SMP FSPs operate, absent regulation. Therefore, in this chapter ComReg considers what remedies are appropriate, having regard to the particular circumstances of the Additional Relevant FVCT Markets and the associated competition problems.

¹²⁷ As explained in paragraph 7.17, ComReg is of the position that the remedies imposed in the 2019 Termination Markets Decision and as further specified in the 2019 Separate Pricing Decision remain appropriate to address the competition problems identified. As such, it is not necessary for ComReg to consider the 2019 SMP FSPs in this chapter.

- 8.6 ComReg has decided to impose the same remedies¹²⁸ on the Additional SMP FSPs as was imposed on the 2019 SMP FSPs in the 2019 Termination Markets Decision:
- (a) Transparency obligations;
 - (b) Non Discrimination obligations;
 - (c) Access obligations; and
 - (d) Price Control obligations.
- 8.7 In the context of the price control remedies ComReg has, similar to the 2019 SMP FSPs¹²⁹, provided for differentiated treatment for FTRs to be applied to calls originated outside of the EEA, subject to certain conditions.
- 8.8 Consistent with the position in the 2019 Termination Markets Decision, ComReg is not imposing cost accounting and accounting separation remedies, but will keep this under review.
- 8.9 Below, ComReg summarises its position on remedies as set out in the 2019 Termination Markets Decision, followed by its consideration of the remedies for the Additional SMP FSPs.

Position Set out in the 2019 Termination Markets Decision

- 8.10 In the 2019 Termination Markets Decision ComReg justified and imposed a range of obligations on the 2019 SMP FSPs to address identified competition problems, including:
- (a) **Transparency Obligations:** in addition to a general transparency obligation, each SMP FSP is required to make publicly available and keep updated on its website a Reference Interconnect Offer ('**RIO**') and to make FTRs publicly available and publish such FTRs in an easily accessible manner on its website.
 - (b) **Non-Discrimination Obligations:** which include requirements to ensure that equivalent conditions are applied, including in respect of FTRs or other charges, in equivalent circumstances to other undertakings requesting or being provided with access to FVCT and associated facilities; and requirements to ensure that such access and information are provided to all other undertakings under the same conditions and of the same quality as the SMP FSP provides to itself or to its subsidiaries, affiliates or partners.

¹²⁸ With the exception of Eircom that has certain additional interconnection related obligations imposed upon it under the 2019 Termination Markets Decision.

¹²⁹ See sections 8.175 to 8.177 in the 2019 Termination Markets Decision.

- (c) **Access Obligations:** which include a requirement to provide access to FVCT and associated facilities; requirement to negotiate in good faith; requirement not to withdraw access to facilities already granted; requirement to grant open access to technical interfaces, protocols and other key technologies; and requirements governing fairness, reasonableness and timeliness of access.
- (d) **Price Control Obligations**¹³⁰: a price control obligation of cost orientation was imposed. This obligation was further specified in the 2019 Separate Pricing Decision which set maximum regulated FTRs. The level of the maximum FTR varies depending on whether the 2019 SMP FSP charges Undertakings for FVCT on both a “cost per minute” and a “cost per call” basis, or only on a “cost per minute basis”.
- 8.11 The above obligations are further explained and justified in paragraphs 8.36 to 8.220 of the 2019 Termination Markets Decision.
- 8.12 Further, insofar as Price Control obligations are concerned, within the 2019 Termination Markets Decision¹³¹ ComReg’s position was that the 2019 SMP FSPs may apply a differentiated approach in respect of the FTRs to be charged for the termination of calls originated outside the EEA, subject to the conditions set out in detail in that decision¹³².

Remedies

- 8.13 This section outlines the remedies for the FVCT markets within which the Additional SMP FSPs operate. Furthermore, it is ComReg’s position that, given the strong similarity in the competition issues identified (including those in the 2019 Termination Market Decision and this Decision), it is objectively justified to adopt the same approach to the imposition of remedies on the Additional SMP FSPs as was adopted for the 2019 SMP FSPs.

Transparency Remedies

- 8.14 In Section 7 above, ComReg identified that the Additional SMP FSPs have the ability and incentive to engage in a range of exploitative and/or exclusionary conducts which may impact downstream competition and consumers. The potential for leveraging of SMP into related markets can occur through information asymmetries, delaying tactics such as protracted negotiations in respect of the provision of access to FVCT or associated facilities, and/or seeking unreasonable terms and conditions to grant access.

¹³⁰ See paragraphs 4.1 to 4.7 and 5.1 to 5.3.9 of the 2019 Separate Pricing Decision.

¹³¹ See paragraphs 8.117 to 8.196 of the 2019 Termination Markets Decision.

¹³² See paragraphs 8.169 to 8.196 of the 2019 Termination Markets Decision.

- 8.15 As noted at Recital 16 of the Access Directive, transparency of terms and conditions for access and interconnection, including prices, serves to speed up negotiations, avoid disputes and give confidence to market players that a service is being provided on non-discriminatory terms. Openness and transparency of technical interfaces can also be particularly important in ensuring interoperability. Transparency on prices (and changes to prices) provides the necessary clarity to buyers of FVCT in order that they can consider impacts on the structure or level of retail prices. Transparency also provides the means to demonstrate that access is provided in a non-discriminatory manner.
- 8.16 ComReg's position is that in addition to a general transparency obligations, pursuant to Regulation 9 of the Access Regulations, each of the Additional SMP FSPs should be subject to obligations requiring them to do the following:
- (a) To make publicly available and keep updated on its website a Reference Interconnect Offer ('RIO'), which is the standard offer of contract for access to FVCT and associated facilities;
 - (b) To ensure that the RIO is sufficiently unbundled in order that Service Providers availing of access are not required to pay for services or facilities which are not necessary for the access requested;
 - (c) To ensure that the RIO includes a description of the relevant offerings broken down into components according to market needs and a description of the associated terms and conditions, including prices;
 - (d) To ensure that the RIO includes a description of the technical specifications and network characteristics of the access (including access to FVCT and associated facilities) being offered;
 - (e) To make its FTRs publicly available and publish such FTRs in an easily accessible manner on its website. In so doing, each Additional SMP FSP shall publish notice of its intention to amend its FTRs not less than 30 (thirty) calendar days in advance of the date on which any such amendment comes into effect, unless otherwise agreed with ComReg. Such notice shall, at a minimum, include a statement of the existing FTRs, a description of the proposed new FTRs, and the date on which such new FTRs are proposed to come into effect;
 - (f) To provide directly to undertakings with which it has entered into a contract in respect of access to FVCT and associated facilities, written notification of its intention to amend the FTRs. Such written notification is to be provided not less than 30 (thirty) calendar days in advance of the date on which any such FTR amendment comes into effect, unless otherwise agreed with ComReg. Such notice is also to include, at a minimum, a statement of the existing FTRs, a description of the proposed new FTRs and the date on which such new FTRs are proposed to come into effect;
 - (g) To notify ComReg of its intention to amend its published FTRs, not less than 30 (thirty) calendar days in advance of the date on which any such amendments come into effect, unless otherwise agreed with ComReg; and

- (h) To furnish to ComReg at the date outlined in (g) above a statement confirming that its proposed amended FTRs comply with its price control obligations.
- 8.17 Given the similarity of the competition problems, ComReg considers that the analysis set out at paragraphs 8.36 to 8.53 of the 2019 Termination Markets Decision is equally applicable to the Relevant FVCT Markets within which the Additional SMP FSPs operate. Therefore, ComReg has decided that each Additional SMP FSP be subject to the requirements set out in paragraphs 8.16 (a) to (h) above which are the same as the obligations to which the 2019 SMP FSPs are subject to. ComReg considers these measures to be both justified and proportionate having regard to the identified competition problems.
- 8.18 ComReg has also considered whether transparency obligations alone would be sufficient to address the competition problems identified in Section 7 of this Decision and does not consider this to be the case. For example, excessive pricing, constructive denial of access problems or poor service quality issues could still occur in the presence of a transparency obligation.
- 8.19 ComReg considers that the imposition of the above transparency obligations is both proportionate and justified, having regard to the competition problems identified in Section 7. ComReg is therefore of the view that the Additional SMP FSPs should have transparency obligations imposed upon them.

Non-Discrimination Remedies

- 8.20 As noted at Recital 17 of the Access Directive, the principle behind non-discrimination is to ensure that undertakings with SMP do not distort competition, particularly where they are vertically-integrated and supply services to undertakings with whom they compete on downstream markets.
- 8.21 Regulation 10 of the Access Regulations provides that ComReg may impose non-discrimination remedies in relation to access or interconnection on a Service Provider designated with SMP.
- 8.22 Having regard to the analysis set out at paragraphs 8.57 to 8.67 in the 2019 Termination Markets Decision and this Decision, ComReg has decided to impose the following non-discrimination obligations on each of the Additional SMP FSPs:
- (a) a requirement to apply equivalent conditions, including in respect of FTRs or other charges, in equivalent circumstances to other undertakings requesting or being provided with access (including access to FVCT and associated facilities); and

- (b) a requirement to ensure that access (including access to FVCT and associated facilities) and information are provided to all other undertakings under the same conditions and of the same quality as the FSP designated with SMP provides to itself or to its subsidiaries, affiliates or partners¹³³.
- 8.23 ComReg has also considered whether non-discrimination obligations alone would be sufficient to address the competition problems identified in Section 7 of this Decision and does not consider this to be the case. For example, excessive pricing, constructive denial of access problems or poor service quality issues could still occur in the presence of a non-discrimination obligation.
- 8.24 ComReg considers that the imposition of the above non-discrimination obligations is both proportionate and justified, having regard to the competition problems identified in Section 7. ComReg therefore has decided that the Additional SMP FSPs should have non-discrimination obligations imposed upon each of them.

Access Remedies

- 8.25 Regulation 12(1) of the Access Regulations provides that ComReg may, in accordance with Regulation 8 of the Access Regulations, impose on an operator obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities where ComReg considers that the denial of such access, or the imposition by operators of unreasonable terms and conditions having similar effect, would:
- (a) Hinder the emergence of a sustainable competitive retail market;
 - (b) Not be in the interests of end users; and
 - (c) Otherwise hinder the objectives set out in Section 12 of the Communications Regulation Act 2002 (as amended).
- 8.26 Regulations 12(2)(a) to (j) and Regulation 12(3) of the Access Regulations provide that ComReg can impose, where appropriate, additional access obligations and may attach conditions covering fairness, reasonableness and timeliness to those access obligations.
- 8.27 Pursuant to Regulation 12(4) of the Access Regulations, when considering whether to impose the obligations referred to in paragraphs (1) and (2) of Regulation 12 and, in particular, when assessing whether such obligations would be proportionate to the objectives set out in Section 12 of the Communications Regulation Act 2002 (as amended), ComReg takes the following factors into account:

¹³³ The requirement of non-discrimination outlined in paragraph 8.22 does not apply between termination rates for the self-supply of FVCT and termination rates charged for FVCT to other Undertakings. For the avoidance of doubt, in the case of self-supply, the non-discrimination obligations outlined at (ii) above apply to all other conditions other than price.

- (a) The technical and economic viability of using or installing competing facilities, in light of the rate of market development, taking into account the nature and type of interconnection and access involved;
 - (b) The feasibility of providing the access proposed, in relation to the capacity available;
 - (c) The initial investment by the facility owner, bearing in mind the risks involved in making the investment;
 - (d) The need to safeguard competition in the long-term;
 - (e) Where appropriate, any relevant intellectual property rights; and
 - (f) The provision of pan-European services.
- 8.28 Service Providers are wholly dependent on having access to FVCT services and associated facilities supplied by the Additional SMP FSPs in order to enable their subscribers to make voice calls to the subscribers of the Designated Additional SMP FSPs. ComReg has concluded that such FSPs have the ability and incentive to refuse, or effectively refuse, to provide interconnection and access to FVCT and associated facilities to their downstream competitors, or to provide these services on discriminatory or unreasonable terms and conditions (including in relation to price and quality).
- 8.29 It is ComReg's position that each of the Relevant FVCT Markets within which the Additional SMP FSPs operate is (and will continue to be over the period intended to be covered by this review) characterised by differences in CBP between the Additional SMP FSPs and buyers of FVCT services, particularly given the absence of credible alternative sources of supply of FVCT.
- 8.30 A denial of interconnection and access to FVCT and associated facilities, or the imposition of unreasonable terms and conditions having similar effect, would, in ComReg's view, ultimately hinder the emergence of sustainable competitive retail markets in which Service Providers and other undertakings purchasing FVCT compete. Actual or constructive denial of access would ultimately be detrimental to the interests of end users and would also otherwise hinder the objectives set out in Section 12 of the Communications Regulation Act 2002 (as amended) and Regulation 16 of the Framework Regulations.

- 8.31 ComReg notes that smaller or new entrant FSPs providing FVCT (which have lower subscriber numbers or traffic flows relative to other Service Providers) may face fewer incentives to refuse or delay access compared to larger and more established FSPs. This asymmetry of incentives principally arises due to the need for smaller or new entrant FSPs to ensure that their subscribers can make and receive calls from subscribers of other FSPs which, in turn, can ensure the growth of their own subscriber base (as the probability is that smaller FSPs will likely have a higher proportion of off-net traffic and therefore face a greater need to interconnect to complete inbound and outbound calls). However, such smaller or new entrant FSPs may effectively refuse or delay access (by extending negotiations or imposing unreasonable terms and conditions) with a view to extracting an inefficient termination rate. In particular, they may engage in such behaviour with respect to undertakings of a similar size and/or those with which they are directly competing in downstream retail markets.
- 8.32 Given the scope for such behaviour, and absent any regulatory obligation to provide access, access disputes would be considered by ComReg through its dispute resolution or compliance functions. This process would occur after the fact; take time to resolve; be specific to the bilateral circumstances between the relevant parties; and would not thereby contribute to regulatory certainty among market players. The resulting regulatory uncertainty would, as a consequence, likely be damaging to downstream competition and, ultimately, consumers. Case-by-case interventions by ComReg would also be inefficient and ineffective in resolving the broader competition problem of denial of access, or delayed access by a SMP Service Provider.
- 8.33 ComReg considers that, for the same reasons that it imposed such obligations on the 2019 SMP FSPs, the access obligations set out below are, therefore, being imposed on each of the Additional SMP FSPs, as these obligations will promote regulatory predictability and ensure all those operating in similar market circumstances are treated, from a regulatory perspective, in an equivalent and consistent manner.
- 8.34 The specific access remedies which ComReg has decided to impose on each of the Additional SMP FSPs are set out below.
- (a) Requirement to provide access to FVCT and Associated Facilities (discussed at paragraphs 8.83 to 8.92 of the 2019 Termination Markets Decision);
 - (b) Requirement to negotiate in good faith, (discussed at paragraphs 8.93 to 8.97 of the 2019 Termination Markets Decision);
 - (c) Requirement not to withdraw access to facilities already granted, (discussed at paragraphs 8.98 to 8.99 of the 2019 Termination Markets Decision);
 - (d) Requirement to grant open access to technical interfaces, protocols and other key technologies, (discussed at paragraphs 8.100 to 8.101 of the 2019 Termination Markets Decision); and

- (e) Requirements governing fairness, reasonableness and timeliness of access (discussed at paragraphs 8.102 to 8.105 of the 2019 Termination Markets Decision).

8.35 ComReg's position is that obligations to provide access to FVCT and associated facilities are both proportionate and justified. ComReg has considered whether obligations other than those relating to access would, in themselves, resolve the competition problems identified. ComReg does not consider this to be the case. The imposition of the above access obligations alone would also not resolve issues such as excessive pricing, discrimination (on price or quality grounds) or ensure transparency of terms and conditions of access.

Price Control Remedies

- 8.36 Regulation 13 of the Access Regulations provides that ComReg may impose on a Service Provider obligations relating to cost recovery and price controls. These include obligations for both cost orientation of prices, and cost accounting systems, for the provision of specific types of access or interconnection in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level or apply a price squeeze to the detriment of end users
- 8.37 In imposing any such obligations, ComReg is required to:
- (a) Take into account any investment made by the SMP Service Provider which ComReg considers relevant and allow that Service Provider a reasonable rate of return on adequate capital employed, taking into account any risks specific to a new investment network project; and
 - (b) Ensure that any cost recovery mechanism or pricing methodology that ComReg imposes serves to promote efficiency and sustainable competition, and maximises consumer benefits.
- 8.38 Accordingly, the purpose of price control and cost accounting obligations is to ensure that prices charged are not excessive (or cause a margin squeeze) and promote efficiency and sustainable retail competition, while maximising consumer benefits.
- 8.39 In Section 7 in this Decision ComReg set out its position, similar to the 2019 Termination Markets Decision, that the Additional SMP FSPs have the ability and incentive to set prices for access to FVCT at an excessively high level, thereby impacting on downstream competition to the ultimate detriment of consumers. ComReg therefore considers it justified and proportionate to impose a price control remedy on the Additional SMP FSPs.
- 8.40 In conjunction with the 2019 Termination Markets review, ComReg published a decision on fixed termination rates, namely in the 2019 Separate Pricing Decision. Section 5.3 of that decision, deals with FTR Modelling and provides the details of the modelling and updates to the FTR cost model.

8.41 ComReg considers it appropriate to continue to use the glide path for maximum regulated FTRs based on the rates as set out in the 2019 Separate Pricing Decision. It is ComReg’s position that these rates must remain in effect until replaced by Eurorate FTRs¹³⁴. The resulting maximum FTRs to be applied are shown in Table 6 below as applicable from 1 January for the years 2020, 2021, and from 2022:

Table 6: FTR based on Glide Path

FTR – two-part and one-part call charges ¹³⁵	2021	From 2022
(A) Two-part charge: call set-up fee	0.062	0.062
(B) Two-part charge: per minute fee	0.030	0.024
One-part charge: per minute fee	0.051	0.045

8.42 ComReg’s position is that the FTRs set out in Table 6 above must be applied by the Additional SMP FSPs.

8.43 The maximum FTRs will, per the measures set out in this Decision, come into effect on the first working day of the calendar month falling two complete calendar months following the effective date of this Decision – namely by 4 January 2021. This will also apply with respect to the FTRs charged by the 2019 SMP FSPs with respect to FVCT to 0818 numbers. This is consistent with the implementation periods provided for in the 2019 Separate Pricing Decision.

Respondent’s Views

8.44 In its Submission Vodafone submitted that the cost of termination for NGN numbers (including 0818 numbers) is higher than for Geographic Numbers because “...the implementation and administration of the required technical solutions is spread over a much smaller count of calls and minutes...”¹³⁶.

¹³⁴ As noted in paragraph 2.33 the Eurorate FTRs will replace the existing maximum regulated FTRs that have been set on a national basis by national regulatory authorities in Member States, including the maximum FTRs established by ComReg via SMP regulation.

¹³⁵ Each operator is free to choose whether to use two-part or one-part charging. Under a two-part charge the operator charges a price for setting up each call and then a separate charge for the duration of the call. Under a one-part charge the price for call set up is included in the duration charge.

¹³⁶ See page 2 of 2 of Vodafone’s Submission dated 29 May 2020.

ComReg's Consideration of Respondent's Views

8.45 ComReg does not agree with Vodafone's views and reiterates its position, as set out in paragraph A7.102 of the 2020 Wholesale NGN Decision that the costs of 0818 call termination can be treated in the same way as in the FTR Long-Run Incremental Cost ('LRIC') model used for purposes of the 2019 Separate Pricing Decision, which incorporates the costs associated with the use of multiple network layers into the FTR LRIC rate calculated. In this regard ComReg notes its response to a submission made by Eircom to the 2019 Wholesale NGN Consultation in which Eircom had argued that the costs incurred in terminating a 0818 call are different to the costs incurred when terminating a call to a national Geographic Number. In response ComReg noted as follows in paragraphs A7.101 to A7.103 of the 2020 Wholesale NGN Decision:

"A7.101. Eircom disagrees with the use of the wholesale Primary FTR rate being applied to 0818 calls. They consider that such calls are not to geo-linked numbers therefore in many cases operators interconnect with Eircom at the tertiary network level for 0818 call terminations. Also service providers using 0818 numbers often migrate their office locations from one exchange area or region to another. Therefore Eircom suggest a premium cost should apply for 0818 call terminations based on a mixture of single and double tandem termination costs per minute. If this correction is applied to 0818 call terminations, Eircom stated that they consider that the regime proposed by ComReg can be sustained.

A7.102. The routing factors within ComReg's FTR cost model, are the same for all terminating calls whether Primary, Tandem or Double Tandem, as the model assumes in the forward looking scenario that the number interrogation and routing analysis must occur in the IMS platform at the top of the network hierarchy for all call types. Eircom considered that the call termination costs linked to 0818 calls, exceed those cost incurred with Primary call termination, however as in the case of 076 call terminations and outlined in response to Q3, the processing of 0818 call terminations requires managing such calls at the tertiary network layer, for number interrogation and routing. Therefore the costs of 0818 call terminations can be treated in the same way as in the FTR LRIC cost model, which has assumed the need to process such calls at the tertiary layer. As a result the additional costs identified by Eircom are not relevant as the costs associated with the use of multiple network layers are already incorporated into the FTR LRIC rate calculated within the FTR cost model.

A7.103 ComReg is of the view that no corrections are required to the calculation of termination costs to account for 0818 call termination."

- 8.46 ComReg's position is that the reasoning referred to above remains valid with respect to Vodafone's comments and therefore ComReg does not agree that the proposed regulated FTR does not reflect to cost of FVCT for termination to 0818 NGNs.
- 8.47 Having regard to the analysis set out in paragraphs 8.139 to 8.161 in the 2019 Termination Markets Decision, ComReg's position is that while the Irish Regulated FTRs (as determined by ComReg) will apply to termination of calls originated within the EEA, the Additional SMP FSPs may apply a differentiated approach in respect of the termination of calls originated outside the EEA, subject to the conditions set out in paragraphs 8.169 to 8.193 of the 2019 Termination Markets Decision.
- 8.48 In this respect, any non-EEA FSP that charges a FTR greater than the highest EEA pure BU-LRIC FTR¹³⁷ (**Threshold EEA FTR**) is, for the purpose of the price control obligations set out in this Decision, considered by ComReg to be charging an unreasonably high FTR. Similarly, any non-EEA MSP that charges a MTR greater than the highest EEA pure BU-LRIC MTR (**Threshold EEA MTR**) is for the purpose of the price control obligations set out in this Decision, considered by ComReg to be charging an unreasonably high MTR. Together the Threshold EEA FTR and Threshold EEA MTR are referred to as Threshold EEA TRs.
- 8.49 Therefore, the Threshold EEA TRs will apply for purposes of the application of the price control set out in the 2019 Termination Markets Decision and will not be automatically revised with subsequent publications of the biannual BEREC Termination Rates at a European Level report. ComReg considers that this will allow for greater certainty for SPs seeking to apply differentiated pricing to termination of non-EEA originated calls as well as reducing unnecessary administrative costs associated with possible biannual revisions to the Threshold EEA TRs. ComReg will monitor market developments in this regard and reserves the right to revise the Threshold EEA TRs should the need arise.
- 8.50 With a view to establishing a balanced and pragmatic solution, ComReg's position is to allow a differentiated approach to the application of the price control to the termination of calls originated within and outside the EEA. While the Irish Regulated FTR will apply to termination of calls originated within the EEA, ComReg's position is that the Additional SMP FSPs may (although are not required to) apply a differentiated approach in respect of the termination of calls originated outside the EEA, subject to the following conditions:
- 8.51 In the case of Additional SMP FSP charging a non-EEA FSP for FVCT:

¹³⁷ According to Figure 1 in BoR (19) 234Rev.1 https://bereg.europa.eu/eng/document_register/subject_matter/bereg/reports/8900-termination-rates-at-european-level Romania and the Netherlands have highest BU-LRIC FTR at 0.139.

- (a) The Additional SMP FSPs must charge the prevailing Irish Regulated FTR when terminating traffic originated by those non-EEA FSPs who charge termination rates that do not exceed the Threshold EEA FTR. This condition is imposed in order to prevent FSPs in non-EEA countries, who charge reasonable FTRs, facing the possibility of unreasonably high FTRs being imposed by the Additional SMP FSPs; and
- (b) The Additional SMP FSPs may charge a FTR above the Irish Regulated FTR for terminating calls originated by a non-EEA FSP where such a non-EEA FSP charges the Additional SMP FSPs a FTR above the Threshold EEA FTR. Where this condition is met, the FTR that can be charged by the Additional SMP FSPs / 2019 SMP FSPs shall be no higher than the prevailing Irish Regulated FTR plus the difference between the FTR charged by the non-EEA FSP and the Threshold EEA FTR. This overall FTR, being the Irish Regulated FTR plus the differential between the FTR charged by the non-EEA FSP and the Threshold EEA FTR, is referred to below as the **Maximum Allowable FTR A**.

8.52 In the case of the Additional SMP FSPs charging a non-EEA MSP for FVCT:

- (a) The Additional SMP FSPs must charge the prevailing Irish Regulated FTR when terminating traffic originated by those non-EEA MSPs who charge the Additional SMP FSPs MTRs that do not exceed the Threshold EEA MTR. This condition is imposed in order to prevent MSPs in non-EEA countries, who charge reasonable MTRs, facing the possibility of unreasonably high FTRs being imposed by the Additional SMP FSPs; and
- (b) The Additional SMP FSPs may charge a FTR above the Irish Regulated FTR for terminating calls originated by a non-EEA MSP where such non-EEA MSPs charges the Additional SMP FSPs a MTR above the Threshold EEA MTR. Where this condition is met, the FTR that can be charged by the Additional SMP FSPs/2019 SMP FSPs shall be no higher than the prevailing Irish Regulated FTR plus the difference between the MTR charged by the non-EEA MSP and the Threshold EEA MTR. This overall FTR, being the Irish Regulated FTR plus the differential between the MTR charged by the non-EEA MSP and the Threshold EEA MTR, is referred to below as the **Maximum Allowable FTR B**.

8.53 The Maximum Allowable FTR A and Maximum Allowable FTR B are collectively referred to together as the **Applicable Maximum Allowable FTR**.

8.54 ComReg notes that under Article 75 of the EECC, the EC is required, by 31 December 2020, to establish single EU wide maximum FTRs which can be imposed on any SP active on a Relevant FVCT Market. However, the EECC also provides for the EC to consider the need to allow for a transitional period of no longer than 12 months in order to allow adjustments in Member States where this is necessary on the basis of termination rates previously imposed, respectively, in any Member State. The EECC has a general two-year transposition period. In light of the above, it is likely that Article 75 will result in consequential changes to the application of price control obligations in Relevant FVCT Markets. It may also have implications for differentiated pricing in respect of termination of non-EEA originated calls. The EC has commenced a review of its current list of recommended markets¹³⁸ and has sought views on a range of issues, including the impact of OTTs¹³⁹ on traditional services and whether the FVCT (and MVCT) markets should be removed from the future list of recommended markets, in particular, given the potential impact of the setting of Eurorates in the EU by 31 December 2020. The EC notes that the setting of Eurorates will avoid excessive wholesale termination prices. In view of this, the EC has asked whether continued regulation of termination markets is warranted at an EU level. ComReg awaits the outcome of the EC's review and will take full account of it, including the implications of the EC's review for differentiated pricing in respect of termination of non-EEA originated calls. ComReg will keep these matters under review.

Accounting Separation Remedies in the Relevant FVCT Markets

8.55 In accordance with Regulation 11 of the Access Regulations, ComReg can require an operator which is vertically integrated to make transparent its wholesale prices and its internal transfer prices, to ensure compliance with any non-discrimination obligation imposed or, where necessary, to prevent unfair cross-subsidisation.

¹³⁸ <https://ec.europa.eu/digital-single-market/en/news/consultation-revision-recommendation-relevant-markets>.

¹³⁹ Over The-Top. It is a term used under Broadcasting Technology. It is a kind of network which runs through the Internet. Unlike Internet TV or IPTV, it refers to audio/video streaming without subscribing to any cable channels.

- 8.56 An accounting separation obligation can also reinforce cost accounting and transparency obligations as it can help to ensure that costs are neither over- nor under-recovered and help disclose possible competition problems by making visible the wholesale prices and internal transfer prices of an SMP Service Provider's services. ComReg further notes that the main objective of accounting separation is to make practical the implementation of non-discrimination and cost orientation remedies by showing cross-subsidisation between products. However, ComReg's position is that an accounting separation remedy is unnecessary for ComReg to implement a cost orientation price control remedy, in circumstances where it involves a remedy based on a Pure LRIC methodology (to be determined in the Separate Pricing Consultation). ComReg is therefore of the position that an accounting separation remedy may not be necessary for the successful implementation of a price control remedy on the Additional SMP FSPs, consistent with its position in the 2019 Termination Markets Decision.
- 8.57 Having regard to the analysis set out in the 2019 Termination Markets Decision at (paragraphs 8.209 to 8.216) and this Decision, ComReg has decided not to impose an accounting separation obligations on the Additional SMP FSPs.

9 Regulatory Impact Assessment

Overview

- 9.1 A Regulatory Impact Assessment ('**RIA**') is a detailed consideration of the likely effect of proposed new regulation, or changes to existing regulation. A RIA seeks to establish if such proposals are necessary and, in doing so, identifies any possible effects which might result from their implementation.
- 9.2 A RIA identifies alternative regulatory options and ultimately establishes whether a proposed regulation is likely to have the desired impact. It is a structured approach to the development of policy, and analyses the impact of the proposed regulation, and other regulatory options, on different stakeholders. Appropriate use of a RIA should ensure that the most effective regulatory option is identified.
- 9.3 The ultimate aim of conducting a RIA of proposed regulation is to ensure that the regulatory measures which are implemented are appropriate, proportionate and justified.
- 9.4 ComReg notes that RIAs were conducted in the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision. In this Decision ComReg has decided to:
- (a) include the 0818 number range in the Relevant FVCT Market; and
 - (b) identify the Additional Relevant RVCT Markets and designate the Additional SMP FSPs with SMP in the Relevant FVCT Market in which they operate and impose the remedies detailed in Section 8 on the Additional SMP FSPs.
- 9.5 With regard to the inclusion of the 0818 number range, as explained in this Decision, ComReg's position is that this change does not involve any significant impacts that would lead to a different conclusion in relation to the appropriate remedies to address the competition concerns identified than in the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision. Accordingly, ComReg's position is that the RIAs conducted for the purposes of the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision remain valid for the purposes of this review.
- 9.6 With respect to the Additional SMP FSPs, as explained in this Decision, ComReg's position is that due to the similarity of the Relevant FVCT Markets (including with the inclusion of the 0818 number range), the reasoning set out in the 2019 Termination Markets Decision, in particular with regard to the competition problems and the remedies is equally applicable to the Additional SMP FSPs. Accordingly, subject to a number of points set out a paragraph 9.7 below, it is ComReg's position that the RIAs conducted for the purposes of the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision are equally valid in the context of this review.

- 9.7 Of relevance to Step 3 of the RIA which determines the impacts on FVCT Stakeholders (see paragraphs 9.51 to 9.60 of the 2019 Termination Markets Decision), ComReg notes that like the position of the 2019 Newly Designated SMP FSPs at the time of the 2019 Termination Markets Decision, the Additional SMP FSPs have not been subject to any SMP regulatory obligations to date. ComReg recognises that the imposition of SMP remedies will impose a greater burden on these FSPs than has been the case to date. However, broadly the same competition problems have been identified in respect of the Additional SMP FSPs and the 2019 SMP FSPs. Therefore, ComReg sees no objective reason to differentiate the obligations in respect of these FSPs, except in the case of Eircom.¹⁴⁰ Further, ComReg is of the view that the remedies which it is proposing to impose are necessary and proportionate, and amount to the minimum level of regulation required to promote competition and protect consumers.
- 9.8 Therefore, ComReg's position is that the RIAs conducted in the context of the 2019 Termination Markets Decision and the 2019 Separate Pricing Decision remain valid in the context of this review. Accordingly, ComReg does not intend to conduct a separate RIA for this review.

¹⁴⁰ ComReg notes that for the reasons set out in the 2019 Termination Markets Decision, Eircom is subject to certain additional obligations.

10 Next Steps

- 10.1 ComReg has set out its position in the preceding Sections regarding its analysis of the Relevant FVCT Markets, and has published this Decision on its publicly available website www.comreg.ie.
- 10.2 The FSP which are subject to the regulatory obligations set out in the Decision Instrument appended to this Decision, are hereby notified of this Decision.

Annex: 1 FVCT Decision Instrument

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1 This Decision Instrument (**‘Decision Instrument’**) is made by the Commission for Communications Regulation (**‘ComReg’**) and relates to the market for wholesale call termination on individual public telephone networks provided at a fixed location identified by the European Commission in the 2014 Recommendation and as defined by ComReg in D09/20.

1.2 This Decision Instrument is made:

- (i) Pursuant to, and having regard to Sections 10 and 12 of the Communications Regulation Act 2002 (as amended) and Regulation 6(1) of the Access Regulations, and Regulation 16 of the Framework Regulations;
- (ii) Having taken the utmost account of the 2014 Recommendation, the Explanatory Note and the SMP Guidelines;
- (iii) Having, where appropriate, pursuant to Section 13 of the Communications Regulation Act 2002 (as amended) complied with Ministerial Policy Directions;
- (iv) Having taken the utmost account of the Termination Rates Recommendation;
- (v) Having taken the utmost account of the 2005 Accounting Separation and Cost Accounting Recommendation;
- (vi) Having had regard to the analysis and reasoning set out in the Analysys Mason Decision Pricing Report;
- (vii) Having had regard to the analysis and reasoning set out in the TERA FTR Decision Specification Document;
- (viii) Having had regard to the analysis and reasoning set out in ComReg Document 14/136 and the Decision Instrument at Annex 2 of ComReg Decision D15/14;
- (ix) Having had regard to the analysis and reasoning set out in ComReg Decision D10/19;
- (x) Having had regard to the analysis and reasoning set out in ComReg Decision D11/19;
- (xi) Having taken account of the submissions received from interested parties in relation to ComReg Document 20/19 following a public consultation pursuant to Regulation 12 of the Framework Regulations;

- (xii) Having consulted with the Competition and Consumer Protection Commission further to Regulation 27 of the Framework Regulations;
 - (xiii) Having notified the draft measure and the reasoning on which same is based to the European Commission, BEREC and the national regulatory authorities in other EU Member States pursuant to Regulation 13 and 14 of the Framework Regulations and having taken utmost account of any comments made by these parties;
 - (xiv) Pursuant to Regulations 25, 26 and 27 of the Framework Regulations and Regulations 8, 9, 10, 12, 13 and 18 of the Access Regulations;
 - (xv) Having had regard to the market definition, market analysis and reasoning set out in ComReg Decision D09/20; and
 - (xvi) Having taken account of the submissions received from interested parties in relation to ComReg Document 18/19 following a public consultation pursuant to Regulation 12 of the Framework Regulations.
- 1.3 The provisions of ComReg Document 17/90, ComReg Decision D10/19, ComReg Document 18/19, ComReg Decision D11/19, ComReg Document 20/19 and ComReg Decision D09/20 shall, where appropriate, be construed with this Decision Instrument.
- 1.4 To the extent that there is any conflict between a Decision Instrument dated prior to the Effective Date and this Decision Instrument, this Decision Instrument shall prevail. Further, in the event of a conflict between the obligations set out herein or as amended from time to time, the most restrictive provision or obligation shall apply.

PART I - GENERAL PROVISIONS (SECTIONS 2 OF THE DECISION INSTRUMENT)

2 DEFINITIONS AND INTERPRETATION

2.1 In this Decision Instrument:

“Access” shall have the same meaning as under the Access Regulations; for the purposes of this Decision Instrument it shall include (but shall not be limited to) Access to FVCT and Associated Facilities where appropriate;

“Access Regulations” means the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (S.I. No 334 of 2011), as may be amended from time to time or replaced with equivalent effect;

“Airspeed Communications” means Airspeed Communications Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“Analysys Mason Decision Pricing Report” means the document entitled “Pricing principles and methodologies for future regulation of wholesale voice call termination services”, dated March 2019 and published as ComReg Document 19/48a;

“Associated Facilities” shall have the same meaning as under the Framework Regulations, and for the purpose of this Decision Instrument shall include information on call routing, which assists and/or has the ability to assist in the provision of Access to FVCT;

“Authorisation Regulations” means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No 335 of 2011), as may be amended from time to time or replaced with equivalent effect;

“BEREC” means the Body of European Regulators for Electronic Communications, as established pursuant to Regulation (EU) 2018/1971 of European Parliament and of the Council of 11 December 2018 amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No. 1211/2009;

“Blueface” means Blue Face Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“BT Communications” means BT Communications Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“Bottom Up Pure Long Run Incremental Costs” or **“BU Pure LRIC”** or **“BU-LRIC”** means the methodology used to estimate the Pure LRIC of an efficient operator which is derived from an economic/engineering model of an efficient network;

“BU Pure LRIC Glide Path” means the approach whereby maximum FTRs are subject to graduated annual decreases determined by reference to the maximum FTR(s) in place immediately prior to the Effective Date pursuant to Section 4.6 and 4.7 of ComReg Decision D12/12 and the maximum FTR(s) for 2022 as calculated by the BU Pure LRIC Model;

“BU Pure LRIC Model” means the model, as may be amended from time to time, used by ComReg to set FTRs in Ireland. The operation and details of the BU Pure LRIC Model are more particularly described in the TERA FTR Decision Specification Document and published as ComReg 19/48c;

“Colt Technology Services” means Colt Technology Services Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“Communications Regulation Act 2002 (as amended)” means the Communications Regulation Act 2002 (No. 20 of 2002) (as amended);

“ComReg” means the Commission for Communications Regulation, established under Section 6 of the Communications Regulation Act 2002 (as amended);

“ComReg Decision D03/09” means the Decision Instrument in ComReg Document 09/65 entitled “Review of the regulatory asset lives of Eircom Limited – Response to Consultation and Decision” dated 11 August 2009;

“ComReg Decision D12/12” means ComReg Document 12/125 entitled “Mobile and Fixed Voice Call Termination Rates in Ireland, Response to Consultations, Decisions and Decision Instruments”, dated 21 November 2012;

“ComReg Decision D15/14” means the Decision Instruments contained in Annexes 1 to 4 of ComReg Document 14/136;

“ComReg Decision D10/19” means “Market Review, Fixed Voice Call Termination and Mobile Voice Call Termination, Response to Consultation and Decision, ComReg Document 19/47, ComReg Decision D10/19”, dated 23 May 2019;

“ComReg Decision D11/19” means “Price Control Obligations for Fixed and Mobile Call Termination Rates: Response to Consultation and Decision, Response to Consultation and Decision, ComReg Document 19/48, ComReg Decision D11/19”, dated 23 May 2019;

“ComReg Decision D09/20” means ComReg Document 20/95 entitled “Market Review – Fixed Voice Call Termination Markets; Further Review concerning 0818 Numbers and Additional Fixed Service Providers”, dated 15 October 2020;

“ComReg Document 14/136” means ComReg Document 14/136 entitled “Cost of Capital: • Mobile Telecommunications, • Fixed Line telecommunications, • Broadcasting (Market A and Market B)”, dated 18 December 2014;

“ComReg Document 17/90” means ComReg Document 17/90 entitled “Market Review - Fixed Voice Call Termination and Mobile Voice Call Termination, Consultation and Draft Decision”, dated 27 October 2017;

“ComReg Document 18/19” means ComReg Document 18/19 entitled “Price Consultation Further Specification of Proposed Price Control Obligations for Fixed and Mobile Call Termination Rates”, dated 13 March 2018;

“ComReg Document 20/19” means ComReg Document 20/19 entitled “Market Review - Fixed Voice Call Termination Markets: Further Review concerning 0818 Numbers and Additional Fixed Service Providers, Consultation and Draft Decision”, dated 2 April 2020;

“Dialoga Servicios Interactivos” means Dialoga Servicios Interactivos, SA and its subsidiaries, and any Undertakings which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“Effective Date” means the date set out in Section 13 of this Decision Instrument;

“Eircom” means Eircom Limited, a company incorporated in Jersey (Number 116389), registered as a branch in Ireland (Number 907674), with an Irish registered branch office at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03, and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“End-User(s)” shall have the same meaning as under Regulation 2 of the Framework Regulations;

“(the) Explanatory Note” means the Commission Staff Working Document: Explanatory Note accompanying the 2014 Recommendation (9 October 2014, SWD (2014) 298);

“Finarea” means Finarea SA and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“Fixed Number” means a number from the Irish national numbering scheme as set out in the Numbering Conditions of Use, which, within the meaning of this Decision Instrument, is terminated at a fixed location and means a Geographic Number, a Nomadic Number, an emergency access number (112 or 999) or an 0818 number;

“Fixed Service Provider(s)” or **“FSP(s)”** means an Undertaking providing End-Users with publicly available voice telephony services using a Fixed Number at a fixed location, irrespective of the underlying technology over which such services are delivered;

“Fixed Termination Rate(s)” or **“FTR(s)”** means the wholesale charge(s) levied by a Fixed Service Provider for the supply of Fixed Voice Call Termination;

“Fixed Voice Call Termination” or **“FVCT”** means the provision by a Fixed Service Provider of a wholesale call termination service to other Undertakings from the nearest point to the End-User or level on that terminating FSP’s network at which incoming voice calls can be handed over for termination to Fixed Numbers in respect of which that Fixed Service Provider is able to set the Fixed Termination Rate;

“**Framework Regulations**” means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No 333 of 2011), as may be amended from time to time or replaced with equivalent effect;

“**Geographic Number**” shall have the same meaning as set out in the Numbering Conditions of Use;

“**Goldfish**” means Goldfish Telecom Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Imagine Communications**” means Imagine Communications Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Intellicom**” means Intellicom Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Interconnection**” shall have the same meaning as under the Access Regulations;

“**In2com**” means In2com Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**IP Telecom**” means Internet Protocol Telecom Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Magnet Networks**” means Magnet Networks Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Magrathea Telecommunications**” means Magrathea Telecommunications Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Ministerial Policy Directions**” for the purposes of this Decision Instrument means the policy directions made by Dermot Ahern TD, then Minister for Communications, Marine and Natural Resources, dated 21 February 2003 and 26 March 2004;

“**Modeva Networks**” means Modeva Networks Unlimited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Nomadic Number**” has the same meaning as under the Numbering Conditions of Use;

“**Nuacom**” means TSFY Limited trading as Nuacom, and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Numbering Conditions of Use**” means the set of rules under which the Irish national numbering scheme is managed and administered as set out in the document entitled *Numbering Conditions of Use and Application Process, ComReg 15/136R2*, as may be amended by ComReg from time to time or replaced with equivalent effect;

“**Orange Business Telecommunications Services**” means Orange Business Telecommunications Services Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Phone Pulse**” means Phone Pulse Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**PlanNet 21 Communications**” means PlanNet 21 Communications Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns, which for the avoidance of doubt includes 3Play Plus Limited;

“**Pure Long Run Incremental Costs**” or “**Pure LRIC**” means those costs and only those costs which would be avoided in the long run if a SMP Fixed Service Provider were to cease to provide FVCT. For the avoidance of doubt, it excludes all costs which are joint or common to the provision of FVCT and to other services;

“**Relevant Market**” means, in the context of a particular SMP Fixed Service Provider, the specific market relating to that SMP Fixed Service Provider’s supply of FVCT as identified in Section 6.2(i) to 6.2(iii) below;

“**Relevant Markets**” means all of the markets defined in Section 4 below;

“**Significant Market Power (SMP) Fixed Service Provider**” or “**SMP FSP**” means a Fixed Service Provider designated with SMP in Section 7 below as may be amended from time to time;

“**Significant Market Power Obligations**” or “**SMP Obligations**” are those obligations as more particularly described in Part III below as may be amended from time to time;

“**(the) SMP Guidelines**” means the European Commission guidelines of 7 May 2018 on market analysis and the assessment of significant market power under

the EU regulatory framework for electronic communications networks and services (2018/C 159/01) (OJ C 159, 7.5.2018, p.1);

“**Telcom**” means Telcom Group Est 1999 Designated Activity Company and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns, which for the avoidance of doubt includes Agility Communications Limited;

“**TERA FTR Decision Specification Document**” means the document entitled “Assessment of PURE LRIC FTRs in Ireland, Specifications and results”, dated February 2019 and published as ComReg Document 19/48c;

“**(the) Termination Rates Recommendation**” means the European Commission Recommendation of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (OJ L124/67);

“**Undertaking(s)**” shall have the same meaning as under Regulation 2 of the Framework Regulations;

“**Verizon**” means Verizon Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Viatal**” means Viatal Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns, which for the avoidance of doubt includes Digiweb Telecom Ireland Limited;

“**Virgin Media**” means Virgin Media Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Vodafone**” means Vodafone Ireland Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;

“**Voxbone**” means Voxbone SA and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns.

“**(the) 2005 Accounting Separation and Cost Accounting Recommendation**” means the European Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications;

“**(the) 2014 Recommendation**” means the European Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the

Council on a common regulatory framework for electronic communications networks and services (OJ L 295, 11.10.2014, p. 79).

PART II – MODIFICATIONS TO COMREG DECISION D10/19 FVCT DECISION INSTRUMENT AND COMREG DECISION D11/19 FVCT DECISION INSTRUMENT

3 MODIFICATIONS

3.1 This Decision Instrument relates to the market for wholesale call termination on individual public telephone networks provided at a fixed location, as identified in the 2014 Recommendation and as analysed by ComReg in ComReg Decision D10/19 and ComReg Decision D09/20.

3.2 For the reasons set out in ComReg Decision D09/20, Section 2.1 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 and Section 2.1 of the Decision Instrument at Annex 1 of ComReg Decision D11/19 shall be modified as follows:

3.2.1 The following definition shall be inserted:

“**0818 number**” shall have the same meaning as set out in the Numbering Conditions of Use;”.

3.2.2 The definition which reads “**Airspeed Communications**” means *Airspeed Communications Unlimited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;*” shall be deleted and replaced with the following:

“**Airspeed Communications**” means Airspeed Communications Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;”.

3.2.3 The definition which reads “**Equant Network Systems**” means *Equant Network Systems Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;*” shall be deleted and replaced with the following:

“**Orange Business Telecommunications Services**” means Orange Business Telecommunications Services Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;”.

- 3.2.4 The definition which reads “**Fixed Number**” means a number from the Irish national numbering scheme as set out in the Numbering Conditions of Use, which, within the meaning of this Decision Instrument, is terminated at a fixed location and means a Geographic Number, a Nomadic Number, or an emergency access number (112 or 999),” shall be deleted and replaced with the following:

“**Fixed Number**” means a number from the Irish national numbering scheme as set out in the Numbering Conditions of Use, which, within the meaning of this Decision Instrument, is terminated at a fixed location and means a Geographic Number, a Nomadic Number, an emergency access number (112 or 999), or an 0818 number;”

- 3.2.5 The definition which reads “**Magrathea Telecommunications**” means Magrathea Telecommunications (Ireland) Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns,” shall be deleted and replaced with the following:

“**Magrathea Telecommunications**” means Magrathea Telecommunications Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns;”.

- 3.2.6 The definition which reads “**Telcom**” means Telcom Limited and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns, which for the avoidance of doubt includes Agility Communications Limited;” shall be deleted and replaced with the following text:

“**Telcom**” means Telcom Group Est 1999 Designated Activity Company and its subsidiaries, and any Undertaking which it owns or controls and any Undertaking which owns or controls it, and its successors, affiliates and assigns, which for the avoidance of doubt includes Agility Communications Limited;”.

4 CONTINUED APPLICATION

- 4.1 Pursuant to Regulation 26 of the Framework Regulations and in accordance with the 2014 Recommendation and the Explanatory Note, taking the utmost account of the SMP Guidelines and in accordance with the principles of competition law, and for the reasons set out in ComReg Decision D09/20, ComReg is satisfied that, notwithstanding the revised definition of Fixed Number set out in Section 3.2 of this Decision Instrument, it continues to be appropriate to identify twenty-two (22) separate markets as defined in Section 4.2 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 (referred to in that Decision Instrument as the Relevant Market(s)).

4.2 Further, pursuant to Regulation 25 and Regulation 27 of the Framework Regulations and taking the utmost account of the SMP Guidelines, having determined that the Relevant Markets are not effectively competitive, and for the reasons set out in ComReg Decision D09/20, ComReg is satisfied that it continues to be appropriate that each of the following Fixed Service Providers (i.e. those identified at Section 5.1(i) to 5.1(xxii) of the Decision Instrument at Annex 16 of ComReg Decision D10/19) is individually (and not collectively) designated as having SMP in relation to the Relevant Market on which that Fixed Service Provider operates:

- (i) Airspeed Communications;
- (ii) Blueface;
- (iii) BT Communications;
- (iv) Colt Technology Services;
- (v) Dialoga Servicios Interactivos;
- (vi) Eircom;
- (vii) Orange Business Telecommunications Services;
- (viii) Finarea;
- (ix) Imagine Communications;
- (x) Intellicom;
- (xi) In2com;
- (xii) IP Telecom;
- (xiii) Magnet Networks;
- (xiv) Magrathea Telecommunications;
- (xv) Modeva Networks;
- (xvi) PlanNet 21 Communications;
- (xvii) Telcom;
- (xviii) Verizon;
- (xix) Viatel;
- (xx) Virgin Media;
- (xxi) Vodafone;
- (xxii) Voxbone.

4.3 From the Effective Date of this Decision Instrument, the Undertakings shall comply with the Decision Instrument at Annex 16 of ComReg Decision D10/19 as modified in accordance with Section 3.2, Section 3.3 and Section 3.4 of this Decision Instrument, to the extent that it applies to that Undertaking.

- 4.4 With effect from 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date), the Undertakings shall comply with the Decision Instrument at Annex 1 of ComReg Decision D11/19 as modified in accordance with Section 3.2 and Section 3.3 of this Decision Instrument, to the extent that it applies to that Undertaking. For the avoidance of doubt, between the Effective Date and 04 January 2021, the Undertakings shall continue to comply with the Decision Instrument at Annex 1 of ComReg Decision D11/19 in its original form.

PART III – ADDITIONAL RELEVANT MARKETS

5 SCOPE AND APPLICATION

- 5.1 Part III of this Decision Instrument applies to each of the following Undertakings in respect of activities falling within the scope of the Relevant Markets defined in Section 6 of this Decision Instrument. Furthermore, this Decision Instrument is binding upon each such Undertaking in the manner now set out below and each such Undertaking shall comply with this Decision Instrument to the extent that it applies to that Undertaking.
- (i) Goldfish Telecom Limited;
 - (ii) Phone Pulse Limited;
 - (iii) TSFY Limited trading as Nuacom.
- 5.2 This Decision Instrument, pursuant to Regulations 8, 9, 10, 12, 13 and 18 of the Access Regulations imposes certain obligations on Undertakings, as more particularly set out in Sections 8 to 10 of this Decision Instrument.

6 MARKET DEFINITION

- 6.1 This Decision Instrument relates to the market for wholesale call termination on individual public telephone networks provided at a fixed location, as identified in the 2014 Recommendation and as analysed by ComReg in ComReg Decision D10/19 and ComReg Decision D09/20. For the purposes of Part III of this Decision Instrument, ComReg identifies an additional three (3) separate markets as defined in Section 6.2 below (referred to in this Decision Instrument as the Relevant Market(s)).
- 6.2 Pursuant to Regulation 26 of the Framework Regulations and in accordance with the 2014 Recommendation and the Explanatory Note, taking the utmost account of the SMP Guidelines and in accordance with the principles of competition law, the three (3) separate Relevant Markets defined in this Decision Instrument are the markets for the provision, by each of those Fixed Service Providers listed below, of wholesale fixed voice call termination services in Ireland to other Undertakings, for the purpose of terminating incoming voice calls to Fixed Numbers in respect of which that Fixed Service Provider is able to set the Fixed Termination Rate, as more particularly described:

- (i) The provision by Goldfish of a wholesale service to other Undertakings from the nearest point to the End-User or level on Goldfish’s network at which incoming voice calls can be handed over for termination to Fixed Numbers (for which the rights of use have been granted by ComReg, or transferred from another Undertaking, in accordance with the stipulations set out in the Numbering Conditions of Use) in respect of which Goldfish is able to set the FTR;
 - (ii) The provision by Phone Pulse Limited of a wholesale service to other Undertakings from the nearest point to the End-User or level on Phone Pulse Limited’s network at which incoming voice calls can be handed over for termination to Fixed Numbers (for which the rights of use have been granted by ComReg, or transferred from another Undertaking, in accordance with the stipulations set out in the Numbering Conditions of Use) in respect of which Phone Pulse Limited is able to set the FTR;
 - (iii) The provision by TSFY Limited, trading as Nuacom of a wholesale service to other Undertakings from the nearest point to the End-User or level on TSFY Limited, trading as Nuacom’s network at which incoming voice calls can be handed over for termination to Fixed Numbers (for which the rights of use have been granted by ComReg, or transferred from another Undertaking, in accordance with the stipulations set out in the Numbering Conditions of Use) in respect of which TSFY Limited, trading as Nuacom is able to set the FTR.
- 6.3 For the avoidance of doubt, the reference to “Fixed Numbers” in Sections 6.2(i) to 6.2(iii) means Fixed Numbers as modified by this Decision Instrument at Section 3 above such that 0818 numbers are included.
- 6.4 The relevant geographic market for each of the individual product markets defined at 6.2(i) to 6.2(iii) is the geographic area covered by the network of each Fixed Service Provider within the State.
- 6.5 The Relevant Markets are more particularly described in Section 5 of ComReg Decision D09/20.

7 DESIGNATION OF FIXED SERVICE PROVIDERS WITH SIGNIFICANT MARKET POWER (“SMP”)

- 7.1 Pursuant to Regulation 25 and Regulation 27 of the Framework Regulations and taking the utmost account of the SMP Guidelines, having determined that the Relevant Markets are not effectively competitive, each of the following Fixed Service Providers is individually (and not collectively) designated as having SMP in relation to the Relevant Market on which that Fixed Service Provider operates:
- (i) Goldfish Telecom Limited;

- (ii) Phone Pulse Limited; and
- (iii) TSFY Limited trading as Nuacom.

PART IV: SMP OBLIGATIONS IN RELATION TO ADDITIONAL SMP FIXED SERVICE PROVIDERS

8 GENERAL PROVISIONS REGARDING SMP OBLIGATIONS

- 8.1 For the purposes of Part III of this Decision Instrument, each of the Fixed Service Providers identified at Sections 7.1(i) to 7.1(iii) above are referred to individually as the “Additional SMP Fixed Service Provider” and collectively as the “Additional SMP Fixed Service Providers”.
- 8.2 For the purposes of this Decision Instrument, an SMP Obligation applies to an Additional SMP Fixed Service Provider only insofar as, and to the extent that, such Additional SMP Fixed Service Provider is operating on its Relevant Market.

9 SMP OBLIGATIONS IN RELATION TO FVCT

- 9.1 ComReg is hereby imposing certain SMP Obligations on Additional SMP Fixed Service Providers in accordance with and pursuant to Regulations 8, 9, 10, 12, 13 and 18 of the Access Regulations, as detailed further in Sections 8 to 12 of the Decision Instrument at Annex 16 of ComReg Decision D10/19.
- 9.2 The obligations, as detailed in Sections 8 to 12 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 shall apply to the Additional SMP Fixed Service Providers as if they were each a SMP Fixed Service Provider for the purposes of that Decision Instrument.
- 9.3 For the avoidance of doubt, the obligations detailed at Sections 8.3 and 11.7 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 apply only to Eircom Limited and accordingly shall not apply to the Additional SMP Fixed Service Providers.
- 9.4 For the purposes of interpreting the obligations as applied to the Additional SMP Fixed Service Providers pursuant to this Section 9, except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in Section 2 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 except that references to Effective Date shall be construed to mean the Effective Date of this Decision Instrument.

10 OBLIGATION RELATING TO PRICE CONTROL

- 10.1 Pursuant to Regulation 13(1) of the Access Regulations and in accordance with Section 12 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 as applied to each Additional SMP Fixed Service Provider pursuant to Section 9 of this Decision Instrument, each Additional SMP Fixed Service Provider is subject to a cost-orientation obligation as regards FTRs and prices charged by the Additional SMP Fixed Service Provider to any other Undertaking for Access to or use of those products, services or facilities referred to in Section 8 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 as applied to each Additional SMP Fixed Service Provider pursuant to Section 9 of this Decision Instrument.
- 10.2 For the purpose of further specifying requirements to be complied with relating to the cost-orientation obligations set out in Section 12 of the Decision Instrument at Annex 16 of ComReg Decision D10/19 as applied to each Additional SMP Fixed Service Provider pursuant to Section 9 of this Decision Instrument, and pursuant to Regulation 18 of the Access Regulations, and in accordance with Regulation 13 of the Access Regulations, with effect from 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date), each SMP Fixed Service Provider is hereby directed to ensure that its Fixed Termination Rate(s) are set in accordance with a BU Pure LRIC Glide Path.
- 10.3 Without prejudice to the generality of Section 10.2 of this Decision Instrument, pursuant to Regulation 18 of the Access Regulations and in accordance with Regulation 13 of the Access Regulations, with effect from 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date), insofar as an Additional SMP Fixed Provider charges other Undertakings for FVCT on both a “cost per minute” and a “cost per call” basis, it shall ensure that its “cost per minute” and “cost per call” Fixed Termination Rates are no more than the relevant Fixed Termination Rates determined for that period in accordance with the BU LRIC Glide Path which are set out in the table below.

Date	Two-Part Charge	
	Maximum “cost per minute” FTR (euro cent per minute)	Maximum “cost per call – set up fee” FTR (euro cent per minute)
From 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date) – 31 December 2021	0.030	0.062
From 1 January 2022	0.024	0.062

- 10.4 Without prejudice to the generality of Section 10.2 of this Decision Instrument, pursuant to Regulation 18 of the Access Regulations and in accordance with Regulation 13 of the Access Regulations, with effect from 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date), insofar as an Additional SMP Fixed Provider charges other Undertakings for FVCT only on a “cost per minute” basis, it shall ensure that its “cost per minute” Fixed Termination Rates is no more than the relevant Fixed Termination Rate determined for that period in accordance with the BU LRIC Glide Path which are set out in the table below.

Dates	Maximum “cost per minute” FTR (euro cent per minute)
From 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date) – 31 December 2021	0.051
From 1 January 2022	0.045

- 10.5 With effect from 04 January 2021 (the first working day of the calendar month falling two complete calendar months after the Effective Date), each Additional SMP Fixed Service Provider shall apply Section 10.3 or Section 10.4 (as appropriate) to all invoices and credit notes issued by it to any Undertaking in respect of FVCT.
- 10.6 Without prejudice to Section 10.3 and Section 10.4, ComReg may review and if necessary, due to circumstances that ComReg considers exceptional, amend the maximum FTRs referred to in Section 10.3 and 10.4.

PART V: OPERATION AND EFFECTIVE DATE**11 STATUTORY POWERS NOT AFFECTED**

11.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it from time to time under any applicable law (in force prior to or after the Effective Date of this Decision Instrument).

12 MAINTENANCE OF OBLIGATIONS

12.1 Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in decision instruments, decision notices and directions made by ComReg applying to each SMP Fixed Service Provider and in force immediately prior to the Effective Date of this Decision Instrument, are continued in force by this Decision Instrument and each SMP Fixed Service Provider shall comply with same.

12.2 If any section, clause or provision or portion thereof contained in this Decision Instrument is found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that section, clause or provision or portion thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining section(s), clause(s) or provision(s) or portion thereof of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument.

13 EFFECTIVE DATE

13.1 The Effective Date of this Decision Instrument shall be, unless otherwise stated in this Decision Instrument, the date of its notification to the SMP Fixed Service Providers and the Additional SMP Fixed Service Providers and it shall remain in force until further notice by ComReg.

13.2 Notwithstanding Section 13.1 above, Sections 10.1 to 10.5 of this Decision Instrument shall apply with effect from 04 January 2021.

GARRETT BLANEY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE 15 DAY OF OCTOBER 2020

Annex: 2 Consultation with the Competition and Consumer Protection Commission



Garrett
Blaney
Chairperson
Commission for Communications
Regulation 1 Dockland Central
Guild Street
Dublin 1, D01 E4X0

13 August 2020

Re: FVCT Markets further review concerning 0818 Numbers and Additional FSPs

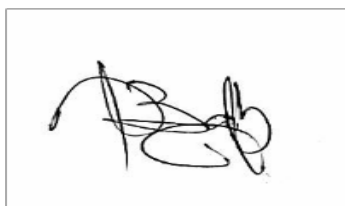
Dear Garrett,

Pursuant to Regulation 27(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the Commission for Communications Regulation (“ComReg”) has consulted the Competition and Consumer Protection Commission (the “Commission”) with respect to ComReg’s proposed draft measures arising from its further analysis of the wholesale markets for Fixed Voice Call Termination (“FVCT”).

On the basis of the facts and analysis presented by ComReg, the Commission is satisfied that there are no compelling grounds to disagree with ComReg’s conclusion that the existing definition of the Relevant FVCT Markets should be amended to include FVCT to the 0818 number range.

The Commission also agrees that, on the basis of the facts and analysis presented by ComReg, Goldfish Telecom Limited, Phone Pulse Limited and TSFY Limited, trading as Nuacom each should be designated as having significant market power (“SMP”) and that it continues to be appropriate to maintain SMP designations on 22 fixed service providers identified by ComReg in its previous FVCT Markets review.

Yours sincerely



Ibrahim Bah

Director – Competition Enforcement & Mergers Division



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

**Competition and
Consumer Protection
Commission**

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Annex: 3 European Commission Response to ComReg's Notified Draft measures



EUROPEAN COMMISSION

Brussels, 23.9.2020
C(2020) 6668 final

Commission for Communications
(ComReg)
One Dockland Central, Guild Street
D01 E4X0 Dublin 1
Ireland

For the attention of:
Mr. Garrett Blaney
Chairperson of the Commission

Subject: Case IE/2020/2263: wholesale call termination on individual public telephone networks provided at a fixed location in Ireland

Article 7(3) of Directive 2002/21/EC: No comments

Dear Mr Blaney,

1. PROCEDURE

On 27 August 2020, the Commission registered a notification from the Irish national regulatory authority, the Commission for Communications Regulation (ComReg)¹, concerning wholesale call termination on individual public telephone networks provided at a fixed location² in Ireland.

¹ Under Article 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33), as amended.

² Corresponding to market 1 in Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with the Framework Directive (2014 Recommendation on Relevant Markets) (OJ L 295, 11.10.2014, p. 79).

The national consultation³ ran from 2 April to 29 May 2020.

2. DESCRIPTION OF THE DRAFT MEASURE

The draft measure concerns wholesale call termination on individual public telephone networks provided at a fixed location (fixed termination markets). It modifies the market definition and designates additional fixed service providers as having significant market power (SMP).

2.1. Background

The review of the fixed termination markets in Ireland was previously notified to and assessed by the Commission under case IE/2019/2150⁴.

ComReg defined the relevant product market as the provision of wholesale fixed voice call termination to all geographic numbers, nomadic 076 numbers and to emergency 112/999 numbers. All 0818 non-geographic numbers have been excluded from the fixed termination market but ComReg indicated that it would revisit this issue. Businesses use 0818 numbers to create a nationwide appearance, removing the need for area codes.

ComReg defined the geographic scope of the relevant market as national. It identified 22 separate national markets and designated the operator of each fixed network as having SMP.

ComReg imposed the following obligations on all 22 SMP operators:

- (i) access;
- (ii) non-discrimination;
- (iii) transparency, including the requirement to publish a reference offer; and
- (iv) price control.

Regarding price control, ComReg calculated the efficient cost of termination based on a pure long-run incremental costs (LRIC) model. The resulting rate was to be achieved over a four-year glide path.

The Commission acknowledged in its comment that the glide path is justified because of:

- i) the already low level of termination rates;
- ii) the very low results of the model; and
- iii) the short waiting period for the Eurorate to enter into force.

³ In accordance with Article 6 of the Framework Directive.

⁴ C(2019) 2908.

The Commission also commented on ComReg's delay in the market review of the fixed termination market, as the previous review, on which the notified decision was based, dated from 2007.

2.2. The notified draft measure

The notified draft measure designates three fixed service providers as having SMP, in addition to 22 operators identified in the 2019 decision. Furthermore, ComReg is modifying the definition of the fixed termination markets by including 0818 numbers (non-geographic numbers).

The three new operators are Phone Pulse, Goldfish and Nuacom. They provide fixed voice services on their own respective networks. ComReg is proposing to impose the same obligations on these three operators as those imposed on the other designated SMP operators, namely:

- (i) access,
- (ii) non-discrimination,
- (iii) transparency, including the requirement to publish a reference offer and
- (iv) price control.

For the latter, ComReg is not changing the glide path currently being applied, as per the table below, and the fees will be applied until the Eurorates enter in force.

FTR – two-part and one-part call charges ¹⁴	2020	2021	From 2022
(A)Two-part charge: call set-up fee	0.061	0.062	0.062
(B)Two-part charge: per minute fee	0.037	0.030	0.024
One-part charge: per minute fee	0.057	0.051	0.045

As well as the currently regulated SMP operators, the three newly designated SMP operators can differentiate between EEA and non-EEA originated calls in line with the previously established regulation, meaning:

- 1) SMP operators must charge the prevailing Irish regulated termination rate when terminating traffic originated by non-EEA operators who charge termination rates that do not exceed the highest EEA pure bottom-up long-run incremental cost (BU-LRIC) termination rate;
- 2) if non-EEA operators charge termination rates above the highest EEA pure BU-LRIC termination rates, SMP operators may charge fixed termination rates (FTRs) above the Irish regulated termination rate.

In the latter case, the termination rate charged must be no higher than the prevailing Irish regulated termination rates plus the difference between the rate charged by the non-EEA operator and the highest EEA pure BU-LRIC rate.

Regarding 0818 numbers, ComReg considers that regulatory changes made outside of the SMP regulation warrant their inclusion in the relevant product market. Since 1 December 2019, retail charges for calls to 0818 numbers have been set so that they do not exceed the originating service provider's standard rate to a standard landline number (a 'geo-linking condition'). Such calls are, because of the geo-linking condition, included in the bundles of the retail service providers. Therefore, these calls form part of the total bundled minutes available to the end-user.

3. NO COMMENTS

The Commission has examined the notification and has no comments.⁵

Under Article 7(7) of the Framework Directive, ComReg may adopt the draft measure and, where it does so, shall communicate it to the Commission.

The Commission's position on this particular notification is without prejudice to any position it may take on other notified draft measures.

Pursuant to point 15 of Recommendation 2008/850/EC⁶ the Commission will publish this document on its website. If ComReg considers that, in accordance with EU and national rules on business confidentiality, this document contains confidential information that you wish to have deleted prior to publication, please inform the Commission⁷ within 3 working days of receipt⁸ and give reasons for any such request.

Yours sincerely,



For the Commission
Roberto Viola
Director-General

⁵ In accordance with Article 7(3) of the Framework Directive.

⁶ Commission Recommendation 2008/850/EC of 15 October 2008 on notifications, time limits and consultations provided for in Article 7 of Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 301, 12.11.2008, p. 23.

⁷ By email: CNECT-ARTICLE7@ec.europa.eu

⁸ The Commission may inform the public of the result of its assessment before the end of this three-day period.

Annex: 4 List of Consultation Questions

Q. 1. Do you agree that the positions regarding retail voice market developments and trends remain valid for purposes of this market review? Please explain the reason for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Q. 2. Do you agree with ComReg’s position that, consistent with its position in the 2019 Termination Markets Decision, there are unlikely to be effective retail demand-side or retail supply-side substitutes which would, within the timeframe of this market review, indirectly constrain a SSNIP in FTRs by the Additional FSPs? Please support your answer with reasoning.

Q. 3. Do you agree with ComReg’s positions on the definition of the Relevant FVCT Markets? In particular, do you agree that (a) 0818 numbers should be included in each of the Relevant FVCT Markets and (b) the Additional FSPs (along with the 2019 SMP FSPs) each constitute separate Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Q. 4. Do you agree with ComReg’s assessment of SMP in the Relevant FVCT Markets? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Q. 5. Do you agree that the competition problems and the associated impacts on competition and consumers which are identified in this Section are those which could potentially arise in the Relevant FVCT Markets? Please explain the reason for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Q. 6. Do you agree with ComReg’s approach to imposing remedies in each of the Relevant FVCT Markets within which the Additional SMP FSPs operate? Please explain the reason for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your views.

Q. 7. Do you have any comments on the draft FVCT Decision Instrument set out in Annex: 1? Please explain the reason for your answer, clearly indicating the relevant paragraph numbers to which your comments refer.

Q. 8. Do you agree with ComReg’s conclusions on the Regulatory Impact Assessment, in respect of FVCT? Please explain the reasons for your answer, clearly indicating the relevant paragraph numbers to which your comments refer, along with all relevant factual evidence supporting your position.

Annex: 5 Glossary of Terms

Acronym	Full Title
BEREC	Body of European Regulators for Electronic Communications
BU-LRIC	Bottom-up Long-Run Incremental Cost
CBP	Countervailing Buyer Power
CO	Call Origination
CPP	Calling Party Pays
EC	European Commission
EEA	European Economic Area
EU	European Union
FACO	Fixed Access and Call Origination
FSP	Fixed Service Provider
FTR	Fixed Termination Rate
FTTP	Fibre to the Premises
FTTx	Fibre to the
FVCO	Fixed Voice Call Origination
FVCT	Fixed Voice Call Termination
FWA	Fixed Wireless Access
FWALA	Fixed Wireless Access Local Area
GGSN	Gateway GPRS Support Node
GHz	Gigahertz
GPRS	General Packet Radio Service
IBH	In Building Handover
IP	Internet Protocol
LRIC	Long Run Incremental Cost
M2M	Mobile-to-Mobile (call)
MNO	Mobile Network Operator
MTR	Mobile Termination Rate
NEH	Near-End Handover
NGA	Next Generation Access
NTP	Network Termination Point

OAO	Other Authorised Operator
PSTN	Public Switched Telephone Network
RFTS	Retail Fixed Telephony Service
RFVC	Retail Fixed Voice Call
RIA	Regulatory Impact Assessment
RIO	Reference Interconnect Offer
RMTS	Retail Mobile Telephony Service
RMVC	Retail Mobile Voice Call
RPP	Receiving Party Pays
SABB	Standalone Broadband
SIP	Session Initiation Protocol
SLA	Service Level Agreement
SME	Small-to-Medium-size Enterprise
SMP	Significant Market Power
SMS	Short Message Service
SSNIP	Small but Significant Non-transitory Increase in Price
STRPL	Switched Transit and Routing Price List
TFEU	Treaty on the Functioning of the European Union
VASP	Value-Added Service Provider
VDSL	Very-high-bit-rate Digital Subscriber Line
VOB	Voice over Broadband
VoIP	Voice over Internet Protocol
WACC	Weighted Average Cost of Capital
WLR	Wholesale Line Rental
WVCT	Wholesale Voice Call Termination
WOR	Wholesale Origination Rate