



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 Annex 1**

**Reference:** ComReg 25/71d

**Decision:** D13/25

**Date:** 31 October 2025



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24 October 2025

**Subject: Urgent Interim Measures Notice Letter from ComReg**

Dear Robert,

Eircom makes the following submission in respect of ComReg's Urgent Interim Measures Notice [ComReg 25/71] as permitted under Section 57(8). This submission is without prejudice to any actions Eircom may take, or any further submissions it may make, in the event of further enforcement action by ComReg in relation to this matter.

**1. ComReg's Measures and Procedural Concerns**

Eircom is deeply concerned by the measures taken by ComReg to prematurely and incorrectly require the removal of an active commercial marketing campaign by open eir from the market. While competitor complaints are not unexpected, it is highly irregular for such complaints to be published by ComReg. ComReg's silence in response to these complaints appears to signal tacit support for the complainant's position, raising serious questions about impartiality and procedural fairness.

More troubling still is the absence of any meaningful engagement with Eircom prior to the issuance of the Urgent Interim Measures Notice on 17 October 2025. The only contact from ComReg was to confirm that I was aware of the campaign on 14 October. When I clarified that the campaign is marketed towards end-users and did not constitute a wholesale Discount or Promotion as defined by ComReg's own market analysis framework, ComReg failed to respond substantively. Nor did ComReg invite Eircom to submit its views in writing for assessment. Instead, ComReg acted wholly disproportionately, misinterpreting its own Decision Instrument and relying on vague assertions of "serious economic problems" without any demonstrable evidence or consideration of the broader market impact.

Section 57(8) requires an urgent interim measures notice to take effect without the person on whom it is served being able to make advance submissions. That is why it is expressed to be used only "exceptionally and in cases of extreme urgency". Eircom submits that ComReg's actions amounted to a misuse of this mechanism. The prejudice to Eircom in not having an opportunity to make submissions in advance was increased by ComReg then making the matter extensively public.

This unjustified intervention has had immediate and damaging consequences for open eir's brand, its commercial strategy, and its investment signals. It is particularly relevant that the characteristics of the Irish market have evolved and are no longer consistent with the assumptions underpinning ComReg's 2024 market analysis and ComReg's continued failure to meet its legal obligation to undertake a fresh market review without delay. Siro has finished its roll-out and Virgin Media's FTTH upgrade is expected to be 85% complete by the year end.

The decision to intervene in relation to open eir's marketing campaign, coupled with ComReg's continued refusal to review the market, appears designed to shield SIRO and Virgin Media from all forms of legitimate competition, to the detriment of Irish consumers. In this context, Eircom's shareholders are actively reviewing their investment exposure in light of the escalating regulatory risk, which now appears to prevent open eir from competing on the merits or undertaking lawful commercial marketing activity to promote fibre take-up.

## **2. ComReg's Misinterpretation and International Precedent**

Eircom strongly disagrees with ComReg's interpretation of the €50 gift card scheme as a "Promotion" under Section 14.9 of Decision D05/24.

ComReg D05/24 states that "'Promotion' means 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;

'Discount' means an offer or sale of a product, service or facility at less than its standard price, for example, a price reduction, including a volume related price reduction, a rebate, a reimbursement, a refund, a set-off and any other similar words or expressions;"

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. ComReg's intervention appears to rely on an interpretation of the campaign as "revenue foregone" by open eir which "entails in effect a price reduction". Eircom submits that is a wholly flawed construct. The campaign is a non-price marketing incentive, which falls outside the scope of ComReg's regulatory framework governing wholesale Discounts and Promotions.

Marketing expenditure — including end-user voucher schemes — is a legitimate commercial operating expense. From both an economic and accounting perspective, such operating expenditure does not constitute revenue foregone. Rather, it is a discretionary cost incurred to raise awareness of the open eir network and encourage network utilisation. It is not "in effect a price reduction", does not alter the wholesale price, nor does it affect the terms offered to Access Seekers. It therefore falls outside the scope of ComReg's regulatory oversight under Decision D05/24. The generation of revenues through commercial marketing activities is not governed by regulation, nor should such activity be restricted by ComReg.

Eircom's position is supported by regulatory international precedent. Ofcom's Openreach Monitoring Unit (see Appendix 1) reviewed a substantively identical voucher scheme by Openreach in the UK and concluded that such commercial activities were permissible. Ofcom found that Openreach could engage in revenue-generating activities and that they were not directly associated with its regulated wholesale pricing obligations. It is also noteworthy that Siro's €50 voucher scheme (details of which are also set out in Appendix 1), which launched in 2024, also targeted end-users in Siro deployment areas.

These precedents confirm that wholesale fibre providers frequently engage in direct-to-consumer marketing initiatives and in the case of Openreach (which is subject to similar regulatory oversight) do so without breaching regulatory obligations.

Finally, it is important to reiterate that Eircom and its shareholders remain concerned not only by the current regulatory overreach, but also by the broader regulatory environment we increasingly find ourselves in, and its implications for Ireland's fibre roll-out ambitions. The Government's 2028 targets for fibre roll-out, copper switch-off, and nationwide fibre migration require a regulatory framework that enables — not obstructs — commercial innovation, activities and investment.

### **3. Next Steps and Industry Clarity**

Eircom respectfully requests that ComReg:

- Withdraw the Urgent Interim Measures Notice without delay;
- Review its position in light of the facts and precedents outlined above; and
- Conclude this matter in a manner consistent with regulatory proportionality and procedural fairness.

To restore industry confidence and avoid further confusion, Eircom encourages ComReg to publish a clarifying statement — similar to Ofcom's approach — confirming that commercial marketing activities directed at end-users, which do not alter wholesale pricing, are not prohibited under regulation.

Looking ahead, Eircom is willing, on a voluntary basis, to inform ComReg in advance of any such future activities prior to launch, so that ComReg can confirm that open eir's commercial activities do not inherently raise concerns about Eircom's regulatory compliance — or, in the case of marketing activity, fall outside the scope of regulation entirely. This approach would support transparency while preserving the ability of open eir to compete on the merits and promote fibre take-up in line with national policy objectives.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink, reading "Kjeld Hartog". The signature is written in a cursive, flowing style.

Kjeld Hartog  
Chief Regulatory Officer  
eir

## **Appendix 1:**

### **1. Extract of Terms and Conditions of Siro 2024 Voucher scheme**

#### **SIRO Offer – “Redeem a €50 One4all Voucher”**

##### **Eligibility**

This offer is open to recipients of a SIRO subscription ezine between 16 September to 31 December 2024 who place an order and successfully receive SIRO services. Entry is limited to one voucher per person and sharing of vouchers on social media is not permitted. The order must be placed and connected before 31 December 2024 and the Redemption Process at 13.2 below must be completed. A €50.00 One4All voucher shall be sent upon order completion.

##### **The Redemption Process**

The Voucher can be redeemed by clicking through to SIRO.ie via monthly subscription ezine, filling out the online form, and completing an order with one of SIRO’s retailers. By participating in this “Redemption Process”, the participant agrees to be bound by these terms and conditions.

##### **Voucher**

The Voucher consists of a €50 One4All Voucher. The prize is not transferable or exchangeable

## 2. International Precedent confirming that end-user vouchers fall outside Wholesale Regulation

Page 9 - Openreach Monitoring Report – 11 September 2025<sup>1</sup>

2.21 Separately, stakeholders raised concerns with us about whether an FTTP end customer voucher scheme trialled by Openreach in summer 2024 was consistent with the Commitments.

**Footnote 14** - Openreach ran a two-month trial offering £50 One4All gift cards to end customers who ordered FTTP with an ISP of their choice, on the Openreach network... 2.22 Parts of the Commitments, and associated documents, define the role and activities of Openreach and it could appear that this was intended to confine Openreach to these specified functions only. However, these definitions were intended to delineate Openreach's functions from the wider BT Group for the purpose of monitoring Commitments compliance. It is our view that these definitions were not intended to limit the capacity of Openreach to evolve and undertake other activities that do not relate to Openreach's vertical integration with BT Group, or are not directly associated with the Commitments. We therefore do not consider that Openreach undertaking new activities that fall outside of these specified functions, including the undertaking of commercial activities to raise revenue for Openreach, inherently raises concerns about Commitments compliance.

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<sup>1</sup> [Openreach Monitoring Report 2025 \(ofcom.org.uk\)](https://www.ofcom.org.uk/consult/condocs/openreach/openreach-monitoring-report-2025/)