Consultation

Framework for the Migration from Legacy Infrastructure to Modern Infrastructure

Consultation and Draft Decision

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Legal Disclaimer

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1 Executive Summary

1.1 Background

1.1   On 4 March 2021, Eircom shared with the Commission for Communications Regulation ('**ComReg**'), and also published on its website, a white paper entitled "Copper switch-off: Leaving a legacy for the Future"[1] (the '**White Paper**') in which Eircom signalled its intent to migrate copper-based services to largely fibre-based networks and ultimately switch off its copper access network. On 9 April 2021, ComReg published Information Notice 21/35[2] welcoming Eircom's initiative and confirming that ComReg would engage with Eircom and other stakeholders on this important matter and would consult publicly in due course.

1.2   This engagement takes place against the background of Eircom's designation as having Significant Market Power ('**SMP**') in the markets for Wholesale Local Access and Wholesale Central Access,[3] Fixed Access and Call Origination[4] and Wholesale High Quality Access.[5] Under the obligations imposed on it following its designation as SMP operator on those markets, Eircom is required not to withdraw access to facilities already granted without the prior approval of ComReg and in accordance with terms and conditions as may be determined by ComReg. Furthermore Article 81 of the European Electronic Communications Code (the **'Code'**),[6] which has yet to be transposed in Irish law but which ComReg expects will be transposed by the time ComReg completes the consultation and publishes a final decision, sets out a number of requirements in respect of migration from legacy infrastructure.

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[1] https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf.

[2] ComReg - Eircom Correspondence on Copper Switch Off, Information Notice, ComReg 21/35, dated 9 April 2021.

[3] "Market Review Wholesale Local Access (WLA) provided at a Fixed Location Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products", ComReg Document 18/94, Decision D10/18, 19 November 2018. See also ComReg Decision D10/21, ComReg 21/120, November 2021.

[4] "Market Review Wholesale Fixed Voice Call Origination and Transit Markets", ComReg Document 15/82, Decision D05/15, 24 July 2015. See also Consultation 22/10, 14 February 2022, proposing to deregulate all FACO markets.

[5] "Market Analysis – Wholesale High Quality Access at a Fixed Location", ComReg Decision D03/20, ComReg 20/06, 24 January 2020.

[6] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (L 321/165), dated 17 December 2018.

1.3   On 3 August 2021, ComReg published Call for Inputs, entitled "*Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs*" (the '**2021 Call for Inputs**').[7] The 2021 Call for Inputs suggested possible key principles to govern copper switch-off from both a wholesale and retail perspective as well as possible principles for a framework governing Migration from Legacy Infrastructure to Modern Infrastructure and the requirements to be met in these respects by Eircom as an SMP operator. Submissions were received from seven stakeholders: ALTO, BT, Eircom, NBI, SIRO, Sky and Vodafone (the '**Respondents**').

1.4   With the benefit of the responses to the 2021 Call for Inputs, this Consultation provides ComReg's proposal for a framework that would apply throughout Eircom's transition from Legacy Infrastructure to Modern Infrastructure for so long as it is designated with SMP on relevant markets (the '**Framework**'). The proposed Framework sets out the minimum standard of requirements for Eircom and includes the principles and conditions which Eircom must comply with before Eircom may withdraw copper-based telecommunications services and switch-off its copper network.

1.5   While the Framework reflects the principles articulated in ComReg's 2021 Call for Inputs, amended as appropriate based on the responses received, not all matters considered in the Call for Inputs or in the inputs provided by Respondents fall within the scope of this Consultation. This is the case in respect of matters raised generally in respect of existing price controls as well as existing rules for consumer protection or universal service regulation including the universal service obligation ('**USO**') and end-user protection measures. ComReg in particular does not propose to amend relevant applicable price controls as part of this Consultation.

1.2 Principles

1.6   Migration from Legacy Infrastructure to Modern Infrastructure will result in the withdrawal, switch-off and, ultimately, the decommissioning of regulated Legacy Infrastructure-based services. In considering the appropriate Framework, ComReg's objective is to create the conditions for a successful transition ensuring that migration does not adversely affect wholesale and retail competition and the interests of end-users while being mindful of not inhibiting the retirement of that network.

1.7   Under Article 81(2) of the Code, the National Regulatory Authority (the '**NRA'**) is required to ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for

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[7] Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs, ComReg 21/78, dated 3 August 2021.

transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

1.8   ComReg proposes that the Framework is organised around transition phases allowing for progressive migration and withdrawal of obligations. The Framework proposed reflects Eircom's underlying principle in its White Paper that transition will occur legacy exchange area by legacy exchange area. This will ensure that transition may commence as soon as a legacy exchange area has Modern Infrastructure available (within the conditions set out under the Framework) and not be delayed until rollout is completed in full. ComReg defines the legacy exchange area by reference to each of Eircom's approximately 1,200 legacy exchanges where its copper access network is terminated on a Main Distribution Frame ('**MDF**') or equivalent (including a Remote Subscriber Unit ('**RSU**')).

1.9   ComReg proposes for determining whether access to Modern Infrastructure is available and accordingly, migration may proceed, that Modern Infrastructure is defined as consisting of:

(a)   Eircom's modern infrastructure, which includes Fibre to the Home ('**FTTH**')[8] and other alternative modern technology used by Eircom (if applicable); and

(b)   The National Broadband Ireland ('**NBI**') FTTH network.

Note that Modern Infrastructure may not necessarily consist of FTTH in all instances. It is not proposed that Eircom be required to develop Alternative Comparable Products ('**ACP**s') on other FTTH networks. The premises in scope for the transition Framework are those which have ceased in-situ copper lines or active copper-based services

1.10   A keystone of the proposed framework is that copper switch-off should only take place once all premises that are currently served by Eircom's copper network have access to Modern Infrastructure, be it Eircom's or the NBI Network. ComReg recognises, however, that there may be circumstances where it would not be appropriate to delay copper switch-off although some premises do not have access to Eircom's or NBI's Modern Infrastructure. These circumstances include where premises are derelict, for example, or where they are passed by an alternative FTTH network offering wholesale access. In those circumstances Eircom may seek ComReg's approval to proceed with copper switch-off transition.

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[8] Also known as Fibre to the Premises ('**FTTP**').

1.11   In order that competition is safeguarded and end-user rights protected, it is essential that there is a clear understanding on the part of Access Seekers as to what Eircom's plans for transition are (on a legacy exchange by legacy exchange basis) with sufficient notice that they themselves can plan accordingly and communicate appropriately with their customers. Timely communication of information to Access Seekers, end-users and other stakeholders will be key to a successful transition to Modern Infrastructure.

1.12   ComReg, however, does not believe that communications by Eircom to end-users who are not its retail customers are appropriate. ComReg proposes to set a rule as part of the transition Framework that Eircom shall not contact directly end-users who are not its direct customers (customers of Eir Retail) and that all required communications are to be undertaken by the end-users' own retail service provider ('**RSP'**). For the avoidance of doubt, Eircom would not be prevented from engaging in general information campaigns to ensure the general public understands the concept and timing of the transition.

1.13   This Consultation does not include a set of rules or guidance on the Retail principles set out in the 2021 Call for Inputs. Retail aspects of the transition will be the subject of a separate publication.

1.3   Proposed Framework

1.14   The proposed Framework is designed to enable Access Seekers to:

(a)   understand Eircom's process for withdrawal of a legacy-based services, and how this will affect them and end-users;

(b)   have access to information about ACPs available to them and their end-users;

(c)   have confidence that the ACPs provide comparable functionality and are available at comparable prices to the legacy-based services;

(d)   have a modern comparable service installed (where their end-user wishes to migrate from a legacy-based service); and

(e)   have reasonable time to prepare for a proposed withdrawal of the legacy-based services.

Phases

1.15   ComReg proposes that the starting point of the transition process is by way of a proposal by Eircom ('**Eircom's Switch-off Proposal**') providing ComReg with information on how Eircom plans to migrate from its legacy network to a modern network. When ComReg has analysed Eircom's Switch-off Proposal and confirms it

fulfils the Framework conditions arising from this Consultation, ComReg will approve it, at which point Eircom's Switch-off Proposal becomes Eircom's switch-off plan (the '**Switch-off Plan'**).

1.16   The proposed Framework for the transition from Legacy Infrastructure to Modern Infrastructure (illustrated in Figure 1 below), consists of three phases:

(a)   Enablement Phase;

(b)   Migration and Switch-off Phase; and

(c)   Decommission Phase.

1.17   The purpose of the Enablement Phase would be for Eircom to develop the required new ACPs (where applicable) and to ensure that Eircom provides Access Seekers with the opportunity to successfully trial and migrate end-users to new ACPs.

1.18   The Enablement Phase is proposed to run in parallel to the Migration and Switch-off Phase.

Figure 1: Proposed Framework
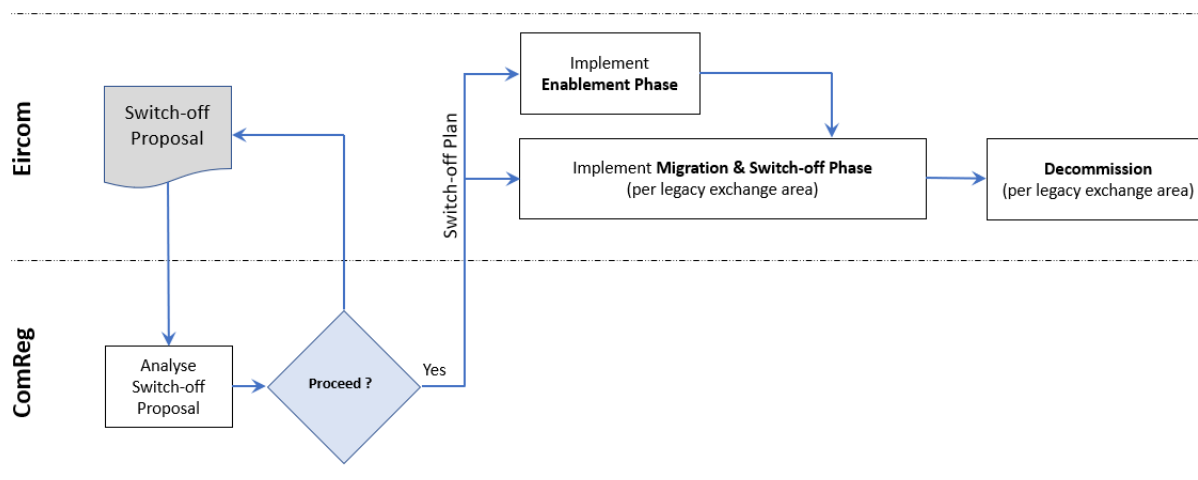
1.19   The Migration and Switch-off Phase will ensure that the migration from the legacy infrastructure is conducted according to a transparent timetable and conditions, including an appropriate notice period for the transition. The migration and switch-off of legacy-based services will occur on a legacy exchange by legacy exchange basis. In the Migration and Switch-off Phase, ComReg proposes a four-milestone transition from legacy-based services. Figure 2 depicts the transition milestones and associated timelines, for a legacy exchange area, where Eircom chooses to implement a "Stop Sell" for legacy-based services. The concept of a Stop Sell is explained below.

Figure 2: Migration and Switch-off Phase (per legacy exchange area)
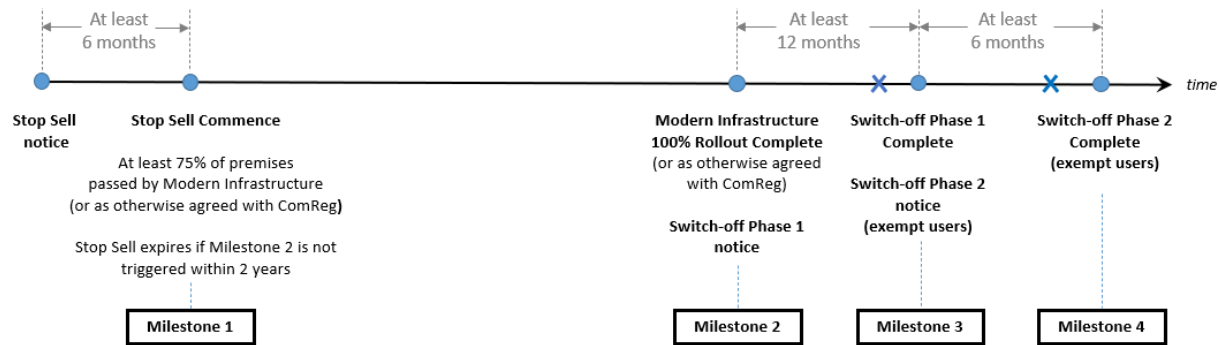
1.20   The proposed conditions to be met to trigger each milestone, in the Migration and Switch-off Phase, are summarised in Figure 3 below.

1.21   A key requirement of the proposed Framework is that transition may only begin where premises concerned have access to Modern Infrastructure by way of ACPs on Eircom's modern infrastructure or fibre-based services on NBI's network. An ACP:

(a)   has at least equivalent features and performance as the legacy-based service;

(b)   is delivered to the location of legacy-based service NTU, in the end-user's premises, at the FTTH standard connection charge;

(c)   has at least service equivalence in terms of service delivery, service assurance, service availability, Service Level Agreements ('**SLA**s') and Key Performance Indicators ('**KPI**s');

(d)   has at least service equivalence in terms of Quality of Service ('**QoS**'); and

(e)   is of a comparable price to the legacy-based service it is mapped to.

Figure 3: Overview of key proposed conditions to be met in the Migration and Switch-off Phase

ComReg Proposed Framework			
Migration and Switch-off Phase (per legacy exchange area)	**Conditions to be met to trigger Milestone**	**Copper-based Product changes**	**Notes**
Milestone 1 *(If Stop Sell Implemented)*	At least 75% of premises in a legacy exchange area (or as otherwise agreed with ComReg) can order an alternative comparable product ('**ACP**') provided on Eircom's network - or fibre-based service from NBI; and At least 6-month notification prior to implementation. No change to copper service regulation where Modern Infrastructure is not available (i.e. end-user unable to order an ACP from Eircom - or fibre-based service from NBI).	Stop Sell applies to in-situ activation, new copper-based connections and changes to legacy-based service features or switching RSP for existing active copper-based services where Modern Infrastructure is available. Stop Sell expires if Milestone 2 is not triggered within 2 years.	For premises impacted by the Stop Sell and with ceased in-situ or active copper-based services, non-standard connection costs borne by Eircom if it cannot deliver an ACP at the FTTH standard connection charge (i.e. no additional cost for ACP delivered to the location of the legacy Network Termination Unit ('**NTU**')).
Milestone 2	100% of premises in a legacy exchange area (or as otherwise agreed with ComReg) can order an ACP provided on Eircom's network - or fibre-based service from NBI; Access Seekers can register an end-user as an exempt user; Access Seekers receive at least 12-month notification prior to Copper Switch-off Phase 1;	Copper service regulation continues to apply for maintenance of legacy-based services.	For premises with ceased in-situ or active copper-based services, non-standard connection costs borne by Eircom if it cannot deliver an ACP at the FTTH standard connection charge (i.e. no additional cost for ACP delivered to the location of the legacy NTU).
Milestone 3	At least 3-month prior notification confirming actual Copper Switch-off Phase 1 (Milestone 3) date; Access Seekers receive at least 6-month notification prior to Copper Switch-off Phase 2.	Switch-off of legacy-based services for non-exempt end-users; and Copper service regulation continues to apply for maintenance of copper-based services to exempt end-users.	
Milestone 4	At least 3-month prior notification confirming actual Copper Switch-off Phase 2 (Milestone 4) date;	Switch-off of legacy-based services for exempt end-users	

1.22   The concept of a "Stop Sell" was introduced by Eircom in its White Paper. It means an arrangement whereby end-users may not switch their legacy-based service to a different retailer (including Eir Retail) or make changes to their legacy-based service, if they have access to fibre-based services. Similarly, for new customers (on Eircom's network) Stop Sell applies where fibre-based services are available to order at the customers premises. Of course, all end-users remain free to choose products from other network operators or platforms as they see fit.

1.23 ComReg proposes allowing, but not requiring, Eircom to apply a Stop Sell period. This means that Eircom would be free to move to Milestone 2 without any Stop Sell arrangement. In that case, the number of milestones reduces to three.

1.24 The Decommissioning Phase will ensure the legacy infrastructure is put in a permanent beyond-use state (on a legacy exchange by legacy exchange basis).

1.25 Figure 4 outlines a summary of the information which Eircom will be required to provide to ComReg and Access Seekers.

Figure 4: Summary of Information to be provided to ComReg and Access Seekers

Information provided by Eircom	ComReg	Access Seekers	Timing
Switch-off Proposal	✓		As determined by Eircom
Switch-off Plan		✓	Eircom publish its Switch-off Plan, within one month, following ComReg's confirmation that Eircom's Switch-off Proposal fulfils the conditions of the proposed Framework
Trial Report (resolution of issues)	✓		End of trial stage (Enablement Phase)
Information to monitor Migration and Switch-off Phase	✓	✓	On a monthly basis, on the commencement of the Migration and Switch-off Phase
Information on premises not passed by Modern Infrastructure	✓		At least one month in advance of milestone 2
Exempt User Process	✓	✓	In advance of Milestone 2 (for first legacy exchange(s)) of the Migration and Switch-off Phase

1.26 In addition, in order to avoid that Access Seekers and end-users are left with no access following transition through no fault of their own, ComReg proposes two additional conditions, in respect of premises passed which may not be connected, and in respect of non-standard, premises-specific, connection costs.

Premises passed may not be connected

1.27 ComReg proposes that if Eircom informs Access Seekers that a premises is passed by Modern Infrastructure, but subsequently the premises cannot be served by the Modern Infrastructure, that Eircom would continue to provide a legacy-based service at that premises until such time as the Modern Infrastructure becomes accessible including for new connections, by way of a temporary legacy-based service ('**TLS**') to be delivered no later than ten working days (excluding any end-user delay time) from receipt of the TLS order.

Non-standard, premises-specific, connection costs

1.28 When a FTTH service is being delivered to a premises, there is sometimes work that needs to be completed on private property or within the curtilage of the

premises. This work can involve tree-trimming, upgrading of ducts and clearance of blockages etc. and such costs are normally borne by the end-user. Copper switch-off means that such costs may arise in order to connect a premises to Modern Infrastructure where the premises has legacy-based services available and where given the choice, an end-user may prefer retaining his or her legacy-based service. Against this background, ComReg proposes that such costs are to be borne by Eircom from the time that the end-user may no longer purchase a legacy-based service. This will be the case where a Stop Sell applies in respect of the premises concerned and in all cases, where Milestone 2 has been reached/triggered for premises which have ceased in-situ copper lines or active copper-based services.

1.29   ComReg proposes also, however, that where additional works are required to be completed on private property or within the curtilage of the end-user's property, Eircom may, instead of connecting the premise to its FTTH network, offer a suitable ACP connection (e.g. FWA, FTTH with G.fast) at the FTTH standard connection charge.

2 Introduction

2.1 Regulatory Context

2.1   The Commission for Communications Regulation ('**ComReg**') is the statutory body responsible for the regulation of the electronic communications sector (telecommunications, radio-communications and broadcasting transmission) in Ireland and the National Regulatory Authority ('**NRA**') for Ireland under the European regulatory framework for electronic communications.

2.2   Currently, the majority of fixed line telephone and broadband connections are delivered to premises using copper lines. The copper line technology has been around for many decades and was originally designed to deliver telephony services (i.e. voice services) at a fixed location. Copper-based networks were not designed to carry large amounts of data or internet traffic.

2.3   As electronic communications have evolved there are now greater demands on communication systems to carry increasing volumes of data traffic. It is apparent that there are now physical limitations on copper networks to cater for today's requirements of faster and more reliable data services and more flexible telephony services. Such important services can be better served by more modern technology, such as fibre.

2.4   In that context, Eircom is continuing to expand its fibre network (which is expected to be complete in 2026), while National Broadband Ireland ('**NBI'**) is rolling out a fibre network in the rural areas of the country (which is expected to be complete in 2027). These network developments will likely result in fibre-based services becoming more widely available at homes/premises, and that Retail Service Providers ('**RSPs**')[9] actively sell fibre-based products to these homes/premises. Indeed, as fibre-based services become more widely available, having regard to cost efficiency and other relevant considerations, there is scope for the copper network to be phased out.

2.5   On 4 March 2021, Eircom shared with ComReg, and also published on its website, a white paper entitled "Copper switch-off: Leaving a legacy for the Future"[10] ('**White Paper**') in which Eircom signalled its intent to migrate services from copper-based to principally fibre-based networks. On 9 April 2021, ComReg published Information

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[9] Including Eircom's own retail arm, Eir ('**Eir Retail**').

[10] https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf.

Notice 21/35[11] welcoming Eircom's initiative and confirming that ComReg would engage with Eircom and other stakeholders on this important matter and would consult publicly in due course.

2.6   This engagement takes place against the background of Eircom's designation as having Significant Market Power ('**SMP**') in the markets for Wholesale Local Access and Wholesale Central Access,[12] Fixed Access and Call Origination[13] and Wholesale High Quality Access.[14] Under the obligations imposed on it following its designation as SMP operator on those markets, Eircom is required not to withdraw access to facilities already granted without the prior approval of ComReg and in accordance with terms and conditions as may be determined by ComReg. Furthermore, Article 81 of the European Electronic Communications Code (the **'Code'**),[15] which has yet to be transposed in Irish law, but which ComReg expects will be transposed by the time ComReg completes the consultation and publishes a final decision, sets out a number of requirements in respect of the Migration from Legacy Infrastructure.

2.7   In particular, Article 81(1) of the Code requires undertakings which have been designated as having SMP in one or several relevant markets to notify the NRA in advance and in a timely manner when they plan to decommission or replace with a new infrastructure parts of the network, including legacy infrastructure necessary to operate a copper network.

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[11] ComReg - Eircom Correspondence on Copper Switch Off, Information Notice, ComReg 21/35, dated 9 April 2021.

[12] "Market Review Wholesale Local Access (WLA) provided at a Fixed Location Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products", ComReg Document 18/94, Decision D10/18, 19 November 2018, Appendix: 20 Wholesale Local Access: Decision Instrument, paragraph 7.7(ii); Appendix: 21 Wholesale Central Access: Decision Instrument, paragraph 7.5(ii).

Mid-term Assessment, Regional Wholesale Central Access (WCA) Market, Re-application of geographic assessment criteria set out in ComReg Decision D10/18. ComReg Document 21/120, Decision D10/21, November 2021.

[13] "Market Review Wholesale Fixed Voice Call Origination and Transit Markets", ComReg Document 15/82, Decision D05/15, 24 July 2015, Appendix H Decision Instrument paragraph 7.5(ii). ComReg has consulted on its analysis of the Fixed Access and Call Origination markets and has proposed that Eircom no longer has SMP in these markets.

[14] "Market Analysis – Wholesale High Quality Access at a Fixed Location", ComReg Document 20/06, Decision D03/20, 24 January 2020, Annex 8: Decision Instrument paragraphs 7.4(ii) and 14.5(ii).

[15] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (L 321/165), dated 17 December 2018.

2.8   Article 81(2) of the Code states that the NRA shall ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition. With regard to assets which are proposed for decommissioning or replacement, the NRA may withdraw the obligations after having ascertained that the access provider:

(a)   has established the appropriate conditions for migration, including making available an alternative access product of at least comparable quality as was available using the legacy infrastructure enabling the Access Seekers to reach the same end-users; and

(b)   has complied with the conditions and process notified to the NRA in accordance with Article 81 of the Code.

The procedures referred to in Article 23 (Consultation and transparency mechanism), Article 32 (Consolidating the internal market for electronic communications) and Article 33 (Procedure for the consistent application of remedies) of the Code apply in respect of the withdrawal of obligations.

2.9   Against this background, on 4 May 2021, ComReg published Information Notice 21/43[16] outlining its approach to engaging with Eircom and other stakeholders, summarised as follows:

(a)   Facilitating bi-lateral stakeholder discussions with ComReg;

(b)   ComReg to publish a Call for Inputs whereby interested parties could express their views in writing;

(c)   Having considered the responses to the Call for Inputs, ComReg to issue a public consultation with more detailed proposals as to how the transition from copper-based to fibre-based networks (or other suitable modern networks) should be conducted; and

(d)   Having considered the responses to the public consultation, ComReg to publish its decision.

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[16] Consultation Process regarding the Transition from Regulated Copper Products and Services, Information Notice, ComReg 21/43, dated 4 May 2021.

2.10   On 3 August 2021, ComReg published Call for Inputs, entitled "*Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs*" ('**2021 Call for Inputs**').[17] The 2021 Call for Inputs suggested possible key principles to govern copper switch-off from both a wholesale and retail perspective as well as possible principles for a framework governing Migration from Legacy Infrastructure to Modern Infrastructure and the requirements to be met in these respects by Eircom as SMP operator. Submissions were received from seven stakeholders: ALTO, BT, Eircom, NBI, SIRO, Sky and Vodafone (the '**Respondents**').

2.11   With the benefit of the responses to the Call for Inputs 21/78,[18] this Consultation provides ComReg's proposal for a Framework that would apply throughout Eircom's transition from legacy infrastructure to modern infrastructure for so long as it is designated with SMP on relevant markets. In the interests of transparency, ComReg has published the submissions to the 2021 Call for Inputs (subject to the protection of any confidential information) on its website.[19]

2.12   Figure 5 depicts the timeline when ComReg plan to publish its decision and Eircom plan to complete its FTTH rollout to 1.9 million premises.

Figure 5: Timeline
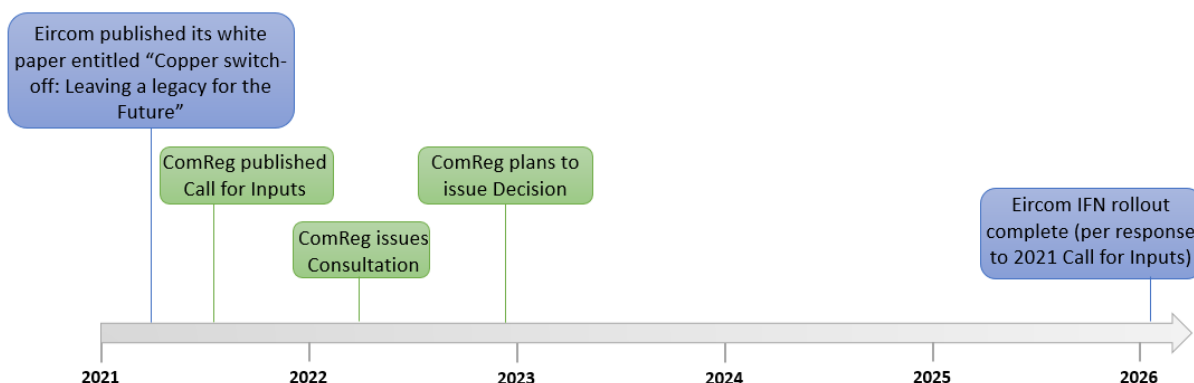
2.13   The process for migrating services from copper-based to fibre-based networks (or other suitable modern networks) is referred to throughout this Consultation as '**Migration from Legacy Infrastructure**'. The upgraded or new network infrastructure substituting the replaced elements of the legacy infrastructure is referred to, in general, throughout this Consultation as '**Modern Infrastructure**'.

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[17] ComReg 21/78.

[18] Migration from Legacy Infrastructure to Modern Infrastructure: Call for Inputs, ComReg 21/78, dated 3 August 2021 ('**2021 Call for Inputs**')

[19] Migration from Legacy Infrastructure to Modern Infrastructure, Submissions to Call for Inputs, ComReg 21/78s, dated 25 March 2022.

2.2 The 2021 Call for Inputs and the scope of the Consultation

2.14   The Framework proposed by this Consultation is concerned with the conditions and requirements to be met before Eircom may switch-off its copper network and withdraw regulated access to its copper network from Access Seekers. While it reflects the principles articulated in ComReg's 2021 Call for Inputs, amended as appropriate based on the responses received, not all matters considered in the Call for Inputs or in the inputs provided by Respondents fall within the scope of this Consultation. This is the case in respect of matters raised generally in respect of existing price controls as well as existing rules for consumer protection or universal service regulation including the universal service obligation ('**USO**') and end-user protection measures.

2.15   This Consultation does not, in particular, purport to embody in a set of rules or guidance on the Retail principles set out in the 2021 Call for Inputs. At this stage, ComReg simply notes that the fact that migration to Modern Infrastructure is ongoing and does not affect end-user rights. During and after a Migration from Legacy Infrastructure, end-users must continue to have adequate methods of accessing universal services. In particular, end-user rights which relate to the following matters continue:

(a)   the availability of service;

(b)   access to emergency services;

(c)   access for disabled end-users; and

(d)   provisions including those related to customer contract.

2.16   These rights must be upheld during and following transition[20] and reference is made to ComReg's Regulatory Guidance on Title III: End-User Rights of the European Electronic Communications Code.[21] In proposing the Framework for Migration from Legacy Infrastructure to Modern Infrastructure, ComReg takes note of the requirement, explicitly set out in Article 81 of the Code, that processes and conditions established are geared towards ensuring that there is no negative impact on the consumer and achieving positive outcomes in the market. Subject to the Consultation on the Framework proposed, ComReg may consider it necessary to disseminate information to end users as well as provide guidance to RSPs setting out ComReg's expectations of RSPs in supporting migrating customers and in meeting their obligations under the applicable legislation before and during the Migration from Legacy Infrastructure.

2.17   ComReg does not propose to amend relevant applicable price controls as part of this Consultation.

2.18   Several Respondents to the Call for Inputs[22] identified Fibre to the Home ('**FTTH**') wholesale rental pricing as a key issue, including that too high a price may disincentivise RSPs from migrating end-users to FTTH, and too low a price may disincentivise Eircom from investing in its network. Respondents noted that Ofcom anchored the FTTH rental to that of a regulated FTTC product. The matter of the recovery of the scrap value of copper (referred to as '**Copper Windfall**') was raised by several Respondents to the Call for Inputs. Copper is a commodity[23] that has increased significantly (by 70%) in value in the past five years, from $2.52/lb to $4.28/lb[24] and the decommissioning of the copper network means that the extraction of copper from ducts, poles, and cabinets, may result in a non-trivial revenue stream for Eircom. As noted in ComReg's annual action plan[25] a separate consultation on a market review of the WLA and WCA markets is due to be published in Q4 2022 ('**WLA/WCA Market Analysis Consultation**') and as part of the WLA/WCA Market Analysis Consultation and predicated on a finding of SMP in the relevant markets,

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[20] In accordance with applicable legislation including the Universal Service Regulation, the Consumer Information Regulations and the EECC.

[21] Information Notice 20/111R, 23 December 2020.

[22] ALTO Submission, pp. 11, 34-38; BT Submission, p. 7; Sky Submission, p. 12; Vodafone Submission, pp. 4, 6-7.

[23] Copper | 2021 Data | 2022 Forecast | 1988-2020 Historical | Price | Quote | Chart (tradingeconomics.com)

[24] Copper prices : November 2016 and November 2021

[25] Annual-Action-Plan-Ye-30-06-2022-Update-as-at-11-November-2021.pdf (comreg.ie)

ComReg will consider the options for a price control for FTTH and how to deal with Copper Windfall.

2.19   Respondents also raised the matter of the wholesale migration costs which will be incurred by operators in the migration of their end-users from legacy copper-based products to FTTH. Wholesale migration costs such as order handling, call centre costs, technician costs, co-location, new customer premises equipment ('**CPE**'), etc. were identified as a possible barrier to switching. ComReg notes that BEREC's draft "Report on a consistent approach to migration and copper switch-off"[26] published in December 2021 suggests that it may be helpful in certain circumstances for the NRA to set rules on migration costs (for instance, that the SMP operator covers some migration costs). However, in many of the 16 countries reported on, it was determined that there was no need for the NRA to set further rules on the migration costs.[27] Having considered the Respondents' inputs and BEREC's draft report, ComReg does not believe that it would be appropriate or necessary, having regard to the proposed Framework, to impose requirements on Eircom as regards the recovery of wholesale migration costs. While there may be a cost of migrations for operators, this is a consequence of an evolution of technology that will deliver benefits to the operators in the long term. Migration to FTTH will result in a faster, more reliable service that will enable operators to gain increased revenues through advanced services. In addition, there will be reduced operational costs on RSPs as less end-users will be contacting call centres with fault scenarios in comparison to copper-based services.

2.20   Several Respondents suggested having a forum to discuss matters related to the Migration from Legacy Infrastructure including conditions, pricing and operational matters. They suggested that following such discussions at a forum, industry could agree on proposals which they termed "voluntary commitments". The Respondents suggested that these "voluntary commitments" could be presented by Eircom to ComReg and made binding in accordance with Article 79 of the Code.

2.21   Article 79 is concerned with an SMP operator offering commitments susceptible to justify the withdrawing or amendments of certain obligations imposed on the SMP operator. It does not appear to ComReg that Article 79 would allow ComReg making binding proposals agreed between operators, even where such an approach was acceptable as a matter of principle. In any event, ComReg notes that at this time, pending transposition, ComReg does not have the power to make voluntary commitments binding.

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[26] Draft Report on consistent approach to migration and copper switch-off, BEREC Document Reference BoR (21) 171, dated 9 December 2021, Section 3.6.

[27] E.g., in Slovenia, Estonia, Hungary, Portugal, Lithuania.

2.22   Having considered the Respondents' suggestion for a forum, ComReg does not propose to host such a forum at this point. The decision not to host a forum at this time does not preclude a new forum being established or an existing forum being used in the future, for instance in respect of certain operational matters related to the Migration from Legacy Infrastructure, once the applicable Framework has been decided upon. Attendees would have at that point the benefit of being aware of the proposed Framework within which Eircom will be expected to operate. Indeed, ComReg would welcome such a dialogue and believes that it could be useful for the purpose of discussions on matters such as solutions to reach all end-users in scope for migration and trial details.

2.3   Consultation Structure

2.23   This Consultation is structured as follows:

(a)   Chapter 3 discusses the principles governing the design of the Framework;

(b)   Chapter 4 describes the proposed Framework for Migration from Legacy Infrastructure to Modern Infrastructure;

(c)   Appendix 1 contains a Draft Decision Instrument; and

(d)   Appendix 2 summarises the questions posed in this Consultation.

2.24   This Consultation references previous publications by ComReg on this topic, in particular:

(a)   ComReg Call for Inputs 16/01, dated 6 January 2016;[28]

(b)   ComReg Information Notice 17/05, dated 19 January 2017;[29]

(c)   ComReg Information Notice 21/35, dated 9 April 2021;[30]

(d)   ComReg Information Notice 21/43, dated 4 May 2021;[31] and

(e)   The 2021 Call for Inputs.

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[28] "Transition from Eir's copper network: Proposed principles and notification procedures", Call for Inputs, ComReg 16/01, dated 6 January 2016.

[29] "Retirement of Legacy Networks and services (including correspondence between Eircom and ComReg)", Information Notice, Reference ComReg 17/05, 19 January 2017.

[30] ComReg - Eircom Correspondence on Copper Switch Off, Information Notice, ComReg 21/35, dated 9 April 2021.

[31] Consultation Process regarding the Transition from Regulated Copper Products and Services, Information Notice, ComReg 21/43, dated 4 May 2021.

3 Principles

3.1 Background

3.1   Eircom's proposal as set out in its White Paper envisages a three-stage approach where Stage 3 includes a tollgate on which "[the contract of] *end-users who have not acted will be terminated on the cessation date*".

3.2   Migration from Legacy Infrastructure to Modern Infrastructure will result in the withdrawal, switch-off and, ultimately, decommissioning of Legacy Infrastructure-based services. In considering the appropriate Framework, ComReg's objective is to create the conditions for a successful transition ensuring that migration does not adversely affect wholesale and retail competition and the interests of end-users while being mindful of not inhibiting the retirement of that network.

3.3   Under Article 81(2) of the Code, the NRA is required to ensure that the decommissioning or replacement process includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

3.4   Against this background, in ComReg's view, the Framework ought to be governed by the following general principles in order to ensure that migration to Modern Infrastructure may take place with no detrimental impact on competition and the position of Access Seekers relying on access to Eircom's network, or the rights of end-users:

(a)   *Wholesale Migration:* Migration from Legacy Infrastructure to Modern Infrastructure must be enabled at the wholesale level;

(b)   *Wholesale Replicability:* there must be in place services available to Access Seekers that are comparable to the legacy-based services in order that they are able to migrate their end-users from legacy-based services;

(c)   *Timeliness:* Migration should be permitted where suitable Modern Infrastructure is available and suitable alternative comparable access products are available to Access Seekers; and

(d)   *Transparency:* The rules and timelines for migration should be clear to all, including end-users.

3.5   These principles are considered in further detail below.

3.2 Wholesale Migration Principle

3.6   ComReg proposes that a key principle guiding the Framework is that Access Seekers are able to migrate their end-users from the existing Legacy Infrastructure to Modern Infrastructure with minimum disruption for the end-user and maximum certainty for Access Seekers (in relation to conditions, process, timelines and prices).

3.7   In order to achieve a smooth transition, ComReg considers that particular attention must be given to ensuring that appropriate processes, procedures and necessary information are made available by Eircom to Access Seekers in sufficient time ahead of the migration, such that, if necessary, the migration of large numbers of end-users (bulk migration) can be planned in advance and project managed by the Access Seekers concerned, ensuring that disruption and risk of service loss for end-users and Access Seekers is kept to a minimum. In general, the transition to these replacement wholesale inputs should be seamless and not involve unnecessary delay or disruption for Access Seekers and RSPs.

3.3 Wholesale Replicability Principle

3.8   ComReg sees as another key principle that Eircom should be required prior to withdrawing access to Legacy Infrastructure-based services to make available a suite of alternative access products to Access Seekers, comparable in terms both of quality and price, to the Legacy Infrastructure-based services (hereafter, Alternative Comparable Products, or '**ACPs**'). ComReg proposes to define access of "comparable quality", as access with at least the same degree of functionality and service quality, and "comparable price" as a price which is not necessarily the same but where any differential or margin between prices for Legacy Infrastructure-based services and the price of ACPs provided over the Modern Infrastructure is fair and reasonable.

3.9   ComReg considers it is important that Access Seekers are able to switch to the replacement wholesale inputs without having to incur significant additional cost or make significant changes to, *inter alia*, their order handling; provisioning; and billing systems.

3.4 Timeliness Principle

Migration in stages to be implemented on a legacy exchange area basis
3.10   In its White Paper, Eircom proposes a three-staged approach to transition from copper-based services to fibre-based services, including a "*customer led migration*"

stage, an "*incentivised exchange area led migration*" and a final stage, "*completing the transition and copper switch-off*". ComReg agrees with the multi-phased approach. However, ComReg does not agree that the stages proposed by Eircom in its White Paper are appropriate to safeguard competition and the rights of end-users.

3.11   ComReg notes in this regard that Eircom's "*customer led migration*" stage is in effect a withdrawal of services provided over the copper network on a premises-by-premises basis as FTTH is rolled out, with a 28-day notice period. In ComReg's view, this is too granular and provides an insufficient notice period and will lead to regulatory uncertainty for Access Seekers, putting the existing level of competition at risk. Eircom's second stage – "*incentivised exchange area led migration*" – relies on price increase for copper services which ComReg does not believe is appropriate having regard to the applicable price controls.

3.12   Eircom's final stage posits that the completion of transition and copper switch-off would occur where 95% of all premises in an exchange area are capable of ordering fibre. At this point, Eircom proposes a minimum 12-month notice period for copper switch-off for premises passed by fibre and also commits to providing broadband speeds greater than 30Mbit/s to the remaining 5% of premises within three years of the end of the 12-month notice period. Here again, ComReg does not believe that this is sufficient and notes that under Article 81(2), the ACPs made available on the Modern Infrastructure must enable Access Seekers to reach the same end-users as the legacy infrastructure, so 100% of end-users with a connection to the copper network are in scope.

3.13   ComReg, however, agrees that a migration in stages, where incentives (albeit not price-based) are introduced to facilitate uptake of Modern Infrastructure access, is appropriate. ComReg also agrees that Eircom's underlying principle in its White Paper that transition will occur on a legacy exchange area by legacy exchange area basis, is appropriate. This will ensure that transition may commence as soon as a legacy exchange area has Modern Infrastructure available (within the conditions set out under the Framework) and not delayed until rollout is completed in full. ComReg defines the legacy exchange area by reference to each of Eircom's approximately 1,200 exchanges where its copper access network is terminated on a Main Distribution Frame ('**MDF**') or equivalent (including a Remote Subscriber Unit ('**RSU**')).

3.14   ComReg is also of the view, however, that readiness must also be readiness of Access Seekers and the availability of ACPs to them and that the conditions to be met for each phase must be clear and objective, and supported by clear and full information made available to Access Seekers.

3.15   Taking into account Eircom's White Paper, ComReg has set out a proposed Framework in Chapter 4 which outlines a three-phased approach and the associated notice periods and conditions assigned to each one.

Modern Infrastructure

3.16   In terms of determining whether access to Modern Infrastructure is available and migration accordingly may proceed (in the stages outlined in Chapter 4), ComReg proposes that Modern Infrastructure is defined as consisting of:

(a)   Eircom's modern infrastructure, which includes Fibre to the Home ('**FTTH**') and other alternative modern technology used by Eircom (if applicable); and

(b)   The National Broadband Ireland ('**NBI**') FTTH network.

3.17   NBI, a wholesale-only operator, has a minimum 25-year contact with the State to deliver high speed broadband services in those areas of Ireland where Eircom and other operators have no plans to invest in fixed Modern Infrastructure and which comprise of approximately 554,000 premises. Once a premises is passed by its network, NBI can connect a premises and provide the end-user with a fibre-based service, at a standard connection charge. The Department of the Environment, Climate and Communications ('**DECC**') manages the compliance of its contract with NBI in order to safeguard competition and the rights of end-users. ComReg proposes for the purpose of the proposed Framework to consider that NBI's FTTH network constitutes Modern Infrastructure.

3.18   Taking into account availability of NBI's network is consistent with Eircom's proposed approach in its White Paper, including its proposal that the trigger for the first stage of the transition process takes account of the premises passed by NBI. Eircom's White Paper also proposed that the final stage of the transition to fibre commence where 95% of premises have fibre available, be it from Eircom or NBI. While ComReg does not believe that it is appropriate that Eircom's access obligations may be withdrawn simply on the basis that another network is available, ComReg sees that the position of NBI is different as its network is to be rolled out in areas where no commercial operator (including Eircom) has plans to roll an FTTH network and NBI has committed to make available on a transparent and non-discriminatory basis a suite of FTTH-based wholesale access products.

3.19   In practical terms, this means that availability of Modern Infrastructure in a legacy exchange area will be defined by reference to the extent to which ACPs are available from Eircom in any given legacy exchange area and/or by reference to NBI's presence – whether all or some premises in a given legacy exchange are passed by NBI's FTTH network. For the avoidance of doubt, it is not proposed that Eircom could be required to develop ACP(s) on other FTTH networks.

3.20   ComReg also accepts that there may be instances where not all premises in scope have access to Modern Infrastructure but that it would not be appropriate to delay starting transition. Such instances include the cases where the premises with no access are derelict premises, for example, but may also include premises which are passed by an alternative FTTH network. In such cases, ComReg proposes that Eircom may request approval to ComReg to proceed with transition in respect of the legacy exchange area concerned. This is considered as part of Chapter 4.

3.21   As alternatives to Eircom's existing regulated access products ('**RAPs**'), ACPs will themselves be RAPs and subject to all applicable product development, notification and publication requirements. They likely will include existing RAPs, such as Eircom's FTTH service, and new RAPs (including product/process enhancement to an existing RAP).

3.5   Transparency: Access Seeker and End-user Communications

3.22   In order that competition is safeguarded and end-user rights protected, it is essential in ComReg's view that there is a clear understanding on the part of Access Seekers as to what Eircom's plans for transition are on a legacy exchange by legacy exchange basis with sufficient notice that they themselves can plan accordingly and communicate appropriately with their customers.

3.23   Timely communication of information to Access Seekers and affected end-users will be key to a successful transition to Modern Infrastructure. Eircom proposes in its White Paper that during its proposed first stage (Consumer led migration), that it would communicate directly with all end-users. This would include marketing collateral outlining the benefits of FTTH and provide clear information on the transition to Modern Infrastructure's associated timelines. Eircom envisages further communication in Stage 3 (Completing the transition and Copper Switch-off phase) giving a 12-month notice to end-users of copper switch-off, with further notifications three months and one month before the copper switch-off deadline.

3.24   ComReg, however, does not believe that communications by Eircom to end-users who are not its retail customers is appropriate. Competition will be better

safeguarded and the rights of end-users protected where end-users are contacted by their retail providers and retail providers are in charge of communication with their own customers. ComReg proposes accordingly to set a rule as part of the transition Framework that Eircom may not contact directly end-users who are not its direct customers (customers of Eir Retail) and that all required communications are to be undertaken by the end-users' own RSP. In Chapter 4 ComReg details proposed requirements to be met by Eircom in terms of the information that Eircom must provide to all Access Seekers, and the associated timelines, so that RSPs are in the position to inform their customers fully throughout the copper switch-off process and have sufficient time to make informed decisions on how to act in advance of switch-off of legacy-based services.

3.25   For the avoidance of doubt, a prohibition on direct communications by Eircom to end-users who are not its retail customers would not prevent Eircom from engaging in general information campaigns to ensure the general public understand the concept and timing of the transition.

3.26   Figure 6 outlines a summary of the information which Eircom will be required to provide to ComReg and Access Seekers.

Figure 6: Summary of Information to be provided to ComReg and Access Seekers

Information provided by Eircom	ComReg	Access Seekers	Timing
Switch-off Proposal	✓		As determined by Eircom
Switch-off Plan		✓	Eircom publish its Switch-off Plan, within one month, following ComReg's confirmation that Eircom's Switch-off Proposal fulfils the conditions of the proposed Framework
Trial Report (resolution of issues)	✓		End of trial stage (Enablement Phase)
Information to monitor Migration and Switch-off Phase	✓	✓	On a monthly basis, on the commencement of the Migration and Switch-off Phase
Information on premises not passed by Modern Infrastructure	✓		At least one month in advance of milestone 2
Exempt User Process	✓	✓	In advance of Milestone 2 (for first legacy exchange(s)) of the Migration and Switch-off Phase

Q.1   Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Q.2   Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

Q.3   Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

Chapter 4

4 Transition Framework

4.1 Design of the Framework

4.1   Under Article 81(2) of the Code, ComReg must ensure that the decommissioning or replacement process for legacy-based services and infrastructure includes a transparent timetable and conditions, including an appropriate notice period for transition, and establishes the availability of alternative products of at least comparable quality providing access to the upgraded network infrastructure substituting the replaced elements if necessary to safeguard competition and the rights of end-users.

4.2   In order to achieve the principles outlined in Chapters 3 above, ComReg proposes that a Framework is embodied in a decision setting out the steps, and associated conditions, to be complied with as part of the Migration from Legacy Infrastructure.

4.3   Building on from the responses to the 2021 Call for Inputs, ComReg proposes that the Framework will consist of an initiation step, where Eircom sets out for ComReg's review and approval its plans for Copper Switch-off ('**Eircom's Switch-off Proposal**'), followed by three phases: an Enablement Phase, a Migration and Switch-off Phase and a Decommission Phase as shown in Figure 7 below.

Figure 7: Proposed Framework
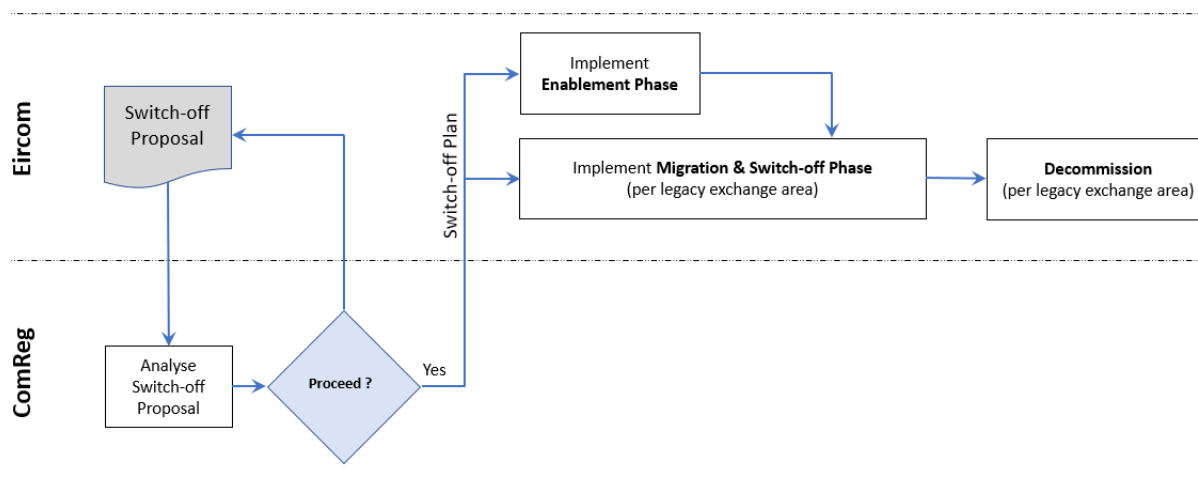
4.4   When ComReg has analysed Eircom's Switch-off Proposal and confirms it fulfils the Framework conditions arising from this Consultation, ComReg will approve it, at which point Eircom's Switch-off Proposal becomes Eircom's switch-off plan (the '**Switch-off Plan'**).

4.5   In contrast with the approach proposed in Eircom's White Paper, in addition to an Enablement phase, allowing for a trial, the transition phases for Migration and Switch-off are centred on the premise that copper switch off may only take place where 100% of in scope premises,[32] and not 95% as proposed by Eircom, are passed by Modern Infrastructure. ComReg proposes further that whether 100% of premises are passed with Modern Infrastructure (as defined) is for Eircom to establish, rather than ComReg as Eircom had proposed in the White Paper.

4.6   ComReg proposes that only when ComReg has approved Eircom's Switch-off Proposal may Eircom proceed to the Migration and Switch-off Phase. ComReg proposes that Eircom's Switch-off Proposal provides an overall view of how it proposes to proceed with transition to Modern Infrastructure throughout the State and over which timeframe, and the means by which Access Seekers will be able to reach existing end-users, namely the ACPs that Eircom proposes will be available.

4.7   ComReg further proposes that for the purpose of ascertaining the percentage of premises passed by Modern Infrastructure, insofar as Eircom's Modern Infrastructure is concerned, a premises is considered passed when an Access Seeker is capable of ordering an ACP and having the ACP installed at the premises within 15 working days (excluding any end-user delay time) on receipt of an ACP order.

Implementation phases

4.8   Once ComReg has approved Eircom's Switch-off Proposal, Eircom may then proceed with its implementation. ComReg proposes that this includes an Enablement Phase during which any required ACPs will be developed and Access Seekers given the opportunity to trial them, and understand how transition to new ACPs will take place. It appears to ComReg that only with an Enablement Phase will an Access Seeker be able to plan for the transition of its end-users from the Legacy Infrastructure, and obtain the information that it requires on how the transition will take place to new ACPs and the proposed migration processes. A successful trial on the end-to-end migration process from Legacy Infrastructure will provide both Eircom and Access Seekers with the evidence that all new ACPs and processes are proven before incorporating them in the Migration and Switch-off Phase.

4.9   The Migration and Switch-off Phase would commence (on a legacy exchange by legacy exchange basis) when ComReg has analysed Eircom's Switch-off Proposal and confirms it fulfils the Framework conditions arising from this Consultation. In order not to delay the commencement of the Migration and Switch-off Phase, ComReg proposes that the development by Eircom of all ACPs which are not

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[32] Premises which have ceased in-situ copper lines or active copper-based services.

currently available, may be done in parallel to the start of the Migration and Switch-off Phase. This in ComReg's view is consistent with the timeliness principle and will safeguard competition and ensure regulatory certainty for Access Seekers as to what ACPs are available for all scenarios, while also protecting the rights of end-users. Any material change to the Switch-off Plan, including for example as regards the ACPs to be offered on the Modern Infrastructure, shall require ComReg's prior approval. Within one month of receiving ComReg's approval, Eircom shall publish on its publicly available website, an updated Switch-off Plan showing the material change made.

4.10   The Migration and Switch-Off Phase will apply on a legacy exchange by legacy exchange basis and concludes with the withdrawal of access to all legacy access products. ComReg proposes further that this phase is used, and organised, so as to address the following key concerns:

(a)   That Access Seekers and end-users are encouraged to switch to Modern Infrastructure as soon as it is available. ComReg proposes that this is achieved through a **Stop Sell** Phase (at Eircom's option). The concept of a "Stop Sell" was introduced by Eircom in its White Paper. It means an arrangement whereby legacy-based services are no longer made available for new connections, changes to existing legacy-based services or changes of RSP where Modern Infrastructure is available. ComReg does not believe that Eircom's proposed premises-by-premises Stop Sell as FTTH is rolled out, subject to a 28-day notice period as premises are added to Eircom's APQ file, is a satisfactory approach being too granular, with an insufficient notice period and leading to regulatory uncertainty for Access Seekers. However, ComReg would see allowing Stop Sell on a legacy exchange by legacy exchange basis where at least 75% of the premises within the legacy exchange area are passed by Modern Infrastructure as an appropriate way of facilitating migration over time. This approach seeks to balance the interests of end-users while allowing Eircom to accelerate the Migration from Legacy Infrastructure in electing to implement a Stop Sell for legacy-based services. If Eircom chooses to implement a Stop Sell, it shall apply to all impacted consumers of legacy-based services (i.e. consumers, small businesses, large businesses and government markets) within a legacy exchange area. This approach is transparent and shall ensure that all end-users are treated in an equivalent manner and also that Access Seekers are in the same position;

(b)   That Access Seekers are given adequate notice that within a legacy exchange area, Modern Infrastructure rollout is complete and withdrawal of legacy-based services is forthcoming. ComReg proposes that this is achieved through

Eircom's issuing a number of notices to Access Seekers at certain key points of the process. This is further detailed in Section 4.4;

(c) That all end-users have access to a Modern Infrastructure-based service following transition. This means that rollout of Modern Infrastructure may only be considered to be complete when 100% of end-users have access to Modern Infrastructure, save that, in order to cater for situations where roll-out may truly be impossible, Eircom ought to be capable of completing the phase when less than 100% of premises have access to Modern Infrastructure, but only with ComReg's agreement;

(d) That the appropriate notice periods to be met by Eircom should recognise the position of certain end-users, hereafter referred to as '**exempt users**', including vulnerable end-users reliant on legacy-based services for medical/security needs and end-users providing critical infrastructure which rely on legacy-based services, who may require additional time before the switch-off of their legacy-based services occur; there should be a mechanism allowing such end-users to be identified and afforded additional time, in a transparent and predictable manner. ComReg proposes to define exempt users as those users who require more time to identify suitable replacement services (which could interwork with ACPs or be delivered using alternative technology (e.g. mobile[33])) and to require Access Seekers/RSPs to identify whom amongst their customers are exempt users; and

(e) That migration costs are borne by Eircom. As explained in Chapter 2, ComReg does not propose to amend at this stage applicable price controls, including in particular the price control applicable to connections to Eircom's FTTH network. ComReg notes, however, that additional costs may arise from transition for Access Seekers and end-users where additional works are required within the premises in order to allow connection to the Modern Infrastructure. ComReg proposes that such non-standard, premises-specific, costs are borne by Eircom where there is no choice for the Access Seeker and end-user to continue to purchase legacy-based services from Eircom. (This is considered in further detail in Section 4.6 below).

4.11 ComReg notes that in its White Paper, Eircom proposed that business to business and government markets should be subject to a different transition to residential and small\medium enterprise end-users and the Stop Sell "*applies to the consumer and small business mass market only*". However, while the business and government market are typically characterised by multi-year contracts for multi-geographic

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[33] For example, a monitored medical alert system using 4G.

locations throughout Ireland, a common framework will result in a more transparent and less confusing migration process and ensure that all end-users are treated equivalently and the position of Access Seekers the same. To the extent that some of these end-users require extended notice period, they can be accommodated as part of end-users providing critical infrastructure under a general common framework.

4.12   Finally, ComReg proposes that prior to Eircom's obligation(s) to provide Legacy Infrastructure-based services in a legacy exchange area be considered to be withdrawn, a Decommissioning Phase is completed. The purpose of the Decommissioning Phase is to ensure that the Legacy Infrastructure is put beyond use and not available for use by Eircom for any commercial purposes. ComReg notes in this respect that a fundamental premise of the Framework for migration from Legacy Infrastructure to Modern Infrastructure is that the legacy infrastructure is being retired.

4.13   The sections below set out ComReg's proposals for each of those steps and phases in detail.

4.2 Eircom's Switch-off Proposal

4.14   ComReg proposes that the starting point of the transition process is by way of Eircom's Switch-off Proposal providing ComReg with information on how Eircom plans to migrate from its legacy network to a modern network. ComReg proposes that Eircom is required to provide such information to all Access Seekers after ComReg is satisfied that Eircom's Switch-off Proposal fulfils the conditions of its Framework.

4.15   ComReg proposes to require Eircom's Switch-off Proposal to describe the entire suite of ACPs to be offered to Access Seekers and the anticipated timelines for the key milestones of the Migration from Legacy Infrastructure.

4.16   ComReg notes in this regard that in its White Paper, Eircom referred to a "*transition and copper switch-off*" stage which had a threshold of 95% of all premises in an exchange area capable of ordering fibre, with the final 5% being serviced by an unspecified service within 3 years of the final notice period. Under Article 81(2), the Modern Infrastructure shall enable Access Seekers to reach the same end-users as the legacy infrastructure, so 100% of end-users with a connection to the copper network are in scope. ComReg proposes that Eircom's Switch-off Proposal include details for ACPs (including any new ACPs required) covering all scenarios, including difficult-to-reach end-users. Eircom can draw on its extensive experience of fibre rollout to identify the likely difficult scenarios and propose the suitable solutions.

4.17   ComReg proposes accordingly, that Eircom's Switch-off Proposal addresses the following matters:

ACPs

4.18   The availability of ACPs will be critical to ensure that Access Seekers are not adversely impacted by copper switch-off. An ACP means a product that allows an Access Seeker to at least replicate its legacy offerings on Modern Infrastructure, in terms of functionality, performance, quality and value including price. ComReg proposes to require that Eircom's Switch-off Proposal includes on a market-by-market basis a detailed description of how access will be provided over Eircom's Modern Infrastructure by way of ACPs. This includes:

(a)   The mapping of regulated legacy-based services to existing and proposed ACPs;

(b)   A description of how all (100%) end-users, accessible via the Legacy Infrastructure, will be accessible from an ACP or fibre-based service from NBI;

(c)   A detailed description of the proposed ACPs on Eircom's modern infrastructure. A proposed ACP shall:

     (i)   have at least equivalent features and performance as the legacy product;

     (ii)   be delivered to the location of legacy-based service NTU, in the end-user's premises, at the FTTH standard connection charge;

     (iii)   have at least service equivalence in terms of service delivery, service assurance, service availability, Service Level Agreements ('**SLA**s') and Key Performance Indicators ('**KPI**s');

     (iv)   have at least service equivalence in terms of Quality of Service ('**QoS**'); and

     (v)   is of a comparable price to the legacy-based service it is mapped to.

(d)   A description of the single and bulk migrations (including rollback options) from each legacy-based service to the existing and proposed ACPs.

Timelines

4.19   In order that Access Seekers have a clear understanding of the transition process and how it may affect them over time, it is essential that clear timelines are set in respect of milestones for completion of the migration and switch-off process. ComReg proposes in particular that Eircom is required to include in Eircom's Switch-off Proposal:

(a)   The timeline for the completion of the migration and switch-off for all legacy exchanges, to include forecast (quarter and year) for the milestones as set out in Section 4.4;

(b)   The decommissioning method and timeline once the migration and switch-off of a legacy exchange area is completed;

Communications

4.20   How Eircom plans to communicate to Access Seekers is also an essential aspect of Eircom's Switch-off Proposal. ComReg proposes to require Eircom to provide the following:

(a)   Eircom's communication plan to inform Access Seekers and other industry stakeholders of the Migration from Legacy Infrastructure for the duration of the migration programme;

(b)   Eircom's communication plan to inform the general public of the Migration from Legacy Infrastructure for the duration of the migration programme;

(c)   The high-level process that Access Seekers shall follow to register an end-user as an exempt user;

(d)   All other information that Access Seekers will require in order to plan for and undertake their role in the proposed Migration from Legacy Infrastructure; and

(e)   Any other relevant information that will be of utility to ComReg in its analysis of Eircom's Switch-off Proposal.

4.21   ComReg proposes also that Eircom publish, on its publicly available website, Eircom's Switch-off Plan, within one month following ComReg's confirmation that Eircom's Switch-off Proposal fulfils the conditions of this proposed Framework. This is with the view to help ensure RSPs can effectively communicate with, and provide relevant information to, their end-users on the transition from Legacy Infrastructure, as necessary.

4.3 Enablement Phase

4.22   ComReg proposes that the Enablement Phase would commence when ComReg has analysed Eircom's Switch-off Proposal and confirms it fulfils the conditions of this proposed Framework.

4.23   The Enablement Phase will be used to ensure that the principles, outlined in Chapter 3 above, are adhered to and that Eircom provides Access Seekers with the opportunity to successfully migrate trial end-users to new ACPs[34] on Eircom's Modern Infrastructure.

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[34] New RAPs or product/process enhancements to existing RAPs.

4.24 The three stages of the Enablement Phase are depicted in Figure 8 and are the Development Stage, the Trial Stage and the Evaluate Trial Stage.

Figure 8: Enablement Phase

4.25 ComReg notes that Eircom's White Paper did not envisage the use of an Enablement phase or a trial phase. However, on the basis that all premises in a legacy exchange area must have access to Modern Infrastructure, it is essential that there is a clear understanding by Access Seekers of what ACPs will be available and how new ACP(s) will be delivered to end users' premises in practice. If new ACPs have been identified in Eircom's Switch-off Plan to meet this requirement, this phase will allow Eircom to develop those products, and test and trial them with Access Seekers. For example, Eircom may wish to develop FWA or an alternative product for difficult-to-reach premises.

4.26 Against this background, a trial is an important aspect of the Enablement Phase. A trial will allow Eircom and Access Seekers to develop and test their end-to-end processes for new ACPs developed to enable Access Seekers to reach all premises in scope. The trial phase should include a variety of scenarios which may be encountered which will reduce service interruption risks for Access Seekers and end-users during the migration.

Development Stage

4.27 In the Development Stage, Eircom will follow its existing product development process to develop the changes to existing RAPs and/or new RAPs, including IT and processes to support migrations.

Trial Stage

4.28 The Trial Stage will involve Eircom and Access Seekers, who consume RAPs, validating their IT systems and processes including the end-to-end migration of their trial end-users. The trial shall cover different geographic areas, end-user types and delivery of ACPs to trial premises.[35]

4.29 ComReg proposes that, in line with existing obligations in the 2018 WLA/WCA Decision,[36] the following obligations apply to the trial stage:

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[35] Including premises in Multi Dwelling Units ('**MDU**s').

[36] 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

(a)   That Eircom invite Access Seekers[37] to participate in the trial, by means of:

   (i)   direct written invitation; and

   (ii)   the publication of a general invitation on Eircom's publicly available wholesale website;

(b)   That Eircom provide a statement of the objectives of the trial and the requirements for participation to all Access Seekers in sufficient time to allow participation;

(c)   That the trial is for a reasonable period sufficient only to achieve the objectives of the trial;

(d)   That Eircom notify ComReg in writing at least one month in advance of the proposed trial being notified to Access Seekers, in accordance with paragraph 4.29(a)-(c) above, or as otherwise agreed with ComReg; and

(e)   That Eircom notify Access Seekers at least three months in advance of the commencement of the proposed trial, in accordance with paragraph 4.29(a)-(c) above, or as otherwise agreed with ComReg.

4.30   ComReg also proposes to require Eircom, as part of the Trial Stage, to maintain a log of issues encountered during the trial, and to provide ComReg, at the end of the Trial Stage, with a report on the resolution of the issues identified.

4.31   The objective is that at the end of the overall Enablement Phase, Eircom and Access Seekers will have validated their systems and processes with the end-to-end migration of their trial end-users, to the new ACP(s). Eircom can then notify the new ACP(s) to ComReg based on its obligations under the relevant market(s).

4.32   In order not to delay the commencement of the Migration and Switch-off Phase, ComReg's preliminary view is that the Enablement Phase shall commence after the ComReg has confirmed Eircom's Switch-off Proposal fulfils the conditions of this proposed Framework. The Enablement Phase shall run in parallel to the Migration and Switch-off Phase.

4.4 Migration and Switch-off Phase

4.33   The Migration and Switch-off Phase will ensure that the principles outlined in Chapter 3 above are adhered to and that the transition process is conducted

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Decision, ComReg Decision D10/18, ComReg Document 18/94, dated 19 November 2018 ('**2018 WLA/WCA Decision'**), Appendix 20 WLA Decision Instrument, Sections 10.14 – 10.15.

[37] Those undertakings who signed the relevant reference offer.

according to a transparent timetable and conditions, including an appropriate notice period for the transition.

4.34   ComReg proposes that the Migration and Switch-off Phase commence when ComReg has analysed Eircom's Switch-off Proposal and confirms it fulfils the conditions of this proposed Framework. The migration and switch-off of legacy-based services will occur on a legacy exchange by legacy exchange basis.

4.35   With the view to encouraging and managing migration, ComReg proposes further that this Phase may commence, at Eircom's discretion, with a "*Stop Sell",* where 75% of the premises within a legacy exchange area are passed by Modern Infrastructure. Stop Sell means an arrangement whereby end-users may not switch their legacy-based service to a different retailer (including Eir Retail) or make changes to their legacy-based service if they have access to fibre-based services. Similarly, for new customers (on Eircom's network) Stop Sell applies where fibre-based services are available to order at the customers' premises. Of course, all end-users remain free to choose products from other network operators or platforms as they see fit.

4.36   In the Migration and Switch-off Phase, ComReg proposes a four-milestone transition from legacy-based services, designed to provide Access Seekers with certainty on how the transition will take place and protect the rights of all end-users impacted by the transition. Figure 9 depicts the transition milestones and associated timelines, for a legacy exchange area.

Figure 9: Migration and Switch-off Phase (per legacy exchange area)
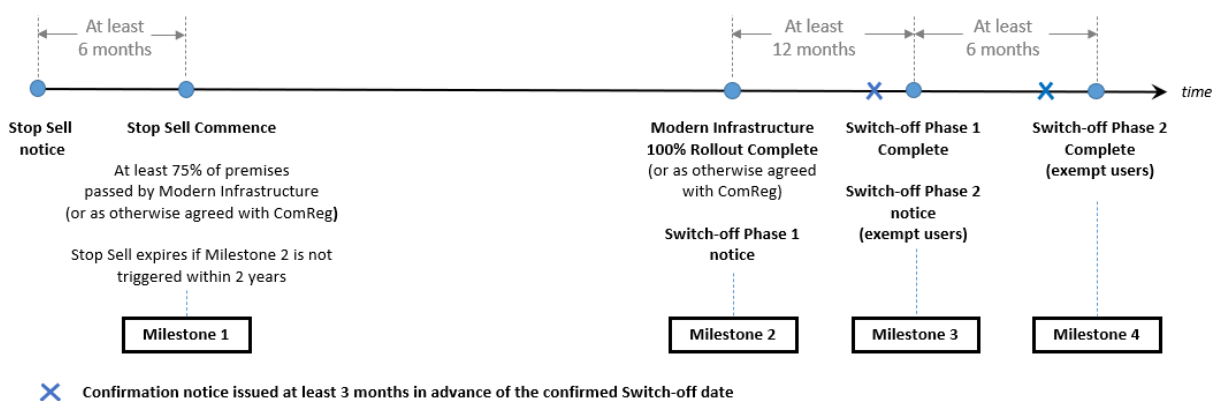
4.37   The proposed milestones are designed to ensure that sufficient notice is given to Access Seekers regarding the status of rollout of Modern Infrastructure and the timeline to switch-off Legacy Infrastructure within a legacy exchange area. Where Eircom chooses not to implement a Stop Sell, the intention to switch off Legacy Infrastructure is triggered with Milestone 2. End-users who do not migrate from their legacy-based services in a timely manner before Milestone 3, will be disconnected at Milestone 3, unless they register with their RSP as exempt users. Exempt users who choose not to migrate from their legacy-based services in a timely manner before Milestone 4, will be disconnected at Milestone 4. Milestone 4 builds on Eircom's proposal in the White Paper that exempt users are given extra time to identify and purchase suitable replacement services.

4.38   ComReg proposes that an additional six-month notice is given in respect of exempt users in addition to a proposed standard 12-months' notice. ComReg notes that if a Stop Sell is implemented by Eircom in a legacy exchange area, a minimum of 24 months is required between the Stop Sell notification and copper switch-off (Milestone 4). This should be ample time to migrate business to business and government end-users in a legacy exchange area to Modern Infrastructure.

4.39   Eircom's White Paper highlights the importance of continued information across all stages of the transition to enable Access Seekers to communicate with their end-users. ComReg agrees and the Framework has been designed with clear milestones and notification timelines which are essential to give Access Seekers transparency and ensure a smooth transition to the Modern Infrastructure.

4.40   The key proposed conditions to be met in the Migration and Switch-off Phase are summarised in Figure 10 and set out in further details below.

Figure 10: Overview of key proposed conditions to be met in the Migration and Switch-off Phase

ComReg Proposed Framework			
Migration and Switch-off Phase (per legacy exchange area)	**Conditions to be met to trigger Milestone**	**Copper-based Product changes**	**Notes**
Milestone 1 *(If Stop Sell Implemented)*	At least 75% of premises in a legacy exchange area (or as otherwise agreed with ComReg) can order an alternative comparable product ('**ACP**') provided on Eircom's network - or fibre-based service from NBI; and At least 6-month notification prior to implementation. No change to copper service regulation where Modern Infrastructure is not available (i.e. end-user unable to order an ACP from Eircom - or fibre-based service from NBI).	Stop Sell applies to in-situ activation, new copper-based connections and changes to legacy-based service features or switching RSP for existing active copper-based services where Modern Infrastructure is available. Stop Sell expires if Milestone 2 is not triggered within 2 years.	For premises impacted by the Stop Sell and with ceased in-situ or active copper-based services, non-standard connection costs borne by Eircom if it cannot deliver an ACP at the FTTH standard connection charge (i.e. no additional cost for ACP delivered to the location of the legacy Network Termination Unit ('**NTU**')).
Milestone 2	100% of premises in a legacy exchange area (or as otherwise agreed with ComReg) can order an ACP provided on Eircom's network - or fibre-based service from NBI; Access Seekers can register an end-user as an exempt user; Access Seekers receive at least 12-month notification prior to Copper Switch-off Phase 1;	Copper service regulation continues to apply for maintenance of legacy-based services.	For premises with ceased in-situ or active copper-based services, non-standard connection costs borne by Eircom if it cannot deliver an ACP at the FTTH standard connection charge (i.e. no additional cost for ACP delivered to the location of the legacy NTU).
Milestone 3	At least 3-month prior notification confirming actual Copper Switch-off Phase 1 (Milestone 3) date; Access Seekers receive at least 6-month notification prior to Copper Switch-off Phase 2.	Switch-off of legacy-based services for non-exempt end-users; and Copper service regulation continues to apply for maintenance of copper-based services to exempt end-users.	
Milestone 4	At least 3-month prior notification confirming actual Copper Switch-off Phase 2 (Milestone 4) date;	Switch-off of legacy-based services for exempt end-users	

Milestone 1

4.41   Milestone 1 marks Stop Sell Commence and only applies if Eircom chooses to implement a Stop Sell of legacy-based services. ComReg proposes that the following conditions are attached to Milestone 1 in order to ensure that Access Seekers are given sufficient notice of the commencement of the Stop Sell at a legacy exchange and that there is regulatory certainty as regards potential premises in scope.

4.42   Eircom may trigger Milestone 1 when:

(a)   The Modern Infrastructure is available at a minimum of 75% of premises in the legacy exchange area (or as otherwise agreed with ComReg); and

(b)   Eircom has given Access Seekers notice of the date for Milestone 1 at least six months in advance.

4.43   For the remaining 25% (or less) premises where Modern Infrastructure is not available at Milestone 1, Stop Sell may not commence until after a 28 days' advance notice has been published that the premises are passed by Modern Infrastructure.

4.44   ComReg proposes also to place a limit of two years on the Stop Sell period in a particular legacy exchange area. This means that if after two years Eircom does not progress to Milestone 2, legacy-based services may be ordered to any premises in the legacy exchange area.

Milestone 2

4.45   Eircom may trigger Milestone 2 when it has reached the stage where the process for withdrawal of legacy-based services in a particular legacy exchange area (at Milestones 3 and 4) may commence. At Milestone 2 Access Seekers are given notice that Modern Infrastructure rollout is complete for the legacy exchange area concerned. In receiving this information, Access Seekers can determine the end-users of the legacy exchange who have not transitioned to the Modern Infrastructure noting that end-users are at risk of being disconnected from their copper-based service if they fail to act in the final periods of the Migration and Switch-off Phase. Milestone 2 (Switch Off Phase 1 notice) is accordingly required to ensure that Access Seekers are aware of the commencement of legacy exchange area led migration and the forecast date of the planned Switch-off Phase 1.

4.46   Milestone 2 may be triggered when:

(a)   100% of the premises, with ceased in-situ copper line or active copper-based service, in a legacy exchange area (or as otherwise agreed with ComReg) can order an ACP or fibre-based service from NBI;

(b)   A process is in place which allows Access Seekers to register an end-user as an exempt user; and

(c)   Eircom has given, and published on its publicly available wholesale website, at least 12 months' advance notice of the forecast date that it plans to switch-off legacy-based services for non-exempt users.

4.47   ComReg proposes that Eircom may be allowed to move to Milestone 2 where not 100% of premises are covered where only a small number of premises remain unpassed by Modern Infrastructure and reasonable grounds are provided to

ComReg as to why that is so. Reasonable grounds may for instance include that the premises concerned are derelict; they may also include that the premises concerned are passed by an alternative commercial FTTH provider offering wholesale access. ComReg proposes that in allowing Eircom to proceed to Milestone 2 in such circumstances, that ComReg may attach conditions to its approval designed in particular to ensure that in scope premises are not left without service where service is requested. For instance, in respect of premises excluded on the basis that they are passed by an alternative FTTH network on which wholesale access is offered, that were the wholesaler provider to decline to connect the premises, or decline to connect at a cost of less than or equal to that which would accrue to the Access Seeker for the connection of an ACP by Eircom, that then Eircom would be required to connect the premises by means of an ACP, before the copper switch-off date.

4.48   ComReg proposes that where Eircom wishes to proceed to Milestone 2 where less than 100% of in scope premises in a legacy exchange area are passed by Modern Infrastructure, that Eircom provides ComReg, at least one month in advance of Milestone 2, with a report containing:

(a)   the Eircodes of the premises concerned;

(b)   the Address Reference Database ('**ARD**') IDs of the premises;

(c)   the category of reasons why Modern Infrastructure is not available (per premises), including the identity of the network operator offering wholesale access on an FTTH network passing the premises, where applicable;

(d)   legacy-based service status (no existing copper connection, ceased in situ copper line, active legacy-based service) and type (if active); and

(e)   the identity of the Access Seeker where the legacy-based service status is active.

4.49   Eircom can commence the Migration and Switch-off Phase by offering existing ACPs to Access Seekers to enable end-users to migrate from their legacy-based services. However, where new ACPs are required to enable certain end-users to migrate from their legacy-based services, these new ACPs must be available to order, at a legacy exchange area, before Milestone 2 can be triggered.

4.50   By Milestone 2 Access Seekers will have been fully informed by Eircom of the process to allow them to register an end-user as an exempt user. ComReg proposes that the registration process, for exempt users, closes one week before the Switch-off Phase 1 Complete (Milestone 3), or as otherwise agreed with ComReg.

Milestones 3 and 4

4.51   A confirmation notice is necessary to ensure Access Seekers are informed of the actual date for the Switch-off Phase 1. ComReg proposes that Eircom publish the confirmation notice at least three months before Switch-off Phase 1 (Milestone 3). Milestone 3 (Switch-off Phase 2 notice) is required to ensure that exempt users receive at least six months' notice of the switch-off of their legacy-based services. This milestone occurs no earlier than 12 months after the Switch-off Phase 1 notice.

4.52   The prior conditions that must be achieved, for Eircom to declare Milestone 3, are:

(a)   Milestone 2 is met;

(b)   Eircom publishes on its publicly available wholesale website a confirmation notice of the Switch-off Phase 1 date, at least three months in advance of the Switch-off Phase 1 Complete (Milestone 3);

(c)   Eircom switches off the legacy-based services of non-exempt users; and

(d)   Eircom publishes a Switch-Off (Phase 2) notice on its publicly available wholesale website at least six months in advance of the forecast date that it plans to switch-off the legacy-based services of exempt users.

4.53   Milestone 4 occurs when Eircom switches off the legacy-based services of exempt users and is necessary to ensure Eircom can switch-off its entire legacy infrastructure in a legacy exchange area.

4.54   A confirmation notice is also necessary to ensure Access Seekers are informed of the actual date for the Switch-off Phase 2. ComReg proposes that Eircom is required to publish the confirmation notice at least three months before Switch-off Phase 2 (Milestone 4).

4.55   The prior conditions that must be achieved, for Eircom to declare Milestone 4, are:

(a)   Eircom publishes on its publicly available wholesale website a confirmation notice of the Switch-off Phase 2 date at least three months in advance of the Switch-off Phase 2 Complete (Milestone 4); and

(b)   Eircom switches off the legacy-based services of exempt users.

4.56   In exceptional circumstances, where Eircom propose to amend the Switch-off Phase 1 date or Switch-off Phase 2 date, for a legacy exchange area, it must seek prior approval from ComReg.

4.5 Decommission Phase

4.57   ComReg's preliminary view is that a Decommission Phase is necessary to ensure that the Legacy Infrastructure is not available for use by Eircom for commercial purposes after ComReg withdraws the obligations to provide services on the Legacy Infrastructure, following the successful completion of Migration and Switch-off Phase, on a legacy exchange by legacy exchange basis. ComReg notes in this respect that a fundamental premise of the Framework for migration from legacy to Modern Infrastructure is that the Legacy Infrastructure is being retired.

4.58   The act of decommissioning will ensure the Legacy Infrastructure is put in a permanent beyond-use state. This can be achieved by the permanent disconnection of the active equipment from the legacy access cables. Hence, the removal of legacy access cables from ducts/poles is not required in the decommission of Legacy Infrastructure.

4.59   Following the decommissioning of a legacy exchange area, ComReg will withdraw the obligations to provide and maintain services on the legacy infrastructure for that legacy exchange area, after having ascertained that Eircom has complied with such conditions as have been set down by ComReg in the Framework. Eircom shall provide a Decommission Notice to ComReg within one month of a legacy exchange being decommissioned.

4.60   Eircom's White Paper proposed that the full list of copper access regulatory requirements be lifted when 95% of premises in a legacy exchange area can order fibre. ComReg disagrees. ComReg does not believe that it would be appropriate to remove obligations on the part of Eircom in respect of premises not yet passed by Modern Infrastructure and sees that Eircom is required to provide service assurance for existing copper-based services in a legacy exchange area until the end of the Milestones 3 and 4 for non-exempt and exempt users respectively. The full list of copper access regulatory requirements for a legacy exchange area will be lifted when Eircom confirm decommissioning of the legacy exchange area.

4.6 Protecting end-users and Access Seekers throughout the Migration process

4.61   In order to avoid that Access Seekers and end-users are left with no access following transition through no fault of their own, ComReg is of the preliminary view that two additional conditions should be set as part of the Framework, in respect of premises passed which may not be connected, and in respect of non-standard, premises-specific, connection costs.

Premises passed may not be connected

4.62   ComReg would see it as essential that in the event that Eircom publishes that a premises is passed by Modern Infrastructure, but subsequently the premises cannot be served by the Modern Infrastructure, that Eircom continue to provide a legacy-based service at that premises until such time as the Modern Infrastructure becomes accessible, noting that a Stop Sell arrangement never applies to a premises with no access to the Modern Infrastructure. Such a rule is in ComReg's view necessary to protect the interests of end-users and avoid the situation where an end-user who moves into a premises with access to the existing legacy infrastructure, may not have access to a telecommunication service if access to the Modern Infrastructure was not actually available.

4.63   An end-user shall be able to request changes to their existing legacy-based service or a new legacy-based service where:

(a)   Eircom was unable to deliver an ACP within 15 working days (excluding any end-user delay time) on receipt of an ACP order; or,

(b)   Access to the NBI FTTH network was unavailable.

4.64   Where an in scope premises,[38] passed by Modern Infrastructure, is subsequently unable to get connected to the Modern Infrastructure, ComReg proposes that, in such circumstances, Eircom is required to implement a process to allow the Access Seeker to order a legacy-based service or request changes to an existing legacy-based service, at that premises, and remove the premises from the Modern Infrastructure rollout plan. Where the Access Seeker requests a legacy-based service, ComReg proposes further that the temporary legacy-based service ('**TLS**') is delivered no later than 10 working days (excluding any end-user delay time) from receipt of the TLS order. ComReg also proposes that Eircom is required to ensure the issue(s) is resolved before the premises is reconfirmed as passed by the Modern Infrastructure and updated on Eircom's Modern Infrastructure rollout plan, and to notify the relevant Access Seeker to initiate an order for the migration from the TLS to the Modern Infrastructure once the premises is reconfirmed as passed by the Modern Infrastructure.

Non-standard, premises-specific, connection costs

4.65   When a FTTH service is being delivered to a premises, there is sometimes work that needs to be completed within private property or the curtilage of the premises. This work can involve tree-trimming, upgrading of ducts and clearance of blockages etc. Currently, the end-user may be responsible for these costs that fall within private property or the curtilage of their property when Eircom provides a FTTH service at

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[38] With a ceased in-situ copper line or active copper service.

an end-user's premises. An issue on private property or at an end-user's premises may be resolved by the end-user directly (by engaging its own contractor) or by Eircom's contractor on behalf of the Access Seeker/end-user.
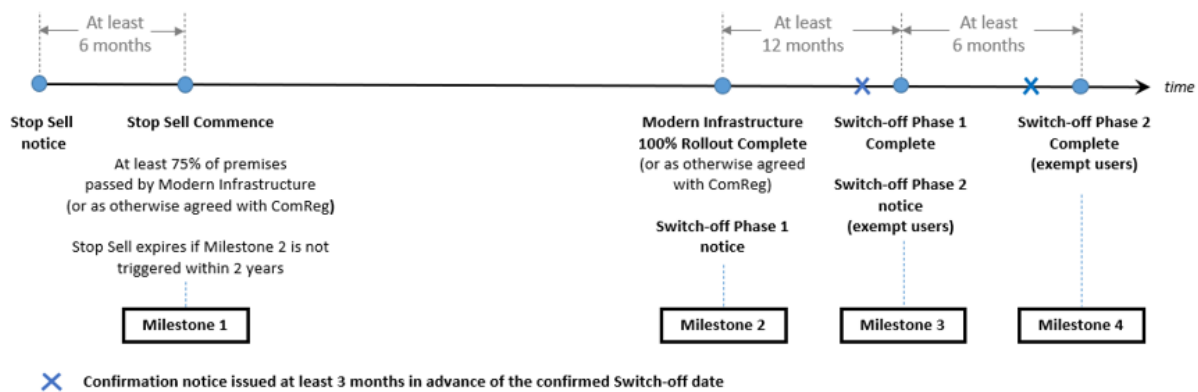
4.66 Copper Switch-off means that such costs may arise in order to connect a premises to Modern Infrastructure where the premises has legacy-based services available and where given the choice, an end-user may prefer retaining his or her legacy-based service rather than incur those costs. Against this background ComReg proposes that such costs are to be borne by Eircom from the time that the end-user may no longer purchase a legacy-based service. This will be the case where a Stop Sell applies in respect of the premises concerned and in all cases, where Milestone 2 has been reached/triggered.

4.67 ComReg proposes also, however, that where additional works are required to be completed within the curtilage of the end-user's property, Eircom may, instead of connecting the premise to its FTTH network, offer a suitable ACP connection (e.g. FWA, FTTH with G.fast) at the FTTH standard connection charge.

4.68 The benefits of this approach are:

(a) Non-standard connection costs may act as a barrier to the take-up of FTTH, and removing this barrier, at the point of legacy exchange area led migration, would address this;

(b) It provides end-users with a comparable (or better) service than they currently enjoy;

(c) It incentivises Eircom to minimise the Stop Sell period; and

(d) It balances the burden of the non-standard connection costs, to be borne by Eircom, with the benefits that Eircom will obtain in decommissioning its copper network.[39]

4.69 ComReg's proposals are summarised in Figure 11 and in Figure 12.

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[39] Given that the coverage thresholds of 75% and 100% include premises passed by NBI, Eircom will avoid incurring any costs in providing FTTH to those premises while gaining all the benefits from copper decommissioning.

Figure 11: Non-standard connection costs where Stop Sell is implemented

Description	NTU fitted in End-User's Premises	Non-Standard Connection Costs (work carried out on private property or end-user premises, impacted by the Stop Sell)	
		Before Stop Sell	**After Stop Sell (Milestone 1)**
Premises not connected to the copper network	No	Applicable	Applicable
Premises with no active copper service (ceased in-situ lines)	Yes	Applicable	Non-standard connection costs borne by Eircom if it cannot deliver an ACP at the FTTH standard connection charge. No additional cost for ACP delivered to the location of the legacy NTU.
Premises with active copper service	Yes	Applicable	

At least 6 months

At least 12 months

At least 6 months

time

Stop Sell notice

Stop Sell Commence

At least 75% of premises passed by Modern Infrastructure (or as otherwise agreed with ComReg)

Stop Sell expires if Milestone 2 is not triggered within 2 years

Modern Infrastructure 100% Rollout Complete (or as otherwise agreed with ComReg)

Switch-off Phase 1 notice

Switch-off Phase 1 Complete

Switch-off Phase 2 notice (exempt users)

Switch-off Phase 2 Complete (exempt users)

Milestone 1

Milestone 2

Milestone 3

Milestone 4

✕ Confirmation notice issued at least 3 months in advance of the confirmed Switch-off date

Figure 12: Non-standard connection costs where Stop Sell is not implemented

Description	NTU fitted in End-User's Premises	Non-Standard Connection Costs (work carried out on private property or end-user premises)	
		Before Switch-off Phase 1 Notice (Milestone 2)	After Switch-off Phase 1 Notice (Milestone 2)
Premises not connected to the copper network	No	Applicable	Applicable
Premises with no active copper service	Yes	Applicable	Non-standard connection costs borne by Eircom if it cannot deliver an ACP at the FTTH standard connection charge. No additional cost, to end-user or RSP, for ACP delivered to the location of the legacy NTU.
Premises with active copper service	Yes	Applicable	
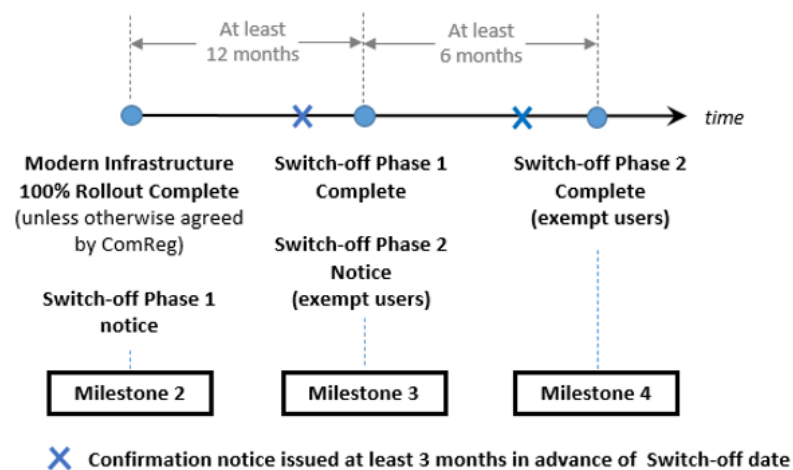
4.7 Monitoring the Migration from Legacy Infrastructure

4.70   In order that both Access Seekers and ComReg have the necessary information to monitor the progress of key milestones of the Migration and Switch-off Phase, ComReg proposes that on the commencement of the Migration and Switch-off Phase, Eircom is required, on a monthly basis, to publish the following information until all legacy exchanges in Eircom's Switch-off Plan have reached the Decommissioning date:

(a)   Exchange (Legacy Infrastructure) name;

(b)   Exchange (Legacy Infrastructure) code;

(c)   Stop Sell notice date; [40]

(d)   Number of premises in scope[41] in the legacy exchange area;

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[40] Where Eircom implements Stop Sell.

[41] Premises with ceased in-situ copper line or active copper-based service.

(e)   Number of premises in legacy exchange area passed with Modern Infrastructure at Stop Sell notice date;[42]

(f)   Percentage of premises in legacy exchange area passed with Modern Infrastructure at Stop Sell notice date [paragraph 4.70 (e)/(d)];

(g)   Stop Sell date (Milestone 1); [43]

(h)   Number of premises in legacy exchange area passed with Modern Infrastructure at Stop Sell date; [44]

(i)   Percentage of premises in legacy exchange area passed with Modern Infrastructure at Stop Sell date [paragraph 4.70 (h)/(d)];

(j)   Number of premises in legacy exchange area passed with Modern Infrastructure;

(k)   Percentage of premises passed with Modern Infrastructure [paragraph 4.70 (j)/(d)];

(l)   Number of premises with active legacy-based services;

(m)   Percentage of premises with active legacy copper-based services [paragraph 4.70 (l)/(d)];

(n)   Number of premises with TLSs;

(o)   Number of exempt users registered;

(p)   Modern Infrastructure Rollout Complete date and Switch-off Phase 1 notice date (Milestone 2);

(q)   Switch-off Phase 1 forecast date;

(r)   Switch-off Phase 1 confirmation notice date;

(s)   Switch-off Phase 1 complete and Switch-off Phase 2 notice date (Milestone 3);

(t)   Switch-off Phase 2 forecast date;

(u)   Switch-off Phase 2 confirmation notice date;

(v)   Switch-off Phase 2 complete date (Milestone 4); and

(w)   Decommission date.

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[42] Where Eircom implements Stop Sell.

[43] Where Eircom implements Stop Sell.

[44] Where Eircom implements Stop Sell.

4.71 Each monthly report shall be archived and available for viewing by ComReg and Access Seekers on Eircom's wholesale website until 2 months after all legacy exchanges in Eircom's Switch-off Plan have reached the Decommissioning date.

4.72 The information published on foot of 4.70 and 4.71 will provide a reference for ComReg and Access Seekers with regard to the status of each legacy exchange in relation to the Framework for transition to the Modern Infrastructure, thereby improving the transparency of the process.

Q.4 Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

Q.5 Does ComReg's proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

Q.6 Do you agree with ComReg's preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Q.7 Do you agree with ComReg's proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Q.8 Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Q. 9 Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.

Chapter 5

5 Next Steps

5.1   The purpose of this Consultation is for ComReg to obtain views from a range of Industry, end-users and external stakeholders on the regulatory Framework to be established by ComReg and followed by Eircom, as SMP operator, when seeking to decommission (or replace with a new infrastructure) parts of a legacy network and the Migration from Legacy Infrastructure to Modern Infrastructure. ComReg will consider the feedback to this Consultation to inform the final Framework. ComReg plans to publish its final decision before the end of 2022.

5.2   ComReg would welcome evidence and views of interested parties on this Consultation and encourages all stakeholders to respond.

5.3   As ComReg plans to publish non-confidential versions of Respondents' submissions on its website, a Respondent should provide confidential and non-confidential versions of its submission.

5.4   ComReg welcomes all written responses from stakeholders by 5pm on 11 May 2022. It will make the task of analysing responses easier if comments reference the relevant question numbers from this document. In all cases, Respondents are requested to provide evidence in support of their views.

5.5   Responses must be submitted in written form (post or email) to the following address/email and clearly marked "Submissions to ComReg 22/13R":

Commission for Communications Regulation
(Wholesale Products)
One Dockland Central,
1 Guild St.,
North Dock,
Dublin 1.
D01 E4XO
Ireland

Email: products@comreg.ie

Appendix 1: DRAFT – Decision Instrument

1   STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1   This Decision Instrument is made by the Commission for Communications Regulation:

(i)   Pursuant to and having regard to sections 10 and 12 of the Communications Regulation Act 2002 and Regulation 16 of the Framework Regulations;

(ii)   [Pursuant to Article 81 of the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;]

(iii)   [Pursuant to section [x] of the [insert title of Irish legislation transposing the EECC];

(iv)   Pursuant to the analysis and conclusions set out in the following ComReg Decisions in which Eircom was designated as having SMP: in the markets for Wholesale Local Access and Wholesale Central Access (ComReg Decision D10/18[45] and ComReg Decision D11/18[46]), Fixed Access and Call Origination (ComReg Decision D05/15)[47] and Wholesale High Quality Access (ComReg Decision D03/20)[48];

(v)   Having, where applicable, pursuant to Section 13 of the Communications Regulation Act 2002, complied with Ministerial Policy Directions;

(vi)   Having regard to the analysis and reasons set out in ComReg Document No. [22/13R];

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[45]   Market Review Wholesale Local Access (WLA) provided at a Fixed Location Wholesale Central Access (WCA) provided at a Fixed Location for Mass Market Products, ComReg Document 18/94, Decision D10/18 as updated by the Mid-term Assessment, Regional Wholesale Central Access (WCA) Market, Re-application of geographic assessment criteria set out in ComReg Decision D10/18, ComReg Document 21/120, Decision D10/21, November 2021.

[46]   Pricing of wholesale broadband services, Wholesale Local Access (WLA) market and the Wholesale Central Access (WCA) markets, ComReg Document 18/95, Decision D11/18.

[47]   Market Review Wholesale Fixed Voice Call Origination and Transit Markets, ComReg Document 15/82, Decision D05/15, 24 July 2015, Appendix H Decision Instrument paragraph 7.5(ii).

[48]   Market Analysis – Wholesale High Quality Access at a Fixed Location, ComReg Document 20/06, Decision D03/20, 24 January 2020, Annex 8: Decision Instrument paragraphs 7.4(ii) and 14.5(ii).

(vii) Having consulted with, and taken into account the submissions received from, interested parties, pursuant to Regulations 12(3) of the Framework Regulations and Article 23 of the EECC;

(viii) Having notified the proposed final decision to the European Commission, BEREC and the national regulatory authorities of other EU Member States pursuant to Article 32 of the EECC and at the same time published the proposed final decision in accordance with Article 32 of the EECC by way of Information Notice [x/x];

(ix) Having regard to the analysis and reasons set out in ComReg Document [x/x] *[the final decision document to which the Decision Instrument is an annex];* and

(x) Having taken the utmost account of the comments received from the European Commission.

PART I – GENERAL PROVISIONS

2   DEFINITIONS

2.1   In this Decision Instrument, unless the context otherwise requires:

"Access" shall have the same meaning as under Regulation 2 of the Access Regulations;

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

"Access Seeker" means an Undertaking (or other authorised operator) that avails or intends to avail of RAPs required under either the FACO Decision Instrument, the WLA Decision Instrument, the WLA Instrument, the WCA Decision Instrument or the WHQA Decision Instrument;

"ACP" means alternative comparable product;

"APQ File" means Eircom's Advanced Prequalification File of all premises passed by Modern Infrastructure and may include where relevant information on premises passed by NBI's FTTH network;

"Authorisation Regulations" means the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011 (S.I. No. 335 of 2011);

"Communications Regulation Act 2002" means the Communications Regulation Act 2002 (No. 20 of 2002), as amended;

"ComReg" means the Commission for Communications Regulation, established under Section 6 of the Communications Regulation Act 2002;

"ComReg Decision D10/18" means ComReg Document No. 18/94, entitled "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;

"ComReg Decision D11/18" means ComReg Document No. 18/95, entitled "Pricing of wholesale broadband services, Wholesale Local Access (WLA) market and the Wholesale Central Access (WCA) markets, Response to Consultation Document 17/26 and Final Decision", dated 19 November 2018;

"ComReg Decision D05/15" means ComReg Document No. 15/82, entitled "Market Review – Wholesale Fixed Voice Call Origination and Transit Markets", dated 24 July 2015;

"ComReg Decision D03/20" means ComReg Document No. 20/06, entitled "Market Review – Wholesale High Quality Access at a Fixed Location" dated 24 January 2020;

"Decision Instrument" means this decision instrument which is made in accordance with the statutory powers and requirements set out in Section 1;

"Decommission" or "Decommissioning" means the act of ensuring the Legacy Infrastructure is put into a permanent beyond-use state;

"Decommission Notice" means the written notification which Eircom shall send to ComReg confirming a legacy exchange has been decommissioned, within one month of the legacy exchange being decommissioned;

"EECC" means the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code;

"Effective Date" means the date set out in Section 17.2 of this Decision Instrument;

"Eircom" means Eircom Limited a company incorporated in Jersey (Number 116389), registered as a Branch in Ireland (Number 907674), with an Irish

registered Branch Office at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, D24 HX03 and its subsidiaries and any related companies, and any Undertaking which it owns or controls, and any Undertaking which owns or controls Eircom Limited, and its successors and assigns. For the purpose of this Decision Instrument, the terms "subsidiary" and "related company" shall have the meaning ascribed to them in the Companies Act 2014, as may be amended from time to time;

"Eircom's Modern Infrastructure" means Eircom's FTTH and other Eircom alternative modern networks;

"End-User(s)" has the same meaning as under Regulation 2 of the Framework Regulations;

"Exempt User(s)" means vulnerable End-Users and End-Users providing critical infrastructure which rely on legacy-based services;

"FACO Decision Instrument" or "FACO DI" means the decision instrument found in Appendix H of ComReg Decision D05/15;

"Framework Regulations" means the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011);

"FTTH" means an access network architecture where fibre optic cable is used to connect the End User premises to the ODF in an Exchange;

"In Scope Premises" means premises which have ceased in-situ copper lines or active copper-based services;

"KPI(s)" means key performance indicators.

"Legacy Infrastructure" means Eircom's copper-based network;

"Legacy Exchange Area" means the geographic area served by a Legacy Infrastructure exchange;

"Modern Infrastructure" means Eircom's Modern Infrastructure and NBI's FTTH Network;

"NBI" means the Undertaking NBI Infrastructure Designated Activity Company, a company registered in Ireland with number 631656 whose registered office is at

3009, Lake Drive, Citywest Business Campus, Citywest, Dublin 24, D24H6RR, Ireland;

"NTU" means the legacy network termination unit;

"**ODF**" means optical distribution frame;

"Regulated Product or Service" or "RAP" means a product, service or associated facility which Eircom is required to provide under ComReg Decision D05/15, ComReg Decision D10/18 or ComReg Decision D03/20;

"Retail Service Provider" or "RSP" means the provider who sells a service to an End User;

"SLA" means service level agreement;

"Stop Sell" means cessation of any new provision of legacy-based services as well as a change of RSP or a change to an existing legacy-based service;

"Switch-off Plan" means Eircom's Switch-off Proposal for migration from the Legacy Infrastructure which has been approved by ComReg;

"Switch-off Proposal" means Eircom's proposal for migration from the Legacy Infrastructure which Eircom provides to ComReg for approval;

"TLS" means a temporary legacy-based service based on an existing RAP;

"Undertaking" has the same meaning as under Regulation 2 of the Framework Regulations;

"WCA Decision Instrument" or "WCA DI" means the decision instrument found in Appendix 21 of ComReg Decision D10/18;

"WLA Decision Instrument" or "WLA DI" means the decision instrument found in Appendix 20 of ComReg Decision D10/18; and

"WHQA Decision Instrument" or "WHQA DI" means the decision instrument found in Annex 8 of ComReg Decision D03/20.

3   SCOPE AND APPLICATION

3.1   This Decision Instrument shall apply to Eircom and its subsidiaries and any related companies, and any entity which it owns or controls, and any entity which owns or controls Eircom, and its successors and assigns, and the terms "subsidiary" and "related company" shall have the meaning ascribed to them in the Companies Act 2014.

3.2   This Decision Instrument sets out the Framework allowing for the withdrawal of Eircom's SMP obligations to provide access to products, services and facilities over its Legacy Infrastructure where Eircom decides to decommission or replace with Modern Infrastructure parts of the Legacy Infrastructure. To that end, this Decision Instrument requires Eircom to comply with the following requirements:

3.2.1   Requirements that Eircom designs and implements a Switch-off Plan approved by ComReg which includes a transparent timetable and conditions including appropriate notice periods and ensures that Access Seekers have access to the Modern Infrastructure in respect of all In Scope Premises.

3.2.2   Requirements to provide ComReg with certain information regarding Eircom's process for migration from the Legacy Infrastructure that is necessary for ComReg to determine whether the process meets the conditions set out in this Decision Instrument; and

3.2.3   Requirements relating to Eircom's obligation to comply with the conditions set out in this Decision Instrument when undertaking the process of migration from the Legacy Infrastructure.

PART II – FRAMEWORK

4   TRANSITION PHASES

4.1   Eircom may not proceed with the Migration and Switch-off process for the withdrawal of Access already granted by way of Regulated Access Products and Services and other facilities over its Legacy Infrastructure in accordance with applicable SMP Obligations, other than in accordance with a Switch-off Plan as further described in Section 7.

4.2   The Switch-off Plan shall organise the migration process from Legacy to Modern Infrastructure over the following three phases, subject to the conditions set out in the Decision Instrument:

Enablement

4.2.1   An Enablement Phase, where Eircom shall in accordance with the requirements of the FACO Decision Instrument, the WLA Decision Instrument, the WCA Decision Instrument and the WHQA Decision Instrument, as applicable, and the requirements set out in Section 8, develop, test and trial the new ACPs to be offered on Eircom's Modern Infrastructure, to the extent necessary.

Migration and Switch-off

4.2.2   A Migration and Switch-off Phase, during which Eircom proceeds, on a Legacy Exchange Area by Legacy Exchange Area basis, to withdraw Access for itself and Access Seekers to the Legacy Infrastructure, where Modern Infrastructure is available to In Scope Premises.

Decommission

4.2.3   A Decommissioning Phase ensuring that obligations are withdrawn only in circumstances where the Legacy Infrastructure has been put in a permanent beyond-use state.

5   ALTERNATIVE ACCESS

5.1   It shall be a condition of approval that the Switch-off Plan identifies for all In Scope Premises how Access will be provided to Access Seekers on the Modern Infrastructure substituting the Legacy Infrastructure.

5.2   Where Access is to be provided over Eircom's Modern Infrastructure, the Switch-off Plan shall include, for each RAP provided over Legacy Infrastructure, at least one ACP.

5.3   In order for a product to be an ACP, the product shall:

5.3.1   have at least equivalent features and performance as the legacy product which it is intended to replace;

5.3.2   be delivered to the location of the legacy service NTU, at the End-User's premises;

5.3.3   have at least service equivalence of the legacy product which it is intended to replace in terms of quality of service, the proposed service delivery, service assurance, service availability, SLAs and KPIs; and

5.3.4   is of a comparable price to the legacy product it is intended to replace.

5.4   An In Scope Premises shall be considered to be passed by Eircom's Modern Infrastructure where an Access Seeker is capable of ordering an ACP and having the ACP installed at the premises within 15 Working Days (excluding any End-User delay time) of receipt of the ACP order.

6   END-USER PREMISES-SPECIFIC COSTS

6.1   Where the delivery of an ACP at an In Scope Premises gives rise to Non-Standard Connection Costs relating to work carried out on private property, Eircom, if it wishes to withdraw access to legacy services at that premises, shall bear all such Non-Standard Connection Costs either from the time that Stop Sell has commenced following a Stop Sell Notice in respect of the Premises concerned (if Stop Sell applies) or from when a Switch-off (Phase 1) Notice has been published for all In Scope Premises in a Legacy Exchange Area.

PART III – MIGRATION FROM LEGACY TO MODERN INFRASTRUCTURE AND COPPER SWITCH-OFF

7   SWITCH-OFF PLAN

7.1   In the event that Eircom makes a decision to commence a migration from the Legacy Infrastructure, before any such commencement, Eircom shall provide in a timely manner formal written notification to ComReg of its plan (the "**Switch-off Proposal**").

7.2   Written notification for the purpose of Section 7.1 shall include the following information together with copy of all documents that Eircom relies on as part of its Switch-off Proposal and to fulfil the conditions set out in this Decision Instrument:

7.2.1   For each RAP offered on Legacy Infrastructure, the ACP to be offered on Eircom's Modern Infrastructure;

7.2.2   A detailed process document stating:

a)   the anticipated timeline for the key stages of the Migration from Legacy Infrastructure, including timelines for each of the phases such as design, testing, trial and implementation;

b)   the anticipated timeline for the completion of the Migration and Switch-off for all legacy exchanges, to include forecast dates (on a quarter and year basis) for the Milestones and Notices set out in Sections 9 and 10;

       c)   the decommissioning method and timeline after the Migration and Switch-off Phase of a Legacy Exchange Area is completed;

       d)   a detailed process for Access Seekers and RSPs to follow in order to register an End-User as an Exempt User; and

       e)   all other information that Access Seekers will require in order to plan for and undertake their role in the proposed Migration from Legacy Infrastructure.

    7.2.3   A communication plan to include the following:

       a)   Eircom's communication plan which shall be used to inform directly the Access Seekers and other industry stakeholders of the Migration from Legacy Infrastructure for the duration of the programme; and

       b)   Eircom's general information campaign which shall allow the general public to understand the concept and timing of the Migration from Legacy Infrastructure.

7.3   Eircom shall provide additional information to ComReg if requested, to enable ComReg to assess and approve the Switch-off Proposal.

7.4   Eircom shall submit the Switch-off Proposal to ComReg for assessment and approval by ComReg, at least three months before it proposes to publish the Switch-off Plan.

7.5   ComReg may require that Eircom amends the Switch-off Proposal in which case Eircom shall provide a new Switch-off Proposal (including a version showing changes made to the Switch-off Proposal) for assessment and approval by ComReg.

7.6   Within one month of the date of ComReg's written confirmation that the Switch-off Proposal meets all of the required conditions, Eircom shall publish its Switch-off Plan in the form of the final approved version of the Switch-off Proposal on its publicly available website.

7.7   Any material change to the Switch-off Plan, including for example as regards the ACPs to be offered on the Modern Infrastructure, shall require ComReg's prior approval. Within one month of receiving ComReg's approval, Eircom shall publish on its publicly available website, an updated Switch-off Plan showing the material change made.

8   ENABLEMENT PHASE

8.1   Upon publication of Eircom's Switch-off Plan, Eircom shall commence the Enablement Phase.

8.2   Eircom shall follow its existing product development processes as set out in section 8 of the WLA DI, section 8 of the WCA DI, section 8 of the FACO DI and section 15 of the WHQA DI to develop the changes to existing RAPs (if required) and/or new RAPs, including IT and processes required to support migrations.

8.3   Eircom shall carry out a trial which shall be designed and determined by Eircom but which, at a minimum, shall involve the following:

8.3.1   Eircom shall invite all Access Seekers and RSPs to participate in the trial, by means of:

a)   a direct written invitation issued to Access Seekers and RSPs that have signed the relevant reference offer provided by Eircom; and

b)   the publication of a general invitation on Eircom's publicly available website;

8.3.2   Eircom shall provide a statement of the objectives of the trial and the requirements for participation to all Access Seekers and RSPs in sufficient time to allow participation;

8.3.3   The trial must be for a reasonable period, sufficient to achieve the objectives of the trial;

8.3.4   Eircom shall notify ComReg in writing at least one month in advance of the proposed trial being notified to Access Seekers and RSPs in accordance with section 8.3.1 above, or as otherwise agreed with ComReg;

8.3.5   Eircom shall notify Access Seekers at least three months in advance of the commencement of the proposed trial, in accordance with section 8.3.1 above, or as otherwise agreed with ComReg;

8.3.6   As part of the trial, Eircom shall maintain a log of all of the issues encountered during the trial. At the end of the trial, Eircom shall provide ComReg with a report setting out each of the issues encountered and how each issue was resolved;

8.3.7   Eircom shall terminate a trial at least one month prior to the launch of the new or amended product, service or facility being trialled or as otherwise agreed with ComReg; and

8.3.8   At the end of the trial, Eircom shall notify any new ACP(s) to ComReg based on the relevant applicable obligations in the relevant market.

9   MIGRATION AND SWITCH-OFF PHASE

9.1   Eircom shall not proceed to the Migration and Switch-off Phase in respect of a Legacy Exchange Area until such time that:

9.1.1   Where Eircom has elected to implement Stop Sell in respect of that Legacy Exchange Area, that at least 75% (or as otherwise agreed with ComReg) of In Scope Premises are passed by Modern Infrastructure (**Milestone 1**); or

9.1.2   Where Eircom has elected not to implement Stop Sell in respect of that Legacy Exchange Area, that 100% of In Scope Premises are passed by Modern Infrastructure, subject to Section 9.2 (**Milestone 2**);

subject to the conditions set out in this Section 9.

9.2   Where less than 100% of In Scope Premises are passed by Modern Infrastructure, Eircom may, no later than one month in advance of the date Eircom intends to publish a Switch-off (Phase 1) Notice referred to in Sections 9.7 to 9.10, seek in writing ComReg's prior approval to proceed to Milestone 2 providing a report on a Legacy Exchange Area basis containing the following information:

9.2.1   the Eircodes of the In Scope Premises that are not passed by Modern Infrastructure;

9.2.2   the Address Reference Database ("**ARD**") IDs of the premises;

9.2.3   the reasons why Modern Infrastructure is not available (per premises), including the identity of the network operator offering wholesale access on an FTTH network passing the premises, where applicable;

9.2.4   the legacy service status (no existing copper connection, ceased in situ, active) and legacy service (if active); and

9.2.5   the identity of the RSP(s) where the legacy service status is active.

9.3   For the purpose of Section 9.2, ComReg may require any additional information that ComReg considers is necessary to its determining whether to allow Eircom to proceed to Milestone 2, and attach any conditions as it considers appropriate in all the circumstances to its approval, including for the avoidance of doubt a condition, where and if appropriate, that Section 9.15 applies.

Stop Sell

9.4   Upon Milestone 1 being reached in accordance with Section 9.1, Eircom may implement Stop Sell in respect of at least 75% of In Scope Premises within the Legacy Exchange Area marked on the APQ File as passed by Modern Infrastructure, subject to providing six months' notice to Access Seekers by way of publication of a Stop Sell Notice on its publicly available website.

9.5   In each Legacy Exchange Area where Stop Sell applies, Eircom shall continue to provide Access to Legacy Infrastructure to those In Scope Premises not passed by Modern Infrastructure on the day the Stop Sell Notice is published and may only implement Stop Sell in respect of those Premises on providing Access Seekers with 28 days' notice as these premises are passed by Modern Infrastructure and added to Eircom's APQ File.

9.6   A Stop Sell may only apply in respect of a Legacy Exchange Area for a maximum period of two years unless Milestone 2 is triggered in accordance with Section 9.7. Where Milestone 2 is not triggered within two years of Stop Sell commencement, Stop Sell shall lapse and Eircom shall provide Access to the Legacy Network in the Legacy Exchange Area in accordance with applicable SMP obligations.

Switch-off (Phase 1) Notices

9.7   Upon Milestone 2 being reached in accordance with Section 9.1.2 or Section 9.2, and a registration process allowing Access Seekers to register an End-User as an Exempt User is in place, Eircom may, save in respect of Exempt Users, withdraw access to Legacy Infrastructure in a Legacy Exchange Area subject to providing a minimum of 12 months' notice to Access Seekers in accordance with Section 9.8.

9.8   Eircom shall provide notice by publishing on its publicly available website a Switch-off (Phase 1) Notice, stating the forecast date on which Switch-off for End-Users (except for Exempt Users) is planned to take place at least 12 months in advance, and by confirming such date by publishing on its publicly available website a Switch-off (Phase 1) (Confirmation) Notice at least three months in advance of switch-off taking place.

9.9   Eircom shall not amend the date for switch-off set out in a Switch-off (Phase 1) (Confirmation) Notice without ComReg's prior approval.

9.10   Upon switch-off, Eircom shall publish on its publicly available website a Switch-off (Phase 1) Complete Notice confirming that all access to Legacy Infrastructure in the legacy exchange area concerned has been withdrawn save as regards Exempt Users.

Switch-off (Phase 2) Notices

9.11   On Switch-off having taken place for Users other than Exempt Users, Eircom may proceed with withdrawing access to Legacy Infrastructure for Exempt Users in a Legacy Exchange Area subject to having provided an additional six month notice to Access Seekers in accordance with Section 9.12.

9.12   Eircom shall provide notice by publishing on its publicly available website at least six months in advance, a Switch-off (Phase 2) Notice, stating the forecast date on which Switch-off for Exempt Users is planned to take place, and by confirming such date by publishing on its publicly available website a Switch-off (Phase 2) (Confirmation) Notice at least three months in advance of switch-off taking place.

9.13   Eircom shall not amend the date for switch-off set out in a Switch-off (Phase 2) (Confirmation) Notice without ComReg's prior approval.

9.14   Upon Switch-off, Eircom shall publish on its publicly available website a Switch-off (Phase 2) Complete Notice confirming that all Access to Legacy Infrastructure in the Legacy Exchange Area concerned has been withdrawn.

Safeguard

9.15   Save for those In Scope Premises the subject of an approval pursuant to Section 9.2, where Eircom finds that it cannot serve by an ACP an In Scope Premises within a Legacy Exchange Area in respect of which a Stop Sell applies or a Switch-off (Phase 1) Notice or a Switch-off (Phase 2) Notice as applicable has been published, Eircom shall provide the Access Seeker concerned with a TLS to that Premises no later than ten working days from receipt of the order for a TLS until such time that the premises can be connected to the Modern Infrastructure.

10   DECOMMISSIONING

10.1   Following publication of a Switch-off (Phase 2) Complete Notice in respect of a Legacy Exchange Area, Eircom shall not offer any services over the Legacy Infrastructure and shall promptly proceed to decommission the Legacy Infrastructure so that it is permanently put into a non-usable state in the Legacy Exchange Area.

10.2   Eircom shall provide a Decommission Notice to ComReg within one month of an exchange being Decommissioned.

PART IV – MONITORING AND WITHDRAWAL

11   MONITORING

11.1   Within one month of the commencement of the Migration and Switch-off Phase set out in Section 9 of this Decision Instrument, Eircom shall, on a monthly basis, publish information to ComReg and Access Seekers to ensure that industry and ComReg can monitor the progress of the Migration and Switch-off Phase.

11.2   Eircom shall publish the monthly report containing this information on its publicly available website and keep each such monthly report available for viewing on Eircom's publicly available website until at least two months after all exchanges listed in Eircom's Switch-off Plan have been Decommissioned.

11.3   Each monthly report shall include, for each legacy exchange referring to the name and code of that legacy exchange, the following information:

(a)   Whether Stop Sell applies: Y/N;

(b)   Stop Sell notice date if applicable;

(c)   Number of premises with a ceased in-situ copper line or active copper-based service in the Legacy Exchange Area;

(d)   Number of premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell notice date;

(e)   Percentage of premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell notice date;

(f)   Number of premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell date;

(g)   Percentage of premises in Legacy Exchange Area passed with Modern Infrastructure at Stop Sell date;

(h)   Number of premises in Legacy Exchange Area passed with Modern Infrastructure;

(i)   Percentage of premises passed with Modern Infrastructure;

(j)   Number of premises with active legacy-based services;

(k)   Percentage of premises with active legacy copper-based services;

(l)   Number of premises with TLSs;

(m)   Number of Exempt Users registered;

(n)   Stop Sell date (Milestone 1);

(o)   Modern Infrastructure Rollout Complete date and Switch-off Phase 1 notice date (Milestone 2);

(p)   Switch-off Phase 1 forecast date;

(q)   Switch-off Phase 1 confirmation notice date;

(r)   Switch-off Phase 1 complete and Switch-off Phase 2 notice date (Milestone 3);

(s)   Switch-off Phase 2 forecast date;

(t)   Switch-off Phase 2 confirmation notice date;

(u)   Switch-off Phase 2 complete date (Milestone 4); and

(v)   Decommission date.

12   WITHDRAWAL

12.1   On a Legacy Exchange Area basis, in the case of a Stop Sell, from the date Eircom commences Stop Sell in respect of the Legacy Exchange Area, the obligations in the FACO Decision Instrument, the WLA Decision Instrument, the WCA Decision Instrument and the WHQA Decision Instrument to provide new Access to Undertakings in that Legacy Exchange Area shall be withdrawn only for those premises with access to the Modern Infrastructure.

12.2   On a Legacy Exchange Area basis, from the date Eircom publishes a Switch-off (Phase 1) Notice in respect of the Legacy Exchange Area, the obligations in the FACO Decision Instrument, the WLA Decision Instrument, the WCA Decision Instrument and the WHQA Decision Instrument to provide new Access to Undertakings in that Legacy Exchange Area shall be withdrawn.

12.3   On a Legacy Exchange Area basis:

12.3.1 from the date when Eircom has issued a Switch-off (Phase 1) Complete Notice, Eircom shall be permitted not to meet requests for Access or provide services over Legacy Infrastructure in that Legacy Exchange Area, in respect of End-Users other than Exempt End-Users; and

12.3.2 from the date when Eircom has issued a Switch-off (Phase 2) Complete Notice Eircom shall be permitted not to meet requests for Access or provide services over Legacy Infrastructure in that Legacy Exchange Area.

12.4   On a Legacy Exchange Area basis, from the date Eircom publishes a Decommission Notice in respect of the exchange, the obligations in the FACO Decision Instrument, WLA Decision Instrument, WCA Decision Instrument and WHQA Decision Instrument to provide any Access to Undertakings in that Legacy Exchange Area shall be withdrawn.

PART V – OPERATION AND EFFECTIVE DATE

13   STATUTORY POWERS NOT AFFECTED

13.1   Nothing in this Decision Instrument and these Directions shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation in force prior to or after the Effective Date of this Decision Instrument.

14   MAINTENANCE OF OBLIGATIONS

14.1   Unless expressly stated otherwise in this Decision Instrument, all obligations and requirements contained in Decision Notices and Directions made by ComReg applying to Eircom and in force immediately prior to the Effective Date of this Decision Instrument, including all obligations specified in ComReg Decision D10/18, ComReg Decision D11/18; ComReg Decision D05/15 and ComReg Decision D03/20 continue in force and Eircom shall comply with same.

15   CONFLICT

15.1   For the avoidance of doubt, to the extent that there is any conflict between a ComReg Decision Instrument or ComReg document dated prior to the Effective Date and Eircom's obligations now set out herein, this Decision Instrument shall prevail.

16   SEVERANCE

16.1   If any Section(s), clause(s) or provision(s), or portion(s) of this Decision Instrument, is(are) found to be invalid or prohibited by the Constitution, by any other law or judged by a court to be unlawful, void or unenforceable, that(those) Section(s), clause(s) or provision(s), or portion(s) shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining Section(s),

clause(s) or provision(s), or portion(s) thereof, of this Decision Instrument, and shall not in any way affect the validity or enforcement of this Decision Instrument or other Decision Instruments.

17   PUBLICATION, NOTIFICATION AND EFFECTIVE DATE

17.1   This Decision Instrument shall be published on ComReg's website (www.comreg.ie) and notified to Eircom.

17.2   The Effective Date of this Decision Instrument shall be the date of its notification to Eircom.

17.3   This Decision Instrument shall remain in force until further notice by ComReg.

ROBERT MOURIK
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE […] DAY OF […] 202[X]

Appendix 2: Questions

Q.1   Do you agree with the proposed principles to govern the Framework? Are there any other principles in this respect that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Q.2   Do you agree to ComReg's approach to the definition of Modern Infrastructure? If not, what changes do you propose? Please set out clearly the reasons for your response and any supporting evidence.

Q.3   Do you agree with the principle that end-user communications rest solely with the RSP? Please set out clearly the reasons for your response and any supporting evidence.

Q.4   Do you agree with ComReg's preliminary views on the proposed Framework outlined in Sections 4.1 to 4.5 above? Please set out clearly the reasons for your response and any supporting evidence.

Q.5   Does ComReg's proposed Framework provide sufficient time for an Access Seeker to migrate its end-users from legacy-based services? Please set out clearly the reasons for your response and any supporting evidence.

Q.6   Do you agree with ComReg's preliminary views on premises passed, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Q.7   Do you agree with ComReg's proposal on non-standard connection costs, outlined in Section 4.6 above? Please set out clearly the reasons for your response and any supporting evidence.

Q.8   Do you have any other comments on these pricing principles or any other pricing principles that should be considered? Please set out clearly the reasons for your response and any supporting evidence.

Q. 9 Do you agree with ComReg's preliminary views on monitoring the Migration from Legacy Infrastructure outlined in section 4.7 above? Please set out clearly the reasons for your response and any supporting evidence.