



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Information Notice

Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers

Wholesale Fixed Access and Call Origination Broadcasting Transmission Services in Ireland

Publication and notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC), and Member State National Regulatory Authorities (NRAs) of draft measures under Article 32 of Directive 2018/1972

Information Notice

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Commission for Communications Regulation

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Additional Information

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1. This Information Notice concerns the Commission for Communications Regulation's ('**ComReg**') publication and parallel notification to relevant European authorities of its '**Draft Decision**' concerning its analysis of the Retail Fixed Telephony Service ('**RFTS**') and wholesale Fixed Access and Call Origination ('**FACO**') markets in Ireland. A non-confidential copy of the Draft Decision is attached at Appendix 1 of this Information Notice.
2. In accordance with the requirements, at that time, of Article 6 of the Framework Directive (now Article 23 of the of the European Electronic Communications Code ('**EECC**')),¹ ComReg carried out a public consultation ('**Consultation**') on its analysis of the RFTS and FACO markets in Ireland over the period 14 February to 14 March 2022.² This Consultation was occasioned by the receipt by ComReg of a European Commission Withdrawal Decision which obliged ComReg to withdraw and amend an earlier RFTS/FACO draft Decision which was notified to the EC on 18 June 2021.
3. Prior to the adoption of a final decision, Article 32(3) of the EECC now requires ComReg to publish and, at the same time, make draft measures accessible to the European Commission ('**EC**'), the Body of European Regulators for Electronic Communications ('**BEREC**') and National Regulatory Authorities ('**NRAs**') in other Member States (the '**Article 32 Notification**').
4. The Article 32 Notification has today been made by ComReg on the basis of the draft measures set out in the Draft Decision.
5. Please note that this Information Notice, including the Draft Decision in Appendix 1, does not constitute a national public consultation and should therefore not be construed as an invitation to make submissions to ComReg.
6. Having completed the Article 32 Notification, ComReg will take utmost account of any views expressed by the EC, BEREC and NRAs in other Member States before adopting its final decision.

¹ Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

² On 14 February 2022 ComReg published its RFTS and FACO Market Review - Consultation and Draft Decision, ComReg Document 22/10 (the '**Consultation**') available at: <https://www.comreg.ie/publication/fixed-access-call-origination-faco-retail-fixed-telephony-service-rfts-consultation>.

Appendix 1: RFTS and FACO Draft Measures

A 1.1 A copy of ComReg's Draft Decision is attached below.



Commission for
Communications Regulation

Market Reviews

Retail Access to the Public Telephone Network
at a Fixed Location for Residential and Non-
Residential Customers

Wholesale Fixed Access and Call Origination

NOTE: THIS IS A DRAFT DECISION

Response to Consultation and Final Decision

Reference: ComReg 22/xx

Date: 16 May 2022

Redacted Information

Please note that this is a non-confidential version of the Response to Consultation and Decision. Certain information within the Response to Consultation and Decision has been redacted from the public version for reasons of confidentiality and commercial sensitivity, with such redactions indicated by the symbol ✂ and highlighted in BLACK. In some cases, ComReg has presented information in an aggregated form in order to strike a balance between preserving the confidentiality of operator-specific information whilst enabling interested parties to understand, in a meaningful way, the conclusions set out in the Response to Consultation and Decision.

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1 Executive Summary

1.1 Overview

- 1.1 This Response to Consultation and Decision (**'Decision'**) sets out ComReg's final position regarding its review of competition in the markets for:
- (a) Retail Fixed Telephony Services (**'RFTS'**); and
 - (b) Wholesale Fixed Access and Call Origination (**'FACO'**).
- 1.2 These markets correspond to Markets 1 and 2 respectively of the European Commission's (**'EC'**) 2007 Recommendation on markets susceptible to *ex ante* regulation.¹ This Decision sets out what, if any, role regulation will play in promoting effective competition within these markets for the coming years.
- 1.3 The 2007 Recommendation established that neither the Retail Fixed Voice Access (**'RFVA'**) markets nor the FACO markets continue to be susceptible to *ex ante* regulation. Accordingly, ComReg must carry out a Three Criteria Test (**'3CT'**) to determine whether *ex ante* regulation of the RFTS markets (which consists of both a RFVA and a Retail Fixed Voice Calling (**'RFVC'**) component) and the upstream FACO markets continues to be warranted. However, in advance of doing so, it is first necessary to define the parameters of the RFTS markets and the FACO markets on which the 3CT is carried out.
- 1.4 This Decision replaces an earlier draft decision (the **'2021 Draft Decision'**)² which ComReg was obliged to withdraw following its notification in June 2021 to the EC. The 2021 Draft Decision was preceded by the 2020 RFTS/FACO Consultation (the **'2020 Consultation'**),³ which issued in June 2020. The EC issued a Withdrawal Decision⁴ on 20 September 2021 in respect of the 2021 Draft Decision.

¹ COMMISSION RECOMMENDATION of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (notified under document number C(2007) 5406) (Text with EEA relevance) (2007/879/EC) (the **'2007 Recommendation'**).

² Information Notice - Publication and notification to the European Commission (EC), the Body of European Regulators for Electronic Communications (BEREC), and Member State National Regulatory Authorities (NRAs) of draft measures under Article 32 of Directive 2018/1972, (**'ComReg Document 21/65'**), available at <https://www.comreg.ie/publication-download/information-notice-rfts-faco-draft-decision>.

³ Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed Access and Call Origination - Consultation and Draft Decision. ComReg 20/46, 17 June 2020 (the **'2020 Consultation'**).

⁴ COMMISSION DECISION of 17.9.2021 pursuant to Article 32(6) of Directive (EU) 2018/1972 (Withdrawal of notified draft measure). Cases IE/2021/2332-2333: markets for retail fixed telephony services and wholesale fixed access and call origination in Ireland (the **'Withdrawal Decision'**).

- 1.5 Arising from the Withdrawal Decision, ComReg issued a fresh consultation in February 2022 (the '**2022 Consultation**')⁵ which set out its proposals in respect of the RFTS and FACO markets, having regard to the Withdrawal Decision. The 2022 Consultation proposed to define three RFTS markets and two FACO markets, all of which were national in scope. The 2022 Consultation further proposed that the 3CT in respect of each of the five relevant markets should fail and that, accordingly, Significant Market Power ('**SMP**') regulation should be removed immediately from the Relevant RFTS Markets, and from the Relevant FACO Markets, following the passage of relevant sunset periods.
- 1.6 Five Respondents (Eircom, Vodafone, Magnet, BT, and ALTO) issued submissions to the Consultation ('**Respondents' Submissions**'). Aside from Magnet, most Respondents agreed with ComReg's proposals, bearing in mind the constraints arising from the Withdrawal Decision. Respondents therefore tended not to focus on issues of market definition or market power. Instead, the majority of comments concerned the proposed sunset periods for the withdrawal of FACO regulation.
- 1.7 Having taken account of both the Withdrawal Decision and Respondents' Submissions, ComReg retains the proposals in the 2022 Consultation and has made no changes in respect of the relevant market definitions, the outcomes or the 3CT, and only a minor change regarding the removal of regulation from the relevant markets in respect of the rollback procedure. ComReg therefore proposes to fully deregulate the entirety of the three Relevant RFTS Markets and the two Relevant FACO Markets.

1.2 Background to the Reviews

- 1.8 The EC's 2020 Recommendation⁶ does not identify the FACO market(s) or the RFTS market(s) as susceptible to *ex ante* regulation at EU level. Accordingly, ComReg must determine whether, at national level, it is appropriate to continue to regulate these markets. One means of testing this proposition is to carry out a 3CT. The purpose of the 3CT is to ensure that markets not identified in the EC's recommendation can only be regulated on an *ex ante* basis where it can be demonstrated that:
- (a) **Criterion 1:** entry barriers are high and non-transitory,
 - (b) **Criterion 2:** the market is not likely to tend towards effective competition, and

⁵ "FACO - RFTS Consultation", 14th February 2022. Reference Number: ComReg 22/10 Available online at <https://www.comreg.ie/publication/fixed-access-call-origination-faco-retail-fixed-telephony-service-rfts-consultation>

⁶ COMMISSION RECOMMENDATION of 18.12.2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**2020 Recommendation**').

- (c) **Criterion 3:** *ex post* competition law remedies on their own are unsuitable for resolving the identified competition concerns.
- 1.9 If any one of these criteria fails, then *ex ante* regulation is not justified, and any SMP remedies on the market should be removed.
- 1.10 Given the withdrawal of the 2021 Draft Decision, the FACO markets are regulated pursuant to the **2015 FACO Decision**,⁷ while the RFVA markets were last reviewed in 2014.⁸ At that time, Eircom was designated as having SMP on each of two national FACO markets, and on each of three national RFTS markets, and a suite of regulatory obligations was imposed on Eircom in all five markets. Some such obligations have since been amended and/or withdrawn through subsequent regulatory decisions.
- 1.11 ComReg carries out its analyses of the RFTS markets and the FACO markets in this Decision in accordance with the Modified Greenfield Approach ('**MGA**') set out in the 2020 Explanatory Note.⁹ ComReg's market assessment starts from the assumption that SMP regulation is not present in the specific market(s) under consideration. However, regulation present in other related markets, or through the general regulatory framework is considered. This approach avoids erroneously drawing conclusions regarding the competitive structure of a particular market that may be influenced by, or indeed premised on, existing regulation on that market. Considering how markets may function absent regulation helps to ensure that SMP-based regulation is only applied (or withdrawn) in circumstances where it is justified and proportionate to do so.
- 1.12 RFTS consists of both an RFVC component and an RFVA, or retail line rental, component. RFTS can be sold either on a standalone basis, or bundled with other retail services (principally broadband, mobile telephony or TV services).

⁷ ComReg Decision No. D05/15, Market Review - Wholesale Fixed Voice Call Origination and Transit Markets. Response to Consultation and Decision, ComReg Document 15/82, 24 July 2015. See <https://www.comreg.ie/csv/downloads/ComReg1582.pdf> (the '**2015 FACO Decision**').

⁸ ComReg Decision No. D12/14, Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, ComReg Document 14/89, 28 August 2014. See <https://www.comreg.ie/csv/downloads/ComReg1489.pdf> (the '**2014 RFVA Decision**'). As set out in greater detail at Section 4 below, ComReg defines relevant RFTS markets, rather than retaining the 2014 definition of relevant RFVA markets, on the grounds that end users have overwhelmingly indicated a preference for purchasing RFTS from the same SP, rather than RFVA and RFVC separately from different SPs.

⁹ COMMISSION STAFF WORKING DOCUMENT EXPLANATORY NOTE Accompanying the document COMMISSION RECOMMENDATION on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**2020 Explanatory Note**').

- 1.13 In general, FACO is a wholesale input purchased by Access Seekers¹⁰ which do not operate their own networks (or only have networks with limited geographic reach), and which ultimately permits the provision of RFTS to end users. Those Service Providers ('**SP(s)**') with their own networks can also self-supply FACO. FACO and RFTS both consist of an access component (line rental), and a calling component.
- 1.14 Fixed Voice Call Origination ('**FVCO**') is the calling component for call conveyance and Wholesale Line Rental ('**WLR**') is the Fixed Access ('**FA**') component. FVCO and WLR allow an SP to sell RFTS, with line rental and calls typically being sold together to the end user at the retail level. FVCO and FA are, in almost all cases, sold together as a single FACO product.
- 1.15 Where ComReg identifies that any SP operating in the FACO or RFTS markets has SMP, this can give rise to competition problems, meaning that RFTS (and related) markets would not function effectively, to the ultimate detriment of end users. Where ComReg identifies SMP, it must impose at least one of a range of *ex ante* regulatory obligations on SPs designated with SMP. At the wholesale level, these obligations may include, *inter alia*, requirements to provide specified products and services at regulated wholesale prices, and are ultimately designed to enable Access Seekers (that is, SPs without networks of their own (or insufficient network coverage of their own)) to compete in providing RFTS to end users.
- 1.16 In this Decision, ComReg defines the RFTS and FACO markets from both a product perspective and a geographic perspective. ComReg then assesses the extent of competition within such markets and, where appropriate, designates SPs with SMP if, in ComReg's view, and on the basis of the evidence available to it, competition does not effectively constrain the conduct of that SP on the market. Where SMP has been identified, ComReg specifies regulatory obligations that it intends to impose on the SMP SP to address competition problems that would likely arise, absent regulatory intervention. Where regulatory intervention is warranted, it is designed to promote the development of effective competition in the provision of retail and/or wholesale services, with the ultimate beneficiary intended to be retail end users, arising from increased choice and quality of retail services at more competitive prices. Where SMP is not identified, existing regulation is withdrawn subject, as appropriate to a sunset period.

¹⁰ We refer in general to Access Seekers as purchasers of wholesale services.

1.3 The 2021 Draft Decision

- 1.17 In the 2021 Draft Decision, ComReg proposed to fully deregulate the Relevant RFTS markets, to deregulate the majority of the FACO markets, and to revisit regulation of the 'Regional FACO Markets' within two years, by means of a Mid-term Assessment. The 2021 Draft Decision proposed that regulation would be maintained in the 'Regional FACO Markets' only.
- 1.18 In accordance with Article 32(3) of the European Electronic Communications Code ('**EECC**')¹¹ ComReg published and made the draft measures accessible to the EC, the Body of European Regulators for Electronic Communications ('**BEREC**') and National Regulatory Authorities ('**NRAs**') in other Member States (the '**Article 32 Notification**'). The Article 32 Notification was submitted by ComReg on 19 June 2021.
- 1.19 Under Article 32(3) EECC, the EC, BEREC and other NRAs had one month to comment on ComReg's Article 32 Notification. On 19 July 2021 the EC issued a comments letter in which it raised serious doubts with respect to the 2021 Draft Decision ('**Serious Doubts Letter**'). The EC also issued a press release¹² regarding its Serious Doubts Letter.
- 1.20 On 17 August 2021 BEREC adopted, published and sent to the EC, its opinion¹³ (the '**BEREC Opinion**'). The overall conclusions set out in the BEREC Opinion were that "*the Commission's serious doubts regarding the draft decision of the Irish national regulatory authority, ComReg, as expressed in the Commission's letter, dated 16 July 2021, are partially justified*". On 18 August 2021, ComReg issued an information notice¹⁴ concerning the BEREC Opinion.

¹¹ Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

¹² See <https://digital-strategy.ec.europa.eu/en/news/commission-opens-depth-investigation-irish-markets-fixed-voice-telephony>.

¹³ BEREC document BOR (21) 109. See https://bereg.europa.eu/eng/document_register/subject_matter/bereg/opinions/10019-bereg-opinion-on-phase-ii-investigation-pursuant-to-article-32-of-directive-eu-20181972-cases-ie20212332-2333-market-for-access-to-the-public-telephone-network-at-a-fixed-location-for-residential-and-non-residential-customers-m12007-in-ireland-market-for-call-origination-on-the-public-telephone-network-provided-at-a-fixed-location-m22007-in-ireland.

¹⁴ Information Notice, Market Review Update, ComReg Document 21/84, available at <https://www.comreg.ie/publication-download/market-review-further-update-retail-fixed-telephony-services-and-wholesale-fixed-access-and-call-origination>.

1.4 The Withdrawal Decision

- 1.21 On 20 September 2021 the EC issued its Withdrawal Decision¹⁵ requiring ComReg to withdraw the 2021 Draft Decision, and to re-notify a draft decision. On 21 September 2021, ComReg issued a second information notice¹⁶ concerning the Withdrawal Decision.
- 1.22 The Withdrawal Decision disagreed with certain aspects of the analysis set out in the 2021 Draft Decision. In summary, these were that:
- (a) Mobile Telephony Services ('**MTS**') should be included in the RFTS and FACO product markets;
 - (b) A Next Generation ('**NG**') broadband coverage threshold used by ComReg to assess the ability for SPs to self-supply Managed VoIP was too low, and Virgin Media's self-supply of RFTS should be included in the FACO product market;
 - (c) ComReg's assessment was insufficiently forward-looking, focussing particularly on the future impact of ongoing substitution to MTS, and ongoing NG broadband network deployment; and
 - (d) The assessment of competition, including the SMP findings, in respect of the Regional FACO Market was incorrect given the above.
- 1.23 In the remainder of this Decision, ComReg takes into account the substance of the EC's concerns expressed in the Withdrawal Decision, as well as Respondents' Submissions, in arriving at its final position.
- 1.24 Having regard to the Withdrawal Decision, ComReg is required to withdraw the 2021 Draft Decision as notified to the EC under Article 32 EEECC. In accordance with Article 32(7) EEECC, ComReg is therefore required to amend or withdraw the 2021 Draft Decision. ComReg is required to undertake a public consultation in accordance with Article 23 EEECC, and to notify the amended draft measure to the EC in accordance with Article 32(3).

¹⁵ "Commission blocks proposed Irish regulation of fixed voice telephony" <https://digital-strategy.ec.europa.eu/en/news/commission-blocks-proposed-irish-regulation-fixed-voice-telephony>.

¹⁶ Information Notice, Market Review Update, ComReg Document 21/94, available at <https://www.comreg.ie/publication-download/market-review-further-update-retail-fixed-telephony-services-and-wholesale-fixed-access-and-call-origination-2>.

1.5 The 2022 Consultation

- 1.25 ComReg formally withdrew the 2021 Draft Decision by means of a letter to the EC of 14 February 2022. On the same date, ComReg issued the 2022 Consultation¹⁷ which set out its proposals in respect of the RFTS and FACO markets, having regard to the Withdrawal Decision. The 2022 Consultation re-assessed the need for continued regulation of the RFTS and FACO markets. The retail markets examined were the:
- (a) Standalone Low-Level RFTS (**'Standalone LL-RFTS'**) in the State;
 - (b) Bundled Low-Level RFTS (**'Bundled LL-RFTS'**) in the State; and
 - (c) High-Level RFTS (**'HL-RFTS'**) in the State.
- 1.26 The wholesale markets examined were the markets for:
- (a) Low-Level Fixed Access and Call Origination market (the **'LL-FACO Market'**) in the State; and
 - (b) High-Level Fixed Access and Call Origination market (the **'HL-FACO Market'**) in the State.
- 1.27 The 2022 Consultation set out ComReg's preliminary analysis of competition in the RFTS markets and the FACO markets (collectively, the **'Relevant Market(s)'**), having regard to the Withdrawal Decision. ComReg set out its proposals on market definition and its assessment of SMP, in order to address potential competition problems to the ultimate benefit of end users. ComReg proposed, absent further evidence to the contrary, that MTS should be included in both the Relevant RFTS Markets and the Relevant FACO Markets, and that its assessment of NG broadband network rollout should be on a more forward-looking basis. Having assessed the revised relevant market definitions, the 2022 Consultation proposed that both the RFTS markets and the FACO markets should be fully deregulated.
- 1.28 Five **Respondents** Submissions were provided in response to the 2022 Consultation by:¹⁸
- (a) Alternative Operators in the Communications Market (**'ALTO'**);
 - (b) BT Communication Ireland Limited (**'BT'**);
 - (c) Vodafone Ireland Limited (**'Vodafone'**);
 - (d) Eircom Limited (**'Eircom'**); and
 - (e) Magnet+ Limited (**'Magnet'**).

¹⁷ "FACO - RFTS Consultation", 14th February 2022. Reference Number: ComReg 22/10 Available online at <https://www.comreg.ie/publication/fixed-access-call-origination-faco-retail-fixed-telephony-service-rfts-consultation>

¹⁸ As set out at Annex: 5 below, non-confidential versions of the Respondents' Submissions are published alongside this Decision on www.comreg.ie as **Document 22/xxb**.

- 1.29 The 2022 Consultation, taking into account the Withdrawal Decision, argued that the RFTS markets would be effectively competitive, even absent upstream FACO regulation, due *inter alia*, to the capability of end users to substitute, to a sufficient degree, from RFTS to MTS to such an extent that fixed-mobile substitution ('**FMS**') generates a strong enough constraint on RFTS to warrant including MTS in the RFTS market as a direct constraint. Additionally, the 2022 Consultation noted, on a forward looking basis, the likely sufficient availability of NG broadband, thereby allowing SPs to compete in RFTS markets on the basis of self-supply of Managed VoIP.

1.6 Summary of RFTS Market Assessment

- 1.30 The 2014 Recommendation established that the RFVA markets are no longer susceptible to *ex ante* regulation. Accordingly, ComReg must carry out a 3CT to determine whether *ex ante* regulation of the RFTS markets (which consist of both an RFVA and an RFVC component) continues to be warranted. However, in advance of doing so, it is first necessary to define the parameters of the RFTS markets on which the 3CT will be carried out.

Market Definition

- 1.31 A relevant market consists of both a relevant product market and a relevant geographic market. In respect of the relevant product market, ComReg analyses the Relevant RFTS Markets to determine whether any retail products could be considered by an end user as an effective substitute for the focal RFTS product, taking account of any demand-side and supply-side considerations.
- 1.32 In line with the EC Notice on Market Definition¹⁹ and the SMP Guidelines,²⁰ ComReg's starting point when defining a relevant market is to consider a narrow set of services (the focal product) and examine whether the relevant market should be expanded beyond the focal product to include other services, taking account of demand-side and supply-side substitutability. ComReg considers that the appropriate focal product is standalone RFTS, consisting of RFVA (retail line rental) and RFVC (retail call origination) in a single product offered over Eircom's Fixed Narrowband Access ('**FNA**') network.²¹

¹⁹ Commission notice on the definition of relevant market for the purposes of Community competition law, (the '**Notice on Market Definition**'), Official Journal C 372, 09/12/1997 pp.5-13.

²⁰ SMP Guidelines 2018 and Notice on Market Definition.

²¹ FNA describes Current Generation ('**CG**') technology delivered entirely over copper access paths, and includes both PSTN and ISDN access paths.

- 1.33 ComReg notes that Eircom FNA may be delivered over the Public Switched Telephone Network ('**PSTN**', which delivers a single voice channel over a line), ISDN Basic Rate Access ('**ISDN BRA**', which delivers two voice channels over a line), ISDN Fractional Rate Access ('**ISDN FRA**', which delivers 16 voice channels over a line), or ISDN Primary Rate Access ('**ISDN PRA**', which delivers 30 voice channels over a line). ComReg's analysis of RFTS product characteristics offers some insight into the substitutability between such products and the likelihood of them falling within the same product market. Given that there is likely a segment of the market that demands high-volume RFTS products, ComReg finds that a focal product relating to standalone FNA RFTS over PSTN or ISDN BRA may not be appropriate for this high-volume segment of the market.
- 1.34 ComReg considers that there is a break in the chain of substitution in the RFTS markets arising from the distinction between PSTN and ISDN BRA on the one hand, which support one or two voice channels respectively, and, on the other hand, ISDN FRA and ISDN PRA, which are capable of supporting up to 30 voice channels.
- 1.35 For that reason, ComReg's position is that there are two distinct focal products for FNA RFTS, pertaining to low-volume and high-volume RFTS end users:
- (a) Low-Level RFTS ('**LL-RFTS**') delivered over PSTN and ISDN BRA; and
 - (b) High-Level RFTS ('**HL-RFTS**') delivered over ISDN FRA and ISDN PRA.
- 1.36 ComReg also considers that RFTS delivered over NG Broadband as Managed VoIP is likely to be an effective demand-side substitute to the focal products.
- 1.37 In light of the high incidence of RFTS being provided as part of a bundle with NG Broadband (particularly for Managed VoIP), and a sizeable but declining number of standalone RFTS users, consistent with the 2014 RFVA Decision, ComReg considers it appropriate to further delineate a Standalone LL-RFTS Market and a Bundled LL-RFTS Market.
- 1.38 From a geographic perspective, the Relevant RFTS Product Markets are national in scope. This is based on limited variations in the number and size of potential competitors geographically, the absence of sufficient evidence of differentiated pricing or marketing strategies on a sub-national basis and limited differences in demand characteristics across regions.
- 1.39 ComReg notes that there may be some geographic differences in entry conditions around the country, depending on availability of NG Broadband which would allow Access Seekers (including BT/Sky, Vodafone, Digiweb and Pure Telecom) to provide Managed VoIP-based RFTS to end users, thus removing any reliance on purchasing upstream FACO inputs from Eircom.

- 1.40 However, on balance, ComReg's view is that there is insufficient evidence to conclude that there are grounds to define sub-geographic markets in respect of any of the Relevant RFTS Product Markets.
- 1.41 ComReg's position is that there are therefore three distinct Relevant RFTS Markets (the '**Relevant RFTS Markets**')
- (a) **Market 1a:** Standalone Low-Level RFTS ('**Standalone LL-RFTS**') including RFTS delivered over PSTN and ISDN BRA, MTS, and Managed VoB delivered over NG Broadband on a standalone basis;
 - (b) **Market 1b:** Bundled Low-Level RFTS ('**Bundled LL-RFTS**') including RFTS over PSTN and ISDN BRA and Managed VoB²² delivered over (and with) NG Broadband and MTS on a bundled basis together with any of broadband, television or MTS,²³ delivered on a bundled basis; and
 - (c) **Market 1c:** High-Level RFTS ('**HL-RFTS**') including RFTS delivered over ISDN FRA and PRA, and Hosted PBX or SIP Trunking delivered over NG Broadband, including, on a standalone basis or on a bundled basis together with any of broadband, television or MTS.

3CT and Competition Assessment of Relevant RFTS Markets

- 1.42 As set out above, the Relevant RFTS Markets are not identified at EU level as being susceptible to *ex ante* regulation, and a 3CT must therefore be carried out. If any one of the three criteria fails, this is sufficient to conclude that the market appears to be competitive, and should not be subject to SMP regulation.
- 1.43 ComReg has assessed all three criteria and has concluded that Criterion 1 (the presence of high and non-transitory barriers to entry) and Criterion 2 (the market is not likely to tend towards effective competition) both fail. The ability to supply Managed VoIP and the substitution possibilities afforded by MTS provide the grounds on which both criteria fail.
- 1.44 *Ex ante* regulation should only be imposed where competition law remedies are likely to be insufficient to address identified competition problems (Criterion 3). This third criterion therefore assesses the sufficiency of competition law by itself to deal with any market failures identified in the market analysis, in the absence of *ex ante* regulation.

²² Managed VoIP includes RFTS delivered in the form of Managed VoB, as well as Hosted PBX, or SIP Trunking.

²³ This refers to the instance where the RFTS element is not based on MTS. For example, where RFTS is delivered over Managed VoB, but the bundle also includes MTS.

- 1.45 ComReg does not consider that competition law is likely to be sufficient to effectively address any market failures in the RFTS Markets, should they arise given, amongst other things, the inability to impose remedies and timing of any action that may be taken. Thus, Criterion 3 passes. However, given that the first two criteria of the 3CT fail, this does not alter ComReg's overall conclusions on the Relevant RFTS Markets. Where the 3CT fails, this suggests that a market is sufficiently competitive, and continued regulation is no longer appropriate.

Withdrawal of Remedies in the Relevant RFTS Markets

- 1.46 ComReg concludes that the 3CT fails on all three Relevant RFTS Markets. It therefore follows that regulation is not appropriate in these markets. ComReg therefore withdraws existing SMP regulation on the Relevant RFTS Markets. ComReg does not consider that any sunset period in respect of deregulation of the Relevant RFTS Markets is required. The SMP obligations are therefore withdrawn upon the effective date of this Decision.

1.7 Summary of FACO Market Assessment

Market Definition

- 1.47 ComReg analyses the upstream wholesale relevant FACO markets to determine whether any wholesale products or services could be considered by an SP as an effective substitute for the FACO focal product, taking account of any demand-side and supply-side considerations.
- 1.48 ComReg has defined two relevant product markets, the Relevant LL-FACO Market and the Relevant HL-FACO Market (the '**Relevant FACO Markets**').

Competition Analysis of Relevant FACO Markets

- 1.49 As set out above, the Relevant FACO Markets are not designated at EU level as being presumptively susceptible to *ex ante* regulation. There is therefore no presumption in favour of continuing to regulate the FACO markets. The EC has further noted in its 2020 Explanatory Note that SMP regulation of wholesale markets should only be applied in order to address a demonstrable lack of effective competition at the retail level on downstream markets. It follows that, where a retail market can be shown to be effectively competitive absent wholesale market regulation, such regulation becomes unnecessary.
- 1.50 Accordingly, given ComReg's finding that the downstream RFTS markets are effectively competitive even absent RFTS regulation, there are no grounds to continue regulating the upstream FACO markets, as it is unnecessary to do so in order to protect downstream RFTS competition. Therefore, in this context a 3CT for the Relevant FACO Markets is unnecessary and ComReg concludes that regulation of the Relevant FACO Markets is no longer warranted.

Withdrawal of Remedies in the Relevant FACO Markets

- 1.51 Accordingly, and subject to the implementation of sunset periods, ComReg withdraws existing obligations from the Relevant FACO Markets. From the effective date of this Decision, an 18-month sunset period will apply in respect of FACO delivered over PSTN, ISDN FRA, and ISDN PRA, by means of which Eircom is required to maintain existing supply of access to FACO products, services and facilities (for example, SB-WLR orders already supplied to Access Seekers) at no more than existing prices. With respect to new supply of FACO products, services and facilities (for example, SB-WLR orders received) a separate nine month sunset period applies (which will run in parallel with the 18-month sunset period described above).
- 1.52 Similarly, and in respect of FACO delivered over ISDN BRA, a 12-month sunset period will apply in respect of existing supply, while a two month sunset period will apply in respect of new supply. ComReg is of the view that these sunset periods will allow Access Seekers sufficient time in which to make any necessary preparations for the new market environment, arising from deregulation, thereby preserving continuity in the supply of both wholesale and retail services (were Eircom to withdraw SB-WLR, or significantly alter its SB-WLR terms and conditions, following deregulation).²⁴
- 1.53 During the relevant sunset periods, Eircom is required to maintain access at existing prices, but not to meet other obligations (for example, in relation to transparency, non-discrimination etc.).
- 1.54 In arriving at the above conclusions, ComReg has, in accordance with its relevant statutory obligations:
- (a) consulted with the Competition and Consumer Protection Commission ('**CCPC**'). The CCPC is in agreement with ComReg's analysis;²⁵ and
 - (b) re-notified the European Commission ('**EC**'), BEREC,²⁶ and other National Regulatory Authorities ('**NRAs**') regarding the measures which it proposes to take (the '**Notified Draft Measures**').²⁷ On **XX XX** 2022 the EC issued its response to ComReg (the '**EC Response**'), in which it **[[To Be Completed]]**, as further set out in Annex: 3 below.

²⁴ ComReg would not expect Eircom to significantly alter its terms and conditions given the presence of competition.

²⁵ A copy of the CCPC's correspondence ('**CCPC Response**') is set out at Annex: 1 of this Decision. The CCPC indicated that it had no grounds to disagree with ComReg's draft findings.

²⁶ Body of European Regulators for Electronic Communications ('**BEREC**') as established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications and the Office.

²⁷ A non-confidential version of the Notified Draft Measures is available online at <https://www.comreg.ie/publication/information-notice-rfts-faco-draft-decision>.

- 1.55 In line with the removal of obligations from the Relevant RFTS Markets, ComReg will continue to monitor the effectiveness of competition in the Relevant FACO Markets in order to ensure the protection of end users' interests. In this respect, ComReg reserves its right to re-examine competitive conditions within this market and, if appropriate, to intervene accordingly.

2 Introduction

2.1 What are RFVA, RFVC and RFTS?

- 2.1 Retail Fixed Voice Access ('**RFVA**') is a retail service which provides a connection or access at a fixed location to the fixed telephone network by means of the Public Switched Telephone Network ('**PSTN**') or another network, for the purpose of making and/or receiving telephone calls. RFVA²⁸ provides the network access necessary for the provision by a Service Provider ('**SP**') of a Retail Fixed Voice Calls ('**RFVC**') service. While it has been in the past possible for end users to purchase RFVA and RFVC separately from different SPs, end users now typically exhibit a strong preference for purchasing a bundle of RFVA and RFVC from a single SP. Throughout this Decision, the bundled RFVA and RFVC service is referred to as Retail Fixed Telephony Service ('**RFTS**'). RFTS allows for an end user to initiate calls on a landline to set up a connection to the dialled number, and therefore involves the use of various services at the wholesale level, including Fixed Access and Call Origination ('**FACO**'), transit, and call termination services such as Fixed Voice Call Termination ('**FVCT**'), which transmit the call from the dialling party up to a point of handover, at which point the called party's SP takes over the call and transports it to the called party. In cases where the originating and terminating SP are not directly interconnected, an intermediary SP may provide a bridging, or interconnection, transit service.
- 2.2 SPs may provide RFVC, RFVA or bundled RFTS over their own network, where they have rolled out a network. In the alternative, an SP which does not operate its own network may purchase wholesale inputs from a network operator and offer RFTS for sale to end users over that network.
- 2.3 End users may purchase RFTS delivered over fixed narrowband access ('**FNA**') or broadband access. FNA-based RFTS delivered over a traditional copper telephone line²⁹ may be provided to end users either directly or indirectly. In the case of **direct** provision, RFTS is provided by the SP on its own FNA network directly to the end user. In the case of **indirect** provision, the SP does not operate its own network and, instead, provides RFTS to end users by purchasing wholesale inputs delivered over Eircom's FNA network (typically, Single Billing-Wholesale Line Rental ('**SB-WLR**'), White Label Voice ('**WLV**') or, on a very limited basis, Carrier Pre-Select ('**CPS**')).

²⁸ Commonly referred to as '(retail) Line Rental'.

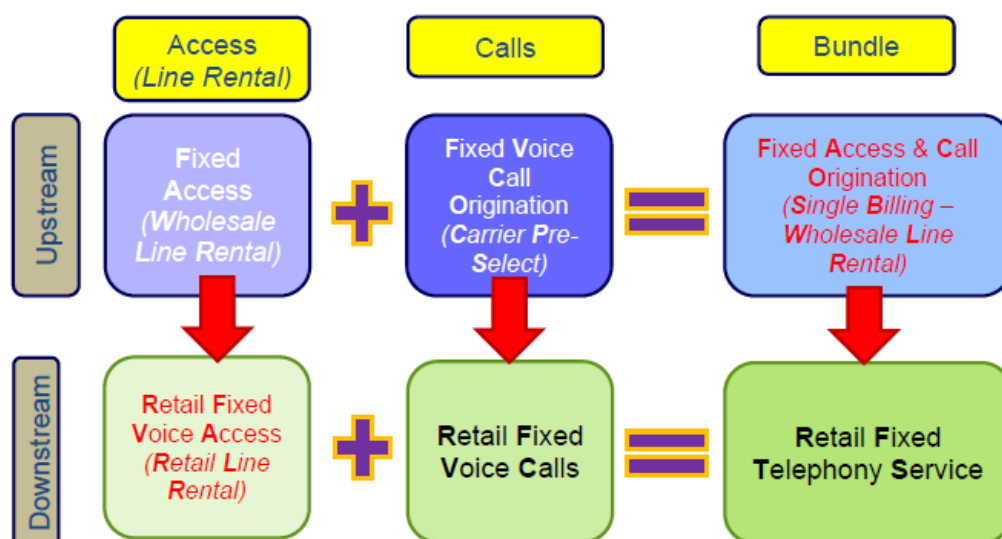
²⁹ Traditional copper lines are classified according to the number of voice channels available. PSTN provides a single voice channel on a line, while Integrated Services Digital Network ('**ISDN**') delivers multiple voice channels over a single line: 2 channels in the case of ISDN Basic Rate Access ('**BRA**'), 16 in the case of ISDN Fractional Rate Access ('**FRA**'), and 30 in the case of ISDN Primary Rate Access ('**PRA**'). Service delivered over PSTN is often described as 'Plain Old Telephony Service', or 'POTS'.

- 2.4 Broadband-based RFTS is provided to end users by SPs who offer dedicated Managed VoIP over broadband, rather than over FNA. In the case of **direct** provision, RFTS is provided by the SP directly on its own broadband network to the end user (for example, Virgin Media). In the case of **indirect** provision, the SP does not operate its own broadband network and, instead, provides RFTS to its end users by means of Managed VoIP, by purchasing wholesale NG Broadband inputs from SPs including Eircom, SIRO, and BT. NBI will also facilitate the provision of RFTS over NG Broadband as it rolls out its network. Managed VoIP differs from Unmanaged VoIP services such as Skype or WhatsApp, in that the SP providing Managed VoIP can manage the quality of the voice traffic on the IP access path, to assure minimum Quality of Service ('QoS') standards.

2.2 What are FVCO and FACO?

- 2.5 Fixed Voice Call Origination ('**FVCO**') is a wholesale service which switches, routes, and conveys a voice call up to a designated point of handover on a network. The FVCO service is supplied over an access path (referred to as '**Fixed Access**' or '**FA**'). FA is commonly described as Wholesale Line Rental ('**WLR**'). The bundled provision of FVCO together with FA is referred to in this Decision as Fixed Access and Call Origination ('**FACO**'). Eircom is currently the largest supplier of FACO.
- 2.6 The relationship between these wholesale inputs and how they are used in supplying RFVA and RFVC – together, RFTS - is illustrated in Figure 1 below:

Figure 1: Upstream FACO and downstream RFTS



- 2.7 In this respect, FACO (FVCO + FA) is an upstream input into the downstream provision of RFTS to end users. Together, the purchase of FACO, transit and FVCT³⁰ enables Access Seekers who do not operate their own network to offer RFTS to end users.³¹ FACO is therefore a key input which facilitates the ability of an SP to provide RFTS to end users, either directly on its network, or by renting access to third party network inputs.
- 2.8 For example, an SP may wish to provide RFTS to an end user's premises but may not operate its own network. That SP can purchase FACO at the wholesale level which allows it to provide RFTS. The SP may also need to purchase transit, if it is not directly interconnected with the called party's SP.
- 2.9 Eircom provides several products which allow for the provision of indirect access to SPs. These are SB-WLR, WLV, and CPS, each of which are described below.
- 2.10 Eircom's FACO (that is, FA by means of WLR, together with FVCO) product is called SB-WLR. While some SPs purchase SB-WLR from Eircom to provide RFTS directly to their end users, other SPs (specifically, BT) purchase SB-WLR as an input to their own wholesale products, which they resell to SPs.
- 2.11 Eircom also offers a WLV product. Eircom provides the SP with a managed end-to-end voice calls product, including FVCO, WLR and other wholesale inputs, which allows the SP to avoid incurring the costs of the switching equipment required to hand a call over at a point of handover at which FACO concludes. SB-WLR is therefore an input into WLV. The 2015 FACO Decision³² described WLV as Wholesale Switchless Voice ('**Wholesale SV**').
- 2.12 Finally, a very small number of SPs purchase CPS, where an end user wishes to purchase its RFVA service from Eircom and a calls-only service (RFVC) separately from another SP. Thus, CPS does not include the WLR component of SB-WLR. CPS is a legacy-only wholesale service which Eircom has not provided to new customers since September 2016 and is used to provide RFVC when the end user purchases RFVA separately.
- 2.13 An SP purchasing SB-WLR pays Eircom a fixed monthly WLR charge, along with FVCO charges and, if required, a transit charge on a per call and/or per minute basis. An SP purchasing CPS pays Eircom the FVCO charge only. An SP purchasing WLV pays Eircom the SB-WLR charges described above, and additional charges relating to the provision of a managed virtual network.³³

³⁰ The provision of a RFTS may also involve the provision of Mobile Voice Call Termination ('**MVCT**').

³¹ Residential and business retail customers.

³² ComReg Decision No. D05/15, Market Review - Wholesale Fixed Voice Call Origination and Transit Markets. Response to Consultation and Decision, ComReg Document 15/82, 24 July 2015. See <https://www.comreg.ie/csv/downloads/ComReg1582.pdf> (the '**2015 FACO Decision**').

³³ https://www.openeir.ie/uploadedFiles/Content/Products/MNS/White_Label_Voice_Services_Factsheet.pdf

- 2.14 In accordance with its statutory obligation to review certain electronic communications markets, this Decision presents ComReg's position on its analysis of the retail markets for the provision of RFTS (the '**Relevant RFTS Markets**') and, separately, its analysis of the wholesale markets for the provision of FACO (the '**Relevant FACO Markets**').
- 2.15 The objective of this review is, ultimately, to decide if, absent regulation, any SP has Significant Market Power ('**SMP**') on any of the defined Relevant Markets³⁴ and, if so, to impose appropriate remedies to address any competition problems that could likely arise, in those Relevant Markets. Such competition problems could, for example, include (but are not limited to):
- (a) A refusal to supply SB-WLR, resulting in an undermining of effective competition, including up to the inability for end users to make calls across networks; or
 - (b) The levying of excessive charges for the provision of SB-WLR, resulting in higher costs for those SPs originating calls, with such higher costs potentially passed through to end users in the form of increased charges for RFTS and/or other services.
- 2.16 Remedies imposed by ComReg to date – and also by National Regulatory Authorities ('**NRAs**') in other European Union ('**EU**') Member States - to address competition problems have generally focussed on access obligations and price controls with respect to the provision of FACO, in addition to other remedies designed to ensure non-discrimination and transparency.
- 2.17 In this Decision, ComReg presents its findings on its analysis of the Relevant Markets. The analysis set out in this Decision adopts the approach recommended by the European Commission ('**EC**') and, in doing so, takes the utmost account of:
- (a) The **2020 Recommendation** on relevant product and service markets susceptible to *ex ante* regulation within the electronic communications sector. The 2020 Recommendation was accompanied by the **2020 Explanatory Note**;³⁵

³⁴ The Relevant FACO Markets and the Relevant RFTS Markets are together referred to in this Decision as the '**Relevant Markets**'.

³⁵ The 2014 Recommendation and 2014 Explanatory Note have since been replaced by an updated list of recommended markets which took effect in December 2020, COMMISSION RECOMMENDATION of 18.12.2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**2020 Recommendation**') and accompanying explanatory note, COMMISSION STAFF WORKING DOCUMENT EXPLANATORY NOTE Accompanying the document COMMISSION RECOMMENDATION on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (the '**2020 Explanatory Note**'). Together, this Decision refers to the 2014 Recommendation and the 2020 Recommendation as the '**EC Recommendations**', and the 2014 Explanatory Note and the 2020 Explanatory Note as the '**EC Explanatory Notes**'.

- (b) The **2014 Recommendation** on relevant product and service markets susceptible to *ex ante* regulation within the electronic communications sector. The 2014 Recommendation was accompanied by the **2014 Explanatory Note**;³⁶
- (c) The **SMP Guidelines**³⁷ on market analysis and the assessment of SMP and the accompanying **SMP Explanatory Note**;³⁸ and
- (d) The 2005 Accounting Separation and Cost Accounting Recommendation.³⁹

2.18 ComReg also takes account of:

- (a) The **Notice on Market Definition** for the purposes of Community competition law;⁴⁰
- (b) The European Electronic Communications Code ('**EECC**');⁴¹
- (c) The 2021 Withdrawal Decision; and
- (d) Any relevant common positions adopted by the Body of European Regulators for Electronic Communications ('**BEREC**'), which is the coordinating and policy-making body for European NRAs.⁴²

2.19 ComReg also has regard to any relevant comments made by the EC, pursuant to Article 32 of the EECC, with respect to other EU NRAs' market analyses.

2.20 Before setting out the analysis underpinning these market reviews, the remainder of this introductory section describes the relevant legal and regulatory framework, in addition to the regulatory approach in the respective Relevant Markets to date.

³⁶ European Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation (the '**2014 Recommendation**') and Explanatory Note accompanying the Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation (the '**2014 Explanatory Note**').

³⁷ European Commission guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (OJ 2018/C 159/01) (the '**SMP Guidelines**').

³⁸ European Commission Staff Working Document accompanying the document COMMUNICATION FROM THE COMMISSION: Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (the '**SMP Explanatory Note**').

³⁹ European Commission Recommendation of 19 September 2005 on accounting separation and cost accounting systems under the regulatory framework for electronic communications (2005/698/EC) (the '**2005 Accounting Separation and Cost Accounting Recommendation**').

⁴⁰ Commission notice on the definition of relevant market for the purposes of Community competition law, (the '**Notice on Market Definition**'), Official Journal C 372, 09/12/1997 pp.5-13.

⁴¹ DIRECTIVE (EU) 2018/1972 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 establishing the European Electronic Communications Code (the '**EECC**').

⁴² BEREC, as established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing BEREC and the Office which has since been replaced and repealed by REGULATION (EU) 2018/1971 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 (the '**2018 BEREC Regulation**') <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:32018R1971&from=EN>.

2.3 Legal basis and regulatory framework

- 2.21 ComReg has undertaken this market review in accordance with the obligation under (and commenced during the currency of) the Framework Regulations⁴³ that NRAs should analyse relevant markets, taking utmost account of an EC recommendation on relevant markets susceptible to *ex ante* regulation and the 2018 SMP Guidelines, prior to determining whether competition is effective or not, and if not, to impose obligations in accordance with the Access Regulations.⁴⁴
- 2.22 The Framework Regulations and the Access Regulations (together with the Authorisation Regulations⁴⁵ and the Universal Service Regulations)⁴⁶ transpose into Irish law the regulatory framework for electronic communications set out in the Framework Directive, the Access Directive, the Authorisation Directive, and the Universal Service Directive,⁴⁷ all now repealed with effect from 20 December 2020 and replaced with the EECC, which entered into force on 20 December 2018. While the work undertaken by ComReg for the purpose of this market review was conducted in part prior to the coming into effect of the EECC, throughout this market review ComReg has been aware of the need to be consistent with the EECC and taken appropriate account of the EECC.
- 2.23 Regulation 26 of the Framework Regulations⁴⁸ requires that ComReg, taking the utmost account of the EC Recommendation on relevant markets susceptible to *ex ante* regulation and of the SMP Guidelines, defines relevant markets appropriate to national circumstances, in accordance with the principles of competition law.
- 2.24 The Relevant FACO Market, its constituent FVCO and FA components, and the Relevant RFVA Market are not deemed to be susceptible to *ex ante* regulation under the 2020 Recommendation.

⁴³ European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011) (the '**Framework Regulations**').

⁴⁴ European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011, S.I. No. 334 of 2011 (the '**Access Regulations**').

⁴⁵ European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011, S.I. No. 335 of 2011 (the '**Authorisation Regulations**').

⁴⁶ European Communities (Electronic Communications Networks and Services) (Universal Service and Users' Rights) Regulations 2011, S.I. No. 337 of 2011 (the '**Universal Service Regulations**').

⁴⁷ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (the '**Framework Directive**'); Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the '**Access Directive**') as amended by Directive 2009/140/EC; Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, as amended by Directive 2009/140/EC (the '**Authorisation Directive**'); Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (the '**Universal Service Directive**').

⁴⁸ This provision is mirrored at Article 64 of the EECC.

- 2.25 ComReg notes that the EC, in the earlier 2007 Recommendation⁴⁹ (which was replaced by the 2014 Recommendation), identified the markets for RFVA and FVCO as being susceptible to *ex ante* regulation.
- 2.26 The RFVA market was described in the following terms:⁵⁰
- “Access to the public telephone network at a fixed location for residential and non-residential customers (hereafter, ‘Market 1’)”*
- 2.27 The FVCO market was described in the following terms:
- “Call origination on the public telephone network provided at a fixed location. (For the purposes of this Recommendation, call origination is taken to include call conveyance, delineated in such a way as to be consistent, in a national context, with the delineated boundaries for the market for call origination and the market for call transit on the public telephone network provided at a fixed location.) (hereafter, ‘Market 2’)”*
- 2.28 Given that the 2007 Recommendation no longer has effect, there is no presumption at EU level in favour of continuing to regulate the FACO or RFVA markets. Therefore, to consider whether the markets are susceptible to *ex ante* regulation in light of national circumstances, ComReg must carry out the 3CT set out in the EC Explanatory Notes and reiterated at Article 67(1)EECC.
- 2.29 The 3CT sets out the criteria that must be cumulatively satisfied in order to determine whether a relevant market should be, or should continue to be, subject to *ex ante* regulation. The three criteria are:
- (a) The presence of high and non-transitory barriers to entry;
 - (b) A market structure which does not tend towards effective competition within the relevant time horizon; and
 - (c) The insufficiency of competition law alone to adequately address the market failure(s) concerned.
- 2.30 If at least one of the 3CT criteria fails, this suggests that competition is working well on the market in question, and that *ex ante* regulation is no longer required. In such instances, the market in question should be deregulated.
- 2.31 If, on the other hand, the 3CT passes, that is to say, if all three criteria are satisfied, then competition is unlikely to be working well on the market in question, and *ex ante* regulation is, in principle, warranted. It is then necessary to carry out a competition assessment, to determine whether the market is characterised by the presence of SMP.

⁴⁹ COMMISSION RECOMMENDATION of 17 December 2007 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (2007/879/EC) (the ‘2007 Recommendation’).

⁵⁰ Annex to the 2007 Recommendation.

- 2.32 In particular, Regulation 25 of the Framework Regulations⁵¹ requires that, where ComReg determines, as a result of a market analysis and in accordance with Regulation 27,⁵² that a given market (defined in accordance with Regulation 26)⁵³ is not effectively competitive, ComReg is obliged under Regulation 27(4)⁵⁴ thereof to designate an Undertaking⁵⁵ (or Undertakings) with SMP in that market. In addition, ComReg must, as it considers appropriate, impose specific obligations on such Undertaking(s), or maintain or amend such obligations where they already exist.
- 2.33 As set out at paragraph 1.11 above, ComReg applies the Modified Greenfield Approach ('MGA'), as set out in the 2020 Explanatory Note, when carrying out its assessment. Where an SP is ultimately designated as having SMP in a market, ComReg is obliged, under Regulation 8(1) of the Access Regulations, to impose on that SP (or maintain where they already exist) the obligations set out in Regulations 9 to 13 of the Access Regulations as it considers appropriate. Obligations imposed must be:
- (a) Based on the nature of the problem identified;
 - (b) Proportionate and justified in the light of the objectives laid down in section 12 of the Communications Regulation Act 2002 (as amended),⁵⁶ and Regulation 16 of the Framework Regulations;⁵⁷ and
 - (c) Only imposed following consultation in accordance with Regulations 12 and 13 of the Framework Regulations.
- 2.34 Section 12(1)(a) of the Communications Regulation Act 2002 (as amended) sets out ComReg's objectives in exercising its functions in relation to the provision of electronic communications networks, electronic communications services and associated facilities, namely to:
- (a) Promote competition;
 - (b) Contribute to the development of the internal market; and
 - (c) Promote the interests of users within the European Union.

⁵¹ This provision is mirrored at Article 63 of the EECC.

⁵² This provision is mirrored at Article 67 of the EECC.

⁵³ This provision is mirrored at Article 64 of the EECC.

⁵⁴ This provision is mirrored at Article 67(4) of the EECC.

⁵⁵ Regulation 2 of the Framework Regulations defines an Undertaking as "a person engaged or intending to engage in the provision of electronic communications networks or services or associated facilities".

⁵⁶ Communications Regulation Act 2002 (No. 20 of 2002), as amended (the '**Communications Regulation Act 2002 (as amended)**').

⁵⁷ The general objectives of the EECC are laid out at Article 3 thereof.

2.4 Liaison with Other Bodies

- 2.35 In addition to conducting a public consultation in accordance with Regulation 12 of the Framework Regulations,⁵⁸ ComReg is required by Regulation 27(1) of the Framework Regulations⁵⁹ to carry out an analysis of the Relevant Markets, where appropriate, with an agreement with the Competition and Consumer Protection Commission (the ‘**CCPC**’) under section 34 or 47G of the Competition Act 2002 (as amended).⁶⁰ A copy of the correspondence from the CCPC (‘**CCPC Response**’) to ComReg dated 12 May 2022 is set out at Annex: 2. The CCPC noted it had no compelling grounds to disagree with ComReg’s draft findings, and agreed with ComReg’s proposals. ComReg is also required to consult with the EC in accordance with Article 32(3) of the EECC (‘**Article 32 Notification**’). On 16 May 2022, ComReg commenced the Article 32 Notification and made the corresponding draft measures accessible to the EC, BEREC and NRAs in other Member States (‘**Notified Draft Measures**’).⁶¹ ComReg is also obliged to make its draft measures accessible to the EC, BEREC and NRAs in other Member States, pursuant to Regulation 13(3) of the Framework Regulations.⁶²
- 2.36 On XX XX 2022 the EC provided its response to ComReg’s Notified Draft Measures (‘**European Commission’s Response**’) a copy of which is set out in Annex: 3. [[TO BE COMPLETED]]

2.5 Previous Reviews of the Relevant Markets

- 2.37 The Relevant RFVA Markets have, to date, been regulated in accordance with ComReg’s 2014 RFVA Decision (the ‘**2014 RFVA Decision**’).⁶³ The 2014 RFVA Decision designated Eircom as having SMP on each of the Standalone Low-Level Voice Access (‘**Standalone LLVA**’), Bundled Low-Level Voice Access (‘**Bundled LLVA**’), and High-Level Voice Access (‘**HLVA**’) RFVA Markets. Various obligations were imposed on Eircom in respect of transparency, bundling, price control, and cost accounting, pursuant to Regulations 8 to 13 of the Access Regulations.

⁵⁸ This provision is mirrored at Article 23 of the EECC.

⁵⁹ This provision is mirrored at Article 67(1) of the EECC.

⁶⁰ Competition Act 2002 (No. 14 of 2002), as amended, (the ‘**Competition Act 2002 (as amended)**’).

⁶¹ Case IE/2021/2332 in respect of RFTS, and Case IE/2021/2333, in respect of FACO.

⁶² This provision is mirrored at Article 32(3) of the EECC.

⁶³ ComReg Decision No. D12/14, Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, 28 August 2014. See <https://www.comreg.ie/csv/downloads/ComReg1489.pdf> (the ‘**2014 RFVA Decision**’).

- 2.38 The remedies applied to the Relevant RFVA Markets in the 2014 RFVA Decision have been amended or altered over time by means of the 2015 FACO Decision and the 2018 Bundles Decision.⁶⁴
- 2.39 The Relevant FACO Markets have, to date, been regulated in accordance with the 2015 FACO Decision which designated Eircom as having SMP on both the Low-Level ('**LL-FACO**') and High-Level ('**HL-FACO**') FACO Markets. Briefly, ComReg defined separate Low-Level and High-Level FACO markets on the basis that there was a break in the chain of substitution between these markets, such that Access Seekers purchasing LL-FACO would not consider switching to HL-FACO if the price of LL-FACO increased, and vice versa. LL-FACO is, generally, dimensioned to the needs of residential and very small business end users, while HL-FACO is, generally, dimensioned to the needs of larger business and institutional or corporate end users. The pricing and functional characteristics of LL-FACO and HL-FACO reflect these differences.
- 2.40 The 2015 FACO Decision imposed regulatory obligations on Eircom in the form of access, transparency, non-discrimination, price control, accounting separation and cost accounting.
- 2.41 ComReg issued a draft decision – the 2021 Draft Decision – and notified it to the EC and BEREC in June 2021, which proposed to fully deregulate the Relevant RFTS Markets and to partially deregulate the Relevant FACO Markets. The EC ultimately issued a Withdrawal Decision in respect of the 2021 Draft Decision, which required ComReg to withdraw the then notified measure, as set out in further detail in Section 3 below. As a result, ComReg issued a new consultation – the 2022 Consultation – in February 2022 – and the decision in this document now considers Respondents Submissions before then making a final decision on its analysis.

2.6 Consultation Process

- 2.42 ComReg conducted a public consultation in accordance with Regulation 12 of the Framework Regulations, issuing the 2022 Consultation in February 2022. Five Submissions to the Consultation were received from a range of industry stakeholders (together referred to as the '**Respondent(s)**'), namely:
- (a) ALTO,
 - (b) BT,
 - (c) Vodafone
 - (d) Eircom, and
 - (e) Magnet.

⁶⁴ Response to Consultation and Decision on price control obligations relating to retail bundles: Further specification of the wholesale price control obligation not to cause a margin squeeze in the WLA, and WCA Markets [ComReg Document 18/96](#) Decision: D12/18, November 2018 (the '**2018 Bundles Decision**').

2.43 Throughout this Decision, ComReg has summarised Respondents' main views and has carefully considered them before setting out its final position.

2.7 European Electronic Communications Code

2.44 The EECC replaces the EU Common Regulatory Framework (which included the Framework Directive and the Access Directive) which was adopted in 2002 and amended in 2009. With some limited exception, Member States were required to transpose the EECC into national law by 21 December 2020.

2.45 As the EECC has not yet been transposed into Irish law as of May 2022, the legal basis for this market review is the existing statutory regime, including the provisions set out in the Framework Regulations, the Access Regulations, the Authorisation Regulations and the Universal Service Regulations, read in light of the EECC. Whilst publication of this Decision occurs before the EECC has been transposed into Irish law, ComReg has been mindful of the EECC in making this Decision. In particular, where possible and appropriate, ComReg has had regard to the amendments brought by the EECC to both the principles and substance of the regulatory regime, including changes to the General Objectives set out at Article 3 of the EECC, and any specific changes to the market analysis procedures described at Chapter III, or the remedies imposed on Undertakings designated with SMP set out at Chapter IV.

2.46 In preparing this Decision, ComReg has taken account of its functions and objectives under the Communications Regulation Act 2002 (as amended), as well as requirements under the Framework Regulations and the Access Regulations.

2.8 Structure of the Decision

2.47 The remainder of this Decision Paper is structured as follows:

- (a) **Section 3** defines the Relevant RFTS Markets from both a product and a geographic perspective;
- (b) **Section 4** assesses competition within the Relevant RFTS Markets by carrying out a 3CT to determine if continued *ex ante* regulation is warranted, and also sets out the withdrawal of SMP remedies and obligations on the Relevant RFTS Markets;
- (c) **Section 5** sets out the process whereby regulation may, as appropriate, be removed from the Relevant FACO Markets;
- (d) **Section 6** sets out the next steps following publication of this Decision;
- (e) **Annex: 1** sets out the Decision Instrument in respect of the Relevant RFTS Markets and the Relevant FACO Markets which specifies, in legal form, the remedies;
- (f) **Annex: 2** sets out ComReg's consultation with the CCPC;

- (g) **Annex: 3** sets out the European Commission's response to ComReg's draft notified Decision;
- (h) **Annex: 4** sets out ComReg's consideration of the European Commission's response; and
- (i) **Annex: 5** sets out the non-confidential version of Respondents' Submissions.

3 Relevant RFTS Market Definition

- 3.1 In this section, ComReg defines the relevant product markets for RFTS and the geographic extent of each such market, having regard to the specific circumstances prevailing in the State. As noted previously, the 2020 EC Recommendation does not identify ‘*access to the public telephone network at a fixed location for residential and non-residential customers*’ as a market susceptible to *ex ante* regulation. Accordingly, ComReg must carry out a 3CT⁶⁵ at local level to determine whether the duly-defined relevant markets should, in principle, be subject to ongoing *ex ante* regulation or whether, alternatively, it is appropriate to remove regulation.
- 3.2 In Section 3 of the 2022 Consultation, ComReg set out its preliminary views on the appropriate RFTS Market definitions from both a product market and a geographic market perspective. Having assessed Respondents’ Submissions, ComReg’s overall conclusion (which is consistent with its view in the 2022 Consultation) is that there are three distinct markets for RFTS (the ‘**Relevant RFTS Markets**’), each of which is national in scope:
- (a) **Market 1a:** Standalone Low-Level RFTS (‘**Standalone LL-RFTS**’) including RFTS over PSTN and ISDN BRA and any Managed VoB delivered over NG Broadband on a standalone basis, together with MTS;
 - (b) **Market 1b:** Bundled Low-Level RFTS (‘**Bundled LL-RFTS**’) including RFTS over PSTN and ISDN BRA and Managed VoB delivered over (and with) NG Broadband and MTS on a bundled basis together with any of broadband, television or MTS; and
 - (c) **Market 1c:** High-Level RFTS (‘**HL-RFTS**’) including RFTS over ISDN FRA and PRA and any Hosted PBX or SIP Trunking forms of Managed VoIP delivered over NG Broadband, including, on a standalone basis or on a bundled basis together with any of broadband, television or MTS.⁶⁶
- 3.3 Below ComReg sets out its position, having considered Respondents’ views, on the appropriate Relevant RFTS Market definitions from both a product market and geographic market perspective as follows:

⁶⁵ The 3CT set out at Article 67(1) of the European Electronic Communications Code (Directive (EU) 2018/1972) sets out the criteria that must be cumulatively satisfied in order to determine that a relevant market should be - or continue to be - subject to *ex ante* regulation. The three criteria are

- a. the presence of high and non-transitory barriers to entry;
- b. a market structure which does not tend towards effective competition within the relevant time horizon;
- c. the insufficiency of competition law alone to adequately address the market failure(s) concerned.

The 3CT is also outlined on pages 26 to 28 of the 2014 Recommendation.

⁶⁶ MTS in this context refers to MTS sold in a bundle with HL-RFTS. MTS is excluded from the HL-RFTS market.

- (a) Summary of the 2021 Draft Decision and 2022 Consultation (paragraphs 3.4 to 3.10 below);
- (b) Identifying the focal product, which is the initial product against which potential substitute products are assessed (paragraphs 3.11 to 3.20 below);
- (c) Whether any alternative RFTS products should be included in the Relevant RFTS Markets, having regard to the effectiveness of any direct constraints from demand-side substitutes or supply-side substitutes, including self-supplied inputs (paragraphs 3.21 to 3.88 below);
- (d) The geographic scope of the Relevant RFTS Markets (paragraphs 3.89 to 3.144 below); and
- (e) Overall conclusions on the Relevant RFTS Markets (paragraphs 3.145 to 3.146).

3.1 View in the 2021 Draft Decision and 2022 Consultation

- 3.4 The 2021 Draft Decision concluded that RFTS products provided over a copper-based FNA network constituted appropriate focal products – being the products against which possible substitute products are considered. ComReg identified two focal products, one for low-volume users comprising standalone copper based FNA RFTS over PSTN and ISDN BRA, and one for high-volume users comprising standalone FNA RFTS over ISDN FRA and ISDN PRA. ComReg additionally identified Managed VoIP delivered over NG Broadband networks as an effective demand-side constraint on the focal products – Managed VoB in the case of Low-level RFTS, and SIP Trunking and Hosted PBX in the case of High-Level RFTS. However, ComReg excluded MTS from the RFTS product markets.
- 3.5 ComReg’s position in the 2021 Draft Decision was that there were three distinct markets for RFTS, each of which was considered to be national in scope:
- (a) **Market 1a:** Standalone Low-Level RFTS (**‘Standalone LL-RFTS’**) including RFTS over PSTN and ISDN BRA and any Managed VoB delivered over NG Broadband on a standalone basis;
 - (b) **Market 1b:** Bundled Low-Level RFTS (**‘Bundled LL-RFTS’**) including RFTS over PSTN and ISDN BRA and Managed VoB delivered over (and with) NG Broadband on a bundled basis together with any of broadband, television or MTS; and
 - (c) **Market 1c:** High-Level RFTS (**‘HL-RFTS’**) including RFTS over ISDN FRA and PRA and any Hosted PBX or SIP Trunking forms of Managed VoIP delivered over NG Broadband, including, on a standalone basis or on a bundled basis together with any of broadband, television or MTS.

- 3.6 In its Withdrawal Decision, the EC asserted that the RFTS product market definition set out in the 2021 Draft Decision was “...*insufficiently grounded by the market investigation carried out by ComReg*”.⁶⁷ The EC’s main argument in this regard focussed on its perceptions of the role of MTS in the RFTS product market – that MTS appeared to be an effective substitute to RFTS and should therefore be included in the same product market. The EC did not query other aspects of the RFTS product market definition set out in the 2021 Draft Decision, although its comments elsewhere may have an indirect bearing on it. Accordingly, in the 2022 Consultation ComReg proposed to include MTS as an effective demand-side constraint on the LL-RFTS focal products only.

Respondents’ Views

- 3.7 No Respondent offered views accompanied by supporting evidence on ComReg’s preliminary conclusions in the 2022 Consultation in respect of the RFTS market definition exercise.⁶⁸ In the absence of any such views, ComReg has no reason to alter the preliminary conclusions which it set out in the 2022 Consultation in respect of the proposed RFTS market definition.

Overview of Candidate Products in RFVA Markets

- 3.8 RFVA⁶⁹ is a retail service which provides a connection or access at a fixed location to the PSTN or equivalent for the purpose of making and/or receiving telephone calls, as well as related services. RFVA provides the network access necessary for the provision by SPs of a RFVC service. Together, RFVA and RFVC provide RFTS.
- 3.9 RFVA can be thought of as retail line rental, a physical access path running from the local exchange (or street cabinet) to the end user’s premises, while RFVC can be thought of as the ability to make (that is, ‘originate’) calls from a fixed handset, by virtue of having RFVA. Figure 2 below gives an overview of RFVA and RFVC. RFVA and RFVC are typically purchased together as a package of RFTS, for which end users pay a single bill to a single SP. RFTS can be purchased either as a standalone product or in a bundle comprising RFTS together with any of broadband, TV and mobile voice telephony. As of Q4 2021, RFTS is most frequently bundled with broadband, as the broadband access path can, in many cases, also be used for the delivery of RFTS by means of Managed Voice over Broadband (**‘VoB’**).⁷⁰

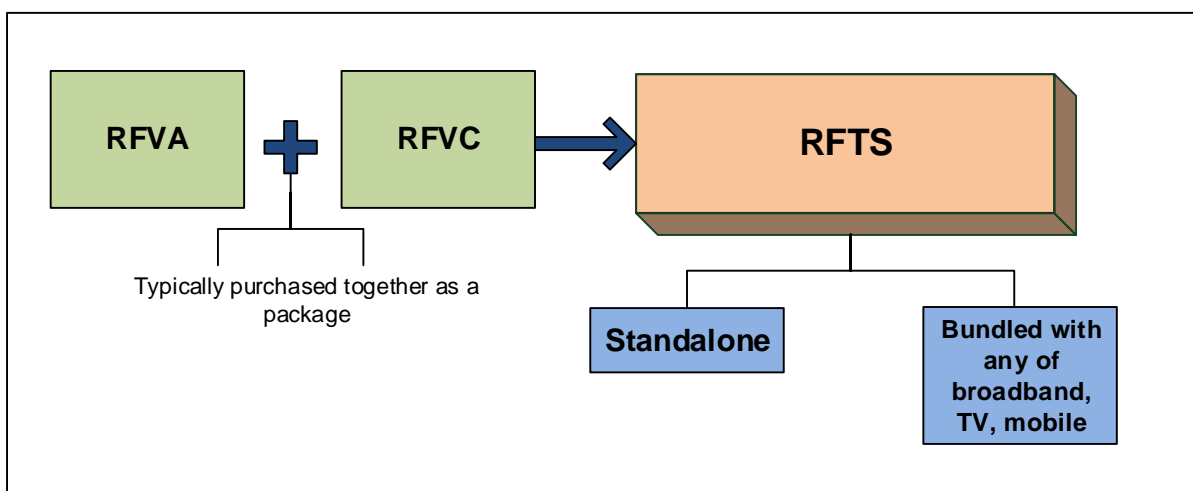
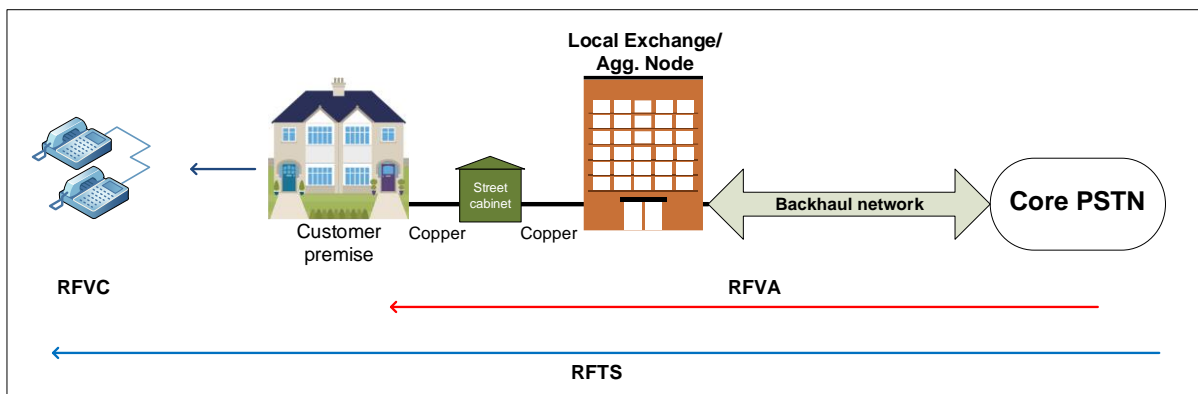
⁶⁷ Paragraph 118 of the Withdrawal Decision.

⁶⁸ Magnet offered a number of views which ComReg addresses below in the discussion of the withdrawal of SMP remedies from the Relevant FACO Markets.

⁶⁹ Commonly referred to as ‘(retail) Line Rental’.

⁷⁰ ‘Managed VoB’ differs from ‘Unmanaged VoB’ services such as Skype or WhatsApp, in that the SP providing Managed VoB can manage the quality of the voice traffic on the IP access path, to assure minimum Quality of Service (**‘QoS’**) standards.

Figure 2: Overview of RFTS



- 3.10 While it is, in principle, possible for end users to purchase RFVA and RFVC separately from different SPs, data show a consistent trend whereby end users exhibit a strong preference for purchasing both RFVA and RFVC in a bundle of RFTS from a single SP.

3.2 Product Assessment of Relevant RFTS Markets

Identifying the Focal Product

- 3.11 The first step in the product market definition is identifying the relevant focal product. According to BEREC,

“The focal product is defined as the main product under investigation and the focal area is the area under investigation, in which the focal product is sold. The definition of the focal product may depend on specific market conditions and on the issues that NRAs want to address during the market analysis.

(.....) an NRA should start by identifying the focal product considering their national market conditions. One of the possible criteria chosen

by NRAs might be to define the focal product as the one where competition problems are believed to exist.”⁷¹

- 3.12 ComReg’s position is that standalone RFTS products provided over a copper-based FNA network constitute appropriate focal products for the definition of the Relevant RFTS Markets. As of Q4 2021, PSTN remains the most common network over which RFTS is delivered (just over 756,000 subscriptions, accounting for 80% of total RFTS subscriptions (962k) and for high-volume users, there continues to be non-trivial uptake of ISDN products.⁷²
- 3.13 ComReg defines two focal RFTS products, as described below:
- (a) A focal product for low-volume users comprising standalone FNA RFTS over PSTN and ISDN BRA (**‘Low-Level RFTS Focal Product(s)’**);
 - (b) A focal product for high-volume users comprising standalone FNA RFTS over ISDN FRA and ISDN PRA (**‘High-Level RFTS Focal Product(s)’**).
- 3.14 ComReg’s analysis suggests that end users with a preference for RFTS and broadband are likely to purchase these products as a bundle. This is because there is a high degree of supply-side complementarity in the provision of these products, and because, on the demand-side, end users typically prefer to have a single SP of fixed telecommunications services, where possible. However, some 16% of households continue to purchase RFTS on a standalone basis.⁷³ This may be due to the unavailability of broadband at their location, a preference for a voice-only service or some level of inertia. While many SMEs purchase both RFTS and fixed broadband access, 31% of SMEs surveyed as part of the 2019 SME Market Research still purchase standalone RFTS.⁷⁴

⁷¹ BEREC Report on Impact of Fixed-Mobile Substitution in Market Definition, at p.12. BoR 12 (52), 24 May 2012. Available online at: https://www.berec.europa.eu/eng/document_register/subject_matter/berec/reports/363-berec-report-impact-of-fixed-mobile-substitution-fms-in-market-definition

⁷² ComReg QKDR Q4 2021.

⁷³ Purchases of ‘Fixed Telephony Only’ as a standalone product, as a proportion of ‘Total Fixed Telephony Subscriptions’, calculated using ComReg QKDR data.

⁷⁴ Slide 14 of the 2019 SME Market Research.

- 3.15 Irrespective, however, of whether there is a separate market for standalone RFTS, a proportion of end users may consider bundles comprised of RFTS and broadband to be a substitute for standalone RFTS. In particular, where households and businesses purchase both RFTS and broadband, there is scope for substitution between standalone RFTS and RFTS bundled with other services. In this scenario, the bundle of RFTS and broadband could be in the market as defined with standalone RFTS as the candidate product, though this would depend on whether the bundle element constrains the Hypothetical Monopolist ('HM') of standalone RFTS from imposing a SSNIP. It is clear from the 2019 Market Research that product bundles that include RFTS and broadband are viewed by some end users as a substitute to RFTS.⁷⁵ In light of this, ComReg considers below the suitability of RFTS bundled with other products as potential substitutes for standalone RFTS.
- 3.16 ComReg's position is that RFVA and RFVC comprise a single offering (RFTS). The low number of CPS lines purchased at wholesale level indicates that very few RFVA lines are delivered separately from RFVC. This is supported by the 2019 Market Research which showed limited purchasing of RFVA and RFVC from separate SPs.⁷⁶ In addition, ComReg found that none of the largest SPs retail RFVA and RFVC separately. This suggests that end users consider RFVA and RFVC as a single product over which the purchasing decision is made.
- 3.17 ComReg does not distinguish between fixed line call types in determining the appropriate focal products.

Respondents' Views

- 3.18 No Respondents offered views in their Submissions on the appropriate RFTS focal product.

ComReg's Position

- 3.19 ComReg therefore retains its position as articulated in the 2021 Draft Decision and 2022 Consultation in respect of the RFTS focal products. Standalone RFTS products provided over a copper-based FNA network constitute appropriate focal products for the definition of the Relevant RFTS Markets. As of Q4 2021, PSTN remains the predominant network over which RFTS is delivered (just over 766,000 access paths), accounting for 80% of total FNA access paths (962k) and for high-volume users, there continues to be a non-trivial uptake of certain ISDN products.⁷⁷

⁷⁵ Slide 19 of the 2019 Residential Market Research.

⁷⁶ Slide 35 of the 2019 Residential Market Research.

⁷⁷ ComReg QKDR Q4 2021.

- 3.20 ComReg therefore defines two focal RFTS products, one for low-volume users comprising standalone copper based FNA RFTS over PSTN and ISDN BRA (**'Low-Level RFTS Focal Product(s)'**), and one for high-volume users comprising standalone FNA RFTS over ISDN FRA and ISDN PRA (**'High-Level RFTS Focal Product(s)'**).

Assessment of Direct Constraints

- 3.21 ComReg considers the strength of any direct constraints on the focal RFTS products to determine whether the Relevant RFTS Markets should be broadened beyond the LL-RFTS and HL-RFTS focal products to include effective substitutes. In particular, ComReg considers:
- (a) Demand-side substitution (paragraphs 3.23 to 3.78 below); and
 - (b) Supply-side substitution, including the self-supply of vertically-integrated SPs (see paragraphs 3.79 to 3.84 below).
- 3.22 ComReg's overall conclusions on the assessment of direct constraints are set out at paragraphs 3.85 to 3.88 below.

Demand-Side Substitution

- 3.23 Demand-side substitution measures how customers react to price increases. The measurement of demand-side substitution is formalised in the HMT. The HMT assesses whether a SSNIP above the competitive level - taken to be in the range of 5% to 10% - of a focal product supplied by a HM would induce a sufficient number of customers to switch to an alternative product, such that it would render the price increase unprofitable. If enough customers switch to the alternative product, rendering the price increase unprofitable, then the alternative product is also included in the relevant product market. The HMT is carried out for any given number of alternative products which, by means of their characteristics, prices and intended use, may constitute an effective substitute to the focal product. If switching to these alternative products renders the SSNIP (above the competitive level) of the focal product unprofitable, then these are also included in the relevant product market.
- 3.24 On the demand side, ComReg considers whether the following forms of voice service are effective direct constraints on the duly-defined focal products (and therefore fall to be included in the same relevant market):
- (a) Managed VoIP-based RFTS delivered over fixed NG Broadband access (paragraphs 3.25 to 3.29 below); and
 - (b) Mobile Service (paragraphs 3.30 to 3.78 below).

Is Managed VoIP-based RFTS delivered over fixed NG Broadband a demand-side substitute to the focal product?

- 3.25 In the 2022 Consultation (and also in the 2021 Draft Decision), ComReg concluded that Managed VoIP-based RFTS delivered over fixed NG broadband was a demand-side substitute to the focal RFTS product. In its Withdrawal Decision, the EC did not take issue with this finding.
- 3.26 ComReg concludes⁷⁸ that Managed VoB delivered over NG Broadband is sufficiently substitutable with the LL-RFTS focal product. While Managed VoB is predominantly sold in a bundle comprising broadband and/or other services, standalone FNA RFTS users who value a bundle of services are likely to switch to Managed VoIP in a bundle with broadband.
- 3.27 For higher-volume RFTS users, ComReg's position is that Managed VoIP over SIP Trunking/Hosted PBX is substitutable with the HL-RFTS focal product as it can offer voice channels equivalent to ISDN FRA and ISDN PRA. However, such high-volume users will need to invest in suitable equipment on-site and SPs have indicated to ComReg that in greenfield sites, businesses would invest in SIP Trunking/Hosted PBX. ComReg considers SIP Trunking/Hosted PBX delivered over NG Broadband to be substitutable with the HL-RFTS Focal Product, as opposed to SIP Trunking/Hosted PBX over leased line, which bears a significantly higher cost differential.⁷⁹

Respondents' Views

- 3.28 No Respondent offered a view in the Submissions on whether Managed VoIP should be designated as a demand-side substitute to the RFTS focal product.

ComReg's assessment of Respondents' views and final position

- 3.29 In the absence of views from Respondents and based on the reasoning set out at paragraphs 4.206 to 4.275 of the 2021 Draft Decision, ComReg's position is that Managed VoIP-based RFTS delivered over NG is a demand-side substitute to the RFTS Focal Products. In the case of LL-RFTS, Managed VoIP takes the form of Managed VoB, and in the case of HL-RFTS, Managed VoIP takes the form of SIP Trunking and Hosted PBX.

⁷⁸ Consistent with the reasoning set out at 4.206 to 4.275 of the 2021 Draft Decision.

⁷⁹ Consistent with the reasoning set out at paragraphs 4.389 to 4.404 of the 2021 Draft Decision.

Is mobile telephony service (MTS) a demand-side substitute to the focal product?

2021 Draft Decision

- 3.30 In the 2021 Draft Decision, ComReg's view was that RFTS and MTS were not in the same product market and should be considered to be complements rather than substitutes.⁸⁰ The 2021 Draft Decision also considered that FMS was not sufficiently strong to amount to an effective and immediate constraint on suppliers of the two focal products over the lifetime of the market review period.
- 3.31 Although there was evidence of some substitutability of RFTS for MTS – that is, fixed-mobile substitution ('**FMS**') (particularly mobile-only households (46%), of which only 39% previously had RFTS)⁸¹ ComReg's view in the 2021 Draft Decision was that both residential and SME end users were more likely to consider RFTS and MTS to be broadly complementary. It was identified that end users therefore appeared to have a strong preference for purchasing both MTS and RFTS, to meet different needs.
- 3.32 The 2021 Draft Decision acknowledged that MTS may, in some usage cases, represent a substitute for RFTS, but argued that overall price differences between fixed and mobile calls, and variations in end user usage, preferences and perceptions regarding mobile telephone calls versus RFTS calls, indicated that MTS was not a sufficiently strong constraint on the focal products to warrant inclusion in the Relevant RFTS Markets.

Withdrawal Decision

- 3.33 The EC indicated in the Withdrawal Decision⁸² that the RFTS product market definition set out in the 2021 Draft Decision, in particular the exclusion of MTS, was not sufficiently supported by evidence. The EC considered that ComReg had failed to sufficiently analyse other relevant evidence, some of which may suggest FMS. Therefore, the EC concluded that it was uncertain whether the product markets defined in the 2021 Draft Decision were correctly defined in accordance with the principles of competition law.

⁸⁰ For the reasons set out in detail at paragraphs 4.276 to 4.388, and 4.411 to 4.424 of the 2021 Draft Decision.

⁸¹ Slide 89 of the 2019 SME Market Research.

⁸² At paragraphs 118 to 127 of the Withdrawal Decision.

Evidence in favour of FMS

- 3.34 The EC considered⁸³ that the evidence provided by ComReg was insufficiently conclusive to justify excluding the competitive constraint that the EC considered MTS places on RFTS. The EC noted that the Explanatory Note to the 2014 Recommendation stated that FMS may be clearly established in markets where fixed penetration has decreased substantially in favour of mobile, and mobile network coverage is close to 100%.⁸⁴ The EC also noted that per capita mobile phone penetration in Ireland exceeded 100%, the suggestion being that FMS may therefore be clearly established in Ireland.
- 3.35 The EC also noted "...the availability of mobile plans offering unlimited voice calls for prices comparable to, or even lower than, RFTS subscriptions."⁸⁵ ComReg notes that the EC used the exact same formula of words in its Serious Doubts Letter, while adding that an exact comparison was difficult, due to differences in the structure of the pricing and services included. The EC did not reiterate its concerns regarding exact comparisons in its Withdrawal Decision.
- 3.36 The EC therefore recommended that indicators of price convergence and behavioural patterns should be examined in analysing FMS, such as:
- (a) convergence between the average duration of fixed and mobile calls; and
 - (b) perception and comparison of call quality on mobile and fixed networks.
- 3.37 Again, while it is not made explicit, the EC appears to suggest that the presence of such unlimited mobile plans is indicative of price convergence, with the EC seeing this as a characteristic feature of relevance to the question of FMS.
- 3.38 The Withdrawal Decision simultaneously concluded that mobile plans offering unlimited voice calls for prices comparable to, or lower than, RFTS subscriptions, and also that the vast majority of RFTS subscriptions are part of a bundle, and adding RFTS to the bundle can result in net savings or comes at no or very small additional costs.

Factors insufficiently analysed

- 3.39 While the EC partially agreed with aspects of ComReg's analysis, it considered that ComReg had not sufficiently analysed a number of factors which, in its view, could lead to a finding of sufficient FMS to warrant including MTS in the relevant RFTS and FACO product markets. These factors are:

⁸³ At paragraph 126 of the Withdrawal Decision.

⁸⁴ COMMISSION STAFF WORKING DOCUMENT EXPLANATORY NOTE Accompanying the document Commission Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services (the '**2014 Explanatory Note**'). Although the 2014 Recommendation has since been superseded by the 2020 Recommendation, there is no equivalent text in the 2020 Explanatory Note, arising from the fact that the discussion in the 2014 Explanatory Note concerned Market 1 of 2007 (Retail Fixed Voice Access), which was removed from the list of markets susceptible to *ex ante* regulation by means of the 2014 Recommendation.

⁸⁵ At p.23 of the Withdrawal Decision.

- (a) Availability;
 - (b) Pricing;
 - (c) Intended use;
 - (d) Adoption; and
 - (e) In particular, available usage data.
- 3.40 In respect of usage data in particular, the Withdrawal Decision alluded⁸⁶ to the respective actual declines in volumes of business and residential voice call minutes delivered over RFTS and increases in volumes of voice call minutes over MTS. Paragraph 119 of the Withdrawal Decision referred generally to convergence between the average duration of fixed and mobile voice calls as being one indicator that could be used in examining FMS, although it did not provide any evidence in favour of this proposition, or commentary as to how such evidence should be interpreted.
- 3.41 The EC noted that shifting traffic volumes from fixed to mobile calls may be indicative of a greater degree of FMS than ComReg had recognised in the 2021 Draft Decision, and that further analysis may be required. The EC also pointed to results from the 2019 Market Research which, in its view, indicated that a significant number of survey respondents did not purchase RFTS, and that those respondents who purchased RFTS did not necessarily make use of the service (such that, in the EC's view, usage data are more relevant than RFTS ownership data).
- 3.42 The EC also asserted that the relatively mild decline in the number of RFTS subscriptions was not in itself sufficient evidence to suggest that end users were reluctant to give up RFTS in favour of MTS, particularly given that the vast majority of RFTS subscriptions are part of a bundle, such that adding RFTS to the bundle can result in net savings or comes at no or very small additional costs. The EC therefore considered that the number of active RFTS lines in itself does not provide sufficiently reliable information about the importance of maintaining RFTS for end users.
- 3.43 Overall, the EC considered that the evidence set out in the 2021 Draft Decision was “..insufficiently conclusive...” to allow ComReg to deduce that mobile calls do not place sufficient competitive constraints on RFTS on a forward-looking basis – the implication being that MTS should be included in the definition of the relevant RFTS product markets if no further evidence is available.

⁸⁶ Footnote 63 of the Withdrawal Decision reads: “The overall number of voice call minutes remained very stable between 2014 and 2020. Fixed voice minutes dropped by 43%, business fixed voice minutes dropped by 45% and mobile voice minutes increase by 18% during that time-frame. 85% of overall voice call minutes stem from mobile calls today. Only 54% of end users in the Regional FACO Market still have RFTS service.”

3.44 The Withdrawal Decision also indicated (at paragraph 118) that “...*the product market definition of the RFTS **and FACO market** in the draft measure are insufficiently grounded by the market investigation carried out by ComReg*” [EMPHASIS ADDED BY COMREG]. However, the relevant analysis appears to focus on FMS at the end user level, and the EC has not provided analysis specific to the FACO product market definition. ComReg must accordingly infer that it considers MTS to act as an indirect retail constraint on FACO by means of FMS – although the EC has failed to provide clear evidence or explanation in this regard.

2022 Consultation

3.45 Accordingly, in the 2022 Consultation, ComReg proposed to include MTS in the LL-RFTS product market on the bases that:

- (a) the Withdrawal Decision found that there was insufficient evidence in the 2021 Draft Decision to support ComReg’s finding that MTS should be excluded from the RFTS product market, and
- (b) ComReg had been unable to source additional evidence beyond that which it had already presented in the 2021 Draft Decision to support the proposition that MTS should be excluded from the Relevant RFTS Markets.

Respondents’ Views

3.46 In the 2022 Consultation ComReg asked Respondents to provide any further evidence in their possession which would support the argument that MTS should be excluded from the RFTS product market. No such evidence was provided by Respondents.

3.47 Magnet disagreed at a principled level with the MTS proposals set out in the 2022 Consultation, and argued that ComReg should have carried out further analysis to support its position in the 2021 Draft Decision. It stated:

“It is worth noting that BEREC concluded that ComReg’s views in relation to fixed and mobile not being in the same market was “logical and convincing” and found the EC’s serious doubts in this regard not to be justified. ComReg has not outlined why evidence it deemed to be conclusive and BEREC found to be “logical and convincing” is now no longer so. Rather than carry out further analysis to support the point (e.g. more detailed consumer survey, indoor speed assessments in the Regional FACO Market etc), it has simply adopted a position as though evidence it rightly relied on very recently is no longer of relevance. This is illogical and unreasonable.”

- 3.48 Magnet therefore argued that ComReg had illogically and unreasonably abandoned its evidence base – with which BEREC had concurred – that FMS was insufficient to warrant the inclusion of MTS in the RFTS product market. Magnet suggested that ComReg should, instead, have carried out further analysis and research to support this proposition, such as more detailed consumer surveys, or indoor speed assessments in the Regional FACO Market.

ComReg's consideration of Respondent's views

- 3.49 Magnet suggests that ComReg should have provided further evidence to demonstrate that MTS is not an effective demand-side substitute for the LL-RFTS focal product, rather than adopting a position which required it to disregard the evidence it had relied on in the 2021 Draft Decision.
- 3.50 ComReg was of the view in the 2021 Draft Decision that the evidence and reasoning which it presented were sufficient to ground its conclusion that MTS should not be included in the RFTS product market. The EC, in its Withdrawal Decision, was not persuaded by this evidence, or by the additional evidence which it provided to the EC on two occasions in response to separate Requests for Information ('RFI(s)') which it received from the EC in summer 2021 during the course of the Article 32 Notification and subsequent veto process. This was and remains the best available evidence in ComReg's possession.
- 3.51 In the 2022 Consultation ComReg, nevertheless, further considered the five factors which, in the EC's view, it had failed to sufficiently analyse at the time of the 2021 Draft Decision. No Respondent has provided additional evidence and, in the absence of this, ComReg has no basis upon which to present a view which departs from the EC's position in the Withdrawal Decision.

ComReg's consideration of EC position

HL-RFTS

- 3.52 Before considering the individual points made in the Withdrawal Decision, ComReg notes that the EC does not appear to have distinguished between the LL-RFTS and HL-RFTS markets in its assessment of the impact of MTS, and therefore seems to assume that MTS may place a similarly effective competitive constraint in terms of substitution on both markets. In particular, the Withdrawal Decision states (at paragraph 124) that a significant number of Irish households and businesses have unsubscribed from RFTS, despite the fact that there is a non-trivial difference in this number – 51% of households, but only 23% of businesses. Accordingly, the data on which the Withdrawal Decision relies to support an (implicit) finding that there is insufficient FMS, is somewhat weaker when it comes to the impact on the HL-RFTS market.

- 3.53 ComReg also notes that products may be regarded as substitutable by an end user by reason of the products' characteristics, prices and intended use. In respect of HL-RFTS and MTS, ComReg considers that the characteristics and intended usage of HL-RFTS on the one hand, and MTS on the other hand, are sufficiently different, such that ComReg considers that there remain insufficient grounds to consider that MTS generates a sufficiently effective competitive constraint on the HL-RFTS Focal Product.
- 3.54 HL-RFTS, consisting of ISDN FRA and ISDN PRA lines capable of delivering 16 and 30 voice channels over a line respectively, or Managed VoIP Hosted PBX or SIP Trunking is dimensioned to the needs of corporate and institutional end users who need to provide RFTS capability to multiple end users, typically located in a single, or small number of locations. MTS is not readily capable of delivering this capability, as each MTS 'line' carries a single voice channel only. In this regard, the product characteristics of MTS are much more similar to those of LL-RFTS, which on PSTN or ISDN BRA delivers one or two voice channels over a line, than HL-RFTS.
- 3.55 Accordingly, ComReg's position is that the product characteristics of MTS and HL-RFTS are sufficiently different, such that there is insufficient evidence to conclude that MTS poses an effective demand-side constraint on the HL-RFTS focal product by means of FMS.

LL-RFTS

- 3.56 ComReg has given consideration to the additional factors upon which the EC has relied on in the Withdrawal Decision in support of its position that ComReg adduced insufficient evidence to justify excluding MTS from the LL-RFTS product markets. The EC considered that ComReg had insufficiently analysed usage data which it considered could be indicative of FMS, specifically:
- (a) Convergence between the average duration of fixed and mobile calls;
 - (b) Relative traffic volumes over RFTS and MTS;
 - (c) Incidence of RFTS lines with no traffic;
 - (d) Perceptions and comparisons of fixed and mobile call quality, and
 - (e) Convergence between MTS and RFTS pricing.
- ComReg considers each of these factors below.

Convergence between the average duration of fixed and mobile calls

- 3.57 The Withdrawal Decision notes that behavioural patterns such as convergence in the average duration of mobile and fixed calls should be analysed in assessing FMS. ComReg presumes that the EC means that a similar average duration, or sufficiently converging duration, of fixed and mobile calls provides evidence of FMS. Unfortunately, the Withdrawal Decision does not provide the underlying reason or evidence base upon which it relies to conclude that this should be so.
- 3.58 Call duration data⁸⁷ are not available to ComReg and it is therefore not in a position to consider whether the average duration of fixed and mobile calls has converged or not. Absent the EC's underlying reasoning, it is unclear to ComReg how, specifically, convergence in the average call duration of fixed and mobile calls is suggestive of FMS. As set out in Section 4 of the 2021 Draft Decision, ComReg has shown that end users continue to demonstrate marked preferences for different call types, depending on whether they are using MTS or RFTS. In this regard, mobile penetration rates in Ireland exceed 100%,⁸⁸ which suggests that a high proportion of RFTS subscribers also have an MTS subscription, and therefore can choose to make a call either over RFTS or MTS. Nevertheless, end users continue to display different preferences, depending on whether they are calling from a mobile phone or a fixed line phone. In particular, end users demonstrate strong preferences for calling other mobiles from a mobile phone, but calling other fixed lines from a fixed line phone.

Table 1: Percentage of all calls made from mobile phones and landlines, Q4 2021⁸⁹

From	Mobile phone	Landline
To mobile numbers	77%	23%
To landline numbers	15%	46%
To international numbers	7%	10%
To advanced numbers	2%	21%

- 3.59 As set out above, 77% of calls from mobiles were made to other mobiles, while only 15% were made to landlines. In contrast, 23% of calls from landlines were made to mobiles, while 46% were made to fixed lines. This provides limited evidence of convergence in fixed and mobile voice call usage characteristics. Given the absence of information concerning any convergence in the average duration of mobile and fixed calls, there is no available alternative evidence for ComReg to present on this issue.

⁸⁷ ComReg collects data from SPs on minute volumes, but not call volumes.

⁸⁸ As of Q4 2021, ComReg recorded 5.4 million mobile subscriptions excluding mobile broadband and machine to machine subscriptions, while the population of the State was estimated to be 5.01 million in April 2021 (<https://www.cso.ie/en/releasesandpublications/ep/p-pme/populationandmigrationestimatesapril2021/mainresults/#:~:text=Ireland's%20population%20was%20estimated%20to,table%201.1%20and%20figure%201.1>).

⁸⁹ ComReg QKDR, Q4 2021. Due to rounding, totals may not sum exactly to 100%.

Relative traffic volumes over RFTS and MTS

- 3.60 Since the publication of the 2014 RFVA Decision, RFTS traffic volumes have, in general, continued to decline in both absolute and relative terms. As of Q4 2021, RFTS accounts for 13% of total voice traffic, a decline from 17% in Q3 2019. Similarly, RFTS minutes have continued, in general, to decline across all calling categories since the 2014 RFVA Decision, although there have been some instances of RFTS traffic increasing. In particular, ComReg QKDR data indicate that RFTS traffic increased in Q1 and Q2 2020, and again in Q4 2020 and Q1 2021, before resuming its declining trajectory in Q2 2021.
- 3.61 In contrast, MTS traffic has generally continued to increase since the 2014 RFVA Decision, again with some instances of declining traffic in certain quarters – specifically, Q3 2020, Q1 2021, and Q3 2021. The instances of increasing RFTS traffic and decreasing MTS traffic over the course of 2020 and 2021 run contrary to longer term, persistent downward trends in RFTS traffic and upward trends in MTS traffic. Although precise determinative causes are difficult to pinpoint, these instances correspond to the onset of the Covid-19 pandemic and consequent changes to day-to-day behaviour including, at different points in time over the course of the pandemic, restrictions on movement and increased levels of working and studying from home, compared to pre-pandemic levels.
- 3.62 While it is, as of Q2 2022, still too early to draw firm inferences, ComReg is of the view that any changes to RFTS and MTS traffic patterns arising from the Covid-19 pandemic are likely to be mainly temporary in nature, rather than indicative of a broader reversal of the trends over the past few years. ComReg bases this conclusion on the fact that, even during the course of the pandemic, there have been quarters where traffic trends are consistent with pre-existing patterns. In this respect, RFTS traffic declined in Q3 2020, Q2 2021, Q3 2021 and Q4 2021, while MTS traffic increased in Q2 2020, Q4 2020, Q2 2021 and Q4 2021.⁹⁰ ComReg therefore considers, on a stable and forward-looking basis, that RFTS traffic is likely to continue to decline, while MTS traffic is likely to continue to increase. Accordingly, there does appear to be evidence of declining RFTS traffic volumes and increasing MTS traffic volumes.

⁹⁰ See ComReg's QKDRs.

Incidence of RFTS lines with no voice traffic

3.63 The Withdrawal Decision, referring to ComReg's 2019 Market Research, noted⁹¹ that, of the 49% of households and 77% of businesses which retain RFTS, a significant number do not use RFTS for voice call purposes. The EC also relied on data provided to it by Eircom⁹² in support of this argument. These data, which were not provided to ComReg by Eircom during the course of its assessment, indicated that 52% of Eircom RFTS lines did not produce any traffic. The EC sought ComReg's views on these data during the Phase 2 assessment in its RFIs of 25 June 2021 and 2 August 2021. In response, ComReg indicated that it did not, at that time, have access to such data. ComReg was therefore not in a position to verify the data provided by Eircom to the EC – including the methodology involved⁹³ and its accuracy. Since then, ComReg has obtained outgoing call incidence data from Eircom, and, as the following table shows, data for Q4 2021 indicated that [X REDACTED X]⁹⁴ of Eircom indirect and direct access voice lines reported no outgoing voice calls over that period.

Table 2: Eircom LL-RFTS traffic Q4 2021 [X REDACTED X]

	Outgoing calls		No outgoing calls	
	n	%	n	%
ISDN BRA SB-WLR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
ISDN BRA WLA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PSTN SB-WLR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
PSTN WLA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
VoIP	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Lines	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁹¹ At paragraph 124 of the Withdrawal Decision. The percentage figures quoted by the EC are based on Slide 8 of ComReg's 2019 SME Market Research, and Slide 8 of ComReg's 2019 Residential Market Research.

⁹² At footnote 58 of the Withdrawal Decision.

⁹³ For example, does it involve an assessment of a sample of customers and, if so, on what basis does it reflect broader consumer preferences; does it involve assessing customers on particular price plans, which may themselves drive particular usage etc?

⁹⁴ 51-60%.

- 3.64 The impact of RFTS lines carrying no voice traffic must be assessed in the context of the fact that these end users continue to retain (and pay for) RFTS, notwithstanding any question on FMS. They may also receive calls. RFTS consists of both an RFVA component and an RFVC component. Thus, even where an end user does not initiate calls, they continue to pay for the RFVA component of RFTS (and also receive calls). In general, some end users may also be paying for bundled minutes that they do not use – and this is irrespective of whether or not there is FMS. This suggests that the incidence of RFTS lines with no traffic as an indicator of FMS is likely to vary, and it may be difficult to draw firm conclusions.

Perceptions and comparisons of fixed and mobile call quality

- 3.65 The Withdrawal Decision suggested that ComReg should assess perceptions and comparisons of the quality of calls on the mobile and fixed networks. While ComReg did carry out such an assessment in the 2021 Draft Decision, the EC, in its Withdrawal Decision does not appear to have taken note of that assessment.⁹⁵ ComReg notes that both end user perceptions as reported in various market research, and technical assessments cited in the 2021 Draft Decision indicate that, particularly in rural areas, MTS call quality is not equivalent to RFTS call quality, measured by end user perceptions, end user experience, and ComReg's own technical research.⁹⁶ Given that the above information was already provided to the EC in the context of the 2021 Draft Decision, and in the absence of further evidence from Respondents' Submissions, it follows that there is no available alternative evidence for ComReg to present on this issue.

RFTS and MTS pricing and price convergence

- 3.66 Paragraph 119 of the Withdrawal Decision indicated that FMS may be more clearly established where MTS-RFTS price convergence is demonstrated, *inter alia*, by the availability of mobile plans offering unlimited voice calls for prices comparable to, or even lower than, RFTS subscriptions. ComReg is aware of the availability of both RFTS plans and MTS plans that offer limited or unlimited minutes (frequently with exceptions for, for example, international or peak calls). However, the provision of such call plans does not necessarily imply equivalence of fixed and mobile pricing.

⁹⁵ See paragraphs 4.348 to 4.349, and 4.373 to 4.377 of the 2021 Draft Decision.

⁹⁶ ComReg document 18/73, The Effect of Building Materials on Indoor Mobile Performance, August 2018, ComReg document 18/05, Mobile Handset Performance (Voice), February 2018, and ComReg document 18/82, Mobile Handset Performance (Data), September 2018.

- 3.67 Given the absence of a fixed line rental component to MTS, as well as the presence of inclusive minutes, the comparative price of fixed and mobile calls may be contingent on the volume of calls made. The presence of an inclusive data component in mobile tariffs, and the predominance of RFTS being purchased as part of a bundle along with, typically, broadband or TV also makes like-for-like comparisons of actual call costs difficult.
- 3.68 That said, a number of Mobile Service Providers (**'MSP(s)'**) advertise plans including 'unlimited' minutes, although some limit may be placed on the number of inclusive minutes for making international or non-EU calls, depending on the plan chosen.⁹⁷ Similarly, a number of RFTS SPs advertise plans including 'unlimited' minutes, although these minutes may be restricted to Irish landlines, or to off-peak calls.⁹⁸ Thus, while both MTS and RFTS SPs offer plans which advertise 'unlimited' minutes, in practice, unlimited minutes may be restricted to certain usage criteria, as set out in the footnotes below.
- 3.69 Given the wide range of prices for various RFTS and MTS plans advertising 'unlimited' minutes, there is only some overlap in pricing between some RFTS and MTS plans. ComReg understands that the EC infers that this partial overlap supports the proposition that, as set out at paragraph 119 of the Withdrawal Decision, FMS *"may already be more clearly established"* in Ireland.
- 3.70 ComReg has been unable to find further evidence of RFTS/MTS price convergence corroborating this conclusion. The evidence available to ComReg suggests that there is some pricing overlap between MTS and RFTS plans. However, ComReg also notes that it is difficult to clearly distinguish evidence of price convergence, particularly in the case of bundled products where the price of the calling component may be difficult to isolate from the other bundle components, or mobile plans which include data and messaging components.
- 3.71 Given that the above information was already provided to the EC in the context of the 2021 Draft Decision, and in the absence of further evidence from Respondents' Submissions, it follows that there is no available alternative evidence for ComReg to present on this issue.

ComReg's Final Position

- 3.72 The Withdrawal Decision concluded that MTS may exert a constraint on RFTS by means of FMS. In doing so, the Withdrawal Decision did not distinguish between LL-RFTS and HL-RFTS. It focussed on the following specific areas which, in its view, ComReg had not assessed or had assessed insufficiently:
- (a) Mobile and fixed usage data;

⁹⁷ For example, Clear Mobile advertises unlimited calls and texts to any Irish mobile or landline. <https://clearmobile.ie/> Accessed on 25 March 2022.

⁹⁸ For example, Eircom's dual play broadband and RFTS packages provide unlimited off-peak calls to Irish landlines, unless the end user purchases a monthly €9.99 add-on which includes unlimited calls to Irish and international landlines and mobiles. <https://www.eir.ie/store/customise-your-bundle/>, accessed 25 March 2022.

- (b) Shifting traffic patterns from RFTS to MTS;
 - (c) Relative traffic volumes over RFTS and MTS;
 - (d) Convergence between the average duration of fixed and mobile calls;
 - (e) Incidence of RFTS lines with no traffic;
 - (f) Perception and comparison of the quality of calls on the mobile and fixed networks; and
 - (g) Price convergence, as indicated by as the availability of mobile plans offering unlimited voice calls for prices comparable to, or even lower than, RFTS subscriptions.
- 3.73 ComReg had already assessed some of these factors (specifically, factors (a), (b), (c), and (f)) in the 2021 Draft Decision and has given further consideration to those factors as well as the remaining factors ((d),(e), and (g)) in the paragraphs above.
- 3.74 As set out at paragraphs 3.52 to 3.55 above, ComReg does not consider that MTS is capable of exercising an effective competitive constraint on HL-RFTS, due to the absence of evidence of FMS, and differences in HL-RFTS and MTS product characteristics.
- 3.75 In some instances (average call duration convergence), ComReg has not been able to acquire the relevant data, and cannot therefore draw any inferences in respect of FMS based on those factors. Additionally, ComReg considers that call duration convergence metrics may be of limited explanatory value in the presence of LL-RFTS and MTS plans offering inclusive or unlimited minutes which likely reduce end user sensitivity to call duration and costs.
- 3.76 ComReg has already set out its view in the 2021 Draft Decision that differences persist in MTS call quality and LL-RFTS call quality which are reflected by end user responses to the 2019 ComReg Mobile Customer Experience survey, and also by ComReg's assessment of the impact of modern construction materials on mobile signal attenuation. In its Withdrawal Decision, the EC was not convinced by the merit of the arguments made in respect of poor mobile call quality by some respondents to the 2020 Consultation, BEREC and ComReg. Accordingly, and in the absence of evidence to the contrary, the EC would be unlikely to agree that poor call quality justifies concluding that MTS is not a substitute for LL-RFTS.

- 3.77 Usage and traffic data, as well as pricing data indicate that there is ongoing migration from LL-RFTS towards MTS, and that there is some overlap between the pricing of MTS and LL-RFTS (although many end users continue to retain both LL-RFTS and MTS). As set out at paragraphs 119, and 122 to 125 of the Withdrawal Decision, the EC considers that these indicators are likely to be indicative of a greater level of FMS than considered by ComReg in the 2021 Draft Decision, such that a different conclusion in respect of MTS is warranted. In this regard, ComReg notes that the EC's interpretation of the evidence available to it suggests that MTS should be included in the Relevant RFTS Markets as a demand-side constraint on RFTS.
- 3.78 ComReg's additional analysis has not provided significant additional evidence to support ComReg's position. Accordingly, and in the absence of any further evidence to the contrary provided by Respondents to the 2022 Consultation, ComReg's position, having regard to the Withdrawal Decision, is to include MTS in the Relevant LL-RFTS Markets on the grounds that there is sufficient FMS to warrant making a finding that MTS is a substitute for RFTS.⁹⁹ However, ComReg excludes MTS from the Relevant HL-RFTS Market.

Supply-Side Substitution

- 3.79 ComReg must also consider whether any alternative products represent an effective supply-side substitute to the focal products. Supply-side substitution measures how potential (rather than actual) competitors react to price increases. The HMT assesses whether a SSNIP of a focal product supplied by a HM would cause sufficient new entry into the relevant market by potential competitors, such that it would render the price increase unprofitable.
- 3.80 The Notice on Market Definition makes clear that the impact of supply-side substitution must be equivalent to the impact of demand-side substitution, in terms of effectiveness and immediacy:¹⁰⁰

*“Supply-side substitutability may also be taken into account when defining markets in those situations in which its effects are **equivalent to those of demand substitution in terms of effectiveness and immediacy**. This means that suppliers are able to switch production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices. When these conditions are met, the additional production that is put on the market will have a disciplinary effect on the competitive behaviour of the companies involved. **Such an impact in terms of effectiveness and immediacy is equivalent to the demand substitution effect.**”*

⁹⁹ For the avoidance of doubt, this should not be construed as indicating that fixed telephony is a substitute for MTS (that there is two-way substitution). ComReg considers that, given the differences in functionality and use, in particular MTS are mobile and do not need to be used at a fixed location, fixed telephony is not likely to be an effective substitute for MTS. Substitution of MTS for fixed telephony is likely to be asymmetric.

¹⁰⁰ See paragraph 20. ComReg emphasis added.

- 3.81 In particular, ComReg considers whether an SP would be likely, in response to a HM's SSNIP of RFTS above the competitive level, to switch into production of RFTS in the immediate to short term (typically within one year), without incurring significant costs, and start supplying services of equivalent characteristics to the focal product. ComReg must also consider whether supply-side substitution would likely render the HM's price increase unprofitable through any consequential demand-side substitution.
- 3.82 Aside from the demand-side substitution possibilities identified at paragraph 3.24 above, constraints on the focal products may also arise from potential competitors who, by means of supply-side substitution, offer merchant market FACO at the wholesale level to Access Seekers, and/or self-supply FACO as an input to the provision of their own RFTS. This could include FACO supplied by vertically-integrated SPs (not supplying merchant market services), or suppliers of broadband or high-capacity business data services (e.g. leased lines) supplying FACO by means of wholesale Managed VoIP (i.e. Managed VoB, Hosted PBX, or SIP Trunking).

Supply-side substitution over mobile services

- 3.83 In the 2021 Draft Decision ComReg considered the potential for supply-side substitution arising specifically from vertically-integrated mobile network operators ('**MNOs**') that provide mobile telephony. Since ComReg now includes MTS as a demand-side substitute, the issue of MTS supply-side substitution is now moot. ComReg accordingly concludes that there are no sufficiently immediate and effective supply-side substitutes to the RFTS focal product.

Respondents' Views and ComReg's final position

- 3.84 In their Submissions, no Respondents offered views on ComReg's assessment of RFTS supply-side substitution. ComReg accordingly retains its position that there are no sufficiently immediate and effective supply-side substitutes to the RFTS focal product.

Overall Conclusions on Relevant RFTS Product Market

- 3.85 ComReg defines two distinct focal products for RFTS, pertaining to low-volume and high-volume RFTS users:
- (a) Low-Level RFTS ('**LL-RFTS**') including RFTS delivered over PSTN and ISDN BRA; and
 - (b) High-Level RFTS ('**HL-RFTS**') including RFTS delivered over ISDN FRA and ISDN PRA.
- 3.86 In light of the high incidence of RFTS being provided as part of a bundle with NG Broadband (particularly for Managed VoIP, a demand-side substitute for the focal products) and a considerable but declining number of standalone RFTS users, consistent with the 2014 RFVA Decision, ComReg considers it appropriate to further delineate Standalone and Bundled LL-RFTS Markets.

- 3.87 In the light of the Withdrawal Decision, ComReg includes MTS in the LL-RFTS Product Markets, but not the HL-RFTS Product Market.
- 3.88 The 2022 Consultation has not yielded further evidence from Respondents which would cause ComReg to alter the position it set out in the 2022 Consultation. ComReg's overall position is, therefore, that there are three distinct Relevant RFTS Product Markets (the '**Relevant RFTS Product Markets**')
- (a) **Market 1a:** Standalone Low-Level RFTS ('**Standalone LL-RFTS**') including RFTS over PSTN and ISDN BRA and Managed VoB delivered over NG Broadband on a standalone basis, together with MTS;
 - (b) **Market 1b:** Bundled Low-Level RFTS ('**Bundled LL-RFTS**') including RFTS over PSTN and ISDN BRA and Managed VoB¹⁰¹ delivered over (and with) NG Broadband and MTS on a bundled basis together with any of broadband, television or MTS,¹⁰² delivered on a bundled basis; and
 - (c) **Market 1c:** High-Level RFTS ('**HL-RFTS**') including RFTS over ISDN FRA and PRA, and Managed VoIP delivered over NG Broadband, including Hosted PBX or SIP Trunking forms of Managed VoIP, on a standalone basis or on a bundled basis together with any of broadband, television or MTS.

3.3 Geographic Assessment of Relevant RFTS Markets

- 3.89 In this section, ComReg considers the geographic scope of the Relevant RFTS Product Markets, as outlined above in paragraph 3.87. ComReg's approach follows the approach adopted by the EC in the 2014 Recommendation.
- 3.90 The Notice on Market Definition states that the relevant geographic market is:
- "... an area in which the Undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different."*¹⁰³
- 3.91 The EC further notes in its SMP Guidelines that:

¹⁰¹ Managed VoIP includes RFTS delivered in the form of Managed VoB, as well as Hosted PBX, or SIP Trunking.

¹⁰² This refers to the instance where the RFTS element is not based on MTS, for example, where RFTS is delivered over Managed VoB, but the bundle also includes MTS.

¹⁰³ Notice on Market Definition, paragraph 8.

“According to established case-law, the relevant geographic market comprises an area in which the Undertakings concerned are involved in the supply and demand of the relevant products or services, in which area the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different. The definition of the geographic market does not require the conditions of competition between traders or providers of services to be perfectly homogeneous. It is sufficient that they are similar or sufficiently homogeneous, and accordingly, only those areas in which the conditions of competition are ‘heterogeneous’ may not be considered to constitute a uniform market. In general, the process of defining the geographic boundaries of markets involves identifying any geographic areas where a distinct break in competitive conditions can be observed. This approach places weight on the underlying structural and behavioural factors that are relevant in determining the competitiveness of a market.”¹⁰⁴

- 3.92 In the 2021 Draft Decision, ComReg considered that the Relevant RFTS Markets were national in scope for the reasons set out at paragraphs 4.429 to 4.494 thereof. In doing so, ComReg took utmost account of the Notice on Market Definition and the BEREC Common Position on Geographic Aspects of Market Analysis.¹⁰⁵
- 3.93 In the Withdrawal Decision, the EC took issue with the FACO geographic market definition set out in the 2021 Draft Decision, but not the RFTS geographic market definition. Nevertheless, the Withdrawal Decision exhortation that ComReg should carry out a forward-looking assessment does have an impact on the RFTS geographic market definition. In particular, the 2021 Draft Decision concluded that it was appropriate to define a national RFTS geographic market, *despite* the presence of some geographic differences in competitive conditions arising from the availability (or not) of NG Broadband capable of delivering Managed VoIP RFTS.¹⁰⁶

¹⁰⁴ SMP Guidelines, paragraph 56.

¹⁰⁵ BEREC [Common Position on Geographic Aspects of Market Analysis](#), BoR (14) 73, 05.06.2014.

¹⁰⁶ At paragraphs 4.486 to 4.489.

3.94 In contrast, the Withdrawal Decision held that the existing presence or absence of NG Broadband capable of delivering Managed VoIP RFTS should not be a determinative factor in assessing the geographic scope of the RFTS market. Rather, network rollout should be assessed on a forward-looking basis, to determine whether a market will, arising from ongoing network rollout, be effectively competitive at some point in the foreseeable future. ComReg considers, and following the EC's reasoning in the Withdrawal Decision, that this is likely to be the case at a point in the foreseeable future.

Respondents' Views

3.95 No Respondent offered views on ComReg's geographic assessment of the RFTS market. Accordingly, ComReg has no grounds to alter its preliminary conclusions set out in the 2022 Consultation. ComReg reiterates its assessment of three factors which arose from its geographic assessment in light of the Withdrawal Decision, all of which are considered below. These are:

- (a) Inclusion of MTS in the LL-RFTS product market definition;
- (b) Impact of NG Broadband rollout on a forward-looking basis; and
- (c) Passage of time since the 2021 Draft Decision.

The inclusion of MTS in the LL-RFTS product market definition

3.96 As set out at paragraph 3.71 above, ComReg now includes MTS in the LL-RFTS relevant product market definition, thus broadening the overall scope of that market. It is therefore necessary for ComReg to assess whether the alteration to the LL-RFTS product market similarly warrants the alteration of the LL-RFTS geographic market definition, compared to the 2014 Decision and the 2021 Draft Decision.

3.97 The existing LL-RFTS and HL-RFTS markets are national in geographic scope. Thus, the inclusion of MTS in the LL-RFTS product market would only cause the LL-RFTS geographic market definition to change if it generated sufficient differences in conditions of competition between different geographic areas.

3.98 The inclusion of MTS could lead to the definition of sub-national geographic markets where MTS coverage, MSP presence or MSP pricing varied between geographic areas and this gave rise to differences in conditions of competition which were sufficiently stable and appreciably different across different geographic areas. ComReg does not consider that this is likely to be the case, for the reasons set out below. Moreover, no Respondent Submissions offered evidence to this effect.

3.99 Seven MSPs are currently active in the provision of MTS to end users in the State.¹⁰⁷ Three of these MSPs (Eir Mobile,¹⁰⁸ Three and Vodafone) operate their own mobile networks,¹⁰⁹ while the remaining four MSPs deliver services by renting access to those networks and are known as Mobile Virtual Network Operators ('**MVNO(s)**'). In respect of the geographic assessment criteria detailed at paragraph 3.92 above, ComReg assesses whether MTS delivered by these seven MSPs sufficiently alters conditions of competition such that it is suggestive that sub-national geographic LL-RFTS markets might exist.

Geographic differences in entry conditions over time

- 3.100 All MSPs (that is, the three MNOs which operate their own networks, together with the MVNOS which access those networks) have broadly similar coverage levels for voice call purposes. This coverage is, effectively, national in scope, notwithstanding the fact that coverage issues arise in some areas characterised by low premises or population density, or challenging topographical features. The evidence available to ComReg, as particularly set out in its outdoor coverage map,¹¹⁰ suggests that the presence of MSPs does not appear to differ significantly across the State, allowing for localised coverage issues.
- 3.101 ComReg's outdoor coverage map suggests, at a high level, that coverage tends to be classified as 'Fringe' or 'Fair' in those areas of the State that are characterised by lower population and premises density, as well as more challenging topography, for example, in remote areas of the western seaboard.
- 3.102 While this suggests that there are some differences in geographic entry conditions, each of the MSPs operating in the State report 4G population coverage levels of at least 98%. Accordingly, ComReg considers that, while some areas of the State may be characterised by less comprehensive mobile coverage arising from higher economies of scale and sunk costs associated with serving less populated areas, such instances are localised and, on their own, are not likely to suffice to warrant the definition of sub-national geographic LL-RFTS markets. The presence of MSPs does not appear to vary significantly in different geographic areas across the State, and there do not appear to be instances of geographic differences in entry conditions over time.
- 3.103 ComReg also assesses the extent to which differences in competitive conditions may evolve in particular areas arising from the coverage and market share evolution of wholesale NG Broadband networks over time as a means of identifying any existing or potential variances in entry and competitive conditions across different geographic areas.

¹⁰⁷ Eircom, Vodafone, Virgin Media, Three, LycaMobile, Tesco Mobile, and Post Mobile.

¹⁰⁸ Eir Mobile is owned and operated by Eircom.

¹⁰⁹ Eir Mobile, Three and Vodafone also operate their own 'sub-brands', GoMo, 48 and Clear Mobile respectively.

¹¹⁰ <https://coveragemap.comreg.ie/map>.

- 3.104 ComReg considers that wholesale NG Broadband, at an appreciable level of coverage, is a relevant determinant in distinguishing differences in competitive conditions between EAs. Having regard to the Withdrawal Decision and Submission responses, ComReg assesses NG broadband network coverage on an even more forward-looking basis (relative to that in the 2021 Draft Decision), to account for expected network rollout in assessing competitive conditions. In the paragraphs below, ComReg assesses market share distributions and expected network coverage.
- 3.105 NG Broadband availability to an RFTS end user varies across Exchange Areas ('EAs'),¹¹¹ and will therefore depend on that end user's location. However, on a forward-looking basis, this level of variation across EAs is likely to diminish over time, as Eircom and SIRO continue their FTTP rollout on a commercial basis, as Virgin Media overlays its existing CATV network with FTTP (although this does not substantially alter its existing NG broadband coverage), and as NBI continues its FTTP rollout in the Intervention Area ('IA') – that is, in those areas of EAs which would otherwise be unlikely to be served by operators with NG broadband on a commercial basis.
- 3.106 Accordingly, ComReg considers that, while wholesale NG Broadband coverage and market shares currently vary across geographic areas, as NG broadband network rollout continues, geographic divergence in NG broadband availability is likely to decline over time. On the assumption that geographic convergence in the availability of both wholesale and self-supply NG broadband coverage is likely to occur in the foreseeable future (in particular given NBI is contractually bound to roll-out), ComReg considers that, on a forward-looking basis (and having regard to the Withdrawal Decision), competitive conditions in the provision of RFTS are likely to be sufficiently similar across the State, such that sub-national geographic markets are not warranted.

NG broadband rollout

- 3.107 ComReg considers that Managed VoIP delivered over wholesale NG broadband inputs is capable of generating a sufficiently effective constraint on the RFTS focal products. Accordingly, and having regard to the Withdrawal Decision and bearing in mind the absence of views in Respondent's Submissions, ComReg takes account of both existing wholesale NG broadband infrastructure operated by Eircom and SIRO, and also planned SIRO, Eircom, and NBI wholesale NG broadband infrastructure rollout, where sufficiently reliable deployment plans are available. Given the absence of firm deployment data, ComReg does not take into account wholesale NG broadband inputs to be provided by Virgin Media once it has upgraded its network to FTTP.

¹¹¹ Exchange Areas', or 'EAs' refer to Eircom's Exchange Areas which, as outlined in Annex 11 of the 2021 Draft Decision, was the appropriate geographic unit of measurement used in the geographic analysis.

- 3.108 The Withdrawal Decision indicated that ComReg should carry out its analysis of NG broadband rollout on a more forward-looking basis than had been the case in the 2021 Draft Decision. In particular, the EC advised that ComReg should, as a result, take into account NBI rollout, which it had excluded from its geographic market analysis on the basis that insufficiently accurate rollout data were available to take NBI rollout into account with a reasonable degree of predictability – also noting that at the time NBI had publicly indicated it had missed its then rollout targets.
- 3.109 The Withdrawal Decision also took issue with the 80% wholesale NG Broadband threshold proposed by ComReg in the 2021 Draft Decision. ComReg applied this threshold to EAs to determine whether they should be assigned to the then-defined Urban FACO Market or the then-defined Regional FACO Market on the basis, *inter alia*, that this would facilitate the delivery of Managed VoIP RFTS to a significant majority of premises at an EA. The Withdrawal Decision held that the use of this indicator was of limited relevance, insufficiently robust, and excessively conservative, particularly compared with thresholds used by other NRAs in other market reviews. The Withdrawal Decision failed to offer any guidance on what the EC deemed to be more appropriate thresholds.
- 3.110 As set out below, while various SPs are currently engaged in NG Broadband rollout, the level of certainty in respect of the timing and location of these rollouts is variable. Accordingly, ComReg has limited capability to carry out its assessment on a forward-looking basis, as indicated by the Withdrawal Decision, in circumstances where firm and reliable deployment data are unavailable. This has important consequences for the forward-looking assessment of competition, the sequencing of the withdrawal of regulation and the transition to deregulation, given that it will not be possible to determine sunset periods by reference to precise NG broadband network rollout dates. There is, however, the prospect that, over a longer time horizon, NG broadband coverage will increase, given announced network expansion and upgrade plans with varying degrees of certainty. This creates an inherent tension between the need for a forward looking analysis and certainty regarding the timing of future competitive dynamics– and thus whether or not regulation is necessary.

Eircom

- 3.111 Eircom is currently rolling out its FTTx network, with two million premises reportedly passed by Eircom FTTx, as of Q4 2021. As of December 2021, Eircom's FTTC network passes 1.2 million premises, while its FTTP network passes approximately 746,000 premises. In respect of FTTP, this represents a 31% increase in premises passed¹¹² year on year. Eircom reports that this amounts to a total 86% premises in the State passed by FTTx.¹¹³ ComReg understands that Eircom expects to continue its fibre rollout programme, and in January 2021 announced the creation of a joint venture with InfraVia to be named Fibre Networks Ireland which, it claims, will accelerate its fibre rollout programme, with the intent of passing 1.9 million premises with FTTP by the end of 2026.¹¹⁴ ComReg also notes that Eircom's fibre network upgrade programme is largely focussed on upgrading from FTTC to FTTP. Given that both FTTC and FTTP are capable of delivering Managed VoIP RFTS, ComReg considers that the upgrade from FTTC to FTTP will have little or no impact on Managed VoIP RFTS availability.
- 3.112 Within its broadband footprint, ComReg considers that Eircom Managed VoIP will, over time, replace delivery of RFTS over FNA. In this regard, Eircom self-supply of Managed VoB RFTS has increased from [x ██████████ ██████████ ██████████ x].

Virgin Media

- 3.113 Virgin Media offers TV, broadband, fixed and MTS products, with speeds of up to 250Mb, 500Mb, and 1Gb.¹¹⁵ As of Q4 2021, Virgin Media's cable broadband network passed 954,000 premises.¹¹⁶ Virgin Media's network rollout plans have led to its expansion outside of Dublin and the regional cities to regional towns.

¹¹² It may be the case that a premises passed may not necessarily be capable of being connected due, for example, reasons associated with blocked ducts, with this only becoming apparent during attempts to connect a customer.

¹¹³ See Eircom Group Results, quarter to 31 December 2021. https://www.eir.ie/opencms/export/sites/default/content/pdf/IR/news/eir_Q6_FY21_results_press_release.pdf

The figures quoted in paragraph 613.111 are taken directly from the Eircom quarterly report above and although the absolute figures differ marginally from data held by ComReg the overall picture and percentage coverage figure are very similar. ComReg QKDR data puts FTTx premises coverage at 87%, due to differences in methodologies for counting and reporting 'Total Premises' figures.

¹¹⁴ "Eir and InfraVia team up on fibre broadband roll-out", [Eir and InfraVia team up on fibre broadband roll-out \(rte.ie\)](http://rte.ie)

¹¹⁵ See <https://www.virginmedia.ie/broadband/buy-a-broadband-package/>.

¹¹⁶ Liberty Global Q4 2021 Preliminary Results, page 19, <https://www.libertyglobal.com/wp-content/uploads/2022/02/Virgin-Media-Fixed-Income-Q4-2021-Results.pdf>

- 3.114 Virgin Media does not currently offer wholesale broadband services over its CATV network. However, Virgin Media indicated in November 2021 that it intended to upgrade its network to FTTP and to commence offering wholesale access to third parties.¹¹⁷ Virgin Media has indicated to ComReg that [§< ██████████
██████████
██████████
██████████] ComReg therefore considers that Virgin Media does not yet have “sufficiently reliable deployment plans” that can be considered for the purpose of this assessment. Accordingly, it is not appropriate to take into account potential use by other SPs of Virgin Media wholesale broadband access to offer Managed VoIP based RFTS. In any event, ComReg also notes that Eircom’s regulated WLA/WCA services largely overlap Virgin Media’s network footprint, and SP use of these regulated services to provide Managed VoIP based RFTS is accounted for.

SIRO

- 3.115 SIRO is a joint venture between the ESB and Vodafone which offers WLA over FTTP on a wholesale-only basis, making use of ESB’s legacy electricity distribution network assets. SIRO commenced Phase 1 of its network rollout in 2015, which was scheduled to pass 500,000 premises,¹¹⁸ but was subsequently revised to 450,000 premises.¹¹⁹ As of March 2022, SIRO passes approximately 420,000 premises.¹²⁰ In October 2021, SIRO announced the launch of Phase 2 of its network rollout programme, which is scheduled to increase its network footprint by 320,000 premises to a total of 770,000 premises.¹²¹ [§< ██████████
██████████
██████████
██████████] ComReg therefore considers that it is appropriate, as part of its analysis, to take into account existing SIRO fibre rollout.

¹¹⁷ ‘Virgin Media to create 500 jobs with €200m fibre network upgrade’, 4 November 2021 - <https://www.independent.ie/business/irish/virgin-media-to-create-500-jobs-with-200m-fibre-network-upgrade-41014717.html>

¹¹⁸ <https://siro.ie/wp-content/uploads/2015/05/SIROfttbPR14MAY20151.pdf>

¹¹⁹ <https://siro.ie/news-and-insights/expansion-of-our-gigabit-broadband-network/>

¹²⁰ <https://siro.ie/>

¹²¹ Ibid.

National Broadband Ireland ('NBI')

- 3.116 In May 2019, Granahan McCourt was designated as the Preferred Bidder for the NBP.¹²² Granahan McCourt has incorporated a new Irish registered company, NBI, to build, operate and maintain the NBP in the Intervention Area (the 'IA'). The NBP contract was awarded by the Department of Communications, Climate Action, and Environment ('DCCAE'),¹²³ and was signed on 19 November 2019. It will require the successful bidder to build, maintain and operate a future-proofed, high-speed broadband network in the IA over a 25-year period. Following confirmation of State Aid Approval by the EC and contract closing requirements, DCCAE awarded NBI the contract for the NBP. NBI will maximise the use of existing Eircom pole and duct infrastructure.¹²⁴
- 3.117 The Withdrawal Decision noted that ComReg should take into account ongoing NBI deployments, despite the fact that actual NBI rollout at the time of the Withdrawal Decision was both extremely limited and behind schedule. The Withdrawal Decision therefore indicated that ComReg should, on a forward-looking basis, take into account planned network rollout, even if existing rollout is trivial or non-existent. As set out above, the Withdrawal Decision also counselled that ComReg should take into account "*sufficiently reliable deployment plans of operators and/or NBI*".

¹²² "Government Signs Contract for National Broadband Plan", <https://www.gov.ie/en/press-release/e15062-high-speed-broadband-for-11m-people-in-homes-schools-businesses-acro/>

¹²³ DCCAE is now known as the Department of the Environment, Climate and Communications ('DECC').

¹²⁴ *Ibid.*

- 3.118 In that regard, ComReg notes that NBI indicated at an Oireachtas committee hearing in September 2021 that it was six months behind schedule on rollout, due to the disruption caused by Covid-19, and that a target of passing 115,000 homes and businesses by the end of January 2022 had been reduced to about 60,000 premises,¹²⁵ with a revised estimate of 130,000 connections to be completed by the end of 2022.¹²⁶ At a subsequent Oireachtas committee meeting in January 2022, NBI indicated that this revised 60,000 premises target would again be pushed back, this time to the end of March 2022.¹²⁷ As of 29 March 2022, and according to the NBI website, 59,722 premises are ‘available to order’, which means that these premises are eligible to order services from a retail broadband supplier making use of NBI’s network. ComReg also notes that NBI itself, at the same parliamentary hearing, sought to reduce expectations that an accelerated rollout could be facilitated, and stated that it would not be possible to accelerate rollout until at least 2023.¹²⁸
- 3.119 As of March 2022, retail services over NBI infrastructure are actually available to end users in parts of Cork, Limerick, Clare, Galway, Roscommon, Cavan, Monaghan, Mayo, Tipperary, Kerry, Wexford, Carlow and Louth, totalling 59,722 premises classed as being available to order,¹²⁹ according to the NBI website.¹³⁰ Although NBI rollout remains at a very low level, substantial rollout is envisaged over the next five years.¹³¹

Variation in the number and size of potential competitors

- 3.120 Together, four MSPs account for 95% of the MTS retail voice market in Ireland as of Q4 2021, measured by subscriptions – Eircom, Vodafone, Three, and Tesco Mobile. Eir Mobile, Three and Vodafone, all operate mobile networks which report coverage (measured by both population and area) of in excess of 90%, while Tesco Mobile is an MVNO making use of Three’s network.¹³² MVNOs effectively have the same voice coverage footprint as the host mobile network. Thus, all MSPs have similar coverage levels, and differ by size, measured by subscribers, for reasons other than differences in coverage.

¹²⁵ www.rte.ie/news/business/2021/0915/1246956-rollout-of-national-broadband-plan-behind-schedule/

¹²⁶ <https://www.irishexaminer.com/news/arid-40720986.html>

¹²⁷ <https://www.irishexaminer.com/news/arid-40794984.html> The full transcript of the Joint Oireachtas Committee on Transport and Communications of the 27th January 2022 can be found at https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_transport_and_communications/2022-01-27/debate/mul@main.pdf

¹²⁸ <https://www.independent.ie/business/technology/acceleration-of-rural-broadband-roll-out-wont-happen-for-years-says-scheme-chief-40854221.html>

¹²⁹ ‘Available to order’ does not mean that rollout is as yet at all of the premises. It includes premises that are actually passed, and also premises not yet passed but which NBI expects to pass with a high degree of certainty within a number of months.

¹³⁰ www.nbi.ie. Data accessed on 28 March, 2022.

¹³¹ As set out in greater detail at paragraphs 3.122 to 3.124 of the 2021 Draft Decision.

¹³² Other MVNOs include Virgin Mobile, Post Mobile and Lycamobile.

- 3.121 ComReg concludes, therefore, that the number of MSPs (notwithstanding any size differences between MSPs) is not a distinguishing factor such that it would warrant the definition of sub-national geographic LL-RFTS markets. Competitive conditions resulting from the presence of MSPs are likely to be consistent across the State, given generally high and similar coverage levels.
- 3.122 While there are localised areas where MTS coverage is likely to be poor, ComReg concludes that the evidence on the number and size of potential competitors is insufficient to support the view that there are sub-national geographic markets. This is because MSPs compete nationally and have largely similar national coverage footprints that enable the delivery of MTS voice services across the State.

Distribution of LL-RFTS and MTS market shares

- 3.123 As set out at paragraph 3.87 above, having regard to the Withdrawal Decision, ComReg includes MTS in the LL-RFTS product market, but not in the HL-RFTS product market. The distribution of MTS market shares is therefore only of potential relevance to the geographic scope of the LL-RFTS market.
- 3.124 Before addressing MTS market shares in the context of the geographic scope of the LL-RFTS market, it is important to note the analytical limitations of accounting for MTS market share data. The inclusion of MTS in the LL-RFTS product markets presupposes that MTS market shares should be taken into account when assessing overall LL-RFTS market shares. However, simply adding MTS market shares to landline LL-RFTS market shares does not generate analytically meaningful overall market shares in the context of the high incidence of RFTS subscribers also holding MTS subscriptions. Similarly, given data limitations, ComReg does not hold information on the overlap between RFTS subscriptions and MTS subscriptions offered by various operators. Accordingly, ComReg does not attempt to measure overall market shares, taking into account both landline RFTS and MTS.
- 3.125 However, ComReg notes, as a matter of analytical logic, that the addition of MTS subscribers and MTS market shares must dilute pre-existing landline RFTS market shares, as the totality of subscriptions would now include both MTS and landline RFTS, rather than landline RFTS alone. Accordingly, RFTS market shares measured by subscriptions, as reported in ComReg's QKDR, would no longer accurately reflect overall LL-RFTS market shares and, instead, would represent absolute maximum market shares for each SP, under the extreme assumption that each MTS operator had a market share of 0%.

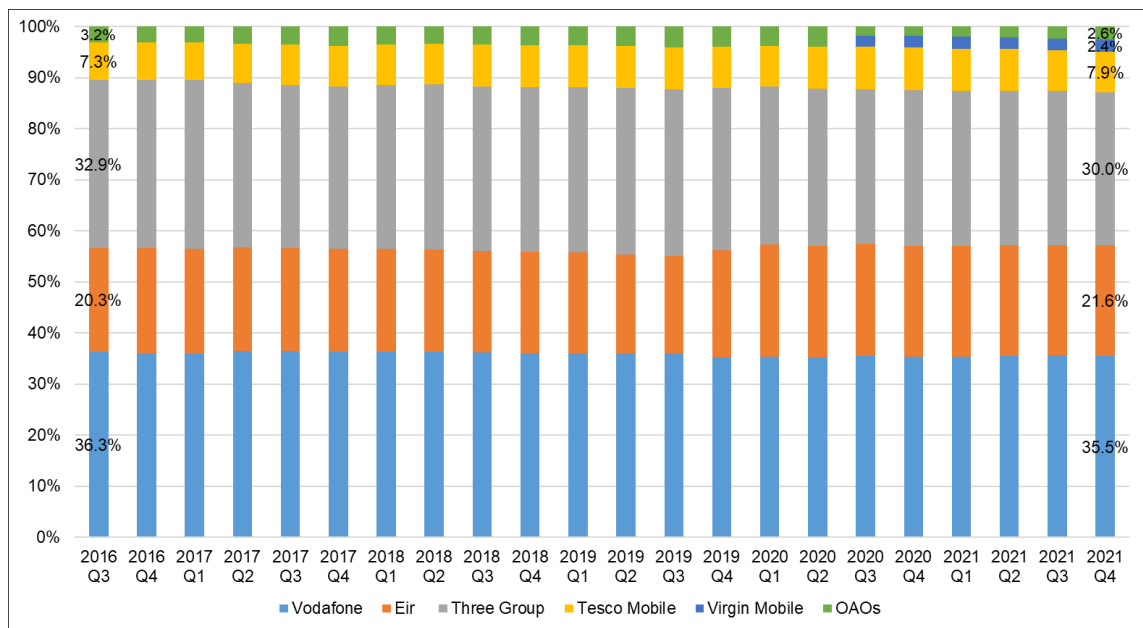
3.126 RFTS SP market shares currently vary across EAs, driven, *inter alia*, by the differing availability of NG Broadband. Thus, for example, Virgin Media's RFTS market share is localised to those EAs where its network has rolled out. However, on a forward-looking basis, ComReg considers that geographic differences in RFTS market shares are likely to even out. Firstly, on the LL-RFTS markets, MTS market shares are unlikely to be distinguished by significant geographic differences. Secondly, as NG broadband network rollout progresses, RFTS SPs will ultimately be capable of providing services on a national basis by purchasing wholesale inputs from multiple operators or through self-supply of NG broadband. On a forward-looking basis, this suggests that differences in conditions of competition at EAs are, over time, likely to converge, as wholesale NG Broadband rollout continues. However, as noted in the 2021 Draft Decision,¹³³ ComReg notes that the pace of network rollout has tended to fall behind projected rollout and this impacts SPs' abilities to use associated wholesale services to provide Managed VoIP. Nevertheless, the EC in its Withdrawal Decision, did not accept ComReg's arguments in this regard.

Comparison of national and regional MTS market shares

3.127 Figure 3 below provides MTS market shares measured by subscription (excluding mobile broadband and machine-to-machine subscriptions) nationally, according to ComReg QKDR data. On a national basis, market shares appear to be stable and consistent. Vodafone has retained a steady 35-38% market share over the past five years, Eir Mobile has remained in the 19-21% market share range, Tesco Mobile has remained in the 7-8% market share range, and Three Ireland has remained in the 30-33% range since 2015.

¹³³ See paragraphs 5.426 to 5.428 of the 2021 Draft Decision.

Figure 3: MTS Subscription Market Shares, Q3 2016 – Q4 2021

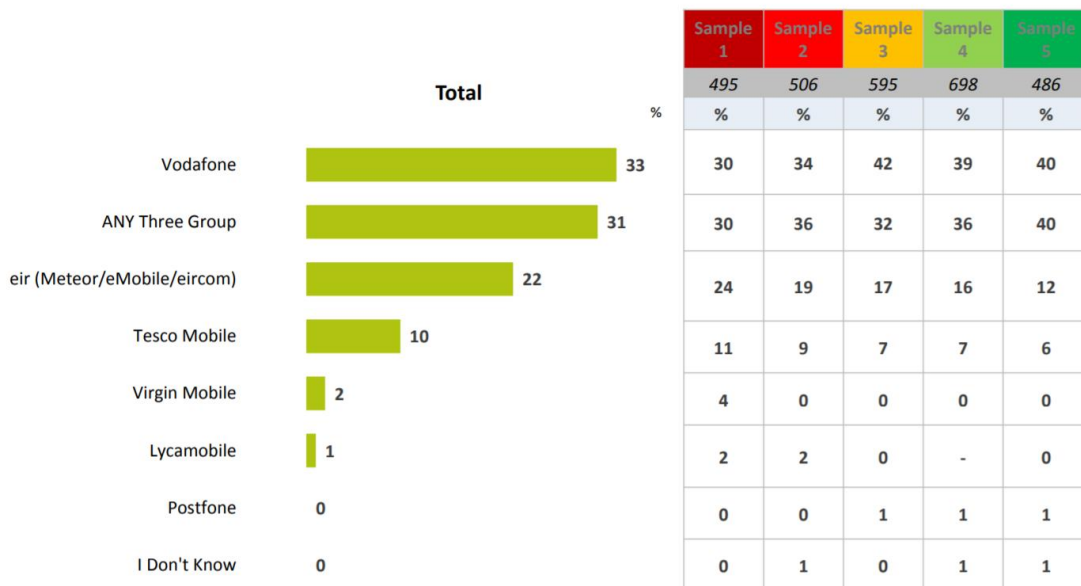


3.128 Compared to the national figures set out above, Figure 4 below gives a snapshot of MTS market shares by location from the 2019 Mobile Consumer Experience Survey.¹³⁴ This does not represent actual market shares – it is based on survey evidence only and, hence, can be interpreted only as indicative evidence. The five samples aggregated electoral districts (‘EDs’) according to population density, Sample 1 representing the highest population density and Sample 5 representing the lowest population density.¹³⁵ Vodafone and Three have higher market shares in rural areas, and Eircom, Tesco Mobile, and Virgin Mobile have higher market shares in urban areas:

¹³⁴ “Mobile Consumer Experience Survey of Consumers - Summer 2019” (the ‘2019 Mobile Consumer Experience Survey’). Available online at https://www.comreg.ie/media/dlm_uploads/2019/11/ComReg-19101.pdf.

¹³⁵ As set out in greater detail at Slide 6.

Figure 4: Current mobile phone network provider by Sample Location¹³⁶



- 3.129 Increasing competitive pressures may be evident in more densely-populated sample areas, as manifested in lower market shares for Vodafone and Three. However, the presence of slightly increased competitive pressures is, in itself, insufficient to support the existence of sub-national geographic markets, given the small magnitude of these differences. Taking concentration ratios as a headline measure of differences in intensity of competition, the C3 ratio ranges from a low of 84% in Sample 1 to a high of 92% in Sample 5, while the C5 ratio is 99% for Sample 1, and 98% for all other samples.
- 3.130 MTS market shares across the State do not yield evidence that competitive conditions in the provision of MTS are sufficiently different across those areas, such that when considered alongside landline RFTS shares, it merits defining separate sub-geographic RFTS markets.
- 3.131 Thus, ComReg considers that, on a geographic basis, the distribution of MTS market shares arising from the inclusion of MTS in the RFTS product market does not suggest that sufficient differences exist in competitive conditions across different geographic areas.

¹³⁶ Slide 33 of the 2019 Mobile Consumer Experience Survey. Sample 1 represents highest density areas, and Sample 5 represents lowest density areas.

Evidence of differentiated pricing strategies or marketing

- 3.132 Each of the MSPs identified by ComReg advertises, prices and sell services on a national basis, although it is likely that larger scale business customers receive bespoke pricing. This does not suggest that pricing or marketing strategies tend towards differences in competitive conditions across geographic areas in the State. Similarly, in respect of geographic variances in RFTS products or pricing of RFTS, ComReg considers that there is little behavioural evidence to suggest that sufficiently different competitive conditions exist in the provision of RFTS between different geographic areas. ComReg has no grounds to conclude that such variances would arise in a scenario where FACO regulation were removed.

Geographical differences in product functionality and demand characteristics

- 3.133 MTS may be offered over different generations of cellular network technology ranging from 2G to 5G, with 5G currently being rolled out in Ireland. Network coverage associated with each of these technologies varies, as set out in ComReg's Outdoor Mobile Coverage Map,¹³⁷ which maps 2G, 3G and 4G coverage offered by each MSP in the State on a continuum from 'Fringe' to 'Very Good'. The coverage map indicates that, particularly on the western seaboard, 'Fringe' 4G coverage levels are present.
- 3.134 As set out at paragraphs 4.325 to 4.378 of the 2021 Draft Decision, mobile coverage is not uniform throughout the State, and this has implications for the availability and reliability of MTS voice telephony. ComReg is of the view that there are some localised geographical differences in MTS product functionality across the State (based on whether there is 2G to 5G coverage/availability), arising from differences in coverage levels. However, ComReg also notes that mobile coverage measured by population exceeds 99%, and that other factors are indicative of broadly uniform provision of MTS at a national level, notwithstanding localised variations in coverage levels.
- 3.135 ComReg considers that these localised differences in MTS product functionality and demand characteristics are insufficient to indicate the presence of different competitive conditions across geographic areas in the State.

Conclusion on impact of MTS on Geographic Scope of the LL-RFTS Market

- 3.136 Given ComReg's view that MTS is offered on a national basis without sufficient geographic differentiation, measured by the five criteria set out above, it follows that the inclusion of MTS in the LL-RFTS product market does not warrant defining sub-national LL-RFTS geographic markets. The inclusion of MTS, which appears to be offered on a homogenous basis across the State, does not give rise to distinct differences in competitive conditions in the provision of LL-RFTS across different geographic areas of the State.

¹³⁷ <https://coveragemap.comreg.ie/map>

The passage of time since the 2021 Draft Decision

- 3.137 ComReg has assessed trends in the provision of RFTS under each of the five criteria identified at paragraph 3.92 above. The 2021 Draft Decision relied on data up to Q4 2020. An additional four quarters of data are now available. Having examined these data, ComReg is satisfied that the trends identified in the 2021 Draft Decision continue to be present on the RFTS product markets, as of Q4 2021. In particular, having taken account of market data and activity from Q4 2020 onwards, ComReg considers that the following positions set out in respect of the RFTS geographic markets in the 2021 Draft Decision and the 2022 Consultation remain valid, and continue to accurately describe the trends of relevance to the relevant geographic markets:
- (a) There are likely to be some differences in geographic entry conditions in the Relevant RFTS Markets, depending on the availability of NG Broadband to support provision of Managed VoIP by Access Seekers to end users. These differences are, on a forward-looking basis, likely to erode over time as NG Broadband coverage expands;
 - (b) While there may be some emergent localised competition for RFTS, the evidence on the number and size of potential competitors is insufficient to support the view that there are sub-national geographic markets. This is because the major competitors to Eircom for RFTS compete nationally and have, or have access to, coverage of NG Broadband that enables the provision of Managed VoIP-based RFTS. Only those areas without NG Broadband availability are likely to see Access Seekers rely on upstream FACO inputs. Pending further rollout of NG Broadband by Eircom, SIRO, NBI and – potentially – Virgin Media, parts of the State are not currently served by NG Broadband and, in some instances, timelines for the rollout of NG Broadband to these areas are uncertain. The Withdrawal Decision states, however, that a market need not be effectively competitive within a review period, but instead that there should be a tendency to that effect “*in the foreseeable future*”.¹³⁸ It accordingly notes that ComReg should take into account network deployment by both NBI and commercial operators, based on “...*sufficiently reliable deployment plans*” over “...*at least two or three years into the future*”.¹³⁹ The Withdrawal Decision does not elaborate on how “*foreseeable future*” or “*sufficiently reliable*” are to be construed, and whether, for instance, rollout plans to towns with no further level of detail of rollout plans at street level should be relied upon;

¹³⁸ At paragraph 139.

¹³⁹ At paragraph 142.

- (c) It is unclear whether increasing competition in the provision of bundles of services (in particular, RFTS and broadband) indicates that competitive conditions are both sufficiently different between different areas and sufficiently stable to merit defining separate sub-geographic RFTS markets at the retail level. Eircom's continued FTTP investment on a close-to national basis (outside of the IA), continued rollout by SIRO and Virgin Media in other areas, and rollout by NBI in the IA, coupled with uptake of WLA/WCA in these areas by Access Seekers, means that the current geographic scope of the area in which Bundled LL-RFTS delivered over NG broadband is available is unlikely to be stable over the period of the market review. It is likely that, as NG Broadband becomes more available, and a proportion of standalone RFTS customers switch to bundles comprising (at least) RFTS and broadband, the cohort of Standalone LL-RFTS customers will decline, shifting and undermining any previously defined boundary between the Standalone LL-RFTS Market and the Bundled LL-RFTS Market. Thus, on a geographic basis, the distribution of market shares does not suggest sufficient differences in competitive conditions across different geographic areas;
- (d) Insofar as potential differences in prices across different geographic areas are concerned, there appears to be little behavioural evidence to suggest that sufficiently different competitive conditions exist, specifically in the provision of RFTS between different geographic areas. For example, ComReg has not observed evidence that, in areas where bundled offers including an RFTS component are available, standalone RFTS products have been priced differently to areas where bundled offerings are *not* available; and
- (e) While there may be some variation in demand for RFTS, ComReg is of the view that sub-national geographic markets do not exist for Standalone LL-RFTS, Bundled LL-RFTS and HL-RFTS. ComReg does not consider it appropriate to determine boundaries for each of these markets, given the presence of dynamic developments, in particular, NG Broadband rollout, together with national MTS coverage.
- 3.138 Accordingly, ComReg has been unable to identify material changes impacting its assessment of the criteria identified above in the intervening four quarters which would, in its opinion, warrant drawing a different conclusion to that drawn in the 2021 Draft Decision, in respect of the RFTS geographic market definition.

Respondents' Views

- 3.139 No Respondent offered material views on ComReg's preliminary conclusions in the 2022 Consultation in respect of the RFTS geographic market definition exercise.¹⁴⁰ In the absence of any such views, ComReg has no reason to alter the preliminary conclusions which it set out in the 2022 Consultation in respect of the proposed RFTS market definition.

ComReg's Assessment of Respondents' Views and Position

- 3.140 For the reasons set out above, taking into account the Withdrawal Decision, and noting that no Respondent offered material views, ComReg determines that the Standalone LL-RFTS Market, the Bundled LL-RFTS Market, and the HL-RFTS Market are all national in geographic scope.

Conclusion on RFTS Geographic Market Definition

- 3.141 ComReg's position is that the Relevant RFTS Product Markets are national in scope. This is based on limited variations in the number and size of potential competitors geographically, insufficient evidence of differentiated pricing or marketing strategies on a sub-national basis, and limited differences in demand characteristics across regions.
- 3.142 However, this is notwithstanding the emergence of some localised competitive pressures, particularly in the case of Bundled LL-RFTS. ComReg notes that there may be differences in demand for RFTS between Standalone LL-RFTS, Bundled LL-RFTS and HL-RFTS end users, depending on geographic location. These differences in demand may be due to availability of broadband and location of businesses and large corporates.
- 3.143 ComReg also notes that there may be some geographic differences in entry conditions around the country, depending on availability of NG Broadband which would allow Access Seekers (including BT/Sky, Vodafone, Digiweb and Pure Telecom) to provide Managed VoIP-based RFTS to end users, thus removing any reliance on upstream FACO inputs from Eircom.
- 3.144 ComReg's position is that, on balance, there is insufficient evidence to conclude that there are grounds to define sub-geographic markets in respect of any of the Relevant RFTS Product Markets.

3.4 Overall Conclusion on RFTS Market Definition

- 3.145 ComReg has further analysed the Relevant RFTS Markets from a product and geographic perspective and considered developments in the market since the publication of the 2021 Draft Decision and the 2022 Consultation, including having regard to the Withdrawal Decision, applying the MGA, and Respondents' Submissions.

¹⁴⁰ Respondents' views on MTS were addressed in the context of the RFTS product market definition.

3.146 ComReg accordingly defines three national markets for RFTS, which are delineated as follows:

- (a) **Market 1a:** Standalone Low-Level RFTS (**'Standalone LL-RFTS'**) including RFTS delivered over PSTN and ISDN BRA, MTS, and Managed VoB delivered over NG Broadband on a standalone basis;
- (b) **Market 1b:** Bundled Low-Level RFTS (**'Bundled LL-RFTS'**) including RFTS over PSTN and ISDN BRA and Managed VoB¹⁴¹ delivered over (and with) NG Broadband and MTS on a bundled basis together with any of broadband, television or MTS,¹⁴² delivered on a bundled basis; and
- (c) **Market 1c:** High-Level RFTS (**'HL-RFTS'**) including RFTS delivered over ISDN FRA and PRA, and Hosted PBX or SIP Trunking delivered over NG Broadband, including, on a standalone basis or on a bundled basis together with any of broadband, television or MTS.¹⁴³

¹⁴¹ Managed VoIP includes RFTS delivered in the form of Managed VoB, as well as Hosted PBX, or SIP Trunking.

¹⁴² This refers to the instance where the RFTS element is not based on MTS. For example, where RFTS is delivered over Managed VoB, but the bundle also includes MTS.

¹⁴³ MTS in this context refers to MTS sold in a bundle with HL-RFTS. MTS is excluded from the HL-RFTS market.

4 RFTS Competition Analysis – 3CT

4.1 3CT for Relevant RFTS Markets

Overview

- 4.1 ComReg notes that the 2020 Recommendation does not include the RFVA or RFTS markets on its list of markets deemed susceptible to *ex ante* regulation. Accordingly, at EU level, there is no presumption in favour of continuing to regulate these markets. ComReg must therefore determine whether, in light of national circumstances, the RFTS markets defined at Section 3 continue to warrant regulation.
- 4.2 The 3CT set out in Article 67(1) EEC and described in the 2020 Explanatory Note¹⁴⁴ is the mechanism which allows for this assessment to be carried out in a structured and objective way.
- 4.3 The 3CT sets out the criteria that must be cumulatively satisfied in order to determine whether a relevant market should be, or should continue to be, subject to *ex ante* regulation. The three criteria are:
- (a) the presence of high and non-transitory barriers to entry;
 - (b) a market structure which does not tend towards effective competition within the relevant time horizon; and
 - (c) the insufficiency of competition law alone to adequately address the market failure(s) concerned.
- 4.4 ComReg concluded in the 2021 Draft Decision, on the basis of the RFTS market definition set out therein, that the 3CT should fail. Accordingly, there should be no grounds to warrant ongoing regulation of the Relevant RFTS Markets. In the 2022 Consultation and this Decision ComReg revisits the 3CT exercise in light of:
- (a) its definition of the Relevant RFTS Markets set out at Section 3 above, which differs materially from the RFTS market definition set out in the 2021 Draft Decision;
 - (b) the Withdrawal Decision; and
 - (c) Any Respondent Submissions (noting that no substantive issues were raised in Submissions).

¹⁴⁴ See p.11 of the 2020 Explanatory Note.

- 4.5 In particular, and arising from the reasoning set out in the Withdrawal Decision, the LL-RFTS market definition now includes MTS in the LL-RFTS market, and ComReg takes a more forward-looking perspective on NG broadband network rollout (and its impact on the capability to provide Managed VoIP), in respect of both the LL-RFTS market and the HL-RFTS market. ComReg's findings in respect of the 3CT for the Relevant RFTS Markets are set out in paragraphs 4.120 to 4.122 below. On the basis of the evidence available to it, ComReg's position, consistent with the view which it set out in the 2022 Consultation, is that Criteria 1 and 2 of the 3CT fail, such that the 3CT fails overall. Accordingly, there are no compelling grounds to continue to regulate the Relevant RFTS Markets or, as a consequence, the Relevant FACO Markets.
- 4.6 The following sub-sections consider each of the 3CT criteria, in order to determine whether it is, in principle, appropriate to regulate each of the three Relevant RFTS Markets.
- 4.7 Before moving to carry out the 3CT to determine the appropriateness of regulation of the Relevant RFTS Markets, ComReg notes that the MGA assumes a hypothetical scenario in which there is no *ex ante* SMP regulation in any of the Relevant RFTS Markets, or on the upstream FACO markets.¹⁴⁵ The purpose of this exercise is to determine whether the RFTS markets are effectively competitive only because of the presence of downstream RFTS regulation or upstream FACO market regulation, or if the RFTS markets would continue to be effectively competitive, even assuming no FACO market or RFTS market regulation. If so, it would be then appropriate to remove both downstream RFTS market regulation and upstream FACO market regulation.
- 4.8 ComReg also notes that, as set out in the 2020 Explanatory Note,¹⁴⁶

*“the starting point for the identification of wholesale markets susceptible to ex ante regulation is the analysis of the corresponding retail markets. The analysis of effective competition at the retail and at the wholesale level is conducted from a forward-looking perspective over a given time horizon, and is guided by competition law, including, as appropriate, the relevant case law of the Court of Justice. Therefore, SMP-based ex ante regulation should be applied only where this is needed in order to address, under the modified Greenfield approach, a lack of effective competition at the retail level. **If it is concluded that a retail market would be effectively competitive in the absence of ex ante wholesale regulation on the corresponding relevant markets, this should lead the NRA to conclude that regulation is no longer needed at the relevant wholesale level.**”*

¹⁴⁵ Which could mean that Eircom would be free to decide not to provide SB-WLR to Access Seekers.

¹⁴⁶ At pp.8-9.

- 4.9 Accordingly, the conclusions of the 3CT on the Relevant RFTS Markets may have a bearing on the assessment of the associated upstream FACO markets. In particular, if ComReg were to conclude that the Relevant RFTS Markets would likely be competitive, absent FACO market regulation, this would lead to the withdrawal of FACO regulation, in the absence of any evident competition problems in the downstream RFTS markets, even where regulation was not present.
- 4.10 No Respondent Submission offered specific views accompanied by supporting evidence in respect of the RFTS 3CT in general, or any of the three criteria in specific.

Criterion 1: The presence of high and non-transitory barriers to entry

- 4.11 The 2020 Explanatory Note and Article 67(1)(a) of the EECC identify that high, non-transitory barriers to entry may be structural, legal or regulatory in nature:
- (a) **Structural barriers to entry** arise where technology or network characteristics (e.g. cost structure, level of demand) create asymmetric conditions between SPs. Examples include the presence of absolute cost advantages, substantial economies of scale or scope, capacity constraints, and high sunk costs; and
 - (b) **Legal or regulatory barriers** result from legislative, administrative or other state measures that directly affect the relevant market. Examples include legal requirements related to the necessary permissions to roll out infrastructure (e.g. planning permission for civil works, or the need to obtain rights of way to roll out a network over private property).
- 4.12 In the 2021 Draft Decision, ComReg carried out its 3CT of the RFTS markets assuming the presence of upstream regulation in the Urban FACO Markets (given the then view that the RFTS markets would not be competitive absent regulation). Under that assumption, ComReg concluded that Criterion 1 of the 3CT failed and that, accordingly, without necessarily needing to assess Criterion 2 or Criterion 3 (although it did so for analytical completeness), the 3CT failed overall, and that, in principle, there were grounds to withdraw *ex ante* regulation of the Relevant RFTS Markets. In contrast, the 2022 Consultation carried out its 3CT of the RFTS markets assuming no upstream regulation in the FACO Markets. Under that assumption, ComReg argued that Criterion 1 of the 3CT failed. ComReg now reassesses Criterion 1 of the 3CT in respect of the RFTS markets, but assuming no upstream FACO regulation.

Structural barriers to entry

- 4.13 Barriers to entry generally comprise any disadvantage that a new entrant faces when entering a market, where incumbents do not face such barriers. According to the 2020 Explanatory Note:¹⁴⁷

“... high structural barriers may be found to exist when the market is characterised by absolute cost advantages, substantial economies of scale and/or economies of scope, capacity constraints, and high sunk cost.”

- 4.14 ComReg assesses structural barriers to entry to the Relevant RFTS Markets under four main headings, having regard to the Withdrawal Decision, and to the Submission responses:
- (a) Overall size of the incumbent and control of infrastructure that is not easily replicated (paragraphs 4.15 to 4.24);
 - (b) Sunk costs (paragraphs 4.25 to 4.27);
 - (c) Economies of scale, scope and density (paragraphs 4.28 to 4.39); and
 - (d) Vertical integration (paragraphs 4.40 to 4.47).

Overall size of the incumbent and control of infrastructure that is not easily replicated

- 4.15 In the 2021 Draft Decision, ComReg concluded (at paragraphs 6.16 to 6.47) that, on balance, barriers to entry, in terms of the size of Undertakings and control of infrastructure not easily replicated, in the provision of RFTS had been eroded since the 2014 RFVA Decision. The 2022 Consultation reached a similar preliminary conclusion. On the basis of the evidence available to it, ComReg has no grounds to alter that finding.
- 4.16 In the case of Standalone LL-RFTS, NG broadband inputs can be used to provide standalone RFTS, although, as set out at paragraph 6.41 of the 2021 Draft Decision, there may be limited incentives for SPs to purchase WLA or WCA inputs for the purpose of offering Managed VoIP RFTS on a standalone basis. Alternative networks such as Virgin Media, NBI and SIRO are, in principle, equally capable of providing Managed VoIP on a standalone basis, with SIRO and NBI providing wholesale FTTP to Access Seekers which can, in turn, support Managed VoB. Eircom also sells White Label VoIP for RFTS on a commercial basis which is purchased by some SPs, conditional on the end user having a broadband connection. Accordingly, a range of wholesale inputs are available on both a regulated and a commercial basis, by which means Access Seekers may provide Standalone LL-RFTS to their own end users. In the context of the inclusion of MTS in the LL-RFTS Markets, MSPs are also capable of serving end user needs for voice calls, although this only applies to MSPs.

¹⁴⁷ 2020 Explanatory Note, page 12.

- 4.17 The presence of the above suggests that barriers to entry to the provision of LL-RFTS are low. However, despite these reduced barriers to entry, ComReg notes that commercial incentives to supply Standalone LL-RFTS are limited, as greater margins can be earned on bundles of RFTS and broadband and other services.¹⁴⁸ Thus, limited new entry is less likely to be a function of any barriers to entry, but rather SPs being reluctant to actively sell Standalone LL-RFTS. This was noted in ComReg's 2021 Draft Decision, however, the Withdrawal Decision did not seem to accept that this was a material issue.
- 4.18 In the case of Bundled LL-RFTS, as with Standalone LL-RFTS, Access Seekers can enter the market using White Label VoIP, WLA or WCA market inputs provided by Eircom, SIRO, NBI as applicable and – potentially – Virgin Media (although it is, as yet, unclear when Virgin Media will offer wholesale services), and provide, *inter alia*, broadband and RFTS, the latter either as POTS-based RFTS or Managed VoB. Taking account of the Withdrawal Decision, MSPs may also enter the Bundled LL-RFTS market offering voice and data packages over 3G, 4G, or 5G networks. This suggests that, while Eircom controls RFTS infrastructure not easily replicable in terms of network coverage, this is not necessarily an impediment to new entry or expansion over a five year time horizon. Moreover, ComReg QKDR data suggest that access to FACO is no longer a prerequisite for entry and/or expansion in the provision of RFTS by Access Seekers who do not own or operate their own networks. Indeed, while RFTS delivered over FNA is in decline, RFTS delivered over Managed VoIP continues to grow. Since the publication of the 2014 RFVA Decision, FACO indirect access paths (SB-WLR and WLA) have declined by 23%, from 547,403 in Q3 2014 to 423,937 in Q4 2021, and have fallen for 16 successive quarters in a row. Over the same time period, Managed VoB subscriptions have increased by 51%, from 367,010 to 555,358, and have increased in 20 of the last 22 quarters.

¹⁴⁸ ComReg bilateral meetings with SPs, October 2018.

- 4.19 The contrasting decline in FACO FNA access paths and increase in Managed VoIP subscriptions suggests that, despite the presence of FACO regulation to date, which has prevented Eircom from exercising its SMP by, for example, increasing prices or withdrawing access without ComReg's express prior permission, Access Seeker demand for FACO is in decline, and any increased demand for RFTS is concentrated on Managed VoIP, which is delivered over White Label VoIP, WLA or WCA on a merchant market or self-supply basis. This suggests that structural barriers to the RFTS market are not sufficiently high or non-transitory, as Access Seekers can rely on White Label VoIP, WLA or WCA inputs to provide Managed VoIP RFTS, even if, absent regulation, Eircom were to withdraw merchant market provision of FACO. ComReg acknowledges that SPs may incur time and expenses in migrating end users from Eircom FACO inputs to Managed VoIP based on upstream wholesale NG broadband inputs, and addresses this issue at Section 5 below.
- 4.20 Virgin Media's CATV network also poses a direct constraint on Eircom in the provision of Bundled LL-RFTS, while, based on their current and, on a forward-looking basis, expected footprints, the SIRO and NBI FTTP networks are likely over the time horizon of this review to facilitate a sufficient degree of demand-side constraint on Eircom in the provision of Bundled LL-RFTS through SPs that purchase wholesale access from SIRO or NBI. In addition, the Withdrawal Decision infers that MTS additionally places a degree of constraint on *both* Standalone LL-RFTS *and* Bundled LL-RFTS.
- 4.21 For HL-RFTS, SPs can enter the market by purchasing:
- (a) WLV delivered over ISDN FRA and ISDN PRA;
 - (b) WLA/WCA market inputs to provide Managed VoIP (including, but not limited to, SIP Trunking and Hosted PBX) for voice channels equivalent to ISDN FRA and ISDN PRA; or
 - (c) White Label VoIP from Eircom or BT on a commercial basis.
- 4.22 SIRO and NBI are likely to facilitate an increasing degree of competitive constraint in the provision of HL-RFTS through SPs that purchase WLA or WCA delivered over those networks. The latter holds true for the HL-RFTS market, insofar as SIRO or NBI FTTP NG wholesale broadband can be leveraged to provide Managed VoIP.
- 4.23 As with Bundled LL-RFTS, this suggests that, while Eircom controls infrastructure not easily replicable in terms of FNA network coverage, this is not an insurmountable impediment to new entry to the HL-RFTS market.
- 4.24 ComReg notes also that BT provides WCA on a commercial basis to Access Seekers, providing an alternative to Eircom provision of wholesale inputs which can be used to provide both LL-RFTS and HL-RFTS (see paragraph 6.47 of the 2021 Draft Decision).

Sunk costs

- 4.25 In the 2021 Draft Decision and the 2022 Consultation, ComReg concluded that sunk costs were likely to undermine entry and/or expansion into the Relevant RFTS Markets for SPs that did not currently operate a network, or had not invested in infrastructure for purchasing wholesale inputs. Where SPs already maintained, or had upstream access to an existing network for providing retail broadband services, the incremental cost of providing RFTS may be low, thereby facilitating entry into the Relevant RFTS Markets. For SPs that already purchased wholesale inputs such as WLA/WCA, the incremental cost of offering RFTS (if they did not already do so) was also likely to be low.
- 4.26 ComReg noted, however, that, although market entry to the Standalone LL-RFTS Market was technically possible, SPs may have limited commercial incentives to do so, as the margins earned on these services were likely lower than the margins earned on Bundled LL-RFTS, and end user demand for Standalone LL-RFTS was in decline.
- 4.27 On the basis of the evidence available to it, including Submission responses, ComReg has no grounds to depart from this finding and therefore concludes that sunk costs are unlikely to generate sufficiently significant barriers to entry, arising in particular from:
- (a) the availability of NG broadband inputs or, on a forward-looking basis, the expected availability of such inputs where network rollout is scheduled over the coming years, which can be used to supply Managed VoIP, such that an SP does not need to replicate Eircom's FNA and/or NG Broadband network in order to enter the Relevant RFTS Markets, and
 - (b) The presence of multiple competing operators active in the supply of MTS which, as postulated in the Withdrawal Decision, acts as a demand-side constraint on RFTS.

Economies of scale, economies of scope and economies of density

- 4.28 In the 2021 Draft Decision and the 2022 Consultation, ComReg considered that there was evidence to suggest that economies of scale, scope, and density were relevant factors for consideration in terms of their potential to pose a barrier to entry for new entrants intending to compete in the provision of RFTS. The 2021 Draft Decision noted that Eircom had benefited from economies of scale, scope and density in the provision of RFTS, which was likely to result in some barriers to entry for other SPs that may seek to enter the Relevant RFTS Markets. However, for SPs already present in related markets (such as broadband, TV or leased line services), the extent of entry barriers posed by economies of scale, scope and density was less likely to discourage entry.

- 4.29 As proposed in the 2022 Consultation, ComReg considers that this conclusion no longer fully reflects the extent to which economies of scale, scope and density generate barriers to entry to the Relevant RFTS Markets defined at Section 3 above, given, in particular, the inclusion of MTS in the RFTS product markets and the forward looking assessment on the rollout of NG broadband (and, thus, Managed VoIP capability) arising from the Withdrawal Decision.
- 4.30 ComReg considers that the Relevant RFTS Markets are characterised by economies of scale, scope and density, since a large proportion of the costs of building and maintaining a (fixed or mobile) telecommunications network is fixed. Therefore, the average cost per subscriber of providing services falls as the number of customers served by the network increases. Economies of scale and density will, therefore, be achieved where an SP can serve as many subscribers as possible from its investment in a given part of the network, e.g. an exchange or equivalent. That also means that the ability of an SP to offer a viable service may depend on its ability to acquire a large number of RFTS customers at local and national level. However, the availability of wholesale services on a regulated or commercial basis, including White Label VoIP, WLA, and WCA means that the magnitude of the barriers to entry erected by economies of scale, scope and density is likely reduced, as an Access Seeker may avoid some costs associated with network rollout and service provision.
- 4.31 ComReg considers that the barriers to entry generated by economies of scale, scope and density are low, given the presence of multiple operators on the market, as well as, on a forward-looking basis, the rollout of NG broadband networks offering WLA and WCA capable of facilitating the delivery of Managed VoIP RFTS on a widespread geographic basis in the medium term. Accordingly, although the RFTS markets are structurally characterised by the presence of economies of scale, scope and density, these are not, in ComReg's view, at a level sufficient to be considered high and non-transitory.
- 4.32 Economies of scope are evident in respect of Bundled LL-RFTS, as the access path is used for the provision of both voice and broadband. For a new entrant, the upfront investment in network coverage (by means of own build or using WLA/WCA inputs) will lead to economies of scope if the entrant can leverage an access path to provide Bundled LL-RFTS. This also applies to rolling out a broadband network, as the access path can be used to provide Managed VoIP RFTS. While there is an increasing trend towards the provision of Bundled LL-RFTS, some 16% of end users continue to purchase Standalone LL-RFTS over the Eircom network (excluding MTS). It should also be noted that, by design, mobile 4G and 5G networks facilitate economies of scope by accommodating both voice and data traffic.

- 4.33 ComReg notes that competitors to Eircom in the LL-RFTS markets such as Vodafone, Virgin Media, Sky and Pure Telecom offer a variety of retail services, including both RFTS and, in some cases, MTS. Such SPs already, or have the potential to, benefit from economies of scale and scope by growing retail end user numbers, including through FMS, cross-selling and bundling products. In respect of RFTS specifically, apart from Virgin Media self-supply, this has, in the past, been largely enabled through regulated access to FACO and WLA/WCA products. Nevertheless, in an absent regulation scenario and, on a forward-looking basis, the availability (including the ability to self-supply) of White Label VoIP, WLA, WCA and MVNO access all lower the barriers to entry posed by economies of scale, because they allow SPs to enter the Relevant RFTS Markets without incurring significant fixed costs. This means that entrants are better able to scale their business appropriately for their customer base and grow their business incrementally in line with the growth of their customer base.
- 4.34 A similar principle applies in respect of MTS which, pursuant to the Withdrawal Decision, is now considered by ComReg to form part of the LL-RFTS market on the basis of the demand-side constraint arising from FMS. The presence of three mobile networks with national coverage operated by Three, Eircom, and Vodafone, together with the capability for MVNOs to offer MTS across these networks suggests that barriers to entry to the LL-RFTS market are further lowered, by the additional possibility offered to an SP of entering the LL-RFTS market as an MVNO, again avoiding incurring significant fixed costs.
- 4.35 In the HL-RFTS market, SPs can achieve economies of scale when they sell ISDN FRA and ISDN PRA products to high numbers of subscribers (i.e. end users that demand multiple ISDN FRAs or ISDN PRAs). In the case of Managed VoIP, economies of scope can be achieved if the RFVA component (i.e. broadband/IP access path) can also be used to provide data connectivity services to business end users. Economies of scale can also be achieved through provision of SLAs with voice plans and other features, such as video conferencing, messaging platforms and advanced calling features.¹⁴⁹
- 4.36 SPs intending to compete with Eircom, Vodafone and other HL-RFTS SPs will likely have to offer these ancillary services to win large business contracts, which could impede market entry. ComReg considers that competition for HL-RFTS is a function of the quality of the RFTS offered and the range of ancillary services that businesses demand, such as SLAs. The 2019 SME Market Research indicated that few businesses purchase ISDN for access to RFTS (15%),¹⁵⁰ with ISDN BRA being the most prevalent at 54%.¹⁵¹

¹⁴⁹ <https://business.eir.ie/product/voice-and-collaboration/>.

<https://n.vodafone.ie/business/products-and-solutions/unified-communications/one-net-business.html>.

¹⁵⁰ Slide 16 of the 2019 SME Market Research.

¹⁵¹ Slide 18 of the 2019 SME Market Research.

- 4.37 In respect of the Relevant RFTS Markets, economies of density are evident from the uneven deployment of competing networks across Ireland. As discussed in paragraphs 3.113 to 3.115 SIRO's FTTP network and Virgin Media's CATV network have sub-national footprints, predominantly in areas with higher premises density, and this is likely to continue to be the case following additional announced Phase 2 rollout by SIRO. NBI will provide high speed broadband to premises in the IA that are not currently served on a commercial basis on completion of its rollout.
- 4.38 In the 2021 Draft Decision, ComReg proposed to discount NBI from its competition assessment on the grounds that, at the time of publication, it served a very low number of premises, and its rollout forecasts were insufficiently reliable, due to delays, as described in further detail at paragraphs 3.116 to 3.119 above. While ComReg drew the EC's attention to NBI rollout delays,¹⁵² the EC appeared to discount this reasoning, relying, *inter alia*, on the fact that DECC had requested that NBI accelerate its rollout (while acknowledging that NBI had not confirmed that it would be capable of meeting this request).¹⁵³ ComReg notes that at a January 2022 Oireachtas committee appearance, NBI appeared to have incurred further delays in rollout, as set out in greater detail above. However, given that NBI is funded on a state-aided basis with a specific mandate to serve end users who would not otherwise be served by high speed broadband on a commercial basis, it is not clear that NBI will be constrained by economies of density in the same way as commercial operators in their network rollout. Indeed, NBI rollout appears, as a matter of public policy, to focus on areas characterised by diseconomies of scale, with this being overcome through State aid funding.
- 4.39 ComReg considers that the LL-RTS and HL-RFTS markets are both likely to be characterised by the presence of economies of scale, scope, and density. However, these economies are unlikely to create high and non-transitory barriers to entry. This is because potential entrants can avoid many of the high sunk costs associated with entry and expansion (e.g. extending the footprint of a network, rather than infilling within the existing network footprint, will require relatively more investment) in the Relevant RFTS Markets by relying instead on the purchase of wholesale access to either a FNA network (SB-WLR, WLV), a NG broadband network (WLA, WCA), or – in the case of LL-RFTS - a mobile network (MVNO). Moreover, as NG broadband network rollout continues, potential entrants will be able to provide Managed VoIP RFTS across the entirety of the State in the medium term, rather than being restricted only to those more densely populated areas where operators have rolled out networks to maximise economies of density, in particular.

¹⁵² See footnote 35 of the Withdrawal Decision.

¹⁵³ See footnote 70 of the Withdrawal Decision.

Vertical Integration

- 4.40 In the 2021 Draft Decision, ComReg concluded (at paragraphs 6.73 to 6.79) that Eircom's vertically-integrated structure could afford it a favourable position in the provision of RFTS and increase barriers to entry by, for example, requiring an entrant to enter multiple vertically-related markets concurrently. The 2021 Draft Decision also argued that the availability of regulated wholesale inputs meant that, where an SP intended to enter the RFTS market, vertical integration did not unduly raise barriers to entry, as Eircom was prevented by means of regulation (on the WLA market and the Revised Regional WCA Market) from leveraging its vertically-integrated position to raise barriers to entry. ComReg also noted that BT and SIRO provided an alternative to Eircom for wholesale inputs to the RFTS markets, where available (although this scenario was under the proposal to regulate the Regional FACO Markets).
- 4.41 Having regard to the Withdrawal Decision, and given ComReg's proposals in the 2022 Consultation in respect of the Relevant RFTS Markets, which this Decision confirms, the conclusions set out in the 2021 Draft Decision no longer accurately reflect ComReg's updated analysis. In particular, and on a forward-looking basis, it is unlikely to be the case that Eircom's vertically-integrated position would create sufficient barriers to entry in the Relevant RFTS Markets.
- 4.42 Vertical integration may constitute a barrier to entry where the presence of a firm at multiple levels of the production or distribution chain raises the costs of new entry, for example, where prospective new entrants perceive the need to enter multiple markets simultaneously to pose a viable competitive constraint on the vertically-integrated SP. Vertical integration can also pose an entry barrier where it increases the possibility of the integrated SP foreclosing competition at one or more levels in the value chain, the threat of which could, in turn, discourage new entry.
- 4.43 As well as being the largest FACO supplier, Eircom is also a significant provider of RFTS, broadband and other services to its own retail end users. Eircom's market share as of Q4 2021 in the Standalone LL-RFTS market is [X ██████████ ██████████ %], [X ██████████ ██████████ %] in the Bundled LL-RFTS market, and [X ██████████ ██████████ %] in the HL-RFTS market, when measured in subscriptions. Eircom therefore has an incentive to increase the costs of retail competitors which purchase wholesale inputs from it, and thereby foreclose its retail competitors from the Relevant RFTS Markets.

- 4.44 Virgin Media is also vertically-integrated in that it provides retail services on its CATV network by self-supplying to itself at the wholesale level. Virgin Media does not offer FACO on a merchant market basis. Other than Virgin Media, Eircom's competitors are not, for the most part, vertically-integrated. For example, Vodafone and Sky provide RFTS and retail broadband using wholesale inputs provided by Eircom, BT and SIRO. Similarly, SIRO and NBI are active at the wholesale level only. Thus, Eircom is the only vertically-integrated SP that is active at both the wholesale and retail levels, on both a self-supply and a merchant market basis, at any level of scale.
- 4.45 However, ComReg does not consider Eircom's vertically-integrated structure to pose a significant barrier to entry for Standalone or Bundled LL-RFTS. Given ComReg's definition of the Relevant RFTS Markets, and on a forward-looking basis, Access Seekers can purchase regulated WLA and/or WCA inputs from Eircom to provide LL-RFTS. SPs can also purchase WLA or WCA inputs from SIRO and NBI where they have or will have rolled out their networks. Accordingly, Eircom would be prevented from leveraging its vertically-integrated position to raise barriers to entry not by means of regulation, but by means of the competitive constraints on its supply of SB-WLR arising from existing and potential competition. ComReg also notes that, as a means of facilitating the delivery of RFTS, SB-WLR and WLV numbers have declined for 16 consecutive quarters, and stand at 74% of their Q4 2016 peak, and now represent a small proportion (28%) of access paths falling into the Relevant RFTS Markets, when including direct access paths and Managed VoIP subscriptions. This figure is an over-estimate arising from the exclusion of MTS subscriptions, which, as discussed in paragraph 4.99 below, cannot, for calculation purposes, be meaningfully added to RFTS subscriptions.
- 4.46 Additionally, Access Seekers can (or will, on a forward-looking basis, be able to) purchase wholesale inputs from a variety of other sources on a commercial basis, including WCA from Eircom (in the Revised Urban WCA Market), WCA from NBI, WLA from NBI or SIRO, or White Label VoIP from BT or Eircom in order to provide Managed VoIP RFTS. As network rollout progresses, this will facilitate Access Seekers in delivering Managed VoIP RFTS on a national basis. Given the inclusion of MTS in the LL-RFTS product market definition, Access Seekers may also become an MVNO and provide MTS on an MNO's network. In addition, were Eircom to leverage its vertically-integrated structure by reducing the price of Standalone LL-RFTS through cross-subsidisation with Bundled LL-RFTS, ComReg considers that, while this could, in principle, deter entry to the Standalone LL-RFTS market, SPs have limited incentives to enter the Standalone LL-RFTS market in any case.

4.47 In relation to the HL-RFTS market, some vertically-integrated SPs operate independently of Eircom and are less exposed to Eircom's wholesale services. These include Goldfish, Colt¹⁵⁴ and Magnet,¹⁵⁵ which provide Managed VoIP HL-RFTS. However, these SPs are limited in scale and geographic reach compared to Eircom. As noted above, the provision of HL-FACO by Eircom is in continuing decline (FRA and PRA numbers have declined for 19 of the last 20 quarters, and now stand at 37% of their Q2 2012 peak) and wholesale NG products are, on a forward-looking basis, available nationwide on both a regulated and a commercial basis which are capable of facilitating Managed VoIP in the form of SIP Trunking or Hosted PBX. Accordingly, the proportion of HL-RFTS lines supported by Eircom SB-WLR or WLV is in absolute and relative decline, and alternative wholesale NG Broadband products capable of delivering Managed VoIP RFTS are available from Eircom on a commercial and a regulated basis, and from BT, SIRO, and NBI on a commercial basis.

Legal, regulatory and administrative barriers to entry

- 4.48 Unlike the structural barriers to entry discussed above, legal, regulatory and administrative barriers to entry are derived not from economic conditions, but rather from interventions by statutory bodies which have a direct impact on a firm's ability to enter a new market. Pursuant to the 2020 Explanatory Note, which sets out the guidelines for the 3CT, the aforementioned barriers must be assessed in respect of the relevant market, in a MGA scenario, in order to determine whether the specified market requires *ex ante* regulation.
- 4.49 In the 2021 Draft Decision (as set out at paragraphs 6.80 to 6.81, and 7.140 to 7.159) and also in the 2022 Consultation, ComReg concluded that the RFTS markets were not characterised by legal or regulatory barriers to entry, and that the need to satisfy administrative criteria generated a barrier to entry, but that this barrier was not substantial, and did not appear to differ substantially, either between Eircom and other SPs. ComReg considers that this reasoning continues to apply to the Relevant RFTS Markets defined herein and therefore concludes that they are not characterised by high and non-transitory legal, regulatory, or administrative barriers to entry.

Respondents' Views

- 4.50 No Respondent Submissions offered views, including supporting evidence, on whether the RFTS Markets are characterised by the presence of high and non-transitory barriers to entry.

¹⁵⁴ <https://www.colt.net/product/sip-trunking/>.

¹⁵⁵ <https://www.magnet.ie/business/business-type/enterprise/sip-trunking/>.

Conclusions on barriers to entry

- 4.51 ComReg considers that the Relevant RFTS Markets are unlikely to be characterised by the presence of high and non-transitory barriers to entry:
- (a) While a new entrant would find it difficult to replicate Eircom's legacy FNA network, noting, in particular, the ubiquity of that network, Virgin Media has a significant presence in providing RFTS, and other SPs, including Vodafone, Sky and Pure Telecom are also active in the provision of RFTS and, in some cases, MTS. On a forward-looking basis, this presence in delivering RFTS is likely to be increasingly facilitated by the presence of multiple NG Broadband networks (Eircom, SIRO, NBI, and, potentially, Virgin Media) offering wholesale access capable of delivering Managed VoIP, together with the possibility of MSPs providing MTS;
 - (b) While Eircom likely benefits from economies of scale, scope and density in the provision of FNA RFTS, it has not done so to an extent that they constitute high and non-transitory barriers to entry to the Relevant RFTS Markets, bearing in mind the decline in Access Seeker demand for FNA FACO, and the increase in RFTS delivered by means of Managed VoIP;
 - (c) While entry to the Relevant RFTS Markets requires a new entrant to incur some level of sunk costs, many SPs purchase wholesale NG Broadband inputs for the provision of bundles comprising RFTS and broadband, such that sunk costs can be spread across multi-product offerings. Sunk costs associated with entry are likely to be mitigated for SPs with extensive wholesale NG Broadband infrastructure or mobile infrastructure already in place and for SPs already present in related markets such as broadband or mobile voice; and
 - (d) While Eircom is vertically-integrated and controls an important upstream input to RFTS (SB-WLR and WLV), the evidence does not indicate that this is likely to pose a barrier to entry, as SPs provide (i) RFTS via Managed VoIP to end users where NG Broadband is available, including through the use of upstream WLA, WCA or White Label VoIP inputs and (ii) MTS by MSPs.
- 4.52 ComReg notes that, at the retail level, for business end users that require only the call origination component of RFTS (i.e. RFVC), obtaining a Managed VoIP service is relatively easy, if the end user already has a broadband connection in place (i.e. RFVA). SPs in this space include Blueface¹⁵⁶ and Goldfish.¹⁵⁷

¹⁵⁶ <https://www.blueface.com/voip/>.

¹⁵⁷ <https://www.goldfish.ie/6832/all/1/Business-VoIP-Packages.aspx>.

- 4.53 ComReg notes that there may be limited commercial incentives to enter the Standalone LL-RFTS market, as the margins earned on these services are lower than the margins on Bundled LL-RFTS. Thus, SPs have, in recent years, shifted their focus from the provision of Standalone LL-RFTS to the provision of Bundled LL-RFTS and the absence of FACO regulation would be unlikely to significantly alter this trend.
- 4.54 New entry into the Standalone LL-RFTS market may not be significant, while entry into the Bundled LL-RFTS market may be more likely, driven by RFTS being bundled with broadband. Ongoing rollout of NG Broadband will likely, on a forward-looking basis, see the number of end users in the Standalone LL-RFTS market continue to decline and, in any event, barriers to offering Standalone LL-RFTS (whether based on heretofore regulated access to FACO or otherwise) have fallen since the 2014 RFVA Decision. This, again, is reflected in an increasing proportion of end users purchasing RFTS as part of a bundle. On the HL-RFTS market, incentives to enter are likely driven by opportunities to provide business data connectivity services alongside RFTS.
- 4.55 As set out at paragraph 4.45 above, SB-WLR and WLV currently accounts for 28% of total RFTS access paths, a number which is an over-estimate arising from the exclusion of MTS subscriptions. Even if Eircom were to cease offering SB-WLR, this would only impact a small and declining proportion of RFTS end users. In response to any such withdrawal, end users could immediately switch to MTS, or immediately switch to Managed VoIP delivered over NG Broadband, where it is currently available, or, on a forward—looking basis, could do so at some point in the foreseeable future. Accordingly, over the lifetime of this market review period, Access Seekers may procure alternative upstream inputs either on a regulated basis, or on a commercial basis, which suggests that barriers to entry on the Relevant RFTS Markets are likely to be low. Access to these upstream wholesale inputs would allow Access Seekers to deliver RFTS by means of Managed VoIP.
- 4.56 At least one of the 3CT criteria must fail for the presumption in favour of *ex ante* regulation to be lifted.¹⁵⁸ Since ComReg’s analysis suggests that the first criterion has failed for the Relevant RFTS Markets in the absence of RFTS and FACO market regulation, the presumption should be lifted, and, in principle, there are grounds to withdraw regulation of the Relevant RFTS Markets. It is therefore not strictly necessary to assess the second and third criteria.

¹⁵⁸ See page 6 of the 2020 Explanatory Note: “However, the Recommendation does not prevent NRAs from analysing markets which differ from those identified in this Recommendation but that are regulated within the territory of their jurisdiction based on previous market analyses, or other markets, if they have sufficient grounds, because of national circumstances, to consider that those specific markets meet the three criteria used for identifying markets susceptible to *ex ante* regulation”

Criterion 2: Is the market tending towards effective competition within the relevant time horizon?

- 4.57 The second criterion to be assessed is whether the Relevant RFTS Markets are likely to tend towards effective competition over the lifetime of this market review.¹⁵⁹ By definition, it is necessary to carry out the assessment of the second criterion on a dynamic and forward-looking basis.
- 4.58 In the 2021 Draft Decision (although this was in the presence of the then-proposed regulation of the Regional FACO Markets) ComReg considered that Criterion 2 of the 3CT failed and that, accordingly, without necessarily needing to assess Criterion 1 or Criterion 3 (although it did so for analytical completeness), the 3CT failed overall. In principle, ComReg considered that there were grounds to withdraw *ex ante* regulation of the Relevant RFTS Markets. ComReg reassesses Criterion 2 of the 3CT in respect of the Relevant RFTS Markets, having regard to the Withdrawal Decision, and assuming no upstream FACO regulation. This assessment is consistent with ComReg's view in the 2022 Consultation.
- 4.59 As set out below, ComReg assessed whether the Relevant RFTS Markets, as defined therein, were tending towards effective competition in the 2021 Draft Decision under three main headings set out below.
- (a) Whether there were observable trends towards effective competition (see paragraphs 6.96 to 6.130 of the 2021 Draft Decision);
 - (b) Whether SPs other than Eircom were in a position to enter the RFTS market to the extent that they would be able to effectively compete with the incumbent (see paragraphs 6.131 to 6.154 of the 2021 Draft Decision); and
 - (c) Whether any expected or foreseeable technological and economic developments were likely to impact on competition within the time period of the market review (see paragraphs 6.155 to 6.159 of the 2021 Draft Decision).
- 4.60 In the Withdrawal Decision,¹⁶⁰ the EC noted that the 2020 Explanatory Note had counselled that,
- “a tendency towards effective competition does not necessarily imply that the market will reach the status of effective competition within the period of review. It simply means that there is clear evidence of dynamics in the market within that period, which indicates that the status of effective competition will be reached in the foreseeable future without ex ante regulation in the market concerned.”*

¹⁵⁹ A market may tend towards effective competition not only by means of new entry into the RFTS Markets, but also by the deployment of alternative infrastructures by Access Seekers that would allow them to offer RFTS.

¹⁶⁰ At paragraph 139.

- 4.61 ComReg interprets this to mean that, for Criterion 2 to be satisfied, it is not necessary to conclude that a market will become effectively competitive within the lifetime of a market review period. Rather, it will suffice for Criterion 2 to be satisfied if, over the market review period, there is sufficient evidence of a trend towards effective competition which will be reached at a point in the foreseeable future. Thus, Criterion 2 is satisfied by evidence of a trend towards an end point, and it is not necessary that the end point be reached during the lifetime of the market review.
- 4.62 ComReg now reassesses Criterion 2 in respect of the Relevant RFTS Markets.

Whether there are observable trends towards effective competition

- 4.63 ComReg's assessment considers levels of existing competition, noting that the 3CT contains many of the factors considered in an SMP analysis. In the 2021 Draft Decision, ComReg considered five factors to determine whether there are observable trends towards effective competition. These are:
- (a) Market shares,¹⁶¹
 - (b) Pricing behaviour,¹⁶²
 - (c) Universal Service Obligation ('USO'),¹⁶³
 - (d) Wholesale prices,¹⁶⁴ and
 - (e) Fixed Number Porting.¹⁶⁵

Market shares

- 4.64 A number of SPs provide RFTS across all of the Relevant RFTS Markets, with overall market shares reported in ComReg's QKDR. Eircom is the only SP with a ubiquitous FNA network.
- 4.65 In calculating RFTS market shares, ComReg does not take into account MTS market shares, even though ComReg now includes MTS in the RFTS market definition. This is because the high incidence of mobile phone ownership would suggest a non-trivial overlap between RFTS and MTS ownership. Accordingly, there is no analytical value in reporting MTS market shares without detailed information on RFTS and MTS overlap by operator. Thus, the RFTS market shares reported below are market share ceilings and overestimate actual market shares because they do not take into account MTS.

¹⁶¹ At paragraphs 6.97 to 6.114.

¹⁶² At paragraphs 6.115 to 6.119.

¹⁶³ At paragraphs 6.120 to 6.121.

¹⁶⁴ At paragraphs 6.122 to 6.126.

¹⁶⁵ At paragraphs 6.127 to 6.128.

- 4.66 Approximately 25 SPs currently provide RFTS. The largest competitors to Eircom are Virgin Media, Sky, Vodafone, Pure Telecom and Digiweb. Additionally, six MSPs are active in the supply of MTS.
- 4.67 Eircom and Virgin Media operate independent networks, while BT (Sky) and Digiweb purchase SB-WLR, and Vodafone and Pure Telecom purchase WLV. Approximately 13 other SPs purchase SB-WLR and WLV and compete in the provision of RFTS on a local basis, such as IFA Telecom¹⁶⁶ and Telcom.¹⁶⁷ In an absent regulation scenario, Access Seekers would potentially be unable to offer RFTS based on SB-WLR or WLV inputs, if Eircom ceased supply of merchant market SB-WLR.
- 4.68 There are various ways of computing market shares in the Relevant RFTS Markets, allowing for the exclusion of MTS for the reasons set out at paragraph 4.65 above. These include number of subscriptions (an account with an SP could have multiple services, all under a single subscription), number of voice lines, number of access paths, and revenue. In the 2014 RFVA Decision, ComReg measured market shares in the then-Standalone and Bundled RFVA markets using subscription data, noting that, in each case, small numbers of ISDN FRA and ISDN PRA may be included, but that this did not materially affect market shares.¹⁶⁸ For the HL-RFVA market, ComReg measured market shares using access lines. Given data availability, ComReg presents market shares based on subscriptions and access lines, both of which indicate similar trends.
- 4.69 The LL-RFTS market shares presented below are in the presence of upstream FACO regulation, and do not include MTS. They do not therefore represent the hypothetical market shares demanded by inclusion of MTS (which would tend to reduce each RFTS SP's market share) and the absence of FACO market regulation (which would - potentially - tend to increase Eircom's market share and reduce the market shares of SPs purchasing SB-WLR or WLV, but only where substitutes were unavailable). These market shares should therefore be interpreted as providing a useful starting point for the Criterion 2 assessment.
- 4.70 Table 3 below outlines market shares in the Standalone LL-RFTS Market, measured by lines (and any equivalent Managed VoB lines), and excluding MTS. Eircom has the highest market share at [X ██████████ X]¹⁶⁹ followed by Vodafone and Pure Telecom.

¹⁶⁶ <https://ifamemberservices.ie/ifa-telecom/>

¹⁶⁷ <https://www.telcom.ie/>

¹⁶⁸ See Figures 7, 8 and 9 of the 2014 RFVA Decision.

¹⁶⁹ 60-70%.

Table 3: Standalone LL-RFTS Market Shares (PSTN and ISDN BRA access lines and VoIP equivalent lines) Q4 2019-Q4 2021¹⁷⁰ [REDACTED]

SP	Lines Q4 2021	Q4 2019	Q4 2021 ¹⁷¹	% change, Q4 2019 – Q4 2021
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

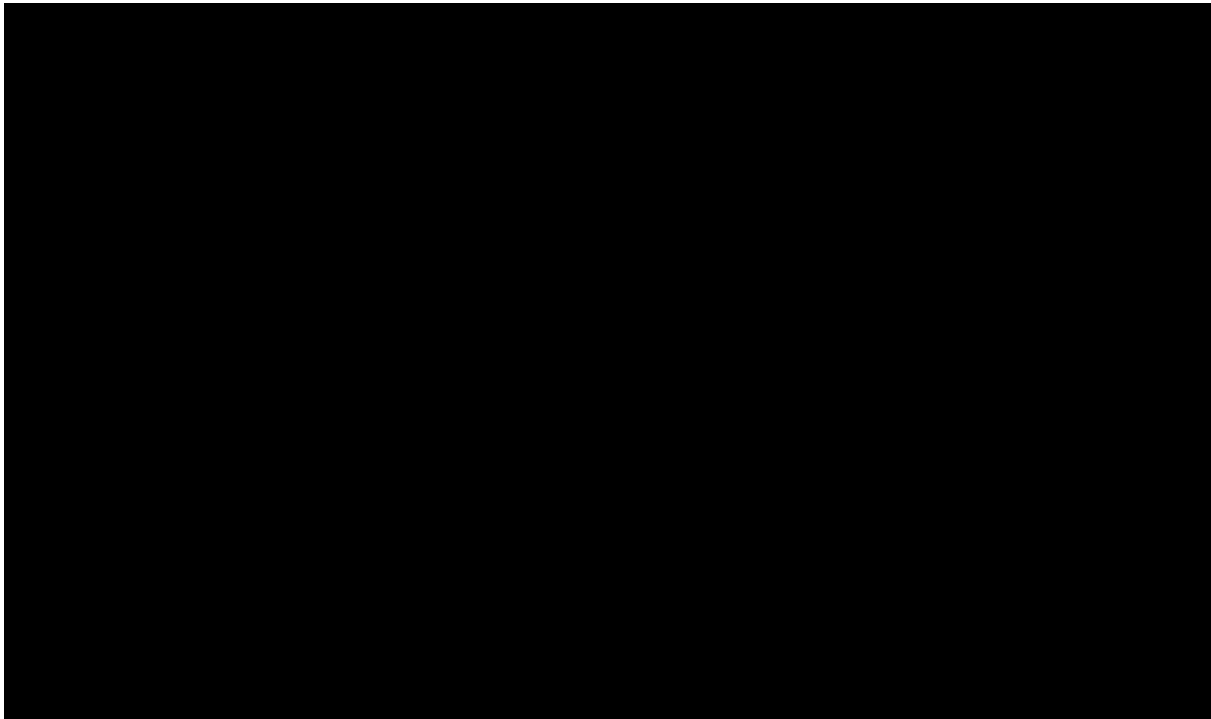
4.71 Figure 5 below presents Standalone LL-RFTS market shares since the 2014 RFVA Decision measured by subscriptions, absent MTS. ComReg notes that standalone fixed voice subscription data include subscribers purchasing ISDN FRA and PRA lines. However, as the number of these subscriptions is relatively small, they do not materially affect the analysis of market shares in the Standalone LL-RFTS Market. Eircom’s market share, measured by subscriptions is [REDACTED].¹⁷²

¹⁷⁰ ComReg QKDR data.

¹⁷¹ As set out at paragraphs 2.49 to 2.51 of the 2021 Draft Decision, due to Eircom management information system difficulties, ComReg believes these data to be partially incomplete.

¹⁷² 40-50%.

Figure 5: Standalone LL-RFTS Market Shares (Number of PSTN, ISDN BRA and VoIP equivalent subscriptions) Q3 2014 to Q4 2021 [REDACTED]¹⁷³



- 4.72 The number of Standalone LL-RFTS customers has fallen since the 2014 RFVA Decision (Q3 2014) when there were 445,234 subscriptions (31% of total RFTS subscriptions) to 203,309 subscriptions (16% of total RFTS subscriptions, excluding MTS) in Q4 2021. At the time of the 2012 RFVA Consultation, Standalone LL-RFTS accounted for 51% of RFTS subscriptions. It should be noted that this excludes MTS subscriptions which, if they were included, would likely further reduce Eircom's market share.
- 4.73 Furthermore, the distribution of market shares has changed since the 2014 RFVA Decision. As illustrated in Figure 5, Eircom's Standalone LL-RFTS market share as of Q4 2021 is [REDACTED], compared with [REDACTED] in Q3 2014, again excluding MTS.
- 4.74 Table 4 below outlines market shares in the Bundled LL-RFTS Market measured by lines (and equivalent Managed VoB lines), again excluding MTS. Eircom has the highest market share at [REDACTED],¹⁷⁴ followed by Virgin Media, Sky and Vodafone, as well as a number of smaller SPs.

¹⁷³ ComReg QKDR data.

¹⁷⁴ 40-50%.

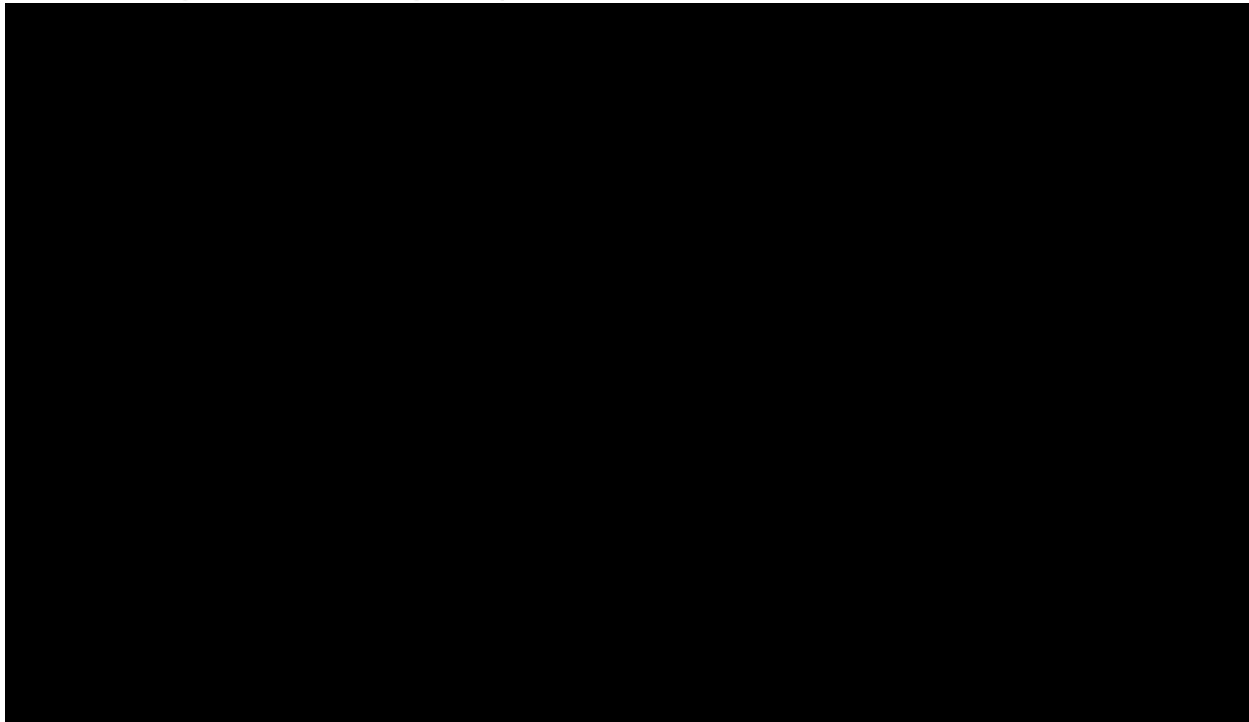
Table 4: Bundled LL-RFTS Market Shares (Number of PSTN and ISDN BRA access lines and VoIP equivalent lines Q4 2019 to Q4 2021)¹⁷⁵ [REDACTED]

SP	Lines Q4 2021	Q4 2019	Q4 2021	% change, Q4 2019 – Q4 2021
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

4.75 Figure 6 below presents Bundled LL-RFTS market shares since the 2014 RFVA Decision, excluding MTS, measured by subscriptions. ComReg notes, as with the 2014 RFVA Decision, and as discussed above in paragraph 4.68, that Bundled LL-RFTS subscription data may include a small number of ISDN FRA and ISDN PRA subscriptions. However, the number of these subscriptions is relatively small and does not materially affect the analysis of market shares. Eircom’s market share, measured by Bundled LL-RFTS subscriptions ([REDACTED]), a figure which has remained fairly stable over time. For the reasons set out at paragraph 4.68 above, it is difficult to calculate accurate market shares across both Bundled LL-RFTS and MTS, given end user overlap in RFTS and MTS subscriptions. Accordingly, the Bundled LL-RFTS market shares represent a hypothetical market share ceiling for these firms, assuming 0% MSP market share. The actual market shares of each of the firms present on the Bundled LL-RFTS Market graph below would therefore all reduce, once MTS market shares were added.

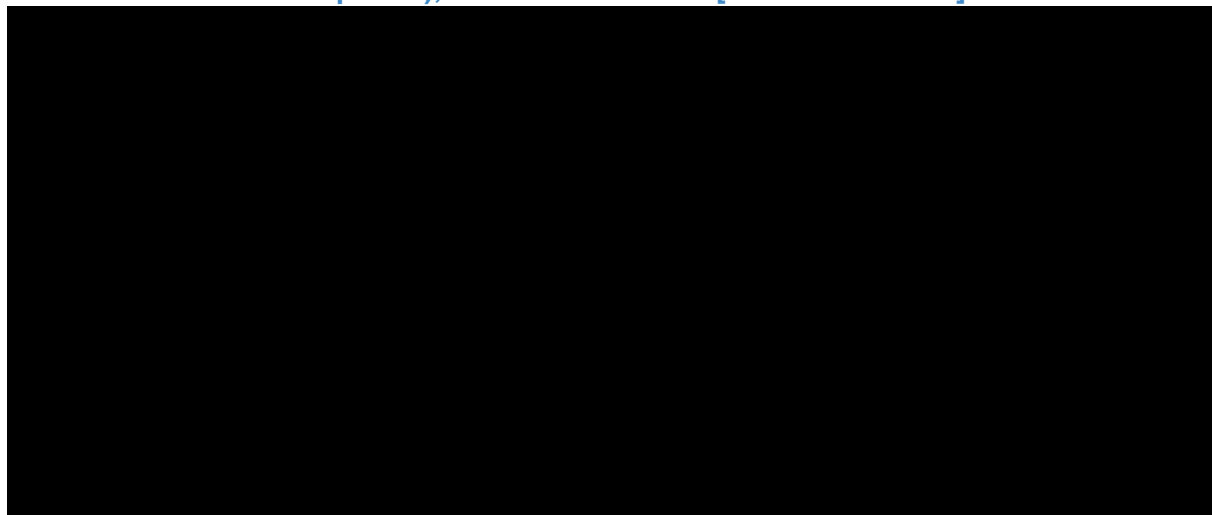
¹⁷⁵ ComReg QKDR data.

Figure 6: Bundled LL-RFTS Market Shares (Number of PSTN, ISDN BRA and VoIP equivalent subscriptions) Q3 2014 to Q4 2021 [REDACTED]¹⁷⁶



4.76 Figure 7 outlines market shares in the HL-RFTS Market, measured by subscriptions, comprising both standalone and bundled ISDN FRA, ISDN PRA and VoIP equivalent subscriptions. Goldfish holds the highest at [REDACTED] [REDACTED],¹⁷⁷ followed by Eircom, Digiweb and Vodafone.

Figure 7: HL-RFTS Market Shares (Number of ISDN FRA, PRA and VoIP equivalent subscriptions), Q3 2014 – Q4 2021 [REDACTED]¹⁷⁸



¹⁷⁶ ComReg QKDR data.

¹⁷⁷ 40-50%.

¹⁷⁸ ComReg QKDR data. ComReg began collecting data from Goldfish for QKDR purposes at the end of 2017.

- 4.77 The presence of SB-WLR (and WLV, which makes use of SB-WLR inputs) in the above datasets means that these data are not fully representative of an absent regulation scenario where, for instance, Eircom withdrew provision of SB-WLR. However, the trends described below suggest that a number of Access Seekers are migrating away from SB-WLR in any case, despite the regulatory obligations placed on Eircom – likely to be driven by migrating to Managed VoIP services.
- 4.78 Since the 2014 RFVA Decision, Access Seekers have migrated away from CPS, SB-WLR and, since, Q3 2018, from WLV. In Q3 2014, CPS accounted for 5% of total indirect (i.e. wholesale) access paths, SB-WLR accounted for 70% and WLV accounted for 26%. As of Q4 2021, the CPS and SB-WLR shares have dropped to 1% and 48% respectively, and WLV has increased to 51%. In practice, many end users that previously purchased RFVA from Eircom and RFVC from another SP have since switched to a single SP for both RFVA and RFVC, which is evidenced by the very low number of CPS access paths. This implies that, while Eircom has lost RFVA subscribers and revenues on the one hand, it has gained many of the same subscribers at the wholesale level, as these retail customers buy RFTS from an SB-WLR or WLV Access Seeker.
- 4.79 As set out in Section 3, Managed VoIP-based RFTS delivered over NG Broadband is a substitute for FNA RFTS, especially for end users that have already decided to purchase broadband, and that place value on a bundle. The bulk of Managed VoIP subscriptions are currently provided over CATV (mainly Virgin Media), with 36% delivered over FTTx. Most of the recent growth in Managed VoIP (effectively, growth in Managed VoB) has been over FTTx.
- 4.80 SPs have indicated to ComReg that higher margins can be earned on bundles of services where broadband is the anchor product, and that RFTS generally has, in their view, reached saturation point.¹⁷⁹
- 4.81 Finally, as set out above in respect of the assessments of market shares on the Standalone LL-RFTS Market, the Bundled LL-RFTS Market, and the HL-RFTS Market, ComReg reiterates that these market shares represent, at best, a starting point, as they do not take into account MTS market shares (on the LL-RFTS markets only), nor do they apply a MGA scenario, where regulation is not present on the upstream FACO markets. These two conditions are likely to alter the likely market share figures in an absent regulation scenario on the defined relevant product markets.

¹⁷⁹ Eircom, Virgin Media and Vodafone – response to April 2019 IIR.

- 4.82 In an absent FACO regulation scenario, Eircom merchant market sales of SB-WLR (and, therefore, WLV) could cease. If the Access Seeker procures alternative wholesale inputs – specifically, WLA or WCA – it may be able to retain its RFTS end users by offering them Managed VoIP (although this involves a migration of services). If the Access Seeker is unable to do so, a range of outcomes arises, and its RFTS end users may:
- (a) Switch to Eircom RFTS delivered over FNA;
 - (b) Switch to an RFTS SP which is not reliant on Eircom wholesale inputs;
 - (c) Switch to an MSP (in the case of LL-RFTS users only); or
 - (d) Cease usage of RFTS or MTS altogether.
- 4.83 Thus, in an absent regulation scenario where Eircom withdraws SB-WLR, multiple outcomes are possible, only one of which results in Eircom increasing its market share.
- 4.84 In respect of the **Standalone LL-RFTS Market**, Eircom SB-WLR and WLV account for 55% of access paths. If Eircom ceased supply of merchant market SB-WLR, end users would be capable of switching to MTS, which would likely act as a sufficiently effective substitute, except in small localised areas characterised by ‘fringe’ mobile coverage, as set detailed on ComReg’s Outdoor Mobile Coverage Map. ComReg considers that such end users would be less likely to switch to Managed VoIP provided over wholesale NG broadband, as Managed VoIP is typically not available on a standalone basis and is only sold in a bundle. Standalone LL-RFTS end user preferences suggest that few end users would purchase a bundle including Managed VoIP. In this scenario, ComReg cannot exclude the possibility that Eircom would increase its already high market share of 55% as end users migrate to it. However, ComReg notes that the Standalone LL-RFTS Market appears to be in ongoing decline and also that, even if Eircom were to increase its market share, these end users would be afforded certain pricing protections under the USO. The Standalone LL-RFTS market makes up only a small proportion (16%) of total Standalone and Bundled LL-RFTS subscriptions, and this share continues to decrease over time. As discussed below in paragraph 4.107, the absolute size of the Standalone LL-RFTS market is also relatively small and again, decreasing over time. On a forward looking basis, as NG broadband rollout continues, ComReg would expect the standalone LL-RFTS market to continue to decline as end users, through increased availability of NG broadband, are increasingly able to migrate to Managed VoIP.

- 4.85 In respect of the **Bundled LL-RFTS Market**, Eircom SB-WLR and WLV account for 26% of access paths. This figure has declined from 32% in 2019, illustrating the decline over time in the share of access paths reliant on Eircom SB-WLR or WLV. If Eircom ceased supply of merchant market SB-WLR, end users would similarly be capable of switching to MTS. ComReg data indicate that 99% of all Bundled LL-RFTS subscriptions include a broadband component. Accordingly, for those end users, it is likely that they are located in areas which are served by NG broadband, and they are therefore likely to have the capability to switch to Managed VoIP delivered over RFTS. Additionally, in scenarios where an end user purchases RFTS as part of a bundle, but does not make use of the RFTS component, that end user may switch to a bundle which has no RFTS component. In the context of increased NG broadband rollout capable of delivering Managed VoIP, ComReg considers that few end users would be incentivised to switch to Eircom FNA RFTS, such that Eircom's Bundled LL-RFTS market share would be unlikely to increase significantly from its current share of 26%, and, indeed, could actually decrease, once MTS market shares were factored in. Accordingly, ComReg considers it unlikely that, in an absent regulation scenario, Eircom would accrue a market share which would be indicative on a preliminary basis of SMP.
- 4.86 In respect of the **HL-RFTS Market**, Eircom SB-WLR and WLV account for 35% of access paths. ComReg does not consider that MTS should be included in the product market definition. Accordingly, MTS would have no impact on HL-RFTS market shares. If Eircom ceased supply of merchant market SB-WLR, HL-RFTS end users would similarly be capable, on a forward-looking basis, of switching to Managed VoIP immediately, where NG broadband is already present, or in the medium term, where NG broadband rollout is forecast. In such circumstances, ComReg considers that few end users would be incentivised to switch to Eircom FNA RFTS, such that Eircom's HL-RFTS market share would be unlikely to increase significantly from its current share of 35%. Accordingly, ComReg considers it unlikely that, in an absent regulation scenario, Eircom would accrue a market share which would be indicative on a preliminary basis of SMP. Eircom's HL-RFTS market share figure has declined from 45% in 2019 to 35% in 2020, a level at which it remained at during 2021, indicating a downward trend in terms of reliance on SB-WLR in HL-RFTS.

Pricing behaviour

- 4.87 The extent of competition in a market over time may be evident in the pricing of RFTS. On the basis of the evidence available to it, ComReg has no grounds to depart from its findings set out in the 2021 Draft Decision and the 2022 Consultation.¹⁸⁰ In particular, ComReg notes that,
- (a) absent RFTS or FACO regulation,

¹⁸⁰ At paragraphs 6.115 to 6.119.

- (b) in the context of the low barriers to entry identified in the Criterion 1 assessment above, and
- (c) on a forward-looking basis, assuming additional NG broadband rollout pricing of RFTS would likely continue to be disciplined by self-supply of Managed VoIP RFTS delivered over NG broadband.
- 4.88 ComReg notes the discipline on pricing exerted by Managed VoIP RFTS is likely to be more effective on the Bundled LL-RFTS Market than on the Standalone LL-RFTS Market, given the apparent absence of a standalone Managed VoIP RFTS product. However, ComReg notes that the Standalone LL-RFTS Market continues to decline, and that end users in this market are afforded certain protections by the Universal Service Obligation discussed below.
- 4.89 Additionally, as set out in the Withdrawal Decision, the EC relied, *inter alia*, on the presence of mobile plans offering unlimited voice calls for prices comparable to, or even lower than, fixed subscriptions to RFTS¹⁸¹ as evidence in favour of the proposition that FMS is present on the RFTS market to a sufficient extent to warrant the inclusion of MTS in the relevant RFTS markets.
- 4.90 On the basis of the pricing evidence available to it, ComReg has no grounds to conclude that pricing behaviour on the RFTS markets is consistent with a market which is not moving towards effective competition.

Universal Service Obligation

- 4.91 ComReg notes that its assessment of the Universal Service Obligation in the 2021 Draft Decision¹⁸² continues to apply, although an updated 2021 USO Decision¹⁸³ issued following the publication of the 2021 Draft Decision. Eircom continues to be required, where requested, to provide RFTS at a geographically averaged price ('**GAP**').¹⁸⁴ This limits Eircom's commercial pricing freedom by requiring it to charge the same price for RFTS, regardless of location. Thus, Eircom is not entitled to charge more to end users who, for example, live in remote rural areas. This obligation relates specifically to a connection and Publicly Available Telephone Service ('**PATS**').¹⁸⁵

¹⁸¹ At paragraph 119. The Withdrawal Decision did not identify any specific MTS plans or provide evidence in favour of its proposition, and, rather, relied on a general assertion.

¹⁸² At paragraphs 6.200 to 6.205.

¹⁸³ "Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO) Response to Consultation and Decision". 5 November 2021, Decision D09/21 (the '**2021 USO Decision**').

¹⁸⁴ Universal Service Requirements: Provision of Access at a Fixed Location (AFL USO) Response to Consultation and Decision, 5 November 2021. Decision D09/21 (the '**2021 USO Decision**').

¹⁸⁵ '**Publicly Available Telephone Service**' or '**PATS**' means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan. For the avoidance of doubt, this does not apply to bundled products.

- 4.92 The requirement under the 2021 USO Decision to apply geographically averaged pricing ('**GAP**') restricts Eircom's commercial pricing freedom by requiring it to charge the same price for RFTS, regardless of location. Thus, Eircom is not entitled to charge more to end users who, for example, live in remote rural areas.
- 4.93 Additionally, Regulation 8 of the Universal Service Regulations gives ComReg the power to monitor retail tariffs and to impose tariff options (with the consent of the Minister) in order to ensure that consumers are not prevented from accessing certain services, including AFL. In the 2021 USO Decision, having regard to the presence of other mechanisms that ensure that basic voice services are broadly affordable for end users, including the Department of Social Protection's Telephone Support Allowance Scheme, ComReg did not consider it necessary to impose tariff options. Accordingly, the sole affordability measure included in the 2021 USO Decision is the obligation on the USP to charge according to GAP principles.

Wholesale prices

- 4.94 The extent to which competitors in the Relevant RFTS Markets can set prices independently of Eircom impacts the competitive constraint imposed by those SPs in those markets. Many of Eircom's competitors have, to date, relied on its wholesale inputs, including SB-WLR, to provide RFTS, as they do not have a network of their own. ComReg currently regulates the price of SB-WLR, pursuant to the 2015 FACO Decision. Similarly, WLV is purchased by some SPs to provide RFTS, which avoids the need for SPs to manage interconnection for their traffic. While the price of WLV is not regulated by ComReg, the WLR and FVCO components (together being SB-WLR) that are necessary for this end-to-end service to be offered by SPs are subject to price control obligations. Other components such as transit are not regulated, but in order to provide the end-to-end service, are priced in by Eircom in its offering to SPs.
- 4.95 However, in an MGA scenario and, as set out below, Eircom would no longer be subject to any regulatory obligations, including pricing obligations in the supply of SB-WLR (and, therefore, WLV).
- 4.96 Data available to ComReg indicate that 64% of Access Seeker purchases of wholesale NG Broadband inputs (FTTC or FTTP VUA, or Bitstream) are on a standalone basis, as of Q4 2021 (which would require the Access Seeker to deliver RFTS by means of Managed VoIP if offering a bundle of broadband and RFTS), while the remaining 36% of wholesale NG Broadband inputs were purchased alongside SB-WLR to provide POTS-based RFTS (which requires the Access Seeker to pay FACO charges to Eircom).

- 4.97 To date, Eircom wholesale pricing has largely been a function of regulation in the FACO market rather than competition *per se*, but ComReg notes that prices of regulated products are set in relation to Eircom's underlying costs, compared to an equally efficient SP and what prices would prevail, were prices cost-oriented.
- 4.98 ComReg notes, however, that, as NG broadband network rollout has progressed further, and given that it includes MTS in the Relevant LL-RFTS Markets, FACO wholesale pricing will ultimately only have an impact on a small proportion of RFTS end users, specifically those end users who purchase RFTS from Access Seekers reliant on Eircom SB-WLR inputs. As NG broadband continues to roll out, this will facilitate migration to Managed VoIP RFTS, which will likely lead to a continued decline in demand for SB-WLR.
- 4.99 Furthermore, as set out at paragraph 4.45 above, RFTS delivered using merchant market FACO inputs accounts for a maximum of 28% of all RFTS access paths, bearing in mind that MTS subscriptions cannot, for calculation purposes, be meaningfully added to RFTS subscriptions. Accordingly, FACO wholesale pricing, while currently regulated, only accounts for a proportion of all wholesale pricing feeding into the provision of RFTS. This suggests that, overall, RFTS is likely to move towards effective competition, even if FACO regulation were removed and Eircom substantially increased the price of SB-WLR to Access Seekers.

Conclusions on observable trends towards effective competition

- 4.100 Having regard to the assessment in paragraphs 4.63 to 4.97 above, absent regulation, ComReg concludes that, on balance, Eircom, as the previously-designated SMP SP is sufficiently constrained by existing competition, suggesting a tendency towards effective competition.
- 4.101 In the Relevant RFTS Markets, ComReg's position is that competition in the retail market is likely to be sufficiently effective over the next 3 to 5 years. This includes competition from Managed VoIP-based RFTS delivered over alternative networks, including by SPs through the use of WLA and WCA inputs and from MSPs supplying MTS.

Potential Entry to the Relevant RFTS Markets

- 4.102 In this sub-section, ComReg examines the likelihood, extent and timeliness of potential entry and further competition occurring in the Relevant RFTS Markets over the lifetime of this market review period.
- 4.103 While Section 3 defined the Relevant RFTS Markets in terms of short to medium term constraints on a HM provider of RFTS, in the context of the 3CT assessment, the effectiveness of potential direct and indirect competitive constraints that may materialise is considered over a longer time horizon.

4.104 ComReg notes that the primary source of additional competition is likely to be the further rollout of NG broadband networks, which SPs use, including through the purchase of wholesale broadband services, to deliver Managed VoIP. For example, SIRO is rolling out an FTTP network, and has announced Phase 2 of its rollout programme. Similarly, ComReg notes that NBI rollout is ongoing and is expected to complete over a seven-year period.¹⁸⁶ The rollout of NBI and SIRO (while having, in the past, proven to be slower than originally anticipated) will be capable of facilitating the delivery of RFTS over time. Accordingly, in the short to medium term, potential further competition will likely emerge from additional RFTS SPs offering Managed VoIP in the NBI and SIRO network footprint.

Expected or foreseeable technological and economic developments

- 4.105 This section identifies any anticipated technological or economic developments that may alter the competitive dynamics of the Relevant RFTS Markets and considers how such developments might impact on the market.
- 4.106 FACO (and, therefore, RFTS delivered using FACO inputs) has been in decline, as measured by declining sales of Eircom WLV and SB-WLR. Uptake of WLV has declined for 13 successive quarters starting in Q4 2018, while SB-WLR has declined for 26 of the last 29 quarters. Provision of SB-WLR and WLV access paths together has declined for 16 consecutive quarters and has fallen by 25% since Q4 2017. Accordingly, recent evidence indicates that Eircom has not, in fact, been successful in growing take-up of either SB-WLR or WLV for at least the last two years.
- 4.107 ComReg also notes that the Standalone LL-RFTS market is in decline, falling by an average of 8,300 customers per quarter (over 2014 to 2021), many (but not all) of which are switching to bundles of RFTS with broadband and/or other products. ComReg considers that the Standalone LL-RFTS market is likely to continue to decline over the period of the market review as end users migrate to bundles of broadband and RFTS, a development which is dependent on the availability of NG broadband.

¹⁸⁶ <https://nbi.ie/news/latest/2021/01/22/nbi-connects-the-first-premises-under-the-national-broadband-plan/>
<https://nbi.ie/news/latest/2020/05/18/first-phase-of-national-broadband-plan-nbp-well-underway/>

- 4.108 In the Bundled LL-RFTS Market, 56% of subscriptions are delivered over Managed VoIP while 45% are delivered over PSTN, as of Q4 2021. SPs have indicated to ComReg that, for new customers on bundles of NG Broadband with RFTS, Managed VoIP is provided, and this is particularly the case for greenfield HL-RFTS customers.¹⁸⁷ For greenfield FTTP connections, it is likely that customers will be provided with Managed VoIP-based RFTS, as legacy CG infrastructure over which FNA RFTS could be delivered, will in some cases not be present.
- 4.109 Eircom will ultimately decommission its legacy FNA network ('copper switch-off') and in March 2021, open eir published a White Paper entitled "*Copper switch-off: Leaving a legacy for the Future*" (the '**White Paper**') which set out some indicative proposals in respect of Eircom's approach to copper switch-off.¹⁸⁸ Once copper switch-off occurs, RFTS will cease to be delivered over the legacy network and will likely be delivered by means of Managed VoIP. ComReg also recently issued a consultation on its regulatory approach to copper switch-off in March 2022.¹⁸⁹

Respondents' Views

- 4.110 No Respondent offered views, including supporting evidence, on whether the RFTS Markets are characterised by a tendency towards effective competition.

Overall Conclusions on Tendency of Relevant RFTS Markets towards Effective Competition

- 4.111 In paragraphs 4.57 to 4.109, ComReg has examined whether the Relevant RFTS Markets are likely to tend towards effective competition within the time horizon of this market review period, having regard to whether:
- there are observable trends suggesting a tendency towards effective competition;
 - potential entry in the Relevant RFTS Markets, and whether alternative SPs are in a position to roll out infrastructure, to the extent that they would be able to compete effectively with Eircom; and
 - any expected or foreseeable technological and economic developments that will impact on competition within the timeframe of this market review.

¹⁸⁷ Responses to April 2019 Informal Information Requests ('IIR(s)') from [redacted]

¹⁸⁸ Available online at https://www.openeir.ie/wp-content/uploads/2021/03/White-paper_Leaving-a-Legacy.pdf

¹⁸⁹ "Consultation - Framework for the Migration from Legacy Infrastructure to Modern Infrastructure Consultation and Draft Decision" Reference: ComReg 22/13, available online at <https://www.comreg.ie/media/2022/03/ComReg-2213.pdf>.

- 4.112 ComReg's view is that the Relevant RFTS Markets are likely to tend towards effective competition, absent RFTS or FACO market regulation. Eircom's market share in the Standalone LL-RFTS Market, which was indicative of a position of SMP in the 2014 RFVA Decision, has fallen considerably since then. Many Standalone LL-RFTS end users have moved into the Bundled LL-RFTS Market, and this has been facilitated by the increased availability of broadband. In the HL-RFTS Market, end users can avail of Managed VoIP products (including SIP Trunks or Hosted PBX) and likely upgrade their infrastructure when contracts are due for renewal.
- 4.113 ComReg considers that the dynamics of competition on the Relevant RFTS Markets are likely to continue to change over time, due to end user behaviour and technological developments. Based on current market dynamics, ComReg's position is, therefore, that the Relevant RFTS Markets are likely to fail the second criterion of the 3CT.
- 4.114 The trends identified above indicate that the Bundled LL-RFTS Market is characterised by greater levels of competition due to the availability of broadband bundles. Where NG Broadband has rolled out or is, on a forward-looking basis, likely to roll out, SPs will be able to offer a suite of services to end users, including Managed VoB, on the basis of purchases of WLA or WCA from Eircom, SIRO, BT, or NBI. NG Broadband availability also allows for the provision of HL-RFTS over SIP Trunking or Hosted PBX, thus reducing reliance on Eircom HL-FACO. Access Seekers are accordingly likely to be able to offer RFTS to end users using wholesale NG Broadband inputs, even in an absent regulation scenario where Eircom withdraws supply of SB-WLR.
- 4.115 For the Standalone LL-RFTS Market, despite wider dispersion of market shares since the 2014 RFVA Decision, ComReg's position is that the market is likely to continue to decline in absolute terms, although the barrier to offering Standalone LL-RFTS has been lowered by the availability of wholesale access products, including WLA and WCA products from Eircom, SIRO, or NBI.
- 4.116 Accordingly, ComReg's view is that the Relevant RFTS Markets are likely to tend towards, and are likely to continue to tend towards, effective competition, based on ongoing NG broadband rollout capable of delivering Managed VoIP RFTS, evolving consumer preferences and technological developments. On that basis, ComReg's position is that the second 3CT criterion fails in relation to the Relevant RFTS Markets.

- 4.117 At least one of the three 3CT criteria must fail in order for the presumption in favour of *ex ante* regulation to be lifted.¹⁹⁰ Since ComReg's analysis suggests that the first and second criteria have failed, the presumption can be lifted, and, in principle, there are grounds to withdraw *ex ante* regulation of the Relevant RFTS Markets.

Criterion 3: The insufficiency of competition law alone to adequately address the market failure(s) concerned

- 4.118 Given ComReg's view that Criterion 1 and Criterion 2 fail on the basis of lower barriers to entry and a general tendency towards effective competition in the Relevant RFTS Markets, Criterion 3 is therefore moot, as the outcome of that assessment cannot alter the overall 3CT findings. It is therefore not necessary to assess Criterion 3, as it cannot alter ComReg's overall conclusion on the application of the 3CT to the Relevant RFTS Markets.

Respondents' Views

- 4.119 No Respondent offered views, including supporting evidence, on whether the RFTS Markets 3CT should pass or fail overall.

Conclusions on the 3CT

- 4.120 Accordingly, ComReg has formed the view that, in respect of the Relevant RFTS Markets, the 3CT is not passed. ComReg therefore considers that there is evidence to suggest that each of the Relevant RFTS Markets are characterised by sufficient levels of competition to immediately withdraw *ex ante* regulation. It follows from this finding that ComReg is not required to carry out a competition assessment of the Relevant RFTS Markets, to determine whether any SP or SPs on those markets hold positions of SMP.

4.2 Overall Conclusions on RFTS Market Analysis

- 4.121 Having defined the Relevant RFTS Markets in Section 3 and carried out a 3CT for these markets in paragraphs 4.11 to 4.120 above, assuming no RFTS or FACO market regulation, ComReg's position is that none of the three Relevant RFTS Markets continues to warrant *ex ante* regulation. ComReg's assessment suggests on a forward-looking basis that the RFTS markets would likely be characterised by effective competition, even if RFTS and FACO market regulation were removed, due in large part to the capability of end users to switch to Managed VoIP RFTS delivered over NG Broadband in a hypothetical scenario where Eircom ceased provision of SB-WLR to Access Seekers and the ongoing rollout of NG broadband networks offering wholesale access by Eircom, SIRO, NBI and, potentially, Virgin Media.

¹⁹⁰ See p.5 of the 2014 Explanatory Note: ".....the Recommendation provides that NRAs should only *regulate* markets which differ from those identified in this Recommendation where this is justified by national circumstances in the sense that the three cumulative criteria referred to in point 2 of this Recommendation are met."

4.122 Accordingly, ComReg withdraws existing regulation from the Relevant RFTS Markets.

4.3 Withdrawal of SMP and Remedies on the Relevant RFTS Markets

4.123 In cases where Eircom has previously been designated as holding SMP on a specific market, and has therefore been subject to regulatory obligations, ComReg notes that Regulation 27(2) of the Framework Regulations¹⁹¹ allows ComReg to give reasonable notice to any parties which it considers to be affected by the withdrawal of such obligations.

4.124 ComReg's position is that the following Relevant RFTS Markets should no longer be susceptible to *ex ante* regulation:

- (a) **Market 1a:** Standalone Low-Level RFTS ('**Standalone LL-RFTS**') including RFTS delivered over PSTN and ISDN BRA, MTS, and Managed VoB delivered over NG Broadband on a standalone basis;
- (b) **Market 1b:** Bundled Low-Level RFTS ('**Bundled LL-RFTS**') including RFTS over PSTN and ISDN BRA and Managed VoB¹⁹² delivered over (and with) NG Broadband and MTS on a bundled basis together with any of broadband, television or MTS,¹⁹³ delivered on a bundled basis; and
- (c) **Market 1c:** High-Level RFTS ('**HL-RFTS**') including RFTS delivered over ISDN FRA and PRA, and SIP Trunk or Hosted PBX forms of Managed VoIP delivered over NG Broadband on a standalone basis or on a bundled basis together with any of broadband, television or MTS.

4.125 In particular, high and non-transitory barriers to entry no longer appear to be present, and these markets are likely to tend towards effective competition at a point in the foreseeable future. Failure to meet any of the 3CT criteria implies that the Relevant RFTS Markets are no longer susceptible to *ex ante* regulation and are effectively competitive. In such cases, ComReg is required, pursuant to Regulation 27(3) of the Framework Regulations, to remove regulation from those markets.

4.126 ComReg accordingly withdraws existing regulatory obligations imposed on Eircom by means of the 2014 RFVA Decision and associated decisions, given its finding that the Relevant RFTS Markets are not susceptible to *ex ante* regulation. All existing SMP obligations are therefore withdrawn from the Relevant RFTS Markets on the effective date of this Decision.

¹⁹¹ This provision is mirrored at Article 67 EECC.

¹⁹² Managed VoIP includes RFTS delivered in the form of Managed VoB, as well as Hosted PBX, or SIP Trunking.

¹⁹³ This refers to the instance where the RFTS element is not based on MTS. For example, where RFTS is delivered over Managed VoB, but the bundle also includes MTS.

4.4 Withdrawal of SMP finding on the Relevant FACO Markets

4.127 ComReg has formed the view that the 3CT is likely to fail on the Relevant RFTS Markets, even in the absence of upstream FACO market regulation. This suggests that competition is likely to be sufficiently effective on the RFTS markets, even without the protections afforded by upstream FACO market regulation. The EC has noted in its 2020 Explanatory Note that SMP regulation of wholesale markets should only be applied in order to address a lack of effective competition at the retail level on downstream markets. It follows that, where a retail market can be shown to be effectively competitive absent wholesale market regulation, then wholesale market regulation becomes unnecessary. Accordingly, and as set out at pages 8 and 9 of the 2020 Explanatory Note, since ComReg concludes that the RFTS markets are likely to be effectively competitive in the absence of FACO market regulation, it then follows that FACO regulation is no longer required, since it is no longer necessary to prevent the emergence and exercise of competition problems at retail level.

Respondents' Views

- 4.128 In its Submission response, Magnet disagreed with ComReg's proposals to deregulate both the Relevant RFTS Markets and FACO markets for a number of reasons. Magnet argued that deregulation would *"have a material distortionary effect on competition and serious implications for end-users with potentially the biggest detriment being suffered by vulnerable users"*, but did not provide any evidence in favour of this assertion. Magnet also argued that the Regional FACO Market should continue to be regulated in the manner described in the 2021 Draft Decision. Rather than providing evidence to support this assertion, Magnet noted that the 2021 Draft Decision was based on recent and comprehensive analysis, and was largely supported by BEREC. Magnet therefore argued that ComReg should have sought additional evidence to support the position it set out in the 2021 Draft Decision, notwithstanding the EC's Withdrawal Decision.
- 4.129 Magnet considered that the approach which ComReg took in the 2022 Consultation amounted, instead, to a capitulation or u-turn, noting that *"It is not possible for Com Reg to reconcile its position and that of BEREC's less than 6 months ago while at the same time now proposing there are no competition concerns. Nothing has changed in the market since ComReg took that position other than the EC challenged ComReg to provide more convincing evidence."*

ComReg's Assessment of Respondents' Views and Final Position

- 4.130 ComReg notes that Magnet has not provided any additional evidence, but argued instead that ComReg should have maintained the position in the 2021 Draft Decision, having provided further evidence/research, such as by carrying out a more detailed consumer survey, or additional indoor mobile coverage/speed assessments.
- 4.131 While the analysis and preliminary conclusions in the 2021 Draft Decision was largely supported by BEREC, both ComReg's analysis and BEREC's opinion was considered by the EC in arriving at its Withdrawal Decision. ComReg's further assessment as set out in the 2022 Consultation and this Decision must take place in light of Withdrawal Decision. ComReg carried out a detailed assessment in the 2021 Draft Decision which relied on detailed evidence from a range of sources. Ultimately, that evidence was not acceptable to the EC.
- 4.132 ComReg does not have additional supporting evidence which would allow it to bolster the arguments previously set out in the 2021 Draft Decision – the best evidence available was presented by ComReg in that decision. It was for this reason that ComReg sought any additional evidence from Respondents as part of the public consultation process. However, no such evidence has been provided.
- 4.133 ComReg accordingly withdraws existing regulatory obligations imposed on Eircom by means of the 2014 RFVA Decision and 2015 FACO Decision and associated decisions, given its finding that the Relevant RFTS Markets are not susceptible to *ex ante* regulation. Existing SMP obligations are to be withdrawn in accordance with the sunset periods discussed in Section 5 below.

5 Withdrawal of Remedies on the Relevant FACO Markets

5.1 Issues arising with the withdrawal of regulation

- 5.1 ComReg considers that regulation of the Relevant FACO Markets is no longer warranted. ComReg therefore withdraws the obligations imposed on Eircom by the 2015 FACO Decision (and associated decisions) in respect of the Relevant FACO Markets. In order to enable an orderly transition to de-regulation in a manner that protects competition and consumers, In accordance with Regulation 27(2) of the Framework Regulations, Comreg has provided a sunset period for the withdrawal of certain obligations in the Relevant FACO Markets.

5.2 Sunset periods

2022 Consultation

- 5.2 As set out in the 2022 Consultation, the purpose of the proposed sunset periods is to give reasonable and sufficient notice to Access Seekers affected by the withdrawal of obligations, in order to facilitate orderly deregulation in the Relevant FACO Markets. ComReg therefore proposed a sunset period of 12 months for existing ISDN BRA services, and a sunset period of 18 months for existing PSTN and ISDN FRA/PRA services. For ISDN BRA, a two month period would apply with respect to new orders which would run in parallel with the overall 12 month sunset period in respect of existing ISDN BRA access. In the case of PSTN and ISDN FRA/PRA, a nine month period would apply with respect to new orders which would run in parallel with the overall 18-month sunset period in respect of existing PSTN and ISDN FRA/PRA access. This would allow Access Seekers sufficient time in which to make any necessary preparations for the new market environment and to preserve continuity in the supply of both wholesale and retail services (were Eircom to withdraw SB-WLR, or significantly alter its SB-WLR terms and conditions, following deregulation).

Table 5: Summary of Sunset Periods

Product	New Services	Existing Services
PSTN and ISDN FRA/PRA	9 months	18 months
ISDN BRA	2 months	12 months

- 5.3 The proposed initial nine month period that would be implemented following the Effective Date of the decision seeks to ensure that an Access Seeker would have sufficient time to further develop or procure a VoIP platform and associated operational/support systems and processes to enable the delivery of Managed VoIP to RFTS end users. The sunset periods seek to ensure continuity in the supply of SB-WLR while an Access Seeker develops or procures a VoIP platform (along with, for example, all ancillary systems integration for in-life management of the Managed VoIP products). This initial nine month period is designed to provide sufficient time for an Access Seeker to, in parallel with these activities, initiate a communication programme with its end users regarding the replacement of its existing SB-WLR-based RFTS by Managed VoIP delivered via NG Broadband.
- 5.4 The subsequent nine month period of the 18-month sunset period for existing PSTN and ISDN FRA/PRA services seeks to ensure that Access Seekers have sufficient time to migrate their end users from POTS-based NGA broadband to standalone NGA broadband with Managed VoIP, noting that SB-WLR-only end users will require NGA broadband to be installed before migrating to standalone NGA broadband with Managed VoIP. The nine month duration proposed in the 2022 Consultation was determined having regard to the volume of FACO lines in the Relevant FACO Markets and Eircom's published product migration processes,¹⁹⁴ which state a maximum throughput of 1,000 migrations per operator per day on the File Transfer Protocol ('FTP') channel of the Unified Gateway ('UG').¹⁹⁵
- 5.5 In setting the sunset period for ISDN BRA, ComReg had regard to Eircom's 2020 submission regarding ISDN BRA,¹⁹⁶ and also the challenges which Eircom has indicated it has in sourcing ISDN BRA Network Termination Units ('NTUs').¹⁹⁷

Respondents' Views

- 5.6 Five Respondents (ALTO, BT, Eircom, Magnet, and Vodafone) commented on the proposals in the 2022 Consultation regarding the sunset periods for the withdrawal of obligations. Three Respondents (ALTO, BT, Vodafone) broadly agreed with ComReg's approach to the sunset periods while two other Respondents (Eircom, Magnet) disagreed with ComReg's approach. Eircom expressed the view that the proposed sunset periods were too long, while Magnet considered that they were too short.

¹⁹⁴ <https://www.openeir.ie/products/>

¹⁹⁵ As specified in the Open eir UG Data Contract.

¹⁹⁶ Eircom submission, 2020 Consultation, paragraphs 227-229.

¹⁹⁷ Information Notice: Eircom's request to withdraw access to Integrated Services Digital Network (ISDN) Basic Rate Access (BRA), ComReg Document 20/118, dated 09 December 2020.

- 5.7 In its Submission, Eircom argued that the proposed withdrawal periods were too long for a number of reasons.
- 5.8 Eircom noted ComReg's conclusion that the downstream Relevant RFTS Markets are competitive absent upstream regulation and found it "questionable" that the sunset period for the upstream wholesale market would be extended to such a period to allow all volumes to migrate to another service and demand for upstream regulated products to cease to exist.
- 5.9 Eircom stated that the proposed transitional periods were not compatible with Article 67(3) of the Code which requires NRAs to provide notice to parties affected by the withdrawal of SMP obligations, "*...defined by balancing the need to ensure a sustainable transition for the beneficiaries of those obligations and end-users, end-user choice, and that regulation does not continue for longer than necessary*" and concluded that ComReg is only proposing to deregulate when there is nothing left to regulate.¹⁹⁸
- 5.10 Eircom surmised that ComReg's position is that Eircom will behave unreasonably, forcing Access Seekers to leave their network and onto alternative solutions. Eircom states that it has no incentive to deny access to its wholesale customers and cites the Urban WCA Market as an example of this.
- 5.11 Eircom stated that ComReg's justification for the initial nine month sunset period to allow Access Seekers to put in place or further develop their VoIP platforms is *ultra vires* although it did not explain why this was the case.¹⁹⁹
- 5.12 Eircom argued that the second nine month sunset period (for existing PSTN and ISDN PRA/FRA services) should be reduced to seven months in line with QKDR data and anticipated falls in SB-WLR volumes by the time the FACO market analysis decision is adopted.²⁰⁰
- 5.13 Magnet stated that ComReg has a duty to ensure that the transition to full deregulation is fair and orderly and suggested that the proposed sunset periods are too short.
- 5.14 Magnet compared the time given by ComReg to Eircom for billing updates (which is a minimum of two months), and for UG updates (which is a minimum of six months' notice to industry), to the 12 to 18 month notice period for the deregulation of the Relevant FACO Markets, where Magnet stated an entire business has to be overhauled and moved on to new technological platforms. It found the 18 month period to be disproportionately short.²⁰¹

¹⁹⁸ Eircom Submission, paragraph 6.

¹⁹⁹ Eircom Submission, paragraph 10.

²⁰⁰ Eircom Submission, paragraph 12.

²⁰¹ Magnet Submission, page 2.

- 5.15 Magnet highlighted that a large proportion of its business is reliant on regulated SB-WLR products provided by Eircom, leaving it exposed to a possible withdrawal of service upon deregulation. To counteract this, Magnet indicated it will have to initiate a programme of work to plan and execute the migration of its end users, while maintaining its business-as-usual service levels. This will include hiring of resources capable of executing such a project.²⁰²
- 5.16 Magnet also referred to the period of engagement required with its end users as being time consuming, as each customer will need to be brought through the process and may require tailor-made solutions. This would drive development on Magnet's sales, customer relationship management and billing platforms.
- 5.17 In Magnet's view, the migration of the customer is not a straightforward task. It highlighted data extraction, data cleansing, data mapping and progress reporting as key elements of a migration process for every Magnet customer, all of which contribute to a time-consuming process.²⁰³
- 5.18 Magnet stated that the backlog in global supply chains for hardware caused in the first instance by the Covid-19 pandemic, with further uncertainty added by war in Ukraine, should be considered by ComReg when defining the sunset periods.
- 5.19 With regard to ISDN BRA, Magnet did not agree that shorter sunset periods were justified, particularly as Universal Service Obligations do not cater for ISDN services.²⁰⁴
- 5.20 Finally, Magnet proposed that a minimum 36 month sunset period for the withdrawal of access and pricing obligations be put in place by ComReg to ensure market distortions and detriment to end users are kept to a minimum.²⁰⁵
- 5.21 ALTO broadly agreed with ComReg's sunset period for PSTN services, considering anything shorter would be detrimental to the market.²⁰⁶
- 5.22 With regard to ISDN BRA sunset periods, ALTO noted the two month sunset period for new orders but suggested that, should the market be foreclosed or prices rise to an extent that the services become unviable, a 24 month sunset period should be considered for migration of existing lines.²⁰⁷

²⁰² Magnet Submission, page 2.

²⁰³ Magnet Submission, page 3.

²⁰⁴ Magnet Submission, page 4.

²⁰⁵ Magnet Submission, page 4.

²⁰⁶ ALTO Submission, page 4.

²⁰⁷ ALTO Submission, page 4.

- 5.23 ALTO proposed to extend the sunset period for migration of FRA/PRA services from nine months to 18 months, giving an overall sunset period of 27 months for FRA/PRA services.²⁰⁸
- 5.24 BT considered that the nine month and 18-month sunset periods for new and existing PSTN services is appropriate, assuming that the bulk migration facilities being put in place²⁰⁹ are fit-for-purpose.²¹⁰
- 5.25 BT broadly agreed with the sunset periods for ISDN BRA and ISDN FRA/PRA, stating that while the sunset periods proposed are the minimum required, migration should be possible in those timescales.²¹¹
- 5.26 Vodafone broadly agreed with the sunset periods for new orders, stating that while challenging, they were acceptable. For existing PSTN and ISDN FRA\PRA lines, Vodafone stated that the sunset period was challenging and that they would prefer longer, but made no further comment.²¹²
- 5.27 Regarding existing ISDN BRA lines, Vodafone's view was that the sunset period should align with existing lines for the PSTN and ISDN FRA\PRA. This would allow Vodafone more time to develop an alternative service. Vodafone also suggested that the extended sunset period would to simplify the message for business end users with regard to migration. Vodafone noted the shortage of ISDN BRA NTUs and suggested that support for the final six months with regard to NTUs could be best effort.²¹³
- 5.28 ComReg addresses these points below.

ComReg's Assessment of Respondents' Views and Position

- 5.29 ComReg disagrees with Eircom's view that it is not appropriate for a sunset period to take into account the volumes of services to be migrated to alternative products. Access Seekers have relied upon FACO related Regulated Access Products ('RAP(s)') to deliver services to end users. These products are mandated under the existing 2015 FACO Decision. Deregulation of the Relevant FACO Markets will permit Eircom, after a sunset period, to withdraw access or change the conditions of access as they choose. Access Seekers need to have appropriate time to migrate their customers from FACO RAPs to alternative products and in a manner and timeframe that facilitates an orderly transition that protects competition and consumers.

²⁰⁸ ALTO Submission, page 4.

²⁰⁹ Direction to Eircom Limited pursuant to Regulation 18 of the European Communities (Electronic Communications Networks and Services) (Access) Regulations 2011 in relation to Migrations, ComReg 21/61, 14 June 2021.

²¹⁰ BT Submission, pages 1-2.

²¹¹ BT Submission, pages 2-3.

²¹² Vodafone Submission, page 3.

²¹³ Vodafone Submission, page 3.

- 5.30 The rate at which Access Seekers can migrate from some RAPs has, to some extent, been impacted by Eircom's own processes for migrations, and so it is understandable that Access Seekers have concerns about possible disruption to end users during the migration process and the risks that this could cause in terms of possible churn following unsuccessful migration attempts. Hence, ComReg is seeking to balance the needs of Access Seekers to be able to migrate their customer base with a relatively aggressive migration timeline and the need to deregulate in an orderly and timely manner.
- 5.31 With regard to preparing alternative solutions and platforms for deregulation, ComReg notes that Eircom is generally afforded a suitable amount of time in which to develop and prepare regulated products which have been mandated by ComReg from time to time in various markets. In proposing the initial nine month period allowing Access Seekers to put in place, or further develop their VoIP platforms, ComReg is affording all Access Seekers a broadly similar opportunity. While substitute products may have been available, the capacity on the alternative platforms may not be sufficient to cater for the existing customer base using RAPs.
- 5.32 The initial nine month period, in the case of PSTN and ISDN FRA/PRA, will also permit Access Seekers to contact their end users and find the best possible alternative solution for them. As per Article 67(3) of the Code, this preparation will allow a sustainable transition for the beneficiaries of the obligations (i.e. Access Seekers) and end users. ComReg considers that this nine month period provides a proportionate balance between a sustainable transition for Access Seekers and end users and not continuing regulation for longer than necessary.
- 5.33 Regarding the second nine month period to migrate PSTN and ISDN FRA/PRA services, ComReg used a calculation based on the largest operator volumes and the daily migration order limitations of the Eircom UG (1,000 orders per operator per day, including business-as-usual orders). However, some leeway was permitted in this calculation. For example, operators may not wish to carry out migrations five days per week. Friday may not be seen as a good day to complete migrations, as if there are any issues, an end user may be left without service for the weekend. Also, the UG order limitation needs to account for business-as-usual orders for Access Seekers.

- 5.34 ComReg notes that there are approximately 350,000 wholesale²¹⁴ FACO PSTN lines. As pointed out by Eircom, the volumes are falling on a quarter-by-quarter basis, so upon the adoption of the final market analysis decision, plus the nine month initial sunset period, there may be approximately 290,000 wholesale FACO PSTN lines remaining. Over a nine month (approximately 198 working days) period, this would equate to 1,465 migrations per day across all Access Seekers. This does not include ISDN BRA, FRA or PRA ISDN FACO lines, of which there are approximately 18,500, 750 and 700 respectively. It may be assumed that a certain percentage of end users may choose not to migrate to VoIP, thus reducing the volumes for migration. However, ComReg's view is that it will be a sufficiently sizeable programme of work to migrate the total wholesale FACO lines in a nine month period and, therefore, it is not appropriate to shorten this sunset period.
- 5.35 ComReg disagrees with Magnet's assertion that the sunset period is too short. ComReg's view is that nine months is a sufficient period within which to contact end users with regard to their migration options. Also, ComReg considers a nine month period to be sufficient to put in place a VoIP platform of sufficient capacity for migrated end users. ComReg notes that Magnet is already offering VoIP services across a number of segments.²¹⁵ ComReg also notes that Magnet's volumes of SB-WLR are relatively low based on information supplied by Magnet in response to the QKDR data collection [§< ██████████ §>].
- 5.36 With regard to the migration itself, Eircom has a soft migration process in place for PSTN services which should allow these to take place quickly once end users agree to the migration and have the appropriate Customer Premises Equipment ('CPE') in place. Migrations from ISDN PRA/FRA/BRA require the installation of an NG broadband line before the migration from ISDN can be scheduled. As Magnet is actively selling business VoIP services, ComReg expects that this migration is a common use case and that the required expertise and experience is in place to execute this. ComReg's view is that the maximum 12 month period for ISDN BRA and 18 month period for PSTN and ISDN FRA/PRA is sufficient for Magnet (and other Access Seekers) to migrate its existing customer base to alternative services.
- 5.37 In respect of supply chain issues, these exist for all Access Seekers and ComReg does not consider it appropriate to prolong regulation on the basis of such issues.

²¹⁴ Based on latest information available to ComReg as collected for QKDR, Q4 2021.

²¹⁵ <https://www.magnetplus.ie/business-solutions/voice/>

- 5.38 With regard to ISDN BRA, and Magnet's reference to Universal Service, ComReg agrees that the Universal Service is not a substitute for ISDN BRA services (although it may still provide a basic telephony service). However, ComReg's view is that considering the level of NG Broadband coverage²¹⁶ and the continuing rollout of this new infrastructure, the large majority of ISDN BRA end users will be catered for by VoIP-based solutions. ComReg notes the obsolescence of certain aspects of the ISDN BRA solution, such as BRA chipsets no longer in production and BRA line cards no longer available from certain telecommunications equipment vendors. As a result, ComReg considers it appropriate to have a shorter sunset period for ISDN BRA services whereby Access Seekers can prioritise the migration of ISDN BRA services ahead of PSTN and ISDN PRA/FRA services.
- 5.39 ComReg must define a sunset period which balances a sustainable transition for the beneficiaries of the outgoing obligations and regulation that does not continue for longer than is necessary. ComReg's view is that the 36 month sunset period proposed by Magnet is too long and unnecessary.
- 5.40 ComReg notes ALTO agrees with the proposed PSTN sunset period.
- 5.41 ComReg disagrees with ALTO's proposal to extend the ISDN BRA sunset period to 24 months, should Eircom try to foreclose the market or raise prices to an unviable level. ComReg is deregulating the Relevant FACO Markets as substitute services are available to Access Seekers to provide a comparable service and on the basis that these alternatives should impose a competitive constraint in the retail markets. Once the sunset period has elapsed, Eircom shall be free to set prices or withdraw access to ISDN BRA services as it chooses (albeit consistent with any other regulatory obligations that may exist).
- 5.42 As previously mentioned, ComReg must define a sunset period which balances a sustainable transition for the beneficiaries of the outgoing obligations, and that regulation does not continue for longer than is necessary. ComReg's view is that the 27 month sunset period proposed by ALTO for ISDN PRA/FRA services is too long and unnecessary.
- 5.43 ComReg notes BT's point on the availability of a fit-for-purpose bulk migration process. ComReg notes BT's agreement regarding the duration of the FACO sunset periods.
- 5.44 ComReg notes Vodafone's agreement regarding the sunset periods for new lines and existing PSTN and ISDN FRA\PRA lines.

²¹⁶ As described in paragraphs 3.111 to 3.119.

5.45 Regarding Vodafone's proposal to extend the ISDN BRA sunset period to 18 months for existing lines to simplify the message for business customers, ComReg does not agree that this would be the case. As highlighted previously, there is a limited supply of ISDN BRA NTUs. The best effort support suggested by Vodafone for the additional 6 months requested would lead to more uncertainty over the ISDN BRA service provided by Eircom.

5.46 [X [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] X]

5.47 ComReg's view is that the proposals for the sunset period outlined in the 2022 Consultation, as outlined in Table 5 above, shall remain unchanged.

5.48 ComReg has decided to set a sunset period for ISDN BRA of 12 months, and a sunset period for PSTN and ISDN FRA/PRA of 18 months. For ISDN BRA a two month period will apply and for PSTN and ISDN FRA/PRA a nine month period will apply with respect to new orders which will run in parallel with the overall 12/18month sunset periods in respect of existing access, to allow Access Seekers sufficient time in which to make any necessary preparations for the new market environment and to preserve continuity in the supply of both wholesale and retail services (were Eircom to withdraw SB-WLR, or significantly alter its SB-WLR terms and conditions, following deregulation).

5.3 Migration Process

5.49 As set out in the 2022 Consultation, in order to avoid a scenario where end users may be left without service in the case of an issue arising during migration, ComReg proposed that Eircom shall provide an expedited/escalation process (either manual or automatic) for the rollback of the line to the pre-existing SB-WLR or POTS-based NGA service, at the request of the Access Seeker concerned, where the un-jumpering task remains outstanding. For the avoidance of doubt, the escalation process would not require physical un-jumpering (of the POTS component) to take place followed by subsequent re-jumpering prior to SB-WLR being restored. While the jumper is in place, Eircom would provide the ability to electronically restore the pre-existing SB-WLR or POTS-based NGA service. Therefore, ComReg expected that Eircom would restore the service as soon as possible, and within no later than one working day.

5.3.1 Respondents' Views

- 5.50 Eircom commented on the proposals regarding the rollback obligations. Eircom disagreed that the dialogue regarding this process took place as part of the market review process.²¹⁷
- 5.51 Eircom outlined the issue that the status of the unjumping task in the inventory system may be out of synchronisation with the actual state of the line in the network, as Eircom systems do not have real-time access to the workbooks of technicians.²¹⁸
- 5.52 Eircom stated the main difficulty in delivering the rollback related to the wording in the 2022 Consultation that the rollback must be available until the unjumping task has been completed. Based on the issue outlined above, there can be a misalignment between Eircom's inventory system and actual state of the network for certain periods of time. Eircom highlighted that implementation of a solution to cater for rollback availability until unjumping takes place would be complex and take longer than the five months as proposed by ComReg. As the rollback is for exceptional or emergency cases, Eircom proposed to time limit the rollback procedure to one working day to simplify the implementation of the functionality using a business rule, meaning it could be delivered within the five month implementation window.²¹⁹

5.3.2 ComReg's Assessment of Respondents Views and Position

- 5.53 ComReg's reasoning for including the rollback was to handle exceptional and emergency circumstances where the new alternative service does not work correctly, and an end user is without service.
- 5.54 ComReg acknowledges the issues outlined by Eircom regarding the synchronisation of its inventory with the actual network status. ComReg expects that Access Seekers will require end users to test the new service as soon as possible following migration to ensure that it is working. As the rollback is considered an exception handling function, ComReg considers it acceptable to time-limit the availability of the rollback to two working days. The two working day period for the availability of the rollback is measured from the time the migration is completed. For example, if a migration occurs at 2pm on Tuesday, rollback is available until 2pm on Thursday. This should give Access Seekers and end users an appropriate window to test the new service. This will also enable Eircom to deliver the rollback function within five months of this Decision.

²¹⁷ Eircom Submission, paragraph 15.

²¹⁸ Eircom Submission, paragraph 16.

²¹⁹ Eircom Submission, paragraphs 17,19.

- 5.55 In respect of any line migrated during the PSTN and ISDN FRA/PRA Sunset Period from SB-WLR or POTS-based NGA (VUA or Bitstream), for the duration of that sunset period, ComReg requires that Eircom shall provide an (manual or automatic) expedited/escalation process for the rollback of the line to the pre-existing SB-WLR or POTS-based NGA service, at the request of the Access Seeker concerned, for two working days following the completion of the migration. For the avoidance of doubt, the escalation process would not require un-jumpering (of the POTS component) to take place followed by subsequent re-jumpering prior to SB-WLR being restored. For two working days, Eircom would provide the ability to electronically restore the pre-existing SB-WLR or POTS-based NGA service. Therefore, ComReg expects that Eircom would restore the service as soon as possible, and within no later than one working day of the rollback request. For example, if an Access Seeker requests a rollback at 1pm on Tuesday, the service must be restored by Eircom no later than 1pm on Wednesday

5.4 Applicable price during the Sunset Period

- 5.56 ComReg further requires that access to any products, services, facilities or associated facilities in the Relevant FACO Markets provided by Eircom shall be provided at prices no higher than those prevailing for such products, services, facilities or Associated Facilities on the effective date of the final decision for the duration of the sunset periods stipulated at Table 5 above. Apart from this and the aforementioned access requirements, Eircom will not be required to meet other obligations (for example, in relation to transparency, non-discrimination etc.) during this period.
- 5.57 No Respondent Submission offered views on the applicable prices which should be charged during the sunset periods. Accordingly, ComReg maintains the position which it set out in the 2022 Consultation.

6 Next Steps

- 6.1 ComReg has set out its position in the preceding sections regarding its analysis of the Relevant RFTS Markets and the Relevant FACO Markets, and has today published its Decision on its publicly available website, www.comreg.ie.

Annex: 1 Decision Instrument

1 STATUTORY POWERS GIVING RISE TO THIS DECISION INSTRUMENT

1.1 This Decision Instrument (“**Decision Instrument**”) is made by the Commission for Communications Regulation (“**ComReg**”):

- (i) Pursuant to and having had regard to Sections 10 and 12 of the Communications Regulation Act;
- (ii) Pursuant to and having had regard to the EECC;
- (iii) Pursuant to and having had regard to Regulation 6(1) of the Access Regulations and Regulation 16 of the Framework Regulations;
- (iv) Having, pursuant to Section 13 of the Communications Regulation Act, where applicable, complied with Ministerial Policy Directions;
- (v) Having taken the utmost account of the 2020 Recommendation and the SMP Guidelines;
- (vi) Having had regard to the analysis and reasoning set out in ComReg Documents 20/46; 21/65 and 22/10;
- (vii) Having, in accordance with Regulation 12(3) of the Framework Regulations, published the text of the proposed measure and given reasons for it, including information as to which of ComReg’s statutory powers gives rise to the measure, in ComReg Documents 20/46; 21/65 and 22/10;
- (viii) Having, in accordance with Regulation 12(4) of the Framework Regulations, considered the representations received in response to ComReg Documents 20/46 and 22/10;
- (ix) Having consulted with the Competition and Consumer Protection Commission pursuant to Regulation 27 of the Framework Regulations and Article 67 of the EECC;
- (x) Having taken the utmost account of the European Commission’s Decision of 17 September 2021 pursuant to Article 32(6) of Directive (EU) 2018/1972 (Withdrawal of notified draft measure) regarding the draft decision set out in ComReg Document 21/65;
- (xi) Having withdrawn the draft decision set out in ComReg Document 21/65 and having notified the draft measure and the reasoning on which the measure is based to the European Commission, BEREC and the national regulatory authorities in other EU Member States in accordance with Regulation 13 of the Framework Regulations and Article 32 of the EECC and having taken the utmost account, pursuant to Regulation 13(6) of the Framework Regulations, of any comments

made by the European Commission, BEREC and any national regulatory authority in another EU Member State;

- (xii) Pursuant to Regulations 25, 26 and 27 of the Framework Regulations;
 - (xiii) Pursuant to Regulation 8 of the Access Regulations;
 - (xiv) Pursuant to Regulations 9, 10, 11, 12, and 13 of the Access Regulations; and
 - (xv) Having regard to the analysis and reasons set out in ComReg Decision DXX/XX [Final Decision].
- 1.2 This Decision Instrument shall, as and where required, be construed consistently with and in light of the Response to Consultation and Final Decision, ComReg Decision DXX/XX.
- 1.3 To the extent that there is any conflict between a decision instrument dated prior to the Effective Date and this Decision Instrument, this Decision Instrument shall prevail.

2 DEFINITIONS

- 2.1 In this Decision Instrument, unless the context otherwise suggests:

“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;

“Associated Facilities” shall have the same meaning as under Regulation 2 of the Framework Regulations;

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

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

“Bitstream” means a wholesale product which consists of an Access Path to the End User premises and transmission of data at various bandwidths to a defined set of Points of Handover;

“CATV” refers to the provision of broadband by means of a cable access TV network which runs on the Data Over Cable Service Interface Specification (DOCSIS) 3.0 standard or higher;

“Communications Regulation Act” 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;

“ComReg Decision D12/14” means ComReg Document No. D14/89 entitled Market Review: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, ComReg Document 14/89, dated 28 August 2014;

“ComReg Decision D05/15” means ComReg Document No. 15/82 entitled “Market Review, Wholesale Fixed Voice Call Origination and Transit Markets, Response to Consultation and Decision”, dated 24 July 2015;

“ComReg Decision D03/16” means ComReg Document No. D16/39, entitled Pricing of Eir’s Wholesale Fixed Access Services: Response to Consultation Document 15/67 and Final Decision”, dated 18 May 2016;

“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 DXX/XX” means ComReg Document No. XX/XX entitled “Market Reviews: Wholesale Fixed Access and Call Origination; Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers. Response to Consultation and Final Decision”, dated XX/XX/XXXX [Final Decision Document];

“ComReg Document 22/10” means ComReg Document No.22/10 entitled “Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers. Wholesale Fixed Access and Call Origination. Consultation and Draft Decision”, dated 14 February 2022;

“ComReg Document 20/46” means ComReg Document No. 20/46 entitled “Market Reviews: Wholesale Fixed Access and Call Origination; Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers. Consultation and Draft Decisions”, dated 17 June 2020;

“ComReg Document 21/65” means ComReg Document No. 21/65 entitled “Market Reviews: Retail Access to the Public Telephone Network at a Fixed Location for Residential and Non-Residential Customers, Wholesale Fixed

Access and Call Origination. Response to Consultation and Final Decision” dated 18 June 2021 which was notified as a draft decision to the European Commission on 19 June 2021 and was withdrawn by ComReg on 14 February 2022;

“**Companies Act 2014**” means the Companies Act 2014 (No. 38 of 2014), as amended from time to time;

“**Competition and Consumer Protection Commission**” means the body established under section 9 of the Competition and Consumer Protection Act 2014;

“**EECC**” means the European Electronic Communications Code established by Directive 2018/1972 of 11 December 2018 which entered into force on 20 December 2020;

“**Effective Date**” means the date set out in Section 13.1 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;

“**End User**” shall have the same meaning as under Regulation 2 of the Framework Regulations. For the avoidance of doubt, End User(s) shall be deemed to include any natural or legal person who facilitates or intends to facilitate the provision of public communications networks or publicly available electronic communications services to other End Users and who is not acting as an Undertaking;

“**Exchange**” means an Eircom premises or equivalent facility used to house network and associated equipment, and includes a Remote Subscriber Unit;

“**Exchange Area(s)**” means the geographic area(s) that is/are served by the relevant Exchange;

“**Exchange launched VUA/Bitstream**” means that the active VDSL equipment that is required to provide the VUA or Bitstream service is housed in an Eircom Exchange building or equivalent;

“**Fixed Voice Call Origination**” or “**FVCO**” means a service whereby voice calls originating at a fixed location of an End User are conveyed and routed through any switching stages (or equivalent, regardless of underlying technology) up to a Point of Handover nominated by an OAO seeking, and/or being provided with, access to this service. The nominated Point of Handover can be the primary, tandem, or double tandem Exchange associated with the Access Path on which the voice call was originated;

“**FNA FVCO**” means calls originated at a fixed location of an End User which are conveyed and routed through any switching stages (or equivalent) up to

a point of interconnection taking place at the primary, tandem, or double-tandem exchange (or equivalent) associated with the Fixed Access at which the voice call was originated. FNA is provided by means of PSTN, ISDN BRA, ISDN FRA or ISDN PRA.

“Fibre to the Cabinet” or “FTTC” means fibre to the cabinet which is a variant of the FTTN access network architecture where the Node used to house active equipment is the street cabinet;

“Fibre to the Home” or “FTTH” means an access network architecture where fibre optic cable is used to connect the End User premises to the ODF in an Exchange;

“Fibre to the Node” or “FTTN” means an access network architecture where fibre optic cable is used to connect a Node in the local access network to the ODF in an Exchange;

“Fixed Narrowband Access FACO” or “FNA FACO” means Fixed Narrowband Access HL-FACO and Fixed Narrowband Access LL-FACO;

“Fixed Narrowband Access HL-FACO” means fixed access for the provision of voice telephony services by means of fixed narrowband access (provided by means of ISDN FRA or ISDN PRA) together with fixed voice call origination being calls originated at a fixed location of an End User which are conveyed and routed through any switching stages (or equivalent) up to a point of interconnection taking place at the primary, tandem, or double-tandem exchange (or equivalent) associated with the fixed access;

“Fixed Narrowband Access LL-FACO” means fixed access for the provision of voice telephony services by means of fixed narrowband access (provided by means of PSTN or ISDN BRA) together with fixed voice call origination being calls originated at a fixed location of an End User which are conveyed and routed through any switching stages (or equivalent) up to a point of interconnection taking place at the primary, tandem, or double-tandem exchange (or equivalent) associated with the fixed access;

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

“FTTC-based VUA/Bitstream” means VUA or Bitstream that is based on FTTC, and includes Exchange launched VUA/Bitstream;

“FTTH-based VUA/Bitstream” means VUA or Bitstream that is based on FTTH;

“Hosted PBX” means a type of Managed VoIP which involves the provision of fixed voice calls over an IP access path on multiple channels and which is generally provided to the End User over CATV, Exchange launched Bitstream or FTTx networks. Hosted PBX requires suitable customer premises equipment (IP handsets or equivalent) in the End User premises while the PBX functionality is hosted in the network by the service provider;

“IP” means internet protocol;

“ISDN” means Integrated Services Digital Network;

“ISDN BRA” means ISDN basic rate access;

“ISDN BRA Sunset Period” means the Sunset Period in respect of ISDN BRA; new orders for the relevant products, services and facilities to be processed for a period of at least 2 months from the Effective Date; access to all lines to be maintained for at least a period of 12 months from the Effective Date.

“ISDN FRA” means ISDN fractional primary rate access;

“ISDN PRA” means ISDN primary rate access;

“Managed VoB” means a type of Managed VoIP which involves the provision of fixed voice calls over an IP access path on single or multiple channels and which is generally provided to the End User, directly or indirectly, over NG Broadband. A Managed VoB service includes quality of service parameters which enable prioritization of voice in congestion situations, thereby delivering an equivalent quality to circuit switched voice;

“Managed VoIP” means a voice service provided to an End User over an IP access path either directly on its own network, or indirectly, by renting the IP Access Path from a third party. A Managed VoIP service includes quality of service parameters which enable prioritization of voice in congestion situations, thereby delivering an equivalent quality to circuit switched voice;

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

“Next Generation” or **“NG”** refers to modern equipment and infrastructure such as IP based packet switched networks;

“Next Generation Access” or **“NGA”** means wired access networks which consist wholly or in part of optical elements and which are capable of delivering broadband and other access services with enhanced characteristics (such as higher throughput) as compared to those provided over exclusively copper access networks such as FTTC-based VUA/Bitstream, and FTTH-based VUA/Bitstream;

“NG Broadband” means broadband provided by means of NGA or CATV;

“Node” means any location or concentration point in the access network (excluding termination points at End Users' premises) which houses equipment for the purpose of providing services to End Users;

“Other Authorised Operator(s)” or “OAO(s)” means an Undertaking that is not Eircom, providing or intending to provide an ECN or an ECS pursuant to Regulation 4 of the Authorisation Regulations;

“PSTN” means Public Switched Telephone Network;

“PSTN and ISDN FRA/PRA Sunset Period” means the Sunset Period in respect of PSTN and ISDN FRA/PRA services; new orders for the relevant products, services and facilities to be processed for a period of at least 9 months from the Effective Date; access to all lines to be maintained for at least 18 months from the Effective Date;

“Related company” or “related companies” shall have the same meaning as under Companies Act 2014;

“(the) Relevant RFTS Markets” means the markets described in Section 4 of this Decision Instrument;

“(the) Relevant FACO Markets” means the markets described in Section 4 of the Decision Instrument of ComReg Decision D05/15;

“(the) SMP Guidelines” means the European Commission guidelines of 7 May 2018 on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (2018/C 159/01) (OJ C159, 7.5.2018, p.1);

“Single Billing - Wholesale Line Rental” or “SB-WLR” means a wholesale service comprised of both FNA FVCO and WLR;

“SIP Trunking” means a type of Managed VoIP which involves the provision of fixed voice calls over an IP Access Path on multiple channels and which is generally provided to the End User over CATV, Exchange launched Bitstream or FTTx networks. SIP Trunking requires a suitable customer premises equipment (IP PBX or equivalent) in the End User premises;

“Subsidiary” or “subsidiaries” shall have the same meaning as under Companies Act 2014;

“Sunset Period(s)” means a period of time after the Effective Date prior to the withdrawal of obligations becoming effective, by way of notice to affected parties;

“(the) Three Criteria Test” means the test set out in the 2020 Recommendation and Article 67 of the EECC used to identify markets other than those set out in the Annex to the 2020 Recommendation as being susceptible to *ex ante* regulation;

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

“VDSL” means a very-high-bit-rate digital subscriber line;

“Virtual Unbundled Access” or “VUA” shall have the same meaning as

under Section 2 of the Decision Instrument at Appendix 20 of ComReg Decision D10/18, as may be amended from time to time;

“**Wholesale Central Access**” or “**WCA**” shall have the same meaning as under Section 2 of the Decision Instrument at Appendix 21 of ComReg Decision D10/18, as may be amended from time to time;

“**Wholesale Line Rental**” or “**WLR**” means the wholesale service that allows an OAO to rent an Access Path(s) from Eircom which in turn enables that OAO to offer or provide services over such an Access Path(s) to either an End User or another OAO, described in the document entitled “Single Billing through Wholesale Line Rental Product Description” (version 3, dated 12 June 2017) as may be amended from time to time and published on Eircom’s wholesale website;

“(the) **2020 Recommendation**” means the European Commission Recommendation of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

3 SCOPE AND APPLICATION

- 3.1 This Decision Instrument applies to Eircom in respect of activities falling within the scope of the Relevant RFTS Markets defined in Section 4 of this Decision Instrument and the Relevant FACO Markets defined in Section 4 of the Decision Instrument of ComReg Decision D05/15.
- 3.2 This Decision Instrument is binding upon Eircom and its subsidiaries and any related companies, and any Undertaking which owns or controls Eircom, and its successors, affiliates and assigns and all shall comply with it in all respects.

4 RELEVANT RFTS MARKETS

- 4.1 For the purposes of this Decision Instrument, ComReg identifies three separate RFTS markets as more particularly defined in Section 4.2 of this Decision Instrument (referred to in this Decision Instrument singularly as the Relevant RFTS Market and together as the Relevant RFTS Markets).
- 4.2 The Relevant RFTS Markets are the markets in the State for:
 - (i) Standalone Low-Level RFTS including RFTS over PSTN and ISDN BRA and any Managed VoB delivered over NG Broadband and mobile telephony services on a standalone basis (“**Market 1a**”);
 - (ii) Bundled Low-Level RFTS including RFTS over PSTN and ISDN BRA and Managed VoB delivered over (and with) NG Broadband and mobile telephony services on a bundled basis together with any of broadband, television or mobile telephony services (“**Market 1b**”); and

- (iii) High-Level RFTS including RFTS over ISDN FRA and PRA and any Hosted PBX or SIP Trunking forms of Managed VoIP delivered over NG Broadband, on a standalone basis or on a bundled together with any of broadband, television or mobile telephony services (“**Market 1c**”).

5 REMOVAL OF REGULATION

- 5.1 ComReg hereby finds that the Three Criteria Test is not met in respect of Markets 1a, 1b or 1c so that Markets 1a, 1b or 1c are not susceptible to *ex ante* regulation.
- 5.2 Accordingly, subject only to Section 6 of this Decision Instrument, all obligations imposed on Eircom pursuant to Regulation 8 of the Access Regulations in respect of the RFTS Markets are hereby withdrawn and the following Decision Instruments (to the extent still extant) are hereby withdrawn at the Effective Date:
 - (i) the Decision Instruments contained in Appendices 6, 7 and 8 of ComReg Decision D12/14;
 - (ii) save as provided for in Section 6 of this Decision Instrument, the Decision Instrument contained in Appendix H of ComReg D05/15;
 - (iii) save as provided for in Section 6 of this Decision Instrument, the Decision Instrument contained in Annex 3 of ComReg Decision D03/16;
 - (iv) save as provided for in Section 6 of this Decision Instrument, section 4.4 of the Decision Instrument contained in Annex 1 of ComReg Decision D11/18; and
 - (v) save as provided for in Section 6 of this Decision Instrument, section 4.5 of the Decision Instrument contained in Annex 2 of ComReg Decision D11/18.

6 SUNSET PROVISIONS

- 6.1 There shall be two Sunset Periods of differing lengths for the Relevant FACO Markets, dependent on the product as follows:
 - (i) the PSTN and ISDN FRA/PRA Sunset Period; and
 - (ii) the ISDN BRA Sunset Period.

- 6.2 Eircom shall not withdraw Access to any products, services, facilities or Associated Facilities in the Relevant FACO Markets to which Access was previously granted on or before the Effective Date, pursuant to or consistent with an obligation imposed by the Decision Instrument contained in Appendix H to ComReg Decision D05/15 (as amended by the Decision Instruments contained in Annex 3 of ComReg Decision D03/16 and Annexes 1 and 2 of ComReg Decision D11/18), or in respect of which Access has been sought on or prior to the Effective Date of this Decision. In respect of the PSTN and ISDN FRA/PRA Sunset Period, this obligation is withdrawn with effect from 18 months from the Effective Date. In respect of the ISDN BRA Sunset Period, this obligation is withdrawn with effect from 12 months from the Effective Date.
- 6.3 In respect of the PSTN and ISDN FRA/PRA Sunset Period, the obligations imposed by Section 7 of the Decision Instrument to ComReg Decision D05/15 shall apply to, and continue in force for a period of nine months from the Effective Date of this Decision Instrument in respect of requests for the provision of Access to any existing products, services, facilities or Associated Facilities in respect of FNA FACO in the Relevant FACO Markets including Associated Facilities.
- 6.4 In respect of the ISDN BRA Sunset Period, the obligations imposed by Section 7 of the Decision Instrument to ComReg Decision D05/15 shall apply to, and continue in force for a period of two months from the Effective Date of this Decision Instrument in respect of requests for the provision of Access to any existing products, services, facilities or Associated Facilities in respect of FNA FACO in the Relevant FACO Markets including Associated Facilities.
- 6.5 Access to any products, services, facilities or Associated Facilities in the Relevant FACO Markets provided by Eircom to any Undertaking pursuant to the obligations contained in Section 6.2, 6.3 and 6.4 above, shall be provided at prices no higher than those prevailing for such products, services, facilities or Associated Facilities on the Effective Date, in respect of the PSTN and ISDN FRA/PRA Sunset Period, for the duration of the 18 month period and the nine month period respectively and in respect of the ISDN BRA Sunset Period, for the duration of the 12 month period and the two month period respectively.

- 6.6 During the PSTN and ISDN FRA/PRA Sunset Period, in respect of any line migrated from SB-WLR or POTS-based NGA (VUA or Bitstream), Eircom shall provide an escalation process (either manual or automatic) enabling it to roll back the line to the original SB-WLR or POTS-based NGA service, by the same time on the next working day following the Access Seeker's request. This shall apply where the Access Seeker requests Eircom to roll back the line, by the same time on the second working day following the completion of the migration. The escalation process must not require un-jumpering of the original line to take place followed by subsequent re-jumpering prior to restoring SB-WLR or POTS-based NGA Service. This obligation applies within five months of the Effective Date of this Decision for the period of the PSTN and ISDN FRA/PRA Sunset Period.

7 MAINTENANCE OF OBLIGATIONS

- 7.1 Save as provided for at Section 5.2 of this Decision Instrument, 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, continue in force and Eircom shall comply with the same.
- 7.2 For the avoidance of doubt, to the extent that there is any conflict between a Decision Instrument dated prior to the Effective Date and Eircom's obligations set out in this Decision Instrument, the latter shall prevail.
- 7.3 If any Section(s), clause(s), or provision(s), or portion(s) thereof, contained in 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) thereof shall, to the extent required, be severed from this Decision Instrument and rendered ineffective as far as possible without modifying the remaining Section(s), clause(s), or provision(s), or portion(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.

8 STATUTORY POWERS NOT AFFECTED

- 8.1 Nothing in this Decision Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers or duties conferred on it under any primary or secondary legislation (in force prior to or after the Effective Date of this Decision Instrument) from time to time as the occasion requires.

9 PUBLICATION AND NOTIFICATION

- 9.1 This Decision Instrument shall be published on ComReg's website, www.comreg.ie and notified to Eircom.

10 EFFECTIVE DATE

- 10.1 The Effective Date of this Decision Instrument shall be the date of its notification to Eircom and it shall remain in force until further notice by ComReg.

GARRETT BLANEY

CHAIRPERSON

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE XX DAY OF XXXX 2022

Annex: 2 Consultation with the Competition and Consumer Protection Commission

A 2.1 Copy of letter from CCPC to ComReg, dated 12 May 2022:



PRIVATE AND CONFIDENTIAL

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

By e-mail only: dave.oconnell@comreg.ie

12 May 2022

Re: Commission for Communications Regulation Market Review of Retail Fixed Telephony Services ("RFTS") Fixed Access Call Origination ("FACO") services in the State.

Dear Garrett,

Pursuant to Regulation 27(1) of the European Communities (Electronic Communications Networks and Services) (Framework) Regulations 2011 (S.I. No. 333 of 2011), the Commission for Communications Regulation ("ComReg") has consulted the Competition and Consumer Protection Commission (the "Commission") with respect to ComReg's proposed draft Response to Consultation and Final Decision concerning the retail telecom markets for RFTS and the wholesale markets for FACO services in the State.

On the basis of the facts and analysis presented by ComReg in its draft review submitted to the Commission on 25 April 2022, the Commission is satisfied that there are no compelling grounds to disagree with ComReg's conclusions regarding the market definitions for RFTS and FACO in the State. Accordingly, the Commission agrees with ComReg's proposed decision to fully deregulate the entirety of the three Relevant RFTS markets and the two Relevant FACO markets defined in the draft Response to Consultation and Final Decision.

Yours sincerely,

Ibrahim Bah
Director – Competition Enforcement and Mergers

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

A 3.1 Copy of letter from the European Commission to ComReg [**To Be Completed**].

Annex: 4 ComReg's Consideration of the European Commission Response to ComReg's Notified Draft Measures

A 4.1 **[[To Be Completed]]**.

Annex: 5 Respondents' Submissions

- A 5.1 Non-confidential versions of the Submissions made to ComReg by Respondents (Eircom, BT Ireland, ALTO, and Magnet+) are is published alongside this Decision as ComReg Document 22/xx.