



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Direction to Eircom Limited pursuant to Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 in relation to Migrations

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**An Coimisiún um Rialáil Cumarsáide**  
**Commission for Communications Regulation**

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## Additional Information

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# 1 Introduction

1. In ComReg Decision D10/18 of 19 November 2018 (ComReg Document 18/94) (“**ComReg Decision D10/18**”), ComReg<sup>1</sup> found that Eircom had significant market power (“**SMP**”) in the WLA Market and the Regional WCA Market.
2. On that basis, ComReg imposed obligations on Eircom to address the associated competition problems. In that context, ComReg imposed an obligation to provide Access to Migrations as defined in both the WLA and WCA Decision Instruments at Appendix 20 and Appendix 21 of ComReg Decision D10/18. The definition of Migrations from the WLA Decision Instrument is as follows,

*“Migration(s)” means where the upstream wholesale input used to supply a retail service is changed whilst maintaining services to the End User, irrespective of whether or not the supplier at the retail level changes. For the avoidance of doubt, Migrations include but are not limited to migrations:- (i) between all Next or Current Generation WLA services in any direction; (ii) between Next or Current Generation WLA and Next or Current Generation WCA in any direction; (iii) VUA Soft Migrations; and (iv) Bulk Migration”.*

3. The definition of Migrations in the WCA Decision Instrument at Appendix 21 of ComReg Decision D10/18 is the same as above save that at (i) the definition states “*between all Next of Current Generation WCA services in any direction*” and at (iii) the definition states “*Bitstream Soft Migrations*”.
4. Bulk Migration is defined in the WLA and WCA Decision Instruments at Appendix 20 and 21 of ComReg Decision D10/18 as,

*“Bulk Migration” means the facility whereby an Undertaking can have multiple Migrations facilitated via a single request”.*

5. The obligation to provide Migrations is set out in sections 7.1 and 7.2(x) of the WLA Decision Instrument and section 7.2(viii) of the WCA Decision Instrument. The WLA Decision Instrument, for example, states that,

*“Pursuant to Regulation 12(1) of the Access Regulations, Eircom shall meet all reasonable requests from Undertakings for the provision of Access to Wholesale Local Access including Associated Facilities.*

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<sup>1</sup> Capitalised terms have the meaning as defined in ComReg Decision D10/18, unless otherwise indicated.

*Without prejudice to the generality of Section 7.1 of this Decision Instrument and pursuant to Regulation 12(2) of the Access Regulations, Eircom shall provide and grant Access to Undertakings for the following particular products, services and Associated Facilities:-*

.....

*(x) Migration(s)".*

6. Since ComReg Decision D10/18 was adopted, issues have arisen concerning the processes followed by Eircom to provide Migrations, in particular in relation to VUA\Bitstream Soft Migrations, including where VUA\Bitstream Soft Migrations are to be carried out at scale through Bulk Migrations. Under Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 (the "**Access Regulations**"), ComReg may "*for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an operator or undertaking to do or refrain from doing anything which [ComReg] specified in the direction*". Having engaged with Eircom on this matter, ComReg is of the view that it is necessary and appropriate to further specify the requirements to be complied with by Eircom in making available Migrations, more particularly VUA\Bitstream Soft Migrations, whether individually or in Bulk.
7. Section 2 below provides details of the issues; Section 3 sets out details of the engagement to date with Eircom; Section 4 recalls ComReg's functions and powers and Section 5 sets out the reasons for the Direction. The Direction is set out in Annex 1.

## 2 Explanation of the Issue

8. ComReg Decision D10/18 includes an obligation on Eircom to provide Access to Migrations as defined in that decision. The term Migrations includes VUA\Bitstream Soft Migrations, which are migrations which do not need physical network intervention at the time of provisioning. In addition, Migrations includes Bulk Migrations which comprise multiple Migrations of any type, facilitated via a single request.
9. At present, Eircom uses a Provide NGA Soft Migration (“**PNS**”) order to fulfil VUA\Bitstream Soft Migrations, consisting of three sequential parts. First, there is provisioning of a new FTTC standalone service from the POTS-based service. Second, there is porting of the end-user’s telephone number. Third, there is de-provisioning of the POTS service, which requires the physical removing of the jumper<sup>2</sup>, after which the order is closed.
10. ComReg has become aware that until the unjumpering task is completed and the order is closed, for so long as the PNS order is open, all orders for other Access products on the FTTC standalone service will be refused. These orders include the CEN, CHN, CPN, QND and PNO order types.<sup>3</sup> There is no fixed timeframe within which the unjumpering task is to be completed and during that time, the FTTC standalone service offered to the End-User may not be altered in any way, the repair ordering process is impeded and switching to another provider is prevented.
11. ComReg understands that the unjumpering task is normally completed within 5-6 working days. This already is a material period of time during which Eircom will not make available to operators all the forms of Access that it is mandated to provide.<sup>4</sup> However, ComReg expects that this timeline will likely be significantly increased if Bulk VUA\Bitstream Soft Migrations are to occur at scale, as may be expected in advance of the deregulation of the Urban FACO Market proposed, subject to consultation, in ComReg Consultation Document No. 20/96, as Access Seekers currently availing of POTS-based FTTC services switch to standalone FTTC services and provide voice services over their own VoIP platform.

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<sup>2</sup> The jumper is the physical connection of the copper line to the PSTN Exchange. Unjumpering in the context of migration to standalone NGA is the removal of the connection between the copper access line and the PSTN Exchange.

<sup>3</sup> Cease NGA (“**CEN**”), Change NGA (“**CHN**”), Change Profile for NGA (“**CPN**”), Query NGA Detail (“**QND**”) and Provide NGA from Other (“**PNO**”)

<sup>4</sup> As specified in section 7 of both the WLA and WCA Decision Instruments at Appendix 20 and Appendix 21 of ComReg Decision D10/18.

12. Given the issues outlined in this section, ComReg had serious concerns regarding Eircom's process for Bulk Migrations in that unless the issues were dealt with it could result in serious operational problems, to the detriment and serious inconvenience of the End Users they serve. These issues are further considered in Section 5.

### 3 Correspondence between Eircom and ComReg

13. Due to ComReg's serious concerns around the Eircom process for VUA\Bitstream Soft Migrations, ComReg engaged with Eircom and started formal communication in relation to this issue by issuing a letter to Eircom on 17 December 2020. ComReg noted that under ComReg Decision D10/18, Eircom is obliged to provide Access to Migrations including VUA Soft Migrations, Bitstream Soft Migrations and Bulk Migrations. ComReg explained that it had serious concerns that the Eircom processes that provide Access to Migration types were not satisfactory and that it was concerned that operators which seek to rely on these Migrations at scale in the near future will face serious operational problems, to the detriment and serious inconvenience of the End Users they serve. As operators move to standalone VUA products and noting the proposed deregulation of the Urban FACO Market, ComReg emphasised that it was essential that urgent, appropriate and timely action was taken now to ensure the smooth functioning of the markets concerned.
14. ComReg explained that its key concern was related to the PNS order used for Eircom's VUA\Bitstream Soft Migration process on the Unified Gateway ("UG").
15. In particular, ComReg explained its concern that when the PNS order remains open, orders for other Access products, on the FTTC standalone service (including migration of the FTTC standalone service between operators), will be refused<sup>5</sup>. ComReg could see no basis on which Eircom could reasonably justify the rejection of other orders on the basis that the unjumping task had not yet been completed. Further, it was unacceptable that a condition of Access required one service to be withdrawn before Access to a different service was granted. ComReg requested Eircom to review its processes and respond by 8 January 2021. At Eircom's request, this deadline was extended to 22 January 2021.
16. Eircom responded to ComReg's letter on 22 January 2021. Eircom confirmed that, *"It is correct that pending the unjumping task completion a number of order types will not flow"*. Eircom explained that Migrations from POTS based FTTC to standalone FTTC require a jumper to be removed at the cabinet as this jumper prevents the correct testing of the line and further leaving the jumper in place would lead the network inventory to be incorrect. Eircom confirmed that it believed the PNS order type is fit for purpose.

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<sup>5</sup> These order types include the CEN, CHN, CPN, QND and PNO.



17. In addition, Eircom noted that either the PNS or Provide NGA from WLR (“**PNW**”) order type could be used by operators to migrate their customers and that either order type could be used to facilitate Bulk Migrations.
18. ComReg responded to Eircom by way of letter dated 11 February 2021. Having considered Eircom’s explanations, ComReg noted that, in contrast to the PNS order, the PNW order type does not support VUA\Bitstream Soft Migrations as the PNW order requires a physical network intervention at the time of provisioning. Further, ComReg noted that at no point during the product development workshop presentations or the NGA IPM updates, did Eircom state that orders to change the standalone NGA service or to move the standalone NGA service to another operator would be blocked while the outstanding unjumping task is pending. ComReg reiterated its position from earlier correspondence and confirmed that in relation to orders being refused on the standalone broadband service while the unjumping task is outstanding, it expected that that once a line has migrated and supports a standalone broadband service, all orders are available to operators including while the unjumping task is outstanding.
19. Eircom responded to ComReg’s letter on 25 February 2021. Eircom stated that the current PNS order has been developed in line with ComReg Decision D10/18 and that there “*are justifiable reasons that prevent certain order types being progressed until the un-jumping task has been completed*”. According to Eircom the main reason for refusing certain orders during this time is to maintain an accurate network inventory.
20. Eircom noted that it remained of the view that the PNS and PNW orders can support an operator in the migration process from SB-WLR to self-provided Voice over Broadband (“**VOBB**”). In addition, in response to ComReg’s requests in its letter of 11 February 2021, Eircom offered to carry out the following steps:
  - a. Review the PNS order and complete the review by the end of April 2021 at which time Eircom hopes to be in a position to consider the technical and economic feasibility of making the changes to the PNS order requested by ComReg.
  - b. Develop an SLA for the unjumping task in accordance with D10/18 and engage with industry at the next PDW scheduled for 10 March 2021.
  - c. Review the documentation for migrations and complete the review during May 2021.

21. Under cover of a letter dated 16 March 2021, ComReg issued Eircom with a draft of the present direction (the “**Draft Direction**”) under Regulation 18 of the Access Regulations and requested that Eircom provide any comments on the Draft Direction by 6 April 2021. By way of letter dated 25 March 2021, Eircom requested an extension to respond to the Draft Direction and on 30 March 2021 ComReg confirmed that it would grant a short extension until 13 April 2021.
22. In summary, ComReg proposed to direct Eircom in respect of any VUA\Bitstream Soft Migrations as defined under ComReg Decision D10/18 to make available to Access Seekers a facility enabling them to migrate from POTS-based service, while allowing the broadband line to be fully available, meaning there are no restrictions on functionality and orders can be placed on the line, regardless of whether or not the unjampering task has been completed by Eircom. Further, ComReg proposed to direct Eircom to update its documentation for Migrations to take into account any changes made as a result of complying with the direction on VUA\Bitstream Soft Migrations. ComReg proposed a deadline for both actions to be completed no later than 17 September 2021.
23. In its letter of 25 March 2021, Eircom also highlighted that even if a feasible solution were identified, it would not be possible to achieve an implementation date on or before 17 September 2021 due to the IT changes required.
24. Comments from Eircom on the Draft Direction were received on 13 April 2021. Eircom sought clarification on the procedure which ComReg was proposing to follow in issuing the direction under Regulation 18 of the Access Regulations, noting its view that by the direction ComReg would be imposing new legal obligations, in effect amending ComReg Decision D10/18, which requires public consultation and notification to the European Commission. Eircom also took issue with the Draft Direction on the basis that ComReg would not have carried out the proportionality assessment that ComReg is required to do. Eircom identified the timelines for the unjampering of the relevant line to be ComReg’s main concern and submitted that ComReg’s concerns would be satisfactorily addressed by Eircom putting in place an SLA on migrations negotiations of which Eircom expected to be completed in July 2021. In that context a direction in the form of the Draft Direction would be clearly disproportionate a measure. Eircom also raised concerns around the technical feasibility of the requirements set out in the Draft Direction and submitted that the requirements set out in the Draft Direction went further than what ComReg may impose under Regulation 12 of the Access Regulations by way of conditions of “reasonableness” and “timeliness”. Eircom also noted that it was continuing with its feasibility assessment and that it would share its findings with ComReg on 30 April 2021.

25. On 5 May 2021 Eircom provided ComReg with a technical assessment of potential changes to the PNS order type and these changes were discussed at a meeting between ComReg and Eircom on 11 May 2021. In summary, Eircom confirmed that it is not feasible to make the changes ComReg requested to ensure there are no restrictions on orders on the line regardless of whether or not the line has been unjumpered. Eircom also suggested two potential solutions.
26. First, Eircom suggested that a new order type Undo NGA Soft Migrations (“**UNS**”) could be developed to allow the migrating provider to cancel the PNS and undo any changes made to the inventory. While ComReg welcomes this suggestion, it is more appropriate in the context of the ongoing FACO market review and is not relevant to the current Direction which is focused on further specifying an existing obligation in ComReg Decision D10/18.
27. Second, Eircom suggested that where a PNS unjumpering task is outstanding on the line and an order is made on that line, the order will be accepted and held until the unjumpering is completed allowing the order to flow. ComReg welcomes Eircom’s proposals and considers that a refined version of this proposal is suitable to include in this Direction.
28. ComReg has considered Eircom’s submissions on the Draft Direction and taken them into account for the purpose of this Direction, as further discussed in the relevant sections below.

## 4 Powers of ComReg

### 4.1 Basis of obligations in Decision D10/18

29. Under Regulation 8 of the Access Regulations, ComReg may, following the market analysis process set out in Regulation 27 of the Framework Regulations, designate an operator with SMP and impose obligations set out in Regulations 9 to 13 of the Access Regulations.

30. Regulation 8 of the Access Regulations applies to the imposition, amendment or withdrawal of obligations:

*“8(1) Where an operator is designated as having a significant market power on a relevant market as a result of a market analysis carried out in accordance with Regulation 27 of the Framework Regulations, the Regulator shall impose on such operator such of the obligations set out in Regulations 9 to 13 as the Regulator considers appropriate.”*

31. In ComReg Decision D10/18, ComReg found Eircom to have SMP in the WLA Market and the Regional WCA Market (as defined in D10/18) and imposed a suite of obligations provided for in the Access Regulations. Pursuant to Regulation 12(2) of the Access Regulations, in ComReg Decision D10/18, ComReg imposed certain access obligations in respect of the WLA and WCA markets. In section 7.2 of the WLA and WCA Decision Instruments it is stated that

*“Eircom shall provide and grant Access to Undertakings for the following particular products, Services and Associated Facilities:-*

...

*(x) Migration(s)”.*

### 4.2 Power to issue directions

32. Section 10 of the Communications Regulation Act 2002 (as amended) (the “**Communications Regulation Act**”) confers on ComReg the following relevant functions:

*“(1) (a) to ensure compliance by undertakings with obligations in relation to the supply of and access to electronic communications services, electronic communications*

*networks and associated facilities and the transmission of such services on such networks,*

...

*(1) (d) to carry out investigations into matters relating to the supply of, and access to, electronic communications services, electronic communications networks and associated facilities and the transmission of such services on such networks,*

...”

33. Under Section 10(3), ComReg has all such powers as are necessary for or incidental to the performance of its functions under the Communications Regulation Act or any other Act.
34. Section 12 of the Communications Regulation Act confers on ComReg, amongst others, the following relevant objectives:

*“(1) The objectives of the Commission in exercising its functions shall be as follows -*

*(a) in relation to the provision of electronic communications networks, electronic communications services and associated facilities -*

- (i) to promote competition,*
- (ii) to contribute to the development of the internal market,*
- and*
- (iii) to promote the interests of users within the Community,*

*(2) In relation to the objectives referred to in subsection (1) (a), the Commission shall take all reasonable measures which are aimed at achieving those objectives, including-*

*(a) in so far as the promotion of competition is concerned-*

- (i) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price and quality,*
- (ii) ensuring that there is no distortion or restriction of competition in the electronic communications sector,*
- (iii) encouraging efficient investment in infrastructure and promoting innovation...”*

35. Regulation 18 of the Access Regulations provides ComReg with the power to issue directions as follows,

*“18 The Regulator may, for the purpose of further specifying requirements to be complied with relating to an obligation imposed by or under these Regulations, issue directions to an operator or undertaking to do or refrain from doing anything which the Regulator specifies in the direction.”*

36. In light of the information available to ComReg, including information from the correspondence exchanged between ComReg and Eircom, it is concerned that Eircom’s processes for VUA\Bitstream Soft Migrations and also Bulk Migrations are not fit for purpose and will lead to operational issues.
37. On that basis, ComReg has decided, for the reasons set out in Section 5, that it is appropriate and proportionate at this time to issue a direction to Eircom under Regulation 18 of the Access Regulations. As set out in Section 3, prior to making this Direction, ComReg has taken into account Eircom’s comments, including Eircom’s comments that prior public consultation and notification to the European Commission are required on the basis, in particular, that the Direction imposes new legal obligations on Eircom. ComReg, however, is satisfied that the Direction is not a measure which falls within the scope of Regulation 12 and Regulation 13 of the Framework Regulations. The Direction does no more than specifying further the requirements that Eircom must comply with when meeting its obligation to provide Migrations under ComReg Decision D10/18, and the obligation on Eircom to provide Migrations is an obligation which has been consulted upon and notified to the European Commission.
38. The Direction is set out in Annex 1.

## 5 Justification

39. As explained in Section 2 above, the processes used by Eircom to provide Soft Migrations mean that provisioning of the new service (standalone FTTC VUA or Bitstream) does not allow operators full Access until such (indeterminate) time that the line has been unjumpered. In particular, orders allowing to upgrade or otherwise change the service; undo a migration; change operator; or log/check a fault (order types CEN, CHN, CPN, QND and PNO), cannot be processed until unjumpering has been completed. In the Consultation that led to ComReg Decision D10/18 (ComReg Document 16/96), ComReg provided the following reasons for Eircom's obligation to provide Migrations (footnotes omitted):

*8.115 A migration process provides the ability for an Access Seeker to change wholesale inputs in response to demand-side requirements or for optimization of supply-side inputs with the minimum possible disruption to End Users.*

*8.116 The ability of an Access Seeker to migrate between wholesale inputs is a fundamental requirement for properly functioning downstream markets. If an Access Seeker cannot seamlessly and efficiently switch between wholesale access products, competition in wholesale and/or retail market(s) would be severely hampered, because an Access Seeker would not be able to freely choose between the wholesale access products that best meets their business needs and the needs of their customers.*

...

*8.118 ComReg is also proposing that Migrations from SB-WLR and VUA to standalone VUA or to standalone VUA combined with the transfer of a telephone number (i.e. porting) should be treated as a VUA Soft Migration, if required by the Access Seeker. Soft Migrations eliminates the need to recover 'jumpers' at the time of service provisioning. ...*

40. In ComReg Decision D10/18, ComReg confirmed those reasons, noting as follows (footnotes omitted):

*7.177 The proposed Migrations obligation is to support the ability for Access Seekers (and Eircom) to efficiently and swiftly switch between various wholesale access products (including those in other regulated markets such as the WCA Markets). Eircom has a central role in the design and implementation of Migration processes and therefore is ultimately responsible for ensuring their effectiveness and efficiency.*

....

*7.186 A VUA Soft Migration is the electronic disablement of the SB-WLR service. With a soft migration the recovery of the jumper can occur at a later stage. Soft Migrations are more efficient in ComReg's view as the removal of the jumper recovery step allows for a more efficient migration process resulting in higher migration order throughput and therefore increased efficiency, benefiting both competition and End Users.*

*7.187 For example, on receiving a request for a soft Migration of SB-WLR and VUA to SA VUA , Eircom, could:*

- (a) electronically disable the voice service;*
- (b) schedule the recovery of the physical 'jumper' at a point in time; and*
- (c) close the order once the 'jumper' is recovered.*

*7.188 In the Consultation ComReg justified the need for a Migrations obligation. The purpose of the obligation is to avoid the requirement for a technician visit to an exchange (or equivalent) when an SB-WLR and VUA service is being migrated to SA VUA, as this is likely to unnecessarily restrict the volume of migration orders that can be processed at any one time. This would have the effect of reducing customer switching which could negatively impact competition. ComReg considers that the purpose of the obligation should be in keeping with Eircom's own view (summarised in paragraph 7.172 above) on the need for Migrations processes that are efficient in order to ensure a well-functioning and competitive market place.*

41. While ComReg accordingly envisaged that Migrations could be implemented via a process allowing latitude to Eircom as to when the physical jumper would be recovered, and the order closed, it was on the understanding that the full benefit of a VUA\Bitstream Soft Migration would accrue from the time of provisioning.



42. In particular, implied in the example provided by ComReg of how Eircom could discharge its obligation to provide VUA\Bitstream Soft Migrations is the assumption that once provisioning happens independently of jumper recovery, a seamless and efficient switching process between wholesale products is available that allows Access Seekers to freely choose between the wholesale Access products that best meets their business needs and the needs of their customers, thereby contributing to ensuring a well-functioning and competitive market place.
43. It has become apparent that this assumption was not correct and that in order that the Migrations processes put in place in Eircom meet the objectives pursued by the obligation in the first place, it is now necessary, appropriate and proportionate to rely on Regulation 18 of the Access Regulations to further specify the requirements to be complied with by Eircom under D10/18 in respect of providing Access to Migrations, and require Eircom to ensure in providing VUA\Bitstream Soft Migrations, whether on a single line basis or in Bulk Migrations, that there are no restrictions placed on the migrated line pending unjumpering, so that all orders which are now declined pending completion of the unjumpering task and closing of the order, flow from the time provisioning has occurred.
44. By putting this in place, the seamless and efficient switching process provided for and required in ComReg Decision D10/18 will be made available to Access Seekers.
45. Noting that there are a number of ways in which Eircom can provide a “*Soft Migration*” process whereby the timing of the unjumpering task does not lead to orders being blocked on the standalone line, and that Eircom has proposed the basis of the solution contained in the Direction, ComReg is satisfied that no more prescriptive direction is required as to how this is achieved. ComReg also notes that the primary reason to remove the jumper is to facilitate cabinet-based Metallic Electrical Line Test (“**MELT**”). If the jumper is not removed, the cabinet-based MELT results will be inaccurate. ComReg understands that it should be possible to run a MELT from the exchange with the appropriate process changes.
46. ComReg acknowledges Eircom’s concern to ensure network integrity and is satisfied that there are solutions available to Eircom which allow Eircom to maintain the integrity of its network and allow orders to flow on the line from the time of provisioning in advance of unjumpering. For example, ComReg notes that Eircom can leave the jumper in place, as is the case when a POTS service is ceased to soft dial tone. Eircom has the capability to determine the status of POTS service and its associate inventory and when necessary to electronically enable the POTS service. Removing the current restrictions on the line pending unjumpering will significantly improve on the efficiency of the Migration process, and ensure that it is fit for

purpose, including, as contemplated in ComReg Decision D10/18 at paragraph 7.190, meeting demand “... from Access Seekers who wish to migrate their installed base from SB-WLR to VoIP services. Access Seekers may wish to bulk migrate their customer base hence efficient migration processes are required”.

47. ComReg is not requesting Eircom to jeopardise the integrity of its inventory or IT systems in arriving at a solution. ComReg merely requires that the unjumping task of a deprovisioned voice service be removed from the critical path and does not lead to orders being blocked on the standalone NGA line. If the unjumping must occur, it should take place in a way that does not block Access to the line. It is for Eircom to manage its inventory which can be marked in such a way as to indicate the correct status of the line. ComReg’s view is that five working days is a reasonable period of time within which to allow new orders to progress where Eircom accepts an order on the standalone NGA line. These new orders exclude order types used for fault handling purposes as specified in the NGA Fault Handling section of the UG Data Contract on the basis that if an end user reports a fault on the standalone NGA line and the jumper is still in place, Eircom may choose to require the operator to contact the open eir customer care centre to log the fault. Five working days will give Eircom sufficient time to carry out the unjumping task, where required, taking account of other competing deadlines. Eircom’s proposal permits an order to be placed on the standalone NGA line, however, this order will not progress until the unjumping task is completed. It is therefore proportionate to place a maximum time limit, of five working days, within which to allow new orders to progress where Eircom accepts an order on the standalone NGA line.
48. While Eircom has suggested that an SLA will address all of ComReg’s concerns and would be a more proportionate solution, ComReg does not believe that an SLA on the unjumping task would be the most appropriate way to resolve this issue as:
  - a. end users will not be able to complete an order on the standalone NGA line, for a material and undetermined period of time if the SLA is breached and even if there is a penalty to be paid under the SLA to an operator;
  - b. it is not clear how, in the case of a switch of standalone NGA between operators, the gaining operator could benefit from any penalties arising from a breach of an SLA as they have not gained the end user yet; and,
  - c. there are likely to be exclusions built into the SLA which will result in the SLA being not applicable in the case of large-scale migrations.

49. A direction at this time is necessary because ComReg is not satisfied that absent a direction, the necessary steps will be taken by Eircom in good time so that the issues arising from the restrictions on the line post migration pre-unjumping are addressed in full and implemented in advance of any deregulation of the FACO Urban Market and the expected increase in demand for Bulk VUA\Bitstream Soft Migrations. In particular, while Eircom put forward its plan in relation to this issue in its letter dated 25 February 2021, the plan fell short of what ComReg had requested. In its letter of 11 February 2021, ComReg had requested Eircom to provide a timeline for reviewing the PNS order as well as making the necessary changes so that *“an outstanding unjumping task will no longer hinder further orders on the SA broadband line being accepted and completed....”*. Eircom’s response only confirmed that it would review the PNS order and assess the feasibility of certain changes by the end of April 2021. While Eircom’s proposed solution in its correspondence of 5 May 2021 is a useful starting point, it is not sufficient because it does not provide for the prioritisation of lines on which an order has been accepted in relation to the unjumping task. This could result in an order being accepted but not being able to flow for a long period of time.
50. This issue is particularly important due to the potential impact on the market and Access Seekers. ComReg considers that well-functioning Migrations are essential for the market to enable Access Seekers and Eircom to switch between various wholesale Access products.
51. The Direction imposes a deadline of 29 April 2022 by which time, Eircom must complete the actions set out in the Direction. ComReg appreciates that depending on the changes which Eircom implements in order to meet the requirements of the Direction, it may require systems changes. In setting a deadline of 29 April 2022, ComReg is taking this into account to ensure Eircom will have sufficient time to implement the changes.
52. On the basis of the above, ComReg considers that it is necessary to rely on Regulation 18 and that this is proportionate taking into account the impact on the market of this issue.

## 6 Conclusion

53. On the basis of the above, ComReg is not satisfied that Eircom's proposal as set out in its correspondence of 5 May 2021 will provide a sufficient solution to this issue. Therefore, ComReg considers that it is necessary to use the powers available to it, principally under Regulation 18 of the Access Regulations, to issue a direction to Eircom in respect of what it is required to do in respect of its processes on Migrations.

# ANNEX 1 - Direction

1. In accordance with Regulation 18 of the Access Regulations, for the purpose of further specifying requirements to be complied with relating to an obligation imposed in ComReg Decision D10/18 under the Access Regulations (in particular, section 7.2 of the WLA and WCA Decision Instruments), ComReg directs Eircom to do the following:
  - a. From no later than 29 April 2022, in respect of any VUA\Bitstream Soft Migrations as defined under ComReg Decision D10/18 (including where such Migrations are carried out at scale as Bulk Migrations), where a VUA\Bitstream Soft Migration is being carried out and a new order is made on the line, Eircom shall, save as regards orders for NGA fault handling purposes as specified in the NGA Fault Handling section of the UG Data Contract, accept such an order and ensure that the order is progressed within five working days of its being made, whether or not an unjumpering task is required; and
  - b. In accordance with its obligations of transparency under ComReg Decision D10/18, Eircom is required to make available and publish product documentation for Migrations (in particular in relation to Bulk Migrations). Eircom shall update this documentation to reflect changes made as a result of (a) above on or before 1 February 2022, having notified ComReg on or before 3 January 2022.
2. For the purpose of Section 1.a., UG Data Contract means the open eir Wholesale Unified Gateway Data Contract referred to in Clause 22.2 of Eircom's ARO published pursuant to Section 10.2 of the WLA Decision Instrument and in Clause 1.2 of Eircom's WBARO published pursuant to Section 10.2 of the WCA Decision Instrument and which forms part of the ARO and WBARO.
3. This Direction is made:
  - a. Pursuant to and having regard to Sections 10 and 12 of the Communications Regulation Act 2002 (as amended);
  - b. Having regard to Section 7.2 of the WLA and WCA Decision Instruments in ComReg Decision D10/18;
  - c. Pursuant to Regulation 18 of the Access Regulations;

- d. Having regard to the reasons set out above in Sections 1-6 of ComReg Document 21/61
4. This Direction is addressed to Eircom Limited, of 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03 and effective from 11 June 2021.
  5. ComReg may at its entire discretion publish an Information Notice in relation to this Direction and may also at its entire discretion publish this Document 21/61 on its website having afforded Eircom the opportunity to identify confidential information in accordance with ComReg's Confidentiality Guidelines.

**SIGNED FOR AND ON BEHALF OF THE COMMISSION FOR COMMUNICATIONS  
REGULATION**

**ROBERT MOURIK  
COMMISSIONER  
11 June 2021**