



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Publication of correspondence between European Commission and ComReg in respect of Registered Notifications IE/2021/2344 and IE/2021/2345

Correspondence further to Requests for Information

Information Notice

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1. On 22 October 2021, the Commission for Communications Regulation's ('**ComReg**') issued an Information Notice in ComReg Document 21/108¹ relating to ComReg's publication and parallel notification to the European Commission ('**EC**') of its Draft Decision on its proposals regarding the pricing of access to Eircom Limited ('**Eircom**') civil engineering infrastructure ('**CEI**') i.e., Eircom's ducts and poles. This CEI pricing notification was registered by the EC on 22 October 2021 as Case IE/2021/2344².
2. At the same time, ComReg also issued an Information Notice in ComReg Document 21/109³ relating to ComReg's publication and parallel notification to the EC of its Draft Decision concerning its Regulated Wholesale Fixed Access Charges Review of the Access Network Model ('**ANM**'). The ANM Draft Decision was registered by the EC on 22 October 2021 as Case IE/2021/2345⁴.
3. On 29 October, the EC sent requests for information ('**RFIs**') to ComReg in relation to Case IE/2021/2344 and Case IE/2021/2345. ComReg provided the EC with a response to the RFIs on 3 November 2021. An additional request for information was sent by the EC on 4 November on Case IE/2021/2345, which ComReg replied to on 8 November 2021.
4. In this Information Notice ComReg has published a non-confidential version of the correspondence referred to at paragraph 3 in Annex 1: and Annex 2: below. Having considered all the circumstances of these two RFIs, ComReg took the view that it would be appropriate to publish redacted versions of the documents referred to in paragraph 3. This publication is made additionally further to ComReg's general interest in providing appropriate transparency to all relevant stakeholders.
5. ComReg has decided on this occasion to publish the relevant correspondence, based on the relevant interests in question and consideration of the specific circumstances that apply. No inferences should be drawn from ComReg's decision to publish these documents. Future publication decisions will be made on a case-by-case basis following careful consideration of the relevant circumstances of each individual case.

¹ [Information Notice 21/108](#)

² ComReg subsequently withdrew the notified draft measures on the pricing of Eircom's CEI on 10 December 2021 - see [Information Notice 21/127](#)

³ [Information Notice 21/109](#)

⁴ ComReg subsequently published the ANM Decision in ComReg Document 21/130, Decision [D11/21](#) on 20 December 2021.

Annex 1: Case IE/2021/2344



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

Connectivity
Markets

Brussels,
CNECT.B.3/PK/GG/BPM/MJ

Commission for Communications
Regulation (ComReg)
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For the attention of:
Mr. Eric Tomkins

Fax: +35318049665

Subject: Case IE/2021/2344 – pricing for access to Civil Engineering Infrastructure

Request for information pursuant to Article 20(2) of Directive (EU) 2018/1972¹

Dear Mr Tomkins,

On 22 October 2021, your notification of the above-mentioned draft measure was registered. This letter is a request for information, under Article 20(2) of the Code and Point 4 of Commission Recommendation (EU) 2021/554.²

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the Code) (OJ L 321, 17.12.2018, p. 36).

² Commission Recommendation (EU) 2021/554 of 30 March 2021 on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code OJ L 112, 31.3.2021, p. 5.

1. INFORMATION REQUIRED

The purpose of this request is to receive information that will allow the Commission to assess the notified draft measure in full knowledge of the relevant facts and the economic context.

We would appreciate if you could provide the information requested in the annex, below, as soon as possible, but no later than 3 November 2021.³

Please send your reply by email to CNECT-markets-notifications@ec.europa.eu.

2. CONFIDENTIAL INFORMATION

If you consider that your submission contains confidential information in accordance with Union and/or national law on business confidentiality, please explain the reasons for this in writing. The Commission will ensure such confidentiality⁴ in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001⁵.

Should you have any queries relating to the information requested, please do not hesitate to contact us.

Yours sincerely,

Kamila KLOC
Head of Unit

Enclosure: (1) Annex with information request

³ In accordance with Point 13 of the Procedural Recommendation, the reply to a request for information should be submitted within three working days.

⁴ See Article 20(3) of the Code.

⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001 p. 43.

ANNEX

REQUESTED INFORMATION

Pricing of NBI's access to Eircom's CEI in the commercial area.

1. We understand that NBI will have a lower price for access to Eircom's civil engineering in commercial areas (CA) compared to if it was considered as a generic access seeker. Can ComReg provide an estimate of what would be the difference of total price for NBI's access to Eircom's CEI in the CA if the generic access pricing methodology was applied to NBI?
2. What is the legal basis for imposing discriminatory conditions on an access seeker based on SMP regulation? Is Eircom subject to non-discrimination obligation? Would that obligation be revoked?
3. We understand that NBI's demand for Eircom's CEI will be of unprecedented scale and duration. Could this not be taken into account without applying a different methodology to NBI (e.g., volume discount and long-term pricing)? In what way does the large volume of expected access justify LRIC?
4. ComReg also argued that differentiated pricing methodology is justified by the fact that NBI will not compete with Eircom. Why is the argument on non-competition decisive in this case? In a hypothetical (yet comparable) scenario, would ComReg also consider that telecom operators should benefit from access at LRIC costs to e.g. energy or railway CEI, as they are also not competing with such entities?
5. Please confirm that applying the generic access prices to NBI in the commercial areas would reduce the price of access for other access seekers to Eircom's CEI in the Commercial Area.
6. Please confirm that applying the generic access prices to NBI in the commercial areas would result in lower costs, and therefore lower regulated prices, for 3a products (nationwide) and 3b products (in the rural WCA market)? Can ComReg therefore confirm that Eircom would only be able to recover "windfall" profits for 3b products in the urban (deregulated) WCA market?
7. Can ComReg provide an estimate of the NBI's needs in terms of access to Eircom's CEI in:
 - Urban commercial areas?
 - Rural commercial areas?
8. In the calculation of the amount of public subsidies necessary for the implementation of the NBP, was the price of access to CEI one of the inputs? If so, which hypothesis was retained as regards this price? Was it not expected at that time that NBI would have to pay for common and shared costs of CEI, even for transit through the commercial areas?

9. Is NBI allowed to provide low-speed products? If not, what is the minimum speed it is allowed to provide?
10. According to footnote 55 of the draft decision currently notified, “As NBI’s wholesale prices in the NBP IA are set by reference to comparable wholesale regulated broadband services any changes to the CEI access prices as a result of this review should only impact on the State subsidy (and hence amount to be recovered from tax payers) but not from end-users of the broadband service.” Can ComReg therefore confirm that the new pricing method that would apply to NBI’s CEI access in the IA would result in a lower need for State subsidy? To what extent the lower cost of the wholesale input would translate to lower retail prices, if at all?
11. To what extent do the rural commercial area and the rural WCA market overlap?
12. ComReg seems to believe that using the generic access methodology for NBI’s access to Eircom’s CEI in commercial areas would disincentivize NBI to use this CEI. Why does ComReg believe this, since NBI manifested its intention to use Eircom’s CEI before knowing that it would potentially be applied LRIC in the CA? Moreover, why would this not be the case for other operators?
13. We understand that since 2016 there was a price for access to CEI within the large exchange area (LEA) and another price outside the LEA. We further understand that ComReg consulted prices for Generic Access to CEI reflecting the costs associated with access across the entire Commercial Area (Urban Commercial Area and Rural Commercial Area). The majority of respondents agree to those prices. However, according to point 22 of the Notification ComReg agree to Eircom’s suggestion of considering only the costs in the Urban Commercial Area (where demand would be most likely to emerge) for setting prices for the entire Commercial Area. Eircom reasoning is that deployment costs are higher in the Urban Commercial Area and it would lead to under recovery of efficient costs. By the same token, as a result of the proposed measure access to CEI in the Rural Commercial Area would lead to over recovery by Eircom and would disincentivise alternative operators to deploy. Please explain.

NBI’s access to Eircom’s CEI in the intervention area

14. In point 25 of the Notification, ComReg states that it did not include any common corporate costs in the price for NBI’s CEI access in the NBP IA given its previous determination in ComReg Decision D11/18 on the pricing for fibre to the cabinet (‘FTTC’) (EC Case IE/2018/2115). Could you point us to the relevant precise section of decision D11/18?
15. We understand that the reason for not applying a common costs mark-up for services in the IA was that Eircom’s copper lines in these areas did not result in sufficient margins to contribute to common costs. Does ComReg consider that this still applies to NBI’s FTTH lines in the IA?
16. Do Eircom’s wholesale and retail customers in the intervention area (therefore on copper) currently contribute to the recovery of parts of common or shared costs of the CEI located in the commercial area?

17. According to point 27 of the Notification, we understand that following public consultation, ComReg has changed its approach for NBI's access to Eircom's CEI in the IA (where there is no mark-up for Eircom's common corporate costs). In particular, some costs that were previously considered as common are now considered as incremental to NBI's access. Can ComReg describe those costs and provide a quantitative estimation of the impact of this change? How does this change interplay with your decision D11/18 (point 25 of the Notification)?
18. What level is the mark-up for common corporate costs for generic access seekers in the CA? What would be the impact on prices for NBI's access to Eircom's CEI if this mark-up was applied in the IA?
19. What would be the CEI access conditions in the IA for access seekers other than NBI? While we understand that currently there is no interest of other operators to invest in such areas, we also understand that IA areas are very much irregularly scattered throughout the territory of Ireland. It cannot thus be excluded that access to CEI in such areas will be necessary e.g. to crossover such areas and reach those which are commercially attractive. Please explain.
20. Is NBI subject to any State Aid-based obligation to provide access to its subsidised infrastructure in the IA to any other operator, including Eircom? Can such infrastructure be used e.g. for other purposes than residential broadband access (e.g. transit, backhaul).
21. Several operators complain about the low standards for access to poles and ducts provided by Eircom and that the proposed measures will reward historical underinvestment by Eircom. Please explain.
22. Several operators are signalling in their replies to the public consultation that the IA will incur significant common costs that will be effectively cross-subsidised by operators in the Commercial Area. These operators will pay Eircom's corporate overheads for CEI through what they refer to as a "back-door Universal Service charge", whereas these will not be applied to NBI in the Intervention Area. Some are also referring to the risk of cherry picking in the IA. Please explain.
23. In point 14 of the Notification ComReg states that "An important restriction in the contract between the State and NBI is that the subsidies provided to NBI may only be used to subsidise the network for the provision of certain wholesale services in the NBP IA, in accordance with the contract, and that NBI may not use subsidies to provide electronic communications services and networks outside the NBP IA". Which specific wholesale services will be provided by NBI and by when?
24. Is NBI limited to the provision of wholesale services for fixed retail services or could NBI also provide those for mobile retail services (such as mobile backhaul)?
25. Please explain in detail the pricing control NBI will be subject to under the State Aid scheme for each wholesale service, the methodology for computing those prices and the duration of such control (given that the contract between NBI and the Ministry for the State subsidy would last 25 years at least).

WACC value for NBI

26. In the comments to case IE/2020/2250⁶ where ComReg notified a WACC value of 5.61%, the Commission reminded ComReg to notify changes to the WACC value, stating “*The Commission considers that ComReg will have to notify it of future updates of the WACC in accordance with Article 7 of the Framework Directive*”. Will ComReg notify the Commission of any future updates of the WACC values for CEI?
27. As you know, WACC compensates the investor and not the access seeker. To this extend, could you kindly elaborate how the investment-decisions of the past is now attributed with two different WACC values, depending on who is buying the product? Why would a WACC taking into account the overall risk for this market not better reflect the actual market-conditions?
28. Does any of the notified products fall within the scope as defined in point 6 of the WACC Notice⁷? Can you confirm that the recalculated WACC values do not apply to any legacy infrastructure?

⁶ C(2020) 4837

⁷ Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission’s review of national notifications in the EU electronic communications sector, (2019/C375/01)

**ComReg Response to European Commission’s RFI (the ‘RFI Response’)
concerning IE/2021/2344: Market 3a/2014; Pricing of Eircom’s Civil Engineering
Infrastructure**

The following sets out ComReg’s response to the questions set out in the European Commission’s RFI of 29 October 2021 concerning ComReg’s Notification of 22 October 2021, pursuant to Article 32 of Directive 2018/1972.

Please also note that capitalised terms in this RFI Response have the same meaning as in the Notification.

Please note that confidential information is highlighted in the RFI Response with the symbols [X X]. This confidential and/or commercially sensitive information should not be shared with third parties without ComReg’s explicit prior consent.

If you have any further queries please do not hesitate to contact us¹. We are also available for a follow-up call should you feel that would be helpful in understanding ComReg’s responses below.

¹ Caroline Jordan (caroline.jordan@comreg.ie) and Susanne Cummings (susanne.cummings@comreg.ie)

A. Pricing of NBI's access to Eircom's CEI in the Commercial Area

Question 1:

We understand that NBI will have a lower price for access to Eircom's civil engineering in commercial areas (CA) compared to if it was considered as a generic access seeker. Can ComReg provide an estimate of what would be the difference of total price for NBI's access to Eircom's CEI in the CA if the generic access pricing methodology was applied to NBI?

ComReg's Response:

The tables below set out the estimated price sensitivity i.e., the difference in total price for NBI's access to Eircom's CEI (pole access and sub-duct access) in the Commercial Areas if the Generic Access pricing methodology of LRAIC plus (LRAIC+) was applied to NBI, compared to the proposed LRIC approach currently set out in the CEI Draft Decision. These prices are based on the assumption that NBI's use of CEI is always shared with Eircom.

It should also be noted that in order to calculate the estimated prices for NBI's CEI access under the Generic Access pricing methodology (LRAIC+) the following adjustments were made:

- The costs exclude a contribution to process costs² as these are paid upfront by NBI (see paragraph 627 of the CEI Draft Decision);
- The costs are calculated based on the CEI WACC of 3.76% for NBI's access (see Table 10 of the CEI Draft Decision);
- The costs are based on the Rural Commercial Area footprint as this is the footprint where access by NBI in the Commercial Area is most likely to occur (see paragraph 326 of the CEI Draft Decision).

[&

Poles (€/pole/year)	2022	2023	2024	2025	2026
CEI Draft Decision *					
LRAIC Plus					
Variance					

Ducts(€/m/year)	2022	2023	2024	2025	2026
CEI Draft Decision *					
LRAIC Plus					
Variance					

&]

** For the purpose of this sensitivity these prices are based on the year ending 30 June. In the CEI Draft Decision NBI's prices are based on Eircom's new financial period ending 31 December.*

² Costs associated with Eircom's staff who are engaged in planning, processing / ordering and managing the provision of CEI access to NBI.

Question 2:

What is the legal basis for imposing discriminatory conditions on an access seeker based on SMP regulation? Is Eircom subject to non-discrimination obligation? Would that obligation be revoked?

ComReg's Response:

ComReg's draft measures are related to the price control obligation, and to a lesser extent the transparency obligation, for CEI access, only. ComReg does not see that the specification of the price control obligation to which Eircom is subject in respect of CEI involves "*imposing discriminatory conditions on an access seeker*". Rather the proposed specification of the price control ensures the cost orientation of Eircom's prices for CEI taking into account the uniqueness of NBI's demand for CEI.

Under ComReg Decision D10/18³ (WLA/WCA Market Review Decision), Eircom is subject to an obligation of non-discrimination. The differentiated price control arises from, and is justified by, NBI's unique situation and is consistent with the obligation of non-discrimination imposed on Eircom in ComReg Decision D10/18.

Question 3:

We understand that NBI's demand for Eircom's CEI will be of unprecedented scale and duration. Could this not be taken into account without applying a different methodology to NBI (e.g., volume discount and long-term pricing)? In what way does the large volume of expected access justify LRIC?

ComReg's Response:

NBI's demand for large-scale and enduring access to CEI means that it is in a unique position. It is that uniqueness of NBI's access that is the reason for differentiating the price control obligation.

As set out in Section 3, paragraphs 107-114 of the CEI Draft Decision, there are a number of reasons why access to Eircom's CEI by NBI in the NBP Intervention Area (NBP IA) and for transit purposes outside of the NBP IA is unique, compared to the more general CEI access sought by other operators i.e., Generic Access seekers. First, the situation in Ireland is highly unusual compared to other member states, as NBI is not the incumbent operator. Typically, incumbents have won broadband subsidies competitions.

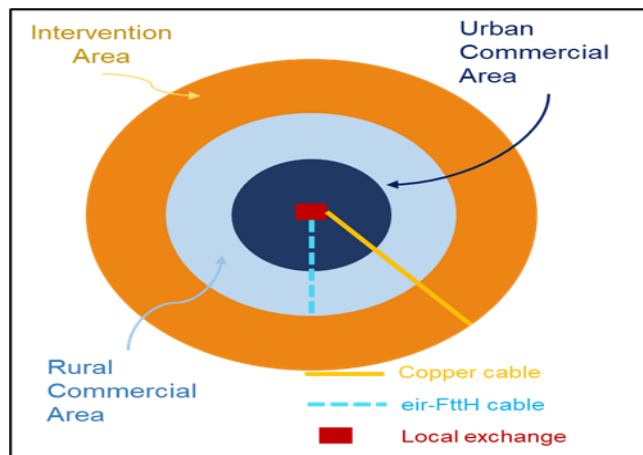
Second, NBI's demand for CEI only arises due to the NBP intervention. No other operator is expected to seek access to Eircom's CEI for the purpose of serving the Intervention Area and at the scale and durability of NBI's demand. According to the Irish Government i.e., the ministerial Department for Environment, Climate

³ ComReg Document No 18/94, Decision D10/18, Market Review: Wholesale Local Access (WLA) provided at a Fixed Location, Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products. Response to Consultation and Decision; dated 19 November 2018 (Case IE/2018/ 2089-2090).

and Communications (DECC), the NBI network will require access to over 1.5 million poles and over 15,000 kilometres of underground duct⁴ to serve circa 537,000 premises⁵, against the background of a contract between NBI and DECC to last for a minimum period of 25 years. This means that the NBP will cover over 20% of the premises in the country.⁶

Third, Eircom is likely to become a significant CEI provider in the NBP IA and, in turn, NBI will eventually become the sole NGA wholesale provider at premises falling within the NBP IA.

Figure 1 in the CEI Draft Decision (which is reproduced below) illustrates the different network footprints (stylised) associated with NBI’s CEI access.



The orange outer ring represents the NBP IA, also referred to by the Government (DECC) as the non-commercial ‘Intervention Area’, where there is no existing or planned commercial high speed broadband services available⁷ and corresponds to the target areas for state intervention under the NBP, for the purpose of its contract with NBI.⁸ This area includes circa 537,000 premises (delivery points). In the NBP IA, NBI will seek significant access to Eircom’s CEI in the NBP IA, where it is expected that NBI will require access to almost all of Eircom’s poles in the NBP IA, estimated to be nearly [redacted] poles (or nearly 70% of its total pole base estimated at [redacted] poles). NBI may only self-supply a CEI network in those limited situations where Eircom does not have a network.⁹ For NBI, there is no effective alternative to access to Eircom’s CEI within the NBP IA for NBI and so Eircom will likely become a significant CEI

⁴ <https://www.gov.ie/en/publication/c1b0c9-national-broadband-plan/>

⁵ DECC refer to circa 537,000 premises, which are in fact delivery points. In determining the CEI costs associated with the NBP IA, ComReg in its cost modelling exercise has used unique Eircodes (rather than delivery points), as our key objective is to establish the cost of serving each building with a fibre or copper cable i.e., premises passed. There are circa 452,000 unique Eircodes in the NBP IA, which equates to the circa 537,000 delivery points referred to by DCCA. This difference arises for example when a farm or a B&B associated with a residential premise will have the same Eircode but are counted twice (as having two delivery points) by DCCA.

⁶ This is based on 537k premises as a percentage of estimated total premises in Ireland of 2.4m.

⁷ Based on the mapping exercise carried out by DECC at the time of the award of the contract to NBI.

⁸ In the EC State Aid Decision, the area requiring intervention is called the “white” NGA areas.

⁹ NBI may in some cases request access to the ESB’s network infrastructure. This would be under a separate commercial agreement between NBI and the ESB.

provider in the NBP IA and in turn NBI will eventually become the sole NGA wholesale provider at premises within the NBP IA.

The two inner concentric rings in the diagram above i.e., light blue and dark blue areas, represent the Commercial Areas. The Commercial Area is divided into the Urban Commercial Area and the Rural Commercial Area.

The Rural Commercial Area (i.e., the light blue middle circle) corresponds to the footprint comprised of the premises passed by Eircom (or to be passed by Eircom) as a result of Eircom's commitment to deliver high speed broadband on a commercial basis under its 2017 Agreement with the Minister in relation to National Broadband Plan – commercial deployment commitment.¹⁰

The Urban Commercial Area (i.e., dark blue inner circle) is the remainder of the Commercial Area not falling into the Rural Commercial Area. It is the footprint where commercial operators are delivering or have indicated plans to deliver high speed broadband services. It is also the footprint where Eircom has deployed FTTC. This footprint covers approximately 1.5m premises (as at its inception in April 2017).

NBI requires access to Eircom CEI in the Commercial Areas in order to interconnect or backhaul to its own Aggregation Nodes in (or around) the NBP IA, as NBI does not have its own network. NBI's access to CEI in the Commercial Areas is likely to be predominantly in the Rural Commercial Areas, where we estimate that NBI will require access to an additional [3< [REDACTED] 3<] poles from Eircom (or 20% of Eircom's total estimated pole base). The Rural Commercial Area represents nearly 15% of the total estimated premises in the State.¹¹

Fourth, an important restriction in the NBP contract between the State and NBI is that the subsidies provided to NBI may only be used in relation to the network for the provision of certain wholesale services in the NBP IA in accordance with the contract, and that NBI may not use the subsidies to provide electronic communications services and networks outside the NBP IA. ComReg understands that NBI will not be able to use its subsidised network outside the NBP IA for any purposes other than "transiting" between its interconnection points located in the Commercial Areas and those in the NBP IA in order to provide services in the NBP IA. This means that NBI may not rely on that part of its network that transits the Commercial Areas, built using the State subsidy, to provide services in direct competition with Eircom or other operators in the Commercial Areas. The restrictions on NBI competing in the Commercial Areas are discussed at subsection 3.3.3 of the CEI Draft Decision.

It is a combination of these unique circumstances surrounding NBI's access to Eircom's CEI as the NBP provider which that has led ComReg to set a differentiated price control for NBI between the NBP Intervention Area and the Commercial Areas. Please also refer to subsection 3.3 of the CEI Draft Decision.

¹⁰ The PAM/DAM models reflect that Eircom rolled out high speed broadband to 340,000 premises rather than the 300,000 agreed to with DECC.

¹¹ 340,000 premises as a percentage of total premises in the country of 2.4m.

Question 4:

ComReg also argued that differentiated pricing methodology is justified by the fact that NBI will not compete with Eircom. Why is the argument on non-competition decisive in this case? In a hypothetical (yet comparable) scenario, would ComReg also consider that telecom operators should benefit from access at LRIC costs to e.g. energy or railway CEI, as they are also not competing with such entities?

ComReg's Response:

First, it is important to point out that “non-competition” is not enough in itself for the differentiated pricing approach for NBI’s CEI access in the Commercial Areas; it is also the scale of NBI’s demand in the Rural Commercial Area and any adverse consequence for competition in downstream markets of NBI paying more than LRIC.

Second, the factor of “non-competition” is only relevant to NBI when it uses Eircom’s CEI to “transit” through the Commercial Areas so as to serve its fibre customers in the NBP IA.

ComReg’s justification for using a differentiated price control measure for NBI’s CEI access in the Commercial Area is discussed in Section 5.6 of the CEI Draft Decision. ComReg has provided an overview below.

As noted in our response to Question 3 above, NBI may not rely on its subsidised network that transits the Commercial Areas (built and operated using a state subsidy) to provide services in direct competition with Eircom or other operators in the Commercial Areas. The choice of the LRIC methodology for setting the charges for NBI’s access to CEI for transit purposes in the Commercial Areas reflects that NBI cannot use the State subsidy outside the NBP IA to serve customers and compete in this area.

NBI’s access in the Commercial Areas is likely to be predominantly in the Rural Commercial Area, where ComReg estimates that NBI will require access to an additional [30-40] poles from Eircom (or 20% of Eircom’s total estimated pole base). Eircom has already replaced poles and cleared duct blockages in the Rural Commercial Area to facilitate the deployment of its own 300k FTTH Rural Network and existing CEI assets in this context could be considered reusable for the provision of fibre broadband services by NBI in the Commercial Areas.

The majority of poles in the Rural Commercial Area are not final drop poles as they are used to support the main cable network. As Eircom has first-mover advantage for FTTH in the Rural Commercial Area, ComReg does not expect that another network operator will seek pole access to deploy its own fibre network given the relatively low density of end users. While there could be situations where rival network operators need to transit the Rural Commercial Area to interconnect their main network nodes, ComReg expects that renting either dark fibre or a managed network solution would be a more efficient alternative to renting pole access to facilitate fibre cable deployment. Siro’s point

that “*In general where there are poles in commercial areas these poles are fed underground with the service drops being fed overhead*”¹² also supports the position that the demand for pole access by Generic Access users may be confined to the Urban Commercial footprint, as most of the network routes and cable feeds in the Rural Commercial Area are overhead. By contrast, the majority of poles in the Urban Commercial Area are final drop poles to the customer premises, and ComReg anticipates that such poles could be required by other operators providing services to end users.

As access to Eircom’s CEI for NBI in the Commercial Areas will be used solely to support NBI’s fibre services in the NBP IA, rather than competing with Eircom to provide downstream services in the Commercial Areas, NBI’s use of Eircom’s CEI in the Commercial Areas will not impact on Eircom’s downstream revenues from wholesale services sold to premises in the Commercial Areas. Hence, Eircom will not face any erosion of its market share in the Commercial Areas as a result of facilitating the use of its CEI for NBI to transit the Commercial Areas. Hence, adopting a LRAIC+ methodology in order to set the price for NBI’s access to CEI for transit purposes in the Commercial Areas could result in a significant revenue windfall gain to Eircom.

To illustrate the materiality of this issue, for example, if NBI was charged circa €10 per transit pole, this would give rise to an annual bill to NBI of circa €3 million (on the assumption that NBI requires transit access to 300k poles in the Rural Commercial Area). This could provide sufficient revenue, over the lifetime of the contract, to fund all the investment in pole replacement that Eircom has undertaken in the Rural Commercial Area subsequent to its commitment under contract with the State in 2016 to deploy a rural FTTH network. Consequently, a significant element of Eircom’s investment in its Rural FTTH network (in order to pass 300k premises that had been previously included as part of in the NBP IA) could ultimately be funded from the charges levied on the National Broadband Provider, NBI.

Eircom argues that competition would ensure that any over recovery from CEI access charges would be temporary but ComReg considers that any introduction of lower prices by Eircom in response to competitive threats from other network operators would mean that any distortion to competition is made permanent. However, any reduction to Eircom’s FTTH prices to offset the margins being made from transit CEI access charges would strengthen Eircom’s first mover advantage for FTTH in the Rural Commercial Area and remove any remaining incentive for another network operator to deploy a rival FTTH network to compete with Eircom’s FTTH network in the Rural Commercial Area. This is particularly the case if the investments that Eircom had incurred for the purpose of deploying its Rural FTTH network are not ultimately funded through the prices for Eircom’s FTTH services but, instead, are funded from the CEI access charges that Eircom

¹² Pages 3-4 of Siro’s Non-Confidential Response dated 18 November 2020.

levy on NBI, in a situation where NBI is prevented from using that CEI to compete with Eircom's Rural FTTH network.

Consequently, Eircom will be the only network operator to benefit from any payments for NBI's access to CEI for transit purposes in the Rural Commercial Area that are above the incremental costs of providing that transit access service. A reduction to Eircom's FTTH prices applied nationally could also distort investment incentives by undermining the business case for alternative operators such as SIRO and Virgin Media to extend their existing NGA networks in the Urban Commercial Area.

This highlights that Eircom has the ability to vary the investment (build/buy) signals in the Commercial Area and so could preclude prospective alternative network build in the Rural Commercial Area or/and to compete more aggressively in the Urban Commercial Area, where it faces greater exposure to competition from alternative network providers, potentially limiting their expansion. The windfall gain, which is obtained from additional demand from a subsidised network, is in effect the equivalent of a scale economy, which in this case however is not reasonably available (or replicated) to alternative network providers and for this reason ComReg considers that it distorts competition and the build/buy signals for alternative investment.

As noted in the Dot Econ Final Report, Eircom's argument about the short-term impact of any excess revenues:

"...misses the point that if Eir earns such gross margins from CEI access provided to NBP in the commercial area and they are passed through in lower prices in the commercial area due to the typical regular reviews of regulated prices, then this has implications for incentives for competition with the commercial area... This see-saw effect is the primary concern with setting CEI access prices for NBI at above LRIC in the commercial area. This pricing effect is not transitory, but permanent (unless there is a subsequent change in the basis of setting NBI's CEI access prices). Moreover, even if it takes some time for those price reductions to filter through, all operators can reason that they will eventually occur, so will factor this into forward-looking entry and investment decisions by Eir's potential competitors."¹³ (emphasis added).

For these reasons, ComReg is of the view that the LRAIC+ option for NBI's access to CEI for transit purposes in the Commercial Areas could lead to competitive distortions, including the adverse effect of reducing incentives for competition from alternative infrastructure build in the Commercial Areas, which would be contrary to ComReg's regulatory objectives of promoting competition and encouraging investment. Please see Section 5.6 of the CEI Draft Decision for the full details.

In respect of whether telecom operators should benefit from access at LRIC costs to the CEI of alternative infrastructure providers such as energy or railway networks, ComReg cannot comment specifically at this stage since it may be

¹³ Section 9.1.3 of the Dot Econ Final Report.

required to resolve disputes in future. Nevertheless, ComReg notes that the Broadband Cost Reduction Directive (BCRD) requires only that the price for such access has to be “fair and reasonable”¹⁴. According to the BCRD in general any bargaining solution is preferred and deemed to be “fair and reasonable” since it allows both parties to be better off through negotiation. However, in the event of a dispute the approach to determine a price for dispute settlement outlined in the BCRD is balanced between the purpose:

- of cost reduction for the broadband rollout, which means that the access seeker has (at least) to recover the incremental costs, in order to allow the access granting operator to recover the associated costs ; and
- incentives for the network operator to open its network, and thus allows for an access price higher than the incremental costs; of course, from the BCDR’s point of view, the surplus for the access granting party should not displace the access seeker’s investment.

ComReg’s proposed approach does require that the price for NBI’s CEI access has always to recover the incremental costs that occur as a result of providing access, as this is the least price at which Eircom should be indifferent to open its network. However, allowing Eircom to recover more than this LRIC could lead to lower prices in downstream markets that could distort competition since, for example, lower FTTH prices on Eircom’s network will reduce the investment incentives for other Electronic Communication Network (ECN) operators that are competing with Eircom’s FTTH network. A similar distortion of build or buy decisions does not arise when the CEI access is granted on the network of a non-ECN operator, as, for example, energy distribution networks and rail networks are not typically in direct competition with rival ECN operators. Hence, positive gross margins for a non-ECN operator are unlikely to lead to downstream distortions in electronic communication markets, and this means that it is less problematic for the CEI access prices on such networks to recover more than LRIC.

Therefore, ComReg does not consider that the situations are that comparable as, even though NBI is prevented from competing with Eircom in the Commercial Areas, it is still the case that Eircom is in direct competition with providers such as SIRO and Virgin Media in providing NGA services over FTTH/CATV (DOCSIS 3.1), and any contribution from NBI’s CEI access payments above LRIC can lead to lower FTTH prices on Eircom’s network that distort the investment decisions of those rival network operators. A similar downstream market distortion is unlikely to arise when a non-ECN such as in the case where an energy or railway operator were to provide CEI access¹⁵.

There is also evidence that some European countries adopt different pricing methodologies for access to physical infrastructure of ECN operators, on the one hand, and of non-ECN operators, on the other. A BEREC report on pricing for access to infrastructure and civil works from 2019 noted that the rationale for

¹⁴ See Article 3 (2) of the Broadband Cost Reduction Directive.

¹⁵ Assuming, of course, such access was technically and economically feasible and there would be demand for such access.

adopting different methodologies in such cases is “*that access of competitors has an impact on the business plan of the ECN operator while access requests have no impact on the non-ECN operator’s business plan*”. The report provides a number of examples where different methodologies are applied, including the case of Poland where, “*for non-ECN operators, prices can cover only incremental cost of granting access (not the cost of the total investment, which should be covered by other utilities, for example service of electric energy)*.” The BEREC report also recognises that other approaches will be developed with a particular attention to the business case of ECN operators and that this “*seems to be also in line with the general objective of fostering investment in electronic communication services and an increase in ultra-broadband coverage in the EU*”.¹⁶

Question 5:

Please confirm that applying the generic access prices to NBI in the commercial areas would reduce the price of access for other access seekers to Eircom’s CEI in the Commercial Area.

ComReg’s Response:

Based on the evidence available to ComReg, NBI and Generic Access users of CEI will not be accessing the same CEI to any material degree; as such, the price that NBI pays for CEI access would not affect the CEI access charges for Generic Access users in the Commercial Areas. There is a split of demand, with NBI and Generic Access seekers predominantly requiring access in different geographic footprints. Hence, Generic Access seekers of CEI are not expected to share the same poles or duct sections and so Generic Access seekers of CEI do not face additional costs that are not borne by NBI.

Please refer to Section 5.6.2, paragraphs 321-329 of the CEI Draft Decision for further details.

Question 6:

Please confirm that applying the generic access prices to NBI in the commercial areas would result in lower costs, and therefore lower regulated prices, for 3a products (nationwide) and 3b products (in the rural WCA market)? Can ComReg therefore confirm that Eircom would only be able to recover “windfall” profits for 3b products in the urban (deregulated) WCA market?

ComReg’s Response:

ComReg confirms that applying the Generic Access prices to NBI in the Commercial Areas would result in lower costs, and therefore lower regulated prices, for Market 3a products (nationwide) and for Market 3b products (in the

¹⁶ https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/8466-pricing-for-access-to-infrastructure-and-civil-works-according-to-the-bcrd, pages 17 to 18.

Regional (Rural) WCA Market) but only for products which are subject to a cost orientation obligation.

Currently, FTTH VUA and FTTH Bitstream are not subject to a cost orientation obligation, but rather are subject to an obligation not to cause a margin squeeze. For FTTC-based products in Market 3a and in the Regional part of Market 3b (Regional WCA Market), which are subject to a cost orientation obligation, this impact is immaterial given that NBI's access in the Commercial Area is expected to be limited to the Rural Commercial Area (as noted in our response above to Question 5) where Eircom does not deploy FTTC. Therefore, only those contributions from NBI's payments for CEI access to Eircom's common corporate costs would be deducted from the costs of fixed line services. Please see paragraphs 331 and 398 of the CEI Draft Decision for further details.

With respect to Eircom's ability to 'recover "windfall" profits', please refer to Section 5.6.2, in particular paragraphs 344-353, of the CEI Draft Decision.

Question 7:

Can ComReg provide an estimate of the NBI's needs in terms of access to Eircom's CEI in:

- **Urban commercial areas?**
- **Rural commercial areas?**

ComReg's Response:

For poles, as noted in our response to Question 4, NBI's access is likely to be predominantly in the Rural Commercial Area. Please see an estimation of NBI's access to Eircom's poles in the Rural Commercial Area in our response to Question 3, above.

For ducts, NBI estimated that it will require access to [x< [REDACTED] x<] of structured duct in the Commercial Areas. It is not entirely clear how much of that will be in the Urban Commercial Area or the Rural Commercial Area but ComReg anticipates that the largest requirement for duct access by NBI will be for transit purposes in the Rural Commercial Area as NBI has the option to use Metropolitan Area Networks (MANs) and Dark Fibre to secure connectivity to its regional exchanges in the Urban Commercial Area footprint.¹⁷

Question 8:

In the calculation of the amount of public subsidies necessary for the implementation of the NBP, was the price of access to CEI one of the inputs? If so, which hypothesis was retained as regards this price? Was it

¹⁷ For example, in a recent appearance before a government committee, NBI outlined its proposed use of Dark Fibre: "We have two different data warehouses located in Dublin where all the different service providers come into. At that point in time there is a single point where we can hand over all the traffic that comes back off the network. From there, we buy dark fibre that is already in place and which goes all the way out to what we call the regional exchanges."

not expected at that time that NBI would have to pay for common and shared costs of CEI, even for transit through the commercial areas?

ComReg's Response:

The NBP is the responsibility of the Irish Government i.e., the ministerial Department of the Environment, Climate and Communications (DECC). ComReg has no function in respect of the tender assessment or administration (or notification) of public subsidies in relation to the NBP. We understand that subsidies were awarded on foot of a competitive tender process. ComReg did not and does not have visibility as to the costing or other assumptions used by bidders at the time of the bid.

Question 9:

Is NBI allowed to provide low-speed products? If not, what is the minimum speed it is allowed to provide?

ComReg's Response:

The NBP contract¹⁸ between the Minister for Communications, Climate Action and the Environment and NBI contains the terms and conditions agreed between both parties. In particular, the following clauses may provide more insight on the access products that NBI is contracted to provide:

- **Clause 9:** Provision of the Services, Wholesale Products and Network.
- **Clause 19:** Wholesale Products.

According to the Irish Government's website "*The NBP network will offer users a high speed broadband service with a minimum download speed of 150Mbps*".¹⁹

Question 10:

According to footnote 55 of the draft decision currently notified, "As NBI's wholesale prices in the NBP IA are set by reference to comparable wholesale regulated broadband services any changes to the CEI access prices as a result of this review should only impact on the State subsidy (and hence amount to be recovered from tax payers) but not from end-users of the broadband service." Can ComReg therefore confirm that the new pricing method that would apply to NBI's CEI access in the IA would result in a lower need for State subsidy? To what extent the lower cost of the wholesale input would translate to lower retail prices, if at all?

¹⁸ A non-confidential version of the NBP contract can be found at <https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/>

¹⁹ <https://www.gov.ie/en/publication/c1b0c9-national-broadband-plan/>

ComReg’s Response:

As noted above, ComReg has no function in respect of the administration of state aid, which is the responsibility of the Irish Government (DECC).

In addition, in the CEI Draft Decision at footnote 60 ComReg stated that “*the level of State subsidy is not relevant to ComReg’s role (it is the responsibility of DECC) and it is not taken into account in ComReg’s review of the costing methodologies for determining CEI prices.*” Hence, ComReg has not considered the impact of the proposed NBI CEI access charges on the state subsidy. ComReg understands that the NBP contract includes various financial clawback mechanisms, but ComReg is not well placed to explain precisely how these will work in practice.

As regards the extent that the lower cost of the wholesale input would translate to lower retail prices, ComReg has interpreted the wholesale input in this instance to refer to the price that is paid by NBI for CEI access in the NBP IA. On this basis, ComReg does not expect the prices paid by NBI to have an impact on retail prices, as the prices that NBI charges for its wholesale services in the NBP IA are not based on the costs incurred by NBI but are set by reference to the prices of comparable (or benchmarked) wholesale regulated broadband services in Commercial Areas as per the NBP contract.

Question 11:

To what extent do the rural commercial area and the rural WCA market overlap?

ComReg’s Response:

The Rural Commercial Area is defined with reference to the premises that Eircom passed with its 300K Rural FTTH network and ComReg understands that the majority of these premises are located in the Regional WCA Market exchange areas.

The ANM Draft Decision assumes that all FTTC services are provided in the Urban Commercial Area and, as a result, there is no overlap for FTTC services between the Rural Commercial Area and the Regional WCA Market.

Question 12:

ComReg seems to believe that using the generic access methodology for NBI’s access to Eircom’s CEI in commercial areas would disincentivize NBI to use this CEI. Why does ComReg believe this, since NBI manifested its intention to use Eircom’s CEI before knowing that it would potentially be applied LRIC in the CA? Moreover, why would this not be the case for other operators?

ComReg’s Response:

No, this is not part of our reasoning.

As set out in Section 5.6 of the CEI Draft Decision, ComReg's justification for the pricing methodology (of LRIC) for NBI's CEI access in the Commercial Areas reflects that if Eircom is paid more than the LRIC, these "windfall gains" could result in distortions of competition, for example, selective price cuts by Eircom in the Commercial Areas, and lead to reduced incentives for alternative infrastructure providers in the Commercial Areas.

In summary, the following points are important to note:

- The existing costing approach (of LRAIC+) cannot simply be re-applied, as it would lead to Eircom earning additional gross margins (or 'windfall gains') on CEI access sold to NBI for the purposes of the NBP, whether for 'transit' purposes through the Commercial Area or within the NBP IA. This would lead to Eircom earning excess returns on these CEI assets in the absence of any countervailing changes to the pricing of services sharing those assets.
- Such windfall gains could lead to competitive distortions. There are various possible options by which such distortions might arise, depending on whether any such excess returns are dissipated in lower prices for other Eircom services sharing CEI with NBI, through what might be called a 'see-saw' effect.
- Overall, if Eircom were to earn persistent excess margins from supplying NBI – whether in the Commercial Area or the NBP IA – these would be uncontestable by other suppliers due to Eircom's unique ability to supply those services. This could create a more general risk of competitive distortion, for example, through Eircom having resources to make selective price cuts where faced by competitors / alternative providers.

Please also see our response to Question 4 above and Section 5.6 of the CEI Draft Decision, in particular paragraphs 348-353, for further details.

Question 13:

We understand that since 2016 there was a price for access to CEI within the large exchange area (LEA) and another price outside the LEA. We further understand that ComReg consulted prices for Generic Access to CEI reflecting the costs associated with access across the entire Commercial Area (Urban Commercial Area and Rural Commercial Area). The majority of respondents agree to those prices. However, according to point 22 of the Notification ComReg agree to Eircom's suggestion of considering only the costs in the Urban Commercial Area (where demand would be most likely to emerge) for setting prices for the entire Commercial Area. Eircom reasoning is that deployment costs are higher in the Urban Commercial Area and it would lead to under recovery of efficient costs. By the same token, as a result of the proposed measure access to CEI in the Rural Commercial Area would lead to over recovery by Eircom and would disincentivise alternative operators to deploy. Please explain.

ComReg's Response:

First, ComReg would like to clarify for the EC the views of Respondents on the proposed methodology for setting the prices for Generic Access to CEI. As set out in paragraph 287 of the CEI Draft Decision, NBI and Siro "generally supported" ComReg's approach, Eircom agreed but considered that the Generic Access prices, in particular for duct, should be based on the costs in the Urban Commercial Area, while BT and ALTO disagreed. Please see paragraph 287 for further details.

Second, in accordance with Regulation 13(4) of the Access Regulations, any SMP operator that is subject to a cost-orientation price control, must ensure that its prices reflect its costs and a reasonable rate of return. Hence, the burden of proof that charges are derived from costs, including a reasonable rate of return on investment lies with Eircom, and is not based on the views of other operators.

Third, paragraph 294 of the CEI Draft Decision states that "*While there could be situations where rival network operators need to transit the Rural Commercial Area to interconnect their main network nodes, ComReg expects that renting either dark fibre or a managed network solution from Eircom or NBI would be a more efficient alternative to renting pole access to facilitate fibre cable deployment.*" Hence, ComReg considers that basing the prices for Generic Access to CEI on the costs of the Urban Commercial Area is reasonable based on the evidence presented by Eircom. However, as noted at paragraph 296 of the CEI Draft Decision "*ComReg will keep this approach under review in order to ensure that the costs used to set the prices for Generic Access to CEI reflects the costs of the footprint(s) where Generic Access to CEI is taking place. If the demand for Generic Access to CEI moves materially beyond the Urban Commercial Area and into the Rural Commercial Area, then ComReg will give consideration to reviewing the cost basis underpinning the price control.*"

Please also see Section 5.5 of the CEI Draft Decision, paragraphs 288-296 for further details.

B. NBI's access to Eircom's CEI in the Intervention Area

Question 14:

In point 25 of the Notification, ComReg states that it did not include any common corporate costs in the price for NBI's CEI access in the NBP IA given its previous determination in ComReg Decision D11/18 on the pricing for fibre to the cabinet ('FTTC') (EC Case IE/2018/2115). Could you point us to the relevant precise section of decision D11/18?

ComReg's Response:

Please see paragraphs 373-374 of the CEI Draft Decision, which includes the reference to footnote 161 of ComReg Decision D11/18²⁰. The relevant section in ComReg Decision D11/18 is Section 6.4.3, and in particular paragraph 6.226 and footnote 161.

Question 15:

We understand that the reason for not applying a common costs mark-up for services in the IA was that Eircom's copper lines in these areas did not result in sufficient margins to contribute to common costs. Does ComReg consider that this still applies to NBI's FTTH lines in the IA?

ComReg's Response:

As set out at paragraphs 373-374 of the CEI Draft Decision, in the CEI Consultation ComReg recognised that the principle established in ComReg Decision D11/18 meant that common corporate costs of Eircom's access network should be recovered only from services sold in commercial areas on the basis that services in the non-commercial area did not have sufficient margins to make a contribution to Eircom's common corporate costs. As a result, the prices that Eircom might charge the NBP operator for access to poles and ducts in the Intervention Area would not need to include a common cost mark-up. Hence, ComReg reached the preliminary view in the CEI Consultation that the costing methodology that should apply in the case of NBI's access to CEI in the NBP IA, should ensure that Eircom recovers a contribution towards the CEI shared network costs as well as the incremental cost caused by NBI's demand through the shared use of the CEI but with no contribution towards the common corporate costs. However, we have since modified that position, as set out at paragraphs 381-403 of the CEI Draft Decision, and as discussed further below in the response to Question 17.

ComReg considers that the point raised above about NBI's FTTH lines in the NBP IA making a contribution to common cost mark-up is not relevant, as ComReg is not setting wholesale FTTH prices for NBI, which are set in the NBP contract based on the prices of comparable wholesale fibre prices. Rather, ComReg is setting prices for Eircom's CEI, which is being accessed by NBI as part of the NBP.

Question 16:

Do Eircom's wholesale and retail customers in the intervention area (therefore on copper) currently contribute to the recovery of parts of common or shared costs of the CEI located in the commercial area?

ComReg's Response:

Paragraphs 6.221 to 6.226 in ComReg Decision D11/18 refers to an assessment

²⁰ <https://www.comreg.ie/publication/pricing-of-wholesale-broadband-services-in-the-wla-and-wca-markets>

of the average incremental line cost in different parts of Eircom's access network undertaken by ComReg and its advisers using the existing Revised Copper Access Model (Revised CAM), in 2018. This assessment concluded that there was no margin from those longer line that would be typical of the NBP IA to contribute to the recovery of access costs within the commercial footprint.

In addition, paragraph 5.290 of the ANM Draft Decision also refers to a similar assessment undertaken using the ANM that indicated that the NBP IA footprint is modelled as having over 35% of annualised capex (on an incremental basis) and over 15% of active lines, with the result that the incremental capex costs of an average active line in the NBP IA, is three times that of an average active line in the commercial footprints. This would also suggest that average line revenues from customers in the NBP IA would not currently be in a position to contribute to the recovery of parts of common or shared costs of the CEI located in the commercial area.

Question 17:

According to point 27 of the Notification, we understand that following public consultation, ComReg has changed its approach for NBI's access to Eircom's CEI in the IA (where there is no mark-up for Eircom's common corporate costs). In particular, some costs that were previously considered as common are now considered as incremental to NBI's access. Can ComReg describe those costs and provide a quantitative estimation of the impact of this change? How does this change interplay with your decision D11/18 (point 25 of the Notification)?

ComReg's Response:

ComReg's reassessment of certain costs from common corporate costs to costs that are incremental to NBI's access to CEI in the NBP IA is set out at paragraphs 385-403 and 562-567 of the CEI Draft Decision.

The estimated quantitative impact of this change to the approach for common corporate costs is set out Section 9, Table 13 (+0.71) and Table 14 (no change) of the CEI Draft Decision.

As set out at paragraph 403 of the CEI Draft Decision, ComReg is of the view that the revised approach to the allocation of common corporate costs should ensure that the prices charged by Eircom in relation to NBI's access to CEI in the NBP IA reflects an appropriate contribution to all relevant costs and overheads associated with the provision of Eircom's CEI access service in the NBP IA, while maintaining the appropriate investment incentives for alternative infrastructure providers in the Commercial Areas. It also confirms that the principle established in ComReg Decision D11/18, that all costs of Eircom's access network that are not incremental to the NBP IA should be recovered from services sold in commercial areas, remains a reasonable approach.

In relation to the interplay between the decision to consider an element of common corporate costs as being incremental to NBI’s CEI access in the NBP IA in the CEI Draft Decision and the previous decision taken in ComReg Decision D11/18 not to recover common corporate costs from services sold in the NBP IA, ComReg notes that NBI’s deployment of an FTTH network in the NBP IA is expected to significantly alter the nature of Eircom’s business in the NBP IA, from that modelled in the Revised CAM, which supported ComReg Decision D11/18.

The Revised CAM modelled an access copper network where all the infrastructure costs incurred in the NBP IA were recovered from downstream wholesale services such as PSTN WLR. However, as outlined in the ANM Draft Decision (e.g., see paragraphs 5.322 to 5.334) the ANM is modelling a period when Eircom is expected to cease to be the main fixed access service provider in the NBP IA and instead become a CEI access provider to NBI. Consequently, some categories of common corporate costs are considered to be incremental to NBI in the NBP IA and in order to avoid any possible double cost recovery, the ANM (in Section 5.7 of the ANM Draft Decision) discounts the common corporate costs to be recovered from commercial downstream wholesale services to recognise the amount of costs that are being recovered directly through the CEI access charges for NBI in the NBP IA (as also noted in our response to Question 6).

Question 18:

What level is the mark-up for common corporate costs for generic access seekers in the CA? What would be the impact on prices for NBI’s access to Eircom’s CEI if this mark-up was applied in the IA?

ComReg’s Response:

As set out at paragraph 570 of the CEI Draft Decision, the mark-up for common corporate costs for Generic Access users of CEI is 25%.

The table below shows the estimated price sensitivity on the prices for NBI’s pole access in the NBP IA with a common cost mark-up of 25%. For ducts the impact is immaterial (for example, as noted in paragraph 523 of the CEI Draft Decision, the ANM assumes the net book value (NBV) of legacy infrastructure to be zero in the NBP IA, see also paragraph 509 of the CEI Draft Decision).

[✕

Poles (€/pole/year)	2022	2023	2024	2025	2026
CEI Draft Decision*	████████	████████	████████	████████	████████
25% mark-up	████████	████████	████████	████████	████████
Variance	████████	████████	████████	████████	████████

✕]

** For the purpose of this sensitivity these prices are based on the year ending 30 June. In the CEI Draft Decision NBI prices are based on Eircom’s new financial period ending 31 December.*

Question 19:

What would be the CEI access conditions in the IA for access seekers other than NBI? While we understand that currently there is no interest of other operators to invest in such areas, we also understand that IA areas are very much irregularly scattered throughout the territory of Ireland. It cannot thus be excluded that access to CEI in such areas will be necessary e.g. to crossover such areas and reach those which are commercially attractive. Please explain.

ComReg's Response:

As set out in paragraphs 405-410 of the CEI Draft Decision, commercial operators are not precluded from offering services to premises in the NBP IA, and ComReg recognises the possibility that premises that have been designated by DECC as being in the NBP IA could ultimately receive NGA services from a commercial operator. However, ComReg remains of the view, as set out in Section 3 of the CEI Draft Decision, that it is highly unlikely that there will be competing wholesale NGA networks in the NBP IA (as defined) for the foreseeable future.

Notwithstanding that view, Eircom or another operator may decide to provide fibre access services to end-users in certain parts of the NBP IA which could ultimately benefit consumers/end-users. In the event that commercial NGA services are extended to premises that have been designated as being in the NBP IA, this may be regarded as an expansion of the Commercial Area footprint, and the associated demand and costs may be included in any future assessment of cost oriented prices for CEI access. Operators, such as Eircom, could target NBP IA premises that are adjacent to their existing FTTH networks by deploying FTTH fibre on poles and in ducts that would previously have been only used by Eircom's copper network or shared with NBI's fibre network.

Currently, the primary distinguishing feature between a pole in the NBP IA footprint and a pole in the Rural Commercial Area footprint is that the latter poles already support a fibre cable that has been deployed as part of Eircom's 300k Rural FTTH network, i.e., a pole accessed by NBI when it is the sole user of the pole or the only other user of the pole is Eircom's copper access network. Hence, if Eircom extend its 300k Rural FTTH network by deploying additional fibre cables on poles and ducts, those poles and ducts could become part of the Rural Commercial Area network, and access to that CEI by NBI could be regarded as transit access for the purposes of determining CEI access charges (and so be based on incremental costs).

If another operator (other than NBI or Eircom) decides to deploy its fibre cables on Eircom's poles in the NBP IA on a commercial basis, this may also be considered an extension of the Commercial Area footprint, as noted above. In this case and based on similar assumptions to those above, the OAO could pay the Generic Access CEI price. If NBI and the OAO are the only two operators

present on the pole then the OAO could pay the total Generic Access CEI price as if it was the sole user of the pole, and NBI could pay the “transit” access incremental price. Similarly, if Eircom is also present on the pole with two operators NBI and the OAO then both Eircom and the OAO could share (50:50) the total Generic Access price of the pole, as NBI would only be subject to “transit” access incremental pricing for poles on the basis that NBI cannot compete for or serve customers in Commercial Areas. However, ComReg considers that the possibility of a third operator deploying its fibre network in the NBP IA on a commercial basis is unlikely. Should this become a material issue in the future ComReg will review the possible implications that such developments could have for CEI access pricing.

Question 20:

Is NBI subject to any State Aid-based obligation to provide access to its subsidised infrastructure in the IA to any other operator, including Eircom? Can such infrastructure be used e.g. for other purposes than residential broadband access (e.g. transit, backhaul).

ComReg’s Response:

As noted above, the NBP is the responsibility of the Irish Government (DECC), not ComReg.

However, it is ComReg’s understanding that NBI is obliged to provide access to its subsidised network in the NBP IA to other operators, and that such infrastructure can be used for “Other Permitted Wholesale Products” in line with the terms and condition of the NBP contract.

Please refer to the terms and conditions set out in the NBP Contract²¹. In particular, the following clauses:

- **Clause 9:** Provision of the Services, Wholesale Products and Network.
- **Clause 19:** Wholesale Products.
- **Clause 37.2:** Use of Subsidy Payments.

Question 21:

Several operators complain about the low standards for access to poles and ducts provided by Eircom and that the proposed measures will reward historical underinvestment by Eircom. Please explain.

ComReg’s Response:

First, the Reusable CEI Assets (poles and ducts) are valued based on the net book value (NBV) taken directly from Eircom's Historic Cost Accounts (HCAs) i.e., the values based on the unadjusted historic costs which reflect past

²¹ A non-confidential version of the NBP contract can be found at <https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/>

investment patterns and the level of depreciation incurred. Hence, this approach ensures that for Reusable CEI Assets Eircom will not be remunerated for capital expenditure that it did not incur or for CEI assets that have been fully depreciated. It therefore facilitates cost recovery for the Reusable Assets while allowing other operators to access this non-replicable infrastructure at an efficient price level.

Notwithstanding the above and taking into account Respondents' Submissions, ComReg has considered this issue as part of the consultation process and as a result it has revised the Business as Usual (BAU) investment levels for poles. This adjustment to the BAU pole investment levels means that the incremental cost to NBI of Eircom's accelerated pole replacement is reduced, and so too as a consequence are the prices for Generic Access seekers. The full details are set out in paragraphs 573-584 of the CEI Draft Decision.

Question 22:

Several operators are signalling in their replies to the public consultation that the IA will incur significant common costs that will be effectively cross-subsidised by operators in the Commercial Area. These operators will pay Eircom's corporate overheads for CEI through what they refer to as a "back-door Universal Service charge", whereas these will not be applied to NBI in the Intervention Area. Some are also referring to the risk of cherry picking in the IA. Please explain.

ComReg's Response:

ComReg is of the view that respondents who allege a "cross subsidy" from the commercial are misinformed. NBI will pay all of the costs that it causes in the long run which by definition means that there can be no such subsidy. Please refer to paragraph 174 of the CEI Draft Decision.

The intended meaning of the term "Universal Service Charge" is unclear to us but ComReg notes that the concept of Universal Service is applied at a retail rather than a wholesale level.

The issue of recovery of common corporate costs in the NBP IA is addressed in paragraphs 385-403 of the CEI Draft Decision, as indicated above in ComReg's Response to Question 17.

The issue of cherry picking is addressed in paragraphs 405-410 of the CEI Draft Decision, as indicated above in ComReg's Response to Question 19.

Question 23:

In point 14 of the Notification ComReg states that "An important restriction in the contract between the State and NBI is that the subsidies provided to NBI may only be used to subsidise the network for the provision of certain wholesale services in the NBP IA, in accordance with the contract, and

that NBI may not use subsidies to provide electronic communications services and networks outside the NBP IA". Which specific wholesale services will be provided by NBI and by when?

ComReg's Response:

As noted above, the NBP is the responsibility of the Irish Government (DECC), not ComReg.

It is the NBP contract²² between the Minister for Communications, Climate Action and the Environment and NBI which contains the terms and conditions agreed between both parties. Please see ComReg's Response to Question 20, for details of specific clauses in the NBP Contract which are relevant to this question.

An overview of the NBP, and in particular the restriction on NBI competing in the Commercial Areas, is provided at Section 3.3, in particular paragraphs 91-103, of the CEI Draft Decision.

Question 24:

Is NBI limited to the provision of wholesale services for fixed retail services or could NBI also provide those for mobile retail services (such as mobile backhaul)?

ComReg's Response:

Please see ComReg's Response to Question 23.

In addition, please also see Section 5.6, in particular paragraphs 354-360 of the CEI Draft Decision, regarding ComReg's consideration of NBI offering services in the Commercial Areas.

Question 25:

Please explain in detail the pricing control NBI will be subject to under the State Aid scheme for each wholesale service, the methodology for computing those prices and the duration of such control (given that the contract between NBI and the Ministry for the State subsidy would last 25 years at least).

ComReg's Response:

As noted above, the NBP is the responsibility of the Irish Government (DECC), not ComReg.

The NBP contract²³ between the Minister for Communications, Climate Action and the Environment) and NBI contains the terms and conditions agreed between

²² A non-confidential version of the NBP contract can be found at <https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/>

²³ A non-confidential version of the NBP contract can be found at <https://www.gov.ie/en/publication/16717-national-broadband-plan-contract/>

both parties. Schedule 5.2 of the NBP contract is particularly relevant to these issues.

C. WACC value for NBI

Question 26:

In the comments to case IE/2020/2250²⁴ where ComReg notified a WACC value of 5.61%, the Commission reminded ComReg to notify changes to the WACC value, stating “*The Commission considers that ComReg will have to notify it of future updates of the WACC in accordance with Article 7 of the Framework Directive*”. Will ComReg notify the Commission of any future updates of the WACC values for CEI?

ComReg’s Response:

As set out in Section 7, paragraph 905 of the CEI Draft Decision “*ComReg considers that the CEI WACC rate should be subject to annual updates, which will be conducted at the same time and in the same manner as the annual WACC review process set out in the 2020 WACC Decision.*”

Hence, ComReg will notify the European Commission of future updates to WACC values (including the CEI WACC for NBI) where, following the appropriate consultation process, prices are proposed to be amended and the WACC value being notified is different from the WACC value used for existing prices.

Question 27:

As you know, WACC compensates the investor and not the access seeker. To this extend, could you kindly elaborate how the investment-decisions of the past is now attributed with two different WACC values, depending on who is buying the product? Why would a WACC taking into account the overall risk for this market not better reflect the actual market-conditions?

ComReg’s Response:

To clarify, the WACC is used to set the price for certain services. The return the service provider receives is a reflection of, inter alia, the risk. Since the systematic risk of providing NBI with CEI access is less than that of providing CEI elsewhere, the WACC applied in the price for CEI access by NBI is lower.

Please see Section 7, subsections 7.2, 7.3, 7.4, 7.5 and in particular paragraphs 797-808 of the CEI Draft Decision for further details. Please also refer to the Europe Economics Report (Annex 3 of Appendix 1 of the notification), Sections 1.4 and 1.5.

²⁴ C(2020) 4837.

Question 28:

Does any of the notified products fall within the scope as defined in point 6 of the WACC Notice²⁵? Can you confirm that the recalculated WACC values do not apply to any legacy infrastructure?

ComReg's Response:

Eircom's Civil Engineering Infrastructure, i.e., ducts and poles, will be used to carry both copper and fibre. Hence, it is difficult to confirm whether the WACC value for Generic Access to CEI would not apply to any legacy (or copper) infrastructure.

In the case of Reusable CEI assets accessed by NBI, both copper and fibre cables could be carried on that CEI infrastructure (at least until Eircom possibly removes copper in the future). However, for Non-Reusable CEI, where Eircom deploys new CEI for the purposes of NBI's fibre deployment, it is anticipated that such CEI would only be used to carry NBI's fibre cables.

It should also be noted that the WACC value for CEI access by NBI is only applied to prices charged to NBI for infrastructure it uses to provide FTTH services.

²⁵ Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission's review of national notifications in the EU electronic communications sector, (2019/C375/01)

Annex 2: Case IE/2021/2345



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS, CONTENT AND TECHNOLOGY

Connectivity
Markets

Brussels,
CNECT.B.3/PK/SN/MJ

Commission for Communications
Regulation (ComReg)

For the attention of:
Mr. Eric Tomkins

Fax: +35318049665

Subject: Case IE/2021/2345: Wholesale central access provided at a fixed location for mass-market products and Market 3a/2014; review of the cost model

Request for information pursuant to Article 20(2) of Directive (EU) 2018/1972¹

Dear Mr Tomkins,

On 22 October 2021, your notification of the above-mentioned draft measure was registered. This letter is a request for information, under Article 20(2) of the Code and Point 4 of Commission Recommendation (EU) 2021/554.²

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the Code) (OJ L 321, 17.12.2018, p. 36).

² Commission Recommendation (EU) 2021/554 of 30 March 2021 on the form, content, time limits and level of detail to be given in notifications under the procedures set in Article 32 of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code OJ L 112, 31.3.2021, p. 5.

1. INFORMATION REQUIRED

The purpose of this request is to receive information that will allow the Commission to assess the notified draft measure in full knowledge of the relevant facts and the economic context.

We would appreciate if you could provide the information requested in the annex, below, as soon as possible, but no later than 3 November 2021.³

Please send your reply by email to CNECT-markets-notifications@ec.europa.eu.

2. CONFIDENTIAL INFORMATION

If you consider that your submission contains confidential information in accordance with Union and/or national law on business confidentiality, please explain the reasons for this in writing. The Commission will ensure such confidentiality⁴ in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001⁵.

Should you have any queries relating to the information requested, please do not hesitate to contact us.

Yours sincerely,

Kamila KLOC
Head of Unit

Enclosure: (1) Annex with information request

³ In accordance with Point 13 of the Procedural Recommendation, the reply to a request for information should be submitted within three working days.

⁴ See Article 20(3) of the Code.

⁵ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.05.2001 p. 43.

ANNEX

REQUESTED INFORMATION

1. Does any of the notified products fall within the scope as defined in point 6 of the WACC Notice⁶?
2. Could you kindly provide an overview of the WACC-values used for prices applicable today? For instance, we understand that the currently applicable copper-prices are subject to a WACC of 8.18% - please confirm and inform on which WACC values was relied on when defining the currently applicable prices set out by ComReg.
3. In the comments to case IE/2020/2250⁷ where ComReg notified a WACC value of 5.61%, the Commission reminded ComReg to notify changes to the WACC value, stating “*The Commission considers that ComReg will have to notify it of future updates of the WACC in accordance with Article 7 of the Framework Directive*”. In light of this, could you kindly inform why ComReg in the currently notified materials rely on an updated WACC value of 5.56% but without an accompanying information as to how ComReg arrived at this value? Will ComReg notify the Commission of any future updates of the WACC values?
4. What are the currently applicable prices for each of the access products subject to an update in the current remedies? Specifically, please inform on the currently applicable prices of the products mentioned in table 1-4 of the notified draft decision and please also indicate which WACC value was used when setting the currently applicable wholesale price if not already covered by question 2 above.
5. If we understand correctly, the FTTC based prices are not derived directly from the model currently notified but rather from the ANM outputs, as explained in point 2.12. To this extend, could you please indicate:
 - a. As the revised CAM is the old model and the ANM is the model currently under notification, what is the connection between the mentioned “ANM output” and the ANM itself?

⁶ Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission’s review of national notifications in the EU electronic communications sector, (2019/C375/01)

⁷ C(2020) 4837.

- b. Are the ANM outputs estimated based on the updated data and, if not, which year are these outputs estimated in?
 - c. Which WACC value is applied in the ANM outputs feeding into the FTTC price calculation?
6. To what extent does data collected in or before 2016 affect the prices in the current notification?
7. How sensitive is the model to assumptions for copper switch-off? We understand that the model assumes copper switch off in 2025, what would be the result on estimated prices if this happened for instance two years sooner or two years later?
8. Section 2.17 in the notified materials informs that ComReg are not able to take commitments into consideration. In this regard, could you kindly indicate why ComReg maintains this position, especially reflecting on the below comment from case IE/2021/2332⁸?

The Commission recalls that 21 December 2020 was the deadline for Member States to transpose the Code into national law. In February 2021, the Commission sent letters of formal notice to several Member States, including Ireland, requesting them to adopt and notify the relevant national measures to the Commission. Nevertheless, the Commission refers to the principle of vertical direct effect of directives as established by the consolidated jurisprudence of the European Court of Justice⁹. In this respect, the Commission considers that the provision enshrined in Article 79 of the Code is sufficiently clear, precise and unconditional so as to be capable of being applied directly, and therefore confers on ComReg the power to make commitments binding.

9. Could you kindly confirm that this draft notification does not contain remedies regarding prices for access to ducts and poles?
10. It appears that ComReg proposes to set the prices for the Wholesale Central Access regional market, on the basis of the average of costs in the (deregulated) urban WCA market and the costs prevailing in the regulated areas. In that regard please explain why such approach is appropriate, and how such averaging would lead to the recovery of higher costs in the rural/regional WCA market (given that such higher costs cannot be recovered from the deregulated/competitive areas).

⁸ C(2021)5450.

⁹ See for example judgment of the European Court of Justice of 4 December 1974, Van Duyn v Home Office, case 41/74 [1972] ECR 1337, and subsequent case law.

ComReg Response to European Commission’s RFI (the ‘RFI Response’) concerning IE/2021/2345: Wholesale central access provided at a fixed location for mass-market products and Market 3a/2014; review of the cost model

The following sets out ComReg’s response to the questions set out in the European Commission’s RFI of 29 October 2021 concerning ComReg’s Notification of 22 October 2021, pursuant to Article 32 of Directive 2018/1972.

Please also note that capitalised terms in this RFI Response have the same meaning as in the Notification.

Please note that confidential information is highlighted in the RFI Response with the symbols [⌘ ⌘]. This confidential and/or commercially sensitive information should not be shared with third parties without ComReg’s explicit prior consent.

If there are any further queries please do not hesitate to contact us.¹ We are also available for a follow-up call should you feel that would be helpful in understanding our responses below.

¹ Pedro Fontes, email Pedro.Fontes@comreg.ie, and Karl Hurley, email Karl.Hurley@comreg.ie.

Question 1

Does any of the notified products fall within the scope as defined in point 6 of the WACC Notice²?

ComReg Response

All of the notified products fall within the scope as defined in point 6 of the WACC Notice. Section 3 (paragraphs 3.5, 3.7, and 3.41) of the Draft Decision document details the access services that are being priced (which are: LLU; SLU; Line Share; Dark Fibre; FTTC based VUA; FTTC based Bitstream; CG SABB; and CG Bitstream).

Question 2

Could you kindly provide an overview of the WACC-values used for prices applicable today?

For instance, we understand that the currently applicable copper-prices are subject to a WACC of 8.18% - please confirm and inform on which WACC values was relied on when defining the currently applicable prices set out by ComReg.

ComReg Response

As outlined in paragraph 2.17 (as well as paragraphs 3.39 to 3.42, 5.442, 5.459, and 5.460) of the Draft Decision document, current prices for all the notified products were set subject to the fixed line WACC rate of 8.18%, based on the 2014 WACC Decision³.

Question 3

In the comments to case IE/2020/2250⁴ where ComReg notified a WACC value of 5.61%, the Commission reminded ComReg to notify changes to the WACC value, stating “The Commission considers that ComReg will have to notify it of future updates of the WACC in accordance with Article 7 of the Framework Directive”. In light of this, could you kindly inform why ComReg in the currently notified materials rely on an updated WACC value of 5.56% but without an accompanying information as to how ComReg arrived at this value? Will ComReg notify the Commission of any future updates of the WACC values?

ComReg Response

The WACC rate for Fixed Line has been updated to 5.56% following a mechanical application of the methodology notified to the European Commission ('EC') in 2020 and this updated WACC rate is used to set prices in this Draft Decision document. As outlined at footnote 59 (and referenced several times in the Draft Decision document) information on how the WACC rate of 5.56% is calculated is set out in [ComReg Document 21/68 Information Notice](#) and in the related [published report](#) (attached to this response).

² Commission Notice on the calculation of the cost of capital for legacy infrastructure in the context of the Commission's review of national notifications in the EU electronic communications sector, (2019/C375/01)

³ [2014 WACC Decision - D15/14](#).

⁴ C(2020) 4837.

As detailed in section 3.4.3 (paragraphs 3.39 to 3.42) of the Draft Decision document (and following the approach decided upon in the [2020 WACC Decision](#)), ComReg is updating the WACC parameters annually and using the most up-to-date WACC rate in its subsequent pricing decisions. ComReg accordingly indicated in the Consultation that the most recent WACC rate would be used to update the prices for products under this review.

ComReg will notify the EC of future updates of WACC values where, following the appropriate consultative process, prices are proposed to be amended and the WACC value being notified is different from the WACC value used for existing prices.

Question 4

What are the currently applicable prices for each of the access products subject to an update in the current remedies? Specifically, please inform on the currently applicable prices of the products mentioned in table 1-4 of the notified draft decision and please also indicate which WACC value was used when setting the currently applicable wholesale price if not already covered by question 2 above.

ComReg Response

As mentioned in reply to Question 2, the current prices for all the notified products are based on the WACC rate of 8.18% while the proposed prices are based on an updated fixed line WACC rate of 5.56%.

Service	€			
	Current Price	1 [month] 2022 – 30 June 2022	1 July 2022 – 30 June 2023	1 July 2023 – 30 June 2024
LLU	11.52	12.79	13.14	14.05
SLU	6.12	10.03	10.18	10.68
Line share	0.77	0.62	0.62	0.62
Dark fibre	0.28 Dublin, 0.15 Provincial	0.12	0.12	0.11

The current prices charged by Eircom for CG SABB in the Regional WCA are not directly comparable to the prices set out in the table below, as Eircom offers a CG SABB product set which is differentiated by speed (8Mbps and 24Mbps). However, the requirement is that the average prices charged by Eircom across this product set do not exceed the prices below (paragraph 6.83 of the Draft Decision document). For reference, the maximum price set in the 2016 Pricing Decision ([ComReg Decision D03/16](#)) was €23.15.

Service	CG SABB - €		
	1 [month] 2022 – 30 June 2022	1 July 2022 – 30 June 2023	1 July 2023 – 30 June 2024
CG SABB: National handover:			
Per port	25.37	25.33	25.69
Per Mbps	0.44	0.37	0.33
CG SABB: Regional handover:			
Per port	23.78	23.73	24.10
Per Mbps	0.19	0.16	0.14

Service	CG Bitstream - €			
	Current Price	1 [month] 2022 – 30 June 2022	1 July 2022 – 30 June 2023	1 July 2023 – 30 June 2024
BMB: National handover:				
Per port	8.88	7.94	8.12	8.36
Per Mbps	0.47	0.44	0.37	0.33
BMB: Regional handover:				
Per port	6.97	6.41	6.47	6.58
Per Mbps	0.20	0.19	0.16	0.14
Bitstream IP: National Handover:				
Bitstream IP	9.37	8.28	8.41	8.61
Bitstream IP: Regional Handover:				
Bitstream IP	7.17	6.55	6.59	6.69

Service	FTTC based services - €			
	Current Price	1 [month] 2022 – 30 June 2022	1 July 2022 - 30 June 2023	1 July 2023 - 30 June 2024
FTTC based VUA	20.36	18.36	18.54	19.12
FTTC based Bitstream: National handover:				
Per port	25.27	22.19	22.48	23.24
Per Mbps	0.31	0.29	0.27	0.27
FTTC based Bitstream: Regional handover:				
Per port	22.68	20.20	20.42	21.08
Per Mbps	0.12	0.11	0.11	0.11
Assumed 90/10 mix for Regional / National Handover				
Per port	22.93	20.40	20.63	21.29
Per Mbps	0.14	0.13	0.12	0.12

Question 5

If we understand correctly, the FTTC based prices are not derived directly from the model currently notified but rather from the ANM outputs, as explained in point 2.12. To this extent, could you please indicate:

- a. As the revised CAM is the old model and the ANM is the model currently under notification, what is the connection between the mentioned “ANM output” and the ANM itself?

ComReg Response

The ANM calculates the costs for the following fixed line wholesale services: LLU, SLU, Line Share, Dark Fibre, CG SABB and for CEI services (although CEI prices are set by separate notification, your reference IE/2021/2344, see our response to Question 9).

The LLU and SLU costs calculated in the ANM are used for the purpose of generating FTTC prices. An additional output from the ANM for the purpose of generating FTTC prices are the costs of NGA Links. These three inputs correspond

to the costs of the passive network elements associated with FTTC services (see paragraphs 6.16, 6.119 to 6.121 of the Draft Decision document), which were previously calculated in the Revised CAM.

These three ANM output costs are inputted to the NGA Cost Model, which - along with the NGN Core Model - calculate the remaining costs stacks of FTTC services (e.g. the active network elements which are discussed in paragraphs 6.126 to 6.129 of the Draft Decision document).

b. Are the ANM outputs estimated based on the updated data and, if not, which year are these outputs estimated in?

ComReg Response

The ANM outputs for LLU, SLU and the NGA Core link are based on data that has been updated since the Revised CAM. For example, Geospatial data is based on data as of 30 June 2019 (paragraph 5.70 of the Draft Decision document); volume data is based on data as of 30 June 2019 (paragraph 5.71 of the Draft Decision document); Opex data is based on Eircom's financial years ending 30 June 2018 and 30 June 2019 (paragraph 5.224 of the Draft Decision document); and Capex data is based on Eircom's financial information as of Eircom financial year ending 30 June 2019 (paragraph 5.444 of the Draft Decision document) or, where unavailable is based on the Revised CAM data (see paragraphs 5.467, and 5.448 of the Draft Decision document). The ANM outputs are estimated for each of the years in the FTTC price control period ending 30 June 2024, as described in Section 7 of the Draft Decision document.

c. Which WACC value is applied in the ANM outputs feeding into the FTTC price calculation?

ComReg Response

The fixed line WACC value applied in the ANM is 5.56%.

Question 6

To what extent does data collected in or before 2016 affect the prices in the current notification?

ComReg Response

In addition to the response above to Question 5b, data collected in or before 2016 is used to calculate the cost stacks associated with the active network elements of FTTC based services and CG Bitstream services, which are calculated in the NGA Cost Model and NGN Core Model. Paragraphs 6.126 to 6.129 of the Draft Decision document explain ComReg's position with respect to limiting data updates in these models to the copper costs based on the ANM and the latest fixed line WACC rate, and paragraphs 6.142 to 6.156 which in summary concludes that these data continue to be appropriate.

Paragraph 5.113 of the Draft Decision document describes a comparison of line volumes between the NGA Cost Model and the ANM for VDSL/ADSL services in the context of concerns raised by operators with respect to demand data discrepancies between the ANM and the NGA Cost Model. See also Annex 3 to the Draft Decision document,

containing a note prepared by TERA Consultants (in particular Section 2.2 and Section 2.3 of that note).

Question 7

How sensitive is the model to assumptions for copper switch-off? We understand that the model assumes copper switch off in 2025, what would be the result on estimated prices if this happened for instance two years sooner or two years later?

ComReg Response

Firstly, as noted in paragraph 5.42 of the Draft Decision document, the copper loop costs that are used to cost FTTC and EVDSL services are set on the basis of an 'anchor technology' approach with a hypothetical demand scenario of no overlay of FTTH in the Urban Commercial Area footprint. Consequently, full copper switch-off does not arise in respect of the Urban Commercial Area footprint scenario that is used to cost FTTC based services.

The ANM assumes copper switch-off to be no earlier than 2025 (paragraph 5.74 of the Draft Decision document). This assumption, combined with the timing of fibre enablement by exchange - based on operators' fibre rollout deployment plans (see paragraph 5.14 and 5.15 of the Draft Decision document) - and the assumption of the number of years to switch-off (set to 5 years, once an exchange is fibre-enabled) drives the calculation of the copper switch-off in the ANM and ultimately the forecast volume of active copper lines in the Eircom network.

These assumptions are only used in the top-down scenario of the ANM (paragraph 5.96 of the Draft Decision document). The only service the Draft Decision document sets prices for using the top-down scenario is CG SABB; consequently the assumptions for copper switch-off only affect this service. For the avoidance of doubt, these assumptions have no impact on the costs of FTTC services which are calculated in the bottom-up scenario of the ANM, adopting an anchor technology approach, which assumes no overlay of FTTC with FTTH by Eircom in the Urban Commercial footprint, as already noted above, (see also paragraph 5.206 of the Draft Decision document and paragraphs 6.60 and 6.131 of the [2018 Pricing Decision](#)).

By way of sensitivity analysis, a delay of the earliest switch-off date to 2027 would decrease CG SABB per port prices by an estimated []% in 2026, with no impact within the price control period ending in 2024. An assumed faster copper switch-off with an earlier switch-off date in 2023 and with the number of years to switch-off set to 3 years, would increase CG SABB per port prices by an estimated []% in 2024 (and no effect prior to this year), circa []% in 2025 and []% in 2026 (ComReg is however not setting CG SABB prices beyond 2024 in this Draft Decision).

Question 8

8. Section 2.17 in the notified materials informs that ComReg are not able to take commitments into consideration. In this regard, could you kindly indicate why ComReg maintains this position, especially reflecting on the below comment from case IE/2021/2332⁵?

The Commission recalls that 21 December 2020 was the deadline for Member States to transpose the Code into national law. In February 2021, the Commission sent letters of formal

⁵ C(2021)5450.

notice to several Member States, including Ireland, requesting them to adopt and notify the relevant national measures to the Commission. Nevertheless, the Commission refers to the principle of vertical direct effect of directives as established by the consolidated jurisprudence of the European Court of Justice⁶. In this respect, the Commission considers that the provision enshrined in Article 79 of the Code is sufficiently clear, precise and unconditional so as to be capable of being applied directly, and therefore confers on ComReg the power to make commitments binding.

ComReg Response

ComReg notes the position of the European Commission as regards the direct effect of Article 79 of the European Electronic Communications Code. ComReg remains concerned that pending transposition of the Code, ComReg's powers do not include the power to accept and enforce voluntary commitments proffered by an SMP provider.

However, it is not the case that ComReg has ignored or given no consideration to Eircom's proposals. As noted in the Draft Decision document, ComReg has considered the pricing proposals put forward by Eircom and assessed those pricing proposals in light of the criteria set out in Article 79(2) of the European Electronic Communications Code. Please refer to paragraphs 6.3 to 6.12 of the Draft Decision document.

Question 9

Could you kindly confirm that this draft notification does not contain remedies regarding prices for access to ducts and poles?

ComReg Response

This draft notification does not contain remedies regarding prices for access to ducts and poles. Remedies for ducts and poles are set out in the separate notification entitled the "Price control for Civil Engineering Infrastructure in Market 3a", your reference IE/2021/2344.

Question 10

It appears that ComReg proposes to set the prices for the Wholesale Central Access regional market, on the basis of the average of costs in the (deregulated) urban WCA market and the costs prevailing in the regulated areas. In that regard please explain why such approach is appropriate, and how such averaging would lead to the recovery of higher costs in the rural/regional WCA market (given that such higher costs cannot be recovered from the deregulated/competitive areas).

ComReg Response

In updating the FTTC related prices ComReg have maintained the approach that was adopted in the 2018 Pricing Decision of setting for the national WLA market a national FTTC VUA price, which then acts as the anchor service for all FTTC based services. The issue of cost recovery that this question raises, appears to be similar to a concern raised by Eircom in its response. This concern is addressed by ComReg in paragraphs 6.44 to 6.51 in the Draft Decision document.

⁶ See for example judgment of the European Court of Justice of 4 December 1974, Van Duyn v Home Office, case 41/74 [1972] ECR 1337, and subsequent case law.

The [2018 WLA/WCA Market Review Decision](#) defined the Wholesale Local Access Market as a national market and found Eircom to have SMP in the Wholesale Local Access Market, which, for the purpose of this Draft Decision, continues to apply. The national average prices that were set for FTTC VUA in the 2018 Pricing Decision (synopsised in paragraphs 3.34 to 3.38 of the Draft Decision document) and have been updated in this Draft Decision document, are intended to allow Eircom to fully recover the copper loop costs for all FTTC services, regardless of whether that service is sold as a standalone FTTC VUA service, or in combination with a backhaul supplement in the case of FTTC Bitstream, or a voice supplement in the case of FTTC POTS. The fact that the costs of FTTC VUA are recovered as a national price means that an operator that purchases FTTC Bitstream in the deregulated Urban WCA Market will pay the same charge for the FTTC VUA element of the service as the operator that is attempting to compete by purchasing FTTC VUA from Eircom and self-providing backhaul. Therefore, ComReg does not accept the premise that the higher copper loop costs of lines in the Regional WCA Market exchanges are not recovered from the margins generated across all FTTC lines via the national FTTC VUA price.

With respect to the FTTC Bitstream backhaul supplement, bitstream data traffic is aggregated with other data traffic, so the relevant costs are averaged with no cost differentiation made between Urban WCA and Regional WCA Markets.

ComReg Response to European Commission’s subsequent questions to its RFI (the ‘RFI Response’) concerning IE/2021/2345: Wholesale central access provided at a fixed location for mass-market products and Market 3a/2014; review of the cost model

The following sets out ComReg’s response to the questions set out in the European Commission’s RFI of 4 November 2021 concerning ComReg’s Notification of 22 October 2021, pursuant to Article 32 of Directive 2018/1972.

Please also note that capitalised terms in this RFI Response have the same meaning as in the Notification.

Please note that confidential information is highlighted in the RFI Response with the symbols [⌘ ⌘]. This confidential and/or commercially sensitive information should not be shared with third parties without ComReg’s explicit prior consent.

If there are any further queries please do not hesitate to contact us.¹ We are also available for a follow-up call should you feel that would be helpful in understanding our responses below.

¹ Pedro Fontes, email Pedro.Fontes@comreg.ie, and Karl Hurley, email Karl.Hurley@comreg.ie.

Follow up Question 1 - Scope of the WACC Notice

This relates to your reply to question 1, where we ask whether any of the products notified fall within the scope of the WACC Notice (the Notice). Here, you reply that all services notified falls within the scope of the Notice including Dark Fibre and other NGA products. To this extend, could you kindly explain why you see Dark Fibre products as falling under the scope of the Notice?

ComReg Response

Following the clarification provided in the meeting on 5 November 2021 that in the view of the European Commission ('EC'):

- the WACC Notice does not apply to Dark Fibre;
- the WACC Notice does not apply to Civil Engineering Infrastructure; and
- the WACC Notice applies to FTTC VUA and FTTC Bitstream only to the extent that FTTC services are not subject to a Next Generation Access (NGA) premium.

ComReg notes that in that case, the products notified that fall within the scope of the WACC Notice are as follows:

- FTTC VUA and FTTC Bitstream given that FTTC services are not subject to a Next Generation Access (NGA) premium in Ireland;
- CG SABB;
- CG Bitstream; and
- LLU, SLU, and Line Share.

For the avoidance of doubt, ComReg has applied the same fixed line WACC rate across all pricing in the ANM Draft Decision as computed in [June 2021](#) in accordance with the methodology set out in ComReg's [2020 WACC Decision](#) (e.g. the fixed line WACC rate of 5.56%).

Based on this updated understanding, ComReg's reply to Question 1 from the RFI of 29 October 2021, is restated as follows:

All of the notified products, with the exception of Dark Fibre, fall within the scope as defined in point 6 of the WACC Notice. Section 3 (paragraphs 3.5, 3.7, and 3.41) of the Draft Decision document details the access services that are being priced (which are: LLU; SLU; Line Share; FTTC based VUA; FTTC based Bitstream; CG SABB; and CG Bitstream).

Follow up Question 2 – Notified Legacy Products

For other products, for instance CG SABB and CG Bitstream, these do seem to fall under the scope of the Notice. However, also from your reply to the RFI, we see that you still rely on the WACC methodology as notified under case IE/2020/2250. In the case mentioned above, the Commission specifically commented on the fact that the Commission is bound to access any notification containing products within the scope of the Notice under the methodology outlined therein, as commented [emphasis added]:

*“The Commission considers that ComReg will have to notify it of future updates of the WACC in accordance with Article 7 of the Framework Directive. **After 1 July 2020, and from 1 July 2021 at the latest, the Commission will assess any notification of a WACC methodology or value for legacy infrastructure on the basis of the principles set out in the Notice. Thus, in the future, ComReg should take account of the methodology applied by the Commission on the basis of the Notice.**”*

In light of the above, could you kindly clarify:

- a) Why products falling under the scope of the Notice rely on a WACC value determined by a method not in compliance with the Notice and how you justify not updating your method as indicated in the comments?

ComReg Response

ComReg has followed the position as outlined in the 2020 WACC Decision and detailed in ComReg's response to the WACC RFI (Case IE/2020/2250: Cost of capital notification) on 22 June 2020 (attached).

ComReg noted the following in its response to Question 2 of the WACC RFI:

"In reaching the notified decision, ComReg has had full regard to the Commission Notice on WACC, although it [...] is not binding on ComReg. The notified decision accordingly reflects the approach to the calculation of the WACC set out in the Commission Notice to the full extent that ComReg believes is appropriate, having regard to national circumstances. In particular, the Commission Notice approach informs to a significant extent the calculation of the WACC values set out in the Notification.

ComReg accordingly does not propose to adjust the methodology for the calculation of the WACC as set out in the Notification ('ComReg's WACC methodology') [...]."

In its response to Question 3 at that time ComReg noted:

"However, the approach set out in the Commission Notice is not fully appropriate for Ireland [...]. As explained by Europe Economics² the European Commission's overall approach to the calculation of the cost of equity is unsatisfactory for Ireland because it tends to produce implausibly low figures for the TMR, partly because for large parts of the historic dataset, bond yields were far higher than those today."

Please refer to ComReg's full response to the WACC RFI (22 June 2020) for further details.

- b) Which specific parameters in your WACC methodology that deviates from that of the Notice?**

ComReg Response

The following parameter values deviate from the methodology in the WACC Notice, but are reflective of ComReg's position as decided upon in the ComReg 2020 WACC Decision:

- Risk free rate;
- Equity Risk Premium;
- Gearing;
- Asset beta (and equity beta); and
- Debt premium.

² Section 4.4.2.1 of Europe Economics Final Report [available [here](#)].

c) The values used to derive the currently applied WACC and indicate which WACC-value would prevail for Ireland if the methodology of the Notice and the parameters of the accompanying BEREC report (2021 version) had been applied?

ComReg Response

The first table presents the WACC value that ComReg is applying in the ANM Notification of 22 October 2021.

Parameter	ComReg Doc. 21/68a ³	
	Modified Commission Notice Approach	
	(lower bound ERP)	(upper bound ERP)
Corporation tax	12.5%	12.5%
Nominal risk free rate	0.52% ⁴	0.52%
ERP	7.26% ⁵	8.06% ⁶
Asset beta	0.48 ⁷	0.48
Gearing	40% ⁸	40%
Equity Beta	0.80	0.80
Nominal cost of equity post tax	6.33%	6.97%
64 th percentile ⁹	0.41% ¹⁰	
Post tax cost of equity (ComReg 21/68)	6.74% ¹¹	
Debt premium	1.83% ¹²	
Nominal cost of debt pre tax	2.35% ¹³	
Nominal pre-tax WACC	5.56%	

As noted in the WACC Notice and the BEREC report (2021 version) the WACC Notice is non-binding on member states. As such, the second table is purely for information purposes only. By way of sensitivity analysis ComReg has derived the following WACC values as if the methodology of the Notice and the parameters of the accompanying BEREC report (2021 version) had been applied by Ireland.

Please note that ComReg has not determined whether or not weighted average values or arithmetic average values are the most appropriate. ComReg has not determined whether or not there are any “national specificities” that should be considered when estimating the WACC for Ireland under the BEREC report (2021 version).

³ ComReg Document 21/68a: “The 2021 Europe Economics Report” is available [here](#).

⁴ See Section 1.3 of the 2021 Europe Economics Report.

⁵ See Section 1.4 of the 2021 Europe Economics Report.

⁶ Ibid footnote 5.

⁷ See Section 1.5.1 of the 2021 Europe Economics Report.

⁸ See Section 1.8 of the 2021 Europe Economics Report.

⁹ Paragraph 7.58 of ComReg Document No. 20/96.

¹⁰ $6.97\% - 6.33\% = 0.64\% * 64\% = 0.41\%$

¹¹ $6.33\% + 0.41\%$ (footnote 10) = 6.74%

¹² See Section 1.9 of the 2021 Europe Economics Report.

¹³ Ibid footnote 12.

BEREC report (2021 version)		
Parameter	Weighted average value	Arithmetic average value
Corporation tax	12.5%	12.5%
Nominal risk free rate ¹⁴	0.5%	0.5%
ERP ¹⁵	5.3%	5.5%
Asset beta ¹⁶	0.48	0.47
Gearing ¹⁷	45.32%	39.22%
Equity Beta ¹⁸	0.82	0.75
Nominal cost of equity post tax	5.01%	4.63%
Debt premium	1.12%	1.15%
Nominal cost of debt pre tax	1.62%	1.65%
Nominal pre-tax WACC	3.87%	3.86%

¹⁴ Page 15 BEREC report (2021 version).

¹⁵ Page 51 BEREC report (2021 version).

¹⁶ Page 36 BEREC report (2021 version).

¹⁷ Page 36 BEREC report (2021 version).

¹⁸ Page 36 BEREC report (2021 version).

Appendix 1

ComReg Response to European Commission's RFI (the 'RFI Response') concerning:

- **Case IE/2020/2250: Cost of capital notification**

The following sets out ComReg's response to the questions set out in the European Commission's request for information ('**RFI**') of 17 June 2020 concerning ComReg's notification of 10 June 2020, pursuant to Article 7(3) of the Framework Directive, of its draft measures concerning the Weighted Average Cost of Capital to be used for the regulation of fixed and mobile communications, and broadcasting transmission, where required (the '**Notification**' or '**notified decision**').

Please also note that (where the context so admits) capitalised terms in this response have the same meaning as in the Notification.

The Commission's RFI seeks detailed information to certain questions. ComReg has sought to respond to these questions on the basis of the information available to it.

A. Process and methodology

Response to Question 1

For what kind of price control measures does ComReg intend to use the WACC for mobile communications?

The WACC for mobile communications would be used in any price control imposed by ComReg on mobile operators in the future. However, at present, ComReg has no price control measures for mobile communications planned for review. In particular, ComReg has no plans to update the price control applicable to the termination of mobile calls in advance of the introduction of the Eurorates under the European Electronic Communications Code. ComReg also has no plans, at this time, to review or update its recently published decision, ComReg Decision D02/20, "Access to non-geographic numbers: imposition of price control and transparency obligations" which, among others, set a maximum wholesale mobile origination rate for calls to 1-800 (freephone) numbers.

Response to Question 2

Does ComReg intend to adjust its WACC methodology and parameters (before 1 July 2021 after elapse of the transition period for NRAs) to align it with the Commission Notice on WACC that comes into force on 1 July 2020 and the accompanying BEREC Report on WACC parameters (to be published in June this year)?

In reaching the notified decision, ComReg has had full regard to the Commission Notice on WACC, although it had not come into force and is not binding on ComReg. The notified decision accordingly reflects the approach to the calculation of the WACC set out in the Commission Notice to the full extent that ComReg believes is appropriate, having regard to national circumstances. In particular, the Commission Notice approach informs to a significant extent the calculation of the WACC values set out in the Notification.

ComReg accordingly does not propose to adjust the methodology for the calculation of the WACC as set out in the Notification ('ComReg's WACC methodology') before 1 July 2021.

As noted in Chapter 7 – "Annual reviews", ComReg will annually review (prior to 30 June each year) and where necessary update the various WACC parameters per ComReg's WACC methodology, which includes calculating the WACC parameters in accordance with the Commission Notice. Please see paragraphs 7.51 to 7.62 of ComReg's Response to Consultation (enclosed as part of the Notification). ComReg will continue to contribute to the development of the annual BEREC Report and will consider its outputs while also reflecting national specificities.

Response to Question 3

If ComReg does not intend to update the methodology before 1 July 2021 (i.e. ComReg will maintain its methodology, while only updating some parameters of WACC calculations in the years to come), please explain how ComReg would justify departing from the methodology outlined in the Notice after expiry of the 12 months transition period. Does ComReg intend to update the parameters to align with the parameters in the BEREC reports?

In ComReg's Response to Consultation (enclosed as part of the Notification) ComReg set out the various reasons, as detailed in paragraphs 3.21 to 3.26, for departing from the methodology outlined in the Commission Notice, and reproduced below:

"The Commission Notice approach involves inferring the risk-free rate from the historic yields of government bonds. The Commission Notice recommends the use of 10-year domestic government bonds to estimate the risk-free rate without any adjustment for central bank quantitative easing programmes being required¹. According to the Commission, the use of domestic government bonds, together with a consistent methodology across NRAs, will ensure that differences in risk free rates reflect actual differences in financing conditions between Member States.

Under that approach, the risk-free rate is calculated as the arithmetic mean of Irish government 10-year bonds over a period of 5 years.

However, the approach set out in the Commission Notice is not fully appropriate for Ireland at this time. As explained by Europe Economics², the European Commission's overall approach to the calculation of the cost of equity is unsatisfactory for Ireland because it tends to produce implausibly low figures for the TMR, partly because for large parts of the historic dataset, bond yields were far higher than those today.

In particular, the Commission Notice approach estimates the ERP on the basis of long term historical series which covers periods in which government bond yields were materially higher than the observable yields in recent years, while it relies on recent bond market data to estimate the risk free rate. This results in a TMR below that which could be expected.

For the cost of equity, the fundamental point set out in Europe Economics Technical Report still applies³: the uncertainties in TMR estimation for Ireland mean that the view that approaches of the UKRN or Commission Notice "let the data speak" type reduce the need for regulatory judgement or a need for assessing an underlying or equilibrium value, does not hold true in Ireland. This does not work for Ireland because of challenges in obtaining robust estimates of the TMR due to the large spikes in recent years in Gross Domestic Product ("GDP") and in the stock market, generally attributed to distortions associated with the relocation to Ireland of large corporate firms. Consequently, estimating the risk-free rate from current bond yields and a TMR based

¹ See section 4.1 of the Commission Notice.

² Section 4.4.2.1 of Europe Economics Final Report.

³ See section 4.2.1.3 of Europe Economics Final Report.

on recent dividend yields and GDP produces a range of estimates that are so wide as not to be useful for regulatory purposes.

Therefore, ComReg is of the view that it is appropriate to continue with the use of the 2014 approach in the estimation of the cost of equity albeit taking account of the Commission Notice approach in the overall assessment.”

As explained above and in the Notification, ComReg’s WACC methodology relies on the Commission Notice approach and as such, will use certain of the BEREC WACC parameters. ComReg’s approach in this regard is described in Chapter 7 – “Annual reviews” in its Response to Consultation⁴.

As the first BEREC report is not yet available, ComReg has calculated WACC values under the Commission Notice approach using the methodology as described in the Commission Notice. As of Q4 2019, ComReg has estimated these values for fixed line telecommunications to be as follows:

Parameter	Value	Reference
Corporation tax	12.5%	Ireland's statutory corporation tax rate
Nominal risk free rate	0.824%	Eurostat to November 2019
ERP	5.3%	Table 4.12 of Europe Economics Final Report ⁵
Asset beta	0.48	Table 4.13 of Europe Economics Final Report
Gearing	40%	Notional
Equity Beta	0.80	Calculated value
Nominal cost of equity post tax	5.07%	Calculated value
Debt premium	0.62%	Section 5.4.2 of Europe Economics Final Report
Nominal cost of debt pre tax	1.45%	Calculated value
Nominal pre-tax WACC	4.05%	Calculated value

The nominal cost of equity post tax per the Commission Notice approach is 5.07%, whereas under ComReg’s WACC methodology (the 2014 approach and the modified Commission Notice approach) it is 7.62%; a variance of 2.55%. The nominal cost of debt pre-tax per the Commission Notice approach is 1.45%, whereas under ComReg’s WACC methodology it is 2.6%; a variance of 1.15%.

As set out in Annex 7 of ComReg’s Response to Consultation, the WACC calculated for fixed line telecommunications under ComReg’s WACC methodology falls within the median values of Member States that have notified the WACC since June 2017, and that many of its values are comparable to those that have been notified since 2017.

⁴ See sections 7.43 to 7.54 of ComReg’s Response to Consultation.

⁵ This is the average of 4.2% and 6.39%

	ComReg	Notified WACCs Median values
Cost of equity post tax – all countries ⁶	6.67%	7.12%
Cost of equity post tax – eurozone countries ⁷	6.67%	6.76%
Cost of debt pre tax – all countries ⁸	2.60%	3.90%
Cost of debt pre tax – eurozone countries ⁹	2.60%	3.75%
WACC post tax - all countries ¹⁰	4.91%	5.17%
WACC post tax - eurozone countries ¹¹	4.91%	5.09%
WACC pre tax – all countries ¹²	5.61%	7.16%
WACC pre tax – eurozone countries ¹³	5.61%	7.14%

ComReg will however continue to monitor the WACC values as produced in the BEREC Report.

⁶ Figure 2 of ComReg’s Response to Consultation

⁷ Figure 3 of ComReg’s Response to Consultation

⁸ Figure 4 of ComReg’s Response to Consultation

⁹ Figure 5 of ComReg’s Response to Consultation

¹⁰ Figure 6 of ComReg’s Response to Consultation

¹¹ Figure 7 of ComReg’s Response to Consultation

¹² Figure 8 of ComReg’s Response to Consultation

¹³ Figure 9 of ComReg’s Response to Consultation

Response to Question 4

In an integrated capital market with no currency risk, regional differences in inflation rates do not (necessarily) affect the cost of capital. In view of this, please explain why ComReg considers the national inflation rate more appropriate than Eurozone-wide inflation rate for the WACC methodology.

The inflation rate used in the notified Decision to calculate the WACC is not the simple national inflation rate; it also reflects the Eurozone-wide inflation rate. Under the 2014 approach ComReg places weight on both Irish inflation forecasts (for the short term – two years) and Eurozone inflation forecasts (for the medium-to-long term, three years).

The use of a blended average between national and Europe-wide inflation can be justified on two grounds. First, Irish communications sector price changes are likely to reflect Irish economic conditions more closely than those of the Eurozone as a whole and therefore national price levels should be reflected. Second, the use of a blended average reflects the idea that Eurozone capital markets are not yet fully integrated, and we note in that context that the Commission Notice recommends using national government bond yields.

In the Consultation (note: a link to the Consultation was provided with the Notification), the WACC was estimated using the ‘2014 approach’ i.e. using the same approach as had been used for the 2014 WACC decision. ComReg proposed estimating the risk-free rate and inflation separately (see Consultation paragraph 4.13). As the ‘2014 approach’ produces a real estimate of the risk-free rate it was also necessary to estimate the inflation rate.

In the notified Decision, ComReg modified its view of how inflation should be taken account of under the ‘2014 approach’; see paragraph 4.24. As a result, ComReg in the notified Decision used a combination of the forecast inflation for Ireland for the next two years, and the Eurozone forecast inflation for the following three years.

In the notified Decision, under its interpretation of the Commission Notice, ComReg used Eurozone inflation forecasts for the calculation of the WACC using the ‘Commission Notice’ approach; see paragraph 2.13.

The yearly update of the WACC values for Ireland is based on updating the modified ‘Commission Notice’ approach as calculated by ComReg’s consultants. As the modified ‘Commission Notice’ approach uses forecasts of Eurozone inflation future updates will take into account Eurozone inflation.

B. Values

In the notified draft measure, ComReg calculates the WACC parameters in two different ways, referred to as ‘the 2014 approach’ and ‘Commission Notice’. In this regard, please clarify the following:

Response to Question 5

The final WACC-values for fixed line and mobile communications incorporate the average cost of equity for each technology from the ‘the 2014 approach’ and ‘Commission Notice’. Please explain why, in your opinion, averaging these two approaches is a justified method of estimating the final WACC value.

In the Consultation, ComReg had proposed to continue solely with the “2014 approach”, that is, the equilibrium-based approach that had been used by ComReg in 2014 when setting the WACC; noting that for reasons particular to Ireland, a “let the data speak approach” such as that used in the UK would not be appropriate as it would not avoid the use of judgement:

“[...] for Ireland, the task of “letting the data speak” is challenging, since what the data tells us involves such a wide range of possibilities that very considerable judgement is required in coming to a conclusion. That means that the key supposed advantage of this approach — the ability to rely upon data rather than judgement — is (at least for Ireland) largely absent.”¹⁴

However subsequent to the Consultation, and for the reasons set out in the notified Decision, including the discrepancy between market-based cost of debt for the incumbent and the cost of debt calculated under the 2014 approach, as well as the publication of the Commission Notice, ComReg decided that further weight ought to be given to a “let the data speak” approach and in order to resolve the difficulties associated with that approach in Ireland for the reasons set out in the Consultation, to calculate the WACC using two different approaches, and make a judgement as regards the appropriate value.

Given that the cost of equity estimates obtained under “the 2014 Approach” and the “Commission Notice approach” produce very similar results, ComReg is of the view that the use of a blended average between both approaches for the cost of equity (ComReg’s WACC methodology) is a pragmatic choice which allows ComReg’s judgement to reflect the Commission Notice while addressing the specificities of the Irish market.

¹⁴ See section 12.4 of ComReg Document No. 19/54a (Europe Economics Technical Report).

Response to Question 6

In our understanding, ComReg calculates the ‘Commission Notice’ ERP of 7.21% by averaging a low and high estimate of the ERP (6.86% and 7.56%). The high estimate uses the TMR for Ireland (6.7%). Please explain the rationale of using the TMR for Ireland and use of the averaging.

As noted in the Commission Notice¹⁵ there are alternative means for estimating a European Union ERP. For the strict application of the Commission Notice approach ComReg has used the average of¹⁶:

- a) an off-the shelf Dimson Marsh and Staunton (“DMS”) figure for Europe (4.20%); and
- b) a weighted average (across all European countries) of DMS figures (6.40%).

This results in a nominal point estimate for a European Union ERP of 5.30%.

However, insofar as Ireland is concerned, this approach to estimating the ERP on the basis of long term historical series results in a Total Market Return (‘TMR’) for Ireland that is implausibly low,¹⁷ noting that the TMR can vary over time but tends to vary less than each of the risk-free rate and ERP.

Consequently, it is necessary in the case of Ireland when implementing the Commission Notice approach to calculate the cost of equity to depart from a literal reading of the Commission Notice with regard to the European Union ERP calculation¹⁸ and derive the ERP from the TMR.

Accordingly, ComReg calculates the ERP starting from DMS TMR figures and then subtracts the risk-free rate (per the Commission Notice approach). Therefore, the data source for the European Union ERP and TMR is the same (i.e. DMS).

The ERP range of 6.86%-7.56% is derived from the Europe-wide real TMR value (6.0%) and the Irish-specific real TMR value (6.7%). The average of the two values is 6.35% (real). The real risk-free rate under the Commission Notice Approach is negative 0.86%. Therefore, a combination of TMR values and risk-free rate results in an ERP range of 6.86% and 7.56% with the average of 7.21% being chosen as the point estimate¹⁹.

ComReg also considers that the use of a blended average between European and Irish figures is justified on the grounds that capital markets are not yet fully integrated as suggested in paragraph 38 of the Commission Notices which states that:

“[...] financial markets in the Union are increasingly integrated [...]”

¹⁵ Section 5.2.3.2

¹⁶ See Table 4.12 of Europe Economics Final Report.

¹⁷ See section 3.23 of ComReg’s Response to Consultation.

¹⁸ See section 4.4.2.1 of Europe Economics Final Report.

¹⁹ As noted in section 4.51 of ComReg’s Response to Consultation the Irish Commission for Aviation Regulation estimated a real TMR of 6.38% and an ERP of 6.99%.

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As also noted in its Response to Consultation, ComReg considers that the Commission Notice approach produces an ERP that is below what could be expected²⁰. Because ComReg is using a TMR approach and wants to reflect the Europe wide capital market of the Commission Notice, ComReg would ideally need both a Europe wide TMR and Europe wide risk-free rate. However, the Commission Notice advises using a country specific risk-free rate. In the absence of a European-wide risk-free rate, in order to calculate a suitable ERP for the purpose of ComReg's modified Commission Notice approach, ComReg chose to use an average of the Europe wide and Irish TMR in conjunction with the Irish risk-free rate to derive the ERP and is comparable to other data sources, including DMS²¹. The range is chosen to reflect both European and Irish circumstances and the average value places equal weight on the European TMR and the Irish TMR. We note that in the CAPM calculation the ERP derived from the TMR, results from deducting an Irish risk-free rate. Therefore, for consistency ComReg has placed equal weighting on an Irish TMR.

²⁰ See section 3.24 of ComReg's Response to Consultation.

²¹ See section 3.31 of ComReg's Response to Consultation.