



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Urgent Interim Measures Notice addressed to Eircom Limited t/a Eir and Open Eir

“€50 Gift Card”

Confirmation

Reference: ComReg 25/71c

Decision: D13/25

Date: 31 October 2025

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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1 Introduction

- (1) On 17 October 2025, ComReg imposed by notice in writing (“the Notice”) pursuant to Section 57(8) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“the 2023 Act”), urgent interim measures on Eircom in respect of a promotion, to run from 13 October 2025 to 23 November 2025, offering end-users connecting to Eircom’s fibre-to-the-home broadband network through any retailer customer of Eircom’s wholesale network arm Open eir, a €50 Gift Card (hereafter, “the Promotion”).
- (2) Under section 57(8) of the 2023 Act, ComReg, where it has evidence of a breach of a regulatory provision, or of a substantial risk that such a breach will take place that risks creating serious economic or operational problems for other providers or users of electronic communications networks and services, may impose urgent interim measures to remedy the breach.
- (3) As set out in the Notice (ComReg Decision D13/25), having regard to Eircom’s obligation under ComReg Decision D05/24 of 18 January 2024 (ComReg 24/07)¹ to obtain the prior approval of ComReg before offering any wholesale promotion or discount in respect of its FTTH VUA product, the offering of the Promotion by Eircom without ComReg’s prior approval was prima facie a breach of a regulatory provision within the meaning of section 57 of the 2023 Act, that risks creating serious economic or operational problems for other providers of electronic communications networks or services. As such urgent interim measures were required in order to address those risks.
- (4) The measures imposed on Eircom include the following:
 - (a) A requirement to cease immediately all end-user registration activities and without limitation, to that purpose:
 - (i) Deactivate the “Register Here” link on www.openeirrewards.ie;
 - (ii) On www.openeirrewards.ie, substitute the text “*Register Here To claim your €50 Gift Card after installation using your Eircode and Email address*” with “*Registration is no longer available*”;
 - (b) A requirement to cease, or arrange to have ceased immediately, the distribution of the Promotion’s leaflets to any of the 77,464 premises targeted by the Promotion;

¹ Decision D05/24, “*Market Reviews. Wholesale Local Access (WLA) provided at a fixed location. Wholesale Central Access (WCA) provided at fixed location for mass-market products*”, 18 January 2024.

- (c) A requirement to take all necessary measures to bring to an immediate end any marketing activity concerned with the Promotion whether under the eir or Open eir brand or any other brand of Eircom Limited and refrain from making available any information regarding the Promotion and from engaging in any related marketing activities, directly or indirectly; and
 - (d) A requirement to advise immediately all customers of Open eir who were advised of the Promotion by Open eir, to cease all marketing activities in respect of the Promotion, to remove from their website any information regarding the Promotion and to refrain from making available information in respect of the Promotion.
- (5) As the Promotion had already been launched and any delays in taking the actions required by ComReg would materially affect their effectiveness, there was a situation of extreme urgency which justified that the measures imposed on Eircom take effect immediately without Eircom having the opportunity to make submissions in advance of the measures taking effect. In accordance with section 57(8) of the 2023 Act, Eircom was given the opportunity to make submissions to ComReg in respect of the Notice, which it availed of by letter of 24 October 2025. ComReg is required under section 58(9) of the 2023 Act to consider any such written submissions and by notice in writing, confirm, revoke or vary the urgent interim measure.
- (6) In its submissions² Eircom requested that ComReg “*Withdraw the Urgent Interim Measures Notice without delay; Review its position in lights of the facts and precedents outlined [in Eircom’s submissions]; and Conclude this matter in a manner consistent with regulatory proportionality and procedural fairness*”. For the reasons set out below, having considered Eircom’s submissions, ComReg has determined that the urgent interim measures should be confirmed and the Notice of 17 October 2025 remains in force until 23 November 2025.

2 Eircom’s submissions

2.1 Procedural concerns

- (7) Under the heading “*ComReg’s measure and Procedural concerns*”, Eircom’s submissions set out a number of complaints of a procedural nature, which extend into a criticism of the obligations currently applicable to Eircom. While none of these submissions address the Urgent Interim Measures set out in the Notice they are nonetheless addressed below.

² See Appendix 1: Letter from Kjeld Hartog (Eircom) to Robert Mourik (ComReg) of 24 October 2025.

- (8) First, Eircom submits that publication of “*competitor complaints*” in the Notice would be “*highly irregular*” while ComReg’s “*silence in response to these complaints*” would signal “*tacit support*” for the complainant’s position, which would raise “*serious questions about impartiality and procedural fairness*”. In addition, ComReg would have failed to engage meaningfully with Eircom and did not invite Eircom to submit its views in writing for assessment and instead, would have relied on “*vague assertions of “serious economic problems” without any demonstrable evidence or consideration of the broader market impact*”.
- (9) ComReg does not accept that the Urgent Interim Measures Notice raises any questions about impartiality or procedural fairness. Eircom’s complaints in this regard ignore the procedural requirements which govern the issue of an Urgent Interim Measures Notice under section 57 of the 2023 Act. This includes in particular the requirement on the part of ComReg under section 57(4) to “*identify the evidence relied upon,*” namely in this case, among others, the correspondence received from service providers which compete with Eircom. The fact that ComReg does not address the complaints reflects the nature of an urgent interim measure notice and does not suggest a “*tacit support*”. A full investigation of the matter will be carried out which will give Eircom full opportunity to be heard. Similarly, there are no “vague assertions” in the Notice of “serious economic problems” as Eircom contends. Rather, the Notice sets out based on the evidence available to ComReg, the serious economic problems which would follow from the suspected breach, as required under section 57(1) of the 2023 Act.
- (10) Second, Eircom also complains of “*the absence of any meaningful engagement with Eircom prior to the issuance of the Notice*” and that the Notice amounts in Eircom’s view to a “*misuse of [the] mechanism*” in section 57(8) allowing for urgent interim measures without advance submissions “*exceptionally and in cases of extreme urgency*”. There would be a prejudice to Eircom in not having an opportunity to make submissions in advance which was increased by ComReg making the matter “*extensively public*”.

- (11) The mechanism in section 57(8) of the 2023 Act allows ComReg to issue urgent interim measures without prior consultation with the addressee of the measures exceptionally and in cases of extreme urgency. The absence of substantive engagement results from Eircom's failure to engage with ComReg prior to the launch of the Promotion and it is not clear on what grounds Eircom considers that the "*mechanism*" has been "*misused*". The Notice sets out the basis for ComReg relying on section 57(8) of the 2023 Act, namely that Eircom had already introduced on the market a Promotion without notifying or obtaining ComReg's prior approval in circumstances where there were serious doubts that it was a Promotion that would have been capable of approval. The conditions of extreme urgency were met given that the Promotion was on the market and its economic impact would be compounded with any time passing. The Notice was published in the normal way on ComReg's website in order to ensure transparency of ComReg's decisions having regard to the fact that the Promotion had been launched and in order to ensure full compliance with the measures.
- (12) Eircom under the same heading also submits that "*this unjustified intervention has had immediate and damaging consequences for open eir's brand, its commercial strategy, and its investment signals.*" According to Eircom, it would be particularly relevant that market characteristics have evolved and ComReg ought to have undertaken a "*fresh market review*". The urgent interim measures and ComReg's "*continued refusal to review the market*" would be designed to shield Siro and Virgin Media "*from all forms of legitimate competition, to the detriment of the Irish consumers*". As such Eircom's investors would be "*actively reviewing their investment exposure in light of the escalating regulatory risk...*"
- (13) There is no evidence whatsoever supporting Eircom's contentions of impropriety on the part of ComReg and they are denied in the strongest terms. ComReg also notes that Eircom's contentions do not appear to be concerned with the Urgent Interim Measures as such, but with the regulation of Eircom as an operator with Significant Market Power in the Wholesale Local Access market, as set out in ComReg Decision D05/24. ComReg's position in respect of Eircom's calls for a market review has been the subject of extensive correspondence between Eircom and ComReg.³ There is no need to repeat it here given that Eircom's position that ComReg should undertake a "*fresh market review*" does not justify, and cannot excuse, non-compliance with existing obligations. Any damaging consequences for the Open eir's brand or its commercial strategy arising from ComReg having to issue the Urgent Interim Measures Notice results from Eircom's failure to notify ComReg of the Promotion and to engage with ComReg.

³ Eircom's letters of 28 March 2025, 9 May 2025, 21 May 2025, 29 May 2025 and 22 July 2025; ComReg's responses of 16 May 2025, 28 May 2025, 3 July 2025 and 14 August 2025.

2.2 Meaning of “Promotion” under ComReg Decision D05/24

- (14) Under the heading “*ComReg’s Misinterpretation and International Precedent*,” Eircom in its submissions “*strongly disagrees with ComReg’s interpretation of the €50 gift card scheme as a Promotion under Section 14.9 of Decision D05/24*”.
- (15) As recalled in the Notice, the offer of Wholesale Discounts and Promotions by Eircom in respect of FTTP VUA is regulated under Section 14 of the Decision Instrument at Annex 1 of ComReg Decision D05/24 (“the WLA Decision Instrument”). In particular, Section 14.9 provides that “*Eircom shall not apply any Discounts or Promotions in respect of FTTP-based VUA without the express prior approval of ComReg...*” In turn, “*Promotion*” is defined as “*an offer in respect of a product, service or facility which is available for a finite period of time and which entails a price reduction*”.
- (16) Eircom submits in summary that:
- a. Open eir’s campaign does not entail a reduction in open eir’s “standard” wholesale prices, nor does it reduce or alter the commercial terms offered to Access Seekers; it falls outside the scope of ComReg’s regulatory oversight under Decision D05/24: according to Eircom, “*the generation of revenues through commercial marketing activities is not governed by regulation nor should such activity be restricted by ComReg*”.
 - b. ComReg’s “*wholly flawed construct*” implies that there is “*revenue foregone*” which in turn “*entails in effect a price reduction*”. However, the campaign is a legitimate commercial operating expense which does not constitute revenue foregone; it is a “*discretionary costs incurred to raise awareness of the open eir network and encourage network utilisation*”.
 - c. In the UK, Ofcom found that Openreach could engage in revenue-generating activities and they were not directly associated with its regulated wholesale pricing obligations. SIRO implemented also a voucher scheme targeting end-users in its deployment area. This shows that “*wholesale fibre providers frequently engage in direct-to-consumer marketing initiatives*”.
- (17) Contrary to Eircom’s view, it is not the case as a matter of principle that “*the generation of revenues through commercial marketing activities is not governed by regulation nor should such activity be restricted by ComReg*”: whether or not this is the case depends on the regulatory obligations imposed upon Eircom, namely in this case, whether the campaign is a “promotion” within the meaning of Decision D05/24. For the reasons set out in the Notice, the campaign, indeed the “Promotion” as Open eir itself described it in its email of 17 October 2025 to its wholesale customers, is a promotion because it is “*an offer in respect of a product, service or facility which is available for a finite period of time and which entails a price reduction*”. The offer is

in respect of a connection to Open eir's FTTH network available between the period 13 October to 23 November 2025 and which entails a price reduction from the end-user's viewpoint. Neither the definition of "promotion" in ComReg Decision D05/24 nor the Notice require that there is revenue foregone by Open eir, as Eircom appears to contend and ComReg's finding that the Promotion is a promotion within the meaning of ComReg Decision D05/24 is not based on a construct that relies on "revenue foregone".

(18) As it is a promotion within the meaning of Decision D05/24, the Promotion ought to have been notified to ComReg in order that ComReg could assess it to determine whether it could be implemented. There is no suggestion in the Notice that by nature, the campaign is not "*a legitimate commercial operating expense*" or that Open eir may never engage in direct-to-consumer marketing initiatives. Such a commercial operating expense or marketing initiative which is a promotion within the meaning of ComReg Decision D05/24 may be approved by ComReg, following its notification in advance as per the timelines set out in Section 14.11 of the WLA Decision Instrument, where the four criteria set out in Section 14.10 are all met, namely:

- The proposed price taking account of any Promotion or Discount remains above the applicable Price Floor (Section 14.10.1);
- The Promotion or Discount does not, in form or in effect, favour Eircom's retail arm and is in practice available to a range of Access Seekers (Section 14.10.2);
- The Promotion or Discount is not targeted at a specific geographic area and for the avoidance of doubt and in particular, does not give rise to a geographic differentiation of prices (Section 14.10.3); and
- The Promotion or Discount will not adversely affect investments by Undertakings or undermine competition (Section 14.10.4).

(19) As regards Ofcom's treatment of marketing initiatives by Openreach in the UK, it could not of course bind ComReg but could have persuasive value, were the regulatory obligations applying to Openreach and Eircom drafted in the exact same or sufficiently close terms. However, save for stating without any further detail that "*Openreach ... is subject to similar regulatory oversight*", Eircom has not set out in its submissions any detail of the mechanism in place in the UK for the monitoring of discounts and promotions by Openreach. ComReg understands in this regard that the regime applicable to Openreach differs to a material extent and for instance does

not include a prohibition on discounts and promotions which may only be lifted by way of prior approval, as is the case for Eircom.⁴

- (20) The extract included in Part 2 of the Appendix to Eircom's submissions suggests that Openreach trialled an "*FTTP end customer voucher scheme*" for which no further detail is available. It further indicates that consideration of this scheme was in respect, not of obligations applicable in terms of discounts and promotions, but of the delineation of "*Openreach's functions from the wider BT Group for the purpose of monitoring Commitments compliance*". Nothing turns accordingly on the position taken by Ofcom as regards Commitments compliance by Openreach/BT group.
- (21) Finally, Eircom's submission as regards "*the Government's 2028 targets for fibre roll-out, copper switch-off, and nationwide fibre migration*" is not understood given that the Promotion in the main appeared to target premises not concerned with copper switch-off but where fibre rollout from another operator will soon be available.

3 Confirmation

- (22) In light of the above, ComReg has not identified any reasons in Eircom's submissions to revoke or amend the Urgent Interim Measures set out in the Notice of 17 October 2025. ComReg accordingly is of the view that the Notice should be confirmed so that in absence of notification and express approval by ComReg of the Promotion in accordance with ComReg Decision D05/24, Eircom may not implement the Promotion.
- (23) For the avoidance of doubt, Eircom may at any time, further to Section 14.9 of the WLA Decision Instrument, notify to ComReg a promotion or discount (including the Promotion) for ComReg's prior assessment.
- (24) ComReg notes Eircom's offer, "*on a voluntary basis, to inform ComReg in advance of any such future activities prior to launch*". ComReg notes that Eircom is required under ComReg Decision D05/24 to notify ComReg of any promotion or discount in respect of a WLA product, service or facility. There is nothing to prevent Eircom from informing ComReg of any commercial activities that it wishes to engage in, including for the purpose of clarifying the extent of its regulatory obligations.
- (25) For these reasons, ComReg hereby issues the following confirmation.

⁴ See [Statement: Promoting investment and competition in fibre networks – Wholesale Fixed Telecoms Market Review 2021-26](#), in particular Volume 3 – Non-pricing remedies and Volume 7 – Legal instruments.

4 Notice of confirmation

1. This Notice of Confirmation is issued by the Commission for Communications Regulation (“ComReg”) to Eircom Limited t/a Open eir and Eir (“Eircom”) of 2 Heuston South Quarter, St John’s Road, Dublin 8:
 - (a) Having regard to the Urgent Interim Measures Notice, ComReg Decision D13/25 (ComReg 25/71), adopted on 17 October 2025 pursuant to section 57(1) and section 57(8) of the Communications Regulation and Digital Hub Development Agency (Amendment) Act 2023 (“the 2023 Act”) (“the Notice”);
 - (b) Eircom being the addressee of the Notice;
 - (c) Having regard to the submissions made by Eircom on 24 October 2025 in accordance with section 57(8) of the 2023 Act;
 - (d) Having considered, in accordance with section 57(9)(a) of the 2023 Act, Eircom’s submissions;
 - (e) Pursuant to section 57(9)(b) of the 2023 Act.
2. The Urgent Interim Measures listed at paragraph 2 of the Notice are hereby confirmed and shall accordingly remain in force until 23 November 2025.

ROBERT MOURIK
COMMISSIONER
THE COMMISSION FOR COMMUNICATIONS REGULATION
THE 31st DAY OF OCTOBER 2025