



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

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 (ComReg Document 25/52) 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. In July 2025 ComReg published previous correspondence on this matter, with this set out in ComReg Document 25/47². This latest Information Notice publishes correspondence between Eircom and ComReg since then.
3. 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.

² ComReg Document 25/47 is available at <https://www.comreg.ie/media/2025/07/Information-Notice-Correspondence-between-Eircom-and-ComReg.pdf>.

Appendix 1: Correspondence between Eircom and ComReg

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



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22 July 2025

Subject: Material Change in Market Conditions and Legal Obligation to Reassess SMP under Article 68(6) EECC

Dear Eric,

Thank you for your letter dated 3 July 2025. We note ComReg's views regarding the WLA Annual Update and its position concerning the need to reassess the NGA market under the European Electronic Communications Code ("EECC").

We are writing to reiterate and clarify our position that there have been material changes in market conditions that require ComReg to initiate a new analysis of the market under Article 68(6) of the EECC.

1. Article 68(6): Legal Obligation Triggered by Market Developments

Article 68(6) EECC states:

"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” [emphasis added].

We are not asserting that deregulation should follow automatically. Rather, we are stating that the conditions underlying the 2024 WLA Decision have materially changed, and as a result, ComReg must reconsider its previous finding of SMP for eir in the NGA Commercial Area.

2. Overbuild and the Emergence of Effective Competition

At the time of the 2024 Decision, ComReg acknowledged that there was negligible co-coverage between eir and alternative operators such as SIRO and VMI. Consequently, its SMP designation was based on a market reality characterised by very limited or no overlapping infrastructure competition.

That is no longer the case. As evidenced in the 2025 WLA Annual Update:

- Over 150,000 premises are now covered by all three operators (eir, SIRO, VMI);
- Co-coverage by two operators has expanded well beyond ComReg's earlier assumptions;
- These are not projections — they are live, operational, and commercially active networks.

In short, the core market conditions upon which the SMP finding rested no longer exist. ComReg must therefore reassess whether SMP remains — particularly in areas where robust infrastructure-based competition has emerged.

The issue is not whether the “rule of three” is formally triggered — it is that ComReg's original SMP finding assumed the absence of overlapping infrastructure. That assumption is now demonstrably invalid.

3. Annex 12: Mischaracterised and Legally Insufficient

ComReg's recent correspondence appears to argue that its earlier forecasts (in Annex 12) anticipated the current extent of overbuild — and that this somehow negates the need for reassessment. That view is both legally and factually flawed:

- Annex 12 is a projection tool, not a substitute for actual market analysis;
- Whilst the use of legacy copper exchanges for geographic assessment is questionable, Annex 12 was designed to model how many exchanges might meet the cumulative deregulation criteria if roll-out occurred;
- It does not assess SMP, nor does it reflect real-world competition, pricing, or entry dynamics;
- At the time of the 2024 Decision, exchanges with dual or triple operator presence were negligible.

Annex 12 is not a legal or analytical shield. It did not and could not anticipate or analyse the competitive reality that has now materialised — a reality characterised by meaningful and durable co-coverage.

It would be misguided for ComReg to suggest that Annex 12 precludes its legal duty to reassess. Forecasting future possibilities is not a substitute for engaging with present-day realities.

4. ComReg's Position Is Inconsistent with the EECC and Its Own Commitments

In the 2024 Decision, ComReg committed to keeping the market under review and reassessing if competitive conditions evolved. The presence of three networks, now proven at scale, directly engages the competitive tests ComReg designed and places it under a clear obligation to review.

A failure to act at this juncture would:

- Undermine the procedural safeguards of Article 68(6);
- Be inconsistent with ComReg's stated regulatory objectives;
- Delay deregulation in areas where SMP no longer appears justified;
- Risk European Commission scrutiny for inaction in light of significant market change.

5. The “Rule of 3” Cannot Be Recast

ComReg now states that the “rule of 3” is not a deregulation benchmark but merely a tool to identify similar geographic areas. With respect, that re-characterisation is inconsistent with both ComReg’s own usage of the rule and its regulatory effects in practice.

- In the 2024 Decision, the rule of 3 was used to project the extent of areas that might qualify for lighter regulation — clearly linking it to the deregulatory framework;
- More importantly, falling short of the rule results in continued regulation — meaning the rule operates as a *de facto* deregulatory barrier, regardless of how it is now described.

If the consequence of failing to meet the rule is that regulation remains in place, then the rule must be assessed not as a descriptive heuristic, but as a regulatory filter. Its failure to reflect commercial reality — in particular, the absence of durable three-player overlap in most areas — means that the current regulatory framework is structurally incapable of adapting to real-world market change.

More fundamentally, ComReg is no longer operating in a context of uncertainty. It now knows that the “rule of 3” will not be satisfied at scale. The premise that this test could serve as a forward-looking proxy for areas of effective competition is therefore no longer credible. Under Article 68(6), ComReg must now reassess whether materially different competitive conditions — including widespread two-player infrastructure coverage — give rise to homogenous conditions of competition across areas with one, two, or three networks. This was not possible in 2024. It is necessary now.

6. Structural Market Shifts in Operator Rollout Strategies

ComReg’s letter refers to its prior acknowledgment of VMI’s wholesale agreement with SIRO. However, the 2024 Decision merely stated this as a factual development — it did not examine or evaluate its competitive implications. At the same time, ComReg asserted that all operators were free to roll out infrastructure as they pleased.

Since then, what has materialised is the emergence of quasi-reciprocal roll-out patterns between SIRO and VMI. This behaviour suggests a fundamental change in roll-out incentives, which may limit overlapping deployment between these operators and thus materially affect competitive dynamics.

This is a market development that did not exist — or was not examined — at the time of the 2024 Decision and must now be evaluated under Article 68(6) of the Code. Such a development is specifically called out in the Code ““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...” [emphasis added].

7. ComReg’s Interpretation of Its Legal Obligations Is Misplaced

ComReg argues that the likely impact of increased build by SIRO and VMI was considered in the 2024 Decision, and that Annex 12 accounted for potential changes in market structure. However, this conflates the possibility of future change with the obligation to respond when change **actually occurs**.

The 2024 Decision did not — and could not — account for real market structure shifts that had not yet materialised. Article 68(6) requires ComReg to reassess obligations when those changes do occur. That is the case now.

8. Article 68(6) Obligation Now Triggered

For the reasons outlined above, we consider that Article 68(6) EECC has been clearly triggered. There has been a material change in market characteristics — including extensive overbuild and the emergence of competitive dynamics not assessed in the 2024 Decision.

ComReg is now legally obliged to conduct a new market review in line with its obligations under the EECC.

9. Virgin Media Rollout Data: Material Divergence and Unresolved Transparency Issues

Finally, we wish to reiterate our concern regarding the divergence between Virgin Media Ireland’s (VMI) publicly reported FTTP rollout figures and the coverage data relied upon by ComReg in the QKDR. ComReg has still not addressed the core query raised in our earlier correspondence — namely, where the definitions of “standard connection within standard provisioning lead times” and “standard connection fee” are formally set out, particularly in relation to VMI.

It remains unclear how VMI could meaningfully align its internal data reporting to an alleged QKDR definition that is not transparently published or subject to consistent interpretation. This lack of clarity undermines transparency and limits confidence in the consistency of ComReg’s market coverage assessments — particularly where they diverge materially from figures VMI reports to the investment community.

Most importantly, the divergence itself has grown to the point of being material which was not the case at the time of the 2024 Decision. As we have set out, VMI has publicly reported coverage of over 100,000 premises more than the QKDR reflects. The suggestion that this “definitional” change was “noted” in the 2024 Decision is now beside the point. The scale of the discrepancy has widened significantly since that Decision. At a minimum, this gap must now be recognised as a material market development that casts serious doubt on the continued accuracy of ComReg’s coverage assumptions and further supports the case for reassessment under Article 68(6).

Request for Regulatory Reassessment

We therefore request that ComReg:

- Acknowledge the emergence of durable triple-operator and extensive dual-operator coverage as a material change in market conditions;
- Initiate a reassessment of SMP in the NGA Commercial Area, particularly in geographic areas where overbuild is evident;
- Engage with stakeholders on an expedited consultation process to ensure that regulatory conditions remain proportionate, targeted, and legally compliant.

We would welcome a discussion on the appropriate next steps and are happy to provide further supporting data if required.

Yours sincerely,



Kjeld Hartog
Chief Regulatory Officer
eir



14 August 2025

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Dear Kjeld

I refer to your letter of 22 July 2025 concerning ComReg Document 25/15 (the 'Monitoring Report') and Eircom's contention that there have been material changes in market conditions in the Commercial Next Generation ('NG') WLA Market and that a new market analysis is therefore warranted.

ComReg has addressed the matter repeatedly and comprehensively, in particular, in our letters of 16 May and 3 July 2025. Again, ComReg's position is that the WLA market has evolved in ways that are consistent with the assumptions underpinning the 2024 WLA/WCA Decision and that no new market analysis is required.

We have, again, taken the time to address the points you make in your letter so that you can be in no doubt as to ComReg's position and the reasons for it. Please note as follows:

- ComReg's market analysis in the 2024 WLA/WCA Decision and the finding that Eircom has SMP did not assume, as you contend, an absence of overlapping infrastructure. It was a forward looking rather than a static assessment which had regard to existing and planned rollouts and existing and potential competition. The fact that 150,000 premises are passed by three operators across the entirety of the market and that coverage at the two-operator level is growing does not call into question ComReg's analysis in the decision and the "*core market conditions upon which the SMP finding rested*", to use your words, continue to exist.
- In particular, Eircom has had, and continues to have, the largest FTTH roll-out in the State currently passing some 1.38m premises and a significant and broadly stable FTTP market share position outside of the NBP Intervention Area of 65% (rising to 75% when FTTC lines are included); an FTTP subscriber line base that stands at 520K having grown by over 90K in the last year; and, at 38%, the highest FTTP network take-up rate of any FTTP network operator, with this growing over time.

- Annex 12 of the 2024 WLA/WCA Decision is not a “*projection tool*”. It includes details of the market analysis set out in the main body of the Decision and cannot be read independently of the Decision. There is no suggestion on the part of ComReg that it “precludes” anything. It simply shows the detail of the analysis carried out at the time of the 2024 WCA/WLA Decision and its forward-looking nature and this includes consideration of the position in future were VMI’s cable TV network footprint to be fully overlaid with FTTP.
- It is Eircom’s stance, not ComReg’s, that involves recasting what you call the ‘rule of three’. The 2024 Decision did not use the rule of 3 to project the extent of areas that might qualify for lighter regulation as you contend or as a “proxy” for effective competition. Again, the extent of infrastructure rollout and overlaps is part of the criteria used for the geographic assessment. Our position on this has been consistent. Under the current regulatory framework, regulation will remain in place not because some proxy or arbitrary rules are used, but where competition is not effective absent regulation. If real-world market change translates into effective competition in the long term with no need for regulation, then regulation will be removed. Ongoing market developments do not in any way indicate that this is the case yet. They may indicate that ComReg’s Decision is allowing network rollout to progress; this does not make them “*materially different competitive conditions*” as you contend. Again, Eircom has had, and continues to have, a significant and broadly stable FTTP market share position outside of the NBP Intervention Area, an FTTP subscriber line base that has substantially increased in the last year and the highest FTTP network take-up rate of any FTTP network operator.
- We see no evidence in the market for Eircom’s position that there are “*structural market shifts in operator rollout strategies*”, which would include “..*quasi-reciprocal roll-out patterns between SIRO and VMI*” and “*materially affect competitive dynamics*”. This has already been addressed in ComReg’s letter of 2 July 2025. VMI’s public announcements never expressed any intention to go beyond its cable TV network footprint and SIRO does not purchase wholesale services from VMI, nor has it expressed any intention to do so. The 2024 WLA/WCA Decision (paragraph A12.53) considered and rejected the suggestion by Eircom at that time that SIRO would have no incentive to roll out in VMI’s footprint. The Monitoring Report notes that, as of Q3 2024, VMI’s network upgrade is only 34% complete (336,000 premises) and SIRO and VMI’s FTTP networks overlap at approximately 170,000 premises. It is factually and objectively incorrect to characterise VMI’s and SIRO’s roll-out as quasi-reciprocal.
- As regards VMI’s rollout data, as you will be aware, ComReg collects data using uniform definitions that apply to all operators, VMI included, and your apparent suggestion that operators should have the same “*standard connection within standard provisioning lead times*” or the same “*standard connection fees*” “*formally set out*” indicates a misunderstanding of the regulatory framework and the role that competition plays within it. Eircom’s lack of understanding or confidence in

VMI's public statements does not make this "*a material market development that casts serious doubt on the continued accuracy of ComReg's coverage assumptions*" and it certainly does not support the case for a re-assessment under Regulation 50(7) of the ECC Regulations as you contend. For its part ComReg stands on the data that it publishes, which we would note is gathered using our statutory information gathering powers, with operators aware of the consequences for providing false or misleading information.

I trust that this further letter puts the matter to rest. In practical terms, this means that ComReg at this time will not initiate a market analysis on the basis of ComReg Document 25/15 of the Commercial NG WLA Market. ComReg will continue to monitor the market, more particularly the impact of new market developments as required by Regulation 50(7) ECC.

As noted in my letter of 2 July ComReg reserved its right to publish further correspondence on this matter and, in the interests of transparency for all stakeholders, ComReg intends to do so within 2 working days (save for redacting email addresses). I note that Eircom's letter does not contain confidential information and has not been marked confidential.

Yours sincerely

No signature as sent by email

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