Information Notice

Correspondence between Eircom and ComReg concerning ComReg Document 25/15, Market Monitoring Report – Issue 1

Information Notice

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Additional Information

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1. This Information Notice publishes correspondence between Eircom Ltd ('**Eircom**') and the Commission for Communications Regulation ('**ComReg**') concerning ComReg's published Market Monitoring Report – Issue 1 (the **'Monitoring Report'**)[1] in relation to wholesale broadband and physical infrastructure markets.
2. ComReg has decided to publish this correspondence in the interests of transparency for all relevant stakeholders. Personal information such as individual email addresses has been redacted in the correspondence.

[1] Wholesale Market Monitoring Report – Issue 1 | Commission for Communications Regulation, published 24 March 2025.

Appendix 1: Correspondence between Eircom and ComReg

A 1.1 The correspondence between Eircom and ComReg is presented below in chronological order of receipt to ComReg (oldest to newest).

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Cc: robert.mourik@comreg.ie

28 March 2025

Re: Legal Implications Arising from ComReg 25/15

Dear Garrett,

I am writing to express eir's deep concern regarding the conclusions drawn by ComReg in its latest publication regarding the WLA and PIA markets, reference ComReg 25/15 – WLA and PIA markets monitoring report (issue 1). In this report, ComReg appears to conclude that market developments over the last year align with ComReg's expectations, and as such, believes there is no basis to commence an earlier review of the WLA market. However, the data presented in ComReg 25/15 clearly contradicts this conclusion and strongly supports the concerns we raised in our previous consultation response and during our meeting with ComReg on 29 January 2025. These developments also validate the European Commission's concerns regarding ComReg's market analysis and directly challenge several key assumptions that underpin the current WLA Decision, as outlined below, this necessitates an immediate reassessment of the regulatory approach.

In light of this, under the requirements of Articles 68(6) and related Articles of the European Electronic Communications Code (EECC), eir calls on ComReg to undertake an immediate and complete WLA market analysis. This is a legal requirement given the significant and unforeseen changes to the *assumptions* underlying ComReg's existing market analysis and latest monitoring report, as explained further below.

1. Geographic Assessment Methodology Limits Deregulation

ComReg's assumption in D05/24:

> *"ComReg considers that, despite growing rollout, no operators were in a position to provide detailed and reliable FTTP deployment plans (beyond a few months) that would enable ComReg to conduct a more granular geographic analysis."*

We raised concerns in our 29 January meeting that the MEA-based framework and the threshold of 3 overlapping networks (the "rule of 3") structurally prevent deregulation, even where real-world competition exists. ComReg's monitoring report (ComReg 25/15) confirms that only 10 out of 1,183 MEAs pass the geographic test (representing 15.8k premises in the Commercial Area) — equating to less than 1% of lines and premises in the Commercial NG WLA Market. In the monitoring report (Figure 13) ComReg identifies that at least[1] 153.7k of premises in the Commercial Area are passed by 3 operators. However, ComReg's assessment criteria only identify 10% of these premises in MEAs meeting the rule of 3. This confirms that effective competition remains invisible under the current framework despite the fact that network roll-out is now well progressed by Virgin Media and near complete by both eir and Siro.

As we outlined in our presentation to ComReg on 29 January, the competitive environment in urban areas (Dublin, the Four Cities and Regional towns) is fundamentally different to that in the rest of the country (i.e., excluding the "300k"and Intervention Area). In urban areas, eir's FTTC and FTTP networks face substantial overlap by either SIRO and/or Virgin Media. This is confirmed by ComReg's data in the monitoring report. Specifically, Figure 16 (focussing on FTTP[2]) shows that 515k premises (26.8%) of premises in the Commercial NG WLA Market are passed by Eircom and at least one other network operator — indicating large-scale co-coverage.

We also cautioned that the use of copper exchange boundaries to define geographic markets would fail to reflect ribbon-style deployment — and that the adoption of this structure was not consistent with market realities. The European Commission also commented that *"when assessing the competitive conditions in a given area with a sufficiently forward-looking approach, ComReg appears to underestimate other criteria*

[1] The overlap will be understated as not all FTTC premises are matched to Eircodes.

[2] The persistent decline in active FTTC lines questions whether FTTC can be considered to act as a constraint on FTTP.

(e.g. intensity of retail competition, wholesale access provided by competitors, and regulation in the upstream physical infrastructure access market)."

As noted above only 10 MEAs (out of 1,183), representing 10% of premises passed by 3 network operators, meet ComReg's cumulative geographic test — demonstrating that the MEA approach suggests that areas of three-network overlap are extremely limited and highly localised. However, there are clearly large areas of intensive competition — predominantly in urban areas where there is overlap with Siro and/or Virgin Media — which are diluted in ComReg's national-level market share reporting and obscured by the rigid application of MEA-level criteria. Our data confirms that eir faces significant competitive pressure in those more densely populated zones, which is not captured by the national or MEA-aggregated analysis currently in use by ComReg.

eir's national FTTP market share remains relatively stable only because it combines areas of intense urban competition — where its share is declining due to overlap with SIRO and Virgin Media — with large rural and single-operator areas where eir continues to hold a higher share. This averaging effect conceals the extent to which eir is already losing ground in the most competitive parts of the market. This is reflected in ComReg's published Quarterly metrics, which show that SIRO's national network broadband share is steadily increasing, while Virgin Media's share has remained relatively stable quarter-on-quarter. In contrast, eir's total network broadband share — excluding the Intervention Area — continues to decline. eir retail's FTTP market share closely mirrors its overall broadband market share – which is considerably lower (as ComReg is aware of our low retail market share in Dublin and Virgin Media areas) in the urban areas where either Siro or Virgin Media are present. As we have shown, this is consistent at a network level where eir faces greater competition from Virgin Media and Siro. eir's retail share in the 300k is slightly higher due to customer demographics, the time since roll-out and the fact that other retailers initially boycotted eir's wholesale network.

While the monitoring report fails to fully capture the localised nature of competition, the data it presents nonetheless reinforces our view that ComReg's current market definition and assessment framework fails to reflect how and where competition is emerging — underscoring the need for a fresh and more realistic market analysis.

2. 'Rule of 3' Assumptions Are Now Proven Overly Restrictive

ComReg's assumption in D05/24:

> *"ComReg considers that meaningful competition for WLA can only occur where at least three independent NG broadband networks are present."*

At the 29 January meeting, we demonstrated that this rule had the effect of rendering deregulation functionally impossible across most of the State. We also highlighted that in other Member States, and in a recent EC decision (MT/2024/2484), two-network competition was considered sufficient to support deregulation.

In our recent submission to ComReg 24/92, we highlighted that ComReg has provided no evidence or market-specific analysis to justify the appropriateness of the rule of 3 in the context of the Irish market. The threshold appears to have been applied as a default assumption, without consideration of Ireland's actual network deployment patterns, geographic density, or competitive dynamics. The European Commission also commented that *"the level of coverage adopted by ComReg as the main criterion to lift access regulation (i.e. the presence of three VHCNs in a given modified exchange area) seems to be overly conservative. First, the presence of three independent, overlapping fibre-based infrastructures might never materialise on a significant scale".*

The monitoring report shows that, as of Q3 2024:

- Only 7.4% of premises in the Commercial NG WLA Market are passed by all three FTTP networks.
- 41% of premises are passed by Siro and/or Virgin Media with their rollout programmes ongoing.
- Despite 18 months of accelerated rollout, only 10 MEAs met the various thresholds of "competition" in ComReg D05/24 (accounting for 0.8% of premises).

This confirms that the rule of 3 fails to reflect actual competition, and that it precludes deregulation even where robust FTTP investment exists.

We understand that Siro's FTTP roll-out is near complete as it has reduced its target to 700k and therefore has only 90k more premises to pass to complete its current rollout target. Virgin Media has publicly stated that their FTTP roll-out will fully overbuild their existing cable footprint. It is now categorically clear that the rule of 3 will not materialise. It is now evident that if less than 10% of premises qualify for deregulation based on a rule of 3 FTTP overlap of 142k, then at most c.20k premises[3] will ever qualify for deregulation under ComReg's flawed analytical framework.

The European Commission is very clear that the purpose of regulating electronic communications markets is to enable conditions for effective competition, and to withdraw regulation once those conditions exist. It is now clear that ComReg's methodology or

[3] Based on the estimated 200k overlap of all three operators as presented to ComReg on 29 January and applying the 10% ratio from ComReg's monitoring report (this is considered a reasonably ratio given the level of FTTP roll-out already completed).

criteria (e.g., rule of 3, geographic tests) creates a framework in which deregulation is effectively unattainable. If left unaddressed, this would be inconsistent with ComReg's obligations under the EECC to ensure that regulation is proportionate, forward-looking, and ultimately transitional.

The objective of ex ante regulation under the EECC is to create the conditions for deregulation where effective competition emerges. ComReg must now recognise that the rule of 3 is extremely unlikely, if not impossible, to be met in the foreseeable future, at scale. As cautioned — and indeed foreseen — by the European Commission in its comments to ComReg, the rigid application of the rule of 3 has created a framework in which deregulation is effectively unattainable.

The emergence of new market conditions now legally obliges ComReg to urgently reassess whether eir continues to hold SMP in areas where only two operators are present — or whether market outcomes in those areas now justify a different regulatory treatment, including potential SMP designations for SIRO or Virgin Media. In that regard, ComReg may, in exceptional circumstances, refrain from conducting a full market analysis and instead adopt proportionate and provisional measures under Article 32(10) of the Code, where there is an urgent need to safeguard competition and protect end-user interests.

With respect, where market conditions/characteristics have evolved in ways that clearly diverge from those assumed in ComReg's previous market analysis, ComReg must revisit those assumptions. Taking a forward-looking perspective, and ComReg's own statutory functions, it is inconceivable — given ComReg's own insistence on the necessity of three operators — that it could now maintain regulation of eir alone in areas where it knows a third entrant will not materialise. On ComReg's own logic, the answer cannot be to continue regulating only eir.

3. Quasi-Reciprocal Wholesale Agreements Were Not Properly Considered

ComReg's assumption in D05/24:

> *"It is a matter for each SP to determine independently its own network upgrade/rollout strategy and the evidence suggests that network overlaps occur, albeit at varying levels of intensity."*

This assumption failed to acknowledge the commercial dynamics of reciprocal wholesale access agreements. In our consultation response (March 2023), we warned:

> *"...the context of the various wholesale agreements between Virgin Media and Siro (of which Vodafone is a 50% shareholder) and the reciprocal arrangement*

by Vodafone agreeing to wholesale from Virgin Media, it is unclear what assessment ComReg has done even from a theoretical competition concern perspective as to whether such arrangements could dampen the expectation of competing network overbuild and competition".

At our 29 January meeting, we highlighted that such quasi-reciprocal agreements between SIRO and Virgin Media were clearly dampening incentives to overbuild, allowing operators to rely on each other's footprints rather than investing in duplicative infrastructure.

The monitoring report now confirms:

- Overlap between SIRO and Virgin Media remains at just 8.86%.

This miniscule overlap is despite SIRO's roll-out now being materially complete. Virgin Media has also publicly stated that it will only overbuild its existing cable footprint and not extend beyond it.

This pattern is not consistent with healthy infrastructure-based competition and supports our original position that quasi-reciprocal wholesale access is resulting in market segmentation, not competition.

Article 68.6 of the Code states:

> *"National regulatory authorities shall consider the impact of new market developments, <u>such as in relation to commercial agreements</u>, including co-investment agreements, <u>influencing competitive dynamics</u>. If those developments are not sufficiently important to require a new market analysis in accordance with Article 67, the national regulatory authority shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision, including by withdrawing obligations or imposing new obligations, in order to ensure that such obligations continue to meet the conditions set out in paragraph 4 of this Article" [emphasis added].*

4. FTTP Rollout Is Now Sufficiently Predictable – Earlier Doubts No Longer Justify Caution

ComReg's assumption in D05/24 was that Siro's delays and historical missed targets, as well as the infancy of Virgin Media's roll-out, meant that the FTTP roll-out had an associated "*range of uncertainties*", and that "*ComReg notes that rollout…is sensitive to economic growth, inflation, and interest rates.*"

In our consultation response, we warned:

> *"ComReg's conclusions skew in favour of regulation 'just in case' future network roll-out does not happen." "SIRO has secured significant funding… Eir's rivals merely need to maintain the speed of rollout they have demonstrated over the past 3–4 years."*

These concerns were reiterated in our meeting on 29 January, where we highlighted that rollout is now proceeding at a credible and verifiable pace.

ComReg 25/15 confirms:

- All three networks are continuing rollout.
- The number of FTTP-active lines is increasing across all operators.
- Virgin Media has now launched wholesale services and expanded its FTTP coverage significantly.

This fundamentally contradicts ComReg's justification for excluding forward-looking rollout from its geographic analysis (a little over 12 months ago).

It is now clear that, within the current market review period, Virgin Media's FTTP deployment is effectively overbuilding its existing cable network. This allows ComReg to model the remainder of their rollout with greater accuracy. Virgin Media has publicly stated that its FTTP rollout is nearing 50% completion. Similarly, SIRO's programme is 87% complete as of Q3 2024. ComReg could request detailed rollout plans from SIRO, and if these plans are not available, it is highly probable that SIRO will not overbuild Virgin Media's cable network due to their quasi-reciprocal wholesale agreement. Moreover, SIRO is unlikely to target the Intervention Area (IA) or the "300k" areas. By eliminating these areas, ComReg can reasonably estimate the specific regions where SIRO will complete its rollout. These developments represent a material shift in market conditions and deployment pace, which significantly diverge from the assumptions made by ComReg in D05/24.

5. PIA Data and Assumptions Are Outdated and Misleading

ComReg's assumption in D05/24:

> *"ComReg considers that the availability of PIA could in principle support the rollout of additional network infrastructure by third parties. However, the practical extent of that potential over the market review period remains limited."*

In our consultation response to ComReg 24/92 we flagged that PIA take-up had only just begun to materialise following the implementation of D03/24 — and that ComReg's use of historic PIA data failed to reflect these changes. The European Commission's comments to ComReg's market analysis notification stated that "*…when assessing the competitive conditions in a given area with a sufficiently forward-looking approach, ComReg appears to underestimate other criteria (e.g. intensity of retail competition, wholesale access provided by competitors, <u>and regulation in the upstream physical infrastructure access market</u>)" [emphasis added].*

ComReg 25/15 includes data showing that over 98% of duct and pole access was used by NBI. However, this data predates the 2024 pricing and product reforms under D03/24, and thus does not reflect current commercial use of PIA.

Our evidence, as submitted to ComReg 24/92, shows:

- The use of Eircom's PI at scale by NBI clearly demonstrates that it can be used to support large scale FTTP rollouts.
- The majority of non-NBI duct access orders occurred after the start of 2024.
- Commercial operators are now using PIA for average routes of over 500 metres, especially for business connectivity.
- Pricing analysis demonstrates that for any route over 20 metres, regulated PIA is now more cost-effective than dig, encouraging build.
- The continued roll-out at pace of both Virgin Media and Siro indicates that the duplication of eir's PIA network is not challenging, Virgin Media and Siro have access to their own PIA to roll-out their network at scale but have demonstrated that they will use Eircom's PI to plug gaps in their own PI.

Commercial use of PIA is no longer theoretical — it is measurable and increasing.

ComReg's continued reliance on outdated usage patterns creates a false impression of limited viability and competitive threat. A new WLA market analysis must incorporate up-to-date PIA uptake trends and take into account the regulation of PIA in the upstream market as recommended by the European Commission.

Legal Basis: Article 68(6) of the Code

Article 68(6) of the EECC provides:

> *"National regulatory authorities shall consider the impact of new market developments, such as in relation to commercial agreements, including co-investment agreements, influencing competitive dynamics. If those developments are not sufficiently important to require a new market analysis in accordance with Article 67, the national regulatory authority shall assess without delay whether it is necessary to review the obligations imposed on undertakings designated as having significant market power and amend any previous decision, including by withdrawing obligations or imposing new obligations, in order to ensure that such obligations continue to meet the conditions set out in paragraph 4 of this Article. Such amendments shall be imposed only after consultations in accordance with Articles 23 and 32."*

Given the material shift in market conditions and the demonstrable mismatch between market outcomes and ComReg's assumptions, the threshold for action under Article 68(6) is now met.

Conclusion and Request

eir respectfully requests that ComReg initiate a new market analysis under Article 68(6) of the EECC. Market conditions have changed materially. The assumptions underpinning D05/24 have not held, and ComReg's own monitoring report demonstrates that regulation is being applied in a manner that is now disproportionate, structurally rigid, and inconsistent with the objectives of the Code and ComReg's own statutory obligations.

I would welcome confirmation that it is now ComReg's intention to initiate a new market review, in line with its obligations under the Code and in light of the material changes in market conditions set out above.

Kjeld Hartog

Kjeld Hartog
Chief Regulatory Officer
eir

An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

16 May, 2025

Kjeld Hartog
Chief Regulatory Officer
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Dear Kjeld

Thank you for your letter of 28th March last concerning ComReg Document 25/15 (the '**Monitoring Report**'). ComReg welcomes the fact that that the information detailed in the Monitoring Report has provided useful data to market participants, including Eircom. As regards Eircom's contention that, contrary to ComReg's position, a new analysis of the Wholesale Local Access ('**WLA**') market is warranted, ComReg does not intend to respond to each and every point raised in your letter (and this should not be taken as acceptance of Eircom's view) and simply notes as follows.

The Monitoring Report sets forth objective information for stakeholders and sets out ComReg's consideration of market outcomes just over one year on so from the 2024 WLA/WCA Decision[1], including whether they are materially different from the outcomes anticipated by ComReg when adopting the WLA Decision. The market monitoring exercise does not involve revisiting matters of approaches and methodology to the market analysis considered and determined as part of the adoption of the 2024 WLA/WCA Decision. This includes what Eircom calls "*the rule of three*" and the criteria related to the geographic scope of the market.

It is clear from the evidence and analysis presented in Monitoring Report that market outcomes at this point in time are not materially different from what is envisaged in the WLA Decision and there is no reason therefore to consider whether a market analysis should be undertaken now. Progress in network roll-out by Virgin Media and near-

[1] ComReg Decision D05/24.

completion of network roll-out by Eircom and Siro does not mean, contrary to what Eircom contends, that "*there is effective competition*" or that "*effective competition remains invisible*". It is also not the case that the "*analysis currently in use by ComReg*" means that "*large areas of intensive competition… predominantly in urban areas … are diluted… and obscured…*" The geographic assessment does not require 3 network operators to be present at all premises in a MEA in order for it to be suggestive of geographic differences in the conditions of competition. The cumulative geographic assessment criteria can be met if a network operator has individual coverage of at least 60% in an MEA, and there are 3 network operators having an overlap of coverage at 50% of premises in an MEA. It follows that, even where the criteria can be satisfied, it can be the case that up to 50% of premises at an MEA are passed by only two, or one, or even by no, FTTx network(s).

Eircom continues to have the largest FTTP roll-out of any network operator. The positive changes in FTTP roll-out overall and the increased choice of services at to some additional premises do not constitute a material change in market outcomes. Despite a fall in its combined FTTP and FTTC market share to 78%[2], Eircom's 66.6%[3] FTTP only market share has been largely maintained – noting that this part of the market is continues to grow. Furthermore, at 37%, Eircom also has the highest FTTP take-up rates of any NO, with this increasing year on year[4].

Finally, ComReg welcomes the increased use of Eircom's PIA but also notes that the data does not indicate that this has to date made any material difference to the Commercial NG WLA market in terms of roll-out or market dynamics.

I trust this addresses the matter raised in your letter.

Yours sincerely

Donal Leavy
Director of Wholesale

[2] Paragraph 69, Monitoring Report.

[3] Paragraph 71, Monitoring Report.

[4] Paragraph 41, Monitoring Report.

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9 May 2025

Re: Virgin Media FTTP rollout data

Dear Eric,

There is a substantial difference between the FTTP rollout figures publicly stated by Liberty Global regarding Virgin Media Ireland (VM) and the figures published in the QKDR which are relied upon in ComReg's Market Monitoring Report (ComReg 25/15). As illustrated below the difference is both material and growing. Our concern is that ComReg has significantly understated the extent of VMI FTTP build (500K by the end of Q1 2025), under forecasted when it will be 80 -100% complete (800K by the end of 2025), and has not taken account of the rapid pace of VMI build through 2025 (300K through Q2,3 and 4). Can ComReg please explain its position on this and its understanding of the difference?

The following is based on public statements made by VM to the financial markets. VM has a duty of care to ensure its statements to financial markets are accurate and not misleading. The growing gap between ComReg's numbers relative to VM is of concern.

In its Q3 24 update[1] VM states "*Fiber deployment continues apace with ~45% of our premises now constructed for FTTH services and with an encouraging trend of improvements in monthly fiber connections. Notwithstanding the progress we're making in delivering on our strategic priorities, we continue to face a highly competitive market environment, and alongside the investments into our growth plan, we do see a continued impact on our overall financial performance. With our continued focus on building fiber and customer experience, we are confident that these efforts are building the strong foundations required for sustainable long-term growth.*"

[1] https://www.libertyglobal.com/wp-content/uploads/2024/10/Virgin-Media-Ireland-Fixed-Income-Q3-2024-Release.pdf

ComReg advises in the Market Monitoring Report that VMs "*target is to pass approximately 980K premises with FTTP*". 45% of 980k means that VM has upgraded around 441k premises which is 104k higher than the figure quoted by ComReg.

In Q2 2024 VM stated[2] "*On our fully owned network, we continue to expand our fiber upgrade program, and at the end of the quarter we had upgraded nearly 40% of our premises to full fiber capability*", and in Q1 2024[3] "*More than a third of our network upgraded to full fiber at the end of Q1, with build costs in line with expectations*". These statements imply the following numbers of premises passed have been upgraded to FTTP.

	Q1 24	Q2 24	Q3 24
VM statement	More than a third	Nearly 40%	Approx. 45%
% used by eir	33%	39%	45%
VM premises passed	323k	382k	441k
ComReg QKDR	281k	297k	335k
Variance	(42k)	(85k)	(104k)

This very material and increasing variance must be explained. eir also requests confirmation that the variance does not result in an understatement of the extent of FTTP network overlaps.

eir also notes the most recent statements[4] on VM's rollout progress (Q1 2025 Results) which state "***Network upgrade****: Continued to deliver on full fiber upgrade project, with over half of premises upgraded to full fiber at the end of Q1*", and "*Financing and monetizing our network infrastructure remains a key priority, with Virgin Media Ireland expected to reach 80% of homes with fiber by year-end*". As already noted, VM has a duty of care to ensure its statements to financial markets are accurate. The statements advise that VM expects to upgrade around one third of its network premises during 2025 meaning that the programme to upgrade the remining 20% should complete during 2026, taking into account previous proportionate progress. This appears to undermine the view expressed by ComReg[5] "*that Virgin Media's FTTP network upgrade was not likely to be completed until towards the end of the market review period. Virgin Media's FTTP roll-out progress so far suggests that this remains the case (although as evidenced in Figure 1 and Table 1 its roll-out can vary significantly across periods).*"

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[2] https://www.libertyglobal.com/wp-content/uploads/2024/07/Virgin-Media-Ireland-Fixed-Income-Q2-2024-Release.pdf
3 https://www.libertyglobal.com/wp-content/uploads/2024/05/Virgin-Media-Ireland-Fixed-Income-Q1-2024-Release.pdf
4 https://www.libertyglobal.com/wp-content/uploads/2025/05/LG-Q1-2025-Press-Release.pdf
[5] Para. 35, ComReg 25/15

ComReg must investigate the variances between the two datasets, to the extent not already done, and provide an explanation as to the validity of the variances.

I look forward to hearing from you.

Yours sincerely,

W. McCoubrey

William McCoubrey
Head of Regulatory Strategy

From: Eric Tomkins
Sent: 28 May 2025
To: McCoubrey, William
Cc:
Subject: RE: Correspondence

Hi William

Thank you for your letter.

ComReg is aware that there are differences between the FTTP coverage figures published by ComReg and figures published by Liberty Global. ComReg has (including historically) sought confirmation from Virgin Media Ireland (VMI), that the data it is providing to ComReg is in accordance with the ComReg definitional requirements and an explanation of the differences with the Liberty Global figures.

ComReg has received assurances from VMI that the data it provides to ComReg meets ComReg's definitional requirements and that the Liberty Global figures are calculated on the basis of a different definition. As to how Liberty Global chooses to publish information about its FTTP coverage for the purpose of its financial or non-ComReg regulatory reporting is not a matter for ComReg.

I would note that differences between ComReg's reporting and Liberty Global's reporting of FTTP coverage was also referred to in ComReg Decision D05/24, in paragraph 4.2.47, footnotes 248 and 348.

I trust that this clarifies the matter.

Regards

Eric

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29 May 2025

Re: Virgin Media FTTP rollout data

Dear Eric,

Following our recent exchange regarding Virgin Media's FTTP rollout, eir wishes to reiterate the significance of this issue in the context of ComReg's WLA annual update.

As set out in our letter of 28 March 2025, the assumptions underpinning ComReg's WLA framework — particularly in relation to rollout progress and competitive presence — are now demonstrably out of date. Virgin Media's public investor disclosures clearly show that FTTP deployment is progressing materially ahead of the figures reported by ComReg. While we note ComReg's clarification that a narrower definition of "premises passed" is applied in the QKDR, from a regulatory perspective this results in a lagging and overly conservative view of where FTTP networks are already exerting, or are imminently capable of exerting, competitive pressure.

This definitional conservatism is particularly problematic for the WLA annual update, where FTTP presence is a core input into the assessment of competitive conditions and the application of remedies. Understating coverage in this way risks misrepresenting actual market dynamics and delaying necessary adjustments to regulatory obligations — particularly in urban areas where Virgin Media's rollout is now well advanced. We also note that the European Commission has already cautioned ComReg on the overly conservative nature of its approach during the notification of the WLA market analysis. The application of a second, additional layer of conservatism through the QKDR definition further compounds the issue. This double layering of unwarranted caution fundamentally undermines ComReg's position, is contrary to ComReg's duty to take a forward looking view when assessing markets, and is inconsistent with its obligation to take the utmost account of the Commission's comments, as required under the European Electronic Communications Code.

This concern is all the more pressing given that ComReg's market analysis was underpinned by its stated uncertainty regarding the rollout plans of Virgin Media and Siro. With respect, that uncertainty can no longer be maintained. Virgin Media has publicly confirmed that over 50% of its rollout is now complete, with a target of 80% by year-end. Siro, likewise, has completed 92.9% of its rollout as of May 2025. These are material developments that significantly alter the competitive landscape and directly undermine the assumptions that supported ComReg's market review.

Moreover, we are not aware of any formal or published ComReg definitions of what constitutes a "standard connection within standard provisioning lead times" or a "standard connection fee", particularly as applied to Virgin Media Ireland or indeed any other operator. The absence of clear, industry-consistent criteria undermines transparency, replicability, and confidence in ComReg's FTTP coverage assessments — and risks masking competitive conditions in areas that may already merit deregulation.

We therefore urge ComReg to reflect not only its internal QKDR definition, but also the broader commercial reality of network investment and availability in the WLA annual update. As rollout becomes more predictable and operator deployment targets are publicly confirmed, it is essential that the annual update captures this evolution in competitive conditions with appropriate accuracy and responsiveness.

As previously raised in our letter of 28 March, the legal and evidential basis for a new market analysis is clear. Your recent clarification on ComReg's FTTP coverage methodology further reinforces our submission — namely, that the WLA annual update clearly indicates the market has materially changed and requires immediate reconsideration, as legally required under Article 68(6) of the European Electronic Communications Code.

I look forward to hearing from you.

Yours sincerely,

W. McCoubrey

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21 May 2025

Re: Clarification on the Purpose of the WLA Annual Update and Application of Article 68(6) of the Code

Dear Donal,

I am writing in response to your letter of 16 May 2025 addressing our WLA Annual Update submission dated 28 March 2025. I am disappointed that ComReg's response appears to misunderstand both the nature and legal basis of our submission.

The WLA Annual Update serves not as a vehicle to reassess ComReg's existing approaches or methodologies, but as a mechanism to monitor market developments and provide updated evidence. As clearly set out in our submission, this information must be viewed through the lens of Article 68(6) of the European Electronic Communications Code, which imposes an obligation on ComReg to assess, without delay, whether existing SMP obligations remain justified when significant market developments occur.

Our letter sets out several such developments that materially diverge from the assumptions underpinning ComReg's Decision D05/24. While we have previously expressed concerns — shared by the European Commission — about the robustness of ComReg's conclusions in Decision D05/24, our current submission focuses on the fact that the market evolved in ways that materially diverge from the assumptions underpinning that decision. It is therefore essential that the regulatory framework now be updated to reflect these changes.

We are further concerned by ComReg's response on the "rule of 3". While ComReg states that deregulation does not require 100% premise coverage within a copper exchange area, this fails to address the central issue: the criteria set by ComReg itself mean that deregulation is structurally impossible in almost all areas under current conditions. This is now very evident from ComReg's annual update. As we have submitted, just 10 out of 1,183 MEAs meet the three-network overlap threshold — a threshold that is unlikely to be met in future given the nature of current rollouts and commercial agreements.

I therefore reiterate eir's request that ComReg initiate a review under Article 68(6) EECC and begin preparatory work for a new WLA market analysis. In particular, I ask that ComReg address each of the substantive points raised in our 28 March submission and clearly identify — in cases where it considers no change has occurred — the basis on which it believes the assumptions underpinning Decision D05/24 continue to reflect present market conditions.

The evidence set out in the most recent annual update confirms that the rollout uncertainty anticipated by ComReg has not materialised. Moreover, it is now apparent — on any reasonable forward-looking basis — that network overlap by Siro of VMI, and vice versa, is not occurring and will not occur at scale. If ComReg continues to treat the "rule of three" as a determinative benchmark for effective competition, it must now assess whether Virgin Media and SIRO should themselves be subject to regulatory obligations in the interest of maintaining competitive parity.

The current situation — in which only eir remains subject to regulation in areas where ComReg itself, in its own decision, acknowledges the presence of competitive constraints — is not sustainable. It is inconsistent with the principle of proportionality, and it undermines the credibility of the regulatory framework. These developments call into question the continued justification for asymmetric regulation of eir and demand urgent and objective regulatory reassessment.

Yours sincerely,

Kjeld Hartog

Kjeld Hartog
Chief Regulatory Officer
eir

An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

3 July 2025

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Dear Kjeld

I refer to recent correspondence in respect ComReg Document 25/15 (the '**Monitoring Report**'), in particular your letter of 21 May 2025 and William McCoubrey's letter of 29 May 2025.

We do not consider that there has been any misunderstanding on the part of ComReg on the nature and legal basis of Eircom's correspondence regarding the Monitoring Report. For the reasons set out in the Monitoring Report, the WLA market has evolved in ways that are consistent with the assumptions underpinning ComReg's 2024 WLA/WCA Decision and no new market analysis is required under Regulation 50(7) of the Electronic Communications Code Regulations (S.I. No. 444 of 2022) (which transposes Article 68(6) of the Code to which you make reference). We do not agree that your letters of 28 March and 1 May 2025 identify any new developments that would necessitate ComReg to reconsider its analysis of the WLA market completed in 2024.

Your concerns concerning the 'rule of 3' are misplaced. The geographic assessment criteria are not designed to set a de-regulatory target or a benchmark for effective competition as suggested by Eircom. Their purpose is to assess whether the conditions of competition sufficiently differ across areas, followed then by an assessment of SMP across homogeneous areas.

Your suggestion that the Monitoring Report "*confirms that the rollout uncertainty anticipated by ComReg has not materialised*" misunderstands the nature of the uncertainty that ComReg dealt with as part of its forward-looking assessment with respect to Virgin Media Ireland's ('VMI') current and future FTTP roll-out. That uncertainty largely concerned the specific locations and timing of VM's FTTP rollout, not the rollout itself. In this regard, the 2024 WLA/WCA Decision, in particular in paragraphs 5.386, 5.387 and Annex 12, included consideration of the hypothetical impact on the geographic modelling exercise of treating VMI's CATV network as a FTTP network. This showed that in that case, the number of Commercial EAs that would pass all three geographic criteria would increase from 0 to 18, amounting to 1.5% of Commercial EAs and 5% of premises in the market.

The Monitoring Report shows that there have been no material deviations since then. Your letter indeed acknowledges that 10 out of 1,183 MEAs meet the geographic criteria as of Q3 2024 and that this is unlikely to change in the future given the nature of current rollouts and commercial agreements. VMI's agreement to buy services from SIRO was also noted in the 2024 WLA/WCA Decision. ComReg would also note that VMI's FTTP roll-out is an upgrade of its existing CATV footprint and ComReg is not aware of any plans for it to substantially expand beyond this.

Eircom's separate correspondence of 9 May 2025 takes issue with the definition of 'premises passed' as employed by ComReg, which Eircom contends, amounts to 'definitional conservatism' which risks misrepresenting market dynamics. ComReg's definition of 'premises passed' has been constant over the years ensuring regulatory certainty and predictability. It forms the basis upon which network operators including Eircom provide information to ComReg quarterly, pursuant to a statutory information request; it is accordingly well known of all network operators including Eircom. ComReg would also refer Eircom to the 2024 WLA//WCA Decision[1] which set out the basis upon which a premises is considered passed. The definition of 'premises passed' used by ComReg is consistent with the definition established by BEREC in its 'Guidelines on Geographical Surveys of Network Deployments Guidelines'[2] and is used by other National Regulatory Authorities and the European Commission.

We do not accept that the fact that operator may have different standard provisioning lead times or connection fees means that "*transparency, replicability and confidence in ComReg's FTTP coverage assessments*" is undermined as a result, as you contend. Defining 'premises passed' by reference to the ability of an end-user to connect to the network concerned means that actual competitive conditions and dynamics (in the context of actual network presence) can be captured, beyond public investor disclosures and other statements which may rely on other definitions or record intentions rather than facts.

In the interests of transparency for all stakeholders, ComReg intends to publish Eircom's correspondence of 29 March, 9 May, 21 May and 29 May along with ComReg's responses of 16 May, 28 May and this letter (save for redacting email addresses) within 7 days of this letter and we note in this regard that Eircom's letters do not contain confidential information and have

[1] See footnotes 102, 248 and 38.
[2] BOR (20) 42, page 10.

not been marked confidential.

ComReg also reserves the right to publish any further correspondence on this matter in due course.

Yours sincerely

Eric Tomkins
Head of Market Analysis & Intelligence