An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Regulation 67 of the European Union (Electronic Communications Code) Regulations 2022 (S.I. 444 of 2022)

Dispute between Vodafone and Eircom re obligations under ComReg Decision D05/24

Draft Determination

Consultation

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An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation
1 Lárcheanter na nDugaí, Sráid na nGildeanna, BÁC 1, Éire, D01, E4X0.
One Dockland Central, Guild Street, Dublin 1, Ireland, D01, E4X0.
Teil | Tel +353 1 804 9600 Suíomh | Web www.comreg.ie

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Redacted information

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1 Introduction

1. On 21 August 2026, Vodafone Ireland Limited ('Vodafone') formally submitted to ComReg a request for resolution of a dispute with Eircom Limited t/a eir and Open eir ('Eircom') under Regulation 67 of the European Union (Electronic Communications Code) Regulations 2022 (the 'ECC Regulations') and in accordance with ComReg's Dispute Resolution Procedures set out in ComReg Decision D14/25 (ComReg 25/89[1]) ('the Dispute'). On 3 September 2026, ComReg decided to handle the Dispute[2] pursuant to Regulation 67(2) of the ECC Regulations. Under Regulation 67, ComReg is required to make a binding determination to resolve the Dispute as soon as possible and in any event within 4 months, except in circumstances considered by ComReg to be exceptional.

2. The Dispute concerns the Service Level Agreements ('SLA') and associated compensation mechanisms applicable to Eircom's Virtual Unbundled Access ('VUA') product which Eircom is required to make available to Access Seekers in accordance with ComReg Decision D05/24 of 18 January 2024 (ComReg 24/07). More particularly, the Dispute is concerned with agreed service levels in respect of service assurance, namely repair times. Assurance SLAs can be described as contractual commitments that define the standards and timeframes within which a service provider is expected to restore faults and maintain the quality and availability of its services. The purpose of such SLAs is to provide customers with clarity and certainty regarding the level of service they can expect, to incentivise efficient fault resolution, and to ensure accountability where agreed service standards are not met. The SLA in place between Vodafone and Eircom specifies the target times for fault repair and service restoration, together with the performance level Eircom is committed to achieving.

3. Vodafone raised four distinct issues within its dispute submission:

   (a) the introduction by Eircom of separate SLA arrangements to apply to Eircom's Bitstream Plus wholesale product ('Bitstream Plus') and Virtual Unbundled Access ('VUA') respectively;

   (b) the operation of the fault exclusion framework, including the treatment of specified clear codes;

   (c) the methodology and value of the applicable payments known as Service Credits, including whether they provide meaningful compensation and an effective incentive for compliance; and

[1] Dispute Resolution Procedures under Regulation 67 of the European Union (Electronic Communications Code) Regulations 2022 (S.I. 444 of 2022) Date: 12 December 2025.
[2] Information Notice: "ComReg accepts request from Vodafone for the resolution of a dispute with Eircom".

(d) the absence of specific information provided to operators, which if provided, would enable service-credit payments to be identified and verified.

4. Further detail on the scope of the Dispute and relevant regulatory obligations is set out in Chapter 2.

5. Under its Dispute Resolution Procedures, ComReg may, at its discretion, publish for consultation its proposed draft determination for the resolution of a dispute. Having regard to the subject-matter of the Dispute and its wider relevance to all Access Seekers availing of Eircom's VUA product, ComReg considers it appropriate to seek the views of any interested parties, in addition to Vodafone and Eircom.

6. ComReg's assessment of the issues in dispute between Vodafone and Eircom, and their respective submissions, is set out in detail in Chapter 3. By way of summary, ComReg proposes to resolve the Dispute as follows, having regard to the parties' submissions, Eircom's obligations under Decision D05/24 and ComReg's functions and statutory objectives as set out in section 10 and section 12 of the Communications Regulation Act 2002 and Regulation 4 and Regulation 67 of the ECC Regulations:

(a) Following Eircom's publication of its revised Bitstream SLA V8 on 11 September 2026, which aligned agreed service levels for repair in the Bitstream and VUA SLAs, no intervention from ComReg at this time appears to be required.

(b) Eircom's approach to fault exclusion results in a large number of faults being excluded from Eircom's assessment of fault repair times against the agreed service levels. Accordingly, this approach cannot be considered to encourage an efficient level of performance on the part of Eircom as required by Section 11.1 of the Wholesale Local Access ('WLA') Decision Instrument. Having regard to the purpose of an SLA, all faults should be included by Eircom in its performance assessment and service credit calculations, save only for faults which are exclusively within the control of the Access Seeker, namely customer equipment or customer environment-related faults, and allowing for interruptions in the calculation of the number of days a fault is not repaired where repair is objectively dependent on an independent third-party's intervention over which Eircom has no control.

(c) Eircom applies a differential percentage-based calculation of Service Credits, whereby Service Credits are payable only in respect of the percentage of faults by which the agreed service level has been missed. This approach does not provide Eircom with sufficient and adequate incentives to meet agreed service levels and no meaningful incentive to repair faults in order to ensure that it meets agreed service levels. In order that service credit calculation under the SLA encourages an efficient level of performance, ComReg proposes to require that Service Credits are applied in respect of all faults included within the applicable

SLA measure that were not repaired within the relevant repair timeframe, when the relevant agreed service level is not met.

(d) The proposed change to the service credit calculation means that it is reasonable that Eircom provides with its quarterly NGA SLA Assurance reporting, detail of all faults that are late, including as the case may be, all reported faults that have been excluded, so that Vodafone can verify whether agreed service levels have been met or not, and if not, that Service Credits are paid on all faults that are late. Detail should include the basis for any exclusion of faults and include faults subject to a “stop-the-clock” event.

7. Under Regulation 67, ComReg is required to make a binding determination to resolve the dispute as soon as possible and in any event within 4 months of its decision to handle a dispute, except in circumstances considered by ComReg to be exceptional. In light of the applicable timeline, the parties to the Dispute and other interested parties have 10 working days, namely until 5pm on 4 December 2026, to submit comments on the draft Determination.

2 The Dispute

2.1 Request for Dispute resolution

8. On 21 August 2026, Vodafone formally submitted to ComReg a request for resolution of a dispute with Eircom pursuant to Regulation 67 of the ECC Regulations and in accordance with ComReg's Dispute Resolution Procedures set out in ComReg Decision D14/25 (ComReg 25/89[3]).

9. On 3 September 2026, ComReg decided to handle the Dispute[4] pursuant to Regulation 67(2) of the ECC Regulations, being satisfied that there was a dispute between two undertakings providing electronic communications networks or services in the State, in connection with existing regulatory obligations, namely the obligations imposed on Eircom by ComReg Decision D05/24. In particular both Eircom and Vodafone are undertakings providing electronic communications networks and services in the State and the dispute submitted by Vodafone is concerned with the Service Level Agreements ('SLA') and associated compensation mechanisms applicable to the provision by Eircom of Virtual Unbundled Access ('VUA') further to the obligations imposed on Eircom by ComReg Decision D05/24.

10. Under Regulation 67, ComReg is required for disputes falling within the scope of Regulation 67, to initiate an investigation and make a binding determination to resolve the dispute, within 4 months, except in circumstances considered by ComReg to be exceptional. In determining a dispute, ComReg has regard to its functions and objectives at Section 12 of the Communications Regulation Act 2002 (as amended) and Regulation 4 of the ECC Regulations.

2.2 Investigation

11. Vodafone made submissions to ComReg on 21 August, 21 September, 15 October and 20 October 2026. It also provided copies of correspondence exchanged with Eircom, information published by Eircom and analysis conducted internally on the impact of extended fault durations. Eircom furnished its responding submission to the Dispute on 25 September 2026, setting out its position on each of the matters raised by Vodafone and providing supporting material. Eircom made further submissions on 13 October, 19 October, 23 October and 28 October 2026. The information provided by Eircom included material shared as part of the SLA Review process that led to the

[3] Dispute Resolution Procedures under Regulation 67 of the European Union (Electronic Communications Code) Regulations 2022 (S.I. 444 of 2022) Date: 12 December 2025.
[4] Information Notice: "ComReg accepts request from Vodafone for the resolution of a dispute with Eircom".

SLA concerned in the Dispute, including correspondence between Eircom and ComReg. In response to a request from ComReg, Eircom also provided an Excel spreadsheet containing the full fault information for Vodafone for the period from 1 July 2026 to 30 September 2026, received on 23 October 2026, and a copy of the related NGA SLA Assurance Report, received on 30 October 2026.

2.3 Scope

12. The Dispute is concerned with the SLA for VUA and related arrangements put in place by Eircom under the obligations imposed on it by ComReg Decision D05/24, and which Vodafone says, result in a failure to deliver effective wholesale access in practice, as required under the European Electronic Communications Code ('ECC') Regulations and applicable ComReg Decisions, namely,

    (a) ComReg Decision D05/24 (Document No. ComReg 24/07) – Wholesale Local Access (WLA) Market Review; and

    (b) ComReg Decision D04/22 (Document No. ComReg 22/49) – Access Products and Services KPI Metrics.

13. Specifically, Vodafone's dispute submission identified four areas in which it and Eircom are in dispute:

    (a) the separation of the Bitstream and Virtual Unbundled Access ('VUA') Service Level Agreements ('SLAs'): according to Vodafone, Eircom "*has structurally decoupled its Next Generation Access (NGA) Service Level Agreement framework into two distinct tracks via publications dated 5 June 2026… [resulting] in a target and performance divergence between downstream Bitstream+ (BS+) services and upstream Virtual Unbundled Access (VUA) services...";*

    (b) the exclusions of faults, to dilute the SLA: according to Vodafone, Eircom "maintains an excessively wide "Clear Code Exclusion List" within its operational rules to systematically absolve itself of service credit liabilities,"

    (c) credit calculation under the SLA: according to Vodafone, "The current SLA credit framework does not impose meaningful consequences for non-performance and therefore fails to incentivise timely fault resolution by Open eir...", and

    (d) fault repair reporting: according to Vodafone, Eircom "*does not provide case-by-case itemisation for service credit payouts, instead issuing aggregated monthly bulk credits...*" imposing a significant administrative burden on Vodafone to reconcile and validate the Next Generation Access ('NGA') SLA Assurance reports provided by Eircom.

14. In its submission of 25 September 2026, Eircom disagreed "*with Vodafone's interpretation of Decisions D04/22 and D05/24, or with the conclusion that the matters raised in this dispute demonstrate a breach by open eir of those Decisions*".

2.4 Relevant Obligations

15. The Dispute is primarily concerned with Eircom's obligations of access as set out in Section 7 of the Decision Instrument at Annex 1 of ComReg Decision D05/24 ('the WLA Decision Instrument'). In particular, Section 7.1 obliges Eircom to meet all reasonable access requests, including an obligation to provide Virtual Unbundled Access (VUA) and Section 7.4 requires such access to be granted in a fair, reasonable, timely, transparent and non-discriminatory manner.

16. Section 11 of the WLA Decision Instrument further specifies the requirements associated with the obligation to grant access in a fair, reasonable, timely, transparent and non-discriminatory manner in respect of service level agreements, as follows:

> *11.1 Without prejudice to the generality of, and for the purpose of further specifying the requirements of the obligation at, Section 7.4, Eircom shall ensure that a legally binding, fit-for-purpose, SLA which encourages an efficient level of performance on the part of Eircom is attached to each product, service and Associated Facility made available in accordance with this Decision Instrument from the time that the product, service and Associated Facility is available and subsequently kept up to date and fit for purpose.*
>
> *11.2. In meeting its obligation under Section 11.1, Eircom shall:*
>
> *(…)*
>
> *11.2.2. Ensure that SLAs are sufficiently detailed and include, without limitation, the following provisions:*
>
> *(a) An obligation on Eircom to compensate failure to meet agreed service levels by way of payment of Service Credits such that the Service Credits cover, at a minimum, the direct costs and any other reasonable loss of value incurred by the Access Seeker concerned and provide Eircom with sufficient and adequate incentives to meet agreed service levels;*
>
> *(b) Details of the specific circumstances upon which Service Credits must be paid by Eircom and the methodology used to calculate the amount of Service Credits owed, including an itemised list of the direct costs and other losses contributing to the Service Credit calculation, supported by clear examples demonstrating the practical application of Service Credits;*

(c) An obligation on Eircom to apply Service Credits, where payable, automatically and in a timely manner;

(…)

17. Section 8 of the WLA Decision Instrument also imposes on Eircom an obligation of non-discrimination, as follows:

"*8.1. Eircom shall, as regards the provision of Access required in Section 7 of this Decision Instrument, ensure that it does not discriminate between Access Seekers, and between Access Seekers and itself, its subsidiaries, affiliates or partners, and to that effect shall more particularly:*

(i) apply equivalent conditions in equivalent circumstances to other Undertakings requesting, or being provided with Access (or requesting or being provided with information in relation to such Access); and

(ii) provide Access and information in relation to such Access to all other Undertakings under the same conditions and of the same quality as Eircom provides to itself or to its subsidiaries, affiliates or partners, as further specified in Section 8.2.

8.2. For the purpose of Section 8.1(ii), Eircom shall provide Access and information to all Undertakings including itself, its subsidiaries, affiliates or partners, on the same timescales, terms and conditions, including those related to prices and service levels, using the same systems and processes."

3 Assessment

18. Set out below is ComReg's assessment and proposed resolution, having regard to the submissions made by Vodafone and Eircom, of each of the matters in dispute, namely (a) the decoupling of the VUA and Bitstream SLAs; (b) the exclusion of faults for the purpose of determining performance under the SLA; (c) the calculation of Service Credits; and (d) fault reporting, that is, the information regarding faults made available to Vodafone.

3.1 Decoupling of the VUA and Bitstream SLAs

19. ComReg understands that Vodafone is concerned that the publication by Eircom of a separate SLA to apply to its Bitstream offering, will translate into asymmetries or disparity in the service levels offered by Eircom in respect of VUA and Bitstream. According to Vodafone, "*this separation enables divergence in performance metrics and applied standards such that VUA-based operators are exposed to a materially different level of service assurance compared to downstream retail operations within the eir Group"* and "*VUA-reliant operators are potentially placed at a systemic disadvantage to the unregulated Bitstream, undermining the requirements of Non-Discrimination and Equivalence of Outputs".*

20. In other words, following the separation of the SLA into separate agreements for Bitstream and VUA, Vodafone is concerned that the Bitstream SLA would be preferential to the Eircom retail arm and therefore be discriminatory, and asks that ComReg "*enforce metric parity",* and "*require that SLA repair timelines, metrics, and definitions across FTTC/FTTH and Bitstream+/VUA operate to deliver equivalent outcomes in service assurance".*

21. ComReg notes that since 1 July 2026, separate SLAs apply in respect of VUA (NGA Fibre to the Home ('FTTH') and Fibre to the Cabinet ('FTTC') SLA V1.0) and Bitstream (NGA SLA V7.0) have been published. As initially published, they introduced differences in the performance levels associated with Eircom's repair service and the credits payable by Eircom in case agreed performance levels were not met. However, on 11 September 2026 (after the Dispute was submitted by Vodafone), Eircom notified all Access Seekers of an amendment to Bitstream NGA SLA V7.0 and replacement with NGA SLA V8.0. Following the publication of NGA SLA V8, the repair targets for Bitstream and VUA are aligned. The remaining difference in the FTTC arrangements is that Service Credits apply to VUA, but not to Bitstream, at the two-day and five-day stages.

22. The following table provides a summary of the Service Level performance targets and associated Service Credits committed to by Eircom as detailed in its published SLA documents.

	FTTC		FTTH		FTTC		FTTH		FTTC		FTTH	
	2-day				5-day				10-day			
Original	84%	€18	73%	€4	93%	€36	92%	€7	100%	€36	100%	€10
BS+ V7.0	84%	€18	73%	€4	93%	€36	92%	€7	100%	€36	100%	€10
VUA V.1	80%	€12	80%	€12	92%	€25	92%	€25	100%	R*	100%	R*
BS+ V8.0	80%	0	80%	0	92%	0	92%	€25	100%	R*	100%	R*

*R stands for "*redress*": where repair time extends beyond the 10-day restoration target, the credit amount is based on the monthly rental incurred for the service.

23. While it is correct, as noted by Eircom, that Bitstream Plus (BS+) "*is not a regulated WLA access product"* and that *"D05/24 in fact removes entirely the previous SMP regulations associated with the Wholesale Central Access Market for which BS+ is a part*", this does not mean that the obligations imposed on Eircom in respect of its provision of VUA are not relevant to its provision of Bitstream Plus. In particular, as explained in para 3.26 of ComReg Decision D04/22 (ComReg 22/49), Eircom does not directly consume VUA; rather it consumes Bitstream Plus. Bitstream Plus, however, is considered to include a VUA self-supply component and in accordance with Section 8 of the WLA Decision Instrument, Eircom's provision of VUA to Access Seekers such as Vodafone must be under the same conditions and of the same quality as Eircom provides to itself when it consumes Bitstream Plus. This means that the service levels agreed by Eircom under an SLA, and the performance achieved by Eircom in its provision of VUA to Access Seekers and as part of its self-supply must not favour Eircom's own operations.

While ComReg understands Vodafone's concern that the decoupling of the VUA SLA from the Bitstream Plus SLA raises the potential for "*asymmetric service outcomes",* ComReg does not believe that there is cause to intervene at this stage. ComReg notes in particular that as submitted by Eircom, "*the regulatory framework does not prescribe that VUA and Bitstream plus products must be contained within the same SLA document"* and for so long as the service levels agreed by Eircom in respect of VUA are no less favourable than those applicable to Eircom when self-supplying VUA as part of Bitstream Plus, and there is no difference in the performance achieved, no issue arises. In this regard, with the publication of NGA SLA V8 the repair targets for FTTH Bitstream and FTTH VUA are now fully aligned, as are those for FTTC Bitstream with FTTC VUA, and the Service Credits are more favourable to Access Seekers under the NGA SLA than they are under the Bitstream Plus SLA.

3.2 Fault Exclusions

24. The second matter in dispute between Vodafone and Eircom concerns fault exclusions, that is, Eircom's practice to exclude certain faults for the purpose of determining whether the agreed service levels are met or not.

25. According to Vodafone, Eircom "*maintains an excessively wide "Clear Code Exclusion List" within its operational rules to systematically absolve itself of service credit liabilities*". The Clear Codes would be used by Eircom to exclude from SLAs faults which have been validated and accepted by Eircom as "*faults based on an infrastructure-level line error*"; examples provided by Vodafone include Clear Code 10 (Network Disturbance/Congestion), Clear Code 11 (Bad Transmission), Clear Code 84 (Broadband Fault) and Exchange Power Failures (Clear Codes 248, 538, 588) which Vodafone submits, "*represent internal network conditions entirely within Open eir's operational control"*. Vodafone also takes issue with Eircom's treatment of "child faults" which should be treated, according to Vodafone, as a "*genuine technical fault… on each individual line".*

26. For its part, Eircom explains that it is not correct that "*acceptance of a fault report following a line test result automatically demonstrates an underlying open eir network fault"* and "*the fact that a fault report was initially accepted for investigation following a line test does not pre-determine the final root cause of the issue".* It explains further that "*the exclusion framework exists to distinguish between faults attributable to the open eir network, issues arising from customer equipment or customer environments, intermittent conditions that cannot subsequently be substantiated, and circumstances outside the reasonable control of open eir*". In terms of the clear codes identified by Vodafone, Eircom says that "*many… fall within categories that are treated as non-network faults, or are excluded from SLA calculations."* As for the use of a parent-child fault concept, it provides according to Eircom, "*operational efficiency by allowing all related customer reports to be linked to a single root-cause investigation and repair activity".*

27. ComReg understands that after investigation of a reported fault and any associated repair activity, Eircom assigns a "Clear Code" to each individual fault to categorise the fault and its root cause. Where applicable, Eircom also assigns a fault suffix to provide additional information about the cause of the fault. Both the clear code and suffix are used to determine whether the fault is included or excluded from service credit calculation. Eircom has published a list of 556 Clear Codes and 56 fault suffixes on its website (not all of these are applicable to FTTC or FTTH VUA), with a very brief description of the fault and its applicability to the different markets. The descriptions do not, in all cases, make clear the circumstances in which a clear code is applied or why a fault assigned that clear code is included in or excluded from the SLA calculation. A high-level, non-exhaustive review of clear codes used by Eircom to exclude faults indicate a wide range of causes for faults that are relied on to exclude

faults, including “Broadband Fault” (Code 84), or congestion (Clear Codes 10, 262, 820) – ComReg notes that congestion concerns the operation and capacity of Eircom’s network, and network capacity planning and management are matters for Eircom.

28. While it appears to ComReg that the information available on clear codes is unsatisfactory and insufficient to understand the basis for exclusion of faults, it also appears to ComReg that the actual issue in dispute is not so much Eircom’s use of clear codes, but the actual exclusion of faults by Eircom for the purpose of assessing performance under the SLA and the calculation of any credits owed. In addition, having considered both Vodafone’s and Eircom’s submissions, it does not appear to ComReg that issues arise as such from Eircom’s line-testing procedures. ComReg also accepts that faults entirely attributable to: “*issues arising from customer equipment or customer environments”,* may properly be excluded from SLA calculations. However, in respect of other faults, it is apparent that Eircom’s approach to performance assessment under the SLA means that a very significant number of faults are excluded: based on data submitted by Vodafone, ComReg calculates that for the period July to September 2026 [redacted] of the faults logged by Vodafone with Eircom in respect of FTTH VUA, and [redacted] in respect of FTTC VUA, were excluded from SLA calculations.

29. Clearly Eircom’s approach allows it to mask a very significant number of faults and such an approach, where half of the faults logged with Eircom can be excluded from performance assessment, cannot be considered to encourage an efficient level of performance on the part of Eircom as required by Section 11.1 of the WLA Decision Instrument.

30. Having regard to the purpose of an SLA, which is concerned with setting the performance levels that can be expected by the Access Seeker, and compensating the Access Seeker using the service where performance is not met, there is no basis for excluding certain faults when assessing performance (other than those faults which are exclusively within the control of the Access Seeker, namely customer equipment or customer environments-related faults). This is the case not only of faults directly attributable to the network used to deliver the service, but also of other faults including those associated with external events such as power failures and utility outages. In all cases where the service provided to the Access Seeker is affected and an end-user out of service, performance associated with the service purchased is affected and the cause of the fault, from a service level performance and compensation perspective, is irrelevant.

31. Similarly, the fact that the fault is a “child” fault or is “non-standard” can have no relevance to service level performance assessment or compensation: each child fault counts as one fault. Accepting that the parent and child fault process is an operational mechanism for managing the investigation and repair of faults arising from a common network issue, it remains that the linking of individual end-user faults to a parent fault does not alter the fact that those faults have arisen and remain unresolved.

32. Furthermore, any faults that Eircom considers "non-standard", which ComReg understands include faults where additional civils work, or a licence application may be required as part of service restoration, remain faults: the need for additional civil works or a licence application as part of the restoration activity does not alter the fact that a fault has arisen and remains unresolved. There is no basis for excluding such a fault for the purposes of SLA calculation solely because Eircom has classified it as non-standard. The only exception to this rule should be where fault restoration is delayed as a result of an objective requirement for an independent third-party's intervention over which Eircom has no control: in that case, Eircom should be allowed to "stop the clock" for the duration of those circumstances, and resume counting thereafter.

33. Accordingly, ComReg proposes to resolve the issue in dispute between Vodafone and Eircom by requiring Eircom to ensure that it accounts for all faults for the purpose of determining whether agreed service levels have been met and only excludes for that purpose, in its assessment of performance levels, faults which are exclusively within the control of the Access Seeker, namely customer equipment or customer environments-related faults.

3.3 Cost Recovery

34. Both Vodafone and Eircom agree that the third issue in dispute between them is whether the SLA's service credit arrangements provide appropriate performance incentives and compensation. Vodafone contends that "*the current SLA credit framework does not impose meaningful consequences for non-performance and therefore fails to incentivise timely fault resolution by Open eir, leading to unacceptable impacts on customers…"* Vodafone submits further that its handling costs associated with faults are materially greater than the level of service provided under the SLA framework and suggest that its baseline operational cost is, even on a conservative basis, multiples above the current credit values.

35. Importantly, Vodafone does not rely on its internal cost estimates, which it says are conservative as they exclude wider downstream operational and commercial impacts associated with continuing faults on Eircom's network, as a basis for calculating Service Credits/compensation. "*Rather,* Vodafone further explains, "*the purpose of this evidence is to demonstrate that the proposed SLA credit structure does not give rise to a proportionate financial or operational consequence for Open eir where SLA targets are missed,"* which is, according to Vodafone, further compounded by Eircom's approach to fault exclusion. As such, Vodafone seeks from the resolution of the Dispute that it ensures that "*SLA credit structure operate as an effective and proportionate incentive for compliance with service assurance obligations and targets.*"

36. Eircom disagrees that the SLA credit framework fails to provide meaningful compensation or to incentivise compliance with agreed service level and submits that it has complied with each of the requirements set out in Decision D05/24, including that the credits provide compensation for direct costs and reasonable loss of value and that they incentivise compliance with relevant service levels. Eircom further submits that the question is not whether Vodafone considers its own internal costs exceed the Service Credits, but whether Eircom has complied with the requirements under Decision D05/24 regarding the development, justification and consultation of the SLA credit framework and whether the credits provide appropriate incentives and compensation within the meaning of Decision D05/24. According to Eircom, "*the Decision requires open eir to develop informed estimated of Access Seeker direct costs and reasonable loss of value and to use those estimated as the basis for the discussion, justification and worked-examples discussion with industry. This is precisely the approach adopted by open eir*."

37. ComReg notes, first of all, that under Section 11.1 of the WLA Decision Instrument, SLAs must "*encourage an efficient level of performance on the part of Eircom"* and under Section 11.2.2, Service Credits must "*provide Eircom with sufficient and adequate incentive to meet agreed service levels".*

38. For the purpose of determining whether the current credit SLA framework provides appropriate incentives, ComReg notes first that Service Credits are only applied, where the service level is not met, to the number of faults making the difference between the actual service level reached, and the service level agreed. For instance, where the agreed service level is that 80% of faults will be repaired within 2 days, and only 70% of faults were repaired within two days, Service Credits will be applied to 10% of the faults, that is, the number of faults that fall between their actual performance and the target performance. The service credit due is calculated as the Credit Amount multiplied by Number of faults to get to the target performance multiplied by average days over the target days.

39. The following is the worked example from Eircom's published document:[5]

[5] Eircom document "open eir Next Generation Access (NGA) FTTH VUA & FTTC VUA V1", section 1.3.1, page 18.

Example - FTTH VUA & FTTC VUA			
Qualifying Faults			1000
	T1 - 2 wd	T2 - 5 wd	T3 - 10 wd
Faults Open	300	130	30
Average Working Days	4.5	9	15
Workings			
Target %	80%	92%	100%
Target W/Days	2	5	10
Service Credits	€ 12.00	€ 25.00	€ 23.50
Actual % Formula	1 - (Faults Open / Qualifying Faults)		
Actual %	70%	87%	97%
Faults Over Formula	(Target % - Actual %) x Qualifying Faults		Redres
Faults Over	100	50	30
Days Over Formula	Avg W/Days Open - Target Days		Redres
Days Over	2.5	4	1
Service Credits Formula	Faults Over x Days Over x Service Credit		
Service Credits	€ 3,000.00	€ 5,000.00	€ 705.00
Total Service Credits			€ 8,705.00

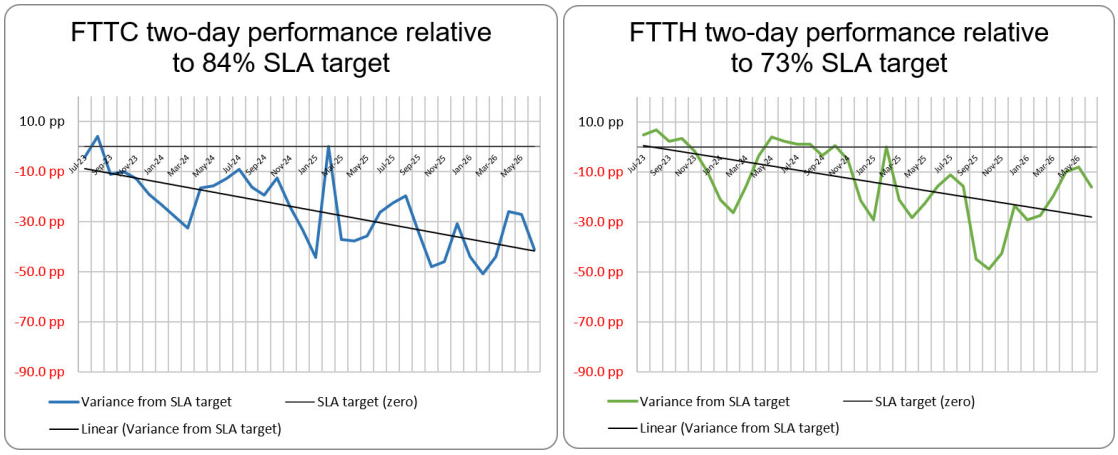
40. In Eircom's worked example, 300 of the 1,000 faults remain unresolved after two days. Actual performance is therefore 70%, against a target of 80%. Eircom calculates the service credit by reference to 100 faults, being the number represented by the difference between actual performance and the target. The remaining 200 faults are not included in the service credit calculation. In this instance the Service Credit is calculated as €12 (credit amount) x 100 (faults over) x 2.5 (Average Days over).

41. However, an Access Seeker's fault-related costs are not limited to the number of faults which make the difference between actual and agreed service level performance. Costs also arise in relation to any other faults that remain unresolved. In other words, and using the numbers from Eircom's own example for the 2-day SLA target, whilst Vodafone incurs the costs associated with the 300 faults that were actually not resolved within the two days, Eircom currently only pays the credit associated with the 100 faults by which it misses the agreed service level of 80% of faults fixed within two days. Vodafone submits that as a result, the Service Credits are so limited as to not provide a meaningful incentive for Eircom to improve its repair performance and consistently achieve the agreed service levels.

42. The NGA SLA Assurance report provided by Eircom quarterly to Vodafone for the period Q2 2025 and Q2 2026 shows that Eircom failed to achieve any of the applicable repair targets in any of the quarters shown. Although performance improved on some measures in individual quarters, none of the applicable targets was achieved during the period. Comparing Q2 2025 with Q2 2026, performance deteriorated on four of the six measures and remained below target on all six measures.

[redacted]

43. Meanwhile, Eircom's published Key Performance Indicator ('KPI') reports showing the performance against its 2-day Repair target on a monthly basis show persistent underperformance against both two-day repair targets:



44. FTTC performance was below the 84% target in almost every month shown, with the shortfall generally increasing over the period. FTTH performance was closer to the 73% target during the earlier part of the period but subsequently remained below the target and also shows a clear downward trend. The scale and duration of these shortfalls indicate that the failure to achieve the agreed service levels was sustained rather than confined to isolated reporting periods.

45. This persistent underperformance over an extended period suggests that service credit arrangements under SLAs are insufficient or inadequate to meet the regulatory requirements set out in Decision D05/24, namely that SLAs encourage an efficient level of performance on the part of Eircom and that compensation payable under the SLA provide Eircom with sufficient and adequate incentives to meet agreed service levels. ComReg notes in this regard that under the existing credit calculation model, Eircom has no real incentive to repair faults in order to ensure that it meets agreed service levels, only at best an incentive to ensure that performance is not too much below agreed service levels so as to limit the amount of Service Credits payable and actual performance clearly suggests that the cost to Eircom of not meeting agreed service level is materially below the cost of improving performance, consistent with Vodafone's concern that "*the proposed SLA credit structure does no give rise to a proportionate financial or operational consequence for Open eir where SLA targets are missed.*"

46. ComReg believes accordingly that it is necessary and justified to adjust the SLA credit structure so that Eircom is required, where an agreed service level is not met, to pay Service Credits in respect of all faults not repaired within the relevant service level timeline. In other words, where Eircom does not achieve an applicable SLA target, the service credit should be calculated by reference to all faults included within the applicable SLA measure that were not repaired within the relevant repair timeframe. The calculation should not be limited to the number of faults represented by the difference between Eircom's actual performance and the applicable agreed service level.

47. Calculating Service Credits in this way means that where Eircom does not achieve an agreed service level, a service credit is due in respect of all faults included within the applicable SLA measure that were not repaired within the relevant repair timeframe, which takes account of the wider group of unresolved faults in relation to which Access Seekers incur costs. It also ensures that the financial consequence increases with the number of faults that remain unresolved. As such it addresses Vodafone's submission that the current arrangements do not create a financial consequence that reflects the operational impact of unresolved faults or provides a meaningful incentive for Eircom to improve its repair performance and consistently achieve the agreed service levels. This change of approach also takes account of Eircom's submission that service credit rates were developed using informed estimates of Access Seekers' direct costs and reasonable loss of value.

48. For the avoidance of doubt, no changes to the agreed service levels are proposed. If Eircom achieves the applicable target, no service credit will be payable. If Eircom does not achieve the target, the rate is applied to all faults included within the applicable SLA measure that were not repaired within the relevant repair timeframe. This resolves the issue between the parties concerning the operation of the Service Credit calculation without imposing a requirement on Eircom to repair 100% of faults within that timeframe.

3.4 Level of Information provided to Vodafone

49. The fourth issue in dispute between Vodafone and Eircom concerns the information provided to Vodafone under the SLA in respect of faults and associated repair times, and more particularly Eircom's "*bulk-reporting practice",* as described by Vodafone. Vodafone explains that Eircom "*does not provide case-by-case itemisation for service payouts, instead issuing aggregated monthly bulk credits."* Vodafone complains that this in turn shifts the administrative burden onto it and "*forces Vodafone to spend considerable operational hours auditing, tracing and manually reconciling lump-sum payments against thousands of individual customer files."* Vodafone asks that Eircom provides "*incident-level, end user referenced, monthly service tracking…"*

50. In response, Eircom submits that there is no obligation imposed under Decision D05/24 for Eircom "*to provide incident-level, end-user-referenced reports or enable an Access Seeker to reconcile an aggregate service credit against every individual fault record."* Eircom does not accept Vodafone's contention that its reporting framework creates an "*unlawful administrative burden"* and notes that "*the service credit mechanism was designed to align with the agreed percentage-based SLA structure"* and "*the reporting information provided reflects the methodology used to calculate service credits under that framework".* According to Eircom, what Vodafone seeks represents "*a material change to the agreed SLA construct and would effectively move from a percentage-based performance regime to an event-by-event compensation framework".*

51. Following the conclusion of each quarter, Eircom provides a report, the NGA SLA Assurance report, covering the performance for the previous quarter and the credit amount payable, as follows: [6]



52. The "Qty" number is the total number of faults for the period. The "Qty Late" is the number of faults that did not meet the target days associated with the SLA. The "Qty Penalties" is the number of faults represented by the difference between the Actual Performance and the Repair Target. The "Penalty" amount is calculated as the "Qty Penalties" multiplied by the "Rate" multiplied by the "Average Days Over". The "Average Days Over" figure used in the calculation is not shown in the NGA SLA Assurance report and in its submission of 13 October 2026, Eircom explained that "*The average days penalty for each tier can be calculated by dividing the total penalty by the penalty rate and that figure by the qty penalties number to get the average days for the metric*".

53. ComReg understands from Eircom that it uses a system called "WSLAM" that automatically receives the relevant fault information from two other systems, Unified

[6] Perlico "NGA SLA Assurance Report Q2 2026"

Gateway ('UG') and FHS Helix. WSLAM applies the Clear Code and fault suffix rules to identify the valid fault population and automatically calculate the applicable SLA performance measures and associated Service Credits. While Vodafone has access to the UG, and fault data, Clear Code and fault suffix information are available to it at an individual fault level, the UG does not provide a consolidated report linking those individual fault records to the SLA performance and Service Credit figures reported for the quarter.

54. While ComReg notes Eircom's position that the percentage-based approach to the calculation of Service Credits does not reconcile with an incident fault, service credit tracking requirement, for the reasons set out in section 3.3 above, the percentage-based approach used to date has not encouraged Eircom to deliver an efficient level of performance and in future, Eircom will be required to calculate Service Credits not based on a percentage of faults, but in respect of all faults not repaired within the relevant period, when the agreed service level is not met. As a result the issues raised by Eircom no longer apply and it is reasonable that Eircom would provide with its quarterly NGA SLA Assurance reporting, detail of all faults that are late, including as the case may be, all reported faults that have been excluded, so that Vodafone can verify whether agreed service levels have been met or not, and if not, that Service Credits are paid on all faults that are late. Detail should include the basis for the treatment of those faults and the figures used to calculate the Service Credit, including Days Over where that figure is used, and include faults subject to a "stop-the-clock" event.

4 Proposed resolution

55. In light of the assessment set out in Chapter 3, in summary, ComReg proposes to determine the issues in dispute between Vodafone and Eircom as follows –

(a) Following Eircom's publication of its revised Bitstream SLA V8 on 11 September 2026, which aligned agreed service levels for repair in the Bitstream and VUA SLAs, no intervention from ComReg at this time appears to be required.

(b) Eircom's approach to fault exclusion results in a large number of faults being excluded from Eircom's assessment of fault repair times against the agreed service levels. Accordingly, this approach cannot be considered to encourage an efficient level of performance on the part of Eircom as required by Section 11.1 of the WLA Decision Instrument. Having regard to the purpose of a SLA, all faults should be included by Eircom in its performance assessment and service credit calculations, save only for faults which are exclusively within the control of the Access Seeker, namely customer equipment or customer environment-related faults and allowing for interruptions in the calculation of the number of days a fault is not repaired where repair is objectively dependent on an independent third-party's intervention over which Eircom has no control.

(c) Eircom currently applies a differential percentage-based calculation of Service Credits, under which Service Credits are payable only in respect of the percentage of faults by which the agreed service level has been missed. This approach does not provide Eircom with sufficient and adequate incentives to meet agreed service levels and no meaningful incentive to repair faults. In order that service credit calculation under the SLA encourages an efficient level of performance, and to incentivise Eircom to repair the faults within the agreed timeframes, ComReg proposes to require that when the relevant agreed service level is not met, Service Credits are applied in respect of all faults included within the applicable SLA measure that were not repaired within the relevant repair timeframe.

(d) The proposed change to the service credit calculation means that it is reasonable that Eircom provides with its quarterly NGA SLA Assurance reporting, detail of all faults, including as the case may be, all reported faults that have been excluded, so that Vodafone can verify whether agreed service levels have been met or not, and if not, that Service Credits are paid on all faults that are late. Detail should include the basis for any exclusion of faults, the time to clear the fault and include faults subject to a "stop-the-clock" event.

56. In its dispute submissions, Vodafone noted that "*Taken individually, SLA separation, exclusions, credit structures and reporting practices may appear to be discrete operational issues, but their combined effect is systemic, resulting in a framework*

where accountability is diluted, compliance is difficult to verify and effective wholesale access is undermined in practice." As shown in Chapter 3, and having regard to persistent poor repair performance as against agreed service levels, it is apparent that current arrangements in respect of fault identification and service credit calculations have not encouraged an efficient level of performance on the part of Eircom in respect of its provision of VUA, and in particular, have not given Eircom sufficient and adequate incentives to meet agreed service levels, contrary to the requirements set out in Section 11 of the WLA Decision Instrument. ComReg believes that the proposed changes to fault identification and service credit calculations ought to address the inadequacy of Eircom's incentives and are necessary and reasonable for the purpose of resolving the dispute between Vodafone and Eircom.

57. The proposed operative part for the Dispute determination is set out in the draft Determination Instrument at Annex 1.

5 Next Steps

58. Interested parties are invited to submit comments on the Draft Determination. Any submissions in respect of the draft Determination are required by email to wholesaledisputes@comreg.ie on or before 5pm on 4 December 2026.

59. The task of analysing responses received will be made easier if all comments are referenced to the specific paragraph or chapter numbers used in this draft Determination

60. ComReg may publish responses, subject to the provisions of the Dispute Resolution Procedures in ComReg 25/89 and ComReg's guidelines on the treatment of confidential information in ComReg 05/24. Respondents are requested to clearly identify confidential material within their submissions and place any such confidential material in a separate document to their response, with this also being provided by the date referred to in paragraph 59 above.

61. Respondents are requested to provide a copy of any submissions in an unprotected electronic format.

62. It is ComReg's intention to complete its consideration of any submissions received and finalise its resolution of the Dispute within the 4-month statutory timeline.

6 Annexes

Annex: 1 Draft Determination Instrument

1. STATUTORY POWERS GIVING RISE TO THIS DETERMINATION INSTRUMENT

1.1. This Determination Instrument is made:

(a) Pursuant to Regulation 67 of the ECC Regulations;

(b) Having had regard to Sections 10 and 12 of the Communications Regulation Act 2002 and Regulation 4 of the ECC Regulations;

(c) Having followed the procedures set out in ComReg Decision D14/25;

(d) Having regard to ComReg Decision D05/24, and in particular Section 8 and Section 11 of the WLA Decision Instrument;

(e) Having regard to the analysis and reasons set out in [*the Determination Document];*

(f) Having consulted with the parties to the Dispute and held a public consultation and having given due consideration to the submissions received.

1.2. This Determination Instrument shall be construed together, and consistently, with ComReg Document No. [*Determination Doc*].

PART I – GENERAL PROVISIONS

2. DEFINITIONS

2.1. In this Determination Instrument, capitalised terms shall have the same meaning as those terms in the WLA Decision Instrument.

2.2. In addition:

(a) "ComReg Decision D05/24" means ComReg Document No. 24/07 of 18 January 2024 entitled Market Reviews, Wholesale Local Access (WLA) provided at a fixed location. Wholesale Central access (WCA) provided at a fixed location for mass-market products;

(b) "ComReg Decision D14/25" means the Dispute Resolution Procedures published by ComReg on 12 December 2025 in ComReg Document No. 25/89;

(c) "ComReg Decision DXX/2●" means [ComReg Document setting out ComReg's final determination of the Dispute];

(d) "Determination Instrument" means this Determination Instrument;

(e) "Dispute" means the dispute described in Section 3.1 of this Determination Instrument;

(f) "Effective Date" means the date set out in Section 6 of this Determination Instrument;

(g) "Parties" means Vodafone and Eircom;

(h) "VUA SLA" means the SLA published by Eircom further to its obligations under the WLA Decision Instrument and entered into by Eircom and Vodafone;

(i) "Vodafone" means Vodafone Ireland Limited, an undertaking authorised pursuant to Regulation 6 of the ECC Regulations; and

(j) "WLA Decision Instrument" means the decision instrument set out at Annex 1 of ComReg Decision D05/24.

3. SCOPE AND APPLICATION

3.1. This Determination Instrument resolves the dispute submitted to ComReg by Vodafone on 21 August 2026 and which ComReg decided to handle on 3 September 2026.

3.2. The Dispute is a dispute within the meaning of Regulation 67 of the ECC Regulations, being a dispute between Vodafone and Eircom, two undertakings providing electronic communications services and networks in the State, and in connection with regulatory obligations imposed on Eircom by ComReg Decision D05/24 being obligations imposed under Section 8 and Section 11 of the WLA Decision Instrument.

3.3. The Determination is binding upon the Parties and their subsidiaries and any related companies, and any Undertaking which they each own or control, and any Undertaking which owns or controls either of them, and their respective successors and assigns, who shall comply with it in all respects from the Effective Date. For the purpose of this Determination, the terms "subsidiary" and "related company" shall have the meaning ascribed to them in the Companies Act 2014.

PART II – RESOLUTION

4. RESOLUTION

4.1. The Dispute is hereby determined as follows.

(a) There is no obligation on Eircom to make provision in a single contractual document for an SLA attaching to both VUA and Bitstream services subject always to the requirement that Eircom shall ensure that service levels applicable

to its self-supply of VUA including when self-supplying Bitstream do not favour its own operations as compared to Vodafone's.

(b) In order to ensure that the VUA SLA encourages an efficient level of performance on the part of Eircom as required by Section 11.1 of the WLA Decision Instrument, and subject to the exception set out in Section 4.1(c), Eircom shall not exclude any faults affecting the VUA service purchased by Vodafone for the purpose of the performance assessment and calculations conducted under the VUA SLA, and shall count as one fault, any such fault, irrespective of the nature of the fault.

(c) Eircom may, for the purpose of the performance assessment and calculations conducted under the VUA SLA:

(i) Exclude those faults which Eircom has established objectively are faults exclusively within the control of Vodafone, namely customer equipment or customer environments-related faults; and

(ii) Interrupt the calculation of the number of days a fault is not repaired where, and only for so long as, repair of that fault is objectively dependent on an independent third-party's intervention over which Eircom has no control.

(d) In order to ensure that Service Credits payable to Vodafone provide Eircom with sufficient and adequate incentive to meet agreed service levels, Eircom shall make provision in its NGA SLA with Vodafone, for the calculation of Service Credits, in circumstances where the applicable agreed service level is not met, by reference to all faults that were not repaired within the relevant repair timeframe.

(e) Eircom shall provide as part of the quarterly NGA SLA Assurance Report supplied to Vodafone under the NGA SLA, detail of all faults that are late, including as the case may be, all reported faults that have been excluded with the reason therefor, so that Vodafone can verify whether agreed service levels have been met or not, and if not, that Service Credits are paid on all faults that are late.

4.2. Nothing in this Determination Instrument affects the obligations imposed on Eircom in the WLA Decision Instrument including for the avoidance of doubt Section 8 of the WLA Decision Instrument and Eircom shall ensure full compliance with Section 8 of the WLA Decision Instrument in meeting the requirements of this Determination Instrument.

PART III – OPERATION AND EFFECTIVE DATE

5. STATUTORY POWERS NOT AFFECTED

5.1. Nothing in this Determination Instrument shall operate to limit ComReg in the exercise and performance of its statutory powers and duties conferred upon it under primary or secondary legislation from time to time whether in force prior to or after the Effective Date.

6. NOTIFICATION AND EFFECTIVE DATE

6.1. Notice of the Determination shall be given to the Parties by service of ComReg Decision DXX/2● upon them, and a copy of ComReg Decision DXX/2● shall be published on ComReg's website.

6.2. The Determination Instrument shall be effective on the date of its service to the Parties.

[NAME]
COMMISSIONER
COMMISSION FOR COMMUNICATIONS REGULATION
Date: