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Commission for
Communications Regulation

Assessment of Margin Squeeze between FTTP VUA and downstream FTTP-based wholesale services

Consultation

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1.2 Decision D05/24 also specified a Retail FTTP Margin Squeeze Test obligation on Eircom, which ComReg considered would reduce Eircom’s incentives to engage in a margin squeeze in WCA (Bitstream) markets. Notwithstanding this safeguard, ComReg recognised that Eircom could still have incentives to adopt commercial strategies in WCA markets in order to compete more effectively in WLA markets.[2] Accordingly, ComReg indicated that it would monitor market developments closely and, if necessary, could intervene in a number of ways, including by reimposing the *ex ante* Wholesale FTTH based VUA Margin Squeeze Test obligation previously set out in ComReg Decision D11/18.[3,4]

1.3 ComReg’s analysis of volume trends indicates that Eircom has increased its presence in the backhaul of fixed broadband traffic since ComReg Decision D05/24, evidenced in a noticeable shift from FTTP VUA towards Bitstream. It is also apparent from market developments and the information gathered for the purposes of this Draft Decision, that backhaul may be procured through large-scale tenders based on bespoke network infrastructure arrangements extending beyond traditional Bitstream provision. Because of this, we do not consider that reintroducing the *ex ante*

[1] ComReg Document No. 24/07, ComReg Decision D05/24: Market Reviews, 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 Final Decision), 18 January 2024.

[2] See paragraph 9.842 of the ComReg Decision D05/24. Offers with Bitstream priced at a level that would not recover the costs of backhaul could nevertheless be economically justified by Eircom if there was an overall gain in (WLA) customers for Eircom (new customers to Eircom’s network or else preventing churn to alternative network providers), and this gain would be potentially higher in geographic areas where infrastructure competition is stronger. Such offers, being geographically targeted, would not affect retail prices and therefore would circumvent the Retail MST safeguard.

[3] See discussion of these matters in paragraphs 9.830 to 9.851 of ComReg Decision D05/24.

[4] ComReg Document No. 18/95, ComReg Decision D11/18: 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, 19 November 2018

Wholesale FTTH based VUA MST imposed in ComReg's Decision D11/18[5] would be effective.

1.4 The increase in Eircom's Bitstream volumes and these arrangements have taken place against a backdrop which suggests that price pressure, together with the incentives to engage in margin squeeze conduct, may be increasing in broadband markets. These developments give rise to concerns regarding potential weakening of competition downstream from the Commercial NG WLA Market in respect of which Eircom holds a position of SMP. In ComReg's view, it is therefore appropriate to take precautionary action and further specify Eircom's obligation not to cause a margin squeeze in relation to wholesale markets downstream from the Commercial NG WLA Market. Section 3 of this Draft Decision discusses the information we considered for this Draft Decision in greater detail.

1.5 The Pricing Principles specified in this Draft Decision are guided by competition law principles and are intended primarily to safeguard competition, acknowledging that in Decision D05/24 ComReg concluded that the continued *ex ante* regulation of WCA markets was not warranted in the presence of regulation in the Commercial NG WLA Market. Furthermore, we propose to carry out a preventive assessment of margin squeeze of FTTP VUA backhaul Contracts or Arrangements, on a case-by-case basis, where it is proportionate to do so. To this effect, we propose to focus our measures on Contracts or Arrangements that are deemed capable of having a *material* and *enduring* impact on fixed broadband markets, based on a defined materiality threshold.[6] Hence, we propose that Eircom be required to notify ComReg for prior approval of FTTP VUA backhaul Contracts or Arrangements with retail service providers or resellers that meet the threshold, prior to their implementation, and to satisfy certain information requirements[7] that these Contracts or Arrangements comply with the obligation not to cause a margin squeeze, including the Pricing Principles specified by this Draft Decision. In addition, Eircom would also be required to file with ComReg all other material finalised Contracts or Arrangements and demonstrate compliance under the same information requirements. This is to facilitate the continued monitoring of broadband markets. These Pricing Principles and our proposals to oversee Eircom's compliance are contained in Section 4 of this Draft Decision.

1.6 ComReg's proposed principles-based approach recognises the complexity and commercial dynamics of backhaul arrangements. It should provide greater regulatory certainty to the market, in light of evolving conditions. While other options were available to us, including those outlined in ComReg D05/24, we consider that the proposed approach strikes an appropriate balance between strengthening

[5] Paragraph 10.63 and Section 5.1 of the Decision Instrument.

[6] Based on three (3) criteria, respectively the volumes and the duration of a specific Contract or Arrangement and a LRIC cost benchmark. See subsection 4.2.2. for more details.

[7] These information requirements are outlined in subsection 4.2.4.

competitive safeguards and preserving Eircom's commercial freedom, while avoiding adverse effects on customers and on the normal functioning of broadband markets. We also consider that they are consistent with ComReg's statutory objectives and duties, including the promotion of sustainable competition in wholesale broadband markets and the promotion of investment in full fibre networks.

2 Introduction

2.1 Overview

2.1 In this section we summarise the relevant pricing obligations set out in ComReg Decision D05/24[8] (the '**2024 Decision**'), including the approach adopted to comply with the obligation to avoid a margin squeeze in relation to FTTP[9] VUA, and set out the legal basis relied upon to further specify this obligation. We also describe our approach to meeting the requirements for a regulatory impact assessment.

2.2 The remainder of this document is structured as follows:

- Section 3 describes the trends observed in the volumes data regularly collected by ComReg, relevant fixed broadband market developments and information specifically sought from Retail Service Providers ('**RSPs**')[10] for the purpose of this Draft Decision, including pricing and other commercially significant data.
- Section 4 sets out our proposals to further specify, by way of Pricing Principles, Eircom's obligation not to cause a margin squeeze between FTTP-based VUA services and downstream FTTP-based wholesale services and outlines our proposals to oversee its compliance;
- Section 5 sets out the next steps, including the timelines for submission of responses to this Draft Decision.

2.3 Additionally, the following annexes are included in this document:

- Annex 1 sets out the Draft Decision Instrument;
- Annex 2 lists the questions set out in this Draft Decision;

[8] ComReg Document No. 24/07, ComReg Decision D05/24: Market Reviews, 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 Final Decision), 18 January 2024.

[9] In this Draft Decision, the terms FTTP (Fibre to the Premises) and FTTH (Fibre to the Home) are used interchangeably.

[10] Henceforth, 'RSPs' refers to Retail Service Providers and Resellers, as defined in paragraph 3.20 of the 2024 Decision.

- Annex 3 includes a copy of the Information Request[11] relating to pricing information, which was issued by ComReg to Retail Service Providers, and which informed this Draft Decision.
- Annex 4 contains the Notification Form to be used for the purposes of complying with the notification obligations set out in this Draft Decision.
- Annex 5 contains a glossary of the acronyms used in this Draft Decision.

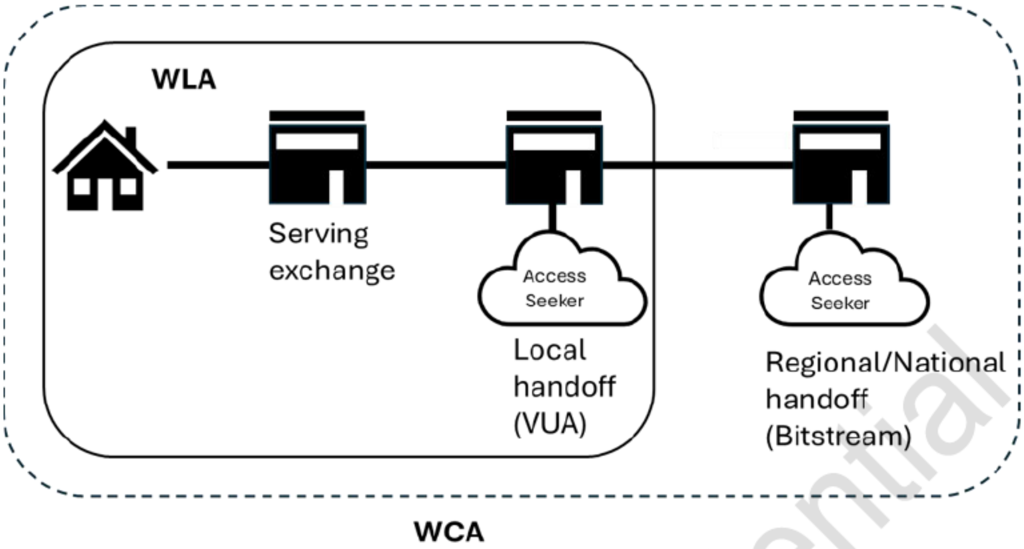
2.2 Obligations and legal basis

2.4 In the 2024 Decision ComReg assessed the fixed broadband markets for Wholesale Local Access ('**WLA**') and Wholesale Central Access ('**WCA**').[12] WLA describes the rental of a connection or access path between the end user's premises and a local serving exchange or, in the case of Next Generation ('**NG**') broadband, an aggregation node (local handoff). WCA involves a similar connection but with an aggregation node higher in the network (which may be a regional or national handoff point). WCA is therefore downstream from the WLA market as it encompasses WLA along with backhaul connectivity to a fewer number of aggregation points. Figure 1 below illustrates the WLA and WCA markets and how they are related with respect to NG broadband access services.

[11] Pursuant to Section 13D(1) of the Communications Regulation Act 2002, as amended.

[12] While WLA is deemed by the European Commission to be a market susceptible to *ex ante* regulation, pursuant to the 2020 Recommendation, this is no longer the case in respect of WCA. See 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 (the '2020 Recommendation').

Figure 1: Stylised example of WLA and WCA provision[13]



2.5 The 2024 Decision designated Eircom as having Significant Market Power ('**SMP**') in the Commercial NG WLA Market,[14] and imposed a number of regulatory obligations including price control obligations. Specifically, with respect to Wholesale FTTP VUA, the 2024 Decision imposed on Eircom *inter alia* the following:

- A price control obligation of cost orientation for FTTC VUA prices, based on a 'Pricing continuity' approach whereby FTTC VUA prices are set at the cost-oriented level set out by the ANM Decision for the period ending 30 June 2024, subject thereafter to annual increases capped at CPI-0;[15]

- 'Pricing Flexibility' for FTTP VUA rental, meaning that Eircom is free to price FTTP VUA rental subject to certain conditions,[16] including a price floor obligation and an obligation on FTTP VUA to not cause a margin squeeze;[17] and

- A relaxation of the ban on wholesale discounts and promotions for FTTP VUA, which may be permitted subject to a case-by-case approval by ComReg.[18]

2.6 With respect to WCA markets, ComReg concluded that there was insufficient evidence that retail broadband competition would be harmed by the absence of WCA regulation (in the presence of regulation on the Commercial NG WLA Market) and

[13] Premises that are not directly served from an Aggregation Node by Eircom require local backhaul from the serving local exchange to the associated Aggregation node.
[14] Corresponding to VUA services delivered over full or partial fibre outside of National Broadband Plan Intervention Area.
[15] Decision Instrument of the 2024 Decision, Section 14.3.
[16] Decision Instrument of the 2024 Decision, Section 14.6.
[17] Paragraphs 9.573 to 9.597 of the 2024 Decision provides an explanation of margin squeeze.
[18] Decision Instrument of the 2024 Decision, Section 14.10.

therefore ComReg decided that the continued[19] *ex ante* regulation of WCA was not warranted.

2.7 With respect to the obligation not to cause a margin squeeze imposed on FTTP VUA, the 2024 Decision imposed specifically that:

*"Eircom shall not cause a Margin Squeeze between FTTH-based VUA services and FTTH-based services in markets downstream from the Commercial NG VUA Market, as **may be further specified by ComReg from time to time**."* (Section 14.6.4 of the Decision Instrument of the 2024 Decision) (emphasis added)

2.8 The 2024 Decision further specified this obligation by imposing *an ex ante* Margin Squeeze Test ('**MST**') with respect to FTTP-based retail offerings, as follows:[20]

"For the purpose of Section 14.6.4, Eircom shall be considered not to cause a margin squeeze where its FTTP Flagship Offering and FTTP Flagship Portfolio pass a Margin Squeeze Test (…)"

2.9 In addition, the 2024 Decision assessed the need to retain from ComReg Decision D11/18[21] the *ex ante* Wholesale MST with respect to FTTP Bitstream and decided that such control was no longer required, given the deregulation of the WCA Market and the safeguards of the Retail FTTP MST and non-discrimination obligations. The purpose of the obligation not to margin squeeze is to ensure that Access Seekers can combine FTTP VUA inputs with backhaul (self-supplied or purchased) and compete profitably with Eircom's FTTP Bitstream and that they are not foreclosed from the WCA Market or discouraged from using FTTP VUA. In particular, ComReg noted:

*"(…) ComReg nonetheless does not believe that it is appropriate and justified to continue in place a Wholesale MST but **will monitor closely market developments following removal of the Wholesale MST** (…) there are a variety of ways in which ComReg may intervene, depending on the circumstances, such as by relying on competition law powers; through enforcement of Eircom's non-discrimination obligation on the WLA market; through the re-imposition of the ex ante Wholesale MST as a further specification of the obligation not to cause a margin squeeze or by*

[19] ComReg previously designated Eircom as having SMP in the Regional WCA Market, as part of ComReg Decision D10/18. Decision Instrument, Section 5.1 of ComReg Document No. 18/94, ComReg Decision D10/18: Market Reviews, 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).

[20] Decision Instrument of the 2024 Decision, Section 14.12.

[21] Decision Instrument, Section 5.1 of ComReg Document No. 18/95, ComReg Decision D11/18: 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, 19 November 2018.

bringing FTTP Bitstream into the scope of wholesale commercial offer assessments.”[22] (emphasis added)

“Systematic gathering of information from network providers and Access Seekers on FTTP services and the associated prices will assist ComReg in identifying if pricing issues exist. If it proved to be necessary **ComReg may revisit the issue of reintroducing a further specification of the obligation not to margin squeeze by reference to a specific Wholesale MST** and in that event would put any such proposals to consultation.”[23] (emphasis added)

2.10 Furthermore, Section 8 (non-discrimination) of the Decision Instrument of the 2024 Decision, Section 8.1, provides that:

“Eircom shall (…) ensure that it does not discriminate between Access Seekers, and between Access Seekers and itself, its subsidiaries, affiliates or partners (…)”

2.11 And, in Section 8.2, provides that:

*“Eircom shall provide Access (…) to all Undertakings including itself, its subsidiaries, affiliates or partners, on the same timescales, terms and conditions, **including those related to prices** (…)”* (emphasis added)

2.12 This Draft Decision to further specify the obligation not to cause a margin squeeze – including by way of Pricing Principles in respect of FTTP-based services provided in markets downstream from the Commercial NG WLA Market – is directly grounded in the above provisions.

2.13 We also note that Regulation 104 of the ECC Regulations[24] provides that existing obligations may be further specified:

“*The Regulator may, **for the purpose of further specifying requirements** to be complied with relating to an obligation imposed by or under these Regulations, including requirements to be complied with under Regulations 8, 9 and 10 relating to a condition attached to a —*

(a) general authorisation,

(b) right of use for radio spectrum, or

(c) right of use for numbers

[22] Paragraph 9.844 of the 2024 Decision.

[23] Paragraph 9.850 of the 2024 Decision.

[24] S.I. No. 444/2022 - European Union (Electronic Communications Code) Regulations 2022 (the ‘ECC Regulations’) which transpose into Irish law the European Electronic Communications Code.

issue directions to an operator or undertaking to do or refrain from doing anything which the Regulator specifies in the direction." (emphasis added)

2.14 More generally, ComReg's further specification of the obligation not to cause a margin squeeze in respect of FTTP-based services provided downstream from the Commercial NG WLA market is pursuant to its statutory objectives and duties, including those set out in section 12(1) of the Communications Regulation Act 2002 (as amended) and Regulation 4(3) of the ECC Regulations, in particular the promotion of competition in wholesale broadband markets and the promotion of investment in full fibre networks.

2.3 Regulatory impact assessment

2.15 The Regulatory Impact Assessment ('**RIA**') is an analysis of the likely effect of proposed new regulation or regulatory change. The purpose of a RIA is to establish whether regulation is necessary, to identify any possible negative effects which might result from imposing a regulatory obligation and to consider any alternatives. The RIA helps identify regulatory options and establish whether proposed regulation is likely to have the desired impact.

2.16 This entire document constitutes a RIA in respect of the further specification in this Draft Decision of the obligation not to cause a margin squeeze of the 2024 Decision, as set out in section 14.6.4 of the Decision Instrument of the 2024 Decision. Hence, in this document and in the process of preparing this document, ComReg has carried out a RIA and concluded that the measures set out in this document are necessary.

2.17 In carrying out the RIA, ComReg has taken into account the following:

(a) ComReg's RIA Guidelines;[25]

(b) Policy Directions issued by the Minister for Communications, Marine and Natural Resources to ComReg under Section 13 of the Communications Regulation Act 2002, as amended, on 21 February 2003;

(c) RIA Guidelines issued by the Department of An Taoiseach in June 2009;

(d) Guidance from the European Commission and Best Practice Principles for Regulatory Policy from the Organisation for Economic Co-operation and Development ('**OECD**').

2.18 The checklist for ComReg in respect of the RIA is:

(a) Describe the policy issue to be addressed and identify the objectives;

[25] ComReg Document No 07/56a, Guidelines on ComReg's Approach to Regulatory Impact Assessment, 10 August 2007.

(b) Identify and describe the regulatory options (i.e. prepare a list of policy options including to make no change to the current policy);

(c) Determine the impacts on stakeholders (i.e. identify the costs, benefits and impacts of each of the regulatory options);

(d) Determine the impact on competition (i.e. consider the impact of each option on competition in the market); and

(e) Assess the impacts and select the best option.

2.19 These 5 steps are reflected in Section 4 of this Draft Decision.

3 Market Monitoring

3.1 Overview

3.1 The 2024 Decision signalled ComReg's intention to monitor market developments in light of its decision not to maintain a Wholesale MST. In particular, it noted:

"*In particular, ComReg (…) will monitor market developments closely to assess if Eircom's strategy is shifting more towards the provision of FTTP Bitstream and away from FTTP VUA by offering geographically targeted offers, in order to identify concerns early and intervene in a timely manner*".[26]

3.2 This section provides an overview of the information we have considered for this Draft Decision. The information includes the trends observed in the line volumes data regularly collected[27] by ComReg for multiple purposes, including the Quarterly Key Data Reports ('**QKDR**') process,[28] relevant fixed broadband market developments and information specifically sought from RSPs for the purpose of this Draft Decision, including pricing and other commercially significant data.

3.2 Volume trends

3.3 As part of the quarterly (or other periodic) data collected by ComReg from operators, including for the QKDR, network operators provide information on wholesale broadband services they supply while RSPs provide data to ComReg on their active retail fixed broadband customer base, with volumes reported at a subscriber line level.[29] Where these retail broadband services are based on wholesale services sold by network operators, the RSPs identify the network operator and the type of

[26] Paragraph 9.844 of the 2024 Decision.

[27] ComReg collects this data using its statutory information gathering powers.

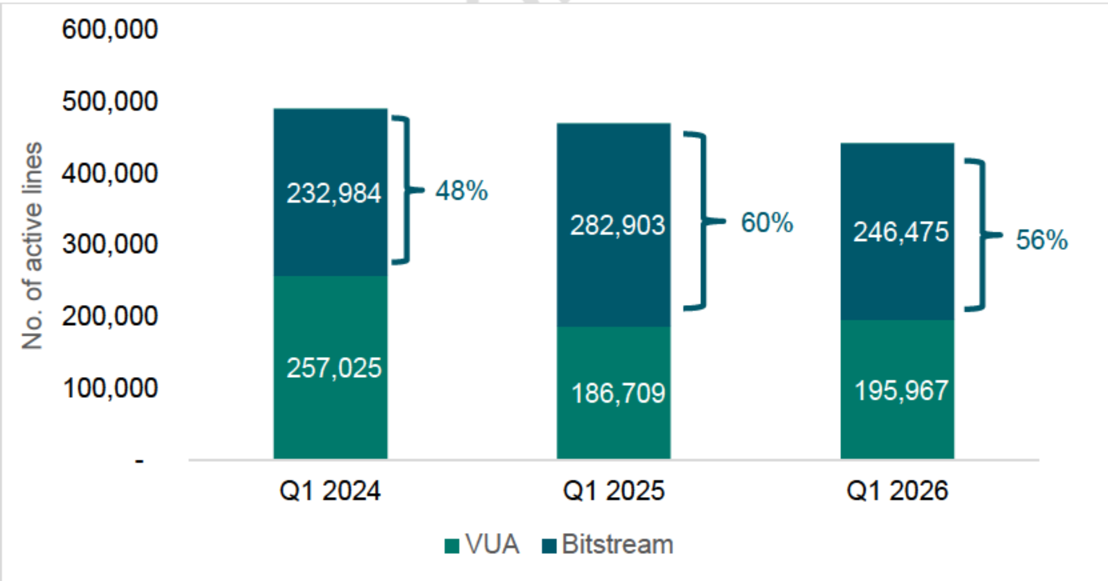
[28] QKDR reports are available in ComReg's Data Portal [Market Information | Commission for Communications Regulation](#).

[29] See, for example, ComReg Information Notice 26/39. Retail fixed broadband market shares are reported in Section 4. Network broadband market (active line) shares are reported in Section 5.

wholesale broadband product purchased (such as VUA, Bitstream or White Label). Where RSPs are using VUA or Bitstream services and use their own infrastructure or third-party infrastructure to backhaul the associated fixed broadband traffic, ComReg does not systematically collect information at this level of detail.

3.4 Our review of the fixed broadband data from network operators indicates that, over the period from Q1 2024[30] to Q1 2026, there has been a noticeable shift in Eircom's wholesale-only line base, at a national level, with a move away from standalone VUA towards Bitstream (i.e. VUA offerings bundled with backhaul). Between Q1 2024 and Q1 2025, Eircom's Bitstream increased by circa 50,000 lines (around 20%) with the share of Bitstream increasing to become the majority (approximately 60%) of its wholesale-only customer base, while sales of standalone VUA correspondingly declined by approximately 70,000 lines (around 30%).[31] This trend was somewhat reversed between Q1 2025 and Q1 2026. However, across the full review period, Bitstream continued to maintain a stronger relative position, accounting for 56% of Eircom's wholesale-only base in Q1 2026, compared with 48% at the start of the review period. These trends are illustrated in Figure 2 below.

Figure 2 - Eircom's wholesale-only fixed broadband mix



3.5 While the decline in Eircom's Bitstream reported sales between Q1 2025 and Q1 2026 may partly reflect changes in purchasing strategies adopted by certain RSPs, the additional evidence from RSPs (as discussed in Section 3.4 below) suggests that

[30] Q1 2024 coincides with the publication of the 2024 Decision.

[31] We note that ComReg reports merchant sales (line volumes) of Bitstream FTTC and FTTH, whereas for the purpose of this Draft Decision, our analysis is based on total fixed broadband lines, including ADSL, FWA and Cable. See, for example, ComReg Document No. ComReg 26/14R, Wholesale Market Monitoring Report - Issue 2, 4 March 2026, section 6. Q1 2026 data will be published in due course.

it may also be indicative of a shift towards alternative network solutions such as the use of DWDM-based backhaul (leased lines) or dark fibre, which may be combined with RSP's own infrastructure deployments.

3.6 A key driver of these developments has been the evolution of Eircom's relationship with Sky, as part of the Eircom-Sky network agreement (which is noted further below in Section 3.3[32]). From [✂[redacted]✂] Bitstream reported sales in Q1 2024, Eircom scaled its Bitstream provision to Sky [✂[redacted]✂] by Q1 2025 [✂ [redacted] ✂] and has [✂[redacted] ✂]. As part of this relationship, Eircom also began backhauling [✂[redacted]✂].

3.7 Over the same period Q1 2024 to Q1 2026, the following trends can also be observed:

(a) [✂[redacted] [redacted]✂], experienced a significant reduction in its share (measured by the number of active fixed broadband lines) of the addressable (merchant) backhaul over the two-year period [✂[redacted] ✂]

(b) SIRO experienced differing growth trends across its customer base. Growth in VUA volumes associated with [✂[redacted]✂]. In contrast, SIRO has observed [✂[redacted] [redacted]✂] across its other wholesale customers, with volumes increasing by approximately 36,000 (33%) lines over the two-year period.

(c) Vodafone [✂[redacted] ✂]

(d) Virgin Media Ireland ('**VMI**') increased its presence in wholesale markets, with steady growth in its merchant market Bitstream sales volumes over the period (from circa 3,000 to 40,000). As of Q1 2026, VMI had not yet started supplying VUA.

[32] Paragraph 3.15.

[33] [✂[redacted]✂]

(e) National Broadband Ireland ('**NBI**') continued to grow its Bitstream volumes, [✂ [redacted] ✂]. NBI added in Q1 2026 approximately 3,000 Bitstream lines, just above one-fifth of the additions in the prior year. As a result, NBI's share of Bitstream relative to its overall FTTP VUA base declined (this share falling from approximately 69% to 41%).

(f) Pure Telecom increased its reliance [✂ [redacted] ✂] (adding over [✂ [redacted] ✂] lines, or close to [redacted] ✂], in the two-year period) while reducing its dependence on [✂ [redacted] ✂] (reducing its purchases by circa [✂ [redacted] ✂]).

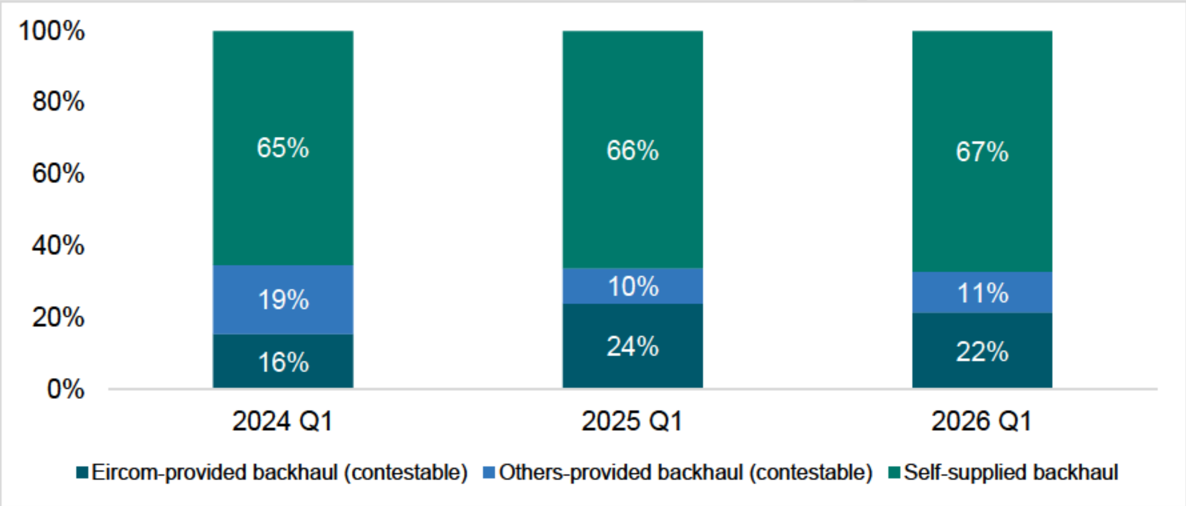
3.8 Given that ComReg does not systematically collect information on certain backhaul infrastructure arrangements as noted in paragraph 3.3 above, we applied what we consider to be a set of reasonable assumptions to the available data[34] to infer, for each RSP, the proportion or share of VUA lines backhauled by each network provider. This includes lines backhauled on a self-supply basis, by third-party access network providers and by network resellers (i.e. backhaul aggregators). Our assumptions reflect our interpretation of the additional information gathered from RSPs and market developments that we observed (both discussed further below in this section). We consider this approach to be appropriate for identifying relevant trends.

3.9 Our analysis of backhaul shares (as noted above, the share of VUA lines backhauled by each network provider) indicates that the majority of fixed line broadband traffic is self-supplied, mainly due to the prevalence of vertically integrated operators, and therefore is not expected to be contestable, i.e., is not expected to be available in the merchant market for other backhaul providers to compete to supply. We also understand, based on information from RSPs, which is discussed below in subsection 3.4, that self-supply of backhaul may be supplemented by third-party supplied network infrastructure services (i.e. services other than Bitstream, such as dark fibre or leased lines), including infrastructure provided by Eircom. A precise quantification of the extent to which third-party infrastructure, including Eircom's infrastructure, adds to the contestable backhaul shares (measured by the number of active fixed broadband lines) is limited by the available information, not least because of the complexity of the underlying commercial arrangements. However, we can reasonably estimate an approximate range between 50% to over 60% of fixed broadband lines, for which the associated data traffic is not available to be contested in the merchant market.

[34] For example, we have taken fully integrated RSPs Eircom and VMI to backhaul their own VUA traffic.

3.10 Our analysis indicates that Eircom's role in the backhaul of fixed broadband traffic has strengthened in the two-year period to Q1 2026. Between its wholesale-only customer base (Bitstream) and the backhaul of traffic for other network providers, we estimate that Eircom backhauled traffic for 22% of the fixed broadband lines in Q1 2026, compared to only 16% in Q1 2024. In other words, in Q1 2026 we estimate that Eircom backhauled more than two-thirds of the contestable traffic, compared to less than half in the two years prior. For the purpose of illustrating these figures, in terms of backhaul shares,[35] we show in Figure 3 below self-supplied backhaul to include third-party infrastructure.

Figure 3: Backhaul Shares



3.11 Our estimates indicate that Eircom is increasingly backhauling more fixed broadband traffic since the 2024 Decision. This is directly observable from the Bitstream lines that Eircom reports to ComReg (compared to the reported VUA lines) and is mainly driven by the step change introduced by the Eircom-Sky agreement. We can also observe Eircom's role in enabling other operators not using Bitstream services to backhaul their fixed broadband traffic using its other infrastructure services, such as leased lines or dark fibre. We also note that Eircom's increased role in the backhaul of fixed line broadband traffic coincides in the period with a slight decline in its network share for fixed broadband lines.

3.3 Market developments

3.12 Since publication of the 2024 Decision, a number of relevant developments have been observed in fixed broadband markets.

[35] Calculated as a percentage of total fixed broadband lines.

3.13 The relaxation of the ban on wholesale discounts and promotions for FTTP VUA, allowed Eircom to propose a number of discount schemes, including:

- An FTTP promotion available to all operators (unconditional) that migrate FTTC end-users to Eircom's FTTP services, notified by Eircom in Wholesale Notification 2025-002 and approved by ComReg, having met the criteria set out in the 2024 Decision;[36]

- An FTTP promotion, notified by Eircom in Wholesale Notification 2025-021, conditional on operators meeting certain volume thresholds, which ComReg did not approve based on concerns that the promotion would give rise to loyalty enhancing effects and have a foreclosing effect on alternative wholesale network providers;[37]

- An FTTP promotion available to all operators (unconditional) for new or upgrade connections to Eircom's FTTP service at 1, 2 and 5 Gbps, notified by Eircom in Wholesale Notification 2026-016 and approved by ComReg, having met the criteria set out in the Decision.[38]

3.14 Additionally, ComReg intervened pursuant to Section 57 of the 2023 Act and issued Urgent Interim Measures[39] directing Eircom to cease a €50 Gift Card promotion available to FTTP end-users, having failed to meet the notification/pre-approval obligations under the 2024 Decision for wholesale discounts and promotions,[40] including on the basis of ComReg's *prima facie* concerns that such promotion was targeted geographically and failed to meet the FTTP VUA price floor.

3.15 Since the 2024 Decision, ComReg has also been in receipt of correspondence raising concerns in relation to pricing behaviour by Eircom in respect of large tenders for backhaul. In particular:

- Concerns were raised [✂ [redacted] ✂]in relation to the Eircom-Sky backhaul agreement[41] and in particular the pricing and transparency in the tender process prior to the 2024 Decision.[42] The material impact of the

[36] ComReg Document No. 25/28, ComReg Decision D05/25: Assessment of a wholesale FTTH promotion notified by Eircom Limited under ComReg Decision D05/24 (WN2025-002), 21 May 2025.
[37] ComReg Document No. 26/22, ComReg D04/26: Response to Consultation & Final Decision, Decision on Assessment of a wholesale FTTH discount scheme notified by Eircom Limited under ComReg Decision D05/24, 27 March 2026.
[38] ComReg Document No. 26/32, ComReg Decision D05/26: Assessment of wholesale FTTP promotion WN2026-016 notified by Eircom under ComReg Decision D05/2421 May 2025.
[39] ComReg Document No. 25/71, ComReg Decision D13/25: Section 57 Urgent Interim Measures Notice, 17 October 2025.
[40] Section 14 of the Decision Instrument at Annex 1 of the 2024 Decision.
[41] open eir and Sky announce five year partnership.
[42] [✂ [redacted] ✂]

implementation of the Eircom-Sky backhaul agreement has been noted above; and

- Concerns of margin squeeze behaviour were submitted to ComReg by [✄ [redacted] ✄] in relation to a Three tender and further correspondence [✄ [redacted] ✄] pointing, in their view, to Eircom's increased dominance in this market.[44]

3.16 In our view the developments described above, including FTTP promotional activity that was not unexpected following the 2024 Decision, suggest that pricing pressure in fixed broadband markets, together with the incentives to engage in margin squeeze conduct, may be increasing. These developments also provide evidence of the material and non-temporary impact of large tenders for backhaul of fixed broadband data traffic.

3.4 Additional information

3.17 In order to gain a better understanding of backhaul arrangements, we have sought pricing and other commercially relevant information from RSPs. Pricing information mainly included the prices charged to RSPs by wholesale network providers for VUA, Bitstream and other services used to backhaul or aggregate VUA traffic, and associated facilities such as interconnect links, for Q4 2025 (three months to December 2025). Annex 3 includes a copy of the data request sent to RSPs under ComReg's statutory data gathering powers.[45]

3.18 The information received from RSPs points to a variety of commercial arrangements, under which RSPs typically enter into master service agreements with wholesale network providers, which may be updated periodically, or in response to specific commercial triggers such as volume-based discounts or other promotional schemes. These agreements may provide for either the bundled supply of access and backhaul services (e.g. Bitstream-type products), or the separate procurement of access (VUA) and backhaul. In practice, RSPs can adopt a mixed approach, reflecting differences in their network footprint and the location of interconnection points, i.e. relying on VUA where they have network presence to interconnect with the VUA providers, while using Bitstream products where such direct interconnection is not feasible. Backhaul may be procured from third parties under separate commercial arrangements or provided via self-supplied infrastructure, including core fibre networks which may be supplemented, where required, by additional wholesale services (e.g. dark fibre, leased lines). Such self-supplied infrastructure may also be

43 [✄ [redacted] ✄]

44 [✄ [redacted]').

used to carry data traffic from multiple services, including mobile traffic, as part of a converged network infrastructure.

3.19 Pricing data also shows variations in structures. RSPs may be charged based on the prices listed in network suppliers' reference offers but pricing may vary from these listed prices, including, as noted in the paragraph above, by way of volume or other price incentives. For example, RSPs may not be charged separately for data usage (based on an average usage assumption, which may be capped). They may also be provided with a single backhaul charge for traffic that originates from FTTP and FTTC VUA lines or that originates from different traffic aggregation locations. It is also the case that other wholesale products that are used for backhaul, such as dark fibre or leased lines, are paid by RSPs per rented circuit and not on a per subscriber basis.

3.20 Based on the information provided we have sought to quantify the range of backhaul charges per VUA line (in the relevant period). In doing so, we took the following approach:

- Where backhaul charges were not directly provided by RSPs, we have estimated these charges based on the differences between the stated Bitstream prices and their VUA equivalent, based on the relevant speed profile;
- Where RSPs stated that discounts applied based on volume targets, we have included, in our range, the discounted charge applicable only to the cohort of customers above the target; and
- Where RSPs are charged separately for data usage, we assumed a 5 Mbps/line for data usage for the purpose of deriving a single backhaul charge per line.

3.21 Our estimated cost for VUA backhaul per line is between approximately €1 – €8 per line/month.[46] The top end of this range aligns predominantly with the published Eircom listed pricing for FTTP VUA and FTTP Bitstream, as shown in Table 1 below. At the lower end, we can see RSPs availing of end-to-end backhaul connectivity (i.e. from the VUA aggregation nodes to the RSP's hubs or internet gateways), with discounts, and offerings that only cover part of this connectivity.

Table 1 – Eircom's published reference offers[47]

Speed Profile	FTTP VUA	FTTP Bitstream	Inferred Backhaul (based on 5 Mbps/line)
150-500 Mbps	€23.50	€29.72	€8.11

[46] This excludes a few outliers.
[47] https://www.openeir.ie/industry-information/reference-offers.

1 Gbps	€28.50	€34.72	€8.11
≥ 2 Gbps	€39.72	€33.50	€8.11

3.22 With regards to the duration of contracts, including renewal or exit provisions, we observed both open-ended and fixed-term agreements. Some agreements are automatically renewable (e.g. annual roll-over), while others rely on termination rights (often with 12 months' notice). Fixed-term agreements are most commonly around 3 years, but in some cases can extend longer and up to 10 years. Long-term agreements may in some cases be accompanied by additional provisions such as minimum commitments or other protection arrangements[48] and they tend to be associated with larger RSPs.

3.23 Interconnection, Network-to-Network Interfaces ('**NNI**') and other facilities such as colocation may in some cases be part of the master service agreements or standard wholesale agreements but can also be separately procured. Some respondents to the data request do not procure these facilities separately, reflecting the use of White Label or fully integrated wholesale services.[49] The information provided in this regard has nevertheless been limited.[50] This is also the case in relation to other associated services, with respondents making limited references to Service Level Arrangements ('**SLA**') or operational services such as provisioning and fault management. More generally, when asked about other factors affecting the effective backhaul pricing, responses refer to the impact of promotional schemes and rebates, price amendment rights and non-price dependencies, such as exclusivity clauses or dependencies on network or BSS systems.

3.24 Table 2 below provides a brief summary of the information received from RSPs.

Table 2 – Summary of RSPs' responses

Information request	Summary of responses
Backhaul prices	Estimated range between approximately €1 - €8 per line/month (with a median value of €2.50 per line/month).

[48] For example, this may include MFN-style (Most-Favoured Nation) provisions, in which an RSP is assured of receiving terms that are no less favourable than those offered by the supplier to other comparable RSPs.

[49] Hence, for these RSPs the backhaul costs included in our estimated range are inclusive of these additional facilities.

[50] We nevertheless consider the responses sufficient and proportionate to the queries raised in the 13D information request. While it would have been open to us to seek more information, we did not consider it necessary in the circumstances, as seeking additional information would have delayed progress without materially assisting our assessment.

Contract duration	Commonly 3 years, and in some cases of up to 10 years.
Additional Facilities	Interconnection/NNIs, colocation (including power, rack space, etc).
Associated Services	Enhanced SLAs, provisioning and fault management services.
Other price-influencing factors	Promotional rebates, price amendment rights and non-price factors (e.g. exclusivity or network systems dependencies).

4 Further Specification of Obligation

4.1 Pricing Principles

4.1.1 Overview

4.1 In this section, we set out our proposals to further specify the requirements to be complied with, relating to Eircom's obligation not to cause a margin squeeze between FTTP-based VUA services and FTTP-based wholesale services provided downstream from the Commercial NG WLA Market. In summary, we propose that the replicability assessment of FTTP VUA backhaul offerings in contracts or arrangements should ensure that the incremental revenues earned by Eircom, as a result of the relevant contract, exceed the long-run incremental costs incurred by it in fulfilling that contract. These costs include the backhaul or transmission network costs associated with fixed broadband traffic, associated facilities technically required to supply the contract, the costs of bundled other unregulated services, and the regulated upstream FTTP VUA wholesale input, having regard to the principles further specified in this section.

4.2 Acknowledging that in the 2024 Decision WCA markets were found not to warrant continued *ex ante* regulation in the presence of the continued regulation in WLA markets, our approach to setting Pricing Principles for the assessment of margin squeeze is guided by competition law principles and the view that it is sufficient to ensure that an equally efficient operator to Eircom is not foreclosed and can compete profitably on a forward-looking basis. Hence, our proposed approach to assess margin squeeze acknowledges, and allows for, any cost-related advantages that Eircom may have, resulting from its network scale and reach, including scope and coordination efficiencies from the provision of multi-service offerings, provided they do not give rise to exclusionary effects.

4.3 We do not consider that reintroducing an *ex ante* Wholesale FTTH based VUA MST – similar to the one imposed in ComReg's Decision D11/18[51] – would be an effective safeguard given Eircom's freedom to productise its backhaul or transmission network in tailored offerings.[52] Accordingly, we propose that any bespoke form of FTTP VUA backhaul (in addition to Bitstream or White Label) is in the scope of the assessment as are any associated facilities and services provided in the contract or arrangement, which may impact on the effective prices for FTTP VUA backhaul. Also, given, as discussed in Section 3, that contracts or arrangements for backhaul services can have a material and enduring impact on fixed broadband markets, our proposals focus on the preventive assessment of margin squeeze of such contracts or arrangements, on a case-by-case basis.

4.4 Contracts or arrangements for the provision of FTTP VUA backhaul may be agreed as part of a formal tendering process, or through direct negotiation with the RSP in question. These may be agreed through a series of contractual agreements or arrangements which may comprise of a principal agreement (MSA) together with one or more ancillary agreements, amendments, variations or side letters which may be entered into at the same or different times and which together form the overall agreement with the parties. We refer to FTTP VUA backhaul "**Contracts or Arrangements**" as any agreement, arrangement or understanding that may give rise to legally binding obligations between Eircom and RSPs, and includes amendment, variation, side letter, statement of work, addendum, purchase order or other document which amends, supplements, implements or forms part of an arrangement or agreement.

4.5 Finally, the Retail FTTP MST in ComReg's 2024 Decision was informed by reference to the BEREC guidance on the application of *ex ante* MSTs[53] and the 2013 EC Recommendation.[54] The 2013 EC Recommendation has since been replaced by the Gigabit Recommendation.[55] While these guidelines are primarily framed in the context of wholesale-to-retail margin squeeze tests, they are also relevant to wholesale-to-wholesale replicability assessments. We have therefore taken them into account, including in terms of the structure of relevant parameters, as set out below, including the scope of the services concerned, the level of aggregation, the

[51] Paragraph 10.63 and Section 5.1 of the Decision Instrument, ComReg Document No. 18/95, ComReg Decision D11/18.

[52] A similar difficulty to anticipate and model precisely in an *ex ante* MST bespoke arrangements has been noted with respect to the introduction of an *ex ante* MST for the WDC Market in ComReg's WDC Decision D09/26. See paragraph 7.206 of ComReg Document No. 26/50, ComReg Decision D09/26: Market Review - Wholesale Dedicated Capacity (WDC) Market - Response to Consultation and Decision, 31 July 2026.

[53] BEREC (2014), 'BEREC Guidance on the regulatory accounting approach to the economic replicability test (i.e. *ex ante*/sector specific margin squeeze tests)', 5 December.

[54] European Commission (2013), 'Commission Recommendation of 11 September 2013 on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment (2013/466/EU)'.

[55] COMMISSION RECOMMENDATION (EU) 2024/539 of 6 February 2024 on the regulatory promotion of gigabit connectivity.

reference operator, the cost standard, the choice of upstream and downstream costs, the treatment of other unregulated services and the time period.

4.1.2 Scope of services

4.6 Section 14.6.4 of the 2024 Decision imposes an obligation on Eircom not to cause a margin squeeze between FTTP-based VUA services and downstream FTTP-based services. The removal of the obligation to provide regulated access to Bitstream services, pursuant to the deregulation of the WCA markets, gives Eircom greater commercial freedom to productise its backhaul or transmission network and consequently to tailor its FTTP VUA-based backhaul offerings to the bespoke needs of customers, including through arrangements for the transport of fixed broadband data that may differ from the previously regulated FTTP Bitstream services. As we have seen above from the information gathered from RSPs, this may also mean, for example, the use of DWDM-based backhaul solutions, providing high-capacity, point to point, uncontended connectivity (using, for example, Eircom's Wholesale Uncontended Product), the use of dark fibre services or through extending the boundary of FTTP VUA backhaul services beyond the footprint of the NGN Core network handover points, through a combination of NGN Ethernet-based services and interconnection (similar to Eircom's Edge-Node Handover interconnection products). Hence, it would not be appropriate to limit the assessment of margin squeeze to only FTTP-based Bitstream services as it would undermine the effectiveness of the obligation, and consequently the competition safeguards it aimed to achieve in the 2024 Decision.

4.7 Limiting any assessments to only FTTP-based Bitstream services would have the advantage of being relatively more straightforward to implement, less resource-intensive and potentially quicker to assess, given that Eircom's reference offers for FTTP Bitstream have previously been subject to *ex ante* testing, as part of ComReg's Decision D11/18.[56] However, this is not sufficient to exclude FTTP-based bespoke backhaul solutions from the scope of any potential assessment of margin squeeze by ComReg, as harms to competition could arise as a result. This is especially relevant if bespoke arrangements are significant, enduring and increasingly dominate the competitive landscape in wholesale markets downstream from WLA markets.

4.8 Given this, the relevant scope of downstream FTTP-based services for assessing Eircom's obligation not to cause a margin squeeze with respect to FTTP-based VUA services should comprise FTTP Bitstream services provided in WCA markets, including where these services are combined in White Label services, and should also include, as discussed above, any other bespoke form of FTTP VUA backhaul

[56] Noting that the level of charges may vary from the listed prices in Eircom's CISPL/BARO, including the structure of the charges, which may vary as well, for example, to a per/line only charging model (subject to a cap in capacity).

provided downstream from the Commercial NG WLA Market. Henceforth, we refer to these services as "**FTTP VUA backhaul services**".

4.1.3 Level of aggregation

4.9 The level of aggregation determines whether the assessment should be undertaken at an individual product level (e.g. by the speed profile of FTTP Bitstream services) or if a higher level of aggregation would be more appropriate. A higher level of aggregation provides Eircom with greater pricing flexibility and can be welfare enhancing as it can allow, for example, the testing of consumer preferences for different speed profiles. We note that a product-by-product approach was adopted in ComReg Decision D11/18 for the Wholesale FTTP MST, with Access Seekers being afforded a degree of protection across every VUA speed or profile made available by Eircom.

4.10 Given, as discussed in Section 3, that broadband backhaul may be procured through large Contracts or Arrangements with RSPs, which can have a material and non-temporary impact (e.g. multi-year contracts), a discrete aggregation by backhaul Contracts or Arrangements, i.e. an assessment on a 'contract-by-contract' basis, would be the most appropriate aggregation to ensure the replicability by Access Seekers of the contract in question, and a more effective safeguard for competition in markets downstream from the Commercial NG WLA Market. Under this approach, the assessment would be carried out in respect of the specific portfolio or mix of FTTP VUA speed profiles (and specific interconnection arrangements) included in contracts on aggregate and not on a product-by-product basis.

4.11 In addition, we note that Contracts or Arrangements will often include the backhaul of FTTP VUA traffic together with a range of associated facilities and services. This may include regulated associated facilities subject to price control obligations, such as colocation[57] (e.g. rack space, power and cooling equipment) facilities in Eircom's exchanges (or equivalent) and interconnection links[58] but could also include unregulated facilities and services as a result of Eircom acting, as part of the contract, as a traffic aggregator for other FTTP access (VUA) network operators. It is also the case that Contracts or Arrangements may bundle other unregulated services, not technically required or directly related to the provision of FTTP VUA backhaul services, which may be combined as a result of a wider commercial relationship between the backhaul provider and the RSP. Accordingly, the Contract or Arrangement, taken as the relevant level of aggregation for the purpose of a margin squeeze assessment, allows an evaluation of the extent to which the inclusion of such facilities and other unregulated services can affect the effective prices for FTTP VUA backhaul services. While the impact may be more complex to assess, their inclusion, together with FTTP VUA backhaul services, should be part of the 'contract-

[57] See paragraph 9.77 of the 2024 Decision for a description of colocation facilities.
[58] See paragraph 9.93-9.96 of the 2024 Decision for a description of interconnection facilities.

by-contract' assessment in order that the assessment fully reflects the commercial reality of the Contract or Arrangement.

4.12 The purpose of the assessment is to consider the economic replicability of the specific portfolio of FTTP VUA speed profiles – on aggregate – included in Contracts or Arrangements. Consequently, Eircom would have pricing flexibility to price differently each service within the Contract or Arrangement. However, this flexibility afforded to Eircom is confined to markets downstream from the Commercial NG WLA Market, where Eircom has been found to have SMP and is constrained by the charges associated with FTTP VUA backhaul services (FTTP Bitstream services, or other similar WCA services which bundle FTTP VUA with backhaul), having to be above the FTTP VUA price floor for the corresponding speed profile, as set out in the 2024 Decision.[59]

4.1.4 Reference operator

4.13 The reference operator defines the level of efficiency that can be expected to be achieved by Access Seekers competing with Eircom in the market for backhaul. This involves typically a choice between a hypothetical operator as efficient and operating at the same scale and geographical reach as Eircom ('**EEO**');[60] an operator as efficient as Eircom but of a smaller scale ('**SEO**');[61] or an alternative operator using a different cost function as Eircom and also operating at a lower scale ('**REO**').[62]

4.14 We propose that the assessment should be carried out on the basis of an EEO approach, allowing for a level of efficiencies consistent with Eircom's scale and reach, i.e. consistent with a network capacity dimensioned to carry data traffic volumes from its extensive residential and business customer bases and from interconnecting operators, reflecting its extensive network capillarity. We consider that an SEO/REO approach, which can be justified to incentivise investment where there may be barriers to entry, would go beyond the level of protection that efficient Access Seekers should be afforded in a deregulated market and this is consistent with the 2024 Decision finding that WCA markets (in the presence of the continued regulation in WLA markets) do not warrant *ex ante* regulation.

4.15 While previously in ComReg Decision D11/18,[63] ComReg adopted an SEO approach based on a reference operator with a 25% market share for the Wholesale FTTP

[59] See paragraph 9.487 of the WLA/WCA Decision.
[60] Equally Efficient Operator.
[61] Similarly Efficient Operator.
[62] Reasonably Efficient Operator.
[63] ComReg Document No. 18/95, ComReg Decision D11/18: 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, 19 November 2018.

MST,[64] at the time Eircom retained SMP in the Regional WCA market, where the barriers to build competitive backhaul routes would have been expected to be more prevalent, and where mitigating the effects of demand uncertainty for NGA was then a more relevant regulatory concern.

4.16 An EEO approach is also consistent with the standard used in competition law. In particular, in *Deutsche Telekom*[65], the Court of Justice (CJEU) confirmed that margin squeeze should be assessed by reference to the dominant undertaking's own costs and prices. The CJEU stated:

"*In that regard, it must be borne in mind that the Court has already held that, in order to assess whether the pricing practices of a dominant undertaking are likely to eliminate a competitor contrary to Article 82 EC [now Article 102 TFEU], it is necessary to adopt a test based* ***on the costs and the strategy of the dominant undertaking itself*** *(see AKZO v Commission, paragraph 74, and France Télécom v Commission, paragraph 108).*

The Court pointed out, inter alia, in that regard that a dominant undertaking cannot drive from the market undertakings which are perhaps ***as efficient as the dominant undertaking*** *but which, because of their smaller financial resources, are incapable of withstanding the competition waged against them (see AKZO v Commission, paragraph 72)*".[66] (emphasis added)

4.17 Also, in *Slovak Telekom*, the European Commission outlined the approach followed by competition authorities in relation to the margin squeeze method applied as follows:[67]

"…Competition authorities investigate whether what a dominant undertaking has been actually charging to downstream rivals is causing an **equally efficient rival** to incur into negative or insufficient margins." (emphasis added)

4.18 We further note that an EEO approach was adopted[68] in the 2024 Decision for the calculation of downstream costs for the Retail FTTP MST, including with respect to the backhaul costs used in that test. The 2024 Decision considered that the use of an EEO approach was consistent with Regulation 56(5) of the ECC Regulations[69] and served ComReg's objective of promoting sustainable competition. In this regard, the 2024 Decision stated:

[64] Paragraph 10.63 and Section 5.1 of the Decision Instrument, ComReg Document No. 18/95, ComReg Decision D11/18

[65] Case C-280/08 P, Deutsche Telekom AG v European Commission, EU:C:2010:603

[66] Paragraphs 198 and 199.

[67] CASE AT.39523 – SLOVAK TELEKOM, paragraph 855.

[68] Paragraph 9.770 of the 2024 Decision.

[69] S.I. No. 444/2022 - European Union (Electronic Communications Code) Regulations 2022 (the 'ECC Regulations') which transpose into Irish law the European Electronic Communications Code.

"ComReg has the objective to promote 'sustainable competition' to the benefit of end users without compromising efficient entry, and this means promoting new efficient entrants, rather than all entrants. An EEO benchmark would therefore be more in line with ComReg's objectives".

4.19 This was consistent with the recommendation of ComReg's advisers Oxera in the 2024 Decision, which stated:[70]

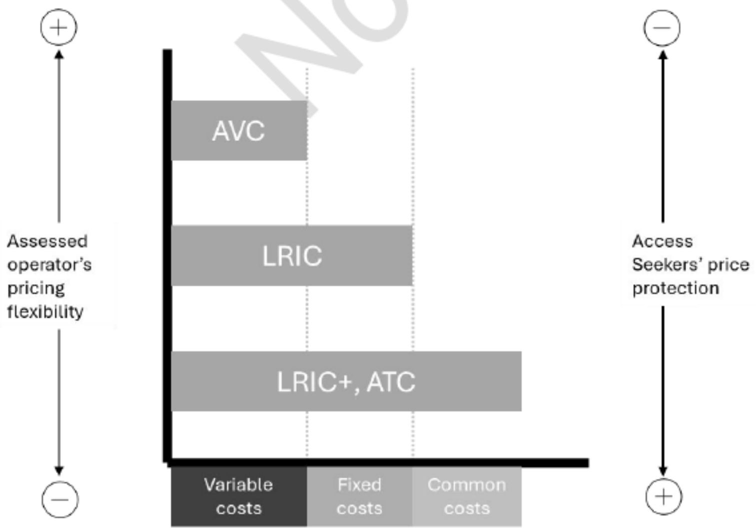
"We maintain the view that a continuation of the EEO benchmark is the appropriate standard to adopt given that Eircom is competing with well-established access seekers that are active in the retail market and that the MST is not intended to protect inefficient entry by smaller operators."

4.20 Hence, an EEO approach adopted for the assessment of wholesale margin squeeze affords Access Seekers operating in WCA markets a level of protection comparable to that already afforded in retail broadband markets.

4.1.5 Cost standard

4.21 The purpose of using cost standards is to measure the costs associated with the provision of WCA services, which should appropriately be reflected in the assessment of wholesale margin squeeze. Figure 4 below illustrates a range of cost standards that may be adopted. The selected standard impacts on the price flexibility granted to the operator under assessment and the level of protection afforded to Access Seekers.

Figure 4: Cost standard choices[71]



[70] Paragraph 4.50 of the Oxera report. WCA/WLA market review: Oxera Updated Part 3 Report, ComReg Document No. 24/07f, ComReg Decision D05/24. See also paragraph 9.768.
[71] Adapted from Figure 6.3 of Oxera Part 3 Report WCA/WLA market review: Oxera Reports', ComReg Document No. 24/07f.

4.22 In the 2024 Decision ComReg adopted a LRIC+ approach (or FAC) in the Retail FTTP MST for testing Eircom's portfolio of FTTP flagship bundles, while using LRIC to allow more flexibility at an individual bundle level. A LRAIC+ approach was adopted in ComReg Decision D11/18 for the Wholesale FTTP MST.[72] LRIC and LRAIC are often used interchangeably. For the purposes of this document, the term LRIC is used and is treated as having the same meaning as LRAIC.

4.23 We propose to adopt a LRIC+ approach. LRIC+ comprises LRIC of a given increment plus an allowance for the recovery of common costs. Our view is that the relevant LRIC increment should reflect the total level of fixed broadband traffic that is backhauled on Eircom backhaul or transmission network. This is because backhaul or transmission networks are characterised by large sunk capital investments, composed of assets with long asset lives and typically scaled to cater for large volumes of data traffic and serve wide coverage areas. ComReg expects that fixed broadband related traffic accounts for the majority of demand on Eircom's backhaul or transmission network. Therefore, over the long-run, the recovery of these investments could not be sustained by Eircom (or by competing Access Seekers) through pricing on a Pure LRIC basis. This would include, for example, pricing based on the incremental backhaul or transmission network costs of onboarding traffic associated with services of a specific Contract or Arrangement, i.e. situations where the broadband traffic is carried on Eircom's backhaul or transmission network, Pure LRIC might only take the subset of traffic associated with the specific Contract or Arrangement as the relevant increment, while LRIC would be based on a larger increment that includes all the broadband traffic carried on Eircom's backhaul or transmission network. Hence, in the context of this Draft Decision, the cost of a particular offer should be objectively determined as its proportionate share of the LRIC+ cost of Eircom's backhaul or transmission network, where the relevant increment comprises the total broadband traffic carried over that network.

4.24 ComReg also considers that an appropriate assessment of the replicability of FTTP VUA backhaul services provided downstream from the Commercial NG WLA Market should also take into account that broadband traffic represents an increasing share of the total traffic handled by backhaul or transmission networks. This means these networks can only be sustained economically over the long run if Access Seekers can derive from backhaul services a contribution to the non-incremental costs that are common to all services carried on the network. As noted by ComReg's advisers Oxera in the 2024 Decision, telecom operators are typically multi-product firms, so *"…the recovery of common costs is highly relevant*."[73] It is therefore important that Eircom recover a reasonable share of its common costs across the portfolio of

[72] Section 5.1 of the Decision Instrument, ComReg Document No. 18/95, ComReg Decision D11/18

[73] Paragraph 4.40 of the Oxera report. WCA/WLA market review: Oxera Updated Part 3 Report, ComReg Document No. 24/07f, ComReg Decision D05/24.

network products. For this reason, ComReg considers the appropriate cost standard should be LRIC+, i.e., the LRIC of the backhaul or transmission network plus an allowance for the recovery of common costs.

4.25 ComReg notes that the European Commission guidelines on the application of Article 102 TFEU[74] in relation the appropriate cost benchmark to assess predatory pricing also state that:

"LRAIC includes product-specific fixed and sunk costs incurred before the period in which the allegedly abusive conduct took place, including costs of capital. LRAIC are hence the appropriate benchmark for assessing whether the dominant undertaking's prices are such that it earns a positive return on the product-specific assets."

4.26 Which, in turn, references the Wanadoo España v Telefónica case[75], which states that:

"Therefore, in accordance with the economic theory and with the practice of the Commission on margin squeeze where the ability of competitors to operate profitably in the long term was assessed, the relevant cost measure for the assessment of a margin squeeze in the telecommunications sector is the long run average incremental costs (LRAIC)."

4.27 ComReg also notes that the Gigabit Recommendation,[76] in relation to the economic replicability of retail (VHCN-based) broadband prices states in Point 33 that:

"NRAs should ensure that the margin between the retail price offered by the SMP operator and the price of the VHCN wholesale input covers the incremental downstream costs and a reasonable percentage of common costs. Where wholesale price regulation for VHCN wholesale inputs is not imposed on the SMP operator and additional safeguards are implemented in accordance with this Recommendation, a lack of economic replicability can be demonstrated by showing that the SMP operator's own downstream retail arm could not trade profitably on the basis of the upstream price charged to its competitors by the upstream operating arm of the SMP operator ('equally efficient operator' (EEO) test)."

4.28 Annex III in Point 3 further states that:

"The incremental cost of providing the relevant downstream service is the appropriate standard. A long run incremental cost plus (LRIC+) model should be used to calculate

[74] European Commission (2026), 'Guidelines on the application of Article 102 of the Treaty on the Functioning of the European Union to abusive exclusionary conduct by dominant undertakings', 2026/C 6118 final

[75] Commission Decision of 4 July 2007 in case COMP/38784 – Wanadoo España v Telefónica, paragraphs 318.

[76] COMMISSION RECOMMENDATION (EU) 2024/523 of 6 February 2024 on the regulatory promotion of gigabit connectivity.

the incremental cost (including sunk costs) and to add a mark-up for common costs related to the downstream activities."

4.29 While these recommendations specifically address the replicability of Retail FTTP-based offers (broadband bundles, in effect) by RSPs, the underlying principles apply equally in markets further upstream and the choice of LRIC+ as the appropriate cost standard ensures a principles-based consistency with the approach applied to the replicability of Retail FTTP broadband bundles.

4.30 To implement this cost standard, Eircom could choose to develop a bottom-up LRIC+ cost model by reference to the economic life of the associated assets but could also, as a pragmatic alternative, estimate backhaul costs using a Top-Down FAC/ATC approach (informed by its Separated Accounts), which could be used as a proxy for supporting evidence, provided that they are appropriately adjusted to approximate incremental costs and are consistent with the LRIC+ cost standard.[77]

4.1.6 Upstream costs

4.31 In determining the relevant upstream input cost, the Gigabit Recommendation states in Annex III in Point 4 that:

"NRAs should identify the most relevant regulated inputs used, or expected to be used, by access seekers, at the VHC network-based wholesale layer that is likely to be prevalent within the current market review period."

4.32 Our objective of ensuring that Eircom does not cause a margin squeeze between FTTP-based VUA services and wholesale downstream FTTP-based services implies that the relevant upstream input is the regulated FTTP VUA wholesale product. This should be based on Eircom's ARO[78] price list and by reference to the relevant FTTP VUA speed profile as noted above in paragraph 4.12.

4.33 ComReg also notes that the 2024 Decision relaxed the ban on wholesale FTTP VUA discounts and promotions, which may be permitted subject to a case-by-case approval by ComReg.[79] Hence, where discounts have been explicitly approved by ComReg and are available to Access Seekers, such discounts may be factored into the replicability assessment of FTTP VUA backhaul offerings in Contracts or Arrangements as they would impact on the effective VUA charges incurred by RSPs. Otherwise, this would limit Eircom's ability to compete fairly for backhaul Contracts or Arrangements. In other words, in assessing the replicability of a FTTP VUA backhaul Contract or Arrangement, any FTTP VUA discounts attained by the RSP in

[77] For example, Eircom previously would have produced CCA/LRIC accounts that could provide some insight as to how different measures of LRIC cost values might compare with the FAC/ATC cost values for equivalent core network increments.

[78] Access Reference Offer (ARO) | openeir.

[79] Decision Instrument of the 2024 Decision, Section 14.10.

the Contract or Arrangement in question, and approved by ComReg may be taken into account.

4.34 We note that a contract-by-contract basis assessment requires forecasting how the eligibility and level of discounts may change over the assessment period (i.e. over the duration of the contract, as specified below), which adds some complexity. However, ComReg considers that any such additional complexity should be mitigated by the fact that, in a competitive market, any available Eircom FTTP VUA discounts would be reflected in the price of the associated FTTP Bitstream services (i.e. where backhaul is bundled with Eircom's regulated VUA).

4.1.7 Downstream costs

4.35 To ensure the effective replicability of Eircom's FTTP VUA backhaul services, it is necessary that all relevant downstream costs are part of the assessment. As assessments are to be conducted on a Contract or Arrangement-specific basis, all costs incurred to carry traffic over the backhaul network and deliver it at the designated points of handover, as set by the terms of the specific contract, should be included in the assessment. This should consider the capital and operating costs (such as maintenance, fault management or provisioning costs) associated with backbone transmission fibre links (including civil engineering infrastructure), optical transport equipment (e.g. DWDM/ROADM systems) and switching/routing equipment (e.g. Ethernet/VLAN routing platforms). Separately, the use of LRIC+ cost standard with respect to backhaul network implies that the assessment should also allow a contribution to the costs associated with carrier billing, account management, and administrative support functions, such as finance.

4.36 Long-term or volume discounts may be offered by Eircom in respect of backhaul services. Such arrangements may provide greater certainty for network investment and could, in principle, lead to lower consumer prices. However, our choice of LRIC+ as the appropriate cost standard is predicated on the need to ensure that competition in WCA markets can be sustained over the long run. Critically, as noted in paragraph 9.685 of the 2024 Decision, ComReg believes that the decision to enter, and remain in, a market depends on the expectation that fixed and common costs will be recovered. Accordingly, backhaul-specific long-term or volume discounts by Eircom are acceptable, provided that they do not undermine the LRIC+ cost standard (i.e. do not result in effective prices falling below LRIC+). This approach is consistent with the Gigabit Recommendation, which states in Recital 59 that:

"NRAs may accept volume discounts and long-term access-pricing agreements by SMP operators on their own downstream businesses if they do not foreclose market entry for efficient competitors (including infrastructure competition) and do not undermine the existing market position of efficient competitors."

4.37 As noted above in paragraph 4.11 Contracts or Arrangements can be tailored to include a range of associated facilities and services. ComReg considers that all associated interconnection and NNI facilities technically required to deliver traffic to the RSP's designated handover locations (i.e. in addition to regulated associated facilities used to handover traffic from the VUA aggregation nodes, discussed further below) should be included in the assessment. This also extends to cases where similar facilities are technically required to support the ingress of end-user traffic from other access network (VUA) providers, where Eircom is acting as a VUA traffic aggregator. We note that Access Seekers attempting to replicate the offer would likely also need to provide similar facilities.

4.38 Furthermore, these technically required facilities should be included within the scope of the assessment but only to the extent they are incremental to the FTTP VUA Contract or Arrangement in question (i.e. the cost is incurred as a result of supplying the contract in question), consistent with a LRIC approach, taking services provided in the Contract or Arrangement in question as the relevant increment. We recognise that such an approach may, in some circumstances, translate into lower costs for Eircom, due to its existing footprint and established interconnection arrangements with RSPs and network providers. For example, the RSP may already purchase interconnection capacity from Eircom that is sufficient to support the delivery of the expected level of broadband traffic so the revenues and costs with such interconnect links would not be incremental to the broadband backhaul offer. However, we consider that this approach is consistent with competition law principles and is appropriate and sufficient for preventing exclusionary conducts and safeguarding an equally efficient operator's ability to compete profitably on a forward-looking basis (consistent with our proposal above to adopt an EEO standard). Also, given that these technically required facilities are provided in association with the provisioning of backhaul we consider that is reasonable to allow cross-subsidisation between these elements, provided the combined price is above the LRIC of these elements.

4.39 Additionally, an Access Seeker relying on regulated FTTP VUA requires a range of regulated associated facilities, such as interconnect links (e.g. WEILs)[80] and colocation facilities, to ensure the handover of VUA end-user traffic from the Eircom aggregation nodes (the points of handover for VUA services) to its network. While such facilities would not be required by Eircom, they should nevertheless be included in the assessment, based on Eircom's LLRO[81] price list, in order to replicate the cost stack incurred by an Access Seeker. For this purpose, ComReg considers it reasonable to assume that interconnection would take place at the deepest level, i.e., within the Eircom sites, using Eircom's regulated inbuilding handover (IBH) interconnect product. This approach may also translate into lower costs for Eircom, compared to Access Seekers who are not as deeply interconnected with Eircom but

[80] WEIL is the ethernet interconnection service Eircom provides to handover various products including Next Generation Access ('**NGA**') and Next Generation Network ('**NGN**') wholesale products.
[81] Leased Line Reference Offer (LLRO) | openeir.

we consider it to be better aligned with competition law principles (and it aligns with our proposal above to adopt an EEO standard) and our objective of preventing exclusionary conduct; it also allows recognising existing efficiencies, and assessing whether an equally efficient operator could compete profitably on a forward-looking basis. We note, however, that these facilities are subject to a price control obligation of cost orientation and, as a result, should not be a source of margin for the Contract or Arrangement. More generally, we would expect that the impact of including or excluding cost oriented associated facilities, as they may be technically required to deliver traffic to the RSPs as part of the relevant Contract or Arrangement, should be neutral to the assessment. This principle should also apply when services that may be used to backhaul fixed broadband traffic, as outlined in subsection 4.1.2, are provided on a cost-oriented basis.

4.1.8 Other unregulated services

4.40 As noted above, Contracts or Arrangements may bundle or aggregate other unregulated services that are not technically required for delivering FTTP VUA traffic to the RSP as part of the Contract or Arrangement in question.

4.41 We consider that these other unregulated services should be taken into account in the margin squeeze assessment where they form part of the Contract or Arrangement in question, or where the Contract or Arrangement is conditional upon, or materially influenced by, the provision of such services, thereby impacting on the effective FTTP VUA backhaul prices. This is because the exclusion of such other unregulated services raises the risk that any undue cross-subsidisation between such services and the FTTP VUA backhaul services is not detected as part of the assessment. This, in turn, increases the likelihood of false negatives, with Eircom incorrectly “passing” the assessment of its FTTP VUA backhaul prices.

4.42 We note that the inclusion of other unregulated services in the assessment of margin squeeze for FTTP VUA backhaul is consistent with established EU competition law precedent regarding margin squeeze abuses. In particular, in *TeliaSonera,*[82] the Court of Justice of the European Union (CJEU), in defining the legal test for margin squeeze under Article 102 TFEU, held that the assessment must take into account all relevant economic circumstances. In particular:

> “*In order to assess whether a pricing practice is abusive, it is necessary to consider* ***all the circumstances*** *and to examine whether the practice tends to remove or restrict the buyer’s freedom to choose his sources of supply* (…)”[83] (emphasis added)

[82] Case C-52/09, EU:C:2011:83.
[83] Paragraph 28.

4.43 The CJEU further clarified that:

> "*The margin squeeze… is present where the spread between the retail price and the wholesale price is either negative or insufficient to cover the product-specific costs*…".[84] (emphasis added)

4.44 This approach was subsequently also adopted by the European Commission in *Telefónica*[85] in relation to broadband margin squeeze and bundled offers. In particular, the Commission stated:

> "*The Commission bases its analysis on the effective prices resulting from retail offers, **taking account of promotions, discounts and other commercial conditions***." [86] (emphasis added)

4.45 The Commission further stated that:

> "***All elements of the offer** which are likely to influence the customer's choice must be taken into account*."[87] (emphasis added)

4.46 To assess the impact that these other unregulated services may have, we consider that only those costs that are incremental to the relevant Contract or Arrangement should be included within the scope of the assessment. Taking the FTTP VUA backhaul services provided in the Contract or Arrangement in question as the relevant increment, the LRIC of these other unregulated services should be included in the assessment.

4.47 Furthermore, the inclusion of other unregulated services should consider the extent to which any positive margins of FTTP VUA backhaul services (including technically required facilities) are contingent on the inclusion of other unregulated services. Where other unregulated services exhibit clear demand-side complementarity with FTTP VUA backhaul services, i.e., RSPs typically procure these services as a bundle with backhaul (for example, the maintenance of operators equipment, enhanced network reporting or premium SLAs), or where these other unregulated services fall within the scope of WCA markets, their inclusion may be warranted, and provided for in the margins. This approach reflects our previously stated objective of remaining aligned with competition law principles (including through a product market-based approach).[88] However, the inclusion of other unregulated services in the Contract or

[84] Paragraph 31.
[85] COMP/38.784, Commission Decision, 2007.
[86] Paragraph 694.
[87] Paragraph 700.
[88] Commission Notice on the definition of the relevant market for the purposes of Union competition law (2024), Section 1.2 ("Role of market definition"), which states that market definition is used "to identify the boundaries of competition between undertakings" and to provide "a framework to structure and facilitate the competitive assessment", and paragraph 25, noting that the main approach to defining product markets is based on demand-side substitutability.

Arrangement in question may be problematic if such services are not provided in wholesale markets downstream from WLA markets nor do they demonstrate clear complementarity, such as may be the case with caching services or Content Delivery Network (CDN) services, such that an equally efficient operator competing for backhaul (and relying on regulated wholesale inputs) would not be expected to replicate them. In these circumstances, the inclusion of such services entails a greater risk of exclusionary effects, and would therefore necessitate a particularly strong and well-substantiated justification for their inclusion in the assessment.

4.48 We are cognisant that the evaluation of the impact of other unregulated services adds complexity (and is potentially more resource-intensive and burdensome to implement). For example, as we have outlined above, significant incremental costs may be justified, for example, in the context of a broader or long-term commercial relationship with the RSP, where the appropriate cost and revenue apportionment may be complex to determine. For this reason, it is essential that Eircom should identify clearly the assumptions used in the apportionment and demonstrate its impact in the assessment, as part of the information requirements discussed below in subsection 4.2.4. Furthermore, it is incumbent on Eircom to ensure full disclosure to ComReg of all relevant aspects of the relevant Contract or Arrangement including for the avoidance of doubt where other unregulated services are set out outside the formal scope of the Contract or Arrangement including in terms of the relevant costs (at LRIC cost standard) and revenues (including, where appropriate, the cost of the revenue foregone as a result of discounts provided in these other unregulated services).

4.1.9 Time period

4.49 The time period or profitability approach refers to the period over which margins are assessed. Given that assessments are to be conducted on a Contract or Arrangement-specific basis, to assess the replicability of FTTP VUA backhaul contracts, margins should be assessed based on the projected margin over a period corresponding to the nominal duration of the relevant backhaul contract, on the basis of a discounted cash flow (‘**DCF**’) approach.

4.50 In a DCF approach, the cash flows forecast to arise over the life of the contract are discounted back to equivalent present day terms, to derive a Net Present Value (‘**NPV**’). We propose this to be the point at which there is a reasonable expectation that Eircom will enter into a Contract or Arrangement. We also consider Eircom’s regulatory Fixed Line WACC[89] to be an appropriate discounting factor. We note that this multi-period approach is not dissimilar to the DCF approach adopted by ComReg in the 2024 Decision for assessing Retail FTTP broadband bundles,[90] which are

[89] Eircom’s regulatory Fixed Line WACC is currently 4.82%. ComReg Document No. 25/35, Information Notice: Weighted Average Cost of Capital (“WACC”), Annual update – 2025, 12 June 2025.
[90] Decision Instrument of the 2024 Decision, Section 14.12.

assessed not on a period-by-period basis but instead assessed over the average customer life on a retail offer/bundle.

4.51 With a DCF approach Eircom is not required to achieve a positive margin in any given period (e.g. month, year) of the relevant Contract or Arrangement. Such a requirement may unduly constrain Eircom's commercial freedom and may not necessarily provide a meaningful safeguard to Access Seekers, particularly where the contracted backhaul demand may be locked-in and therefore not contestable. By contrast, a DCF gives Eircom pricing flexibility to, for example, defer or advance revenues over the life of contract to accommodate changes in the projected take-up, end-user data usage or to smooth non-recurring revenue elements, such as rebates or one-off payments, or any significant upfront costs (e.g. connections, network builds or IT development). Allowing for this flexibility reflects the expectation that similar flexibility would be available to Access Seekers.

4.52 We recognise that a multi-period DCF approach, which inherently involves forecasting cash flows, introduces a degree of uncertainty and adds some complexity to the assessment. We consider that the forecasting should be tied to the volume commitments and other terms of the Contract or Arrangement (e.g. volume targets). Furthermore, in principle, where the Contract or Arrangement has been subject to a formal competitive tender, we consider that the terms or assumptions of the tender should form the basis of the assessment. This approach would most closely mirror the conditions of replicability faced by competing bidders at the time of the tender.

4.53 We noted above that where contracts specifically require the provision of associated facilities, they should be included within the scope of the assessment. These facilities and other costs (e.g. integration of ESS/BSS or IT systems) could imply significant upfront capital outlays with long asset lives where their recovery could not be reasonably justified from the relevant contract alone. It is also the case that contracts may have explicit renewal clauses or options (as noted in subsection 3.4), which could effectively extend the provision of backhaul beyond the contract's nominal duration. Hence, it may be appropriate to consider a longer time period for the assessment than the period nominated in the contract. This could be implemented by way of the inclusion of a terminal value to the contract in the assessment, consistent with our proposal for LRIC, and would likely replicate the approach followed by a competing bidder. However, any such approach would need to be carefully assessed to avoid overstating incumbent advantages.

4.1.10 Summary

4.54 Table 3 summarises our preliminary views with regards to the Pricing Principles to be adopted in assessing margin squeeze between FTTP-based VUA services and downstream wholesale FTTP-based services.

Table 3 – Pricing Principles obligations (preliminary view)

Obligation	Requirement
Scope of services	FTTP VUA backhaul services, consisting of FTTP Bitstream services, FTTP White Label and other FTTP VUA backhaul services provided downstream from WLA markets
Aggregation level	Specific FTTP VUA backhaul Contract or Arrangement with RSP
Level of efficiency	Equally Efficient Operator (EEO)
Cost standard	Long Run Incremental Costs plus Common costs (LRIC+) (or FAC/ATC), with the total fixed broadband services provided over Eircom's backhaul or transmission network as the relevant increment
Upstream costs	FTTP VUA by reference to the relevant speed profile (based on regulated prices, and accounting for FTTP discounts and promotions for which the RSP may qualify)
Downstream cost	All relevant costs required to replicate a specific FTTP VUA backhaul Contract or Arrangement, including Eircom's backhaul or transmission network (LRIC+/EEO), the VUA-associated facilities (based on the applicable regulated charges) and incremental only technically required facilities (LRIC, with the fixed broadband services provided in a specific Contract or Arrangement as the relevant increment)
Other unregulated services	Incremental only other unregulated (including "out of contract") services, where the Contract or Arrangement is conditional upon, or materially influenced by, the provision of such services (LRIC, with the fixed broadband services provided

	in a specific Contract or Arrangement as the relevant increment).
Time period	Nominal duration of the specific backhaul Contract or Arrangement with RSP, and adopting a discounted cash flow ('DCF') approach.

Question

Q.1	Do you agree that Eircom's FTTP VUA backhaul Contracts or Arrangements should comply with the above Pricing Principles (summarised in Table 3), when assessing Eircom's obligation not to cause a margin squeeze between FTTP-based VUA services and downstream FTTP-based wholesale services? Please provide reasons for your responses.

4.2 Regulatory Oversight

4.2.1 Overview

4.55 In this section we set out our proposals to oversee Eircom's wholesale FTTP-based services offerings, given its obligation not to cause a margin squeeze between FTTP-based VUA services and wholesale FTTP-based services provided downstream from the Commercial NG WLA Market. In doing so, our objectives are to ensure both that Eircom's commercial freedom is not unduly restricted, and that RSPs tendering for or procuring backhaul services from Eircom are not impacted beyond what is necessary to safeguard the normal functioning of competitive processes in wholesale markets downstream from the Commercial NG WLA Market.

4.56 We propose to introduce an *ex ante*, preventive safeguard in relation to FTTP VUA backhaul services offered by Eircom. This is because relying solely on an *ex post* safeguard carries the same limitations as competition law enforcement, where any potential anti-competitive effects may only be assessed after arrangements are already in place and anti-competitive effects may materialise and may not be prevented or stopped without causing material detriment to RSPs.

4.57 We note in this regard, the recommendations of ComReg's advisers Oxera in the 2024 Decision, which stated that:[91]

[91] Paragraph 1.15 of the Oxera report. WCA/WLA market review: Oxera Updated Part 3 Report, ComReg Document No. 24/07f, ComReg Decision D05/24.

> "*In the absence of imposing an ex ante wholesale MST between FTTH VUA and FTTH Bitstream (specifically, in the urban WCA areas, where this behaviour may be targeted) and in the absence of ex ante regulation on the WCA services, given the potential risk identified, ComReg should continue to monitor market developments closely. It could do this, for example, through its* ***detailed monitoring of commercial offers****. In particular, ComReg could undertake systematic gathering of information from network providers and access seekers on FTTH services and the associated prices (including Bitstream prices). This monitoring would allow it to assess whether there are signs that Eircom's commercial strategy is shifting towards the provision of FTTH Bitstream instead of FTTH VUA, and whether it is launching commercial offers which have the effect of circumventing the obligations not to engage in behaviour that can materially affect infrastructure competition, such as geographically targeted offers*." (emphasis added).

4.58 Hence, Eircom should be required to notify ComReg of Contracts or Arrangements in respect of the provision of FTTP VUA backhaul services and demonstrate compliance with the Pricing Principles set out in this Draft Decision where such Contracts or Arrangements have the potential to have a material and enduring impact on fixed broadband markets. ComReg does not consider, at this point in time, that additional reporting obligations, further to those described as regards material Contracts or Arrangements, would be warranted. In particular, we do not consider necessary to require Eircom to report periodically on the performance of all Contracts or Arrangements in relation to its margin squeeze obligation and the Pricing Principles specified by way of this Draft Decision. This position does not preclude, and is without prejudice to, requests for additional information with respect to its Contracts or Arrangements, should it be justified in light of Eircom's obligation not to cause a margin squeeze as further specified by this Draft Decision and non-discrimination obligations.

4.59 We set out below how we propose to identify those Contracts or Arrangements which have the potential to have a material and enduring impact on fixed broadband markets and ensure a proportionate regulatory oversight.

4.2.2 Materiality threshold

4.60 To limit our preventive approach to FTTP VUA backhaul Contracts or Arrangements that may have a material and enduring impact on fixed broadband markets, we propose to define a materiality threshold. Hence, the proposed requirement not to implement the Contract or Arrangement without ComReg's approval would apply only in respect of those Contracts or Arrangements that meet this threshold. To this end, we propose three criteria, which must be met cumulatively:

- The volumes associated with the Contract or Arrangement are above a threshold of 5% of the total contestable demand for backhaul at any point over the duration of the Contract or Arrangement, as further explained below; and
- The duration of the Contract or Arrangement is longer than three (3) years. This is informed by information gathered by ComReg, as discussed above in paragraph 3.22; and
- The backhaul per month/line price offered in the Contract or Arrangement is below the LRIC cost benchmark, as further explained below.

4.61 The proposed contract volume and duration criteria are intended to filter for Contracts or Arrangements that could have a material and enduring impact on fixed broadband markets. The LRIC cost benchmark is designed to identify those cases where the risk of margin squeeze is higher, thereby justifying a preventive review by ComReg.

4.62 ComReg is of the view that it should have visibility of all *material* Contracts or Arrangements in relation to services provided downstream from WLA markets (we note, however, that Eircom's margin squeeze and non-discrimination obligations, including the obligation to meet the Pricing Principles set out in this Draft Decision, applies to all Contracts or Arrangements). This is consistent with the intention to monitor broadband markets, signalled in the 2024 Decision.[92]

4.63 We propose to distinguish between Contracts or Arrangements that meet cumulatively all three criteria and those Contracts or Arrangements which only meet cumulatively the first (contract volume) and second criteria (contract duration). Contracts or Arrangements which meet all three criteria, may not be implemented or put into effect prior to Eircom having notified and obtained ComReg's approval. Contracts or Arrangements meeting only the first and second criteria are subject only to a requirement that Eircom notify such Contracts or Arrangements to ComReg within thirty (30) days of its conclusion without any restriction as to their implementation and therefore may be implemented or put into effect without being required to obtain ComReg's approval prior to implementing or putting such Contracts or Arrangements into effect. The requirement on Eircom to demonstrate compliance for concluded Contracts or Arrangements may be expected to inform its approach to the negotiation and conclusion of such agreements.

4.64 For the avoidance of doubt, only Contracts or Arrangements that are concluded after the effective date of the final Decision (or Contracts or Arrangements for which the date of implementation has not passed on the date of the Decision) would be subject to regulatory oversight. However, while we are not proposing to review Contracts or Arrangements on a retrospective basis, where an existing contractual arrangement is changed, renewed, extended, or amended, and the notification and materiality

[92] Paragraph 9.844 of the 2024 Decision.

thresholds are met, the arrangement would fall within scope and subject to assessment.

4.65 Below, we explain in detail our choice of criteria.

4.66 With respect to the volumes criterion our aim is to ensure that Eircom can quickly undertake an assessment of whether a Contract or Arrangement meets or is close to meeting the materiality threshold and also to provide competing Access Seekers with appropriate visibility and transparency as to whether such Contracts or Arrangements may be subject to ComReg's scrutiny. To this end, and for the purpose only of this criterion, we propose to define the total contestable demand for broadband backhaul based on the total Fixed Broadband Subscriber Lines reported by ComReg in its Quarterly Key Data Reports ('**QKDR**'),[93] excluding the volumes of Eircom and VMI, on the basis that both operate end-to-end networks and primarily self-supply backhaul networks to deliver fixed line broadband services to their end-user base.

4.67 The use of the QKDR ensures that the evaluation is based on prevailing market conditions, which would not necessarily be the case under a simpler criterion such as a fixed revenue threshold. A revenue-based threshold is also inherently linked to pricing levels, such that lower prices reduce revenue, which may result in a material Contract or Arrangement falling outside of the scope of prior review. As the QKDR is publicly available, Access Seekers can also reasonably anticipate whether a Contract or Arrangement may fall within the scope of prior review and calibrate their pricing strategies accordingly.

4.68 In this regard, ComReg's QKDR for Q4 2025 shows a total of 1,765,075 subscriber lines.[94] Eircom and VM's shares are 489,188 and 355,731, respectively, resulting in a defined total contestable demand for backhaul of 920,156 subscriber lines (or 52%). We note that a subset of smaller RSPs have, on average approximately 40,000 subscriber lines in Q1 2026, which is circa 4%[95] of the defined total contestable demand. This provides a reasonable benchmark, as those RSPs are sufficiently scaled to approximate backhaul Contracts or Arrangements capable of impacting the market. Accordingly, and adopting a pragmatic approach, we propose that a volume threshold of 5% of the defined total contestable demand for broadband backhaul should be used to identify Contracts or Arrangements which require ComReg's pre-approval.[96]

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[93] QKDR reports are available in ComReg's Data Portal [Quarterly Key Data Report | Commission for Communications Regulation](#).

[94] See QKDR Data Portal sheet "5 – Broadband"

[95] Updating these figures for prior quarters does not materially change the results.

[96] The round-up to 5% also address the fact that RSPs other than Eircom and VM will also self-supply backhaul broadband.

4.69 With respect to the backhaul per month/line price criterion and the LRIC cost benchmark, we propose that this benchmark should be based on the LRIC cost per line used by Eircom in its Retail FTTP MST submissions (at the time of notification). RSPs are afforded a minimum level of protection anchored in the Retail FTTP MST LRIC, and using a lower cost in Contracts or Arrangements entails an increased risk of margin squeeze. This is why these Contracts or Arrangements should be subject to pre-approval, while other Contracts or Arrangements which only meet the contract volume and duration criteria but which the backhaul price is above the LRIC benchmark would only require to be notified ex post, with no suspensive effect attached to the obligation to notify.

4.2.3 Regulatory Assessment

4.70 For Contracts or Arrangements which meet the materiality threshold in full (i.e. the three criteria), we propose that Eircom be required to notify ComReg for prior approval such Contracts or Arrangements with RSPs and prior to their implementation or putting into effect. Upon notification of a Contract or Arrangement, ComReg will determine whether it meets the Pricing Principles within six (6) weeks of notification (the "**assessment period**") and allow or not its implementation or putting into effect. This is aimed at giving sufficient time to review Eircom's submission, to allow ComReg to give or withhold approval, and to provide legal and regulatory certainty to both Eircom and the RSP concerned, as to when approval will be forthcoming.

4.71 ComReg may require additional information, beyond the notification requirements, in order to complete its assessment. In such circumstances, ComReg will inform Eircom no later than three (3) weeks that additional information is required, whereupon the assessment period shall be suspended pending receipt of requested information and shall resume once such information has been provided by Eircom. Once the assessment period resumes, it shall be extended by two (2) weeks, to allow ComReg to consider the additional information provided. The assessment period shall therefore be a maximum of eight (8) weeks in duration, excluding any period during which it is suspended.

4.72 We welcome stakeholders' views in this regard, as we acknowledge that introducing an assessment period may impact on negotiations between the RSP and Eircom. However, we consider that a six-week assessment period appropriately reflects the potential complexity in assessing a Contract or Arrangement for margin squeeze, as discussed in subsection 3.4. We also note that a six-week (with a maximum of eight weeks) assessment period is shorter than the three-month assessment period for FTTP VUA discounts and promotions in the 2024 Decision, in which similar concerns with respect to assessing complex offers were equally noted by ComReg.[97]

[97] Section 9.9 of the Decision Instrument of the 2024 Decision.

4.73 To mitigate regulatory uncertainty and ensure that all information is available to ComReg, Eircom would be encouraged to engage with ComReg (on a confidential basis) in advance of the notification, in respect of its proposed pricing to any Contract or Arrangement under consideration. This could include information equivalent to that required for formal notification. We note that merger control authorities also encourage early engagement.[98]

4.74 ComReg's decision to approve or withhold approval will be published by ComReg without undue delay, together with a summary of the assessment and the reasons for ComReg's decision. In publishing its decision, ComReg will have regard to the protection of commercially sensitive information and determine the appropriate level of redaction, and may consult with Eircom for that purpose.

4.75 For the avoidance of doubt, Eircom should not implement or put into effect any material Contract or Arrangement meeting the three criteria, unless prior approval is granted by ComReg on the basis that the Contract or Arrangement meet the Pricing Principles.

4.76 In contrast, the requirement to notify, within 30 days, a Contract or Arrangement that meets the first and second criteria of the materiality threshold but not the third criterion would not attach any suspensive effect to the notification, so that the Contract or Arrangement could be implemented or put into effect before notification or during the course of ComReg's review. However, Eircom will be subject as regards such Contracts or Arrangements to the obligation not to cause a margin squeeze. This means that were ComReg not satisfied that the Contract or Arrangement does not meet the Pricing Principles, ComReg would intervene as appropriate to ensure compliance.

4.77 Given the potential for regulatory uncertainty arising for a subsequent intervention by ComReg, we propose that it should be open to Eircom to seek ComReg's determination that a Contract or Arrangement that only meets the first and second criteria of the materiality threshold, complies with the Pricing Principles. This Eircom could do by notifying such a Contract or Arrangement in the same way as it would in respect of a Contract or Arrangement meeting the materiality threshold. In that case the same process would apply as for the assessment of a Contract or Arrangement that meets the materiality threshold.

[98] For instance, in respect of the treatment of concentrations under Council Regulation (EC) No 139/2004, available at EUR-Lex: https://eur-lex.europa.eu/eli/reg/2004/139/oj (the Merger Regulation), the European Commission merger control procedures note as follows: "Pre-notification contacts should preferably be initiated at least two weeks before the expected date of notification. The extent and format of the pre-notification contacts required is, however, linked to the complexity of the individual case in question. In more complex cases a more extended pre-notification period may be appropriate and in the **interest of the notifying parties**." (emphasis added). European Commission, Directorate-General for Competition, Best Practices on the Conduct of EC Merger Proceedings, 20 January 2004, available at: https://competition-policy.ec.europa.eu (Merger control section).

4.78 To allow ComReg to carry out a full assessment of the notified Contract or Arrangement, its details should be fully finalised and not subject to any further changes or discussions relevant to the matters to be considered by ComReg, that is, to the application of the Pricing Principles. In practice, we would expect that any Contract or Arrangement would be notified after it has been signed by the relevant parties and all relevant details agreed and settled between the parties.

4.79 However, ComReg proposes that notification should also be possible earlier, should Eircom wish to do so, where Eircom satisfies ComReg that it has a good faith intention to enter into the Contract or Arrangement and that the Contract or Arrangement is sufficiently detailed and settled that it can be assessed as against the Pricing Principles. This could be the case where there is an agreement in principle, a memorandum of understanding, or a letter of intent signed by Eircom and the RSP concerned where details of the services being provided and associated prices have been settled and are part of the agreement in principle, memorandum of understanding or letter of intent. We propose further that Eircom should be able to notify the terms offered in response to a tender once those terms affecting the assessment, including prices and other commercial provisions, would be binding, were Eircom to be successful. This would allow notification to take place where negotiations are still ongoing but no longer concern the scope of services in the contract, the prices and other commercial provisions.[99]

4.80 We are cognisant that there may be a degree of uncertainty as to whether those thresholds are or will be met by the relevant Contract or Arrangement over its duration. However, having regard to the purpose pursued by the obligation to notify and allow a preventive approach, whether or not the materiality threshold is met should be determined by Eircom by reference to an "upper-bound" scenario, that is, the scenario giving rise to the greatest potential materiality, by reference to the highest volume, longest duration and lowest price achievable under the Contract or Arrangement. For instance, this means assuming that volume targets will be achieved and that renewal opportunities will be exercised, and the first and second criteria assessed on that basis.

[99] Our proposed approach is somewhat similar to the approach reflected in Article 4(1) of the EU Merger Regulation which provides that "*Concentrations with a Community dimension … shall be notified to the Commission* ***prior to their implementation*** *and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest. A notification may also be made where the undertakings concerned demonstrate to the Commission* ***a good faith intention to conclude an agreement****…*" (emphasis added). Recital 35 of the EU Merger Regulation also states that "*Notification should also be possible where the undertakings concerned satisfy the Commission of their intention to enter into an agreement for a proposed concentration and demonstrate to the Commission that their plan for that proposed concentration is sufficiently concrete, for example on the basis of an agreement in principle, a memorandum of understanding, or a letter of intent signed by all undertakings concerned, or, in the case of a public bid, where they have publicly announced an intention to make such a bid, provided that the intended agreement or bid would result in a concentration with a Community dimension.*"

4.81 In addition, where a Contract or Arrangement meets both the first (volume) and second (duration) criteria but not the third criterion, prior to implementing or putting into effect such Contract or Arrangement, it would be open to Eircom preventively to notify ComReg for prior approval. This would provide certainty to Eircom (and the RSP) and avoid any subsequent regulatory intervention by ComReg that it may consider necessary to ensure compliance with the further specification of the obligation set out in this Draft Decision, should Eircom decide not to notify such Contract or Arrangement.

4.2.4 Notification requirements

4.82 To facilitate ComReg's assessment of FTTP VUA backhaul Contracts or Arrangements subject to a notification requirement Eircom should provide, as part of its notification, at a minimum, the following information:

- The completed Notification Form, as set out in Annex 4 of this Draft Decision, which should be certified by an authorised appropriate Officer/[Director] of Eircom Limited.
- The cost model/business case supporting the assessment including all underlying assumptions (e.g. tiered volume targets) and supporting data, a disaggregation of revenues by services provided in the Contract or Arrangement and a disaggregation of costs associated with those services. The cost model/business case should be clearly structured, transparent and appropriately documented to facilitate independent review and verification.
- An unredacted copy of such Contract or Arrangement between the parties or similar.

4.83 We propose that the above requirement applies to Contracts or Arrangements subject to a prior approval obligation and to those Contracts or Arrangements meeting only the first and second criteria, as set out in subsection 4.2.2.

4.2.5 Summary

4.84 Table 4 summarises our proposals to oversee Eircom's wholesale FTTP-based services offerings, with regards to assessing margin squeeze between FTTP-based VUA services and downstream FTTP-based wholesale services.

Table 4 – Regulatory oversight obligations (preliminary view)

Obligation	Requirement
Notification for prior approval	Notification to ComReg of all FTTP VUA backhaul Contracts or Arrangements meeting cumulatively all three criteria of

	the materiality threshold, prior to their implementing or putting into effect.
Other notification obligations	Notification to ComReg of all FTTP VUA backhaul Contracts or Arrangements, meeting cumulatively the volume and duration criteria of the materiality threshold, within thirty (30) days of their conclusion.
Notification requirements	Provision to ComReg of information with respect to FTTP VUA backhaul Contracts or Arrangements subject to prior approval and all other Contracts or Arrangements meeting the volume and contract duration criteria, with the completed Notification Form, cost model/business case and unredacted copy of such Contracts or Arrangements.

Question

Q.2	Do you agree with ComReg's preliminary views that Eircom's FTTP VUA backhaul Contracts or Arrangements should be subject to notification and additional information obligations (summarised in Table 4)? Please provide reasons for your responses.

5 Next Steps

5.1 ComReg invites all interested parties to respond to the questions set out in Annex 2 of this Draft Decision document. The consultation period will run from 25 September 2026 to 17:00 on 23 October 2026, providing a 4-week consultation period.

5.2 ComReg will take all submissions received into consideration with a view to finalising its position and, where appropriate, revising the preliminary views set out in this Draft Decision.

5.3 As part of any submission, respondents are requested to:

- Provide all relevant factual (data) or other evidence supporting the response;

- Ensure responses contain paragraph numbers and where relevant cross refer to the paragraph numbers in the Draft Decision document;
- Provide a confidential response with any confidential elements clearly marked using the following format: [✂relevant text deemed to be confidential✂] and identify why they consider that the relevant text is confidential;
- Provide a non-confidential version of the response which may be published by ComReg, subject to the provisions of ComReg's guidelines on the treatment of confidential information (ComReg Document 05/24). Similarly, any correspondence received by ComReg from stakeholders during the consultation period may also be published; and
- Provide a copy of submissions in an unprotected electronic format in order to facilitate publication by ComReg.

5.4 This is a non-confidential version of the Draft Decision. Certain information has been redacted for reasons of confidentiality, with such redactions indicated by the symbol "✂". Should a stakeholder wish to review its own redacted information, it should make a request by email to wholesalepricing@comreg.ie and indicate, where relevant, the specific paragraph numbers within which the redacted information being requested is contained. ComReg will consider requests for redacted information and will, subject to the protection of confidential information, respond accordingly.

5.5 All responses should be sent by email to wholesalepricing@comreg.ie to arrive on or before 17:00 on Friday, 23 October 2026. Responses received after this date may not be considered.

5.6 ComReg will then notify these final draft measures to the EC, other NRAs and BEREC, pursuant to Regulation 17(4) of the ECC Regulations and Article 32 of the Code. Taking utmost account of any comments received from the EC, as well as from the other aforementioned parties, ComReg will then seek to adopt and publish the final decision in its subsequent Response to Consultation and Decision.

Annex 1 Draft Decision Instrument

1 STATUTORY POWERS GIVING RISE TO THIS DECISION

1.1 This Draft Decision Instrument (“Decision Instrument”) is made by the Commission for Communications Regulation (“ComReg”) for the purpose of amending the WLA Decision Instrument :—

(i) Pursuant to and having had regard to Sections 10 and 12 of the Communications Regulation Act 2002 and Regulation 4 and Regulation 42 of the ECC Regulations;

(ii) Pursuant to Section 14.6.4 of the WLA Decision Instrument;

(iii) Having regard to the analysis and reasoning set out in ComReg Decision No. D05/24.

(iv) Having taken the utmost account of the Gigabit Connectivity Recommendation;

(v) Having regard to relevant BEREC guidance (including the BEREC Guidance on the regulatory accounting approach to the economic replicability test);

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

(vii) Having taken account of the submissions received from interested parties in response to ComReg Document No. 26/63 as part of the public consultation held pursuant to Regulation 101 of the ECC Regulations;

(viii) 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 pursuant to Article 32 of the Code/Regulation 17 of the ECC Regulations and having taken utmost account of any comments made by them;

(ix) Pursuant to Regulations 50, 52, 53, 56 and 104 of the ECC Regulations;

(x) Pursuant to Regulation 99 of the ECC Regulations;

(xi) Having regard to the analysis and reasons set out in ComReg Decision DXX/YY, ComReg XX/YY.

1.2 This Decision Instrument shall be construed consistently with ComReg Decision DXX/YY [*the final Decision Document*]. For the avoidance of doubt, to the extent that there is any conflict between a decision instrument dated prior to the Effective Date (as defined in Section 9 of this Decision Instrument) and this Decision Instrument shall prevail.

PART I – GENERAL PROVISIONS

2 DEFINITIONS AND INTERPRETATION

2.1 In this Decision Instrument, unless the context indicates otherwise:—

"**Decision D05/24**" means ComReg's Decision D05/24, Document No. 24/07, entitled "W*holesale Local Access (WLA) provided at a fixed location and Wholesale Central Access (WCA) provided at a fixed location for mass-market products*", dated 18 January 2024;

"**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 2 Heuston South Quarter, St John's Road, Dublin 8, designated with Significant Market Power in Decision D05/24 and subject to the obligations imposed by that Decision;

"**Gigabit Connectivity Recommendation**" means Commission Recommendation (EU) 2024/539 of 6 February 2024 on the regulatory promotion of gigabit connectivity;

"**WLA Decision Instrument**" means the decision instrument at Annex 1 of Decision D05/24.

2.2 Capitalised terms which are not defined in Section 2.1 shall have the meaning set out in the WLA Decision Instrument.

3 SCOPE AND APPLICATION

3.1 This Decision Instrument amends the further specification of Eircom's obligation not to cause a margin squeeze imposed by Section 14.6.4 of the WLA Decision Instrument, as contained in Sections 14.12 to 14.19 of the WLA Decision Instrument, by amending and adding to the requirements set out in those sections.

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

PART II – AMENDMENTS OF THE WLA DECISION INSTRUMENT

4 DEFINITIONS

4.1 Section 2.1 of the WLA Decision Instrument is hereby amended by adding the following definitions:

“Average Total Costs” or **“ATC”** means a cost standard based on a Fully Allocated Cost (“**FAC**”) approach which reflects all costs incurred in the provision of a product or service including variable, fixed, common and joint costs;

“**Contract or Arrangement**” means a contract, agreement, arrangement or understanding between Eircom and an RSP entered into on or after [date of the Effective Date] and includes amendment, memorandum, variation, side letter, statement of work, addendum, tender, proposal, purchase order, or other document which amends, supplements, implements or forms part of the contract or arrangement made on or after [date], for the provision by Eircom of FTTP VUA Backhaul Service;

“**EEO**” stands for Equally Efficient Operator;

“**FAC**” stands for Fully Allocated Costs;

“**FTTP VUA Backhaul Service**” means a wholesale service provided by Eircom which includes the collection and transmission of FTTP broadband traffic originated from End User Premises connected to Eircom’s network’s Access Paths, between VUA aggregation nodes and across the transmission or backhaul network to a designated Point of Handover for collection by the RSP, whether VUA is included as part of the service or provided separately;

“**LRIC**” stands for Long Run Incremental Cost and means all efficiently incurred variable and fixed costs directly attributable to a given increment (e.g. a product or network component) based on whether such costs are directly caused over the long term by the provision of that increment in question;

“**LRIC+**” is a proxy for ATC/FAC and means LRIC to which is added including an appropriate apportionment of joint and common costs;

“**Materiality Threshold”** means the test set out in Section 14.23;

“**Notification Form**” means the notification form referred to at Section 14.29;

“**QKRD**” means the Key Data Report published by ComReg on its website on a quarterly basis;

5 “RSP” stands for Retail Service Provider.RE-SPECIFICATION OF THE OBLIGATION NOT TO CAUSE A MARGIN SQUEEZE

5.1 The WLA Decision Instrument is hereby amended by adding the following text:

(i) Immediately under the text "*Further specification of the obligation not to cause a Margin Squeeze"* and above Section 14.12, the text "Retail Margin Squeeze Test"; and

(ii) Immediately after Section 14.19 and above Section 15, the text "Wholesale Margin Squeeze Test".

5.2 Section 14.12 of the WLA Decision Instrument is hereby amended as follows:

(i) By adding after "margin squeeze" in the second line, the words "between FTTP-based VUA services and FTTP-based services in the retail market downstream from the Commercial NG WLA Market"; and

(ii) By substituting in the third line "pass a Margin Squeeze Test" with "pass the following Retail Margin Squeeze Test".

5.3 Sections 14.13, 14.14, 14.15, 14.16, 14.17, 14.18 and 14.19 of the WLA Decision Instrument are hereby amended by substituting "*Margin Squeeze Test*" or "*Margin Squeeze test*" in each place they occur with "*Retail Margin Squeeze Test".*

5.4 Section 14 of the WLA Decision Instrument is hereby amended by adding the following subsections, immediately after the text "**Wholesale Margin Squeeze Test**" added pursuant to Section 5.1:

14.20 For the purposes of Section 14.6.4 of the WLA Decision Instrument, effective from [DD MM 2027], Eircom is required not to cause a margin squeeze between FTTP-based VUA services and FTTP-based services in markets downstream from the Commercial NG WLA Market but upstream from the retail market.

Wholesale Margin Squeeze

14.21 Further to Section 14.20, Eircom shall not put into effect a Relevant Contract or Arrangement unless and until ComReg has determined that the price for the services provided under the Contract or Arrangement does not cause a Wholesale Margin Squeeze, namely the price under the Relevant Contract or Arrangement recovers at least the costs to Eircom arising from the provision of the services under the Contract or Arrangement over the duration of the Contract or Arrangement, where:

(i) the cost of FTTP VUA is the price as published in the ARO Price List reflecting applicable speed profiles and may account for applicable FTTP discounts and promotions;

(ii) the cost of the services required to replicate the FTTP VUA Backhaul Service under the Contract or Arrangement is the LRIC+ of an EEO's backhaul or transmission network calculated by reference to an increment equal to the total fixed broadband services provided over this network, the published price for relevant VUA Associated Facilities and the LRIC of the other technically required facilities calculated by reference to an increment equal to the fixed broadband services provided in the Contract or Arrangement;

(iii) the cost of the services obtained from third party operators is the price charged by the third-party operators; and

(iv) the cost of any other service or facility provided under the Contract or Arrangement (including "out of contract" services) is their LRIC calculated by reference to an increment equal to the fixed broadband services provided in the Contract or Arrangement.

14.22 For the purposes of Section 14.21:

(i) "Price" means the total amount of monies owed under a Contract or Arrangement in consideration for the provision of all services under the Contract or Arrangement;

(ii) "Relevant Contract or Arrangement" means a Contract or Arrangement notified pursuant to Section 14.23 or Section 14.24.

Determination

14.23 Further to Section 14.20, following their conclusion and prior to their implementation, without prejudice to Section 14.24.1, Eircom shall notify to ComReg, Contracts or Arrangements, or any extension, renewal or variation of a Contract or Arrangement, that meet the Materiality Threshold, namely:

14.23.1 The number of Subscriber Lines from which traffic will be collected and transmitted across Eircom's transmission network under the Contract or Arrangement exceeds 5% of the Contestable Demand for Backhaul at any point over the duration of the Contract or Arrangement; and

14.23.2 The duration of the Contract or Arrangement exceeds three (3) years; and

14.23.3 The backhaul price per line per month in the Contract or Arrangement is below the Long Run Incremental Cost benchmark;

Where:

(i) "Subscriber Lines" means a fixed broadband line purchased by a consumer or at a residential premises as reported in ComReg's QKDR;

(ii) "Contestable Demand for Backhaul" means the number of Subscriber Lines reported in the latest available QKDR, excluding the Fixed Broadband Subscriber Lines attributed to Eircom and to Virgin Media Ireland Limited; and

(iii) "Long Run Incremental Cost Benchmark" means the LRIC cost per line used in Eircom's most recent notification pursuant to Section 14.14.

14.24 Eircom may notify to ComReg:—

14.24.1 A Contract or Arrangement prior to its conclusion provided that Eircom satisfies ComReg of its good faith intention to conclude the Contract or Arrangement in short order and that the scope of the Contract or Arrangement and associated price are sufficiently settled that the assessment set out in Section 14.21 can be conducted;

14.24.2 A Contract or Arrangement that meets both the criteria set out at Sections 14.23.1 and 14.23.2 but does not meet the criteria at 14.23.3 .

14.25 The determination required under Section 14.23 shall be made by decision addressed to Eircom:—

14.25.1 Within six weeks of receipt of a complete notification made further to Section 14.23 or Section 14.24; or

14.25.2 Where ComReg requests further information within three weeks of receipt of a complete notification made further to Section 14.23 or Section 14.24, within eight (8) weeks of notification, excluding the period between the request of information and the provision of the information by Eircom.

14.26 Notice of a determination made pursuant to Section 14.25 shall be published on ComReg's website having due regard to the protection of the commercial interests of the parties concerned. ComReg may publish the decision made under Section 14.25 having due regard to the protection of the commercial interests of the parties concerned.

Monitoring

14.27 Eircom shall notify to ComReg within one month of its conclusion and irrespective of its date of implementation, a Contract or Arrangement that only meets the criteria set out in Section 14.23.1 and Section 14.23.2 save where that Contract or Arrangement has been notified pursuant to Section 14.24.2.

14.28 Upon review of the Contract or Arrangement notified pursuant to Section 14.27, ComReg may, as necessary and appropriate, require any further information from Eircom or direct Eircom to do or refrain to do anything in order to ensure that the Contract or Arrangement does not cause a margin squeeze between FTTP-based VUA services and FTTP-based services in a market downstream from the Commercial NG WLA Market but upstream from the retail market.

Notification Form

14.29 A notification for the purpose of Sections 14.23, 14.24 or 14.27 shall be made using the Notification Form at Schedule [●] and include the following information and documents:

(i) An unredacted copy of the Contract or Arrangement or in the case of a notification further to Section 14.24.1, other evidence of the parties' intention to enter into the Contract or Arrangement being notified such as an agreement in principle, a memorandum of understanding, or a letter of intent setting out the scope and terms and conditions of the proposed Contract or Arrangement;

(ii) The basis upon which the Contract or Arrangement is notified and whether or not the Materiality Threshold is met;

(iii) The basis upon which Eircom submits that there is no Wholesale Margin Squeeze under Section 14.21;

(iv) The cost model/business case supporting the assessment, including all underlying assumptions (e.g. tiered volume targets) and supporting data, a disaggregation of revenues by services provided in the Contract or Arrangement and a disaggregation of costs associated with those services; and

(v) Any other information relevant to ComReg's determination."

PART III – OPERATION AND EFFECTIVE DATE

6 STATUTORY POWERS NOT AFFECTED

6.1 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).

7 SEVERANCE

7.1 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 PUBLICATION AND NOTIFICATION

8.1 This Decision Instrument shall be published on ComReg's website, www.comreg.ie, and on the same day, notified to Eircom.

9 EFFECTIVE DATE

9.1 The Effective Date of this Decision Instrument shall be, unless otherwise expressly stated in this Decision Instrument, the date of its publication on ComReg's website.

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

[ ]

COMMISSIONER

THE COMMISSION FOR COMMUNICATIONS REGULATION

THE […] DAY OF […] 2027

SCHEDULE

NOTIFICATION FORM

(PLEASE SEE ANNEX 4)

Annex 2 Questions

Q1. Do you agree that Eircom's FTTP VUA backhaul Contracts or Arrangements should comply with the above Pricing Principles (summarised in Table 3), when assessing Eircom's obligation not to cause a margin squeeze between FTTP-based VUA services and downstream FTTP-based wholesale services? Please provide reasons for your responses.

Q2. Do you agree with ComReg's preliminary views that Eircom's FTTP VUA backhaul Contracts or Arrangements should be subject to notification and additional information obligations (summarised in Table 4)? Please provide reasons for your responses.

Annex 3 Information requested on 1 April 2026 from RSPs

ANNEX 1

Please complete the spreadsheet […] with the relevant pricing data for FTTP/VDSL wholesale products and/or aggregation/backhaul services purchased for the period indicated - Q4 2025 (three months to December 2025). The spreadsheet is provided as a separate attachment to the cover email for this letter. Please provide in this spreadsheet, or in a separate document, any necessary information or assumptions supporting or explaining the data provided.

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ANNEX 2

Please provide copy of invoices and/or backup to invoices corresponding to the data provided in Annex 1, for FTTP/VDSL wholesale products and/or aggregation/backhaul services purchased for the period indicated - Q4 2025 (three months to December 2025).

NOTE: This information may be limited to sample invoices, for each supplier, that account for approximately 50% of your total FTTP/VDSL VUA/Bitstream and/or aggregating/backhaul purchases for the relevant quarter, provided that at least one invoice per supplier is included.

§

ANNEX 3

Please provide a detailed description of the contractual terms governing your FTTP/VDSL wholesale and/or aggregating/backhaul purchases, associated with the data provided in Annexes 1 and 2. Please organise your response according to the following points, addressing each as applicable:

- **A3.1 Form of Agreement:**

  Specify whether the relevant terms are set out in executed contracts, amendments/addenda, commercial letters, or other instruments.

- **A3.2 Contract Duration and Commercial Conditions:**

  Describe the contractual duration, renewal mechanisms, line volume or data traffic thresholds, minimum commitments, discounts or rebates, connection/activation fees and one-off charges and any other commercial provisions that materially affect the effective prices paid.

- **A3.3 Additional Facilities:**

  Provide the details of any required facilities obtained under these agreements or other commercial arrangements, including interconnection/NNI handoff facilities, colocation, or related handover services.

- **A3.4 Associated Services:**

  Provide the details of any services that are associated or bundled with your FTTP/VDSL VUA, Bitstream, or aggregating/backhaul purchases under the applicable contracts or commercial arrangements.

- **A3.5 Other Relevant Factors:**

  Provide any further information that may materially influence the effective prices paid under the applicable contracts or commercial arrangements.

NOTE: This information may be limited to the contracts or agreements that account for approximately 50% of your total FTTP/VDSL VUA/Bitstream and/or aggregating/backhaul purchases for the relevant quarter.

Annex 4 Notification Form

Section 1: Identification of FTTP VUA backhaul Contract or Arrangement			
No	**Field**	**Requirement**	**Source Reference(s)**
1.	**RSP**	*State Retail Service Provider party to the Contract or Arrangement for FTTP VUA backhaul services.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
2.	**Date of Implementation**	*State the date (month and year) on which the relevant prices and contractual terms will take effect.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
3.	**Volume**	*State the forecast average annual fixed broadband VUA lines associated with the Contract or Arrangement, including lines associated with other VUA providers, where applicable.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
4.	**Duration**	*State the nominal duration of the Contract or Arrangement (in calendar months)*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
5.	**Renewal rights**	*State any renewal, extension or rollover provisions, including the maximum potential duration of the Contract or Arrangement.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
6.	**Services provided**	*State all services included in the Contract or Arrangement, including backhaul services, associated facilities and other unregulated services, where applicable.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
7.	**Related Agreements**	*Identify any side letters, amendments, statements of work, memoranda of understanding or other agreements that form part of the arrangement or may materially affect the effective prices.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*

Note: Completion of all fields in the above table is mandatory.

Section 2: Materiality threshold			
No	**Criterion**	**Requirement**	**Source Reference(s)**
1.	**Volume**	*State the maximum number of fixed broadband subscriber lines expected to be attained at any point during the duration of the Contract or Arrangement. State the total contestable fixed broadband subscriber lines and the relevant QKDR quarter used. State whether contractual volume commitments, targets, options or forecast volumes have been relied upon in determining the maximum volume. Show the calculation of the percentage of contestable demand represented by the Contract or Arrangement.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
2.	**Duration**	*State the maximum duration (in calendar months) of the Contract or Arrangement. State whether renewal rights, extension rights, automatic renewals or similar contractual provisions have been taken into account in determining the maximum duration. State the resulting duration used for the purposes of the notification threshold assessment.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
3.	**Backhaul cost**	*State the present value (€) of the total backhaul charge per VUA line/month used in the Contract or Arrangement. State the LRIC benchmark backhaul cost (€/line/month) in use in Eircom's Retail MST submissions.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*

Note: Completion of all fields in the above table is mandatory.

Section 3: Prices of FTTP VUA backhaul services						
No	**FTTP VUA backhaul services**	**Unit**	**Regulated Offer**	**Year 1**	**…** [(1)]	**Source Reference(s)**
1.	*Identify FTTP VUA backhaul service.*	*Identify charging unit (e.g. VUA line, circuit)*	*Identify Regulated Reference Offer. If not applicable mark "Not Applicable".*	*State Average Price (€) in implementation Year 1 of the identified Contract or Arrangement, net of volume-based or other discounts.*		*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
2.	… [(2)]					

(1) *Add columns for each of the remaining years of the identified Contract or Arrangement.*

(2) *Add rows for additional FTTP VUA backhaul services.*

Note: Completion of all fields in the above table is mandatory.

Section 4: Assessment of Pricing Principles			
No	**Field**	**Requirement**	**Source Reference(s)**
1.	**Scope of Services**	*Demonstrate that all services for the backhaul of FTTP VUA data traffic in the identified Contract or Arrangement are included in the assessment.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
2.	**Level of Aggregation**	*Demonstrate that the level of aggregation for the assessment for FTTP VUA backhaul services is based on the identified Contract or Arrangement.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
3.	**Reference operator**	*Demonstrate that the costs in the assessment are reflective of an Equally Efficient Operator (EEO).*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
4.	**Cost standard**	*Demonstrate that the cost standard used for calculating the costs associated with the backhaul or transmission network is consistent with the Long Run Incremental Costs plus Common costs (LRIC+, with the total fixed broadband services provided over the backhaul or transmission network as the relevant increment).*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
5.	**Upstream cost**	*Demonstrate that the costs in the assessment for the upstream cost correspond to the FTTP VUA service, by reference to the relevant FTTP VUA speed profile, and explain, as appropriate, if discounts are availed by the RSP and included in the assessment.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
6.	**Downstream costs**	*Demonstrate that all costs associated with services provided are included in the assessment, including Eircom's backhaul or transmission network (based on LRIC+/EEO), the VUA-associated facilities (based on applicable regulated charges) and other technically required associated facilities (based on LRIC, with the fixed broadband services provided in the identified Contract or Arrangement as the relevant increment).*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*

Section 4: Assessment of Pricing Principles			
7.	**Other unregulated services**	*Demonstrate that the assessment is inclusive of unregulated (including "out of contract") services where the identified Contract or Arrangement is conditional upon, or materially influenced by, the provision of such services (based on LRIC, with the fixed broadband services provided in the identified Contract or Arrangement as the relevant increment). If no such services are included, state "Not Applicable".*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
8.	**Time Period**	*Demonstrate that the assessment is based on a discounted cash flow ('DCF') approach based on the nominal duration of the identified Contract or Arrangement or, as appropriate, demonstrate if an extended duration is used, identifying the renewal rights, extension rights, automatic renewals or similar contractual provisions that have been relied upon.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*

Note: Completion of all fields in the above table is mandatory.

Section 5: Summary Assessment			
No	**Field**	**Requirement**	**Source Reference(s)**
01.	**Total Revenue (PV)**	*State the present value (€) of all revenues included in the assessment over the assessment period.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
02.	**Total Cost (PV)**	*State the present value (€) of all capital and operating costs included in the assessment over the assessment period.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
03.	**Terminal Value (PV)**	*State the present value (€) of any terminal value included in the assessment. Where no terminal value is included, state "Not Applicable".*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
04.	**Total Margin (NPV)**	*State the net present value (€) of the arrangement, calculated as Total Revenue (PV) less Total Cost (PV), plus Terminal Value (PV), where applicable.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
05.	**Other unregulated services (NPV)**	*State the net present value (€) attributable to any additional regulated or unregulated services included in the assessment. If no such services are included, state "Not Applicable".*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
06.	**Discount rate (WACC)**	*State the Weighted Average Cost of Capital (%) used to discount future cash flows in the assessment.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
07.	**Total FTTP VUA lines**	*State the forecast average annual number of FTTP VUA lines included in the assessment over the relevant assessment period.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
08.	**Backhaul cost (PV)**	*State the present value (€) of the total backhaul costs per VUA line/month included in the assessment and summarise the methodology used to calculate those costs.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*
09.	**Time Period**	*State the assessment period used in the economic assessment and explain how the period has been determined, including the treatment of renewal or extension options.*	*Identify the document(s), page(s), paragraph(s), worksheet tab(s) or cell reference(s) where this information can be verified.*

Note: Completion of all fields in the above table is mandatory.

Section 5: Certification
In accordance with Section [XXX] of the Decision Instrument in ComReg Decision [XX/XX], I, the undersigned, being a duly authorised Officer/[Director] of Eircom Limited, hereby certify that, to the best of my knowledge, having made reasonable enquiries, the information contained in this Notification Form is true, accurate and complete in all material respects and has been provided in good faith for the purposes of demonstrating compliance with the obligations set out in ComReg Decision [XX/XX].
Authorised Officer / [Director] of Eircom Limited
Date

Annex 5 Glossary of Terms

Acronym	Full Title
ARO	Access Reference Offer
ATC	Average Total Cost
BEREC	Body of European Regulators for Electronic Communications
BSS	Business Support Systems
BU-LRAIC	Bottom Up Long Run Average Incremental Cost
CDN	Content Delivery Network
CG	Current Generation
CGA	Current Generation Access
CJEU	Court of Justice of the European Union
CPI	Consumer Price Index
DCF	Discounted Cash Flow
DWDM	Dense Wavelength Division Multiplexing
EC	European Commission
ECC	Electronic Communications Code
EEO	Equally Efficient Operator
ESS	Enterprise Support Systems
FAC	Fully Allocated Cost
FTTC	Fibre to the Cabinet
FTTH	Fibre to the Home
FTTP	Fibre to the Premises
IBH	In Building Handover

LLRO	Leased Line Reference Offer
LRAIC	Long Run Average Incremental Cost
LRIC	Long Run Incremental Cost
LRIC+	Long Run Incremental Cost Plus Common Costs
MFN	Most Favoured Nation
MSA	Master Services Agreement
MST	Margin Squeeze Test
NBI	National Broadband Ireland
NG	Next Generation
NGA	Next Generation Access
NNI	Network-to-Network Interface
NPV	Net Present Value
NRA	National Regulatory Authority
NRAs	National Regulatory Authorities
OECD	Organisation for Economic Co-operation and Development
QKDR	Quarterly Key Data Report
REO	Reasonably Efficient Operator
RIA	Regulatory Impact Assessment
ROADM	Reconfigurable Optical Add-Drop Multiplexer
RSP	Retail Service Provider
SEO	Similarly Efficient Operator
SLA	Service Level Agreement
SMP	Significant Market Power

TFEU	Treaty on the Functioning of the European Union
VHCN	Very High Capacity Network
VLAN	Virtual Local Area Network
VMI	Virgin Media Ireland
VUA	Virtual Unbundled Access
WACC	Weighted Average Cost of Capital
WCA	Wholesale Central Access
WEIL	Wholesale Ethernet Interconnection Links
WLA	Wholesale Local Access